Marudhar Kesari Jain College for Women (Autonomous)

Vaniyambadi

Class: I M.Com

Subject: Setting Up of Business Entities

Subject Code: 24PCOC24

Unit-III

Limited Liability Partnership and Join Venture

Limited Liability Partnership: Definition – Nature and characteristics -Advantages and disadvantages – Procedure for incorporation – LLP agreement – Annual compliances of LLP-Business collaboration: Definition – Types –Joint venture: Advantages and disadvantages– Types–Joint venture agreement-Successful joint ventures in India– Special Purpose Vehicle– Meaning– Benefits – Formation.

Definition of LLP

LLP is a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership.

The Limited Liability Partnership Act, 2008(LLP Act) does not provide an exhaustive definition. Sub-section (n) of section 2 of the Act states that "limited liability partnership" means a partnership formed and registered under this Act.

Nature and Characteristics of LLP

• The LLP is a body corporate having separate entity from its partners and perpetual succession.

• An LLP in India is governed by the Limited Liability Partnership Act, 2008 and, therefore, the provisions of Indian Partnership Act, 1932 are not applicable to it.

• Every Limited Liability Partnership shall use the words "Limited Liability Partnership" or its acronym "LLP" as the last words of its name.

• An LLP is a result of an agreement between the partners, and the mutual rights and duties of partners of an LLP are determined by the said agreement subject to the provisions of LLP Act, 2008.

• The LLP being a separate legal entity is liable for all its assets, with the liability of the partners limited only to the amount of contributed by them just like a company. No partner will be individually liable for any wrongful acts of other partners. However if the LLP was formed for the purpose of defrauding creditors or for any fraudulent purpose, then the liability of the partners who had the knowledge will be unlimited.

• There must be at least two designated partners in every LLP of whom one shall be resident in India.

• Every LLP shall maintain annual accounts to show its true state of affairs. It must prepare a statement of accounts and solvency every year and file with the Registrar.

• The Central Government may, whenever it thinks fit, investigate into the affairs of an LLP by appointing a competent Inspector.

• A firm, private company or an unlisted public company have the option to convert itself into LLP as per the provisions of the Act. Upon such conversion, the Registrar will issue a certificate to that effect. After issuance of a certificate of registration, all the property of the firm or the company, all assets, rights, obligations relating to the company shall be vested in the LLP so formed, and the firm or the company stands dissolved. The name of the firm or the company is then removed from the Registrar of Firms or Registrar of Companies, as the case may be.

• Like the company, an LLP can be wound up either voluntary or by the Tribunal established under The Companies Act, 2013

• The LLP Act 2008 also enables the Central Government to apply the provisions of the Companies Act whenever it thinks appropriate.

Advantages of LLP

1. Easy to form: Forming an LLP is an easy process. It is less complicated and time consuming unlike the process of formation of a company.

2. Liability: The partners of the LLP is having limited liability which means partners are not liable to pay the debts of the company from their personal assets. No partner is responsible for any other partner's misconduct.

3. Perpetual succession: The life of the Limited Liability Partnership is not affected by death, retirement or insolvency of the partner. The LLP will get wound up only as per provisions of the LLP Act.

4. Management of the company: An LLP has partners, who own and manage the business. This is different from a private limited company, whose directors may be different from shareholders.

5. Easy transferability of ownership: There is no restriction upon joining and leaving the LLP. It is easy to admit as a partner and to leave the firm or to easily transfer the ownership to others.

6. Taxation: an LLP is not subject to Dividend Distribution Tax. (DDT). Distributed profits in the hands of the partners is not taxable. For Income Tax purposes, LLP is treated on par with partnership firms.

7. No compulsory audit required: Every business has to appoint an auditor for checking the internal management of the company and its accounts. However, in the case of LLP, there is no mandatory audit required. The audit is required only in those cases where the turnover of the company exceeds Rs 40 lakhs and where the contribution exceeds Rs 25 lakhs.

8. Fewer compliance requirements: An LLP is much easier and cheaper to run than a private limited company as there are just three compliances per year. On the other hand, a private limited company has a lot of compliances to fulfil and has to compulsorily conduct an audit of its books of accounts.

9. Flexible agreement: The partners are free to draft the agreement as they please, with regard to their rights and duties.

10. Easy to wind-up: Not only is it easy to start, it is also easier to wind-up an LLP, as compared to a private limited company.

Disadvantages of LLP

1. Restricted Access to Capital Markets: LLPs are small form of business and cannot get its shares listed in any stock exchange through initial public offerings. With this restriction, limited liability partnerships may find it difficult to attract outside investors to buy the shares.

2. Rights of partners: An LLP can be structured in such a way that one partner has more rights than another. So it isn't a one vote per share system. So, some lesser partners may feel compromised if higher shareholders choose to move the business in a direction that affects their interests.

3. Public Disclosure of LLP Information: A LLP must file its Annual Returns, Financial Statements etc to the Registrar of LLPs annually. Which become public document once filed with Registrar of LLPs and may be inspected by general public including competitors by paying some fees to the Registrar of LLPs. Information disclosure can make an entity competitively disadvantaged. Competitors – especially those not required to disclose any documents – can access that information and use it to improve their own business.

4. Limitations in Formation of LLP: LLP cannot be formed by a single person. A non – resident Indian and a Foreign National willing to form a LLP in India must have one person resident in India to act as Designated Partner. Further FDI in LLP is allowed only through government route only and that too in those sectors only where 100% FDI is allowed under automatic route under the FDI Policy. This limitation makes LLP an unattractive form of business.

