

CONVERSION OF UNLISTED COMPANY TO LLP

1. AS PER THE PROVISIONS OF LLP ACT, 2008

In India, formation, registration, and regulation of an LLP is exclusively governed and controlled by the rules, provisions, and regulations provided in the LLP Act of 2008 and the LLP Rules of 2009.

The LLP Act, 2008 deals with conversion of **Unlisted Public Company to Limited Liability Partnership.**

According to the Fourth Schedule of LLP Act, 2008, “conversion” means,

*1. (b) “**convert**”, in relation to a company converting into a limited liability partnership, means **a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the limited liability partnership in accordance with the provisions of this Schedule;**”*

The extract of Fourth Schedule is annexed as per **Annexure I.**

1.1 Eligibility for conversion:

A company may apply to convert into a limited liability partnership in accordance with the provisions of this Schedule **if and only if:**

(a) there is **no security interest** in its assets subsisting or in force at the time of application; and

(b) the partners of the limited liability partnership to which it converts comprise **all the shareholders of the company** and **no one else.**

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1.2 Summarization of steps for Conversion of Company into LLP:

<u>S. NO.</u>	<u>PARTICULARS</u>	<u>REQUIREMENT</u>
1.	Call Board Meeting- to change name -ending with word LLP	
2.	File form for name approval with work ROC	e-form-RUN
3.	ROC issue name approval certificate	
4.	Incorporation documents with Registrar	File e-form-FiLLiP
5.	Application of Conversion	e-form-18
6.	LLP Agreement- within 30 days of approval of above forms	e-form-3

A step by step procedure for compliances to be followed for conversion of Company to LLP is annexed as per **Annexure II**.

1.3 After the Conversion into LLP:

1. All the ***tangible and intangible property, all assets, interests, rights privileges, liabilities, obligations relating to company and the whole of the undertaking*** of the company shall be transferred to the LLP.
2. The company shall be deemed to be ***dissolved and removed*** from the records of registrar of Companies.

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3. All **proceedings** by or against the company which are pending in any court or Tribunal or before an authority on the date of registration may be continued, completed and enforced by or against LLP.
 4. **Any continuance of conviction, ruling, order or judgement** of any Court, Tribunal or other authority in favour of or against the company may be enforced by or against the LLP.
 5. Every agreement, to which the company was a party immediately before the date of registration, shall have effect as from that date as if the LLP were a party to such an agreement instead of the company.
 6. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements pending/existing immediately before the date of registration of the company or to which the company is a party, shall continue in force on and after that date as if they relate to the LLP.
 7. Every contract of employment shall continue on or after the date of registration as if the LLP was the employer instead of the company.
 8. The LLP shall ensure that for a period of **twelve months** commencing **not later than fourteen days** after the date of registration, every official correspondence of the LLP bears the following, namely:
 - (a) a statement that, it has converted from a company into a LLP from date of registration
 - (b) the name and registration number of the company from which it was converted.
- 1.4 Event based and subsequent compliances of LLP are annexed as per **Annexure III.**
- 1.5 Benefits of LLP as compared to Corporate Form are annexed as per **Annexure IV.**
- 1.6 Comparative chart of compliances to be made by a Company and LLP is annexed as per **Annexure V.**

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2. AS PER THE PROVISIONS OF THE INCOME TAX ACT, 1961

2.1 Section 47(xiiib) of the Income Tax Act, 1961: Transactions *not regarded as “transfer”*:

If the following conditions are satisfied, then the transfer of **capital asset or intangible asset** to LLP or any transfer of **share or shares** held in Company by a shareholder on conversion of Company into LLP shall not be regarded as transfer:

<u>S. No.</u>	<u>Condition</u>	
1.	Turnover Limit	The Total sales, turnover or gross receipts in business of the Company do not exceed Sixty Lakhs rupees in any of the three previous years preceding previous year in which conversion takes place.
2.	All the shareholders of Company become the partners of the LLP	All the shareholders of the Company become partners of the LLP in the same proportion as their shareholding in the Company.
3.	Capital Contribution and Profit-Sharing Ratio on Conversion.	The Capital Contribution and Profit-Sharing ratio of the shareholders of Company should be in the same proportion as their shareholding in the Company as on the date of Conversion.
4.	No other consideration to	No consideration other than share in profit and capital contribution in the LLP

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	partners.	arises to partners.
5.	Profit Sharing Ratio after conversion	The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than fifty per cent at any time during the period of five years from the date of conversion.
6.	Assets and Liabilities	All assets and liabilities of the Company become the assets and liabilities of the LLP.
7.	Total value of Assets	The total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed five crore rupees.
8.	Accumulated Profit (Reserve)	No amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the Company for a period of 3 years from the date of conversion.

