



CA Nikesh Agrawal

CA Foundation May 2025

BUSINESS LAW

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Chapter: 5 - Limited Liability Partnership Act, 2008
Question Bank (Updated till Jan 2025 Attempt)

09 - Dyana and Bharti, newly qualified chartered accountants, wish to form a Limited Liability Partnership (LLP) to provide their professional services. They seek information about the provisions of the Limited Liability Partnership Act, 2008, specifically regarding the incorporation document. Additionally, they want to know whether the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled. Explain these aspects to them.

2)c)6m, Jan2025

Ans - Incorporation document (Section 11 of the Limited Liability Partnership Act, 2008):
The most important document needed for registration is the incorporation document.

(1) For a LLP to be incorporated:

(a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

(b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and

(c) Statement to be filed:

- there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
- by any one who subscribed his name to the incorporation document,
- that all the requirements of this Act and the rules made thereunder have been complied with,
- in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

(a) be in a form as may be prescribed;

(b) state the name of the LLP;

(c) state the proposed business of the LLP;

(d) state the address of the registered office of the LLP;

(e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;

(f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;

(g) contain such other information concerning the proposed LLP as may be prescribed.

(3) If a person makes a statement as discussed above which he—

(a) knows to be false; or

(b) does not believe to be true, shall be punishable

- with imprisonment for a term which may extend to 2 years and
- with fine which shall not be less than ` 10,000 but which may extend to ` 5 Lakhs.

Incorporation by registration (Section 12- Sufficient evidence): As per section 12, 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 the sub-section has been complied with.

In view of above, the statement filed along with the incorporation document serves as sufficient evidence that all legal requirements for the incorporation of the LLP have been fulfilled.

08 - Referring to the provisions of the Limited Liability Partnership Act, 2008, answer the following:

(i) Under what circumstances a Limited Liability Partnership is compulsorily required to change its name? Also, explain the compliance requirement following the change of name and the consequences, if any, in case of default therein. (4m)

(ii) What do you mean by a Small Limited Liability Partnership? (2m)

2)c)6m,MDTP7,10, 2)c)6m,MTP1,Jan2025, 2)c)6m,Sept2024

Ans - (i) Change of name of LLP (Section 17 of Limited Liability Partnership Act, 2008):

(1) Notwithstanding anything contained in sections 15 and 16, if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to —

(a) that of any other LLP or a company; or

(b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,

then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company,

the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

(2) Where a LLP changes its name or obtains a new name under sub section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

(3) If the LLP is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.

Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

(ii) Small Limited Liability Partnership [Section 2(1)(ta) of the Limited Liability Partnership Act, 2008]:

It means a limited liability partnership—

(i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

(iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

07 - 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?

RTP, Sept 2024

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

- i) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
- ii) 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.
- iii) 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.
- iv) If the LLP contravenes any provisions of this section, the LLP and its every partner shall be liable to a penalty of ` 500 for each day during which the default continues, subject to a maximum of ` 50,000 for the LLP and its every partner.

Q6 - What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP?

2)c)6m,MDTP5, 2)c)6m,MTP1,Sept2024

Ans - Designated Partner [Section 2(1)(j) of the LLP Act, 2008]: "Designated partner" means any partner designated as such pursuant to section 7.

According to section 7 of the LLP Act, 2008:

- i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- ii) If in LLP, 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 LLP or nominees of such bodies corporate shall act as designated partners.
- iii) Resident in India: 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 120 days during the financial year.

Q5 - "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.

2)c)6m,MDTP1,6, 2)c)6m,MTP2,Sept2024, 2)c)6m,MTP1,June2024

Ans - 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. 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.

Q4 - A LLP is a new form of legal business entity with limited liability. It's an alternative corporate business vehicle that only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organizing their internal structure as a traditional partnership. Keeping in view of above, define the following characteristics of LLP.

- i) Body Corporate
- ii) Mutual Agency
- iii) Foreign LLPs
- iv) Artificial legal person

2)c)6m,MDTP8,9, 2)c)6m,MTP2,Jan2025, RTP,Jan2025, 2)c)6m,June2024

Ans - Body corporate: Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

Section 3 of LLP Act, 2008, provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

Mutual Agency: 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. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

Foreign LLPs: Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India". Foreign LLP can become a partner in an Indian LLP.

Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

Q3 - A & B were friends. Now they have plans of setting up a supermarket in their locality. They are confused as to whether to register as a traditional partnership or as a Limited Liability Partnership. As an advisor, enumerate the differences between the two forms of business highlighting the compliances & other legal formalities. RTP, June 2024

Ans - Comparison between a Limited Liability Partnership (LLP) and partnership can be analysed on the below tabulated parameters.

Basis	LLP	Partnership firm
Regulating Act	The Limited Liability Partnership Act 2008.	The Indian Partnership Act, 1932.
Body corporate	It is a body corporate.	It is not a body corporate.
Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.

Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership
Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
Annual filing of documents	LLP is required to file: (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
Foreign partnership	Foreign nationals can become a partner in a LLP	Foreign nationals cannot become a partner in partnership firm.
Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can admitted to benefits of the partnership with the prior consent of the existing partners.

02 - List the differences between the Limited Liability Partnership (LLP) and the Limited Liability Company.

2)c)6m,MTP2,June2024

OR

"A LLP (Limited Liability Partnership) is a type of partnership which provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement." In line with the above

statement clearly elaborate the difference between LLP and Limited Liability Company (LLC).

2)c)6m,MDTP2,3

Ans - Distinction between LLP and Limited Liability Company: The points of distinction between a LLP and Limited Liability Company are tabulated as follows:

Basis	LLP	Limited Liability Company
Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
Members/Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
Internal governance structure	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
No. of members/partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum - 2 members Maximum 200 members Public company: Minimum - 7 members Maximum - No such limit on the members. Members can be organizations, trusts, another business form or individuals.
Liability of members/partners	Liability of the partners is limited to the extent of agreed contribution except in case of willful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
Management	The business of the company is managed by the partners including the designated partners authorized in the	The affairs of the company are managed by board of directors elected by the shareholders.

	agreement.	
Minimum number of directors/ designated partners	Minimum 2 designated partners.	Pvt. Co. - 2 directors Public co. - 3 directors

01 - i) Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? (3m)

ii) What are the effects of registration of Limited Liability Partnership? (3m)

2)c)6m,MDTP4, 2)c)6m,MTP3,June2024

Ans - i) Partners (Section 5 of Limited Liability Partnership Act, 2008):

Any individual or body corporate may be a partner in a 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 and the finding is in force;
- (b) he is an undischarged insolvent; or
- (c) he has applied to be adjudicated as an insolvent and his application is pending.

ii) Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):

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.

Note: Before June 2024 Attempt questions are not included as syllabus is highly changed from June 2024.

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