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CHAPTER

LIMITED LIABILITY PARTNERSHIP ACT, 2008

Q.1 What is meant by Limited Liability Partnership? What are its salient features/characteristics?

Ans. A LLP is a new form of legal business entity with limited liability. It is a separate legal entity where LLP itself is liable to the third parties upto the assets it owns but the liability of the partners is limited. It 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.

1. A body corporate

A LLP is a body corporate formed and incorporated under LLP Act and is a legal entity separate from the partners constituting it. (Section 3)

2. Separate Legal Entity

The LLP is a separate legal entity. It 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 and not of the partners.

3. Perpetual Succession

Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. The LLP can continue its existence irrespective of changes in partners. It can enter into contracts in its own name. It can also hold properties in its own name. It is created by law and law alone can dissolve it.

4. Absence of Mutual Agency

The cardinal principal of mutual agency of partners in a partnership is missing in LLP. In case of LLP, the partners of LLP are agents of LLP alone and not of the other partners. Hence, no partner can be held liable on account of the independent or unauthorized actions of other partners.

5. LLP Agreement

The partners are free to make rules related to the mutual rights and duties of the partners as per their choice. This is done through an agreement. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

6. Artificial Person

A LLP is an Artificial legal person created by law capable of enjoying all the rights of an individual. It can do everything which a natural person can do, except the contracts of very personal nature. A LLP is invisible, intangible, immortal but not fictitious because it really exists.

7. Common Seal

Being an artificial person, a LLP work on its own but it has to act through its partners. Hence, it may have a common seal which can be considered as its official signature. [Section 14(c)]. It should be noted that it is not mandatory for a LLP to have a common seal. If it decides to have one, then it shall remain under the custody of some responsible official and it shall be a fixed in the presence of at least 2 designated partners of the LLP.

8. Limited Liability

Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26). The liability of the partners will be limited to their agreed contribution in the LLP.

9. Management of Business

The partners in the LLP are entitled to manage the business of LLP. However, only the designated partners are responsible for legal compliances.

10. Minimum and Maximum number of Partners

Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners. It is mandatory that at least one of the designated partners shall be resident in India. Further, there is no maximum limit of partners in LLP.

11. Business for profit only

LLP can be formed only for carrying on any lawful business with a view to earn profit. Thus LLP cannot be formed for charitable or non-for-profit purpose.

Q.2 What are the advantages of forming LLP for doing business?

[RTP May 2018]

Ans. Advantages of LLP form :—

The following are the advantages of LLP form of business organization:

1. It is easier to form a LLP as compared to a company.
2. The partners of a LLP enjoy limited liability.

3. It operates on the basis of an agreement.
4. It is not rigid as far as capital structure is concerned.
5. It provides flexibility without imposing detailed legal and procedural requirements.
6. It is easy to dissolve an LLP as compared to a Company.

Q.3 What are the essential elements to form a LLP under the LLP Act, 2008? [May 2018, 5 Marks], [MTP Nov. 2018], [Nov. 2018, 2 Marks], [June 2022, 2.5 Marks]

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

1. Persons intending to incorporate a LLP shall decide a name for the LLP.
2. A LLP shall execute a limited liability 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.
3. Then they shall complete and submit the incorporation document in the form prescribed with the Registrar electronically, along with the prescribed fees.
4. There must be at least two partners for incorporation of LLP [Individual or body corporate].
5. A LLP shall have a registered office in India so as to send and receive communications.
6. It should appoint atleast 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. At least one of them should be resident in India. Each designated partner shall hold a Designated Partner Identification Number (DPIN) which is allotted by MCA.
7. As soon as the process is completed, a certificate of registration shall be issued which shall contain a Limited Liability Partnership Identification Number (LLPIN)

Q.4 What are the steps for incorporating LLP under the LLP Act, 2008? [MTP May 2018], [Nov. 2018, 3 Marks], [MTP May 2019] [June 2022, 2.5 Marks]

Ans. Steps or process for incorporating an LLP:—

Step 1: Reservation of name

- ◆ The first step while incorporating a LLP is the reservation of name of LLP.
- ◆ The name of a LLP shall not be similar to that of an existing LLP, Company or a Partnership Firm.

