

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

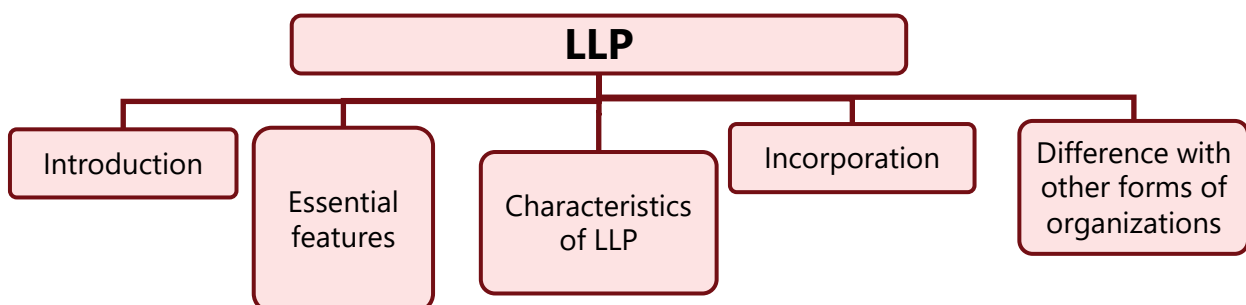


LEARNING OUTCOMES

After studying this chapter, you would be able to understand-

- ◆ The meaning of the term 'Limited Liability Partnership', its need, scope and advantages
- ◆ About Incorporation of LLP
- ◆ Differences between 'Limited Liability Partnership' and other forms of organisation

CHAPTER OVERVIEW





INTRODUCTION

The Ministry of Law and Justice on 9th January 2007 notified the Limited Liability Partnership Act, 2008.

The Parliament passed the Limited Liability Partnership Bill on 12th December, 2008 and the President of India has assented the Bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008.

The LLP Act, 2008 is applicable to the whole of India.

This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.

The LLP Act, 2008 has 81 sections and 4 schedules.

The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of a formal agreement with respect to them.

The Second Schedule deals with conversion of a firm into LLP.

The Third Schedule deals with conversion of a private company into LLP.

The Fourth Schedule deals with conversion of unlisted public company into LLP.

The Ministry of Corporate Affairs and the Registrar of Companies (ROC) are entrusted with the task of administrating the LLP Act, 2008. The Central Government has the authority to frame the Rules with regard to the LLP Act, 2008, and can amend them by notifications in the Official Gazette, from time to time.

It is also to be noted that the Indian Partnership Act, 1932 is not applicable to LLPs.

The Limited Liability Act, 2008 has been amended through the Limited Liability Partnership (Amendment) Act, 2021 dated 13th August, 2021.

Need of new form of Limited Liability Partnership

The lawmakers envisaged the need for bringing out a new legislation for creation of the Limited Liability Partnership to meet with the contemporary growth of the Indian economy. 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. In order to enable professional expertise and entrepreneurial initiative and combine, organize and operate in flexible, innovative and efficient manner, the LLP Act, 2008 was enacted.



Thus, LLP as a form of business organization is an alternative corporate business vehicle. It provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. 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.

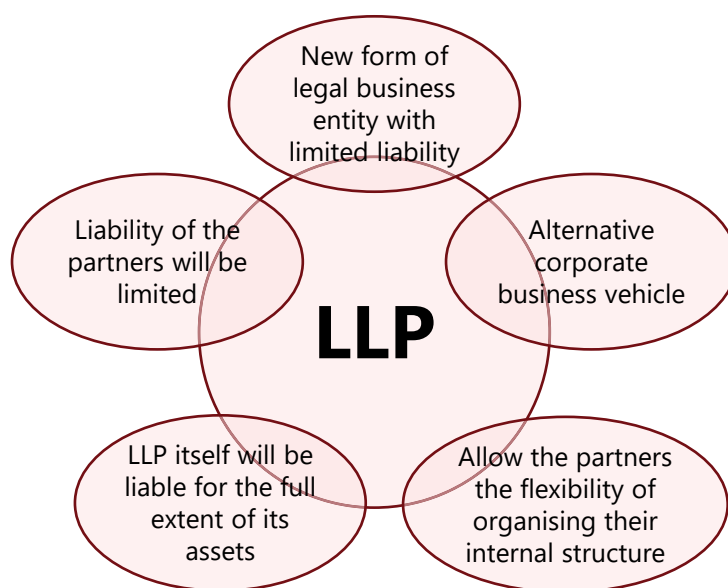
1. LIMITED LIABILITY PARTNERSHIP- MEANING AND CONCEPT

Meaning: 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 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.



