



# Refresher Course on Limited Liability Partnership

**Eastern India Regional Council  
The Institute of Chartered Accountants of India**

# President, Vice-President, ICAI & Team EIRC 2016 – 17



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Compiled by  
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**Designed & printed by :**

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December 2016

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# ABOUT THE ICAI

The Institute of Chartered Accountants of India is a statutory body established by an Act of Parliament viz., The Chartered Accountants Act, 1949 in the year 1949 for regulating the profession of Chartered Accountancy in the country. The Institute, which functions under the administrative control of Ministry of Corporate Affairs, Government of India, has five Regional Councils at Mumbai, Chennai, Kanpur, Kolkata and New Delhi. It presently has 155 Branches covering the length and breadth of the country, 22 Chapters outside India and an overseas office in Dubai.

Founded 66 years ago with just seventeen hundred members, the Institute has grown to cross mark of 2,46,000 members and 9,35,000 students as of now. A significant majority of our membership is in practice and a good deal of specialisation in traditional areas of direct/indirect taxes and in emergent specialism's inter-alia, in financial services, information technology, insurance sector, joint ventures, mutual funds, exchange risk management, risk and assurance service environment/energy/quality audits, investment counseling, corporate structuring and foreign collaborations. The other half was/is in employment, many occupying senior positions such as CMDs in Banks/Financial Institutions, CEOs in leading and reputed public/private sector companies etc.

One of the important elements of the developmental role of the Institute is to make contributions to Government authorities and Regulations viz., the Ministry of Corporate Affairs, Trade Policy Division of the Ministry of Commerce, CBDT, RBI, IRDA, C&AG, SEBI etc. to name a few, on relevant matters of importance to the economy and profession.

On International front, the Institute, a permanent member of International and Regional Accounting bodies, like International Federation of Accountants(IFAC), International Accounting Standards Board(IASB), Confederation of Asian and Pacific Accountants(CAPA) and South Asian Federation of Accountants(SAFA) has made its presence felt through its effective and sustained contribution Professional bodies like American Institute of Certified Public Accountants(AICPA) in U.S.A. The Institute of Chartered Accountants in England and Wales(ICAEW) in U.K. and a host of similar bodies in many other countries have signed MOUs with our Institute for professional collaboration in areas such as education, examination, training etc. and on issues confronting the accounting profession worldwide.

The Institute, being a statutory body, is administered by a Council which is the highest policy making body of the chartered accountancy profession. The Council is comprised of 40 members of whom 32 are elected from among its members spread all over the country. The remaining eight members are nominated by the Central Government representing such authorities as the Comptroller and Auditor General of India, Ministry of Finance, Ministry of Corporate Affairs and persons of eminence from the fields of law, banking, economic, business, finance, industry, management, public affairs etc.

# ABOUT EIRC

In 1952, Eastern India Regional Council (EIRC of ICAI) was constituted with its jurisdiction on West Bengal, Orissa, Assam, Tripura, Sikkim, Arunachal Pradesh, Mehalaya, Nagaland, Manipur, Mizoram and the Union Territory of Andaman & Nicobar Islands. The founder Chairman was Mr. Molay Deb and the office of EIRC was located in the 2nd Floor of 7, Hastings Street(Now renamed as Kiron Shankar Roy Road).

On 10th December, 1975, the foundation stone of the present EIRC Building at 7, Russell Street (Now renamed as Anandilal Poddar Sarani) was led by the then Chief Justice, Calcutta High Court, Hon'ble Justice Shankar Prasad Mitra. On 14th April, 1977, the building was inaugurated by the then Hon'ble Governor of West Bengal, His Excellency Shri A.L. Dias.

On 17th January, 2014, the Second State of Art Building at 382/A, Prantik Pally, Rajdanga, Kasba, Kolkata-700107 has been inaugurated and the same is in operation to cater its dedicated service to its more than 23,005 Members and 83,690 Students.

EIRC has 13 Branches, 18 Study Circles, 5 Study Circles for Members in Industry, 8 CPE Chapters and 9 Study Groups.

EIRC has the privilege and pride in presenting 10 Presidents to ICAI and each one of them has enriched and empowered the profession through their visionary leadership and innovative dynamism.

The cherished dream of EIRC is to kindle the spark within the fraternity and to make the members world class professionals as well as good human beings – to contribute as an active partner in the nation building exercise.

# CHAIRMAN'S MESSAGE



Dear Professional Colleagues,

With a view to empower all our Members of all the latest developments, we have organised this Refresher Course on Limited Liability Partnership, and also come up with a Background Material on LLP covering various topics in details.

Limited Liability Partnership has taken the virtues of a company and it is expected that we shall have many large professional limited liability partnership firms, which will enable them to compete with international professional firms. I am sure that this background material would provide the necessary guidance to the readers to understand the concept of LLP which would further be explained in detail by the eminent speakers who would be addressing during this 4 days Refresher Course.

I express my sincere gratitude to all my colleagues in the Regional Council & Central Council for their support in bringing out this background material on LLP. I must make special mention of CA Nitesh Kumar More, Chairman, Corporate & other Allied Laws & Corporate Governance Committee of EIRC who has come up with this idea of organising this workshop. I would also like to thank all the contributors who have earnestly contributed for this background material.

I am sure that the members will find this background material useful in providing a comprehensive overview about the concept of Limited Liability Partnership. I would be glad to receive inputs and suggestions from the readers.

I wish this programme a stupendous success and a great learning experience to all.

Let's touch base ...today, tomorrow and forever!!!

Date : 23rd December 2016

Place : Kolkata

CA Anirban Datta  
Chairman, EIRC

# **CHAIRMAN, CORPORATE & OTHER ALLIED LAWS & CORPORATE GOVERNANCE COMMITTEE'S MESSAGE**



Dear Professional Colleagues,

It gives me immense pleasure to present you the Background Material on Limited Liability Partnership. We have brought out this background material to keep our members updated of all the developments which has recently taken place on the subject.

Limited Liability Partnership (LLP) is a new corporate structure, which is an alternative corporate business vehicle that provides the benefits of limited liability of a company, but allows its members the flexibility of organising their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm. As the concept is still in the formative stage we have brought out this background material to provide comprehensive information on LLP for the benefit of our Members at large.

I would like express my sincere gratitude to CA Anirban Datta, Chairman for his constant support in all the endeavours. I would like to thank my central council and other regional council members for their support in bringing out this background material. I am thankful for the constant support and efforts of all the professionals who have contributed for this background material, without them this would not have been possible. I earnestly request the readers to send their suggestions at [eirc.material@icai.in](mailto:eirc.material@icai.in)

I wish all a great learning experience.

Date : 23rd December 2016

Place : Kolkata

**CA Nitesh Kumar More**

Chairman, Corporate & other Allied Law &  
Corporate Governance Committee, EIRC

# ACKNOWLEDGEMENT

We are thankful to all the tireless efforts in earnestly contributing for the **Background Material on Limited Liability Partnership**. Without their kindest support this would not have been a success.

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# LLP : BASICS, INCORPORATION, COMPLIANCE & CONVERSION

## LLP Basics.....

- LLP (Limited Liability Partnership) was introduced through Limited Liability Partnership Act, 2008.
- LLP Act got the assent of the President on 7th January, 2009.
- LLP Act was notified on 9th January, 2009.
- The provisions of the LLP Act came into force on 31st March, 2009.
- The Limited Liability Partnership Rules, 2009 were notified by the Central Government in phases since 1st April, 2009.
- LLP Act comprises of 81 Sections and 4 Schedules attached thereto.
- LLP Rules comprises of 41 Rules.

## Benefits in case of LLP .....

- Low cost of formation
- Easy to establish
- Easy to manage and run
- No requirement of any minimum capital contribution
- No restrictions as to maximum number of partners
- LLP and its partners are distinct from each other
- Less compliance level
- Less requirement as to maintenance of statutory records
- Less Government Intervention
- For professionals' more suitable
- Renowned form of Business worldwide

## Eligible Partners for LLP .....

- Individual
- Body Corporate : Companies Formed in India  
Companies Formed outside India
- LLP formed in India
- LLP formed outside India

## Ineligible Partners for LLP .....

- Trust / Trustee (not in capacity of that of Trustee)
- HUF / Karta (not in capacity of that of Karta of HUF)
- NBFC Companies (in terms of RBI Circular dated June 11, 2013)
- Society
- Minor

## Incorporation .....

### Step : I

#### ➤ Application for Reservation of Name :

##### Pre-requisite :

- There must be at least two Designated Partners
- All the Designated partners must have DIN (Otherwise DIN need to be obtained with DSC of the individual applicant)
- In case of existing DIN, at least one Designated Partner must have DSC
- All the Partners must have PAN
- Selection of six(6) names to be proposed for incorporation (name should not resemble with the existing one and should not be match with the existing Trademark in terms of category in which it falls)
- Significance of the name (if not a general one)
- Board Resolution in favour of the Authorised Person (from the Company acting as Partner/Designated Partner).

Form No.	Particulars	Time Frame
1	Reservation of Name	Name will be valid for 3 months from the date of approval

### Step : II

#### ➤ Application for Incorporation of LLP :

##### Pre-requisite :

- Subscribers' sheet duly filled up and signed by all designated partners/partners and the witness
- PAN and Address Proof of the person authorized by the Board (for the Company acting as designated partner/partner)
- Documents pertaining to Registered Office

Form No.	Particulars	Time Frame
2/2A	Incorporation of LLP	Within 3 months from the date of approval of name

### Step : III

#### ➤ Filing of LLP Agreement :

##### Pre-requisite :

- LLP Agreement duly signed by all the designated partners/partners

Form No.	Particulars	Time Frame
3	Filing of LLP Agreement	Within 30 days from the date of Incorporation

## Compliances .....

### (A) Change in Partners :

Form No.	Particulars	Time Frame
4/4A	Notice of appointment, cessation, change in name / address / designation of a designated partner or partner. and consent to become a partner/designated partner	Within 30 days from the effective date
3	Changes in LLP Agreement	Within 30 days from the effective date

**(B) Change of Name :**

Form No.	Particulars	Time Frame
1	Reservation for change of Name	
5	Form for Change of Name	Within 3 months from the approval of name
3	Change in LLP Agreement	Within 30 days from the date of obtaining new certificate of incorporation

**(C) Change of Registered Office :**

Form No.	Particulars	Time Frame
15	Shifting of Registered Office	Within 30 days of the effective date
3	Change in LLP Agreement	Within 30 days of the effective date

**(D) Change in LLP Agreement : (except name, partners and registered office)**

Form No.	Particulars	Time Frame
3	Change in LLP Agreement	Within 30 days of the effective date

**(E) Statutory Filings :**

Form No.	Particulars	Time Frame
8	Statement of Account & Solvency	Within 6 months of the closure of the financial year
11	Annual Return	Within 60 days of the closure of the financial year

**(F) Miscellaneous :**

Form No.	Particulars	Time Frame
12	Form for intimating other address for service of documents	Within 30 days of the effective date
22	Notice of intimation of Order of Court/ Tribunal/CLB/ Central Government to the Registrar	Within 30 days of the receipt of the certified copy of the order
23	Application for direction to Limited Liability Partnership (LLP) to change its name to the Registrar	
24	Application to the Registrar for striking off name	Within 30 days of the effective date
31	Application for compounding of an offence under the Act	
32	Form for filing addendum for rectification of defects or incompleteness	

**Conversion .....**

Different type of entities can be converted into a Limited Liability Partnership (LLP) under the provisions of the Limited Liability Partnership Act, 2008. It can be broadly covered under :

- (A) Conversion of Partnership Firm to LLP
- (B) Conversion of Private Company to LLP
- (C) Conversion of Unlisted Public Limited to LLP

**Partnership Firm to LLP.....****➤ Relevant provisions :**

Section 55 of the LLP Act read with Second Schedule as attached thereto.

**➤ "Conversion" means :**

"Conversion" in relation to a firm converting into a LLP, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to the LLP.

(Paragraph 1(b) of the Second Schedule)

➤ **Pre-requisite :**

- All the partners of the firm and no one else will be the partners of LLP.
- Conversion must be consented by all the partners of the firm.
- Minimum Number of Designated Partners : 2
- All other partners will be LLP Partners, if the number of partners in the Partnership Firm are more than two.
- Consent of all the secured creditors have been obtained.

➤ **Procedure :**

- (a) all the designated partners must have DIN;
- (b) the designated partners to take DSC first, in case of no DIN;
- (c) to make the application for reservation of name :
- Form : Form – 1
  - Attachments : \* Firm Registration copy, if any  
\* Copy of Agreement, if any
- (d) to make application for incorporation and conversion :
- Form : Form – 2 (Form : 2A, if required)
  - Attachments : \* Subscribers' sheet  
\* Proof of Registered Office
  - Form : Form – 17
  - Attachments : \* Statement of consent of all the partners of the firm  
\* Statement of assets and liabilities duly certified by CA  
\* List of Secured Creditors, if any along with their consent  
\* Copy of last Income Tax acknowledgement.
- (e) to register LLP Agreement :
- Form : Form – 3
  - Attachments : LLP Agreement
- (f) intimation vide Form 14 (within 15 days of the conversion)

➤ **Notice of Conversion :**

For a period of 12 months commencing not later than 14 days from the date of registration, every official correspondence of the LLP must carry:

<p><b>XYZ .....LLP</b> (Formerly : XYZ..., a Partnership Firm under Registration No.....) LLPIN :..... Regd. Office :.....</p>
--

**Pvt. Ltd. Co. to LLP.....**

➤ **Relevant provisions :**

Section 56 of the LLP Act read with Third Schedule as attached thereto.

➤ **“Conversion” means :**

“Conversion” in relation to a private company converting into a LLP, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the Third Schedule.

➤ **Certain Companies not eligible for conversion :**

- Company not having Share Capital (i.e., limited by guarantee)
- Company registered u/s 8 of the Companies Act, 2013 (earlier u/s 25 of the Companies Act, 1956)

➤ **Pre-requisite :**

**If and only if :**

- All the shareholders of the Company and no one else will be the partners of LLP.
- Conversion must be consented by all the shareholders of the Company.
- Minimum Number of Designated Partners : 2
- All other shareholders will be LLP Partners, if the number of shareholders in the Company are more than two.
- Consent of all the secured creditors have been obtained.

