

# Limited Liability Partnership (LLP) – Conversion and Reconstruction

CS. Meenakshi Jayaraman

**DVS Advisors LLP**

India-Singapore-London-Dubai-Malaysia-Africa

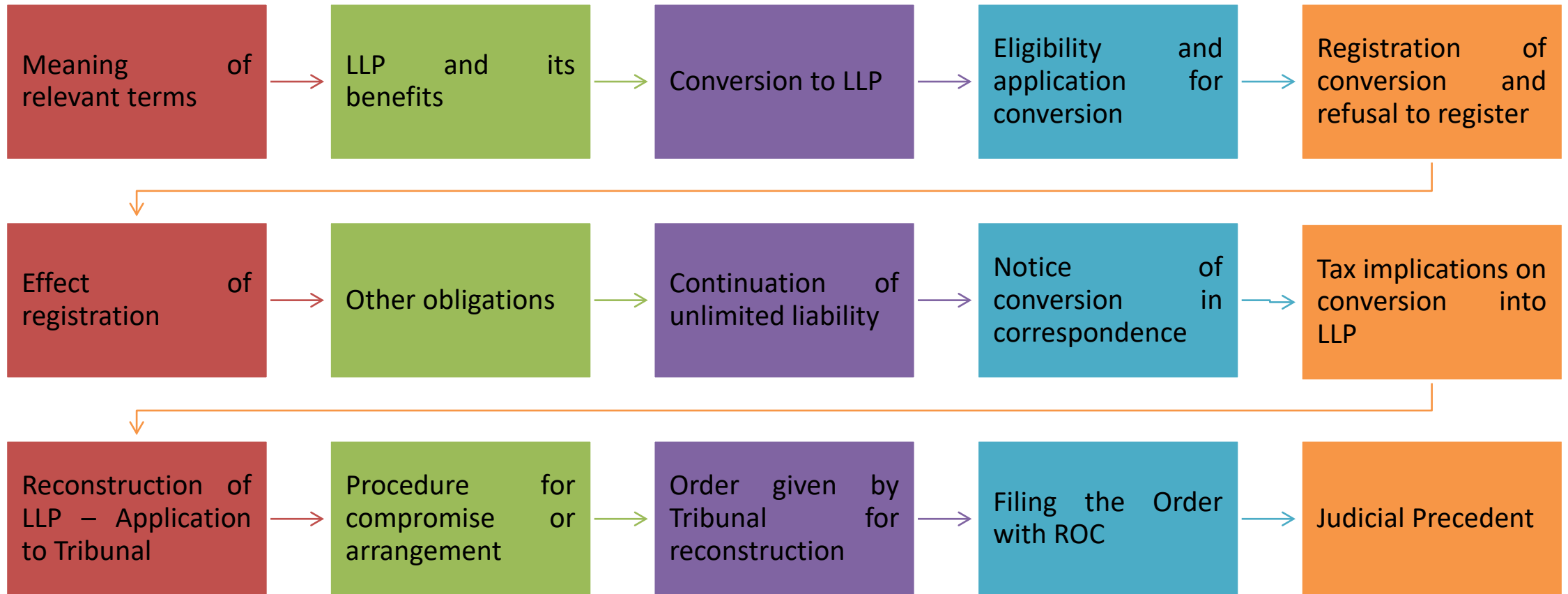
[www.dvsca.com](http://www.dvsca.com)

