

CHAPTER – 12: The Limited Liability Partnership, 2008

Introduction/Background

The Partnership Act was enacted during the year 1932.

The Partnership Act, 1932 suffers from **certain disadvantages**, as detailed below:

- The **liability** of each partner is **unlimited**;
- The partners are **jointly and severally** liable for the debts and liabilities of the firm to the risk of the personal assets of the partners;
- The partner is **not having right to transfer his holding** in the partnership unless he retires from partnership and other partners agree to admit the same;
- The **number of members is limited** by which more investments will not be there which results inhibiting the growth of the business.

A **need** has been felt for a long time to provide for a business format that would **combine** the **flexibility of a partnership** and the **advantages of the limited liability of the company** at a **low compliance cost**.

During the financial crisis of the late **1980s** and early **1990s** hundreds of US saving and loan firms were declared insolvent. As a result of the collapse many accountancy and legal firms faced legal claims instigated by the US government. Successful claims could have resulted in all partners, including those who were not responsible for the failure of the savings and loan firms, being liable to repay millions of dollars in compensation. **In 1991** Texas introduced the concept of a limited liability partnership (LLP). The concept was popular and the majority of US states eventually passed LLP legislation.

The LLP structure is available in countries like United Kingdom, United States of America, various Gulf countries, Australia and Singapore. **In India** on the advice of experts who have studied LLP legislations in various countries, the **LLP Act is broadly based on UK LLP Act 2000 and Singapore LLP Act 2005**. Both these Acts allow creation of LLPs in a body corporate form i.e. as a separate legal entity, separate from its partners/members.

Question 1 "LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership". Explain. [May 19, 5 Marks] [July 21 – 5 Marks] [MTP Oct 20 – 5 Marks] [MTP Oct 21 – 5 Marks] [RTP May 22 - Marks] CS LLM Arjun Chhabra

Answer:

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 an 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.

Body Corporate [(Section 2(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.

Business [Section 2(e)]: “Business” includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude.

Question 2

What is Small Limited Liability Partnership as per Limited Liability Partnership (Amendment) Act, 2021?[RTP Nov 22 - 5 Marks] [RTP June 23]

Answer:

“Small Limited Liability Partnership [Section 2(ta) of the Limited Liability Partnership Act, 2008]: 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.

Question 3 Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership? [RTP Nov 19] CS LLM Arjun Chhabra

Answer:

Partners (Section 5 of Limited Liability Partnership Act, 2008): 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.

For knowledge: An Undischarged Insolvent or Undischarged Bankrupt is a person who has submitted a bankruptcy petition to the court of law and whose debts are still being assessed by the court. The court will allow the person to submit all the persons assets and liabilities, list of creditors, list of debtors and will evaluate the persons ability to pay off, which creditors to pay, how much to pay etc.

Until the court decides all of the above, the person is an undischarged bankrupt or insolvent. Once the court passes appropriate orders - the bankruptcy petition is disposed off and the person will be discharged by a court. Once this is done, the person becomes a discharged bankrupt or discharged insolvent.

Related Question: Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain. [Module Question]

Partners (Section 5 of Limited Liability Partnership Act, 2008): Same as above

Body Corporate [(Section 2(d)]: Same as above

Therefore, HUF is not covered in the definition of body corporate and cannot be partner in LLP.

Question 4

What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP? [MTP Oct 19, 5 Marks] [RTP Nov 20] [RTP May 21] [MTP Nov 21 – 5 Marks]

Answer:

Designated partners (Section 7)

(1) Every limited liability partnership shall have **at least two** designated partners who are **individuals** and **at least one** of them shall be a **resident in India**:

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

Explanation. 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 one hundred and twenty days** during the financial year.

(2) Subject to the provisions of sub-section (1),

(i) if the incorporation document

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; **or**

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

(3) An individual shall **not** become a designated partner in any limited liability partnership unless he has given his **prior consent** to act as such to the limited liability partnership in such form and manner as may be prescribed.

(4) Every limited liability partnership shall file with the Registrar the **particulars** of every individual who has given his consent to act as **designated partner** in such form and manner as may be prescribed within **thirty days of his appointment**.

(5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

(6) Every designated partner of a limited liability partnership shall **obtain a Designated Partners Identification Number (DPIN)** from the Central Government and the provisions of sections 153 to 159 (both inclusive) of the Companies Act, 2013 shall apply mutatis mutandis for the said purpose.

Related Question: There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, **Mr. Raheem**, **Mr. Kartar** and Mr. Albert. **Mr. Rahul and Mr. Albert** are **non-resident** while other two are resident. LLP wants to take **Mr. Rahul and Mr. Raheem** as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so?

