

Formation & Conversion of LLP

Coverage

- ❑ Overview of LLP
- ❑ Comparison with existing options
- ❑ Formation of LLP
- ❑ FDI in LLP
- ❑ Conversion of Company into LLP
- ❑ Conversion of Firm into LLP
- ❑ Conversion of LLP into Company



Overview of LLP

Need For LLP's in India

**Limitations of
Partnership
Firm**



Maximum number of members to 20 (10 for banking industry)

Unlimited liability of the partners

No perpetual succession

Overview of LLP

Need For LLP's in India



**Limitations of
a Company**

Public Disclosures & Filings

Need for Professional &
Independent Directors

Extensive Secretarial
Compliance with Company
Law

Overview of LLP

Who Can Prefer LLP ?

Best for Joint
Venture
entities

All partnerships
/AOP with long
term objective

Professional
Firms
[CA/CS/CWA]

Service sector/
Real Estate

Overview of LLP

Who Can Not go for LLP ?

Non profit making entities
[NGO]



Finance/ Investment entities
[Till RBI recognizes LLP]

Overview of LLP

Statutory Recognition

LLP are governed by Limited Liability Partnership Act 2008

LLP is a body corporate and a Entity separate from its partners having perpetual succession

Any change in the partners of a LLP shall not affect the existing right or liabilities of the LLP

Overview of LLP

1

Salient Features of LLP

Liability of Partner is limited to his agreed contribution

Every Partner, for the purpose of LLP, is the agent of LLP & not of other Partner

Perpetual Succession and Continuity & No limit on Number of Partners

No Partner is liable on account of the independent or un-authorized acts of other partners

Initiate Legal proceeding and own property on its own name

Rights of Partners in Profit & Losses is transferable

2

Salient Features of LLP (Cont..)

There is no restriction on entering into any contracts with related parties

No mandatory meetings & their compliances, except provided in LLP Agreement

No restrictions on withdrawal from Capital Account

Rights & Duties of partners governed by the LLP Agreement subject to LLP Act

Simplified Compliances

No restrictions on salaries, compensations, distribution of profits to partners

Comparison with existing options

Key Parameters	Partnership	LLP	Company
Compliance Level	Low	Moderate	High
Taxation	Lower	Lower	Higher
Dividend Distribution Tax	Not Applicable	Not Applicable	Applicable
FDI/ODI/ECB	Eligible	Eligible for FDI with FIPB approval	Eligible
NBFC	Not Eligible	Not Eligible	Eligible
From Bankers point of view	Unfavourable	Less Favourable	Favourable
Information at Public Domain	NIL	Lower	Higher
Related Party Transactions	No restrictions	No restrictions	Lot of restrictions

Formation of LLP

Key points to be considered under the LLP Act, 2008

Partners

- Individual or a body corporate can be a partner in LLP
- Minimum 2 partners
- No limit on maximum partners

Designated Partners

- At least 2 designated partners who are individuals and at least one of them shall be resident in India
- If one or more partners of LLPs are bodies corporate, then nominees of such bodies corporate can act as DP.

Key points to be considered under the LLP Act, 2008

Partners Contribution

- Contribution may consist of tangible, movable or immovable or intangible property or other benefit to the LLP, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed
- The obligation to contribute should be as per the LLP agreement.

LLP Agreement

- Mutual rights and duties of the partners
- Profit sharing Ratio
- Capital Contribution
- Key terms regarding the operation of LLP

Documents required to be filed for LLP Formation

Form 1- Application for reservation of Name

- Details of Business activity to be carried out by LLP
- Proposed Names
- BR of Proposed Partner in case of Body Corporate
- Approval from sectorial regulator, if applicable

LLP Form No. 1- Key Points

- Name of the applicant- whether nominee of body corporate or individual. Nominee should also be individual. It can be anyone.
- Description of proposed business activity (Prefilled in LLP Form No. 2 subsequently)
- Proposed monetary value of partner's contribution.
- Name Justification, whether name based on regd. Trade Mark etc.
- In case of body corporate is a partner attach copy of signed resolution.
- Making Investment in LLP(check compliance of 186 in case of Company)- specify amount and %.
- Appointing nominee for it.
- NOC for the name.

