



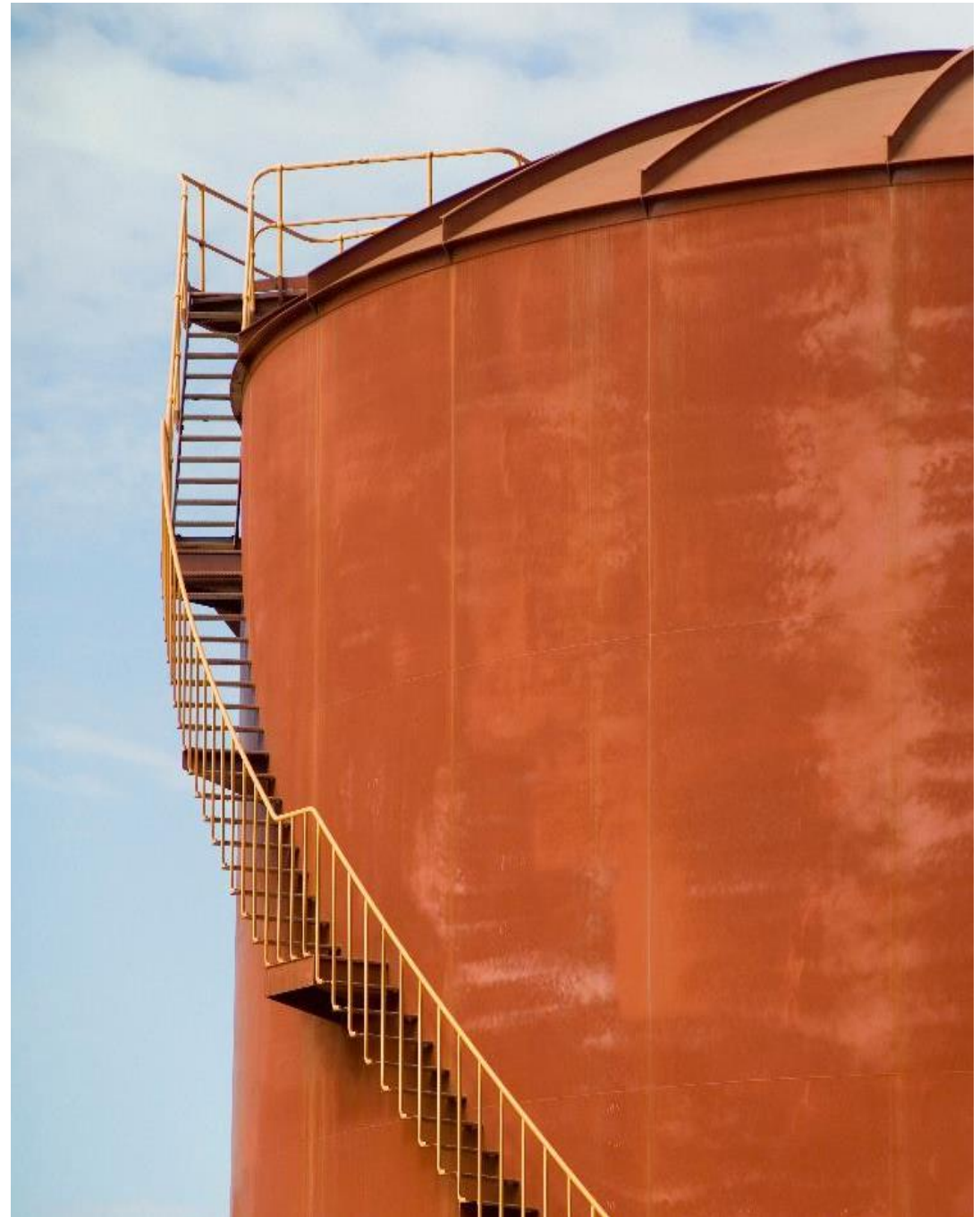
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Conversion of Company and Partnership Firm into Limited Liability Partnership (LLP)

