

# LIMITED LIABILITY PARTNERSHIP

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## **Course Summary:**

This course attempts to discuss about the Limited Liability Partnership. This course is mainly designed keeping in view the CBCS syllabus for the second semester undergraduate students of commerce of the University of Kalyani, West Bengal.

## **Course Content:**

- (a) Definition.
- (b) Salient Features of LLP.
- (c) Advantages and disadvantages of LLP.
- (d) Differences between: LLP and Partnership, LLP and Company.
- (e) Incorporation of LLP.

## **Limited Liability Partnership:**

The limited liabilities partnership (LLP) form of entity was introduced in India through the innovative Limited Liabilities Partnership Act of 2008. This form of entity integrates the features of both traditional partnership firms and limited liability corporations. A *Limited Liabilities Partnership means a partnership formed and registered under the Limited Liabilities Partnership Act, 2008.* An LLP is a body corporate which has separate legal entity and perpetual succession. Its existence, rights or liabilities are not affected by any change in the partners. It is thought that the LLP form of entity is suitable for small and medium size businesses and professional enterprises.

## **Salient features of LLP as per LLP Act, 2008:**

The LLP has the following important features-

- i. LLP forms of organizations are governed by the Limited Liabilities Partnership Act, 2008 and The Indian Partnership Act, 1932 is not applicable to LLPs.
- ii. LLP is a body corporate and as a result has legal entity separate from that of its partners.
- iii. LLP has perpetual succession. In other words, LLP's existence is not affected by death, bankruptcy, insanity and change in membership.
- iv. Unlike shareholders of company, partners of LLP can directly manage the affairs of business. In other words, in case of LLP there is no separation between management and ownership.

- v. The liability of LLP is to the extent of its assets. The partners are liable to the extent of the amount they have agreed to contribute to the LLP.
- vi. A partner cannot be held responsible for the misconduct or negligence of other partners.
- vii. The minimum number of partners is 2 and there is no maximum limit.
- viii. There shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- ix. A private or unlisted public company and firm can be converted into LLP.
- x. The winding up of LLP is either voluntary or by the High Court.

## **Advantages and Disadvantages of LLP:**

We have already learned that LLP has the features of both partnership and company. It has the advantages of both simplicity of doing business like partnership and separate legal entity and limited liability like company. The advantages as well as disadvantages of LLP are discussed below-

### **Advantages:**

1. An LLP has legal entity separate from its partners. Thus, it can sue or be sued by third parties. Again a partner cannot be made responsible for the misconduct or negligence of other partner.
2. Active participation in the management of the LLP. Partners of LLP can actively participate in the management of the business of LLP. There is no separation of management from ownership.
3. The partners of LLP have the flexibility to draft the agreement of LLP defining the roles, responsibilities, rights and powers of the partners to LLP and to each other.
4. The liability of partners of LLP is limited to the extent of the amount they have agreed to contribute. A partner is held responsible only when it is proved that a fraud has happened on the part of the partner.
5. The LLP has to comply with just three annual requirements, namely, annual return filing, filing of statement of accounts and income tax return filing. Whereas, a private limited company has to follow more complex requirements.
6. Unlike private limited company, an LLP can be wound up very easily within two to three months.

### **Disadvantages:**

1. LLP has separate legal status and as a result requires extensive legal paper works compared with partnership firm.
2. Venture capitalists are unwilling to make investment in LLP. Because, in order to make investment in LLP, venture capitalist has to become partners of the LLP and eventually, has to take some responsibility as partner.

3. Higher penalties compared with private limited company if an LLP fails to comply with the requirements.
4. At least two partners are required to form an LLP. If for any reason, number of partners is reduced to one, then the LLP has to be terminated.
5. LLP form of organization is limited to only certain types of profession, such as, lawyers, accountants and architects.

## **Difference between LLP and Partnership:**

We know that partnership is an old concept whereas LLP is a new concept. In an LLP form of organization, partners have limited liabilities like company. Following are the essential differences between LLP and partnership form of organization-