5. Offenses and penalties: Limited Liability Partnership Act, 2008 provides that for non-compliance on procedural matters such as delay in filing of e-forms, one has to pay default fee for every day for which the default continues. Such default fee would be payable at the rate of rupee one hundred per day after the expiry of the date of filing up to a period of three hundred days. The offense can result in either (i) through payment of fine or (ii) through payment of fine as well as imprisonment of the offender.

6. Exit Options are Not Easy for LLPs in default of Filings: A LLP who has defaulted in filings its statement of accounts and annual return with the Registrar of LLPs, willing to shut down its operations and wind up, will have to make its default good first by filing necessary e-forms with late filing fee. This provision is making LLP an unattractive form of business as in India there are many businesses that are ignorant about compliances.

7. Limitation in External Commercial Borrowings (ECB): Limited Liability Partnerships are not allowed to raise ECB. Therefore, a LLP cannot avail commercial loans from its foreign partners, FIIs, Foreign Banks, and any financial institution located outside India.

Procedure for Incorporation of LLP

The incorporation document shall be filed in Form **FiLLiP** (**Form for incorporation of Limited Liability Partnership**) with the Registrar having jurisdiction over the State in which the registered office of the limited liability partnership is to be situated. if an individual required to be appointed as designated partner does not have a DPIN or DIN, application for allotment of DPIN shall be made in Form FiLLiP The application for allotment of DPIN shall not be made by more than two individuals in Form FiLLiP: an application for reservation of name may be made through Form FiLLiP: Provided also that where an applicant had applied for reservation of name under rule 18 in Form RUN-LLP (Reserve Unique Name-Limited Liability Partnership) and which has been approved, he may fill the reserved name as the proposed name of limited liability partnership. The Summaries procedure for incorporation of LLP is as under:

Procure DSC and DIN: Procure DSC and DIN for the individuals acting as Designated Partners of LLP. A person, who already has a DIN, is not require to obtain any new DIN. Existing DIN to be used for Designated Partner (However, DIN should have all latest details such as resident of India, name, address etc.).

Any person proposed to become the Designated Partner in a new LLP shall have to make an application through eform FiLLiP. An application for allotment of DIN up to two Designated Partners, shall be filed in eform FiLLiP with the Registrar, in case of proposed Designated Partners not having approved DIN.

Name reservation: The first step in incorporation of an LLP is reservation of name of the proposed LLP. There are two ways of reserving name of the proposed LLP.

i. File an application under LLP-RUN for ascertaining availability and reservation of the name of an LLP

ii. Name can be proposed in eform FiLLiP, an application for incorporation of LLP

Incorporate LLP: After reserving a name under LLP-RUN, applicant should file eform FiLLiP for incorporating a new LLP. eform FiLLiP contains the details of LLP proposed to be incorporated, Partners'/ Designated Partners' details and consent of the Partner/ Designated Partners to act as Partners/ Designated Partners. On approval of the form, the RoC will issue the certificate of incorporation.

Where the Registrar, on examining Form FiLLiP, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days time to remove such defects or deficiencies: Provided that the total period for re-submission of documents shall not exceed thirty days.

Documents to be attached with form FiLLiP:

i. Consent of partners;

ii. In case of partners are body corporates, certified true copy of board resolution passed by such body corporate partners;

iii. Proof of address of registered office of LLP;

iv. Subscribers' sheet including consent;

v. Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner;

vi. Copy of approval obtained from any sectoral regulator/in-principle approval;

vii. Identity and address proof of individuals acting as Partner and/or Designated Partner;

viii. List of main objects of an LLP;

ix. If the name proposed is liked to registered trademark, NoC from the trade mark owner;

x. NOC of foreign body corporate for usage of name (In case of foreign entities intending to incorporate LLPs in India) **LLP AGREEMENT**

After incorporation of LLP, the partners should execute LLP Agreement and a copy of executed agreement is required to be filed with the RoC in e-form 3 within 30 (thirty) days from the date of incorporation of LLP. Section 2(1)(O) of the Limited Liability Partnership Act, 2008 defines it as under:

"Limited liability LLP Agreements mean any written agreement between the partners of the Limited Liability Partnership or between the Limited Liability Partnership and its partners which determines mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership [section 2(1)(0)]."

It is compulsory to make and execute a LLP agreement within 30 days of the incorporation of LLP.

The value of stamp paper on which the LLP agreement must be printed or stamp duty to be paid on the LLP agreement is dependent on the state of incorporation and amount of capital contribution from the partners

How to draft LLP agreement?

LLP agreement defines the roles, responsibilities, rights, and powers of the partners to LLP and to each other. Hence, it creates the foundation for the smooth running of LLP. LLP agreement clarifies the managerial, operational as well administrative responsibilities and sets clear methodologies for decision making, adding a new partner and disassociation of existing partner.

How to prepare LLP agreement ?

• Draft the agreement and print it on a Stamp paper of requisite value. Value of Non-judicial Stamp Paper depends on the state in which Registration of LLP is done and on the amount of capital contribution.