Documents required to be filed for LLP Formation

Form 2- Incorporation Documents

- Consent Letters of the Partners and Designated Partners to act as such
- Proof of registered office address
- Subscriber Sheet
- Declaration from Partners
- BR of proposed Partner in case of Body Corporate

LLP Form No. 2- Key Points

- Address of RO
- Description of proposed business activity (Prefilled in LLP Form No. 2 subsequently)
- NIC 2004 List to be used
- Details of Partners & their Designated Partners
- Occupation, form of contributions- manually filled.
- In case of body corporate , a partner attach copy of signed resolution

LLP Form No. 2- Key Points

- ❑ Mandatory Attachments- Proof of RO, Subscriber's sheet
- ❑ Where name includes specified sectors such as banking, insurance, VC, MF, stock exchange, Advocate, CA, CS, CWA, etc. a copy of the in-principle approval of the regulatory authority or council is required to be attached.
- ❑ Addendum required in case no. of partners exceeds 200. (LLP Form No. 4 - details of the partners as an addendum)
- ❑ Certification by professional stating all requirements of Act & rules in respect of incorporation complied.

Documents required to be filed for LLP Formation

Form 3- LLP Agreement Registration

- LLP Agreement
- Partners Resolution


In case of FDI in LLP, Form FDI-LLP(I) is required to be filed with AD Bank along with FIRC within 30 days of date of receipt of Capital Contribution.

LLP Form No. 3- Key Points

- Date of Agreement to be filed manually from LLP Agreement.
- Date of ratification, if agreement is done prior to incorporation (also attach relevant confirmation or declaration about ratification).
- Business objectives & obligation to contribute gets pre-filled from LLP Form No. 2
- Mutual rights & duties of partners, durability of LLP, admission, cessation of partners, dispute resolution etc.
- Mandatory attachments : **LLP Agreement**

Routine Compliances

LLP shall maintain books of accounts on cash or accrual basis and according to double entry system of accounting.(Rule 24(2))




Audit of books of accounts of the LLP is not mandatory if the turnover does not exceed Rs 40 lacs in any FY or contribution does not exceed Rs 25 Lakhs (Rule 24(8))



An LLP has to close its financial year on 31st March every year.



All the Books of accounts, other documents and annual forms shall be preserved at its registered office for 8 years from the date on which they are made



Filing with ROC

□ *Filing of Annual Accounts*

- Every LLP is required to maintain the Books of Accounts as per Double Entry System. It has to prepare a Statement of Solvency every year ending on 31st March.
- If there are no transactions, then venture formation and allied expenses are to be booked.
- These expenses can be part of LLP Losses and these can be carried forward and set off in subsequent years.
- LLP are required to file such accounts in **Form 8 to** the Registrar. This form has to be filed within 30 days from the end of 6 months of such financial year.
- These accounts are to be filed **on or before 30th October** every year.

Filing with ROC (Cont.)

