

21<sup>st</sup> August 2023

classmate

Date

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## \* CH. 7<sup>th</sup> :- NON - CORPORATE ENTITIES \*

• The 1<sup>st</sup> decision is faced by entrepreneur is how the business 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 / loss
- Tax implications

## \* PARTNERSHIP

Sec<sup>n</sup> Partnership is the relation between persons who have agreed to share profits of business, carried on by All or by any of them acting for all.

• Dissolution : The dissolution of partnership between all partners of firm is called dissolution of partnership firm

• Insolvency & Bankruptcy - The insolvency & bankruptcy of partnership firms amount of default is not less than 1000 Rupees shall be governed by insolvency & Bankruptcy code 2016.

- A partnership firm is not Body Corporate.

- Essential elements -

i) Agreement - It should be noted that relation of partnership arises from contract. The agreement between partners may be expressed as oral / written or can be implied.

ii) Sharing profit of business - The sharing of profits of business is essential agreement of partnership.

iii) Mutual agency - The business must be carried on by all partners or by anyone or more partners acting for all. An act of one partner is act of all partners.

iv) Duration - Partnership firm continues at the pleasure of partners. Legally a partnership comes to end if any partner dies, retires or becomes insolvent.

- Types :-

i] Partnership at -will : This partnership exist on will of partners. Whenever a partner gives his notice to end then it can be brought to end.

ii] Particular partnership : Partnership is formed for undertaking a particular venture. It comes to end

automatically after completion of venture.

iii] Partnership for fixed duration :- Such partnership is for fixed time period.

### • Types of Partner -

i] Active partners :- Partners who take active part in conduct of day - to - day business are called as Active partners.

ii] Sleeping / dormant partners :- Partners who do not take active part in business but shares profits & losses are sleeping / dormant partners.

iii] Nominal Partners :- Partners who do not have interest in business but lend their name to firm are Nominal Partners.

iv] Partners by holding out :- The person who is liable to 3<sup>rd</sup> party to pay the debts of firm is known as partner by holding out.

v] Minor Partners :- A minor cannot be a partner, but he can be admitted for benefits if all the partners gives consent. He will share profits but his liability will be limited in case of loss.

### • Merits -

1) Ease in formation :-

Partnership firm is very easy to form. It only requires the agreement between partners.

2) Pooling of financial resources :-

Partnership demands more financial resources, it helps in expanding business & earning more profits. As when firm requires more money, more partners can be admitted.

3) Pooling of managerial skills :-

Partnership facilitates pooling of managerial skills of all its partners. It leads to greater efficiency in business.

4) Balanced business decisions :-

In partnership firm, decisions are taken unanimously i.e. with one mind after considering all major aspects of problem. It ensures balanced decisions & removes difficulties in smooth implementation of decisions.

5) Sharing Risks :-

The risk of partnership business are shared by all partners in predetermined basis. It encourages partners to undertake risky but profitable business activities.

6) Privacy :- The

The partners carry out significant business decisions. Hence, there is no chance of leakage of secrets and privacy is maintained.

### 3) Division of work :-

In partnership firm, all work of firm is divided among partners as per their knowledge & skills. This division of work leads to efficient management, which results in higher profits.

### • Limitations -

1) Uncertainty of existence - The existence of partnership firm is very uncertain. The retirement, death, bankruptcy or lunacy of any partner can put an end to partnership.

2) Risks of implied authority - Sole proprietor has unlimited liability, but may liability may arise from his acts & also from co-partners act to whom he has no control. This discourages many persons with money & ability, to join a partnership firm as partner.

3) Risks of Disharmony - In partnership decisions are taken unanimously for common good by all partners. But some situations may arise where any will adopt rigid attitude & will make it impossible to arrive at commonly agreed decision. Lack of harmony may result into conflict and mutual bickering.

4) Difficulty in withdrawal from the firm - Investment in partnership can be easily made, but cannot be easily withdrawn, because it requires consent of all partners.

5) Lack of institutional confidence - A partnership firm does not enjoy much confidence of banks and financial institutions.

6) Lack of Public Trust - The public has less confidence in partnership firms since their annual reports & accounts are not published. Therefore, the public does not trust their dealings.

#### • PARTNERSHIP DEED

- It is also known as a partnership agreement.
- It is a document that outlines in detail the rights & responsibility of all parties to a business operation.
- It helps to prevent disputes & disagreements over the role of each partner & benefits.
- The key ingredients are given below
  - 1) Definition & vital information.
  - 2) Investment
  - 3) Accounting
  - 4) Duties, powers & obligations of partners
  - 5) Withdrawal
  - 6) Expulsion
  - 7) Dissolution
  - 8) Arbitration

#### • Benefits -

- 1) It enables to file a suit in case of dispute.
- 2) It helps to avoid any misunderstanding / conflict between partners.

- 3) It clearly outlines duties of each partner.
- 4) It provides details of profit/loss ratio.
- 5) It mentions amount invested by all partners.
- 6) It details the salary & commission to partners.

