

5

CHAPTER

Formation of LLP

Chapter Coverage

| S. No. | Topic |
|--------|--|
| 5.1 | Formation & Registration of LLP |
| 5.2 | Features of an LLP agreement and the manner of alterations therein |
| 5.3 | Annual Compliances Of LLP |
| 5.4 | Event Based Compliances For LLP |
| 5.5 | Recent Developments/Proposed changes in LLP Act – LLP (Amendment) Act, 2021. |
| 5.6A | Draft Resolution to change the name of LLP. |
| 5.6B | Draft Resolution to shift the registered office of LLP. |

Regulatory Framework Coverage

The Limited Liability Partnership Act, 2008

The Limited Liability Partnership Rules, 2009

5.1 Formation & Registration of LLP

| | |
|--|---|
| Definition of LLP | As per Section 2(n) of the Limited Liability Partnership Act defines Limited Liability Partnership as: "limited liability partnership" means a partnership formed and registered under this Act. |
| Important Dates of Limited Liability Partnership Bill | Limited Liability Partnership Bill: |
| | Passed in Rajya Sabha 24 th October, 2008 |
| | Passed in Lok Sabha 12 th December, 2008 |
| | Assent of the President 7 th January, 2009 |
| | LLP Act was effective 31 st March, 2009 |
| Nature and Characteristics of LLP | <ul style="list-style-type: none"> ◆ The LLP is a body corporate having separate entity from its partners and perpetual succession. ◆ Every Limited Liability Partnership shall use the words "Limited Liability Partnership" or its acronym "LLP" as the last words of its name. ◆ An LLP is a result of an agreement between the partners, and the mutual rights and duties of partners of an LLP are determined by the said agreement subject to the provisions of LLP Act, 2008. ◆ Unlike partnership, no partner will be individually liable for any wrongful acts of other partners. However, if the LLP was formed for the purpose of defrauding creditors or for any fraudulent purpose, then the liability of the partners who had the knowledge will be unlimited. ◆ There must be at least two designated partners in every LLP of whom one shall be resident in India. ◆ Every LLP shall maintain annual accounts to show its true state of affairs. It must prepare a statement of accounts and solvency every year and file with the Registrar. The Central Government may, whenever it thinks fit, investigate into the affairs of an LLP by appointing a competent Inspector. |

| | |
|--|---|
| | <ul style="list-style-type: none"> ◆ A firm, private company or an unlisted public company have the option to convert itself into LLP as per the provisions of the Act. Upon such conversion, the Registrar will issue a certificate to that effect. After issuance of a certificate of registration, all the property of the firm or the company, all assets, rights, obligations relating to the company shall be vested in the LLP so formed, and the firm or the company stands dissolved. The name of the firm or the company is then removed from the Registrar of Firms or Registrar of Companies, as the case may be Like the company, an LLP can be wound up either voluntary or by the Tribunal established under The Companies Act, 2013. ◆ The LLP Act, 2008 also enables the Central Government to apply the provisions of the Companies Act whenever it thinks appropriate. ◆ Section 67(1) of the Limited Liability Partnership Act, 2008 gives powers to the Central Government to direct that, if required, the provisions of the Companies Act, 2013 may be made applicable to the LLP's. <p><i>The Central Government has directed that the provisions of section 460 of the Companies Act, 2013 i.e. Condonation of Delay in Certain Cases shall apply to a limited liability partnership from January 30, 2020.</i></p> |
| Meaning of LLP | LLP is a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership. |
| Advantages of LLP | |
| Easy Formation | Forming an LLP is an easy process. It is less complicated and time consuming unlike the process of formation of a company. |
| Liability | <ul style="list-style-type: none"> ◆ The partners of the LLP is having limited liability which means partners are not liable to pay the debts of the company from their personal assets. ◆ No partner is responsible for any other partner's misconduct. |
| Perpetual succession | <ul style="list-style-type: none"> ◆ Life of the Limited Liability Partnership is not affected by death, retirement or insolvency of the partner. ◆ LLP will get wound up only as per provisions of the LLP Act. |
| Management of company | LLP has partners who own and manage the business. |
| Easy transferability of ownership | <ul style="list-style-type: none"> ◆ No restriction upon joining and leaving the LLP. ◆ Easy to admit as a partner and to leave the firm/ to easily transfer the ownership to others. |
| Easy to wind-up | Not only is it easy to start, it is also easier to wind-up an LLP as compared to a private limited company. |
| Flexible agreement | The partners are free to draft the agreement as they please with regard to their rights and duties. |
| Less compliance requirements | An LLP is much easier and cheaper to run than a private limited company as there are just three compliances per year as compared to private limited company having lot of compliances to fulfil and compulsorily conduct an audit of its books of account. |
| No compulsory audit required | In the case of LLP there is no mandatory audit required. The audit is required only in those cases where the turnover of the company exceeds Rs. 40,00,000 and where the contribution exceeds Rs. 25,00,000. |
| Taxation | <ul style="list-style-type: none"> ◆ LLP is not subject to Dividend Distribution Tax (DDT). ◆ Distributed profits in the hands of the partners are not taxable. |

