

Western India Regional Council of the Institute of Chartered Accountants of India

Drafting of documents relating to LLP
Taxation Aspects of LLP



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Limited Liability Partnership Act – Drafting of Agreement.

LLP Agreement

➤ Section 2 (1) (o) defines LLP Agreement as

“limited liability partnership agreement” means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership

LLP Agreement (Cont'd)

- A LLP agreement can be executed before or after the incorporation of LLP.
- In the Absence of Agreement the Provisions of First Schedule shall apply.
- If the agreement is signed prior to incorporation, it needs to be ratified by the partners.

Features of First Schedule

- All partners entitled to share equally in the Capital and Profits/losses.
- Indemnity Clause.
- All Partner entitled to take part in management.
- No partner entitled to remuneration.
- No new partner can be introduced without consent of all partners.
- All decisions with majority of partners consent.
- Minutes to be recorded within 30 days and all decisions recorded.
- Render True Accounts.
- Non Compete Clause.
- Partners cannot be expelled by majority unless prior agreed.
- Disputes to be referred to Arbitration under Arbitration and Conciliation Act, 1996.

Checkpoints in Agreement

- Objects
- Registered Address
- Contribution
- Mode of Contribution
- Changes in Contribution
- Sharing of Profit and / or Loss
- Remuneration
- Designated Partners and their Rights and Obligations.
- Rights and Obligations of Partners.
- Admission, Retirement, Expulsion or death of Partner.
- Meetings and minutes

Checkpoints in Agreement

(Cont'd)

- Loans from Partners, if any.
- Non Compete Clause, if any.
- Banking, Accounts and Audit.
- Restrictions on Partners
- Amendments to Agreement
- Indemnity Clause
- Winding up
- Resolution of Disputes

Stamp Duty

- On LLP Agreement.
- On Conversion to LLP.

Limited Liability Partnership Act – FDI.

FDI in LLPs

The Central Government has vide Press Note No. 1 (2011 Series) issued in May, 2011 allowed restricted FDI in LLPs.

Foreign Direct Investment in LLPs is allowed in those sectors/activities where 100% FDI is allowed, through the automatic route.

FDI in LLPs

Exceptions :

- Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions (for example minimum capitalisation norms applicable to 'Non-Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects', etc.); or

FDI in LLPs

Exceptions :

- Sectors eligible to accept less than 100% FDI under automatic route; or
- Sectors eligible to accept FDI under Government Approval route; or
- Agricultural/plantation activity and print media; or
- Sectors ineligible to accept FDI i.e. any sector which is prohibited under extant FDI policy.

FDI in LLPs

Eligible Investors :

A person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs.

FDI in LLPs

Exceptions :

- a citizen/entity of Pakistan and Bangladesh or
- a SEBI registered Foreign Institutional Investor (FII) or
- a SEBI registered Foreign Venture Capital Investor (FVCI) or

FDI in LLPs

Exceptions :

- a SEBI registered Qualified Foreign Investor (QFI) or
- a Foreign Portfolio Investor registered in accordance with Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 (RFPI).

Limited Liability Partnership Act – Taxation Aspects.

Taxation of LLP

- LLP to be taxed as a Partnership Firm.
- Partners Shares to be exempt u/s 10 (2A).
- Returns to be signed by designated partners.
- All partners jointly and severally liable for tax dues in case of winding up.

Taxation of LLP

- Sec 2 (23) (i) includes LLP within the definition of firm.
- Sec 2 (23) (ii) includes partner of LLP as a Partner.
- Sec 2 (23) (iii) includes LLP as a partnership.
- Sec 140 Returns of LLP to be signed by Designated Partners
- Sec 167C tax dues on liquidation to be joint and several liability of all partners.
- Sec 44AD Explanation (a) specifically excludes LLP from the definition of eligible assesseees.

Taxation of LLP

- Sec 115JC Alternate Minimum Tax to apply to LLC
- Sec 115JD Tax Credit for AMT paid under Section 115JC
- Sec 45 (3) Introduction of capital Asset by Partner.
- Sec 45 (4) Transfer of Capital Asset on Dissolution / Retirement to Partner.
- Sec 40(b) Remuneration and Interest to Partners.
- Sec 40 (A) (2) Payments to related parties.

Taxation on conversion of LLP

- No Tax on conversion of Firm to LLP if all partners continue to be partners in LLP and all rights and obligations are the same.
- No Tax on conversion of Company to LLP if conditions specified in S. 47(xiiib) of Income Tax Act, 1961 satisfied.
- S. 47A (4) has been added to state that in case the conditions laid down in S. 47 (xiiib) are not complied then the amount of profits or gains arising from transfer of capital assets or intangible assets shall be deemed to be profits or gains of the successor LLP in the year in which the conditions are not complied with.

Provisions of S. 47 (xiiiib)

- 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 in the company on the date of conversion.

S. 47 (xiiiib) (Cont'd)

- The shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the LLP.
- The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50%, at any time during the period of five years from the date of conversion.

S. 47 (xiiiib) (Cont'd)

- The total sales, turnover or gross receipts in business of the company, in any of the three previous years preceding the previous year in which the conversion takes place does not exceed Rs. 60 Lakhs.
- The total value of assets of the company as per the books of accounts, in any of the three previous years preceding the previous year in which the conversion takes place does not exceed Rs. 5 Crores
- 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.

Effects on conversion of LLP

- S. 32 The proviso has been amended to state that the aggregate depreciation allowable to the predecessor company and the successor LLP shall not exceed the depreciation at the prescribed rates, as if the conversion had not taken place.

Effects on conversion of LLP

(Cont'd)

- S. 49 (1) (iii) (e) has been amended to provide that in case of a conversion of private company or unlisted public company to LLP, the cost of acquisition of assets of the successor LLP shall be deemed to be the cost of acquisition of the predecessor company.
- S. 49 (2AAA) Cost of acquisition of rights of partner shall be deemed to be cost of acquisition of shares of company prior to conversion.
- S. 115JAA (7) has been inserted to provide that no credit for MAT paid by the predecessor company shall be allowed to the successor LLP.

Effects on conversion of LLP

(Cont'd)

- S. 35DDA (4A) has been added to state that in case of a conversion of a private company or an unlisted public company to a LLP, the provisions of the section relating to amortization of expenses relating to lump sum payments to employees under a voluntary retirement scheme, would be allowed to the successor company.
- S. 35DDA (5) has also been amended to state that no deduction would be allowed under this section to the predecessor company in the year of conversion.

Effects on conversion of LLP

(Cont'd)

- S. 43 (1) Explanation 13 of the said section has been amended to state that in case deduction under s. 35AD has been allowed or is allowable in respect of any capital asset to the predecessor company, then the cost of cost shall be taken as “Nil” at the time of conversion.
- S. 43 (6) has been amended to state that the actual cost of assets at the time of conversion of private company or unlisted public company to LLP shall be the WDV in the hands of the predecessor on the date of conversion.

Effects on conversion of LLP

(Cont'd)

- S. 72A (6A) has been added to provide for carry forward of business loss or unabsorbed depreciation of the predecessor company in the LLP, subject to fulfillment of conditions laid in S. 47 (xiiib).
- It further provides that in case the conditions laid down in S. 47 (xiiib) are not complied then the benefit availed under this section shall be chargeable to tax in the hands of the successor LLP in the year in which the conditions are not complied with.
- S. 72A (7) (a) and S. 72A (7) (b) have been amended to accumulated loss and unabsorbed depreciation

Questions



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Thank You