## **Credits and Acknowledgments**

Sundar Rajan

DVS Research Team

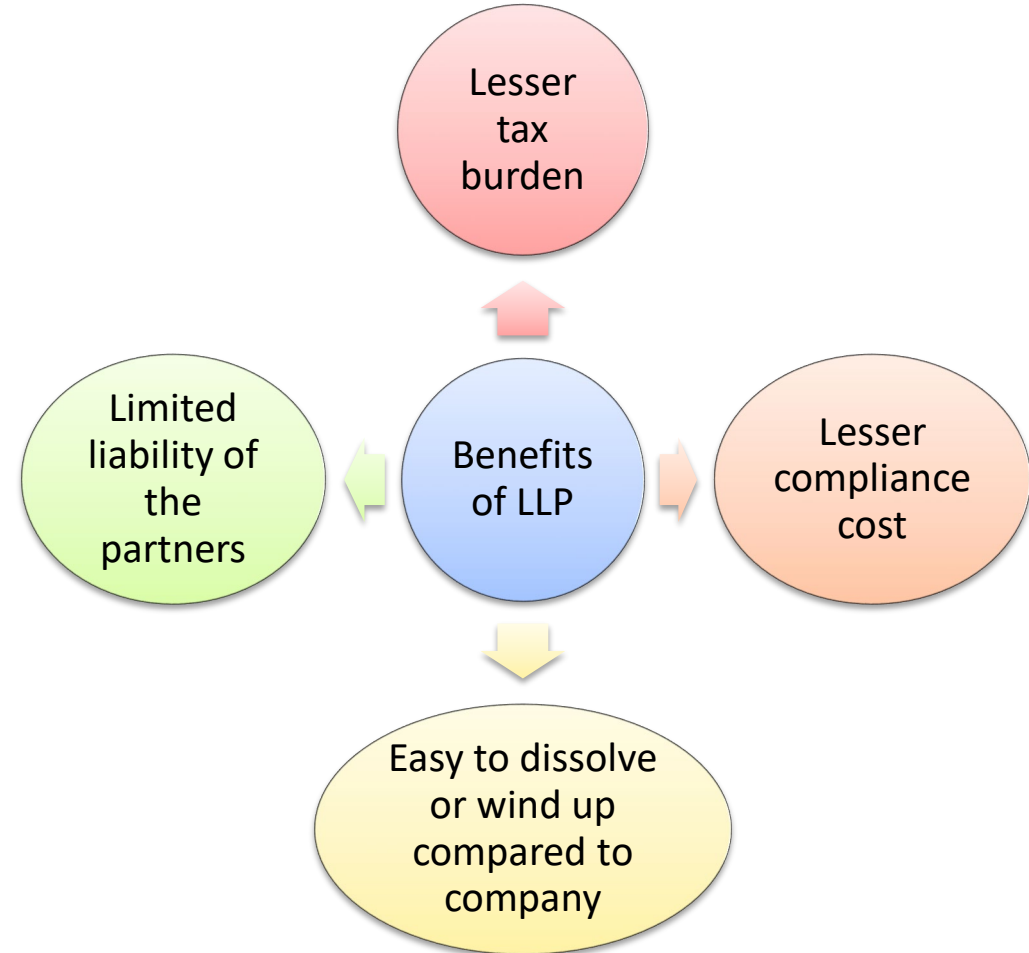
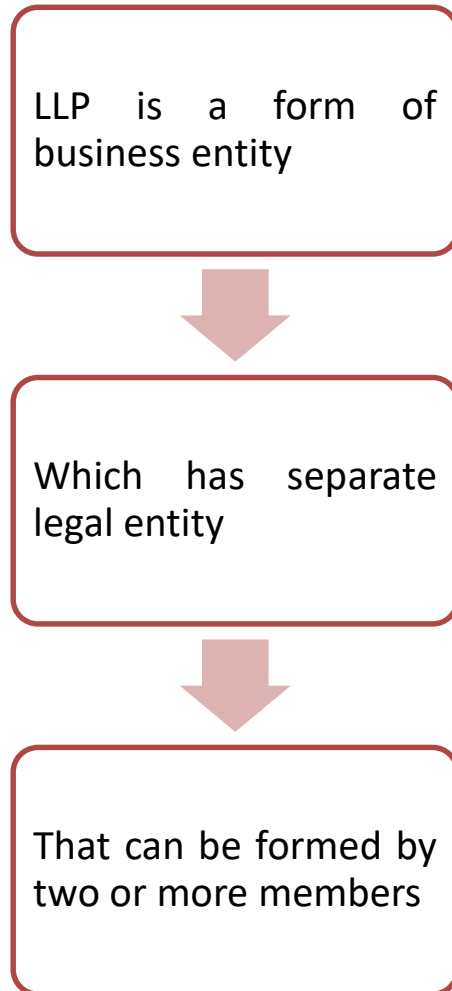
# Presentation Schema



