

Discipline Courses-I

Semester-I

Paper : Business Law

Unit-III

Lesson: Introduction to Limited Liability Partnership Act 2008

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1. Learning Outcomes:

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

- understand the concept of Limited Liability Partnership,
- explain the characteristics of the Limited Liability Partnership,
- differentiate LLP from a partnership firm and a company,
- understand the advantages and disadvantages of an LLP.

2.Introduction:

Limited Liability Partnership (LLP) is a hybrid form of business structure that infuses the operational flexibility and tax advantages of a traditional partnership firm with the limited liability and perpetual existence feature of a corporate entity. Therefore, it is considered to be an attractive investment option by foreign investors, venture capitalists, professionals and service providers etc. who can go in for this alternative business vehicle rather than following traditional investment routes of joint ventures or wholly owned subsidiaries.

A company registered in India, whether private or public, has to comply with host of complex formalities and incur additional costs for managing affairs including mandatory board meetings, maintaining of statutory records etc. But for LLP, such mandates are not prescribed. Further, it enjoys certain benefits like non-applicability of dividend distribution tax, relaxation of many detailed legal and procedural requirements.

Popularity of LLP - LLP kind of business form of organization has already gained popularity in several developed and developing economies like United States, Singapore, United Kingdom, Japan, China, Australia and so on.

Figure 1: Limited Liability Partnership



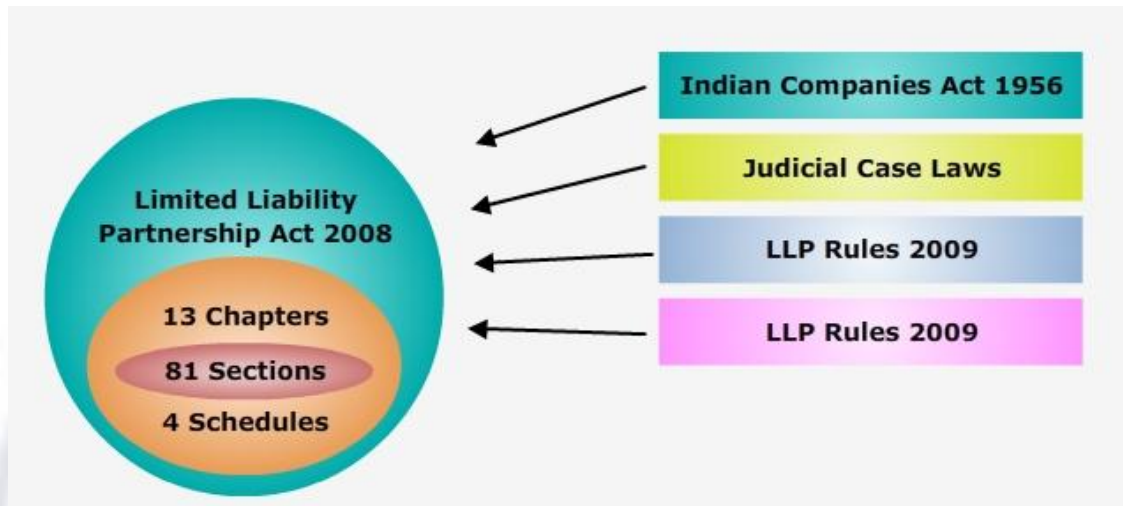
Adoption of LLP form of Business Organization in India

India got little late in adopting it but nevertheless, once the Act was passed in 2008, LLPs started mushrooming and by now, more than 10000 LLPs have got registered in India. It was after several expert committees like Abid Hussain Committee (1997), the Naresh Chandra Committee (2003) and the JJ Irani Committee (2005) and many rounds of deliberations, that the limited liability partnership bill finally got passed by Rajya Sabha on 24th October 2008, by Lok Sabha on 12th December 2008 and received assent from the

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President on 7th January 2009. The Limited Liability Partnership Act came into force for most of the provisions on 31st March 2009 and for remaining provisions on 31st May 2009 and applies to the whole of India. The law related to limited liability partnership has not been introduced in vacuum but it has come from the existing relevant and related laws.

Figure 2: Composition of LLP Act 2008



The main sources of law of LLP in India are as follows:

1. The Limited Liability Partnership Act 2008.
2. The Limited Liability Partnership Rules 2009.
3. The Companies Act 1956.
4. The judicial decisions or case laws.