- ◆ The applicant has to file e-form 1, for ascertaining the availability and reservation of name. 6 names in order of preference can be indicated.
- ◆ The name should contain the suffix “Limited Liability Partnership” or “LLP”.

Step 2: Incorporation

- ◆ In the second step, the applicant has to file e-form 2 for incorporating a new LLP.
- ◆ This form contains the details of the proposed LLP and the Partners and Designated Partners along with their consent to act as such.

Step 3: Execute a LLP Agreement

- ◆ It is mandatory to execute LLP Agreement. (Section 23)
- ◆ LLP agreement shall be filed with the Registrar in e-form 3 within 30 days of incorporation of LLP.
- ◆ The contents of the LLP Agreement are enumerated below:
 1. Name of LLP
 2. Name and address of partners and designated partners
 3. Form of contribution & interest on contribution
 4. Profit sharing ratio
 5. Remuneration of Partners
 6. Rights & Duties of Partners
 7. Proposed Business
 8. Rules for governing LLP.

Q.5 Differentiate between:

(a) LLP & Partnership

[MTP Nov. 2018],

(b) LLP & Company

[RTP May 2018 & MTP Nov. 2018]

[MTP May 2019], [MTP July 2021]

[Dec. 2022, 5 Marks]

Ans. (a) Distinction between LLP and Partnership Firm: The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

Sr. No.	Basis	LLP	Partnership
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.

Sr. No.	Basis	LLP	Partnership
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 wilful 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 of them shall be resident in India.	There is no provision for such partners under the Indian Partnership Act, 1932.
11	Common seal	It may have its common seal as its official signatures.	There is no such concept in partnership.
12	Legal compliances	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13	Annual filing of documents	LLP is required to file: (i) Annual statement of accounts (ii) Statement of solvency (iii) Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the Registrar of Firms.

Sr. No.	Basis	LLP	Partnership
14	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

(b) Distinction between LLP and Limited Liability Company (LLC)

Sr. No.	Basis	LLP	Limited Liability Company
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 agreement between the partners.	The internal governance structure of a company is regulated by statute (<i>i.e.</i> , 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 Private company to contain the word "Private Limited" as suffix.
5	Number of members/ partners	(i) Minimum - 2 members (ii) Maximum - No such limit on the members in the Act. (iii) The members of the LLP can be individuals/or body corporate through the nominees.	(i) Private company: Minimum - 2 members Maximum - 200 members (ii) Public company: Minimum - 7 members Maximum - No such limit on the members. (iii) Members can be organizations, trusts, another business form or individuals.
6	Liability of members/ partners	Liability of a partner is limited to the extent of agreed contribution except in case of wilful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.

Sr. No.	Basis	LLP	Limited Liability Company
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.	Private Co. - 2 directors Public Co. - 3 directors

Q.6 'LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership'. Explain.
[May 2019, 5 Marks; July 2021, 5 Marks]

Ans. Limited Liability Partnership is a new form of business entity which is viewed as an alternative corporate business vehicle. It provides the benefits of limited liability of a corporate entity but permits its members the flexibility of organising their internal management structure as a partnership on the basis of mutual agreement. The following salient features of LLP indicate that it is a hybrid between a company & a partnership:

1. *Separate legal entity* - Since LLP is a body corporate incorporated under LLP Act, 2008, it enjoys separate legal entity. As a consequence the assets & liabilities of LLP, shall be of LLP alone & not treated as the joint properties or liabilities of the partners.
2. *Limited Liability* - The liability of the partners in LLP, shall be limited upto the amount of their agreed capital contribution in the LLP.
3. *Perpetual Succession* - LLP, as a body corporate, enjoys a separate legal entity and as a consequence has perpetual succession. Like a company, its existence remains unaffected by death or insolvency of the partners.
4. *LLP Agreement* - Similar to a partnership, the mutual rights & duties of the partners within LLP are governed by an agreement between the partners. This provides flexibility to the partners to draft the terms of agreement as per their choice.
5. *Management of Business* - Just like partnership, the partners in LLP are entitled to manage the business of LLP.

Thus it is evident that LLP is an alternative corporate business form that gives the benefits of limited liability of a company & the flexibility of a partnership.

Q.7 What are the documents that are required to be filed for the purpose of incorporation of LLP?

