

# AN OVERVIEW ON LIMITED LIABILITY PARTNERSHIP ACT

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by

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## LLP (history in Indian Legislative)

- 1957- Suggested by iron, steel & hardware merchant chambers- rejected by 7<sup>th</sup> Law commission
- 1997- Recommended by Abid Hussain Committee on Small Scale Industries
- 2003-Naresh Chandra Committee Report (Regulation of Private Companies and Partnerships) highlighted the grave need to introduce LLPs in India
- 2005- JJ Irani Expert Committee on Company Law recommended introduction of LLPs
- December 15, 2006: 2006 LLP Bill introduced in Parliament
- May 1, 2008: Union Cabinet gave its approval to introduction of a new bill (2008 LLP Bill) replacing the 2006 LLP Bill
- October 21, 2008: LLP Bill 2008 introduced in Parliament
- January 7, 2009: President's assent given to the LLP Bill 2008 after being passed in Loksabha and Rajyasabha
- March 31, 2009-ACT CAME IN TO EXISTENCE

## Nature Of LLP

- Hybrid of companies & Partnerships- Benefit of Limited Liability of Company and flexibility of Partnership
- Separate Legal Entity- Continue its existence irrespective of Changes in partners
- LLP itself can enter into contracts and hold properties
- Partners' Liability limited to the agreed contribution
- LLP concept exist in UK, US, Australia , Singapore & various gulf countries (Indian LLP act based on UK LLP Act 2000 and Singapore LLP Act, 2005)
- Professional & Non-professional (Businessmen) , both can set up LLP

## LLP AGREEMENT

- ✓ It is a written agreement between the partners of the limited liability partnership and between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership.
- ✓ It is not necessary to enter into an LLP agreement as per LLP Act, 2008. In the absence of LLP agreement, the mutual rights of partners & in relation to LLP will be determined as per schedule I of the LLP Act, 2008.
- ✓ Due to varied nature of different type of businesses, it may not be practically advisable to have those standard clauses as mentioned in schedule 1. Therefore, it is advisable to have a legally drafted agreement

# LLP AGREEMENT

## Main Features of the Agreement

1. Parties (Individuals or body corporate sec. 5 LLP)
2. Objective
3. Definition and interpretation Clause
4. Commencement of business of LLP
5. Duration of LLP
6. Designated Partners (LLP Act) Working partners (IT Act).
7. Role of Partners in Management  
(Otherwise any partner can take part in Management)
8. Contribution of Partners (in cash or in kind).
9. Partners' powers, duties and authorities.
10. Define share in the capital, profit and Losses  
(otherwise equally as per Sch 1.)
11. Specify Remuneration to working partners  
(otherwise no remuneration) [(See I.T.Sec. 40(b)]
12. Define Interest to partners [Sec.40(b) of I.T. Act allows interest up to 12% only]
13. Power to expel (otherwise nobody can be expelled as per Schedule)

## L L P vs. Other Business forms - A Comparative analysis

S. no	Particulars	Partnership	Company	LLP
1.	<b>Governing Law</b>	<b>Limited Partnership Are governed by 'The Partnership Act,1932 And various rules made there under.</b>	<b>Companies Are governed by 'The Companies Act, 1956' .</b>	<b>Limited Liability Partnerships are governed by The Limited Liability Partnership Act,2008 and various rules made there under.</b>
2	<b>Registration</b>	<b>Registration is optional</b>	<b>Registration with ROC is required.</b>	<b>Registration with ROC is required.</b>
3.	<b>Creation</b>	<b>It is Created by Contract</b>	<b>It is Created by Law</b>	<b>It is Created by Law</b>
4.	<b>Distinct Entity</b>	<b>It is not a separate legal Entity</b>	<b>It is a separate legal entity under the Companies Act, 1956</b>	<b>It is a separate legal entity under the LLP Act, 2008.</b>

## LLP vs. Other Business Forms - A Comparative Analysis

Sr. no.	Particulars	Partnership	Company	LLP
5.	Choice of Name	Any name as per choice	Name to contain 'Limited' in case of Public company or 'Private Limited' in case of Private Company as suffix & is subject to availability.	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix & is subject to availability.
6	Cost of Formation	Nominal cost of creating a partnership firm.	Minimum fee for incorporation of Private Company is Rs.6,000/- approx. and for incorporation of Public Company, the minimum fee is Rs.21000/- approx.	The cost of formation of LLP is comparatively lesser than the cost of formation of Company. It's statutory fees ranges from Rs 500/ to Rs 5,000/-
7.	Perpetual Succession	It does not have perpetual succession as this depends upon the will of partners .	It has perpetual succession and the members may come and go.	It has perpetual succession and partners may come and go .