➤ **Procedure :**

(a) all the designated partners must have DIN;

(b) the designated partners to take DSC first, in case of no DIN;

(c) to make the application for reservation of name:

- Form : Form – 1
- Attachments : Certificate of Incorporation

(d) to make application for incorporation and conversion :

- Form : Form – 2 (Form : 2A, if required)
- Attachments : \* Subscribers' sheet  
\* Proof of Registered Office
- Form : Form – 18
- Attachments : \* Statement of consent of all the shareholders of the Pvt Co.  
\* Statement of assets and liabilities duly certified by CA  
\* List of Secured Creditors, if any along with their consent  
\* Copy of last Income Tax acknowledgement.

(e) to register LLP Agreement :

- Form : Form – 3 (attachment : LLP Agreement)

(f) intimation vide Form 14 (within 15 days of the conversion)

➤ **Notice of Conversion :**

For a period of 12 months commencing not later than 14 days from the date of registration, every official correspondence of the LLP must carry: :\*deleted w.e.f. 15.10.2015

**XYZ .....LLP**  
(Formerly : XYZ....Private Limited / CIN : .....)  
LLPIN : .....  
Regd. Office : .....

**Unlisted Public Ltd. Co. to LLP.....**

➤ **Relevant provisions :**

Section 57 of the LLP Act read with Fourth Schedule as attached thereto.

➤ **“Conversion” means :**

“Conversion” in relation to a company converting into a LLP, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the public company to the LLP in accordance with the Fourth Schedule.

➤ **Certain Companies not eligible for conversion :**

- Company not having Share Capital (i.e., limited by guarantee)
- Company registered u/s 8 of the Companies Act, 2013 (earlier u/s 25 of the Companies Act, 1956)

➤ **Pre-requisite :**

**If and only if :**

- All the shareholders of the Company and no one else will be the partners of LLP.
- Conversion must be consented by all the shareholders of the Company.
- Minimum Number of Designated Partners : 2
- All other shareholders will be LLP Partners, if the number of designated partners are only two.
- Consent of all the secured creditors have been obtained.

➤ **Procedure :**

- (a) all the designated partners must have DIN;
- (b) the designated partners to take DSC first, in case of no DIN;
- (c) to make the application for reservation of name :
- Form : Form – 1
  - Attachments : \* Certificate of Incorporation
- (d) to make application for incorporation and conversion :
- Form : Form – 2 (Form : 2A, if required)
  - Attachments : \* Subscribers’ sheet  
\* Proof of Registered Office
  - Form : Form – 18
  - Attachments : \* Statement of consent of all the shareholders of the Co.  
\* Statement of assets and liabilities duly certified by CA  
\* List of Secured Creditors, if any along with their consent  
\* Copy of last Income Tax acknowledgement.
- (e) to register LLP Agreement :
- Form : Form– 3 (Attachment : LLP Agreement)
- (f) intimation vide Form 14 (within 15 days of the conversion)

➤ **Notice of Conversion :**

For a period of 12 months commencing not later than 14 days from the date of registration, every official correspondence of the LLP must carry: :\*deleted w.e.f. 15.10.2015

**XYZ .....LLP**  
(Formerly : XYZ....Private Limited / CIN : .....)  
LLPIN :.....  
Regd. Office :.....

## FEES .....

### [In terms of LLP Rules, 2009]

- **For registration of Limited Liability Partnership including conversion of a firm or a private company or an unlisted public company into Limited Liability Partnership:**
  - (a) Limited Liability Partnership whose contribution does not exceed Rs. 1 lakh Rs. 500
  - (b) Limited Liability Partnership whose contribution exceeds Rs.1 lakh but does not exceed Rs.5 lakhs Rs. 2,000
  - (c) Limited Liability Partnership whose contribution exceeds Rs.5 lakhs but does not exceed Rs.10 lakhs Rs. 4,000
  - (d) Limited Liability Partnership whose contribution exceeds Rs. 10 lakh Rs. 5,000
- **For filing, registering or recording any document, form, statement, notice, Statement of Accounts and Solvency, annual return and an application along with the Statement for conversion of a firm or a private company or an unlisted public company into LLP by this Act or by these rules required or authorized to be filed, registered or recorded:**
  - (a) Limited Liability Partnership whose contribution does not exceed Rs. 1 lakh Rs. 50
  - (b) Limited Liability Partnership whose contribution exceeds Rs.1 lakh but does not exceed Rs.5 lakhs Rs. 100
  - (c) Limited Liability Partnership whose contribution exceeds Rs.5 lakhs but does not exceed Rs.10 lakhs Rs. 150
  - (d) Limited Liability Partnership whose contribution exceeds Rs. 10 lakh Rs. 200
  - 3A. For filing, registering or recording notice of appointment, cessation, change in name, address, designation of a partner or designated partner, intimation of Designated Partner Identification Number and consent to become a partner or designated partner in Form 4. Rs. 50
- **Fee for any application other than application for conversion of a firm or a private company or an unlisted public company into LLP shall be as under :**
  - (a) An application for reservation of name u/s 16 Rs. 200
  - (b) An application for direction to change the name u/s 18 Rs. 10,000
  - (c) Application for reservation of name under Rule 18(3) Rs. 10,000
  - (d) Application for renewal of name under rule 18(3) Rs. 5,000
  - (e) Application for obtaining DPIN under rule 10(5) Rs. 100
  - (f) An application for striking off name of defunct Limited Liability Partnership under rule 37 Rs. 500
- **Fee for inspection of documents or for obtaining certified copy thereof shall be as under:**
  - (a) For inspection of documents of an LLP under section 36 Rs. 50
  - (b) For copy or extract of any document under section 36 to be certified by Registrar Rs. 5 per page or fractional part thereof
- **Fee for filing any form or a Statement of Account and Solvency or a notice or a document by foreign limited liability partnership :**
  - (a) For filing a document under rule 34(1) Rs.5,000
  - (b) Any other form or Statement of Account and Solvency or notice or document Rs.1,000

LLP model of business is very popular in foreign countries and is gradually steaming up its popularity in our country too due to its operational simplicity and lesser burden of legal compliances resulting in a smooth overall ease to do business for our young entrepreneurs promoting stand up India and MAKE IN INDIA.

# LLP vis-a-vis Other Entities.....Handy Comparison

## LLP vs Partnership Firm.....

Features	Partnership Firm	Limited Liability Partnership
<b>Applicable Act</b>	The Partnership Act, 1932	The Limited Liability Partnership Act, 2008
<b>Liability</b>	Liability of partners unlimited	Liability of a partner limited to the extent of his capital contributed as per LLP agreement.
<b>Perpetual Existence</b>	No.	Yes
<b>Separate Legal Entity</b>	No.	Yes. It can own properties in its name. It can sue and be sued in its own name.
<b>Minimum Number of Owners</b>	Two Partners.	Two Partners.
<b>Maximum Number of Owners</b>	10 in the case of Banking firm and 20 in other cases.	No maximum numbers of partners.
<b>Minor</b>	Minor can be admitted for the benefit of the partnership.	There is no such provision to admit minor to a LLP.
<b>Document defining the activities</b>	Partnership Deed. However it is possible to have oral agreement to have a partnership firm.	Limited Liability Partnership Agreement is the main document defining the activities of the LLP. If there is no LLP Agreement or it does not contain certain provisions, then Schedule 1 of the LLP Act will prevail.
<b>Management</b>	By the Partners. Partnership deed can provide power to certain partners to run the business.	By the Partners. LLP Agreement can give the power to run the business to one or more partners.
<b>Compliance</b>	No specific person has been designated for this purpose. Managing partner/partners shall be responsible for compliance.	Designated partners are liable for compliance of the LLP Act requirements i.e. filing return, Annual accounts etc.
<b>Transferability of Shares</b>	Partner can transfer his membership with the permission of all the partners only.	Transfer allowed. Transferee does not become partner automatically.
<b>Conversion</b>	Firm can be converted into LLP and Company.	LLPs can be converted into limited company by following company law procedure to incorporate a company. In that event LLP would be wound up.
<b>Common Seal</b>	No common seal.	It is optional.
<b>Change of Registered office from one state to another</b>	It can be changed.	Possible. Very less legal formalities to be followed.
<b>Change of Name</b>	Possible.	Possible.
<b>Annual accounts/Return to be filed with the Registrar</b>	No. There is no requirement of Annual Accounts and Annual Returns.	Yes.
<b>E-filing</b>	No.	Yes.

**LLP vs Private Limited Company.....**

<b>Features</b>	<b>Private Limited Company</b>	<b>Limited Liability Partnership</b>
<b>Applicable Act</b>	The Companies Act, 1956 / 2013.	The Limited Liability Partnership Act, 2008
<b>Liability</b>	Liability of shareholders is limited to the extent amount due on shares subscribed.	Liability of a partner limited to the extent of his capital contributed or agreed to be contributed as per LLP agreement.
<b>Perpetual Existence</b>	Yes.	Yes.
<b>Separate Legal Entity</b>	Yes. It can own properties in its name. It can sue and be sued in its own name.	Yes. It can own properties in its name. It can sue and be sued in its own name.
<b>Minimum Number of Owners.</b>	Two shareholders	Two Partners.
<b>Maximum Number of Owners.</b>	200	No maximum number of partners.
<b>Document defining the activities.</b>	Memorandum of Association is the document defining the activities of the Company. It shall contain Name clause, Situation clause, Object clause, Liability clause, Capital clause and Association clause.	Limited Liability Partnership Agreement is the main document defining the activities of the LLP. If there is no LLP Agreement or it does not contain certain provisions, then Schedule 1 of the Act will prevail.
<b>Document providing procedure to be followed.</b>	Articles. It is compulsory to have its own Articles of Association.	Limited Liability Partnership Agreement is the document, which provides the procedure to be followed by the LLP. If there is no LLP Agreement or it does not contain certain provisions, then Schedule 1 of the LLP Act will prevail.
<b>Management</b>	By Board of Directors.	By the Partners. LLP Agreement can give the power to run the business to one or more partners.
<b>Compliance</b>	Secretary/Managing Director/ Executive Director/ Directors/ Manager is liable for compliance of Company law requirements.	Designated partners are liable for compliance of the LLP Act requirements i.e. filing return, Annual accounts etc.
<b>Minimum numbers of Directors</b>	Two	No directors. Two Designated Partners are to be appointed for the purpose of compliance of the LLP Act requirements.
<b>Transferability of Shares</b>	The Articles of Association has to provide restrictions for transfer of shares.	Transfer allowed. Transferee does not become partner automatically.
<b>Conversion</b>	Unlisted Companies and Private Limited Companies can be converted into LLP.	LLPs can be converted into Limited Company by following Company law procedure to incorporate a Company. In that event LLP would be wound up.
<b>Common Seal</b>	It is compulsory.	It is optional.
<b>Change of Registered office from one state to another</b>	Possible. Lot of formalities to be followed.	Possible. Very less legal formalities to be followed.
<b>Change of Name</b>	Possible.	Possible.
<b>Annual accounts/Return to be filed with the Registrar</b>	Yes.	Yes.
<b>E-filing</b>	Yes.	Yes.

# MODEL LLP AGREEMENT

THIS AGREEMENT OF LLP MADE ON \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_ BETWEEN (1) \_\_\_\_\_ son/daughter of \_\_\_\_\_ aged about \_\_\_\_ years presently residing at \_\_\_\_\_ of the **FIRST PART** (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include his\her heirs, executors, administrators, representatives and assigns), AND (2) \_\_\_\_\_ son/daughter of Shri \_\_\_\_\_ aged about \_\_\_\_ years presently residing at \_\_\_\_\_ of the **SECOND PART** (which term or expression shall unless excluded by or repugnant to the subject or context be deemed to mean and include his/her heirs, executors, administrators, representatives and assigns)

**WHEREAS** the parties hereto of the First Part and Second Part shall hereinafter be collectively referred to as '**the Partners**'.

**AND WHEREAS** the parties hereto have mutually covenanted to become and have unanimously agreed amongst themselves to start and carry on a partnership business in the form of Limited Liability Partnership with effect from the execution of the Agreement upon the terms and subject to the conditions and stipulations as hereinafter appearing.

**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

## 1. NAME OF THE LLP

The name of the LLP shall be ' \_\_\_\_\_ **LLP**' (hereinafter referred to as '**the LLP**') bearing LLPIN \_\_\_\_\_

## 2. EFFECTIVE DATE OF THE LLP AGREEMENT

The Agreement shall be effective from date of incorporation of the LLP on \_\_\_\_\_.

## 3. BUSINESS OF THE LLP

The business of the LLP will be \_\_\_\_\_  
\_\_\_\_\_

### 3.1 Incidental or ancillary powers

The following powers shall be incidental or ancillary to attainment of the main business of the LLP, which the LLP can exercise as and when required:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

### 3.2 Change, suspension or modification in nature of business

The nature of business can be changed or new business can be commenced or existing business can be suspended or modified or business can be completely closed only with the consent of all the partners.

## 4. REGISTERED OFFICE OF THE LLP

The Registered Office of the LLP shall be at \_\_\_\_\_

The Registered Office can be changed as provided in the subsequent clauses of the Agreement.

## 5. DESIGNATED PARTNERS

The following are the Designated Partners of the LLP:

Sl. No.	Name	DPIN
1.		
2.		

The Designated Partners have given their consent to act as Designated Partners of the LLP.

### 5.1 Acts to be done by the Designated Partners

The Designated Partners shall be responsible for all acts specified under section 8(a) and all other statutory requirements of the Limited Liability Partnership Act, 2008 (hereinafter referred to as 'the LLP Act') and the Limited Liability Partnership Rules, 2009 (hereinafter referred to as 'the LLP Rules') including authenticating, signing and filing of Statement of Accounts and Solvency and any other document, return, statement and so on as required under the LLP Act and the LLP Rules.

### 5.2 Appointment/Removal of the Designated Partners

The Designated Partners shall be appointed and/or removed upon consent of all partners.

## 6. CONTRIBUTION

The initial capital and/or monetary contribution of the LLP shall be Rs. \_\_\_\_\_/- (\_\_\_\_\_).

The obligation of each partner to contribute is as follows:

Sl. No.	Name of the Partner	Nature and specification of obligation to contribute
---------	---------------------	--

- 1.
- 2.

