MODULE III
THE INDIAN PARTNERSHIP ACT 1932

8

FORMATION OF PARTNERSHIP AND TYPES OF PARTNERSHIP

Unit Structure

8.0 Objectives

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8.0 OBJECTIVES

After studying the unit students will be able to:

- Understand the meaning of Partnership and Partnership deed.
- Explain the features of Partnership
- Distinguish between Partnership and co-partnership, HUF and Company.
- Discuss about Dissolution of Partnership Firm

8.1 INTRODUCTION

Partnership form of business organisation have come into existence due to some of the limitations of sole trading concern such as limited capital, managerial ability etc.

Formerly partnership business was regulated by Indian contract act 1872 but subsequently authorities found it necessary to have a separate law for this purpose, as a result of which Indian partnership Act 1932 came into effect. The act was established to define and modify as and when required.

Partnership derived from the word 'part' and implies sharing. Persons come together to share profits and properties of the business. The relationship of partnership arises from contract and not status.

8.2 MEANING AND DEFINITION

Definition:

Section 4 of the Act defines Partnership as "the relation between the persons who have agreed to share the profits of business carried on by all or any of them acting for all". Person who has entered into partnership with one another are called individually partners and collectively a firm. The name under which their business is carried on is called firm name.

8.3 WHO MAY BE A PARTNER

1. **INDIVIDUAL** – An individual who satisfies all conditions required for a valid contract can become a partner.
2. **MINOR –** A minor cannot become a partner. He may be entered into partnership business with consent of all other partners.
3. **LUNATIC –** A person of unsound mind is not competent to contract and therefore cannot become a partner.
4. **CORPERATE BODY –** A corporate body being an artificial person can become a partner and can enter into partnership agreement.
5. **A FIRM-**A firm cannot be a partner of another firm, though its partner can be in their individual capacity.

WHO ARE NOT PARTNERS:

- The members of Hindu undivided family carrying in family business. However partnership contract inter se between members of family is permissible.
- Lender of the money receiving a rate of interest from any person engaged in business or about to engage in business.
- An agent engaged in business receiving commission from principal.
- Widow or a child of deceased partner receiving a portion of profit as annuity.
- A previous owner or part owner of the business selling his business along with the good will and receiving a portion of the profit in consideration of sale.
- Joint or co-owners of property sharing profits arising from the business.

8.4 ESSENTIAL ELEMENTS OF PARTNERSHIP

Following are the elements of Partnership:

1. Two or More Persons:

Minimum two persons are required to form a partnership. In case of banking business maximum number of partners allowed is ten, while in any other business the numbers cannot exceed 20.

2. Competency:

All partners must have attained an age of majority and must be of sound mind to enable him to enter into contracts.

3. Agreement:

There has got to be an agreement to form partnership. This agreement may be expressed or implied. Express agreement arises out of words spoken or written. Similarly implied agreement arises out of the conduct and custom of business. Section 5 of the act states "The relation of the partnership arises from contract and not from status.

4. Lawful business:

Term business refers any lawful activity, which if successful would result in profits. It include every trade, occupation and profession. It is not necessary that a business be permanent undertaking. A Partnership may exist even for a single venture example: X and Y are partners for producing a film.

5. Profit Sharing:

An agreement entered into by all the partners concerned must be for sharing the profit of the business. Profit means net profit arrived at after providing for all expenses. It must be remembered that profit sharing is must irrespective of profit-sharing ratio. However, it must be noted that near sharing of profits between persons would not necessarily determine the existence of partnership. **For Example**: Joint owner of a shop who shared the rent of the shop will not be called partners.

6. Mutual Agency between Partners: Another important aspect of the definition of a partnership is that the business must be carried on by all the partners or by any (one or more) acting on their behalf of them, i.e., joint agency

8.5 PARTNERSHIP DEED OR ARTICLES OF PARTNERSHIP

Partnership may be expressed or implied. Express Partnership arises by words spoken or written. Implied Partnership may arise from conduct of the parties. Partnership agreement must satisfy all conditions of valid contract such as offer, acceptance, competency, lawful business etc.

Sometimes minor may be admitted to the benefits of the partnership with the consent of all the partners. As relationship of partners to one another is that of agency, no consideration is required to create partnership. The documents which contain the terms of partnership as agreed among the partner is called partnership deal.

Following are the contents or provisions of the deed:

a) Name of the firm

b) Name and address of all partners

c) Nature and place of business

d) Duration of the partnership.

e) Amount of capital of each partner with profit sharing ratio.

f) Interest on drawings and Interest on capital.

g) Interest on loan advanced by partner.

h) Salary or commission payable t any partner.

i) Method of valuation of goodwill in case of admission, retirement or death of a partner.

j) Settlement of account in case of retirement or death of a partner or dissolution of a firm.

8.6 TEST OF PARTNERSHIP

The true test of a partnership is the existence of a Mutual Agency. There are other circumstances where the sharing of profit exists but there is no partnership. But if an agency exists between the parties who run a business together and share profits it will be deemed that a partnership exists.

Following three tests must be undertaken to determine whether or not a group of persons doing lawful activity constitute partnership or not.

1. Agreement to share profits:

Sharing of profit is prima facie evidence of existence of partnership. The term profits mean net profit i.e surplus left after deducting all expenses paid or payable. In what ratio profit is to be shared is immaterial.

2. Mutual agency:

U/S 18 of the Indian partnership act a partner is both agent and principal. It means each partner is both agent and a principal. A partner is an agent of the other partner in the sense that by his act he can bind other partners. He is principal in the sense that he can be held liable for the acts of the other partners.

3. Intention of parties:

The intention of the partners may be gathered from their conduct, course of dealings, circumstances of their entering into business.

8.7 TYPES OF PARTNERS

A partnership is when two or more people join together do engage in a particular venture and share the profits carried on from such venture or business. However, one must not always assume that all partners participate in the work or profits or even liabilities of the firm equally. In fact, there are various types of partners based on the degree of their liability, or their involvement in the firm.

1. Active Partner:

An Ostensible Partner or an active partner first type of partner. As the name suggests he takes an active part in the firm and carrying of the business activity. He performs on the daily business on behalf of all the partners. This means he acts as an agent of all the other partners on a day-to-day basis and with regards to all routine business of the firm.

2. Sleeping Partner:

This is a partner that does not take actual part in the daily functioning, i.e. he does not take an active part in the daily activities of the firm. He is bound by the action of all the other partners.

He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires, he need not give a public notice of the same.

3. Nominal Partner

This is a partner that does not have any significant interest in the partnership. So, in essence, he is only lending his name to the partnership. He will not make any capital contributions to the firm, and so he will not have a share in the profits. But the nominal partner will be liable to outsiders and third parties for acts done by any other partners in the partnership.

4. Partner by Estoppel:

When a person holds out to another that he or she is a partner of the firm, either by his words, actions or conduct then such a partner cannot deny that he/she is not a partner. This actually means that though such a person is not a partner he/she has represented himself /herself as such, and so he becomes partner by estoppel.

5. Partner in Profits Only:

Such types of partners will only share the profits of the firm, he will not be liable for any liabilities. Even when dealing with third parties he will be

liable for all acts of profit only, he will not share any of the liability of the firm.

