

The Limited Liability Partnership Act 2008 has been come in to force w.e.f. from Jan., 2009. The Limited Liability Partnership Rules 2009(except Rules 32 and 33, rules 38 to 40 dealing with conversion) and Forms have been notified w.e.f. 1st. April 2009. The Taxation Scheme of LLPs has been proposed in the union Budget 2009-10 on the same line as the taxation scheme prevalent for Partnership firm. Provisions of Sec. 2(23) of Income tax Act,1961 containing the words 'partner', 'firm' and 'partnership' have been substituted accordingly and the word 'partner' shall include within its meaning a partner of LLP and the words 'firm' and 'partnership' shall include within its meaning a LLP as these terms have been defined in the LLP Act 2008. With all these preparations the new entity of business ready to use but there are certain issues and anomalies to be resolved before doing so.

Incorporation of LLP

Sec.11(1) of LLP Act provides that-

"For a limited liability partnership to be incorporated,-

- (a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation documents;"

And provision of sec. 22 provides that-

"On incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement."

The term used 'persons' in the above provisions not defined anywhere in the LLP Act 2008. However as per Income Tax Act 1961 the 'person' includes an individual, a huf, a company, a firm, an

association of persons or body of individuals (whether incorporated or not), a local authority and artificial juridical person. Therefore in common parlance any person may subscribe their name for incorporation of LLP. But Sec. 5 of LLP Act provides that -

“any Individual or body corporate may be a partner in limited liability partnership:”

and body corporate has been defined under sec.2(1)(d) of LLP Act as

“body corporate” means a company as defined in section 3 of the Companies

Act, 1956 and includes-

- (i) A limited liability partnership registered under this Act;
- (ii) A limited liability partnership incorporated outside India; and
- (iii) A company incorporated outside India,

But does not include-

- (i) a corporation sole;
- (ii) a co-operative society registered under any law for the time being in force; and
- (iii) any other body corporate (not being a company as defined in section 3 of the

Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;

Keeping in view of the above provisions one should be careful about that persons other those defined in sec. 5 of LLP Act shall not be eligible to subscribe their name for incorporation of LLP.

CONVERSIONS

Conversion from Partnership Firm into LLP.

Sec. 55 of LLP Act 2008 provides that-

“A firm may convert into a limited liability partnership in accordance with the provision of this Chapter and the Second Schedule” .

Clause 3 of Second Schedule to LLP Act 2008 provides that-

“A firm may apply to convert into limited liability partnership in accordance with this Schedule if and only if the partners of the limited liability partnership in to which the firm is to be converted, comprise, all the partner of the firm and no one else.”

In strict sense for conversion from firm into limited liability partnership, all the partners of the firm must be partner of limited liability partnership, no one else. Now, a question arises if the existing firm have partners other than Individual and body corporate (as defined in sec. 5 of LLP Act) and it apply for conversion, what would be the consequence as the provision of sec. 5 of LLP Act qualifies only individual and body corporate for partners while the provisions of clause 3 of Schedule Second of the LLP Act provide

that all the partners of the firm must be partner of LLP, no one else.

Conversion from Private Company or unlisted Public Company into Limited Liability Partnership

Sec. 56 of LLP Act 2008 provides that-

“A private company may convert into a LLP in accordance with the provision of this Chapter and the Third Schedule” ; and

Sec.57 of LLP Act 2008 provide that-

“An unlisted public company may convert into a LLP in accordance with the provision of this Chapter and the Fourth Schedule” .

Accordingly, Clause 2(2)(b) of Third Schedule and Clause 3(b) of Fourth Schedule of the LLP Act 2008 provides that-

“A company may apply to convert into limited liability partnership in accordance with this Schedule if and only if the partners of the limited liability partnership in to which the firm is to be converted, comprise, all the shareholders of the company and no one else.”

Presently, the Companies Act 1956 allows person/(s) other than specified in Sec. 5 of LLP Act 2008 to be shareholder of the company, than keeping in view of the provision of clause 2(2)(b) of Schedule Third and clause 3(b) of Schedule fourth of LLP Act the situation is not different as in the case of firm.

To Sum up

After all we are emerging fastest growing economy in the world managing all the affairs prudently and adopting all the new innovations and technologies to cope with developed economies. However countries like USA, UK, Singapore, Australia, Germany and other countries long back accepted the concept of LLP but not too late, we have also recognized this alternative corporate business entity, which is likely to cater the need of trade, profession services and occupation particularly knowledge industry and provides the benefits of limited liability and flexibility of organising the internal affairs of partners mutually on the basis of partnership agreement at one hand and on the other hand provides perpetual succession as it is a legal entity separate from that of its partners. Therefore there will be no danger of disruption of business for any reasons, attributed to the relations of partners in any way.

However the provision has been made in the LLP Act and on such conversion all tangible (movable and immovable) property and intangible property vested in the firm shall be transferred and shall vest in the LLP without further assurance, act or deed. But to make smooth ride it may be clarify that no stamp duty attracted. Further sec. 47 of I.T. Act 1961 should be suitably amended to exempt such conversions from capital gains. Therefore before taking a find call on the implementation date for conversion Rules 31,32 and 38 to 40, we are hopeful that the Government would have been taken into account all the issues and anomalies.

