

Volume III

The Indian Partnership Act, 1932

The Limited Liability Partnership Act, 2008

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Applicable for:

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THE INDIAN PARTNERSHIP ACT, 1932

5.1. General Nature of a Partnership

Partnership:

Relation between persons

To do business

Agreed to share profits

By All or any one them acting for all

Note:

Partners collectively - "firm"

Name - "firm name"

Elements

☞ Association of two or more Persons

Note:

Persons includes Legal persons

Minors can be partners (with the consent of all the partners)

☞ Agreement - (Partnership Agreement / Deed)

Note: Nature

Voluntary | Contractual

Express (Oral or Writing) Implied

☞ Business

Note:

1. Existence – Trade / Occupation / Profession

2. Motive – To acquire gains

☞ Agreement to share profit - Profit – Sharing Ratio

Note: No entitlement for the whole profit, but Loss can be in whole

☞ Business carried on by all or any of the partners

Note:

A binding contract exists

Mutual Agency- Principal as well as an agent

TEST of partnership: "No mutual agency, No partnership"

Case Law: KD Kamath & Co – The two essential conditions are:

(1) An agreement to share the profits as well as the losses of business

(2) The business as per the act

Exclusive power and control vesting in one partner does not destruct the theory of partnership

Examples:

1. No business, No partners – Co-owners sharing rent from a piece of land
2. Not a partnership: Non-economic purposes - charitable institution | club

Note: Applicable for a joint stock company

3. Partners – X and Y buy certain bales of cotton which they agree to sell on their joint account and to share the profits equally

True Test of Partnership

1. **Agreement** – By agreement and not by status

Note: Non – Applicability

The members of a HUF

Burmese Buddhist husband and wife

2. **Sharing of profit** (gross returns)

– A prima facie evidence, not conclusive evidence

Note: NOT a partner

- 🕒 Lender of money lending Money
- 🕒 Servant / Agent receiving Remuneration
- 🕒 Widow / child of a deceased partner receiving Annuity
- 🕒 Previous / part owner receiving consideration for the sale of the goodwill / share

3. **Agency** – Mutual Agency

Case Law: Santiranjn Das Gupta Vs. Dasyran Murzamull (SC) – No partnership on the following

No records

No accounts for inspection

No bank Account

No written intimation conveyed to the Deputy Director of Procurement w.r.t the newly created partnership

Comparison with other forms of organisation

Partnership vs Joint Stock Company		
Feature	Partnership	Joint Stock company
Legal Status	No	Yes - Salomon vs Salomon
Agency	Mutual Agency	No such
Distribution of profits	Profit – sharing ratio	Declared Dividend
Extent of liability	Unlimited	(Un)Limited by shares / Guarantee
Property	Joint estate	Separate property
Transfer of shares	Consent required	AOA and Stock Exchange
Management	By an express agreement	Separate Management
Registration	Not Compulsory	Incorporated
Winding up	Upon agreement	Wind – up / Strike – off
Number of membership	Section 464, The Companies Act, 2013 - - Not more than 100 in any association Companies(Miscellaneous)Rules, 2014 - Restricts the present limit to 50	Private company - 2 to 200 Public company - 7 to unlimited OPC – ONLY 1 person
Duration of existence	Death / Retirement / Insolvency	Perpetual succession

Partnership vs Club		
Feature	Partnership	Club
Definition	Profit making Business	Non – Profit making promoting beneficial purposes improvement of health recreation for the members.
Relationship	Partners – Agent	Members – Not an agent
Interest in the property	Yes	No
Dissolution	On Change of partners	Not on Change of members

Partnership vs Hindu Undivided Family		
Feature	Partnership	Joint Hindu Family
Mode of creation	By an agreement.	By status birth
Death of a member	Dissolution	No dissolution
Management	Equal entitlement of the partners	Vests with the karta - the governing male / female member
Authority to bind	Every partner	The Karta or the manager
Liability	Unlimited Liability	Karta – unlimited Other coparcener – to their extent of their share
Calling for accounts on closure	On dissolution	No entitlement
Governing Law	Indian Partnership act, 1932	The Hindu Law
Minor's capacity	Incompetent Benefits with the consent of all the partners	By the incidence of birth
Continuity	Dissolved by death / insolvency of a partner	Continuity till it's division Not by death
Number of Members	Not to exceed 50	Unlimited
Share in the business	By agreement	Fluctuating on births and deaths.

Partnership vs Co-Ownership / joint ownership, i.e. the relation which subsists between persons who own property jointly or in common		
Basis of difference	Partnership	Co-ownership
Formation	Contract – Express / Implied.	Agreement Operation of law – inheritance
Implied agency	Mutual agency	Not such
Nature of interest	Profit Sharing ratio	Not such

Transfer of interest	Consent of other partners required	No consent of other co-owners required
-----------------------------	------------------------------------	--

Partnership vs Association		
Basis of difference	Partnership	Association
Meaning	Profit Business	Not for profit Social cause
Examples	Sahasri Singar Academy	Member of charitable society / religious association / an improvement scheme / building corporation / a mutual insurance society / a trade protection association.

