

Functioning and Winding up of Limited Liability Partnership



**Discipline Courses-I
Semester-I
Paper : Business Law
Unit-III**

Lesson: Functioning and Winding up of Limited Liability Partnership

Lesson Developer: Monika Arya

College/Department: Bharati College, University of Delhi

Lesson: Functioning and Winding up of Limited Liability Partnership

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1. Learning Outcomes:

After you have read this lesson, you should be able to:

- understand the role of Whistle Blower,
- understand the provisions of contribution and the obligation of partners,
- know the financial disclosures required to be made by an LLP,
- understand the accounts, audit and taxation aspects of LLP,
- explain the procedure to convert a partnership firm or a company into an LLP,
- differentiate winding up from dissolution,
- explain the forms of winding up and the steps involved in each of the forms.

2. Introduction:

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India has occupied a center stage in the global arena. The world has started recognizing the immense potential that lies in this robust economy that has been witnessing high growth rate despite global turmoil and ups and downs in the international markets. India can now boast of its huge technical and professional manpower, large consumer base, promising investment opportunities, supportive government policies and competitive business climate. In such a favorable environment, businesses and professionals can flourish provided their concerns are addressed and they are left to concentrate on finer details of business activities. In the coming years, the Indian professionals are expected to be in great demand for providing accountancy, legal, medical, technical, software, educational, and gamut of other professional services to clients spread all across the globe. In such a scenario, the initiative of the government in terms of the enactment of Limited Liability Partnership Act, 2008, seems to be both appropriate and appreciable. This alternative form of business is expected to imbibe the good features of the company form of organization structure as well as partnership firms, and at the same time keep their demerits at bay.

Besides the legal procedures of incorporation, registration, relations with the partners and partnerships, extent of liability etc., it is important to know about the functioning of an LLP. The Act of LLP takes care of the rights and interests of people affected in any way by the form of business.

3. Concept of Whistle Blower

Figure 1: A Whistle Blower



The act of 'Whistle Blowing' refers to alerting others or drawing their attention to an illegal act or crime. A whistle blower informs the people in authority or the public about the dishonest or illegal activities occurring in their organizations. 'Whistle Blowers' often face retaliation from those against whom they blow the whistle. The LLP Act has given adequate protection to the whistle blower and is the only legislation in India that contains specific provisions in this regard.

Section 31 of LLP Act provides that if such employee or partner has cooperated during the investigation of an LLP for any offence and has provided useful information, then the Tribunal has the power to reduce or waive off the penalty that may be levied on such employee or partner. Further they can't be suspended, removed, demoted, threatened,

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harassed or discriminated against in any manner just because he gave information to the court or tribunal. A whistle blower, who helps in conviction of the guilty, is thus protected.

4. Contribution

The contribution in case of an LLP is akin to share capital in case of a company. Contribution means and includes whatever a partner intends to bring into an LLP for the running of its business. As per **Section 32(1)** of the Act, the partner can contribute towards the LLP in any of the forms recognized by the Law, i.e. tangible or intangible property, movable or immovable property, some other benefit to the LLP including cash, promissory notes, and agreements to contribute money or property and contracts for services performed or to be performed. Thus, a partner's contribution could be in any form viz. cash or kind. Further, the Act lays down that the monetary value of such contribution shall be ascertained so that it could be taken into account and disclosed in the books of the LLP under **Section 32(2)**.

Obligation to Contribute

1. A partner shall contribute for the LLP in as per the terms of the LLP agreement as provided by **Section 33(1)**.
2. All the partners are entitled to share profits and losses as well as the capital of the LLP equally, till anything contrary to this is agreed. (Point 2 of First Schedule of the LLP Act, 2008)
3. Contribution can be enhanced, but only after making an amendment in the agreement.
4. Partners can withdraw their contributions only after fulfilling the conditions laid out for such withdrawal in the LLP agreement.
5. The original obligation of contribution can be enforced by a creditor of the LLP against any partner(s), without any subsequent notice to partner(s) for compromise. **Section 33(2)**

5. Financial Disclosures

Financial disclosures are the windows through which the public or the authorities can peep into the LLP. The LLP Act has laid down specific provisions for maintenance of books of account and filing of certain financial information with ROC (Registrar of Companies) within specific time period.

5.1 Maintenance of Books of Account

1. **Section 34 (1)** of the Act requires that an LLP shall have to maintain in a proper manner such books of accounts, which disclose its transactions for each year as may be prescribed.
2. Such books of accounts could be maintained either on cash or on accrual basis and as per the double entry system of accounting.
3. These books shall have to be kept at the registered office of the LLP for a prescribed time period (i.e. 8 years from the date of their preparation).
4. Rule 24 (2) of the LLP Rules 2009 provides that the books of account shall contain the following:
 - a. Particulars of money received and disbursed by the LLP.
 - b. Record of assets and liabilities of LLP.
 - c. Statement of costs of purchases, inventories, work in progress, finished goods and costs of goods sold.

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- d. Details of such other matters relating to the business as may be specified.

5.2 Statement of Account and Solvency (SAS)

Section 34(2) and (3) provides for the preparation and filing of Statement of Account and Solvency:

1. Each year an LLP has to prepare "Statement of Account and solvency" and such statement should bear the digital signatures of the designated partner of the LLP.
2. This statement has to be prepared within a period of 6 months after the financial year has ended.
3. Further, the Statement of Account and Solvency has to be filed with the Registrar of Companies (ROC) in the manner prescribed in Form 8, along with prescribed fees, within a period of 60 days from the end of above mentioned 6 months.
4. The Statement of Accounts and Solvency has 2 parts:
Part A – Statement of Solvency – This part contains an honest declaration made by the designated partners regarding the ability of the LLP to pay off its debts.
Part B – Statement of Account – This part provides a summary of financial position of the LLP through (i) statement of assets and liabilities (ii) statement of income and expenditure.
In such statements, the figures of the current year as well as preceding year are reported side by side.
5. Such statements can be inspected by public at the office of the ROC and its certified copy can also be obtained on payment of a nominal fee.

Penalty

The non-compliance of these provisions by any of the LLP, makes it liable to be punished with a fine of at least twenty five thousand Rupees extendable to Five lakhs of Rupees, and all of its designated partners with a fine of rupees ten thousand extendable to one lakh Rupees **u/s 34(5)**.

6. Filing of Important Documents and Annual Return

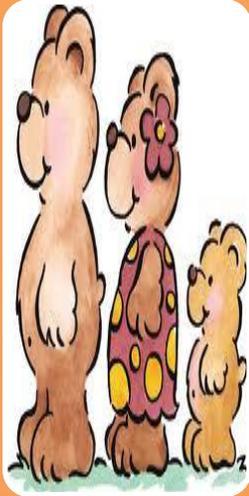
The LLP firm under the provisions of LLP Act 2008, is supposed to file with the Registrar of Firms, many documents that may be inspected by the concerned competent authorities and the public at any point of time by submitting the application along with the required fee. These filed documents are the written evidence of compliance with the rules and regulations of this Act. The documents such as the Incorporation document, LLP agreement, Statement of Accounts and Solvency, Annual Return etc. are considered to be the crucial documents and as such needs to be filed.