| Disadvantages of LLP | |
|---|--|
| Restricted Access to Capital Markets | LLPs are small form of business and cannot get its shares listed in any stock exchange through initial public offerings due to this restriction, LLPs may find it difficult to attract outside investors to buy the shares. |
| Rights of partners | LLP can be structured in such a way that one partner has more rights than another. |
| Public Disclosure of LLP Information | LLP must file its Annual Returns, Financial Statements etc. to the Registrar of LLPs annually which is generally available on public portal accessed and used by competitors to improve their own business. |
| Exit Options are Not Easy for LLPs in default of filings | LLP who has defaulted in filings its statement of accounts and annual return with the Registrar of LLPs willing to shut down its operations and wind up will have to make its default good first by filing necessary e-forms with late filing fee. |
| Offences and penalties | <ul style="list-style-type: none"> ◆ Non-compliance on procedural matters such as delay in filing of e-forms, one has to pay default fee for every day for which the default continues. ◆ Such default fee would be payable at the rate of rupee one hundred per day after the expiry of the date of filing up to a period of three hundred days. ◆ The offence can result in either <ul style="list-style-type: none"> (i) through payment of fine or (ii) through payment of fine as well as imprisonment of the offender. |
| Limitations in Formation of LLP | <ul style="list-style-type: none"> ◆ LLP cannot be formed by a single person. ◆ If non - resident Indian and a Foreign National willing to form a LLP in India must have one person resident in India to act as Designated Partner. |
| Procedure for Incorporation of LLP | <p>Step 1: Name reservation: There are two options of reserving name of the proposed LLP:</p> <p>Option 1: File an application under LLP-RUN for ascertaining availability and reservation of the name of an LLP.</p> <p>Option 2: Name can be proposed in e-form FiLLiP, an application for incorporation of LLP.</p> <p>Step 2: Procure DSC and DIN:</p> <ul style="list-style-type: none"> ◆ Procurement of DSC and DIN for the individuals acting as Designated Partners of LLP. ◆ A person who already has a DIN is not require for obtaining any new DIN. ◆ Existing DIN to be used for Designated Partner. However, DIN should have all latest details such as resident of India, name, address etc. ◆ Any person proposed to become the Designated Partner in a new LLP shall have to make an application through e-form FiLLiP up to two Designated Partners in case of proposed Designated Partners not having approved DIN. <p>Step 3: Filing Form FiLLiP:</p> <ul style="list-style-type: none"> ◆ After reserving a name under LLP-RUN, applicant should file e-form FiLLiP for incorporating a new LLP. ◆ E-form FiLLiP contains the details of LLP proposed to be incorporated, Partners' / Designated Partners' details and consent of the Partner/ Designated Partners to act as Partners/ Designated Partners. On approval of the form RoC will issue the certificate of incorporation. ◆ On examining Form FiLLiP if registrar shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar. |

- ◆ After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days time to remove such defects or deficiencies: Provided that the total period for re-submission of documents shall not exceed thirty days.

