

FAQ

Limited Liability Partnership | FAQs on Auditors

1. Which Companies require audit?

As per Rule 24(8) of the Limited Liability Partnership Rules (LLP Rules), 2008, every limited liability partnership (LLP) which fulfils the following two criteria is required to get its accounts audited

- a. turnover exceeds Rs.40 lacs in any financial year and
- b. whose contribution exceeds Rs.25 lacs in any financial year.

2. Will there be a requirement of audit if an LLP fulfills any one of the criteria mentioned in Question 1 above?

Under Rule 24(8) of the LLP Rules, 2008, an exemption from audit is available for all those LLPs which fulfill any one of the above mentioned criteria.

3. Are there any other criteria where an exemption can be available form audit?

The Central Government may by a notification in the Official Gazette, exempt any class or classes of LLPs from the requirements of audit. (Proviso to Section 34(4) of the LLP Act, 2008)

4. Are there any obligations prescribed on LLPs which avail the audit exemption?

In case of LLPs which avail the audit exemption, the following obligations are prescribed:-

- (a) a statement by the partners to the effect that the partners acknowledge their responsibilities for complying with the provisions of this Act and Rules with respect to preparation of accounts, is required to be included in the Statement of Account and Solvency.
- (b) a certificate needs to be attached in Form 8 to be filed with the MCA, along with the Statement of Account and Solvency.

(Proviso to Rule 24(8) of the LLP Rules, 2008)

5. Can an exempted LLP mentioned in Question 2 above get its accounts audited?

The exempted LLPs may get its accounts audited voluntarily. (Proviso to Rule 24(8) of the LLP Rules, 2008)

6. Are the obligations mentioned above in Question 4, applicable to exempted LLPs which opt for audit?

No, the above mentioned obligations are not applicable in case of exempted LLPs which opt for getting their accounts audited. (Proviso to Rule 24(8) of the LLP Rules, 2008)

7. What Guidelines are prescribed for audit of LLPs?

The audit of LLPs is required to be conducted as per the LLP Rules, irrespective of whether audit is compulsorily prescribed under the Rules, or optionally undertaken by the partners of exempted LLPs. (Rule 24(8) of the LLP Rules, 2008)

8. Is auditors' report required to be filed with Ministry of Corporate Affairs (MCA)?

No, Auditors report is not required to be filed with Ministry of Corporate Affairs (MCA).

9. Who can conduct audit?

Only a Chartered Accountant in Practice can be appointed as an auditor for conducting audit of an LLP. (Rule 24(9) of the LLP Rules, 2008)

10. What are the disqualifications of an auditor?

No specific disqualifications have been provided for auditors under the LLP Act, 2008 and LLP Rules, 2008.

11. Is there any limit on maximum number of LLPs in which a Chartered Accountant can be appointed as an auditor?

No maximum limit has been mentioned under the LLP Act, 2008 or LLP Rules, 2008, on the number of LLPs in which a Chartered Accountant can be appointed as an auditor.

12. Can a Chartered Accountant who is related to the partners, be appointed as an auditor of an LLP?

Nothing has been specifically mentioned in the LLP Act, 2008 and LLP Rules, 2008 regarding the appointment of a Chartered Accountant who is related to the partners as auditor of the LLP. The LLP Agreement can contain a suitable provision for the same.

13. Who can appoint the first auditors of an LLP?

As per Rule 24(11) of the LLP Rules, 2008, the designated partners may appoint the first auditors of an LLP. It is recommended that the LLP Agreement should contain a provision authorizing the designated partners to appoint the auditors.

14. What is the time limit for appointment of first auditors of an LLP?

The first auditors of an LLP may be appointed by the designated partners, at any time but before the end of first financial year. (Rule 24(11) of the LLP Rules, 2008)

15. In case of failure of designated partners to appoint the first auditors within the prescribed period, who can appoint the first auditors?

In case of failure of the designated partners to appoint the first auditors within the

prescribed time, partners may appoint the first auditors. (Rule 24(12) of the LLP Rules, 2008)

For instance, if an LLP is incorporated on 1st January 2009 and the first financial year is from 1st January 2009 to 31st March 2009, then the first auditor may be appointed by the designated partner at any time before 31st March 2009. In case of failure of designated partners to appoint the first auditors before 31st March 2009, then the first auditors may be appointed by the partners of the LLP.

16. Is any time limit prescribed for appointment of first auditors, by the partners of an LLP?

No time limit has been prescribed under the LLP Act, 2008 or LLP Rules, 2008 for the appointment of first auditors, by the partners of an LLP.

17. Who can appoint the subsequent auditors of an LLP?

As per Rule 24(11) of the LLP Rules, 2008, the designated partners may appoint the subsequent auditors of an LLP. It is recommended that the LLP Agreement should contain a provision authorizing the designated partners to appoint the auditors.

18. What is the time limit for appointment of subsequent auditors of an LLP?

The subsequent auditors of an LLP may be appointed by the designated partners, at least 30 days prior to the end of the financial year in respect of which he is appointed. (Rule 24(11) of the LLP Rules, 2008)

19. In case of failure of designated partners to appoint the subsequent auditors within the prescribed period, who can appoint the subsequent auditors?

