CASC BULLETIN

The Chartered Accountants Study Circle

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INDEX

Page No.

MEETINGS

Date	Time	Speaker	Topic
10.12.09	06.15 P.M.	CA. SUNDAR RANGANATHAN	QUALITY ASSESSMENT - EMERGING TRENDS IN BPOs / KPOs

High Tea 6.00 pm (for both the meetings)

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ALL ABOUT LLP FORMATION AND ITS BENEFITS

S DHANAPAL

This is the first part of this article. the second and concluding part will appear in jan 2010 bulletin.

Introduction:

Limited Liability Partnership (LLP) is an alternative corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a Partnership firm. This format would be quite useful for small and medium enterprises in general and for the enterprises in services sector in particular, including professionals and knowledge based enterprises.

LLP shall be a body corporate and a legal entity separate from its partners. While the LLP will be a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP. No partner would be liable on account of the independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct.

PROS AND CONS IN LLP.

They are as follows:

PROS:

- Renowned and accepted form of business worldwide in comparison to Company.
- Low cost of Formation.
- Easy to establish.
- Easy to manage & run.
- No requirement of any minimum capital contribution.
- No restrictions as to maximum number of partners.
- LLP & its partners are distinct from each other.
- Partners are not liable for Act of other partners.
- Less Compliance level.
- No exposure to personal assets of the partners except in case of fraud.
- Fewer requirements as to maintenance of statutory records.
- Less Government Intervention.
- Easy to dissolve or wind-up.
- Professionals can form Multi-disciplinary Professional LLP, which was not allowed earlier.
- No requirement as to Minimum Alternate Tax.
- Audit requirement only in case of contributions exceeding Rs. 25 lakhs or turnover exceeding Rs. 40 lakhs.

CONS:

- Any act of the partner without the other partner, may bind the LLP.
- Under some cases, liability may extend to personal assets of partners.
- Cannot raise money from Public.

Now let us discuss in detail main aspects of conversion into LLP from other forms of entities:

CONVERSION ROUTE AND ITS REQUIREMENTS
FIRM, PRIVATE COMPANY AND UNLISTED PUBLIC COMPANY INTO LIMITED LIABILITY PARTNERSHIP

HEADINGS	SECOND SCHEDULE (CONVERSION FROM FIRM TO LLP)	THIRD SCHEDULE (CONVERSION FROM PRIVATE CO. TO LLP)	FOURTH SCHEDULE (CONVERSION FROM UNLISTED PUBLIC CO. TO LLP)
1. Interpretation	"Firm" means Partnership firm under The Indian Partnership Act, 1932	"Company" means a private co. under Sec.3 of the Companies Act.	"Company" means an unlisted public company;
	"Convert" means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to the LLP in accordance with the Schedule.	"Convert" 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 this Schedule.	"Convert" means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the LLP in accordance with this Schedule.
	Firm convertible to LLP complying with requirements of Schedule.	Private company convertible to LLP complying with requirements of Schedule.	Company convertible to LLP complying with requirements of Schedule.
	Upon conversion, Firm's partners bound by applicable provisions.	Upon conversion, the private company, its shareholders, LLP and its partners bound by applicable provisions.	Upon conversion, the company, its shareholders, LLP and its partners bound by applicable provisions.
	CG can vary the Schedule's provisions.	CG can vary the Schedule's provisions.	CG can vary the Schedule's provisions.

2. Eligibility for conversion	All the partners of firm to become partners of LLP.	There should be no security interest in its assets subsisting and all the shareholders of the private company to become partners of LLP.	There should be no security interest in its assets subsisting and all the shareholders of the company to become partners of LLP.
3. Statements to be lodged	Statement u/s.11 as stated in Form 2 & Form 17 by all partners with name and Regn. No. of Firm, date of registration; and incorporation document	Statement u/s.11 as stated in Form 2 & Form 18 by all shareholders with name and Regn. No. of Company; Date of incorpn & incorpn document	Statement u/s.11 as stated in Form 2 & Form 18 by all shareholders with name and Regn. No. of Company; Date of incorporation, & incorpn. document & statement u/s.11
4. Registration of conversion	Registrar will register and issue certificate under his seal in Form 19 and an intimation is given to Registrar about the conversion in Form 14	Registrar will register and issue certificate under his seal in Form 19 and an intimation is given to Registrar about the conversion in Form 14	Registrar will register and issue certificate under his seal in Form 19 and an intimation is given to Registrar about the conversion in Form 14
5. Refusal by Registrar	Registrar has the power to refuse regn.	Registrar has the power to refuse regn.	Registrar has the power to refuse regn.
6. Effect of Registration	Effective date of registration: LLP by the name registered. All movable and immovable property, assets etc. of Firm transferred and vested with LLP. The firm dissolved and if regd. under Partnership Act, removed from the records under the said Act.	Effective date of registration: LLP by the name registered. All movable and immovable property, assets etc. of Company transferred and vested with LLP. The Company dissolved and removed from the records of ROC.	Effective date of registration: LLP by the name registered. All movable and immovable property, assets etc. of Company transferred and vested with LLP. The Company dissolved and removed from the records of ROC.