Kinds of Partnerships

1. Partnership at will

No agreed fixed period

No provision as to the determine the partnership

Notice of dissolution is required to be given by the intent partner to other partners

2. Partnership for a fixed period

Fixed (agreed) period, ends after that

If continues, then partnership at will

3. Particular Partnership

Prosecution of a single adventure or continuous business (subject to), ends after that

Liability – extends to that particular adventure only

4. General Partnership – General business

Partnership Deed:

Document with Terms and conditions defining relationship between the partners to each other

Note:

No particular formalities in drafting the agreement

Written (desirable to avoid future disputes) / verbal form

Applicable Acts – Stamp Act and Registration Act (for immovable property alone)

Contents of Partnership deed (inclusions / deletions may be made)

- | | |
|--|---|
| 1. Firm's Name | 2. Partner's Name |
| 3. Nature and place of the business | 4. Commencement date |
| 5. Duration of the firm | 6. Profit – Sharing ratio |
| 7. Partner's Capital contribution | 8. Admission and Retirement |
| 9. Rates of interest - capital, Drawings and loans | 10. Settlement in the case of dissolution |
| 11. Provisions for salaries or commissions | 12. Expulsion – Breach of duty or fraud |

Types of Partners

1. Active / Actual / Ostensible Partner

Partner by agreement

Active in business

Mutual Agency

Retirement by public notice

2. Sleeping / Dormant Partner

Partner by agreement

Not active in the business

Shares profits and Losses

Liable to the third party for all the acts

Retirement – No public Notice required

3. Nominal Partner

Lends his name to the firm

No real interest

Not Entitled to profit

Not active in the business

Liable to third parties

4. Partners in Profit only

Entitlement of profit only and no losses

Liable to third parties (all the acts of profits only)

5. Incoming Partners

Consent of all the partners

Not liable to the prior acts

6. Outgoing Partners

Leaves the firm and the others continue the business

Liable to third parties, until a public notice is given (If public notice is not given, he is a partner by Estoppel)

7. Partner by holding out / Partnership by estoppel

Represents himself / permits himself to be represented as a partner in a firm (when in fact he is not)

He is liable in the firm to anyone who on the faith of such representation has given credit to the firm

5.2. Relations of Partners

I Relation of Partners to one another

1. General Duties of partners

Utmost good faith

Greatest common advantage

Just and faithful to each other

Render full accounts & information of all things affecting the partner / his legal representative

Note: Prima facie – The partner holding the accounts is the proper person to explain and give full information about them.

Example: In a transaction between partners for the sale and purchase of a share in the business, if one of them is better acquainted with the accounts than the other, it is his duty to disclose all material facts.

2. Indemnify the loss caused by Fraud / Misconduct

Note: To throw the whole consequence, the amount so brought in should be divided between the partners

3. Determination by contract

- ☞ Contract – Express / Implied | varied with the consent of all the parties / course of dealing
- ☞ Agreements in restraint of trade: A partner shall not carry on the business other than that of the firm while he is a partner

Note: The agreement need not be manifested in any particular form

4. The conduct of the business (Subject to contract)

- ☞ Partner's right
 - Access / inspect / copy any of the books of the firm
 - conduct of the business
 - Includes Sleeping & Dormant partner
- ☞ To attend diligently in his duties
- ☞ No change in the nature of the business without the consent of all the parties
- ☞ Difference may be decided by the majority (acts in good faith) of the partners and every partner has the right to express his opinion
- ☞ Management powers are co-extensive

5. Mutual Rights and liabilities (Subject to contract between the partners)

- ☞ No remuneration for taking part in the conduct of the business, unless customary or by contract

- ☞ Equal profit and Loss sharing ratio:
Presumption of Equality or by Agreement
Shares of profits and capital contribution need not be proportionate
- ☞ Interest on capital is payable only out of profits
Note:
(i) Express Agreement
(ii) Trade / Custom
(iii) Statutory provision
- ☞ Any payment of advance beyond the amount of capital is entitled to 6% p.a. interest
Note: Interest on Capital Account is till dissolution, whereas the interest on advances is till the date of payment
- ☞ Partners are Indemnified
for the payments made and liabilities incurred in the ordinary and proper business
Emergency act to protect the firm from loss in ordinary prudence
- ☞ Firm is Indemnified : Loss | wilful neglect | business of the firm

II Property

Property acquired / purchased for the business

Includes rights & interest therein

Goodwill of the business

Note:

- ☞ Titled as - Partnership Property / Partnership Assets
Common Stock / Joint Stock / Joint Estate
- ☞ Deemed Property, if acquired with firm's money
- ☞ Use of partner's property is not firm's property, unless by agreement
- ☞ Apply exclusively for business
- ☞ Partner's right to apply all the assets for the business

III Personal Profit Earned by Partners (subject to)

Account and pay the profits or transactions made in the property in connection with the business of same nature

Example: A is a wholesale grocer and a partner in the business of refining of sugar. He was entrusted with the work of selection and purchase of sugar. A knowing the price fluctuations in the market, sold the sugar (purchased at a low price for his individual business, which he had in stock) to the firm without informing his partners.

It was held that A was bound to account to the firm for the profit so made by him. (subject to a contract between partners)

IV Rights and duties of partners after a change in the firm

- ☞ Remains the same (subject to)
- ☞ Incoming partner
- ☞ Outgoing partner (Death / Retirement)
- ☞ New business
- ☞ Partnership at will

V Relation of partners to third parties

1. Partner as agent: (Subject)

Note: Mutual agency - A partner is both principal and an agent

Distinction: A mere agent has no interest

Not – applicability: The transactions / dealings between the partners other than firm's business

2. Implied Authority as agent

(Subject) ordinary course of business - the act of a partner binds the firm

Not Implied:

Transfer or Acquire immovable property

Enter into partnership

Withdraw a suit or proceedings filed on behalf of the firm

Submit a dispute relating to the business of the firm to arbitration

Admit any liability in a suit or proceedings against the firm

Open a bank account on behalf of the firm in his own name

Compromise / relinquish any claim or portion of a claim by the firm;

Note:

☞ Mode of doing act to bind firm -

Normal / usual business of the firm

Usual conduct / circumstances

Express / implied in the name of the firm

☞ Implied Authority - differs in different kinds of a business

☞ The acts which are beyond the implied authority of the partners.

