



# BUSINESS LAW.

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008.

**SUBJECT-BUSINESS LAW.**

**TOPIC-THE LIMITED LIABILITY PARTNERSHIP**

**ACT, 2008.**

**Q1) What do you mean by LLP?**

Ans: According to Section 2(1)(n) of Limited Liability Partnership Act, 2008 Limited Liability Partnership means a partnership formed and registered under LLP Act. The LLP is an incorporated business organization, which possesses elements of both a Partnership Firm and a Limited Company. An LLP is a body corporate, with a distinct legal entity separate from its partners. It has perpetual succession and a common seal. It incorporates the features of the company and partnership form of business entity.

**Q2) What are the salient features of LLP?**

Ans: The LLP is an alternative corporate business vehicle that gives the benefits of limited liability and allows its members the flexibility of organizing their internal structure as a partnership based on an agreement. Following are the salient features of the LLP:

- A) **Act:** LLP is governed by the Limited Liability Partnership Act 2008, which has come into force with effect from April 1, 2009. The Indian Partnership Act, 1932 is not applicable to LLP.
- B) **Nature of Organization:** The LLP is a body corporate and a legal entity separate from its partners. Any two or more persons associated for carrying on a lawful business with a view to earn profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership.
- C) **Name:** The LLP Act mandates the use of the words “Limited Liability Partnership” or “LLP” as the last words of the name of an LLP. Similar to the procedure envisaged under the Companies Act, 2013, during the incorporation process of an LLP, the name of the LLP first has to be reserved for application with the Registrar under the LLP Act. Section 20 of the LLP Act imposes a penalty for the improper use of the words “Limited Liability Partnership” or “LLP” in the name or title of any business undertaking unless such undertaking is registered under the LLP Act.
- D) **Relationship:** Under the LLP Act the partners are an agent of the LLP firm, not of other partners. However, it is pertinent to note that according to Section 23 of the LLP Act, the mutual rights and duties of the partners of an LLP and the mutual rights and duties of an LLP and its partners shall be governed by the LLP agreement between the partners, or between the LLP and its partners. The contribution of partners to the LLP

business, whether any kind of property, money, promissory notes, agreements to contribute cash or property and contracts for services to be performed shall be as per the agreement between the partner.

- E) **Mutual rights and duties:** The mutual rights and duties of the partners of LLP and the mutual rights and duties of LLP and its partners shall be governed by LLP agreement between the partners or between LLP and its partners.
- F) **Liability of partners:** The partners in an LLP have a limited liability. Unlike in Partnership, where a partner is also liable for the acts of other partners, in an LLP, a partner is not liable for another partner's act. No partner would be liable for independent acts of the other partners. Every partner of an LLP, for the purpose of business of the LLP is the agent of the LLP, but not of the other partners.
- G) **Number of members:** Every LLP shall have at least two partners and shall also have at least two persons as Designated Partners, of whom at least one shall be resident in India.
- H) **Incorporation:** Incorporation of an LLP requires the filing of an incorporation document with the Registrar under the LLP Act, along with the requisite fees [ u/s 11(b) of the LLP Act] along with the documents mentioned in section 11(c) of the LLP Act by two or more persons for carrying on a lawful business with a view to profit. Upon compliance therewith, the Registrar shall retain the incorporation document and within a period of fourteen days register the incorporation document and issue a certificate of registration containing the Registrar's signature and official seal, which shall be conclusive evidence of incorporation of an LLP.
- I) **Structure:** The partners are given full freedom under LLP to engage in any lawful business and manage and conduct the operations of the business in a manner they deem fit. The relationship interest of the partners has also been left to them to decide. In the absence of agreement between them provisions of the Act will apply. LLP agreement is confidential to the members.
- J) **Objective of business:** the business of LLP should be "for profit" business only.
- K) **Nature of contribution by the partners:** Contributions by partners may be tangible, intangible, movable or immovable.
- L) **Winding Up:** The winding up of the LLP may be either voluntary or by the Tribunal to the established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court.

