

Amita Desai & Co. Company secretaries, Mumbai, India

Limited Liability Partnership

INTRODUCTION:

A new type of business structure became available from 6th April, 2001 when the Limited Liability Partnerships Act 2000 came into effect. Limited Liability Partnership (LLP) is a separate legal entity conferring full limited liability on its members. A limited liability partnership (LLP), is a relatively new creation. It operates much like a limited partnership, but gives each member of the LLP protection from personal liability, except to the extent of their investment in the LLP. A LLP is a body corporate formed and incorporated under the **Limited Liability Partnership Act, 2008** and is a legal entity separate from that of its Partner. Any individual or a Body Corporate (LLP registered in India or outside India or Company incorporated in India or outside India) can be a partner in a LLP. Every LLP shall have either the words “**Limited Liability Partnership**” or “**LLP**” as the last word of its name.

The Act does not impose a structure for the management of an LLP. There are no statutory provisions for general meetings, Directors, Company Secretary, Share Allotments, etc. As with a common law partnership, these are matters for the LLP agreement. There is no statutory requirement to register (or even to have) a written LLP agreement, but such an agreement is essential in practice. Implied terms, which apply in the absence of agreement to the contrary, are set out in the Limited Liability Partnerships Regulations 2001. The LLP is treated for tax purposes as an ordinary partnership: i.e. each partner is liable to income tax for his or her share of the profits, and to Capital Gains Tax in respect of any gains made on the disposal of partnership assets.

CONVERSION OF PRIVATE COMPANY TO LLP:

Private Limited Company can be converted into Limited Liability Partnership (LLP) the reason for conversion might be to avoid the formalities attached to the Private Company.

...2

Amita Desai & Co. Company secretaries, Mumbai, India

BENEFIT OF LLP:

- The Most Important Reason for conversion of a company into an LLP is on the tax front.
- LLP are taxed like general partnership firm, they are exempted from surcharge currently, the Income-tax Act, 1961, provides for payment of minimum alternate tax (MAT) as also for payment of dividend distribution tax (DDT) by companies. An LLP should not be liable to pay DDT.
- No Capital Gains tax shall be charged on transfer of property from Company to LLP.
- **Minimum Compliance & cost saving:**
After commencement of Companies Act 2013 cost of maintenance is increase in case of Companies. In LLP there is no need of compliances related to meetings and maintenance of huge statutory records So LLP help to save cost.
- Easy to manage & run.
- Less Government Intervention
- Easy to dissolve or wind-up
- Audit requirement only in case of contributions exceeding Rs. 25 Lacs or turnover exceeding Rs. 40 Lacs.

ELIGIBILITY TO COVERT INTO LLP:

A Private limited Company may apply to convert into LLP if --

- (i) there are no security interest in its assets subsisting or in force at the time of application and
- (ii) all the shareholders of the company and no one else are going to be the partners of the LLP.

...3

CHECK FOR CONVERSION OF COMPANY INTO LLP:

- 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

...4

PROCESS OF CONVERSION OF COMPANY INTO LLP

A Private Company may convert into LLP in accordance with the procedure prescribed in the **Third Schedule of LLP Act, 2008**. Process as given below:

Board Meeting:

- Call meeting of board of Director.
- Pass a Resolution for Conversion of Company into LLP and authorize any Director to apply for Name availability of LLP.
- File Application for name availability in form **LLP Form 1** with ROC.

FILLING OF INCORPORATION DOCUMENTS:

- File **LLP Form- 2** with ROC along with following attachments:
 - Proof of Address of Registered office of LLP.
 - Subscription sheet signed by the Shareholder.
 - (Notice of Consent & Appointment of Designated Partners with their personal details)
 - Detail of LLP(s) and/ or Company(s) in which partner/ Designated partner is a Director/ partner.
- File **LLP Form 4** for Notice of appointment, cessation, change in name/ address/ designation of a designated partner or partner and consent to become a partner/designated partner etc as required to be filed under LLP Act/ Rules.
- **Form 4** to be filed in 30 days of the incorporation.

...5

FILLING OF APPLICATION FOR CONVERSION:

- File **LLP form- 18** with ROC along with following attachments:
- Statement of shareholders.
 - Incorporation Documents & Subscribers Statements in Form 2 filed electronically.
 - Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor made up to a date not preceding 30 days of the date of filing the application attached.
 - List of all the Secured and Unsecured creditors along with their consent to the conversion.
 - Approval of the governing council (In case of professional private limited Companies)
 - Acknowledgement of latest Income Tax Return filed.
 - Approval from any other body/authority as may be required.
 - Particulars of pending proceedings from any court/Tribunal etc.3
 - Please confirm if, latest Balance Sheet and Annual Return of Company has been filed or not with ROC.

After all formalities and filings been complied with by the applicants and approved by the Ministry, **REGISTRAR OF LLP** to issue a **Certificate of Registration in LLP Form 19** as to conversion of the LLP. The Certificate of Registration issued shall be the conclusive evidence of conversion of the LLP.

FILLING OF E-FORM-3:

This form provides information in respect to the LLP Agreement entered into between the partners.

Attachment: LLP Agreement

...6

FILLING OF E-FORM-14: (Intimation to RoC):

After Receiving Incorporation Certificate Limited liability partnership to file within 15 (fifteen) days of the date of registration, information to the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 2013 (1 of 2013) about the conversion and of the particulars of the limited liability partnership in **LLP Form 14** within **15 days** of conversion into LLP.

Attachments:

- Copy of Certificate of Incorporation of LLP formed.
- Copy of incorporation document submitted in Form 2

EFFECT OF CONVERSION:

- I. The Private Limited Company shall be deemed to be dissolved.
- II. The Private Limited Company's name shall be removed from the register of the Registrar of Companies.
- III. On conversion of a Private Limited Company into LLP, all properties, assets, Interests, rights, privileges, liabilities, obligations of the Private Limited Company is transferred to the LLP. In other words the whole of the undertaking of the Private Limited Company is transferred to the LLP.
- IV. The conversion does not affect the existing liabilities, obligations, agreements, contracts and continuation employment.
- V. The LLP shall replace the liability in the following cases:
 - a) Pending proceedings by or against the Private Limited Company.
 - b) Any conviction, ruling, judgement or order in favour or against the Private Limited Company.
 - c) Any appointment, authority or power of the Private Limited Company.
- VI. Any approval, permit or licence issued under any written law to the firm which is in force before the date of conversion will not be transferred automatically to the Firm. The partnership firms have to be careful regarding this aspect.

...7

Amita Desai & Co. Company secretaries, Mumbai, India

ACTION TO BE TAKEN ON CONVERSION:

If the properties are registered with the concerned authorities, the LLP shall take necessary steps to notify the concerned authority of the conversion and the particulars of the LLP in the form prescribed by the concerned authority.

REFUSAL TO CONVERT:

If the Registrar refuses to convert a private limited company into a LLP, the Private Limited Company may file appeal before the Tribunal.