Example: X, a partner in a firm of solicitors, borrows money and executes a promissory note in the name of firm without authority. The other partners are not liable on the note, as it is not part of the ordinary business of a solicitor to draw, accept, or endorse negotiable instruments, however it may be usual for one partner of firm of bankers to draw, accept or endorse a bill of exchange on behalf of the firm.

Note: But if of General commercial nature:

pledge / sell - partnership property | buy goods on account of the firm | borrow money / contract debts / pay debts on account of the partnership | draw, make, sign, endorse, transfer, negotiate and procure to be discounted, promissory notes, bills of exchange, cheques and other negotiable papers in the name and an account of the firm

3. Extension and Restriction of Partners' Implied Authority by contract between the partners

Unless the person with whom he is dealing knows of the restriction / does not know / believe that partner to be a partner.

Note: Consent of all the partners is required

Example: A, a partner, borrows from B ₹1,000 in the name of the firm but in excess of his authority, and utilizes the same in paying off the debts of the firm.

Facts: The firm has contracted debts suggests that it is a trading firm - The implied authority of A to borrow money for the business of the firm.

Status: This implied authority may be restricted by an agreement between him and other partners.

Case: If B is unaware of this restriction imposed on A, the firm will be liable to repay the money to B. On the contrary B's awareness as to this restriction will absolve the firm of its liability to repay the amount to B.

4. Partner's authority in an emergency

Purpose – To protect the firm from loss in ordinary prudence

Binding effect - binds the firm

VI Effect of Admission by a Partner

Admission or Representation made is evidence against the firm, if in ordinary course of business

Example: X and Y are partners in a firm dealing in spare parts of different brands of motorcycle bikes. Z purchases a spare part for his Yamaha motorcycle after being told by X that the spare part is suitable for his motorcycle. Y is ignorant about this transaction. The spare part proves to be unsuitable for the motorcycle and it is damaged. X and Y both are responsible to Z for his loss.

VII Effect of Notice to Acting Partner

Notice to the firm is the notice given to a partner who habitually acts in the business.

Exception – Fraud committed by him or with the consent of the partners

Note:

1. Notice to one is equivalent to the notice to the rest of the partners, just as notice to an agent is notice to his principal.
2. Notice – Actual, not constructive
3. To be received by a working partner, not by sleeping partner.

Examples:

1. P, Q and R are partners in a business for purchase and sale of second hand goods. R purchases a second hand car on behalf of the firm from S. In the course of dealings with S, he comes to know that the car is a stolen one and it actually belongs to X. P and Q are ignorant about it. All the partners are liable to X, the real owner.
2. A, a partner who actively participates in the management of the business of the firm, bought for his firm, certain goods, while he knew of a particular defect in the goods. His knowledge as regards the defect, ordinarily, would be construed as the knowledge of the firm, though the other partners in fact were not aware of the defect. But because A had, in league with his seller, conspired to conceal the defect from the other partners, the rule would be entitled to reject the goods. Upon detection by them of the defect.

VIII Liability to Third Parties

1. Partners (while he is a partner) are jointly and severally liable for acts of the firm

Note:

Express / Implied Authority

Act includes omission

Example: Certain persons were found to have been partners in a firm when the acts constituting an infringement of a trademark by the firm took place, it was held that they were liable for damages arising out of the alleged infringement, it being immaterial that the damages arose after the dissolution of the firm.

2. Firm's liability for wrongful acts of a partner on

☞ Any loss or injury caused to the third party

☞ Penalty incurred with or without the authority of the partner for wrongful act / omission

Note:

No question of liability to other partners even if the acts are un - authorised or wrongful or caused due to negligence

Example: One of the two partners in coal mine acted as a manager was guilty of personal negligence in omitting to have the shaft of the mine properly fenced. As a result thereof, an injury was caused to a workman. The other partner was also held responsible for the same.

3. Firm's liability on misapplication by partners

Where-

Misapplication of money or property received from a third party by a partner having apparent authority or by the firm and in the custody of the firm

Note:

1. Two categories of distinction of misapplication of money by partners

No necessity that the money should have actually come into the firm

The money has come into the firm but misapplied by the partners.

2. Firm is liable in both the cases

3. Not with apparent authority - The receipt of money is not the receipt by the firm and the other partners are not liable, unless the money received comes into their possession or control.

Example: A, B, and C are partners of a place for car parking, P stands his car in the parking place but A sold out the car to a stranger. Here, the firm is liable for the acts of A.

IX Rights of Transferee of a partner's interest

1. Absolute / Mortgage / Charge on such interest –

☞ To receive share in profits

☞ No interference in the conduct of business, to require accounts or to inspect the books of the firm

2. Dissolves / Ceases –

To receive the share of the assets of the firm to an account as from the date of the dissolution.

Note:

1. Interest - share of profits and assets

Partner's interest is a transferable property (as an existing interest / assigned as tangible property), but the partnership relationship is based on mutual confidence.

2. The transferee cannot challenge the accounts / enjoy the same rights and privileges as the original partner (unless)

X Minors Admitted to the Benefits of Partnership

1. Admission – Consent of all the partners is required

2. Right –

Share of the property and profits

Access, inspect or copy the accounts of the firm

3. Liable – Minor's share is liable, but not personally

4. Capacity to Sue – Cannot sue the partners

Share is determined by valuation as per section 48

Note: Court may determine the amount of share along with the other partners

On attaining majority - WEL of 6 months / obtaining knowledge give public notice on election of partner or not (Deemed partner, if notice not provided within 6 months)

No knowledge of admission - Burden of proof lies on the persons asserting that fact until a particular date after the expiry of six months of his attaining majority

Effect on becoming a partner

- Right and Liabilities – continues with personally liability
- Liable to third parties
- Entitlement of share in property / profits of firm as before

Effect on not becoming a partner

- Rights and Liabilities – till the notice
- Non liability of his share
- Not to sue the partners (Section 30 (4))

9. Nothing in sub-sections (7) and (8) shall affect the provisions of section 28

Note:

Generally, Minor's contract is void and not merely voidable. But this section, gives a highlight on the nature of the contract.

