

Formation & Conversion of LLP

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Interesting Global History

- The concept of LLP originated in Italy.
- France is the first country which brought LLP under regulatory framework in 1673.
- In 1892, German Act on LLP extended the limited liability to all the partners.
- The Concept of Company is existing in UK since several Centuries.
- East India Company was formed in 1600BC
- First Joint Stock Companies Act was since 1844 in UK.



Why do we need
separate form of
Organization ?

Rationale –

Need for a separate form of organization

- There is a need for Multi Disciplinary Professionals Firm
- There is restriction on number of partners u/s. 11
- BIG Hurdle is the liability of all partners is unlimited

Rationale –

Need for a separate form of organization

- SME can not cope up with corporate financial rigidity [i.e. Dividend, capital and related party transaction]
- SME can not cope up with compliance requirements in Company
- SME sector generally do not raise money from public

Comparison with existing Options

Particulars	Partnership	Limited Liability Partnership	Company
Legal Entity	No separate entity	Separate entity	Separate Legal Entity
Perpetual Succession	Not applicable	Applicable	Applicable
Liability	Unlimited	Limited	Limited

Comparison with existing Options

Particulars	Partnership	Limited Liability Partnership	Company
Compliance level	Low	Moderate	High
Taxation	Lower	Lower	Higher
Dividend Distribution Tax	Not applicable	Not Applicable	Applicable

Comparison with existing Options

Particulars	Partnership	Limited Liability Partnership	Company
FDI/ ODI/ ECB	Eligible	Eligible with FIPB approval	Eligible
NBFC	Not eligible	Not eligible	Eligible
From Bankers point of view	Un favorable	Favorable	Favorable
Information at Public Domain	NIL	Lower	Higher

Comparison with existing Options

Particulars	Partnership	Limited Liability Partnership	Company
Dispute Resolution System	Not available	Not available	Available
Related Party Transactions	No restriction	No restrictions	Lot of restrictions
Restrictions on cash flow	No restriction	No restriction	Stringent
Making investment in shares	Not possible	Possible	Possible

Who can prefer LLP?

- Asset Holding Companies
- 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 recognises LLP]
- Entities where FDI is restricted[Till FEMA is amended]

Incorporation

- Partnership Agreement is required to be entered [By default First Schedule is applicable]
- At least two partners
- At least two individual are required as designated partners
- At least one of Designated Partners should be resident in India

Important/ New Concepts in LLP

- Designated Partner
- Contribution
- LLP Agreement

Important concepts

- Designated Partner is a concept similar to officer in default
- Contribution is not a capital
- Contribution is similar to guarantee
- Contribution need not be the basis for voting/ control
- Contribution need not be the basis for profit sharing

Imp. aspects of LLP Agreement

- Profit Sharing Pattern/ Voting/ Contribution may not be related
- Powers of DP and Partners to be specified
- Decision making process to be defined
- Exit mechanism / dispute resolution
- AOA of public co. can be the basis
- Agreements for Family business / VC Undertaking / Widely held cos will be different

Process for Incorporation

- Step I – Obtain DIN/ DSC
- Step II – Apply for Name [Form 1]
- Step III – Enter into LLP Agreement
- Step IV – Submit Form 2
- Step V – Obtain Certificate of Registration
- Step VI – Submit Form 3 & 4 within 30 days
- Process Time = 10 - 15 days
- Registration is handled from New Delhi

Conversion of Partnership into LLP

- All the assets and liabilities of the firm would get vested in LLP
- All the Partners becomes Partners of LLP
- Partnership Firm registered with ROF stands dissolved
- Partners personally liable for liabilities incurred before conversion
- Consent of all creditors is required
- Statement of assets and liabilities by CA
- Acknowledgement of last Income Tax rtns.

Conversion of Company to LLP

- There should not be any security interest on the assets of the Company
- All the assets and liabilities of the Company would get vested in LLP
- All the shareholders becomes Partners of LLP
- Consent of all Creditors is required
- Statement of assets and liabilities by CA
- Acknowledgement of last Income Tax rtns.
- Company stands dissolved

Process of Conversion

- Step I – Obtain DIN/ DSC
- Step II – Apply for Name [Form 1]
- Step III – Enter into LLP Agreement
- Step IV – Submit Form 2
- Step V – Submit form 17 OR 18
- Step VII – Obtain Certificate of Conversion
- Step VIII – Submit form 14 within 15 days
- Submit Form 3 & 4 within 30 days
- Process Time = 15-20 days
- Registration is handled from New Delhi

Critical Aspects of Conversion

- Treatment of Equity Capital
- Treatment of Equity Capital with Differential Voting Right
- Treatment of Preference capital
- Treatment of Shareholders Agreement
- Role of Directors/ Managing Directors
- Method of maintaining Books of Accounts
- Stamp Duty Implications
- Change in licenses/ govt. registrations

Important features of First Schedule

- No partner shall draw remuneration
- LLP shall indemnify partner against liabilities incurred in Ordinary Course
- Each Partner shall have one vote at the meeting
- New partner can be admitted with consent of all the Partners

Important features of First Schedule

- Decision taken at Partners Meeting should be minuted within 30 days
- New business can be started with consent of all Partners
- Partner shall not compete with LLP
- Partner can not derive any benefit from LLP without consent of Partners

Interesting Questions ?

- Whether Doctrine of Ultra Vires is applicable?
- Whether Doc. Of Indoor Mgt. is applicable?
- Can LLP issue debentures/ bonds?
- Can LLP convert into Company/ Firm?
- Can LLP have Share Capital over and above contribution?
- Can LLP list on Stock Exchange?
- Can LLP carry out investment as its incidental business?

Opportunities for CAs

- Incorporation of LLP
- Drafting of LLP Agreement [V V IMP]
- Conversion of Partnerships into LLP
- Conversion of Private or Closely held Public Ltd cos' into LLP
- Compliance services for LLP
- Gearing up for Multi Disciplinary Practice

THANK YOU

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