



Formation and Conversion of Company into LLP

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Overview of Limited Liability Partnership (LLP)

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Statutory Recognition

LLPs are governed by Limited Partnership Act 2008

LLP is a Body Corporate and a Legal Entity separate from its partners having Perpetual Succession

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

Overview of Limited Liability Partnership (LLP)

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Key Features of LLP

Liability of the partner is limited to his agreed contribution.

Every Partner, for the purpose of business of LLP, is the agent of LLP but not of other partner.

Perpetual Succession & continuity

Initiate legal proceedings and own property on its own name

No mandatory requirement of statutory audit for certain LLP's

Rights of Partners in Profits and Loses is transferable

Overview of Limited Liability Partnership (LLP)

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Key Features of LLP (Cont..)

No limit on number of partners

Rights and duties of partners governed by the LLP Agreement subject to LLP Act

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

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

No restrictions on salaries, compensations, distribution of profit to Partners. under LLP Act except provided in LLP Agreement and other laws

No restrictions on withdrawal from capital account

Company V/s. LLP

Company V/s. LLP

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

Company V/s. 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

Company V/s. LLP

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 \leq Rs. 40 Lakh, or whose contribution \leq 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 style="list-style-type: none"> • Listing • ESOPs • Banking, Insurance and Finance Business 	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

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

Designated Partners

- Atleast 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

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

Attachments to forms

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

File Form 1 LLP with Registrar of Companies for name availability

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graph TD; A[File Form 1 LLP with Registrar of Companies for name availability] --> B[Once the name approval is obtained the applicant to execute other relevant documents File Form 2 (Document for incorporation) with the ROC within 3 months from the date of receipt of name availability letter]; B --> C[ROC will issue a certificate of Incorporation in Form No. 16]; C --> D[Execution of LLP Agreement after formation of LLP]; D --> E[The LLP incorporated to file Form 3 with the ROC with regard to information of limited liability partnership agreement within 30 days from the date of incorporation];
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Once the name approval is obtained the applicant to execute other relevant documents File Form 2 (Document for incorporation) with the ROC within 3 months from the date of receipt of name availability letter

ROC will issue a certificate of Incorporation in Form No. 16

Execution of LLP Agreement after formation of LLP

The LLP incorporated to file Form 3 with the ROC with regard to information of limited liability partnership agreement within 30 days from the date of incorporation

Timeframe – 2 to 4 weeks

Annual filings

LLP Act

Form 8 (statement of accounts and solvency) within a period of 30 days from the end of 6 months at the end of each FY

Form 11 (Annual Return) within 60 days from the end of each FY

FEMA

Annual Return on Foreign Liabilities and Assets by 15th July of each year

Stamp Duty on LLP Agreement – Illustrative List

Maharashtra	<ul style="list-style-type: none">• 1% of capital contribution subject to minimum of INR 500 and Maximum INR 15000
Gujarat	<ul style="list-style-type: none">• INR 1000 to 10000
West Bengal	<ul style="list-style-type: none">• INR 20 to 150
Delhi	<ul style="list-style-type: none">• INR 1000 to 5000
Tamil Nadu	<ul style="list-style-type: none">• INR 300

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 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



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graph TD; A[Consent from all shareholders] --> B[No security interest on assets]; B --> C[Audited Statement of Assets and Liabilities certified by Auditor not older than 30 days prior to filing conversion application]; C --> D[All due returns of ROC, Income Tax and other statutory authorities shall be filed]; D --> E[NOC from regulatory authority, if necessary];
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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



Step 7: Filing LLP Agreement with Registrar of Companies

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

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

Effects on conversion



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

Thank you



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