

Winding up of LLP

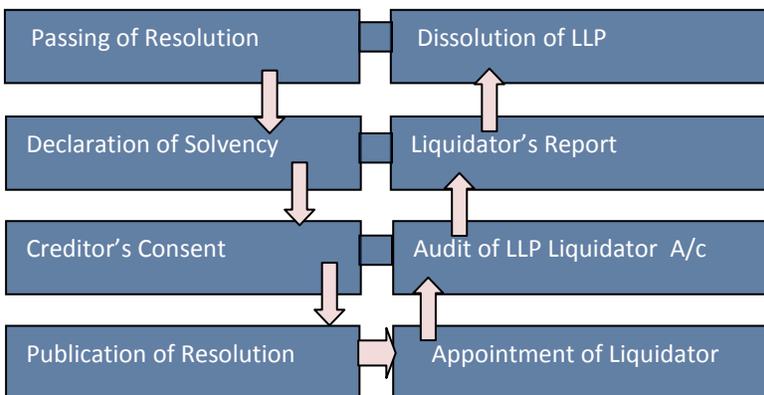


Winding up of a LLP is the stage, where by the entity bring to a conclusion or an end by putting in order. It is a process by which business of the LLP is wound up, and the LLP ceases to exist anymore. All the assets of the LLP are sold, and the proceedings collected are used to discharge the liabilities on a priority basis.

The winding up of a limited liability partnership may be either voluntary by members/creditors or by the Tribunal and limited liability partnership, so wound up may be dissolved. Recently the Central Government in pursuance of the power conferred under Section 65 read with Section 79 of the LLP Act, 2008 has notified the winding up rules naming Limited Liability Partnership (Winding up and Dissolution) Rules, 2010 effected from 30th March 2010.

Voluntary Winding up

Voluntary winding up may be either by members or by creditors. The procedure for voluntary winding up by members is clarified herewith



Step 1: Passing of resolution: LLP can be wound up voluntary by passing of resolution for such winding up by at least three fourth of the total number of its partners. A copy of the resolution shall be filed with the Registrar within 30 days of passing of resolution in form 1.

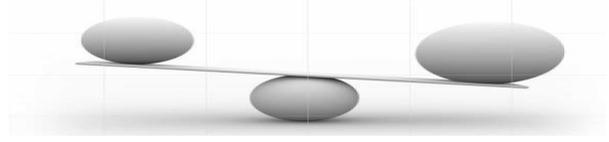
Step 2: Declaration of Solvency: The majority of the Designated Partners shall make a declaration in the format provided under Form 2 verified by an affidavit to the effect that the LLP has no debt or that it will be able to pay its debt in full within such period not exceeding one year from the commencement of the winding up.

Such declaration to be registered with the Registrar in **Form 3** within 15 days of passing of the resolution for voluntary winding up along with

- Statement of Assets and Liabilities in **Form 4** for the period commencing from the date declaring that the LLP is not being wound up to defraud any person up to which the last account was prepared and ending with the latest practicable date immediately before the making of the declaration duly attested by at least two designated partners.
- Valuation Report, valuing the assets of the LLP.

Step 3: Creditor's Consent for winding up: In case where the creditors are subsisting, whether secured or unsecured, the approval of the creditors would also be required for such winding up. A copy of the aforesaid declaration, the estimated amount of the claims due to each of the creditors and an offer for creditors to accept such claims shall send to the creditors by registered or speed post or any of the mode specified in rule 15 of Limited Liability Partnership Rules 2009.

The creditors shall, within thirty days of receipt of declaration, give to the LLP their opinion in respect of voluntary winding up proposed by the LLP or acceptance of offer for satisfaction of their claims.



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At least 2/3 rd in value of the creditors of the LLP shall give their consent for such voluntary winding up. In case if the debts of the creditors would not be payable from the proceeds of the assets of the LLP, the LLP may be wound up voluntarily by creditors.

In case if the debts of the creditors would not be payable and it is proposed that the LLP to be wound up by the tribunal, the LLP shall file an application within 14 days thereafter.

