

TopYug Educations**CA FOUNDATION – BUSINESS LAWS****SUGGESTED ANSWERS for TEST 8 – THE LLP ACT, 2008****Answer any 6 questions. Each question carries 4 marks each. Duration – 60 Mins**

1. What do you mean by Limited Liability Partnership (LLP)? What are the advantages of 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 detailed 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) All partners enjoy limited liability
- (f) Flexible capital structure
- (g) It is easy to dissolve

2. State the essential elements & steps involved to incorporate a LLP?

Answer:

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

- a. To complete and submit incorporation document in 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 communications will be made and received;
- d. To appoint minimum two individuals as designated partners who will be

responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.

- 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 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.
- g. LLP name.

3. Who are the individuals which shall not be capable of becoming a partner of a Limited Liability Partnership?

Answer:

Section 5 of 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 of a LLP, if—

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

4. What is the procedure for changing the name of Limited Liability Partnership (LLP) under the LLP Act, 2008?

Answer:

Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which —

- a. is a name referred to in sub-section (2) of section 15; or
- b. is identical with or too nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it,

the Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within 3 months after the date of the direction or such longer period as the Central Government may allow.

- (i) Any LLP which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than Rs.10,000 but which may extend to Rs.5 Lakhs.
- (ii) The designated partner of such LLP shall be punishable with fine which shall not be less than Rs.10,000 but which may extend to Rs.1 Lakh.

5. Explain the circumstances in which LLP may be wound up by Tribunal under the LLP Act,

2008.

Answer:

Section 64 of the LLP Act, 2008: A LLP may be wound up by the Tribunal:

- (a) if the LLP decides that LLP be wound up by the Tribunal ;
- (b) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
- (c) if the LLP is unable to pay its debts;
- (d) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (e) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- (f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

6. "LLP is an alternative corporate business form that gives benefit of limited liability of a company and flexibility of partnership". Explain.

Answer:

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

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

Answer:

The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

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

A LLP is not bound by anything done by a partner in dealing with a person if—

- (i) the partner in fact has no authority to act for the LLP in doing a particular act; and
- (ii) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.