1. LLP is **governed** by the Limited Liabilities Partnership Act, 2008 whereas; partnership is governed by the Indian Partnership Act of 1932.
2. LLP is a type of partnership formed and registered according to the Limited Liabilities Partnership Act, 2008 whereas; partnership is a type of business organization where partners have agreed to carry on a business and share profit and loss of the business in accordance with the terms of the partnership agreement.
3. Partnership does not have **separate legal entity**, whereas; LLP has separate legal entity.
4. **Registration** is optional for partnership form of business, whereas; LLP must be registered as per LLP Act, 2008.
5. Partnership does not have **perpetual succession**, whereas; LLP has perpetual succession.
6. **Liabilities** of partners in case of partnership firm are **unlimited**, whereas; in case of LLP liabilities of partners are limited to the extent of contribution of partners, except in case of fraud.
7. **Audit of accounts** is mandatory for LLP only if turnover and capital contribution exceed Rs.40 lakhs and 25 lakhs respectively, whereas; for partnership audit is not mandatory.
8. Annual return filing is necessary in case of LLP, but partnership does not require submitting annual return.
9. The existence and operation of LLP are not affected by any change in partnership, whereas; annual return filing is not necessary in case of partnership.

## **Difference between LLP and Company:**

Following are the essential differences between LLP and Company-

1. LLPs are registered under the Limited Liabilities Partnership Act, 2008, whereas; companies are registered as per Companies Act, 2013. It is mandatory to register for both types organization.
2. The name of LLP ends with “LLP”, whereas; name of private limited company ends with “Pvt. Ltd.” And Public limited company end with “Ltd.”.
3. In case of LLP the amount of capital contribution is not specified in law but for private limited company minimum authorized capital is 1 lakh and for public limited company

minimum authorized capital is Rs 5 lakh. However, there is no requirement of paid up capital.

4. The compliance requirements for LLP are minimum in comparison with company as per Companies Act.
5. In LLP related parties transactions are allowed but in case of companies there are restrictions related to related party transactions.
6. The liability of partner is limited to the extent of their capital contribution in case of LLP, whereas; liability of shareholders of company is limited to the extent of the unpaid capital.
7. There is no limit on the number of directors for LLP but for private company minimum number of director is 2 and for public limited company minimum number of director is 3.
8. In case of LLP audit of accounts is required only if the contribution exceeds Rs.25 lakhs or annual turnover exceeds Rs40 lakhs. In case of company compulsory audit is required whatever may be the turnover or capital.

## **Incorporation of LLP:**

The LLP form of organization has the benefits of both partnership and company. As a result, it is the preferred form of organization among the new entrepreneurs. The Limited Liability partnership (Second Amendment) Rules, 2018 prescribed new rules and procedure superseding LLP Rules, 2009 for the incorporation of LLP. Following are the steps for the incorporation of LLP-

**Step 1:** To register an LLP all designated partners of the proposed LLP first need to obtain Designated Partner Identification Number (DPIN). E-Form DIR-3 needs to be filed in order to obtain DPIN. However, if a director already has Director Identification Number (DIN) the same can be used as DPIN.

**Step 2:** The second step is to obtain Digital Signature Certificate (DSC) of partners or designated partners of proposed LLP from any authorized certifying agency.

**Step 3:** A new user needs to register by filling New User Registration form through the website of Ministry of Corporate Affairs, Government of India i.e. [www.mca.gov.in](http://www.mca.gov.in). This will create User Name and Password. On successful registration the system will give a message that you have been registered successfully.

**Step 4:** After successful registration the next step is to select a name of the LLP to be registered by filing Form 1 and appending digital signatures.

**Step 5:** The next step is to file Form 2 “Incorporation Document and Subscriber’s Statement”.

**Step 6:** Once the form has been approved by the concerned official of the Ministry of Corporate Affairs, Government of India and after incorporation of LLP,

Form-3 needs to be filled within 30 days of incorporation of LLP. Form 3 contains information regarding LLP Agreement and changes, if any, made therein.

## **Possible Questions:**

### **A. Short Answer Type Questions: (Marks: 2)**

1. Define Limited Liability Partnership?
2. Write two features of LLP.
3. Write two advantages of LLP form of entity.
4. Write two disadvantages of LLP form of entity.
5. Write two differences between LLP and partnership.
6. Write two differences between LLP and company.

### **B. Medium Answer type Question: (Marks: 5)**

1. What is LLP? What are the main features of LLP form of organization?
2. What are the advantages of LLP form of entity?
3. What are the disadvantages of LLP form of entity?
4. Distinguish between LLP form of entity and partnership.
5. Distinguish between LLP form of entity and company.

### **C. Essay Types Question: (Marks: 10)**

1. Write about the steps required to incorporate LLP.

### **Suggested Readings:**

1. Limited Liability Partnership Act, 2008.
2. Limited Liability Partnership (Second Amendment) Rules, 2018.