• All partners should sign the agreement at the bottom of all pages

• Two witnesses should sign the agreement at the end of the document

• Each partner should be provided a copy of the agreement

Essential Clauses to be included in the LLP agreement

S. No	Section no along with the relevant rules	Clauses to be included in the LLP Agreement
1	**Section 23(4)**	**INTERPRETATION / DEFINITIONS** This clause is the essence of any LLP agreement. An LLP Agreement must provide for various definitions such as the definition of designated partners, the accounting period, business of LLP and the name with which the LLP will be known. The agreement must also provide with full address of the registered office of the LLP as well as the address of all the partner.
2	Section 7(1) and 7(2) r.w. rules 7 to 9 of the LLP Rules 2009	**DESIGNATED PARTNERS** LLP agreement shall clearly mention the name, age and address of each of the Designated Partners correctly.
3	Section 5,16,19 read with Rule 18 of LLP Rules	**NAME OF THE LLP AND CHANGES TO IT** This clause shall state that business of the LLP shall be carried on in the name and style of [Name of LLP]. Any change in the name of the LLP shall be notified to the Registrar by the Designated Partner(s) in accordance with the provisions of the LLP Act and the Rules.
4	Section 13 read with Rule 17 of LLP rules	**REGISTERED OFFICE OF THE LLP** LLP agreement shall state that partnership business shall be carried on at the under mentioned address, which shall also be its registered office The business shall also be carried from such other places as may be mutually decided by the partners from time to time.
5	Section 23(4) r.w. the First schedule to the LLP Act 2008	**BUSINESS OF THE LLP** This clause must clearly specify the nature of the business that the LLP will be carrying on.. The LLP may engage in any and all activities necessary, desirable or incidental to the accomplishment of the conduct of such business of the LLP including but not limited to such ancillary business. It may also include any other business conducted in such manner as may

		be decided by the majority of Partners from time to time.
6	Section 3(3),32 and 33 r.w. rule 2 in the First schedule to the LLP Act 2008	**CAPITAL CONTRIBUTION** Total contribution of the LLP and the contribution by each partner along with the percentage of contribution to be mentioned in this clause. .If any partner is contributing in non-monetary form, that is, he / she is going to render services instead of monetary contribution, add the same. Manner of Additional capital contribution by partner during the course of agreement to be included as well .Manner in which contribution can be withdrawn by the partners shall also be stated in this clause.
7	Section 42(1) of the LLP Act 2008	**PROFIT SHARING RATIO** An ideal LLP Agreement must also mention the ratio in which the profits and the losses of the business will be shared among the partners. The partners must clearly state the amount of profit that each member receives, or the amount of the loss that they're liable for will be set out in the agreement.
8	Section 23(4) read with the First schedule of LLP Act 2008	**RIGHTS AND DUTIES OF DESIGNATED PARTNERS** The LLP Agreement must specify the various rights and duties of the Designated Partners as may be mutually agreed by them. In the absence of such separate agreement between the partners about such rights and duties, etc., the provisions of Schedule I of the Limited Liability Act, 2008 will apply as given in Section 23(4) of the said act**.**
9	Section 22,23read with the First schedule of LLP Act 2008	**ADMISSION OF PARTNER, RETIREMENT RESIGNATION AND EXPULSION OF PARTNERS** LLP agreement must include the provisions regarding admission of new partners, retirement as well as the death of a partner, etc. The agreement must provide guidelines for the expulsion of partners as well.
10	Section 23(4)	**REMUNERATION & INTEREST TO BE PAID TO PARTNERS** The LLP agreement shall contain a clause regarding the amount of remuneration to the Designated

		Partner(s), for rendering the services as such. This clause shall contain the rate of interest to be paid to the partners on their capital contribution
11	Section 23(4)	**BANK ACCOUNT** This clause shall set out the modus operandi of the Bank account transactions of the LLP
12	Section 34(1)	**BOOKS OF ACCOUNTS AND ACCOUNTING YEAR** The LLP agreement shall contain clause relating to maintenance of books of accounts and other documents, method of accounting and the details relating to the Accounting year of the LLP.
13	Section 23(4)	**MEETINGS** LLP agreement shall clearly state the manner in which the decisions of LLP shall be taken in the meeting of the partners and shall also provide as to how the same shall be recorded in the minutes and the place of maintenance of such minutes book etc
14	Section 23(4) read with First schedule	**INDEMNITY** The LLP agreement should contain a provision regarding indemnities. The clause of indemnity states that the LLP must protect its partners from any kind of liability or claim incurred by them while carrying the business of the LLP. The partners should also agree to indemnify the LLP for the loss caused by it due to any breach committed by them.
15	Section 23(4) read with First schedule	**DISPUTE RESOLUTION** A well-drafted LLP must always contain a provision for resolving disputes between the members. In a normal course, every LLP prefers Arbitration as a mode of resolving disputes. Such LLP is governed by the Arbitration and Conciliation Act, 1996. Thus, every LLP agreement must incorporate a clause providing for a dispute resolution mechanism to avoid disputes that result in lengthy and expensive litigation**.**
16	Section 63 & 64	**TERM OF LLP /WINDING UP** The partners must specify the term of validity of such LLP agreement whether it is a perpetual agreement or is valid for a fixed period. The agreement must also

		provide for the situations when the partners have agreed to wound up the affairs of the LLP either voluntarily or by an order of Tribunal for the specific violations as mentioned in Section 64 of the Act.
17	Section 23(4)	**GENERAL PROVISIONS** The LLP agreement shall in addition to the above mentioned clauses shall include general provisions on binding on heirs ,successors ,counterparts, serving of notices, waiver, Governing law etc.

ALTERATION TO THE LLP AGREEMENT

The Limited Liability Partnership (LLP) Agreement is the charter of the LLP, similar to the Memorandum of Association and Articles of Association for a private limited company. It defines the scope and extent of the LLP's operations as well as the rights, duties, obligations of the partners.

Altering the agreement can be done passing a resolution approving the revision in the LLP Agreement. The second step is to file Form 3 with the Registrar within 30 days of the amendment in the agreement.

The Documents to be attached to the Form 3 shall include the following

- Initial LLP Agreement
- Supplementary/ Altered agreement
- Optional attachments if any

Change in Partner /Designated Partner

If the change in LLP agreement is due to change in partner(s)/ designated partner(s), Form 4 is also required to be filed along with Form 3.