Pictorial Presentation of Steps to incorporate LLP:

Obtain DSC → Apply for DPIN → Name Approval → Incorporation Form (FiLLiP) → File LLP agreement

Note(s) :

1. Documents to be attached with Form FiLLiP:

- ◆ Consent of partners;
- ◆ In case of partners are body corporates, certified true copy of board resolution passed by such body corporate partners;
- ◆ Proof of address of registered office of LLP;
- ◆ Subscribers' sheet including consent;
- ◆ Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner;
- ◆ Copy of approval obtained from any sectoral regulator/in-principle approval;
- ◆ Identity and address proof of individuals acting as Partner and/or Designated Partner;
- ◆ List of main objects of an LLP;
- ◆ If the name proposed is liked to registered trademark, NoC from the trade mark owner;
- ◆ NOC of foreign body corporate for usage of name (In case of foreign entities intending to incorporate LLPs in India).

2. Who is a designated Partner?

- ◆ Designated Partners are responsible for regulatory and legal compliances of the LLP, besides their liability as "partner's per-se".
- ◆ Every LLP is required to appoint at least 2 designated partners who shall be individuals and one of whom shall be a resident of India.
- ◆ 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 bodies corporate shall act as designated partners.

QUESTIONS

Ques 1: What are the salient features of the Limited Liability Partnership (LLP)?

Hint: Refer Topic Nature and Characteristics of LLP.

Ques 2: There are no shareholders in limited liability partnership, instead there are partners. Comment.

Hint: There are no shareholders in limited liability partnership instead there are partners.

Questions For Practice

Ques 1: Discuss procedure for Incorporation of LLP?

Hint: Refer Topic Procedure for Incorporation of LLP.

Ques 2: Discuss advantages of LLP?

Hint: Refer Topic Advantages of LLP.

Ques 3: Discuss disadvantages of LLP?

Hint: Refer Topic disadvantages of LLP.

Ques 4: List of Documents to be attached with Form FiLLiP ?

Hint: Refer Topic Documents to be attached with Form FiLLiP.

5.2 Features of an LLP agreement and the manner of alterations therein

| | |
|-------------------------------------|---|
| Definition of LLP Agreement | <p>Section 2(1)(O) of the Limited Liability Partnership Act, 2008 defines it as under: "LLP Agreements" mean:</p> <ul style="list-style-type: none"> ◆ any written agreement ◆ between the partners of the Limited Liability Partnership or ◆ between the Limited Liability Partnership and its partners ◆ which determines mutual rights and duties of the partners and ◆ their rights and duties in relation to that limited liability partnership. |
| Objective of LLP Agreement | <ul style="list-style-type: none"> ◆ LLP agreement defines the roles, responsibilities, rights, and powers of the partners to LLP and to each other. Hence, it creates the foundation for the smooth running of LLP. ◆ LLP agreement clarifies the managerial, operational as well administrative responsibilities and sets clear methodologies for decision making, adding a new partner and disassociation of existing partner. ◆ It defines the outlook and gives a clear idea as to decision making, adding a new partner, removal of existing partner, etc. ◆ Well drafted LLP agreement works like a backbone of the LLP. |
| How to prepare LLP agreement | <p>Draft the agreement and print it on the stamp paper of requisite value.</p> <p style="text-align: center;">↓</p> <p>All partners should sign the agreement.</p> <p style="text-align: center;">↓</p> <p>Two witness should sign the agreement on the last page.</p> <p style="text-align: center;">↓</p> <p>Each partner should be provided with the copy of agreement.</p> |

Essential Clauses to be included in the LLP agreement

| Clauses to be included in LLP Agreement | Description of respective clause(s) |
|--|---|
| Section 23(4): INTERPRETATION/ DEFINITIONS | <ul style="list-style-type: none"> ◆ This clause is the essence of any LLP agreement. ◆ For instance, LLP Agreement must provide for various definitions such as the definition of designated partners, the accounting period, business of LLP and the name with which the LLP will be known. All these points must be part of LLP Agreement. |
| Section 7(1) and 7(2) with respect to Rules 7 to 9 of the LLP Rules 2009: DESIGNATED PARTNERS | LLP agreement shall clearly mention the name, age and address of each of the Designated Partners correctly. |
| Sections 5,16,19 read with Rule 18 of LLP Rules: NAME OF THE LLP AND CHANGES TO IT | <ul style="list-style-type: none"> ◆ This clause shall state that business of the LLP shall be carried on in the name and style of [Name of LLP]. ◆ Any change in the name of the LLP shall be notified to the Registrar by the Designated Partner(s) in accordance with the provisions of the LLP Act and the Rules. |

