

# ***MCA clarification: Trust/ trustee not barred from being a partner in an Limited Liability Partnership***

October 21, 2014

## ***In brief***

The Ministry of Corporate Affairs (MCA) has recently issued General Circular No. 37/ 2014 dated October 14, 2014, stating that a trustee (being a body corporate) of Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InvITs), or any other trust set up under the regulations prescribed under the Securities and Exchange Board of India (SEBI) Act, 1992, is not barred from becoming a partner in an limited liability partnership (LLP).

Furthermore, such bodies corporate are permitted to hold partnership in an LLP without an addition of the statement that it is a trustee.

## ***In detail***

### ***Backdrop***

As per section 5 of the LLP Act, 2008, any individual or body corporate can become a partner in an LLP.

While technically, a trust represented by a trustee-company could be regarded as a body corporate, practically there existed an ambiguity as to whether a trustee representing a domestic trust could be permitted to become a partner in LLP. This uncertainty led to inadvertent hurdles in the smooth implementation and functioning of the investment pooling vehicles such as REITs, InvITs and Alternative Investment Funds (AIFs).

It may be noted that the regulations pertaining to REITs and InvITs recently introduced by SEBI stipulated that REITs and InvITs being set up as a trust could hold specified assets either directly,

or through Special Purpose Vehicles (SPVs). The SPVs could either be a company or an LLP.

Similarly, according to SEBI regulations dealing with AIFs, an AIF could be incorporated as a trust to make investments in investee companies. The term 'investee company' has been defined to mean any company, SPV or LLP or body corporate in which an AIF makes an investment.

### ***Conclusion***

The clarification by the Ministry is a welcome move providing clarity in investment structuring and long-term strategy formulation by the investment management fraternity adopting the aforesaid investment vehicles.

However, an interesting issue arises as to whether, under section 5 of the LLP Act, different positions can be taken for trustees of trusts regulated by SEBI and trustees

(being bodies corporate) representing other trusts (e.g., family trusts, charitable trusts, etc.).

The link to the circular is attached below.

[http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_37-2014.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_37-2014.pdf)

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

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