

CA Foundation

Paper 2 - Business Law

Chapter 5 (LLP)

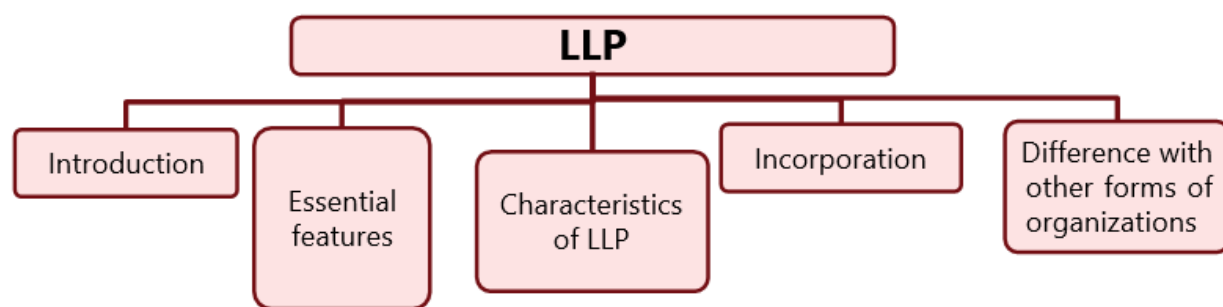
The Limited Liability Partnership

Act, 2008

Notes by - CA Chaitanya Jain

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INTRODUCTION

The Ministry of Law and Justice on 9th January 2009 (misprinted in the module as 2007) notified The Limited Liability Partnership Act, 2008

- **2008** - Bill was passed by the Parliament on 12th December, 2008 and
- **2009** - The President of India has assented to the Bill on 7th January, 2009
- **2021** - Amended- The LLP (Amendment) Act, 2021 (31st August, 2021)
- This Act is for formation and regulation of LLPs and matters connected therewith or incidental thereto.
- The LLP Act, 2008 has **81 sections and 4 schedules**.
 - **The First Schedule** =
Mutual rights and duties of partners and
Between limited liability partnership and its partners where there is absence of formal agreement with respect to them.
 - **The Second Schedule** - Conversion of a Firm into LLP.
 - **The Third Schedule** - Conversion of a Private company into LLP.
 - **The Fourth Schedule** - Conversion of Unlisted public company into LLP.

- Administration of the Act -

The Ministry of Corporate Affairs (MCA) + the Registrar of Companies (ROC)

The Companies Act, 2013 —> Registrar of Companies
The Indian Partnership Act, 1932 —> Registrar of Firms
The Limited Liability Partnership Act, 2008 —> Registrar of Companies

- Framing of the rules, amendments in OG with regards to the Act - CG
- It is also to be noted that 'The Indian Partnership Act, 1932 is not applicable to LLPs.
- Non-applicability of the Indian Partnership Act, 1932 (Section 4): -
The provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.

Need of new form of Limited Liability Partnership

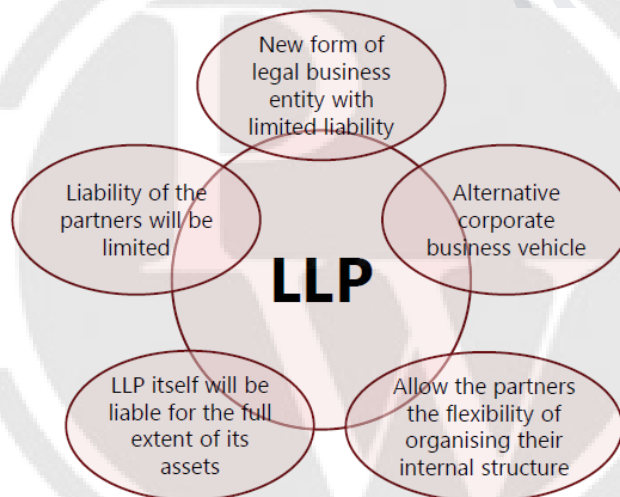
- A need has been felt for a new corporate form that would provide -
 - an alternative to the traditional partnership with unlimited personal liability on the one hand and
 - the statute-based governance structure of the limited liability company on the other hand.
- Owing to flexibility in its structure and operation -
- The LLP is a suitable vehicle for small enterprises and for investment by venture capital.

