

# Conversion of Partnership Firm into LLP



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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 7<sup>th</sup> 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

# Key Features 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. As per General Circular no. 37/2014 Trustee company of REIT or InvIT can become partner in LLP. As per General Circular No. 2/2016 dated 15 January, 2016, Hindu Undivided Family (HUF) or its Karta cannot become Partner or Designated 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

# **Key relevant provisions**

## **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



# **Key Comparison of LLP and Partnership Firm**

# Key Comparison of LLP and Partnership Firm

Particulars	LLP	Partnership Firm
Legislation	Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932
Registration	Mandatory	Optional
Name	Name to end with "LLP" or "limited liability partnership"	Shall mention "(Registered)" immediately after its name (in case of registered firm)
Cost of formation	<p><u>ROC fees:</u> Maximum ₹ 5,000/- (Form 2). Other forms (not material)</p> <p><u>Stamp duty:</u> No contribution or cash contribution &lt; ₹ 50,000 - ₹ 500 Cash Contribution &gt; ₹ 50,000 - ₹ 500 + 1% subject to a maximum of ₹ 15,000</p> <p><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>

# Key Comparison of LLP and Partnership Firm

Particulars	LLP	Partnership Firm
Number of Partners	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]
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
Liability	Limited to their agreed contribution in the LLP	Unlimited liability of partners
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  No clarity on conversion of company into LLP	Requires FIPB approval

# Key Comparison of LLP and Partnership Firm

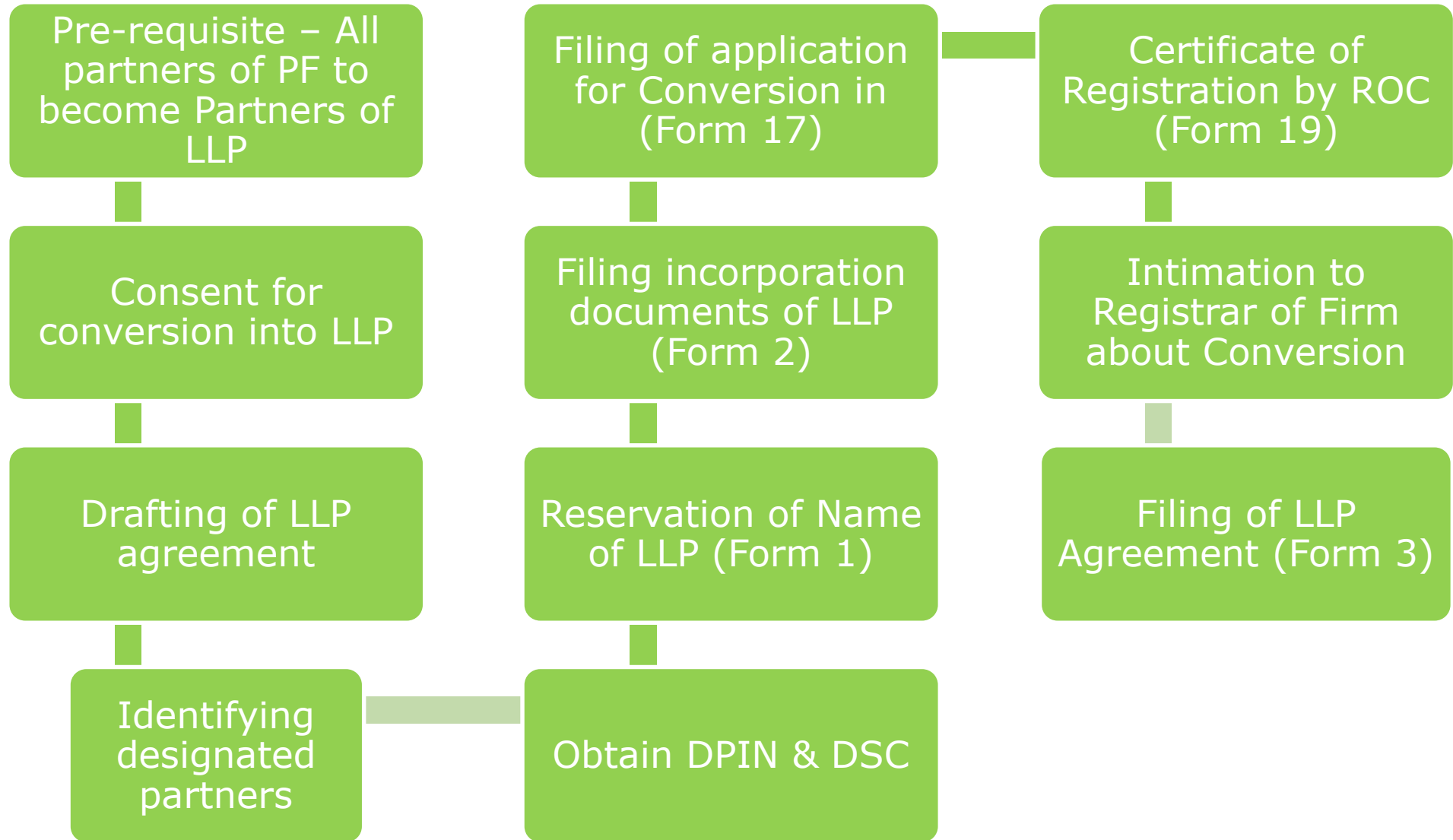
Particulars	LLP	Partnership Firm
Designated partner / directors/ managing director	2 designated partners, of which 1 shall be a "resident in India"	No such requirement
Identification Number of director/ partner	DPIN for designated partner	No such requirement
Audit (other than under Income tax)	Mandatory 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
Annual Filing	Annual Statement of accounts and Solvency & Annual Return needs to be filed every year	No Filing of accounts is prescribed
Books of accounts to be preserved for	Minimum 8 years from the date on which they are made	Not prescribed
Dissolution	Voluntary winding-up or by order of High Court	Can be dissolved by agreement or on happening of contingent event or at will