Extract of **Section 47(xiib)** of the Income Tax Act, 1961 is annexed as per **Annexure VI.**

2.2 If all the above conditions are complied with, the conversion **shall not attract capital gains tax** either for the **Company or the Successor LLP or for the shareholders of the Company, who become the partner** in

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the successor LLP and get share of profits and capital in the LLP in lieu of their shares in the Company.

2.3 If any of the above conditions is not complied with, then as per provisions of Section 47A(4) such transfer of Capital Assets & Intangible assets deemed to be liable to Capital gains of the successor LLP or the Shareholders of the predecessor Company in the previous year in which such non-compliance took place. The extract of such section is provided as under:

S.47A(4) *“Where any of the conditions laid down in the proviso to clause (xiib) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible assets or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.”*

2.4 Other relevant points

a) Cost of acquisition & improvement: As per **Section 49(1)(e) of the Income Tax Act, 1961**

Cost of acquisition of the asset: It shall be deemed to be the cost of acquisition of Predecessor Company

Cost of Improvement: Any cost incurred on improvement of the assets by predecessor company and LLP shall be the cost of improvement.

b) Period of holding of asset: As per **Section 2(42A)(b)**, for the purpose of determining period of holding of capital asset for determining nature

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of capital gain, period for which the asset was held by predecessor company shall be included.

c) Set-Off and Carry-Forward of losses: As per **section 72A (6A)**, accumulated loss under head business/profession and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor LLP of the year in which conversion takes place.

However, if any of the aforementioned conditions u/s 47(xiiiib) are not complied with, the set off of loss or allowance of depreciation made in any previous year by LLP, shall be **deemed to be the income of the LLP** chargeable to tax in the year in which such conditions are not complied with.

d) MAT Credit: LLP doesn't have the concept of **MAT**. **LLP have the concept of AMT (Alternate Minimum Tax)**. Therefore, the succeeding LLP will not be allowed the credit of MAT paid by the preceding Company.

e) Unabsorbed Depreciation and Accumulated Loss not carried over if, all the conditions in clause (xiiiib) of section 47 are not satisfied.

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3. AS PER THE PROVISIONS OF GOODS AND SERVICE TAX, 2017

The conversion of the company to LLP will lead to change in the Permanent account Number hence this conversion will be read as transfer of business in GST provisions. Following is our opinion in accordance with the GST Law on each and every aspect taking into consideration the conversion taking place of an Unlisted Public Company to a Limited Liability Partnership:

3.1 Registration:

Where a change in the constitution of any business results in the change of the Permanent Account Number of a registered person, the said person shall ***apply for fresh registration*** in FORM GST REG-01.

3.2 Transfer of assets & liabilities whether supply or not:

- i) In accordance with Schedule II Para 4(c) such a transfer is a supply but GST law is silent whether it will be classified as Goods or Services as transfer of business is not an itemized sale but a sale as going concern.
- ii) However, transfer of a going concern, as a whole or an independent part thereof, is an exempted service in terms of Notification 12/2017-Central Tax (Rate) dated 28.06.2017.

3.3 Liability:

- i) **Liability arising prior to transfer:** Both ***transferor and transferee*** will be jointly and severally ***liable for payment of taxes, interest or penalty*** due ***upto*** the time of transfer of business even if such amounts were determined and become due after the transfer of business.

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Please note that only **'payment'** of dues (tax, interest and penalty) is joint-and-several with transferee but the ***process will only be against transferor.***

- ii) ***Liability arising post transfer: 'Recovery'*** of liability in respect of tax, interest and / or penalty which may be determined ***subsequent to transfer*** and which relates to that period will be the ***liability of the transferee*** of business.

3.4 Input tax Credit:

- i) A registered person shall, in the event of transfer of business for any reason, furnish the details of transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. ***This section benefit is available only in case of all business liabilities are transferred to the transferee.***
- ii) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that ***the transfer of business has been done with a specific provision for the transfer of liabilities.***
- iii) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the unutilized credit specified in FORM GST ITC- 02 shall be credited to his electronic credit ledger.
- iv) ***The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.***

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Annexure I

THE FOURTH SCHEDULE

(See section 57)

CONVERSION FROM UNLISTED PUBLIC COMPANY INTO LIMITED LIABILITY PARTNERSHIP

1. Interpretation.— (1) In this Schedule, unless the context otherwise requires,—

(a) "company" means an unlisted public company;

(b) "convert", in relation to a company converting into a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the limited liability partnership in accordance with the provisions of this Schedule;

(c) "listed company" means a listed company as defined in the Securities Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 issued by the Securities and Exchange Board of India under section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(d) "unlisted public company" means a company which is not a listed company.

2. Conversion of company into a limited liability partnership.—(1) A company may convert into a limited liability partnership by complying with the requirements as to the conversion set out in this Schedule.