7. Registration in relation to property	Authority with whom properties already regd. to be notified by LLP about conversion along with its particulars.	Authority with whom properties already regd. to be notified by LLP about conversion along with its particulars.	Authority with whom properties already regd. to be notified by LLP about conversion along with its particulars.
8. Pending proceedings	All proceedings pending by or against the firm, may be continued, completed and enforced by or against LLP.	All proceedings pending by or against the Company, may be continued, completed and enforced by or against LLP.	All proceedings pending by or against the Company, may be continued, completed and enforced by or against LLP
9. Continuance of conviction, ruling, order or judgment by or against the existing entity	May be enforced by or against LLP.	May be enforced by or against LLP.	May be enforced by or against LLP.
10. Existing agreements	LLP will be the party in place of the firm, whether or not the existing rights and liabilities assignable or not.	LLP will be the party in place of the Company, whether or not existing rights and liabilities assignable or not.	LLP will be the party in place of the company, whether or not existing rights and liabilities assignable or not.
11. Existing contracts etc.	All existing deeds, contracts, bonds, agreements shall be enforceable by or against LLP.	All existing deeds, contracts, bonds, agreements shall be enforceable by or against LLP.	All existing deeds, contracts, bonds, agreements shall be enforceable by or against LLP.
12. Continuance of employment	Every contract of employment will continue and LLP will be the employer.	Every contract of employment will continue and LLP will be the employer.	Every contract of employment will continue and LLP will be the employer.
13. Existing appointment, authority or power	LLP will be the deemed appointee; and authority or power will vest on the LLP.	LLP will be the deemed appointee; and authority or power will vest on the LLP.	LLP will be the deemed appointee; and authority or power will vest on the LLP.

14. Application of paragraphs 6 to 13	Shall not apply to any approval, permit or licence issued under any written law to the firm	Shall not apply to any approval, permit or licence issued under any written law to the Company	Shall not apply to any approval, permit or licence issued under any written law to the Company
15. Liabilities and obligations of the entity before conversion	Partners of firm personally liable. Entitled to be fully indemnified by LLP.	Not Applicable	Not Applicable
16. Notice of conversion in corre-spondence	For a period of 12 months commencing not later than 14 days after registration of LLP, every official correspondence should bear a statement about the conversion including the name and Regn. No. of the Firm (if applicable), failing which punishable.	For a period of 12 months commencing not later than 14 days after registration of LLP, every official correspondence should bear a statement about the conversion including the name and Regn. No. of the Company, failing which punishable.	For a period of 12 months commencing not later than 14 days after registration of LLP, every official correspondence should bear a statement about the conversion including the name and Regn. No. of the Company, failing which punishable.

DIFFERENCES AND SIMILARITIES BETWEEN LLP E-FORMS & COMPANY MCA E-FORMS

LIMITED LIABILITY PARTNERSHIP		PRIVATE / PUBLIC COMPANY	
e-Forms to be filed by LLP's	Purpose	eForms to be filed by Companies	Purpose
Form 1	Application for reservation & change of Name	Form 1A	Application form for availability or change of a name
Form 2	Incorporation Document & Statement	Form 1	Application or declaration for incorporation of a company