LLP as a separate legal entity and business organisation 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.



Important Definitions

1. **Body Corporate [(Section 2(1)(d))]:** It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes
 - (i) a limited liability partnership registered under this Act;
 - (ii) a limited liability partnership incorporated outside India; and
 - (iii) a company incorporated outside India,but does not include
 - (i) a corporation sole;
 - (ii) a co-operative society registered under any law for the time being in force; and
 - (iii) any other body corporate (not being a company as defined in clause (20) of section 2 of the Companies Act, 2013 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)]:** "Business" includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude.
3. **Designated Partner [Section 2(1)(j)]:** "Designated partner" means any partner designated as such pursuant to section 7.
4. **Entity [Section 2(1)(k)]:** "Entity" means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932.
5. **Financial Year [Section 2(1)(l)]:** "Financial year", in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of 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.

The Income Tax department has prescribed uniform financial year from 1st April to 31st March of next year. In keeping with the Income tax law, the financial year for LLP should always be from 1st April to 31st March each year.

6. **Foreign LLP [section 2(1)(m)]:** It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.
7. **Limited liability partnership [Section 2(1)(n)]:** Limited Liability Partnership means a partnership formed and registered under this Act.
8. **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.
9. **Partner [Section 2(1)(q)]:** Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.
10. **Small Limited Liability Partnership [Section 2(1)(ta)]:** It means a limited liability partnership—
 - (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
 - (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
 - (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Non-applicability of the Indian Partnership Act, 1932 (Section 4): Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.

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):

- (i) Every LLP shall have at least two partners.
- (ii) If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than six months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on

business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

Designated partners (Section 7):

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
- (iii) *Resident in India:* For the purposes of this section, the term resident in India means a person who has stayed in India for a period of not less than 120 days during the financial year.

Example 2: 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.



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

Section 3 of LLP Act 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:** 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 as 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 practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.
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 designated partners 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. 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:** 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.
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 agreements 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.
16. **Foreign LLPs:** Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established as place of business within India". Foreign LLP can become a partner in an Indian LLP.

Advantages of LLP form- LLP form is a form of business model which:

is organized and operates on the basis of an agreement

provides flexibility without imposing detailed legal and procedural requirements.

Easy to form

All partners enjoy limited liability

Flexible capital structure

Easy to dissolve



3. INCORPORATION OF LLP

Incorporation document (Section 11): The most important document needed for registration is the incorporation document.

(1) For a LLP to be incorporated:

- (a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
- (b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and
- (c) **Statement to be filed:**
 - there shall be filed along with the incorporation document, a statement in the prescribed form,
 - made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
 - by any one who subscribed his name to the incorporation document,
 - that all the requirements of this Act and the rules made thereunder have been complied with,

- in respect of incorporation and matters precedent and incidental thereto.
- (2) The incorporation document shall—
- (a) be in a form as may be prescribed;
 - (b) state the name of the LLP;
 - (c) state the proposed business of the LLP;
 - (d) state the address of the registered office of the LLP;
 - (e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;
 - (f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;
 - (g) contain such other information concerning the proposed LLP as may be prescribed.
- (3) If a person makes a statement as discussed above which he—
- (a) knows to be false; or
 - (b) does not believe to be true, shall be punishable
 - with imprisonment for a term which may extend to 2 years and
 - with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 5 Lakhs.

