

# Conversion of Partnership & Pvt Ltd into LLP



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# Coverage

- ❑ Overview of LLP
- ❑ Comparison with existing options
- ❑ Conversion of Company into LLP
- ❑ Conversion of Firm into LLP
- ❑ Conversion of LLP into Company
- ❑ Conversion of company to LLP – key eligibility criteria for tax neutral conversion Recent Case laws



# 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, KEY FEATURES AND BENEFITS OF LLP.

## LIMITED LIABILITY PARTNERSHIP



# Overview of 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

The rights of a partner to share profits or losses of LLP are transferable either in whole or in part.

## 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



# ADVANTAGES

- Low Cost of formation.
- Provides operational flexibility by way of savings in costs and time.
- Liability of its members is limited (except in cases of fraud or
- where the no. of partners is reduced to 1 and LLP continues for 6 months).
- Perpetual existence – continues till it is wound up.
- No personal liability of the partner for debts of the LLP.  
Separate legal entity – can own property, can sue and be sued in its name.

# ADVANTAGES

- Liability of Partners to contribute at the time of winding up limited to the amount recorded in the LLP Agreement.
- Not subject to full financial reporting and disclosure requirements.
- Not required to have a Memorandum of Association - The organization and operations are on the basis of a mutual agreement.
- Easy to exit and wind up and withdraw capital.
- Tax advantage vis-à-vis a corporate entity.

# 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

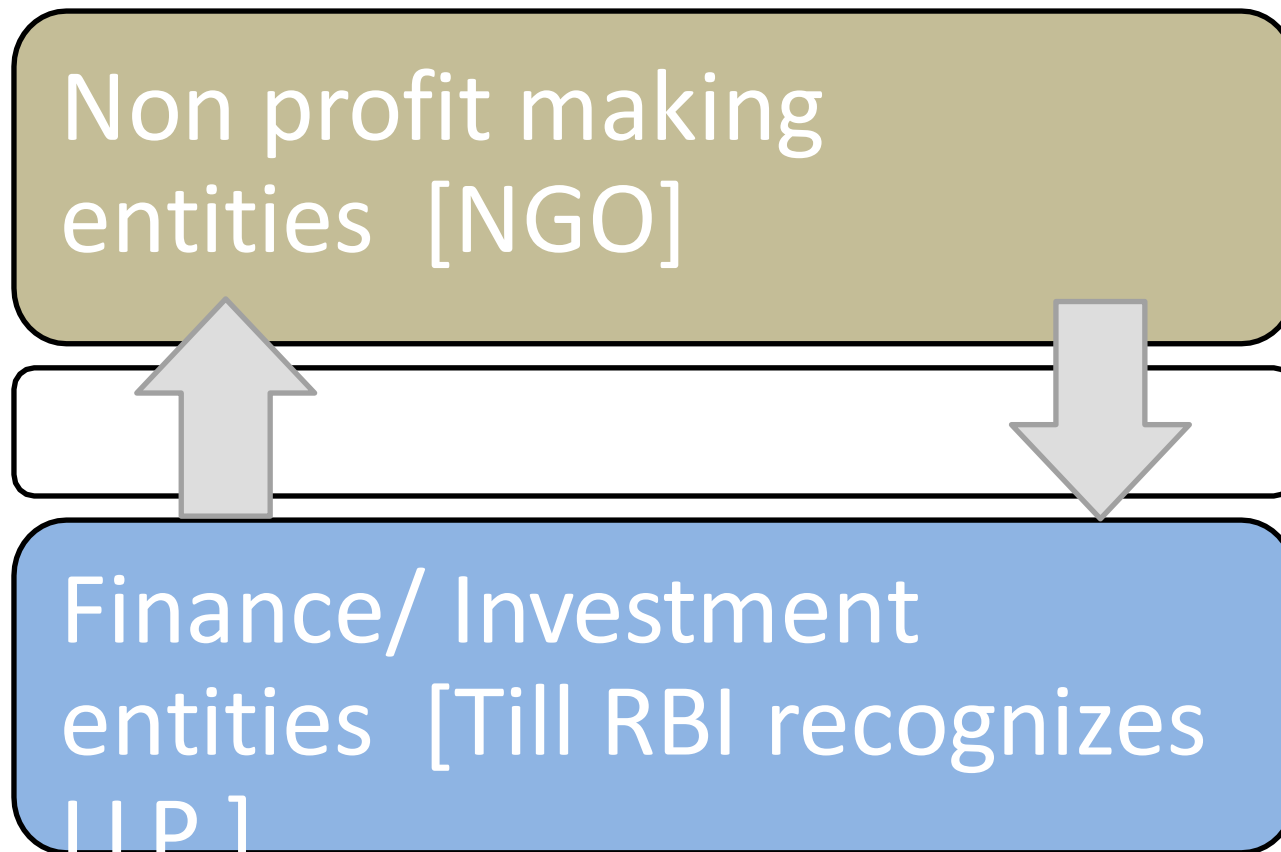
All partnerships  
/AOP with  
long term  
objective

