

Question 1 :

Explain the incorporation by registration & Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008.

May-18, Nov-18, May-22, Module

Answer :

Incorporation by registration (Section 12 of LLP Act, 2008) :

When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause

(a) Of that sub-section has not been complied with, he shall, within a period of 14 days— (a) register the incorporation document; and

(b) Give a certificate that the LLP is incorporated by the name specified therein.

The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.

The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.

The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Essential elements to incorporate LLP :

Under the LLP Act, 2008, the following elements are very essential to form a LLP in India :

- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
- (iii) To have registered office in India to which all communications will be made and received;
- (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
- (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
- (vi) To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.

(vii) LLP Name.

Steps to incorporate LLP :

1. Name reservation :

- The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP (3m)
- Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business

2. Incorporate LLP :

- After reserving a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership (LLP).
- e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners

3. LLP Agreement :

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

Question 2 :

"LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain

May-19, Jul-21, Module

Answer :

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

- **Limited Liability** : Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.
- **Flexibility of a partnership** : The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Question 3 :

State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008.

Dec. -21

Answer :

Registered office of LLP and Change therein (Section 13 of the Limited Liability Partnership Act, 2008)

Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

Question 4 :

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Examine the concept of LLP.

Answer :

➤ **Meaning** – A LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that gives the benefits of limited liability but allows its partners the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.

Concept of "limited liability partnership" :

➤ The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name.

➤ The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

➤ Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.

➤ Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity.

- LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

Question 5 :

Module

Enumerate the various characteristics of the LLP.

Answer :

LLP registered with the Registrar under the LLP Act, 2008 has the following characteristics :

- | | |
|------------------------------|--|
| a) Body Corporate | b) Perpetual Succession |
| c) Separate legal entity | d) Mutual Agency |
| e) LLP Agreement | f) Artificial Legal person |
| g) Common Seal • | h) Limited liability |
| i) Management of business | j) Minimum and maximum number of members |
| k) Business for profit only | l) Investigation |
| m) Compromise or Arrangement | n) Conversion into LLP |
| o) E-filing of documents | p) Foreign. |

Question 6 :

What do you mean by Designated Partner? Whether it is ^{Yes} mandatory to appoint Designated partner in a LLP ?

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Answer “

Designated Partner [Section 2(j)] :

- 1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India: Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such body corporate shall act as designated partners.

Explanation : For the purposes of this section, the term resident in India means a person who has stayed in India for a period of not less than one hundred and twenty days during the financial year.

- 2) Subject to the provisions of sub-section (1),
 - (i) if the incorporation document
 - (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

- (b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner.
- (ii) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.

An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

Every designated partner of a limited liability partnership shall obtain a Designated Partners Identification Number (DPIN) from the Central Government and the provisions of sections 153 to 159 (both inclusive) of the Companies Act, 2013 shall apply mutatis mutandis for the said purpose

Question 7 :

Module

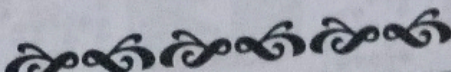
What are the effects of registration of LLP ?

Answer :

Effect of registration (Section 14) :

On registration, a LLP shall, by its name, be capable of :

- a) suing and being sued;
- b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- c) having a common seal, if it decides to have one; and
- d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.



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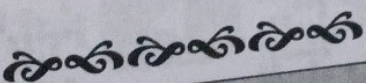
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"Learning is never done without errors and defeat."