Filing of Annual Return

1. **Under Section 35 (1)** every LLP is required to file with the ROC, its Annual Return, after getting it verified and digitally signed by designated partners, within sixty days from the end of its financial year in the form and manner prescribed along with the required fee.
2. Annual Return has to be filed in prescribed form (i.e. Form 11) along with the prescribed fees otherwise a penalty @ Rs.100/- per day shall be levied for late filing of return. Further, a certificate from Company Secretary in practice stating that the particulars stated therein are correct and that he has verified them from the books and records of the LLP, shall also be attached with the Annual Return.

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- Such Annual return can be inspected by public at the office of the ROC and its certified copy can also be obtained on payment of a nominal fee under **Section 36**.



Inspection of Documents kept with the Registrar

Question: Can only an Annual Return be inspected by the public at the registered office?

Answer: No. Besides Annual Return, any document, like Incorporation document, Statement of Account and Solvency filed by the LLP and kept with the Registrar of Companies, can also be inspected by any person in the manner specified, by paying the required fee, under Section 36.

- The Annual Return should contain the following:
 - Name and address of the registered office of the LLP.
 - The main business activity of the LLP.
 - The particulars of partners and designated partners and their DPIN.
 - Number of individuals as partners and number of body corporate as partners.
 - The obligation of each partner to contribute and the contribution received.
 - The particulars of penalties imposed, if any.
 - The particulars of the compounding of the offences.

Penalty

If an LLP fails to file the annual return in prescribed form on or before the due date, then a fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 lakhs may be imposed on it. Further every designated partner shall also be liable to pay fine, which shall not be less than Rs. 10,000 but which may extend to Rs. 1 lakh under **Sec 35 (2) and (3)**.

Enforcement of Law

The ministry has a great responsibility while enforcing the LLP Act 2008, because of the introduction of the concept of limited liability in the partnership firm. The clause of penalty has been added to most of the provisions to ensure the enforcement and avoid the occurrence of fraud in business.

The LLP Act imposes the penalty on the person making a false statement knowingly in any document like return, SAS or an important document, to be filed with the registrar. It also enforces the strict adherence to the filing of documents, return, statement and notice etc. and confers special powers to the Registrar of company Affairs for effective applicability of this Act.

Penalty for false Statement

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Section 37 provides that any person who makes a false statement or omits any material fact knowing that the statement is false, and material, with regard to the documents like return, statement, or any other desirable document for the purpose of this Act, shall be liable to be punished with an imprisonment for a term extendable to two years along with the fine of Rupees one lakh extendable to Rupees five lakhs.

Duty to file necessary documents

The provisions of **Section 41** ensure that the rules with regard to the filing of return, statement of account or any other document or giving of notice(s) are complied within time. If not done so, the registrar may serve the notice to LLP to get the compliance within fourteen days of such notice. This section also empowers the Tribunal to make an order, at the application of the registrar, to direct the LLP, or the designated partners or the partners to rectify the default within the specified time. Such order may also direct the LLP to bear all costs incidental to the application made by the registrar for default in compliance with regard to filing of documents.

Value Addition 1: Did You Know?

Powers of Registrar

The Limited Liability Partnership Act 2008 confers certain powers to the Registrar of Company Affairs:

1) The Registrar is empowered to obtain information which may be required for the compliance of this Act under **Section 38**.

- The registrar can ask an employee or present or former partner or designated partner to respond to any question or query, or give a declaration, or supply information/details/ particulars in writing, within a reasonable or specified time **Section 38(1)**.
- In case of non compliance u/s 38(1), such person can be summoned by the Registrar to appear before him or an inspector or any other public officer as designated by the Registrar to fulfill the purpose in a satisfactory manner **Section 38(2)**.
- The person, as summoned above is liable to be punished with the fine of Rupees Two Thousand extendable to Rupees Twenty Five Thousand in case of non compliance of Subsection (2) of section 38, **Section 38(3)**.

2) Any document filed or registered with the Registrar in hard or soft copy can be destroyed by him as provided in **Section 40** in accordance with the rules as may be prescribed.

3) The registrar, in case of default with regard to filing of required documents, may serve the notice to LLP to complete or amend or resubmit the documents or submit fresh document(s) within fourteen days of such notice under **Section 41(1)(b)**.

3) **Section 75** assigns the power to Registrar to struck off the name of a LLP firm from the register of Limited Liability Partnerships in the manner as may be prescribed, if he believes that the firm is not carrying the business or its operations in tune with the provisions of this Act. However, law also provides that the firm, should be given enough opportunity to be heard before its name is struck.

Source: http://www.mca.gov.in/LLP/pdf/LLP_Act_2008_15jan2009.pdf

6. Audit of LLP

Section 34(4) provides that the accounts of an LLP needs to be audited as per the prescribed rules. Further the section authorizes the Central Government to exempt by notification, in the official gazette, any class or classes of LLPs from the requirement of audit

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or any provision of the audit. However, the issues like who will be the auditor, how will he be appointed etc. are defined in the LLP rules that are discussed below.

Figure 2: Audit



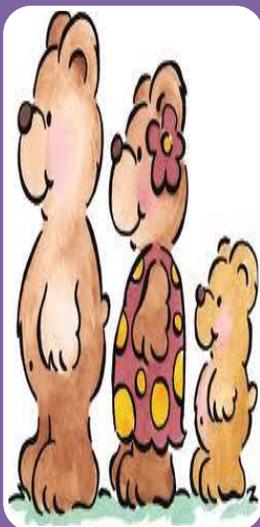
LLP Rules regarding Audit

- 1. Qualification of Auditors**
Any person can be appointed as an auditor of an LLP if he is
 - a) A Chartered Accountant in practice.
 - b) An LLP, if it is allowed to be the auditor by the Institute of Chartered Accountants of India, in spite of the fact that it is a body corporate.
- 2. Remuneration of Auditor** shall be decided by the designated partners or it shall be determined as per the provisions/ procedure laid down by the LLP agreement.
- 3. Appointment of Auditor** – The auditors of an LLP shall be appointed for each financial year by the designated partners. The casual vacancy or vacancy by removal shall also be filled by the designated partners. However, in the event of the designated partner failing to appoint the auditor, the other partners shall have the privilege to appoint the auditor.
- 4. Appointment of First Auditor**-The first auditor or auditors shall be appointed before the first financial year expires. The subsequent auditor or auditors need to be appointed at least thirty days before the end of the financial year .
- 5. Re-appointment of the Auditor(s)** – Where no auditor is appointed by the designated partners or, in case of their failure, by other partners, the retiring auditor shall be deemed to be re appointed. However in the following cases, the retiring auditor shall not be deemed to be re appointed:
 - a) The LLP agreement provides for an actual reappointment.
 - b) The majority of partners wish that he should not be re appointed and so they have given a notice to that effect to the LLP by way of hard copy or in electronic form.
- 6. Communication of disinterest for Reappointment**-If the auditor is not interested in his reappointment, he is supposed to communicate his intention to the LLP by giving a notice to this effect at least 14 days prior to the expiry of the time provided for appointing the new auditor.