LIMITED LIABILITY PARTNERSHIP		PRIVATE / PUBLIC COMPANY	
e-Forms to be filed by LLP's	Purpose	eForms to be filed by Companies	Purpose
Form 3	Information with regard to LLP Agreement and changes, if any, made therein		
Form 4	Notice of appointment of Partners/Designated partner and changes among them, intimation of DPIN by the LLP to Registrar and consent of partner to become a partner/ designate partner	Form 32	Particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares
Form 6	Intimation of Particulars/ Change in particulars of Partners to LLP by partners		
Form 9	Consent to Act as Designated Partner		
Form 13	Notice of Resignation of Partner to all other Partners		
Form 7	Allotment of DPIN	DIN 1	Application of allotment of Director Identification Number
Form 10	Intimation for Change in Particulars of Designated Partners to central Government	DIN 4	Intimation of change in particulars of Director to be given to the Central Government
Form 5	Notice of change of name	Form 1B	Application for approval of the Central Government for change of name or conversion of a public company into a private company
Form 23	Application for Direction to change the Name	Form 23	Registration of resolution(s) and agreement(s)

Form 12	Intimation of other address (Other than registered office for serving of Documents)	Form 1AD	Application for confirmation by Regional Director for change of registered office of the company within the state from the Jurisdiction of one Registrar to the Jurisdiction of another Registrar
Form 15	Notice of change of Place of Registered Office	Form 18	Notice of situation or change of situation of registered office
Form 17	Application for conversion of Firm into LLP	Form 1B	Application for approval of the Central Government for change of name or conversion of a public company into a private company
Form 14	Intimation to Registrar of Firms/Companies for conversion of Firm/Company to LLP		
Form 18	Application for conversion of Private Company/Unlisted Company in to LLP		
Form 24	Application to the Registrar or Central Government for striking off name	Form 61	Form for filing an application with Registrar of Companies as Defunct Companies and for compounding of an offence
Form 31	Application for compounding of an offence under the Act		
-NA-	There is no question of increase in capital. In LLP only Contributions.	Form 5	Notice of consolidation, division, etc. or increase in share capital or increase in number of members
-NA-	Not required for any minimum capital contribution	Form 2	Return of allotment

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INDEX

Page No.

MEETINGS

Date	Time	Speaker	Topic
07.01.10	06.15 P.M.	DR. NILENDU MISHRA	EPF - REGISTRATION & RELATED ISSUES
28.01.10	06.15 P.M.	CA. RAJASEKARAN	APPELLATE PROCEEDINGS UNDER INCOME TAX ACT AN ANALYSIS.

High Tea 6.00 pm (for the meetings)

3

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ALL ABOUT LLP FORMATION AND ITS BENEFIT

S DHANAPAL

This is the second and concluding part of this article. The first part was published in Dec 2009 bulletin....

ANNUAL COMPLIANCES TO BE DONE FOR A COMPANY AND A LLP.

Form 8	Statement of Account & Solvency -To be filed within 6 months of close of financial year	Form 23AC	Form for filing balance sheet and other documents with the Registrar -To be filed within 30days from the date of AGM
		Form 23ACA	Form for filing Profit and Loss account and other documents with the Registrar - -To be filed within 30days from the date of AGM
Form 11	Annual return of LLP -To be Within 60 days from the close of financial year	Form 20B	Form for filing annual return by a company having a share capital with the Registrar- To be filed within 60days from the date of AGM

COMPARISON OF EVENTS BETWEEN COMPANY AND LLP:

EVENTS	COMPANY	LLP
Statutory Meetings	Board Meetings and General Meetings are required to be conducted at appropriate time.	There is no provision in regard to holding of any meeting.
Maintenance of Minutes	The proceedings of meeting of the board of directors / shareholders are required to be recorded in minutes.	A LLP by agreement may decide to record the proceedings of meetings of the Partners/ Designated Partners
Voting Rights	Voting rights are decided as per the number of shares held by the members.	Voting rights shall be as decided as per the terms of LLP Agreement.
Remuneration	Company can pay remuneration to its Directors subject to law.	Remuneration to partner will depend upon LLP Agreement.
Contracts	Restrictions on Board regarding some specified contracts, in which directors are interested.	Partners are free to enter into any contract.
Maintenance of Statutory Records	Required to maintain books of accounts, statutory registers, minutes etc.	Required to maintain books of accounts.
Annual Filing	Annual Financial Statement and Annual Return is required to be filed with the Registrar of Companies every year.	Annual Statement of accounts and Solvency & Annual Return is required to be filed with Registrar of Companies every year.
Share Certificate	Share Certificates are proof of ownership of shares held by the members in the Company	LLP Agreement evidences the ownership of the partners in the firm.
Audit of accounts	Companies are required to get their accounts audited annually as per the provisions of the Companies Act, 1956,	All LLP except for those having turnover less than Rs.40 Lacs or Rs.25 Lacs contribution in any financial year are required to get their accounts audited annually as per the provisions of LLP Act 2008.