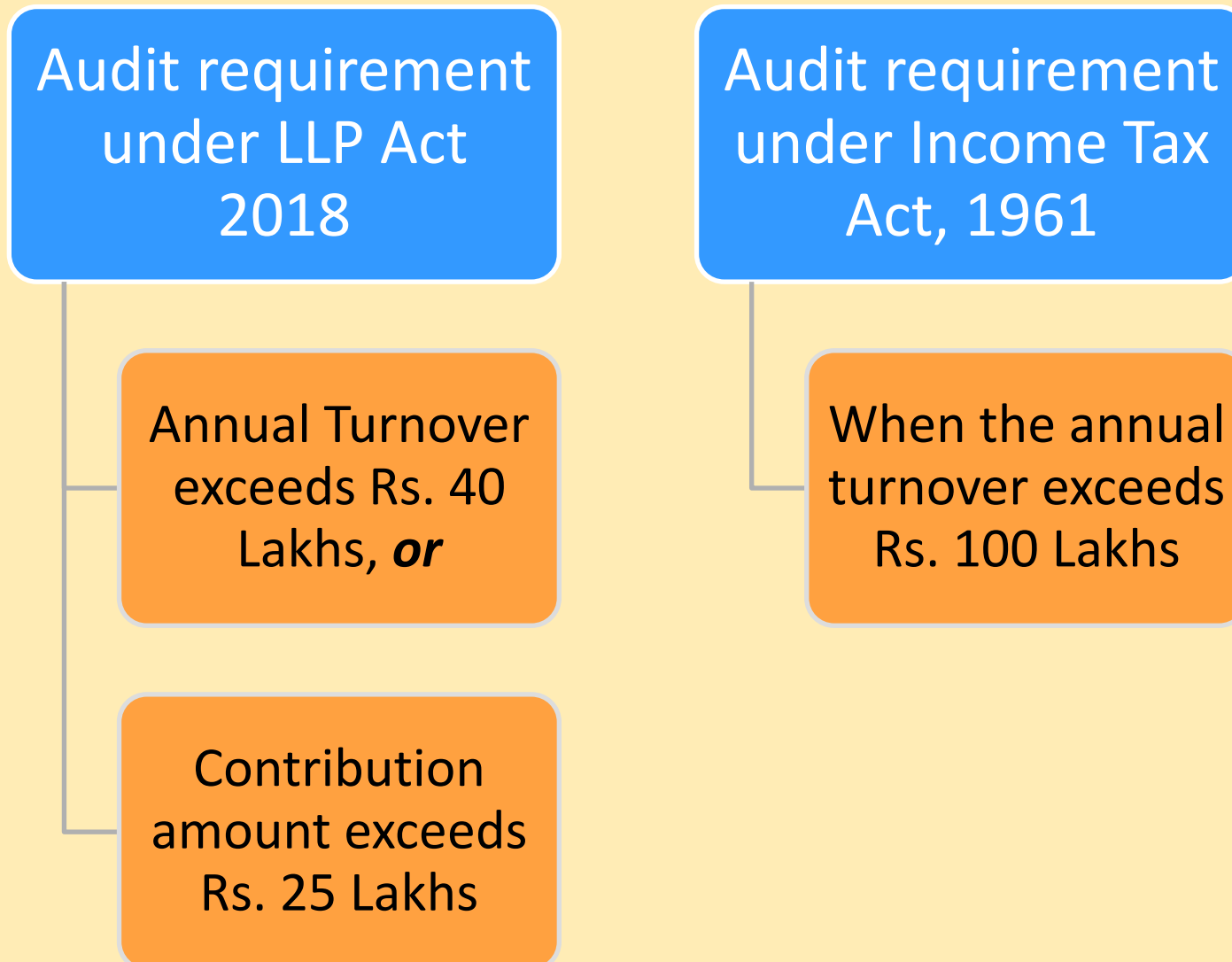
❑ *Filing of Annual Return*

- Every LLP is required to file Annual Return in **Form 11** to the ROC. It has to be filed within 60 days from the closure of financial year. An LLP has to close its financial year on 31st March every year.
- So the annual return has to be filed **on or before 30th May** every year.

Note: Form 11 or Annual Return is applicable on those LLPs which are registered until the 30th September 2017. If your LLP is registered on or after the 1st October 2017 then you do not require to file the Annual Return in the year 2018

Filing of Income Tax Return

- Every LLP is required to close its financial year on 31st March every year as per the Income Tax Act and is also required to file their returns with the Income Tax Department.



Penalty

- ❑ The penalty for non-filing of these forms with the ROC is Rs. 100 per day per form.
- ❑ It goes on increasing every day during the period of non-compliance. This means there is no upper limit.

Actions Taken by Registrar for Non-Filing

- ❑ Apart from the penalties, the Registrar has right to ***strike off the LLPs*** who are not filing their Financial Statements (Form 8) and Annual Returns (Form 11) for a period of two immediate financial years.
- ❑ It is advisable for all the Designated Partners to complete their Annual Filings in respect of LLPs to avoid striking off the name of LLPs and prevent from disqualification of DPIN(DIN)

How to Form LLP

Step 1: Deciding the Partners & Designated Partners

- ❑ A LLP can be incorporated with a minimum of at least two partners who can be Individuals or Body Corporate through their nominees.
- ❑ Further for incorporating an LLP, of the total number no. of partners, at least two shall be Designated Partners, of which at least one must be an Indian Resident.
- ❑ Mandatory prior consent is required from partner willing to act as Designated Partner.

Parameters for Deciding the Partners & Designated Partners

- At least Two Partners; Individuals or Body Corporate through individual nominees.
- Minimum of Two Individuals as Designated Partners, of total no. of Partners.
- At least One Designated Partner to be Resident.

A person 'Resident in India' means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one year.

'Designated Partner' means a partner who is designated as such in the incorporation documents or who become a designated partner by and in accordance with the Limited Liability Partnership Agreement.

Designated partner is liable for complying with all the provisions of LLP Act

Step 2: Obtaining DIN No. and Digital Signature

- ❑ **Director Identification Number:** Every Designated Partner is required to obtain a DIN from the Central Government. If a person already has a DIN, the same can be used for forming LLP. Please also check whether the DIN reflect residential or non-residential status otherwise **file DIR-6 for correction.**
- ❑ **Digital Signature Certificate:** All the e-forms relating to incorporation and routine filing after incorporation is done electronically and hence DSC is mandatory.

Step 3: Decide Registered Office Address

- ❑ Registered address proof in form of utility bill is required and NOC if owned by Director or any other Company or third party if taken on lease once the name is approved.

Step 4: Decide Contribution

- ❑ Partners among themselves has to agree on initial fixed capital contribution which will required to be mentioned in LLP Agreement and incorporation forms. P&L ratio is not required to be identical to capital contribution, **however in case of conversion the capital and P&L ratio has to be identical.**

In case of contribution is tangible assets or property or any benefits then valuation is required as per Rule 23 of LLP Rules, 2009.

Step 5: Main Objects of the LLP

- Thoroughly draft the main objects and incidental objects and get it approved from Promoters of LLP based on which activity code is to be selected while incorporation.

