

# Conversion into

LLLP

Why-When-How

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Phone: 9810052785

# Hybrid Version

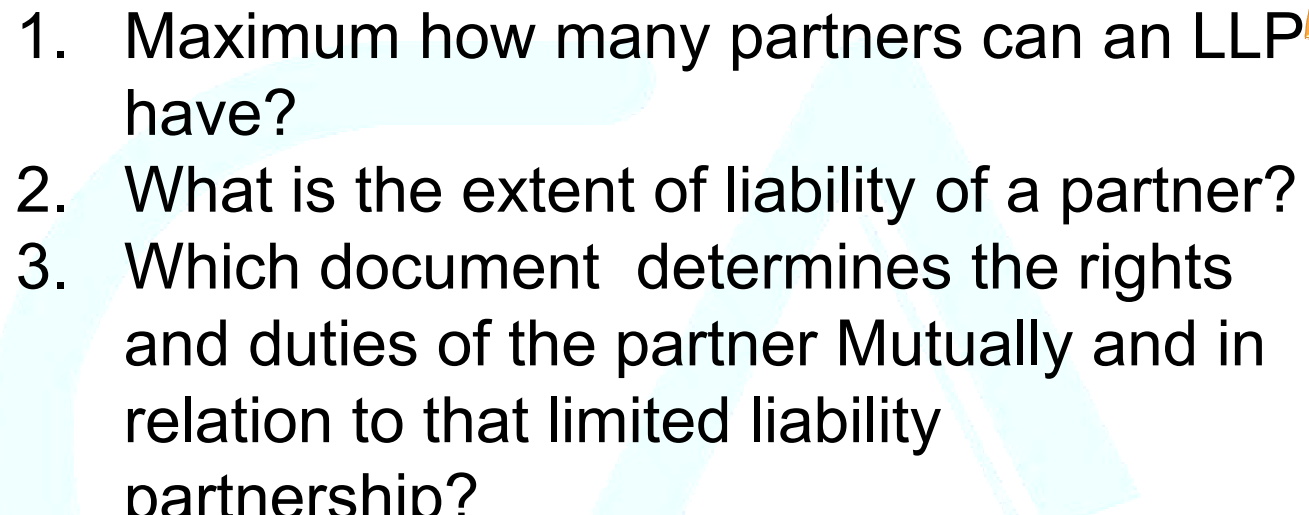
✓ **Limited Liability**  
of a Company

and

✓ **Internal Flexibility**  
of a conventional Partnership.

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1. Maximum how many partners can an LLP have?
  2. What is the extent of liability of a partner?
  3. Which document determines the rights and duties of the partner Mutually and in relation to that limited liability partnership?
  4. What is contribution?
  5. Can an LLP reduce its contribution?
  6. Is audit compulsory in case of LLP?
  7. What format of balance sheet has to be used by an LLP?

## True or False

1. LLP is a body corporate
2. Designated partners are responsible for managing affairs of the LLP.
3. Even a charitable organization can be formed as an LLP.
4. All partners are equally responsible for wrongdoings of any partner
5. At least one of the designated partner must be resident partner
6. Amounts owned to partners at par with amounts owned to other
7. An LLP can not be formed with a contribution below one lakh
8. Financial year of an LLP must end on 31<sup>st</sup> March every year.
9. A partner who has resigned from LLP can himself file notice of his resignation to registrar



# Convertible Entities

- Conventional Partnership
- Pvt. Ltd. Co.
- and unlisted public co.