24 February 2018

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Legislative background

Evolution of LLP

- 1957 - Suggestion by the iron, steel and hardware merchants chamber to introduce LLP legislation rejected by 7th Law Commission on Partnership Act, 1932
- 1997 - Abid Hussain Committee on Small Scale Industries recommended introduction of LLPs in India
- 2003 - Naresh Chandra Committee Report (Regulation of Private Companies and Partnerships) recommended introduction of LLPs and suggested its application to service sector
- 2005 - JJ Irani Expert Committee on Company Law recommended introduction of LLPs and suggested its application to professionals and small enterprises
- 2006 – Limited Liability Partnership Bill 2006 was approved by Union Cabinet and Parliament.
- 2008 – Limited Liability Partnership Bill 2008 (revised) was approved by Union Cabinet and passed in Parliament. Limited Liability Partnership Act 2008 was notified w.e.f. 31st March 2009
 - Different dates specified for bringing in force different provisions of LLP Act
 - Most of the provisions notified w.e.f. 31 March 2009
 - Conversion of firm/private company/unlisted company notified w.e.f. 31 May 2009
 - Winding up of LLP notified w.e.f. 10 July 2012

Overview and Key Features of LLP

Overview of LLP



Key Features of LLP

An LLP is a hybrid form of organisation having features of a partnership firm under the Partnership Act, 1932 and a company under the Companies Act, 2013

An individual or body corporate may become a partner in LLP

The liability of partners is limited to the extent of their contribution, except in case of intentional fraud or wrongful act of omission or commission by the partner.

Contribution of a partner may consists of tangible or intangible, movable or immovable or other benefit to LLP

LLP Agreement is a charter of the LLP which denotes its scope of operation and rights and duties of the partners vis-à-vis LLP

Right of a partner to share profits and losses is transferable

Partners are agents of LLP but not the agents of other partners

Q - Can Trust / HUF / Partnership Firm become Partner of LLP?

Budget 2018

LLP Tax rate card

Income =< ₹ 10 crores		Income > ₹ 10 crores	
Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Nil (Nil)	31.20% (30.90%)	12% (12%)	34.94% (34.61%)

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Location of LLP	Income =< ₹ 10 crores		Income > ₹ 10 crores	
	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Other than in IFSC	Nil (Nil)	19.24% (19.05%)	12% (12%)	21.55% (21.34%)
In IFSC	Nil (Nil)	9.36% (19.05%)	12% (12%)	10.48% (21.34%)

Note:

- Health and Education Cess of 4% has been considered for determining the tax rates above
- Figures in bracket represent existing tax rates

Corporate Tax rate card – Income > ₹ 10 crores

Particulars	Company with turnover not exceeding ₹ 250 crores in FY 2016-17	Company with turnover exceeding ₹ 250 crores in FY 2016-17	LLP
	Income > ₹ 10 crores	Income > ₹ 10 crores	Income > ₹ 10 crores
Income	100	100	100
<u>Less:</u> tax	29.12	34.944	34.944
Net distributable income	70.88	65.056	65.056
<u>Less:</u> DDT at the rate of 20.56%	12.09	11.10	-
Net amounts distributed to shareholder/ partner	58.79	53.96	65.06
Effective tax rate	41.21%	46.04%	34.94%

Note:

- Health and Education Cess of 4% has been considered for determining the tax rates above

FDI in LLP

FDI in LLP is permitted subject to the following conditions

FDI is permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions

Company having FDI can be converted into an LLP under automatic route (as against government approval route earlier), if it is engaged in a sector where foreign investment upto 100% is permitted under automatic route and there are no FDI linked performance conditions

An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI linked performance conditions

Downstream investment by an LLP not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

Restrictions on only Indian Company to be eligible to act as designated partner of LLP has now been removed. In other words, any body corporate including foreign company would be eligible to act as designated partner of LLP (through an individual nominee)

Onus shall be on the Indian company / LLP accepting downstream investment to ensure compliance with the above conditions

Q - Can LLP make downstream investment in another LLP?