MEANING AND CONCEPT

- A LLP is a new form of legal business entity
- with limited liability.
- It is an alternative corporate business vehicle that not only
- gives the benefits of limited liability at low compliance cost but

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- 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.
- It gives 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.



New form —> Alternative Corporate business Vehcile —> LLP is a HYBRID system

Benefit of Company

- Body Corporate
- Limited Liability
- Perpetual Succession
- Separate Legal Entity
- Artificial Legal person

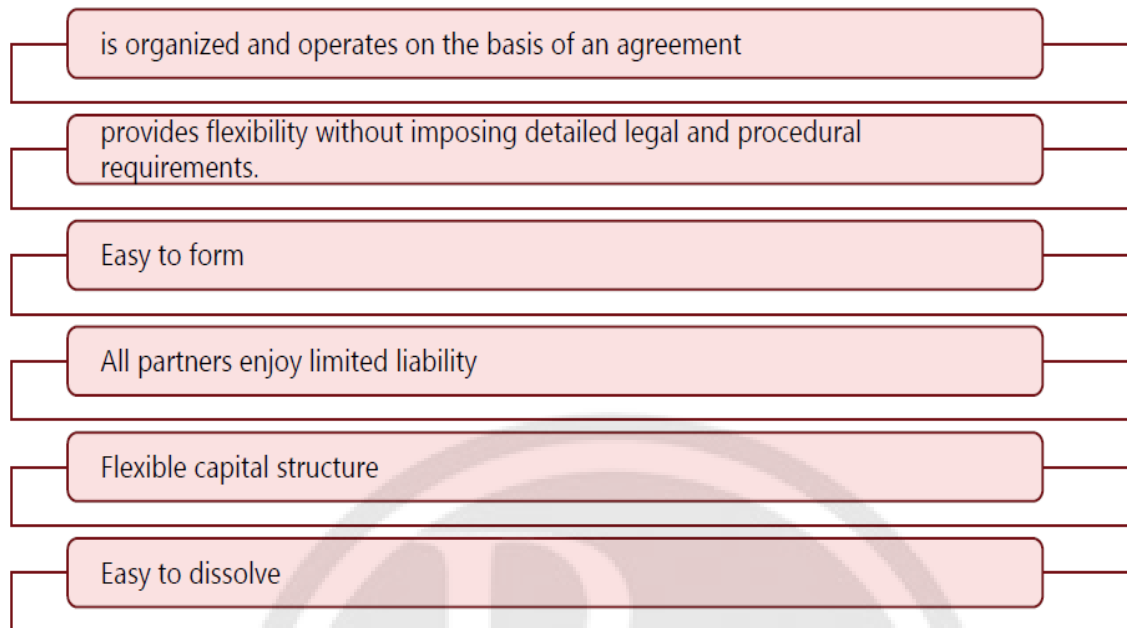
Benefits of Partnership Firm

- Flexibility
- Agreement
- Easy to create
- Easy to dissolve
- Compliances are less

LLP has taken advantages of both the form of organisation

ADVANTAGES OF LLP FORM

LLP form is a form of business model which:



IMPORTANT DEFINITIONS

1. Body Corporate Section 2(1)(d) - ★

A BODY CORPORATE CAN BECOME A PARTNER IN LLP. SO WE NEED TO UNDERSTAND WHAT IS A BODY CORPORATE ?

It means a company as defined in section 3 of the Act and includes -

- a. a LLP registered under this Act;
- b. a LLP incorporated outside India; and
- c. a company 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; and
- c. any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

2. Business [Section 2(1)(e)]:

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Business" includes every trade, profession, service and occupation.

LLP can't be formed for CHARITABLE PURPOSE. ONLY PROFIT.

3. Designated Partner [Section 2(j)]:

Designated partner means any partner designated as such pursuant to Sec. 7

4. Financial Year [Section 2(1)(l)]:

The period from -

REGULAR Case - the 1st April to 31st March of the following year.

SPECIAL Case - LLP incorporated after the 30th September of a year - the financial year may end on 31st March of the year next following that year. ★

Example 1: If a LLP has been incorporated on 15th October, 2019, then its financial year may be from 15th October, 2019 to 31st March, 2021.

5. Foreign LLP [section 2(1)(m)]: ★★

- It means a LLP formed, incorporated or registered outside India
- which establishes a place of business within India.