Documents to be attached with Form 4

- Consent of the partner
- Evidence of cessation
- Affidavit or any proof of change of name
- If the partner or a designated partner is a company, copy of resolution of the company to become partner in LLP
- Copy of resolution/ authorization letter mentioning name and address of individual nominated as representative nominee/ partner.

Change of name

The procedure for the name change is governed by provisions of Section 19 of the Limited Liability Partnership Act, 2008. A Limited Liability Partnership (LLP) that is registered in India may, under certain circumstances, need to change its name. The reasons can be business-related or on account of certain directives from the Central Government (if the name of the LLP is considered undesirable or similar to an already existing LLP, the Government can ask for a name change and failure to comply with the directives could attract a penalty of up to Rs. 5 lakh for the business and up to Rs.1 lakh for each partner)

Procedure for Changing the Name of the LLP

An application for changing the name of the LLP should be, first, submitted to the Ministry of Corporate Affairs. The application must have maximum six name preferences. One must ensure that the preferences are in tandem with the LLP naming guidelines that have been laid out in India. To start with, it should not be identical or similar to an already existing one. You can also check out the availability of a name on the MCA portal and then finalize a name.

Along with the LLP name change application, the partners need to submit the following documents.

1. Certified copy of consent of all partners involved for the name change;

2. Copy of the existing LLP agreement;

3. Trademark copy or a copy of the registration certificate;

After the suggested name gets approved, one has to file Form LLP-5, giving notice of the change in the name.

The form has to be submitted to the Registrar within 30 days.

The ROC, after taking into consideration the application, will approve/deny the name change.

If the name is approved, the ROC will issue a certificate and the new name will be effective from the date mentioned in the certificate.

Once the partners get the new certificate of registration, a supplementary agreement needs to be laid out mentioning the changes in the LLP agreement as a result of the name change.

Shifting of Registered office

Notice of change of registered office to be filed with the Registrar within 30 days from the date of the change in LLP -Form 15 prescribed under Rule 17 of the LLP Rules 2009 along with the prescribed fees.

List of documents required to attached with LLP Form 15:

1. Consent letter of all DP’s

2. Consent letter of all Secured Creditors

3. Copy of Board Resolution

4. Copy of Advertisement

5 Proof of New Registered Office Address (If Rented then Rent Agreement, Utility Bill in the name of Owner & NOC)

ANNUAL COMPLIANCES OF LLP

All LLPs registered under the LLP Act, 2008 need to file Annual Returns and Statement of Accounts for every Financial Year. It is mandatory for a LLP to file a return irrespective of whether it has done any business or not. There are three mandatory compliance requirements to be followed by LLPs.

Filing of Annual Return

• Annual returns are filed in Form 11. This form is a summary of the management affairs of the LLP, such as number of partners and their names. Form 11 needs to be filed within 60 days of the closure of the Financial year. Hence this Annual Return should be filed on or before 30th May every year by the LLP.

• In case the annual turnover of the LLP crosses Rs 5 crores or the Capital contribution from Partners exceeds more than Rs 50 Lakhs the Annual return should be accompanied by a Certificate from Practising Company Secretary.

Filing of Statement of the Accounts or Financial Statements

• All LLPs are required to maintain their Books of Accounts in Double Entry System. They also need to prepare a Statement of Solvency (Accounts) every year ending on 31st March. For this purpose, LLP Form 8 should be filed with the Registrar of Companies on or before 30th October every year.

• It should be noted that LLPs whose annual turnover exceeds Rs. 40 lakh or whose contribution exceeds Rs. 25 lakh are required to get their accounts audited by a qualified Chartered Accountant mandatorily.

• The penalty for non-filing of these forms with the ROC is Rs. 100 per day per form.

Filing of Income Tax Returns

• Every LLP is required to close its financial year on 31st March every year as per the Income Tax Act and is also required to file their returns with the Income Tax Department. The LLP whose annual turnover exceeds Rs. 40 lakhs or capital contribution exceeds Rs. 25 Lakhs are required to get their accounts audited under the provisions of the Income Tax Act. Maintenance of book of accounts is mandatory for LLP, irrespective of annual turnover.

However, it is mandatory for LLP to file return of income electronically under digital signature, if its accounts are required to be audited under section 44AB of the Income Tax Act.

Due dates for an LLP to file their Income Tax Returns are as follows:

Particulars	**Due Dates**
LLP who is required to get its accounts audited under the Income- tax Act or under any other law	September 30 of the assessment year

LLP who is required to furnish a report in Form No. 3CEB under Section 92E of Income Tax Act	November 30 of the assessment year
In any other case	July 31 of the assessment year

EVENT BASED COMPLIANCES FOR LLP

Section	**Nature of events**	**Compliance requirement**	**Penalty for non-compliance**
7(3)&(4)	Consent & Particulars of Partner/ Designated Partner	Filing of consent of Partner/ Designated Partner to act as such with the Registrar of Companies in E Form-4 within 30 days of the appointment as the designated partner	The LLP and all its partner shall be punishable with fine which shall not be less than Rs. 10,000 & may extend to Rs. 5,00,000
9	Vacancy of Designated Partner	Filing of vacancy in Designated Partner within 30 days of vacancy and intimation of same to Registrar in E Form-4 and in case if no designated partner being appointed or if any time there is only one designated partner, then each partner shall be deemed to be the designated partner	The LLP and all its partner shall be punishable with fine which shall not be less than Rs. 10,000 & may extend to Rs. 5,00,000
13(3)	Change of Registered Office	File the notice of any change in registered office with the Registrar of Companies in E Form - 15 within 30 days of shifting and any such change shall take effect only upon such filing.	The LLP and all its partner shall be punishable with fine which shall not be less than Rs. 2000 & may extend to Rs. 25000
19	Change of Name	LLP may change its name registered with the Registrar by filing	Person guilty of offence shall be punishable with fine