6. Minor Partner:

A minor cannot be a partner of a firm according to the Contract Act. However, a partner can be admitted to the benefits of a partnership if all partner gives their consent for the same. He will share profits of the firm but his liability for the losses will be limited to his share in the firm.

Such a minor partner on attaining majority has six months to decide if he wishes to become a partner of the firm. He must then declare his decision by giving a public notice. He will have to give the public notice in the circumstances whether he continues as a partner or decides to retire.

8.8 TYPES OF PARTNERSHIP

1. Partnership for a Fixed Term:

It is a partnership where at time period is fixed. Such a partnership gets dissolved at the expiry of the time period. Before the fix period it may be dissolved by mutual consent. However, if it continues after the fix period it becomes partnership at will

2. Particular Partnership :(Section 8):

Where two or more persons agree to do business in a particular adventure or undertaking such partnership is called particular partnership.

E.g. X & Y enter into partnership for producing advertising film.

3. Partnership at Will:

It is a partnership in which duration is not fixed and can be dissolved by any partner by giving a notice. The firm may be dissolved by any partner by giving 14 days advance notice in writing to all the other partners indicating his intention to dissolve the firm.

8.9 DISTINGUISH BETWEEN PARTNERSHIP FIRM WITH JOINT FAMILY BUSINESS, COMPANY AND HINDU UNDIVIDED FAMILY BUSINESS

1. Distinguish Between Partnership and Co-ownership:

	Partnership	Co ownership
1	**Business:** To carry on business isan essential element of partnership.	Co ownership may exist without carrying on any business.
2.	**Mutual agency:** There exist mutual agency among the partners of the firm.	No mutual agency exists among co owners

3.	**Creation:** Partnership is created by an agreement	Co ownership is created by an agreement or by law or by virtue of status.
4.	**Profit:** An agreement to share profit is essential element of partnership.	Sharing
5.	**Lien:** A partner has a lien on the property of the firm owned in common	Co ownership has no lien on the property owned in common.
6.	**Partition of property:** A partner cannot demand the partition of property of the firm.	A co-owner is entitle to claim partition of property.7
7.	**Agreement:** Partnership	arises from an agreement
8.	**No of partners:** Minimum 2, maximum 10 for banking, 20 for other business.	There is no maximum limit of co owners.

2. Distinguish Between Partnership and Company:

	Partnership	**Company**
1.	**Meaning:** Partnership is the relationship between the persons who have agreed to share profits of the business carried on by all or any one of them acting for all.	A company means a company formed and registered under company's act or an existing company.
2.	**Legal person:** A firm is not a legal entity.	A company is a legal person created in the eye of a law.
3.	**Liability:** liability of a partner is unlimited. Even personal property of the partner is liable to settle claim of creditor.	In case of company the liability of the member is limited to the extent of unpaid amount on calls.
4	**Transfer of share:** in a firm a partner cannot his share without the consent all the partners.	In a company shareholder can transfer his shares subject to the provision of A.A.
5	**Agency :** every partner is an agent of other partner.	Shareholder of the company is not an agent of the company.
6	**Registration:** registration of firm is not compulsory under partnership act 1932.	Registration of company is compulsory under companies act 1956.
7	**Management:** Management vests in the hands of the partners except in the case of sleeping partner	Management
8	**Creditors:** Creditors of the firm are also the creditor of the partners individually as well.	Creditors are only the creditors of the company and not
9	**Accounts:** Accounts of the partnership need not be audited	Accounts

	by the auditors	
10	**Ownership of property:** The property of the Firm collectively belongs to the partner.	The property of the company, belongs to the company, and not to the shareholders
11	**Effect of death:** In case of a death or insolvency of a partner firm gets dissolved, unless there is contract to the contrary.	In case of company, death or insolvency of a member of the company does not results in to dissolution of the company.
12	**Disposal of property:** A partner can dispose the property of the firm	A shareholder cannot dispose of the property of the company.
13	**No of members:** Minimum 2, maximum 10 in case of banking and 20 in case of general business.	In case of private company maximum 50 members and public company can have any number of shareholder.
14	**Existence:** Partnership has no perpetual or continuous life.	Company has long and stale life

3. Distinguish Between Partnership and HUF:

	Partnership	**Hindu undivided Family**
1	**Meaning:** partnership is the relationship between the persons who have agreed to share profits of the business carried on by all or any of the acting for all.	A joint Hindu family which carries on business handed down from its ancestors.
2	**Agreement:** It can arise only by an agreement of the partner	It arises by the operation of the law.
3	**Admission of new member:** A new partner can be admitted in the partnership, only with the consent of all the partners.	A person becomes member only by birth in the family.
4	**Numbers:**	maximum
5	**Mutual agency:** There exist mutual agency among the partners i.e. all is acting for one and one is acting for all.	There is no such agency relationship between members of the family. The karta i.e. head or manager of the family is the only representative of the family.
6	**Implied authority:** Every partner has an implied authority to bind the firm by his acts done in the ordinary course of the business.	Only karta has an implied authority to bind the family by his acts.
7	**Liability:** A partner is personally liable for the business obligation of the firm. The share of each partner in the property and profits along with his private	A member is not personally liable for the business obligation of the family. Only his share of profits and property in the family is liable for discharge the debts

	property is liable for the discharge of the debts of the firm.	of the family.
8	**Dissolution/partition:** A partner has right to demand for dissolution of firm.	A partner has right to demand for dissolution of firm.
9	**Death/insolvency:** Firm gets dissolved on death or insolvency of any one partner.	It is not dissolved on the death or insolvency of any of the members.

8.10 SUMMARY

Partnership: Section 4 of the Act defines Partnership as "the relation between the persons who have agreed to share the profits of business carried on by all or any of them acting for all.

Who can become a Partner: Individual, Body Corporate,

Who can not become a Partner in Partnership: The members of Hindu undivided family carrying in family business. Lender of the money receiving a rate of interest from any person engaged in business or about to engage in business. An agent engaged in business receiving commission from principal. etc

Essentials of Partnership: Two Or More Persons: Competency: Agreement: Profit Sharing: Mutual Agency between Partners:

PARTNERSHIP DEED OR ARTICLES OF PARTNERSHIP

Partnership Deed: Meaning: Partnership Deed is nothing but an agreement between the Partners in respect of the Partnership.

Contents:

a) Name of the firm, Name and address of all partners, Nature and place of business, Duration of the partnership, Amount of capital of each partner with profit sharing ratio. etc

Types of Partnership: Agreement to share profits: Mutual agency: Intention of parties:

Types of Partners: Active Partner, Sleeping Partner, Nominal Partner, Partner by Estoppel, Partner in Profits Only, Minor Partner

Types of Partnership: Partnership for a Fixed Term: Particular Partnership: Partnership at Will:

8.11 QUESTIONS

1. State and Explain the concept of partnership and essential elements of partnership

2. How the Partnership Firm can be formed? State types of Partnership?
3. What are types of partners?
4. "Mutual Agency' is an essence of the Partnership' Explain this statement.
5. Distinguish between Partnership and Company
6. Distinguish between Partnership and Joint Hindu Family Business.