Limited Liability Partnership Act, 2008 comprises 81 sections contained in 13 chapters. Further the following 4 schedules have been provided at the end of the Act. The first schedule is a model set of terms of LLP agreement. The second schedule contains provisions for conversion of a firm into LLP. The third schedule contains provisions for conversion of a private limited company into LLP. The fourth schedule contains provisions for conversion of an unlisted public limited company into LLP. The Ministry of Corporate Affairs and Registrar of Companies have been entrusted with the task of administration of the Act and Rules framed there under.

LLP Rules, 2009 provide for the procedural and operational matters of the LLP Act 2008. The various forms to be filled or required at the time of incorporation, conversion etc. have been provided in the Annexure A to the Rules.

The Companies Act 1956 provides for need-based application of the Companies Act, 1956 for the issues on which LLP Act, 2008 is silent. The Central Government is required to prescribe or notify the provisions of Companies Act that would apply and under what instances. For example, the Central Government has notified that the certain provisions relating to winding up in the Companies Act shall be applicable to 'Winding up' of the LLP after certain modifications.

Judicial Decisions or Case Law provide the judgment for a case in the past that is similar to the current case. Sometimes judicial decisions are guided by the stance taken by a judge in a similar case in the past. Such precedents or landmark cases are often cited in subsequent legal arguments/counter arguments. Such judicial cases are relevant particularly when law or Act is silent or ambiguous on that issue.

2.1 Characteristics of Limited Liability Partnership (LLP)

Figure 3: Features of LLP



1. LLP is a body corporate. This means it enjoys an independent identity distinct from its partners. It is incorporated under the LLP Act 2008 notified in 2009.
2. LLP is an artificial legal person. It comes into existence by a process other than natural birth and does not have the physical attributes- like soul, limbs, eyes, ears etc. that natural persons have. It is created after complying with certain formalities. A minimum of two persons, intending to carry any lawful activity, can by subscribing to the incorporation document, submit prescribed information, file certain documents and then apply for registration with the Registrar of Companies (ROC). Once it gets

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the Certificate of Incorporation, it is recognized in the eyes of the law as a distinct entity. Like other persons, it also enjoys certain rights and obligations, for example, it may sue or be sued, it may acquire and/or dispose of properties etc.

3. It has perpetual existence. LLP enjoys a stable life. Events such as death, insolvency, retirement or resignation of any or all partners do not affect its continuity. It is created through a legal process and can be brought to an end by a legal process only. Thus, partners may come and go but LLP keeps it going on and on.
4. LLP may have a common seal. Since LLP is an artificial person with no body, limbs, soul etc., it has to act through its partners and designated partners. Further, it has a separate legal personality and is known by its own name. It may decide to have a common seal. A common seal is a stamp like object with name of LLP engraved on it and used as a substitute for its signature.
5. There is no mutual agency in LLP. The distinctive feature of LLP which differentiates it from traditional partnership is that, here, there are no mutual agency vis-a-vis partner(s). This implies that every partner of the LLP is an agent of LLP only and not of other partners. Thus, a partner shall not be personally responsible for any wrongful act/misdeed/misconduct committed by other partners. It is because of this feature of LLP that professionals would come together and form LLP without worrying about the consequences of negligence of other partners.
6. The partners of LLP have limited liability. This implies that the obligation of LLP shall be borne by the LLP only and not by its partners. It can be settled out from the properties of LLP and will not extend to its partners' personal assets. The liability of the partners shall be limited to the extent of their agreed contribution except in case of unauthorized acts, fraud or negligence committed by them. Creditors of LLP can claim authority over the LLP only and not over the partners or their assets.
7. LLP has agreement based internal management. For the smooth working of LLP and avoidance of future disputes, it is desirable to get an LLP agreement drafted. Such an agreement or charter contains provisions on issues relating to mutual rights or duties of partners *inter se* and that of LLP and its partners. If no LLP agreement has been created, the LLP can adopt the first schedule of the Act, which is a model set of terms of LLP agreement. The LLP agreement governs not only the relationship among the partners but also the relationship between the partners and the LLP.
8. LLP should be engaged in Lawful Business. An LLP can be formed to carry any lawful business with a view to earn profit. The term business includes every economic activity viz. trade, profession, service and occupation. Thus, small and medium enterprises, professional service providers like CAs, CSs, advocates and the like, can start their associations in the form of Limited Liability Partnership. However, LLPs can't be formed for charitable or philanthropic purposes.