| | |
|--|--|
| Section 13 read with Rule 17 of LLP rules: | LLP agreement shall state that partnership business shall be carried on at the under mentioned address which shall also be its registered office. The business shall also be carried from such other places as may be mutually decided by the partners from time to time. |
| REGISTERED OFFICE OF THE LLP | |
| Section 23(4) with respect to First Schedule to the LLP Act, 2008: BUSINESS OF THE LLP | <ul style="list-style-type: none"> ◆ This clause must clearly specify the nature of the business that the LLP will be carrying on. ◆ The LLP may engage in any and all activities necessary, desirable or incidental to the accomplishment of the conduct of such business of the LLP including but not limited to such ancillary business. ◆ It may also include any other business conducted in such manner as may be decided by the majority of Partners from time to time. |
| Sections 3(3),32 and 33 with respect to Rule 2 in the First Schedule to the LLP Act 2008: CAPITAL CONTRIBUTION | <ul style="list-style-type: none"> ◆ Total contribution of the LLP and the contribution by each partner along with the percentage of contribution to be mentioned in this clause. ◆ If any partner is contributing in non-monetary form, he/she is going to render services instead of monetary contribution, add the same. ◆ Manner of Additional capital contribution by partner during the course of agreement to be included. ◆ Manner in which contribution can be withdrawn by the partners shall also be stated in this clause. |
| Section 42(1) of the LLP Act, 2008: PROFIT SHARING RATIO | <ul style="list-style-type: none"> ◆ LLP Agreement must mention the ratio in which the profits and the losses of the business will be shared among the partners. ◆ The partners must clearly state the amount of profit that each member receives/ the amount of the loss that they are liable for will be set out in the agreement. |
| Section 23(4) read with the First Schedule of LLP Act, 2008: RIGHTS AND DUTIES OF DESIGNATED PARTNERS | <ul style="list-style-type: none"> ◆ LLP Agreement must specify the various rights and duties of the Designated Partners as may be mutually agreed by them. ◆ In the absence of such separate agreement between the partners about such rights and duties, etc., the provisions of Schedule I of the Limited Liability Act, 2008 will apply as given in Section 23(4) of the said act. |
| Sections 22, 23 read with the First Schedule of LLP Act, 2008: ADMISSION OF PARTNER, RETIREMENT RESIGNATION AND EXPULSION OF PARTNERS | <ul style="list-style-type: none"> ◆ LLP agreement must include the provisions regarding admission of new partners, retirement as well as the death of a partner, etc. ◆ The agreement must provide guidelines for the expulsion of partners as well. |
| Section 23(4): REMUNERATION & INTEREST TO BE PAID TO PARTNERS | <ul style="list-style-type: none"> ◆ LLP agreement shall contain a clause regarding the amount of remuneration to the Designated Partner(s) for rendering the services as such. ◆ This clause shall contain the rate of interest to be paid to the partners on their capital contribution. |
| Section 23(4): BANK ACCOUNT | This clause shall set out the modus operandi of the Bank account transactions of the LLP. |

