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## DSK Legal Knowledge Center

### Updates on

- Corporate

### CORPORATE

- A. The Limited Liability Partnership Act, 2008 (6 of 2009) (“the LLP Act”) and the Limited Liability Partnership Rules, 2009 (“LLP Rules”)
1. Pursuant to the notification<sup>1</sup> dated May 22, 2009 issued by the Central Government, rules 32 and 33 and rules 38 to 40 of the LLP Rules have become effective from May 31, 2009.
- Rules 32 and 33 pertain to conversion of a private limited company or an unlisted public company into limited liability

partnership. Upon such conversion a Certificate of Registration under the Registrar of Company's (“Registrar”) seal in Form 19 is to be issued. In the event, Registrar has refused the registration, the applicant firm or private company or unlisted public company, as the case may be, may apply to the Tribunal within 60 days from the date of receipt of such intimation of refusal. Where the firm, private company or unlisted public company has been converted into limited liability partnership, an intimation of such conversion to the concerned Registrar of firms or Registrar of Companies, as the case may be, shall be given in Form 14 within fifteen days of the date of registration of the limited liability partnership.

<sup>1</sup> Notification No. S.O. 1324(E)

The Central Government, vide its notification dated June 4, 2009<sup>2</sup>, amended rule 32 by inserting after sub-rule (2) a proviso stipulating that until the Tribunal is constituted under the Companies Act, 1956, the application to be filed in response to the rejection by the Registrar to register the applicant firm/ private company/ unlisted public company, may be made to the Company Law Board.

- Section 38 inter alia provides that in respect of conversion of a firm into a limited liability partnership, an application shall be made in the format provided in Part A of Form 17 together with the statement of partners in format provided in Part B of Form 17 alongwith the fee as prescribed in Annexure -A.
- Section 39 inter alia provides that in respect of conversion of a private company into a limited liability partnership, an application shall be made in the format provided in Part A of Form 18 together with the statement of shareholders in format provided in Part B of Form 18 along with the fee as mentioned in Annexure -A.
- Section 40 inter alia provides that in respect of conversion of an unlisted public company to limited liability partnership an

application shall be made in the format provided in Part A of Form 18 together with the statement of shareholders in format provided in Part B of Form 18 along with the fee as mentioned in Annexure-A.

For more information please refer to

<http://www.llp.gov.in/tolink/so1324.pdf>

<http://www.llp.gov.in/tolink/gsr385and386e.pdf>

2. The Central Government has, vide its notification<sup>3</sup> dated May 22, 2009, appointed May 31, 2009 as the date on which the provisions of sections 55 to 58, Second Schedule, Third Schedule and Fourth Schedule of the LLP Act shall come into force. The aforementioned sections and the schedules make provisions for conversion of a firm, an unlisted company and a private limited company into a limited liability partnership.

Further, vide its notification dated June 4, 2009<sup>4</sup>, the Central Government amended the Second Schedule, the Third Schedule and the Fourth Schedule of the LLP Act by inserting in each Schedule that until the Tribunal is constituted under the

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<sup>2</sup> G.S.R. 385(E)

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<sup>3</sup> Notification No. S.O.1323 (E)

<sup>4</sup> G.S.R. 386(E)

Companies Act, 1956, the appeals under the respective Schedules, may be made to the Company Law Board.

For more information please refer to

<http://www.llp.gov.in/tolink/so1323.pdf>

<http://www.llp.gov.in/tolink/gsr385and386e.pdf>

B. Foreign Exchange Management (Current Account Transactions) Rules, 2000

The Central Government, in consultation with the Reserve Bank of India ("RBI"), has vide Notification No. G.S.R. 349(E), dated May 22, 2009 amended the Foreign Exchange Management (Current Account Transactions) Rules, 2000 ("Rules").

Rule 5 of the Rules provides that no person shall draw foreign exchange for a transaction included in Schedule III without the prior approval of the RBI. The notification has effected the following amendments:

- Item numbers 2 and 3 and the entries relating thereto, are substituted by:

- "2. Release of exchange exceeding US\$ 10,000 or its equivalent in one financial year for one or more private visits to any country (except Nepal and Bhutan).
3. Gift remittance exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual;"<sup>5</sup>

- Item 4 and the entries relating thereto are substituted by:

- "4. (i) Donation exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual;
- (ii) Donations by corporate, exceeding one per cent of their foreign exchange earnings during the previous three financial years or US\$ 5,000,000, whichever is less, for,-
  - (a) creation of Chairs in reputed educational institutes;
  - (b) to funds (not being an investment fund) promoted by educational institutes; and
  - (c) to a technical institution or body or association in the field of activity of the donor company.