FDI in LLP

- The term “**FDI linked Performance Conditions**” is defined under FEMA Regulations to mean the sector specific conditions stipulated in Regulation 16 of FDI Regulations for companies receiving foreign investment
- FDI in LLP is not permitted in:
 - Sectors where 100% FDI is not allowed e.g. print media, Trading in Transferable Development Rights (TDRs), Real Estate Business or Construction of Farm Houses, Agricultural/plantation (except Floriculture, Horticulture etc. as mentioned in FDI Regulations) activity etc... or
 - Sectors that are prohibited viz. Lottery Business including Government/private lottery, online lotteries, Gambling and Betting including casinos etc., Chit funds, Nidhi company, Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes, etc.,
 - Sectors not open to private sector investments viz. Atomic energy and railway operations

ECB regime for LLP

Para 1.11 - *The term 'Indian entity' means a company or a body corporate or a firm in India*

(Master Direction External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers)

Limited Liability Partnership (LLP) is a body corporate under the Limited Liability Partnership Act , 2008. Hence, would be an eligible "Indian entity" in terms of Master Direction.

FAQ on ECB specifies following,

12. Is a Limited Liability Partnership (LLP) or Partnership firm or Proprietary concern eligible to raise ECB?

No, entities which are not covered within the provisions contained in Master Direction stated above [like companies doing trading business (whether online or otherwise), companies involved in activities like tourism, beauty parlour / beauty clinics, entertainment business, retail sales, e-commerce companies, etc., on any other activity not covered within these provisions] are not eligible to raise ECB

FDI in LLP (Cont..)

FDI in LLP is not permitted in sectors where there are FDI linked performance Conditions

Illustrative sectors where FDI in LLP is not allowed

E-Commerce having performance linked condition viz. Market Place Model, No more than 25% sales from single vendor, etc.

Civil Aviation, Insurance, Defense, Investment Company

Construction Development: Townships, Housing, Built-up Infrastructure

Industrial Parks

Cash & Carry Wholesale Trading, SBRT / MBRT

Railway Infrastructure etc.....

Conversion of Company into LLP

Key relevant provisions for conversion of a Company into LLP

- Chapter X – Section 56 of LLP Act, 2008 – Private company
- Chapter X – Section 57 of LLP Act, 2008 – Unlisted Public company
- Third Schedule to the LLP Act, 2008 – Private company
- Fourth Schedule to the LLP Act, 2008 – Unlisted Public company
- Chapter X – Rule 32 and 33 of LLP Rules, 2009

Which companies cannot convert into LLP?

Companies in the business of banking, finance and insurance

Companies having secured loan / security interest on assets

Companies having ECBs

Companies having FDI under approval route

Companies having FDI where Performance linked conditions are applicable

Companies engaged in business governed by sector specific regulators and which does not recognize LLP for such business

Eligibility criteria

Eligibility criteria under LLP Act for conversion Company into LLP

LLP Act permits conversion of a Private Company (as per the Section 56 & Third Schedule of the LLP Act) and Unlisted Public Company (as per the Section 57 & Fourth Schedule of the LLP Act) into LLP subject to conditions mentioned below:

1 There is **no security interest** in its assets subsisting or in force at the time of application

2 **All the shareholders** of the company to become partners of LLP and no one else

Cumulative conditions

Security Interest has not been defined. Practically, Registrar of Companies ('ROC') insists that the assets should be free of any encumbrance / Charge

Q – After conversion of company into LLP, can LLP create charge on assets?

Key requirements for conversion of a Company into LLP


Consent from all shareholders



No security interest on assets



Statement of Assets and Liabilities certified by Auditor not older than 30 days prior to filing conversion application



All due returns of ROC, Income Tax and other statutory authorities shall be filed



NOC from regulatory authority, if necessary

Steps for conversion of a Company into LLP

Step 1 - Deciding Partners and Designated Partners



Step 2: Obtaining DPIN and Digital Signature (*Obtaining DPIN for a DP in LLP is restricted by MCA till 31 March 2018*)



Step 3: Checking availability of desired name and reserving it with ROC



Step 4: Filing of incorporation and conversion documents



Step 5: Obtaining certificate of registration



Step 6: Drafting of LLP Agreement



Step 7: Filing LLP Agreement with Registrar of Companies

Documents required to be filed for conversion into LLP

Attachments to forms

Form 1 (Name availability application)

- Board Resolution of Company for Name availability application
- Board Resolution of Shareholders in case of Body Corporate
- Copy of trademark trade mark registration