In case of failure of designated partners to appoint any subsequent auditor within the prescribed time, the partners may appoint such subsequent auditors. (Rule 24(12) of the LLP Rules, 2008)

For instance, if a subsequent financial year of the LLP is from 1st April 2009 to 31st March 2010, then the first auditor may be appointed by the designated partner at any time before 28th February 2010. In case of failure of designated partners to appoint the first auditors before 28th February 2010, then the first auditors may be appointed by the partners of the LLP.

20. Is any time limit prescribed for appointment of subsequent auditors, by the partners of an LLP?

No time limit has been prescribed under the LLP Act, 2008 or LLP Rules, 2008 for the appointment of subsequent auditors, by the partners of an LLP.

21. Who can fill a casual vacancy in the office of auditors?

The designated partners may fill the all kinds of casual vacancy in the office of auditors. (Rule 24(11) of the LLP Rules, 2008)

22. In case of failure of designated partners to fill the casual vacancy in the office of auditors, who can fill such casual vacancy?

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Auditors, the partners may fill such casual vacancy. (Rule 24(12) of the LLP Rules, 2008)

23. Who can fill a casual vacancy arisen in case removal of an auditor?

The designated partners may fill the casual vacancy arisen by removal of an auditor. (Rule 24(11) of the LLP Rules, 2008)

24. Is any time limit prescribed for filling of casual vacancy by designated partners?

No time limit has been prescribed under the LLP Act, 2008 or LLP Rules, 2008 for filling of casual vacancy in the office of auditors.

25. How much votes of partners are prescribed for appointment of auditors by the partners?

The LLP Act, 2008 or the LLP Rules, 2008 does not mention anything specifically about the number of votes of partners required for the appointment of auditors. The LLP Agreement may contain a suitable provision for the same.

26. What will be the position of auditors if he is not re-appointed within 30 days prior to the end of financial year?

Where no new auditor has been appointed before 30 days prior to the end of financial year, any auditor holding office shall be deemed to be re-appointed unless,

- (i) the LLP Agreement requires actual re-appointment; **or**
- (ii) majority of partners have determined that he should not be re-appointed and have given a notice to this effect to the LLP.

(Rule 24(14) of the LLP Rules, 2008)

27. Who can fix the remuneration of Auditors?

The Designated Partners are authorised to fix the remuneration of auditors, unless the LLP Agreement prescribes otherwise. (Rule 24(17) of the LLP Rules, 2008)

28. What is the time period prescribed for fixation of remuneration of Auditors?

No time period has been mentioned in the LLP Act, 2008 or LLP Rules, 2008 for fixation of remuneration of auditors. The LLP Agreement can provide for a suitable provision.

29. What is the tenure of appointed auditors?

An auditor or auditors shall continue to hold such office till the occurrence of the following events;

- a. appointment of new auditors, or
- b. re-appointment of existing auditors.

(Rule 24(13) of the LLP Rules, 2008)

30. What are the formalities required for resignation of an unwilling auditor from his office?

An unwilling auditor can resign from his office by depositing a notice in writing to that effect at the LLP's registered office, accompanied by a statement of the circumstances connected with his ceasing to hold office. (Rule 24(19)(a) of the LLP Rules, 2008)

31. What are the formalities required by an existing auditor if he is unwilling to be re-appointed as an auditor for the subsequent period?

If an auditor is unwilling to be re-appointed as an auditor for subsequent period, he is required to give a notice in writing to that effect at the LLP's registered office, **not less than 14 days before** the end of the time allowed for appointing the new auditor, accompanied by a statement of the circumstances connected with his ceasing to hold office. (Rule 24(19)(b) of the LLP Rules, 2008)

32. Will the resignation notice be effective if it is not accompanied by a statement of the circumstances?

No, the resignation notice given by an auditor will not be effective if such notice is not accompanied by a statement of the circumstances connected with his ceasing to hold office. (Rule 24(19)(c) of the LLP Rules, 2008)

33. When will the term of an unwilling auditor come to an end?

The term of an unwilling auditor shall come to an end as on the date on which the notice is deposited or on such later date as may be specified in the notice. (Rule 24(19)(d) of the LLP Rules, 2008)

34. Who can remove auditors?

The partners of LLP can remove the auditors.

35. What is the procedure for removal of auditors?

The auditors can be removed by following the procedure as may be laid down in the LLP agreement.

36. If the LLP Agreement is silent about removal of auditors, then what procedure needs to be followed?

If the LLP Agreement is silent about the procedure of removal of auditors, then auditors can be removed with the consent of all the partners. (Rule 24(18)(b) of the LLP Rules, 2008)

37. What are duties and responsibilities of Auditors?

The LLP Act, 2008 and the LLP Rules, 2008 do not mention anything specifically about the duties and responsibilities of the Auditors.

38. What is the basis of accounting i.e. Mercantile / cash basis?

The basis of Accounting can be either cash basis or mercantile basis, and according to double entry system of book keeping. (Section 34(1) of the LLP Act, 2008)

39. Whether accounting standards are applicable to LLP?

No the accounting standards shall not be applicable to LLPs. The audit of an LLP shall be governed by the LLP Rules, 2008. (Section 34(4) of the LLP Act, 2008)