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9. Incorporation is essential for its existence. In order to incorporate an LLP, two or more persons shall subscribe their names to the Incorporation document; file it along with prescribed fees with the Registrar of Companies of the State in which the registered office of the proposed LLP is to be situated. Such incorporation documents shall be accompanied by a compliance statement made by a CA, CS or advocate certifying that all requirements of the LLP Act have been complied with. When the incorporation documents are scrutinized, verified and found in order, the Registrar of Companies issues Certificate of Incorporation, which is conclusive evidence that LLP is incorporated by the name specified in the certificate. Thereafter, it enjoys the status of the body corporate with the separate legal personality.
10. Minimum and maximum number of partners defined for LLP. To form an LLP, at least 2 partners are needed. Further, an LLP shall also have 2 individuals as designated partners of whom, at least one shall be resident in India. There is no bar on maximum number of partners in LLP. The designated partners shall apply to the Central Government for allotment of Designated Partners Identification Number (DPIN), which shall be granted to them after their credentials have been verified. This would facilitate the government to keep track of them and take effective legal actions against them in case of any mishappening.
11. Management of Business is internal. The business of LLP shall be managed by the partners of LLP. However, for legal compliances, designated partners are responsible.
12. Annual Accounts & Audit are to be maintained legally. Every LLP shall be obliged to maintain prescribed books of account, in a proper manner, reflecting true and proper view of its state of affairs. Further, every year, it shall file with the Registrar, the Statement of Accounts and Solvency as well as Annual Return within the prescribed time period. As per LLP Rules 2009, every LLP has to get its accounts audited by a Chartered Accountant if its annual turnover or the contribution exceeds the prescribed benchmark (i.e. annual turnover crosses rupees one crore or the contribution exceeds rupees twenty five lakhs).
13. Conversion into LLP is allowed. A partnership firm, a private limited company or an unlisted public company has been allowed to get converted into an LLP provided it is as per the provisions of the Act and the relevant schedules attached thereto. In such cases, the earlier entity is deemed to be dissolved and the LLP comes into existence with a new name. Further, all the existing agreements, contracts, pending legal cases, awards etc. of the converting entity are deemed to continue in the hands of the LLP.
14. Winding up of LLP can be done as per legal procedure. The LLP can be wound up either voluntarily or by the Tribunal. In order to ensure smooth dissolution, a liquidator is appointed who realizes the assets, pays off the liabilities and distributes the surplus left (if any) amongst the partners. The provisions and procedures in respect of winding up are provided in the LLP (Winding up and Dissolution) Rules 2010.

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15. Taxation of LLP. The LLP Act, 2008 does not contain provisions concerning the taxation aspects of LLPs. The Income Tax Act, 1961, has been amended by the successive Finance Acts to provide for tax framework of LLPs. Accordingly, LLP shall be treated at par with the general partnership. However, it shall be liable to alternate minimum tax (AMT) @ 18.5% on adjusted total income. It shall not be liable for Dividend Distribution Tax (DDT).
16. Need based application of Companies Act, 1956. The Central Government has been given the authority to make applicable, by a notification, any provision of Companies Act, 1956 to LLPs with or without suitable modification or changes.
17. Non-applicability of the Partnership Act, 1932. The Indian Partnership Act, 1932, shall not be applicable to LLPs.
18. Provision for Whistle blowers. The LLP Act is the only legislation in India that contains specific provisions for whistle blowers. It has provided adequate safeguards and protection to the partners or the employees of the LLP who provide useful information and co-operate in the investigation thereby facilitating the conviction of perpetrators of fraud or misconduct.
19. Contribution. In order to garner funds to run the business of LLP, the partners shall contribute to the capital of LLP in accordance with the LLP agreement. The LLP Act does not prescribe any minimum capital contribution. Such contribution could be in any form viz. movable or immovable property, tangible or intangible assets, cash or cash equivalents, or other benefits such as contracts for service. The monetary value of such contribution shall be ascertained so that it can be accounted for and disclosed properly in the books of the LLP.
20. Electronic filing of documents is provided for. All the forms, returns or documents that are required to be submitted under the Act or the Rules shall be filed in prescribed electronic mode after being authenticated by designated partners by affixing digital or electronic signatures.

Value Addition 1: Did You Know?

Advantages of LLP

Many countries like US, UK, Japan, etc. have accepted LLP as a form of business. India is also one of such countries. The LLP form of business was accepted due to the peculiar benefits that it offers.

Click on the link below to read the advantages of an LLP.

Source: <http://easylawstartyourbusiness.blogspot.in/2012/04/concept-and-advantages-of-limited.html>

Value Addition 2: Did You Know?

