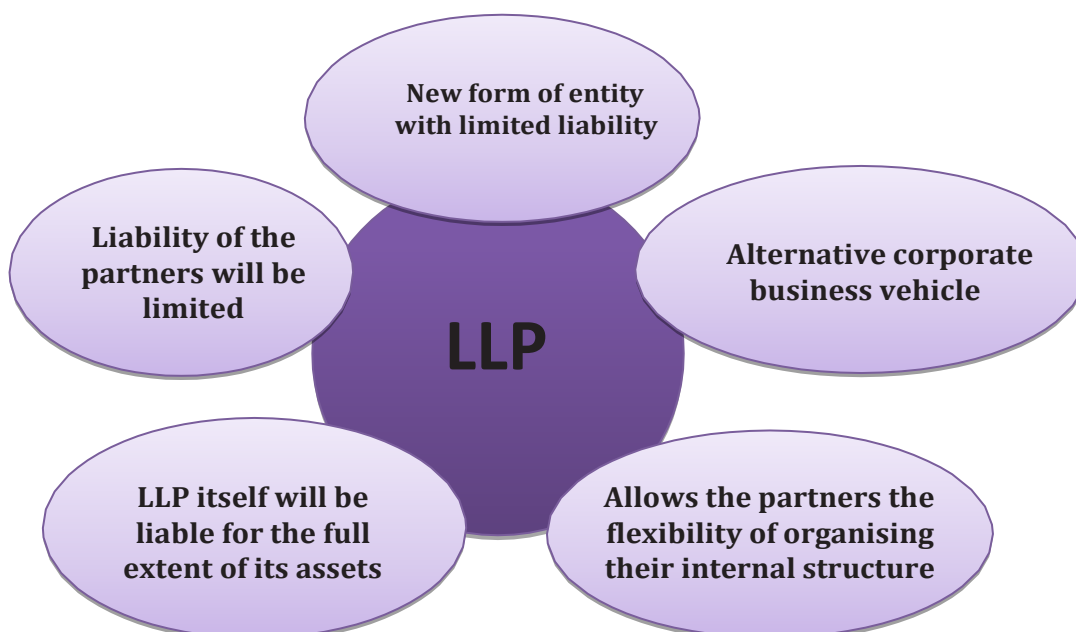
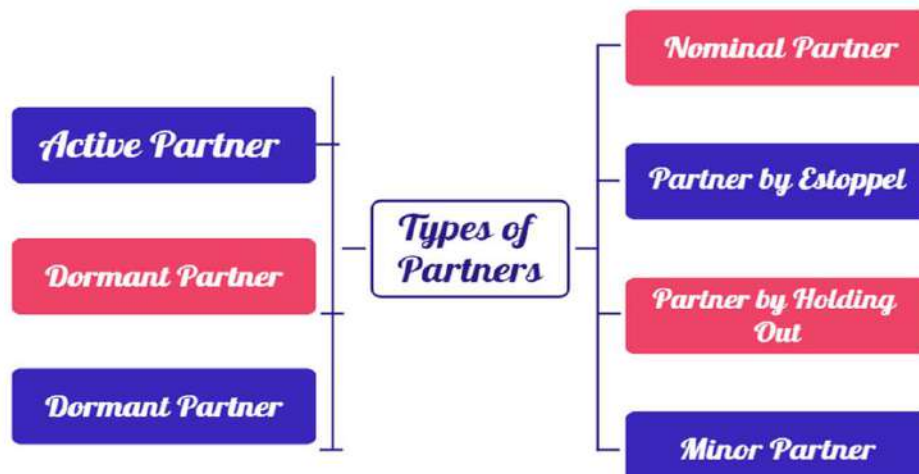
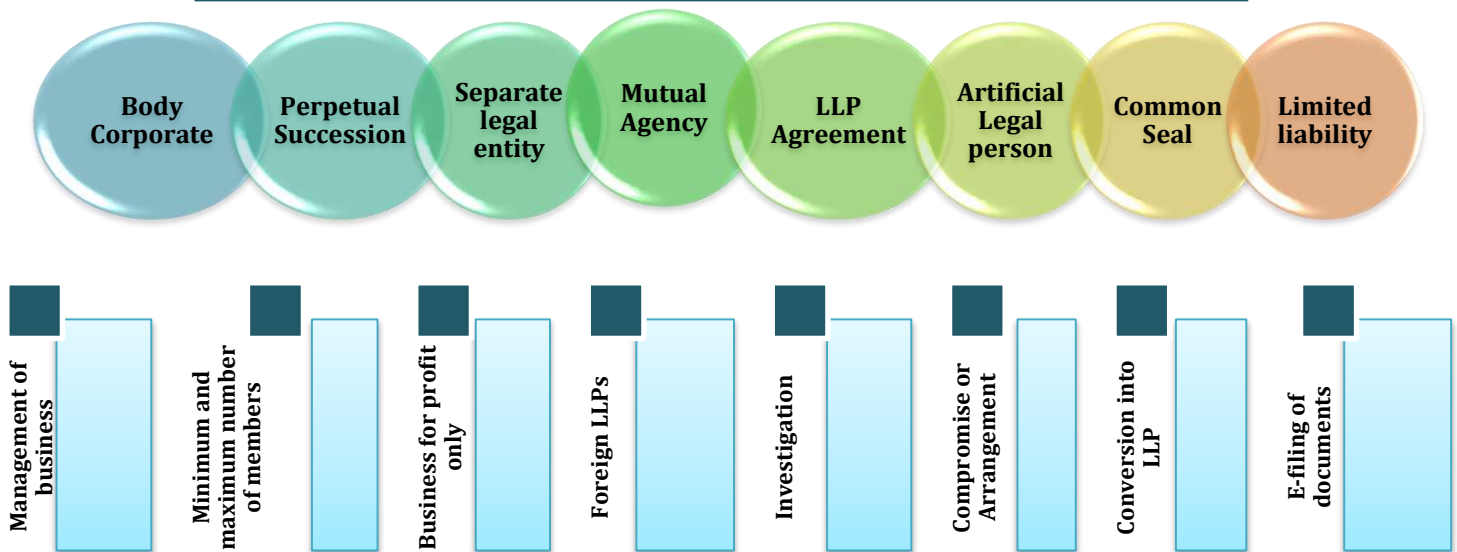