# Key Comparison of LLP and Partnership Firm

Particulars	LLP	Partnership Firm
Regulatory Authority	ROC, NCLT, NCLAT	ROF
Eligible to raise ECB	Not permitted	Not permitted
Downstream investment	LLP with FDI is permitted to make downstream investment under automatic route only in those sectors where 100% FDI is permitted under automatic route and there is no FDI-linked performance related conditions	Not specified

# Broad Process

# Process for conversion of Partnership Firm into LLP



# Steps for Conversion



# Steps for Conversion

## **Step 1: Eligibility for Conversion**

### **Partnership Firm into LLP**

- All the partners of the partnership firm to become partners of the LLP

## **Step 2: Consent for conversion into LLP**

- Obtain consent of all the partners for the proposed conversion, no-objection for use of key words, contribution in LLP, authorize any partner to apply on its behalf

## **Step 3: Drafting of LLP agreement**

- Unless specific agreement is drawn up, provisions of Schedule I relating to mutual rights and duties of partners and LLP & its partners will apply

# Steps for Conversion

## Step 4: Identifying DPs

- Minimum 2 DPs required to be appointed out of which 1 should be resident in India and have stayed in India for a period of not less than 182 days during immediately preceding 1 year
- If DPs not identified, all partners are deemed to DPs
- Only Individual to be a DP. If Partner is body corporate, then body corporate need to appoint a nominee (individual) to act as DP
- Individual to give prior consent to act as DP of proposed LLP (can be part of Form 2)
- DP's role in a LLP:
  - Responsible for compliance with the provisions of LLP Act
  - Liable to all penalties under the LLP Act

# Steps for Conversion

## Step 5: Obtaining DSC & DPIN

### **DSC**

- Obtain DSC from a certifying agency for each DP

### **DIR 3**

DIR 3 to be submitted online for approval along with following certified / attested document –

- Proof of identity along with date of birth and father's name
- Proof of residential address
- Passport size photograph (self attested pasted on plain paper)
- Passport for foreign national (compulsory)
- If identity proof does not contain father's name, additional attested proof to be attached

**Proof in language other than Hindi or English to be translated and notarised / consularise**

# Steps for Conversion

## **Step 6: Application for Reservation of Name (Form 1)**

- Name applied to be identical to firm's name
- Information to be provided:
  - Details of 2 identified DPs and partners
  - State and place of proposed LLP
  - Details of State in which firm is registered
  - Proposed business activity of LLP
  - Proposed monetary value of contribution of each partner
  - Proposed names (upto 6) along with significance of key or coined word(s) if any in the name
  - Whether name is based on registered trade mark
  - Partner's / Board of Director's consent for conversion to be attached to Form 1
- Name approved by ROC is valid for a period of 3 months from the date of approval

# Steps for Conversion

## **Step 7: File Incorporation documents (Form 2)**

- Following information needs to be provided
  - Address of the registered office
  - Proposed business activity
  - Division of industrial activity based on the proposed business activity as per NIC 2004
  - Form of contribution
  - Monetary value of contribution of the LLP
  - Details of all partners and DPs in the format prescribed
- Following documents needs to be attached
  - For a nominee of body corporate – a board resolution for nominating such individual as partner / DP of LLP
  - In case of an individual – authorization in the form of consent

