

Limited Liability Partnership Act, 2008

Question 1:

Mr. X was appointed as a partner of an LLP but after just 3 months he was declared undischarged insolvent. Can he continue as a partner because he was solvent when he was appointed as a partner? Justify your answer with reference to the relevant provisions of the applicable Act. **[Model Paper – Set 1 – June 23 – 7 Marks]**

Answer:

Section 5 of LLP Act 2008 provides that any individual or body corporate may be a partner in a LLP.

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

- he has been found to be of unsound mind by a Court of competent jurisdiction and the findings is
- in force.
- he is undischarged insolvent; or
- he has applied to be adjudicated as an insolvent and his application is pending.

So, Mr. X cannot continue as a partner because he is undischarged insolvent. As per act he is not capable or eligible a partner of LLP.

Question 2:

Demonstrate the procedure relating to winding up of an LLP by the tribunal. **[Model Question Paper Set 1 – Dec 24 – 7 Marks]**

OR

Discuss, in brief, rules for winding up and dissolution of a LLP. **[Dec 17 - 10 Marks (12)]**

OR

Demonstrate the circumstances in which Limited Liability Partnership may be wound up by Tribunal? **[Model Question Paper Set 1 – Dec 23 – 7 Marks]**

Answer:

Winding up of a Limited Liability Partnership (LLP) by a Tribunal can be initiated for several reasons:

1. **Voluntary Winding Up:** The LLP decides to wind up and consents to the process.
2. **Insufficient Number of Partners:** The LLP has fewer than two partners for six months. An LLP requires at least two partners to operate legally.
3. **Inability to Pay Debts:** The LLP is financially insolvent and cannot meet its debt obligations or public order.
4. **Activities against National Interest:** The LLP engages in activities detrimental to the sovereignty, integrity of India, the state's security.
5. **Non-compliance with Statutory Filings:** The LLP fails to file the Statement of Accounts and Solvency or Annual Returns with the Registrar for five consecutive financial years, indicating a lack of operational transparency and regulatory compliance.

6. Just and Equitable Grounds: The Tribunal determines that it is just and equitable for the LLP to be wound up. This broad and subjective criterion can encompass various situations the Tribunal deems as warranting winding up for fairness or other reasons.

When a Tribunal initiates the winding-up process for an LLP based on these grounds, it marks the beginning of a formal procedure to dissolve the LLP.

Procedure for winding up of an LLP by a Tribunal: -

The procedure for winding up an LLP by a Tribunal involves several steps to ensure an orderly and fair dissolution of the LLP. Here's an overview of the process:

Step 1: Petition for Winding Up

The process begins with filing a petition for winding up to the Tribunal. This petition can be filed by the LLP itself, creditors, partners, or, in certain cases, by the Registrar or by a person authorized by the Central Government.

Step 2: Tribunal's Decision to Wind Up

Upon receiving the petition, the Tribunal will consider the reasons for winding up. If the Tribunal finds sufficient grounds per the LLP Act's provisions, it will pass a winding-up order.

Step 3: Appointment of Liquidator

Once the winding-up order is passed, the Tribunal will appoint a Liquidator. The role of the Liquidator is crucial, as they are responsible for managing the entire winding-up process, including the liquidation of assets.

Step 4. Public Announcement:

The Liquidator must publicly announce the winding up, inviting claims from creditors and instructing debtors to settle their dues.

Step 5. Settlement of Claims:

The Liquidator will then proceed to settle the claims of creditors as prescribed by the law. This includes verifying the claims and deciding the order for the debts to be paid.

Step 6. Liquidation of Assets:

The Liquidator will liquidate the LLP's assets to generate funds to pay off the LLP's debts. This could involve selling off property, machinery, intellectual property, etc.

Step 7. Distribution of Assets:

After paying off the debts. If there are any remaining assets, they are distributed among the partners of the LLP according to the agreement in the LLP deed or the LLP Act if the deed does not specify the distribution.

Step 8. Dissolution of LLP:

Once all debts have been paid, and the remaining assets have been distributed, the Liquidator will apply to the Tribunal for the dissolution of LLP firm. After ensuring that all procedures have been correctly followed, the Tribunal will pass an order to dissolve the LLP.