## LLP vs. Other Business forms - A Comparative analysis

<b>S. no</b>	<b>Particulars</b>	<b>Partnership</b>	<b>Company</b>	<b>LLP</b>
8.	<b>Charter Document</b>	<b>Partnership Deed is a charter of the firm which denotes its scope of operation and rights and duties of the partners</b>	<b>Memorandum and Articles of Association is the charter of the company which defines its scope of operation.</b>	<b>LLP Agreement is a charter of the LLP which denotes its scope of operations And rights and duties of the partners vis-à-vis LLP</b>
9	<b>Common Seal</b>	<b>There is no concept of common seal in partnership</b>	<b>It denotes the signature of the company and every company shall have its own common seal</b>	<b>It denotes the signature and LLP may have its own common seal (Optional), dependant upon the Terms of the Agreement</b>
10.	<b>Formalities of Incorporation</b>	<b>In case of registration, Deed along with form / affidavit required to be filed with ROF along with requisite filing fees</b>	<b>Various e-forms along the Memorandum &amp; Articles of Association are to be filed with The Registrar of Companies with prescribed fees</b>	<b>Various e- forms are to be filed with The Registrar of Companies with prescribed fees</b>



## LLP vs. Other Business forms - A Comparative analysis

<b>S. no</b>	<b>Particulars</b>	<b>Partnership</b>	<b>Company</b>	<b>LLP</b>
11.	<b>Time required for formation</b>	It will take nominal time.	It will take 8-10 days (approx.) to incorporate (inclusive of time taken to obtain DIN)	It will take 8-10 days (approx.) to incorporate (inclusive of time taken to Obtain DPIN)
12	<b>Legal Proceedings</b>	Only registered partnership can sue third party	A company is a legal entity which can sue and be sued	A LLP is a legal entity which can sue and be sued
13.	<b>Foreign Participation</b>	Foreign Nationals can not be a Partner in a Partnership firm.	Foreign Nationals can be a member in a company	Foreign Nationals can be a Partner in a LLP.
14.	<b>Number of Members</b>	Minimum 2 and Maximum 10 / 20	2 to 50 members in case of Private Company and Minimum 7 members in case of Public Company	Minimum 2 partners and there is no limit for maximum number of partners
15.	<b>Ownership of Assets</b>	Partners have joint ownership of all the assets belonging to partnership firm	Company & not its members has ownership of assets	The LLP independent of its members has ownership of assets

## LLP vs. Other Business forms - A Comparative analysis

S. no	Particulars	Partnership	Company	LLP
16.	Rights/Duties/ obligation of the Partners/ Managing Partners/ Directors	Rights / Duties/ obligation of the partners are governed by Partnership deed .	Rights / Duties/ obligation of the directors are governed by AOA and resolutions passed by shareholders or directors	Rights / Duties/ obligation of the partners are governed by LLP Agreement.
17	Liability of Partners/ Members	Unlimited. Partners are severally and jointly liable for actions of other partners and the firm and liability extend to their personal assets	Generally limited to the amount required to be paid up on each share	Limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
18.	Tax Liability	Income of the Partnership is taxed at a Flat rate of 30% plus education cess	Income of Company is Taxed at a flat rate of 30% Plus surcharge & education cess	Income of LLP is taxed at a Flat rate of 30% plus education cess
19.	Principal / Agent Relationship	Partners are agents of the firm and other partners.	Partners are agents of the firm and other partners.	Partners act as agents of LLP and not of the other partners.