		with the Registrar notice of such change in E Form- 5 within 30days of such change.	which may extend to Rs 5,00,000 but which shall not be less than Rs 50000 and with a further fine which may extend to Rs 50 for everyday after the first day after which thedefault continues
23	LLP Agreement & Changes there in	LLP Agreement and any changes made therein shall be filed with the Registrar in E Form-3 within 30days of incorporation of LLP or such alteration of LLP agreement	The LLP and every designated partner of the LLP shall be punishable with fine which shall not be less than Rs 2000 & may extend to Rs. 25,000
25(2)	Change in Designated Partners	Where a person becomes or ceases to be a partner or where there is any change in the name or address of a partner, notice of the same signed by the designated partner and to be filed within 30 days to the Registrar in E Form - 4.	The LLP and every designated partner of the LLP shall be punishable with fine which shall not be less than Rs 2000 & may extend to Rs. 25,000

DRAFT LLP AGREEMENT

THIS Agreement of LLP made at .... this.................... Day of .... 20............

BETWEEN

1. ………………. S/o ……………….. R/o……………………… residing at which expression shall, unless it be repugnant to the subject or context -thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the FIRST PARTY, and

2. ………………. S/o ……………….. R/o……………………… residing at which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the SECOND PARTY, and

THAT THEY BOTH SHALL BECOME Partners who shall be Designated Partners on incorporation of the LLP to carry on the partnership business as a Limited Liability Partnership (LLP) registered under the provisions of Limited Liability Partnership Act, 2008 (LLP Act) with a view to shall the profits/losses on the following terms:

DEFINITIONS : In this agreement unless the context otherwise requires :-

“Accounting year” means the financial year as defined in the Limited Liability Partnership Act, 2008.

“Act” or “LLP Act” means the Limited Liability Partnership Act, 2008 “Business” includes every trade, profession service and occupation. “Designated Partner” means any partner designated as such.

“LLP” means the limited liability partnership formed pursuant to this LLP Agreement.

“LLP Agreement” means this Agreement or any supplement thereof determining the mutual right, duties and obligations of the partner in relation to each other and in relation to LLP.

“Partner” means any person who becomes a partner in the LLP accordance with this LLP Agreement

1. Name: Limited Liability Partnership shall be carried on in the name and style of M/s. .... LLP and hereinafter called as …X… LLP.

2. Business: The Partnership business shall be .... until and unless changed as per the mutual decision of all the partners of the LLP at the time of the decision.

3. Place of Office: The partnership business shall be carried on at the under mentioned address, which shall also be its registered office....................... The business shall also be carried from such other places as may be mutually decided by the partners from time to time.

4. Duration : The Partnership shall commence from the date of registration of the firm, and shall continue to operate in accordance with the provisions of LLP Act, 2008 and rules framed thereunder, until termination of this agreement with the the mutual consent of all the partners.

5. Contribution: The Contribution of the LLP shall be Rs. .... (Rupees .... only) which shall be contributed by the partners in the following proportions. First Party .... % i.e. Rs. .... (Rupees .... only) Second Party .... % i.e. Rs.. (Rupees .... only) The further Contribution if any required by the LLP shall be brought by the partners in their profit sharing ratio.

6. Number of Designated Partners: The maximum number of designated partners appointed for the LLP shall be as mutually agreed between the partners initially at the time of incorporation of LLP or as decided by the designated partners of the LLP from time to time unanimously.

7. Sleeping Partners: All the partners other than those appointed as the designated partners of the LLP shall be sleeping partners, and they shall not interfere with the day to day conduct of business of the LLP.

8. Common Seal: LLP shall have a common seal to be affixed on documents as defined by partners under the signature of any of the Designated Partners.

9. Immovable Properties: The immovable properties purchased by the LLP shall be clear, marketable and free from all encumbrances.

10. Audit: The Statement of Accounts and Solvency of LLP mad each year shall be audited by a qualified Chartered Accountant in practice in accordance with the rules prescribed under section 34(3) of the LLP act, 2008, namely, rule 24 of the LLP Rules & Forms, 2008. It shall be the responsibility of the Designated Partners of the LLP to comply with Rule 24 of the rules.

11. Remuneration to Partners: No partners shall be entitled to any remuneration for taking part in the conduct of the LLP's business.

12. Drawings: Each partner may draw out of the partnership funds as drawings from the credit balance of his income account. Such drawls shall be duly accounted for in the yearly settlement of accounts and divisions of profits of the partnership at the end of each financial year.

13. Interest on Capital or Loan : Interest at the rate of % per annum on the capital contributed or loan given or credited as given by each of the partners and standing to his credit as on the first day of each calendar month for the previous month out of the gross profits of the partnership business shall be credited in the respective accounts, and such interest shall be cumulative such that any deficiency in one financial year shall be made up out of the gross profits of any succeeding financial year or years.

14. Business transaction of partner with LLP : A partner may lend money to and transact other business with the LLP, and in that behalf the Partner shall have the same rights and obligations with respect to the loans or other business transactions as a person who is not a Partner.

15. Profits : The net profits of the LLP shall be divided in the following proportions:

To the said ....%

To the said ....%

16. Losses: The losses of the LLP including loss of capital, if any, shall be borne and paid by the partners in the following proportions:

To the said ....%

To the said ....%

17. Bankers: The bankers of the partnership shall be .... Bank, ... branch and/or such other bank or banks as the partners may from time to time unanimously agreed upon.