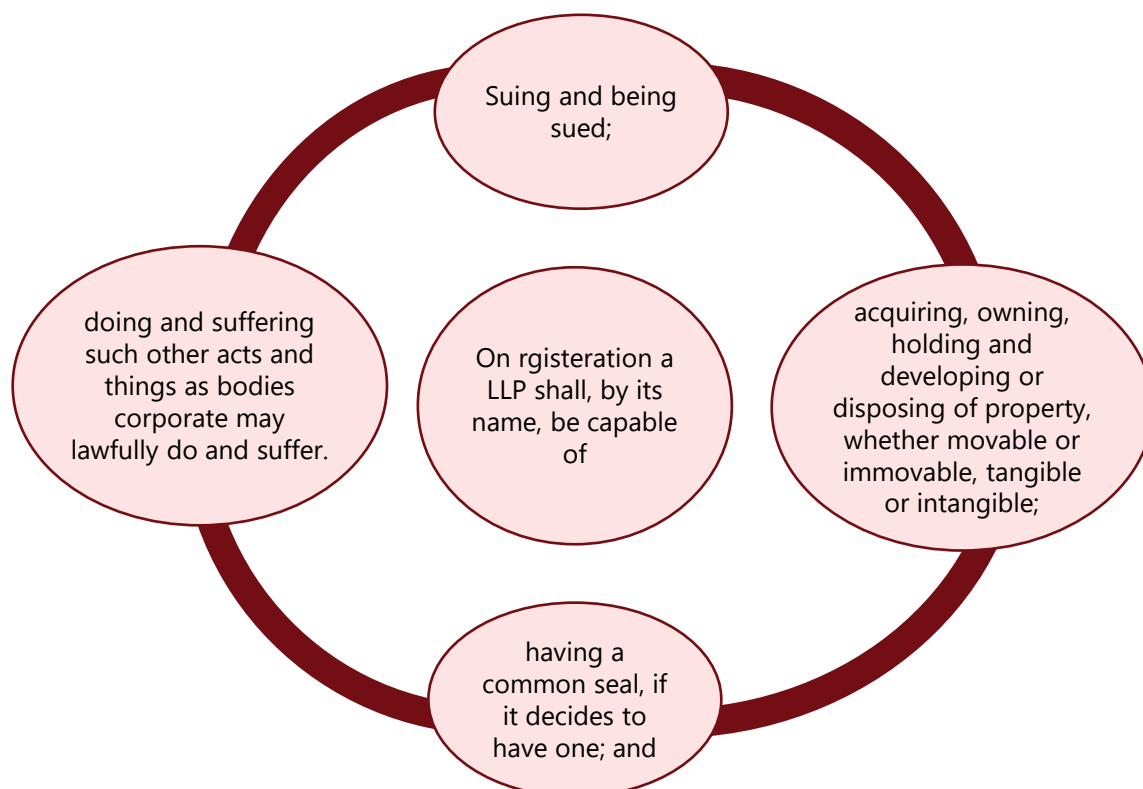
Incorporation by registration (Section 12):

- (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.

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 partner shall be liable to a penalty of ₹ 500 for each day during which the default continues, subject to a maximum of ₹ 50,000 for the LLP and its every partner.

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 LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

Reservation of name (Section 16):

- (1) 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.
- (2) Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, 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, a LLP, on its first registration or on its registration by a new body corporate, its registered name, is registered by a name which is identical with or too nearly resembles to —
 - (a) that of any other LLP or a company; or
 - (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company,
the Central Government may direct that such LLP to change its name or new name within a period of 3 months from the date of issue of such direction.

It is further provided that an application of the proprietor of the registered trade marks 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 sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of section 16.



4. DIFFERENCES WITH OTHER FORMS OF ORGANISATION

Distinction between LLP and Partnership Firm: The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

| | 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) | 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. | 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. |
| 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 Limited Liability Company

| | 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 |

SUMMARY

A LLP is a special type of partnership that can be used as business organizations owned by certain type of professionals such as Company Secretaries, Chartered Accountants, Cost Accountants, Lawyers, Engineers, Doctors, and Consultants etc., who are not allowed to use corporation form of entity to limit their liability. LLP is generally set up for carrying on a partnership consisting of partners carrying on practice in one or more eligible professions, etc.

Since India has witnessed considerable growth in services sector and the quality of our professionals have been acknowledged internationally. It was necessary that entrepreneurship knowledge and risk capital combine to provide a further momentum to our impressive economic growth. It is likely that in the years to come Indian professionals would be providing accountancy, legal and various other professional/technical services to a large number of entities across the globe. Such services would require multidisciplinary combinations that would offer a menu of solutions to international clients. In view of all this, the concept of LLP came into existence. LLP framework could be used for many enterprises, such as:-

- ◆ Persons providing services of any kind
- ◆ Enterprises in new knowledge and technology based fields where the corporate form is not suited.
- ◆ For professionals such as Chartered Accountants (CA), Cost and Management Accountants (CMA), Company Secretaries (CS) and Advocates, etc.
- ◆ Venture capital funds where risk capital combines with knowledge and expertise.
- ◆ Professionals and enterprises engaged in any scientific, technical or artistic discipline, for any activity relating to research production, design and provision of services.
- ◆ Small Sector Enterprises
- ◆ Producer Companies in Handloom, Handicrafts sector.

LLP has partners but no directors or shareholders. The major constituents of a LLP are its partners who are the ultimate owners.