XI Legal Consequences of Partner Coming in and Going Out

- Changes may occur due to
Admission | Retirement | Expulsion | Insolvency
- Changes leads to reconstitution

(i) Introduction of a Partner (Section 31):

Consent of all the existing partners is required

New partner is not liable for the earlier act

Note: Subject – contract and section 30

1. The new partner may agree to the old liability of the firm but with the consent of the creditor's in every case of the existing debt.
2. Mere agreement between the partners cannot create Novation. No creditor gets ipso facto right against the new partner.
3. Non-Applicability: The death of one of the partner on a two partner firm is automatically dissolved.

(ii) Retirement of a partner (Section 32):

1. Consent of all the other partners | Express agreement | Notice in case of partnership is at will
2. Discharge of liability – Third party | By Agreement and Reconstitution
3. Liability – continues till public notice

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

4. Notice - by the retired partner / by any partner of the reconstituted firm

Note:

1. A partner is said to retire when he ceases to be a member of the firm without bringing to an end the subsisting relations between the other members / the firm and third parties.
2. No dissolution of the firm
3. Case Laws: Vihnu Chandra Vs. Chandrika Prasad (Supreme Court) – The expression “if any partner wants to dissociate from the partnership business”, clearly indicates that in the event of retirement, the partnership business will not come to an end.

Example: Mere retirement of a partner, who was the tenant of the premises in which the partnership business was carried out, would not result in assignment of the tenancy rights in favour of the remaining partners even though the retiring partner ceases to have any right, title or interest in the business as such.

(iii) Expulsion of a partner (Section 33):

1. In good faith of powers | contract between the partners (majority)
2. Applicability of Section 32 (2),(3) and (4)

Note:

1. Must conditions - else null and void
2. Test of good faith: Interest of the partnership | served with notice | opportunity of being heard
3. No dissolution
4. Invalid expulsion- Not an end to the partnership even if the partnership is at will and it will be deemed to continue as before.

Example: A, B and C are partners in a Partnership firm. They were carrying their business successfully for the past several years. Spouses of A and B fought in ladies club on their personal issue and A's wife was hurt badly. A got angry on the incident and he convinced C to expel B from their partnership firm. B was expelled from partnership without any notice from A and C. Considering the provisions of Indian Partnership Act, 1932 state whether they can expel a partner from the firm?

Answer: A partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners. It is, thus, essential that:

- (i) the power of expulsion must have existed in a contract between the partners;
- (ii) the power has been exercised by a majority of the partners; and
- (iii) it has been exercised in good faith.

If all these conditions are not present, the expulsion is not deemed to be in bonafide interest of the business of the firm.

Thus, according to the test of good faith as required under Section 33(1), expulsion of Partner B is not valid.

(iv) Insolvency of a partner (Section 34):

1. Ceases – From the date of the order of adjudication is made (whether or not the firm is dissolved)
2. If not dissolved - the estate is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date of the order of adjudication.

Note:

1. Estate (of an insolvent) thereupon vests in the official
2. Effects of insolvency: From the Date of dissolution -

Not to continue as a partner | Ceases | Non – liability of the estate / firm | The partners may continue the firm without dissolution.

(v) Liability of Estate of deceased partner (Section 35):

No dissolution | Non – liability of the estate for the acts done after the death

No necessity for giving notice to the public / the persons having dealings with the firm

XII Rights of Outgoing Partner to Carry on Competing Business

(1) An outgoing partner may carry (and advertise) on business competing with that of the firm, but (subject) he may not,

- a) use the firm name,
- b) represent himself as carrying on the business of the firm or
- c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreement in restraint of trade:

(2) An agreement with valid and reasonable restrictions on not to carry on the business within a specified period or within specified local limits may be executed with his partners. (w.r.t. to section 27 of the Indian Contract Act, 1872)

Note: A similar rule applies to such an agreement of sale of firm's goodwill.

XIII Right of Outgoing Partner in Certain Cases to Share Subsequent Profits

Cease / death – continues the business, the surviving / continuing partners without any final settlement of accounts as between them

Entitlement to outgoing partner / his estate - share of property of the firm / interest @ 6% p.a. on the amount of his share in the property of the firm

But the entitlement exists only when the option given to the surviving / continuing partners (comply with the terms in all material respects) to purchase and if not opted by them.

Examples:

1. A, B and C are partners in a manufacture of machinery. A is entitled to three-eighths of the partnership property and profits. A becomes bankrupt whereas B and C continue the business without paying out A's share of the partnership assets or settling accounts with his estate. A's estate is entitled to three-eighths of the profits made in the business, from the date of his bankruptcy until the final liquidation of the partnership affairs.

2. A, B and C are partners. C retires after selling his share in the partnership firm. A and B fail to pay the value of the share to C as agreed to. The value of the share of C on the date of his retirement from the firm would be pure debt from the date on which he ceased to be a partner as per the agreement entered between the parties. C is entitled to recover the same with interest.