### Q3) what are the advantages of LLP?

Ans: **The advantages of LLP are discussed below:**

- A) **Separate legal entity:** An LLP is a separate legal entity. This means that it has assets in its own name and can sue and be sued. Furthermore, one partner is not responsible or liable for another partner's misconduct or negligence.
- B) **No owner or manager distinction:** An LLP has partners, who own and manage the business. This is different from a private limited company, whose directors may be different from shareholders. In case of LLP partners manage their businesses.
- C) **Flexible agreement:** The partners are free to draft the agreement as they please, with regard to their rights and duties.
- D) **Capital contribution:** In this type of business nothing is mentioned regarding the amount of capital contribution. Contributions by partners may be tangible, intangible, movable or immovable.
- E) **Limited liability:** The liability of partners is limited to the extend of his/her contribution to the LLP. Unless fraud has been detected, the personal assets of the partner are protected from any liability of the LLP.
- F) **Fewer compliance requirements:** An LLP is much easier to form and cheaper to run than a private limited company as there are just three compliances per year. On the other hand, a private limited co. has a lot of compliances to fulfil and conduct an audit of its books.
- G) **Advantages to the professionals:** Any person engaged in any profession can start LLP. So, LLP is to a great extent helpful to the professional persons to do their businesses.
- H) **Government intervention:** In this form of business the intervention of government is very nominal in comparison to company. So, this type of organization can independently function.
- I) **Easy to wind-up:** Not only it is easy to start, it's also easier to wind-up an LLP, as compared to a private limited company. While it still takes 2-3 months to complete this process, it can take over a year to close a private limited company.

#### **Q4) what are the disadvantages of LLP?**

Ans: **Following are few of the disadvantages of an LLP:**

- A) **Inability to raise venture capital funding:** Venture capitalists would be unwilling to invest in an LLP structure. This is because all 'shareholders' in an LLP must be partners, which have certain responsibilities toward the entity. No venture capitalist likes any of these responsibilities, and would, therefore, only invest in a private limited company.
- B) **Rights of partners:** An LLP can be structured in such a way that one partner has more rights than another. So, it isn't a one vote per share system. So, some lesser number of partners may feel compromised if higher no. of shareholders chooses to move the business in a direction that affects their interest.
- C) **Numbers of persons for formation of LLP:** As the basic structure of the LLP is similar to that of any partnership firm but it requires minimum two partners to form it. LLP cannot be formed by a single person. NRI who wants to form an LLP in India then at least one partner should be a resident of India. two foreign partners cannot form LLP without having one resident Indian partner along with them.
- D) **Difficulty in transfer of ownership:** ownership rights are not transferable easily without obtaining consents of all partners of the LLP.
- E) **Offenses and penalties:** LLP Act have provided the provisions of offenses and penalties. For default or 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 defaults 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 offense can result in either 1) through payment of fine or 2) through payment of fine as well as imprisonment of the offender.
- F) **Limitation in External Commercial Borrowing (ECB):** LLP is not allowed to raise ECB. Thus, LLP cannot take commercial loans from its foreign partners, FII's, banks from outside India, any financial institution outside India or any other entity outside India.

**Q5) Distinguish between LLP and Company.**

Ans:

<b>BASIS</b>	<b>LLP</b>	<b>COMPANY</b>
1. creation	It is created by law.	It may or may not be created by law.
2. governed by	It is governed by Limited Liability Partnership Act, 2008.	It is governed by Indian Companies Act, 2013.
3. Nature	An LLP is a body corporate formed and incorporated under this act and which has legal entity separate from that of its partners, having perpetual succession and liability of its partners shall be limited.	An co. is a body corporate formed and incorporated under the Companies Act, 1956 and which has legal entity separate from its members, having perpetual succession and liability of its members shall be limited.
4. Legal Entity	It has separate legal entity, separate from its partners or designated partners.	A co. is also a separate legal entity.
5. Charter document.	LLP Agreement is its charter document.	Memorandum of Association is its charter document.
6. Right to contract	A partner can enter into contract with the LLP.	A director or member can enter into contract with the company.
7. Name of firm	Name containing LLP as suffix.	Any name can be used. Suffix 'Limited' or 'Private Limited' has to be added to the name.
8. Formalities of Incorporation	Various documents/declarations executed in prescribed formats pre-filled in designated e-forms are required to be filed with ROC along with filing fee.	Various documents/declarations executed in prescribed formats pre-filled in designated e-forms are required to be filed with ROC along with filing fee.
9. Property	The LLP property belongs to the LLP.	The property of the co. belongs to the company.
10. Agreement	LLP agreement must be in writing as Section 23(2) requires the LLP agreement and changes therein to be filed with the Registrar of Companies. As per Rule 21 this is to be done within 30 days of incorporation.	The persons who want to form a co. prepare Memorandum of Association and submit for its incorporation.
11. No. of Members	An LLP must have at least 2 partners and at least one of them must be resident in India. there is no maximum limit of partners.	In case of private limited co. minimum no. of members is 2 and maximum no. of members is 200. In case of public limited co. minimum no. of members is 7 and there is no maximum limit of members. In case one person co. the no. of member will be one.

12. Agency	Partner is an agent of LLP but not of other partners.	A member is not an agent of the company. However, a director of a co. may act as an agent of the co.
13. Identification number	Each Designated partner required to have a DPIN (Designated Partner's Identification Number) before being appointed as a designated partner of LLP.	Each director is required to have a Director Identification Number (DIN) before being appointed as a director of any co.
14. Dissolution	An LLP is not dissolved by the death or insolvency of a partner. The circumstances in which an LLP may be wound up by the Tribunal are prescribed in Section 64.	A co. is not liquidated in case of death or insolvency of a member. It has perpetual existence. However, it will be liquidated on the verdict of the court.

**Q6) Discuss in details the contents of the LLP agreement.**

Ans: A well-structured and clearly summarized LLP agreement is very much required for the successful functioning of an LLP. LLP agreement contains the following provisions:

- A) **Name of the LLP:** The name of the LLP shall end with LLP or Limited Liability Partnership as per the provisions of the LLP Act.
- B) **Date of the agreement and parties of agreement:** After incorporation, the LLP agreement is to be executed within 30 days as per the LLP Act. LLP agreement is between partners of LLP and the LLP or between individual partners. Hence for the agreement, all the parties to the LLP agreement which can be LLP or individual or both are taken into consideration.
- C) **Introductory provisions:** It includes the definition of terms used in the LLP agreement, the name of the LLP and provision of future name changes, initial partners, new partners admission, business activities and their scope, power of LLP, duration, management, accounting, auditing, etc.
- D) **Partners' contribution and method of contribution:** It provides the contribution ratio of partners in terms of capital, interest on contribution, profit sharing ratio as well as the time period after which the capital can be withdrawn by any of the partners. It is important for maintaining the good cordial relation between partners.
- E) **LLP record keeping and bank arrangement:** It includes the recording, maintenance and storage of LLP books and other related documents.
- F) **Allocation and distribution:** It clarify the method of profit sharing among partners and distribution including interim distribution or final distribution of profit in the LLP.