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7. **Removal of the Auditor(s)** – Auditor (s) can be removed at any time by the partners of the LLP and in accordance with the scheme provided laid down in the LLP agreement. If the agreement is silent on this issue, consent of all the partners is to be obtained to remove the auditor.
8. **Resignation by Auditor(s)** – Auditor(s) of LLP may give a notice of their intention to resign but it has to be supported by the statement of circumstances connected with his resignation.
9. **Penalties** for non compliance - If an LLP does not comply with the aforesaid provisions, then it shall be punishable with a fine ranging between Rs. 25,000 and Rs. 5 lakhs depending upon the circumstances . Further every designated partner shall also be punishable with fine, which shall not be less than Rs. 10,000 but which may extend to Rs. 1 lakh.

Audit of LLP: Compulsory or Desirable



Question: Is every LLP bound to get its accounts audited compulsorily?

Answer: No. Rule 24 (8) of the LLP Rules 2009 provides that if the turnover in any financial year does not exceed Rs. 40 Lakhs (extended to Rs. 60 lakhs by Finance Act 2010 and to Rs. 1 Crore by Finance Act 2011) or capital contribution does not exceed Rs. 25 Lakhs, then the LLP is exempted from getting its accounts audited. However the partners may decide to get the accounts of the LLP audited as per the LLP Rules 2009.

In all other cases the audit of LLP is compulsory as per the Act.

10. Powers of the Auditors –

- (a) The Auditor shall have access to books of account during the business hours.
- (b) The auditor is entitled to seek all such information and explanations from the designated partners that he considers necessary for carrying out his duties.

11. Duties of the Auditors

- (a) The auditor must act honestly and with reasonable care, skill and caution in the discharge of his duties.
- (b) The auditor is not bound to be suspicious unless there is something which makes a person suspicious. This clause has been borrowed from the phrase “the auditor is a watch dog and not a blood hound”.
- (c) He must bring irregularities (if any) to the notice of the partners
- (d) He must personally verify the matters capable of direct verification.
- (e) He shall make a report to the partners of the LLP.
- (f) The report must expressly state that whether in his opinion, the accounts of the LLP give a true picture of the actual state of affairs of the LLP.

8. Taxation of LLP

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Figure 3: Taxation Authority of India



Source: www.incometaxindia.gov.in

Taxation scheme of the LLP is governed by the Income Tax Act, 1961. The LLP Act, 2008 does not contain the provisions regarding taxation. The Finance Act 2009 has amended the Income Tax Act, 1961 to enable it to bring LLPs under the tax net.

Salient features of Taxation of LLPs

1. **Inclusion of LLP partners, firm and partnership in the finance Act-** The Finance Act, 2009 has extended the definition of firm, partner and partnership to include the LLP firm, LLP partners and limited liability partnership respectively.
2. **Eligibility** – In order to enable the LLP to be assessed as a firm, it has to satisfy the following conditions:
 - a) There must be an LLP agreement in writing.
 - b) In the LLP Agreement, there must be clear specification of the individual share of partners.
 - c) While filing the Return of Income of the previous year, a certified copy of LLP agreement must be attached thereto.
 - d) In case of the change in the constitution of LLP or in profit sharing ratio of the partner, a certified copy of the revised LLP agreement shall be filed along with the Return of Income of the financial year.
 - e) The LLP must not have committed any failure while attending to the notices issued by the Income Tax Officer in connection with the completion of the assessment.
 - f) Since the Department of Income Tax is not accepting annexure attached to the returns filed, the above requirements of attaching documents with the income tax return have become redundant. But the LLP shall keep them ready so that they can be produced when demanded by the Assessing officer.
3. **Rate of Tax** – Income of LLPs shall be charged to tax at the flat rate of 30% plus education cess @3%. No surcharge can be levied on LLP.
4. **No Double Taxation on the income of LLP partners from the LLP firm-** Since the LLP shall pay tax on its income, such income shall not be taxed again in the hands of its partners.
5. **Return to be filed in Form ITR -5** -The Income Tax Return shall be in Form ITR -5 and needs to be signed by the designated partner.
6. **Alternate Minimum Tax (AMT)** - The LLP is also liable to AMT @18.5% w.e.f. Assessment Year 2011-12 on the adjusted total income if its income tax computed under the regular provisions is less than AMT.
7. **Dividend Distribution Tax** - LLP is however, not liable to pay Dividend Distribution tax.
8. **Non applicability of Presumptive Taxation Scheme** - LLPs are not eligible for taking benefit under presumptive taxation scheme of the Income Tax Act.
9. **Interest on capital and remuneration**-Whatever interest or remuneration a partner receives from the LLP firm, shall be taxed under the head 'Profits and Gains from Business and Profession' while computing the taxable income of that partner.

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10. **Share in profit is exempted from Taxation**-The share of the profit received by a partner from the LLP firm shall be exempt in the hands of the partner because the firm has already been taxed on it.
11. **No capital gain shall arise on conversion**-No capital gain shall arise on conversion of partnership firms, private companies and unlisted public companies into LLP. On conversion, the successor LLP shall be allowed to carry forward and set off the accumulated losses, unabsorbed depreciation and voluntary retirement expenditures. However, the credit of Minimum Alternate Tax paid by the predecessor company shall not be allowed to the successor LLP.
12. **Filing of Tax return by the due date**-Due date of filing Income Tax return by an LLP is 31st July (if the accounts are not to be audited) and 30th September, if its accounts are to be audited.
13. **Partners jointly and severally liable for unpaid tax**- As per Income Tax Act, every partner in LLP shall remain jointly and severally liable for the unpaid taxes of LLP in liquidation for the period during which he was the partner.

Value Addition 2: Did you know?

Legal Interface: Application of Other Laws are not Barred

The provisions of **Section 71** of LLP Act 2008 does not bar the application of all other laws in force at that time. These provisions are applicable in addition to the existing laws on other related matters. This Act does not derogate the provisions of other applicable laws. For example, Though The companies Act 1956 or Indian Partnership Act 1932 or Information Technology Act 2000 do not govern the Limited Liability Partnership firms, yet they are not derogated. Rather these may be applied for the firms when they are dealing with other firms, companies or on-line services etc.

9. Conversion to LLP

The LLP concept was conceived to reap the benefits of both the partnership structure as well as the company form of organisation. In order to enable the existing firms and companies to take advantage of this new model, the LLP Act contains enabling provisions in Chapter 10, whereby a firm, a private company or an unlisted public company would be able to convert themselves into LLPs.

