

# THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

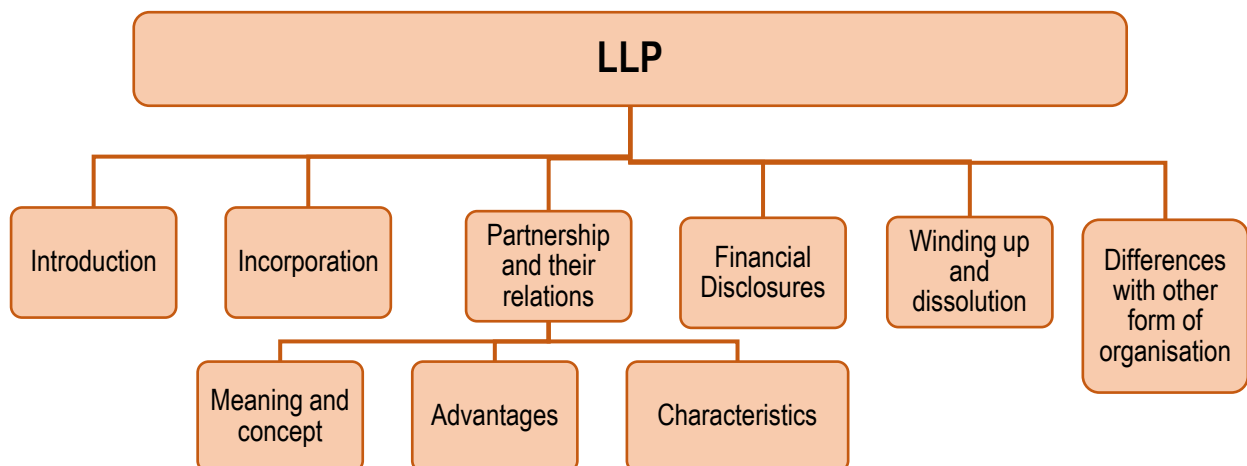


## LEARNING OUTCOMES

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

- ◆ Understand the meaning of the term 'Limited Liability Partnership', its need, scope and advantages
- ◆ Incorporation of LLP, Partners and their relations, financial disclosures, conversions, winding up and dissolution
- ◆ Differentiate between 'Limited Liability Partnership' and other forms of organisation

## CHAPTER OVERVIEW



## INTRODUCTION

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

The Parliament passed the Limited Liability Partnership Bill on 12<sup>th</sup> December, 2008 and the President of India has assented the Bill on 7<sup>th</sup> 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.

### 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.



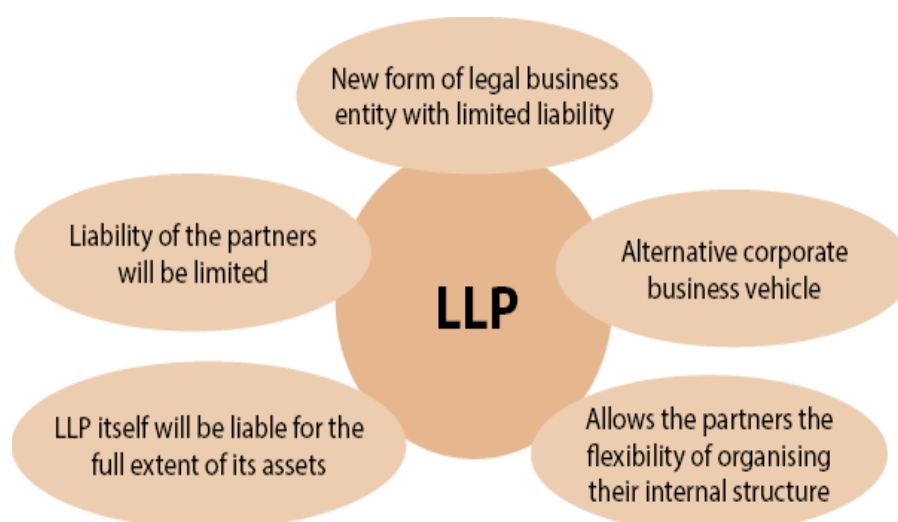
## 1. LIMITED LIABILITY PARTNERSHIP- MEANING AND CONCEPT

**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(d))]:** It means a company as defined in section 3 of the Companies Act, 1956 (now Companies Act, 2013) and includes—
  - (i) a LLP registered under this Act;
  - (ii) a LLP 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 section 3 of the Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.
- 2. **Business [Section 2(e)]:** “Business” includes every trade, profession, service and occupation.
- 3. **Designated Partner [Section 2(j)]:** “Designated partner” means any partner designated as such pursuant to section 7.
- 4. **Entity [Section 2(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(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, 2017, then its financial year may be from 15th October, 2017 to 31st March, 2019.