XIV Revocation of Continuing Guarantee (w.r.t future transactions) by Change in Firm

Change may occur due to death / retirement / admission

5.3. Registration of a Firm

Registration of Firms

Application for Registration:

🌀 Prescribed Application Form and fees by post / delivered to the concerned Registrar

🌀 Contents:

Firm: Name | Duration | Place – Principal or other place

Partner: Date of joining | Full Name | Permanent address

🌀 Verified and Signed by all the partners / their authorised agents

Prohibitions in the name

🌀 Names like Crown | Emperor | Empire | Imperial | King | Queen | Royal

🌀 Other words expressing or implying the sanction, approval or patronage of Government

🌀 Exception: SG by order in writing

Note:

1. Nature of Registration –

Indian Partnership Act – Optional / done at any time

English Law – Compulsory

2. Subsequent alteration w.r.t. place / constitution / others can be carried over

3. Registration can be done if the firm has filed a suit, but

Step 1: withdraw the suit | Step 2: Register | Step 3: File a fresh suit

Certificate of Registration

🌀 Routine duty of the Registrar to record and issue the certificate of registration

🌀 Register of Firms: Registers the firm's and partner's name

🌀 Deemed Registration – Delivery to the registrar with the complete application

🌀 Firm Includes the word registered

Consequences of Non-Registration - A persuasive pressure.

🌀 Cannot file a suit in a civil court by firm or other co-partners against third party

🌀 No relief to partners for set-off of claim

Note: Applicable to firm also for the value more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.

🌀 Aggrieved partner cannot bring legal action against other partner or the firm

Note: Exception – Dissolution of the firm or for the accounts and realization of his share in the firm's property

🌀 Third party can sue the firm / any partner

Exceptions: The following rights are affected:

1. The third party can sue the firm / partner
2. Partner's right to sue for dissolution / settlement of accounts for dissolved firm / realization of the property of the dissolved firm
3. The power of an official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. Right w.r.t. set off claim for less than ₹ 100
5. Right to suit and legal proceedings – By legal representatives / heirs | w.r.t. accounts and property

Example: A & Co is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration – The suit is maintainable even without notice to the registrar and fresh registration.

Case: In 2017, B and C had taken a new partner D and no fresh registration done – The suit is not maintainable as it is to be notified to the registrar.

Note:

“Person suing” means persons in the sense of individuals whose name appear in the register as partners and who must be all partners in the firm at the date of the suit.

5.4. Dissolution – Partnership and Firm

Dissolution: Discontinuance of the jural relation existing between all the partners of the firm.

Feature	Dissolution of Firm	Dissolution of Partnership
Means	the whole firm is dissolved	Particular partner retires / dies / becomes insolvent / insane goes, but the others may carry on the business
Continuation of business	Discontinued	Continues Reconstitutes
Winding up	Winds up Realization of assets and settlement of liabilities	Reconstitution Revaluation of assets and liabilities of the firm
By Order of court	Yes	No
Scope – Dissolution	Yes	May / may not
final closure of books	Yes	No

Modes of Dissolution of a firm

1. Voluntary dissolution (No interference of the court)

By agreement: Consent / by Contract (already made)

Contingent Event: (Subject to)

Expiry of fixed term | Completion of one or more adventure | Death / Insolvency of a partner

Compulsory dissolution:

Unlawful business in all the adventures, if more than one

By notice of partnership at will:

(1) Notice by intent partner to others

(2) the date of dissolution - the date in the notice / the date of communication of the notice

Example: A firm is carrying on the business of trading of chemicals X and Y, and a law is passed which bans on the trading of X alone. The business of the firm becomes unlawful w.r.t X only and to stop trading X only and need not dissolve

2. Dissolution by the court, may, at the suit of the partner

(a) Insanity / unsound minded

Suit by other partners / the next friend

Non Applicability:

Sleeping partner | Temporary sickness

(b) Permanent (physical disability / illness) incapacity

Not capable to perform his duties as a partner

Non Applicability: Suing partner

(c) Misconduct in the affairs of the business

Non Applicability: Suing partner

Note:

Partner's personal misconduct affects the business

Misconduct differs from business to business

(d) Persistent Breach of agreement:

Wilfully / Persistent relating to the management of the affairs or the conduct of its business

Impracticable for other partners to carry on

the business in partnership with him Embezzlement

Erroneous accounts

Holding more cash than allowed

Refusal to show accounts despite repeated request

(e) Transfer of (whole) interest in the firm to a third party

Allowed his share to be charged

Sold by the court, in the recovery of arrears of land revenue

(f) Continuous / perpetual losses: in the future also

(g) Just and equitable grounds on court's consideration

Deadlock in the management

Partners not in terms

Loss of substratum

Gambling by a partner on a stock exchange

Example: If one of the partners keeps erroneous accounts and omits to enter receipts or if there is continued quarrels between the partners or there is such a state of things that destroys the mutual confidence of partners, the court may order for dissolution of the firm.

Consequences of Dissolution: Rights and Liabilities

a) Liability for acts of partners done after dissolution (Section 45):

1. Liable to third parties (as if not dissolved) until public notice is given.

Not liable – Estate of a deceased partner | adjudicated as insolvent | Retiring partner (no knowledge of retirement)

2. Notices under sub-section (1) may be given by any partner.

Note:

1. Two fold objectives –

Protection to third parties who had no notice of prior dissolution and

Protection to partners (the estate of a deceased partner | an insolvent partner | Dormant partner), even if notice of dissolution is not given

Example: X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution. In such a case, Y also would be liable for the amount because no public notice was given.

2. Dormant partner - A partner, who was not known as a partner to the person dealing with the firm

(b) Right of partners (representatives) to have business wound up after dissolution (Section 46):

Applying the property of the firm in payment of the debts and liabilities of the firm

Distribution of surplus among the partners / representatives according to their rights

(c) Continuing authority of partners for purposes of winding up (Section 47):

Continuance of authority of each partner to bind the firm, and the other mutual rights and obligations of the partners so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution.