7. Write Short Note on

a. Distinguish Partnership and co-ownership
b. Public notice
c. Partnership Deed
d. Who can become a partner in partnership?

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9

REGISTRATION OF FIRMS AND CONSEQUENCES OF NON-REGISTRATION RELATIONS AMONST THE PARTNERS AND DISSOLUTION OF FIRM

Unit Structure

9.0 Objectives
9.1 Introduction
9.2 Consequences of Non- Registration of Partnership.
9.3 Rights, Duties and Liabilities and Authority of Partners
9.4 Rights of a Partner
9.5 Duties of Partners
9.6 Liabilities of Partners
9.7 Implied Authority of Partner
9.8 Mutual Relationship of Partners to Each Other
9.9 Relationship of Partners to Third Persons
9.10 Minor's Position in Partnership
9.11 Minor Become A Full-Fledged Partner.
9.12 Rights of the Minor If He Elects Not to Become A Partner
9.13 Effects or Consequenses of Dissolution
9.14 Public Notice
9.15 Summary
9.16 Questions

9.0 OBJECTIVES

After studying the unit students will be able to:

- Understand importance of registration of Partnership.
- Understand the consequences of non-registration of firm
- Understand rights duties and mutual rights duties of partners
- Understand the Minors position in partnership
- Understand Liability of Partners to the firm and to a third parties.
- Understand the concept of Dissolution and Effects of Dissolution.

9.1 INTRODUCTION

Registration of a partnership firm is not compulsory under law. The provisions under Partnership Act, 1932 made specifically that if the partners so wish to register, may register the firm with the Registrar of Firms of the state in which the firm's main office is situated. A partnership firm may be registered at the time when it is formed or at any time thereafter. Procedure for partnership Registration so that to get a partnership firm registered, an application in a prescribed form must be submitted with the Registrar of Firms. The application must include the following information:

- The name of the firm
- The principal place of business of the firm
- Names of other places where the firm's business is carried on.
- Names in full and permanent addresses of the partners.
- The date on which each partner joined the firm
- Duration of partnership, if specified

The filled and prescribed application should be signed and verified by each partner, after that it is to be submitted to the Registrar of Firms of the place in which the main office of the firm's business is located or proposed to be located. The registration fee is also deposited along with the application. On submission of the application, the registrar will scrutinize the application. If he is satisfied that everything that required to fulfill has fulfilled and all the legal formalities have been taken care, he will make an entry in the register of firms. He will also issue a certificate of registration. Any change in the information submitted at the time of registration should be communicated to the Registrar.

9.2 CONSEQUENCES OF NON- REGISTRATION OF PARTNERSHIP.

The consequences of a partnership firm which is not registered are as follows:

- It cannot enforce its claims against the third party in a court of law.
- It cannot file a legal suit against any of its partners
- Partners of an unregistered firm cannot file any suit to enforce a right against the firm.
- A partner of an unregistered firm cannot file suit against other partners. It cannot claim adjustment for any sum exceeding Rs. One hundred.

Example: Suppose an unregistered firm owes Rs. 2000 to Sahil and Sahil owes Rs.1000 to the firm. The firm cannot enforce an adjustment of Rs.1000 in a court of law.

Partnership Property (Section 14):

Partnership Property is also known as property of a firm, partnership assets, joint stock, common stock, or joint estate. A partnership property includes all property and rights, and interest in property that the purchases by partnership firm.

These properties are collectively owned by all the members of the in the course of partnership business which includes Goodwill.

Therefore, a partnership property includes of the following items if there is no agreement between the partners showing any contrary intention. All property and rights and interest in property that the partners purchase in the common stock as their contribution to the common business purpose.

Goodwill of the business:

To arrive at the conclusion or to decide whether a particular property is partnership property or not it depends on the fair and true objective or agreement between the partners.

Therefore, if a firm uses the property of a partner for its purposes, it does not make it a partnership property unless that was the real intention. At any time, the partners may agree to convert the property of a partner or partners into partnership property.

9.3 RIGHTS, DUTIES AND LIABILITIES AND AUTHORITY OF PARTNERS

The Partnership Deed includes the mutual rights, duties and obligations of the partners, in certain cases, the Partnership Act also makes a compulsory provision in respect of the rights and obligations of partners. When Partnership Deed is silent.

9.4 RIGHTS OF A PARTNER

The rights of a partner are as follows:

1. Right of the partner to take active part in the day-to-day affiars of the firm.
2. Right to be consulted and heard when taking any decision regarding the business.
3. Right as agent of the firm and implied authority to bind the firm for any act done in carrying the business.
4. Right to share the profits equally or as agreed upon by the partners as per the provisions under partnership deed.

5. Right to get interest on capital contributed by the partners to the firm.
6. Right of access to books of accounts and call for the copy of the same for inspection.
7. Right to prevent admission of new partners/expulsion of existing partners.
8. Right to enjoy interest on advances paid by the partners for business purpose.
9. Right to the use of partnership property exclusively for partnership business only not for his personal use or benefit.
10. Right to retire with the consent of other partners and according to the terms-and conditions of deed.

9.5 DUTIES OF PARTNERS

The duties of a partner are as under:

a. To carry on the business to the greatest common advantage:

Every partner is bound to carry on the business of the firm to the greatest common advantage. In other words, the partner must use his knowledge and skill in the conduct of business to provide maximum benefits for the firm.

b. To be just and faithful to each other:

Every partner must be faithful to other partners of the firm. Every partner must observe utmost good faith and fairness towards other partners in partnership activity.

c. To render true accounts:

Every partner must render true and proper accounts to his co-partners, as they are mutually related.

d. To provide full information:

Every partner must provide full information and details of activities affecting the firm to the other co-partners. No information should be hide.

e. To attend diligently to his duties:

Every partner is bound to attend diligently and faithfully to duties in the conduct of the business of the firm.

f. To indemnify for loss caused by fraud or willful neglect:

It is the duty of the partners to indemnify the firm for loss If any caused to the firm because of a partner's willful neglect in the conduct of the business or fraud commit by him against a third party.

g. Should not hold and use partnership property exclusively for the firm:

The partners must hold and use the partnership property exclusively for the purpose of partnership activity of the firm not for their personal advantage.

h. No Secret Profit and to account for personal profits:

If a partner secured any personal benefit or profit from partnership transactions or from the use of the property of the firm or business connection the firm or the firm's name, he must account for such profit and reimbursed it to the firm.

i. Not to carry on any competing business:

A partner must not engage in competing activities to that of the firm. If he carries on and earns any profit then he must account for the profit made and pay it to the firm.

j. To share losses:

When there is no agreement as to partnership, partners have to share the losses of the firm equally as per profit sharing ratio

9.6 LIABILITIES OF PARTNERS

a. **Joint & Several**: Every partner is liable jointly and severally for all the acts of the firm done while he was a partner. The liability of a partner is unlimited.

b. **Liability for Secret Profits**: A partner is liable to account for and pay to the firm any personal profits earned from the business of the firm or property .

c. **Liability for Profits from Business of a same nature**: If a partner carries on any business of the same nature and competing with that of the firm, he would be liable to account for and pay to the firm all profits made by him in that business.

d. **Liability to Render True Accounts**: A partner is liable to render true statements of accounts to other partners. He is liable to disclose all the accounts which fall within the scope of business of the firm.

e. **Liability for Losses of the firm:** As a partner has a right to share the profits of the firm likewise is he liable to share the losses equally unless otherwise agreed upon.