18. Accounting year: The accounting year of the LLP shall be from 1st April of the year to 31st March of subsequent year. The first accounting year shall be from the date of commencement of this LLP till 31st March of the subsequent year.

19. Place of keeping books of accounts: The books of accounts of the firm shall be kept at the registered office of the LLP.

20. Division of Annual profits of LLP: As soon as the Annual Statements of Accounts and Solvency shall have been signed by the Partners and the same duly audited and the auditor rendering his report thereon, the net profits, if any of the LLP business, shall be divided between the partners in the proportion specified in and in accordance with the provisions of this Agreement.

21. Term of validity of deed: Duration of this Agreement shall be .... years beginning from the date first above mentioned, subject to the condition that this deed may be extended further by mutual consent in writing of the Parties hereto upon such terms and conditions or with such modifications as may be mutually agreed upon between them.

22. Arbitration: In the event of any dispute or differences arising between the parties hereto either touching or concerning the construction, meaning or effect of this Deed or the respective rights and liabilities of the parties hereto, or their enforcement there under, it shall be first settled amicably through discussions between the parties and if not resolved then otherwise referred to the arbitration of a Sole Arbitrator if agreed upon, failing which to the Sole Arbitrator as appointed by the Court in accordance with the provisions of the Arbitration and Conciliation, Act 1996. The arbitration proceedings shall be conducted at New Delhi in English language.

23. Auditors: The Auditors of the firm shall be .... having their office at .... The auditors shall be responsible for all the accounts/taxation related tasks of the firm including but not limited to income tax, VAT, preparation of balance sheet/ assets and liabilities/ profit and loss of the LLP etc.

24. The legal advisors of the firm shall be ....

25. Severability: This deed constitutes the entire understanding/agreement between the parties taking precedence over and superseding any prior or contemporaneous oral or written understanding. Unless otherwise provided herein, this deed cannot be modified, amended, rescinded or waived, in whole or part except by a written instrument signed by all the parties to this deed. The invalidity or unenforceability of any terms or provisions of this deed shall not affect the validity or enforceability of the remaining terms and provisions of this deed, which shall remain in full force and effect.

Admission of New Partner

26. The new partner may not be introduced with the consent of all the existing partners. Such incoming partner shall give his prior consent to act as Partner of the LLP.

27. The Contribution of the partner may be tangible, intangible, Moveable or immoveable property and the incoming partner shall bring minimum contribution of Rs. ....

28. Person whose business interests are in conflict to that of the firm shall not be admitted as the Partner.

29. The Profit sharing ratio of the incoming partner will be in proportion to his contribution towards the capital of LLP.

Rights of Partner

30. All the partners hereto shall have the rights, title and interest in all the assets and properties in the firm in the proportion of their Contribution.

31. Every partner has a right to have access to and to inspect the books of accounts of the LLP.

32. Each of the parties hereto shall be entitled to carry on their own, separate and independent business as hitherto they might be doing or they may hereafter do as they deem fit and proper and other partners and the LLP shall have no objection thereto provided that the said partner has intimated the said fact to the LLP before the start of the independent business. Provided the business is not in competition to the existing business being carried on by the LLP.

33. On retirement of a partner, the retiring partner shall be entitled to full payment in respect of all his rights, title and interest in the partner as herein provided.

34. Upon the death of any of the partners herein any one of his or her heirs will be admitted as a partner of the LLP in place of such deceased partner.

35. On the death of any partner, if his or her heir legal heirs opt not to become the partner, the surviving partners shall have the option to purchase the contribution of the deceased partner in the firm.

Duties of Partners

36. Each Partner shall be just and faithful to the other partners in all transactions relating to the LLP.

37. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.

38. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the LLP of any transaction concerning the limited liability partnership.

39. Every partner shall indemnify the limited liability partnership and the other existing partner for any losscaused to it by his fraud in the conduct of the business of the limited liability partnership.

40. In case any of the Partners of the LLP desires to transfer or assign his interest or shares in the LLP he can transfer the same with the consent of all the Partners.

41. No Partner shall without the written consent of other Partners :-

(a) Engage or except for gross misconduct, dismiss any employee of the partnership

(b) Commit to buy any immovable property for the LLP

(c) Submit a dispute relating to business of LLP business to arbitration.

(d) Assign, mortgage or charge his or her share” in the partnership or any asset or property thereof or make any other person a partner therein.

(e) Engage directly or indirectly in any business competing with that of the limited liability partnership.

(f) Withdraw a suit filed on behalf of LLP.

(g) Admit liability in a suit or proceedings against LLP.

(h) Share business secrets of the LLP with outsiders.

(i) Remit in whole or part debt due to LLP.

(j) Go and remain out of station in connection with the business of LLP more than .... days at a time.

(k) Open a banking account on behalf of LLP in his name.

(l) Draw and sign any cheque on behalf of LLP unauthorizedly in excess of Rs. .... on its banking account.

(m) Give any unauthorized security or promise for the payment of money on account on behalf of the LLP except in the ordinary course of business.

(n) Draw or accept or endorse unauthorized any bill of exchange or promissory note on LLP's account.

(o) Lease, sell, pledge or do other disposition of any of the LLP's property otherwise than in the ordinary course of business.

(p) Do any act or omission rendering the LLP liable to be wound up by the Tribunal.

(q) Derive any profits from any transactions of the LLP or from the use of its name, resources or assets or business connection by carrying on a business of the nature as competes with that of the LLP.

Duties of Designated Partner

42. Devote their whole time and attention to the said partnership business diligently and faithfully by employing themselves in it, and carry on the business for the greatest advantage of the partnership.

