

#### Formation and Conversion of Company into LLP

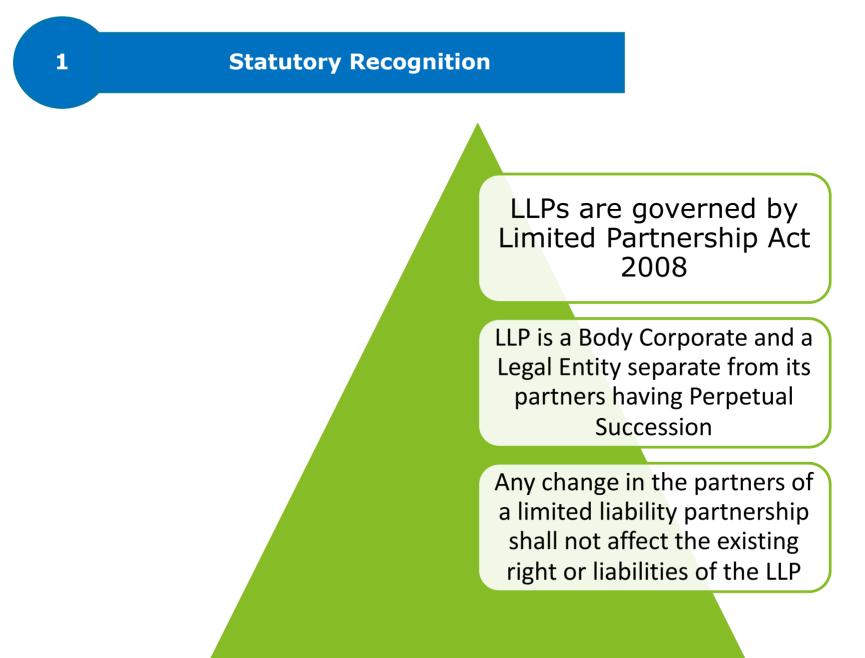
March 2017

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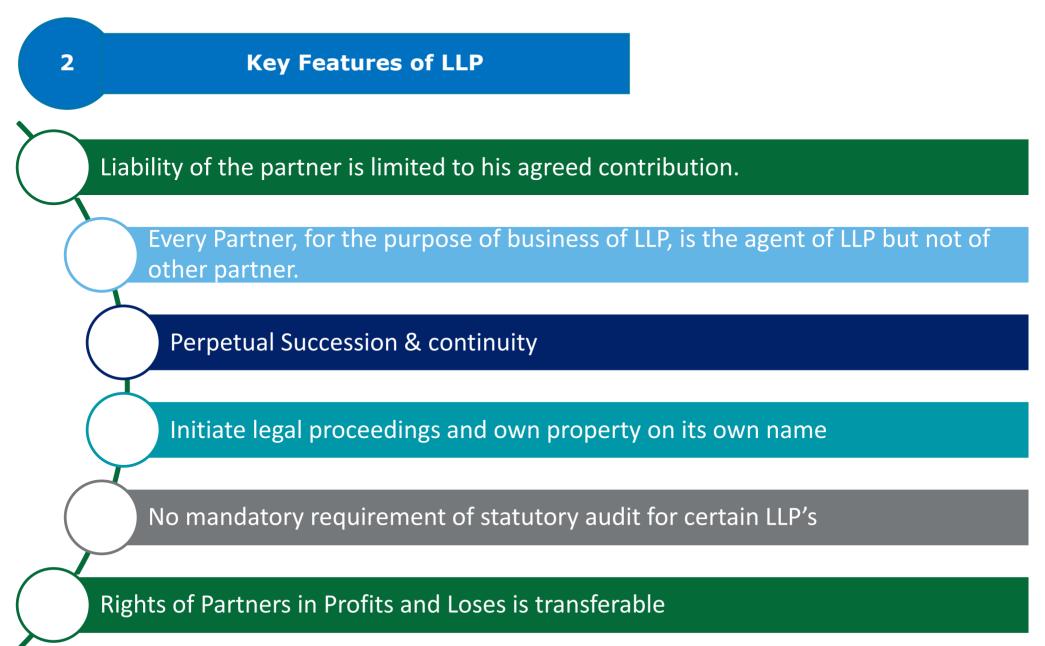
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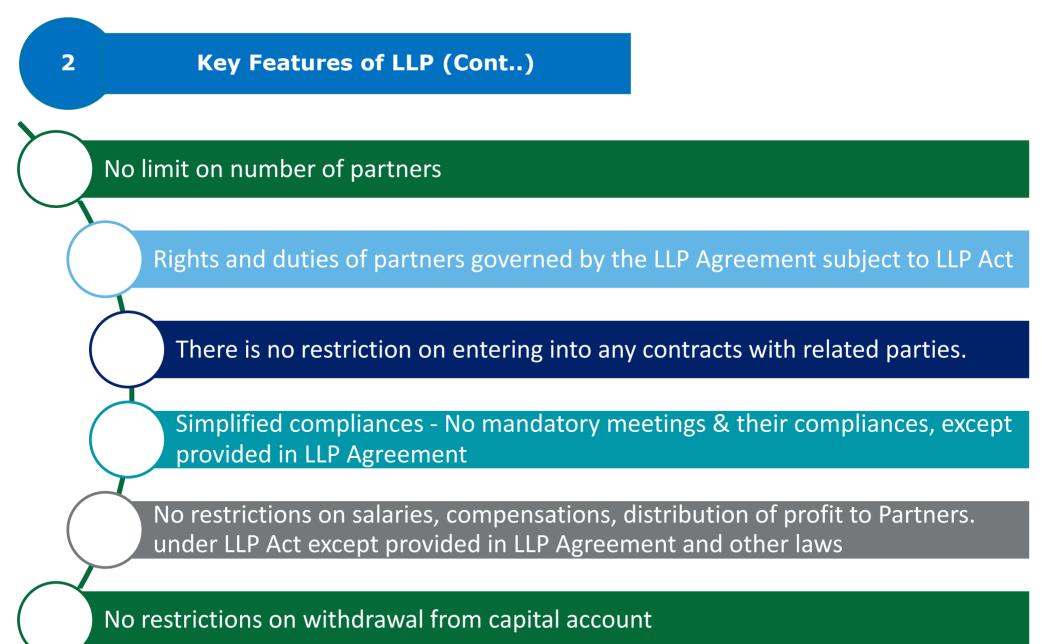
## Overview of Limited Liability Partnership (LLP)