Table 1: Comparison of Conversion from a firm, Pvt. Co., and Unlisted Public Co. into an LLP

Heading /Basis	Conversion from Firm to LLP	Conversion from Private Company into LLP	Conversion from Unlisted Public Company into LLP
Applicable Sections and Schedules	A traditional partnership firm registered under Indian Partnership Act 1932 or not, is allowed to convert into an LLP under section 55 of the LLP Act and as per the provisions of second schedule of the LLP	A private company incorporated under Companies Act 1956, is allowed to convert into an LLP under section 56 of the LLP Act and as per the provisions of third schedule of the LLP Act.	A unlisted public company incorporated under Companies Act 1956, is allowed to convert into an LLP under section 57 of the LLP Act and as per the provisions of fourth schedule of the LLP Act.

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	Act.		
Meaning	The conversion of the firm into an LLP means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to the LLP as a going concern.	The conversion of the private company into an LLP means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP as a going concern.	The conversion of the unlisted public company into an LLP means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the unlisted public company to the LLP as a going concern.
Eligibility for conversion	A firm may apply to convert into an LLP provided the partners of the LLP into which it converts comprises all the partners of the firm and no one else.	A private company may apply to convert into an LLP provided i) There is no security interest in its assets subsisting at the time of application and ii) The partners of the LLP to which it converts comprises all the shareholders of the company and no one else.	An unlisted public company may apply to convert into an LLP provided i) There is no security interest in its assets subsisting at the time of application and ii) The partners of the LLP to which it converts comprises all the shareholders of the company and no one else.
Preparatory steps	i) To decide about the designated partners, obtain Designated Partner Identification Number (DPIN) as well as their digital signatures. ii) To ascertain the availability of the proposed name of the LLP from the ROC. iii) To get LLP agreement and incorporation documents drafted and printed. iv) To make an online application in Form no 17(annexed to LLP Rules 2009) to the ROC of the State in which the registered office of the proposed LLP is to be situated along with below mentioned relevant documents	i) To decide about the designated partners, obtain Designated Partner Identification Number (DPIN) as well as their digital signatures. ii) To ascertain the availability of the proposed name of the LLP from the ROC. iii) To get LLP agreement and incorporation documents drafted and printed. iv) To make an online application in Form no 18 (annexed to LLP Rules 2009) to the ROC of the State in which the registered office of the proposed LLP is to be situated along with below mentioned relevant documents	i) To decide about the designated partners, obtain Designated Partner Identification Number (DPIN) as well as their digital signatures. ii) To ascertain the availability of the proposed name of the LLP from the ROC. iii) To get LLP agreement and incorporation documents drafted and printed. iv) To make an online application in Form no 17(annexed to LLP Rules 2009) to the ROC of the State in which the registered office of the proposed LLP is to be situated along with below mentioned relevant documents

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Documents to be attached with application	<p>i) A statement by all its partners containing the name and if applicable, the registration number and the date on which, the firm was registered under Indian Partnership Act 1932 or under any other Act.</p> <p>ii) Incorporation documents</p> <p>iii) Statement made either by an advocate or CA or CS or CWA involved in formation of an LLP and any subscriber to the incorporation documents that all the requirements under this act and rules have been complied with.</p> <p>iv) Statement of the assets and liabilities of the firm certified by a CA.</p> <p>v) List of all creditors along with their consent to the conversion.</p> <p>vi) The clearance, approval or permission from the concerned authorities if needed.</p> <p>vii) Other attachments like Income Tax Returns, particulars of pending proceedings etc.</p> <p>viii) Necessary filing and registration fees.</p>	<p>i) A statement by all its shareholders containing the name, registration number and the date of incorporation of the company</p> <p>ii) Incorporation documents</p> <p>iii) Statement made either by an advocate or CA or CS or CWA involved in formation of an LLP and any subscriber to the incorporation documents that all the requirements under this act and rules have been complied with.</p> <p>iv) Statement of the assets and liabilities of the private company duly certified by a CA.</p> <p>v) List of all creditors along with their consent to the conversion.</p> <p>vi) The clearance, approval or permission from the concerned authorities if needed.</p> <p>vii) Other attachments like Income Tax Returns, particulars of pending proceedings etc.</p> <p>viii) Necessary filing and registration fees.</p>	<p>i) A statement by all its shareholders containing the name, registration number and the date of incorporation of the company</p> <p>ii) Incorporation documents</p> <p>iii) Statement made either by an advocate or CA or CS or CWA involved in formation of an LLP and any subscriber to the incorporation documents that all the requirements under this act and rules have been complied with.</p> <p>iv) Statement of the assets and liabilities of the public unlisted company duly certified by a CA.</p> <p>v) List of all creditors along with their consent to the conversion.</p> <p>vi) The clearance, approval or permission from the concerned authorities if needed.</p> <p>vii) Other attachments like Income Tax Returns, particulars of pending proceedings etc.</p> <p>viii) Necessary filing and registration fees.</p>
Registration of documents	The registrar scrutinizes the above documents and if he finds them in order, he will register them and issue Certificate of Registration bearing the name and date of registration of	The registrar scrutinizes the above documents and if he finds them in order, he will register them and issue Certificate of Registration bearing the name and date of registration of LLP.	The registrar scrutinizes the above documents and if he finds them in order, he will register them and issue Certificate of Registration bearing the name and date of registration of LLP.

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	LLP. However, if finds any discrepancy or is dissatisfied with the particulars of information furnished, he can refuse the conversion. The applicant firm can file an appeal to the Company Law Board (CLB) against such refusal by ROC.	However, if finds any discrepancy or is dissatisfied with the particulars of information furnished, he can refuse the conversion. The applicant private company can file an appeal to the Company Law Board (CLB) against such refusal by ROC.	However, if finds any discrepancy or is dissatisfied with the particulars of information furnished, he can refuse the conversion. The applicant unlisted public company can file an appeal to the Company Law Board (CLB) against such refusal by ROC.
Intimation to Registrar	The LLP shall, within 15 days of its registration, inform the concerned Registrar of Firms with which it was registered, about the conversion and about the particulars of LLP.	The LLP shall, within 15 days of its registration, inform the concerned Registrar of Companies (ROC) with which it was registered, about the conversion and about the particulars of LLP.	The LLP shall, within 15 days of its registration, inform the concerned Registrar of Companies (ROC) with which it was registered, about the conversion and about the particulars of LLP.
Effect of Registration	<p>i)An LLP comes into existence by the name specified in the Certificate of Registration.</p> <p>ii) All tangible as well as intangible property, assets, interests, rights, privileges, liabilities, obligations and the whole of the undertaking of the firm shall be transferred to and vest in the LLP.</p> <p>iii) The firm shall be deemed to be dissolved and removed from the records of the Registrar of Firms.</p>	<p>i)An LLP comes into existence by the name specified in the Certificate of Registration.</p> <p>ii) All tangible as well as intangible property, assets, interests, rights, privileges, liabilities, obligations and the whole of the undertaking of the company shall be transferred to and vest in the LLP.</p> <p>iii) The company shall be deemed to be dissolved and removed from the records of the Registrar of Companies (ROC).</p>	<p>i)An LLP comes into existence by the name specified in the Certificate of Registration.</p> <p>ii) All tangible as well as intangible property, assets, interests, rights, privileges, liabilities, obligations and the whole of the undertaking of the company shall be transferred to and vest in the LLP.</p> <p>iii) The company shall be deemed to be dissolved and removed from the records of the Registrar of Companies (ROC).</p>
Other consequence	All the pending proceedings, existing agreements, contracts, arrangements, approvals, permits, licenses etc relating to the firm shall continue in the name of the LLP and shall be enforceable by or	All the pending proceedings, existing agreements, contracts, arrangements, approvals, permits, licenses etc relating to the company shall continue in the name of the LLP and shall be enforceable by or against the LLP instead of the company.	All the pending proceedings, existing agreements, contracts, arrangements, approvals, permits, licenses etc relating to the company shall continue in the name of the LLP and shall be enforceable by or against the LLP instead