Professional  
Firms  
[CA/CS/CWA  
]

Service  
sector/  
Real Estate

# Overview of LLP

## Who Can Not go for LLP



# 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

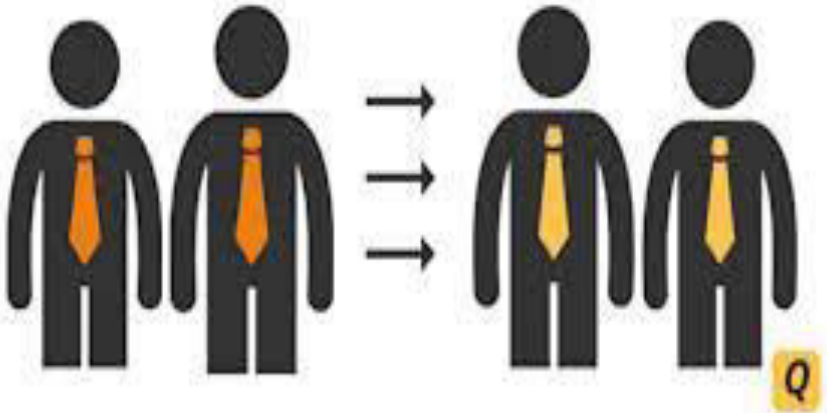
## Comparison with existing options

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	NTI	Lower	Higher



# CONVERSION OF

## PRIVATE LIMITED COMPANY TO LLP



# Eligibility criteria

## ***Eligibility criteria under LLP Act for conversion Company into LLP***

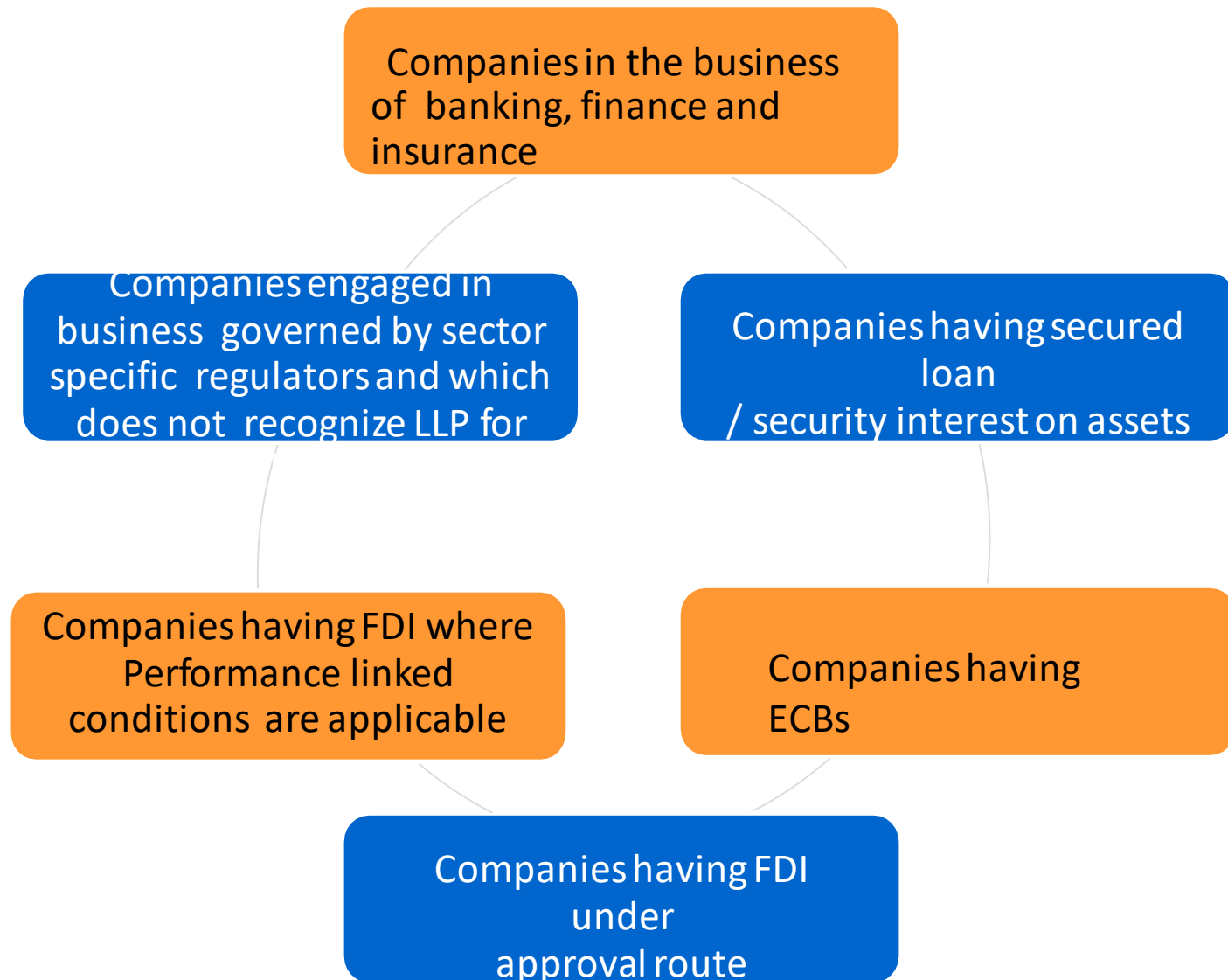
LLP Act permits conversion of a Private Company (as per the Section 56 & Third Schedule of the LLP Act) and Unlisted Public Company (as per the Section 57 & Fourth Schedule of the LLP Act) into LLP subject to conditions mentioned below:

- 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?



# CHECK FOR CONVERSION OF COMPANY INTO LLP:

In case of conversion of Private Limited Company into LLP, all the shareholders of the Company to be partners in the LLP. No one else can be partner in LLP.

Also there will be no Security Interest subsisting or in force at the time of application in the assets of the Company.

Every Designated Partner is required to obtain a DIN from the Central Government.

Whether up to date Income-tax return is filed under the Income-tax Act, 1961.

Whether any prosecution initiated against or show cause notice received by the company for alleged offences under the Companies Act, 1956 or Companies Act, 2013.

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 LLP is required from anybody/authority. Etc

## 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**

# 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

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

Attachments to forms

### RUN-LLP FORM

(Name availability application)

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

### FiLLiP FORM & 18

(Incorporation and conversion application)

- Consent Letters of shareholders
- Board Resolution 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

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

## 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  
Designate  
d  
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.

## 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:Agreemen  
t

- Draft the LLP Agreement.



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, intimate the 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

## 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

## 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.

# Effects on conversion of partnership firm 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 proceeding 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

# Key Comparison between LLP, Partnership Firm and company

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"

## 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"> <li>NRI (on non-repatriation basis) – considered as domestic investment</li> <li>Non-resident (other than NRI on non-repatriation) and NRI on repatriation basis – Approval of RBI, who</li> </ul>	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

# Details of fees

For registration of Limited Liability Partnership including conversion of a firm or a private company or an unlisted public company into Limited Liability Partnership:

Particular	Amount(Rs.)
Limited Liability Partnership whose contribution does not exceed Rs. 1 lakh	Rs.500/-
Limited Liability Partnership whose contribution exceeds Rs. 1 lakh but does not exceed Rs. 5 lakhs	Rs.2000/-
Limited Liability Partnership whose contribution exceeds Rs. 5 lakhs but does not exceed Rs. 10 lakhs	Rs.4000/-
Limited Liability Partnership whose contribution exceeds Rs. 10 lakh	Rs.5000/-