9.7 IMPLIED AUTHORITY OF PARTNER

The authority of a partner to bind the firm is called his "implied authority". Partners in the partnership firm are playing dual role that is as an agent and at the same time Principle. An authority which is in the

form of express or by words spoken and the Indian Partnership Act is has not specifically mentioned any authority by expression. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not confer any rights to him to—

a. submit a dispute relating to the business of the firm to arbitration,

b. open a banking account on behalf of the firm in his own name,

c. acquire immovable property on behalf of the firm,

d. admit any liability in a suit or proceeding against the firm.

e. suspend any claim or portion of a claim by the firm,

f. depart a suit or proceeding filed on behalf of the firm,

g. transfer immovable property belonging to the firm enter into partnership on behalf of the firm.

9.8 MUTUAL RELATIONSHIP OF PARTNERS TO EACH OTHER

Each partner has a right to share in the profits of the partnership. Unless the provisions made in the partnership deed otherwise, partners share profits equally. Moreover, partners must contribute equally to partnership losses unless a provision made in the partnership deed for another arrangement.

Each partner has a **right to participate equally in the working of management of the partnership**. In many partnerships a majority vote resolves disputes relating to management of the partnership. Except, some decisions, like as admitting a new partner or expelling a partner, require the consent from all the partners.

Each partner owes a **Fiduciary duty** to the partnership and to copartners. This duty requires that a partner deal with copartners in Good Faith, and it also requires a partner to account to copartners for any benefit that he or she receives while engaged in partnership business. If a partner generates profits for the partnership, for example, that partner must hold the profits as a trustee for the partnership.

9.9 RELATIONSHIP OF PARTNERS TO THIRD PERSONS

A partner is an agent of the partnership. When a partner has the actual authority and acts on behalf of the firm, the partner binds the partnership and every partner for the obligations.

Similarly, a partner's admission concerning the partnership's affairs is considered an admission of the partnership. A partner may only bind the partnership, however, if the partner has the authority to do so and undertakes transactions while conducting the usual partnership business. **If**

a third person, however, knows that the partner is not authorized to act on behalf of the partnership, the partnership is generally not liable for the partner's unauthorized acts. Moreover, a partnership is not responsible for a partner's wrongful acts or omissions committed after the dissolution of the partnership or after the dissociation of the partner. A partner who is new to the partnership is not liable for the obligations of the partnership that occurred prior to the partner's admission.

9.10 MINOR'S POSITION IN PARTNERSHIP

A person who has not attained the age of 18 years of his or her age is known as minor as provided to Section 3 of the Indian Majority Act.

Section 4 of the Indian Partnership Act, 1932, defines partnership and partner as follows:

"***Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all".***

Persons who have entered into a partnership business with one another are called "partners" individually and collectively it is called as "firm", and the name by which their partnership business is carried on is called the "**firm name".**

As per Indian Contract Act, 1872, minors can neither take an active party in any partnership business nor to enter into any agreement. An agreement involving a minor is void-ab-initio. However, the Indian Partnership Act has its own sets of legal rules in respect of minors.

Minor admitted to benefits of partnership

A partnership firm cannot be formed with a minor as the only other member. The relation of partnership arises from a contract

"Section 30 of the Indian Partnership Act, provides that a minor cannot become a partner, however with the consent of the adult partners, he may be admitted to the benefits of partnership.

A minor can only be admitted to the benefits of a partnership, and that partnership has to exist independently. Also, there cannot be a contract between two minors.

Rights of Minor:

A minor admitted to the benefits of a partnership in consultation and unanimous consent of all the other major partners.

- Such minor is entitled to his agreed shares of the property and of the profits of the firm.
- Such minor has the right to access and taking copies of the book of accounts of the firm. But has no right of access to those other books of the firm which do not contain matters of account.

- Such minor is not personally liable to the third parties for the debts of the firm, but his liability is limited only up to his shares in the partnership assets and profits.

- Such minor is not entitled to take part in the conducting of the actual business activities as he has no capacity to contract

9.11 MINOR BECOME A FULL-FLEDGED PARTNER

- On attaining the age of majority, the minor has his own choice whether to continue with the same partnership or not and accordingly he should specify his interest with in a time specified that is within six months on attaining the majority. If he fails to do the same, he becomes personally liable to the third parties for all the debts of the firm with retrospective effect from the date of he gets admitted to the benefits of partnership.

9.12 RIGHTS OF THE MINOR IF HE ELECTS NOT TO BECOME A PARTNER

- His rights and liabilities shall continue to be those of a minor up to the date of giving public notice;

- His share shall not be liable for any acts of the firm done after the date of the notice;

- He shall be entitled to sue the partners for his share of the property and profits.

- If after attaining the age of majority but before choosing to become a partner the minor represents and knowingly permits himself to be represented as a partner in the firm, he will be personally liable to anyone who on the faith of such representation granted credit to the firm on the ground of 'holding out'.

From the above discussion, we can say that a partnership firm cannot be formed with a minor as the only other member. The relation of partners in partnership business come into in existence from a contract. Section 11 of Indian Contract Act states that a minor is not competent to contract and hence not entitled to have the contractual relations amongst the other partners as he is not able to form the sensible judgment and such contracts are void ab initio as mentioned in the landmark judgement in the case of ***Mohoribibi V/s Dharmodash Ghosh.***

DISSOLUTION OF FIRM:

MEANING OF DISSOLUTION:

Partnership, as we are aware is a result of an agreement. All agreements can be discharged or terminated. This termination of the contractual relationship in case of partnership is called as dissolution. Dissolution under the partnership law can be mean "Dissolution of the firm" as well as

"Dissolution of partnership". Commonly both are taken to mean the same and are used interchangeably. However, legally there is a difference in the two. Dissolution of the firm means complete breakdown of the relations among all partners. Whereas dissolution of the partnership means, the relationship between same partners came to be an end while the firm continues. It would be right for us to say dissolution of the firm necessarily implies dissolution of partnership whereas dissolution of partnership does not necessarily involve dissolution of firm.

Example:

1. A, B,C, D. are partners in a firm. A, dies B, C, D decides to close down the firm. This amount to dissolution of the firm.

2. A, B, C, D, and E are partners in a firm. There is an agreement that the firm shall not be dissolved on the death, retirement or expulsion of any partner. C dies, this amounts to dissolution of partnership as the firm continues. Only relationship with C. comes to an end.

MODES OF DISSOLUTION:

There are modes of dissolution of a firm

1) Voluntary dissolution.

2) Dissolution by operation of law.

3) Dissolution by intervention of court.

1. Voluntary dissolution:

It includes dissolution by any of the following manner.

a) By consent: All partners may consent for the dissolution of the firm. This can happen whether the firm is for a fixed duration or not.

b) By agreement: A firm may be dissolved in accordance with a contract. For example partnership formed for a specific period or for a particular venture.

c) By Notice: Whenever a partnership is at will any partner can give 14 days' clear notice in advance indicating his intention to disassociate from the firm.