Non – liability for the acts of the adjudicated insolvent, but who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent is applicable

(d) Settlement of partnership account (Section 48):

(i) Losses (including deficiencies of capital) (in order)

First – Profits, Next – Capital and last - If necessary, the partners (proportion to share in profits) (ii) Assets (including any sums contributed by the partners to make up deficiencies of capital)

First - Debts of the firm to third parties, Second - Each partner rateably what is due to him from capital, Third - the residue to the partners (proportion to share in profits)

Note:

1. Settlement as per prescribed in partnership agreement

May give effect for different intention which will not affect the rights of the creditors of the firm.

Example: X and Y were partners sharing profits and losses equally and X died. On taking partnership accounts, it transpired that he contributed ₹6,60,000 to the capital of the firm and Y only ₹40,000. The assets amounted to ₹2,00,000. The deficiency (₹6,60,000 + ₹40,000 – ₹2,00,000 i.e ₹5,00,000) would have to be shared equally by Y and X's estate.

If the agreement, provides that on dissolution the surplus assets would be divided between the partners according to their respective interests in the capital, and on the dissolution of the firm a deficiency of capital was found, then the assets would be divided between the partners in proportion to their capital with the result that X's estate would be the main loser.

(e) Payment of firm debts and of separate debts (Section 49):

(i) First - Property of the firm, for the payment of joint debts

Next (in the case of surplus) – Share of each partner to the separate debt

(ii) First - the separate property of any partner in the payment of his separate debts

Next (in the case of surplus) – for firm's debts

(f) Personal profits earned after dissolution (Section 50):

Accountable to the other partners firm by the partners (Deceased / representatives / surviving) before fully wound up

Example: A lease expiring on the death of a partner, renewed by the surviving partners, before final winding up, belongs to the partnership.

Note:

1. Read with Section 53: In the absence of an agreement to the contrary, each partner / representative is entitled to restrain (by injunction) other partners from carrying on a similar business in the name of the firm or from using the property of the firm for their own benefit till the affairs of the firm are completely wound up.

(g) Return of premium on premature dissolution (Section 51):

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 dissolved:

(1) by the death of one of the partners;

(2) mainly due to the misconduct of the partner paying the premium;

(3) pursuant to an agreement containing no provisions for the return of the premium or any part thereof.

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

- (1) without the fault of either party; or
- (2) owing to the fault of both; or
- (3) on account of the fault of the partner receiving the premium; or
- (4) due to the insolvency of the partner receiving the premium, where the partner paying the premium was unaware of the others embarrassing circumstances at the time of entering into the partnership.

(h) Rights where partnership contract is rescinded for fraud or misrepresentation (Section 52): (1) to a lien on the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

- (2) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and
- (3) to an indemnity from the partners guilty of fraud or misrepresentation against all the debts of the firm.

(i) Sale of Goodwill after dissolution (Section 55):

- (1) Sale (either separately or along with other property of the firm) of goodwill is included in settling the accounts of a firm after dissolution
- (2) Rights of buyer and seller of goodwill: Any partner may carry on the business competing with that of the buyer and he may advertise such business (subject) to agreement that
 - (a) Use the firm name,
 - (b) represent himself as carrying on the business of the firm, or
 - (c) solicit the custom of person who were dealing with the firm before its dissolution.
- (3) Agreement in restraint of trade: Make an agreement (upon sale) that the business will not be carried similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 such agreement shall be valid if the restrictions imposed are reasonable.

Note:

Prima facie rule – Sale of goodwill (as other assets) has to be settled

3.5 Mode of Giving Public Notice (Section 72)

Cases	Mode
1. Retirement / Expulsion of a partner	Notice to the Registrar of firms

<p>2. Dissolution of a registered firm</p> <p>3. Minor Partner - Election to become or not to become a partner in a registered firm on attaining majority.</p>	<p>Publication in the Official Gazette and in atleast one vernacular newspaper in the district in the place or principal place of business.</p>
<p>Other cases</p>	<p>Publication in the Official Gazette and in atleast one vernacular newspaper in the district in the place or principal place of business.</p>

6. The Limited Liability Partnership Act, 2008

The Act

Notification: by The Ministry of Law and Justice | on 09th Jan 2007

Passing of Bill: in Parliament | on 12th Dec 2008

LLP Act | President's Assent | on 07th Jan 2009

Contents: 81 Sections | 4 Schedules

Schedule I	Mutual Rights and duties of partners, LLP and its partners (absence of formal agreement)
Schedule - II / III / IV	Conversion into LLP

Administration – MCA | RoC

Amendment – CG by notifications in the official Gazette

Non – Applicability: The IP Act, 1932 (Section 4)

Why: To make the provisions: the formation and regulation of LLPs (and related)

Advantages: Mutual agreement | Flexibility (No detailed procedure) | Easy to form / dissolve | Limited Liability to partners | Flexible capital structure

Definitions

Body Corporate

Includes	Excludes
Company (Incorporated in / outside India) LLP (Registered in / outside India)	A corporation Sole A co-operative society (registered) other body corporate (CG notification)

Business: Trade | Profession | Service | Occupation

Entity: Body Corporate | Firm (Sec 18, 46, 47, 48, 49, 50, 52 and 53 of IP Act)

Financial Year: 1st April of the year to 31st March of the following Year

If incorporated after 30th Sep, the FY is from the start date

Example:

Incorporation	FY
30.09.2019	01.04. 2019 to 31.03.2020
01.10.2019	01.10.2019 to 31.03.2021

Foreign LLP: Registered outside India | establishes a place of business (as per CG –Rules)

Apply / Incorporate E Form 25 with modifications and regulatory mechanism

LLP Agreement: Written Agreement between partners and LLP and partners | Mutual rights and duties of the partners | Rights and Duties in relation to that LLP