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Key Parameters	Company	LLP	Advantage
Regulatory compliances	High	Moderate	LLP
Funding	Equity / CCPS / CCDs / fees for services to parent or group cos	Capital Contribution / fees for services to parent or group cos	Company
Director / Designated Partner (DP)	Minimum 2 / 3 directors including 1 resident Director	2 individual to act as DP including 1 resident individual acting as DP	Neutral
Repatriation of funds	Moderate	Relatively easy	LLP
Flexibility for various businesses where FDI is involved	Flexibility substantially higher than LLP	Permitted only in sectors where there are no FDI linked performance conditions	Company
Dividend distribution tax on repatriating of profits	Yes	NIL	LLP

Key Parameters	Company	LLP	Advantage
Downstream investment	Permissible (subject to conditions specified in the FDI Policy)	Permissible where FDI is allowed under automatic route and there are no FDI- linked performance conditions	Company
Borrowing from foreign lender (ECB)	Permitted (Subject to FEMA and end use restrictions)	Not Permitted	Company
Related party transactions	Allowed subject to conditions	No such provisions	LLP
CSR	Applicable	Not applicable	LLP
Intercorporate Loan restriction	Applicable	Not applicable	LLP
FPI Investment	Possible	Not possible	Company

Key Parameters	Company	LLP	Advantage
Change in Financial Year (April – March)	Can change financial year with the approval of NCLT	Not permissible	Company
Consolidation of Accounts	Have to consolidate its account with the subsidiaries, wherever applicable	No such provision	LLP
Audit	Compulsory	LLP whose turnover in any financial year <= Rs. 40 Lakh, or whose contribution <= Rs. 25 lakh not required to get accounts audited	LLP
Closure / Strike-off	Yes – Company which is not in operation for a period of 2 financial year	Yes – LLP which is not in operation for a period of 1 year	LLP
Liability	Limited to Capital Contribution	Limited to Capital Contribution	Neutral
Others	<ul> <li>Listing</li> <li>ESOPs</li> <li>Banking, Insurance and Finance Business</li> </ul>	Not possible	Company

# **FDI in LLP**

## 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

- 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.

## FDI in LLP (Cont..)

FDI in LLP not permitted in sectors due to performance linked conditions or not 100% automatic route

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

Civil Aviation, Insurance, Defense, Investment Company

Construction Development: Townships, Housing, Built-up Infrastructure

**Industrial Parks** 

Cash & Carry Wholesale Trading /SBRT / MBRT

Railway Infrastructure

# **Formation of LLP**

## Formation of LLP - Key points to be considered under the LLP

Partners	<ul> <li>Individual or a body corporate can be a partner in LLP</li> <li>Minimum 2 partners</li> <li>No limit on maximum partners</li> </ul>	
Designated Partners	<ul> <li>Atleast 2 designated partners who are individuals and at least one of them shall be resident in India</li> <li>If one or more partners of LLPs are bodies corporate, then nominees of such bodies corporate can act as DP</li> </ul>	
Partners Contribution	<ul> <li>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</li> <li>The obligation to contribute should be as per the LLP agreement.</li> </ul>	
LLP Agreement	<ul> <li>Mutual rights and duties of the partners</li> <li>Profit sharing Ratio</li> <li>Capital Contribution</li> <li>Key terms regarding the operation of LLP</li> </ul>	