Applicability of Accounting Standards.	Companies have to mandatorily comply with accounting standards	Application of accounting standards and rules are not yet issued.
Compromise / arrangements/ merger / amalgamation	Companies can enter into Compromise / arrangements / merger / amalgamation	LLP's can enter into Compromise / arrangements / merger / amalgamation
Oppression and mismanagement	Provisions providing for remedy against Oppression and mismanagement exists	No provision relating to redressal in case of oppression and mismanagement

Now let us discuss the steps to incorporate an LLP:

5 Simple Steps to Incorporate LLP:

Step 1: Deciding the Partners and Designated Partners

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Step 2: Obtaining DPIN No. & Digital Signature

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Step 3: Checking the Name Availability

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Step 4: Drafting of LLP Agreement

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Step 5: Filing of Incorporation Documents

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Step 6: Certificate of Incorporation

Steps are explained in detail as follows:

STEP 1: DECIDING THE PARTNERS AND DESIGNATED PARTNERS

A LLP can be incorporated with a minimum of atleast two partners who can be Individuals or Body Corporate through their nominees. Further for incorporating an LLP, of the total number no. of partners, atleast two shall be Designated Partners, of which atleast one must be an Indian Resident.

PARAMETERS FOR DECIDING THE PARTNERS AND DESIGNATED PARTNERS:		
Atleast Two Partners; Individuals or Body Corporate through individual nominees.	Minimum of Two Individuals as Designated Partners, of total no. of Partners.	At least One Designated Partner to be Resident Indian.
'Resident in India'	means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one-year.	
'Designated Partner'	means a partner who is designated as such in the incorporation documents or who become a designated partner by and in accordance with the Limited Liability Partnership Agreement.	

STEP 2: OBTAINING DPIN NO. & DIGITAL SIGNATURE

Designated Partner Identification Number (DPIN):

Section 7 (6) of LLP Act 2008, provides that every Designated Partner to obtain a DPIN from the Central Government.

DPIN is an eight digit numeric number allotted by the Central Government in order to identify a particular partner and can be obtained by making an online application in eForm 7 to Central Government and submitting the physical application along with necessary identity and Address proof of the person applying with prescribed fees.

Digital Signature Certificate:

As all the documents and forms required for incorporating an LLP in India to be filed electronically and under the signatures of Designated Partners, thus atleast one Designated Partner to obtain the digital signature certificates from government recognized DSA's. The signatures shall also be required for signing and filing of all relevant forms and documents to be filed, annually or event based after incorporation of the LLP, asking for approvals or as intimation.

Likewise the manual signatures, digital signature certificates are individual specific and no partner needs to obtain more than one.

STEP 3: CHECKING THE NAME AVAILABILITY

The next step is to decide the name for the proposed LLP to be incorporated, anyone intending to incorporate an LLP has to evaluate his proposed name under the prescribed parameters and make an application in Form 1 of Rule 18(5) of the Limited Liability Partnership Act 2008, for reservation of the desired name.

WORDS WHICH REQUIRES APPROVALS	
Proposed Words	Approval Required
Venture Capital/Venture Capital Company/Venture Capital Fund/ Venture Capital Finance Company	Department of Economic Affairs/ SEBI
Stock Exchange/Mutual Funds	Securities Exchange Board of India (SEBI)
Name belongs to registered trade mark	Owner of the registered trade mark
Bank, Banking	Reserve Bank of India (RBI)
Insurance	Insurance Regularity and Development Authority of India (IRDA)

WORDS WHICH ARE PROHIBITED	
Words	Reasons
National, Union, Central, Federal, Republic, President,Rasthrapathi,Small Scale Industries, Cottage Industries, Financial Corporations, Municipality, Panchayat or any other word imparting connection Union or State Government	It signifies Government Patronage or Participation
State together with the name of Particular State for e.g. Delhi state corporations Ltd	It gives an impression that the state is also participating in the paid up share capital of the company
Ashoka Chakra, Dharma Chakra, Name of Parliament , State Legislature	Prohibited Under Emblems & Names (Prevention of Improper Use) Act, 1955
Rama Krishna Math, Ramakrishna Sarada Mission, Bharat Scouts, Interpol	Prohibited Under Emblems & Names (Prevention of Improper Use) Act, 1955
Chhatarpait Shivaji Maharaj, Mahatma Gandhi or the name of any Prime Minister/President of India	Prohibited Under Emblems & Names (Prevention of Improper Use) Act, 1955

Note: Undesirable Names

If in the opinion of the department, the name by which a Company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the department may direct it to change its name. A Company registered under the

Companies Act, is not entitled to carry on its business in such a way or under such a name, as to represent that its business is the business of any other company or firm or person; and the absence of fraud is immaterial. In such cases, the old company or firm can apply to the court for an injunction, and in such cases the principles that apply to individuals trading under identical or similar names would become applicable.