## LLP vs. Other Business forms - A Comparative analysis

S. no	Particulars	Partnership	Company	LLP
20.	Transfer of Share	Not transferable.	Ownership is easily transferable by way of transfer of shares.	Regulations relating to transfer are governed by the LLP Agreement.
21	Dissolution	By agreement, mutual consent, insolvency, certain contingencies, and by court order.	Voluntary or by order of National Company Law Tribunal	Voluntary or by order of National Company Law Tribunal.
22.	Admission as partner / member	A person can be admitted as a partner as per the partnership Agreement	A person can become member by buying shares of a company.	A person can be admitted as a partner as per the LLP Agreement
23.	Cessation as partner / member	A person can cease to be a partner by resignation or due to death or as per the agreement	A member / shareholder can cease to be a member by selling his shares.	A person can cease to be a partner as per the LLP Agreement or in absence of the same by giving 30 days prior notice to the LLP

## LLP vs. Other Business forms - A Comparative analysis

S. no	Particulars	Partnership	Company	LLP
24.	Statutory Meetings	There is no provision with regard to holding of any meeting.	Board Meetings and General Meetings are required to be conducted at appropriate time .	There is no provision with regard to holding Of any meeting.
25	Annual Filing	No return is required to be filed with Registrar of Firms	Annual Financial Statement and Annual Return is required to be filed with the ROC every year.	Annual statement of accounts and Solvency (eForm 8) & Annual Return (eform 11) is required to be filed with ROC every year.
26.	Audit of Accounts	Partnership firms are only required to have tax audit of their accounts as per the provisions of the Income Tax Act.	Companies are required to get their accounts audited annually as per the provisions of the Companies Act, 1956	All LLP's except for those having turnover less than Rs.40 Lacs or contribution Less than Rs.25 Lacs in any financial year are required to get their accounts audited annually as per the Provisions of LLP Act <sup>12</sup>

## L L P vs. Other Business forms - A Comparative analysis

S. no	Particulars	Partnership	Company	LLP
27.	Whistle Blowing	No such provision is provided under The Partnership Act, 1932	No such provision is provided under the Companies Act, 1956	Provision has been made to provide protection to Employees & partners providing useful information during an investigation or convicting any partner or firm.

# STEPS REQUIRED TO REGISTER LLP

- All the LLP Forms are e-forms which requires digital signatures.  
Hence

## Step 1 – Digital Signature Certificate :

Partner/Designated partner of LLP/proposed LLP, whose signatures are to be affixed on the e-forms, has to obtain Digital Signature Certificate (DSC) from any authorized certifying agency.

- Every LLP must have minimum 2 DPs having DIN. Hence,

## Step 2

### Obtain Director's Identification Number. (DIN)

As per rule 2(1)(v) DIN means Identification Number allotted by Central Govt. to an individual or a nominee of a body corporate who intends to be appointed DP of LLP.

Any individual intending to become DP should file online application For DIN (Rule 10)

Cont... (Steps required to register LLP)

- Applicant should attach certified copies of identity and address proofs, Affidavit along with form (scanned copy). In case of foreign national, a certified copy of Passport should be enclosed.
- DIN is valid for life time.

As per Rule 10(8) Every DP should intimate his consent to become DP to the LLP in form 9 (within 30 days of admission) and the LLP shall intimate the same to the Registrar in Form 4 (within 30 days of admission).

➤ Every LLP must have different name. Hence

**Step 3 Reservation of Name (Form 1) (Rule 18(5))**

**Form-1 for reservation of name** shall be filed. Partners shall have to select name of the proposed LLP (up to 6 choices can be indicated).

Any partner or designated partner in the proposed LLP may submit Form-1 and will append his digital signature and submit the e-form.

Approval of name for Indian LLP is valid for 3 months (fees Rs.200/-).

Approval of name for foreign LLP is valid for 3 years (fees Rs.10,000/-) (Form 25

+ Rule 18(3)

An existing entity can object allotment of name (Form 23).

## Step 4 (Steps required to register LLP)

### Form 2 Incorporation: Document + Statements

After the name is reserved by the Registrar,  
**“Incorporation Document and Statement” (Form 2)**  
shall be filled up and filed electronically.

Part A of Form 2 contains following particulars :

- (a) Name of LLP
- (b) Reg. office address
- (c) Details of Partners
- (d) Value and mode of contribution
- (e) Proposed business, etc.

Part B of Form 2 contains a statement to be signed by a DP and a Professional engaged by LLP.

A statement in Part B of Form 2 (the e-form) is to be digitally signed by a person named in the incorporation document as a designated partner having DPIN.