CHAPTER 4 THE LIMITED LIABILITY PARTNERSHIP ACT, 2008



<p>LIMITED LIABILITY PARTNERSHIP</p>	<p>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 organizing their internal structure as a traditional partnership.</p>
<p>SCHEDULE</p>	<p>The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.</p> <p>The Second Schedule deals with conversion of a firm into LLP.</p> <p>The Third Schedule deals with conversion of a private company into LLP.</p> <p>The Fourth Schedule deals with conversion of unlisted public company into LLP.</p>

CHARACTERISTIC/SALIENT FEATURES



**Advantages of
LLP form**

- 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

INCORPORATION OF LLP

Deciding Partners and Designated partners

Obtaining DPIN and Digital Signature Certificates (DSC)

Checking the Availability of Name [upto 6 choices can be indicated]

Drafting of LLP Agreement

Electronic Filing of some Documents

Issuing Certificate of Incorporation alongwith LLPIN (Limited Liability Partnership Identification Number)

STEPS TO INCORPORATE LLP

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.

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.

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



DIFFERENCES:

Question1

What is the difference between an LLC and a LLP?

Answer:

- **Limited Liability Company**

LLC owners, called "members," can manage their businesses or hire professional managers. In addition, LLCs enjoy a lot of flexibility. For instance, they can have as many members as they like, and corporations are allowed to be members. LLCs enjoy freedom from the state-mandated membership and management reporting requirements that corporations have. Most important, LLCs do not have to pay taxes. Instead, their profits and losses are passed through to their members' individual tax returns in the same way as a partnership. As a result, members enjoy the advantages of avoiding the

"double taxation" of corporations as well as receiving tax relief from the poor performance of their LLCs.

- **Limited Liability Partnership**

LLPs have the same tax advantages of LLCs. They cannot, however, have corporations as owners. Perhaps the most significant difference between LLCs and LLPs is that LLPs must have at least one managing partner who bears liability for the partnership's actions. With an LLP, whoever is in charge is legally exposed in the same way owners of a simple partnership are exposed. Silent partners and investors in an LLP receive liability protection as long as they do not take on a managerial role. If they do, a court could pierce the veil of liability protection.

- **Common Types of LLP**

The most common type of LLP is a professional business. Law firms and sometimes group medical practices use the LLP format when a founding partner or group of partners are in charge and run the firm, while other partners are silent and have bought in as they have earned partnership status. Because junior partners have no real say over the direction of the firm aside from their personal practice, the LLP protects them from any problems caused by management's decisions. Managing partners usually own a significantly larger share of the company than junior or silent partners.

- **Common Types of LLC**

Small businesses of all kinds use the LLC format. Many states require businesses with more than one owner to form as an LLC, so the form is ideal for small to mid-size businesses with multiple owners. Compared to simple partnerships, LLCs offer the benefit of a separation between personal and legal assets and liabilities. However, LLCs must report their revenues and earnings annually to the Internal Revenue Service in a Form 1065, which the IRS then uses to check against members' tax filings. Unlike simple partnerships, LLCs must register with their state secretary of state. LLCs enjoy the same advantage as simple partnerships in being able to structure and run themselves in a way they see fit. All owners are protected from financial liability, regardless of whether they play an active role in the direction of the company.

- **IRS Recognition**

As far as the IRS is concerned, LLCs don't exist as a tax-filing entity. The IRS instead classifies an LLC depending on how many members are included and whether the LLC elects to be treated as a corporation. If the LLC does not choose the classification as a corporation, then the IRS treats the business as a sole proprietorship if it has one member or as a partnership if it has at least

two members. LLCs usually report as partnerships when possible since that's the key to pass-through taxation and avoiding double taxation

Question 2

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

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 perpetualsuccession.

Question 3

List the differences between LLP and company.

Answer:

Difference between LLP & a Company

A basic difference between an LLP and a joint stock company lies in that the internal governance structure of a company is regulated by statute (i.e. Companies Act, 1956) whereas for an LLP it would be by a contractual agreement between partners.

The management-ownership divide inherent in a company is not there in a limited liability partnership.

LLP will have more flexibility as compared to a company.

LLP will have lesser compliance requirements as compared to a company.

Question 4

List the differences between Limited Liability Partnership and Limited Liability Company

Answer:

	Basis	LLP	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008.	The Companies Act,
2.	Members/Partners	The persons who contribute to LLP are known as partners of the	The persons who invest the money in the shares are
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
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
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	Private company: Minimum – 2 Member's Maximum 200 Member's Public

CONCEPTS

Question 5

Committees, which have made recommendations for legislation on LLPs in India, are?