Ans. The following documents are required for the incorporation of LLP—

- (i) *The incorporation document* : An incorporation document in a prescribed form (e-Form 2) shall be filed in such manner & with such fees as may be prescribed, with the Registrar of the State in which the registered office of the LLP is proposed to be situated. The document shall state the name of the LLP (the name approved and reserved by Registrar after due application); the proposed business of the LLP; the address of registered office of LLP; name & address of each of the persons who are to be partners of LLP; names & addresses of the persons who are to be designated partners of LLP on its incorporation. It should contain such other information concerning the proposed LLP as may be prescribed. It must be subscribed by two or more qualified persons.
- (ii) *Statement of compliance* : There shall be filed alongwith the incorporation document a statement in the prescribed form with Registrar, made either by an advocate or a Company Secretary or a Chartered Accountant or a Cost Accountant who is engaged in the formation of LLP and by anyone who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been duly complied with, in respect of incorporation and matters precedent and incidental thereto.

The Registrar on being duly satisfied with respect to the completion of all legal formalities for incorporation of LLP shall within 14 days register the incorporation document & give a certificate to that effect. The certificate of incorporation is the conclusive evidence that LLP is incorporated by the name specified therein.

LLP agreement is required to be filed with the Registrar in prescribed form (e-Form 3) within 30 days of incorporation of LLP.

Q.8 What is the procedure for application of name of LLP?

[RTP May 2020]

Ans. Every Limited Liability Partnership shall have either the words 'Limited Liability Partnership' or the acronym 'LLP' as the last words of its name. Further no LLP shall be registered by a name which in the opinion of the Central Government is undesirable or identical to or too nearly resembles to that of any other partnership firm or LLP or company or a registered trademark or a trademark which is subject of an application for registration of any other person under the Trade Marks Act, 1999. [Section 15]

Application for reservation of name - A person may apply in the prescribed form & with the prescribed fees to the Registrar for reservation of name. The application should be made after due consideration of requirements of section 15 and must state the name of the proposed LLP or the name to which the existing LLP proposes to change its name in the application. Upon satisfaction, the Registrar may subject to the rules prescribed by the Central Government in the matter, reserve the name for a period of 3 months from the date of intimation by the Registrar.

Q.9 When does a person cease to be a partner in LLP? What are the effects of cessation of partnership interest?

Ans. A person may cease to be a partner of LLP in the following instances—

- (i) in accordance with an agreement with the other partners, or
- (ii) in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner, or
- (iii) on his death or dissolution of LLP, or
- (iv) if he is declared to be of unsound mind by a competent court, or
- (v) if he has applied to be adjudged as an insolvent or has been declared as an insolvent.

Where a person has ceased to be a partner of a LLP, then such a person shall be regarded as still being a partner of the LLP, in relation to any other person dealing with the LLP unless - such a person has notice that the said partner has ceased to be a partner of LLP or a notice that former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

The cessation of a partner from LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.

Where a partner of a LLP ceases to be partner, the former partner or his legal representatives shall be entitled to receive from the LLP - an amount equal to capital contribution by the former partner and his share in the accumulated net profits of the LLP.

Q.10 Discuss the conditions under which LLP will be liable & not liable for the acts of the partner.

[Nov. 2019, 5 Marks]

Ans. Every partner of a LLP is for the purpose of the business of LLP the agent of LLP but not of other partners.

- ◆ Further a LLP is not bound by anything done by a partner in dealing with a third person if—
 - (i) the partner in fact has no authority to act for the LLP in doing that particular act and
 - (ii) the third person has knowledge that the partner has in fact no authority.

Thus the LLP shall be bound by its partner's act, if the partner acts within the scope of his authority and the third person is acting in a *bona fide* manner.

- ◆ The LLP shall also be liable to any person who suffers damages on account of any wrongful act/omission of the partner performed by him or with his authority in the course of the business of the LLP.
- ◆ In the event of an act carried out by a LLP or any of its partners with an 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 in such a manner shall be unlimited.

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 done without the knowledge or the authority of the LLP.

Q.11 What are the requirements with respect to books of Account, Statement of Solvency & Annual return for LLP?

Ans. Books of Account - The LLP shall maintain such proper books of account as may be prescribed, relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting. Such books of account shall be maintained at the registered office of LLP for such period as may be prescribed. The accounts of LLP shall be audited as per rules prescribed.

