Conversion of Partnership & Pvt Ltd into LLP

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By: Shardul Dilip Shah
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.
Overview of LLP

- Body Corporate
- Non-applicability of Partnership Act
- Separate Legal Identity
- Only with Profit Motive
- Perpetual Succession
- Limited Liability of Partner

Overview of LLP

LLP
Overview of LLP

Salient Features of LLP

1. Liability of Partner is limited to his agreed contribution
2. Every Partner, for the purpose of LLP, is the agent of LLP & not of other Partner
3. Perpetual Succession and Continuity & No limit on Number of Partners
4. No Partner is liable on account of the independent or un-authorized acts of other partners
5. Initiate Legal proceeding and own property on its own name
6. The rights of a partner to share profits or losses of LLP are transferable either in whole or in part.
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
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
Who Can Not go for LLP

- Non profit making entities [NGO]
- Finance/ Investment entities [Till RBI recognizes LLP]
Overview of LLP

Statutory Recognition

LLP are governed by Limited Liability Partnership Act 2008

LLP is a body corporate and an 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

<table>
<thead>
<tr>
<th>Key Parameters</th>
<th>Partnership</th>
<th>LLP</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance Level</td>
<td>Low</td>
<td>Moderate</td>
<td>High</td>
</tr>
<tr>
<td>Taxation</td>
<td>Lower</td>
<td>Lower</td>
<td>Higher</td>
</tr>
<tr>
<td>Dividend Distribution Tax</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td>Applicable</td>
</tr>
<tr>
<td>FDI/ODI/ECB</td>
<td>Eligible</td>
<td>Eligible for FDI with FIPB approval</td>
<td>Eligible</td>
</tr>
<tr>
<td>NBFC</td>
<td>Not Eligible</td>
<td>Not Eligible</td>
<td>Eligible</td>
</tr>
<tr>
<td>From Bankers point of view</td>
<td>Unfavourable</td>
<td>Less Favourable</td>
<td>Favourable</td>
</tr>
<tr>
<td>Information</td>
<td>NIL</td>
<td>Lower</td>
<td>Higher</td>
</tr>
</tbody>
</table>
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.

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 FDI under approval route
- Companies having ECBs
- 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
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

**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 the Partners of LLP”
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.
The firm should be registered as Partnership.

There should be consent of all the Partners.

Every partner should contribute to the LLP.

DSC (Digital Signature Certificate) should be acquired for two designated Partners having ECBs.

DPIN (Known as DIN) should be acquired for all the designated Partners.

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 conversion.
Key Requirements for Conversion into LLP

- Upto date filing of Income tax returns
- Consent of all the unsecured creditors for the proposed conversion
- Minimum of 2 Designated 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?

<table>
<thead>
<tr>
<th>Orange</th>
<th>Blue</th>
</tr>
</thead>
<tbody>
<tr>
<td>No limit to number of partners in a LLP</td>
<td>The liability of the partners is limited to the amount of capital contributed</td>
</tr>
<tr>
<td>There is no limit on the minimum amount of capital to be contributed</td>
<td>LLP is a Body Corporate</td>
</tr>
<tr>
<td>LLP has a perpetual succession</td>
<td>LLPs enjoy higher creditworthiness compared to Partnerships</td>
</tr>
<tr>
<td>Complete flexibility in managing the business</td>
<td>Foreign Direct Investment (FDI) in LLPs allowed</td>
</tr>
<tr>
<td>Further CA firms are now allowed to convert themselves into LLP</td>
<td>LLP’s can enter into mergers, amalgamation with other LLPs</td>
</tr>
</tbody>
</table>
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: Agreement

- 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, inform 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.
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 continues, 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.
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

<table>
<thead>
<tr>
<th>Particulars</th>
<th>LLP</th>
<th>Partnership Firm</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation</td>
<td>Limited Liability Partnership Act, 2008</td>
<td>Indian Partnership Act, 1932</td>
<td>Companies Act, 2013</td>
</tr>
<tr>
<td>Registration</td>
<td>Mandatory</td>
<td>Optional</td>
<td>Mandatory</td>
</tr>
<tr>
<td>Name</td>
<td>Name to end with &quot;LLP&quot; or &quot;limited liability partnership&quot;</td>
<td>Shall mention &quot;(Registered)&quot; immediately after its name (in case of registered firm)</td>
<td>Name to end with “Private Limited” or “Limited”</td>
</tr>
</tbody>
</table>