Answer:

The desirability of LLP form has been expressed in the context of small enterprises by:-

Bhatt Committee (1972);

Naik Committee (1992);

Expert Committee on Development of Small Sector Enterprises headed by Sh. Abid Hussain in 1997 and

Study Group on Development of Small Sector Enterprises (SSEs) headed by Dr. S P Gupta (2001).

Following Committees set up by M/o Company Affairs have also recommended for legislation on LLPs:-

Committee on Regulation of Private Companies and Partnerships headed by Sh. Naresh Chandra (2003)

The Committee on New Company Law (Dr. J.J. Irani Committee) (2005)

Question 6

What is the structure of an LLP?

Answer:

LLP shall be a **body corporate** and a **legal entity** separate from its partners. It will have **perpetual succession**.

Question 7

How can an existing partner cease to be a partner of an LLP?

Answer:

A person may cease to be a partner in accordance with the agreement or in the absence of agreement, by giving 30 days' notice to the other partners.

A person shall also cease to be a partner of a limited liability partnership-

- a) On his death or dissolution of the limited liability partnership; 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.

Notice is required to be given to ROC when a person becomes or ceases to be partner or for any change in partners.

Question 8

Who can be a "Designated Partner"?

Answer:

Every LLP shall be required to have atleast two Designated Partners who shall be individuals and at least one of the Designated Partner shall be a resident of India. In case of a LLP 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 LLP or nominees of such bodies corporate shall act as designated partners.

Question 9**How does a LLP work?****Answer:**

LLPs are a flexible legal and tax entity that allows partners to benefit from economies of scale by working together while also reducing their liability for the actions of other partners

Question 10**Whether foreigners can incorporate LLP?****Answer:**

Yes, the LLP Act 2008 allows Foreign Nationals including Foreign Companies & LLPs to incorporate a LLP in India provided at least one designated partner is resident of India. However, the LLP/Partners would have to comply with all relevant Foreign Exchange Laws/ Rules/ Regulations/ Guidelines.

Question 11**How can a person become a partner of an LLP?****Answer:**

Persons, who subscribed to the “Incorporation Document” at the time of incorporation of LLP, shall be partners of LLP. Subsequent to incorporation, new partners can be admitted in the LLP as per conditions and requirements of LLP Agreement.

Question 12**What is the manner in which a partner of an LLP can bring his contribution? How will it be recorded/disclosed in the accounts?****Answer:**

Partner’s contribution may consist of both tangible and/or intangible property and any other benefit to the LLP. The monetary value of contribution

of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed in the rules.

Question 13

Whether a partner would be able to give loan to or transact other commercial transactions with LLP? What will be his rights and obligations in this regard?

Answer:

A partner may lend money to and transact other business with the LLP and shall have the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

Question 14

Whether a partner would be able to transfer his 'Economic Rights'?

Answer:

A partner's economic rights (i.e. rights of a partner to a share of the profits and losses of the LLP and to receive distribution at the time of winding up) in the LLP shall be transferable. However, such a transfer shall not by itself cause the partner's disassociation or a dissolution and winding up of the LLP. However, such transfer shall not entitle the transferee or assignee to participate in the management or conduct of the LLP's activities. Therefore, the transferee would not be deemed to be a 'partner' of the LLP just because a partner has transferred him the 'economic rights'. For becoming a partner of LLP, the manner specified in the LLP Agreement or the provisions of the Act would have to be followed.

Question 15

Nature & extent of liability of a partner of an LLP?

Answer:

Every partner of an LLP would be, for the purpose of the business of the LLP, an agent of the LLP but not of the other partners. Liability of partners shall be limited except in case of unauthorized acts, fraud and negligence. But a partner shall not be personally liable for the wrongful acts or omission of any other partner. An obligation of the limited liability partnership whether arising in contract or otherwise, is solely the obligation of the limited liability partnership. The liabilities of LLP shall be met out of the property of the LLP.

Question 16

What is the liability of a Partner upon reduction of minimum number of members in an LLP?**Answer:**

The Act provides for the minimum of two partners to carry on LLP. If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership 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 limited liability partnership incurred during that period.

Question 17**Whether audit of all LLPs would be mandatory?****Answer:**

The accounts of every LLP shall be audited in accordance with Rule 24 of LLP, Rules 2009.

Such rules, inter-alia, provides that any LLP, whose turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty-five lakh rupees, is not required to get its accounts audited. However, if the partners of such limited liability partnership decide to get the accounts of such LLP audited, the accounts shall be audited only in accordance with such rule.

Question 18**Enumerate the various characteristics of the LLP.****Answer:**

Characteristics

- Body Corporate
- Perpetual Succession
- Separate legal entity
- Mutual Agency
- LLP Agreement
- Artificial Legal person
- Common Seal
- Limited liability
- Management of business
- Investigation

➤ Compromise or Arrangement

Question 19

Write short note on:

Annual Return (limited liability partnership)

Answer:

Annual return: (Section 35): As per Section 35 of the LLP Act, every LLP shall file an annual return within sixty days of its financial year in such form and manner as may be prescribed.

Such return should be accompanied by prescribed fees.

If the LLP fails to comply with the provisions of Section 35 regarding filing of annual return, the LLP will be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every designated partner of such LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Question 20

Comment on the following based on legal provisions:

Provisions of Indian Partnership Act 1932 are applicable to LLPs and the body corporate may be partner of LLP.

