

COMPANY SECRETARY

**SBILL (NON CORPORATE ENTITIES) HANDWRITTEN
NOTES**

By CS MENTOR

Non-corporate entities

The 1st decision faced by entrepreneur is how the busi. should be structured. While making choice he should consider the following

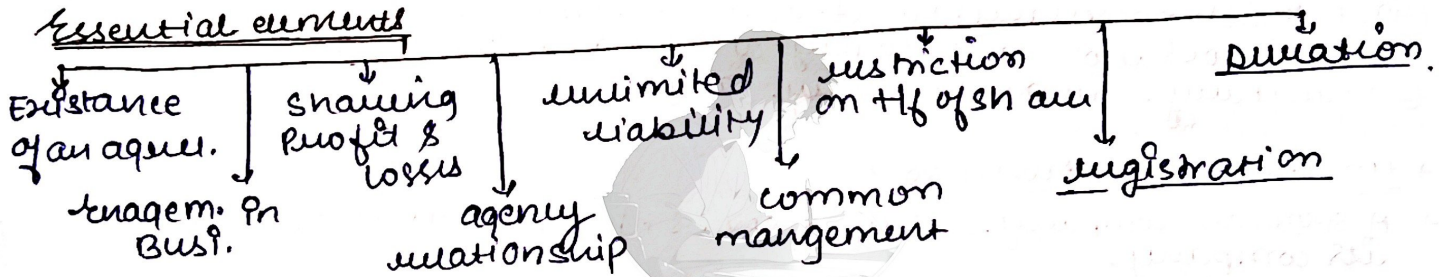
- His vision regarding size & nature
- His need for cash
- Level of control
- Level of structure he is dealing with
- Need to re-invest
- Expected profit
- Tax implications.

* Partnership

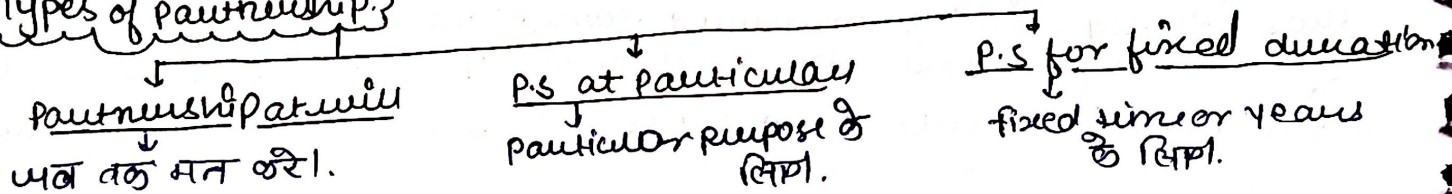
Section - 4 of P.S act 1932 → is the relation b/w persons who have agreed to share profit of Busi, carried on by all or by any of them acting for all.

Insolvency & Bankruptcy. The IBC of partnership firms amt of default is not less than 100 rupees shall be default is not less than 1000 rupees shall be governed by IBC 2016.

Essential elements



Types of Partnership.



Types of Partner

- Active partner: → Partner take actively part in day to day activi.
- Sleeping partner. —||— who not take actively —||—
- Nominal partner. lend their name to partnership firm.
- Partners by holding out: → The person who is liable to 2nd party to pay the debts of firm. Is known as partner by holding out.
- Minor partner: A minor cannot be a partner but he can be admitted for benefits if all the partner of the consent: take profit, Not bear any loss.

Merits of Partnership

- Easy to form! - Only require agreement (deed) b/w partners.
- Pooling of financial resources! - P.S demands more financial resources, it helps in expanding business & earning more profits. As when need more partner can introduced.
- Pooling of managerial skills! - facilitates pooling of manaq. skills of all its partners. leads to greater efficiency.
- Balanced Busi. decision. Ensure balanced decision & remove difficulties in smooth impm. of decision.
- Sharing risk! - shared by all partner. Not bear by any one.
- Privacy! - No chance to leak of secrets and privacy is maintained
- Division of work! - all partners are divided into so various activities which leads to perfection.

Limitation of Partnership

- Uncertainty of existence. Exist. of P.S is very uncertain, Death, retirement of any partner leads to end of P.S.
- Unlimited liability! - It has unlimited liability
- Risk of disharmony! - possibilities of conflict ~~with~~ between partners.
- Difficulty in withdrawal of capital! - It is difficult because it requires consent of all partners.
- Lack of institutional confidence! - Not enjoy much confidence of Banks.

Partnership Deed! - Also known as partnership agreement - It is a document that outlines in detail the rights & respon. of all parties to a busi. operation

- Key elements! - Definition (vital info), investment, accounting, duties powers of partner, withdrawal, expulsion, dissolution.