- G) **Capital and current account:** It includes particulars that will be credited and debited to each account.
- H) **Disassociation of partner:** It includes the terms and conditions when partners can disassociate or withdraw from the LLP. It illustrates the procedure, the rights of existing partners, and rights on assets after disassociation, as well as notice to existing partner.
- I) **Redemption and cross purchase of rights:** It includes rights of partners as well as how those rights can be redeemed from the LLP. It considers methods of readmission as well as cross purchase.
- J) **Issue of partnership rights:** It provides information related to admission of new partners and its rights thereafter.
- K) **Sales, transfer of partnership rights:** It provides procedural information about the selling, transferring of partnership right to existing partner and a new partner, partners' meeting and voting etc. it covers the mode, time period of the meeting, the method of decision-making process and the voting rights of the partners concerned.
- L) **Partners' rights to inspect records:** Each partner has the right to scrutinize the records and documents of LLP for avoiding misappropriation and embezzlement.
- M) **Management and fiduciary duty:** It take into account the responsibility of the management of an LLP and the appointment of manager as well as person liable for fiduciary duty i.e., taking care of legal matters as well as funds and assets of the LLP.
- N) **Arbitration and general provisions:** In the case of disagreement between parties, the parties may involve the third party known as an arbitrator who listens to both the parties and take a decision, which is to abide by both the parties concerned.

**Q7) Give an idea of the various types of LLP.**

Ans: LLP agreement should be customized and meet the requirement of all the partners without compromising on the objective and growth of LLP. One agreement may not fit all the partners into a satisfactory zone. Following discussed are the main types of LLP agreement.

- A) **Equal rights LLP:** In such type of LLP, all partners contribute equal capital, time, and energy in the LLP. All receive the same remuneration and share the profit and loss equally. The decisions are mutually taken. All the partners have same rights and contribute equally to the management as well as the business of the LLP.



- B) **Differential rights LLP:** In such type of LLP, partners have different amount of contribution in terms of capital, energy, and time. Hence the right to profit sharing, decision making, and managerial right differs. It can be classified into:
- LLP agreement wherein rights are in the ratio of contribution and profit sharing. The level of contribution may decide the level of profit sharing.
  - LLP agreement wherein are in the ratio of contribution only, but profit rights differ. Management rights may be equal or in some other ratio.
- C) **Husband & wife LLP:** If husband and wife are running LLP, then special agreement pertaining to tax liability can be made so as to minimize the family tax liability. Besides, they can choose any of the above-said types of LLP according to their convenience and need.
- D) **Differential rights and differential powers LLP:** In such type of LLP, partners hold different rights and powers. Some may be just investing while other may be holding managerial responsibilities. In order to avoid miscommunication and conflict, the rights and power of partners must be well defined and agreed on.
- E) **Partner managed LLP:** In such type of LLP, there are multiple partners. It is same as differential rights and powers LLP where some partners are nominal or investor while others are holding administrative or management or operational decision-making powers.
- F) **Board managed LLP:** In such type of LLP, management is done by forming the board or committee of partners similar to a board of director in the co. overall control rest in the hands of all partners whereas day to day managerial and operational and decision-making power rest in the hand of board or committee of partners.
- G) **Manager managed LLP:** In such type of LLP, partners appoint the manager and give him specific powers related to administration, management, operational. In this multi-partnership LLP, the role of the partner is like an investor and does not have any decision-making right-on day to day activities of the company.

**Q8) Discuss the procedures to be followed for incorporation of LLP.**

Ans: There are specific guidelines given by Limited Liability Partnership Act, 2008, towards the incorporation of an LLP. Incorporation procedure is similar to that of a Company. For a Limited Liability Partnership to be incorporated section 11(1) is applicable. Following are the procedures to be followed for incorporation of an LLP.

- A) **Name of LLP:** The name of LLP must end with the word “Limited Liability Partnership” or “LLP”. Under similar lines of regulation for a co., an LLP’s name should not resemble the name of an existing LLP. In case the name contains the words Company Secretary or Cost Accountant or Chartered Accountant etc., the same should

be allowed only after obtaining approval from the council governing institute or any other authority specified by the government. Section 16 of the LLP Act, 2008, specifies that the application for reservation of name should be made in Form No. 1 to the Registrar having jurisdiction over the registered office of the LLP. The reservation of the name is valid for 3 months within which the person incorporating the LLP must file all documents relevant for incorporation.