## Documents required to be filed for LLP formation

#### Form 1

#### (Application for reservation of name)

- Details of the business activity to be carried out by the LLP
- Proposed names
- BR of proposed Partner in case of **Body Corporate**
- Approval from sectoral regulator, if applicable

Form 2 (Incorporation **Documents**)

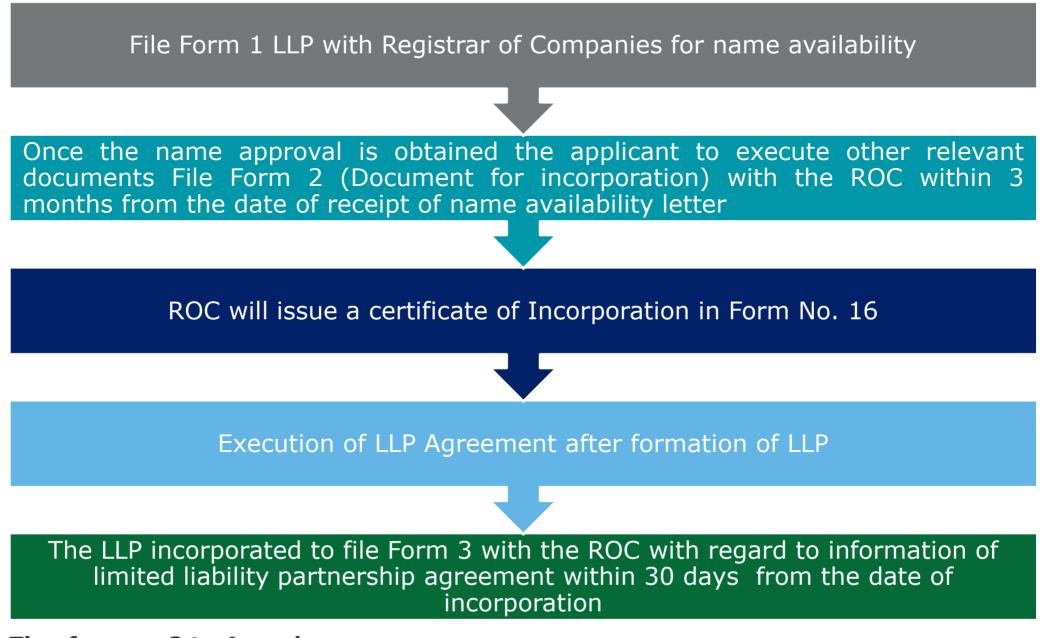
- Consent Letters of the Partners and Designated Partners to act as such
- Proof of registered office address
- Subscriber Sheet
- Declaration from Partners
- BR of proposed Partner in case of **Body Corporate**

Form 3 (LLP Agreement registration)

- LLP Agreement
- Partners Resolution

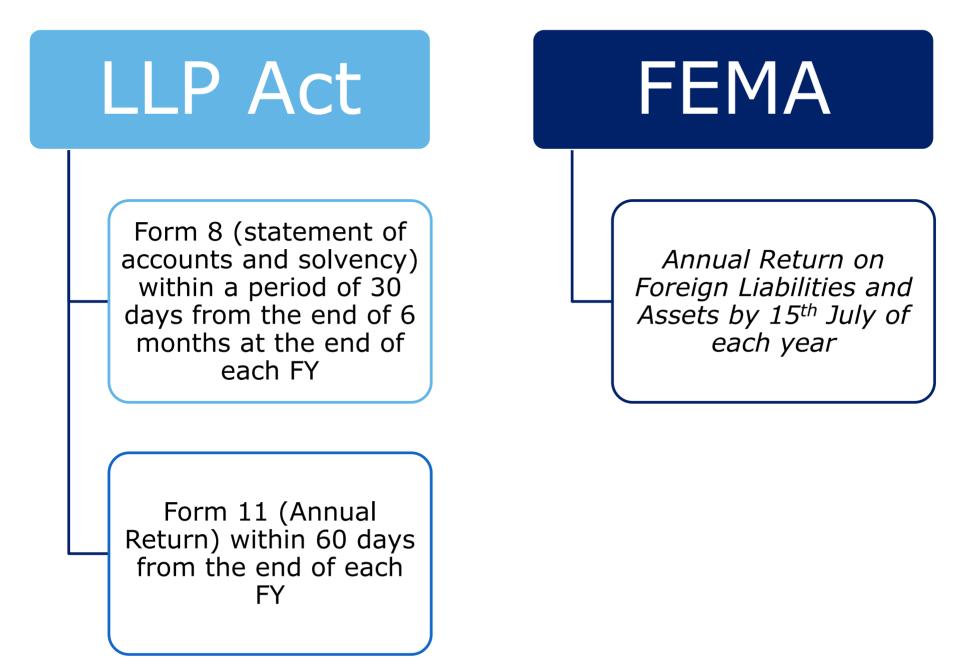
In case of FDI in LLP, Form FDI-LLP(I) is required to be filed with AD Bank along with FIRC within 30 days of date of receipt of Capital Contribution