(2) Upon such conversion, the company, its shareholders, the limited liability partnership into which the company has converted and the partners of that limited liability partnership shall be bound by the provisions of this Schedule that are applicable to them.

3. Eligibility for conversion.—A company may apply to convert into a limited liability partnership in accordance with the provisions of this Schedule if and only if—

(a) there is no security interest in its assets subsisting or in force at the time of application; and

(b) the partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.

4. Statements to be filed.—A company may apply to convert into a limited liability partnership by filing with the Registrar—

(a) a statement by all its shareholders in such form and manner to be accompanied by such fee as the Central Government may prescribe containing the following particulars, namely:—

(i) the name and registration number of the company;

(ii) the date on which the company was incorporated; and

(b) incorporation document and statement referred to in section 11.

5. Registration of conversion.—On receiving the documents referred to in paragraph 4, the Registrar shall, subject to the provisions of this Act, and the rules made thereunder, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 1956 (1 of 1956) about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

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6. Registrar may refuse to register.—(1) Nothing in this Schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act:

Provided that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 4 to be verified in such manner, as he considers fit.

7. Effect of registration.—On and from the date of registration specified in the certificate of registration issued under paragraph 5—

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

8. Registration in relation to property.—If any property to which clause (b) of paragraph 7 applies is registered with any authority, the limited liability partnership shall, as soon as practicable, after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such form and manner as the authority may determine.

9. Pending proceedings.—All proceedings by or against the company which are pending in any Court or Tribunal or before an authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

10. Continuance of conviction, ruling, order or judgment.—Any conviction, ruling, order or judgment of any Court, Tribunal or other authority in favour of or against the company may be enforced by or against the limited liability partnership.

11. Existing agreements.—Every agreement to which the company was a party immediately before the date of registration, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that date as if—

(a) the limited liability partnership were a party to such an agreement instead of the company; and

(b) for any reference to the company, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

12. Existing contracts, etc.—All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company is a party shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the company.

13. Continuance of employment.—Every contract of employment to which paragraph 11 or paragraph 12 applies shall continue in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the company.

14. Existing appointment, authority or power.—(1) Every appointment of the company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

(2) Any authority or power conferred on the company which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

15. Application of paragraphs 7 to 14.—The provisions of paragraphs 7 to 14 (both

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inclusive) shall apply to any approval, permit or licence issued to the company under any other Act which is in force immediately before the date of registration of the limited liability partnership, subject to the provisions of such other Act under which such approval, permit or licence has been issued.

16. Notice of conversion in correspondence.—(1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following, namely:—

(a) a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and

(b) the name and registration number of the company from which it was converted.

(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

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Annexure II

Process or Compliances to be made for conversion of Company to LLP

(a) Board Meeting:

- Call meeting of Board of Directors.
- **Pass Resolution** for Conversion of Company into LLP.
- **Pass Resolution** to authorize any director to apply for Name of LLP.

(b) Application for name availability:

- File **e-form RUN** with ROC.
- **Attachments: Board Resolution** passed by the Company approving the conversion into LLP shall be attached with the aforesaid form.

(c) Obtain name approval from ROC.

(d) Drafting of Limited Liability Partnership Agreement:

Contents of Agreement should be:

- Name of LLP
- Name of Partners & Designated Partners
- Form of contribution
- Profit Sharing ratio
- Rights & Duties of Partners
- Proposed Business
- Rules for governing the LLP

(e) Filing of Incorporation documents:

File **E-Form-FiLLiP** with ROC along with following *attachments*:

- **Proof of Address** of Registered office of LLP.

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- **NOC** for using place as **registered office**.
- **Subscription sheet** signed by the **promoters**.
- Detail of **LLP(s)** and/ or **Company(s)** in which **partner/ designated partner is a director/ partner**
- **Consent** of Designated Partners in **form-9**.

(f) Filing of application for conversion:

File e-form 18 with ROC along with following **attachment:**

- List of **shareholders**.
- **Incorporation Documents & Subscribers** statements in Form 2 filed electronically.
- **Statement of Assets and Liabilities** of the Company duly **certified** as true and correct by the **auditor**.
- List of all the **Secured creditors** along with their **consent** to the conversion in form of **NOC**.
- Approval of the **governing council** (In case of professional private limited companies)
- **NOC** from **Income Tax authorities** and **Copy of acknowledgement of latest income tax return**.
- **Approval** from any other body/authority as may be required.
- **Particulars of pending proceedings** from any court/Tribunal etc.
- Copy of **Latest ITR**.
- **Declaration** by Designated Partner

(g) After all formalities and filings been complied with by the applicants and approved by the Ministry, Registrar of LLP to issue a Certificate of

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Registration in **form no. 19** as to conversion of the LLP. The Certificate of Registration issued shall be the ***conclusive evidence of conversion of the LLP.***

(h) Filing of e-Form 3:

This form provides information in respect to the LLP Agreement entered into between the partners.

