

SERIES
539

CONVERSION OF PARTNERSHIP FIRM INTO LLP



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A. BACKGROUND:

A firm may convert into a Limited Liability Partnership in accordance with the provisions of Section- 55 of LLP Act, 2008 read with **Second Schedule**.

Partnership firms are at a Disadvantage when compared to the newly introduced Limited Liability Partnership (LLP) as they do not provide limited liability protection for

the partners, separate legal entity status, ability to take on unlimited number of partners and ease of ownership transfer. The introduction of LLP's through the Limited Liability Partnership Act, 2008 has made LLPs the premier choice for small and medium sized businesses.

Inciting tremendous interest among Partners of an existing Partnership firms to convert their firms into LLP. In this article we look at the process for conversion of partnership into LLP.

B. For Conversion of Partnership Firm into LLP - First need to understand following terms:

“FIRM” As per Para 1 (a) of the Second Schedule of the LLP Act states that, unless the context otherwise requires, a ‘firm’ means a firm as defined in Section 4 of the Indian Partnership Act, 1932. It, thus, only the registered partnership firm would be eligible for conversion into a LLP.

“CONVERT” As per Para 1 (b) of the Second Schedule of the LLP Act states that, unless the context otherwise requires, ‘convert’, in relation to a firm converting into a LLP, means a transfer of the property, assets, interests, right, privileges, liabilities, obligations and the undertaking of the firm to the LLP in accordance with the Second Schedule of the LLP Act.

C. Eligibility Criteria for conversion: On Conversion, Partners of Limited Liability Partnership “LLP”

“All the Partners of the Partnership firm will be partner of LLP”

“No person except Partners of firm will be partner of LLP”

This is one of the major requirements for the conversion of Partnership into LLP is that the LLP formed from the Partnership have the same Partners as the original Partnership. The LLP formed cannot have new or less Partners than the Partnership firm. Therefore, if any Partners are to be added to the LLP, the Partnership should first be converted into a LLP and then Partners must be added to the newly formed LLP. On

the other hand, if Partners are to be removed, it is best to remove them prior to starting the process for conversion of Partnership into LLP.

D. CONDITIONS FOR CONVERSION:

- The firm may or may not be register with Registrar of Firms.
 - There should be consent of all the Partners.
 - All the Partners become partner in the LLP, in the same proportion in which their capital accounts stood in the books of the Firm on the date of the conversion.
 - Every partner should contribute to the LLP.
 - DIN should be acquired for all the designated Partners.
 - DSC (Digital Signature Certificate) should be acquired for at least one Designated Partner.
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E. KEY REQUIREMENTS:

- Upto date filing of Income tax returns
- Consent of all the unsecured creditors for the proposed conversion
- Minimum 2 Designated Partners
- Atleast 1 of the designated partners shall be an Indian Resident.
- The Partners and Designated Partners can be same person
- There is no concept of share capital, but there has to be some sort of contribution from each partner.

F. WHY LLP IS BETTER THAN PARTNERSHIP

- There is no limit to number of partners in a LLP; a partnership willing to have more than 20 partners can benefit through this.
- The liability of the partners is limited to the amount of capital contributed.
- There is no limit on the minimum amount of capital to be contributed.

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- LLP is a Body Corporate.
 - LLP has a perpetual succession unlike partnership which depends upon the will of the partners Separate legal entity.
 - LLPs enjoy higher creditworthiness compared to Partnerships; therefore they are able to obtain better financing.
 - Complete flexibility in managing the business, partners may run the business according to the terms defined in the LLP Agreement
 - Foreign Direct Investment (FDI) in LLPs allowed.
 - Now, multidisciplinary LLPs are allowed wherein professionals of varied disciplines can work together which is an exclusive advantage of LLP
 - Further CA firms are now allowed to convert themselves into LLP and increase their scale of operations.
 - LLP structure is also suitable for PE funds, joint ventures and venture capital funds which is not the case in partnership form
 - LLPs can enter into compromise, arrangement, merger or amalgamation with other LLPs whereas partnerships cannot merge with other firm
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PROCEDURE FOR CONVERSION OF PARTNERSHIP INTO LLP

A. STEP – I: Apply for DIN:

First requirement on conversion is to Obtain DIN for the Partners of Company.

- If there are only Two Designated Partners, DIN can be obtained along with Incorporation Form (FiLLiP).