Functioning and Winding up of Limited Liability Partnership

	against the LLP instead of the firm.		of the company.
Notice of conversion in correspondences	The LLP shall ensure that for a period of 12 months commencing not later than 14 days after the date of registration, its every official correspondence shall bear (i) the statement that it was converted from a firm into an LLP and (ii) the name and registration number, if applicable, of the firm from which it was converted.	The LLP shall ensure that for a period of 12 months commencing not later than 14 days after the date of registration, its every official correspondence shall bear (i) the statement that it was converted from a private company into an LLP and (ii) the name and registration number of the company from which it was converted.	The LLP shall ensure that for a period of 12 months commencing not later than 14 days after the date of registration, its every official correspondence shall bear (i) the statement that it was converted from a unlisted public company into an LLP and (ii) the name and registration number of the company from which it was converted.

Value Addition 3: Activity

Conversion to an LLP

Find out:

- i) The forms of business that can be converted into an LLP.
- ii) Can a listed public company be converted into an LLP? Why or why not?

Discuss your opinion with your peer group.

Hint- Section 58 provides that only the partnership firm, private limited company and an unlisted company can be converted under the provisions of Schedule second, third and the fourth schedule, chapter 10 of The LLP Act 2008. Can you think of the rationality behind it?



Conversion of LLP:

Question: When does the procedure of conversion get completed?

Answer: The conversion is said to be completed when all the relevant documents, complying with the rules and regulations of the relevant schedule are submitted to the Registrar of Firms (for LLP); The Registrar registers the documents and issue The Certificate of Registration; and the previous registrar of firms or companies is informed of such conversion within fifteen days of the issue of the certificate of registration by the Registrar of Firms (for LLP).

Registration of Conversion

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Under **Section 58**, at first, on receiving the application along with the relevant documents from the partnership firm, or a private limited company or an unlisted public company, the registrar is supposed to ensure that the provisions of the LLP Act given in the Second, Third or the fourth schedule at the end of the Act are complied with. Then, the Registrar shall register the documents submitted and issue a certificate of registration to the applicant in the manner determined by him, specifying the date on and from which the firm so converted would be deemed to be registered under this Act.

This would be enforceable only if the applicant firm or a company informs the Registrar of firms or the Registrar of companies with which they were registered earlier Under the Indian Partnership Act 1932 (9 of 1932) or companies Act 1956(1 of 1956) within fifteen days of such registration about the conversion and registration. The particulars of the LLP have to be revealed in the form and manner as prescribed under the rules and provisions.

Effects of Conversion- As per **Section 58** all the parties, such as the partners or shareholders of the applicant firm or a company; the applicant firm or the company itself, and the partners of converted LLP, are:

- i) All are bound by the provisions of 2nd or 3rd or 4th schedule.
- ii) Such binding is activated on and from the date specified on the certificate of such registration,
- iii) LLP shall come into existence in the name as specified in the certificate from the date specified in the certificate.
- iv) All kinds of properties like, assets, interests, rights, privileges, liabilities, obligations relating to the applicant firm or a company shall be transferred and vest in the new LLP so converted without any further agreement, or act or assurance or deed.
- v) The applicant firm or a company would be treated as dissolved and its name would be removed from the records of Registrar of Firms or Companies.

10. Winding Up of LLP

Winding up is the process by which the life on an entity is brought to an end. LLP is an artificial person created by a legal process called 'incorporation' and its winding up is also through a legal process called 'dissolution'. The process of winding up involves disposal/sale of assets, paying off liabilities and distribution of surplus, if left, among the partners of the LLP. As per section 65 of the Act, the Central Government is authorised to make rules regarding the winding up and dissolution of the LLPs. Further, the Central Government may, by virtue of **section 67** of the LLP Act, 2008, notify in the Official Gazette all those provisions of the Companies Act, 1956 that shall apply to an LLP with such exception, modification or adaption as may be specified. In pursuance of the power conferred by the aforesaid section, the Central Government had directed to apply many sections of the Companies Act, 1956 to LLPs. **Limited Liability Partnership (Winding up and Dissolution) Rules, 2012** have also been issued.

10.1 Winding up Vs. Dissolution

Winding up is different from dissolution. Winding up is a process which culminates into dissolution. During the period, when winding up commences till the dissolution takes place, the legal entity of LLP remains and so, such LLP can be sued. But on dissolution, the LLP loses its existence because its name is struck off from the register of LLPs and therefore, it is not possible to sue the LLP.

Table 2: Comparison of Winding up with Dissolution

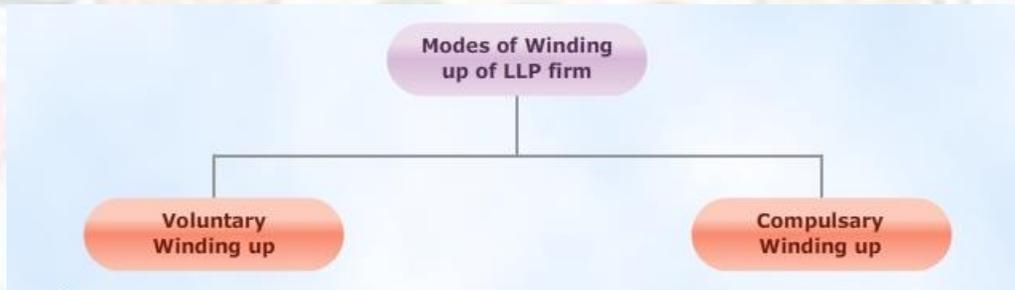
Functioning and Winding up of Limited Liability Partnership

Sr. No.	Winding up	Dissolution
1	It is a lengthy process spanning over several months wherein the assets are realized and liabilities are paid off and surplus, if any, is distributed among the partners.	It is an event wherein the name of LLP is removed from the register of LLPs and the fact is notified.
2	In Winding up, it is the liquidator, who helps in completing the liquidation proceedings	In dissolution, it is the Registrar of Companies, who actually removes the name of LLP from the register and notifies it.
3	Winding up precedes dissolution.	Dissolution follows winding up.
4	LLP retains its legal entity and can be sued.	LLP ceases to exist and so after dissolution, it cannot be sued.