| | |
|---|--|
| Section 34(1): BOOKS OF AC- COUNT & AC- COUNTING YEAR | The LLP agreement shall contain clause relating to maintenance of books of account and other documents, method of accounting and the details relating to the Accounting year of the LLP. |
| Section 23(4): MEETINGS | LLP agreement shall clearly state the manner in which the decisions of LLP shall be taken in the meeting of the partners and shall also provide as to how the same shall be recorded in the minutes and the place of maintenance of such minutes book etc. |
| Section 23(4) read with First Schedule: INDEMNITY | <ul style="list-style-type: none"> ◆ The LLP agreement should contain a provision regarding indemnities. ◆ The clause of indemnity states that the LLP must protect its partners from any kind of liability or claim incurred by them while carrying the business of the LLP. ◆ The partners should also agree to indemnify the LLP for the loss caused by it due to any breach committed by them. |
| Section 23(4) read with First Schedule: DISPUTE RESOLU- TION | <ul style="list-style-type: none"> ◆ A well-drafted LLP must always contain a provision for resolving disputes between the members. ◆ Every LLP prefers Arbitration as a mode of resolving disputes. Such LLP is governed by the Arbitration and Conciliation Act, 1996. |
| Sections 63 & 64: TERM OF LLP / WINDING UP | <ul style="list-style-type: none"> ◆ The partners must specify the term of validity of such LLP agreement whether it is a perpetual agreement or is valid for a fixed period. ◆ The agreement must also provide for the situations when the partners have agreed to wound up the affairs of the LLP either voluntarily or by an order of Tribunal for the specific violations as mentioned in Section 64 of the Act. |
| Section 23(4): GENERAL PROVI- SIONS | The LLP agreement shall in addition to the above mentioned clauses shall include general provisions on binding on: <ul style="list-style-type: none"> ◆ heirs , ◆ successors , ◆ counterparts, ◆ serving of notices, ◆ waiver, ◆ governing law etc. |

Alteration To The LLP Agreement

Step 1: Passing resolution approving the revision in the LLP Agreement.

Step 2: File Form 3 with the Registrar within 30 days of the amendment in the agreement.

Note: Documents to be attached to the Form 3 shall include the following:

1. Initial LLP Agreement;
2. Supplementary/ Altered agreement;
3. Optional attachments, if any.

Change in Partner /Designated Partner

If the change in LLP agreement is due to change in partner(s)/ designated partner(s), Form 4 is also required to be filed along with Form 3.

Note: Documents to be attached to the Form 4 shall include the following:-

1. Consent of the partner;
2. Evidence of cessation;
3. Affidavit or any proof of change of name;
4. If the partner or a designated partner is a company, copy of resolution of the company to become partner in LLP;

| | |
|---|---|
| | <p>5.m. Copy of resolution/ authorization letter mentioning name and address of individual nominated as representative nominee/ partner.</p> |
| Change of Name | |
| <p>Step 1: An application for changing the name of the LLP should be, first, submitted to the Ministry of Corporate Affairs. Along with the LLP name change application, the partners need to submit the following documents:</p> <ul style="list-style-type: none"> ◆ Copy of the existing LLP agreement; ◆ Certified copy of consent of all partners involved for the name change; ◆ Trademark copy or a copy of the registration certificate. <p>Step 2: After the suggested name gets approved, one has to file Form LLP-5, giving notice of the change in the name. The form has to be submitted to the Registrar within 30 days.</p> <p>Step 3: The ROC, after taking into consideration the application, will approve/deny the name change. If the name is approved, the ROC will issue a certificate and the new name will be effective from the date mentioned in the certificate.</p> <p>Step 4: Once the partners get the new certificate of registration, a supplementary agreement needs to be laid out mentioning the changes in the LLP agreement as a result of the name change.</p> | |
| Shifting of Registered office | |
| <p>Notice of change of registered office to be filed with the Registrar within 30 days from the date of the change in LLP -Form 15 prescribed under Rule 17 of the LLP Rules, 2009 along with the prescribed fees.</p> | |
| <p>List of documents required to attach with LLP Form 15:</p> <ul style="list-style-type: none"> ◆ Consent letter of all Designated Partner's. ◆ Consent letter of all Secured Creditors. ◆ Copy of Board Resolution. ◆ Copy of Advertisement. ◆ Proof of New Registered Office Address (<i>If Rented then Rent Agreement, Utility Bill in the name of Owner & NOC</i>). | |
| Checklist for Shifting of Registered Office | <p>Change of Registered office within the same State and within jurisdiction of same Registrar:</p> <ul style="list-style-type: none"> ◆ Resolution for change of address: Consent of all partners shall be required for changing the place of Registered Office of Limited LLP to another place. ◆ Secured Creditors: No Consent Required. ◆ Form to be filed: Form- 15 prescribed under Rule 17 of the LLP Rules, 2009 along with the prescribed fees to be filed with Registrar with which it is registered within 30 days from the date of the change. ◆ Public Notice: No public notice required. ◆ Time limit for filing: Within 30 days of resolution so passed. <p>Change of Registered Office within the same State from the jurisdiction of one Registrar to another Registrar:</p> <ul style="list-style-type: none"> ◆ Resolution for change of address: Consent of all partners shall be required for changing the place of Registered Office of Limited LLP to another place. ◆ Secured Creditors: No Consent Required. ◆ Form to be filed: Form- 15 prescribed under Rule 17 of the LLP Rules, 2009 along with the prescribed fees to be filed with Registrar with which it is registered within 30 days from the date of the change. ◆ Public Notice: No public notice required. ◆ Time limit for filing: Within 30 days of resolution so passed. |