Statement of solvency - Every LLP shall within a period of 6 months from the end of each financial year, prepare a Statement of Account & Solvency for the said financial year as at the last day of the said financial year. The statement shall be in such form as may be prescribed and shall be signed by the designated partners of the LLP.

Every LLP shall file the Statement of Account & Solvency with the Registrar within the prescribed time, every year in such form and manner & accompanied by such fees as may be prescribed.

Any LLP which fails to comply with the provisions of sub-section (3), such LLP & its designated partners shall be liable to a penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 1 lakh for the LLP and ₹ 50,000 for every designated partner.

Further, if any LLP fails to comply with the provisions of sub-sections (1), (2) & (4) such LLP shall be punishable with fine which shall not be less than ₹ 25,000 but may extend to ₹ 5 lakh & every designated partner of such LLP shall be punishable with fine which shall not be less than ₹ 10,000 but may extend to ₹ 1 lakh.

Annual Return - Every LLP shall file the Statement of Account & Solvency with the Registrar within the prescribed time, every year in such form and manner & accompanied by such fees as may be prescribed.

If any LLP fails to file its annual return before the expiry of the period specified therein, such LLP & its designated partners shall be liable to a penalty of ₹ 100 for each day during which default continue subject to a maximum of ₹ 1 lakh for LLP and ₹ 50,000 for designated partners.

Q.12 What is the procedure for conversion of a firm/private company/unlisted company into LLP?

Ans. A firm may convert into LLP by complying with the provision of Second Schedule of the Limited Liability Partnership Act, 2008. Whereas a private

company and an unlisted public company can be converted into LLP after complying with the provisions of Third Schedule & Fourth Schedule respectively.

- ◆ The Registrar may on being duly satisfied that a firm, a private company or an unlisted public company, as the case may be, has complied with the requirements of the respectively applicable Schedules and rules made thereunder, register the documents submitted for registration of such conversion. The Registrar shall issue a certificate of registration in such form as the Registrar may determine, stating that the LLP is on and from the date specified in the certificate, registered under this Act.
- ◆ The LLP shall within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered about the fact of conversion.
- ◆ On the registration of conversion of firm/private company/unlisted public company into LLP, the partners or members of the erstwhile firm/private company/unlisted public company, as the case may be, shall be regarded as the partners of LLP. Further all the assets & liabilities of the erstwhile entity shall be transferred to and vest in the LLP.

The former firm or company as the case may be shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as may be applicable.

Q.13 What are the circumstances when LLP can be wound up ?

[Nov. 2020, 5 Marks]

Ans. The winding of LLP can be initiated either voluntarily or by the Tribunal.

A LLP may be wound up by the Tribunal in any of the following instances:

- (i) The LLP decides that it be wound up by Tribunal
- (ii) There are less than 2 partners in the LLP for a period of more than 6 months
- (iii) The LLP is not in a position to repay its debts
- (iv) The LLP has acted against the interests of the sovereignty and integrity of India
- (v) The LLP has defaulted in filing with the Registrar, the Statement of Account & Solvency or the Annual Return for any 5 consecutive financial years or
- (vi) The tribunal is of the opinion that winding-up of LLP is just and equitable.

Q.14 Who are the individuals who are not capable of becoming a partner of LLP ?

[RTP Nov. 2019]

Ans. According to the provisions of section 5 of the LLP 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 in 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 & his application is pending.

Q.15 What are the effects of registration of LLP ? [RTP Nov. 2019]

Ans. On the registration, a LLP shall be recognised as a body corporate & shall by its name, be capable of —

- (a) suing & being sued;
- (b) acquiring, owning, holding & 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 & suffer.

Q.16 State the circumstances under which a LLP and its partners may face unlimited liability under the Limited Liability Partnership Act, 2008.

[Jan. 2021, 5 Marks]

OR

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 2023, 5 Marks]

Ans. *Circumstances when liability of partners of LLP is unlimited.*

According to provisions of section 30, of LLP Act, 2008, if LLP or any of its partners carry out an act, with intent to defraud creditors of the LLP or any other person or for any fraudulent purpose, the liability of the LLP and the 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. Thus in case of a fraud carried out by a partner, the LLP is also liable to the same extent as the partner unless it is established that such an act was performed by the partner without the knowledge or authority of LLP.