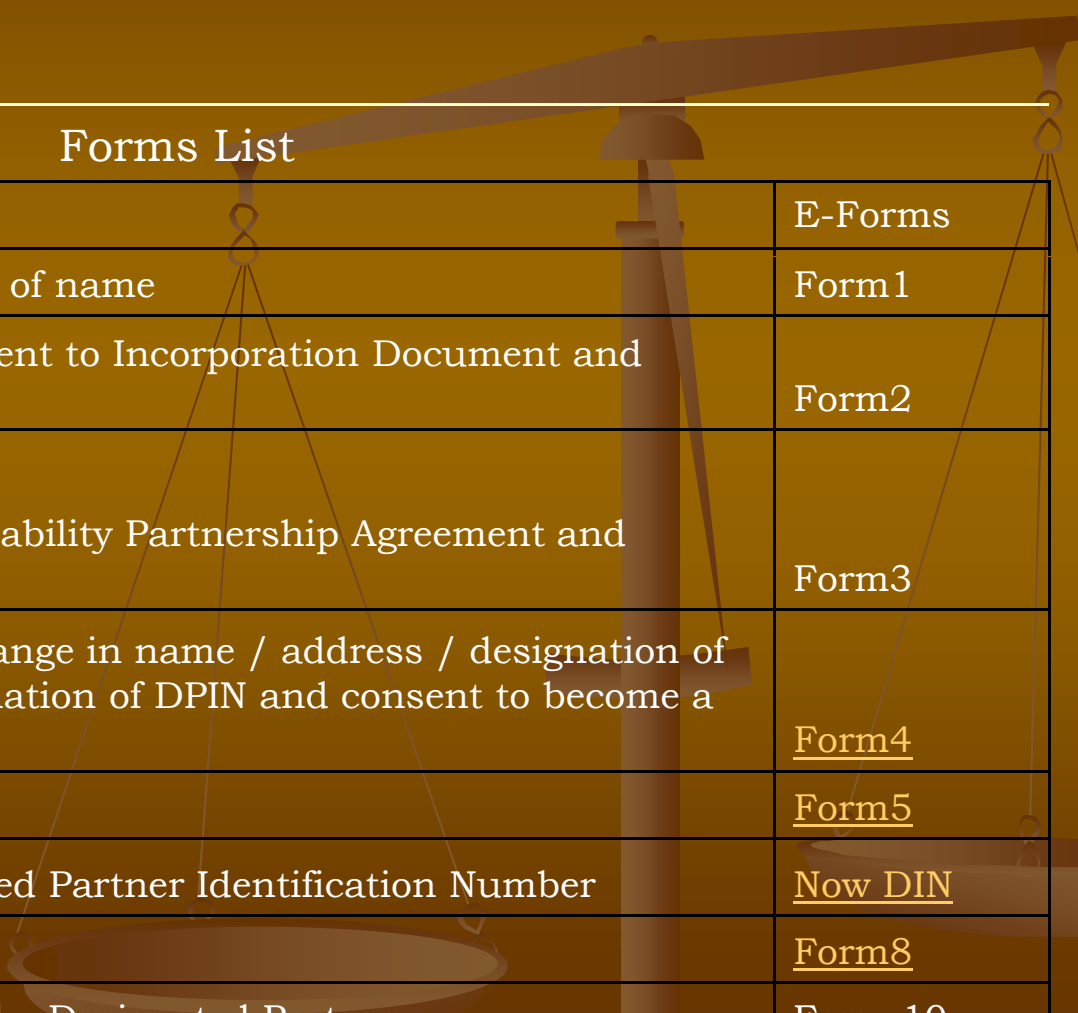
Also a statement to be digitally signed by an advocate/company secretary/ chartered accountant/ cost accountant in practice who is engaged in the formation of LLP.



## Congratulations! Your LLP is now registered by ROC

### Step 5 – Execute LLP Agreement + Stamp

And file Form 3 which is summary of LLP Agreement. As per Rule 21 Form 3 should be filed along with the prescribed fee within 30 days of the date of Incorporation. (Rule 21).