Formed / Incor. / Reg.	POB	Foreign LLP ?
In India	Within India	NO (Normal LLP)
Outside India	Within India	YES
Outside India	Outside India	NO
In India	Outside India	NO (Normal LLP)

6. Limited Liability partnership agreement Section 2(1)(o) -

- It means any written agreement between the partners of the LLP or
- Between the LLP and its partners

which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

7. Partner [Section 2(q)]:

- Partner, in relation to a LLP, means any person
- who becomes a partner in the LLP
- in accordance with the LLP agreement.

8. Small LLP [Section 2(1)(ta)]: ★★

It means a limited liability partnership (Satisfy both the conditions)

- a. Contribution of which does not exceed 25 lacs rupees or Max. not exceeding 5 crores (CG has power to increase it till this figure) as may be described

AND

- b. Turnover of which -
 - i. as per the statement of Accounts and Solvency for the
 - ii. immediately preceding financial year
 - iii. does not exceed 40 Lacs rupees or max. 50 crores (CG has power to increase it till this figure) as may be described

OR

- c. Which meets such other requirement as may be prescribed and fulfils such terms and conditions as may be prescribed

Partners (Section 5):

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.

Minimum number of partners (Section 6):

1. Every LLP shall have at least two partners.
2. If at any time the number of partners of a LLP is reduced below two and
 - a. the LLP carries on business for more than six months while the

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number is so reduced ★

- b. the person, who is the only partner of the LLP during the time that it so carries on business after those six months and
- c. has the knowledge of the fact that it is carrying on business with him alone,
- d. shall be liable personally for the obligations of the LLP incurred during that period.

Designated partners (Section 7):

1. Every LLP shall have **at least two designated partners** -
 - a. who are individuals and
 - b. at least **one of them shall be a resident in India (ROI)** ★
2. ★ If in LLP - ALL THE PARTNERS ARE BODY CORPORATE or in which one or more partners are individuals and bodies corporate (COMBINATION) -
at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

Resident in India:

A person who has **stayed in India** for a period of **not less than 120 days during the financial year.**

Example 2:

A There is an LLP by the name Indian Helicopters LLP having 5 partners namely -

Mr. A (Non resident),

Mr. B (Non Resident)

Ms. C (resident),

Ms. D (resident) and

Ms .E (resident).

In this case, at least 2 should be named as Designated Partner out

of which 1 should be resident. Hence, if Mr. A and Mr. B are designated then it will not serve the purpose. One of the designated partners should be there out of Ms. C, Ms. D and Ms. E.



BASIS	Partners	Designated Partners
MIN	2	2
MAX	No limit	No limit
WHO ?	Individual & BC	Only Individual
WHAT ?	Business	Compliances

CHARACTERISTIC OF LLP

Body Corporate	Perpetual Succession	Separate legal entity	Mutual Agency
LLP Agreement	Artificial Legal person	Common Seal	Limited liability
Management of business	Minimum and maximum number of partners	Business for profit only	Investigation
Compromise or Arrangement	Conversion into LLP	E-filing of documents	Foreign LLPs

1. LLP is a body corporate:

- Section 3 of LLP Act 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.

2. Perpetual Succession:

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- The LLP can continue its existence irrespective of changes in partners.
- Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP.
- It is capable of entering into contracts and holding property in its own name.

3. Separate Legal Entity:

- 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.
- In other words, creditors of LLP shall be the creditors of LLP alone.

4. Mutual Agency: ★

- No partner is liable on account of the independent or unauthorized 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.

5. LLP Agreement:

- Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners.
- The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice.
- In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

6. 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 practise 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.

7. Common Seal:

- A LLP being an artificial person can act through its partners and designated partners.
- LLP may have a common seal, if it decides to have one [Section 14(c)].
- Thus, it is not mandatory for a LLP to have a common seal.
- It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 DPs of the LLP.

8. 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). ★
- The liability of the partners will be limited to their agreed contribution in the LLP.
- Such contribution may be of tangible or intangible nature or both

Example 3: The professionals like Engineering consultants, Legal Advisors and Accounting Professional are afraid of entering into business due to unlimited liability.

Hence the LLP partnership Act provides an avenue for these professionals to Limited Liability Partnership firms which restricts their liability to the agreed amount. This has encouraged Professionals to form LLP.