Further where any business is carried out with an intent to defraud others or for any fraudulent purpose, then every person who was knowingly a party to such a business shall be punished with:

- ◆ imprisonment for a term which may extend to 5 years and
- ◆ with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Moreover where an 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 proceeding 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 LLP shall not be liable, if it can establish that fraudulent act of its partner, designated partner or employee was not within its knowledge.

Q.17 What do you mean by a designated partner ? Is it mandatory to appoint him ? [RTP May 2021]

Ans. Designated partners (Section 7)

(1) Every limited liability partnership shall have at least two designed 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 purpose 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 a designated partner, every partner shall be a designated partner;

(ii) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

(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.

Q.18 What is the procedure for applying for change of name of LLP?**Ans. Change in 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, 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 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 registrar of limited liability partnership 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.

Q.19 State the rules regarding registered office of a Limited Liability Partnership (LLP) and change therein as per provisions of the Limited Liability Partnership Act, 2008. [Dec. 2021, 5 Marks]**Ans. Rules regarding Registered Office of LLP & Changes:**

- ◆ Every LLP shall have a registered office to which all communications & notices may be addressed & where they shall be received.
- ◆ A document may be served on a LLP or a partner thereof by sending it by post under a certificate of posting or by any other manner, as may be prescribed, at the registered office and any other address specifically

declared by the LLP for the purpose in such form & manner as may be prescribed.

- ◆ A LLP may change its registered office and file the notice of such change with the Registrar in such form & manner & subject to such conditions as may be prescribed & any such change shall take effect only upon such filing.
- ◆ If the LLP contravenes any provisions of this section the LLP and its every partner shall be liable to a penalty of ₹ 500 for each day during which the default continues, subject to a maximum of ₹ 50,000 for the LLP and its every partner.

Q.20 What is the procedure for registration of changes in partners of LLP?

Ans. 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 changes.

(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.

Q.21 What are the provisions for the following under LLP (Amendment) Act, 2021?

- (i) Establishment of special courts**
- (ii) Procedures & powers of special court & appeals**
- (iii) Registration offices**

Ans. (i) Establishment of Special Courts (Section 67A):

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) The Special Court shall consist of—

- (a) a single Judge holding office as Sessions Judge or Additional Sessions Judge, in case of offences punishable under this Act with imprisonment of three years or more; and
- (b) a Metropolitan Magistrate or a Judicial Magistrate of the first class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court:

Provided that until Special Courts are designated or established under sub-section (1), the Courts designated as Special Courts in term of section 435 of the Companies Act, 2013 shall be deemed to be Special Courts for the purpose of trial of offences punishable under this Act:

Provided further that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established under this Act or the Companies Act, 2013, be tried by a Court of Sessions or the Court of Metropolitan Magistrate or Judicial Magistrate of the first class, as the case may be, exercising jurisdiction over the area.

(ii) Procedure and powers of Special Court (Section 67B):

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences specified under sub-section (1) of section 67A shall be triable only by the Special Court established or designated for the area in which the registered office of the limited liability partnership is situated in relation to which the offence is committed or where there are more than one Special Courts for such area, by such one of them as may be specified in this behalf by the High Court concerned.

(2) While trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

(3) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Special Court may, if it thinks fit, try in a summary way any offence

under this Act which is punishable with imprisonment for a term not exceeding three years:

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

Provided further that, when at the commencement of or in the course of a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

Appeal and revision (Section 67C)

(1) The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

(iii) Registration offices (Section 68A)

(1) For the purpose of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under rules made thereunder and for the purpose of registration of limited liability partnership under this Act, the Central Government shall, by notification, establish such number of registration offices at such places as it thinks fit, specifying their jurisdiction.

(2) The Central Government may appoint such Registrars, Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars as it considers necessary, for the registration of limited liability partnerships and discharge of various functions under this Act.

(3) The powers and duties of the Registrars referred to in sub-section (2) and the terms and conditions of their service shall be such as may be prescribed.

(4) The Central Government may direct the Registrar to prepare a seal or seals for the authentication of documents required for, or connected with the registration of limited liability partnerships.

Q.22 Define – Small LLP as introduced by LLP (Amendment) Act, 2021.

Ans. “Small limited liability partnership” [Section 2(*ta*)]: 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.