Step 6: Checking the Name Availability

- Decide the name for the proposed LLP to be incorporated, anyone intending to incorporate an LLP has to evaluate his proposed name under the prescribed parameters and make an application in e- Form 1 of Rule 18(5) of the Limited Liability Partnership Act 2008, for reservation of the desired name.
- The name of the limited liability partnership shall not be similar or identical with Company or LLP already registered in India and it should not contain words prohibited under the 'Emblems and Names (Prevention of improper use) Act, 1950' or which are also not 'Undesirable' in the opinion of Central Government or which satisfies the conditions prescribed under rule 18(2)




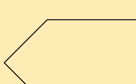
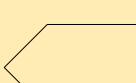



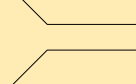
Step 7: Board Resolution from Body Corporate/Company, if Partner

- In case any Body Corporate is partner, copy of Board resolution authorizing the incorporation of LLP shall be attached.

Step 8 : Drafting of LLP Agreement

- The next pertinent step is drafting of Limited Liability Partnership Agreement governing the mutual rights and duties among the partners and among the LLP and its partners.
- LLP agreement if prepared must be in writing but in the absence of LLP agreement, mutual rights and liabilities of partners shall be determined as provided under Schedule I to the LLP Act. **(ROC asks for written LLP agreement as mandatory attachment in Form 3)**

Contents of LLP Agreement

	<input data-bbox="347 300 436 383" type="radio"/>	Name of LLP
	<input data-bbox="347 406 436 489" type="radio"/>	Name of Partners & Designated Partners
	<input data-bbox="347 513 436 596" type="radio"/>	Proposed Business
	<input data-bbox="347 620 436 703" type="radio"/>	Form of Contribution
	<input data-bbox="347 727 436 810" type="radio"/>	Profit Sharing ratio
	<input data-bbox="347 834 436 917" type="radio"/>	Rights & Duties of Partners
	<input data-bbox="347 941 436 1024" type="radio"/>	Admission, Cessation, expulsion of partners
	<input data-bbox="347 1048 436 1131" type="radio"/>	Management and Administration
	<input data-bbox="347 1155 436 1238" type="radio"/>	Veto powers
	<input data-bbox="347 1262 436 1345" type="radio"/>	Dispute Resolution
	<input data-bbox="347 1369 436 1452" type="radio"/>	Dissolution

Kindly remember following provisions of First Schedule while drafting LLP Agreement

- All partners are entitled to share equally in the capital, profits and losses
- Every partner may take part in the management of the LLP
- No partner is entitled to remuneration
- Each partner shall have one vote in the matters related to LLP and resolution shall be passed by majority
- Decisions concerning LLP must be recorded in the minutes within 30 days of taking decisions
- If a partner is carrying on competing business without consent of the LLP, he must account for any pay for the profits of such business to the LLP

Stamp Duty on LLP Agreement

Maharashtra Stamp (Amendment) Act, 2015 has included LLP under Article 47 and stamp duty on Agreement is minimum Rs. 500/- if contribution does not exceed Rs. 50,000 and if more than Rs. 50,000 than one percent of contribution subject to maximum of Rs. 15,000. ***(if contribution is property then same as conveyance)***

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.

An LLP, having FDI, 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.

FDI in LLP is subject to the compliance of the conditions of LLP Act

FDI in LLP (Cont.)

- ❑ The term “**FDI linked Performance Conditions**” is not defined under FDI Policy / FEMA. However, FDI linked performance related conditions are provided for sectors like - 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.
- ❑ FDI in LLP is not permitted in prohibited sectors viz. Lottery Business including Government/private lottery, online lotteries, Gambling and Betting including casinos etc., Chit funds, Nidhi company, Agricultural/plantation activity and print media, Trading in Transferable Development Rights (TDRs), Real Estate Business or Construction of Farm Houses, Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes, etc.

Conversion of Company into LLP

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 The partners of the LLP to which it converts comprise of **all the shareholders** of the company 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

Which companies cannot convert into LLP?

