

CHANAKYA 2.0

For CA Foundation

One Shot

Business Laws

The Limited Liability Partnership Act 2008
– Revision Notes

By- Kunal Mandhania Sir



Enactment

- **The Ministry of Law and Justice on 9th January 2009 notified the Act**
- **81 sections and 4 schedules.**

Schedule	Deals with
I	mutual rights and duties of partners and limited liability partnership and its partners
II	conversion of a firm into LLP.
III	conversion of a private company into LLP.
IV	conversion of unlisted public company into LLP.

Need

1. alternative to the traditional partnership with unlimited personal liability
2. **benefits of limited liability** - 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.
3. **Flexibility of a partnership** -but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.
4. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Question

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

[MTP Apr 2023 (5 Marks)]

[RTP May 2022]

(module)

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

Particulars	Company	Partnership Firm	LLP
1 Perpetual Succession	Yes	No	Yes
2 Liability	Limited	Unlimited	Limited to agreed Contribution
3 Artifical person but separate legal Entity	yes	no	yes
4 Seperation of Ownership From management	yes	No	Partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal Compliances
5 Separate Property in its own name	Yes	No	Yes
6 Transferability Of Shares	Freely transferable in Public co	With consent of partners	With consent of partners

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

Particulars	Company	Partnership Firm	LLP
7 Incorporated Association (Registration Compulsory)	Yes	No	Yes
8 Common Seal	not mandatory	Not required	not mandatory
9 Capacity to sue in its own name	Yes	Through partners	Yes
10 Min Members /Partners	Pvt – 2 Public – 7 OPC- 1	2	at least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India
11 Max Members / Partners	Pvt- 200 Public – No limit	50	No limit

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

Particulars	Company	Partnership Firm	LLP
12 Agreement	MOA/AOA	Partnership deed	LLP Agreement
13 Business	For profit or non profit	Only for profit	Only for profit
14 Mutual Agency	Members not agent of company	All partners are agent of firm and of other partners	All partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

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Question

3. "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 2022(5 Marks)]

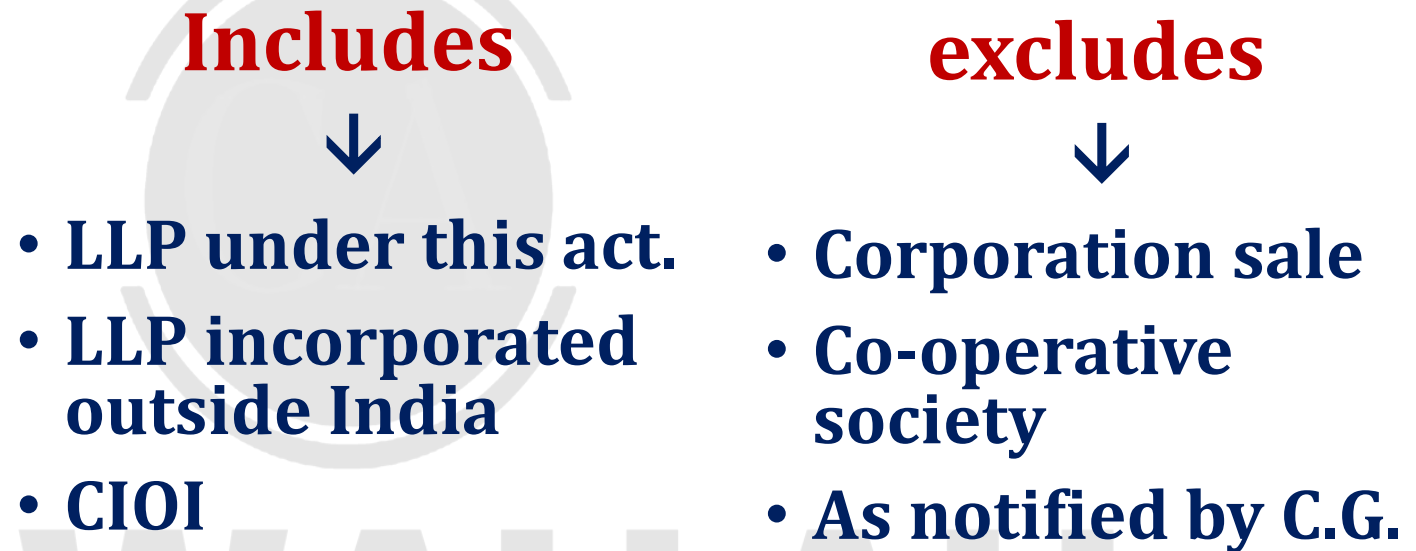
ADVANTAGES OF LLP FORM (LOL-FEE)

