

## PROCEDURE FOR CONVERSION OF PRIVATE COMPANY OR UNLISTED PUBLIC COMPANY INTO LIMITED LIABILITY PARTNERSHIP (LLP)

{Section 56 and 57 read with Schedule III and IV of the LLP Act, 2008}

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### Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Limited Liability Partnership Act, 2008	Sections 16, 23, 56, 57 and 58 Schedules III and IV
The Companies Act, 2013	Sections 117, 173 and 403
The Companies (Management and Administration) Rules, 2014	Rule 24
The Limited Liability Partnership Rules, 2009	Rules 11, 18, 21, 32, 33, 39 and 40
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	MGT-14 (in unlisted public company) RUN-LLP FILLIP LLP-3 LLP-18 and LLP-14

### Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Unanimous resolution of members
- ❖ All shareholders of the company shall be partners of the proposed limited liability partnership
- ❖ Every creditor of the company must agree for conversion of the company into limited liability partnership.
- ❖ No security interest in its assets subsisting or in force at the time of application for conversion
- ❖ At least one balance sheet and annual return by the company is filed with the Registrar of Companies after its incorporation.
- ❖ No show cause notice for any offence under the Companies Act, 2013/1956 has been received by the company and no prosecution should have been initiated against the company.
- ❖ Up to date income tax return of the company is filed under the Income Tax Act, 1961.
- ❖ Statement of assets and liabilities of the company duly certified by auditors of the company after approval from the directors.
- ❖ Designated Partner Identification Number and digital signature certificate
- ❖ Draft limited liability partnership agreement
- ❖ Proof of address of registered office of the proposed Limited Liability Partnership.
- ❖ Subscribers' sheet including consent in prescribed proforma in LLP e-Form 18.
- ❖ Consent of regulatory authority, if required
- ❖ Declaration by a professional

### 46.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"><li>• the company which is to be converted into a limited liability partnership does not fall into any of the following category as following companies are not eligible for conversion into Limited Liability Partnership:<ul style="list-style-type: none"><li>- One person company.</li><li>- Listed company.</li><li>- Company not having share capital.</li><li>- Company is a non-profit company and registered under section 25 of the Companies Act, 1956 or under section 8 of the Companies Act, 2013.</li></ul></li><li>• a private limited company may be converted into a limited liability partnership in accordance with the provisions of section 58 and third schedule of the LLP Act. {<i>Section 56 of the LLP Act, 2008</i>}.</li><li>• an unlisted public limited company may be converted into a limited liability partnership in accordance with the provisions of section 58 and fourth schedule of the LLP Act. {<i>Section 57 of the LLP Act, 2008</i>}.</li></ul>

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> <li>• Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-11) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014).</li> <li>• Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of jointly incorporated companies, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act).</li> <li>• A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies provisions a government company and regulations in COA 2012 about COA 2012).</li> <li>• A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act)             <ul style="list-style-type: none"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.</li> </ul> </li> </ul>
2.	<p>In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).</p>
3.	<p>Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form <b>DIR-2</b> (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).</p>
4.	<p>Form as certificate in writing, on or before appointment, from the appointed director as Form <b>DIR-3</b> regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of <u>Directors</u> Rules, 2014).</p>
5.	<p>The particulars of first directors to be integrated with Form SPICe-1 (INC-11) at the time of incorporation of company.</p>

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at [www.bharatlaws.com](http://www.bharatlaws.com)

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)