Form 2 & 18 (Incorporation and conversion application)

- Board Resolution of Shareholders in case of Body Corporate
- Proof of registered office Address
- Subscriber Sheet
- Consent letter of shareholders
- Detail of LLPs and Companies in which Partner/ DP is a director/ partner
- Undertakings of shareholders
- List of secured creditor along with their consent
- Approval from any regulatory body / authority, if applicable
- Statement of Assets and Liabilities certified as true and correct by Auditor
- Ack. of latest ITR filed
- Statement of Shareholders
- Undertaking for not carrying on NBFC activities

Form 3 (LLP Agreement registration)

- LLP Agreement

In case of companies having FDI, then intimation of conversion to be give to AD Bank / RBI post conversion

Effects on conversion of Company into LLP



Conversion of Partnership firm into LLP

Key relevant provisions

- Chapter X – Section 55 of LLP Act, 2008
- Second Schedule to the LLP Act, 2008
- Chapter X – Rule 32 and 33 of LLP Rules, 2009

Eligibility criteria

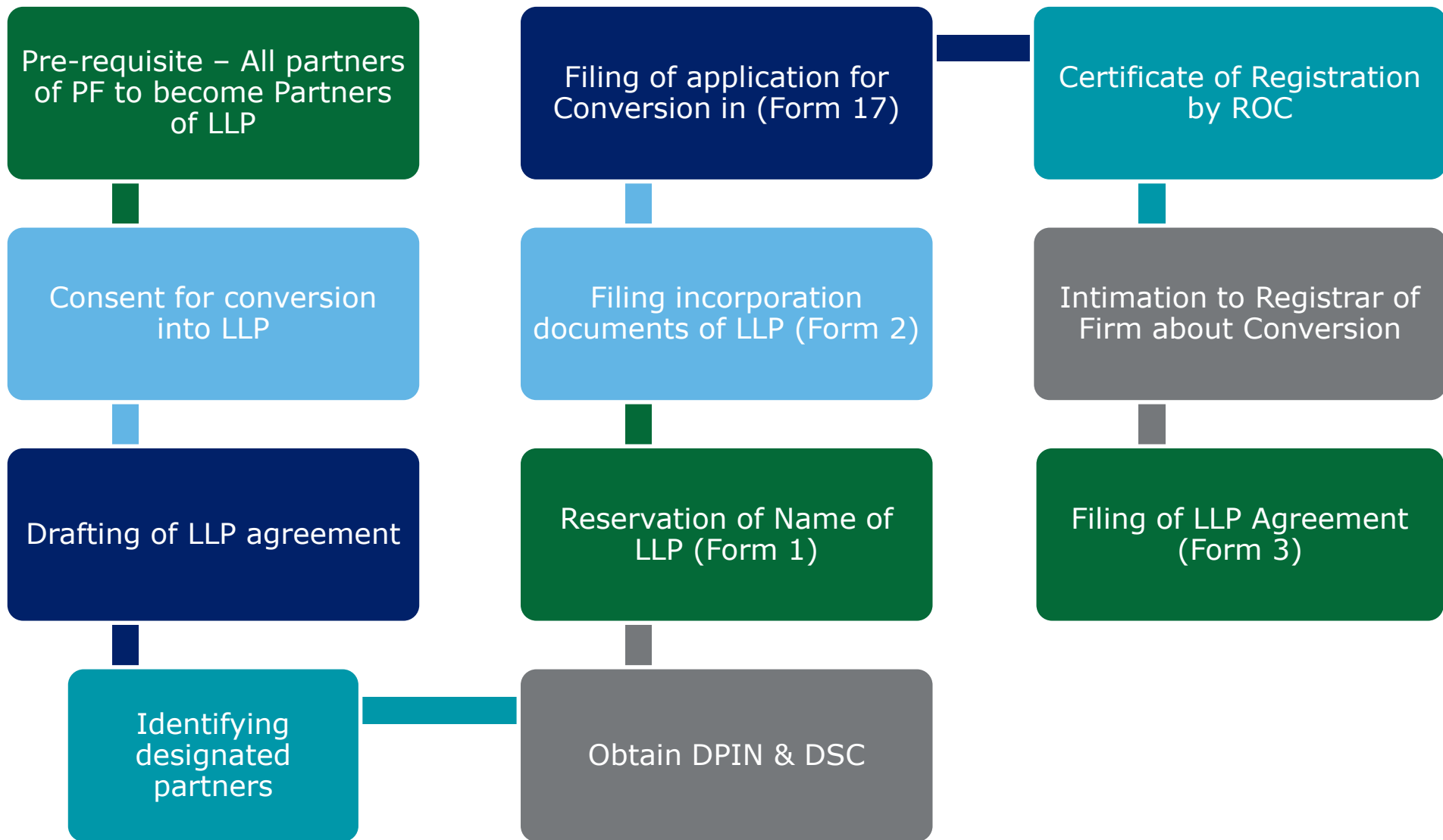
Eligibility criteria under LLP Act for conversion partnership firm into LLP