10.2 Modes of Winding Up

As per **section 63** of the LLP Act, the winding up of the Limited Liability Partnership could be either of the following-

Figure 4: Winding up of LLP Firm

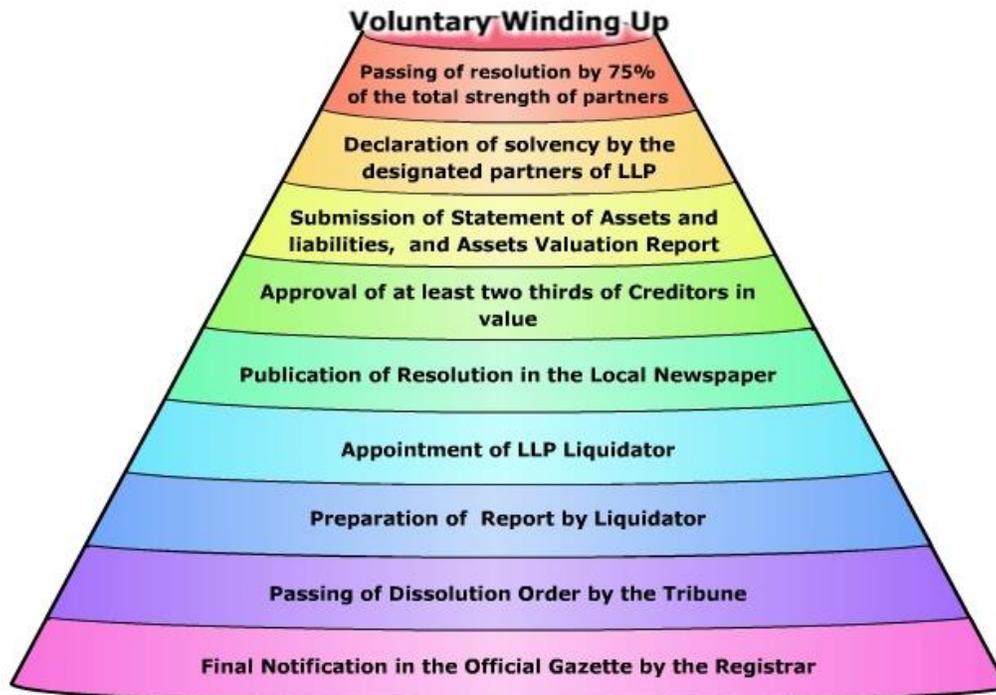


Voluntary Winding up

Here the partners of the LLP, after consenting among them, agree to wind up its affairs and activities. And adopt the following procedure to wind up the limited liability partnership. If the firm is not solvent the partners cannot start the process of winding up the firm. They also need to have creditors' consent/approval for winding up the firm. And many more formalities have to be complied with for winding up the business.

Figure 5: Process of Voluntary Winding up

Functioning and Winding up of Limited Liability Partnership



- Passing of Resolution**- An LLP can be wound up voluntarily only if at least $\frac{3}{4}$ of total numbers of partners pass such a resolution and file a copy of it with the Registrar within the next 30 days. It shall be deemed that the winding up has commenced from the time of the passing of such resolution.
- Declaration of solvency by designated partners** – The designated partners are required to make a declaration, which shall be verified by an affidavit, that their LLP is solvent and will be able to fully settle the debts out of proceeds realized from the sale of assets within a time period of one year starting from the date when winding up commenced. This declaration along with the Statement of Assets and Liabilities and Assets Valuation Report prepared by an independent valuer shall be submitted with the Registrar of Companies (ROC) within 15 days of passing of the winding up resolution.
- Approval of Creditors** – No winding up can take place voluntarily unless the approval of creditors is sought. The LLP shall intimate to its creditors, the estimated amount that it owes to each of these parties and shall give them an offer to approve and accept the claims. They shall be given a 30 days time to accord their approval in respect of voluntary winding up or acceptance of the offer made to them. Consent of at least $\frac{2}{3}$ in value of creditors is required for winding up. The LLP shall file the decision of the creditors with the ROC within 15 days of receipt of their consent.
- Publication of Resolution** – Once the resolution demanding voluntary winding is passed and approval of the creditors is obtained, then the LLP shall within 14 days of receipts of creditors consent give a public notice about its resolution. For this purpose, it shall place an advertisement concerning this matter in the local newspaper of the district where the principal office or registered office of the LLP is situated.
- Appointment of Liquidator** – To administer the proceedings of winding up, an official known as LLP liquidator is appointed from the panel maintained by the Central Government within 30 days of filing of consent of creditors. Once

Functioning and Winding up of Limited Liability Partnership

the LLP liquidator gets appointed, all the powers of the designated partners as well as that of other partners shall cease. Further notice of such appointment of the LLP Liquidators shall also be given to the Registrar.

Duties of LLP Liquidator – The LLP Liquidator is supposed to discharge the following duties with regard to the winding up -

- a. perform such functions and duties as may be prescribed under the Act or Rules,
- b. maintain books of accounts in the proper manner,
- c. settle the list of creditors and partners,
- d. pay off the liabilities of the LLP and adjust the rights of the partners among themselves,
- e. observe due care and diligence while discharging his duties,
- f. give a quarterly report on the progress of winding up of the LLP to the partners and creditors in the prescribed form & manner,
- g. Get the accounts of the LLP audited.

Preparation of Final Report by the Liquidator – Once the affairs of the LLP get fully wound up, then the liquidator shall prepare a final report concerning the winding up accounts and explanations in the prescribed format. Thereafter, he/she shall seek the approval of the partners and the creditors, as the case may be, with regard to the said report and accounts in the meeting with the partners and creditors.

Further, all the above mentioned documents shall be filed with the ROC within 15 days of the approval by the partners /creditors.

- vi) **Passing of Dissolution Order** – If the tribunal is satisfied that the process of winding up has been duly followed, it shall pass the dissolution order within 60 days of the receipt of the application. The liquidator is required to file a final copy of the dissolution order of LLP with the Registrar of Companies (ROC), who shall then get this fact notified in the Official Gazette .