9. Management of Business:

- The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

10. Minimum and Maximum number of Partners: ★

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- Every LLP shall have **at least two partners and**
- shall also have **at least 2 individuals as designated partners,**
- of whom **at least one shall be resident in India.**
- There is **no maximum limit** on the **partners in LLP**

11. Business for Profit Only: ★★

- The essential requirement for forming LLP is carrying on a lawful business
- with a view to earn profit.
- Thus **LLP cannot be formed for charitable or non-economic purpose.**

12. Investigation:

- The Central Government shall have powers to investigate the affairs of an LLP **by appointment of competence authority for the purpose.**

13. Compromise or Arrangement:

- Any compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.

14. Conversion into LLP:

- A firm,
- private company or
- an unlisted public company
would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.

15. E-Filing of Documents:

- Every form or application of document required to be filed or delivered under the act and rules made thereunder,
- shall be filed in computer readable electronic form on
- its **website www.mca.gov.in** and
- authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.

INCORPORATION OF LLP

Section	Description
11	Incorporation document
12	Incorporation by registration
13	Registered office of LLP and change therein
14	Effect of registration
15	Name
16	Reservation of name
17	Change of name of LLP

Incorporation document (Section 11):

The most important document need for registration is the incorporation document.

LLP's Partners	→	Registrar
Incorporation Document		
Statement		
Prescribed fees		

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

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c. Statement to be filed:

1. there shall be filed along with the incorporation document, a statement in the prescribed form,
2. 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
3. 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
 1. with imprisonment for a term which may extend to 2 years and
 2. with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 5 Lakhs.

Incorporation by registration (Section 12):

1. 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 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.
2. 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.**
 3. The certificate issued under clause (b) of sub-section (1) **shall be signed by the Registrar and authenticated by his official seal.**
 4. The certificate shall be conclusive evidence that the **LLP is incorporated by the name specified there- in.**

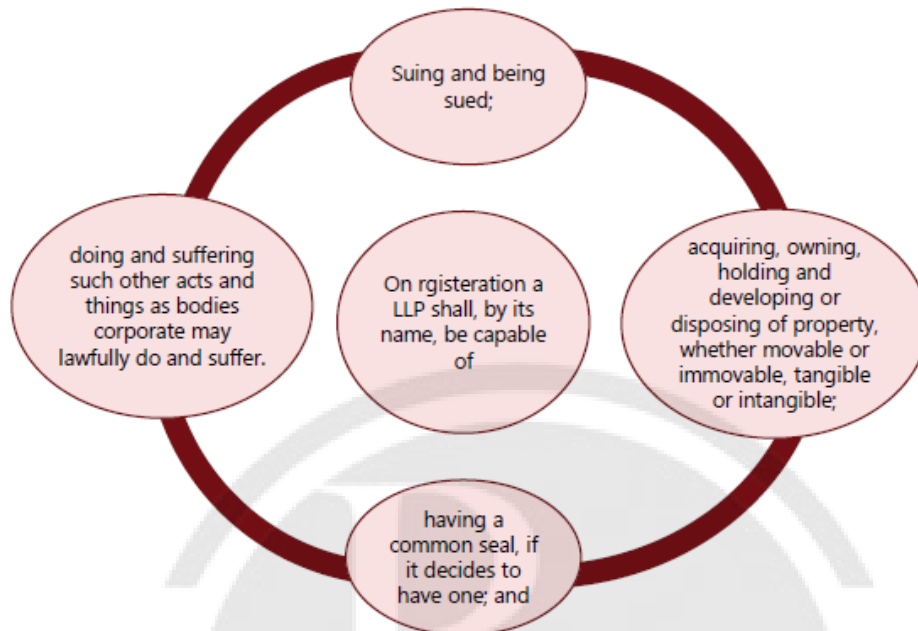
REGISTERED OFFICE OF LLP AND CHANGE THEREIN (SECTION 13):

1. Every LLP shall have a registered office to which all **communications and notices may be addressed** and where they shall be received.
2. 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.
3. 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.
4. If the LLP contravenes any provisions of this section, the LLP and its every

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partner shall be punishable with fine which shall not be less than Rs. 2,000 but which may extend to Rs. 25,000.