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- If there are more than Two Designated Partners, in such case need to obtain DIN for other Designated Partners.
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B. STEP – II: Apply for Name Approval:

a) Login on MCA Website

Applicant have to login into their account on MCA Website. (Pro-existing users can use earlier account or new users have to create a new account.)

After Login use have to click on the icon “**RUN**” in MCA Service. An online form shall be open. Applicants have to fill the information online. (This form can't be download)

Note* since 02nd October, 2018 e-form LLP-1 has been omitted from the LLP Act, 2008.

A. Details required to be mentioned in online form:

- (i) Entity type LLP
 - (ii) LLPIN (LLPIN and it has to be entered only when an existing company wishes to change its name and is using RUN to reserve a new name)
 - (iii) Proposed name (Auto Check Facility)
 - (iv) Comment (Mention Objects of the proposed LLP and any other relevant information Like Trade Mark etc.)
 - (v) Choose File (Any attachment)
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B. Choose File:

This option is available to upload the PDF documents. If applicant want to attach any file, can be upload at this option.

C. Submission of Form on MCA Website:

After completion of above steps user shall submit the Form with MCA website.

D. Payment of Fees:

There is no option of pay later challan in RUN. Applicant has to pay fees immediately after submission of form. After payment challan shall be generated.

E. Validity of Reserved Name:

Reserved name shall be valid for 90 days from the date of approval of Name.

C. STEP – III: APPLY FOR DSC (Digital Signature Certificate):

Getting DSC for Designated Partners for digital authentication of the Incorporation documents. You can use only the valid Digital Signatures issued to you. It is illegal to use Digital Signatures of anybody other than the one to whom it is issued.

D. STEP – IV: Filling of form with ROC:

Following below mention forms along with attachments are required to file with ROC for Conversion of Partnership firm into LLP.

- I. **Form- 17 :** Application for conversion in Form 17 is required to be filed by the partners along with the following **ATTACHMENTS:**
- Statement of Consent of all Partners
 - List of all unsecured creditors along with their consent to conversion
 - Statement of assets & liabilities of the company duly certified by a CA.
 - Approval from any other body/authority as may be required
 - Declaration for Part B of Form 17 by Designated Partners
 - Copy of acknowledgement of latest Income Tax Return
- II. **Form- FiLLiP:** Application for in Form 17 is required to be filed by the partners along with the following **ATTACHMENTS:**
- ▽ Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts);
 - ▽ NOC from the owner of the property.
 - ▽ Copy of the utility bills (not older than two months)
 - ▽ Subscriber Sheet including Consent.
 - ▽ In case of Designated Partner does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers
 - ▽ All the Designated Partners should have Digital Signature.
 - ▽ Detail of LLP(s) and/ or company(s) in which partner/designated partner is a director/ partner
 - ▽ Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from central government;
 - ▽ Form-9 – Consent to Act as Designated Partners

Note:

In accordance with Section 11(1) (c)A Statement in the prescribed form to the effect that all the requirements of the LLP Act and the rules made there under have been complied with, in respect of incorporation and matters

precedent and incidental thereto. Such statement shall be made by the following persons:

- An Advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP; and
 - Anyone who subscribed his name to the incorporation document.
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E. STEP – V: Issue of Certificate of Registration of LLP:

Section 58(1) of the LLP Act provides that the Registrar, on satisfying that a firm has complied with the provision of the Second Schedule shall subject to the provisions of the LLP Act and the rules made there under, register the documents submitted under such schedule and issue a certificate of registration.

Sub-rule (1) of rule 32 of the LLP Rules provides that the Registrar shall on conversion of a firm into a LLP, issue a certificate of registration under his seal in Form- 19.

F. STEP – VI: Draft LLP Agreement:

Contents of Agreement Are:

- ▽ Name of LLP
- ▽ Name of Partners & Designated Partners
- ▽ Form of contribution
- ▽ Profit Sharing ratio
- ▽ Rights & Duties of Partners
- ▽ Proposed Business
- ▽ Rules for governing the LLP

It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to field in e-form 3 within 30 days of incorporation but in order to avoid any dispute between the partners as to the terms & conditions of the agreement after the conversion into LLP.