Companies in the business of banking, finance and insurance

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

Companies having secured loan / security interest on assets

Companies having FDI where Performance linked conditions are applicable

Companies having ECBs

Companies having FDI under approval route

Key Requirements for Conversion into LLP

Consent from all
shareholders

No security interest
on assets

Audited 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

Procedure for Conversion into LLP

Step 1 - Deciding Partners and Designated Partners

- **Step 2: Obtaining DPIN and Digital Signature**



Step 3: Checking the availability of the desired name

- **Step 4: Filing of incorporation and conversion documents**



Step 5: Obtaining certificate of registration

- **Step 6: Drafting of LLP Agreement**

Documents required to be filed for conversion into LLP

Forms / documents required to be filed with ROC for conversion of company into LLP

Attachments to forms

Form 1

(Name availability application)

- BR of Company for Name availability application
- BR of Shareholders in case of Body Corporate

Form 2 & 18

(Incorporation and conversion application)

- Consent Letters of shareholders
- BR of Shareholders in case of Body Corporate
- Audited Statement of Assets and Liabilities along with Auditor's Certificate
- Proof of registered office Address
- Undertakings of shareholders
- Statement of Shareholders
- Subscriber Sheet

Form 3

(LLP Agreement registration)

- LLP Agreement
- Partners Resolution

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

Effects on Conversion into LLP

All tangible , intangible assets , interests, rights, privileges, whole of undertaking gets vested in LLP without further assurance, act or deed

Company shall be deemed to be dissolved & removed from records of the ROC

Pending proceedings may be continued, completed enforced by or against LLP

Conviction ruling, order judgment may be enforced by or against LLP

Existing contracts, agreements, etc. continues and vest in the LLP

Employment contract continuity

Conversion of Firm into LLP

Eligibility criteria

Eligibility criteria under LLP Act for conversion of Firm into LLP

LLP Act permits conversion of a Firm into LLP as per section 55 of the LLP Act. This provision is applicable in the conversion of both a Partnership Firm and a Sole proprietorship Firm into a Limited Liability Partnership.

1 "All the Partners of the Partnership firm will be partner of LLP"

2 "No person except Partners of firm will be partner of LLP"

- ❑ One of the major requirements for the conversion of Partnership into LLP is that the LLP formed from the Partnership have the same Partners as the original Partnership.
- ❑ The LLP formed cannot have new or less Partners than the Partnership firm. Therefore, if any Partners are to be added to the LLP, the Partnership should first be converted into a LLP and then Partners must be added to the newly formed LLP.

Conditions for Conversion

The firm should be registered as Partnership.

Every partner should contribute to the LLP.

There should be consent of all the Partners.

DPIN (Known as DIN) should be acquired for all the designated Partners.

DSC (Digital Signature Certificate) should be acquired for two designated Partners.having ECBs

All the Partners become partner in the LLP, in the same proportion in which their capital accounts stood in the books of the Firm on the date of the conversion.

Key Requirements for Conversion into LLP

Upto date filing of
Income tax returns

Consent of all the
unsecured
creditors for the
proposed
conversion

Minimum 2
Designated
Partners

Atleast 1 of the
designated
partners shall be
an Indian Resident.

There is no concept of share
capital, but there has to be
some sort of contribution
from
each partner.

The Partners and
Designated
Partners can be
same person

Why LLP is better than Partnership ?

No limit to number of partners in a LLP

The liability of the partners is limited to the amount of capital contributed

There is no limit on the minimum amount of capital to be contributed

LLP is a Body Corporate

LLP has a perpetual succession

LLPs enjoy higher creditworthiness compared to Partnerships

Complete flexibility in managing the business

Foreign Direct Investment (FDI) in LLPs allowed

Further CA firms are now allowed to convert themselves into LLP

LLP's can enter into mergers, amalgamation with other LLPs

Procedure for Conversion into LLP

Step 1 - Apply for DIN

- First requirement on conversion is to Obtain DPIN (DIN) for the Partners of Company.

Step 2: APPLY FOR DSC (DIGITAL SIGNATURE CERTIFICATE)

- Getting DSC for Designated Partners for digital authentication of the Incorporation
- documents. You can use only the valid Digital Signatures issued to you. It is illegal to use
- Digital Signatures of anybody other than the one to whom it is issued.

Step 3: APPLY FOR NAME APPROVAL

- File e-Form LLP-1 with ROC.
- **Attachments:** Addition of the word LLP at the end is allowed in the existing name of firm to be converted.

Information required being mention in form LLP-1

- Name of LLP
- State in which the Registered office of the LLP is to be situates
- The address of the registered office of the LLP
- Business to be carried on by the LLP
- Summary of partners/ designated partners (i.e. number of partners, number of designated partners, number of designated partners resident in India)
- Number of individuals as partners and their details

Procedure for Conversion into LLP

Step 4- Approval
from Registrar

- The registrar will approve the name applied for, provided the name is not undesirable in the opinion of CG or that is identical with or that resembles to the name of existing partnership firm or a LLP.

Step
5:Agreement

- Draft the LLP Agreement.

Contents of LLP Agreement

- Name of LLP
- Name of Partners & Designated Partners
- Form of contribution
- Profit Sharing ratio
- Rights & Duties of Partners
- Proposed Business
- Rules for governing the LLP
- It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to field in e-form 3 within 30 days of incorporation but in order to avoid any dispute between the partners as to the terms & conditions of the agreement after the conversion into LLP.

