



# CHAPTER

# INDIAN PARTNERSHIP ACT, 1932

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CA FOUNDATION

**Q. 1 How an application of registration of firm is to be made ?**

**OR**

**What is the procedure for registration of firm ?**

**Ans. Application for registration (section 58):**

(1) The registration of a firm may be effected at any time by sending by post or delivering to the REGISTRAR of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) The firm's name
- (b) The place or principal place of business of the firm,
- (c) The names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely:-

- ▶ 'Crown', Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or
- ▶ words expressing or implying the sanction, approval or patronage of Government
- ▶ except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.



## Q. 2 When Registrar shall issue a registration certificate ?

### Ans. Registration (section 59):

When the Registrar 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.

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

Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.



## Q.3 Is it necessary to get the firm registered ? what are the consequences of non registration ? OR The non registration of a firm attracts certain disabilities . Comment.

**Ans.** 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 which are as follows:

No suit in a civil court by firm or	<ul style="list-style-type: none"><li>▶ The firm or any other person on its behalf</li><li>▶ cannot bring an action against the third party</li><li>▶ for breach of contract entered into</li></ul>
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<p>other co-partners against third party</p>	<p>by the firm,</p> <ul style="list-style-type: none"> <li>▶ unless the firm is registered and</li> <li>▶ the persons suing are or have been shown in the register of firms as partners in the firm.</li> </ul>
<p>No relief to partners for set-off of claim</p>	<ul style="list-style-type: none"> <li>▶ If an action is brought against the firm by a third party,</li> <li>▶ then neither the firm nor the partner can claim any set-off,</li> <li>▶ if the suit be valued for more than Rs. 100 or</li> <li>▶ pursue other proceedings to enforce the rights arising from any contract.</li> </ul>
<p>Aggrieved partner cannot bring legal action against other partner or the firm</p>	<ul style="list-style-type: none"> <li>▶ A partner of an unregistered firm (or any other person on his behalf)</li> <li>▶ is precluded from bringing legal action</li> <li>▶ against the firm or any person alleged to be or to have been a partner in the firm.</li> <li>▶ But, such a person may sue for</li> <li>▶ dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.</li> </ul>

Third party can sue the firm

- ▶ In case of an unregistered firm,
- ▶ an action can be brought against the firm by a third party.



**Q.4 Even if the firm is unregistered , it does not affects certain rights ? OR The non registration of a firm attracts some disability. What are the exceptions to these disabilities ?**

**Ans.** Exceptions: Non-registration of a firm does not, however effect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a 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. The right to sue or claim a set-off if the value of suit does not exceed Rs. 100 in value.



**Q.5 Distinguish between Dissolution of firm and Dissolution of Partnership ?**

**Ans.** According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.

In the case of dissolution of the firm, the whole firm is dissolved. The partnership terminates as between each and every

partner of the firm.

But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e. the relationship between such a partner and other is dissolved, but the other partner decides to continue the business .

Basis	Dissolution of Firm	Dissolution of Partnership
Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is NOT ordered by the court.
Scope	It necessarily involves dissolution of partnership.	It MAY OR MAY NOT involve dissolution of firm.
Final closure of books	It involves final closure of books	It does NOT involve final

	of the firm.	closure of the books.
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## Q.6 What are the modes of dissolution of firm ?

**Ans.** The following are the modes of dissolution of firm ?

- I. Dissolution without the order of court.
- II. Dissolution by the order of the court .