Answer:

The rules and regulations relating to Limited Liability Partnership have been described in the Limited Liability Partnership Act 2008; hence provisions of Indian Partnership Act 1932 are not at all applicable to LLP's. As regard the second portion of the question, the body corporate may be a partner in the LLP as per LLP Act 2008.

Question 21

How the profit of a limited liability partnership is treated for the purpose of Tax Acts?

Answer:

Profit will be treated as profits of the partners or members of LLP and not by the LLP as such.

2010 - June [3] (b) Give correct answer if the following statements are wrong:

A limited liability partnership must ensure that

Where a person becomes or ceases to be a member or designated member, notice is delivered to the Registrar within 30 days.

Where there is any change in the name or address of a member, notice is delivered to the Registrar within 30 days.

Question 22

Comment on the following statements based on legal provisions.

(b) A limited liability Partnership is a body corporate.

Answer:

A limited liability partnership is a body corporate with legal personality separate from that of its members. It is formed as per the limited Liability Partnership Act 2009.

Question 23

If the following statements are not correct, give the correct

Answer:

Authorized capital for formation of limited liability partnership (LLP) is one crore.

- Maximum number of partners in a LLP shall not exceed 50.
- Foreign nationals can also be partners in a LLP.
- Audit is not required in LLP in any circumstances.
- NIL - Since the authorised capital is not specified in the Act.
- No maximum limit - as no specific number specified in the Act.
- Yes, foreign Nationals can also be partners.
- Audit is required if the contribution is above INR 25 Lakhs or if annual turnover is above INR 40 Lakhs.

Question 24

What are the circumstances in which Limited Liability Partnership may be wound up by Tribunal?

Answer:

The circumstances in which a limited liability partnership may be dissolved by Tribunal are provided in Section 64 of the Limited Liability Partnership Act, 2008. A limited liability partnership may be wound up by the Tribunal in following ways:

- The limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

- if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
- if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;
- if the limited liability partnership 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
- If the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.
- If the limited liability partnership is unable to pay its debts.

Question 25

Explain the concept of 'whistle blowing' with respect to the Limited Liability Partnership Act, 2008

Answer:

Whistle blowing policy means a policy in which a mechanism is established to listen and take action against any wrong practice anywhere in the company. The concept has been discussed in **Section 31 of the Limited Liability Partnership Act, 2008**. As per the Section:

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

Question 26

Limited Liability Partnerships are body corporate. Do you agree? Justify.

Answer:

Limited liability partnership to be body corporate:

- A limited liability partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
- A limited liability partnership shall have perpetual succession.
- Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Question 27

Explain the extent of liability of limited liability partnership under section 26 of LLP Act.

Answer:

Extent of liability of limited liability partnership is contained in Section 27 which are as under:

A limited liability partnership is not bound by anything done by a partner in dealing with a person if:

The partner in fact has no authority to act for the limited liability partnership in doing a particular act; and the person now that he has no authority or does not know relieve him to be a partner of the limited liability partnership.

The limited liability partnership is liable if a partner of a limited liability partnership 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 limited liability partnership or with its authority.

An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Question 28

For any contravention of provisions of the LLP Act or LLP agreement, all the partners of LLP are liable-for all penalties. Offer your views based on Limited Liability Partnership Act, 2008.

Answer:

False, it is the designated partner who is responsible for doing all acts matters and things as are required to be done by LLP as per the Act or as specified in the LLP agreement, Unless expressly provided otherwise in this Act, a designated partner shall be responsible for doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement

and the like report pursuant to the provisions of this and as may be specified in the limited liability partnership agreement; and liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Question 29

How the profit of a limited liability partnership is treated for the purpose of Tax Acts?

Answer:

Profit will be treated as profits of the partners or members of LLP and not by the LLP as such.

Question 30

What do you mean by Limited Liability Partnership (LLP)? What are the advantages for forming a LLP for doing business?

Answer:

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 organizing 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 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.

Advantages of LLP form:

- a) LLP is organized and operates on the basis of an agreement.
- b) It provides flexibility without imposing entailed legal and procedural requirements
- c) It enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.
- d) It is easy to form
- e) In LLP form, all partners enjoy limited liability
- f) Flexible capital structure is there in this form
- g) It is easy to dissolve

Question 31

Gives advantages of LLP

Answer:

LLP form is a form of business model which:

- (i) Is organized and operates on the basis of an agreement.
- (ii) Provides flexibility without imposing detailed legal and procedural requirements
- (iii) enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner

Question 32

Whether the LLP Act is applicable to any specific services like professional services regulated by Statutes?

Answer:

No. Any two or more persons associating for carrying on a lawful business with a view to profit may set up an LLP.

In the light of various inputs received by this Ministry for applicability of the LLP form to small entities and venture LLP Act does not restrict the benefit of LLP structure to certain classes of professionals only. Capital funded enterprises; it is proposed that the framework should not be restricted to professional services alone as was earlier recommended by Naresh Chandra Committee.

Question 33

Whether an entity which has objectives like “charitable or other not for profit objectives” would be able to set up under LLP Act?

Answer:

No. The essential requirement for setting LLP is ‘carrying on a lawful business with a view to profit’.

Question 34

How the mutual rights and duties of partner’s inter-se and those of partners and LLPs would be governed?