Forms List	
Description	E-Forms
Application for reservation or change of name	Form1
Incorporation Document and Statement to Incorporation Document and Subscriber's Statement	Form2
Information with regard to Limited Liability Partnership Agreement and changes, if any, made there in	Form3
Notice of appointment, cessation, change in name / address / designation of a partner / designated partner, intimation of DPIN and consent to become a partner/designated partner.	<u>Form4</u>
Notice for change of name	<u>Form5</u>
Application for allotment of Designated Partner Identification Number	<u>Now DIN</u>
Statement of Account & Solvency	<u>Form8</u>
Intimation of changes in particulars by Designated Partners	Form 10 17

Annual Return of Limited Liability Partnership	<a href="#"><u>Form11</u></a>
Form for intimating other address for service of documents	<a href="#"><u>Form12</u></a>
Notice of change of place of registered office	<a href="#"><u>Form15</u></a>
Application and statement for the conversion of a firm into Limited Liability Partnership	<a href="#"><u>Form17</u></a>
Application and Statement for conversion of a private company/unlisted public company into limited liability partnership.	<a href="#"><u>Form18</u></a>
Notice of intimation of Order of Court/ Tribunal/CLB/Central Government to the Registrar	<a href="#"><u>Form22</u></a>
Application for direction to LLP to change its name	<a href="#"><u>Form23</u></a>
Application to the Registrar for striking off name	<a href="#"><u>Form24</u></a>
Application for reservation/renewal of name by a foreign LLP/foreign company	<a href="#"><u>Form25</u></a>
Form for registration of particulars by foreign limited liability partnership	<a href="#"><u>Form27</u></a>
Alteration in the - (A) The incorporation document, or other instrument constituting or defining the constitution of a limited liability partnership incorporated or registered outside India; or (B) The registered or principal office of a limited liability	<a href="#"><u>Form28</u></a>
(A) Alteration in the certificate of incorporation or registration of limited liability partnership incorporated or registered outside India (B) Alteration in the name or address of any of the persons authorized to accept service on behalf of a foreign 1	<a href="#"><u>Form29</u></a>
Application for compounding of an offence under the Act	<a href="#"><u>Form31</u></a>

## Statements of Accounts and Solvency & Audit (Sec.34)

- (i) LLP is required to maintain books of accounts for each year as prescribed by Rule 24. (Sec.34).
- (ii) Accounts on cash basis or on accrual basis under double entry system of accounting.
- (iii) Accounts shall be audited by Auditors appointed by the LLP, in accordance with Rule 24.

Audit compulsory under LLP Act if : -

- (a) If turnover exceeds Rs. 40 lakhs in any F.Y.
  - (b) Contribution by partners exceed Rs. 25 lakhs.
- (iv) Within a period of six months from the end of the year, LLP to prepare a Statement of A/cs and Solvency in Form No.8 as prescribed by Rule 24. It is to be signed by the Designated Partner.
  - (v) Before 30th October in each year, the Statement of Accounts and Solvency for the year ended on 31st March is required to be filed with the Registrar ( Rule 24)
  - (vi) (Sec. 35) Annual Return – Every LLP to file Annual Return within 60 days of closure of financial year. In case of failure DP to be fined (Rs.10,000/- to Rs. 100,000/-) Else additional fee of Rs 100/- per day.

# CONVERSION TO LLP (Sec.55 to 57)

## Conversion from firm/company into limited liability partnership.

(Section 55 + Schedule-II).

1. Eligibility – A firm can be converted only if all the partners agree to become partners of LLP.
2. A private company can be converted into LLP only if :
  - all shareholders agree to become partners of LLP and
  - there is no security interest subsisting like mortgage(Sec. 56 Schedule-III)
3. Conversion from unlisted public company into LLP. (Section 57 + Schedule – IV)
4. Registrar to issue a certificate in Form No. 19.
5. On Registration of LLP erstwhile firm or company will be deemed to be dissolved.

(Cont...CONVERSION)

## **CONVERSION from FIRM to LLP: (As per Second Schedule)**

- a) **On incorporation of LLP all the rights and liabilities under various agreements executed by the firm shall stand assigned to LLP as if those agreements were executed by LLP instead of the firm.**
- b) **All the properties of previous firm would vest in LLP without any assurance.**
- c) **If any property of the partnership firm is registered with any authority, LLP must notify the authorities like SSI etc., about the conversion and submit the particulars in such form as the authority may specify.**
- d) **For a period of 12 months LLP will have to mention its previous Name and Registration number and business Form.**
  - **If the Registrar refuses registration, the Applicant may apply to the Tribunal within 60 days from such intimation of refusal [Rule 32(2)].**
  - **Rule 33 provides that upon such conversion the necessary intimation to the Registrar of Firms or Registrar of Companies, as the case may be shall be given in form No. 14.**

# LLP & TAXATION

## 1. World wide LLP taxation practice.

### a) Tax Transparent (Pass through).

In U.K. and Singapore, Tax is not payable by LLP.