Step 6: Filing of
Form with ROC

Application for conversion in Form 17 is required to be filed by the partners along with the **ATTACHMENTS**.

Step 7: Issue of
Certificate of
Registration

Section 58(1) of the LLP Act provides that the Registrar, on satisfying that a firm has complied with the provision of the Second Schedule shall subject to the provisions of the LLP Act and the rules made there under, register the documents submitted under such schedule and issue a certificate of registration.

Sub-rule (1) of rule 32 of the LLP Rules provides that the Registrar shall on conversion of a firm into a LLP, issue a certificate of registration under his seal in Form- 19.

Step 8: Filing of
e-Form 3

This form provides information in respect to the LLP Agreement entered into between the partners.

ATTACHMENT: LLP Agreement

Step 9: Intimate
the Registrar of the
Firms

As per paragraph 5 of the Second Schedule, the LLP shall, within 15 (fifteen) days of the date of registration, inform the Concerned Registrar of Firms with which it was registered under the provisions of the Indian Partnership Act, 1932, about the conversion and of the particulars of the LLP in Form – 14 along with following attachments:

- Copy of Certificate of Incorporation of LLP.
- Copy of Incorporation documents submitted in form-2

Effects of Conversion into LLP

Once all the above steps have been complied with, the Partnership Firm shall be converted into Limited Liability Partnership (LLP) and shall follow rules & regulations as applicable to LLPs.

Section 58(2) of the LLP Act provides that upon such conversion, the partners of the firm, the LLP to which such firm has converted, and the partners of the LLP shall be bound by the provisions of the Second Schedule of the LLP Act.

Transfer of Licenses, Registrations and Property

- Licenses, approvals, permits or registrations issued in the name of the Partnership firm will not be transferred automatically to the LLP.
- If there were any properties registered under the Partnership firm prior to the conversion, the LLP must approach the concerned authorities and take steps as prescribed to transfer the assets to the LLP.
- It is important for the Entrepreneur to keep in mind various other aspects and clarify procedural aspects with the concerned licensing or registration authorities prior to beginning the process for conversion into LLP.

Pending Proceedings

- ❑ As per Paragraph 9 of the Second Schedule of the LLP Act provides that all the proceedings by or against the firm which are pending before any Court or Tribunal or before any authority on the date of registration may be continued, completed and enforced by or against the LLP. In other words, all proceedings by or against the erstwhile firm shall stand vested into the LLP, as it is.

Section 58(4) of the LLP provide that on and from the date of registration

- ❑ There shall be LLP by the name specified in the Certificate of Registration.
- ❑ The assets, liabilities, rights, privileges, obligations of the Partnership firm are considered to be wholly transferred to the LLP and the conversion doesn't affect any existing contracts, employment, agreement, etc.
- ❑ The Partners will enjoy limited liability protection for all transactions conducted after the conversion of partnership into LLP. However, the Partners will continue to be personally liable for all business conducted as a Partnership prior to the conversion into LLP.

Partner liable for liabilities and obligation of a firm before conversion

- ❑ As per paragraph 16(1) of the Second Schedule of the LLP Act provides that notwithstanding anything in every partner of a firm that has converted into a LLP shall continue to be personally liable for the liability and obligation of the firm:
 - Which were incurred prior to the conversion; or
 - Which arose from any contract entered into prior to the conversion.

- ❑ As per Second Schedule Paragraph 17(1) : the LLP shall ensure that for a period of 12 (twelve) months commencing not later than 14 (fourteen) days after the date of registration, every official correspondence of the LLP bears the followings:
 - A statement that it was, as from the date of registration, converted from a firm into LLP; and
 - The name and registration number, if applicable, of the firm from which it was converted.

Advantages of LLP

- ❑ The Limited Liability Partnership Act of 2008 introduced Limited Liability Partnerships (LLP) in India to provide flexibility for small enterprises, promote the service sector and bring together business synergies.
- ❑ The basic premise behind the introduction of Limited Liability Partnership (LLP) is to provide a form of business organization that is simple to maintain while at the same time providing limited liability to the owners.
- ❑ Taking into consideration the various benefits surrounding the LLP structure, it is certainly worth converting your existing partnership firm into a Limited Liability Partnership. Here are some of the major reasons on why you should convert your Partnership firm into a Limited Liability Partnership.
- ❑ **PERPETUAL EXISTENCE**
- ❑ **UNLIMITED PARTNERS**
- ❑ **POTENTIAL FOR GROWTH**

PERPETUAL EXISTENCE

- ❑ The existence of a partnership firm is limited and can be dissolved on the death of a partner or all partners but one becoming insolvent or a partner becoming insane in the absence of any contract to the contrary.
- ❑ Limited Liability Partnerships on the other hand have perpetual existence and is a separate juristic person whose existence does not depend on the partners.
- ❑ The partners of a LLP may keep changing from time to time and it will not affect the LLP's continuity.
- ❑ Therefore, converting your existing partnership firm into a LLP can ensure continued existence for your business separate from that of the partners.