LLP Act permits conversion of a partnership firm (as per the Section 55 & Second Schedule of the LLP Act) into LLP subject to conditions mentioned below:

- 1 Partnership should be **registered** under the Indian Partnership Act 1932
- 2 There is **no security interest** in its assets subsisting or in force at the time of application
- 3 **All the Partners** of the partnership firm to become partners of LLP and no one else

**Cumulative
conditions**

Process for conversion of Partnership Firm into LLP



Documents required to be filed for conversion into LLP

Attachments to forms

Form 1 (Name availability application)

- Consent of requisite partners for Name availability
- Board Resolution of partners in case of Body Corporate
- Copy of trademark trade mark registration

Form 2 & 17 (Incorporation and conversion application)

- Consent letter of partners
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- Subscriber Sheet
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Form 3 (LLP Agreement registration)

- LLP Agreement

Effects on conversion of partnership firm into LLP



Points for consideration

Points for consideration



Can a Partnership Firm / company investing in Stock Market be converted into LLP?

Can monetary value of contribution of any of the Partner be NIL?

Can Partnership Firm be converted to LLP with name which resembles name of an existing company already registered?

Whether Partnership Firm registered in one State can be converted to LLP having registered office in any other State?

What is the Stamp duty payable on Conversion of Partnership Firm into LLP? Is any stamp duty payable on immovable property held by Partnership Firm on conversion?

Can unregistered partnership firm be converted into LLP?

MCA clarification

MCA Clarification

- Provision of section 55 and section 58 of the LLP Act, 2008 read with Second Schedule of LLP Act, *inter-alia*, provide for requirements in respect of conversion of single partnership firm into a single LLP. The LLP Act, 2008 does not provide for conversion of two or more firms into a single LLP (General Circular No. 09/2013 dated 30 April 2013)
- Provision of section 58(4) of the LLP Act 2008 provide that on conversion of a firm into an LLP, as per the provisions of the said Act all property, assets, interest, rights, privileges, liabilities, obligations relating to the firm shall be transferred to and vest in the LLP without further assurance, act or deed. Accordingly, if a CA Audit firm, being an auditor in a company gets converted into LLP after complying with the relevant provisions of the LLP Act 2008, then, such an LLP in accordance with the provisions of section 58(4)(b) of the LLP Act 2008, would deemed to be the auditor of the said company. Reference is also drawn to the notification number SO 1152(E) dated 23rd May 2011 and General circular 30A dated 26th May 2011. The relevant appointee company may take note of such change in status of the auditor through a resolution of Board (General Circular No. 09/2013 dated 30 April 2013)
- Trustee company of REIT or InvIT can become partner in LLP without addition of the statement that it is a trustee (General Circular no. 37/2014 dated 14 October 2014)
- Hindu Undivided Family (HUF) or Karta cannot become Partner or Designated Partner in LLP (General Circular No. 2/2016 dated 15 January 2016)