### • Registration Procedure :-

1. file application with Registrar of firm
2. Application should include -
  - name of firm
  - name of place where business is carried on
  - date of partners joining firm
  - full name & address of all partners.
  - Duration of firm.
3. Every partner should verify & sign the application.
4. Ensure following documents & prescribed fees
  - Form - 1
  - Duly filled affidavit
  - Certified Copy of partnership deed
  - Proof of ownership of business.
5. Once the Registrar of firm is satisfied then it shall issue Certificate of Registration.

### • Consequences -

- A partner cannot file a suit in any court against the firm or other partners.
- A right arising from contract cannot be enforced.
- firm / any of its partners cannot claim set off or other proceedings in dispute with a 3<sup>rd</sup> party.

Note - It is compulsory for all firms to have PAN CARD

## \* HINDU UNDIVIDED FAMILY [HUF]

• Meaning - It is created by operation of law. It does not have any separate legal entity. HUF is controlled & managed by 'Karta'. The liability of karta is limited but liability of another members is limited.

### • Characteristics -

- 1) Governed by Hindu law.
- 2) Management
- 3) Membership by Birth.
- 4) Liability
- 5) Permanent existence.
- 6) Implied authority of karta.
- 7) Minor also a partner
- 8) Dissolutions.

### • Benefits -

- 1) Easy to start
- 2) Efficient Management
- 3) Secrecy
- 4) Prompt decision
- 5) Economy
- 6) Credit facilities

### • Limitations -

- 1) Limited resources
- 2) Unlimited liability of karta
- 3) Dominance of karta

4) Limited Managerial Skills

5) Misuse of Power

6) Limited Membership

#### • Formation

**HUF Deed** : One has to prepare deed on stamp paper declaring the formation of HUF. Creating HUF Deed is not mandatory, but it is always beneficial to have Deed. After one has allotted a PAN, open a bank account in the name of HUF.

There are tax advantages of forming an HUF, the following matters merit consideration.

- 1) One person cannot form HUF. HUF is formed by family.
- 2) HUF is automatically created at the time of marriage.
- 3) HUF consists of a common ancestor and all of his lineal descendants, including their wives and married daughters and unmarried daughters.
- 4) Hindus, Buddhists, Jains & Sikhs can form HUF.

5) Once HUF is formed it must be formally registered in its name. It should have a legal deed. A PAN number & bank account should be opened in the name of HUF.

6) In Income Tax, a HUF is a separate legal entity for the purpose of Income Tax return.

## \* SOLE PROPRIETORSHIP :-

- The sole proprietorship is a form of business that is owned, managed and controlled by an individual.
- He has to arrange capital for the business and he alone is responsible for its management.
- He is therefore, entitled to profits and has to bear the loss of business. Sole proprietorship own all the assets of business.
- He also takes complete responsibility for any of its liabilities or debts.
- In eyes of law & public the sole proprietor and the business are one and the same.
- Merits :-
  - 1) Easy formation
  - 2) Better control
  - 3) Sole beneficiary of profits
  - 4) Inexpensive Management
  - 5) Confidentiality
  - 6) Simple tax calculations
  - 7) Lower business fees.

- Limitations :-
  - 1) Limitation of management skills
  - 2) Limitation of Resources
  - 3) Unlimited liability.

- 4) Lack of continuity.
- 5) No economies of scale.
- 6) Risk in decision-making.
- 7) Selling the business is a challenge.

- Procedure for formation

Registration may be required under the following enactments -

- 1) Shops & commercial establishments Act,
- 2) Law relating to professional Tax,
- 3) Registration under Micro, Small and Medium Enterprises Developments Act, 2006
- 4) Registrations as a Small Scale Industry
- 5) GST registration.
- 6) Intellectual property.

### \* MULTI STATE CO-OPERATIVE SOCIETY

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

- Benefits :-

- 1) MSCS provides loans to the poor at reasonable rates of interest.
- 2) MSCS can function pan India as they can start branches in different districts and states.

3) A Multi state Co-operative Credit Society belongs to its members who are the owners and the customers of society at the same time.

4) MSCS have - law compliance costs.

• formation :-

i) An application in form - 1 should be filed with Central Registrar of Cooperative Societies, New Delhi along with following enclosures :-

i] A certificate from the bank stating credit balance of MSCS.

ii] A scheme explaining how the proposed multi state co-operative society has reasonable prospects of becoming a viable unit.

iii] four copies of bye-laws

iv] MSCS can work in two contiguous states only, after registration.

v] List of atleast 50 members from each state along with the copies of ID proofs of members.

vi] Certified copies of the resolutions passed by the proposed society.

will Contact number and e-mail address of the chief Promoter or society on Cover page.

• Additional documents for societies related to Thrift & Credit -

i] NOC from Registrar of Cooperative Societies, where area of operation of society is confined & situated.

ii] A certificate to effect that the credentials of chief promoter / promoters verified by Registrar of Co-operative societies.

iii] All documents should be submitted with signatures of chief promoter / promoters on each page.

## \* TRUST

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

• Essential elements -

1) The author

2) The trustee

3) The beneficiary

4) The trust property / subject-matter of society.

- 5) The object of trust
- 6) The instrument of trust.