- | | |
|----------|---|
| L | 1. All partners enjoy limited liability. |
| O | 2. organised and operates on the basis of an agreement. |
| L | 3. Less legal and procedural requirements. |
| F | 4. Flexible Capital Structure |
| E | 5. Easy to form |
| E | 6. Easy to dissolve. |

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Some Imp definitions

1. Body Corporate → As defined in 2(20) of Co. Act.



2. Business → Every trade, occupation, profession
→ Only profit motive

Some Imp definitions

3. F.Y → 1st April to 31st Mar.

→ If LLP incorporated after 30 Sep.



then FY till next 31st Mar.

4. Foreign LLP → Incorp. Outside India + POB → in India

5 Small LLP →
[Sec. 2(i) (ta)]

Contribution



Does not exceed
25 lakhs

&

Turnover
(preceding F.Y.)



Does not exceed
40 lakhs

Question

6. Explain the Small Limited Liability Partnership under the LLP Act, 2008.

[MTP Nov 2022(5 Marks)]

[RTP June 2023]

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Steps to incorporate LLP

Reservation of
Name of LLP



File application
form for
incorporation



Execute LLP
Agreement



Registrar



Effect of
Registration

- File e-form no RUNLLP
- ROC reserves name for 3 months
- In e-form FiLLP
- Includes Name / business / Address/ details of partner
- Attach statement → By Adv. /CA/ CS/ CMA & subscriber → That all requirements of act
- During incorp.
- Within 30 days of incorporation file with ROC
- Within 14 days → Register & give or certificate (Certificate conducive evidence about incorporation)
- Becomes B.C (write features of B.C if asked question)

Question

4. Explain the incorporation by registration of a Limited Liability Partnership and its essential elements under the LLP Act, 2008.

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[May 2022 (5 Marks)]

Explain the essential elements to incorporate a Limited Liability Partnership and the steps involved therein under the LLP Act, 2008.(module)

1. To complete and submit **incorporation document** in the form prescribed with the Registrar electronically;
2. To have at **least two partners** for incorporation of LLP [Individual or body corporate];
3. To have **registered office** in India to which all communications will be made and received;
4. 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.
5. 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.
6. 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.
7. **LLP Name.**

	Partner	Designated Partner
1. Who can be	<ul style="list-style-type: none"> • Individual (Resident / NR / OCI/ Foreign national) • LLP • Co. • Foreign LLP 	<ul style="list-style-type: none"> • Individuals
2. Requirement	<ul style="list-style-type: none"> • Atleast 2 partners (Sec. 6) • If no. fall below ↓ • After 6 months ↓ • Personally liable (who is cognizant of fact) 	<ul style="list-style-type: none"> • Atleast 2 D.P. individual ↓ • 1 should be resident in India (atleast 120 days in F.Y.) • If all partner B.C ↓ • Nominee of such B.C. (Sec. 7)
3. Disqualification	<p style="text-align: center;">Sec. 5</p> <ul style="list-style-type: none"> i. Unsound mind ii. Insolvent iii. Applied for insolvency & application pending 	

Question

9. What do you mean by Designated Partner? Whether it is mandatory to appoint Designated partner in a LLP?

[MTP Jun 2022(5 Marks)]

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Question

(b) Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ` 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP. **(5 Marks) (MTP Mar. 24) (CA Inter)**

Hint - no as atleast 1 should be resident in india

Other IMP Pts.

- i. Prior consent required for DP**
- ii. D.P. should acquire DPin no or has DIN no.**
- iii. Liability of D.P (sec. 8)**
 - Compliance of provision of Act.**
 - Liable to penalties**
- iv. Changes in DP → appoint New D.P within 30 days**
- v. If no. D.P or less than 2 → all partners will be deemed to be D.P.**

Name of LLP (Sec. 15)

- End with LLP
- If changes name → within 15 days → give notice of change to ROC
- If name → too identical → C.G may Ask to Change → Change within 3 months → Ask to change only till 3 years from incorp.

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