Answer:

The mutual rights and duties of partners inter se and those of the LLP and its partners shall be governed by the agreement between partners or between the LLP and the partners. This Agreement would be known as “LLP Agreement”.

Question 35

Whether LLP Agreement would be mandatory for all LLPs?

Answer:

As per provisions of the LLP Act, in the absence of agreement as to any matter, the mutual rights and liabilities shall be as provided for under Schedule I to the Act. Therefore, in case any LLP proposes to exclude provisions/requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule I.

Question 36**What are the registration formalities relating to LLPs?****Answer:**

LLPs shall be registered with the Registrar of Companies (ROC) (appointed under the Companies Act, 1956) after following the provisions specified in the LLP Act. Every LLP shall have a registered office. An Incorporation Document subscribed by at least two partners shall have to be filed with the Registrar in a prescribed form. Contents of LLP Agreement, as may be prescribed, shall also be required to be filed with Registrar, online.

Contents of LLP Agreement or any changes made therein, if any, may be filed in Form 3 and details of partners/designated partners may be filed in Form 4 in accordance with LLP Rules, 2009.

Question 37**What are the broad provisions of the Act in respect of names of LLPs?****Answer:**

Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name. LLPs would not be given names, which, in the opinion of the Central Government, are undesirable. Registrar would be under obligation to follow such rules, which would be framed by the Central Government in connection with allotting names to LLPs. There are also provisions in respect of ‘rectification of name’ in case two LLPs have been registered with the same name, inadvertently.

Question 38**Applicable of the LLP Act?****Answer:**

Whether the LLP Act is applicable to any specific services like professional services regulated by Statutes?

No. Any two or more persons associating for carrying on a lawful business **with a view to profit** may set up an LLP.

In the light of various inputs received by this Ministry for applicability of the LLP form to small entities and venture capital funded enterprises, it is proposed that the **framework should not be restricted to professional services alone as was earlier recommended by Naresh Chandra Committee**. Accordingly, the LLP Act does not restrict the benefit of LLP structure to certain classes of professionals only.

Question 39

When was the LLP Bill, 2006 was introduced? Whether the Bill was referred to Standing Committee? Has the Bill been revised?

Answer:

The Limited Liability Partnership (LLP) Bill, 2006 was introduced in the Rajya Sabha on 15th December, 2006. The Bill was referred to the Lok Sabha Standing Committee on Finance, for examination. The Standing Committee consulted various chambers of commerce, professional institutes and other experts and also heard the M/o Corporate Affairs.

The said Committee presented/submitted its report to the Parliament on 27th November, 2007. Based on such report the Ministry of Corporate Affairs revised the LLP Bill and the revised LLP Bill, 2008 was introduced in the Rajya Sabha on 21st October, 2008. This was passed by the Rajya Sabha on 24th October, 2008. The Bill was passed by Lok Sabha on 12th December, 2008. The President has given assent to this Bill on 7th January, 2009.

Question 40

Whether provisions of the Companies Act, 1956 would be applicable to LLPs?

Answer:

Since LLP shall be in the form of a body corporate, it is proposed that to address various situations applicable to LLPs as such, the relevant provisions of the Companies Act, 1956 may be made applicable to LLPs at any time in the future by Notification by Central Government, with such changes or modifications as appropriate.

Question 41

What are the provisions being proposed in the Act for striking off defunct LLPs? Whether LLPs would be allowed a less stringent framework for closing of business?

Answer:

The Act empowers Registrars to strike off names of LLPs which are not carrying on any business or operation. They will be under obligation to give an opportunity of being heard to LLP concerned. Details for manner of striking off would be prescribed through rules. Since LLPs would be governed by LLP Agreement it would be possible for LLPs to make suitable clauses in such Agreement prescribing time limits or duration of LLPs. In such cases, provisions for striking off names could be used.

Besides, the Act empowers Central Government to make rules in respect of winding up and dissolution of LLPs. It is proposed to prescribe a simple procedure for voluntary winding up of LLPs under such rules

Question 42

Whether other business entities like firm or company would be able to convert themselves into LLP?

Answer:

Yes. The LLP Act contains enabling provisions pursuant to which a firm (set up under Indian Partnership Act, 1932) and private company or unlisted public company (incorporated under Companies Act) would be able to convert themselves into LLPs. Provisions of clause 58 and Schedule II to Schedule IV to the Act provide procedure in this regard.

Question 43

Fill the blank with appropriate term

A franchisee needs to acquire a (n) _____ with the franchisor which will give the franchisee the right to use the franchisor's trademarks, service marks, trade names, and other intellectual property in the distribution of goods, services, software, and digital information.

Answer:

Licensing occurs when one business or party that owns trademarks, service marks, trade names, and other intellectual property (the licensor) contracts to permit another business or party (the licensee) to use its trademarks, service marks, trade names, and other intellectual property in the distribution of goods, services, software, and digital information. This is called a license.

Question 44

Whether a 'partner by holding out' will be liable under the Act?

Answer:

The Act provides that any person (not being a partner in any LLP), 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 (known as 'partner by Holding out') 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.

It has further been provided that 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. The provisions have also been made in the Act to provide that 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.

Question 45

What are the measures, which can be taken against an LLP, which has engaged in fraudulent activities?

Answer:

Central Govt. may appoint inspectors to investigate the affairs of an LLP. The manner and procedure for conduct of investigation has been specified in the Act.

Question 46

What is the tax treatment being provided for LLPs?