#### Procedure for formation of LLP

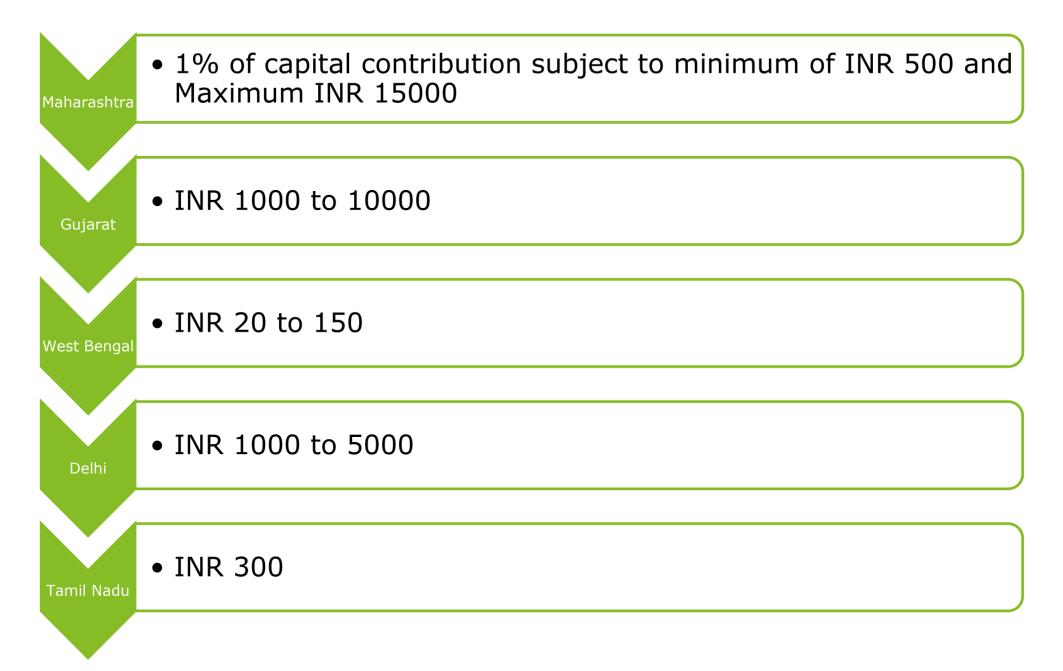


Timeframe – 2 to 4 weeks

### Annual filings



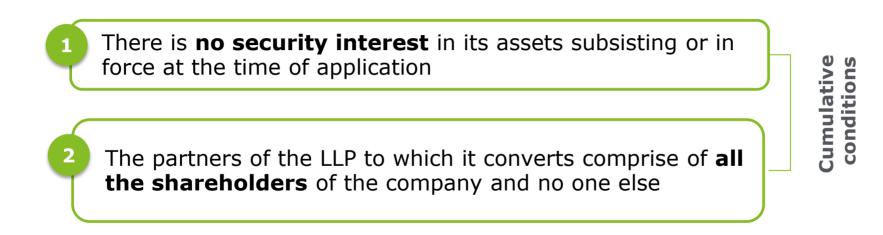
#### Stamp Duty on LLP Agreement – Illustrative List



# **Conversion of Company into LLP**

#### 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:



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 having secured loan / security interest on assets

# Companies having ECBs

Companies having FDI under approval route Companies having FDI where Performance linked conditions are applicable Companies engaged in business governed by sector specific regulators and which does not recognize LLP for such business

### 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



Timeframe – 4- 6 weeks

## Documents required to be filed for conversion into LLP

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

#### 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

to

forms

Attachments

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

# **Effects on Conversion**

#### Effects on conversion

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** 

# **Matters for Consideration**

#### Matters for Consideration

Whether stamp duty is applicable on assets / liabilities transferred to LLP on conversion? Whether prior approval of FIPB required for conversion of Company having FDI into LLP?

Taxation on conversion under IT Act

Whether the Audited Statement of Assets and Liabilities can be certified by Non-Auditor for conversion

Role of existing Directors of Company Whether withdrawal of capital / profits post conversion into LLP having FDI is allowed

Whether LLP can be converted into Company Whether section 8 company can be converted into LLP Whether LLP can be formed for holding / investment company

