



Date: 11 March 2021

VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI

FOUNDATION LEVEL PAPER 2A: BUSINESS LAWS

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Topics to be covered

Modes of
effecting
Registration

Consequences
of Non -
Registration

Dissolution
of Firm



Registration of Firm

Section 58 Statement in the prescribed form stating the following is to be filed with the registrar of firms.

- Firm's name
- Place of business
- Name of place where business carried on
- Date when partners joined the firm
- Full name + address
- Duration of partnership



Registration of Firm

Section 59 When the registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry in the register which is called **register of firms** and shall file the statement.

Then he shall issue a **certificate of Registration**.



FORM 'H' / नमुना ' ह '

(See rule 17 / नियम 17 पहा)

CERTIFICATE OF REGISTRATION

नोंदणीचे प्रमाणपत्र



सत्यमेव जयते

THE INDIAN PARTNERSHIP ACT, 1932
(ACT NO. IX OF 1932)

भारतीय भागीदारी अधिनियम, १९३२
(सन १९३२ चा अधिनियम क्रमांक ९)

Registration No. MU000003794.

It is certified that a firm by name " Cargo Pack " with its head office at C-18 , Neighbourhood Shopping Complex , Sector 4 , Plot No 10/11 , Nerul West, Navi Mumbai , Thane , Thane , Maharashtra , 400706, India has this day been duly registered under The Indian Partnership Act, 1932 (Act No. IX of 1932).

याद्वारे असे प्रमाणित करण्यात येत आहे की, सी -१८ , नेबरहुड शॉपिंग कॉम्प्लेक्स , सेक्टर ४ , प्लॉट नंबर १०/११ , नेरुळ (प), नवी मुंबई , महाराष्ट्र , ४००७०६ , India

येथे मुख्यालय असलेल्या " कार्गो पॅक "

चा नावाच्या संस्थेची 24 February, 2015 या दिवशी भारतीय भागीदारी अधिनियम, १९३२ (१९३२ चा अधिनियम क्रमांक ९) अन्वये योग्य रीतीने नोंदणी करण्यात आली आहे.

Given under my hands this 24 February, 2015

दिनांक 24 February, 2015 ०९ या दिवशी माझ्या सहीने देण्यात आले.

Registrar/Deputy Assistant Registrar of
Firms Mumbai/Pune/Nagpur/Aurangabad.





Registration of Firm

Registration when complete

- ❑ Compliance [Section 58]
- ❑ Recording of statement in register [Section 59]
- ❑ Certificate of registration

**FIRM &
COMPANY
REGISTRATION**





Consequences of Non -Registration

1. No suit in a civil court by firm or other co- partners against third party
2. No relief to partners for set off of claim
3. Aggrieved partner cannot bring legal action against other partner or the firm
4. Third party can sue the firm

**Register a
Law Firm as
Partnership**





Dissolution of Firm

Section 39 Discontinuance of partnership between all the partners of the firm is called as dissolution of the firm.