Limitations of LLP

LLP form of Business is not free from disadvantages. There are certain difficulties

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with respect to compliance procedures related to annual filing, solvency etc. An LLP does not offer the provision of one-person ownership. A minimum of two people are required to form an LLP. An LLP formed by two people always run the risk of closure at the cessation of any one partner's membership. Presence of penalty for non-compliance with the provisions of the Act, is another limitation of LLP. Click on the link below to read more points on the limitations of an LLP.

Source: <http://www.marketexpress.in/2013/04/limitations-disadvantages-llp.html>
<https://www.youtube.com/watch?v=Hy62MDdx6u8>

2.2 Difference between Partnership Firm, Limited Liability Partnership and Limited Liability Company

Since LLP is a hybrid entity created by combining the positive features of partnership as well as company, it resembles both in some respect and is also different from both in other aspects.

The major points of distinction between a limited liability partnership and other business forms such as Partnership and Company are as follows:



Sr. No.	Basis	Partnership Firm	Limited Liability Partnership	Limited Liability Company
1	Regulatory Act	The Indian Partnership Act, 1932	The Limited Liability Partnership Act, 2008	The Companies Act, 1956.
2	Body Corporate	It is not a body corporate.	It is a body corporate.	It is a body corporate.
3	Separate Legal Entity	It has no legal identity distinct from its partners	It has a legal identity distinct from its partners	It has a legal identity distinct from its members
4	Creation	It is created by an agreement between the partners	It is created by registration under the LLP Act, 2008.	It comes into existence by registration under the Companies Act 1956.
5	Registration	Voluntary	Mandatory	Mandatory
6	Perpetual Existence	It does not have perpetual existence. The death, insanity, retirement or insolvency of the partners may affect its continuity.	It has perpetual existence and remains unaffected by the death, insanity, retirement or insolvency of its partners.	It has perpetual existence and remains unaffected by the death, insanity, retirement or insolvency of its members.
7	Name	Partners can	Name of LLP to	Name of the public

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		choose any name for their firm.	contain the word Limited Liability Partnership or LLP as suffix.	company to contain the word "Limited" and private company to contain the word "Pvt Ltd" as suffix.
8	Number of members	Minimum – 2 Maximum – Banking – 10 Non banking - 20	Minimum – 2 Maximum – no limit is prescribed	Public limited Company : Minimum – 7 Maximum – no limit is prescribed Private Limited Company : Minimum – 2 Maximum – 50
8	Liability of partners or members	Unlimited It can extend up to the personal assets of the partners	Limited up to the extent of his agreed contribution of the partners	Liability is limited up to the amount unpaid on the shares held by them.
9	Principal – agent relationship	Every partner regarded as agent of the firm as well as other partners	There is no mutual agency among the partners inter se. Each partner acts as an agent of the LLP only and not of the other partners	No mutual agency
10	Common seal	Not required	May have a common seal if LLP decides to have one.	Must have a common seal.
11	Audit of Accounts	Audit required only if annual turnover of the firm exceeds 1 crore.	Audit required only if annual turnover exceeds 1crore or contribution exceeds 25 lakhs.	Compulsory irrespective of turnover or capital.
12	Legal Compliances	All the partners are responsible for the legal compliances and penalties under the Act	Only the designated partners are responsible for all the compliances and penalties under the Act.	Board of directors is responsible for all the compliances and penalties under the Act.
13	Designated partners/ directors	There is no provision of such partners under	The business of the LLP is managed by the partners	The Company is managed by the Board of Directors

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		Partnership Act, 1932. All partners are responsible individually and collectively.	including designated partners authorized by the agreement. There is a requirement of minimum two designated partners, one of whom shall be an individual resident in India.	elected by the shareholders. In Private Limited Company, there shall be minimum 2 directors where as in Public Limited Company; there shall be minimum 3 directors.
14	Minimum authorized capital	Not specified	Not specified	In Private Limited Company, there shall be minimum one lakh authorized share capital whereas in Public Limited Company, there shall be a minimum capital of Rs. 5 lakhs.
15	Mode of maintenance of books of accounts	The Indian Partnership Act 1932 is silent on the mode of maintenance of accounts.	The LLP Act says that the books of account shall be maintained on cash or accrual basis.	It is mandatory for a company to maintain its books of account on accrual basis.
16	Transfer of interest	A partner can transfer or sell his interest only with the consent of all other partners.	A partner can transfer or sell his interest subject to the provisions of LLP agreement.	A member of public limited company can transfer or sell his interest freely without any restriction. However, in a private limited company, there are some restrictions.
17	Whistle Blowers	No such provision exists.	Protection is provided to the whistle blowers.	No such provision exists.
18	Taxability	It is taxed @ 30% + surcharge+ cess. AMT and DDT is not applicable to a partnership firm.	It is taxed @30% + surcharge+ cess. AMT is applicable but DDT is not applicable to LLP.	It is taxed @ 30% + surcharge+ cess. AMT as well DDT is applicable to a company
19	Annual filings	No return/ statement is to be	LLP is supposed to file with ROC the	A company is required to file