Benefits

- enable to file a suit in case of dispute.
- Clearly outline of each partner.
- It provide detail of profit loss ratio.
- It mentions amount invested by all partner.
- It detail the salary & comm. to partners.

Regi. procedure

- fill appi. with regi. of firm.
- Appi. should include.
- Every partner should verify & sign the appi.
- Follow the following documents & prescribed fees.

- Name of firm
- Name of place where busi. is carry
- date of Partnership
- full name & add. of all partners
- duration of firm

- ① Form
 - ② duly filed affidavit
 - ③ certified copy of partnership deed.
 - ④ proof of ownership of Busi.
- Once the reqd. of firm is satisfied then it shall issue COR.

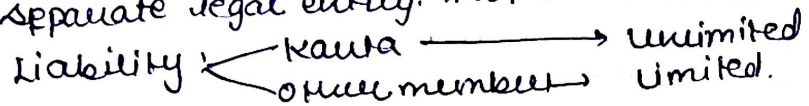
consequences for non regd

- A partner cannot file a suit in any court against the firm or other partner.
- A right arising from contract cannot be enforced.

Note :- It is compulsory for all the firm to have PAN CARD

Hindu Undivided Family (HUF)

→ It is created by operation of law, It does not have any separate legal entity. HUF is controlled & managed by "Karta".



Characteristics.

- Governed by Hindu Law.
- management
- membership by birth
- Liability.
- Permanent existence.
- Implied authority of Karta.
- minor also a partner
- Dissolution

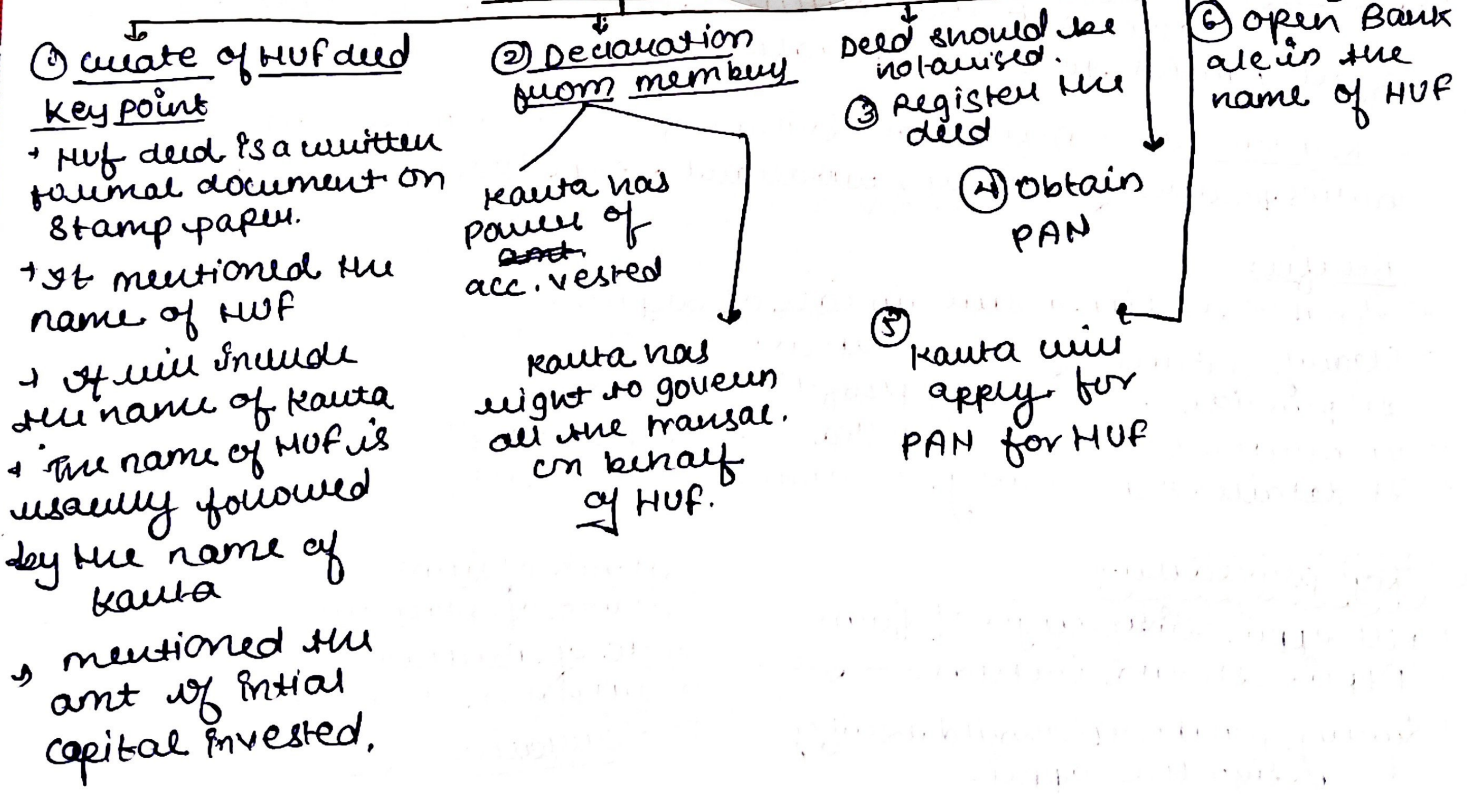
Benefits

- easy to start
- Efficient management
- security
- prompt decision
- Economy
- credit facilities

Limitation.