STEP 4: DRAFTING OF LLP AGREEMENT

The next pertinent step is drafting of Limited Liability Partnership Agreement governing the mutual rights and duties among the partners and among the LLP and its partners.

In case no agreement is entered into, the rights & duties as prescribed under Schedule I to the LLP Act shall be applicable.

STEP 5: FILING OF INCORPORATION DOCUMENTS

Next step is the filing of Incorporation documents, consent of Partners and declaration electronically through the medium of e-forms prescribed with the Registrar of LLP for incorporation of the LLP on payment of prescribed fees based on the total monetary value of contribution of partners in the proposed LLP.

EFORM 2: INCORPORATION DOCUMENT	This is an informative document setting down the details of LLP, its Partners including designated partners along with their amount of contribution and consent for forming a Limited Liability Partnership to carry on a lawful business with profit motive along with declaration stating that all the requirements of Limited Liability Partnership Act, 2008 regarding incorporation of LLP in India have been complied with.
EFORM 3: DETAILS OF LLP AGREEMENT	This form provides for the necessary information in respect to the LLP Agreement entered into between the partners.
EFORM 4: CONSENT OF PARTNERS	Consent of each partner to become a partner of Limited Liability Partnership along with their address and identity proof to be filed with the Registrar of Companies.
SUBSCRIPTION SHEET:	Just like in case of Company formation, the partners are required to subscribe their names along with signatures to the subscription sheet, which shall be witnessed by any chartered Accountant/Company Secretary/Advocate in practice.
EFORM 3 & 4	Are required to filed within 30 days of the incorporation.

All the eforms will be digitally signed by any Designated partner and shall be certified by an advocate/company secretary/chartered accountant/cost accountant in practice engaged in the formation of LLP.

Form	Purpose
Form 7	Allotment of DPIN
Form1	Application for reservation & Change of Name
Form 2	Incorporation Document & Statement
Form 3	Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein
Form 4	Notice of appointment of partners/ designated partner and changes among them, intimation of DPIN by the LLP to Registrar and consent of partner to become a partner /designated partner
• LLP Agreement duly stamped as per relevant Stamp Act of the State. • Proof of Address of Registered Office • Consent of Partners and Designated Partners	

Key points:

- Filing will be done on www.llp.gov.in
- With All the Designated Partners need to be registered as Business User.
- Digital Signature is required only for the Designated Partner who would be signing all the e Forms.

STEP 6: CERTIFICATE OF INCORPORATION

After the Registrar is satisfied that all the formalities with respect to the incorporation has been complied, he will issue a Certificate of Incorporation as to formation of the LLP within maximum of 14 days from date of filing of documents. The Certificate of Incorporation issued shall be the conclusive evidence of formation of the LLP.

TAXATION on LLP

- LLP's will be treated as Partnership Firms for the purpose of Income Tax w.e.f assessment year 2010-11
- No surcharge will be levied on income tax.
- Profit will be taxed in the hands of the LLP and not in the hands of the partners.
- Minimum Alternate Tax and Dividend Distribution Tax will not be applicable for LLP.
- Remuneration to partners will be taxed as "Income from Business & Profession".
- No capital gains on conversion of partnership firms into LLP.
- Designated Partners will be liable to sign and file the Income Tax return.
- LLP shall not be eligible for presumptive taxation.

CONCLUSION:

Generally limited liability partnership is not applicable for all activities such as non-profit-making activities. LLP has been accepted in countries like U.S.A, U.K, Australia, and Germany. It is a form of business entity, which allows individual partners to be restricted from joint liability of partners in a partnership firm. The Liability of the partners incurred in the normal course of business is that of LLP and it does not extend to the personal assets of the partners. The hybrid structure of LLP will facilitate entrepreneurs, service providers and professionals to organize and operate in an innovative and efficient manner for effectively competing in the global market.

(The author is a Chennai based Practicing Company Secretary. He can be reached at csdhanapal@gmail.com)