### 6.1 Increase or reduction in contribution

The Contribution can be increased or reduced with the consent of all the partners.

## 7. POWERS AND DUTIES OF PARTNERS

### 7.1 Powers of the partners

Every partner shall take part in the management of the LLP.

### 7.2 General Powers to the partners

Unless specified to the contrary elsewhere in the Agreement, the partners shall have following specific authorities:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

### 7.3 Mutual rights and duties of each partner

- (a) Every partner shall work diligently and faithfully for the purpose of the business of the LLP and shall be loyal to the LLP.
- (b) Every partner shall indemnify the LLP for any loss caused to it by his fraud in the conduct of the business of the LLP.
- (c) Each partner shall render true accounts and full information of all things affecting the LLP to the LLP.
- (d) Every partner shall account to the LLP for any benefit derived by him without the consent of the LLP from any transaction concerning the LLP or from any use by him of the property, name or any business connection of the LLP.
- (e) No partner will divulge business information, trade secrets or confidential information of the LLP to any outsider, except where required by any law in force.
- (f) Every partner shall disclose his interest in any contract, business deal or arrangement with the LLP.

### 7.4 Authority of each partner

The authority of each partner shall be as provided in Agreement.

### 7.5 Mutual rights and duties of the LLP and the partners

The LLP shall indemnify each partner in respect of payments made and personal liabilities incurred by the LLP:

- (a) in the ordinary and proper conduct of the business of the LLP; or
- (b) in or about anything necessarily done for the preservation of the business or property of the LLP.

### 7.6 Restrictions on partner's authority

The powers and duties of each partner shall be as provided in the Agreement.

## 8. MANAGEMENT AND ADMINISTRATION OF THE LLP

Every partner shall take part in the management and administration of the LLP.

### 8.1 Procedure for calling, holding and conducting meetings

The meetings will be termed as General Meeting of the partners of the LLP.

The meeting can be convened by any partner. The partners can meet as and when required and at any place.

**Chairman of the LLP** - The partners may elect a person as its Chairman. The partners may delegate any powers to Chairman by passing a resolution.

**Quorum for meeting of partners** - Quorum for the meeting will be \_\_\_\_% of the total partners with minimum of \_\_\_\_ partners.

**Minutes** - The partners shall keep minutes of the meetings at the Registered Office of the LLP. The minutes shall be recorded within \_\_\_\_\_ days of the meeting. The minutes can be maintained and authenticated electronically.

### 8.2 Acts, matters, deeds, things and affairs which can be done only with the consent of all the partners

The following acts, matters, deeds, things and affairs will require the consent of all the partners in the General Meeting of the partners:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

## 9. NO COMMON SEAL

The LLP shall not have any Common Seal.

All the correspondence, letters, agreements etc. in the normal course of the business of the LLP shall be signed by any partner or employee or any other person duly authorized by the LLP.

## 10. INDEMNITY

Indemnity given by any partner in favor of the LLP or vice versa shall be as provided in the Agreement.

## 11. ADMISSION, RETIREMENT, CESSATION, RESIGNATION AND EXPULSION OF PARTNER

**Admission of partner** - A partner shall be admitted only with the consent of all the partners in a General Meeting of the partners.

**Retirement of partner** – During the continuance of the LLP no partner shall retire from the LLP except by giving \_\_\_\_ days prior notice in writing to all the other partners of his intention to that effect and on such retirement the retiring partner shall be entitled to get the amount of capital, if any, appearing in the books of the LLP to his credit on the date of his retirement and his share in the profits, if any, of the LLP computed upto the date of such retirement.

**Cessation of partner** – A partner ceases to be a partner upon his death or on the date on which he is declared insolvent by a competent court.

He will also cease to be a partner if he resigns or retires or if he is expelled.

**Resignation of partner** – A partner can resign by giving a minimum \_\_\_\_ days prior written notice of the same to the LLP.

**Expulsion of partner** - A partner can be expelled by passing resolution at the General Meeting of the partners with the consent of all the other partners.

Before expelling a partner, a notice shall be given to the concerned partner giving reasons and his representation, if any, shall be circulated among all partners either electronically or physically.

## 12. OBLIGATIONS AND RIGHTS ON ADMISSION, RETIREMENT OR CESSATION OF PARTNER

**Obligation and rights on admission**- On admission as a partner, he shall be liable to pay the contribution to the LLP as may be agreed by all the partners. He shall be entitled to benefits of \_\_\_\_\_ as agreed at the time of her admission. A partner who has been admitted to the business of the LLP shall be bound by all the terms and conditions of the agreement as existing on the date of his admission and as may be amended from time to time.

**Obligations and rights on cessation** - On cessation of a person as partner, his contribution shall be refunded to him.

### **13. PURCHASE OF SHARE OF PERSON WHO HAS CEASED TO BE PARTNER**

The share of a person who ceases to be a partner may be purchased by any other partner or partners as may be mutually agreed.

### **14. BANK ACCOUNTS**

The LLP may open and operate any bank account. The account may be operated by any one or all the partners jointly and severally.

### **15. BORROWINGS**

The LLP shall borrow any money from any Bank, Financial Institution, NBFC, Finance Company or any other person. The borrowing may be secured or unsecured.

The LLP shall not be liable for any debt or liability contracted or incurred by any of the partners in his/her personal capacity and not for the purpose of the benefit of the LLP.

### **16. SHARE OF PROFIT/LOSS**

The share of the profits and/or losses of each partner will be as below:

1. \_\_\_\_\_
2. \_\_\_\_\_

The share of the profits and/or losses can be modified only with the consent of all the partners.

Save as provided herein no partner shall without the prior written consent, sell, mortgage, charge, encumber, gift, alienate and/or otherwise deal with his share in the LLP or any part thereof.

### **17. SALARY TO PARTNERS**

Each partner shall be entitled to salary, perquisites and allowances upon such terms and conditions as may be determined unanimously by all the partners in writing.

### **18. INTEREST TO PARTNERS**

The LLP may pay interest @ \_\_\_\_% per annum on contributions of the partners in the LLP or as decided amongst the partners.

### **19. LOANS TO LLP FROM PARTNERS**

The LLP may obtain loans from its partners. The acceptance of such loan and rate of interest on the loans will be determined unanimously by all the partners.

### **20. LOANS BY LLP TO PARTNERS**

The LLP may grant loans to its partners. Such loans and interest chargeable on the said loans shall be unanimously decided by all the partners.

### **21. ACCOUNTS**

The Financial Year of the LLP shall end on \_\_\_\_\_ and thereafter on 31st March every year.

Books of Accounts of the LLP shall be maintained on \_\_\_\_\_ basis. The Books of the LLP shall be kept at the Registered Office of the LLP. All the partners shall have full access to the said Books of Accounts at all reasonable times and the partners shall be at liberty to check them and take out such extracts therefrom as each one of them may deem necessary.

### **22. AUDIT OF ACCOUNTS**

The Accounts, if required, shall be audited by a practicing Chartered Accountant, who shall be appointed by all the partners. The remuneration of the Auditors shall be fixed by all the partners.

**Removal of Auditors** – The Auditors can be removed by a Resolution passed in the General Meeting of the partners of the LLP.

### **23. RESOLUTION OF DISPUTES BETWEEN PARTNERS**

Disputes amongst the partners and disputes between any partner and the LLP shall be settled through conciliation by the remaining partners.

### 23.1 Arbitration

All disputes and differences by and between the parties hereto in any way relating to or connected with the Agreement and/or the partnership witnessed herein and/or anything done in pursuance hereof shall be referred for arbitration to such person as be appointed by the parties hereto and the same shall be adjudicated in accordance with the Arbitration and Conciliation Act, 1996 as modified from time to time. The arbitrator shall have the right to proceed summarily and to make interim awards.

### 23.2 Jurisdiction

Only the Courts within the Ordinary Original Civil Jurisdiction of the \_\_\_\_\_ High Court shall have the jurisdiction to entertain, try and determine all actions and proceedings between the parties hereto relating to or arising out of or under the Agreement or connected therewith including the arbitration as provided hereinabove.

## 24 DURATION OF THE LLP

The LLP will have perpetual succession, unless the LLP is wound up or struck off.

## 25. VOLUNTARY WINDING-UP

The LLP is and shall always be deemed to be a LLP "AT WILL".

Voluntary winding-up of the LLP can be done by Resolution passed by simple majority in the General Meeting.

Upon the determination of the LLP the properties and assets belonging to the LLP shall be allotted to the partners as may be mutually agreed amongst the partners.

## 26. INFORMATION OF CLAUSES IN THE AGREEMENT

**26.1 Relating to rule 16(2) regarding notices to other address of LLP** - Notices and documents to LLP shall be served at the Registered Office of the LLP. Other additional address for serving of notice as per provisions of rule 16(2) shall be decided by the partners of the LLP by a resolution passed in a General Meeting of the Partners.

**26.2 Relating to rule 17(1) - Change of registered office** - Change of Registered Office shall be by resolution passed in a General Meeting of the Partners.

**26.3 Relating to rule 20(1) - Change of name** - Change of name of the LLP shall be by Resolution passed in a General Meeting of the Partners.

**26.4 Relating to rule 24(18)(a)- Removal of auditors** - Auditors can be removed by resolution passed in a General Meeting of the Partners.

## 27. PRE- INCORPORATION EXPENSES

Expenses incurred by the partners prior to incorporation shall be reimbursed to them by the LLP.

## 28. ALTERATION OF THE LLP AGREEMENT

Any clause of the Agreement can be amended, altered, modified, deleted or added by executing a fresh Agreement duly signed by all the partners.

**IN WITNESS WHEREOF** the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and year first above written.

**EXECUTED AND DELIVERED** by the Party hereto of the **FIRST PART** namely \_\_\_\_\_ at \_\_\_\_\_ in the presence of:

**EXECUTED AND DELIVERED** by the Party hereto of the **SECOND PART** namely \_\_\_\_\_ at \_\_\_\_\_ in the presence of:

*Note - This write-up is just a model draft of LLP Agreement prepared in view of the current provisions of LLP Act, 2008 and related Rules. The same may be varied and altered as required.*

# LLP FOR REAL ESTATE PROJECTS

## WHY LLP?

With the advent of Companies Act, 2013, several exemptions and relaxations available earlier to private limited and unlisted limited companies have been done away with, and the new company law has imposed several restrictions on such companies. Apart from the stringent regulations affecting the day-to-day working of the companies, the new law has also imposed rigorous penalty and prosecution provisions in case of non-adherence to the same.

In such a scenario it has become very difficult, challenging and costly to maintain small private limited companies. Hence the need of the hour is to look forward to other forms of entities for doing business, and Limited Liability Partnership is one of such forms.

A Limited Liability Partnership (hereinafter referred to as 'LLP') is a corporate business form that provides the benefits of limited liability of a company and the flexibility of a partnership. Hence it may also be referred to as a hybrid between company and partnership. It is governed by the provisions of *The Limited Liability Partnership Act, 2008* and related Rules thereon.

## LLP IN REAL ESTATE INDUSTRY

The Real Estate Industry has always favoured Companies as the desired Special Purpose Vehicles (SPVs) for its projects. Several kinds of real estate arrangements and Joint Ventures are eminent in the real estate sector. Further the presence of Urban Land Ceiling laws in some states of the country (including West Bengal) requires formation of several companies in large real estate projects.

However the Companies Act, 2013 has imposed several restrictions on the companies which has effected the functioning of the companies especially in real estate sector.

Some of the most important amendments brought in by the Companies Act 2013 which are expected to have an implication on the real estate sector are mentioned as below:

- Restrictions on giving loans to sister concerns/ associates with common management;
- No interest free loan can be given by any such company even to its sister concern or associate company;
- Stringent norms and formalities for receipt of share application money and issue of shares;
- Preparation of Consolidated Financial Statements in case of Associates and Joint Ventures

Earlier, there was easy transfer of funds amongst the group companies involved in real estate business without any restriction and without any requirement to charge interest. It was very common to transfer surplus funds from a particular project for deployment in some other project of the same group.

However, with the above-mentioned restrictions and other stringent norms of the Companies Act, it has become very difficult to maintain companies for real estate projects. Hence the real estate industry has been looking forward to incorporate new LLPs or convert existing companies to LLPs.

## ADVANTAGES OF LLP

- LLP is a separate legal entity, liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP;
- LLP has perpetual existence and can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name;
- No partner shall be held personally liable for any act of the LLP or any of the other partners for the sole reason of being a partner of the LLP. Hence no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct;
- No MAT applicable. However AMT u/s 115JC is applicable in cases where income based deductions are claimed;
- No requirement for preparation of consolidation financial statements in case LLP is the holding entity;

- Very less ROC statutory compliances as compared to a company;
- No restrictions on borrowings or granting loans as applicable to a company;
- Maximum Capital Contribution fee is Rs.5000/- compared to high fees payable for increase of authorized capital in case of companies;
- The partners of a LLP can withdraw their capital contribution and profits as per the mutual provisions mentioned in the LLP Agreement, whereas it is not possible to withdraw capital in a company and withdrawal of profits by way of dividend in a company attracts dividend distribution tax (DDT). Hence this is a very big advantage of a LLP.
- No requirement for mandatory audit for LLPs having capital contribution less than Rs.25 Lacs or with Turnover less than Rs.40 Lacs, whereas in case of a company even with a paid up capital of Rs.1 lac, statutory audit is mandatory;
- LLP has flexibility to assign the mutual rights and duties of the partners and the conduct of working of a LLP by specifying the same in the LLP agreement.

### **LLP AS A SPV**

Several types of arrangements and joint ventures can be witnessed in the real estate industry. An attempt has been made in this article to highlight some of such arrangements and use of LLP as a SPV in the same.

### **SINGLE LAND-OWNER/DEVELOPER**

A single LLP can be incorporated in case of an entity that shall be acquiring the land and would carry out the development itself. The partners can contribute the funds as capital contribution and the LLP in turn can use such funds in acquiring land and development of property.

### **JOINT VENTURE - DIFFERENT LAND-OWNER/DEVELOPER**

These types of Joint Ventures are normally very common wherein the Land is already owned by certain landlord(s) and the Developer executes a Joint Venture Agreement with him/them and agrees to carry out the construction of the entire project. Such agreements may be based on area allocation amongst the landlord(s) and the Developer or on the basis of revenue sharing model amongst them.