- B) **Place of Registered office of LLP:** Registered office of LLP need not be the same place where the business is conducted. LLP may give another address within the jurisdiction in which registered office is situated. Form no. 12 should be submitted within 30 days for intimating the above address.
- C) **Number of members:** Two or more persons associated for carrying on a lawful business with a view to earning profit shall subscribe their names to an incorporation document.
- D) **Registrar office:** The incorporation document should be filed with the registrar of the state in which the registered office of the limited liability partnership is situated in the prescribed manner and with fees.
- E) **Incorporation documents:** 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 anyone 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. The incorporation document shall state:
- The name of the LLP
  - The proposed business of the LLP
  - The address of the registered office of the LLP
  - The name and addresses of each person who are to be partners of the LLP on incorporation
  - The names and addresses of each person who are to be designated partners of the LLP on incorporation
  - The limited liability of the partnership.
- F) LLP agreement must be filed in Form No. 3 and Notice of appointment of partner and designated partner in Form No. 4 should be filed at the time of Filing Form No. 2 or within 30 days of incorporation.  
The registrar shall within 14 days of filing, register the incorporation document and give a certificate that the LLP has been incorporated.

## **PARTNERS OF LLP**

### **Qualifications for becoming a partner:**

Any individual or body corporate may be a partner in an LLP. Following persons can be partners of an LLP.

- An individual
- Any limited liability partnership firm
- Indian co.
- Foreign limited liability partnership firm
- Foreign co.

However, an individual shall not be capable of becoming a partner of a LLP, if-

- He has found to be of unsound mind by a court of competent jurisdiction and the finding is in force.
- He is an undischarged insolvent, or
- He has applied to be adjudicated as an insolvent and his application is pending

### **Who cannot be the partners of LLP:**

**The following entities are not permitted to be the partners of an LLP.**

- a) **Hindu Undivided Family:** HUF cannot be partner in LLP. Section 5 clearly spells out that only Individual and Body Corporate can become the partner of LLP.
- b) **Co-operative Society:** A co-operative society cannot be member of an LLP.
- c) **Minor:** Minor cannot be partner in LLP. There are no provisions of admitting minors to the benefits of partnership unlike Section 30 of Indian Partnership Act, 1932.
- d) **Trade Union:** A trade union cannot be the member of an LLP.

- e) **Firms under Indian Partnership Act, 1932:** Firms registered under Indian Partnership Act, 1932 cannot be partner in LLP.

## **DESIGNATED PARTNER**

**Definition:** Section 7 of the Act provides that every LLP shall have at least 2 designated partners who are individuals and at least one of them shall be a resident in India.

### **Duties of Designated Partner:**

- Notify any changes in the LLP to the Registrar of Companies.
- Notify any changes in the partners' names and residential addresses to the Registrar of Companies.
- Notify any changes in registered office address to the Registrar of Cos.
- Filing of any annual return, statement of accounts and other documents specified under the provisions of LLP Act with the Registrar of Cos.
- Statement of accounts and solvency to be signed by the designated partners of the LLP
- To preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the central government, all books and papers of, or relating to, the LLP which are in their custody or power.
- Responsible for signing all the e-forms filed with the Registrar of Cos.

### **Responsibilities of designated partners:**

The designated partners are responsible for all acts to be performed under the LLP Act like filing of documents, returns, statements and those documents mentioned in the LLP agreement and penalties for non-compliance. Following are the responsibilities of designated partners:

- To register the LLP with the Registrar of Cos.
- To appoint an auditor for the audit of books and accounts of the LLP
- To prepare and sign the accounts on behalf of the members
- To deliver the accounts to the Registrar of Cos.
- To notify Registrar of any membership changes, or of a change to the registered office address or name of the LLP
- To prepare, sign and deliver the annual return to the Registrar
- To act on behalf of the LLP if it is wound up and dissolved

Therefore, it can be said that designated members generally face more responsibilities as compared to ordinary members.