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<sup>5</sup> The amendments made to item numbers 2 and 3 shall be deemed to have come into force on the December 20, 2006

Explanation : For the purposes of these item numbers 3 and 4, remittance of gift and donation by resident individuals are subsumed under the Liberalised Remittance Scheme."

- Item number 15 and the entries relating thereto are substituted by:

"15. Remittances exceeding US\$ 10,000,000 per project, for any consultancy services in respect of infrastructure projects and US\$ 1,000,000 per project for other consultancy services procured from outside India.

Explanation: For the purposes of this item number 'infrastructure project' is those related to -

- (i) Power,
- (ii) Telecommunication,
- (iii) Railways,
- (iv) Roads including bridges,
- (v) Sea port and airport,
- (vi) Industrial parks, and
- (vii) Urban infrastructure (water supply, sanitation and sewage)".

- after item number 16 and the entries relating thereto, Item No. 17 has been inserted :-

"17. Remittances exceeding five per cent of the investment brought into India or US\$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses."<sup>6</sup>

C. M.S.D.C. Radharaman v. M.S.D. Chandrasekara Raja & Anr.

In M.S.D.C. Radharaman v. M.S.D. Chandrasekara Raja & Another<sup>7</sup>, the Supreme Court has held that even if a shareholder does not establish oppression, the Company Law Board ("CLB") has the power to direct an existing shareholder to purchase the share held by the other shareholder, if there exists a deadlock in the affairs of the company.

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<sup>6</sup> The amendments made to item numbers 4, 15 and 17 shall be deemed to have come into force on the April 30, 2007.

<sup>7</sup> (2008) 6 SCC 750

#### Facts-

The entire shareholding of a private company was held by two shareholders (father and son) and the two shareholders were also the directors of the Company. One of the shareholders filed an application under section 397 of the Companies Act, 1956 alleging several acts of oppression.

The CLB in its order held that there was no act of malafide or oppression. However, the CLB was of the view that there was a deadlock in the affairs of the company and directed one of the shareholders to purchase all the shares held by shareholder alleging oppression, at a value to be determined by a chartered valuer.

An appeal was filed against the order passed by the CLB before the Hon`ble High Court of Judicature at Madras. The High Court upheld the order passed by the CLB with certain modifications.

#### Issue for consideration-

The Supreme Court examined the issue as to whether the CLB has the power to direct a shareholder to purchase the shares of another shareholder alleging oppression under Sections 397 of

the Companies Act, 1956 ("Act") when the claim of oppression is not established or proved.

#### Decision-

The Supreme Court observed that the CLB and the High Court had held that there was a bitter relationship between the shareholders and there was no mutual trust and confidence between them. The CLB and the High Court had also noted that in view of the bitter relationship between the shareholders, there existed a deadlock as regards the conduct of the business of the company. The Supreme Court was of the view that the relationship between the shareholders would have a direct impact on the manner of the conduct of the affairs of the company and that it would be impossible for the company to run smoothly.

The Supreme Court took a holistic approach of the matter and observed that what might not be permissible for the affairs of a public limited company or even a private company having large number of shareholders and directors, may be permissible in a case where a company for all intent and purport is a quasi partnership concern.

The Supreme Court upheld the order of the CLB since refusal to exercise jurisdiction by the CLB would have led to total chaos or mismanagement of the company and the CLB has wide and diverse statutory powers to grant such relief to the parties. The Supreme Court was of the view that the order passed by the CLB was in the best interest of the company and shareholders.

#### Comments-

The above case would enable an aggrieved shareholder to obtain relief from the CLB where the shareholder is unable to establish oppression, but could establish that there is a deadlock between the shareholders.

The above case highlights the endeavour of the CLB to grant relief to parties where there may not be a claim for oppression or mismanagement, but a deadlock. The case also highlights the importance given by the judiciary to the interests of the shareholders as a whole over an individual shareholder and continuing of the operations of a company.

Contact Details: [dsklegal.knowledgecenter@dsklegal.com](mailto:dsklegal.knowledgecenter@dsklegal.com)

Mumbai Office  
4<sup>th</sup> Floor, Express Towers,  
Nariman Point,  
Mumbai 400 021  
India  
Tel: (91 - 22) 6658 8000  
Fax: (91 - 22) 6658 8001

Delhi Office  
46, Aradhana, Chanakyapuri,  
New Delhi 110 066  
India  
Phone : (91 - 11) 2687 1122; 2687 1133;  
2687 1144  
Fax : (91 - 11) 2687 1155

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