G. STEP – VII: Filling of e-form LLP-3:

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

H. STEP – VIII: Intimate the Registrar of Firms

As per paragraph 5 of the Second Schedule, the LLP shall, within 15 (fifteen) days of the date of registration, inform the Concerned Registrar of Firms with which it was registered under the provisions of the Indian Partnership Act, 1932, about the conversion and of the particulars of the LLP in Form – 14 along with following attachments:

- ▽ Copy of Certificate of Incorporation of LLP.
 - ▽ Copy of Incorporation documents submitted in FiLLiP.
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G. EFFECT OF CONVERSION:

- ❖ Once all the above steps have been complied with, the Partnership Firm shall be converted into Limited Liability Partnership (LLP) and shall follow rules & regulations as applicable to LLPs.

- ❖ Section 58(2) of the LLP Act provides that upon such conversion, the partners of the firm, the LLP to which such firm has converted, and the partners of the LLP shall be bound by the provisions of the Second Schedule of the LLP Act.

❖ **Transfer of Licenses, Registrations and Property:**

- Licenses, approvals, permits or registrations issued in the name of the Partnership firm will not be transferred automatically to the LLP.
- If there were any properties registered under the Partnership firm prior to the conversion, the LLP must approach the concerned authorities and take steps as prescribed to transfer the assets to the LLP.
- It is important for the Entrepreneur to keep in mind various other aspects and clarify procedural aspects with the concerned licensing or registration authorities prior to beginning the process for conversion into LLP.

❖ **Pending proceedings:**

- As per Paragraph 9 of the Second Schedule of the LLP Act provides that all the proceedings by or against the firm which are pending before any Court or Tribunal or before any authority on the date of registration may be continued, completed and enforced by or against the LLP. In other words, all proceeding by or against the erstwhile firm shall stand vested into the LLP, as it is.

❖ **Section 58(4) of the LLP provide that on and from the date of registration;**

- There shall be LLP by the name specified in the Certificate of Registration.
- The assets, liabilities, rights, privileges, obligations of the Partnership firm are considered to be wholly transferred to the LLP and the conversion doesn't affect any existing contracts, employment, agreement, etc.
- The Partners will enjoy limited liability protection for all transactions conducted after the conversion of partnership into LLP. However, the Partners will continue to be personally liable for all business conducted as a Partnership prior to the conversion into LLP.

❖ **Partner liable for liabilities and obligation of a firm before conversion:**

- As per paragraph 16(1) of the Second Schedule of the LLP Act provides that notwithstanding anything in every partner of a firm that has converted into a LLP shall continue to be personally liable for the liability and obligation of the firm:
 - Which were incurred prior to the conversion; or
 - Which arose from any contract entered into prior to the conversion.

H. Advantages of LLP:

Limited Liability for Partners

The Limited Liability Partnership Act of 2008 introduced Limited Liability Partnerships (LLP) in India to provide flexibility for small enterprises, promote

the service sector and bring together business synergies. The basic premise behind the introduction of Limited Liability Partnership (LLP) is to provide a form of business organization that is simple to maintain while at the same time providing limited liability to the owners. Taking into consideration the various benefits surrounding the LLP structure, it is certainly worth converting your existing partnership firm into a Limited Liability Partnership. Here are some of the major reasons on why you should convert your Partnership firm into a Limited Liability Partnership.

Perpetual Existence

The existence of a partnership firm is limited and can be dissolved on the death of a partner or all partners but one becoming insolvent or a partner becoming insane in the absence of any contract to the contrary. Limited Liability Partnerships on the other hand have perpetual existence and is a separate juristic person whose existence does not depend on the partners. The partners of a LLP may keep changing from time to time and it will not affect the LLP's continuity. Therefore, converting your existing partnership firm into a LLP can ensure continued existence for your business separate from that of the partners.

Unlimited Partners

In a partnership firm the minimum number of partners must be two, while the maximum number can be 10 in case of banking business and 20 in all other types of business. However, in the case of a Limited Liability Partnership, there is no limit regarding the maximum number of partners. Also, a Limited Liability Partnership requires a minimum of two partners to form a LLP; but only in the case of number of partners falling below two for six months, the remaining partner in the continuing LLP becomes personally liable.

Potential for Growth

In today's business environment, mergers and amalgamation are commonplace with many businesses merging or amalgamating with other businesses to unlock business synergies. Partnership firms cannot be merged or amalgamated with other partnership firm; whereas, LLP can merge or amalgamate with other LLPs in order to continually grow and share synergies with other business. Therefore, the ability of LLPs to undergo merger or amalgamation is another reason for converting your Partnership firm into an LLP.

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