



Conversion to LLP

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New form of business organisation emerged with the passage of the Limited Partnership Act 2008 (Act). Various provisions of the Act were notified on 1-4-2009. However provisions pertaining to the conversion of existing other form of organisations to limited liability partnership (LLP) came into force only from 31-5-2009.

LLP is a supple form of business entity combining the advantages of corporate entity and general partnership firm. LLP is a corporate entity with perpetual succession but at the same time it does not demand strict compliance as are required by companies and also irons out certain tax inefficiencies of corporate structure. Given the operational and structural flexibility, it may make sense for a firm or private/unlisted company to migrate themselves into the new LLP structure. However, migration of existing entities to the LLP may give rise to host of tax (including stamp duty), regulatory issues.

This article covers an overview of the key conversion procedure and regulatory issue that arise on the migration to LLP. Taxation aspect has been covered elsewhere in this issue.

Conversion provision

The Act provides for the conversion of general partnership firm, private limited & unlisted public company only. Act does not prescribe any procedure for conversion of sole proprietary concerns, trusts into LLP. Provisions of section 58(4) are very significant. It being a notwithstanding clause has overriding effect on various laws for the time being in force. As per the said clause, all the property, assets and liabilities of the firm/company converted into LLP gets vested in the LLP without any further act /deed and erstwhile firm/company stands dissolved.

<i>Particulars</i>	<i>Partnership Firm</i>	<i>Private Limited Company</i>	<i>Unlisted Public Company</i>
Applicable to conversion of	Firms as defined u/s. 4 of Indian Partnership Act 1932	Company as defined u/s. 3(1) (iii) of Companies Act 1956	Company which is not a listed company
Statutory provisions:			
a) Section	55	56	57
b) Schedule to Act	Second	Third	Fourth
c) Rules⁺	38	39	40

Eligibility	Partners of the converted LLP comprises of all the partners of the firm.	<ul style="list-style-type: none"> a) No security interest subsists at the time of application and b) Partners of the converted LLP comprises of all the shareholders of such private / unlisted public company
Filings	<ul style="list-style-type: none"> a) A application in format provided in Part A of Form 17 comprising information such as name, registration number and date of registration of firm along with statement of partners in format provided in Part B of Form 17 b) Fees prescribed in Annexure 'A' c) Incorporation documents & statements referred in section 11. 	<ul style="list-style-type: none"> a) A application in format provided in Part A of Form 18 comprising information such as name, registration number and date of registration of private / unlisted public company along with statement of shareholders in format provided in Part B of Form 18 b) Fees prescribed in Annexure 'A' c) Incorporation documents & statements referred in section 11.
Certificate of registration	On conversion of firm registrar shall issue certificate of registration in Form 19	On conversion of any private / unlisted company registrar shall issue certificate of registration in Form 19
Information to concern registering authority	The LLP within 15 days shall inform the concern Registrar of firms about conversion of firm into LLP in form 14	The LLP within 15 days shall inform the concern Registrar of Companies about conversion of private / unlisted public company into LLP in form 14
Refusal for registration	<ul style="list-style-type: none"> a) Registrar may refuse to register such proposed LLP, in case it is not satisfied with the particulars and other information provided along with the registration. b) Against such refusal appeal may be preferred before tribunal. 	
Effect of registration	<ul style="list-style-type: none"> a) LLP as per name specified in the registration certificate comes into existence. b) All assets movable / immovable tangible / intangible, interest rights, privileges, liabilities obligations relating to firm, whole of the undertaking of the firm shall be trans- 	<ul style="list-style-type: none"> a) LLP as per name specified in the registration certificate comes into existence. b) All assets movable / immovable tangible / intangible, interest rights, privileges, liabilities obligations relating to such private / unlisted public company, whole of the undertaking of such