# Meaning of relevant terms

Terms	Meaning/expansion
Security interest	Legal claim on an asset given as collateral for obtaining loan
FiLLiP	Form for Incorporation of Limited Liability Partnership
ROC	Registrar of Companies
ROF	Registrar of Firms
Entity	Firm, Private limited company and Unlisted public company
PLC	Private Limited Company
UPC	Unlisted Public Company
ITA	Income Tax Act
Affidavit	Sworn document used as evidence in the Tribunal
Summons	Order from Tribunal requiring specific person to appear before it
Dissolution	Process of removing the name from the Register maintained by the ROC
Tribunal	National Company Law Tribunal
PSR	Profit Sharing Ratio
DOC	Date Of Conversion
YOC	Year Of Conversion

# LLP and its benefits



# Conversion to LLP

Conversion to LLP can be made only by three types of entities (Firm, Private limited company and unlisted public company)

Conversion shall take place in order to derive benefits like limited liability, lesser compliance cost, tax benefits, etc.

The provisions for conversion to LLP is laid down in Chapter X of LLP Act, 2008 (Sec. 55-58)

# Provisions for conversion

## Section 55

- Conversion from firm into LLP in accordance with the provisions of chapter X and Second Schedule

## Section 56

- Conversion from private limited company into LLP in accordance with the provisions of chapter X and Third Schedule

## Section 57

- Conversion from unlisted public company into LLP as per the provisions of chapter X and Fourth Schedule

The procedure for conversion is very similar in all three types

# Eligibility and application for conversion

## Firm to LLP

- **Condition to be satisfied**
  - All the partners of the firm should become partners in the LLP (common list of partners in firm and LLP)
- **Application**
  - Form 17 to be filed for conversion along with “Form FiLLiP” for incorporation with ROC (FiLLiP deals with the single application for reservation of name, incorporation of LLP / conversion to LLP and/or application for allotment of DIN/DPIN).

## Private and unlisted public company to LLP

- **Conditions to be satisfied**
  - No security interest in its assets subsisting or in force at the time of application **and**
  - All the shareholders of the company should become partners in the LLP (common list of shareholders of company and partners of LLP)
- **Application**
  - Form 18 has to be filed for conversion along with “Form FiLLiP” for incorporation with ROC



# Registration of conversion and refusal to register

## Registration of conversion

- Registrar on satisfying that the entities have complied with the provisions of the Act, shall register the documents and issue Certificate of Registration in Form 19
- The Certificate of Registration shall act as a conclusive evidence of registration as an LLP
- Form 14 to be filed by LLP to inform ROF about the conversion of firm to LLP (To be filled in physical form and submitted to ROF)

## Refusal to register

- Registrar has the right to deny registration if he is not satisfied with the particulars or information furnished under the provisions of the Act
- However, an appeal can be made before the Tribunal in case of refusal of registration by the Registrar within 60 days from the date of receipt of intimation of refusal
- The Registrar shall require the documents from the applicant in any particular case as he considers fit

# Effect of Registration

From the date of registration specified in the Certificate of Registration

LLP shall be registered in the name specified in the Certificate of Registration under the LLP Act

All assets, interests, rights, privileges, liabilities, obligations of the entity and the whole of the undertaking of firm / company shall be transferred to LLP without further assurance, act or deed

The entity shall be deemed to be dissolved and removed from the records of the ROC/ROF, as the case may be

# Other obligations

The LLP shall take steps to notify the authority with which any **property has been registered**, about its conversion in such medium and form as determined by the authority

All **proceedings** against the entity pending before Court, Tribunal or any other authority shall continue against the LLP

Any **conviction, order or judgment** by the Court, Tribunal or any authority on the entity shall be enforced by or against the LLP

All **contracts, agreements**, etc. existing before registration of LLP shall continue in force and enforceable by or against LLP

