

Ch-15:- LLP Act-2008

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Q1.) 'LLP is an alternative corporate business form that gives the benefits of limited liability of a company & the flexibility of a partnership'. Explain.

Ans. # Limited Liability:- Every Partner of a LP is, for the purpose of the business of LP, the agent of the LP, but not of other Partners (Sec-26 of LLP Act-2008). The liability of the partner is limited to their agreed contribution in the LP, while the LP itself will be liable for the full extent of its assets.

Flexibility of partnership:- The LP allows its members the flexibility of organizing their internal structure as a partnership based on mutually agreed agreement. The LP form enable Entrepreneurs, Professionals & Enterprises providing services of any kind or engaged in scientific & technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure & operation, the LP is suitable vehicle for small enterprises & for investment by venture capital.

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Q2.) Mr. Ankit Sharma wants to form an LLP taking him, his wife Mrs. Archika Sharma & one HUF as partners for that. Whether this LLP can be incorporated under LLP Act 2008? Explain.

Ans.) Sec-5 of LLP Act 2008, provides any Individual or body corporate may be a partner in an LLP. However, an individual shall not be capable of becoming a partner of a LLP if :-

- a.) he has been found to be of unsound mind by a court of competent Jurisdiction & the finding is in force.
- b.) he is an undischarged Insolvent; or
- c.) he has applied to be adjudicated as an insolvent & his application is pending.

Further Sec-2(1)(e) provides that a body corporate it means a company as defined in clause (20) of Sec-2 of Co. Act 2013 & Includes! -

- i.) An LLP registered under this Act;
- ii.) An LLP incorporated outside India &
- iii.) A Co. incorporated outside India, but does not include
 - a.) a corporation sole

b.) a co-operative society registered under any law for the time being in force, &

c.) any body corporate (not being a co. as defined in Clause (20) of Sec-2 of Co. Act 2013 or LLP Act 2008)

which the Co. may by notification in the official Gazette, specify in this behalf. Therefore HUF is not covered in the definition of body corporate & cannot be partner in LLP.

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Q3.) There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Rahul, Raheem, Kartal & Albert. Mr. Rahul & Albert are non-Resident while other 2 are Resident. LLP wants to take Rahul & Raheem as designated partners. Explain in the light of LLP Act 2008, whether LLP can do so?

Ans.) According to Sec-7 of LLP Act 2008, Every LLP shall have at least 2 designated partners who are Individuals & at least one of them shall be a Resident in India. Further explanation to the sections provides, the term 'Resident in India' means a person who stayed in India for a period of not less than one hundred 20 days during financial year. Hence, in the given problem, besides Mr. Ram & Raheem, Mr. Albert should also be a designated partner.

Q4.) Konik, Priyansh, Abhinav & Bhawna were partners in Singh Jara & Associates LLP. Abhinav Resigned from the firm w.e.f. 01.11.22 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will be still liable for the loss of firm of the transactions entered after 1.11.22?

Ans.) According to Sec-24(3), where the person has ceased to be a partner in LLP (hereinafter referred as to as former partner) the former partner is to be regarded (in relation to any person dealing with the LLP)

as still being a partner of the LLP unless:—

- a) The person has notice that the former partner has ceased to be a partner of LLP or;
- b) Notice that the former partner has ceased to be a partner of LLP has been delivered to the Registrar.

★ Hence, by the virtue of above provision, as no notice of resignation was given to RoC, Abhinav will still liable for the loss of firm of the transaction entered after 1.11.22.

Q5.) Mr. Mudit is the creditor of Devi Ram food circle LLP. He has a claim of Rs. 100000 against the LLP but the worth of the asset of LLP are only ₹ 70000. Now Mr. Mudit wants to make the partner of LLP personally liable for the deficiency of ₹ 30000. Whether by the virtue of LLP Act 2008, Mr. Mudit can claim the deficiency from the partner of Devi Ram food circle LLP?

Ans → A LLP is a body corporate formed & incorporated under this Act & is a legal Entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partner will be limited. Creditor of LLP shall be the creditor of LLP alone. In other words, creditors of LLP cannot claim from partners.

The liability of the partner will be limited to their agreed contribution in the LLP. Hence the Creditors of Devi Ram food circle LLP are the Creditors of Devi Ram food circle LLP only. Partners of LLP are not personally liable towards Creditors. Mr. Mudet cannot claim his deficiency of '300000' from the partner of Devi Ram food circle LLP.