EFFECT OF REGISTRATION (SECTION 14):



NAME (SECTION 15):

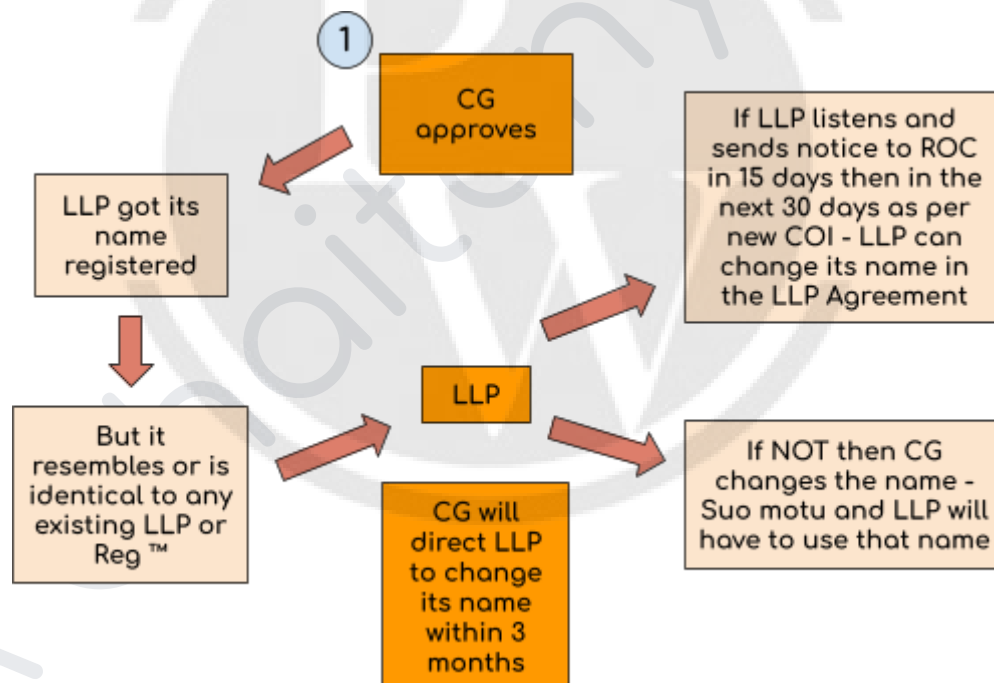
1. Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
2. No LLP shall be registered by a name which, in the opinion of the Central Government is -
 - a. undesirable; or
 - b. identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999.

RESERVATION OF NAME (SECTION 16):

- A person may apply in such form and manner and
- accompanied by such fee as may be prescribed to the Registrar
- for the reservation of a name set out in the application as -

- a. the name of a proposed LLP; or
 - b. the name to which a LLP proposes to change its name.
- Upon receipt of an application under sub-section (1) and on payment of
 - i. the prescribed fee,
 - ii. the Registrar may, if he is satisfied,
 - iii. subject to the rules prescribed by the Central Government in the matter,
 - iv. that the name to be reserved is not one which may be rejected on
 - v. any ground referred to in sub-section (2) of section 15,
 - vi. reserve the name for a period of 3 months from the date of intimation by the Registrar.

CHANGE OF NAME OF LLP (SECTION 17):



1. Notwithstanding anything contained in sections 15 and 16,
 - if through inadvertence or otherwise (galti se),
 - 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 —

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- 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.

It is further provided that - ★

- an application of the proprietor of the registered trademarks shall be maintainable
 - within a period of 3 years from
 - the date of incorporation or registration or change of name of the LLP under this Act.
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 subsection shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.

DIFFERENCES WITH OTHER FORMS OF ORGANISATION

Distinction between LLP and Partnership Firm:

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	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.
6.	Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Partners 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.
7.	Name	Name of the LLP to contain the word limited liability partnership (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner is 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.
9.	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.
10.	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.
11.	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.

5 ► The LLP Act, 2008

12.	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.
13.	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.
14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

Distinction between LLP and LLC:

Refer next page -

	Basis	LLP	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	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.
3.	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).
4.	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.
5.	No. of members/partners	Minimum – 2 partners Maximum – No such limit on the partners in the Act. The partners 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.
6.	Liability of members/partners	Liability of a 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.
7.	Management	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	Minimum number of directors/designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

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“ PROBLEM KYA HAI ? ”

Question Bank for the Chapter

*This section is complied with questions and suggested answers
for the chapter - The LLP, 2008*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

Examine the concept of LLP.

Answer 1

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 unauthorized 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 2

Enumerate the various characteristics of the LLP.