✓ A listed company can NOT

# Why LLP

## Why Convert A Company



### ✓ **MOST IMPORTANT**

- ✓ **Stringent provisions**
- ✓ **No MAT**
- ✓ **Deemed Dividend**
- ✓ **Dividend Tax**
- ✓ **Limited Liability**
- ✓ **Flexibility**

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## LLP Company

Contribution/Capital		100,000	100,000
Year one	Profits	50,000	50,000
	Total	150,000	150,000
	Withdrawal	50,000	-
		100,000	150,000
Year Two	Profits	60,000	60,000
	Total	160,000	210,000
	Withdrawal	60,000	-
		100,000	210,000
Year Three	Profits	75,000	75,000
	Total	175,000	285,000
	Withdrawal	75,000	-
		100,000	285,000
Year Four	Profits	100,000	100,000
	Total	200,000	385,000
	Withdrawal	100,000	-
		100,000	385,000
Year Five	Profits	125,000	125,000
	Total	225,000	510,000
	Drawings	125,000	-
		100,000	510,000

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# Incorporation Document and Statement

<b>Contribution</b>	<b>Registration Fee</b>
≤ 1 lakh	500
≤ 5 lakh	2000
≤ 10 lakh	4000
> 10 lakh	5000

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# Filing Fee

<b>Contribution</b>	<b>Filing Fee</b>
≤ 1 lakh	50
≤ 5 lakh	100
≤ 10 lakh	150
> 10 lakh	200

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# Why LLP

## Why Convert A Conventional Partnership



- ✓ Limited liability
- ✓ Number of the Partners
- ✓ Designated partners
- ✓ Amounts owned to partners at par with amounts owned to other
- ✓ Not responsible for misdeeds of other partners

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# Conditions

- ✓ Application
  - Income tax returns shall be up to date
  - Consent from all the creditors
  - List of court cases
  - Statement of assets and liabilities upto 30 days from the date of filing fully certified by a
- ✓ comprise, all the partners / shareholders and no one else
- ✓ no security interest in its assets (company)
- ✓ ROC filings up to date including BS & AR
- ✓ Bound by Schedule 2 / 3 / 4
- ✓ Companies with FDI must get conversion approved from FIPB

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# Procedure

- ✓ Form 17 / 18
- ✓ Incorporation Document – Form 2
- ✓ Regn Certificate – Form 19
- ✓ Intimation - Form 14 > 15 Days
- ✓ Appeal tribunal > 60 days

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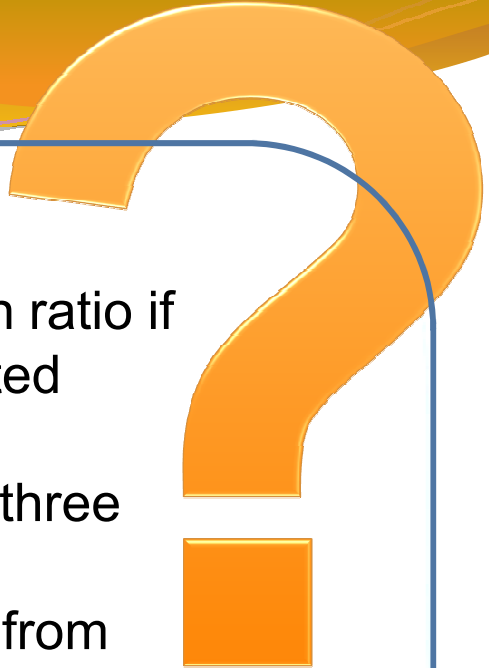
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## Conditions u/s 47(xiiib)

- ✓ ALL assets and liabilities
- ✓ Same shareholders/Partners
- ✓ Capital / Ratio Same
- ✓ No benefit to shareholders
- ✓ Shareholders ratio => 50% - 5 yrs
- ✓ Turnover =< 60lac
- ✓ No Distribution of Accumulated Fund < 3yrs


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1. What will be profit sharing and contribution ratio if some of the shareholders have been allotted sharers at premium?
  2. Can a company in existence for less than three years be converted into LLP?
  3. Can a partner draw drawings or take loan from LLP after conversation into LLP?
  4. Can a company with capital gains of more than 5 crores in one or more of the preceding to three years be converted into LLP?
  5. Can an LLP after one day of its conversion induct a new partner?
  6. Can such LLP, whose contribution is one lac accept another one as contribution from such new partner?