- ① Limited resource.
- ② Unlimited liab. of Karta.
- ③ Dominance of Karta.
- ④ Limited managerial skills.
- ⑤ misuse of Power.

Registration



* Sole Proprietorship

Form of Busi. that is owned, managed and controlled by an indivi.
→ arrange capital alone, and respons. for its management.
→ take all profit and bear liabilities.

Merits

- 1) Easy formation
- 2) Better control
- 3) Sole beneficiary of profits.
- 4) Inexpensive management
- 5) Confidentiality
- 6) Simple tax calculations
- 7) Lower busi. fees.

Limitations

- limitation of managerial skills
- limitation of resource
- Unlimited liability
- Lack of continuity
- No economic of scale
- Risk in decision making.

Procedural for formation

→ Regi. may be required under the following enactments.
→ Shops & Commercial Establi. Act.
→ Law relating to professional Act.
→ Regi. under micro, small & medium.

Enterprises Development Act, 2006
→ Regi. as a small scale industry
→ GST Regi.
→ Intellectual property.

* Multi State Co-operative Society

Multi-state co-operative societies are those co-operative societies whose objects and functions spread over to several states.

Benefits

- Provide loans to the poor at reasonable rate of interest.
- MSCs can function pan India
- A multi-scs. belongs to its members who are the owners and customers of society at same time.
- Have low compliance costs.

Imp. Formation of MSCs

→ An appli. in form 1 should be filed with central registrar of cooperative societies, New Delhi along with following enclosure.

- i) a certifi. from the bank stating audit balance of MSCs.
- ii) A scheme explaining how the proposed multi state co-operat. society has reasonable prosp. of becoming a viable unit.
- iii) four copies of bye laws.
- iv) MSCs can work in two contiguous states only, after regi.
- v) List of atleast 50 members from each state along with copies of ID proofs of members.
- vi) certified copies of the resoluti. passed by proposed society.
- vii) Contact number and e-mail address of the chief promoter or society on cover page.

Additional documents for societies related to swift & credit.

- ① Noc. from dept. of registration of co-op. soc.
- ② A certificate to effect that the credentials of chief promoter.
- ③ All documents should be submitted with sign of chief promoter on each page.

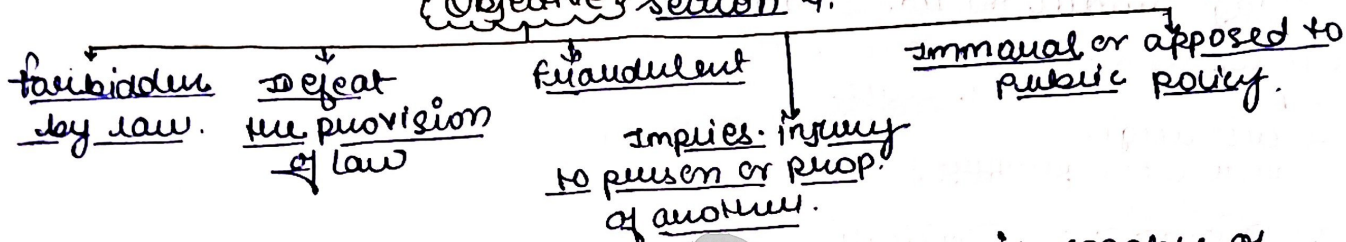
Trust:

A 'trust' is a obligation annexed to ownership of property & arising out of confidence imposed in & accepted by owner or declared and accepted by him, for the benefit of another or of another and the owner.

Essential elements:-

→ The author, the trustee, the beneficiary, object of trust, trust property, instrument of trust.

Objective section 4.



→ Person who can be trustee: Any person who is capable of holding property can be trustee.

→ Person who can create trust:

- ① Every person competent to contract
- ② minor or behalf of minor with permission of court.
- ③ HUF.
- ④ Association of person (AOP).
- ⑤ Trust by women
- ⑥ company.