Compulsory Winding up

Figure 6: Winding up by the Order of Court

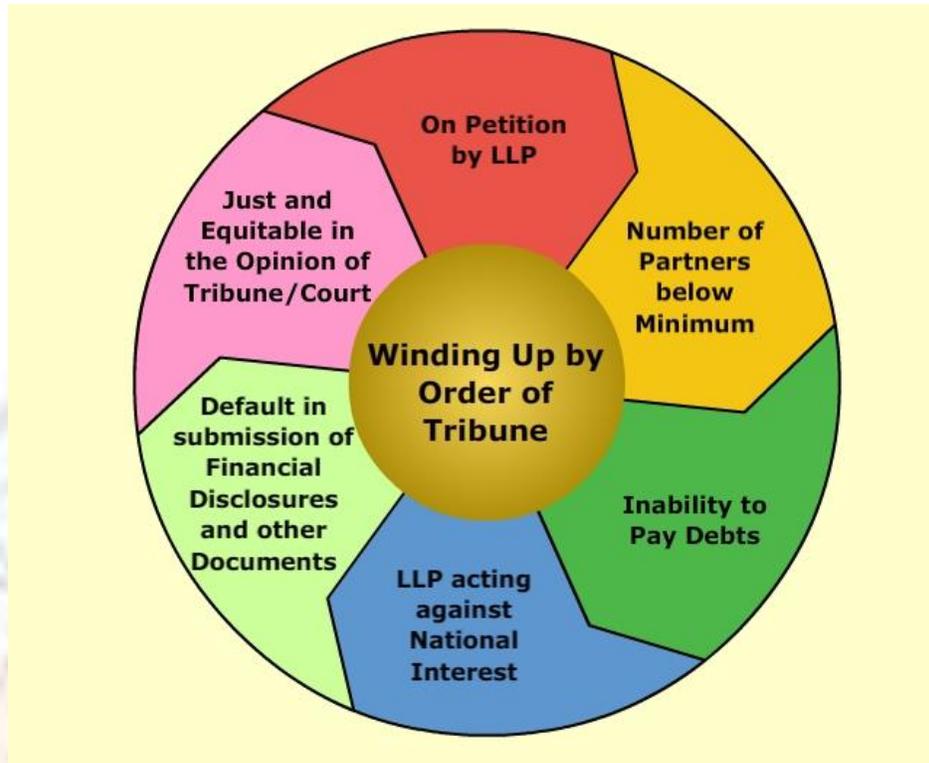


Source: commerce.wa.gov.au

The firm may also wound up by the order of the Tribunal/court. And this kind of winding up is known as Compulsory Winding up. The Tribunal may order an LLP firm to wind up in the following circumstances as provided under **section 64**.

Figure 7: Winding up By Order of Tribunal

Functioning and Winding up of Limited Liability Partnership



- a) **Petition by LLP** – If the LLP firm has resolved to be wound up by the Tribunal, then it may file a petition to the Tribune under section 64 subsection (a).
- b) **Number of the partners below statutory minimum** – If the number of partners in an LLP falls below two, and still it keeps carrying on for more than 6 months, then the Tribunal is bound to issue a winding up order under the provisions of Section 64 sub section (b).
- c) **Inability to Pay Debts** – If the LLP is in a severe financial crunch and is unable to honour its obligations towards the creditors, the Tribunal may make a winding up order. The power of the Tribunal is, however, discretionary and it may desist from making a winding up order, if the majority of creditors in value oppose the petition in the hope that the LLP would be able to regain its financial position and must therefore continue to trade as referred under Section 64 subsection (c).
- d) **LLP acts against the National Interest** – If the activities of the LLP put at risk the sovereignty, integrity and security of India, then the tribune may make a winding up order under section 64 sub section (d).
- e) **Default in submitting the prescribed financial disclosures and other documents with the Registrar** – If the LLP has, for any reason defaulted in filing with the Registrar its Statement of Account and Solvency or Annual Return for five consecutive financial years, then the Tribune is bound to make a winding up order as per the provisions of Section 64 subsection (e).
- f) **Just and Equitable to wind up** – If in the opinion of the Tribunal, it is just and equitable to wind up the LLP; it may order it's winding up. The Tribunal has wide discretionary powers under this clause and on the basis of judicial decisions; the following circumstances may be made a ground for winding up under Section 64 subsection (f).

Functioning and Winding up of Limited Liability Partnership

- i. If there is a complete deadlock in management.
- ii. If there is a Bubble LLP i.e. LLP exists only for the name sake without any real business or property.
- iii. If there is a loss of substratum i.e. whole of the capital of the LLP has eroded or the main object of the LLP has failed.
- iv. If the LLP firm carries business which is illegal.
- v. The business of LLP cannot be carried on further except at a loss.

The following points should also be noted and understood along with the conditions laid in section 64. These provisions relate to the details of winding up procedure.

- i) The petition or an application for winding up of an LLP could be filed with the tribunal by the LLP itself or by any of its partner(s) or creditor(s) or by the Registrar or by Central Government or by a person authorized by Central Government.
- ii) It shall be deemed that winding up of the LLP has commenced from the time of the presentation of its petition to the tribunal.
- iii) The tribunal is empowered with the special powers that can be exercised by the Tribunal as per his discretion on presentation of petition. Once the petition for winding up of the LLP, has been received by the Tribunal, it fixes a date for its hearing and issues notice to the LLP to appear and justify its position. The Tribunal shall also give a public notice in order to inform everybody, particularly, the creditors and the partners, about winding up so that their concerns or objections could also be considered. Then, on the specified date, after taking into consideration the concerns of all the parties and circumstances of the case, the Tribunal (within ninety days from the date on which petition was presented), may – dismiss the petition or make an interim order or direct to revive or rehabilitate the LLP or appoint a liquidator as provisional liquidator till the final order or pass an order to windup the LLP.
- iv) Once the Tribunal passes and communicates the Winding up order to the firm, the following consequences will follow.
 - a) The petitioner and the LLP shall ensure that a certified copy of the winding up order has been filed with the ROC so that the Registrar could notify the fact in the Official Gazette.
 - b) The winding up order serves as a notice of discharge to all the employees and officers of the concerned Limited Liability Partnership.
 - c) No suit or legal proceedings can be commenced against the LLP without the leave of the court. Even a suit, which is pending against the LLP at the date of winding up order, cannot be preceded unless the permission of Tribunal is obtained.

Figure 8: Process of Compulsory Winding up

Functioning and Winding up of Limited Liability Partnership



Role of Liquidator in Compulsory Winding Up

Liquidator is an officer who assists the court or tribunal in completing the liquidation proceedings i.e. realizing the assets of the business, paying off the liabilities and distributing the surplus, if any, among the partners.

1. Duties of the Liquidator

The Liquidator has to perform some duties to execute the order of the tribunal to wind up the firm.

- i) To conduct the proceedings in the winding up,
- ii) To submit the reports to the Tribunal after the receipt of the 'Statement of Affairs' from the designated partners,
- iii) To take into custody all the books, documents and assets of the LLP,
- iv) To summon meetings of creditors and partners for the purposes of ascertaining their wishes,
- v) To give regard to the resolutions of creditors and partners or to any directions given by the committee of inspection,
- vi) To submit information as to pending liquidation.

2. Powers of the Liquidators

He has been entrusted with the numerous powers to enable the proper execution of the order and performance of the duties. Some of the powers can be exercised:

- a) with the prior sanction of the Court/Tribunal, and
- b) without prior approval or sanction of the Court/Tribunal.

The liquidator has to get sanction for executing the following:

- i) to institute and defend suits and proceedings by and against the LLP,
- ii) To continue the business of LLP, if required, for the beneficial winding up,

Functioning and Winding up of Limited Liability Partnership

- iii) To sell the movable and immovable property of the LLP and its actionable claims,
- iv) To raise money on the security of the LLP assets,
- v) To take all such measures as may be required for winding up the affairs of LLP and distributing its assets.