2. Dissolution by operation of law:

It includes dissolution in any of the following manner.

a) Compulsory dissolution: In this case firm is compulsorily dissolved due to insolvency or some new law makes the business of the firm unlawful

b) Some event making the business unlawful, if carried on in partnership, due to change in its number, example a firm carrying in banking business by more than 10 person

c) On happening of certain contingencies such as expiry of fixed period or particular venture for which it was formed, on death of a partner and on insolvency of a partner.

3. Dissolution by intervention of court:

It arises on the following ground:

a) Insanity of a partner:

When a partner becomes of unsound mind. The other partner can institute case against such partner to dissolve the firm.

b) Permanent incapacity:

In case a partner becomes permanently incapable in discharging his duties, the court may order dissolution of the firm.

c) Misconduct of a partner:

When a partner is guilty of misconduct which adversely affects the business of the firm then court may order dissolution of the firm provided other partner take legal action.

d) Willful or persistent breaches of agreement:

Sometimes, a partner willfully or persistently commits a breach of agreement relating to the management of the affairs of the firm or conducts the business in such a way that the other partners find it difficult to carry on business with him. In such a cases any partner other than the guilty partner may approach the court for dissolution.

e) Transfer of interest:

Sometimes a partner may transfer the whole of his interest or share to a third party or the share may be charged or the share has been sold for the recovery of arrears of land revenue in which cases the other partner or partners may seek for dissolution of the firm

f) Losses in Business:

Where the business of the firm cannot be carried on except at a loss the court can order for dissolution.

g) Any other just an equitable ground:

Where the court is satisfied that is just an equitable to dissolve the firm.

9.13 EFFECTS OR CONSEQUENSES OF DISSOLUTION

Dissolution of firms:

Section 39 of the Indian Partnership Act, 1932 defines the dissolution of partnership firms. ***"The dissolution of the firm means to stop all the***

business activities with the firm" There is a difference between the dissolution of the firm and the dissolution of the partnership.

When all the activities in respect of partnership business comes to an end and all the profit and loss is settled among the partners is called dissolution of the firm and when the partner retires or dies even though the firm continues to perform its partnership business with existing partners is called dissolution of a partnership.

RIGHTS OF A PARTNER ON DISSOLUTION OF A FIRM:

1. Rights to have the business wound up.
2. Right to repayment of premium on premature dissolution.
3. Where the firm was dissolved on account of fraud or misrepresentation by a partner, the innocent partner can rescind the contract and also have right to retain surplus if any for the capital and sum paid to be indemnified for all debts paid with regard to the firm.
4. Right to restrain partners from the use of the firm name or firm property.

Liabilities of Partners on dissolution

Liabilities for an act of the partners on dissolution specified under Section 45 of the Indian Partnership Act, 1932

1. According to this section, the partners of the firm are liable to the third party for any act done by any of them unless they give public notice of the dissolution of the firm.
2. It also states that the partner who dies, retries, becomes insolvent or that of a person who the third party is not aware of being the partner of the firm, is not liable under this section.

Return of premium after dissolution

Section 51 of the Indian Partnership Act specifically tells about the return of premium after dissolution. At the time of entering into a partnership firm, the partner has to pay an amount as premium. However, when the firm gets dissolves before the maturity due to any reason, then such partners are entitled to the repayment of premium at the time of admission.

9.14 PUBLIC NOTICE

Section 72 of Indian Partnership Act describes the manner and the in which the public notice of certain matters relating to partnership firm is to be given. According to this section, public notice must be given in the following circumstances:

a) On retirement or expulsion of a partner from a registered firm.

b) On the dissolution of a registered firm.

c) On the election of a minor to become or not to become a partner on attaining majority.

Following are the modes by which the public notice pertaining to the above matter is to be given are as under:

a) By notice to the Registrar of firm under Section 63.

b) By, publication in the Official Gazette.

c) By publication in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Following are the repercussions or Consequences when public notice is not given:

- When a minor admitted to benefits of partnership fails to give public notice within six months of his attaining majority, he becomes a partner in the firm on the expiry of the said period and would be liable as a partner.
- If a partner does not give a public notice of the retirement, he and the other partners shall continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before retirement.
- If in case of expulsion of a partner, a public notice is not given, the expelled partner and other partners shall continue to be liable to third parties dealing with the firm as in the case of a retired partner.
- If on dissolution of a registered firm a public notice is not given, the partners shall continue to be liable to third persons for any act done by any of them which would have been an act of the firm done before dissolution.

9.15 SUMMARY

Registration of Partnership:

Registration of a partnership firm is not compulsory under law

Consequences of Non- Registration of Partnership:

It cannot enforce its claims against the third party in a court of law. It cannot file a legal suit against any of its partners, Partners of an unregistered firm cannot file any suit to enforce a right against the firm.

Rights of a Partner:

Right of the partner to take active part in the day-to-day affairs of the firm. Right to be consulted and heard when taking any decision regarding the business.

Duties of Partners:

To carry on the business to the greatest common advantage: To be just and faithful to each other: To render true accounts:

To provide full information. To attend diligently to his duties: No Secret Profit and to account for personal profits: Not to carry on any competing business:

LIABILITIES OF PARTNERS:

Joint & Several: Liability for Secret **Profits**: **Liability for Profits from Business of a same nature**: **Liability for Losses of the firm:**

Implied authority of Partner:

Submit a dispute relating to the business of the firm to arbitration, open a banking account on behalf of the firm in his own name, acquire immovable property on behalf of the firm,

Mutual Relationship of Partners to Each Other: Each partner has a right to share in the profits of the partnership. **Each Partner has right to participate equally in the working of management of the partnership**. **Fiduciary Duty.**

Relationship of Partners to Third Persons:

A partner is an agent of the partnership. If a third person, however, knows that the partner is not authorized to act on behalf of the partnership, the partnership is generally not liable for the partner's unauthorized acts.

Minor's Position in Partnership:

Minor admitted to benefits of partnership, Rights of Minor, Minor become a full-fledged Partner.

Dissolution of Firm: MODES OF DISSOLUTION:

Voluntary dissolution. Dissolution by operation of law. Dissolution by intervention of court.

RIGHTS OF A PARTNER ON DISSOLUTION OF A FIRM:

Rights to have the business wound up. Right to repayment of premium on premature dissolution. Where the firm was dissolved on account of fraud or misrepresentation by a partner, the innocent partner can rescind the contract and Voluntary dissolution: Dissolution by operation of law; Dissolution by operation of law.