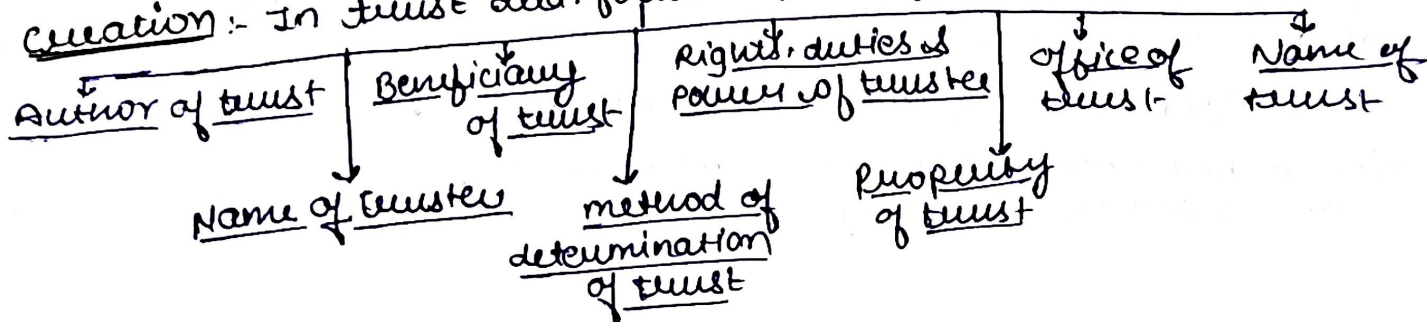
→ Tax exemption

→ discretionary → All income is taxable in hands of trust at max. marginal rate.

→ non discretionary → All income is taxable in hands of beneficiary.

→ formation → Trust can be created by any person over 18 year of age & mutually and capable of understanding.

→ creation:- In trust deed following things to be written:-



Registration :- The requirements to reg. a trust deed are as follows:-

- Trust deed on stamp paper.
- Proof of identity.
- Address proof of reg. office.
- NOC from property owner.
- Passport sized photographs of the trustee, settlor & witness.

Society

A society is an association of persons united together by mutual consent to contribute, and at times, for some common purpose.

→ Registration * Imp.

- 7 or more persons can form a society (including foreign or Bodies).
- Reg. will be done at state level.
- selection of a name - Name shall not be prohibited in emblems & name act 1950, &
- Draft MOA → notarized by gazetted officer/advocate.
- Draft rules & regulation for a society.
- Full application + documents to Registrar of Society.

Procedure for registration

- A letter requesting reg.
 - A certified copy of the MOA.
 - A certified copy of rules & regulations.
 - A table with name & address and occupation of all members.
 - Minutes of meeting.
 - Declaration of key pers. of society.
 - Address proof of reg. office.
- A unregistered society cannot claim benefits under In. Tax Act 1961.

Advantages :-

- 1) The process of formation & reg. is simple.
- 2) Record-keeping requirements are minimum & compliance with regulation is easy.
- 3) Cost of compliance is low.
- 4) Least possibility of interference by regulator.
- 5) Exemption from tax because of charitable operation.

Disadvantage

- It is an inapp. form of commercial venture.
- The concept of equity invest. is absent.
- Investment in such entities are risky because of lack of proper & managerial practices.
- It is vulnerable under money lenders act.

Accounts & audits :- It is necessary for societies to maintain proper & regular account books & get them audited and present them to members at C.M. and file same to reg. of societies.

Litigation - Jewelry society is a legal entity distinct from its members. It can file suit against any person and suit can be filed against society.

- Consequences of reg. / Non-reg.
- Obtaining reg. is approval from Income tax act.
 - Law vesting of property in the societies.
 - Provides authenticity & would at large.
 - For opening Bank accounts.

Mega firm

- Multi-disciplinary firm (MDF) can be described as partnership firm with more than 25 partners.
- A firm which provides core professional service of part.
- MDF is a step towards mega firm.
- MDF will put the professionals in general and com. securities in particular on fast track.
- Large firms will become larger and one day the global bus. enterprise will call them a "mega firm".

Partnership agreement & Trust deed.

Partnership agreement	Trust deed.
→ Partner are already mentioned in partnership deed.	→ Trustees are generally appointed or elected.
→ Partnership member → 2 min & max - 50	→ 3 parties are involved in trust - Trustor, trustee & Beneficiary.
→ Wound up easily.	→ Trust to be wound up with certain no. of yrs.
→ The deed states the rights & duties of partners.	→ The trust deed states the rights & duties of trustee as well as Beneficiary.
→ Expectations of partner are limited	→ Expectation of trustees can be high - difficult.

Public trust vs Private trust:

Public trust	Private trust.
A public trust exists for the purpose of ill objects the mem. of an uncertain.	The beneficiaries are narrow and specific group such as employee of company.
Trust is vested in uncertain and fluctuating body.	In private trust, beneficiaries are definite and ascertained individuals.
Public trust have larger and wider domain.	Private trust have limited & narrow domain.