

Mode Of Effecting Registration

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Mode of Effecting Registration

It is not essential that the firm should be registered from the very beginning. When the partners decide to get the firm registered, as per the provisions of **Section 58** of the Partnership Act, they have to file the statement in the prescribed form.

Mode of Effecting Registration

The statement must be accompanied by the prescribed fee stating

- (i) the firm's name,
- (ii) the principal place of business,
- (iii) the names of its other places of business,
- (iv) the date of joining of each partner,

Mode of Effecting Registration

- (v) the names in full and the permanent addresses of the partners,
- (vi) the duration of the firm.

The aforesaid statement is to be signed by all the partners or by their agents specially authorized in this behalf. Each partner so signing it shall also verify it in the manner prescribed.

When the Registration is complete?

When the Registration is satisfied that the provisions of **Section 58** have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration.

When the Registration is complete?(Cont..)

However, registration is deemed to be complete as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particular of the partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

Consequences of Non-Registration

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under **Section 69**, non-registration of partnership gives rise to a number of disabilities.

Consequences of Non-Registration(Cont..)

Although registration of firms is not compulsory, yet the consequences of disabilities of non-registration have a persuasive pressure for their registration.

1. The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

Consequences of Non-Registration(Cont..)

2. If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set off, of the suit be valued for more than Rs.100 or pursue other proceedings to enforce the rights arising from any contract.

Consequences of Non-Registration(Cont..)

3. A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realisation of his share in the firm's property where the firm is dissolved.

Consequences of Non-Registration(Cont..)

Non-registration of a firm does not affect the right of third parties against the firm or its partners, or the power of an Official Assigns, Receiver of Court under the Presidency-Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920 to realise the property of an insolvent partner.

Dissolution of the firm(Section39-47)

Dissolution of the firm means the discontinuation of the jural relations existing between **all** the partners of the firm. But when only one of the partner retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership between such a partner and other is dissolved, but the rest may continue

Dissolution of a firm may take place (Sections 39-44)

- (a)** As a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b)** by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c)** by the business of the firm becoming unlawful (i.e., compulsory dissolution);

Dissolution of a firm may take place (Sections 39-44))Cont..)

- (d)** Subject to agreement between the parties, on the happening of certain contingencies, such as:
 - (i)** Efflux of time;
 - (ii)** Completion of the venture for which it was entered into;
 - (iii)** Death of a partner;
 - (iv)** Insolvency of a partner.

Dissolution of a firm may take place (Sections 39-44)(cont..)

In case of death, it is to be noted that a contrary agreement may be made by the partners only if their number exceeds two. If there are only two partners the only result of either's death will necessarily be the dissolution of the firm.

Dissolution of a firm may take place (Sections 39- 44)(Cont..)

(e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and

Dissolution of a firm may take place (Sections 39-44)(Cont..)

- (f) by intervention of court in case of
- (i) a partner becoming of unsound mind;
 - (ii) permanent incapacity of a partner to perform his duties as such;
 - (iii) misconduct of partner affecting the business;
 - (iv) willful or persistent breaches of agreement by a partner;

Dissolution of a firm may take place (Sections 39-44)(Cont..)

- (v) transfer or sale of the whole interest of a partner;
- (vi) improbability of the business being carried on save at a loss;
- (vii) the Court being satisfied on other equitable grounds that the firm should be dissolved.

Consequences of Dissolution (Section 45-52)

(a) Continuing liability until public notice: In spite of dissolution of the firm, partners continue to be liable for any act done by any of them, which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution.

Consequences of Dissolution

(Section 45-52)(Cont..)

Even where notice of dissolution has not been given, there will be no liability for subsequent acts of other partners in the case of:

- (i) the estate of a deceased partner:
- (ii) an insolvent partner, or
- (iii) a dormant partner, i.e., a partner, who was not known as a partner to the person dealing with the firm.

Consequences of Dissolution

(Section 45-52)(Cont..)

- (b) Rights to enforce winding up:** On a partnership being dissolved, any partner or his representative shall have right, against the others
- (i)** to have property of the firm applied in payments of the debts of the firm, and
 - (ii)** to have the surplus distributed amongst the partners or their representatives according to their respective rights.

Consequences of Dissolution (Section 45-52)(Cont..)

- (c)Extent of continuing authority of the partners after dissolution:** The authority of a partner to bind the firm and other mutual rights and obligations continue:
- (i)** so far as may be necessary to wind up the firm,
 - (ii)** to complete the unfinished transactions pending at the date of dissolution and no other.

Consequences of Dissolution (Section 45-52)(Cont..)

- (d) Settlement of the partnership accounts:** In settling the accounts after the dissolution of the firm the following rules should be observed according to **section 48**.
- (i)** Losses included deficiencies of capital are to be paid first out of profits then out of capital and lastly by the partners individually in the proportions in which they were entitled to share profits.

Consequences of Dissolution (Section 45-52)(Cont..)