UNLIMITED PARTNERS

- ❑ In a partnership firm the minimum number of partners must be two, while the maximum number can be 10 in case of banking business and 20 in all other types of business. However, in the case of a Limited Liability Partnership, there is no limit regarding the maximum number of partners. Also, a Limited Liability Partnership requires a minimum of two partners to form a LLP; but only in the case of number of partners falling below two for six months, the remaining partner in the continuing LLP becomes personally liable.

POTENTIAL FOR GROWTH

- ❑ In today's business environment, mergers and amalgamation are common place with many businesses merging or amalgamating with other businesses to unlock business synergies.
- ❑ Partnership firms cannot be merger or amalgamated with other partnership firm; whereas, LLP can merge or amalgamate with other LLPs in order to continually grow and share synergies with other business. Therefore, the ability of LLPs to undergo merger or amalgamation is another reason for converting your Partnership firm into an LLP

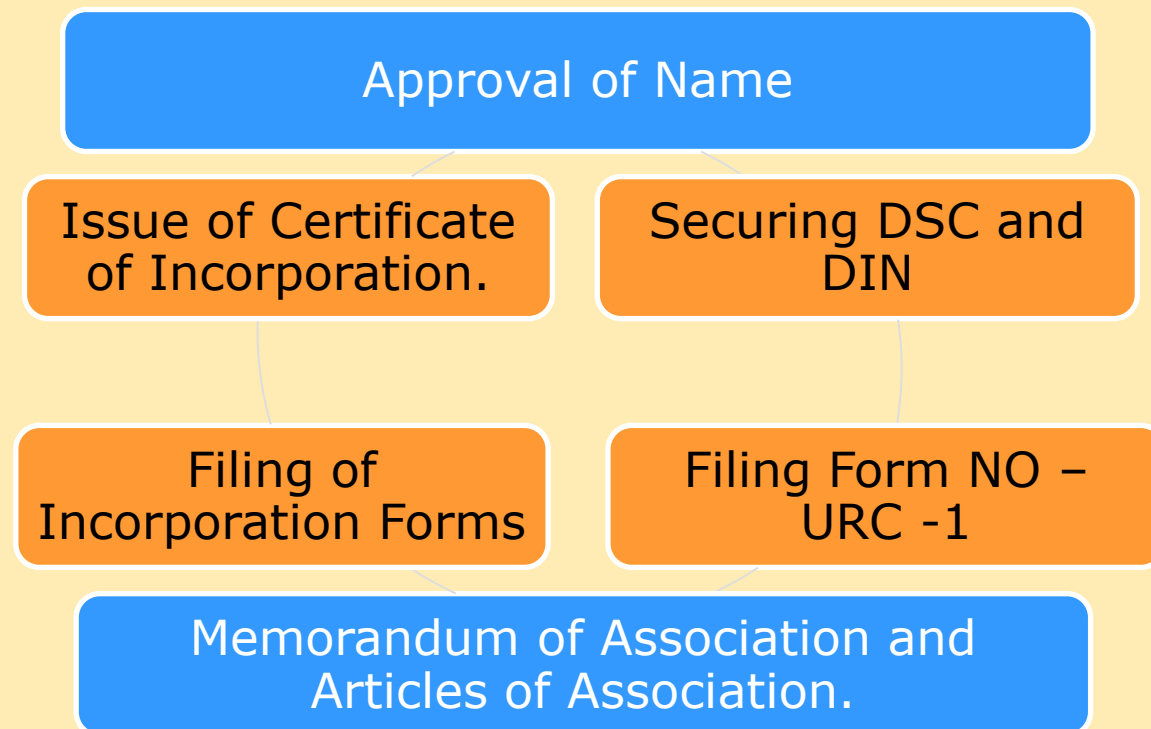
Conversion of LLP into Private Limited Company

BACKGROUND....

- ❑ Corporation is the need of the hour. The entire world is gradually drifting towards one global market without any trade barriers between the countries.
- ❑ With the emergence of corporate work culture and promotional startup benefits, a great chunk of entrepreneurs are looking forward to corporatization. This step can be initiated in 2 ways as enumerated below:
 - Incorporation of a new corporate entity.
 - Conversion of existing entity (e.g. LLP/ Partnership Firm) into a Company.
- ❑ The 2nd option of conversion of Limited Liability Partnership into a corporate entity might be practical for the existing entities to switch over from one mode of business to another.
- ❑ The process of conversion is a step by step procedure, which is a technical process but if handled with expert knowledge may be time and cost saving, as well.
- ❑ There were no provisions under Companies act, 2013 regarding Conversion of Limited Liability Partnership into Company. Ministry of Corporate Affairs has passed a notification on 31st May, 2016 in such Notification its allowed conversion of LLP into Company. These rules called as ***“The Companies Authorized to register Amendment Rules, 2016”***.