| | |
|--|--|
| | <p>Change of registered office from one state to another:</p> <ul style="list-style-type: none"> ◆ Resolution for change of address: Consent of all partners shall be required for changing the place of Registered Office of Limited LLP to another place. ◆ Secured Creditors: Consent of secured creditors is required. ◆ Form to be filed: Form- 15 prescribed under Rule 17 of the LLP Rules, 2009 along with the prescribed fees to be filed with Registrar with which it is registered within 30 days from the date of publishing notice. ◆ Public Notice: Publish a general notice not less than 21 days before filing any notice with Registrar in a daily newspaper published in English and in the principal language of the district in which the registered office of the LLP is situated and circulated in that district giving notice of change of registered office. ◆ Time limit for filing: Within 30 days of publishing of notice. |
|--|--|

Questions For Practice

Ques 1: Discuss checklist for Shifting of Registered Office?

Hint: Refer Topic Checklist for Shifting of Registered Office.

Ques 2: Write Short On: Change in Partner /Designated Partner of LLP?

Hint: Refer Topic Change in Partner /Designated Partner.

Ques 3: Discuss five essential Clauses to be included in the LLP agreement?

Hint: Refer Topic Essential Clauses to be included in the LLP agreement.

Ques 4: Definition of LLP Agreement. Also, discuss objective of LLP Agreement?

Hint: Refer Topic(s) Definition of LLP Agreement and objective of LLP Agreement.

Ques 5: Discuss how to prepare LLP agreement?

Hint: Refer Topic "How to prepare LLP agreement".

5.3 Annual Compliances of LLP

| | |
|---|--|
| Filing of Annual Return | <ul style="list-style-type: none"> ◆ Annual returns are filed in Form 11. ◆ This form is a summary of the management affairs of the LLP such as number of partners and their names. Form 11 needs to be filed within 60 days of the closure of the Financial year i.e. on or before 30th May every year by the LLP. ◆ In case the annual turnover of the LLP crosses Rs. 5 crores or the Capital contribution from Partners exceeds more than Rs. 50 Lakhs the Annual return should be accompanied by a Certificate from Practising Company Secretary. ◆ Penalty for non-filing of these forms with the ROC is Rs. 100 per day per form. |
| Filing of Statement of Accounts or Financial Statement | <ul style="list-style-type: none"> ◆ All LLPs are required to maintain their Books of Account in Double Entry System. ◆ Also need to prepare a Statement of Solvency (Accounts) every year ending on 31st March. ◆ LLP Form 8 should be filed with the Registrar of Companies on or before 30th October every year. ◆ LLPs whose annual turnover exceeds Rs. 40 lakhs or whose contribution exceeds Rs. 25 lakhs are required to get their accounts audited by a qualified Chartered Accountant mandatorily. ◆ Penalty for non-filing of these forms with the ROC is Rs. 100 per day per form. |

| | |
|--------------------------------------|--|
| Filing of Income Tax Returns | <ul style="list-style-type: none"> ◆ Every LLP is required to close its financial year on 31st March every year as per the Income-tax Act and is also required to file their returns with the Income Tax Department. ◆ Maintenance of books of account is mandatory for LLP irrespective of annual turnover. ◆ LLP whose annual turnover exceeds Rs. 40 lakhs or capital contribution exceeds Rs. 25 Lakhs are required to get their accounts audited under the provisions of the Income-tax Act. ◆ It is mandatory for LLP to file return of income electronically under digital signature if its accounts are required to be audited under section 44AB of the Income-tax Act. |
| Due dates to file ITR for LLP | <ul style="list-style-type: none"> ◆ LLP who is required to get its accounts audited under the Income-tax Act or under any other law: Due date September 30 of the assessment year. ◆ LLP who is required to furnish a report in Form No. 3CEB under section 92E of Income-tax Act: Due date November 30 of the assessment year. ◆ In any other case: Due date July 31 of the assessment year. |

QUESTIONS

Ques 1: As a Practicing Company Secretary, advise your client regarding annual compliance requirement to be followed by the LLP.