	ferred to and shall vest in the LLP without further assurance, act or deed c) Firm shall be deemed to be dissolved and if registered under Indian Partnership Act, 1932 removed from the records maintained thereunder.	private / unlisted public company shall be transferred to and shall vest in the LLP without further assurance, act or deed c) Such private / unlisted public company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.
Registration in relation to property	If any property/asset (e.g. tangible assets like immovable property, intangibles like patent, trademark, copy rights) of the firm are registered with any authority, LLP as soon as practicable after the date of registration shall take necessary steps as required by the relevant authority (e.g. property registration authority, trademark / copyright / patent authority) to notify the conversion of firm and particulars of LLP in such form as relevant authority may specify.	If any property /asset (e.g. tangible assets like immovable property, intangibles like patent, trademark, copy rights) of the private / unlisted company are registered with any authority, LLP as soon as practicable after the date of registration shall take necessary steps as required by the relevant authority (e.g. immovable property registration authority, trademark/ copyright/patent authority) to notify the conversion of firm and particulars of LLP in such form as relevant authority may specify
Pending proceedings	All the pending proceedings before any court, tribunal or any authority, by or against the firm, on the date of registration may be continued, completed and enforced by or against LLP	All the pending proceedings before any court, tribunal or any authority, by or against the such private / unlisted public company, on the date of registration may be continued, completed and enforced by or against LLP
Continuation of conviction, ruling, order or judgement	Any conviction, ruling, order or judgement of any Court, Tribunal or other authority in favour or against the firm may be enforced by or against the LLP	Any conviction, ruling, order or judgement of any Court, Tribunal or other authority in favour or against such private / unlisted public company may be enforced by or against the LLP
Existing agreements	Every agreement to which firm was party immediately before its registration as LLP, whether or not such rights/ liabilities under the agreement	Every agreement to which such company was party immediately before its registration as LLP, whether or not such rights / liabilities under the agreement

	could be assigned, after registration shall have effect as LLP were a party to such agreement and reference to the firm shall mean LLP	could be assigned, after registration shall have effect as LLP were a party to such agreement and reference to the such company shall mean LLP
Existing contracts etc.	All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the registration of firm as LLP, shall be enforceable by or against LLP as LLP was named therein or party thereto instead of firm.	All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the registration of such company as LLP, shall be enforceable by or against LLP as LLP was named therein or party thereto instead of such company.
Continuation of employment	Every contract of employment continues to be in force on or after registration as if such LLP were employer there under instead of the firm.	Every contract of employment continues to be in force on or after registration as if such LLP were employer there under instead of such company.
Existing appointments	<p>a) Every appointment of the firm in any role or capacity which is in force immediately before the date of registration shall take effect and operate from the registration date as if LLP were appointed.</p> <p>b) Any authority or power conferred on the firm prior to the registration as LLP shall take effect and operate from the registration date as if LLP was conferred</p>	<p>a) Every appointment of such company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from the registration date as if LLP were appointed.</p> <p>b) Any authority or power conferred on the such company prior to the registration as LLP shall take effect and operate from the registration date as if LLP was conferred</p>
Liability of existing partner /share holders	Every partner of the converted firm shall continue to be personally liable (jointly & severally along with LLP) for the liabilities and obligations of the firm which were incurred prior to the conversion or which arose from any contract entered into prior to the conversion	No such provision for liability on erstwhile shareholders

Notice of conversion	<p>a) LLP shall ensure that for a period of 12 months from the date of registration every official correspondence shall bear</p> <ul style="list-style-type: none"> o Statement that it was converted into LLP from a date of registration o Name and registration number as per Partnership Act, if applicable <p>b) LLP contravening above provisions may be punishable with the fine</p> <ul style="list-style-type: none"> o Minimum – Rs 10,000 o Maximum – Rs 1 lakh <p>c) In case continuing default</p> <ul style="list-style-type: none"> o Minimum Rs 50 & o Maximum Rs 5,000 for every day of default 	<p>a) LLP shall ensure that for a period of 12 months from the date of registration every official correspondence shall bear</p> <ul style="list-style-type: none"> o Statement that it was converted into LLP from a date of registration o Name and registration number as per Partnership Act, if applicable <p>b) LLP contravening above provisions may be punishable with the fine</p> <ul style="list-style-type: none"> o Minimum – Rs 10,000 o Maximum – Rs 1 lakh <p>c) In case continuing default</p> <ul style="list-style-type: none"> o Minimum Rs 50 & o Maximum Rs 5,000 for every day of default
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+ Limited Liability Partnership Rules 2009

Typical steps for the conversion of firm / private or unlisted company into LLP

S. No.	Steps	Particulars
1	Deciding partners & designated partners	<ul style="list-style-type: none"> • Firm / company which desires to convert itself into LLP shall decide about designated partners
		<ul style="list-style-type: none"> • All the partner of the existing general partnership firm or the shareholders of the company are required to become the partners of converted LLP • Other criteria <ul style="list-style-type: none"> o Minimum 2 partners o Minimum 2 designated partners & one of the designated partner is a Indian resident (resident means a person who has stayed in India for the period of not less than 182 days during immediately preceding one year.