# Steps for Conversion

## **Step 7: File Incorporation documents (Form 2)**

- Proof of address of LLP
- Subscriber sheet including consent
- Details of DPs in prescribed format
- In principle approval of regulatory authority, if required
- Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner
- Declaration by practicing CA/ CS/ CWA / Advocate

# Steps for Conversion

## Step 8: Application for Conversion of firm into LLP – (Form 17)

Information / attachment to be provided / filed

Particulars	Comments
Consent	All partners & Creditors
Incorporation documents	All documents filed in Form 2
Statement of Assets & Liabilities made upto a date not preceding 30 days of the date of filing the application	Auditors certificate
Income Tax return filing upto date	Yes (or) No (acknowledgment of latest return to be filed)
Pending proceeding in any Court / Tribunal / or authority	Yes (or) No
Any conviction, ruling, order, judgment of any Court / Tribunal / or authority subsisting	Yes (or) No
Clearance if any, required from any other body / authority	Yes (or) No
Clearance, approval or permission for conversion from any other body/authority	Yes (or) No
Are there any secured creditors	Yes (or) No

# Steps for Conversion

## Step 9: Certification of Registration

- Registrar to grant certificate of registration (Form 19)
- Upon conversion of partnership firm –
  - All partners shall remain personally liable (jointly and severally with the LLP) for liabilities / obligations of the firm prior to conversion as LLP
- All tangible (movable or immovable) and / or intangible property vested in the firm, all assets, interest, rights, privileges, liabilities, obligations relating to the firm shall be transferred to and vest in the LLP
- If property registered with any authority, such authority to be notified about conversion



# Steps for Conversion

- Dissolution of Firm
  - Firm shall be dissolved and if registered under Partnership Act, 1932, shall be removed from the records maintained under the said Act
- All pending proceedings by or against the firm shall be completed, continued and enforced by the LLP
- Any conviction, ruling, order or judgment of any court / tribunal or other authority shall be enforced by or against the LLP
- All existing agreements / contracts to continue as if LLP was party to such agreements / contracts

# Steps for Conversion

- LLP shall for a period of 12 months post conversion, mention following in every official correspondence:
  - Statement that it was, as from the date of registration, converted from a firm to a LLP and
  - Name and registration number (if applicable) of the firm from which it was converted to a LLP

## **Step 10: For Conversion of Firm into LLP**

- LLP to inform about such conversion to Registrar of Firms within 15 days of incorporation in Form 14

## **Step 11: LLP to inform the Registrar about the LLP agreement in Form 3**

- Following key information to be provided:

# Steps for Conversion

- Details of partners such as Name, designation, nature and specification of contribution, monetary value of contribution, % of profit sharing, etc.
- Mutual rights and duties of partners
- Restrictions, if any, on partner's authority
- Management and administration of LLP
  - Acts, matters or things that can be done with consent of all partners or requisite number / percentage of partners
  - Procedure for calling and holding periodic meetings
- Details of indemnity clause
- Details in relation to admission, cessation, retirement, expulsion, resignation of partners
- Resolution of disputes between partners and partners and LLP

# Steps for Conversion

- Information relating to
  - Duration of LLP
  - Voluntary winding-up

**Clarification on conversion of  
firm into Limited Liability  
Partnership, General Circular  
No 09/2013**

## **Clarification on conversion of firm into Limited Liability Partnership, General Circular No 09/2013**

- Provision of section 55 and section 58 of the LLP Act, 2008 read with second schedule thereto, 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
- 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 23<sup>rd</sup> May 2011 and General circular 30A dated 26<sup>th</sup> May 2011. The relevant appointee company may take note of such change in status of the auditor through a resolution of Board

**Food for thought...**

## Food for thought...



- Can a Partnership Firm investing in Stock Market be converted into LLP?
- Can monetary value of contribution of one 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?
- Can LLP be converted into Company?
- Can LLP be converted to Partnership Firm?



## Food for thought...



- 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 a LLP carry out Finance/ lending / NBFC Business?
- can unregistered partnership firm be converted into LLP?
- Can section 8 company be converted into LLP?
- Can company without share capital be converted into LLP?
- Can LLP register the charge for secured loan?
- Can Trust / HUF / Partnership Firm become Partner of LLP?

# Glossary

<b>Abbreviation</b>	<b>Meaning</b>
<b>DP</b>	Designated Partner
<b>DPIN</b>	Designated Partner Identification Number
<b>DSC</b>	Digital Signature Certificate
<b>LLP</b>	Limited Liability Partnership
<b>MCA</b>	Ministry of Corporate Affairs
<b>NCLT</b>	National Company Law Tribunal
<b>NCLAT</b>	National Company Law Appellate Tribunal
<b>ROC</b>	Registrar of Companies
<b>ROF</b>	Registrar of Firms



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