Resident in India (Ril): Stay in India | ≥ 182 days during the immediately preceding 1 year

Partners:

Eligibility	Subscriber’s list / LLP Agreement
Competency	Individual Body Corporate Foreign LLP Any person as per LLP Agreement Incompetent: Unsound minded Undischarged Insolvent Adjudicated Insolvent and application pending
Status	agents for LLP, but not for other partners
Minimum number of partners	2 partners If, Reduced below 2 carries business for 6 months – The only partner (with knowledge) will have personal liability in that period
Designated Partners	2 DPs (Individuals & Ril) Individuals Body Corporate – Nominee
<p>Holding out (deemed partner): Represents / permits (spoken / written / by conduct) Liable to the person who has on the faith of any such representation given credit to the LLP (whether the person representing himself / representing to be a partner does / does not know that the representation has reached the person so giving credit.) Liability of LLP: To the extent of credit received / financial benefit derived (without prejudice to the liability of the person so representing himself / represented to be a partner)</p> <p>Continuity of the same LLP name after a partner’s death does not bring his estate liable.</p>	

All about LLP

Body Corporate
An alternative Corporate Business Vehicle
New Legislation | New Corporate form
Contemporary growth of the Indian Economy
Separate Legal Entity
Low Compliance Cost
Operation – flexible | innovative | efficient
Hybrid - company & partnership
Internal structure: mutual agreement

Limited Liability:

To alternate the traditional partnership
Statue based governance structure company

Suitability:

small enterprises
investment by venture capital
Entrepreneurs | Professionals
Enterprises providing services (scientific / technical)

Characteristics / Salient Features

1. Body Corporate

2. Perpetual Succession: Irrespective of changes – Death | Insanity | Retirement | Insolvency

3. Separate legal Entity

Capability to enter into contracts		Creditors of LLP is Creditors of LLP alone
Separate Property Liability		Partner’s liability - limited to their agreed contribution

4. Mutual Agency: No mutual agency - All partners are agents of the LLP only
No binding effect – for independent / unauthorized actions / another partner’s act
Shield from joint liability for wrongful business decisions / misconduct done by other partners

5. LLP Agreement: Mutual rights and liabilities (as per the partner’s flexibility)

6. Artificial Legal Person

Created by a legal process		Clothed with all the rights of an individual
Invisible Intangible		Cannot be sent to a jail take an oath
Immortal Not fictitious (exists by law)		Marry divorce practice profession (CA, CMA, CS)

7. **Common Seal:** Not mandatory | Custody - responsible official | Affix in the presence of atleast 2 DPs

8. **Limited Liability:** Agreed contribution (tangible / intangible)

9. **Management of Business** – Entitled to partners, but responsibility to designated partners for legal compliance

10. **Number of partners:** 2 partners – Individuals / Body Corporate | 2 DPs – Only Individuals (atleast one Ril)

11. **Business** – Lawful | profit motive | Economic Purpose | No charitable purpose

12. **Investigation** of the affairs– Appointment of Competence Authority by CG

13. **Compromise or Arrangement** – Follow the act | Includes Merger and Amalgamation

14. **Conversion into LLP:** from Firm | Private Company | Unlisted Public Company

15. **E-filing of documents** – computer readable form | www.mca.gov.in | DSC for authentication by a partner / designated partner

16. **Foreign LLPs:** Incorporated and Registered outside India | place of business in India | Foreign LLP can be a partner in Indian LLP

Incorporation Document: Sufficiency of documents

Subscriber's list		Fees to RoC (state)
Statement: subscriber Advocate / CS / CA / CMA		Details: Name Proposed business Address of Registered Office, Partners and Designated Partners other info
Punishment for false / untrue – Imprisonment extend to 2years Fine ₹ 10,000 to ₹ 5L		

Incorporation by Registration

Registration: Registrar | within 14 days

Certificate of Registration / Incorporation:

conclusive Evidence | signed by Registrar and authenticated by his official seal

Sufficiency of Documents: received as per above

Registered office of LLP and change therein

To receive communications and notices

E Form 12 - Registered Office / other addresses | Notice of change to registrar

Document to be served on LLP / Partner / DP | post under certificate of posting / reg. post

Contravention – ₹ 2,000 to ₹ 25,000

Name:

Suffix - Limited Liability Partnership | LLP

CG's Opinion – Undesirable / Identical / Trademarks Act, 1999

RUN-LLP – Reservation | Proposed / change

Reservation - 3 months from the date of intimation on satisfaction of rules of CG & other provisions

CG's right to change: LLP to comply | Failure: LLP – ₹ 10,000 to ₹ 5L | DP – ₹ 10,000 to ₹ 1L

Steps to Incorporation:

Step 1: RUN – LLP | Step 2: FiLLiP form (addendum form for DPs) | Step 3: LLP Agreement

Relationship:

Mutual Rights & duties – governed by LLP Agreement | First Schedule (in the case of absence)

File E Form 3 for the LLP Agreement and the changes thereof

Ratify - the agreement made before Incorporation

Cessation of partnership Interest:

Agreement | Notice in writing of not less than 30 days to the other partners

Death | Unsound minded | Adjudged / Declared Insolvent

Former partner is a partner - unless notice to the other partners | Notice delivered to RoC

Liability continues incurred during his period in the LLP

Entitlement of Share & Accumulated profits, but no interference in the management– Former partner | person entitled for

Registration of changes in partners:

Partner to LLP	LLP to Registrar
Change in address: informs within 15 days to the LLP Contravention - ₹ 2,000 to ₹ 25,000	Notice in E Form 4A: within 30 days Admission / Cessation of a partner / Change in address of the partner Contravention: – LLP & DP ₹ 2,000 to ₹ 25,000

Notice – Prescribed form with fees | Signed by DP and authentication

Statement of consent from the new incoming partner

Cessation of partner – He himself (If LLP does not) to file notice to the Registrar and the Registrar gets confirmation. If LLP does not confirm within 15 days, the Registrar may file the notice filed by that partner.