Answer 2

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

- Body Corporate
- Perpetual Succession
- Separate legal entity
- Mutual Agency
- LLP Agreement
- Artificial Legal person
- Common Seal
- Limited liability
- Management of business
- Minimum and maximum number of partners
- Business for profit only
- Investigation
- Compromise or Arrangement
- Conversion into LLP
- E-filing of documents
- Foreign

Question 3

What are the effects of registration of LLP?

Answer 3

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.

Question 4

Explain the essential elements to incorporate a Limited Liability Partnership under the LLP Act, 2008.

Answer 4

Essential elements to incorporate Limited Liability Partnership (LLP) - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

1. To complete and submit incorporation document in the form prescribed with the Registrar electronically;
2. To have at least two partners for incorporation of LLP [Individual or body corporate];
3. To have registered office in India to which all communications will be made and received;
4. 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.
5. 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 Ministry of Corporate Affairs.
6. 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.

7. LLP Name.

RTPs and MTPs with PYQPs

Question 1

What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008?

(RTP Nov'22)

Answer 1

Maintenance of books of account, other records and audit, etc. (Section 34 of LLP Act, 2008):

The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Every LLP shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.

Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

The accounts of LLP shall be audited in accordance with such rules as may be prescribed.

Question 2

Explain the Small Limited Liability Partnership under the LLP Act, 2008.

(RTP May'23)

Answer 2

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

It means a limited liability partnership

1. 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 (i)
2. 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
3. which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Question 3

Discuss the conditions under which LLP will be liable and not liable for the acts of the partner under Limited Liability Partnership Act, 2008.

(RTP Nov 23)

Answer 3

Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008]

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The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

Conditions under which LLP will not be liable [Section 27(1) of the LLP Act, 2008]

A LLP is not bound by anything done by a partner in dealing with a person if -

- the partner in fact has no authority to act for the LLP in doing a particular act; and
- the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Question 4

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 Jun' 24) (RTP Nov'21)

Answer 4

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

Sr. No.	Basis	LLP	Partnership Firm
1	Regulating Act	The Limited Liability Partnership Act 2008	The Indian Partnership Act 1932
2	Body corporate	It is a body corporate.	It is not a body corporate.
3	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5	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.
6	Perpetual succession	The death, insanity, retirement or insolvency	The death, insanity, retirement or insolvency

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		of the partner(s) does not affect its existence of LLP. Partners may join or leave but its existence continues forever.	of the partner(s) may affect its existence. It has no perpetual succession.
7	Name	Name of the LLP to contain the word limited liability partnership (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8	Liability	Liability of each partner is limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.
9	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.
10	Designated partners	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.
12	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.
13	Annual filing of documents	LLP is required to file: <ul style="list-style-type: none"> a. Annual statement of accounts b. Statement of solvency c. Annual return with the registration of LLP every year. 	Partnership firm is not required to file any annual document with the registrar of firms.
14	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15	Minor as partner	Minor cannot be admitted to the benefits	Minor can be admitted to the benefits of the

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		of LLP.	partnership with the prior consent of the existing partners.
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Question 5

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

(MTP Jun'22 5 Marks)(SM) MTP 5 Marks, Nov' 21)

Answer 5

Designated Partner [Section 2(j)]: "Designated partner" means any partner designated as such pursuant to section 7.

According to section 7 of the LLP Act, 2008:

1. Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
2. 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.

Question 6

What is Small Limited Liability Partnership as per Limited Liability Partnership (Amendment) Act, 2021?

(MTP Nov'22 5 Marks)

Answer 6

"Small Limited Liability Partnership [Section 2(ta) of the Limited Liability Partnership Act, 2008]: It means a Limited Liability Partnership -

1. 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
2. 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
3. which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

Question 7

Limited Liability Partnership (LLP) gives the benefits of limited liability of a company on one hand and the flexibility of a partnership on the other. Discuss.

(MTP Nov'22 5 Marks) (MTP Mar'22 5 Marks) (PYP 5 Marks, Jul'21)

Answer 7

LLP 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 8

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

(MTP Apr'23 5 Marks) (RTP May'22) (SM) (MTP 5 Marks, Oct 21)

Answer 8

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 9

Enumerate the circumstances in which Limited Liability Partnership (LLP) may be wound up by Tribunal under the LLP Act, 2008.