### I. Dissolution without the order of court or Voluntary dissolution : It consists of following four types:

Dissolution by agreement (Section 40)	<ul style="list-style-type: none"> <li>▶ Section 40 gives rights to the partners to dissolve the firm with the consent of all the partners or</li> <li>▶ in accordance with a contract between the partners.</li> <li>▶ Contract between the partners' means a contract already made.</li> </ul>
Compulsory dissolution (Section 41)	<ul style="list-style-type: none"> <li>▶ A firm is compulsorily dissolved</li> <li>▶ by the happening of any event</li> <li>▶ which makes it unlawful for the business of the firm</li> <li>▶ to be carried on or for the partners to carry it on in partnership:</li> </ul> <p>Provided that,</p> <ul style="list-style-type: none"> <li>▶ when more than one separate adventure or undertaking is carried on by the firm,</li> <li>▶ the illegality of one or more shall not of itself</li> </ul>

	<ul style="list-style-type: none"> <li>▶ cause the dissolution of the firm in respect of its lawful adventures and undertakings.</li> </ul>
<p>Dissolution on the happening of certain contingencies (Section 42)</p>	<p>Subject to contract between the partners, a firm can be dissolved on the happening of any of the following contingencies :</p> <ul style="list-style-type: none"> <li>▶ where the firm is constituted for a fixed term, on the expiry of that term</li> <li>▶ where the firm is constituted to carry out one or more adventures or undertaking, then by completion thereof</li> <li>▶ by the death of a partner, and</li> <li>▶ by the adjudication of a partner as an insolvent</li> </ul>
<p>Dissolution by notice of partnership at will (Section 43)</p>	<ul style="list-style-type: none"> <li>▶ Where the partnership is at will,</li> <li>▶ the firm may be dissolved</li> <li>▶ by any partner giving notice in writing</li> <li>▶ to all the other partners of his intention to dissolve the firm.</li> </ul> <p>If the date is mentioned ,</p> <ul style="list-style-type: none"> <li>▶ the firm is dissolved as from the date mentioned in the notice as the date of dissolution, or</li> <li>▶ if no date is so mentioned, as from the date of the communication of the notice.</li> </ul>



**Q.7 What are the modes of dissolution of firm by the order of Court ? or**

**In which circumstances , the court will order for dissolution of firm ?**

**Ans. Dissolution by the court ( section 44)**

The Court may, at the suit of the partner, dissolve a firm on any of the following ground:

<b>Insanity/ unsound mind</b>	<ul style="list-style-type: none"><li>▶ <b>Where a partner (not a sleeping partner)</b></li><li>▶ <b>has become of unsound mind,</b></li><li>▶ <b>the court may dissolve the firm</b></li><li>▶ <b>on a suit of the other partners or by the next friend of the insane partner.</b></li><li>▶ <b>Temporary sickness is no ground for dissolution of firm.</b></li></ul>
<b>Permanent incapacity</b>	<ul style="list-style-type: none"><li>▶ <b>When a partner, other than the partner suing,</b></li><li>▶ <b>has become in any way permanently incapable</b></li><li>▶ <b>of performing his duties as partner,</b></li><li>▶ <b>then the court may dissolve the firm.</b></li><li>▶ <b>Such permanent incapacity may result from physical disability or illness etc.</b></li></ul>

<b>Misconduct</b>	<ul style="list-style-type: none"><li>▶ Where a partner, other than the partner suing,</li><li>▶ is guilty of conduct which is likely to affect</li><li>▶ prejudicially the carrying on of business,</li><li>▶ the court may order for dissolution of the firm, by giving regard to the nature of business. .</li><li>▶ It is not necessary that misconduct must relate to the conduct of the business.</li><li>▶ The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.</li></ul>
<b>Persistent breach of agreement</b>	<ul style="list-style-type: none"><li>▶ Where a partner other than the partner suing,</li><li>▶ wilfully or persistently commits breach of agreements</li><li>▶ relating to the management of the affairs of the firm or the conduct of its business, or</li><li>▶ otherwise so conduct himself in matters relating to the business that</li><li>▶ it is not reasonably practicable for other partners to carry on the business in partnership with him,</li></ul>