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		filed with Registrar of Firms.	following: 1. Annual Statement of Accounts & Solvency 2. Annual Return	number of statements with ROC.
20	Meeting	Partners of partnership firm can hold meetings as per their requirements. No provision has been prescribed for holding the meetings of the partners in the Partnership Act, 1932.	Partners of LLPs can hold meeting as per their requirements. No provision has been prescribed for holding the meetings of the partners in the LLP Act, 2008.	A company is required to hold quarterly board meetings, Annual General Meeting and Statutory Meeting. Further Extra Ordinary General Meetings can also be held if needed.
21	Winding up	A Partnership firm can be dissolved without any legal formalities	An LLP can't be wound up at will. Winding up of an LLP is regulated by the provisions of LLP Act, 2008 and Rules made there under. Winding up can be voluntary or by order of Tribunal.	A company can't be wound up at will. Winding up of a company is regulated by the provisions of Companies Act, 1956. Winding up can be voluntarily or by order of NCLT.

Thus it can be seen that compared to firms, an LLP has more formalities to be observed but these are much less if compared with company. Similarly, like partnerships, LLPs are governed by a contractual agreement among the partners whereas in case of companies even the internal governance is regulated by the statute.

Value Addition 3: Video
LLP Vs. Company
<p>Click on the link below to watch a video on formation of an LLP and its difference from a company form of business.</p> <p>Having read the above text and seen the video, make a choice whether the following points relate to an LLP or a Company.</p> <p>In case of any ambiguity, revisit the text or view the video again.</p> <ul style="list-style-type: none"> • Memorandum is to be filed. • State of registered office can be changed without having to change the incorporation document. • Agreement not required at the time of incorporation. • Managing director manages affairs of the organization. • Every partner is authorized to conduct business.

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- Restrictions are applicable on director's remuneration.
- Share and share certificates not required.
- Pre-scheduled regular meetings are held from time to time.
- No prescribed registers are to be maintained.
- Members can freely enter into contacts and their disclosure is not required.
- No fixed mechanism for redressal in case of mismanagement.

Source: <https://www.youtube.com/watch?v=Hy62MDdx6u8>

Summary:

- Limited Liability Partnership (LLP) is a hybrid form of business structure that infuses the operational flexibility and tax advantages of a traditional partnership firm with the limited liability and perpetual existence feature of a corporate entity.
- LLP form of business organization has gained popularity in several developed and developing economies like United States, Singapore, United Kingdom, Japan, China, Australia.
- In India, the Limited Liability Partnership Act came into force on 31st March 2009 for some provisions and on 31st May 2009 for other provisions.
- The Act applies to the whole of India.
- The main sources of law of LLP in India are: The Limited Liability Partnership Act 2008; The Limited Liability Partnership Rules 2009; The Companies Act 1956; The judicial decisions or case laws.
- Limited Liability Partnership Act, 2008 comprises 81 sections contained in 13 chapters and 4 schedules have been provided at the end of the Act.
- LLP has many distinct characteristics, like: body corporate, artificial person, perpetual existence, common seal, no mutual agency, limited liability, agreement, lawful business, two or more persons, internal management, electronic filing of documents, etc.
- LLP enjoys certain similarities with a Partnership firm and a Company, as it is a hybrid of both; but nevertheless it is a separate form of business that is quite distinct from these two forms of business.

Glossary:

- **Account** – It is the detailed statement that records debits and credits of a transaction or group of transactions.
- **Act** - A bill that is passed by a legislative body and has received the assent of the President.
- **Agency** – It refers to the relationship that arises when one person is appointed to act as the representative of another. Agency is based upon the principle, *qui facit per alium per se* i.e. (he who does a thing through another does it himself). An agent is a connecting link between the principal and the third parties and thereby establishes privity of contract between them.
- **AMT (Alternate Minimum Tax):** It refers to the tax that is to be applied if the regular tax under the Income Tax provisions is lesser than this amount determined on book profit (adjusted total income) at a flat rate @18.5% w.e.f. Assessment Year 2011-12.
- **Certificate of Incorporation:** It is a legal document that relates to formation of a company or a body corporate.