(MTP May'23 5 Marks) (MTP 5 Marks, Mar 21)

Answer 9

Circumstances in which LLP may be wound up by Tribunal (Section 64 of the LLP Act, 2008):

A LLP may be wound up by the Tribunal:

- if the LLP decides that LLP be wound up by the Tribunal;
- if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- if the LLP is unable to pay its debts;
- if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Question 10

"A LLP (Limited Liability Partnership) is a type of partnership in which participants' liability is fixed to the amount of money they invest whereas a LLC (Limited Liability Private/Public Company) is a tightly held business entity that incorporates the qualities of a corporation and a partnership", In line of above statement clearly elaborate the difference between LLP and LLC.

(MTP Nov'23 5 Marks) (PYP Nov'22 5 Marks)

Answer 10

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S.No	Basis	LLP	Limited Liability Company
1	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2	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.
3	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).
4	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.
5	No. of members/partners	Minimum - 2 partners Maximum - No such limit on the partners in the Act. The partners 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,

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			trusts, another business form or individuals.
6	Liability of members/partners	Liability of a 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.
7	Management	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
	Minimum number of directors/designated partners	Minimum 2 designated partners.	Pvt. Co. - 2 directors Public co. - 3 directors

Question 11

Discuss the liabilities of Limited Liability Partnership (LLP) and its partners in case of fraud as per the provisions of the Limited Liability Partnership Act, 2008.

(MTP Dec'23 5 Marks) (PYP Jun 23 5 Marks)

Answer 11

Unlimited liability in case of fraud (Section 30 of the Limited Liability Partnership Act, 2008):

1. In case of fraud:

- In the event of an act carried out by a LLP, or any of its partners,
- with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose,
- the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose,
- shall be unlimited for all or any of the debts or other liabilities of the LLP.

However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner, unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

2. **Punishment:** Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with
 - imprisonment for a term up to 5 years and
 - with fine which shall not be less than \$ 50,000, but which may extend to * 5 Lakhs.
3. **Compensations on commission of fraud:** Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct. However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

Question 12

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.

(PYP Dec 21 5 Marks)

Answer 12

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

1. Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
2. 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.

3. 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.
4. If the LLP contravenes any provisions of this section, the LLP and its every partner shall be punishable with fine which shall not be less than Rs. 2000, but which may extend to Rs. 25000.

Question 13

Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008.

(PYP May 22 5 Marks)

Answer 13

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

1. 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.
2. 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.
3. The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.
4. The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Essential elements to incorporate Limited Liability Partnership (LLP)

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

- a. To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- b. To have at least two partners for incorporation of LLP [Individual or body corporate];

- c. To have registered office in India to which all communications will be made and received;
- d. 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. At least one of them should be resident in India.
- e. 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 Ministry of Corporate Affairs.
- f. 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.
- g. LLP Name.

Question 14

Explain the provisions relating to the registration of changes in partners under the Limited Liability Partnership Act, 2008.

(PYP Dec'23 5 Marks)

Answer 14

Registration of changes in partners (Section 25 of the Limited Liability Partnership Act, 2008):

1. Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.
2. A LLP shall—
 - a. where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and
 - b. where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.
3. A notice filed with the Registrar under sub-section (2) -
 - a. shall be in such form and accompanied by such fees as may be prescribed;
 - b. shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed; and

- c. if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.
4. If the LLP contravenes the provisions of sub-section (2) as regards intimation to the Registrar, the LLP and its every designated partner shall be liable to a penalty of Rs. 10,000.
5. If the contravention referred to in sub-section (1) is made by any partner of the LLP, such partner shall be liable to a penalty of Rs. 10,000.
6. Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice.

However, where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

Question 15

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

(RTP May 21)

Answer 15

Designated Partner [Section 2(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:

1. Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
2. 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.
3. 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 182 days during the immediately preceding one year.

Question 16

State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008.

(PYP 5 Marks, Jan'21)

Answer 16

As per Section 30 of the Limited Liability Partnership Act, 2008, LLP and its Partners may face unlimited liability in case of fraud. According to this section, the liability arises, in the event of an act carried out by an LLP or any of its partners -

- with intent to defraud creditors of the LLP,
- or any other person, or
- for any fraudulent purpose.

The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

Where LLP, Partner or employee of LLP has conducted the affairs of the LLP in fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or employee shall be liable to pay compensation to any such person who has suffered any loss by reason of such conduct.

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