In such type of Joint Ventures, the Developer can form a LLP and such LLP can execute the Joint Venture Agreement with the Landlords. The advantages as enumerated above for a LLP can be enjoyed by such Developer LLP especially that the funds can be contributed as capital contribution by the partners of Developer LLP and can be withdrawn as and when surplus funds generate during or after completion of the project. The Developer can use the same LLP for another project also during or after completion of the existing project.

### **JOINT VENTURE –INVESTORS/PARTNERS**

In certain real estate projects, typically larger ones, there are several partners involved in the projects as Investors, as co-owners of Land or even as co-Developers. There are several terms and conditions on the basis of which such joint ventures are executed. LLP comes in as a very effective form of business entity to take care of such issues.

### **LLP AGREEMENT**

- Section 23 of the Limited Liability Partnership Act, 2008 specifies that the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the LLP agreement;
- The original LLP agreement and any changes in the LLP agreement needs to be filed with the Registrar in prescribed form;
- An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.
- In the absence of LLP agreement, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions set out in the First Schedule.

## KEY ISSUES IN LLP AGREEMENT

Every LLP needs to file a LLP Agreement within 30 days of its incorporation pursuant to section 23(2) of Limited Liability Partnership Act, 2008 read with Rule 21 of Limited Liability Partnership Rules, 2009. The mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners shall be governed by such LLP agreement.

Some of the key issues that normally arise in most of the real estate arrangements involving partners, especially where the LLP is designed to operate as a SPV for a particular project only, can be addressed by covering them in the LLP Agreement:

- The Business of the LLP may be restricted to a specific project only, and generalized business objects may not be mentioned therein;
- The term of the LLP may be fixed up to the completion of the project and it may be mentioned that the LLP shall be wound up after completion of the project or after expiry of a fixed period after such completion. The *Completion of the project* should also be defined in the Agreement.
- The actions/decisions which require consent of all partners may be specifically mentioned
- The actions/decisions which require consent of majority of partners may be mentioned. Also, majority needs to be defined - whether by number of partners or by share of profits of partners
- Backgrounds and Recitals may be included in the Agreement mentioning about the purpose of formation of this LLP and about the execution of other LLPs related to the Project, if any.
- The duties and responsibilities of each partner should be specifically mentioned, especially about the working and non-working/investing partners
- Mode of appointment of new partners, resignation or expulsion of existing partners should be specified
- Details about designated partners and partners should be mentioned
- Modus operandi of calling and conduct of meeting of partners should be specified along with the minimum frequency of such meetings.
- Profit sharing, remuneration to working partners, interest on capital contributions should be specifically provided in the Agreement.
- Mode of computation of profits and restriction on withdrawal of capital contribution and profits until completion of project
- Details about obligation to contribute capital by each partner should be mentioned.

These kinds of issues are very common where several partners are involved in a project and the project cannot be stalled due to inability of any partner to provide his share of contribution or due to any such other issues. Hence appropriate drafting of the LLP Agreement can provide better understanding amongst the partners and avoid future conflicts leading to stability in continuity of the projects.

## USE OF LLPs IN REAL ESTATE SECTOR

As on 30th November 2016, a total number of 76108 LLPs were registered in the country. There has been an increase of more than twenty thousand LLPs in the last nine months i.e. 38% increase.

The last monthly information bulletin for February 2016 issued by Ministry of Corporate Affairs mentions about the broad economic sector wise classification of active LLPs as on 29th February, 2016, and it reveals that real estate sector is the second largest sector incorporating LLPs with a share of 22% of total LLPs incorporated.

Hence it can be observed that due to several advantages and flexibility in use of LLPs as mentioned hereinabove, the real estate sector has been one of the major sectors moving to this legal structure in recent times.

**Note** - This write-up has been compiled based on current provisions of LLP Act, 2008, related Rules, and other documents available in the public domain. While every care has been taken in the compilation of this document and every attempt made to present up-to-date and accurate information, we cannot guarantee that inaccuracies will not occur. We shall not be held responsible for any claim, loss, damage or inconvenience caused as a result of any information, representation or understanding of this write-up.

# INCOME TAX ON LIMITED LIABILITY PARTNERSHIPS

Some important Income tax provisions related to the Indian Limited liability partnerships as applicable for asst. yr. 2017-18 onwards are discussed in this article.

## Status:

Indian LLP i.e. LLP incorporated under the Limited Liability Partnership Act, 2008 (LLP Act) is assessable in the status of 'firm' [section 2(23)(i) of Income tax Act, 1961 (Act)]. However, condition of section 184 of Act as to existence of written LLP agreement between partners with specification of their individual share/s in that agreement has to be complied with for claim of status as 'firm'. The other condition of section 184 of Act providing for filing copy of such LLP agreement certified by all the partners [as per Explanation to section 184(2)] with the return of income of the LLP where status as 'firm' is first sought for, is not possible to be complied with due to paperless e-filing regime for I. tax returns as per section 139C of Act read with Rule 12 of Income tax Rules, 1962. But as provided in section 139C(1), the certified copy of LLP agreement shall have to be kept ready for filing before Assessing Officer as and when demanded by him. Section 184(4) of Act contains similar requirement about filing of the certified copy of revised LLP agreement where constitution of LLP is changed and status as 'firm' is claimed.

If the conditions of section 184 of IT Act as explained above are not complied with, the LLP shall be so assessed as provided in section 185 of IT Act that it shall not be allowed any deduction on account of interest, salary, bonus, remuneration or commission, by whatever name called, paid/payable to a partner, while computing income under the head 'Profits and gains from business or profession' but in that eventuality, relevant income from interest/remuneration etc. shall not be chargeable in the hands of the concerned partner/s.

It may be noted that non deductibility of interest, remuneration etc. to partners as per section 185 of IT Act is restricted to the computation of income under 'business' head only and not for computation under other heads of income. For example, while computing income from house property, any interest paid by LLP to its partners on loans given by them to LLP may be claimed as deduction subject to provisions of section 24 of Act.

It is to be kept in mind that LLPs incorporated outside India shall always be assessable in the status of 'company' in view of section 2(17)(ii) of Act.

## Non applicability of certain provisions to LLP:

- A. Definition of 'dividend' u/s 2(22) of Act covers only the dividend or deemed dividend by a company to its shareholders and therefore, provisions of that section are not applicable to a LLP or its partners. Similarly, LLP is not liable for any dividend distribution tax u/s 115-O of Act on any distribution of profits made by it to its partners.
- B. Provisions of presumptive tax as provided u/s 44AD of Act are not applicable to a LLP as discussed in later paragraphs.
- C. The requirement of first proviso of section 68 of Act, as to satisfactory explanation of 'source of source' of certain cash credits as inserted by Finance Act, 2012, are applicable to Companies only and not to a LLP.
- D. The deeming fiction of Explanation to section 73 of Act treating share dealing business as speculation business in certain circumstances is also not applicable to a LLP as the same is applicable to Companies and their shares.
- E. Restriction on carry forward and set off of losses in certain cases of change in shareholding as provided in section 79 of Act is applicable to companies only and not to LLPs.
- F. Section 115JB and section 115JAA of Act providing for minimum alternate tax and tax credit are applicable to companies only and not to LLPs. However, 'Alternative minimum tax' provided in chapter -XII-BA of Act is applicable to LLPs which has been discussed in later paragraphs.

## Presumptive tax :

As per clause a) i) of Explanation to section 44AD of Act, deeming provisions of section 44AD are not applicable to a LLP. However, presumptive tax provisions of section 44AE of Act are applicable to LLPs also and therefore any LLP doing business of plying, hiring or leasing goods carriages shall have to declare their income on presumptive basis in accordance with said section 44AE. If any LLP claims, lower profits than that specified in section 44AE, it shall have to get its accounts audited (Tax Audit) under section 44AB of Act and furnish the tax audit report as per section 44AB.

To sum up, a LLP, carrying on business other than that of plying, hiring or leasing of goods carriages and whose total turnover or gross receipts does not exceed Rs. 2 crore (since asst. yr. 2017-18) in particular year, need not to get its accounts audited (Tax audit) u/s 44AB even if profits of said business are lower than 8% of his total turnover or gross receipts.

Finance Act 2016 had inserted w.e.f. asst. yr. 2017-18 a new section 44ADA to the Act providing for minimum presumptive professional income of 50% of gross receipts for professionals having gross receipts upto Rs.50 lakhs in a particular year. These provisions would be applicable for LLPs also and if professional income lower than that provided in proposed section 44ADA(1) would be declared and total income would exceed taxable limit, it would have to maintain books of accounts and get its accounts audited (Tax Audit) u/s 44AB of Act. However, as per new section 44ADA, deduction for interest and salary, remuneration etc. to partners would not be allowable from deemed profit declared as per said section.

Here, it is to be noted that deduction of interest, salary, remuneration etc. paid/payable to a partner of LLP falling under section 44AE is still allowable to that LLP while computing income under 'business' head u/s 44AE of Act unlike the LLPs falling under section 44ADA.

### **Interest and remuneration etc. to partners :**

#### **A. Interest**

As per section 40(b) of Act, deduction of interest paid to a partner of LLP shall be allowable as deduction only if LLP agreement between partners authorises such payment of interest and interest payment is in accordance with such agreement. The maximum allowable rate of interest is 12% simple interest per annum and any interest pertaining to the period before the date of LLP agreement authorising such interest payment is not allowable.

Section 44ADA, inserted to Act w.e.f. asst. yr. 2017-18 by Finance Act 2016 and which is applicable to a LLP also whose gross receipts does not exceed Rs. 50 lakhs in the particular year, does not allow any deduction of any interest paid to a partner of LLP from deemed profits and gains of LLP taken at 50% of gross receipts of its profession.

#### **B. Remuneration etc.**

Similarly, in view of aforesaid section 40(b), deduction of remuneration, salary, commission etc. paid to a working partner of LLP shall be allowable only if LLP agreement between partners authorises such payment and said payment is in accordance with such agreement. Any remuneration etc. pertaining to the period before the date of LLP agreement authorising such payment, is not allowable. The maximum allowable limit of such remuneration is as under :

- |     |   |   |
|-----|---|---|
| i)  | On first Rs.300000/- of the 'book profit' or if there is loss | Rs.150000/- or 90% of 'book profit' whichever is higher |
| ii) | On balance 'book profit'                                      | 60%   |

The term 'Book Profit' has been defined in Explanation – 3 to section 40(b) to mean net profit as per Profit & Loss Account for the year computed in the manner laid down in chapter IV-D of Act but before allowance of any remuneration etc., if any, to the partners.

Section 44ADA, inserted to Act w.e.f. asst. yr. 2017-18 by Finance Act 2016 and which is applicable to a LLP also whose gross receipts does not exceed Rs.50 lakhs in the particular year, does not allow any deduction of any remuneration paid to a partner of LLP from deemed profits and gains of LLP taken at 50% of gross receipts of its profession.

It may also be kept in mind, that as per provisions of section 184(5), the deduction of payment of interest, salary, remuneration etc, to partners is not allowable to a LLP if it incurs any of the failures enumerated in section 144 of Act i.e. failure to file return of income, failure to comply with the terms of notices u/s 143 and 142(1) of Act, or failure to get special audit done u/s 142(2A) of Act. As said earlier, as per section 185 of Act also, deduction of interest, remuneration etc to partners is not allowed to a LLP, if it fails to comply with the provisions of section 184 of Act but wherever interest or remuneration etc. paid to partners is disallowed, concerned partners shall also not be assessed for such disallowed interest or remuneration etc. paid by LLP to him.

Certain issues in the matter of deductibility of interest and remuneration etc. paid to a partner of LLP may arise which are discussed below :

- i) Whether income assessable under the non business head/s which are credited to profit and loss shall form part of 'book profit' u/s 40(b) of Act?

This issue is squarely covered by the answer given by Hon'ble Calcutta High Court in case of Md. Serajuddin & Bros. Vs. CIT(2012) 24 taxmann.com 46(Calcutta) which held that income assessable even under the non business heads shall not be excluded from net profit as per P & L Account to find out 'book profit' u/s 40(b) of Act.

- ii) Whether despite specific ceiling on allowable quantum of interest and remuneration etc. paid to partners, revenue can invoke the provisions of disallowance of alleged unreasonable or excessive interest and remuneration etc. u/s 40A(2) of Act?

The answer to this question may be found in CIT Vs. Great City Manufacturing Co. (2013) 33 taxmann.com 258(Allahabad) which held that when remuneration is paid to a working partner as defined in section 40(b) and said payment is authorised by partnership deed (say LLP agreement in case of LLP), there is no justification for treating any amount of remuneration as excessive u/s 40A(2) of Act provided aggregate remuneration to all the partners is also within ceiling prescribed u/s 40(b) of Act.

- iii) Whether quantum of interest and remuneration etc. to partners is required to be specified in the LLP agreement or a simple recital authorizing partners to mutually decide the quantum of remuneration from time to time will do?

There is no unity of opinions on this question between different Hon'ble High Courts. CBDT circular has also taken a view that simple authorisation of payment of remuneration etc. in the partnership deed (say LLP agreement in case of LLP) is not sufficient but remuneration payable to each individual working partner has to be specified in the partnership deed (say LLP agreement in case of LLP) or manner of quantification of such remuneration has to be laid down in such deed (say agreement in case of LLP) and only then the remuneration to a working partner can be allowed as deduction. Though the said view of CBDT is not binding on the assesseees and courts and one may like to contest the said view, it is always advisable, to avoid unnecessary litigation, to specify in the LLP agreement the rate of interest and amount of remuneration payable to a partner or method of working out the amount of remuneration and simple vague authority to partners to decide mutually the quantum of remuneration etc. from time to time should be avoided though power to change such specified remuneration from time to time by confirmation of all partners in writing may be reserved in the LLP agreement but no retrospective effect would be available to such changes.

#### **Normal computation of income :**

Like other assesseees, since asst. yr. 2017-18, income of a LLP also, under the heads 'Profit and gains from business' and 'Income from other sources' shall be computed as per 'Income computation and Disclosure Standard (ICDS) notified by Central Board of Direct Taxes. In case of any conflict between the 'ICDS' and Act, the provisions of Act shall be applicable.