Similarly, he can exercise many powers without obtaining any prior approval of the Court/Tribunal such as:

- i) To represent on behalf of the LLP and to execute deeds, receipts and other documents under its seal.
- ii) To inspect the records and the returns of the LLP in the Registrar's file without paying any fees.
- iii) To prove and claim in the insolvency of any partner and to receive ratable dividends in the insolvency.
- iv) To draw, accept, make or endorse any negotiable instrument in the name of the LLP
- v) To appoint an agent for any business which he cannot do himself?

In addition to the appointment of the liquidator, the Tribunal may, give a direction that a Committee of Inspection be appointed to act with the liquidator, while making an order for winding up of the LLP or any time thereafter. The Committee of Inspection shall comprise of representatives of creditors and the partners of the LLP and shall be in such number as may be prescribed.

Winding up is a long process which may take several months. Number of formalities are required to be undertaken starting from the first stage of winding up till the dissolution of LLP.

Summary:

- Limited Liability Partnership Act, 2008, has brought about a new form of business organization that imbibes the good features of the company form of organization structure as well as partnership firms and at the same time keep their demerits at bay.
- The act of 'Whistle Blowing' refers to alerting others or drawing their attention to an illegal act or crime. A whistle blower informs the people in authority or the public about the dishonest or illegal activities occurring in their organizations.
- The contribution in case of an LLP is akin to share capital in case of a company. Contribution means and includes whatever a partner intends to bring into an LLP for the running of its business.
- Financial disclosures are the windows through which the public or the authorities can peep into the LLP. The LLP Act has laid down specific provisions for maintenance of books of account and filing of certain financial information with ROC (Registrar of Companies) within specific time period.
- The LLP firm under the provisions of LLP Act 2008, is supposed to file with the Registrar of Firms, many documents that may be inspected by the concerned competent authorities and the public at any point of time by submitting the application along with the required fee. These filed documents are the written evidence of compliance of the provisions of this Act.
- The ministry has a great responsibility while enforcing the LLP Act 2008, because of the introduction of the concept of limited liability in the partnership firm. The clause of penalty has been added to most of the provisions to ensure the enforcement and avoid the occurrence of fraud in business.

Functioning and Winding up of Limited Liability Partnership

- The accounts of an LLP needs to be audited as per the prescribed rules. The issues like who will be the auditor, how will he be appointed etc. are defined in the LLP rules. Central Government has the right to exempt by notification, in the official gazette, any class or classes of LLPs from the requirement of audit or any provision of the audit.
- The Finance Act, 2009 has extended the definition of firm, partner and partnership to include the LLP firm, LLP partners and limited liability partnership respectively for taxation purposes.
- A firm, a private company or an unlisted public company can convert themselves into LLPs in accordance with the provisions of the Act.
- LLP is an artificial person created by a legal process called 'incorporation' and its winding up is also through a legal process called 'dissolution'. The process of winding up involves disposal/sale of assets, paying off liabilities and distribution of surplus, if left, among the partners of the LLP for which a liquidator is appointed.
- The winding up of the Limited Liability Partnership could be either voluntary or compulsory (by the order of the Tribunal). On winding up, the name of the LLP is struck off by the Registrar of Companies.

Glossary:

- **Amend:** It refers to bring about a change.
- **Annual Return:** An Annual Return is the snapshot of an information about an entity as at a specific point in time.
- **Artificial person:** An artificial person refers to an entity that gets created by law and acquires certain rights and duties like any natural person.
- **Assignment:** It refers to the giving the rights or interest in one's property to someone.
- **Association:** It refers to a body of persons that is constituted for a common purpose.
- **Authenticate:** It refers to the act of recognizing an item as valid/true/genuine by a responsible person in his/her official capacity.
- **Authority:** It refers to the right or power to do something, or act in a particular manner, or issue orders, or get work done in order to accomplish a task and have access to resources for the same.
- **Authorize:** It refers to the ability to permit someone to perform some work or use some resources.
- **Common law:** It refers to the Law based on judicial principles that get formulated through court decisions as against the law that is created through the legislative process.
- **Default:** In this lesson, it refers to failure in meeting a legal obligation or lapse in performing a mandatory duty.
- **Dissolution:** It refers to the act or process of breaking up or coming to an end.
- **Perpetual:** It refers to something that continues to last infinitely, unless otherwise decided.
- **Record:** It refers to the tangible information that maintained and preserved physically, and/or electronically to serve as evidence or for future reference.
- **Registered Office Address:** It refers to the address of the entity that is notified to the authorities for the purposes of receiving all legal and official documents, notices and court papers are supposed to be sent by law.
- **Withdrawal:** It refers to a penalizing or punitive act of rolling back a benefit or taking away something that was granted previously.

Functioning and Winding up of Limited Liability Partnership

Exercises:

A. Objective Type Questions:

True or False

1. Every LLP is required to get its accounts audited.
2. LLPs shall be treated at par with companies as far as its taxation is concerned
3. LLPs are subject to Dividend Distribution Tax
4. Alternate Minimum Tax is applicable to LLPs.
5. LLPs can maintain its books of account on single entry system.
6. A listed public company can be converted into an LLP.
7. Winding up is same as dissolution.
8. For Voluntary Winding up, approval of 51% of total number of partners is required.
9. Petition for Winding up by the Tribunal can only be filed by the partners of the firm .
10. Whistle blower is the person who blows whistle to draw attention of authorities towards something undesirable cooking up in the organization.

Fill in the blanks

- a. The obligation of the partner to contribute shall be in accordance with _____.
- b. _____ is the only legislation in India which gives protection to
a. whistle blower.
- c. Every LLP is required to file _____ and _____ with the Registrar of Companies every year within the prescribed time period.
- d. Conversion of Private Company into LLP shall be in accordance with section _____ and schedule _____ of the LLP Act.
- e. The two modes of winding up prescribed in the LLP Act are _____ and _____.

B. Short Questions:

Write in brief about the following concepts:

- a) Whistle Blower
- b) Contribution
- c) Liquidator
- d) Dissolution
- e) Annual Return

C. Long Questions:

1. Discuss the provisions for filing of annual return of an LLP.
2. What financial disclosures are required to be made by an LLP.
3. Discuss briefly the powers and duties of auditors of an LLP.
4. Explain the procedures and effects of conversion of a partnership into LLP.
5. Explain the winding up of an LLP. State the various grounds under which an LLP may be compulsarily wound up by the Tribunal.
6. Explain the duties of Liquidator under LLP Act, 2008.

(Answers to objective type questions:

True or False

- | | | | | | |
|----------|----------|----------|----------|----------|----------|
| 1. False | 2. False | 3. False | 4. True | 5. False | 6. False |
| | 7. False | 8. False | 9. False | 10. True | |

Functioning and Winding up of Limited Liability Partnership

Fill in the blanks

1. Limited liability partnership agreement
2. LLP Act 2008
3. Statement of Account and Solvency, Annual Return
4. Section 56 , Third Schedule
5. voluntary and compulsory.)

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