• Objectives - A trust may be created for any lawful purpose. The purpose of trust is lawful unless it is -

- 1) forbidden by law, or,
- 2) defeat the provisions of law, or,
- 3) fraudulent, or,
- 4) implies injury to person or property of another, or,
- 5) immoral or opposed to public policy.

• 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 persons (AOP)
- 5) Trust - by women.
- 6) Company.

• Tax exemption -

i) Discretionary



All income is taxable in hands of trust at maximum marginal rate.

ii) Non-discretionary



All income is taxable in hands of beneficiaries.

- Formation - Trust can be created by any person over 18 years of age & mutually and capable of understanding.

- Creation - In trust deed following things to be written -

- 1) An Author of Trust
- 2) Name of Trustee
- 3) Beneficiary of trust
- 4) Method of determination of trust.
- 5) Rights, Duties & Power of Trustee & beneficiary.
- 6) Property of trust
- 7) Office of trust
- 8) Name of trust.

- In trust deed, settler, trustee & witness have to give their signature with photograph & identity, stamp duty should be paid at appropriate value

- Registration - The requirements to register a trust deed are as follows -

- 1) Trust deed on stamp paper.
- 2) Proof of Identity.
- 3) Address Proof of Registered office
- 4) No objection Certificate (NOC) from property owner
- 5) Passport sized photographs of the Trustor, Trustee & witnesses.

## \* SOCIETY :-

- A society is an association of persons united together by mutual consent to deliberate, determine and act jointly for some common purpose.

- Registration :- A society can be registered by minimum 7 individuals including foreigners for promotion of literature, science or arts, useful knowledge & political education or charitable purposes, as specified under sec. 20.

"Charitable purpose" is a purpose which has some element of general public benefit.

- Procedure for Registration :- The following documents are required to be filed with Registrar -

- 1) A letter requesting registration, signed by founding members

- 2) A certified copy of the MOA

- 3) A certified copy of rules & regulations

- 4) A table with names & address and occupation of all members of society with their signature

- 5) Minutes of meeting

- 6) Declaration by president of society.

7) A affidavit from President / secretary, declaring the relationship between the subscribers.

8) Address proof of registered office & Noc from landlord.

★ A unregistered society cannot claim benefits under Income tax Act, 1961

#### • Advantages -

- i] The process of formation & registration is simple.
- ii] Record - keeping requirements are minimum & compliance with regulations is easy.
- iii] Cost of compliance is low.
- iv] Least possibility of interference by regulator.
- v] Exemption from tax because of charitable operations.

#### • Disadvantages -

1) Tax exemptions extended to societies may apply to public trusts only to the extent Income Tax department accepts their activities as being charitable.

2) It is an inappropriate form of commercial venture, since such institutions are of charitable nature.

3) The concept of equity investment is absent.

4) Investment in such entities are risky because, lack of professionalism & managerial practices.

5) In accordance with sec. 455 of RBI Act, no unincorporated bodies are allowed to accept deposits from public. Organisations registered under Societies Registration Act & Trust are unincorporated bodies.

6) It is vulnerable under Money Lenders Act.

#### • Consequences of Registration / Non-Registration

The registration gives the society a legal status and essential for -

- obtaining registration & approvals from Income Tax Act

- lawful vesting of property in the societies  
- provides authenticity & recognition to society before all authorities & world at large, and,  
- for opening bank accounts

• Accounts & audits - It is necessary for societies to maintain proper & regular account books & get them audited and present them to members at GM and file same to Registrar of societies.

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

## • Mega firm -

i) Mega firm / Multi disciplinary firm (MDF) can be described as Partnership firm with more than 25 partners.

ii) A firm which provides core professional service of particular profession along with allied & ancillary service with equal competence under one roof is MDF.

iii) MDF is a step towards mega firm.

iv) MDF will put the the professionals in general and company secretaries in partial particular on fast track.

v) Large firms will become larger and one day the global business enterprise will call them a "Mega firm".

## \* Difference between Partnership agreement & Trust Deed

Partnership Agreement	Trust Deed
1) Partners are already mentioned in partnership deed.	1) Trustees are generally appointed or elected.
2) Partnership can be between 2 or more persons. Maximum no. of partners is 50.	2) Three parties are involved in trust - Trustor, Trustee and beneficiary.
3) Partnership can be easily dissolved with notice of a partner, if mutually agreed by other partners.	3) Trust deed can provide for trust to be wound up within certain numbers of years.
4) The deed states the rights & duties of partners	4) The Trust deed states the rights & duties of Trustee as well as beneficiary.
5) Expectations of Partner are limited to financial success of business, more easily measured	5) Expectations of trustees can be high - difficult to satisfy beneficiaries.

\* Difference between Public trust & Private trust.

Public Trust	Private Trust
1) A Public trust exists for the purpose of its objects the members of an uncertain and fluctuating body and managed by board of trustee.	1) The beneficiaries are narrow and specific group such as employees of company.
2) In public trust, the interest is vested in uncertain and fluctuating body.	2) In private trust, beneficiaries are definite and ascertained individuals.
3) Public trust have larger and wider domain.	3) Private trust have limited & narrow domain.