## Key Comparison between LLP, Partnership Firm and company

<table>
<thead>
<tr>
<th>Particulars</th>
<th>LLP</th>
<th>Partnership Firm</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Partners / Shareholders</td>
<td>Minimum - 2&lt;br&gt;Maximum - No upper limit prescribed.</td>
<td>Minimum - 2&lt;br&gt;Maximum - Restriction on the number of partners in any firm is 50 [Rule 10 of Companies (Miscellaneous) Rules, 2014]</td>
<td>Minimum - 2 for private company&lt;br&gt;- 7 for public company</td>
</tr>
<tr>
<td>Legal Entity</td>
<td>Is a legal entity, separate from its partners and have perpetual succession</td>
<td>Not a separate legal entity and no perpetual succession. The term will be as per duration mentioned in the partnership agreement or at Will</td>
<td>Separate legal entity having perpetual succession</td>
</tr>
<tr>
<td>Liability of partners / shareholders</td>
<td>Limited to their agreed contribution in the LLP</td>
<td>Unlimited liability of partners</td>
<td>Limited to the extent of the shareholding in the company</td>
</tr>
<tr>
<td>Formation by non-resident</td>
<td>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</td>
<td>• NRI (on non-repatriation basis) – considered as domestic investment&lt;br&gt;• Non-resident (other than NRI on non-repatriation) and NRI on repatriation basis – Approval of RBI, who</td>
<td>Formation of a Company by Non-residents (through FDI) is permitted</td>
</tr>
</tbody>
</table>
# Key Comparison between LLP, Partnership Firm and Company

<table>
<thead>
<tr>
<th>Particulars</th>
<th>LLP</th>
<th>Partnership Firm</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated partner / directors/ managing director</td>
<td>2 designated partners, of which 1 shall be a &quot;resident in India&quot;</td>
<td>No such requirement</td>
<td>Minimum - 2 for private Company - 3 for public company</td>
</tr>
<tr>
<td>Identification Number of director/partner</td>
<td>DPIN for designated partner</td>
<td>No such requirement</td>
<td>DIN for directors</td>
</tr>
<tr>
<td>Audit (other than under Income tax)</td>
<td>Mandatory for LLP with turnover in F.Y. &gt; <code>40 lacs; or contribution </code>25 lacs</td>
<td>No specific provisions made</td>
<td>Mandatory for all the companies</td>
</tr>
<tr>
<td>Annual Filing</td>
<td>Annual Statement of accounts and Solvency &amp; Annual Return needs to be filed every year</td>
<td>No Filling of accounts is prescribed</td>
<td>Filling of financial statement and annual return every year</td>
</tr>
<tr>
<td>CSR</td>
<td>Not mandatory</td>
<td>Not mandatory</td>
<td>2% of average net profits of past 3 years</td>
</tr>
<tr>
<td>Particulars</td>
<td>LLP</td>
<td>Partnership Firm</td>
<td>Company</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Books of accounts to be preserved for</td>
<td>Minimum 8 years from the date on which they are made</td>
<td>Books of accounts to be preserved for</td>
<td>Minimum 8 years from the date on which they are made</td>
</tr>
<tr>
<td>Dissolution</td>
<td>Voluntary winding-up or by order of NCLT</td>
<td>Dissolution</td>
<td>Voluntary winding-up, creditors winding-up or by order of NCLT</td>
</tr>
<tr>
<td>Regulatory Authority</td>
<td>ROC</td>
<td>Registrar of Firm</td>
<td>ROC</td>
</tr>
<tr>
<td>Eligible to raise ECB</td>
<td>Not permitted</td>
<td>Not permitted</td>
<td>Permitted subject to ECB guidelines</td>
</tr>
<tr>
<td>Downstream investment</td>
<td>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</td>
<td>Not specified</td>
<td>Permitted in accordance with relevant sectoral conditions on entry route, conditionality and caps</td>
</tr>
<tr>
<td>Dividend distribution tax on profits</td>
<td>Nil</td>
<td>Nil</td>
<td>20.36%</td>
</tr>
<tr>
<td>Repatriation of funds</td>
<td>Easy</td>
<td>Easy</td>
<td>Moderate</td>
</tr>
</tbody>
</table>
## 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:

<table>
<thead>
<tr>
<th>Particular</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited Liability Partnership whose contribution does not exceed Rs. 1 lakh</td>
<td>Rs.500/-</td>
</tr>
<tr>
<td>Limited Liability Partnership whose contribution exceeds Rs. 1 lakh but does not exceed Rs. 5 lakhs</td>
<td>Rs.2000/-</td>
</tr>
<tr>
<td>Limited Liability Partnership whose contribution exceeds Rs. 5 lakhs but does not exceed Rs. 10 lakhs</td>
<td>Rs.4000/-</td>
</tr>
<tr>
<td>Limited Liability Partnership whose contribution exceeds Rs. 10 lakh</td>
<td>Rs.5000/-</td>
</tr>
</tbody>
</table>
Conversion of LLP into Private Limited Company
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
- Issue of Certificate of Incorporation
- Securing DSC and DIN
- Filing of Incorporation Forms
- Filing Form NO - URC -1
- Memorandum of Association and Articles of Association
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 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 50 percent.

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

<table>
<thead>
<tr>
<th>Cumulative Conditions</th>
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</thead>
<tbody>
<tr>
<td>All the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>No consideration or benefit in any manner (other than by way of share in profit and capital contribution) received by shareholder</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>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</td>
</tr>
</tbody>
</table>

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**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(xiiiib) 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
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