

Formation & Conversion of LLP

Formation of LLP

What is Limited Liability Partnership?

- Hybrid of Corporate & Partnership business Form.
- Limits liability of partners to the extent of their contribution.
- Provides flexibility without imposing detailed (and costly) legal and procedural requirements.
- The organization and operations are on the basis of an mutual agreement.

Need for LLPs in India

Limitations of Partnership firm

- Maximum number of members to 20 (10 for banking industry)
- Unlimited liability of the partners
- No perpetual succession

Limitations of Company

- Public disclosures and filing
- May not be a tax efficient structure
- Need for professional and independent directors
- Extensive secretarial compliances with Company law
- Restrictions on internal control and management

- Limited Liability Act, 2008 came into effect from 7th January 2009.
- LLP Rules, 2009 Notified on 01st of April 2009.

Index

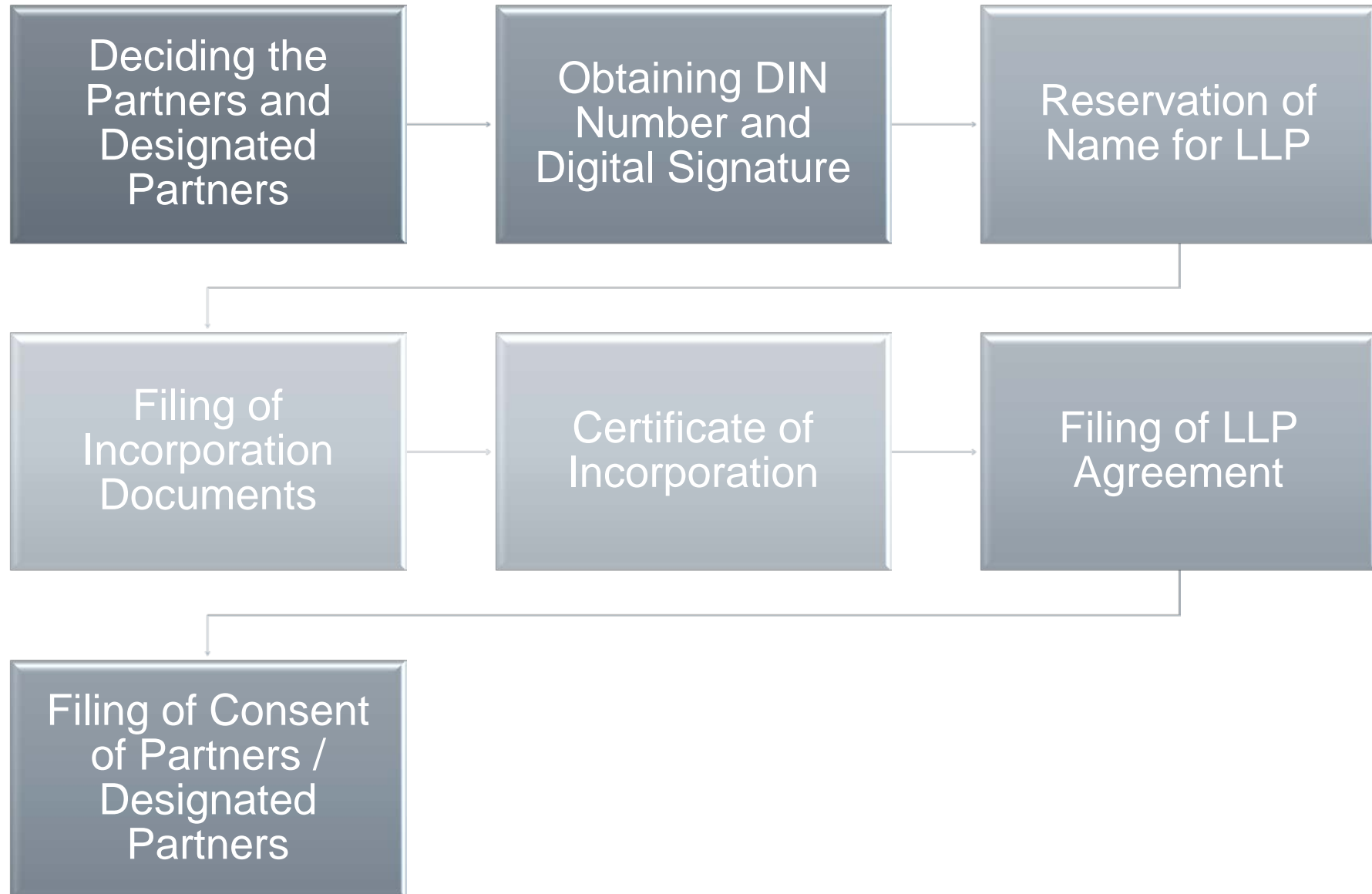
- Formation of LLP

- Conversion of LLP

 - Partnership to LLP

 - Company to LLP

Formation of LLP



Step – I Deciding the Partners & Designated partners

"Partner" in relation to LLP means a person who becomes a partner in a LLP in accordance with the LLP agreement. [Section 2(1)(q)]

- Any Individual or/and body corporate may be partner.
(A foreign national can be partner of a LLP in India).
- Body Corporate means company as defined under section 3 of the companies Act, 1956 and includes
 - Limited liability partnership registered under LLP Act
 - Limited Liability Partnership incorporated outside India and
 - Company incorporated outside India

Step – I Deciding the Partners & Designated partners

"designated partner" means any partner designated as such pursuant to section 7; [Section 2(1)(q)]

Designated partner : -

- Every LLP shall have at least two designated partners who are individuals and
- at least one of them shall be resident in India.
- Responsible for managing the day to day affairs and ensuring the compliances of all applicable laws.