The LLP Act, 2008

| | | | |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicability From 31 st March, 2009 (Extends whole of India) | Contents: 81 sections and 4 schedules First Schedule- mutual rights & duties of partners, Second Schedule - conversion of a firm into LLP, Third Schedule - conversion of a Pvt. Co. into LLP, Fourth Schedule- conversion of unlisted public company into LLP. | Non-Applicability Non-Applicability of the Indian Partnership Act, 1932 to LLPs. | Meaning and Concept of LLP 1. New form of legal business entity with limited liability 2. Alternative corporate business vehicle 3. Allows the partners the flexibility of organising their internal structure 4. LLP itself will be liable for the full extent of its assets 5. Liability of the partners will be limited |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Important Definitions

| Body Corporate [Sec. 2(1)(d)] | Business [Sec. 2(1)(e)] | Designated Partner [S 2(1)(j)] | Entity [Sec. 2(1)(k)] | Foreign LLP [Sec. 2(1)(m)] | Financial Year [Sec. 2(1)(l)]: | LLP agreement [Sec. 2(1)(o)] |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| A company & includes - LLP, foreign LLP, foreign company, Not include - corporation sole; co-operative society & any other notified by CG. | Includes: every trade, profession, service & occupation Excludes: Any activity notified by CG. | Any partner designated as such pursuant to section 7. | Any body corporate & includes a partnership firm for specific purposes. | LLP formed, incorporated or registered outside India which establishes a place of business within India. | 1 st April to 31 st March. If LLP incorporated after 30 th September, F.Y. may end on 31 st day of March of next following that year. | Written agreement b/w partners of LLP or between the LLP and its partners. |

PARTNERS

Who may be (Sec. 5) :

Any individual or body corporate may be a partner in a LLP. But not, person of unsound mind, undischarged insolvent; or who has applied to be adjudicated as an insolvent.

Minimum partners (Section 6)

1. Two partners.
2. If LLP carries on business for more than 6 months with only one partner, he shall be liable personally for the obligations of the LLP incurred during that period.

Important Concepts

Small LLP [S.2(ta)]

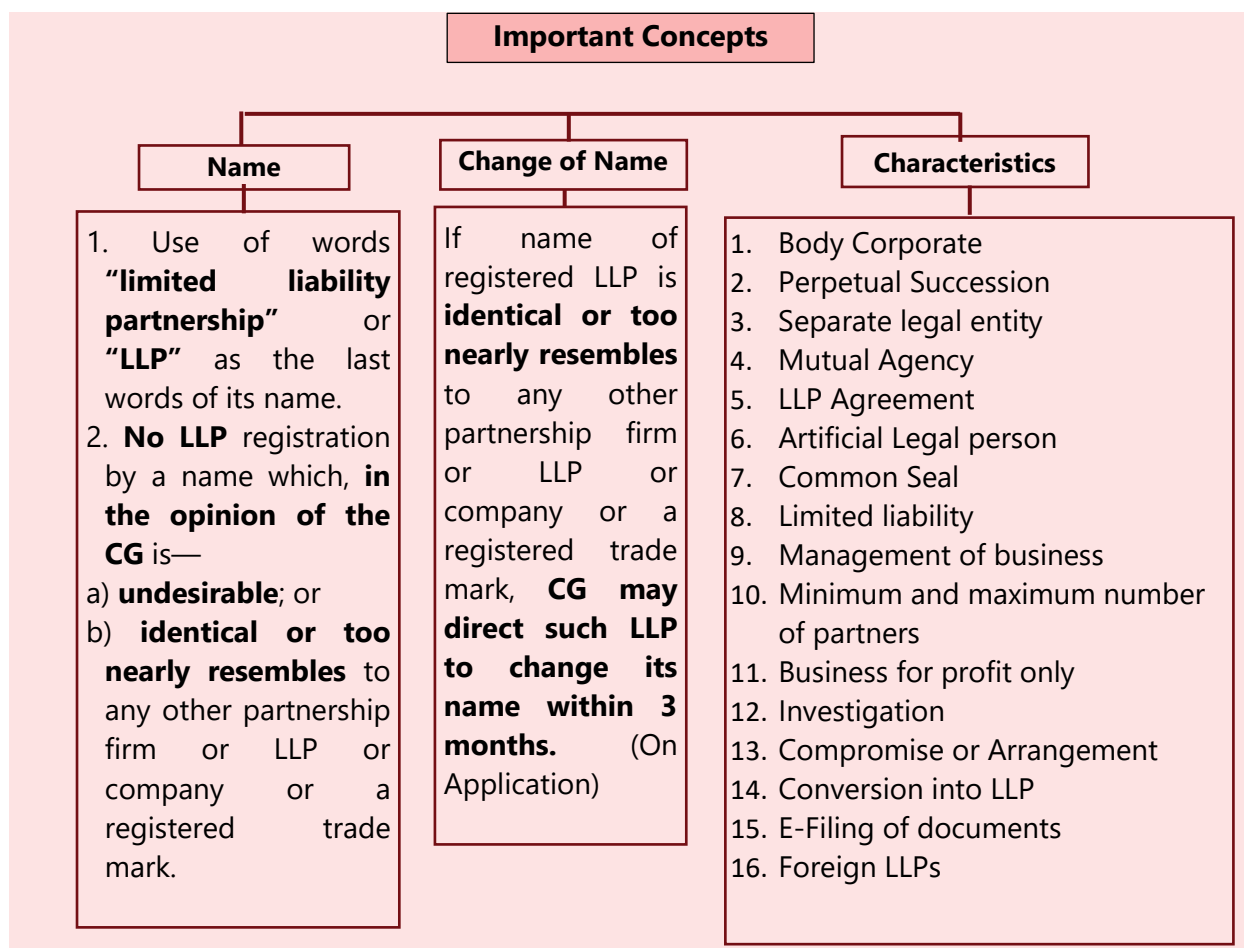
Contribution upto Rs.25L;
&
Turnover for immediately preceding F.Y. upto Rs.40 L
or
which fulfills prescribed terms and conditions.