Attachment: LLP Agreement

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Annexure III

1. Event Based Compliance by LLP:

COMPLIANCE	SECTION	E-FORM	TIME LIMIT
Filing of Consent of Designated Partners	7(3)	Form 4	Within 30 days of incorporation or subsequent appointments
Filing of Change in Partners	25(2)	Form 3 and Form 4	Within 30 days of Change
LLP Agreement & Changes therein	23(2)	Form 3	Within 30 days of incorporation or Changes in LLP Agreement
Shifting of Registered Office	13(3)	Form 15	Within 30 days of Compliance
Change of Name	19	Form 5	Within 30 days of Compliance.

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2. Subsequent compliances:

Compliance	e-form	Time Limit
Filing of Statements of Accounts & Solvency	Form-8	Within 30 days from the end of 6 months from the closure of Financial Year
Filing of Annual Return	Form-11	Within 60 Days of closure of Financial Year

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Annexure IV

BENEFITS OF LLP AS COMPARED TO CORPORATE FORM:

COMPARATIVE ANALYSIS

<u>Particulars</u>	<u>LLP</u>	<u>Private Company</u>
Members	Minimum 2 Partners	Minimum 2 Members, Maximum 200 Members
Liability	Limited, Except in case of Fraud and wrongful Act	Limited Liability
Forms to be filed	Regular- E-form-8 & E-form-11	Regular- MGT-14 (two times), 23AC, 23ACA, 20B, GNL-2
Transfer/ Inheritance of Shares	Transfer, but transferee may not have the management right	By court order, once the company have been wound up
Easy to Form, Run and manage	No Minimum Capital requirement for Incorporation	Minimum Capital for Incorporation of Private Limited Company is Rs. 1,00,000/- and for Public Limited Company is Rs. 5,00,000/-
Requirement as to maintenance of Statutory Records	No such Requirement.	It is must to maintain statutory records as per Companies Act-2013.
Audit of Accounts	Required only if turnover is above 40 lakhs or Contribution more than	Audit is Compulsory.

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	25 lakhs.	
Objects	LLP agreement.	Memorandum of Association and Article of Association of Company.

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Annexure V

Comparative chart of compliances to be made by a Company and LLP

<u>Particulars</u>	<u>LLP</u>	<u>Private Company</u>
Maintenance of Statutory Records	No such registers are required to be maintained	Many registers are required to be maintained under Company as per Companies Act- 2013
Addition or Deletion of Directors	Required to amend LLP Agreement and File e-form- 3 & e-form-4.	Required to Pass Resolution in General Meeting, File e-form-DIR-12 and require many documents from the person who is appointed as Director. (As per Section-152 of Companies Act-2013.)
Change in Registered Office	Required to amend LLP Agreement and File e-form Form-15	There is a Complete lengthy process for change in registered office of Company as Per Section-13 of Companies Act-2013
Increase in Capital	Only required to amend LLP Agreement and File e-form Form-3.	Required to Pass Ordinary resolution in General Meeting and file form SH-7.
Annually form filling requirement	Only Two annual form E-form- 8 and E-form-11	There are many forms E-form-23AC, 23ACA E-form- 20B, E-form- MGT-14.

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			E-form-ADT-1
Disclosure of Interest	of	No such requirement	Required to Take disclosure from director under Section-184(1) and to file form-MGT-14.
Convening Meetings	of	No such requirement	Required to hold Meetings as per Section- 173. (At least Two Board Meetings and one Annual General Meeting for Small Company and At least four Board Meetings and One Annual General Meeting for other than Small Company).
Audit of Accounts		Require only if Turnover above 40 lakhs or Contribution more than 25 lakhs.	Audit is Compulsory.
Loans & borrowings	&	As per LLP Agreement. No other requirements	There is Cap for Loans and Borrowings as per section 179 & 180, Required to hold Board Meeting and file form with ROC.
Deposits		No such condition.	Loan from other than director is covered under deposit as per definition of Deposit under Companies

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		Act-2013.
Related Party Transactions	No Restrictions	Transactions to be at arm's length price only and as per provisions of Section-188 of Companies Act-2013.

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Annexure VI

Section 47(xiiib) *any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 (6 of 2009):*

Provided that—

- (a) *all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;*
- (b) *all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;*
- (c) *the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;*
- (d) *the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;*
- (e) *the total sales, turnover or gross receipts in the business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees;*
- (ea) *the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the*

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previous year in which the conversion takes place does not exceed five crore rupees; and

- (f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.*

Explanation.—For the purposes of this clause, the expressions "private company" and "unlisted public company" shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009);