Extent of liability of LLP:

Liable	Not Liabe
unauthorized act by the partner Immaterial: The person knows / does not know of no authority believes to be a partner	wrongful acts / omission in the course of business (No personal liability for the partner) Sole obligation - met out of its property

Unlimited liability in case of fraud:

Defraud creditors / fraudulent purpose – for LLP and (intent) partner | same extent of the partner for LLP unless without prior knowledge

Penalty for the known fraud: Imprisonment – up to 2 years | fine – ₹ 50,000 to ₹ 5L

Compensation to the person suffered – LLP | Partners | DPs | Employees (But LLP is not liable if no prior knowledge of LLP)

Whistle blowing: Reduce / Waiver of penalty against partner / employee if provides useful information during investigation / any information (whether or not during investigation) w.r.t. conviction under this or other acts

Protection (towards Discharge / Demot / Suspension / Threat / Harass / others) for the whistle blower (partner / employee of the LLP)

Maintenance of books of account, other records and audit, etc:

Proper Books of Accounts – affairs of business | every year (existence) | cash / accrual basis | Double entry system | Reg. Off | prescribed period

Statement of Account and Solvency – within 6 months from the end of FY | Every Year | E Form 8 | Prescribed Fees | Sign – DPs

Audit of Accounts – Rules Prescribed | CG notification may exempt

Contravention: LLP - Fine – ₹ 25,000 – ₹ 5L | DP – ₹ 10,000 to ₹ 1L

Annual return:

File | Authenticate | within 60 days from the closure of FY | E Form 11 | Prescribed fees

Failure to Comply: LLP - Fine – ₹ 25,000 – ₹ 5L | DP – ₹ 10,000 to ₹ 1L

Conversions

Firm to LLP	Pvt Co to LLP	Unlisted Pub Co to LLP
Section 55	Section 56	Section 57
Act II Schedule E form 17	Act III Schedule E form 18	Act IV Schedule E form 18

Certificate of Registration: Register the documents | Specified date is the date of registration of LLP)

Intimate: conversion and particulars of LLP to RoF (The IP Act, 1932) / RoC (The Co Act, 2013)

Effect: Existence of LLP in the name specified in the Certificate of Registration.

Assets / liabilities of the firm / company converted vests in the name of LLP without further assurance / act / deed

Status of converted firm / company – Deemed to be dissolved and removed from the records of the RoF / RoC. Intimate in physical form 14 to RoF

Winding up and dissolution: Voluntary / Tribunal | CG's Rules

By Tribunal: Cases -

Decision of LLP to wound up by the Tribunal

Less than two partners for more than 6 months

Against the interest of Sovereignty and Integrity of India / Security of the state or public order

Default in filing E Form 8 and 11 for 5 consecutive FYs

Tribunal's opinion on just and Equitable case

Miscellaneous

Business transactions of partner with LLP:

Lending money | Transact business - Same rights as other person who is not a partner

Application of the provisions of the Companies Act:

with / without exception , modification and adaptation specified in the notification

Draft laid before the houses of Parliament (30 days) in required number of successive sessions.

Notification is issued only upon agreement with modification or disagreed.

Electronic filing of documents:

File / Record / Register in the prescribed manner

Admissible Evidence (DSC affixed) – those filed with / certified by the Registrar, unless contrary

Payment of additional fee:

If not filed within specified period, additional (delay) fees of ₹ 100 per day is levied upto a period of 300 days (without prejudice to any other action / liability, - file after 300 days)

Differences with Other Forms of Organisation

	Basis	LLP	Partnership Firm
1	Regulating Act	The LLP Act, 2008	The IP Act, 1932
2	Body corporate and Separate Legal Entity	Yes	No
3	Creation by	Registration	Agreement
4	Registration Mandatory	Yes	No
5	Perpetual succession – Death / Insanity / Retirement / Insolvency	Members may join or leave, but its existence continues forever	No Perpetual Succession
6	Name (Suffix)	LLP	Not such
7	Liability	Limited to the extent of agreed contribution (except fraud)	Unlimited, extends to the personal assets
8	Mutual agency	Bind the acts of LLP only, but not partners	Bind the acts of LLP as well as partners
9	DP	Atleast 2 DP One – RoI	Not such
10	Common seal	As official signature	Not such
11	Legal compliances / Penalties – Responsibility	DPs	All partners
12	Annual filling of documents	Annual Statement of Accounts Statement of Solvency Annual Return with registration of LLP every year	Not such
13	Foreign partnership (nationals)	Yes, eligible	Not eligible
14	Minor as partner	No admission	For the benefits with all partners consent

	Basis	LLP	Limited Liability Company
1.	Regulating Act	The LLP Act, 2008	The Companies Act, 2013
2.	Members / Partners	w.r.t. contribution made	w.r.t. investment in terms of shares
3.	Internal Governance structure	Contract between the partners	Regulated by the statute, Act
4.	Name (suffix)	LLP	Public Co – Ltd Private Co – Pvt Ltd
5.	Number of members / partners	Min – 2 / Max – any	Pub Co: Min – 7 / Max – any Pvt Co: Min – 2 / Max - 200
6.	Liability	Limited to the extent of agreed contribution (except fraud)	To the extent of unpaid amount
7.	Management	Partners & DPs as per authority	BoD
8.	Number in the management	2 DPs	Pub Co – 3 Directors Pvt Co – 2 Directors