Notice of any decision of creditors shall be given by the LLP to the Registrar in Form No. 5 within 15 days of the receipt of consent of Creditors.

Step 4: Publication of Resolution: Within 14days of the receipt of the creditors consent LLP shall give notice of the resolution by advertisement in a newspaper circulating in the district where the registered office or the principal office of the LLP is situated.

Step 5: Appointment of Liquidator Within 30 days of the passing of the resolution where no creditors are subsisting or in case of creditors within 30 days of intimating the decision of the creditors to the Registrar. The liquidator of the LLP to be appointed with the consent of the partners.

The LLP Liquidator shall file a declaration in **Form 6** with the Registrar disclosing conflict of interest or lack of independence in respect of his appointment if any with the LLP or the creditors and the LLP shall give notice to the Registrar in Form 10 within 10 days of the appointment of the Liquidator.

On the appointment of LLP Liquidator all the powers of the designated Partner and other partner, if any shall cease.

Step 6: Audit of LLP Liquidator's Account: The accounts of the LLP liquidator shall be audited in accordance with the manner specified in rule 56.

Step 7: Liquidator's Report: After the wound up of the affairs of LLP, the LLP liquidator shall prepare a report in Form 9 describing the manner in which the winding up has been conducted and property has been disposed off, its debts has been discharged.

The approval of the partners would be required on the said report and the final winding up accounts and explanation of the Liquidator in the meeting of partners.

At least two –third of total no. of partners shall give their consent for the approval of report and the accounts satisfied by the liquidator. The resolution for such approval shall be passed within 30 days of the receipt of the report, winding up accounts and explanation for its dissolution.

Step 8: Dissolution of LLP: After the wound up of the affairs of LLP, the LLP liquidator shall prepare a report in **Form 9** describing the manner in which the winding up has been conducted and property has been disposed off, its debts has been discharged.

Within 15 days of the of the passing of the resolution , the LLP Liquidator shall file with the Registrar a copy of the final winding up accounts, explanations and report in form 10 and file an application with the Tribunal, for passing an order of dissolution of LLP.

The tribunal on the satisfaction for the duly follow up of the winding process pass an order for the dissolution of LLP within 60 days of the receipt of such application.

The liquidator shall file a copy of the order for the dissolution of LLP with the registrar within 30 days in Form 11.





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FAQ'S – Winding up of LLP



✓ **Whether the rules for the winding up of LLP have been notified by the Central Government?**

Yes, the rules have been notified with effect from 30th March 2010 vide notification no. GSR266(E).

✓ **What are the different modes for winding up of LLP?**

The winding up of a limited liability partnership may be either voluntary or by the Tribunal i.e compulsory winding up.

✓ **Whether the provisions of strike off Limited Liability Partnership from the Register, have been existing under the LLP Act 2008?**

Yes, Where the Registrar has reasonable cause to believe that a limited liability partnership is not carrying on business or its operation, in accordance with the provisions of this Act, the name of limited liability partnership may be struck off the register of limited liability partnerships in such manner as may be prescribed. However the manner of such strike off has not yet been prescribed.

✓ **What is the procedure for the appointment of LLP Liquidator?**

In case of Voluntary winding up the liquidator would be appointed with the consent of the majority of the partners through resolution, however in case of Creditor's voluntary winding up the appointment should be approved by two-thirds of the creditors in value of the LLP.

✓ **Whether the accounts maintained by Liquidator during winding up are also required to be audited?**

The accounts shall be audited by a Chartered Accountant, and for the purpose of the audit, the LLP

Liquidator or liquidator shall furnish the auditor such vouchers and information as the auditor may require.

Provided that the accounts need not be got audited by the Chartered Accountant where the value of total transactions during the period is for rupees fifty thousand or less. In such a case the statements of accounts shall contain a declaration that the LLP Liquidator or liquidator acknowledges his responsibility for maintaining the books and records and funds are utilized only for the purpose of winding up of the affairs of the LLP.