**Appointment** of the entity in **any capacity or role** before the date of registration and **powers conferred** on the entity shall take effect and operate on the LLP after conversion

# Continuation of unlimited liability

The liability of the partners of the firm prior to conversion shall continue to prevail even after conversion into LLP (for liabilities and obligations incurred prior to conversion / from contracts entered into prior to conversion )

If partner discharges such liability, he shall be entitled to be fully indemnified by the LLP for such liability or obligation

# Notice of conversion in correspondence

For a period of **12 months commencing not later than 14 days** after the date of registration, every official correspondence of the LLP shall bear:

A statement that it was, as from the date of registration, **converted from a firm/PLC/UPC into an LLP**

**AND**

The **name and registration number** (if applicable) of the firm/PLC/UPC from which it was converted

Any LLP contravening the above provision, shall be punishable with a fine of not less than Rs.10,000 but which may extend to Rs.1,00,000 and a further fine of Rs.50 to 500 for every day after the first day after which the default continues

# Tax benefit - Sec. 47(xiiib) of ITA, 1961

Conversion of PLC or UPC (the company) into LLP is not regarded as transfer u/s 47 of the ITA, 1961 when the following conditions are satisfied

All the assets and liabilities of the company immediately before conversion become that of LLP after conversion

-All the shareholders of the company immediately before conversion become partners of LLP after conversion;  
-Partners' PSR in LLP is same as that of their shareholding in the company on the DOC

Shareholders do not receive any other consideration from LLP, in any manner, apart from share in profit and capital contribution

Aggregate of PSR of shareholders of the company in LLP not to be less than 50% at any time during 5 years from DOC

Total sales, turnover or gross receipts of the company in any of 3 previous years preceding YOC  $\leq$  60 lakhs

Total value of assets as per books of accounts of the company in any of 3 previous years preceding YOC  $\leq$  5 Crores

No amount is paid, directly or indirectly, to any partner out of balance of accumulated profits of the company on DOC, for a period of 3 years from DOC

# Withdrawal of tax benefit – Sec. 47A(4) of ITA, 1961

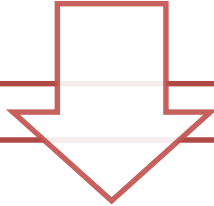
When conditions laid down under clause xiiib of Sec. 47 of ITA, 1961 are not complied with by the LLP

Profits and gains from transfer of capital asset or intangible asset or shares which were exempt from tax due to provisions of Sec. 47

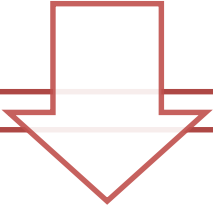
Shall be deemed to be taxable for LLP/shareholders in the previous year in which the conditions laid down in Sec. 47 (xiiib) were not complied with

# Carry forward of losses – Sec. 72A(6A) of ITA, 1961

When provisions of Sec. 47 (xiiib) are fulfilled, then **accumulated losses and unabsorbed depreciation** of the predecessor company shall be deemed to be the loss of the successor company



For the previous year in which such reorganisation took place, **other provisions of set-off and carry forward** shall apply accordingly



When the provisions of Sec. 47 (xiiib) are not complied with, then **set-off of loss made in successor LLP** in any PY shall be **deemed to be income** in the year in which such conditions are not complied with



# Reconstruction of LLP (Sec. 62) – Application to Tribunal

Application has to be made to the Tribunal for sanctioning a compromise or arrangement u/s 60

For the purposes of reconstruction or amalgamation of LLP and

For the transfer of undertaking (whole or part), properties or liabilities of one LLP (transferor) to another LLP (transferee)

# Application for compromise or arrangement (Sec. 60 read with Rule 35)

**Application** for an order convening a meeting of creditors and/or partners made by LLP shall be supported by an **affidavit** along with a **copy of proposed compromise or arrangement**

When application is made by creditors or partners, a **copy of the summons and affidavit** shall be issued to the LLP in not less than **14 days before the date of hearing of the summons**

Affidavit shall be in **Form 20** and summons shall be in **Form 21**

On approval of the application by the Tribunal, it shall **order meeting or meetings of creditors or partners** of the LLP with appropriate directions

# Procedure before the meeting

Tribunal to fix **time and place of the meeting, quorum**, time within which Chairman has to report the result of the meeting, etc.