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(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(n)]:** Limited Liability Partnership means a partnership formed and registered under this Act.
- 8. **Limited Liability partnership agreement [Section 2(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(q)]:** Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.

**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.

**Example 2:** A LLP by the name SMY LLP has three partners namely 1. SI Limited, 2. MIS Limited, 3. YI Private Limited. This will not be considered for registration because the requirement for LLP is to have 2 individual members as partners apart from the body corporates. Accordingly, the said SMY LLP must consist of at least five partners, namely the three body corporates and 2 individual members to constitute the LLP and the two individuals need to be treated 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 182 days during the immediately preceding one year.

**Example 3:** 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.


**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 members	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 un-authorized 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 (Section 26). The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both.  
**Example 4:** 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](http://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**



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

**Effect of registration (Section 14):**

**Name (Section 15):**

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

**Reservation of name (Section 16):**

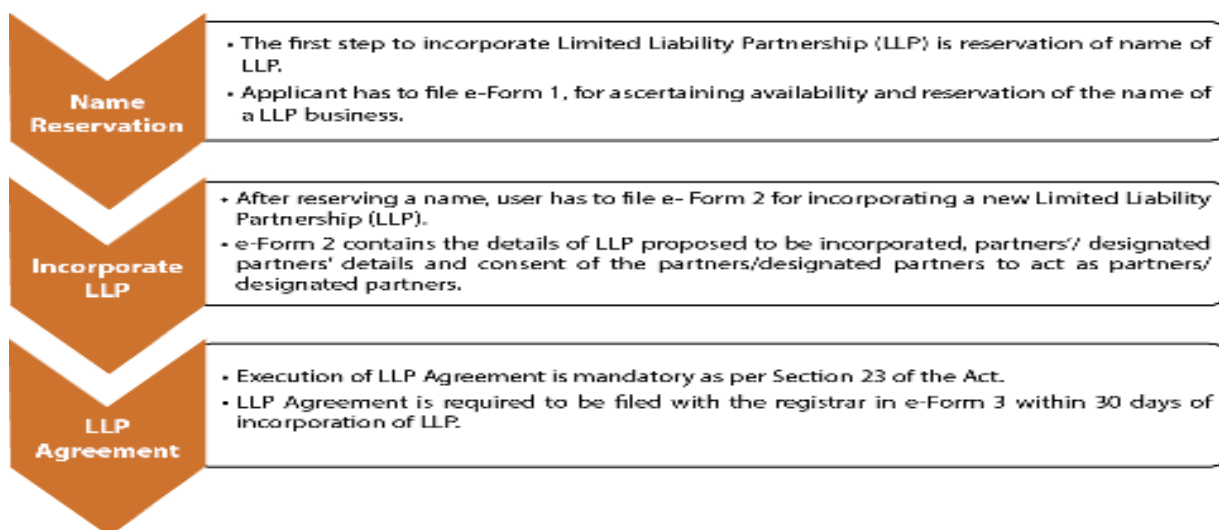
- (1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—
  - (a) the name of a proposed LLP; or
  - (b) the name to which a LLP proposes to change its name.
- (2) Upon receipt of an 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, where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which —
  - (a) is a name referred to in sub-section (2) of section 15; or
  - (b) is identical with or too nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it,

the Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow.

- (2)
  - (i) Any LLP which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 5 Lakhs.
  - (ii) The designated partner of such LLP shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 Lakh.

**Steps to incorporate LLP-****3. PARTNERS AND THEIR RELATIONS**

**Eligibility to be partners (Section 22):** On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.

**Relationship of partners (Section 23):**

- (1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a LLP, and the mutual rights and duties of a LLP and its partners, shall be governed by the LLP agreement between the partners, or between the LLP and its partners.
- (2) The LLP agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.
- (3) An agreement in writing made before the incorporation of a LLP between the persons who subscribe their names to the incorporation document may impose obligations on the LLP, provided such agreement is ratified by all the partners after the incorporation of the LLP.
- (4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

**Cessation of partnership interest (Section 24):**

- (1) A person may cease to be a partner of a LLP in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.
- (2) A person shall cease to be a partner of a LLP—
  - (a) on his death or dissolution of the LLP; or

- (b) if he is declared to be of unsound mind by a competent court; or
  - (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.
- (3) Where a person has ceased to be a partner of a LLP (hereinafter referred to as “former partner”), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—
- (a) the person has notice that the former partner has ceased to be a partner of the LLP; or
  - (b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.
- (4) The cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.
- (5) Where a partner of a LLP ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the LLP—
- (a) an amount equal to the capital contribution of the former partner actually made to the LLP; and
  - (b) his right to share in the accumulated profits of the LLP, after the deduction of accumulated losses of the LLP, determined as at the date the former partner ceased to be a partner.
- (6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the LLP.