#### **Alternative Minimum Tax (AMT) :**

Like other non company assesseees, where regular tax for any year i.e. income tax + surcharge, if any + education cesses on total income without considering provisions of 'AMT', payable by a LLP is less than 'Alternative Minimum Tax' (called AMT) i.e. 18.5% of adjusted total income + surcharge, if applicable + education cesses then said adjusted total income shall be deemed to be total income of that LLP and amount of 'AMT' shall be the tax payable by it for that year in view of provisions of section 115JC of Act.

The 'adjusted total income' referred above shall be computed as follows :

Regular total income (i.e. total income without considering 'AMT' Provisions)

Add :

- i) Deduction claimed u/s 10AA of Act (related to SEZ units)
- ii) Deduction claimed under Part 'C' of chapter- VI-A of Act (except section 80P) i.e. deductions claimed u/s 80-IA, S. 80-IAB, S. 80-IB, S.80-IC S.80-ID, S.80-IE S. 80JJA, S.80 JJAA(applicable to non company case since asst. yr. 2016-17) and section 80LA
- iii) Deduction claimed u/s 35AD of Act (related to capital expenditure in case of specified businesses) less depreciation allowable u/s 32 of Act ignoring provisions of section 35AD.

It is to be noted that like other non-company assesseees, in case of LLP also, there is no 'AMT' on exempted income like certain dividends and long term capital gains etc. Similarly, like other non-company assesseees, 'AMT' provisions of chapter XII-BA of Act (except provisions of section 115JD related to tax credit) are not applicable to LLPs also if no deduction has been claimed u/s 10AA (SEZ units), u/s 35AD (capital expenditure in case of specified businesses) or under part 'C' of chapter VI-A (other than section 80P and under sections enumerated above) of Act.

Like other non company assesseees, 'AMT' provisions (except provision relating to tax credit u/s 115JD of Act) shall not be applicable to a LLP if for any reason it is assessable in the status of 'AOP' or 'body of individual' (BOI) instead of 'firm' and its adjusted total income does not exceed Rs.20 lakhs in subject year. Thus, this concession is not available to a LLP assessable as a 'firm'.

As per provisions of section 115JD of Act, 'AMT credit' i.e. credit of any 'AMT' paid in a year over and above the regular tax payable as per non AMT provisions is allowable in subsequent year/s from non AMT tax to the extent of excess of 'non AMT tax' over 'AMT' for the year of such set off. The maximum period of carry forward and set off of 'AMT' credit is 10 years from the year of origin of such AMT credit. The allowance of 'AMT credit' is not affected even if for the reasons mentioned in section 115JEE(1) and (2) of Act, AMT provisions are not applicable to that LLP in the year of set off of AMT credit.

## **Tax Audit:**

The requirement of tax audit u/s 44AB of Act is applicable to a LLP also in following circumstances:

- i) If the LLP carries on business and total turnover or gross receipts of that business for a particular year exceeds Rs. 1 crore.
- ii) If the LLP carries on profession and gross receipts of that profession for a particular year exceeds Rs. 50 lakhs (since asst. yr. 2017-18).
- iii) If the LLP carries on business of plying, hiring or leasing of goods carriages and claims its profits and gains from that business for a particular year to be lower than that deemed as profits and gains u/s 44AE of Act.

Apart from above, w.e.f. asst. yr. 2017-18 a LLP also, carrying on profession and having gross receipts of a particular year not exceeding Rs.50 lakhs, is required to have tax audit u/s 44AB of Act if it would claim profits and gains from that profession to be lower than 50% of its gross receipts and its income (not total income) is not in negative (as there is no threshold limits for firms including LLPs)

The tax audit report is required to be furnished electronically by due date of filing of return of income u/s 139(1) of Act. As per Rule 24(8) of Limited Liability Partnership Rules, 2009 (LLP Rules), a LLP, whose turnover does not exceed Rs.40 lakhs in any particular year or its partners' contribution does not exceed Rs.25 lakhs in that year, is not required to get its account audited under LLP Act. Hence, tax audit report in case of such LLPs shall be in Form No. 3CB of IT Rules unless its account are required to be audited under any law other than LLP Act. But tax audit reports of LLPs, who are required to get their accounts audited under LLP Act (upon crossing threshold limits specified in LLP Rules) or any other law, shall be in form no. 3CA of IT Rules.

However, prescribed particulars required to be furnished in tax audit report shall, in all cases, be in Form No. 3CD of IT Rules.

In case of non-compliance of any provision of section 44AB of Act, a penalty may be levied u/s 271B of Act if no reasonable cause for such lapse is shown. The quantum of such penalty shall be lower of ½% of total turnover or gross receipts in business or profession or Rs.150000/-.

## **Carry forward and set off of loss in case of death of partner etc.**

By virtue of section 78(1) of Act, share of a deceased or ceasing partner in brought forward losses (not unabsorbed depreciation) of LLP after reducing such partner's share of profit or adding such partner's share of loss in the LLP for the year of his death or cessation of his interest in LLP, shall not be carried forward and set off by LLP in future.

It is noteworthy that above provisions of section 78(1) are not applicable to LLP in case of mere change in profit sharing ratio of its partners or in case of admission of a new partner as that section speaks of share of deceased or retired partner only. Similarly, the above provisions of section 78(1) does not apply to carry forward of unabsorbed depreciation also.

## **Liability to partners of LLP in liquidation :**

Irrespective of provision of LLP Act, if tax, penalty interest or any other sum payable under the Act due from a LLP in respect of any income of any year or from any other person in respect of any income of any year during which such other person was a LLP, remain unrecoverable then each person who was a partner of LLP for any period during the said relevant year shall be jointly and severally liable for payment of such dues unless he proves that non-recovery of those dues is not attributable to his gross neglect, misfeasance or breach of duty in respect of affairs of the LLP.

## **Conversion of a Company into LLP:**

A. In view of provisions of section 47(xiii b) of Act, transfer of any capital asset or intangible asset (and not any trading asset) by a private company or unlisted public company (these companies referred as 'converting company') to a LLP (Successor LLP) or any transfer of shares held in such converting company by a shareholder, as a result of conversion of such company into a LLP in terms of section 56 or 57 of LLP Act, shall not be regarded as a 'transfer' chargeable to capital gain tax u/s 45 of Act provided all the following conditions as prescribed by proviso to section 47(xiii b) of IT Act are fulfilled :

- i) Each asset and liability of the converting company immediately before such conversion should become the asset and liability of the successor LLP.
- ii) Each shareholder of converting company immediately before such conversion should become the partner of successor LLP and their respective capital contribution and profit sharing ratio in successor LLP should be in same proportion as their respective shareholding in converting company was on date of conversion. Here, it is to be noted that as per clause 2(2)(b) of Third Schedule to LLP Act and as per clause 3(b) of Fourth Schedule to said Act, all the shareholders of converting company before conversion are required to become partners of

successor LLP and no one else shall be able to become the partner of LLP upon such conversion. However, this restriction of LLP Act may be interpreted to be applicable upto the date of conversion only and not thereafter.

- iii) None of the shareholders of the converting company should receive any consideration or benefit, directly or indirectly, in any form, manner, except conversion of his share capital into capital contribution in the successor LLP and getting of a share in profit of that LLP.
- iv) The aggregate of profit sharing ratio of the shareholders of the converting company as partners of successor LLP should not be less than 50% at any time during the period of five years from the date of conversion. A perusal of section 58 of LLP Act suggests that date of registration of conversion by the Registrar shall be the date of conversion from the company to LLP.
- v) The total sales, turnover or gross receipts in business of the converting company in any of the three years preceding the year of conversion should not exceed Rs.60 lakhs.

This restriction of turnover of Rs.60 lakhs is in respect of years preceding to the year of conversion only and not for the year of conversion itself. In other words, even if the turnover/gross receipts of converting company in the year of conversion is more than Rs.60 lakhs, it shall be eligible for benefit of section 47(xiii b) provided its turnover, gross receipts were not more than Rs.60 lakhs in three preceding years and the other prescribed conditions of section 47(xiii b) have also been complied with.

- vi) No amount should be paid either directly or indirectly, to any partner of successor LLP out of balance of accumulated profit standing in the converting company's accounts on the date of conversion during a period of three years from the date of such conversion.
- vii) A new condition in this regard had been inserted w.e.f. asst. yr. 2017-18 in proviso to section 47(xiii b) by Finance Act, 2016 to the effect that the total value of the assets as appearing in the books of accounts of converting company in any of the three years preceding the year of conversion should not exceed Rs. 5 crores. There may be a controversy about the interpretation of this new condition as to whether book value of assets has been referred or current value of the assets which are appearing in books of account has been referred in this condition. However, use of the word 'as' after the words 'the total value of assets' indicates reference to the 'book value' of the assets and not current value.

- B. As per section 47A(4) of IT Act, if any of the conditions prescribed in proviso to section 47(xiii b) of Act (as explained above) are violated, the amount of exemption of capital gain availed under section 47(xiii b) shall be chargeable in the hands of successor LLP or the shareholders of converting company, as the case may be, as capital gain of the year in which such violation is made.
- C. There may be a doubt as to whether transfer of reserves and surplus (standing in converting company's accounts before conversion) to capital or current accounts of partner of successor LLP be avoided for three years from the date of conversion so as to prevent allegation of any violation of conditions of clause (c) and (f) of proviso to section 47(xiii b) of Act (condition no. vi) mentioned above)? The answer seems to be in affirmative and it is better that amount standing credit to general or other reserves or as balance in P & L A/c in the accounts of converting company be kept as credited to the reserves in the books of successor LLP upto three years from the date of conversion.
- D. By Virtue of sixth proviso to section 32(1) of Act, the aggregate depreciation allowable to converting company and successor LLP for the year of conversion shall not exceed the amount of depreciation calculated as if subject conversion had not taken place and such total allowable depreciation for year of conversion shall be apportioned between converting company and successor LLP in the ratio of number of days for which the assets were used by each of them in the year of conversion.
- E. By virtue of provisions of section 35DDA(4) of Act, the balance amortisation of any VRS expenditure incurred by the converting company before its conversion into LLP shall be continued to allowed to successor LLP as if no conversion has taken place provided all the conditions of section 47(xiii b) are complied with. However, provisions of 35DDA(5) makes it clear that no amortisation for such expenditure will be allowed to converting company in the year of conversion and such balance amortisation will be allowed only in the hands of successor LLP in the year of conversion and subsequent year/s, as the case may be.
- F. There may be a question as to whether deduction u/s 40(a)(i) and 40(a)(ia) or u/s 43B of Act would be allowed to the successor LLP in respect of t.d.s. deposited by it which pertained to expenditure incurred in an earlier year by converting company but disallowed u/s 40(a)(i) for 40(a)(ia) for non- deposit of t.d.s. in that year or tax, duty and other sums paid by successor LLP which were earlier disallowed u/s 43B of Act in the hands of converting company due to non-payment of the same by it in that earlier year. Considering the legal effect of the conversion as specified

in section 58(4) of LLP Act and in absence of any specific prohibition in the Act, such benefits u/s 40(a)(i) or (ia) or u/s 43B should be available to successor LLP as the said provision of LLP Act is an overriding provision and all rights, privileges are transferred and vested in successor LLP from the date of registration of conversion without requirement of any further assurance, act or deed.

- G. In view of overriding provisions of Explanation 2C to section 43(6) of Act, the actual cost, in the hands of successor LLP, of the block of assets transferred by the converting company fulfilling all the conditions specified in proviso to section 47(xiiib), shall be equal to the written down value of said block of assets in the hands of converting company on the date of conversion into LLP.
- H. By virtue of provisions of section 49(i)(iii)(e) of Act, the cost of acquisition, in the hands of successor LLP, of a capital asset or intangible asset which became its property upon conversion referred in section 47(xiiib), shall be deemed to be equal to cost for which converting company acquired it plus cost of any improvement of the respective asset incurred by that converting company.
- I. As per provisions of section 49(2AAA) of Act, the cost of acquisition of the LLP partner's right, referred in section 42 of LLP Act, which became property of such partner upon conversion referred in section 47(xiiib) of Act, shall be deemed to be equal to the cost of acquisition to such partner, of the shares held by him in the converting company immediately before such conversion.
- J. By virtue of provisions of section 72A(6A) and (7) of Act, the unabsorbed non speculative business loss and unabsorbed depreciation of converting company(which could have been carried forward and set off u/s 72 of Act if the conversion from company to LLP had not taken place) shall be deemed to be the similar loss or depreciation of successor LLP for the year of conversion provided all the conditions of proviso to section 47(xiiib) had been fulfilled. In other words, a fresh period of 8 years after the year of conversion as provided in section 72 of Act seems to be available for set off of unabsorbed non speculative business loss transferred from converting company to successor LLP if such loss is not fully set off in the year of conversion itself. The reason for this view is that the transferred loss is treated as loss of successor LLP for the year of conversion. It is also true that such transfer of loss does not include speculation loss or losses under the non- business heads in view of specific restriction under section 78(2) of Act. So far as transferred depreciation is concerned, it can be set off by successor LLP against any income and upto indefinite period as depreciation and loss are viewed differently under the Act.

However, in view of proviso to section 72A(6A), if any of the conditions specified in proviso to section 47(xiiib) of IT Act are violated, the amount of set off of transferred non-speculative business loss or depreciation made in any year in the hands of successor LLP, shall be deemed to be income of said LLP in the year of such violation of the conditions of section 47(xiiib) of Act.

- K. In view of section 115JAA(7) of Act, in case of conversion of a private company or unlisted public company into LLP, the provisions of section 115JAA relating to MAT credit shall not apply to successor LLP and no MAT credit shall be allowed to successor LLP even if converting company had MAT Credit available in its hands on the date of conversion.

#### **Some Provisions Concerning Partners of LLP**

- i) Share of a partner in total income of LLP is exempted u/s 10(2A) of Act.
- ii) The interest, salary/remuneration etc. received by a partner from LLP is assessable under the head 'Profit & Gains from Business' as per provisions of section 28(v) of Act. Any amount of interest, salary/remuneration etc. to partners disallowed in the hands of LLP shall not be taxed as income of the partners to the extent of such disallowance.
- iii) Salary/remuneration etc. paid to a partner by LLP shall not be regarded as 'salary' and therefore t.d.s. provisions of section 192 of Act shall not apply.
- iv) Interest paid to a partner by LLP is also not liable for t.d.s. under section 194A of Act in view of S.194A(3)(iv).

