

Limited Liability Partnership, 2008

Explain the Meaning of LLP. State its Characteristics?_of LLP.

Provision: [The LLP Act, 2008]

Meaning of LLP

1. A LLP is a new form of legal business entity with limited liability.
2. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership.
3. 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.
4. 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.

Essentials of LLP

1. **LLP is a body corporate:** 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:** 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:** 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.
4. **Mutual Agency:** Further, no partner is liable on account of the independent or un-authorized actions of other partners. 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 practice a learned profession like CA or Medicine.
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. Thus, it is not mandatory for a LLP to have a common seal.
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

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:** Every LLP shall have 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.

State the essentials required for incorporation of the LLP.

Provision: [The LLP Act, 2008]

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 MCA
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. The LLP cannot have the same name with any other LLP, Partnership Firm or Company
8. To create a LLP proper formation documents must be led with the registrar along with the necessary filing fees.

9. Steps to Incorporate LLP**a) Name Resevation**

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

b) Incorporate LLP

- ♦ After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership
- ♦ 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

c) 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

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Explain the process of Registration of LLP

Provision: [The LLP Act, 2008]

1. Deciding Partners and Designated partners
2. Obtain Designated Partners Identification Number (DPIN) & Digital Signature Certificates (DSC)
3. Apply for reservation of Name by checking the availability of Name (up to 6 Names)
4. Drafting of LLP Agreement*
5. Electronic Filing of some Documents along with requisite fees
6. Issuing Certificate of Incorporation along with LLPIN (LLP Identification Number)

State the Contents of LLP Agreement ?

Provision: [The LLP Act, 2008]

Following are the contents of LLP Agreement

1. Name of LLP
2. Name & address of Partners & Designated Partners
3. Form of contribution & interest on contribution
4. Profit sharing ratio
5. Remuneration of Partners
6. Rights & Duties of Partners
7. Proposed Business
8. Rules for governing LLP.

Differentiate between a LLP and a partnership firm?

Provision: [The LLP Act, 2008]

Difference between LLP and Partnership Firm

Basis for Comparison	Limited Liability Partnership	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.

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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 up to 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 at least one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932.

Differentiate between a LLP and Limited Liability Company?**Provision:** [The LLP Act, 2008]

Basis for Comparison	Limited Liability Partnership	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.

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Internal governance structure	The internal governance structure of a LLP is governed by 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 Private company to contain the word “Private limited” as suffix.
Number 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 Members can be organizations, trusts, another business form or individuals.
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.
Management	The business of the company 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.	Private Co. – 2 directors Public Co. – 3 directors

What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008?

Provision: [Section 17 of the LLP Act, 2008]

Change of name of LLP (Section 17 of LLP Act, 2008):

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1. Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which —
 - a) is a name referred to in sub-section (2) of section 15; or
 - b) is identical with or too nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it,
2. The Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow.
3. Punishment for not complying with above provisions will be as follow :
 - a) Any LLP which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ` 10,000 but which may extend to ` 5 Lakhs.
 - b) The designated partner of such LLP shall be punishable with fine which shall not be less than ` 10,000 but which may extend to ` 1 Lakh.

Explain the circumstances in which LLP may be wound up by Tribunal under the LLP Act, 2008.

Provision: [Section 64 of the LLP Act, 2008]

A LLP may be wound up by the Tribunal:

1. if the LLP decides that LLP be wound up by the Tribunal ;
2. if, for a period of more than six months, the number of partners of the LLP is reduced below two;
3. if the LLP is unable to pay its debts;
4. if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
5. 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
6. if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?

Provision: [Section 5 of the LLP Act, 2008]

1. 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

What are the effects of registration of LLP?

Provision: [Section 14 of the LLP Act, 2008]

1. On registration, a LLP shall, by its name, be capable of—
 - a) suing and being sued;

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- 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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