**Registration of changes in partners (Section 25):**

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

- (4) If the LLP contravenes the provisions of sub-section (2), the LLP and every designated partner of the LLP shall be punishable with fine which shall not be less than ₹ 2,000 but which may extend to ₹ 25,000.
- (5) If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than ₹ 2,000 but which may extend to ₹ 25,000.
- (6) Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice.

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



## 4. EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER

**Partner as agent (Section 26):** Every partner of a LLP is, for the purpose of the business of the LLP, the agent of the LLP, but not of other partners.

### Extent of liability of LLP (Section 27):

- (1) A LLP is not bound by anything done by a partner in dealing with a person if—
  - (a) the partner in fact has no authority to act for the LLP in doing a particular act; and
  - (b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.
- (2) The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.
- (3) An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.
- (4) The liabilities of the LLP shall be met out of the property of the LLP.

### Extent of liability of partner (Section 28):

- (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the LLP.
- (2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.

### Holding out (Section 29):

- (1) Any person,
  - who by words spoken or written or by conduct,
  - represents himself, or knowingly permits himself to be represented to be a partner in a LLP

- is liable to any person
- who has on the faith of any such representation
- given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

However,

- where any credit is received by the LLP as a result of such representation,
  - the LLP shall,
  - without prejudice to the liability of the person so representing himself or represented to be a partner,
  - be liable to the extent of credit received by it or any financial benefit derived thereon.
- (2) Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

**Unlimited liability in case of fraud (Section 30):**

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

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

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

However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

**Whistle blowing (Section 31):**

- (1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that—
  - such partner or employee of a LLP has provided useful information during investigation of such LLP; or
  - when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.
- (2) No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).



## 5. FINANCIAL DISCLOSURES

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

- (1) **Proper Books of account:**
  - The LLP shall maintain such proper books of account as may be prescribed
  - relating to its affairs for each year of its existence
  - on cash basis or accrual basis and
  - according to double entry system of accounting and
  - shall maintain the same at its registered office
  - for such period as may be prescribed.
- (2) **Statement of Account and Solvency:**
  - Every LLP shall,
  - within a period of 6 months from the end of each financial year,
  - prepare a Statement of Account and Solvency
  - for the said financial year as at the last day of the said financial year
  - in such form as may be prescribed, and
  - such statement shall be signed by the designated partners of the LLP.
- (3) Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.
- (4) The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the Central Government may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this sub-section.

(5) Any LLP which fails to comply with the provisions of this section shall be punishable

- with fine which shall not be less than ₹ 25,000
- but which may extend to ₹ 5 Lakhs

Every designated partner of such LLP shall be punishable

- with fine which shall not be less than ₹ 10,000
- but which may extend to ₹ 1 Lakh.

#### Annual return (Section 35):

1. Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

**Example 5:** Suppose, the financial year of a LLP closes on 31st March, 2020 then the LLP has to file an annual return with the Registrar latest by 30th May, 2020.

The LLP contra-distinct from Partnership Act, 1932 has prescribed the filing of Annual Return in accordance with Companies Act, 2013. This is a new feature of the LLPs.

(2) Any LLP which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs.

(3) If the LLP contravenes the provisions of this section, the designated partner of such LLP shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 Lakh.



## 6. CONVERSION INTO LLP

**Conversion from firm into LLP (Section 55):** A firm may convert into a LLP in accordance with the provisions of this Chapter and the Second Schedule.

**Conversion from private company into LLP (Section 56):** A private company may convert into a LLP in accordance with the provisions of this Chapter and the Third Schedule.

**Conversion from unlisted public company into LLP (Section 57):** An unlisted public company may convert into a LLP in accordance with the provisions of this Chapter and the Fourth Schedule.

#### Registration and effect of conversion (Section 58):

##### Registration:

- (i) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the various Schedules, provisions of this Act and the rules made thereunder, register the documents issue a certificate of registration in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under this Act.
- (ii) The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956 (Now Companies Act, 2013) as the case may be, about the conversion and of the particulars of the LLP in such form and manner as may be prescribed.



- (iii) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the LLP to which such firm or such company has converted, and the partners of the LLP shall be bound by the provisions of the various Schedules, as the case may be, applicable to them.
- (iv) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the various schedules, as the case may be.