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- **Compliance Statement:** It is a statement attesting the accuracy or abiding of the information contained in some document with certain norms or provisions of some Act.
- **Conversion-** It refers to the act of changing; in context of this lesson it refers to change from a business entity from one form to another.
- **DDT (Dividend Distribution Tax):** It refers to the amount of tax imposed on the companies that distribute dividends to its shareholders. The current DDT imposed by the Indian government is 15% on dividends distributed, which is collected from the companies so that the dividend income becomes tax free in the hands of receiving shareholders.
- **Designated partners:** It is a term that is used to describe the specific partners of an LLP. A designated partner's rights, duties and liabilities are those that are governed by the LLP ACT and may vary from that of a partner in the context of a partnership firm.
- **Director** - A director is a person, natural or corporate entity, appointed by the company members to run the company on their behalf.
- **Dissolution-** It refers to the process of ending or breaking up of the agreement.
- **Hybrid form:** It refers to a combination of characteristics of two or more things.
- **Incorporation-** The act of becoming a business entity recognized as an artificial person as per law.
- **Insolvency:** It refers to the inability of the a person or en entity to pay its debts or meet its obligations.
- **Inter se:** It is a legal term in Latin that means 'between or amongst themselves'.
- **Lawful business:** It refers to conducting a business that is legally justified.
- **Liquidator:** It refers to a person who has been assigned as a legal officer by the court for realizing assets of a company or a body corporate that is being wound up, so that its liabilities can be discharged in accordance with provisions of the Act that governs it.
- **Mutual agency:** It refers to the right of all partners to act as an agent on behalf of other partners while conducting the affairs of the business.
- **Perpetrators:** A perpetrator refers to someone who breaches the terms of a contract, or commits a crime.
- **Schedule:** A statement that is usually appended at the end of an Act to supplement the details contained in the Act.
- **Subscribing:** To subscribe means to sign at the end of the document, pledging the contents contained in the document as true and authentic.
- **Whistle Blowers:** As the term refers to cautioning, it points to a person who brings someone's fraud, misconduct, or illegal activity to light and exposes the entity.
- **Winding up:** It refers to the situation when the activities of a company or a body corporate are brought to an end, its assets are realized and liabilities are settled.

Exercises:

A. Objective Type Questions

State true or false:

1. The limited liability partnership is governed by Indian Partnership Act, 1932.
2. There is a mutual agency among the partners in the LLP.
3. LLPs can be formed for charitable purpose.
4. LLPs enjoy perpetual succession.
5. The liabilities of the partners in an LLP are unlimited.

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6. There is a need based application of the Partnership Act, 1932 to an LLP.
7. The framework of an LLP is suitable for professionals and small scale entrepreneurs.
8. LLP Act, 2008 has 81 sections and 4 schedules.
9. The first schedule is a model set of terms of LLP agreement.
10. Every LLP must have a common seal.

Fill in the blanks:

1. A minimum of _____ persons can form LLP for any lawful business.
2. The partners of LLP are liable to the extent of their _____.
3. Every LLP should have minimum two designated partners who should be _____ and at least one of them should be _____.
4. LLP Act came into force, for most of the provisions, on _____ and for the remaining provisions on _____.
5. _____ and _____ are entrusted with the task of administration of the LLP Act, 2008 and Rules framed thereunder.

Long Questions:

1. Define LLP. Explain its essential features.
2. Distinguish between LLP and General partnership.
3. Distinguish between LLP and Company.
4. If LLP is a body corporate then whether the provisions of the Companies Act, 1956 would be applicable on it?
5. LLP stands for Limited Liability Partnership. Would provisions of Indian Partnership Act, 1932 apply to an LLP?

Answers to Objective Type Questions:

True/False: 1. F 2. F 3. F 4. T 5. F 6. F
7. T 8. T 9. T 10. F

Fill Ups:

1. Two
2. Contribution
3. Individuals, ROI (Resident of India)
4. 2008, 2009
5. MCA (Ministry of Corporate Affairs), ROC (Registrar of Companies)

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2. Web links:

- Visit the link <http://iaccindia.wordpress.com/2010/11/11/limited-liability-partnership-an-emerging-concept-in-india/> to read about the international perspective to LLP.