Designated partners (S.7)

1. At least two designated partners who are individuals and at least one of them shall be a resident in India.
- 2. Resident in India:** a person who has stayed in India for a period of not less than 120 days during the immediately preceding one year.

Incorporation of LLP

1. Subscription of Names by two or more persons,
2. Filing of Documents with ROC with prescribed fees.
3. Compliance Statement made by advocate/CS/CA/CWA & by any one of subscribers.
4. Documents containing - Name, Proposed business, Address of LLP; Name and address of each of to be partners & designated partners; Other prescribed information.
5. Issue of Incorporation Certificate by ROC within 14 days



TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. Ministry of Corporate Affairs enforced the LLP Act, with effect from-
 - (a) 31st March, 2008
 - (b) 1st April 2008
 - (c) 31st March, 2009
 - (d) 1st April 2009
2. Whether partnership law applies to the LLP-
 - (a) Yes
 - (b) No

3. *State which of the statement is correct under the Limited Liability Partnership Act, 2008-*
 - (a) *All partners have unlimited liability*
 - (b) *All partners have limited liability*
4. *Which of the following cannot be converted into LLP?*
 - (a) *Partnership firm*
 - (b) *Private company*
 - (c) *Listed company*
 - (d) *unlisted company*
5. *The approved name of LLP shall be valid for a period of ___ from the date of approval:*
 - (a) *1 Month*
 - (b) *2 Months*
 - (c) *3 months*
 - (d) *6 months*
6. *Name of the Limited Liability Partnership shall be ended by:*
 - (a) *Limited*
 - (b) *Limited Liability partnership or LLP*
 - (c) *Private Limited*
 - (d) *OPC*
7. *Which one of the following statements about limited liability partnerships (LLPs) is incorrect?*
 - (a) *An LLP has a legal personality separate from that of its members.*
 - (b) *The liability of each partner in an LLP is limited.*
 - (c) *Members of an LLP are taxed as partners.*
 - (d) *A listed company can convert to an LLP.*

8. For the purpose of LLP, Resident in India means:

- (a) Person who has stayed in India for a period of not less than 182 days during the current year.
- (b) Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
- (c) Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year.
- (d) Person who has stayed in India for a period of not less than 120 days during the financial year.

Descriptive Questions

1. Examine the concept of LLP.
2. Enumerate the various characteristics of the LLP.
3. What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP?
4. What are the effects of registration of LLP?
5. "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain.
6. Explain the essential elements to incorporate a Limited Liability Partnership under the LLP Act, 2008.

ANSWERS/HINTS

Answers to MCQs

| | | | | | | | | | | | |
|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|
| 1 | (c) | 2 | (b) | 3 | (b) | 4 | (c) | 5 | (c) | 6 | (b) |
| 7 | (d) | 8 | (d) | | | | | | | | |

Answer to the Descriptive Question

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 un-authorized 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.

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

3. 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:

- (i) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (ii) If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.
- (iii) *Resident in India:* For the purposes of this section, the term “resident in India” means a person who has stayed in India for a period of not less than 120 days during the financial year.

4. 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.

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

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners. The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

6. 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:

- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
- (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
- (iii) To have registered office in India to which all communications will be made and received;
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) LLP Name.

NOTES

[illegible]