Answer:

Since the taxation related matters in India are provided under Tax Laws, the taxation of LLPs has not been provided in the LLP Act. The Finance Bill, 2009 has made provisions in this regard, pursuant to which the taxation scheme of LLPs has been proposed to be introduced in the Income Tax Act. The Finance Bill, 2009 has proposed following regarding taxation of LLPs:-

- LLPs to be taxed on the lines similar to general partnerships under Indian Partnership Act, 1932, i.e. taxation in the hands of the entity and exemption from tax in the hands of its partners.
- Consequent changes to be made in the Income-tax Act, 1961 like (i) the word 'partner' to include within its meaning a partner of a limited liability

partnership, (ii) the word 'firm' to include within its meaning a limited liability partnership and (iii) the word 'partnership' to include within its meaning a limited liability partnership

- The designated partner shall sign the income tax return of an LLP, or, where, for any unavoidable reason such designated partner is not able to sign the return or where there is no designated partner as such, any partner shall sign the return.
- In case of liquidation of an LLP, every partner will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part.
- As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Income-tax Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion.
- If there is a violation of these conditions, the provisions of section 45 of Income-tax Act shall apply.
- These amendments are proposed to be made effective from the 1st day of April 2010 i.e. assessment year 2010-11.

Question 47

Whether LLP would be able to convert itself into company under the Companies Act, 1956? Answer:

This would not be allowed under LLP Act. However, enabling provisions would be required to be made in the Companies Act for such conversion. Necessary action in this regard would be taken when Companies Act would be revised.

Question 48

Whether two LLPs would be allowed to merge? What would be the provisions in respect of winding-up of LLPs?

Answer.

Provisions of section 60 to 62 of the Act provide for the manner in which compromises or arrangements including mergers and amalgamations involving LLPs shall be allowed.

It is proposed to provide the provisions and procedures required to be complied with when the affairs of an LLP are to be wound-up and dissolved, by enabling the Central Government to make rules under the LLP Act, 2008.

Question 49

Broad provisions in respect of Offences and Penalties

Answer:

Offences and penalties arising out of the non-compliance with the provisions of the Act have been **defined along with the substantive provisions themselves**. However, for defaults/ non-compliance on **procedural matters** such as time limits for filing requirements, penalties have been provided for application in a non-discretionary manner, through the levy of a **default fee** for every day for which the default continues. Such default fee would be payable at the rate of rupee one hundred per day after the expiry of the date of filing (as prescribed in relevant provision) upto a period of three hundred days. Charging of such default fees would, however, be without prejudice to any other action or liability under the Act, in case the filing is made beyond the expiry of three hundred days.

The offences can be punished either (i) through **payment of fine** or (ii) through **payment of fine as well as imprisonment** of the offender. The **Judicial Magistrate of the first class**, or, as the case may be, the **Metropolitan Magistrate** shall have jurisdiction to try offences under the LLP Act.

Though most of the offences in the Act provide for punishment by way of charging fine, **imprisonment has been provided for in respect of violations relating to**

(i) making by any person a **false statement** at the time of incorporation of LLP (ii) carrying on business of LLP with intent to **defraud** or for any fraudulent purposes and (iii) making, knowingly, false statements or omitting any material fact, in any return, documents etc under the Act. The offences which are punishable with fine only can be compounded by the Central Government, by collecting a sum not exceeding the amount of maximum fine prescribed for the offence.

Further, for defaults/non-compliance on procedural matters such as time limits for filing requirements provisions have been made for charging default fees (on daily basis) in a non-discretionary manner.

Question 50

Is partnership better than LLP?

Answer:

Introduction of LLP in India:

The concept of **Limited Liability Partnership** has been brought into by way of enforcing Limited Liability Act, 2008. The idea is to get the flexibility of the Partnership and Benefits of Corporate Body like Company to bring together under one structure of organization.

In this blog, we will discuss why registering a business as LLP is advantageous over partnership firm registration.

The Comparison:

Basis	Limited Liability Partnership	Partnership Firm
Separate legal entity	LLP is a separate legal entity and can hold assets in its name.	The status of Partnership Firm does not have separate identity from its Partners.
Liability of Partners	The liability of Partners is limited to the extent of their contribution in LLP. Further, one Partner is not affected or not held liable for the actions of another Partner.	The liability of Partners is not limited and can extend to personal assets of Partners. The action of active Partner can hold another liable.
Number of Partners	Minimum 2 Designated Partners are required to form LLP. However, there is no ceiling limit on number of Partners.	The ceiling limit on number of Partners is 50. Partnership Firm having more than 50 Partners are declared as illegal association .
Uninterrupted Existence	The existence of LLP is not affected by change in the Partners of LLP.	The Partnership Firm dissolves due to removal or death of Partner subject to clauses of Partnership Deed.

Registration	Registration of LLP is mandatory and it is registered with Registrar of Companies on online portal of MCA. Hence, it gets benefit of Centralized Registration.	Partnership Firm can be registered as well as unregistered. The registration, if required shall be done with local Registrar of Firm. No online portal is available for its registration.
Statutory Compliances	Statutory Compliances in case of LLP are in addition to compliance under Income Tax Act, as the LLP Act mandates the same. These compliances ensure transparency of operations and financials of the entity.	There are no additional compliances prescribed except laid down under Income Tax Act.
Data availability	The central Registration with MCA allows availability of Documents to Public except the Agreement between Partners. Also, one can see the last Balance sheet filed with MCA in the Master data of the entity which creates high creditability and reliability among the other parties to the LLP	Any of the information or the data of the Partnership are not disclosed on public platform.
Higher Creditability	Due to higher compliances and transparency in operation, the credibility of LLP is higher and thus it eases the fund raising from financial institutions.	Compared to partnership firms, other body corporates are having higher credibility and hence are less preferable.