The rules laid down in **Section 48**, just specified, as to what will be the mode of settlement of accounts in the usual course of business. But if the partners, by their agreement, express any different intention as to the mode in which losses will have to be borne eventually or the manner in which capital or advances will have to be paid to any partner, such an intention must be given effect to. However, any such agreement cannot affect the rights of the creditors of the firm.

Consequences of Dissolution (Section 45-52)(Cont..)

- (ii) The assets of the firm, included any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the third parties;
 - (b) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital and;

Consequences of Dissolution (Section 45-52)(Cont..)

(d) in distributing the residue, if any, among partners in the proportions in which they were entitled to share profits.

(iii) Where there are joint debts due from the firm and also separate debts due from any partner:

(a) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;

Consequences of Dissolution (Section 45-52)(Cont..)

(b) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm **(Section 49)**.

(e) Personal profits earned after dissolution (Section 50): where a firm is dissolved by the death of a partner and the surviving partners or the surviving partners along with the representatives of the deceased partner carry on business

Consequences of Dissolution (Section 45-52)(Cont..)

of the firm, any personal profits by them, before the firm is fully wound up, must be accounted for by them to other partners. Thus a lease expiring on the death of a partner, which is renewed by the surviving partners, before final winding up, belongs to the partnership.

(i) Return on premium of partnership's premature dissolution:

Consequences of Dissolution (Section 45-52)(Cont..)

According to Section 51, in the case of dissolution of partnership earlier than the period fixed for it, the partner paying the premium is entitled to the return of the premium of such part thereof as may be reasonable, regard being had to the terms of agreement and to the length of time during which he was a partner, except when the partnership is dissolved:

Consequences of Dissolution (Section 45-52)(Cont..)

- (a) by the death of one of the partners;
- (b) mainly due to the misconduct of the partner paying the premium.
- (c) pursuant to an agreement containing no provisions for the return of the premium or any part thereof.

Consequences of Dissolution (Section 45-52)(Cont..)

For example, X and Y become partners for 10 years; X pays Y a premium of Rs. 2,000. At the end of 8 years a quarrel arises between X and Y and a dissolution is declared. In such a case, X will be entitled to a return of such amount of the premium from Y as may be deemed reasonable. What is reasonable will depend upon the circumstances of each case.

Consequences of Dissolution (Section 45-52)(Cont..)

The partners paying the premium gets a proportionate part of the premium where the partnership is dissolved:

(a.) (i) Without the fault of either; or (ii) owing to the fault of both; or (iii) on account of the fault of the partner receiving the premium, or (iv) due to the insolvency of the partner receiving the premium, where the partner paying the premium was unaware of the other's embarrassing circumstances at the time of entering into the partnership.

Consequences of Dissolution (Section 45-52)(Cont..)

(b) Rescission of partnership for fraud act.
(Section 52): A partnership agreement is a contract based on amount of confidence. In the case of fraud or misrepresentation practised by one partner or the other, the party misled has the right to resign the partnership agreement and is entitled to;

Consequences of Dissolution (Section 45-52)(Cont..)

(i) a lien on the surplus, after payment of firm's debts, for any sum paid by him for purchase of a share in the firm or for any capital contributed by him: (ii) to rank as a credit of the firm in respect of any payment made by him towards firm's debts; and (iii) to an indemnity from the partners guilty of fraud or misrepresentation against all the debts and liabilities of the firm.

Consequences of Dissolution (Section 45-52)(Cont..)

Goodwill on dissolution (Section 55): What the purchaser of goodwill acquires

- (i) the right to carry on the same business under the old name and
- (ii) to represent himself to the customers of the old firms as the successor in the business of the old firm.

Consequences of Dissolution (Section 45-52)(Cont..)

The partners selling the goodwill of a firm can:

- (i)** carry on a similar business;
- (ii)** also complete with the business sold by them to purchase and
- (iii)** advertise their business in such manner as they deem fit, but, subject to an agreement to the contrary, they cannot use the firm name, represent themselves as carrying on the old business, and solicit the customers of the old firm.

Multiple Choice Question (MCQ'S)

1. In the absence of agreement to the contrary all partners are:

- (a) Not entitled to share profits
- (b) Entitled to share in capital ration.
- (c) Entitled to share in proportion to their ages.
- (d) Entitled to share profits equally.

Multiple Choice Question (MCQ'S)

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Multiple Choice Question (MCQ'S)

2. A minor is:

- (a) A partner of a firm
- (b) Representative of the firm
- (c) Entitled to carry on the business of the firm
- (d) Entitled to the benefits of the firm

Multiple Choice Question (MCQ'S)

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Multiple Choice Question (MCQ'S)

3. A partnership at will is one:

- (a) Which does not have any deed
- (b) Which does not have any partner
- (c) Which does not provide for long the business will continue
- (d) Which cannot be dissolved.

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Multiple Choice Question (MCQ'S)

4. Active partner is one who:

- (a) Takes part in the business of the firm
- (b) Actively participates in co-curricular activities
- (c) Actively shares the profits
- (d) Makes a show of authority.