# Conversion of LLP into Private Limited Company

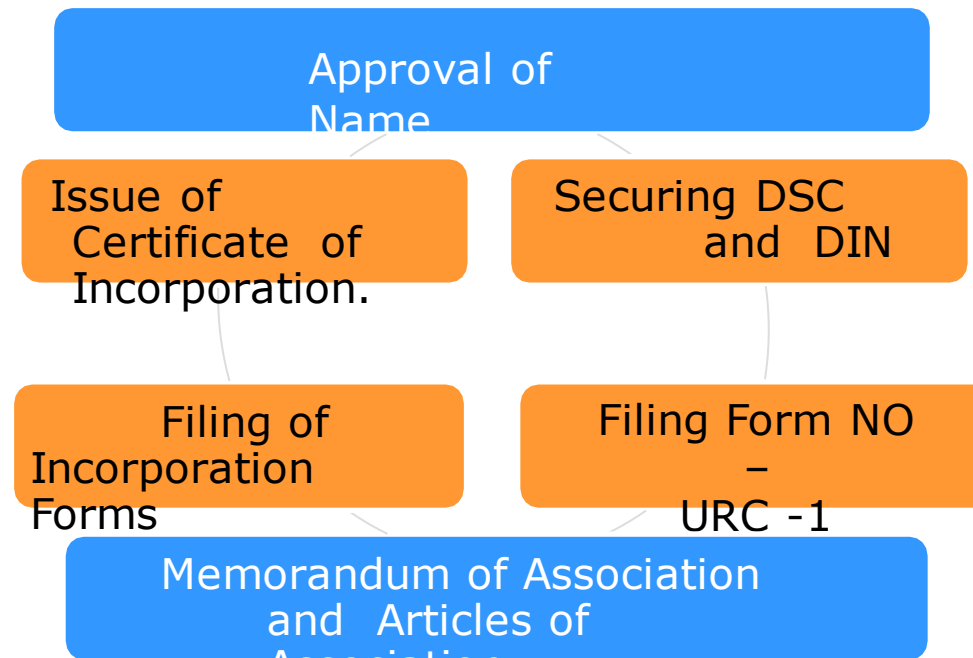


# BACKGROUND....

- ❑ 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**.

# CONVERSION OF COMPANY TO LLP – KEY ELIGIBILITY CRITERIA FOR TAX NEUTRAL CONVERSION

All the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP

All the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding

No consideration or benefit in any manner (other than by way of share in profit and capital contribution) received by shareholder

The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50 per cent, at any time during the period of five years from the date of conversion

The total sales / turnover / gross receipts in business of the company in any of the 3 previous years preceding the previous year in which the conversion takes place does not exceed INR 6 million

No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion

The total value of the assets as appearing in the books of account of the company in any of the 3 previous years preceding the previous year in which the conversion takes place does not exceed INR 50 million

Cumulative conditions

Tax neutral  
Conversion of  
company to  
LLP



# In a recent ruling, the Mumbai bench of the Income-tax Appellate Tribunal Tribunal Held the Following:

- ❑ Conversion of a company/ private limited company (PLC) into a limited liability partnership (LLP) results in “transfer” of capital assets and is subject to capital gains tax in India in the hands of the PLC unless covered by the specific exemption under the Income-tax Act, 1961 (the Act).
- ❑ Further, due to conversion, the PLC ceases to exist and hence such gains will be taxable in the hands of the converted LLP.
- ❑ However, such capital gain arising on conversion of a PLC to a LLP tantamount to ‘nil’ as book value of the assets/ liabilities transferred is to be considered as full value of consideration received or accrued to the PLC which is same as cost of acquisition.
- ❑ Further, the Tribunal also made observations on the permissibility of carry forward of losses of the PLC in the hands of the successor LLP.

## Issues under consideration before the Hon'ble Mumbai ITAT

- a. Whether conversion of the Company into the LLP can be regarded as 'transfer' or not? -Yes
- b. If the conversion of the Company into the LLP is to be regarded as transfer, whether there can be any capital gains liability, where the assets and liabilities are vested at book value? -No
- c. Whether the LLP is liable to pay capital gain tax for transfer of assets by erstwhile Company u/s. 47A(4) of the Act, where exemption under section 47(xiiib) was not claimed by the company/LLP? -No
- d. Whether brought forward losses of the erstwhile Company can be set-off by the LLP u/s. 72A (6A) of the Act?-Yes
- e. Whether deduction u/s 80-IA of the Act can be claimed by the LLP even though Audit Certificate in form 10CCB was not submitted alongwith ITR as required u/s 80-IA of the Act. -Yes

## **ACIT vs. Celerity Power LLP (ITAT Mumbai) Ita 3637/Mum/2015**

As per Section 47(xiiib) r.w.s 47A(4): The conversion of a company into a LLP constitutes a "transfer". If the conditions of s. 47(xiiib) are not satisfied, the transaction is chargeable to 'capital gains' u/s 45 (**Texspin Engg 263 ITR 345 (Bom) distinguished**). If the assets and liabilities of the company are vested in the LLP at 'book values' (cost), there is in fact no capital gain. The argument that u/s 58(4) of the LLP Act, the LLP is entitled to carry forward the accumulated losses & unabsorbed depreciation of the company, notwithstanding non-compliance with s. 47(xiiib) is not acceptable

*Thank You*