#### **Disclaimer :**

The author does not accept any liability whatsoever in respect of the views expressed and information furnished in this article and any person acting on the basis of the said views and information will do so at his own risk and responsibility.

# Scope for Litigation in case of Limited Liability Partnerships

## Introduction

A Limited Liability Partnership ('LLP') has elements of a partnership and a corporate form of business. Like a company it is a separate legal entity having perpetual succession and there is no limit on the number of partners. The liability of partners is limited to the amount of his contribution in the LLP and a partner of an LLP cannot be made liable for the acts of another partner, though he can be made liable for any negligent or wrongful act committed by him or under his supervision or control. Like a partnership it operates on the basis of an agreement and its compliance framework in India is governed by the LLP Act 2008.

The dual nature of an LLP offers scope for litigation in order to determine whether it will be governed by principles of a partnership firm or a company in particular circumstances some of which are discussed in the following case laws:

### **In the Matter of Magi Capital Partners LLP<sup>1</sup>**

The question was whether the petition for winding up under the Insolvency Act 1986 will be stayed where there was an arbitration clause in the LLP agreement. Dispute arose between the partners of an LLP, no one partner or majority was entitled to terminate the relationship. Arbitration commenced pursuant to the provisions of the LLP agreement. While some of the partners petitioned the court for an order winding up the partnership pursuant to the Insolvency Act 1986. One partner applied to the court for an order to stay the petition in favor of arbitration.

In case of an ordinary partnership the partner would have had an absolute right to stay under the Arbitration Act 1996 and the arbitrator would have the power to wind up the partnership under the Partnership Act 1890. However the court observed that in case of an LLP a separate entity is created by the statute and it is not possible to exclude the statutory right to apply to the court for winding up. The court enjoyed discretion whether or not to grant a stay. In this case the Court considered that arbitration process was already in process and a stay was granted on the petition for winding up under the Insolvency Act 1986.

### **In the Matter of BFI Optilas v Blyth & Others<sup>2</sup>**

In this case the concern was whether an agreement in restraint of trade entered into between the defendants, who were in employment with the claimant could be extended against the LLP constituted by the defendants after termination of their employment. The Court refused to grant an injunction against the LLP though it did grant an injunction against the defendants. It was held that the LLP was a separate legal entity and the claimant could only restrict the activity of its former employees to the extent that it had an enforceable covenant against them.

### **In the Matter of Hailes v Hood & Others<sup>3</sup>**

It was held by the Court that the interest of a partner of an LLP is (potentially) transferable. However there is no definition of a 'share' or 'interest' as in a company where a share represents a unit of ownership in the company and a transfer of shares is a transfer of the ownership of those shares. Partners of an LLP have financial rights and governance rights i.e. economic interest and management interest in the LLP. The 'share' of a member is the totality of the contractual or statutory rights or obligations of the member attached to his membership; and 'interest' of a member is one or more components of his share.

### **In the Matter of Clyde & Co LLP and another v Bates van Winkelhof<sup>4</sup>**

The Supreme Court of UK held that a member of an LLP is a worker and therefore entitled to whistle blowing protection. The decision of the Court of Appeals was overturned by this judgment which had held that Ms. Bates van Winkelhof was not a worker due to interpretation of Section 4(4) of the LLP Act 2000 and a lack of subordination relationship amongst the members of an LLP. The Court highlighted the difference between self employed people in business on their own account and those who provided their service as a part of profession. For the latter category it was held that depending upon individual circumstances a member of an LLP was a worker for the purpose of Employment Rights Act and entitled to proceed with his whistle blowing claim. In India, Section 31 of the LLP Act 2008 provides for whistle blowing protection to partners and employees of an LLP. However, there is no clarity on whether the partners of a partnership firm will be covered by whistle blowing protection.

<sup>1</sup><http://alrr.oxfordjournals.org/content/2003/1/437.extract>

<sup>2</sup><http://lexisweb.co.uk/cases/2002/october/bfi-optilas-ltd-v-blyth-and-others>

<sup>3</sup><http://high-court-justice.vlex.co.uk/vid/-52635935>

<sup>4</sup>[https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2012\\_0229\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2012_0229_Judgment.pdf)

### **In the Matter of Conk v. Richard & O'Neil, LLP<sup>5</sup>**

In this case it was held that an LLP is a citizen of all the states where its partners reside. This was based on the US Supreme Court ruling *Re. Carden v. Akroma Associates*<sup>6</sup> where citizenship of an unincorporated association is determined based on citizenship of all its members. The Court held that a limited partnership is a citizen of every state in a general or limited partner resides.

### **In the Matter of Verizon Yellow Pages Co. v. Sims and Sims<sup>7</sup>**

It was held that unlike a traditional partnership firm, a lawyer partner of an LLP cannot appear for the LLP since the LLP is legally distinct from the partners.

### **In the Matter of Lewis v. Rosenfeld<sup>8</sup>**

The Court held that defendants, partners of an LLP could not be held vicariously liable for the misconduct of an LLP in the absence of specific allegations against them. However the plaintiff's claim arising out of the actions of a second partnership which was not an LLP was valid and the defendants could potentially be held vicariously liable based on their status as partners in that partnership firm( In this case the claim was time barred).

### **Conclusion**

In India, The LLP Act 2008 contains provisions for whistle blowing as per which no partner or employee provision useful information during the investigation of the LLP or where such information leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act shall be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against. Further, as per Section 2(m) a 'Foreign Limited Liability Partnership' is defined as a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India, which is similar to the definition of a 'Foreign Company' under the Companies Act 2013. Section 42 contains provisions for partner's transferable interest according to which the rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part. The transfer of right by any partner pursuant as above does not by itself cause the disassociation of the partner and winding up of the LLP. This transfer of right does not entitle the transferee to participate in the management of the LLP. Similarly, Section 29 of the Indian Partnership Act 1932 provides that transfer by a partner of his interest in the firm either wholly or in part does only entitles the transferee a right to receive a share in the profits but does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business. This is different from transfer of shares in a Company where the transferee becomes the owner of the share transferred carrying right to vote in the general meetings of the company. However, for the purpose of Income and Service Tax an LLP is assessed as a partnership firm (Value Added Tax does not make any distinction between assesses on the basis of type). Thus understanding the complex nature of a LLP becomes difficult in times of disputes and the Courts play a crucial role in determining the fundamentals by which a Limited Liability Partnership will be governed.

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<sup>5</sup><http://law.justia.com/cases/federal/district-courts/FSupp2/77/956/2308625/>

<sup>6</sup><https://supreme.justia.com/cases/federal/us/494/185/>

<sup>7</sup><http://masslawyersweekly.com/fulltext-opinions/1990/01/01/verizon-yellow-pages-co-v-sims-sims-pc-et-al/>

<sup>8</sup>[http://www.leagle.com/decision/2001486145FSupp2d341\\_1447/LEWIS%20v.%20ROSENFELD](http://www.leagle.com/decision/2001486145FSupp2d341_1447/LEWIS%20v.%20ROSENFELD)

# Professionals' liability in LLPs: Limits of limitation

As is common knowledge, the Limited Liability Partnership (LLP) form was devised at the behest of professionals who were looking for means to limit their liability as damages being imposed by courts for professionals' liability assumed great proportions. This article probes the limitation of liability that can actually be achieved by LLPs, and while in the process, it explores the origins and growth of LLPs, and other similar forms of entities. In addition, this article takes the case of auditors' liability to illustrate how effective the LLP form is in protecting professionals.

Since LLPs were almost like "made to order" form of entity, it tries to combine the wish-list of those who might have wanted to have this form of entity. As a tool of convenience, this form of entity has the best of both the worlds – flexibility of a partnership, yet the benefit of separate existence and limited liability. Though the backbone of limited liability is capital maintenance, LLPs may enjoy limited liability without having to ensure creditors and outsiders of any fixed capital. Unlike partnerships, LLPs are bodies corporate and their membership is transferable. Like a partnership, the mutual rights and liabilities of the Partners are governed by agreement and the partnership is run and managed by the partners. It is thus a hybrid between company and partnership.

## HISTORY OF LLP LEGISLATION

### LLP legislation overseas

In the United States LLPs emerged in the early 1990s, while only two states allowed LLPs in 1992, over forty had adopted LLP statutes by the time LLPs were added to the Uniform Partnership Act in 1996. USA has had other liability limiting vehicles – limited partnerships, and limited liability companies. Some US states have also recognised limited liability limited partnerships which may be called an extended form of limited partnership.

In UK, LLP Act was passed in the year 2000. The campaign for LLPs was initiated by accounting firms (PwC and E&Y) to limit their liability by registering themselves under the LLP statute in Jersey in 1995. Though UK Companies Act did allow professions to register as companies, accounting firms were reluctant to publish accounts, be subject to inspections etc. The argument was first rejected by the Law Commission. The accounting firms used their power to have this law passed in Jersey in the midst of political uproar. The statute received Royal Assent in November 1996. There was an element of uncertainty that as to whether the firms would register in Jersey. In its draft Regulatory Impact Assessment, the Department of Trade and Industry made a tentative estimate that around 60,000 regulated firms in UK might eventually become LLPs. In view of the agreements between Jersey and UK, the accounting firms could still do business in UK. This forced the (then) Department of Trade and Industry to put the LLP Bill on the agenda in 1996. After a series of consultations, the Bill was passed in 2000; with tax clarity, the structure got into effect in April 2001.

The provisions of the LLP regulations in UK are largely based on the Companies Act, 1985. The UK Companies Act 2006 received Royal Assent on 8 November 2006, though some of its provisions are yet to be enforced. The Department for Business Enterprise and Regulatory Reform (BERR) issued a consultation paper in November 2007 setting out its proposal for application of the Companies Act 2006 to LLPs. The consultation closed on 6 February 2008 and the Government Response to the same was published in May 2008. The regulations applying the accounts and audit provisions of the Companies Act 2006 came into effect on 1st October 2008 for financial years beginning on or after that date. The draft regulations applying the remaining provisions of the Act to LLPs have been published for comment. These regulations will come into effect on 1st October 2009, to coincide with the implementation of the Companies Act 2006 for companies. However, due to the differences between LLPs and companies, certain provisions are not considered relevant to LLPs, including those relating to narrative reporting, directors and share capital.

The UK move set the ball rolling in other countries too. Canada (Ontario) introduced LLP law in 1998. In Canada, a LLP is usually only available to groups of professionals, such as lawyers, accountants and doctors. Singapore issued consultation paper in 2002, enacted the law in 2005. This legislation draws on both from the US and UK models of LLP, and like the latter establishes the LLP as a body corporate. LLPs were introduced in Japan in 2006. Currently, LLP legislation exists in UK, US, India, Singapore, Japan, China, Canada, Germany, Greece, Poland, Romania in some form or the other.

### LLP legislation in India

On the recommendations of the Naresh Chandra Gupta committee and the JJ Irani committee, the Govt had come out with a concept paper and a draft of the LLP bill in late 2005. The Limited Liability Partnership (LLP) Bill, 2006 was introduced in the Rajya Sabha on 15th December, 2006. The Bill was referred to the Lok Sabha Standing Committee on Finance, for examination. The Standing Committee after consulting various chambers of commerce, professional institutes and other experts and also heard the Ministry of Corporate Affairs, submitted its report to the Parliament in November, 2007.

Based on such report the Ministry of Corporate Affairs revised the LLP Bill and the revised LLP Bill, 2008 was introduced in the Rajya Sabha on 21st October, 2008. The Bill was passed by the Rajya Sabha on 24th October, 2008 and by the Lok Sabha on 12th December, 2008. Finally, the bill received President's assent on 7th January, 2009.

The LLP Rules 2009 covering the registration and other operational aspects of the Act have been notified in the official gazette on 1st April 2009. The Government of India has also launched a website namely [www.llp.gov.in](http://www.llp.gov.in) for operationalising various processes under the Rules. The rules with respect to winding up and dissolution of LLPs has also been notified in the official gazette. on 30th March, 2010 which was further been amended via notification dated 10th July, 2012. The said rule deals with the ways available for the LLPs to close its business.

The LLP Act, though is an outcome of agitation of the professionals, does not restrict the benefit of LLP structure to certain classes of professionals only and would be available for use by any enterprise which fulfills the requirements of the Act. Many of its provisions would still take quite some time to be operational. However, removing hurdles poised by the erstwhile Companies Act, 1956 in LLPs becoming auditors; the extant Companies Act, 2013 creates an enabling provision which allows LLPs to act as auditors which was disallowed earlier.

## **OTHER FORMS OF BUSINESS ORGANISATION WITH LIMITED LIABILITY**

### **Limited Partnership (LP)**

A limited partnership is a form of partnership similar to a general partnership, except that in addition to one or more general partners, there are one or more limited partners (LPs). In such a case, at least one partner is required to be a general partner. Like shareholders in a company, the limited partners in a limited partnership limited liability, i.e., they are only liable on debts incurred by the firm to the extent of their registered investment and have no management authority. In US, these kinds of entities are governed by the United States Uniform Limited Partnership Act, 2001. In UK, limited partnerships are governed by the Limited Partnership Act 1907.

### **Limited Liability Limited Partnership (LLLP)**

Some US states like Texas, Colorado and Delaware have recognised another vehicle very much similar to the LLPs namely, Limited Liability Limited Partnership. A LLLP is a form of limited partnership and consists of one or more general partners and one or more limited partners. The management of LLLPs are entrusted to the general partners, while typically the limited partners only have a financial interest. The difference between an LLLP and a traditional LP is with respect to the general partner's liability for the debts and obligations of the limited partnership.

### **Limited Liability Company (LLC)**

A limited liability company is a type of business ownership which combines the features of corporation and partnership structures, however, in effect it is neither a corporation nor a partnership. LLCs are popular because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC. Other features of LLCs are more like a partnership, providing management flexibility and the benefit of pass-through taxation. Such forms of organizations are commonly found in the UK and the US.

## **RELEVANCE OF LLP FORM FOR LIMITING LIABILITY OF PROFESSIONALS**

The past few years have seen two notable developments – massive corporate failures mostly connected with accounting lapses, and resultantly, huge claims of penalties and damages on auditors<sup>1</sup> and other professionals including investment bankers, portfolio managers, trustees, solicitors, advisers, and so on.