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Multiple Choice Question (MCQ'S)

5. Each of the Partner is _____

- (a) Principals as well agents
- (b) Only Agents of the firm
- (c) Only Representatives of the firm
- (d) Only Co-partners of the firm

Multiple Choice Question (MCQ'S)

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(c) Only Representatives of the firm

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Multiple Choice Question (MCQ'S)

6. Every partner has the right to:

- (a) Take part in the business of the firm
- (b) To share exclusive profits
- (c) To use the property of the firm for personal profits
- (d) Pay taxes

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Multiple Choice Question (MCQ'S)

7. A partner can be expelled if

- (a) Such expulsion is in good faith
- (b) The majority of the partner agree on such expulsion
- (c) The expelled partner is given an opportunity to start a business competing with that of the firm.
- (d) Compensation is paid

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Multiple Choice Question (MCQ'S)

8. Death of partner has the effect of

- (a) Dissolving the firm
- (b) Result in continuance of the business of the firm
- (c) His heirs joining the firm
- (d) Computation of profits upto the date of death

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Multiple Choice Question (MCQ'S)

9. Which of the following statements, about the registration of firm, is not true:

- (a) It must be done at the time of its formation.
- (b) It may be done at the time of its formation.
- (c) It may be done before filing a suit against third party.
- (d) It may be done at any time after its formation.

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Multiple Choice Question (MCQ'S)

10. As per the accepted view, the registration of the firm is considered complete when.

- (a) Complete application for registration is filed with the Registrar.
- (b) Registrar files the statement and makes entries in the Registrar.
- (c) Registrar gives notice of registration to all partners.
- (d) Court records the statement and certifies the entries in Register of Firms.

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(b) Registrar files the statement and makes entries in the Registrar.

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(d) Court records the statement and certifies the entries in Register of Firms.

Multiple Choice Question (MCQ'S)

11. Which of the following is not disability of an unregistered firm?

- (a) It cannot file a suit against parties
- (b) Its partners cannot file a suit against a firm.
- (c) It cannot claim a set-off exceeding Rs. 100.
- (d) It cannot be sued by a third party.

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Multiple Choice Question (MCQ'S)

12.Which of the following acts are not included in the implied authority of a partner?

(a) To buy or sell goods on accounts of partners.

(b) To borrow money for the purpose of firm.

(c) To enter into partnership on behalf of firm.

(d) To engage a lawyer to defend actions against firm.

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Multiple Choice Question (MCQ'S)

13. After retirement from firm, which of the following partners is not liable by holding out, even if the public notice of retirement is not given?

- (a) Active partner
- (b) Sleeping partner
- (c) Representative of deceased partner
- (d) Both (b) and (c)

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Multiple Choice Question (MCQ'S)

14. The reconstitution of the firm takes place in case

- (a) Admission of a partner
- (b) Retirement of a partner
- (c) Expulsion or death of partner
- (d) All of the above.

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Multiple Choice Question (MCQ'S)

15. A partner may retire from an existing firm

- (a) with consent of all partners
- (b) as per express agreement
- (c) by written notice in partnership at will
- (d) all of the above.

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Multiple Choice Question (MCQ'S)

16.A partnership firm is compulsorily dissolved where

- (a) All partners have become insolvent
- (b) Firm's business has become unlawful
- (c) The fixed term has expired
- (d) In case (a) and (b) only.

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Multiple Choice Question (MCQ'S)

17. On which of the following grounds, a partner may apply to the court for dissolution of the firm?

- (a) Insanity of a partner
- (b) Misconduct of a partner
- (c) Perpetual losses in business
- (d) All of the above.

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Multiple Choice Question (MCQ'S)

18. Suppose you have entered into a partnership agreement with me and the partnership deed provides neither for the duration nor for the determination of our partnership. What is the technical expression for this kind of partnership?

- (a) Partnership for a fixed term.
- (b) Partnership at will
- (c) Particular Partnership.
- (d) Any of these.

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Multiple Choice Question (MCQ'S)

19.X agrees with Y to carry passengers by taxi from Delhi to Gurgaon on the following terms, namely, Y is to pay Rs. 100 per annum, and X and Y are to share the costs of repairing and replacement of the cars, and to divide equally between them the proceeds of fares received from passengers. Chose the correct alternative.

- (a) X and Y are partners
- (b) X and Y are cab owners
- (c) X and Y are co-owners
- (d) None of the above

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Multiple Choice Question (MCQ'S)

20.X and Y purchase 10,000 bags of cement, which they agree to sell for their joint account. The relation between X and Y is

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Multiple Choice Question (MCQ'S)

21.X agrees with Y who is goldsmith to buy and furnish gold to Y, to be worked up by him and sold, and that they shall shares in the resulting profit or loss. The contract between X and Y is that of

- (a) Partnership
- (b) Associate of goldsmith
- (c) Contract for labour work
- (d) Contract of Sale

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THE END

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