43. The Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of Limited Liability Partnership Act, 2008.

44. Protect the property and assets of the LLP.

45. Upon every reasonable request, inform the other partners of all letters, writings and other things which shall come to their hands or knowledge concerning the business of the LLP.

46. Punctually pay their separate debts to the LLP.

47. The Designated Partners shall be responsible for the doing of all such other acts arising out of this agreement.

Cessation of Existing Partners

48. Partner may cease to be partner of the LLP by giving a notice in writing of not less than days to the other partners of his intention to resign as partner.

49. Majority of Partners can expel any partner in the situation where the partner has been found guilty of carrying of activity/business of LLP with fraudulent purpose or has been found to engage in a business which competes with the business of LLP.

IN WITNESS WHEREOF THIS DEED IS SIGNED BY THE PARTIES HERETO THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

Party of the First Part ....

Party of the Second Part ....

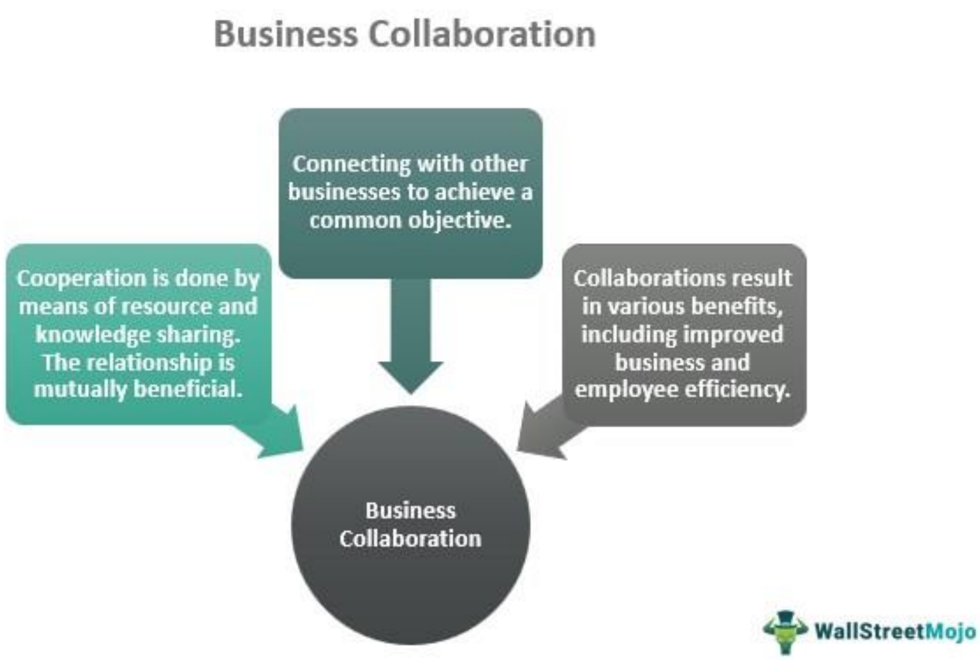
Witness 1:

Witness 2:

BUSINESS COLLABORATIONS

Business collaboration is the process of businesses working together to achieve a specific and shared goal. It can be a short-term or long-term arrangement connecting business entities. All the entities part of the alliance or association benefit from it.

Business collaboration is creating purposeful connections, both internally and externally, to achieve goals or solve problems through sharing varied skill sets, strengths, and perspectives. Advanced digital tools strengthen business collaboration between employees and clients to boost productivity and improve communication in a unified environment.



Regardless of their size or industry, businesses can benefit greatly from collaboration. Through it, businesses can collaborate to solve issues and accomplish objectives that, when pursued independently, appear impossible. In addition, all network partners in the collaboration framework are more equipped to develop, grow and boost their competitiveness on various fronts by merging with the work and experience of other organizations.

How Do Business Collaborations Work?

Business collaboration uses business relationships inside and outside the company to produce ideas, find solutions, and accomplish shared objectives. An open, honest, and fruitful exchange of ideas is the basis of any partnership that is truly successful for both parties involved.

Business network collaborations enhance reachability and access to resources that are otherwise out of reach for a single company. Businesses can often complement one another and specialize in diverse fields through collaboration, allowing them to compete in markets that are typically out of their reach. Specifically, small businesses may encounter several obstacles when attempting to compete in international markets. Partnering with international business owners help them in both obvious and non-obvious ways.

Creating a culture of collaboration with effective communication strategies and knowledge sharing as critical element is essential to thriving in the modern world of competition. Therefore, businesses must consider their communication strategies and adapt them to the requirements of the people they share information with to communicate and share knowledge successfully.

Types of Collaboration

There are various types of collaboration, and some are listed below:

1 . Internal Collaboration

Internal collaboration occurs when people or groups within a company collaborate and share knowledge. The term "collaboration" is a wide one that encompasses a variety of formats and organizational levels. However, it is advantageous to encourage internal collaboration to achieve objectives and finish tasks since it encourages transparency and enables employees from other departments to share knowledge and ideas.

2. External Collaboration

Working with people outside the organization is referred to as external collaboration. Customers, suppliers, competitor businesses, and other organizations could all be considered external collaborators. Organizations can employ external cooperation for various business-related objectives, including data collection or introducing a new project or product. A company frequently looks for external partners because they can provide something that cannot be obtained internally. While working on external collaboration initiatives, it's crucial to identify and document shared goals effectively. One practical method for doing this is through structured templates that facilitate communication and ensure alignment. To streamline this process, you can use templates that guide your team in establishing clear objectives and timelines, helping everyone collaborate efficiently towards a common aim. For teams looking to enhance their collaborative efforts, understanding how to create an action plan can be pivotal in achieving successful outcomes and ensuring smooth cooperation between partners or departments.