Accountants, solicitors and recognized professionals are organized as partnership firms. Partnership firms are founded on the principle of unlimited liability which is joint and several, and agent-principal relationship. Every partner is an agent of the firm. Hence, every partner shares a reflection of the liability of other partners. This is exactly what the LLP legislation is trying to achieve. It will not protect the partners against their personal liability, but will grant the most-needed protection of liabilities filtering in due to actions of other partners. The LLP legislations provide that partners will be agents of the LLP, but not of other partners. Hence, vicarious liability for acts of other partners will be shielded against.

We take the case of auditors' liability as an illustrative case – to judge the effectiveness of the LLP legislation.

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<sup>1</sup> A presentation on <http://www.auditanalytics.com> by Mark Cheffers shows some very interesting data on liability of auditors, solicitors and other professionals. From 2000 to July 2009, the total amount of top 50 auditor liability settlements in the USA add up to \$ 6.6 billions. In the Madoff scandal itself, there are 25 cases against 8 audit firms. 25 cases have been filed against law firms. Pertaining to the credit crisis, 179 suits have been filed against auditors. In addition, the presentation shows the extent of restatement of accounts, and the reduction in reported earnings by way of such restatements.

## **Auditors' liability for tort, negligence, etc.**

Auditors may be liable on various counts – gross negligence, breach of duty of care and skill, professional negligence, and liability to third parties in tort. This is in addition to criminal liability of the auditor for a breach of law, or for collusion in a crime, etc.

While criminal liabilities are liabilities of the concerned partner, the civil liabilities are usually the liability of the firm. Civil liability may be brought by the auditee company, the company's liquidator, or shareholders by way of a class action or derivative action.

The auditee company is not the only entity entitled to sue the auditors. Individual shareholders, creditors and even third parties who can establish having placed reliance on reported financial statements and therefore, suffered damages, are entitled to bring action. The grounds on which third party action can be brought vary based on the legal traditions of the country – they may range from intentional negligence, damages, causation, etc. In most cases, third party liability has been based on tort.

Tort law provides remedies for civil wrongs not arising out of contractual obligations. A person who suffers legal damages may be able to use tort law to receive compensation from someone who is legally responsible, or liable, for those injuries. The damage may be to a person's property, his reputation or his commercial interest. Generally speaking, tort law defines what constitutes a legal injury and establishes the circumstances under which one person may be held liable for another's injury. Therefore, a duty of reasonable care is required to be observed.

Prior to *Ultramares v. Touche* (USA 1931), auditors were relatively shielded from lawsuits brought by third-parties claiming negligence on the part of the auditor. However, the decision in *Ultramares* served as an opening towards the expansion of auditor liability to third-parties for negligent performance of audits. Two relatively new theories of law were introduced in the above ruling: (1) that the plaintiff might be able to claim as a third-party beneficiary of the contract between the auditor and the client, or (2) the auditor's negligence was heedless to such an extent that it amounted to constructive fraud. It therefore appears that the legal liability of auditors might be extended beyond their clients to the third-parties who relied on audited financial statements. In UK, however, thanks to *Caparo Industries Plc v Dickman* (supra) the legal position now seems to be that auditors owe duty to shareholders as a body and not as individuals. In *Esanda Finance v Peat Marwick Hungerfords* (1997) the High Court of Australia ruled that the auditors did not owe a duty of care to a third party but demonstrated such a liability might exist if for example the audit firm knew a particular third party was to rely on their work in relation to a specific transaction.

In deciding the circumstances in which the auditors of a company owe a duty of care to a third party with whom they have no contractual relationship, the Courts have been divided in their approach- the test of foreseeability, proximity and fairness has been established in *Caparo's case* (supra) and the assumption of responsibility test has been laid down in *Hedley Byrne & Co Ltd v Heller & Partners Ltd*<sup>2</sup> and further adopted in *Henderson v Merrett*<sup>3</sup>.

In *Caparo Industries Plc v Dickman*<sup>4</sup>, the House of Lords, rejecting the test of reasonable foreseeability for determining the duty of care, held that the duty of auditors is towards the shareholders as a body and not as individuals. Although the auditors' primary duty is owed to the company pursuant to the contract under which they are engaged, they also owe a duty of care under the general law to the shareholders, as a body, who can be expected to exercise their rights and powers in a general meeting on the basis of the audited accounts.

The basis of tort is assumption of responsibility. The question which is required to be addressed is that whether on becoming a partner of a LLP, an auditor shall be relieved of his personal liability. The negligence liability in professional firms was the very issue that the LLP Act set out to resolve, however, the issue concerning limited liability was left to be decided through judicial decision.

Liability to third parties arises in tort. The central question in assessing tortious liability is whether the auditor owes a duty of care to the particular third party. The decision in *Man Nuzfahrzeuge AG and Others v Freightliner Ltd and Others*<sup>5</sup> has clearly laid down the principles where an auditor will be found to owe a third party a duty of care:

- i) the loss must be foreseeable;
- ii) there must be a relationship of considerable proximity;
- iii) it must be fair, just and reasonable in all the circumstances to impose a duty of care;

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<sup>2</sup> [1964] AC 465

<sup>3</sup> [1995] 2 AC 145

<sup>4</sup> [1990] 1 All ER 568

<sup>5</sup> [2005] EWHC 2347

- iv) the auditor must be expressly made aware of the third party's likely reliance on the accounts for the particular purpose; and
- v) the auditor should have intended that the third party rely on the accounts for that purpose; absent intention an auditor may still, viewed objectively, be found to have assumed responsibly to a third party.

### **SCOPE OF LIMITATION ON LIABILITY**

Limited liability is a well-established principle among corporations. With the enactment of LLP legislations, the said principle has been extended to partnerships so as to enable professionals to render broad based services and involve in cross-border assignment.

In *Cedric Kushner Promotions, Ltd. v. King*<sup>6</sup>, it was observed that the basic purpose of incorporation is to create a distinct legal entity, with legal rights, obligations, powers, and privileges different from those of the natural individuals who created it, who own it, or whom it employs.

Where no acts were alleged against an individual member of LLC, which were not related to his status as a member, naming the member was improper and unjustified. *Page v. Roscoe, LLC*<sup>7</sup>. A partner of a general partnership is not personally liable, directly or indirectly, including by way of contribution or otherwise, for obligations the partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, solely by reason of being a partner. *Lewis v. Rosenfeld*<sup>8</sup>.

### **LLP law and partners' liability limitation**

The main idea behind enactment of LLP Act in any region is to limit the liability of the partners on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct.

Partners of limited liability partnership are agents of the LLPs, but not of other partners, unlike a general partnership which is based on the rule of agency. LLPs are solely responsible for all obligations arising under a contract or otherwise and partners are not personally liable, whether directly or indirectly, by reason of being a partner. The personal liability of the partners has been excluded under the Act except in case of unauthorized acts, fraud and negligence.

The Report of the Standing Senate Committee on Banking, Trade and Commerce, Canada has dealt with joint and several liabilities of the auditors. The accounting profession is facing liability crisis due to application of the rule of joint and several liability. The Canadian Institute of Chartered Accountants submitted to the Committee a written brief prepared by the Honourable W. Z. Estey Q.C. and entitled *Proportionate Liability and Canadian Auditor*, outlining the concerns of the auditing profession and recommended that the relevant federal and provincial statutes be amended to bring the following proposal into effect:

“The Court in awarding damages for negligence relating to the issuance of financial information by an organization, apportion such damages according to the fault of each defendant and their liability shall not exceed their proportion of the fault.”

The Committee expressed that issue of joint and several liabilities touches every professional, not just the auditors. The Committee released an Option Discussion Paper covering the issue of Joint and Several Liability and Professional Defendants in October 1997. The Committee favoured implementation of “proportionate liability regime” for claims for economic (financial) loss arising by reason of any error, omission, statement or misstatement in financial information. The Australian Inquiry into the Law of Joint and Several Liability and the U.K. Feasibility Investigation of Joint and Several Liability discounted the practical difficulties arising from the implementation of proportionate liability. The Australian study put it this way:

“It may, however, be suggested that any practical problems in implementing a regime of proportionate liability are more apparent than real. It has already been observed that the Republic of Ireland has had such a regime for more than 30 years, and no evidence has emerged of any practical difficulties. The Province of British Columbia has also had such a regime for more than 10 years, and there is no indication of practical difficulties. Equally, there has been no suggestion from those States in the United States of America which have adopted one of the various forms of proportionate liability that the change in the law has led to difficulties of applying it in practice.”

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<sup>6</sup> 121 S. Ct. 2087, (June 11, 2001)

<sup>7</sup> 497 S.E.2d 422 (N.C. Ct. Apps. 1998)

<sup>8</sup> 138 F. Supp. 2d 466, 477 (S.D.N.Y. 3/8/01)

Another option contained in the Options Discussion Paper was that the professionals be permitted to incorporate or form limited liability partnerships in order to limit their liability at the partnership level. The Committee recommended in the following words:

“The Committee urges the provincial and territorial governments to take the necessary steps to provide for the creation of limited liability partnerships and/or corporations by professionals who wish to practise their professions within such structures.”

A UK LLP's members have a collective (“Joint”) responsibility, to the extent that they may agree in an “LLP agreement”, but no individual (“several”) responsibility for each other's actions. Their mutual rights and duties are governed by an agreement between them or between them and the limited liability partnership. As in case of a corporation, Members in an LLP cannot, in the absence of fraud or wrongful trading or un-authorised acts, not personally liable for the acts and deeds of the LLP.

### **Statutory limitation of auditors' liability**

The government of UK has acknowledged that audit firms need some degree of protection. While unlimited liability cannot be ruled out completely, the government has made provision under the Companies Act of 2006 for companies to decide for themselves if they would like to limit their auditor's liability.

The Companies Act 2006 provides for limitation of auditors liability by agreement. Sections 532 to 538 make provisions enabling auditors to negotiate with companies whose accounts they are auditing to limit liability by contract to an amount that is “fair and reasonable in all the circumstances”. One such agreement pertains to only one financial year and is required to be approved by the members before the same can be made effective.

In July 2007 the Financial Reporting Council, UK's independent regulator, at the request of the accountancy profession and after consultation with other interested parties, established an independent working group to guide the directors on the use of agreements to limit the liability of auditors of companies.

In June 2008, the European Commission issued a Recommendation concerning the limitation of the civil liability of statutory auditors and audit firms. The Recommendation states that EU Member States should take national measures to enable auditors to limit their liability and suggests the types of such agreement that should be permissible, which include those contemplated by the Companies Act 2006. The Recommendation also states that agreements should be conditional on receiving shareholder approval and that a description should be included in any financial statements published by the company concerned, as required by the Companies Act 2006 and the accompanying regulations.

The Secretary of State (UK) has framed The Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 w.e.f 6th April 2008 which requires complete disclosure in the companies' annual accounts about the fees receivable by the auditors and auditors' associates and also liability limitation agreements that the company make with their auditors.

### **Conclusion**

Thus, the LLP form, as it was meant to be, is an important enactment for professionals. Limiting the liability of partners is expected to go a long way in an age where reliance on professionals' work is ever increasing. This is especially true for audit profession which is bombarded by litigations. In time to come, company secretaries also are expected to play a significant role as socially-relevant corporate governance professionals. Hence, company secretaries may evaluate the option of transforming themselves in LLPs.

# FAQS ON LLP E-FILING

## 1) What are the steps to incorporate LLP?

Name reservation: The first step to incorporate Limited liability partnership (LLP) is reservation of name of LLP. Applicant has to file eForm 1, for ascertaining availability and reservation of the name of a LLP business.

Incorporate LLP: After reserving a name, user has to file eForm 2 for incorporating a new Limited Liability Partnership (LLP). eForm 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/ designated partners to act as partners/ designated partners.

LLP Agreement: Execution of LLP Agreement is mandatory as per Section 23 of the Act. LLP Agreement is required to be filed with the registrar in eForm 3 within 30 days of incorporation of LLP.

## 2) Can an existing partnership firm be converted to LLP?

Yes, an existing partnership firm can be converted into LLP by complying with the Provisions of clause 58 and Schedule II of the LLP Act. Form 17 needs to be filed along with Form 2 for such conversion and incorporation of LLP.

## 3) Can an existing company be converted to LLP?

Yes, any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act. Form 18 needs to be filed with the registrar along with Form 2 for such conversion.

## 4) Can a listed company be converted to LLP?

No, only private / unlisted public company can be converted into LLP.

## 5) In case form 17 or form 18 has been filed for conversion of partnership firm/company into LLP, can conversion application be rejected? Is there any provision for filing appeal against such rejection?

Yes, conversion application (Form 17 or 18) can be rejected by the registrar, if not found appropriate along with eForm 2.

The applicant has the option to go for appeal against the application rejected within 90 days and inform the registrar about the action undertaken. After the appeal is decided, the registrar can mark the status of eForm as 'Sent for re-application' or 'Rejection confirmed'.

## 6) Status of my conversion application is 'Sent for re-application'. Do I need to file the application again? Do I also need to make the payment again?

In case the eForm is marked as 'Sent for re-application', the applicant is required to file fresh Form 17 or 18 along with Form 2 within 60 days, failing which the Form will be marked as 'Rejection confirmed' by the system.

In case of re-application, the fee is not required to be paid again while re-applying for conversion.

## 7) I want to convert my private company 'ABC Infotech Private Limited' into LLP but with name 'DEF Infotech LLP'. Can I get my LLP registered with new name?

Any private company or unlisted public company can be converted into LLP. However, in this case LLP shall take same name as that of the company at the time of conversion.

## 8) How can apply for reserving LLP name?

File LLP Form No. 1 (Application for reservation or change of name) by logging on to the LLP portal along with the fee prescribed and attaching the digital signature of the designated partner proposing to incorporate a LLP.

Also, refer the LLP name availability guidelines prescribed under section-15 read with Rule-18 of LLP Rules, 2009.

## 9) What is the duration during which the approved name is available for formation of the LLP? Or What is the validity period of approved name of LLP?

The approved name of LLP shall be valid for a period of 3 months from the date of approval. If the proposed LLP is not incorporated within such period, the name shall be lapsed and will be available for other applicant/ LLP. Please note that there shall not be any provision for renewal of the name.