2	Obtaining DPIN & Digital signature	<ul style="list-style-type: none"> • Every designated partner (in the proposed LLP) is required to obtain Designated Partners Identification Number (DPIN), and • Any one designated partner to obtain digital signature for the purpose of signing e-forms
3	Name availability	<ul style="list-style-type: none"> • Application for the reservation of name of the proposed LLP in e-form1 along with prescribed fees as mentioned in Annexure 'A'
4	Drafting of LLP agreement	<ul style="list-style-type: none"> • This is a vital document which governs the mutual rights and duties amongst the various partners inter se and also with the LLP. • In absence of specific provisions in LLP agreement matters relating to mutual rights and duties of the partners & LLP and its partners shall be governed by the first schedule to Act. • Due care and consideration should be given to exercise flexibilities in respect of various clauses of LLP agreement especially powers, duties and authority of the partner & designated partner, contribution of money or property, admission, retirement, expulsion of partner, succession, right in goodwill, terms of retirement, valuation at the time of retirement & admission of partner, dispute resolution & arbitration, usage of property of partner, indemnity, loans, profits sharing ratios etc. • Various details of the LLP agreement are required to be given in e-form 3 within 30 days from the date of registration.
5	Filing of incorporation documents	§ Online filing of incorporation documents in e-form 2
6	Filing of conversion application	<ul style="list-style-type: none"> • Application for the conversion of the existing firm / company to be filed in e-form 17(firm) / 18 (company)
7	Registration Certificate	<ul style="list-style-type: none"> • On completion of all the formalities if Registrar is satisfied, he may issue registration certificate or may refuse registration.

		<ul style="list-style-type: none"> • Appeal may be preferred before Tribunal on refusal of the registration.
8	Submission of information registrar of firm/company	<ul style="list-style-type: none"> • In case existing partnership firm company is registered as LLP, LLP shall within 15 days from the date of conversion shall submit form 14 with the concern registrar of firms or company as the case may be.
9	E-Form / forms / Documents involved	<ul style="list-style-type: none"> • E-Form 1-Name Availability Application • E-Form 2-Incorporation Document • E-Form 3- Details of LLP Agreement • E-Form 4-Consent of Partners • E-Form 7-Application for Designated Partners Identification Number • E-Form 14- Intimation of conversion to Registrar of Firms / companies • E-Form 17-Application for Conversion • Subscription Sheet • LLP Agreement duly stamped as per relevant Stamp Act of the State. • Proof of Address of Registered Office • Consent of partners • Statement of partners • Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor • List of all the unsecured creditors along with their consent. • Approval from any other body authority, if any required

Certain issues

- Act provides that all the partners of the firm or shareholders of the company as the case may be shall become the partner of the LLP on conversion. However there is no time limit specified upto which they should continue to remain partner in the LLP.

Hence, in absence of any such time limit conversion should not be affected even if any of the partners retire immediately on conversion.

- Second Schedule to the Act provides that firm willing to convert itself as LLP should provide details as to date of registration & registration number allotted at the time of registration and post registration inform concern registrar of firms about its registration of LLP. Registration of firm is optional under Partnership Act.

Issue here may arise whether unregistered firm would not be allowed to convert itself into LLP? Further registration is only the criteria or all amendments to the partnership deed should have been filed & registered with the registrar of firms? What if application had been filed for registration but firm is not registered for one or the other reasons?

- Act provides that on conversion LLP shall inform concerned registering authorities where asset was originally registered in the name of firm or company as the case may, as soon as practicable. No specific time frame as been prescribed. Hence the term 'as soon as practicable' would be subject to various interpretations.
- Foreign Direct Investment (FDI) Regulations currently doesn't recognise LLP as an entity to accommodate FDI. Consequently, LLP structure may not work where FDI is involved. Foreign Exchange Management Act (FEMA) requires specific permission from RBI for foreign investment in partnership concerns. FEMA is yet to clarify whether LLP would be considered as partnership or corporate entity.
- A Company with more than Rs 1 crore capital does not get protection under Bombay Rent Act. However, in case such company migrates to LLP, it may be entitled for protection under Rent Act. This may act against the landlord, who may not agree for such conversion.
- Chartered Accountants, Company Secretary, etc. are allowed to practice either in individual capacity or as a partnership concern. Currently these professional institutes do not recognise LLP.

LLP being an agile entity would certainly be a winner as compared to any other form of organisation. However conversion of existing entity to LLP would not take off unless and until other Ministries, State Government, Regulators amend the respective laws, regulation to recognise LLP as new form of business organisation and erase the ambiguity that may arise due to the lack of specification and clarity. It is imperative for the government to address issues upfront.