Key Comparison between LLP, Partnership Firm and company

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Particulars	LLP	Partnership Firm	Company
Legislation	Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932	Companies Act, 2013
Registration	Mandatory	Optional	Mandatory
Name	Name to end with "LLP" or "limited liability partnership"	Shall mention "(Registered)" immediately after its name (in case of registered firm)	Name to end with "Private Limited" or "Limited"
Statutory fees for formation	<p><u>ROC fees:</u> Maximum ₹ 5,000/- (Form 2). Other forms (not material)</p> <p><u>Stamp duty (in Maharashtra):</u> No contribution or cash contribution < ₹ 50,000 - ₹ 500 Cash Contribution > ₹50, 000 - ₹500 + 1% subject to a maximum of ₹ 15,000 <u>Contribution by way of property (not cash)</u> - Same as on a conveyance on the market value of property</p>	<p><u>ROF fees:</u> Nominal</p> <p><u>Stamp duty:</u> Same as LLP Agreement</p>	<p><u>Stamp duty (in Maharashtra):</u> 0.2% of capital subject to maximum of ₹ 50 lacs</p> <p><u>ROC fees:</u> Starts with 4% and it reduces as the capital increases – for authorised share capital above ₹ 1 crore, the fee is 0.75% (Maximum ₹ 25 crore)</p>

Key Comparison between LLP, Partnership Firm and company

Particulars	LLP	Partnership Firm	Company
Number of Partners / Shareholders	Minimum - 2 Maximum - No upper limit prescribed.	Minimum - 2 Maximum - Restriction on the number of partners in any firm is 50 [Rule 10 of Companies (Miscellaneous) Rules, 2014]	Minimum - 2 for private company - 7 for public company
Legal Entity	Is a legal entity, separate from its partners and have perpetual succession	Not a separate legal entity and no perpetual succession. The term will be as per duration mentioned in the partnership agreement or at Will	Separate legal entity having perpetual succession
Liability of partners / shareholders	Limited to their agreed contribution in the LLP	Unlimited liability of partners	Limited to the extent of the shareholding in the company
Formation by non-resident	Formation of LLP is permitted under automatic route only for those sectors where 100% FDI is permitted under automatic route and there is no FDI-linked performance related conditions	<ul style="list-style-type: none"> • NRI (on non-repatriation basis) – considered as domestic investment • Non-resident (other than NRI on non-repatriation) and NRI on repatriation basis – Approval of RBI who will consult Government 	Formation of a Company by Non-residents (through FDI) is permitted