**10) Whether name of LLP can end with words like 'Limited' or 'Pvt. Limited'?**

No, name of the LLP shall end with either 'Limited Liability Partnership' or 'LLP'. Word 'limited' shall be allowed in name only within 'Limited Liability Partnership'.

**11) What is the treatment for stamp duty issues, both in terms of original incorporation and conversion from other business structures? Would there be any stamp duty exemption in case of conversion?**

Since Stamp Duty is the subject reserved for the States, the LLP Act does not contain any provision for treatment of stamp duty issues. The stamp duty payable will depend upon the relevant Stamp Act prescribed by the State Government/Union Territory.

**12) What will be the obligation of a partner in case he changes his name or address?**

Every partner shall inform the LLP of any change in his name or address within a period of fifteen days of such change. The LLP, in turn, would be under obligation to file such details with the Registrar within thirty days of such change in Form 4

**13) Can I comply with the requirement of two designated partner by appointing myself as a designated partner in individual capacity as well as a nominee of body corporate?**

No, Appointment of at least two "Designated Partners" shall be mandatory for all LLPs.

Every LLP shall be required to have atleast two Designated Partners who shall be individuals and at least one of the Designated Partner shall be a resident of India. In case of a LLP in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

**14) I want to incorporate a LLP with more than 200 designated partners and partners. However, Form 2 has the limit of only 200 partners to be entered. What shall I do in that case? Or When Addendum to Form 2/ 4 is required to be filled by LLP?**

Filing of addendum to Form 2 with Form 2 or addendum to Form 4 with Form 4 is required to be filed if the Total number of designated partners and partners for which the Form is filed exceed 200.

**15) In case Form 2 or Form 4 is marked for resubmission, then how the details of DPs/ partners numbering more than 200 are to be re-submitted?**

In case Form 2 or any addendum to Form 2 is marked as RSUB, then the Form 2 and all the corresponding addendums shall be marked as RSUB and shall have to be resubmitted by the stakeholder. In case Form 2 is resubmitted, status of Form 2 'Pending for addendum to Form 2' and shall be changed to 'pending for action' once all the required addendums are filed.

The above scenario is similarly applicable in case of Form 4 or any addendum thereto.

**16) Which forms are required to be filed to Registrar in case of appointment of new partners/ resignation of existing partners from the LLP?**

Form 3 and Form 4 are required to be filed for appointment of new and resignation of existing partners within thirty days of such cessation or appointment without additional fee and with additional fee thereafter

**17) What is the process for intimation of changes in the partner's details?**

The change in partner's details can be intimated by filing Form 4 within thirty days of such change without additional fee and with additional fee thereafter.

**18) Is it mandatory to file and get registered the partnership agreement under LLP?**

Yes, it is mandatory to execute and file LLP Agreement in view of Section 2(0) & (q) , 22 and 23 of the Act.

As per provisions of the LLP Act, in the absence of agreement as to any matter, the mutual rights and liabilities shall be as provided for under Schedule I to the Act. Therefore, in case any LLP proposes to exclude provisions/ requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule I.

**19) I have incorporated a LLP with partners numbering more than 200. How can I file the details of partners in Form 3?**

A limited liability partnership willing to file the information with regard to initial LLP agreements or any changes thereto, and the number of partners exceeds maximum number allowed in the eform, will need to enter/ update the details of all partners through a screen for 'Enter/ Update partners' detail for filing LLP agreement' which shall be available to the designated partners (as business partner) after login to MCA portal.

**20) I have filed Form 3 and Form 4 for cessation of partners from the LLP. The eform are pending for approval. Can I file another Form3 and Form 4 for appointment of other partners in the LLP?**

In this case filing shall not be allowed if there is any eform 3 and any eform 4 for cessation of a designated partner or partner pending for payment of fee or any eform 3/4 is under processing in respect of the LLP.

**21) What are the documents required to be filed by a LLP annually?**

LLP is required to file LLP Form 8 (Statement of Account & Solvency) and LLP Form 11 (Annual Return) annually. The 'Annual Return' is required to be filed within 60 days of close of the financial year and 'Statement of Accounts & Solvency' shall be filed within 30 days from the end of six months of the financial year to which it relates. Every LLP has to maintain uniform financial year ending on 31st March of a year.

**22) What is "Statement of Accounts and Solvency" and whether it has a prescribed format?**

Every LLP is required to file 'Statement of Accounts & Solvency' in prescribed LLP Form 8 which contains a declaration on the state of solvency of the LLP by the designated partners and also information related to statement of assets and liabilities and statement of income and expenditure of the LLP. This form has to be filed by the LLP on an annual basis.

**23) I have incorporated a LLP on 1st December of financial year, when do I require filing my statement of accounts and annual return?**

In case LLP has been incorporated on or after 1st October of financial year, then LLP can close its first financial year either on the coming or next 31st March i.e. LLP files its first financial year details for 18 months.

**24) When the details of DP or partners are required to be updated through screen for 'Verifying partner's detail'?**

In case total number of designated partners (DP) and partners as on 31st March of the financial year for which return is being filed exceeds two hundred, details are required to be updated through the screen. These details are required to be provided in the screen before filling eForm 11. Once the details are updated on the LLP portal, a service request number (SRN) shall be generated by the system and the same is to be mentioned at the time of filing of form 11. Also note that filing of form 11 shall not be allowed in case there is any other eForm 11 pending for payment of fee or any other eForm 11 is under processing or already approved in respect of the SRN.

**25) How can I intimate charge details to the registrar? Is it mandatory to file the charge details to the registrar office?**

The charge details i.e. creation, modification or satisfaction of charge, can be filed through Appendix to eForm 8(Interim). However, it is not mandatory to file the charge details with the office of Registrar but the stakeholders can voluntarily file the same.

**26) The registered office of my LLP has been shifted from the jurisdiction of one ROC office to another. How do I file eForm 15 with both the ROCs?**

You are required to file eForm 15 at LLP portal only once. Existing registrar shall process the eForm and forward the same to the new Registrar for registration. Please note that approval of such eForm 15 shall not be allowed in case there is any other eForm(s) pending for payment of fee or is under processing in respect of the LLP. Upon approval, Certificate for change of registered address from the Registrar office shall be provided.

**27) Can LLP give any other address (besides its registered office) for the purpose of receiving communication from Registrar?**

It has been provided in the Act that a document may be served on a LLP or a partner or designated partner by sending it by post or by any other mode (to be prescribed under Rules) at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed (in the rules). Thus, an LLP shall have option to declare one more address within the jurisdiction of same ROC (other than the registered office) for getting statutory notices/letters etc. from Registrar.

**28) What are the provisions for reservation of name by a foreign entity under the LLP Act?**

Foreign entity can file an application for reservation of its name or for renewal of name reserved earlier by filing an application in eForm 25.

The name will be reserved in system for a period of three years and an application for renewal of name should be filed before the expiry of three years. In case of renewal of name, the name should be reserved for a further period of three years after renewal date.

**29) Whether a foreign LLP can establish a place of business in India?**

Foreign LLP can establish a place of business in India by filing Form 27 giving the particulars of incorporation of foreign LLP, details of DPs/ partners of that foreign LLP and details of atleast two authorised representatives for complying with regulation of LLP act.

**30) After filing an eForm, do I need to keep track of my SRN?**

Yes. One should keep a track of the SRN till it is approved. In case of any defect, incompleteness or to call any further information, concerned MCA office can mark the status of SRN as 'Required Resubmission' or 'Waiting For User Clarification'. In such a case, the concerned company/ person will be required to rectify such defects or incompleteness or furnish further information, within prescribed period.

**31) Transaction status of my SRN is 'Waiting For User Clarification'. What should I do?**

You are required to file eForm 32 (Addendum), to rectify the defects pointed out or furnish further information/ document(s) called for by the concerned registrar office.

**32) I want to provide additional information in respect of an already filed LLP Form. Can I file addendum Form 32 for this?**

Addendum Form 32 can be filed only in case status of the relevant LLP eForm(s) in respect of which addendum is being filed is 'Pending for user clarification' (PUCL). This eForm cannot be filed suo-motu by the LLP or stakeholder (that is in case status is other than PUCL).

**33) Transaction status of my SRN is 'Required Resubmission'. What should I do?**

You are required to re-submit your eForm to rectify the defect(s)/ incompleteness pointed out by the concerned MCA office. If you fail to re-submit your eForm, you will be required to file the eForm afresh with payment of fee and additional fee, as applicable.

**34) How can I inspect the documents as filed and registered by a LLP?**

The user has to log on to LLP portal to avail the service. The following documents/ information of LLP will be available for inspection by any person:-

- Incorporation document,
- Names of partners and changes, if any, made therein,
- Statement of Account and Solvency
- Annual Return

The fees for such inspection of a LLP is Rs 50/-

**35) Can I apply for certified copies of the documents as filed and as registered by a LLP?**

Yes, a user can take a certified copy or extract of any document from the below mentioned list of documents by paying a nominal fee of Rs. 5/- per page:-

- Incorporation document,
- Names of partners and changes, if any, made therein,
- Statement of Account and Solvency
- Annual Return

**36) Is it required to file Form 14 for conversion of private company/unlisted public company in to Limited Liabilities Partnership (LLP)?**

As per notification dated 15th October, 2015 issued by Ministry, Form-14 is not required to be filed in case of conversion of private company/unlisted public company into LLP.

**37) Is it required to file Form 14 for conversion of firm in to Limited Liabilities Partnership (LLP)?**

As per notification dated 15th October, 2015 issued by Ministry, Form-14 is required to be filed in physical form with Registrar of Firms, after approval of Form 17 by Registrar of LLP.

**38) When should a user file Form 2A (addendum)?**

As per notification dated 15th October, 2015 issued by Ministry, Form 2A (addendum) is linked to Form 2. As soon as Form 2 is filed and number of partners exceeds 200, then Form 2A (Addendum) needs to be filed for number of partners exceeding 200.

**39) When should a user file Form 4A (addendum)?**

As per notification dated 15th October, 2015 issued by Ministry, Form 4A (addendum) is linked to Form 4. As soon as Form 4 is filed and number of partners exceeds 200, then Form 4A needs to be filed for number of partners exceeding 200.

# CASE STUDIES

## Case I

Whether a minor/HUF be admitted as a partner in a LLP?

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## Case II

Whether the rights in a LLP be assigned by a partner to a minor/HUF?

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## Case III

Whether a NRI can be admitted as a partner in LLP?

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## Case IV

- How can be a body corporate become a partner in a LLP?
  - Can it become a designated partner?
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## Case V

Whether a LLP can pay interest to its partners?

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## Case VI

Whether a LLP can pay remuneration to its partners?

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## Case VII

What are the implications of MAT/MAT credit available to a company in the hands of LLP in case of conversion of such company into LLP?

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**Case VIII**

Whether various losses under different heads of income sustained by a company be allowed to be carried forward in the hands of LLP to which it is so converted?

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**Case IX**

What will be the tax implications u/s 41(1) if the LLP so converted recovers any expenditure or remits or ceases to hold any trading liability, the allowance or deduction of which was made to the company so being converted?

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**Case X**

- What are the implications if any debt of the preceding company is written off as bad-debt in the books of succeeding LLP?
- Similarly, what are the implications in case any bad-debt written off in the books of preceding company is recovered by the succeeding LLP?

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**Case XI**

Whether Explanation to Section 73 of the Income Tax Act, 1961 applies to a Limited Liability Partnership?

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**Case XII**

- Whether the provisions of AMT are applicable to a LLP?
- Whether AMT provisions are applicable for dividend & long term capital gains earned by a LLP?
- What are the provisions for carry forward of AMT credit?

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**Case XIII**

Whether Section 2(24)(iv) applies to a LLP?

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**Case XIV**

Whether provisions of Deemed Dividend as contained in Sections 2(22)(a) to 2(22)(e) of the Income Tax Act, 1961 applicable to a LLP?

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**Case XV**

Whether merger of two LLPs are allowed?

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**Case XVI**

What are the implications of conversion under Section 47of the Income Tax Act, 1961?

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**Case XVII**

Section 184 of the I.T. Act, 1961 requires the return of partnership firm to be accompanied by a certified copy of partnership deed in certain situations.

How shall the same be filed in case of e-filing of return where there is no provision in the return to attach the same?

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**Case XVIII**

What shall be the written down value of the block of assets in the hands of successor LLP where such assets are transferred to it from the predecessor company on conversion?

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**Case XIX**

What shall be the cost of acquisition and period of holding of capital assets transferred to LLP in case of conversion of company into LLP?

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**Case XX**

Whether the provisions of Section 50C & Section 43CA of the Income Tax Act, 1961 applies to a LLP?

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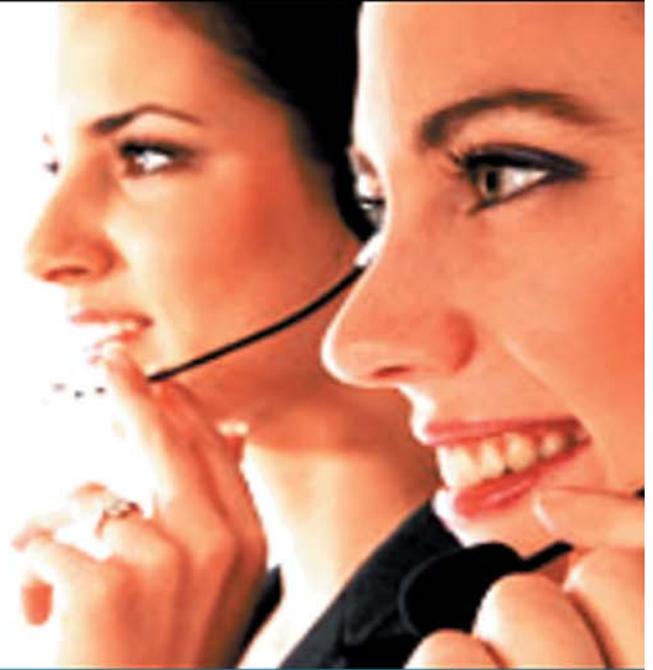
**Case XXI**

What shall be the consequences if any of the conditions laid down u/s 47(xiiib) of the Income Tax Act, 1961 is not complied with?

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