File the details of designated partners and partners in e Form 2A

Step – II Obtaining DIN & Digital Signature

- The designated partners shall obtain
- DPIN / DIN – Designated Partner Identification Number which is same as DIN subsequent to merging these vide MCA General Circular No. 44/2011.
- The Designated Partner shall have Digital signature

Step – III Reservation of name Availability for LLP

- e Form 1 to be filed with ROC
- The word 'LLP' or 'Limited Liability partnership' shall be the last word of the name.
- Name shall not
 - be identical or too nearly resembles to any other partnership firm, LLP, Body Corporate and trade mark. (Section-15)
 - shall not be under Emblems '**Emblems and Names (Prevention of Improper use) Act, 1950** and **Rule-18**.
- If business includes regulated business, a copy of in principle approval of appropriate authority to be obtained.

Step – IV Filing of Incorporation Document (Form-2

■ e Form 2 – Incorporation Document along with Subscription Sheet and proof of address of registered office of LLP. (Signed by each Designated Partner and witnessed by Professional

■ Total incorporation fees

Contribution up to 1 lakh	Fee	Contribution More than 10 lakh	Fee
Form 1 (Name Availability)	200	Form 1 (Name Availability)	200
Form 2 (Incorporation Document)	500	Form 2 (Incorporation Document)	5000
Form 3 (LLP Agreement Registration)	50	Form 3 (LLP Agreement Registration)	200
Form 4 (Partners Consent)	50	Form 4 (Partners Consent)	200
Incorporation Fee	800	Incorporation Fee	5600

Step – V Certificate of Incorporation

- On Successful Compliances – Registrar Issues Certificate of Incorporation in Form 19.
- Certificate of Incorporation is the conclusive Evidence of Registration of Limited Liability Partnership

Step – VI Registration of LLP Agreement

- Execution of LLP Agreement is mandatory (Section-23).
- In absence of Agreement as to any matter, Schedule 1 will be applicable.
- Filing of details of LLP Agreement through e Form 3 – within 30 days of Incorporation.
- Stamp duty on LLP agreement to be paid as per State Stamp Act.