LLP in News -



Source: Business Standard
Date: 19 July 2010

No cap likely on FDI in LLPs

Foreign direct investment in the new form of business, limited liability partnerships, could be allowed without a cap, a highly placed source told PTI. "The officials have reached a consensus for 100.

Let foreigners set up LLPs in areas open to FDI

Source: The Economic Times

The finance ministry has pitched for allowing foreigners to set up Limited Liability Partnerships (LLPs) in all the sectors open to foreign direct investment.

The ministry has written to the department of industrial policy and promotion, or DIPP, government body that frames foreign investment policy, to expeditiously take up the issue. Allowing foreign direct investment in LLPs in line with the sectoral limits will encourage foreign investment and not complicate the current regulatory regime, said a finance ministry official.



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Global Segment



	LLP Winding up
LLP UK	LLP Act, 2000 provides for both voluntary as well as compulsory winding up by the High Court.
LLP Singapore	LLP Act 2005 provides for both voluntary as well as compulsory winding up by the High Court.
LLP USA	Uniform Partnership Act provides for both voluntary as well as compulsory winding up by the secretary of the state.
LLP India	LLP may be wind up either voluntary or Compulsory winding up.

Gray Issue



The Reserve Bank of India has recently issued the regulatory framework for the Core Investment Company. As per framework, Core Investment Companies having as asset size of less than 100 cr will not be required to get themselves register with the Reserve Bank of India. Though these framework doesn't applies to LLP but in absence of any regulation for LLP, whether it can be assumed that LLP having as asset size less than 100 cr will also be not required to get themselves register with RBI, in case they satisfy the criteria provided in definition of Core Investment Companies.

Core Investment Companies means a NBFC carrying on the business of acquisition of shares and securities which satisfies the following conditions:-

- it holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies

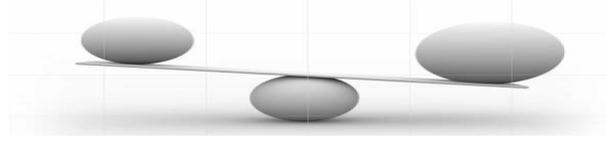
- its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets;
- it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
- it does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI Act, 1934 except investment in bank deposits, money market instruments, government securities, loans and investments in debt issuances of group companies or guarantees issued on behalf of group companies.

Recent Queries – LLP Club



- ✓ Can an LLP buy shares of an Indian Company in its own name? If yes, what would be the capital gain tax implication on LLP at the time of sale of such shares, as compared to an individual?
- ✓ We are operating our business under various Pvt. Ltd. companies. Can we merge all and make a LLP. What will be the status of the companies individually?
- ✓ I together with my partner have proposed to incorporate a LLP where my company XYZ Private Ltd. will be one partner and ABC Private Ltd. would be another partner. The equity holding of XYZ in the LLP would be 61 % and that of ABC would be 39%. On this my question whether XYZ is allowed to consolidate its books with the books of LLP by following AS-21 of ICAI.
- ✓ Do Schedule VI of Companies Act will be applicable to LLP?
- ✓ How we will treat pre-incorporation expenses of LLP? Does capital contribution of partners will be regarded as Capital as we treat in normal partnership or as Share capital as we do in Company.





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Public Opinion



Our Poll of the week “Whether profit in the LLPs should be taxed in the hands of its partners and not in the hands of LLP” was favored by only 11% audience while 83% audience was in favor for taxation of LLP in the LLP itself.

To count your vote “Whether DTC Code for its Tax benefits would endorse LLP structure as compared to the corporate structure” log in to www.LLPonline.in

Kind Attention: Time for Annual filing of LLPs incorporated before 01st September 2009

The first Financial year for the LLPs incorporated before 01st September 2009 or for the LLPs wherein the LLP Agreement provides for the first financial year to be completed on 31st March 2010, has been ended and now the Compliance regarding the filing of Annual Accounts is due to be filed before 30th October 2010. The additional fee for filing the accounts after the due date is Rs. 100 per day. Make your Compliance before 30th October 2010.

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