[Hint: Refer topic "5.3 Annual Compliances Of LLP"].

Ques 2: Financial Statements of the Limited Liability Partnership are not mandatorily required to be audited by a Chartered Accountant. Comment.

Hint: In the case of LLP, there is no mandatory audit required.

Ques 3: Aryan & Aarav, an LLP having turnover of ₹ 45 lakhs and contribution of the partners exceeding INR 30 lakhs in F.Y. 2018-19 is seeking your advice in the following matters :

- (i) Is dividend distribution tax applicable on LLP ?
- (ii) Is LLP subjected to audit ? State the reason.
- (iii) Is LLP eligible to raise loan from ABC Ltd., a foreign bank ?
- (iv) State Offences & Penalties for non-filing of financial statements under the LLP Act, 2008.

[Hint: (i) LLP is not subject to Dividend Distribution Tax (DDT).

(ii) Every LLP whose turnover exceeds, in any financial year, ₹ 40,00,000 or its contribution exceed ₹ 25,00,000 has to get accounts audited from a Chartered Accountant.

(iii) Limited Liability Partnerships are not allowed to raise ECB. Therefore, LLP cannot avail commercial loans from its foreign partners, FIIs, Foreign Banks, and any financial institution located outside India.

(iv) All LLPs are required to have their books of account in regards to business, and submit it in Form No. 8, every year. Failing to file, the statement of accounts within the specified due date will lead to a fine of ₹ 100 per day.]

| 5.4 Event based Compliances for LLP | |
|--|--|
| Consent & Particulars of Partner/ Designated Partner under section 7(3) & (4) | Filing of consent of Partner/ Designated Partner to act as such with the Registrar of Companies in E Form- 4 within 30 days of the appointment as the designated partner. |
| Vacancy of Designated Partner under section 9 | Filing of vacancy in Designated Partner within 30 days of vacancy and intimation of same to Registrar in E Form- 4 and in case if no designated partner being appointed or if any time there is only one designated partner, then each partner shall be deemed to be the designated partner. |

| | |
|---|---|
| Change of Registered Office under section 13(3) | File the notice of any change in registered office with the Registrar of Companies in E Form - 15 within 30 days of shifting and any such change shall take effect only upon such filing. |
| Change of Name under section 19 | LLP may change its name registered with the Registrar by filing with the Registrar notice of such change in E Form- 5 within 30 days of such change. |
| LLP Agreement & Changes therein under section 23 | LLP Agreement and any changes made therein shall be filed with the Registrar in E Form-3 within 30 days of incorporation of LLP or such alteration of LLP agreement. |
| Change in Designated Partners under section 25(2) | Where a person becomes or ceases to be a partner or where there is any change in the name or address of a partner, notice of the same signed by the designated partner and to be filed within 30 days to the Registrar in E Form - 4. |

Question for Practice

Ques 1: Discuss four event based compliances for LLP?

Hint: Refer Topic 5.4 Event Based Compliances For LLP.

5.5 Recent Developments/Proposed changes in LLP Act – LLP (Amendment) Act, 2021

Introduction:

The Limited Liability Partnership (Amendment) Bill, 2021 was passed in Rajya Sabha on August 04, 2021 and in Lok Sabha on August 09, 2021. It has received assent of the president on August 13, 2021 and became the LLP (Amendment) Act, 2021. The Act provides for regulation of limited liability partnerships (LLP).