Differences



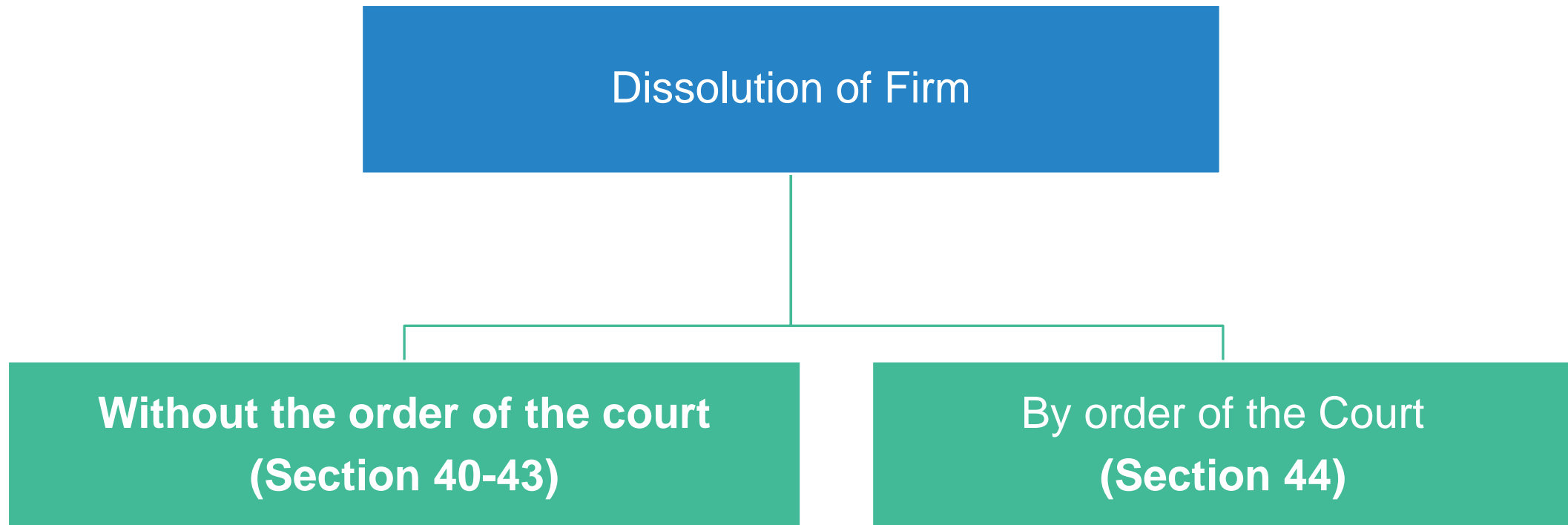


Points of Difference

<u>Dissolution of Firm</u>	<u>Dissolution of Partnership</u>
It involves discontinuance of business in partnership Example: A firm has total 3 partners A,B,C and if the relation between all the partners ends, then the whole firm gets dissolved	It does not affect continuation of the business. It involves only reconstitution of the firm. Example: In a firm where A,B,C are partners and they admit D as a partner, then it is only dissolution of Partnership and new partnership if formed between new partners
It involves winding up of the firm and requires the realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities.
A firm may be dissolved by the order of the Court.	Dissolution of partnership is not ordered by the Court.
It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
It involves the final closure of books of the firm.	It does not involve the final closure of books of the firm.



Modes of Dissolution





Modes of Dissolution (Section 40-44)

1. Dissolution by **agreement (Sec. 40)**
2. **Compulsory** Dissolution (Sec. 41)
3. **Contingent Dissolution or dissolution by operation of law (Sec. 42)**
4. Dissolution by **notice (Sec. 43)**
5. Dissolution by **Court (Sec. 44)**



Dissolution by agreement

Section 40 A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

- Depends on the contract
- Dissolution can be inferred also from the circumstances such as Closure of the business or Final accounts



Compulsory dissolution

Section 41 Happening of an event – making partnership business unlawful or partnership unlawful.

Example – A firm is carrying on the business of trading in a particular chemical and a law is passed which bans on the trading of this particular chemical

Hence the business of the firm now becomes unlawful and soteh firm will have to be compulsorily dissolved.



Dissolution on the happening of certain Contingencies

Section 42 Subject to contract between the partners a firm is dissolved –

- If constituted for a term by expiry of the term;
- If constituted for one or more adventure by the completion of that adventure;
- By the death of partner; unless contrary contract
- By the adjudication of a partner as an insolvent.

Dissolution by Notice

Section 43 Dissolution by notice in partnership at will

Section 43(1) Any partner can communicate his intention for dissolution of the firm

Section 43(2) The effective date of dissolution is the date which is mentioned and if no date is given the effective date would be the date of communication.



Dissolution by Court (Section 44)

- Partner becomes of unsound mind, **44(a)**
- Permanent incapacity, **44(b)**
- Guilty of conduct which affects carrying on the business, **44(c)**
- Wilfully or persistently commits breach of agreements, **44(d)**
- Transfer of whole of his interest in the firm to the third party, **44(e)**
- Loss in the business **44(f)**
- Any other ground which makes dissolution just and equitable. **44(g)**



Case Laws - Dissolution

Suraj Bahadur v. Mahadeo AIR 1963

Partnership firm formed for 20 years was continuously suffering losses. One partner withdrew after sometime other two continued. Subsequently one partner filed a suit for dissolution. Held, Continuous loss can be a ground for dissolution.

Watney v Wells (1861)

Refusal to meet on matters of business, continued quarrelling with no hope of mutual co-operation.



Reconstitution after dissolution

Partnership was for 6 years after that the same was stated to have dissolved by mutual consent and thereafter the said business with its assets and goodwill shall belong to and carried by the continuing partners.

Whether there has been a dissolution of the firm or only reconstitution of the same?

Held, **Dissolution and reconstitution are two different legal terms.** A dissolution brings the partnership to an end while the reconstitution means the continuation of the partnership under **altered circumstances.** Held in the present case the firm was dissolved after expiry of 6 years. Also the firm was dissolved by mutual consent. The old firm stood dissolved and was taken over by the two continuing partners. Thus the new firm succeeded to the business of the old firm.

Consequences of Dissolution (Section 45- 55)



1. Liability for the acts of the partners done after dissolution (Section 45) - Until public notice for dissolution has been given the partners and the firm continues to be liable towards the third party.
 - The estate of a deceased partner, partner not known to the third party dealing with the firm(dormant partner), insolvent partner would not be liable for subsequent acts even if no notice of dissolution is given
 - Notice can be given by any partner.

Consequences of Dissolution (Section 45- 55)



- 2. Right to have business wound up after dissolution (Sec. 46) - Right to clear of the debts and appropriate the surplus among partners or their representatives.**
- 3. Continuing authority of partners for the purpose of winding up (Sec. 47) - It is held, a mere dissolution does not bring about a complete extinction of the firm, which continues and till the liability of the firm are not paid, no partner can claim any particular property or his share in assets.**

Consequences of Dissolution (Section 45- 55)



4. Mode of settlement of accounts between partners (Sec. 48)

48 (a) Losses , including deficiencies of capital, to be paid

• Payment first by profit • Capital • Personal assets in proportion to share

48(b) The assets of the firm to be applied as:

• Third party entitlement • Partner entitlement apart from share contribution • Towards entitlement as per capital of the partners • The residue is to be divided among the partners in PSR.

Consequences of Dissolution (Section 45- 55)



5. Payment of firm debts and of separate debts – sec. 49

Property of the firm shall be applied in payment of firm debt and if any surplus is there , then share of each partner shall be applied to the payment of his separate debt

Separate property of any partner shall be applied first in the payment his separate debt and if any surplus, it should be used for payment of firm debt.



THANK YOU