Requirements for Conversion

- ❑ There are various requirements which need to be satisfied for converting an LLP into a Private Limited Company, for instance, an LLP must have at least 7 partners, approval from all the partners is required, advertisement in newspaper is to be done in a local and a national newspaper, a No Objection Certificate (NOC) is required from the ROC where such LLP is registered and then all the incorporation process has to be undertaken which includes:-



Approval of Name

- Name Approval has to be obtained from the ROC (Registrar of Companies) by submitting an application in **e-format**.
- To apply for this, you need to choose various items that are mentioned in the **form INC-1**.
- The name once accepted by the authority will be valid for **60 days**.

Securing DSC & DIN

- In case all 7 members, who are future directors of the company after conversion, do not have the Digital Signature Certificate (DSC) and Director Identification Number (DIN) for all the future directors of the company must be obtained.
- For obtaining the DIN, an application form must be filed on MCA portal. DIN application is processed & approved by central government via the office of regional director, the ministry of corporate affairs.
- The form must be accompanied by self-attested address proof and identity proof with 1 recent passport size color photo of the applicant.
- All the required documents should be attested by a practicing cost accountant or a practicing chartered accountant or a practicing company secretary.

Filing form no. URC – 1

- ❑ After getting the approval of name from Registrar of Companies, the applicant must prepare & file the form No URC-1 in addition to the following documents:-
 - List of the members with various details viz. names, address, shares held by them appropriately, etc.
 - List of the first directors of the private company with various details viz. names, address, the DIN, passport number with an expiry date, etc.
 - An affidavit from every person proposed as first directors, that he is not banned to be a director under section-164 and all the necessary documents filed with the registrar for the registration of firm must contain information which is complete and correct & true to be best of his belief and knowledge.
 - A list including the names & addresses of partners of LLP and a copy of LLP agreement & certificate of registration duly verified by two designated partners of LLP must be enclosed.
 - A statement indicating the following specifications:
 - ❖ **the nominal share capital of firm & the number of shares into which it is separated**
 - ❖ **the number of shares taken & the amount paid for every share**
 - ❖ **the name of the firm, with the addition of word Limited or private limited is required.**
 - A written consent or No objection certificate from all creditors.
 - Copy of newspaper advertisement, statement of accounts of the company which must not be 6 days preceding the date of the application and it must be duly certified by the auditor.

Memorandum & Articles of Association

- ❑ Memorandum of Association (MoA) & Articles of Association (AoA) is to be formulated and then filed with RoC after getting the name approval and sanction of **Form no. URC-1** – from the registrar.
- ❑ The conversion process provides certain tax benefits, however for availing the same several additional requirements needs to be met, for instance, maintaining the same shareholding by the partners as was in the previous LLP when the conversion takes place, for five years from conversion the former partners of such LLP who are now shareholders in the newly formed company cannot in total have shareholding less than 50percent.
- ❑ There is another option available for the LLP which is to establish a separate private limited company and after that get the whole business transferred to the private company with the help of a written agreement, in such case the restrictions mentioned above such as need for minimum 7 partners, newspaper publication, etc. are not needed to be met.
- ❑ However, in this situation, there is a levy of capital gain tax.

Filing of the Incorporation Forms

Following Forms are required to be file with ROC:-

E-Form INC 7

- a declaration of compliance with the requirements of the Act on the application for registration of a company

E-Form INC 22

- a notice of situation of the registered office

E-Form DIR 12

- an appointment of the directors of the company

Power of Attorney

- to be executed by the subscribers and the proposed directors.

Clarification & Additional Information

- ❑ After all the incorporation papers are filed and are reviewed by the RoC, the RoC may require certain clarifications. These clarifications or the inquiry needs to be satisfied by the person who has been authorized to do so by the Power of Attorney which is filed with the RoC.

Issue of Certificate of Incorporation

- ❑ Once all the clarifications are provided for the Conversion of LLP into Partnership, the Certificate of Incorporation is issued by the RoC and then the company is deemed to be incorporated from the date given in the Certificate of Incorporation.
- ❑ After obtaining the registration under Section 367 of the Companies Act, 2013, an intimation to this effect shall be given, within fifteen days of such registration to the concerned Registrar (LLP) with whom it was originally registered, along with the necessary documents or the papers for its dissolution as a **Limited Liability Partnership**.

Thank you



CA NEHA SURANA