9.16 QUESTIONS

1. Define partnership. Explain its features
2. What are the effects of non-registration of Partnership Firm?
3. Explain Test of partnership
4. What do you mean by the property of the firm ?
5. Explain kinds of partnership
6. What do you mean by dissolution of the partnership firms? How dissolution takes place by operation of law?
7. Explain dissolution by intervention of court.
8. What are the modes of dissolution of Partnership?
9. Distinguish between partnership & co-ownership
10. Distinguish between partnership & company
11. Distinguish between partnership & Hindu undivided family.
12. Write a Short Note:-

a. Partnership

b. Partnership Deed

c. Particular Partnership

d. Dissolution of Partnership

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10

LIMITED LIABILITY PARTNERSHIP FUNCTIONING AND NATURE OF LIMITED LIABILITY PARTNERSHIP [SECTION: 2, 11-12, 55-58]

Unit Structure

10.0 Objectives
10.1 Introduction
10.2 Definition and Meaning
10.3 Procedure for Incorporation of LLP
10.4 Features of LLP
10.5 Designated Partners in Limited Liability Partnership Firm (LLP)
10.6 Essential Clauses of the Limited Liability Agreement (LLP)
10.7 Advantages and Disadvantages of LLP
10.8 Distinguish Between Limited Liability Partnership and Partnership
10.9 Distinguish Between Limited Liability Partnership and Company
10.10 Summary
10.11 Questions

10.0 OBJECTIVES

After studying the unit students will be able to:

- Understand the concept of LLP Act 2008.
- Understand the procedures of incorporation of LLP
- Understand the Advantages and Disadvantages of the same.
- Understand the difference between LLP with Partnership and Company.
- Understand the procedures to be observed to convert the Firms, Private Companies into LLP.

10.1 INTRODUCTION

An approach or an idea of the Limited Liability Partnership (LLP) come to India in the year 2008. An LLP has the features of both the partnership firm and company. LLP is a body corporate and separates from partners like wise members are separate from the company. It is the well accepted and favoured form of organization among entrepreneurs as it incorporates the benefits of both partnership firm and company into a single form of organization that is on a single platform. Thus LLP is a good mixture of

good features. LLPs in India are regulated by the Limited liability Partnership Act, 2008.

10.2 DEFINITION AND MEANING

"A limited liability partnership or LLP is a form of partnership where an individual partner is not liable for the malpractice of another partner in the company. This form of company is most often found in medical practices, law offices, or accounting firms where liability is a big issue. This protects innocent partners from other partners performing services negligently."

LLP stands for Limited Liability Partnership. It is an alternative corporate vehicle that provides the benefits of limited liability of a company along with the flexibility of a partnership. LLP is a legal entity and is liable to the full extent of its assets but the liability of a partner is limited to their contribution in the LLP.

In LLP, one partner will not be liable for the wrongdoing of another partner. The partner will be held responsible only for his own actions. LLP is called a hybrid form between company and partnership as it incorporates properties of both the organisation structures.

10.3 PROCEDURE FOR INCORPORATION OF LLP

Identification of Designated Partners: Two designated partners should identify who will work on behalf of LLP. At least one of the designated partners must be resident in India (i.e., person who has stayed in India for not less than 182 days in the immediately preceding one year).

Acquire Digital Signature: The proposed designated partners are required to obtain digital signature. It is required to file an on-line application for Every form or application is filed online with the Ministry of Corporate Affairs (MCA), which requires to be signed digitally by the applicants and partners of the LLP.

Reservation of Name of LLP: It is required to check availability of name using name search facility on MCA Portal and should apply for name reservation in **Form 1.** Rule 18 of LLP Rules provides cases in which name will not be reserved further the name should not be one prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950

Submission of Incorporation Document: Incorporation documents includes the following.

1. Proof of office address and Registered Office Address of LLP.
2. Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from Central Government.
3. Proof of identity and residential address of the subscribers
4. The incorporated document contains the proposed name of the LLP.

5. In case, a designated partner does not have a DIN, is required to attach.

6. Statement in a prescribed form signed either by professionals like an Advocate, Chartered Accountant, Cost Accountants, stating that all the requirements for formation or incorporation are complied with.

7. All the Designated Partners must have digital signatures.

8. Detail of LLP(s) and/or Company(s) in which partner or designated partner is a director/partner

9. Apply for incorporation of LLP in **Form 2**

10.4 FEATURES OF LLP

1. **Body Corporate:** LLP is a body corporate and has a separate legal entity and it resembles with companies.

2. **Cost of Formation:** The cost of formation is less and compliances and regulations are applicable less as compared with companies.

3. **Liability:** The liability of each partner is limited up to the contribution made by the partner.

4. **Maintenance of Books of Accounts:** LLP must maintain proper books of account mandatorily. The accounts may be on cash basis or accrual basis.

5. **Agreement:** As this is a hybrid type of incorporation. Agreement is needed in respect of partners in the LLP. Hence agreement is an essence of the LLP.

6. **Change in LLP Agreement**: LLP is required to file information to the Registrar of Companies about the LLP Agreement, any changes that is substitution, deletion.

7. **Designated Partners:** At least 02 designated partners should be appointed in LLP. Designated Partners will play a role of an active partner in the LLP.

Filled an application form, documents along with requisite fees shall be submitted to the Registrar of Companies (ROC). After the scrutinization of the shall grant it a certificate of incorporation within **Fourteen Days** of submission of an application for incorporation. Certificate of incorporation of LLP is like a certificate of incorporation of the companies which stands as a conclusive proof which can not be denied at the later stage. Such certificate is an evidence that the LLP has come into an existence and has a corporate personality, and separate legal entity.

10.5 DESIGNATED PARTNERS IN LIMITED LIABILITY PARTNERSHIP FIRM (LLP)

Every LLP must have at least two individuals termed as designated partners. Apart from these two partners one of them must be resident in India (i.e., person who has stayed in India for **not less than 182 days** in the immediately preceding one year). The incorporation document may specify who will be the designated partners by denoting their names and occupations and other identity. Every designated partner must obtain DPIN that is Designated Partners Identification Number. Now instead of DPIN, every partner who will be appointed as Designated Partner, will need to apply for DIN and not DPIN. (Amended the Limited Liability Partnership Rules, 2009.) Individuals holding both DPIN and DIN, their DPIN stands cancelled. To obtain DPIN the individual has to apply in **Form DIN-1** under Companies (Director Identification Number) Rules, 2006.

A Limited Liability Partnership firm may appoint a designated partner within 30 days of vacancy arising for any reason. Each partner in the partnership is deemed to be a designated partner, if there is no designated partner, or if at any time there is only one designated partner. Designated partners are responsible for doing all acts, matters and things that are required to be done for complying with the provisions of the Limited Liability Partnership Act and they are liable to all penalties imposed on the LLP in contravention.

10.6 ESSENTIAL CLAUSES OF THE LIMITED LIABILITY AGREEMENT (LLP)

Limited Liability Partnership is governed by the agreement amongst the partners. Therefore, preparing for LLP agreement is an essential task and necessary to cover various factors governing ventures and relation amongst partners and between LLP and its partners. They are as under: -

A. Definition/interpretation clause

B. Names of designated partners

C. Lawful business clause

D. Registered Office clause

E. Capital & contribution clause

F. In case of conversion of partnership/Company into LLP appropriate clauses for such takeover

General terms amongst the Partners:

a) Admission of new partner retirement of partner

b) Provision for Cessation of partner

c) Terms of Resignation of partner and Expulsion of partner

d) Rights & duties of partners

e) Sharing of profit / Sharing of loss

f) Amount Share in goodwill

g) Meetings of partners

h) Voting rights and its determination

i) Restriction authority of partners

j) Provisions for Acts requiring consent of requisite number of percentages of the partners

k) Provision for Appointment of auditors

l) Provision for Removal of auditor

m) Nomination for signatory to bank accounts, agreement, etc.

n) Assignment monetary interest of partners

o) Rights of legal representative

p) Provision for Duration of the LLP and Provision for Voluntary winding up

q) Provision for Meeting, recording in meeting, etc.

r) Provision for Changes/amendment in agreement

s) Arbitration clause for settlement of disputes if any

t) Changes that may occur in future and the procedure for the same.