Features of Schedule 1

- All partners entitled to share equally in the Capital and Profits/losses.
- Indemnity Clause
- Every Partner shall take part in management
- No partner shall be entitled to remuneration.
- No partner introduced without consent of all partners.
- All decisions with majority of partners consent
- Minutes to be recorded within 30 days
- Render True Accounts
- All Disputes will be referred to Arbitration Act

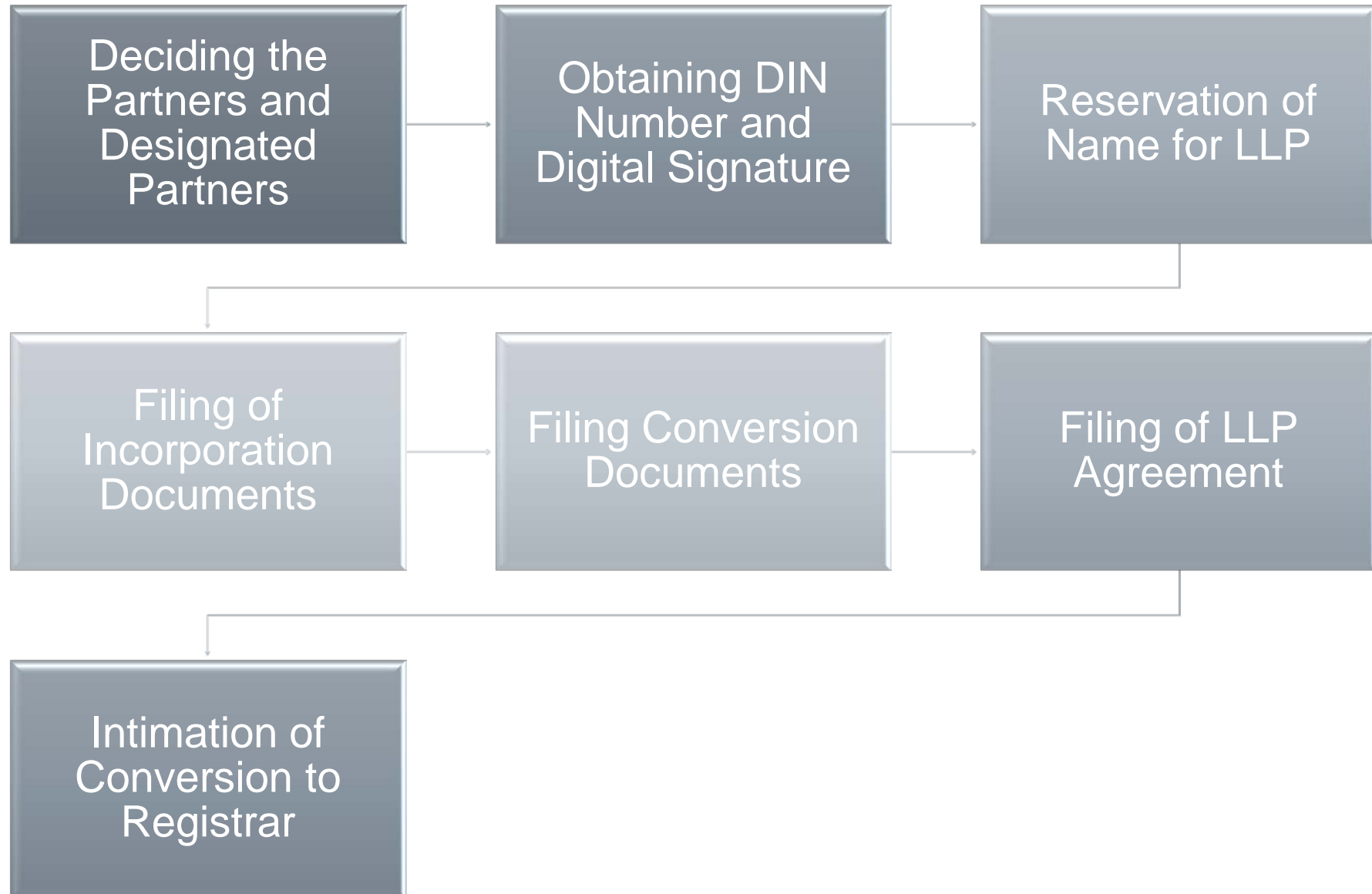
Conversion of LLP

S. G. & ASSOCIATES
COMPANY SECRETARIES

Who can convert?