### b) Tax opaque juridical entity.

In Belgium and Australia, LLP is taxable entity.

### c) Flexible –

In USA – Left to the decision of the partners.

## 2. Sec.2(23) of I.T. Act amended to treat LLP as a firm.

## 3. In India LLP is tax opaque juridical entity - Tax payable by LLP.

4. LLP registered in India will be a resident even if only a part of control and management is in India

5. No surcharge, effective tax rate 30.9%

6. No MAT (Minimum Alternate Tax) A company has to pay MAT@18.5% (eff.rate 20.007% of Book Profit (Sec.115JB) However LLP HAS TO PAY AMT @ 18.5% eff.rate 19.055%

7. No DDT (Dividend Distribution Tax – Sec.115 O)

Amount distributed by the company as dividend is liable for additional income tax @15%

8. Profits distributed by LLP exempt in the hands of the partners Sec.10(2A).

## LLP & TAXATION

9. Profit earned by the Assignee of economic Interest (as per Sec.42 of LLP Act) is taxable in his hands.
10. Deemed dividend provisions do not apply to LLP  
If a private limited company gives any loan to any shareholder holding not less than 10% of share then that loan is taxed as dividend received from the company. [Sec.2(22)(e) of I.T.Act]
11. Corporate law provisions for inter-corporate deposits will not apply. (Sec.58-A of Companies Act. LLP is free to receive deposits from other LLPs. A company can invite deposits from public as per rules only).
12. **Interest paid to partners** is allowable-deduction provided capped at 12% [Sec.36(1)(iii),Sec.40(b),Sec.184].

As per Sec.36(1)(iii) the interest paid on the capital borrowed for the purpose of business is allowed as deduction. However as per Sec.40(b)(v) interest paid to partners if not specified in the Partnership Deed is not allowed.

Moreover, interest is allowed only to the extent of 12%.

## LLP & TAXATION

13. As per Sec. 184 a partnership will be assessed as a firm provided there is an instrument of partnership (P. Deed or LLP Agreement) and the shares of partners are specified therein. In case of unwritten partnership the deductions for salary and interest are not allowed. The provisions will equally apply to LLP.
14. Remuneration to working partners allowed subject to cap.u/s.40(b)(v)-if paid in accordance with Deed/Agreement.
  - (a) On the first 3 lacs of book profit or in the case of loss Rs.1,50,000/- or 90% of Book profit.
  - (b) On the balance profit in excess of 3 lacs – @ 60% of book profit.
15. Retiring/deceased partner's share in loss cannot be carried forward in the hands of LLP **Sec.78(1)**-There is a contrary view also.
16. **Foreign LLPs shall be taxed as companies** under the I.T. Act (and not as a firms).
17. **Wealth Tax not applicable to LLPs.**  
But interest of the partner in the assets of the firm may be liable to wealth Tax [Sec.4(1)(b)of W.T.Act]

The issue is debatable. Since LLP is not equated with firm under W.T. Act, the provision may not have applicability in the case of partners of LLP.



# LLP & TAXATION

## STATUS AFTER 01-04-2011

**Transfer of Assets on conversion u/s 56 & 57 of the act shall not be regarded as transfer if-**

- the total sales, turnover or gross receipts in business of the company do not exceed sixty lakhs rupees in any of the three preceding previous years
- the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company as on the date of the conversion;
- no consideration other than share in profit and capital contribution in the LLP arises to partners;
- the erstwhile shareholders of the company continue to be entitled to receive at least 50 per cent of the profits of the LLP for a period of 5 years from the date of conversion;
- all assets and liabilities of the company become the assets and liabilities of the LLP; and
- no amount is paid, either directly or indirectly, to any partner out of the accumulated profit standing in the account of the company as on the date of conversion for a period of 3 years from the date of conversion. [this condition means that no accumulated profits which are lying in reserve or in the profit and loss (surplus) balance as on date of conversion should be distributed to any partner or transferred to their capital accounts until 3 years from date of conversion.]

**Note:-** LLP is allowed carry forward and set-off of business loss to the successor LLP which fulfills the above mentioned conditions for a fresh period of 8 years from the expiry of the year of conversion and unabsorbed depreciation indefinitely.72A(6A)

# THANK YOU

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