Step 9. Filing of Order with Registrar:

The order of dissolution issued by the Tribunal must be filed with the Registrar by the Liquidator within a specified period. The Registrar will then publish a notice declaring the LLP to be dissolved.

Question 3:

A Limited Liability Partnership wants to shift its registered office from Chennai in the State of Tamil Nadu to Bangalore in the State of Karnataka. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008? **[Dec 23 - 8 Marks (16)]**

OR

A limited liability partnership wants to shift its registered office from Mumbai in the State of Maharashtra to Kolkata in the State of West Bengal. What procedure the corporate has to follow under Limited Liability Partnership Act, 2008? **[Dec 18 - 8 Marks (16)] MTP 2016 Jun2023 Set1 – 8M**

Answer:

1. Sec 13 of the LLP Act states that a Limited Liability Partnership may change the place of its registered office and file the notice of such change with the Registrar in form 15 within 30 days.
2. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement.
3. If the agreement is silent then consent of all partners shall be required for changing the place of registered office of Limited Liability Partnership to another place,
4. where the change in place of registered office is from one State to another State, the Limited Liability Partnership having secured creditors shall also obtain consent of such secured creditors.
5. Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a
 - daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and
 - circulating in that district giving notice of change of registered office.
6. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the Limited Liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office.
7. With a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted.
8. Failure to comply with the provision of this section
 - the Limited Liability Partnership and
 - its every partner is liable to be punishable
 - with fine which shall not be less than
 - two thousand rupees but which may extend to twenty-five thousand rupees.

Question 4:	
Discuss the procedure for conversion from a firm into an LLP. [7] MTP 2016 Jun 2020 Set1	
Answer:	
Definition of Key Terms (Second Schedule)	Firm: As defined in Section 4 of the Indian Partnership Act, 1932. Convert: Transfer of property, assets, interests, rights, privileges, liabilities, obligations, and undertaking of the firm to LLP.
Conditions for Conversion	Partners of the firm must comply with the provisions of the Second Schedule. Eligibility: <ul style="list-style-type: none"> All partners of the LLP must be the partners of the firm. No other person can be a partner in the LLP post-conversion.
Application for Conversion	Submit to the Registrar: <ul style="list-style-type: none"> Form No. 17 (signed by all partners) along with the fee. Details required: <ul style="list-style-type: none"> Name and registration number of the firm (if applicable). Date of registration under the Indian Partnership Act, 1932, or other applicable law. Incorporation document and statement.
Post-Submission Procedure	Registrar's Action: <ul style="list-style-type: none"> Registers the documents. Issues a certificate of registration in Form No. 19, specifying the date of registration under the Act. May require verification of documents. LLP must inform the Registrar of Firms (under the Indian Partnership Act) within 15 days of registration , providing the particulars of the LLP.
Rejection and Appeal	The Registrar may refuse registration if not satisfied with the information provided. Appeal: Can be filed before the Tribunal in case of refusal.

Question 5:	
Discuss the procedure of conversion from unlisted public company into limited liability partnership. [Dec 22 - 10 Marks (16)]	
Answer:	
Definitions (Fourth Schedule)	Convert: Transfer of property, assets, interests, rights, privileges, liabilities, obligations, and undertaking of the company to the LLP as per the Fourth Schedule. Listed Company: As defined in SEBI (Disclosure and Investor Protection) Guidelines, 2000, issued under Section 11 of the SEBI Act, 1992. Refers to companies with securities listed on a recognized stock exchange, including Public Sector Undertakings with listed securities. Unlisted Company: A company that is not a listed company.
Conditions for Conversion	Eligibility Criteria: <ul style="list-style-type: none"> No security interest should subsist or be in force on the company's assets at the time of application. All shareholders of the company must become partners of the LLP, and no one else.
Application Process	Documents to be filed with the Registrar: <ul style="list-style-type: none"> Form No. 18 (statement by all shareholders) with fees, containing:

	<ul style="list-style-type: none"> Name and registration number of the company. Date of incorporation of the company. <p>Incorporation document and statement.</p>
Post-Submission Procedure	<p>Registrar's Action:</p> <ul style="list-style-type: none"> Registers the documents as per the Act and rules. May require verification of documents. Issues a certificate of registration in Form No. 19, specifying the date of registration under the Act. <p>LLP must inform the Registrar of Companies within 15 days of registration about the conversion and provide particulars of the LLP in the prescribed form.</p>
Rejection and Appeal	<p>Registrar may refuse registration if not satisfied with the particulars or information provided.</p> <p>Appeal: Can be made before the Tribunal against the Registrar's refusal.</p>

Question 6:

Discuss the procedure of conversion from private limited company into limited liability partnership. [Dec 19 - 9 Marks (16)]

Answer:

Definition of 'Convert' (Third Schedule)	<p>Convert: Transfer of property, assets, interests, rights, privileges, liabilities, obligations, and undertaking of the private company to the LLP in accordance with the Third Schedule.</p>
Conditions for Conversion	<p>Eligibility Criteria:</p> <ul style="list-style-type: none"> No security interest subsisting or in force on the company's assets at the time of application. All shareholders of the private company must become partners of the LLP, and no one else. <p>All parties (company, shareholders, LLP, and partners) are bound by the provisions of the Third Schedule.</p>
Application Process	<p>Documents to be filed with the Registrar:</p> <ul style="list-style-type: none"> Form No. 18 (statement by all shareholders) with fees, including: <ul style="list-style-type: none"> Name and registration number of the company. Date of incorporation of the company. <p>Incorporation document and statement.</p>
Post-Submission Procedure	<p>Registrar's Action:</p> <ul style="list-style-type: none"> Registers the documents as per the Act and rules. May require verification of the documents. Issues a certificate of registration in Form No. 19, specifying the date of registration. <p>LLP must inform the Registrar of Companies within 15 days of registration about the conversion and provide particulars of the LLP in the required form with fees.</p>
Rejection and Appeal	<p>Registrar may refuse registration if not satisfied with the particulars or information provided.</p> <p>Appeal: Can be made before the Tribunal against the Registrar's refusal.</p>

Question 7:

Explain provisions relating to unlimited liability in case of fraud under LLP Act. **[June 17 - 7 Marks (12)]**

Answer:

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 five years and
- with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 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.

Question 8:

Demonstrate the procedure of appointment of auditor as per the Limited Liability Partnership Act, 2008. **[Dec 24 – 7 Marks]**

Answer: Section

Qualification of Auditor	A Chartered Accountant in practice is qualified for appointment as an auditor.
Appointment of Auditor(s)	<p><u>For the First Financial Year:</u></p> <ul style="list-style-type: none"> • The designated partners may appoint an auditor(s) at any time but before the end of the first financial year. <p><u>For Subsequent Financial Years:</u></p> <ul style="list-style-type: none"> • The designated partners must appoint an auditor(s) at least 30 days prior to the end of each financial year.

	<p><u>To Fill a Casual Vacancy:</u></p> <ul style="list-style-type: none"> This includes cases where the turnover or contribution of the LLP exceeds the prescribed limits or when an auditor is removed.
Failure to Appoint Auditor(s)	If the designated partners fail to appoint auditor(s), the partners may appoint an auditor(s).
Tenure of Auditor	An appointed auditor shall hold office until: <ul style="list-style-type: none"> New auditors are appointed; or Re-appointment of the same auditor occurs.
Deemed Re-appointment of Auditor	<p>Rule 24 (14):</p> <ul style="list-style-type: none"> Where no auditor has been appointed, the existing auditor shall be deemed to be re-appointed unless: <ul style="list-style-type: none"> The LLP agreement requires actual reappointment; or The majority of partners determine that the auditor should not be reappointed and have given notice to this effect to the LLP. Notice Requirements: <ul style="list-style-type: none"> A notice may be in hard copy or electronic form and must be authenticated by the person(s) giving it.
Applicability to Removal and Resignation of Auditors	The provisions for appointment and reappointment also apply to the removal and resignation of auditors.
Remuneration of Auditor	The remuneration may be: <ul style="list-style-type: none"> Fixed by the designated partners; or In accordance with the procedure laid down in the LLP agreement