

Update

CA firms allowed to carry on audit after conversion into LLPs



Pooja Rawal

pooja@vinodkothari.com

Vinod Kothari & Company

June 21, 2013

Check at:

<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be professional advice and should not be relied upon for real life facts.



CA firms allowed to carry on audit after conversion into LLPs

Update

With the introduction of the Limited Liability Act in 2008 (“**Act**”), the Partnership Firms has an added advantage to convert their Unlimited Liability Partnership into a Limited Liability Partnership (LLP). Having said this, the stakeholder came up with the following queries on the same.

1. Whether multiple firms can club themselves into a single LLP?
2. Can a CA firm after being converted in to a LLP, still be eligible to act as an auditor of a company?
3. What are the steps a company needs to take in case their auditors convert their CA firm into LLP?

Ministry of Companies Affairs (“**MCA**”) vide General Circular No 09/2013¹ clarified the following points.

Whether multiple firms can club themselves into a single LLP?

Provision before the circular

Prior to the clarification made by MCA, prima facie it appeared that multiple firms can club themselves into a single entity.

As the provision was not clear, multiple firms were converted into LLPs, however by facing difficulties from the approval authority (ROC).

Provision after the circular

It is quite clear that if the provisions of Section 55 and Section 58 of the Act read along with Second Schedule, the requirements of the Act are limited only to a single firm for conversion into a LLP. There is no provision for multiple firms to join hands for forming a single LLP.

Can a CA firm after being converted in to a LLP still be eligible to act as an auditor of a company?

Provision before the circular

¹ http://www.mca.gov.in/Ministry/pdf/General_Circular_9_2013_LLP.pdf



CA firms allowed to carry on audit after conversion into LLPs

Update

With the introduction of the LLP Act, MCA vide its notification SO 1152(E)², made it clear that every firm after being converted into a LLP would get the status of a body corporate.

However Section 226 (3) (a) of the Companies Act, 1956 states that a body corporate is not eligible to be an auditor of a company.

These two Sections contradicting each other gave rise to the queries such as what would be the way out, if a CA firm who is an auditor of a company gets converted into a LLP? Whether or not the CA firm can continue to be the auditors of the company?

Provision after the circular

This contradiction was clarified in General Circular No 09/2013 (link given above) along with General Circular No 30A/2011³ which clearly said that a CA firm after getting converted in a LLP will not be treated as a body corporate.

Also as per section 58(4)(b), on conversion of a firm into a LLP, all property, assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the LLP without any assurance, act or deed. Similarly, if a CA audit firm, being an auditor in a company under the Companies Act, 1956, gets converted into an LLP after complying with the relevant provisions of the LLP Act, 2008, then, such a LLP, in accordance with the provisions of section 58(4) (b) of the LLP Act, 2008 would deem to be the auditor of the said company

What are the steps a company needs to take in case their auditors convert their CA firm into LLP?

The appointee company will be required to change the status of the auditor through a Board Resolution. Rest all the provisions of the Companies Act, 1956 with regards to auditors would prevail as it did earlier.

² [http://www.mca.gov.in/Ministry/notification/pdf/S.O.1152\(E\)_23may2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/S.O.1152(E)_23may2011.pdf)

³ http://www.mca.gov.in/Ministry/pdf/Circular_30A-2011_26may2011.pdf