<p><b>Transfer of interest</b></p>	<ul style="list-style-type: none"> <li>▶ Where a partner other than the partner suing,</li> <li>▶ has transferred the whole of his interest in the firm to a third party or</li> <li>▶ has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue,</li> <li>▶ the court may dissolve the firm at the instance of any other partner.</li> </ul>
<p><b>Continuous/ Perpetual losses</b></p>	<ul style="list-style-type: none"> <li>▶ Where the business of the firm cannot be carried on</li> <li>▶ EXCEPT at a loss in future also,</li> <li>▶ the court may order for its dissolution.</li> </ul>
<p><b>Just and equitable grounds</b></p>	<ul style="list-style-type: none"> <li>▶ Where the court considers any other ground</li> <li>▶ to be just and equitable for the dissolution of the firm,</li> <li>▶ it may dissolve a firm. The following are the cases for the just and equitable grounds :             <ul style="list-style-type: none"> <li>(i) Deadlock in the management.</li> <li>(ii) Where the partners are not in talking terms between them.</li> <li>(iii) Loss of substratum.</li> <li>(iv) Gambling by a partner on a</li> </ul> </li> </ul>

	On a stock exchange
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## Q. 8 What are the rights and liabilities consequent to dissolution of firm ?

**Ans.**

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

- ▶ Notwithstanding the dissolution of a firm,
- ▶ the partners continue to be liable as such to third parties
- ▶ for any act done by any of them
- ▶ which would have been an act of the firm if done before the dissolution,
- ▶ UNTILL public notice is given of the dissolution.

Therefore Section 45 has two fold objectives-

1. It seeks to protect third parties dealing with the firm who had no notice of prior dissolution and
2. It also seeks to protect partners of a dissolved firm from liability towards third parties

However, there are exceptions to the Section 45 i.e. where notice of

	<p>dissolution has NOT been given, there will be NO liability for subsequent acts in the case of:</p> <ul style="list-style-type: none"> <li>(a) the estate of a deceased partner,</li> <li>(b) an insolvent partner, or</li> <li>(c) a dormant partner, i.e., a partner, who was not known as a partner to the person dealing with the firm.</li> </ul> <p>(2) Notices under sub-section (1) may be given by any partner.</p>
<p>Right of partners to have business wound up after dissolution (Section 46)</p>	<ul style="list-style-type: none"> <li>▶ On the dissolution of a firm</li> <li>▶ every partner or his representative is entitled,</li> <li>▶ as AGAINST all the other partners or their representative,</li> <li>▶ to have the property of the firm APPLIED in payment of the debts and liabilities of the firm, and</li> <li>▶ to have the SURPLUS distributed among the partners or their representatives according to their rights.</li> </ul>
<p>Continuing authority of partners for purposes of winding</p>	<ul style="list-style-type: none"> <li>▶ EVEN after the dissolution of a firm</li> <li>▶ the authority of each partner to bind the firm, and the other mutual rights and</li> </ul>

<p>up (Section 47)</p>	<p>obligations of the partners, <b>CONTINUES</b> ,</p> <p>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, but not otherwise:</p> <p>Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent;</p> <p>However this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.</p>
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## Q. 9 How accounts of partnership firm is settled after dissolution ?

**Ans. .** Settlement of partnership accounts (Section 48): In settling the accounts of a firm after dissolution, prima facie, accounts between the partners shall be settled in the manner prescribed by partnership agreement.

However the following rules shall, subject to agreement by the partners, be observed:-

- (i) Losses, including deficiencies of capital, shall be paid first out of PROFITS, next out of CAPITAL, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
- in paying the debts of the firm to third parties;
  - in paying to each partner rateably what is due to him from capital;
  - in paying to each partner rateably what is due to him on account of capital; and
  - the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.



### **Q.10 How the firm's property and separate property of a partner shall be applied for the payments of the debts of the firm and debts of each partner ?**

**Ans. .** Payment of firm debts and of separate debts (Section 49):

Where there JOINT DEBTS due from the firm and also SEPARATE debts due from any partner:

- the property of the firm shall be applied
  - FIRSTLY 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;
- 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.