**Notice** of meeting to be sent individually by the chairman to creditors and/or partners, not less than **21 clear days** before the date fixed for the meeting along with a **copy of the proposed compromise or arrangement**, statement showing **material interest of the designated partners**, if any, and **form of proxy** i.e. Form 26

Notice of the meeting shall be **advertised** if so directed by the Tribunal **in such newspaper** and in such manner as the Tribunal may direct

**Chairman** appointed or the LLP or the person directed to **issue advertisement and notices**, shall **file an affidavit**, not less than **7 days** before the date fixed for holding the meeting by confirming that the **directions regarding the issue of notices and the advertisement have been duly complied with**

# Procedure after the meeting

**Within 7 days** after the conclusion of the meeting or where there are separate meetings, where time not fixed by the Tribunal, the **Chairman to report the result** thereof to the Tribunal

**Report** shall accurately state the **number of creditors or partners who were present** and who **voted in person or by proxy**, their individual values and the way they voted

**Within 7 days** of filing of the report by the chairman, the LLP or the Liquidator shall **present a petition to the Tribunal for confirmation of the compromise or arrangement**. In case of failure by LLP, creditors or partners shall present the petition, after obtaining permission from Tribunal, and claim the costs from LLP

Where petition could not be presented, the **report of the Chairman on the results of the meeting**, be placed for consideration before the Tribunal for such orders as may be necessary

# Order given by Tribunal for reconstruction (Sec. 62)

Tribunal may, by an order sanctioning the compromise or arrangement, or by a subsequent order make provisions on the following matters:

Transfer of **undertaking (whole or part), properties or liabilities** of transferor LLP to transferee LLP

Continuation of **pending legal proceedings** on transferor LLP by or against the transferee LLP

**Dissolution, without winding up** of the transferor LLP

**Provision to be made** within such time and manner **to persons who dissent** from the compromise or arrangement

Such incidental matters necessary **to secure that the reconstruction or amalgamation** shall be fully and **effectively carried out**

# Condition Precedent to Order

Order by the Tribunal for sanctioning the compromise or arrangement for the purposes of reconstruction or amalgamation of LLP shall not be given

Unless the Tribunal receives a report from the ROC or Official Liquidator (in case of dissolution) stating that

The affairs of the LLP has not been conducted in a manner prejudicial to the interests of its partners or public interest

# Filing the order with ROC

Certified copy of the Order given by the Tribunal shall be filed with ROC in **Form 22 within 30 days** of making the Order

In calculating 30 days, the requisite time for obtaining certified copy of the Order shall be excluded

Contravening the above provision shall lead to an imposition of penalty for the designated partners which may extend to **Rs.50,000**

# Judicial Precedent: ACIT vs. Celerity Power LLP (2018)

Where upon conversion of a PLC into assessee-LLP, entire undertaking of erstwhile company got vested into assessee LLP. No separate cost other than 'book value' would be attributable to individual assets and liabilities. **Hence, such 'book value' could only be regarded as 'full value of consideration' for the purpose of computation of capital gain under Section 48.**

Transaction involving conversion of a PLC or UPC to a LLP as contemplated in section 47(xiiib) would be a 'transfer'. However, on **cumulative satisfaction of conditions (a) to (f)** of proviso to section 47(xiiib), **not chargeable to 'capital gains' under Section 45.**

Where assessee had failed to satisfy the conditions laid down in proviso to clause (xiiib) of section 47, Commissioner (Appeals), rightly declined 'carry forward' of losses of erstwhile company by assessee LLP and Income-tax Appellate Tribunal also made observations on the permissibility of carry forward of losses of the PLC in the hands of the successor LLP.



# THANK YOU

**DVS Advisors LLP**

India-Singapore-London-Dubai-Malaysia-Africa

[www.dvsca.com](http://www.dvsca.com)

Copyrights © 2019 DVS Advisors LLP