Uniqueness of Name	The name of the LLP is unique and not identical or similar to any other company or LLP, which helps to establish distinctive image.	There is no restriction for using the name in case of Partnership, furthermore it does not necessarily help to establish distinct image of Partnership.
Taxation Aspect:	LLP is considered as Partnership Firm for the purpose of Taxation Aspects. The taxation aspects are governed by Income Tax Act, 1961.	
Agreement Signed:	Operations of both the LLP and Partnership firm are administered by Agreement signed between the Partners of the entity.	

On the basis of above comparison above it is clear why LLP is elect over the Partnership Firm as it avails the benefits of the Partnerships with higher preference.

Nature of Simplicity of transaction is intact in the LLP and its distinguished position in Corporate World places an LLP in far more advantageous position than a Partnership. Not necessarily everyone should opt for an LLP but the one who are looking for long term growth and are willing to jump into corporate world without facing the high restriction caused in case of Companies, the person may prefer LLP considering its advantages and disadvantages.

Question 51

Is LLP a firm?

Answer:

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.

Question 52

Whether LLP Agreement would be mandatory for all LLPs?

Answer:

As per provisions of the LLP Act, in the absence of agreement as to any matter, the mutual rights and liabilities shall be as provided for under **Schedule I** to the Act. Therefore, in case any LLP proposes to exclude provisions/requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule I.

Question 53

Whether there would be any requirement of 'identification number' of Designated Partner? Whether Designated Partners would be subject to any other condition/requirement before they are appointed as such?

Answer:

Every Designated Partner would be required to obtain a **"Designated Partner's Identification Number"** (DPIN) on the lines similar to "Director's Identification Number" (DIN) required in case of directors of companies. Enabling provisions have been made to prescribe under rules conditions, which would have to be fulfilled by an individual who is eligible to be appointed as a 'designated-partner'.

Question 54

Why would you choose an LLP over an LLC?

Answer:

The profits "pass through" to partners who pay tax at their individual income tax rates. By default, an **LLC** with more than **one LLC member** is also taxed **like** a general partnership, and a single member **LLC** is taxed as a sole proprietorship. ... This tax flexibility **is one** of the advantages of an **LLC over an LLP**

Question 55

What are the restrictions in respect of minimum and maximum number of partners in an LLP?

Answer:

A minimum of two partners will be required for formation of an LLP. There will not be any limit to the maximum number of partners.

Question 56

Fill the blank and complete the sentence

A franchise is established when one party, the _____, licenses another party, the _____, to use the franchisor's trade name, trademarks,

commercial symbols, patents, copyrights, and other property in the distribution and selling of goods and services.

Answer:

franchisor; franchisee

A franchise is established when one party, the franchisor, licenses another party, the franchisee, to use the franchisor's trade name, trademarks, commercial symbols, patents, copyrights, and other property in the distribution and selling of goods and services.

Question 57

“A limited liability partnership (LLP) is created formally by filing _____ of partnership with the secretary of state of the state in which the LLP is organized”.

Answer:

A limited liability partnership (LLP) is created formally by filing articles of partnership with the secretary of state of the state in which the LLP is organized

Question 58

Whether the LLP Act is applicable to any specific services like professional services regulated by Statutes?

Answer:

No. Any two or more persons associating for carrying on a lawful business with a view to profit may set up an LLP.

In the light of various inputs received by this Ministry for applicability of the LLP form to small entities and venture capital funded enterprises, it is proposed that the framework should not be restricted to professional services alone as was earlier recommended by Naresh Chandra Committee. Accordingly, the LLP Act does not restrict the benefit of LLP structure to certain classes of professionals only.

Question 59

Why a new legislation for LLP? Why not amendments in Companies Act or Partnership Act are made?

Answer:

The Companies Act is not suited to the liability and governance structure intended for LLPs. The overall intent of the legislation to regulate widely-held companies is different. Therefore, in accordance with the recommendations of the Irani Committee, it is felt appropriate to bring about a separate legislation for LLPs. The administration and enforcement of partnership firms under the Indian Partnership Act, 1932 is at the State level. Besides, a partnership firm involves full joint and several liability of the partners. Because of this, many firms/enterprises engaged in biotech, information technology, Intellectual property and other knowledge based sectors find traditional partnerships unsuitable. The traditional partnerships are also considered unsuitable for multi-disciplinary combinations comprising a large number of partners, seeking a flexible working environment but with limited liability. LLP structure would promote growth and enable such firms/enterprises expand their trade/business or services across States in India as also abroad.

Question 60

Whether the Registrar would have any power to call for information from LLPs?

Answer:

Registrar would have power to obtain such information which he may consider necessary for the purposes of carrying out the provisions of the Act, from any designated partner, partner or employee of the LLP. He would also have power to summon any designated partner, partner or employee of any LLP before him for any such purpose, in case the information has not been furnished to him or in case the Registrar is not satisfied with the information furnished to him.

PAST EXAMINATION QUESTIONS

MAY - 2018

Question1

What are the essential elements to form a LLP in India as per the LLP Act, 2008

Answer:

Limited Liability Partnership (LLP) is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. Thus, it is a

hybrid between a company and a partnership.