- › Partnership Firm
- › Private Limited Company
- › Unlisted Public Company

Steps Involved in Conversion



Partnership → LLP

Partnership

- Existing Partnership Firm can be converted into LLP and all the assets, liabilities and business of existing partnership firm will vest in to LLP.
- All the existing partners must be the partners of LLP.
- Only Partnership firms registered under Indian Partnership Act, 1932 can be converted

Partnership

LLP



■ Relevant Provisions:

- Chapter X – Section 55 of LLP Act, 2008.
- Second Schedule of the LLP Act, 2008.
- Rule 38 of LLP Rules, 2009.

Procedure

- File e Form 1 for name approval with consent of each of the partners of the firm for conversion of the firm into LLP.
- File e form 2 (Incorporation documents, statement of partners, registered office etc.);
- File e form 4 and form 9, with consent of each partner to become a partner of LLP and appointment of designated partner is to be provided;
- File e Form 17 for conversion together with the statement of partners and required documents;
- File E – Form 3 (LLP Agreement) within Thirty days from the date of registration;
- After verification, registrar will register all documents and issue Conversion Certificate;
- Upon registration of LLP, an intimation to be filed to the Registrar of Firms stating the fact that the firm is converted into LLP in e Form 14 within 15 days.



Shareholders

Directors



Partners

Designated
Partners

Company

- Existing Private and Public Limited Company (except Listed Company) can be converted into LLP
- All the assets, liabilities and business of existing Company will vest in to LLP.
- If the security interest subsists on the assets of the eligible company then it cannot be converted into LLP.

Company



In case of conversion of Private Limited Company into LLP, all the shareholders of the Company to be partners in the LLP. No new member can be included

Check

- Latest compliance filing and Income Tax returns filing must be completed to the date.
- Whether any prosecution initiated against or show cause notice received by the company for alleged offences under the Companies Act, 1956.
- Whether any proceeding by or against the company is pending in any Court or Tribunal or any other Authority.
- Whether any conviction, ruling, order, judgment of any Court, Tribunal or other authority in favour of or against the company is subsisting.
- Whether any clearance, approval or permission for conversion of the company into limited liability partnership is required from anybody/ authority. etc

Company



Relevant Provisions:

- Chapter X – Section 56 and 57 of LLP Act, 2008 for Private and Public companies respectively.
- Third and Fourth Schedule of the LLP Act, 2008.
- Rule 39 and 40 of LLP Rules, 2009.

Procedure

Board Meeting

- Call meeting of board of Director.
- Pass Resolution for Conversion of Company into LLP.
- Pass Resolution to authorize any director to Apply for Name of LLP.

Application for Name Availability

- File e-form INC-1 with ROC.
- Attachments: Board Resolution Board resolution passed by the Company approving the conversion into LLP shall be attached with the aforesaid form

Procedure

■ Obtain name Approval Certificate from ROC e Form 1

■ Drafting of Limited Liability Partnership Agreement covering:

- 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

Procedure

■ File **E-Form- 2** Incorporation Documents with ROC along with following **attachments**:

- Proof of Address of Registered office of LLP.
- Subscription sheet signed by the promoters.
- Notice of Consent & Appointment of Designated Partners with their personal details
- Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner

Procedure

■ Filling of application for Conversion in E Form 18 with ROC with;

- Statement of shareholders.
- Incorporation Documents & Subscribers Statements in Form 2 filed electronically.
- Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor.
- List of all the Secured creditors along with their consent to the conversion.
- Approval of NOC from industry regulator
- NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return.
- Approval from any other body/authority as may be required.

Procedure

■ Filling of application for Conversion in E Form 18 with ROC with;

- Particulars of pending proceedings from any court/Tribunal etc.

Upon review the application will be approved by the Ministry, REGISTRAR OF LLP TO ISSUE A CERTIFICATE OF REGISTRATION in form no. 19 as to conversion of the LLP. The Certificate of Registration issued shall be the conclusive evidence of conversion of the LLP.

Procedure

■ File of E-Form-3:

- This form provides information in respect to the LLP Agreement entered into between the partners.
- Attachment: LLP Agreement
- Shall be filed in 30 days

■ Certificate of Incorporation as LLP form ROC.

■ Filing of E-Form-14 for intimation to with attachment of Certificate of Incorporation and other attachments of Form 2 within 15 days

CS. Suhass Vaidya
Company Secretary

Thank you