Question 5

Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008. [May 22- 5 Marks]

Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008. [Nov 18, 5 Marks] CS LLM Arjun Chhabra

Related Question: What are the essential elements to form a LLP in India as per the LLP Act, 2008? [May 18, 5 Marks] [RTP Nov 18]

Related Question: State the meaning of Limited Liability Partnership (LLP). What are the relevant steps to incorporate LLP? [MTP March 18, 5 Marks] [MTP Oct 18, 5 marks] [MTP April 19, 5 Marks]

Answer:

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.

Incorporation by registration (Section 12 of LLP Act, 2008):

(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.

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:

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

2. Incorporate LLP:

- After reserving a name, user has to file **e- Form 2** for incorporating a new Limited Liability Partnership (LLP).

- 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

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

Question 6

What do you mean by Limited Liability Partnership (LLP)? What are the advantages for forming a LLP for doing business? [RTP May 18] [RTP May 19] CS LLM Arjun Chhabra

Answer:

Meaning- Same as above.

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.

Characteristic/Salient Features of LLP

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 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. In other words, creditors of LLP shall be the creditors of LLP alone.
4. **Mutual Agency:** 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. **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. **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.

6. **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.
7. **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.
8. **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.
9. **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.
10. **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.

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

- is organized and operates on the basis of an agreement.
- Provide flexibility without imposing detailed legal and procedural requirements.
- Easy to form
- All partners enjoy limited liability
- Flexible capital structure
- Easy to dissolve

Question 7

State the rules regarding the registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008. [Dec 21 – 5 Marks]

Answer:

Registered office of LLP and change therein (Section 13):

1. Every limited liability partnership 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 limited liability partnership 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 limited liability partnership for the purpose in such form and manner as may be prescribed.

3. A limited liability partnership 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 any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of five hundred rupees for each day during which the default continues, subject to a maximum of fifty thousand rupees for the limited liability partnership and its every partner.

Question 8

What are the effects of registration of LLP? [RTP Nov 19] CS LLM Arjun Chhabra

Answer:

Effect of registration (Section 14 of Limited Liability Partnership Act, 2008):

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.

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 limited liability partnership 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 limited liability partnership 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 LP; 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.

Question 9

What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008? [RTP May 20] CS LLM Arjun Chhabra

Answer:

Change of name of LLP (Section 17):

(1) Notwithstanding anything contained in sections 15 and 16, if through **inadvertence** or **otherwise**, a limited liability partnership, on its first registration or on its registration by a new body corporate, its registered name;"name, is registered by a name which is **identical** with or **too nearly resembles** to—

(a) that of any **other limited liability partnership** 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 limited liability partnership or proprietor referred to in clauses (a) and (b) respectively or a company, the **Central Government** may **direct** that such limited liability partnership to **change** its name or new name within a period of **three months** from the date of issue of such direction:

Provided that an **application** of the proprietor of the registered trade marks shall be **maintainable within a period of three years** from the date of incorporation or registration or change of name of the limited liability partnership under this Act.

(2) Where a **limited liability partnership changes its name** or obtains a new name under sub-section (1), it shall within a period of **fifteen 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 thirty days** of such change in the certificate of incorporation, such limited liability partnership shall **change** its name in the limited liability partnership **agreement**.

(3) If the limited liability partnership is in **default in complying** with any direction given under sub-section (1), the **Central Government** shall **allot a new name** to the limited liability partnership in such manner as may be prescribed and the **Registrar** shall **enter the new name** in the register of limited liability partnerships in place of the old name and **issue a fresh certificate** of incorporation with new name, which the limited liability partnership shall use thereafter:

Provided that nothing contained in this sub-section shall prevent a limited liability partnership from subsequently changing its name in accordance with the provisions of section 16.

Question 10

M/s Vardhman Steels LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Vardhimaan Steels is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP is nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Vardhman Steels LLP is liable to change its name under the provisions of Limited Liability Act, 2008?

Answer

Section 15: Same as above

Section 17: Same as above

Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trade mark of a proprietor.

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

Question 11

Kanik, Priyansh, Abhinav and Bhawna were partners in Singh Jain & Associates LLP. Abhinav resigned from the firm w.e.f. 01.11.2022 but this was not informed to ROC by LLP or Abhinav. Whether Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022?

Answer

According to section 24(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.

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

Registration of changes in partners (Section 25):

- (1) Every partner shall inform the limited liability partnership of any change in his name or address within a period of fifteen days of such change.
- (2) A limited liability partnership shall
 - (a) where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty 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 thirty 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 limited liability partnership 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 limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and its every designated partner shall be liable to a penalty of ten thousand rupees.
- (5) If the contravention referred to in sub-section (1) is made by any partner of the limited liability partnership, such partner shall be liable to a penalty of ten thousand rupees.
- (6) Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the limited liability partnership 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 limited liability partnership unless the limited liability partnership has also filed such notice: Provided that where no confirmation is given by the limited liability partnership within fifteen days, the Registrar shall register the notice made by a person ceasing to be a partner under this section.