Essential Elements to in Corporate LLP:

Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:

- a) To complete and submit for incorporation documents with Registrar electronically.
- b) To have atleast two partner for incorporation (whether individual or body corporate).
- c) To have a registered office in India to which all communication will be made.
- d) To appoint minimum two individuals as de signated partner who will be responsible for number of duties. Atleast one of them should be resident in India.
- e) Designated partner (s) should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
- f) To execute a partnership deed/agreementbetweenandpartner1nter- se or between the LLP and its partner.
- g) Decide upon LLP name: LLP are body corporate and hence must be registered with Registrar of LLP.

NOV - 2018

Question 1

Explain the essential elements to incorporate a limited Liability Partnership and the steps involved there in under the LLP Act, 2008.

Answer:

The essential elements to incorporate LLP are:

- a) To complete and submit in corporation document to the form prescribed with the registrar electronically;
- b) To have at least two partners for incorporation of LLP (individual or body corporate).
- c) To have registered office in India to which all communication will be made and received;
- d) To appoint minimum two individuals as designated partner 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.
- e) 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 MCA.

- f) To execute a partnership agreement inter se or between the LLP and its partners. In the absence of any agreement the provision as set out in first schedule of LLP Act, 2008 will be applied.
- g) LLP Name: Limited liability Partnerships are bodies corporate and must be registered with the Registrar of LLP after following the provisions specified in the LLP Act.

NOV - 2019

Question 1

Discuss the conditions under which LLP will be liable and not liable for the acts of the partner.

Answer:

A Limited Liability Partnership, popularly known as LLP combines the advantage of both the company and Partnership into a single form of organization.

In an LLP one partner is not responsible or liable for another partner's misconduct or negligence.

Every partner of an LLP would be, for the purpose of the business of the LLP, an agent of the LLP but not of the other partners. Liability of partners shall be limited except in case of unauthorized acts, fraud and negligence. But a partner shall not be personally liable for the wrongful acts or omission of any other partner. An obligation of the limited liability partnership whether in a contract or otherwise, is solely the obligation of the LLP. The liabilities of LLP shall be met out of the property of the LLP.

Liability of LLP and its fraudulent partner shall be unlimited, if an act carried out by a limited liability partnership, or any of its partners,

1. With Intent to defraud creditors or any other person, or
2. 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.

DEC - 2020

Question 1

State the circumstances under which LLP may be wound up by the Tribunal under the Limited Liability Partnership Act, 2008.

Answer:

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.

JAN - 2021**Question 1**

State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008.

Answer:

1. The liability of the LLP and its partner will be unlimited for all or any of the debts and other liabilities which arises due to fraud
2. LLP and its partners or designated partners or employees shall liable to pay compensation to any person who has suffered nay loss or damage due to such act
3. Further, every person who is in default Shall be punishable with imprisonment for term which may up to a period of two years and Fine not less than 50,000 but which extend up to Rs. 5, 00,000

JULY - 2021**Question 1**

Limited Liability Partnership (LLP) gives the benefits of limited liability of a

company on one hand and the flexibility of a partnership on the Discuss.

Answer:

Limited Liability Partnership (Sec. 2 (N)):

- I. 'Limited Liability Partnership' means a partnership formed and registered under this Act.
- II. It is a hybrid form of business organization structure which combines the advantages of
 - Partnership firm structure and
 - Company structure
- III. It is an alternative corporate business vehicle which provides its partners,
 - The benefits of limited liability at low compliances cost and
 - The flexibility of organizing their internal structure as a traditional partnership.
- IV. LLP is a separate legal entity and it will be liable for the full extent of its assets. But the liability of the partners will be limited up to their agreed contribution.
- V. Due to flexibility in its structure and operation, LLP is a suitable for
 - Small enterprises and
 - Investment by venture capital.

JUNE 2022

Question1

Explain the incorporation by registration of a Limited Liability partnership and its essential elements under the LLP Act, 2008.5 Marks.

Answer:

Limited Liability Partnerships have gotten quite popular in the last few years. In this article, we will focus on the process and steps along with the elements essential for the incorporation of an LLP (limited liability partnership). The guidelines are provided by the Limited Liability Partnership Act (LLP Act), 2008.

Elements Essential for the Incorporation of an LLP

According to the LLP Act, 2008, the following elements are essential for the incorporation of an LLP in India:

- Complete and submit the Incorporation document in the prescribed form, with the Registrar electronically.
- Have at least two partners, either individual or body corporate

- Have a registered office in India for sending and receiving communication
- Appoint at least two individuals as designated partners. They will be responsible for doing all acts, matters, and things as required to be done by the LLP. Also, the designated partners should be resident in India.
- Each designated partner should hold a Designated Partner Identification Number (DPIN) allotted by the Ministry of Corporate Affairs (MCA).
- Execute the agreement between the partners or between the LLP and its partners. Further, if an agreement is not present, the provisions in the First Schedule of the LLP Act, 2008 are applied.
- Name of the LLP. It is important to note that the name should be distinct. The LLP cannot have a name which another LLP or Partnership firm or Company is currently using.

DEC 2022

Question1

“ 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.

Answer:

Basis	LLP	LLC
Ownership	Partners are the owners.	Directors are the owners
Documents	Have Partnership agreement	MOA + AOA
Members Leave/ Die	If partners leave/ die LLP may die	It doesn't get absented by changes or death of directors.