## Consequences If Conditions not complied with

- ✓ Attract Capital Gains
- ✓ Accumulated loss / unabsorbed Depreciation cannot be set off / carried forward
- ✓ Contravention in any subsequent year :
  - attract Capital Gains Tax in the year of non-compliance
  - Accumulated loss / unabsorbed Depreciation cannot be set off
- ✓ Not using 47(xiiib) can be a planning also



**Does that mean a company which does not satisfy conditions u/s 47(xiiib) cannot be converted into LLP?**

**Rather sometimes it could be beneficial to convert into LLP without fulfilling Conditions u/s 47(xiiib).**

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## Benefits of converting into LLP without fulfilling Conditions u/s 47(xiiib).

- ✓ Immediate funds withdrawal possible.
- ✓ Change in partners
- ✓ Change in capital and profitability ratio
- ✓ No turnover condition

## Cases where it can be beneficial to convert into LLP without fulfilling Conditions u/s 47(xiiib) provided:

- ✓ Existing capital gain and conversion leads to capital loss
- ✓ You need to draw funds immediately and tax burden is less than DDT
- ✓ no assets or no gain

Provided that

- ✓ value of share is equal to or less than cost of acquisition
- ✓ there are no accumulated losses or depreciation

# Planning

- ✓ Case of no assets
- ✓ Case of existing Capital loss
- ✓ Change shareholding before conversion
- ✓ Plan turnover for future years
- ✓ Only income LTCG > Rs. 10 crore all three years
- ✓ **Don't Convert** : MAT credit which is likely to be set off
- ✓ **Must Convert** : Listed Securities LTG, dividends attract MAT
- ✓ You need to draw funds immediately and tax burden is less than ddt---don't use 47(xiiib)

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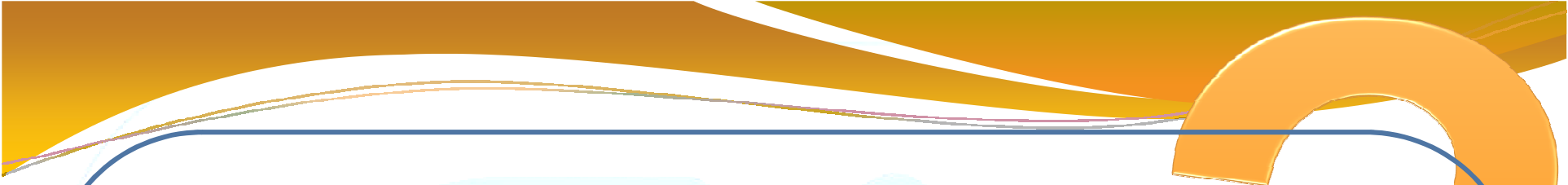
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## Other points

- ✓ **44AD do not apply to LLP (does not apply to company either)**
- ✓ Cost of acquisition of partners'
- ✓ Unabsorbed losses and depreciation stands carried forward.
- ✓ MSMEs get 50% of the amount spent on conversion as subsidy subject to maximum of Rs 45000/-.
- ✓ Late filling under LLP act attracts additional fee of Rs 100/- per day
- ✓ LLP attracts provisions of section 40(b) regarding restrictions on remuneration payable to partners
- ✓ New PAN
- ✓ Separate ITR by company and LLP

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1. Can a pvt ltd with a turnover of 5 crores be converted into LLP?
  2. Can a pvt ltd with a paid up capital of 10 crores be converted into LLP?

## Effect of Conversion

- ✓ LLP existence
- ✓ Firm / Company deemed dissolved
- ✓ All vest in LLP
- ✓ Notify to authority
- ✓ All proceedings by or against
- ✓ conviction, ruling, order or judgment
- ✓ Agreements
- ✓ Deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements

## Effect of Conversion

- ✓ Employment Contract
- ✓ Appointment
- ✓ Permit / license
- ✓ Unlimited liability till date of conversion
- ✓ Statement on conversion -14days – 12 months
  - ✓ Default : Rs10,000/ 1,00,000  
Rs 50/500 per day

Thank you!



CA Karan J.S. Jasuja

Fellow Member

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