10.7 ADVANTAGES AND DISADVANTAGES OF LLP

The following are advantages of incorporating an LLP in India:

1. No requirement of minimum contribution:

No minimum capital is required in LLP. LLP can be formed with the minimum possible capital. The contribution of a partner can consist of tangible, movable or immovable or intangible property or other benefits to the LLP.

2. No limit on owners of the business:

LLP requires a minimum of minimum 2 partners and there is no limit on the maximum number of partners. This is in opposite to a private limited company whereby there is a restriction of not having more than 200 members.

3. Registration Cost is low:

The cost of registering LLP is low as compared to the cost of incorporating a private limited or a public limited company

4. No requirement of compulsory Audit:

All companies, whether private or public, irrespective of their share capital, are required to get their accounts audited. But in case of LLP, there is no such compulsory requirement. This is recognized to be a significant compliance benefit.

5. Partners are not liable for an act of other partners:

In partnership partners are mutual agent of each other and hence they are liable for any wrong act done by any single partner as there is a mutual agency. Whereas in LLP partners are not liable for a wrong done by another partner.

6. Easy to dissolve or wind-up:

LLP is easy to dissolve or wind up as no government formalities and regulations need to observe.

7. Flexibility:

As LLP is a hybrid concern, it includes good features of partnership and good features of company. A limited liability partnership (LLP) is a corporate entity that integrates the organizational flexibility of a partnership with the limited liability protection along the lines afforded to a limited liability company.

8. Penalty for Non-Compliance:

LLP is required to file an income tax return each year even though it does have any activity or in a dormant Even if an LLP does not have any activity, In case an LLP fails to file Form 8 or Form 11 (LLP Annual Filing), a penalty of Rs.100 per day, per form is applicable.

9. LLP cannot raise funds from the public:

LLP stands for Limited liability partnership which means a company form of business where the only the partners contribute in the capital and their liability remains limited to the extent of their capital contribution in the business. Therefore, LLP cannot raise funds from public in any form.

10. Higher Income Tax Rate:

The income tax rate for a company with a turnover of upto Rs.250 crores is 25%. However, LLPs are taxed at a 30% rate irrespective of the turnover.

Liability may extend to personal assets of partners:

In such a scenario the liability of all the partners is unlimited for all or any other debts of the LLP. But even in such an event the personal assets of the partners are not to be exhausted to fulfil such other debts, but the liability extends only to the extent of the fraudulent activity carried out.

10.8 DISTINGUISH BETWEEN LIMITED LIABILITY PARTNERSHIP AND PARTNERSHIP.

Points	Limited Liability Partnership	Partnership
Meaning and Definition	LLP is a hybrid business form that offers the combined benefits of a partnership and a company	Revenue reserve is created to meet unforeseen events in a business organization
Act	Limited Liability Partnership Act 2008	Indian Partnership Act 1932
Registration	Registration is compulsory	Registration is optional
Legal Status	LLP has a legal status	Partnership is not a separate legal entity
Perpetual Succession	Perpetual succession is present as it is registered firm like company. Secondly partners may come and go in an LLP	Feature of Perpetual succession f is not present in partnership.
Maximum Partners allowed	No such limit laid down as to number of partners in LLP	Minimum. 2 partners and Maximum 10 Partners in case of banking and 20 Maximum in case of other business.

10.9 DISTINGUISH BETWEEN LIMITED LIABILITY PARTNERSHIP AND COMPANY

Points	Company	Limited Liability Partnership
Act	Indian Companies Act 2013	Limited Liability Act 2008
Meetings	A company is required to hold minimum of 4 board meetings during a	No such meetings required to conduct.

	financial year, thereby holding 120 days gap between 2 meetings wherein the general meeting of shareholders has to be conducted once a year mandatorily.	
Audit	Statutory audit is mandatory for a company	Statutory Audit is not required unless partner's contribution exceeds 25 lakhs and annual turnover exceeds 40 lakhs.
Transferability of Shares	In a Company, shares can be transferred easily. The Article of Association can only restrict it.	In an LLP, shares can be transferred by executing an agreement before a notary public
Cost of Formation	The Statutory minimum fee for incorporation of the Company is Relatively High.	The cost of the formation of LLP and its statutory filing fees is comparatively lesser than the cost of the formation of the Company.
Voting Rights	In a Company, the voting rights of the members are determined in accordance with the total number of shares held by each member.	In an LLP, the voting rights are decided as per the terms of the LLP Agreement.
Capital	No mandatory requirement for capital.	Company limited by share must have a minimum authorized and paid-up share capital. Share capital has to be divided into shares.

Conversion of Private Limited Company into LLP:

Section 56, (Schedule III and IV) LLP Act- 2008 a Private Limited Company or Unlisted Public Company may convert into a Limited Liability Partnership in accordance with the provisions of Section 56 and the Third and Fourth Schedule of LLP Act, 2008.

Limited Liability Partnerships are popular due to the multiple advantages as they are a mixture of both Company and Partnership firms. LLP offers the benefits of a Company and the flexibility of Partnerships.

The Limited Liability Partnership is a legal entity where the liability of the partners is limited. The LLPs can enter into contracts and holding properties in their own name.

This article covers the concept of conversion of Private Limited Companies into an LLP. Each shareholder of the private limited company must submit a statement and consent for the conversion of a company into LLP along with the application.

Process for Conversion of Company into LLP

- A Board Meeting shall be convened and pass Board Resolution for such intended conversion of the company into LLP.
- A written consent of all the shareholders for conversion of Company into LLP is mandatory.
- Filing of an application for name availability with the Registrar of Company by attaching the Board Resolution and proposed object clause with the name availability application.
- Once the name is approved, it is required for actual execution of all required documents like consent, subscriber sheet etc. and file form and form 18 with the Registrar of Companies (ROC).

10.10 SUMMARY

LLP is a hybrid type of concern. It is a good mixture of features of Partnership and Company. An approach or an idea of the Limited Liability Partnership (LLP) come to India in the year 2008.