**Effect of Registration:** Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the various Schedule, as the case may be,—

- (a) there shall be a LLP by the name specified in the certificate of registration registered under this Act;
- (b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
- (c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.



## 7. FOREIGN LLP

**Foreign limited liability partnerships (Section 59):** The Central Government may make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956 or such regulatory mechanism with such composition as may be prescribed.



## 8. WINDING UP AND DISSOLUTION

**Winding up and dissolution (Section 63):** The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.

**Circumstances in which LLP may be wound up by Tribunal (Section 64):** A LLP may be wound up by the Tribunal:

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

(f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

**Rules for winding up and dissolution (Section 65):** The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.



## 9. MISCELLANEOUS

**Business transactions of partner with LLP (Section 66):** A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

**Application of the provisions of the Companies Act (Section 67):**

- (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 1956 specified in the notification—
  - shall apply to any LLP; or
  - shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.
- (2) A copy of every notification proposed to be issued under sub-section (1)
  - shall be laid in draft before each House of Parliament, while it is in session,
  - for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and
  - if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification,
  - the notification shall not be issued or, as the case may be,
  - shall be issued only in such modified form as may be agreed upon by both the Houses.

**Electronic filing of documents (Section 68):**

- (1) Any document required to be filed, recorded or registered under this Act may be filed, recorded or registered in such manner and subject to such conditions as may be prescribed.
- (2) A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through affixing digital signature as per the Information Technology Act, 2000 to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.
- (3) Any information supplied by the Registrar that is certified by the Registrar through affixing digital signature to be a true extract from any document filed with or submitted to the Registrar shall, in any proceedings, be admissible in evidence and be presumed, unless evidence to the contrary is adduced, to be a true extract from such document.

**Payment of additional fee (Section 69):** Any document or return required to be filed or registered under this Act with the Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that

time upto a period of 300 days from the date within which it should have been filed, on payment of additional fee of ₹ 100 for every day of such delay in addition to any fee as is payable for filing of such document or return.

However, such document or return may, without prejudice to any other action or liability under this Act, also be filed after such period of 300 days on payment of fee and additional fee specified in this section.

## 10. 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.	<b>Regulating Act</b>	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	<b>Body corporate</b>	It is a body corporate.	It is not a body corporate,
3.	<b>Separate legal entity</b>	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	<b>Creation</b>	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	<b>Registration</b>	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.	<b>Perpetual succession</b>	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	<b>Name</b>	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	<b>Liability</b>	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	<b>Mutual agency</b>	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.	<b>Designated partners</b>	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.	<b>Common seal</b>	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	<b>Legal compliances</b>	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.	<b>Annual filing of documents</b>	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.	<b>Foreign partnership</b>	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	<b>Minor as partner</b>	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

	<b>Basis</b>	<b>LLP</b>	<b>Limited Liability Company</b>
1.	<b>Regulating Act</b>	The LLP Act, 2008.	The Companies Act, 2013.
2.	<b>Members/Partners</b>	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.	<b>Internal governance structure</b>	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.	<b>Name</b>	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.	<b>No. of members/partners</b>	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
6.	<b>Liability of members/partners</b>	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	<b>Management</b>	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	<b>Minimum number of directors/designated partners</b>	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.

## TEST YOUR KNOWLEDGE

### Multiple Choice Questions

1. Ministry of Corporate Affairs enforced the LLP Act, with effect from-  
(a) 31<sup>st</sup> March, 2008 (b) 1<sup>st</sup> April 2008  
(c) 31<sup>st</sup> March, 2009 (d) 1<sup>st</sup> 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 182 days during the immediately preceding one year.

### Answers to MCQs

1	(c)	2	(b)	3	(b)	4	(c)	5	(c)	6	(b)	7	(d)	8	(d)
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### 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. Enumerate the circumstances in which LLP may be wound up by Tribunal.

6. “LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership”. Explain.
7. Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008.

### 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 members

- 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 182 days during the immediately preceding one 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. **Circumstances in which LLP may be wound up by Tribunal (Section 64):** A LLP may be wound up by the Tribunal:

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



(f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

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

**Limited Liability:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

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

**7. 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.

**Steps to incorporate LLP:**

**1. Name reservation:**

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

2. Incorporate LLP:
  - (i) After reserving a name, user has to file e- Form 2 for incorporating a new Limited Liability Partnership (LLP).
  - (ii) e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners
3. LLP Agreement
  - (i) Execution of LLP Agreement is mandatory as per Section 23 of the Act.
  - (ii) LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.