Important Provisions: The Limited Liability Partnership (Amendment) Act, 2021, *inter alia*, provides for the following, namely:

- ◆ to introduce the concept of “small limited liability partnership” in line with the concept of “small company” under the Companies Act, 2013;
- ◆ to amend certain sections of the Act so as to convert offences into civil defaults and to convert the nature of punishment provided in the said sections from fines to monetary penalties;
- ◆ to insert a new section 34A so as to empower the Central Government to prescribe the “Accounting Standards” or “Auditing Standards” for a class or classes of limited liability partnerships;
- ◆ to amend section 39 of the Act relating to “compounding of offences” so as to authorise the Regional Director to compound any offence under this Act which is punishable with fine only;
- ◆ to insert a new section 67A empowering the Central Government to establish or designate as many “Special Courts” as may be necessary for the purpose of providing speedy trial of offences under the Act;
- ◆ to amend section 72 of the Act so as to provide more clarity in the provisions when any person aggrieved by an order of “Tribunal” prefers an appeal to the “Appellate Tribunal”;
- ◆ to insert a new section 76A so as to provide that the Central Government may appoint as many officers as Adjudicating Officers as it thinks necessary for the purpose of adjudicating penalties under the Act.

Question for Practice

Ques 1: Discuss five provisions for The Limited Liability Partnership (Amendment) Act, 2021?

Hint: Refer Topic 5.5 Recent Developments/Proposed changes in LLP Act – LLP (Amendment) Act, 2021.

5.6A Draft Resolution to change the name of LLP

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF DESIGNATED PARTNERS OF
LLP HELD ON _____, AT REGISTERED OFFICE OF THE LLP AT _____.**

“RESOLVED THAT pursuant to the provisions of Limited Liability Partnership Act, 2008, Limited Liability Partnership Rules, 2009 and other applicable provisions if any, including any enactments or amendments thereof and subject to the approval of the Registrar of Companies, NCT of Delhi & Haryana, the name of the LLP be and is hereby changed fromLLP toLLP.”

"RESOLVED FURTHER THAT the name _____ LLP wherever it occurs in the LLP Agreement of the LLP be substituted by the new name _____ LLP."

"RESOLVED FURTHER THAT Designated Partners of the LLP, be and are hereby severally authorized to file the necessary application, e-forms and other documents with the Registrar of Companies and to do all such acts, deeds and things as may be necessary in this regard."

"FURTHER RESOLVED THAT to give effect of the above resolution a reconstitution of LLP Agreement will be made by the Designated Partners of the LLP."

5.6B Draft Resolution to shift the registered office of LLP

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF DESIGNATED PARTNERS OF LLP HELD ON _____, AT REGISTERED OFFICE OF THE LLP AT _____.

"RESOLVED THAT pursuant to the provisions of Section 13 of the Limited Liability Partnership Act, 2008 read with Rule 17 of LLP (Incorporation of LLP) Rules, 2009 and other applicable provisions, if any, of the Limited Liability Partnership Act, 2008 and Clause..... of the LLP Agreement dated, be and is hereby accorded to shift the registered office of the LLP from to w.e.f. as agreed upon by the Designated Partner(s)/partner(s) of the LLP."

"FURTHER RESOLVED THAT the LLP Agreement be amended accordingly in order to give effect to the above resolution."

"FURTHER RESOLVED THAT any of the designated partner be and is hereby authorized to sign necessary documents, forms, do necessary filings with the Registrar of Companies and to do any such acts and deeds that may be necessary in this regard."

"RESOLVED THAT pursuant to the provisions of Section 13 of the Limited Liability Partnership Act, 2008 read with Rule 17 of LLP (Incorporation of LLP) Rules, 2009 and other applicable provisions, if any, of the Limited Liability Partnership Act, 2008 and Clause..... of the LLP Agreement dated, be and is hereby accorded to shift the registered office of the LLP from to w.e.f. as agreed upon by the Designated Partner(s)/partner(s) of the LLP."

"FURTHER RESOLVED THAT the LLP Agreement be amended accordingly in order to give effect to the above resolution."

"FURTHER RESOLVED THAT any of the designated partner be and is hereby authorized to sign necessary documents, forms, do necessary filings with the Registrar of Companies and to do any such acts and deeds that may be necessary in this regard."

Question For Practice

Ques 1: Draft Specimen Resolution for:

(a) Shifting of the registered office of LLP.

(b) Change the name of LLP.

[Hint: (a) Refer Topic 5.6B Draft Resolution to shift the registered office of LLP;

(b) Refer Topic 5.6A Draft Resolution to change the name of LLP].