PROCEDURE FOR INCORPORATION OF LLP

Identification of Designated Partners: Acquire Digital Signature: **Reservation of Name of LLP ,Submission of Incorporation Document:**

Features of LLP: Body Corporate, Cost of Formation: Liability: Maintenance of Books of Accounts: Agreement: Change in LLP Agreement, Designated Partners:

DESIGNATED PARTNERS IN LIMITED LIABILITY PARTNERSHIP FIRM (LLP) Essential clauses of the Limited Liability Agreement (LLP): Definition/interpretation clause, Names of designated partners. Lawful business clause, Registered Office clause, Capital & contribution clause, In case of conversion of partnership/Company into LLP appropriate clauses for such takeover,

ADVANTAGES AND DISADVANTAGES OF LLP:- No requirement of minimum contribution, No limit on owners of the business, Registration Cost is low. No requirement of compulsory Audit, Partners are not liable for an act of other partners: Easy to dissolve or wind-up: Flexibility , Penalty for Non-Compliance

10.11 QUESTIONS

1. Explain the Nature of LLP
2. What are the advantages and disadvantages of LLP
3. Who is designated partner in LLP.? Explain his role for conducting a partnership business.
4. Explain the procedure for incorporation of LLP
5. Distinguish between Company and LLP
6. State the extent and limitation of liability of LLP and its partners.
7. Write a short note:

a. Concept of LLP

b. Designated partners

c. Whistle Blowing

d. Incorporation of LLP

e. Conversion into LLP

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11

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNERS IN LLP

DISSOLUTION AND WINDING UP OF THE LIMITED LIABILITY PARTNERSHIP

Unit Structure

11.0 Objective

11.1 Introduction

11.2 Liability of Partners

11.3 Winding Up of LLP

11.4 Whistle Blowing [Section 31]:

11.5 Summary

11. 6 Questions

11.0 OBJECTIVE

After studying the unit students will be able to:

- Understand the extent and limitation of liability of partners
- Understand the liability of Partnership.
- Understand the liability of partners under LLP
- Understand the concept of Whistle Blowing.
- Understand the winding-up process of LLP.

11.1 INTRODUCTION

A Limited Liability Partnership (LLP) is a body corporate and the liabilities of the partners are limited, the liability of the partners only enhanced to their professional roles. LLP is a hybrid of a company and a partnership; this structure has been looked upon with increasing approval by mushrooming entrepreneurs who wish to skip the burdensome regulatory compliance requirements of companies. Secondly, they do not wish to be held personally liable for the misconduct of any partner, as per the Partnership Deed.

11.2 LIABILITY OF PARTNERS

Section 26-31 of the Limited Liability Partnership Act lay down the extent and limitation of the partners' liability.

As per the provisions made under this section, every partner in an LLP is an agent for the purposes of partnership business but is not the agent of any other partner like they used to be under Indian Partnership Act 1932 .

This section differentiates the liability of one partner from that of other partners. But being a body corporate, every act of partner would bind the LLP. It would not bind a particular partner in his individual capacity.

[1]Indian Partnership Act, also confers the role of an agent for the purpose of partnership to its partners. They too are made agents of the partnership business and not the other partners. In case of any discrepancy, the liability arising from the act of the partner shall be discharged, firstly from the firm's assets, and if that falls short then from the erring partner's individual assets.

11.3 WINDING UP OF LLP

Section 27 – Extent of Liability of Limited Liability Partnership:

This section described the limitation of the liabilities arouse by the partners or the LLP as a whole. They can be classified as below:

1. Liability of person not authorised to act**.**
2. Liability of LLP if partner has incurred liability due to wrongful act or omission.
3. Obligations of LLP as an entity.

1. Liability of Person not Authorised to Act:

This section provides the LLP is not bound by anything done by a partner in his dealings with a person if the partner has no authority to do so, and the person, he is dealing with aware that the particular partner has no authority to act so or does not know him to be a partner.

2. Liability of LLP if Partner has Incurred Liability due to Wrongful Act or Omission

This section subject to conditions, provides the LLP responsible if the liability arose by the partners of a third person by his wrongful act in course of the business and in exercise of his authority. The oppressed party may proceed in a suit against the partner and the LLP, holding them jointly and severally liable, but the proceeding cannot be initiated against them singly.

3. Obligation of LLP as a Whole

Provision has been made under Section 27(3) that any liability incurred by the LLP shall be its liability as a whole and cannot confer individually upon the partners. The LLP being a body corporate is eligible to enter into

[1] ipleaders.in/liability-of-partners/

contracts and if such contract is diluted, the liability is confirmed on the LLP as a whole acting through its agents, partners etc.

Extent of Liability of Partners:

Section 28 of LLP lays down that a partner shall not be obligated as per Section 27(3) in his individual capacity, because he's a partner in the LLP. However, he cannot depart from their responsibility for any wrongful act done in his individual capacity, outside the limit of his lawful authority. Further can be stated that, the LLP and the partner are jointly and severally liable under section 27(2), as the wrongful act done by partner was originally accredited by the LLP, making it responsible for any damage or loss caused.

The LLP can be held responsible for any loss suffered by the other party and both LLP and the partner can be held liable for any wrongful act done by partner in the course of business.

Holding Out [Section 29]:

This section laid down the provisions for principle of holding out. Any person who holds out as a partner of an LLP shall be held liable to the person who on faith of such representation gives credit to the LLP.

This means that the partner holding out shall be bound by estoppel and prevented from denying the liability incurred on account of any financial aid received by him or the LLP. This leads to the LLP bound to the third party to the extent of the financial benefits obtained by them.

Unlimited Liability in Case of Fraud [Section 30]:

This section acts as an exception to the principle of limited liability since it imposes unlimited liability on its partners and the LLP if ….

- **LLP intends to defraud its creditors**
- **LLP is entered into to carry on fraudulent activities**.

In this case the liability of all the partners is unlimited for all or any other debts of the LLP. But even in such an event the personal assets of the partners are not to be drained to recover such other debts, but the liability extends only to the extent of the fraudulent activity carried out. The LLP can depart from the liability if it establishes that the fraud was carried out by the partners without the knowledge of LLP or LLP is not aware of such fraudulent acts. This would exempt the LLP of all liability and only the partner will be held liable for the fraudulent activity.

Any such activity being carried out shall be punishable with imprisonment for two years and a fine. If any damage caused due to such fraudulent activity it is the responsibility of the LLP and the partner to reimburse the third party.

11.4 WHISTLE BLOWING [SECTION 31]

[2]In general sense whistle Blowing means exposing a wrong doing with an intention to bring this wrong act to an end. This section provides alleviate from the imposition of fine or imprisonment on the partner if such partner decides to come forward and contribute valuable information about the fraud committed against which the investigation is being conducted leading to conviction of the guilty party. No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment. This section, therefore tries to bring forth the fraudulent activity as expeditiously as possible.

11.5 SUMMARY

LLP is a hybrid type of concern. It is a good mixture of features of Partnership and Company. An approach or an idea of the Limited Liability Partnership (LLP) come to India in the year 2008.

Extent of Liability of Limited Liability Partnership: Liability of person not authorised to act**.** Liability of LLP if partner has incurred liability due to wrongful act or omission. Obligations of LLP as an entity. Liability of Person not Authorised to Act ,Liability of LLP if Partner has Incurred Liability due to Wrongful Act or Omission, Obligation of LLP as a Whole**.**

11.6 QUESTIONS

1. State and Explain the extent of liability of partnership in LLP
2. Write a Short Note on Following:

a. Whistle Blowing

b. Holding out

c. Unlimited Liability in the case of Fraud.

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[2] ipleaders.in/liability-of-partners/