Key Comparison between LLP, Partnership Firm and company

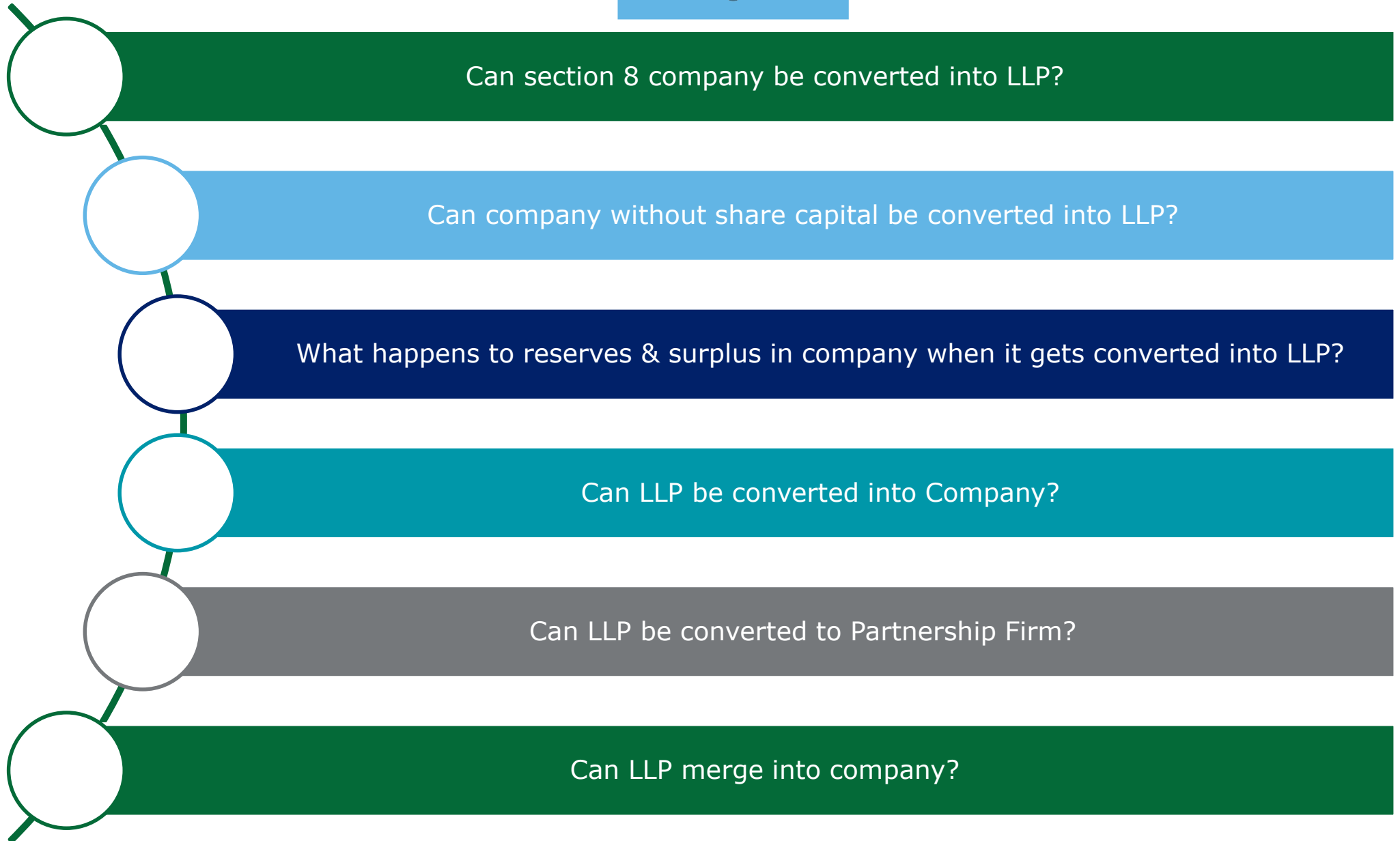
Particulars	LLP	Partnership Firm	Company
Designated partner / directors/ managing director	2 designated partners, of which 1 shall be a "resident in India"	No such requirement	Minimum - 2 for private Company - 3 for public company
Identification Number of director/ partner	DPIN for designated partner	No such requirement	DIN for directors
Audit (other than under Income tax)	Mandatory for LLP with turnover in F.Y. > ₹ 40 lacs; or contribution ₹25 lacs	No specific provisions made Tax audit compulsory under Income Tax Act, 1961 based on prescribed turnover/ income	Mandatory for all the companies
Annual Filing	Annual Statement of accounts and Solvency & Annual Return needs to be filed every year	No Filing of accounts is prescribed	Filing of financial statement and annual return every year
CSR	Not mandatory	Not mandatory	2% of average net profits of past 3 years

Key Comparison between LLP, Partnership Firm and company

Particulars	LLP	Partnership Firm	Company
Books of accounts to be preserved for	Minimum 8 years from the date on which they are made	Books of accounts to be preserved for	Minimum 8 years from the date on which they are made
Dissolution	Voluntary winding-up or by order of NCLT	Dissolution	Voluntary winding-up, creditors winding-up or by order of NCLT
Regulatory Authority	ROC	Registrar of Firm	ROC
Eligible to raise ECB	Not permitted	Not permitted	Permitted subject to ECB guidelines
Downstream investment	LLP with FDI is permitted to make downstream investment in an Indian Company or LLP under automatic route only in sectors where 100% FDI is permitted under automatic route and there is no FDI-linked performance conditions	Not specified	Permitted in accordance with relevant sectoral conditions on entry route, conditionality and caps
Dividend distribution tax on profits	Nil	Nil	20.36%
Repatriation of funds	Easy	Easy	Moderate

Brainstorming

Brainstorming



Glossary

Abbreviation	Meaning
DIN	Directors Identification Number
DP	Designated Partner
DPIN	Designated Partner Identification Number
DSC	Digital Signature Certificate
LLP	Limited Liability Partnership
LLP Act	Limited Liability Partnership Act 2008
MCA	Ministry of Corporate Affairs
NCLT	National Company Law Tribunal
ROC	Registrar of Companies
ROF	Registrar of Firms



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