Question 12

Discuss the conditions under which LLP will be liable and not liable for the acts of the partner. [Nov 19, 5 Marks] [RTP Dec 23]

Answer:

Conditions under which LLP will be liable [Section 27(2) of the LLP Act, 2008]

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.

Conditions under which LLP will not be liable [Section 27(1) of the LLP Act, 2008]

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.

Question 13

Mr. Mudit is the creditor of Devi Ram Food Circle LLP. He has a claim of Rs. 10,00,000 against the LLP but the worth of the assets of LLP are only Rs. 7,00,000. Now Mr. Mudit wants to make the partners of LLP personally liable for the deficiency of Rs. 3,00,000. Whether by virtue of provisions of Limited Liability Act, 2008, Mr. Mudit can claim the deficiency from the partners of Devi Ram

Food Circle LLP?

Answer

A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone.

In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP. Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit can not claim his deficiency of & 3,00,000 from the partners of Devi Ram Food Circle LLP.

Question 14

State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008. [Jan 21 – 5 Marks]

Discuss the liabilities of Limited Liability Partnership (LLP) and its partners in case of fraud as per the provisions of the Limited Liability Partnership Act, 2008. [June 23 - 5 Marks]

CS LLM ARJUN CHHABRA

Answer:

Unlimited liability in case of fraud (Section 30 of the Limited Liability Partnership Act, 2008):

(1) In case of fraud:

- In the event of an act carried out by a limited liability partnership, or any of its partners,
- with **intent to defraud creditors** of the limited liability partnership or any other person, or for any **fraudulent purpose**,
- the **liability** of the limited liability partnership 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 limited liability partnership:

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

(2) **Punishment:** 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 five years** and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

(3) **Compensations on commission of fraud:** Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then **without prejudice to any criminal proceedings** which may arise under any law for the time being in force, the limited liability partnership 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:

Provided that such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.

Question 15

What is the procedure for maintenance of books of account, other records and audit of Limited Liability Partnership under LLP Act, 2008? [RTP Nov 22]

Answer:

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

(1) The limited liability partnership 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) Every limited liability partnership shall, **within a period of six 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 limited liability partnership.

(3) Every limited liability partnership 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 limited liability partnerships shall be **audited** in accordance with such rules as may be prescribed:

Provided that the **Central Government may**, by notification in the Official Gazette, **exempt** any class or classes of limited liability partnerships from the requirements of this sub-section.

(5) Any limited liability partnership which fails to comply with the provisions of sub-section (3), such limited liability partnership and its designated partners shall be liable to a **penalty of one hundred rupees for each day** during which such failure continues, subject to a **maximum of one lakh rupees for the limited liability partnership and fifty thousand rupees** for every designated partner.

(6) Any limited liability partnership which fails to comply with the provisions of sub-section (1), sub-section (2) and sub-section (4), such limited liability partnership shall be **punishable with fine** which shall **not be less than twenty-five thousand rupees**, but may extend to **five lakh rupees** and every designated partner of such limited liability partnership shall be **punishable with fine** which shall **not be less than ten thousand rupees**, but may extend to **one lakh rupees**.

Question 16

List the differences between the Limited Liability Partnership and the Limited Liability Company.

[RTP May 18] [MTP March 19] CS LLM Arjun Chhabra

Related Question: "A LLP (Limited Liability Partnership) is a type of partnership in which participants' liability is fixed to the amount of money they invest whereas a LLC (Limited Liability Private/Public Company) is a tightly held business entity that incorporates the qualities of a corporation and a partnership".

In line of above statement clearly elaborate the difference between LLP and LLC. [Nov 22- 5 Marks]

Answer:

	Basis	LLP	Limited Liability Company (LLC)
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 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.	Liability of members/partners	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.	Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	Minimum number of directors/designated partners	Minimum 2 designated partners.	Pvt. Co. – 2 directors Public co. – 3 directors

Question 17

Differentiate between a LLP and a partnership firm? [RTP Nov 18] [RTP Nov 21] CS LLM Arjun Chhabra

Answer:

	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) 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.	Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended 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	There is no provision for such partners under the Indian partnership Act, 1932.

Question 18

Explain the circumstances in which LLP may be wound up by Tribunal under the LLP Act, 2008. [RTP May 20] [Dec-20 5-Marks]

Answer:

Circumstances in which LLP may be wound up by Tribunal (Section 64 of the LLP Act, 2008): 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.

CS LLM ARJUN CHHABRA