3. Community Cooperation

When people with similar interests come together, it is called community collaboration. The aim of community cooperation is often knowledge sharing and learning. For example, if they learn anything or get an idea from another, they might share it with their team or place of business to further their work.

4. Strategic Alliance Collaboration

When two or more organizations collaborate externally to achieve a common objective, it is a **strategic alliance**. They may make these agreements for short- or long-term goals. In such partnerships, the corporate partners exchange information and assets, frequently completing what the other lacks or cannot provide. This kind of collaboration can support various corporate goals. Binding agreements that outline each party's obligations in the partnership are a part of some of these relationships. Conflicts may arise if their obligations aren't met.

5. Network Collaboration

With network collaboration, businesses or organizations can cooperate to achieve compatible objectives. These networks are usually online, and their participants may not always be acquainted directly or personally. Businesses can contribute to the network by providing knowledge or innovative ideas that others can use to their advantage. Over time, network participants may forge closer bonds and depend on one another to assist with particular objectives or activities.

Examples

Let's look into some examples to understand the concept better:

Example #1

XYZ is a toy manufacturing company with many departments, including production, sales, human resources, operations, and finance. Within the sales department, there are customer success teams that constantly provide data on feedback from customers. Now, this feedback can be shared with the production team to manufacture items according to consumer preferences.

In addition, the production team can share information about finances with the finance department, where they can work on areas to reduce costs. All these departments have their own assigned work. However, they all depend on each other and share vital information across them for one common goal, which is the growth of the business. It is an example of team collaboration.

Example #2

A new virtual credit card that can be added to the iPhone's Wallet app has been created and introduced by Apple under the name Apple Card. The bank authorized to issue this consumer credit card is Goldman Sachs. It is an example of business collaboration where Apple, a technologically oriented company, has tied up with Goldman Sachs, an American multinational investment bank and financial services company.

Apple Inc. has teamed with Goldman Sachs and Mastercard for processing and handling payments. This new service was created to replace traditional credit cards with a more advanced, safe, and convenient payment option for online and offline establishments.

Benefits

Some of the benefits of collaborations by businesses are listed down:

Growth: Businesses that collaborate can benefit from various competitive advantages that increase their productivity, agility, and ability to innovate—all of which help them outstrip the competition.

Profitability: There is a high correlation between an organization's profitability and its collaborative approach, much like with overall growth. A majority of the companies with notable increases in profitability over the previous years had collaborative strategies.

Quality of work output: More than one party is involved in collaboration, and they cooperate, coordinate, and complement each other. They complete each other's tasks efficiently; even if one is lagging, the other party will compensate and complete the work. Hence, the quality of the output does not suffer.

Innovation: Iterative thinking can be sped up along with the innovative process and can go relatively quickly by working with a group of open-minded individuals. They can immediately assess an idea's viability and assist in building upon it. Each unique idea can be collaborated on into something bigger and better.

Employee engagement and reduced turnover: Collaboration in terms of ideas, work, outcomes, and the process benefits the workers; they would be willing to participate actively. It prevents them from switching companies and hence reduces the turnover.

Saving time and increasing staff productivity: Collaboration helps efficiently complete tasks. Even after accounting for some time wasted, it is seen that most employees can efficiently complete tasks due to the shared responsibility systems in place. It saves a lot of money for the management, too.

JOINT VENTURE

Introduction:

Joint Venture is a business preparation in which more than two organizations or parties share the ownership, expense, return of investments, profit, governance, etc. To gain a positive synergy from their competitors, various organizations expand either by infusing more capital or by the medium of Joint Ventures with organizations.

Joint Ventures can be with a company of same industry or can be of some other industry, but with a combination of both, they will generate a competitive advantage over other players in the market.

In short, when two or more organizations join hands together for creating synergy and gain a mutual competitive advantage, the new entity is called a Joint Venture. It can be a private company, public company or even a foreign company.

In India, many companies underwent joint venture with various foreign companies, which were either technologically more advanced or geographically more scattered. The major joint ventures in India were done in sectors like Insurance, Banking, Commercial Transport vehicle, etc.

The concept of "joint venture" was not defined clearly in Companies Act,2013. However, the Hon'ble Supreme Court in case of Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd tried to define it. Here, it noticed that the character of a joint venture is not determined by the title of an agreement, but the real substance, shared control, assets, risks, and liabilities created between the parties.

Definition: A joint venture can be simply defined as a partnership where several parties enter into a business undertaking for mutual profit with resources contribution and sharing of risk. The Companies Act, 2013 was amended in the year 2017; it was called the Companies (amendment) Act, 2017. Section 2(6) was the amended definition stating: "a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement".

In India, JVs happen to be rather a precious strategy as a functional strategy among Indian companies but, more importantly, among foreign organizations of domestic origin in sectors such as manufacturing, infrastructure, and technology. They help foreign companies overcome regulatory obstacles while using the native know-how. With the world economies becoming increasingly interlinked, companies are aggressively venturing abroad through JVs while providing attractive opportunities to expand, gain profits, and participate in the growth process. JVs have been important tools for bridging international players with emerging sectors in India's dynamic economy.

Characteristics of a Joint Venture

1. Creates Synergy

A joint venture is entered between two or more parties to extract the qualities of each other. One company may possess a special characteristic which another company might lack with. Similarly, the other company has some advantage which another company cannot achieve. These two companies can enter into a joint venture to generate synergies between them for a greater good. These companies can work on economies of large scale to give cost advantage.

2. Risk and Rewards can be Shared

In a typical joint venture agreement between two or more organization, may be of the same country or different countries, there are many diversifications in culture, technology, geographical advantage and disadvantage, target audience and many more factors to overcome. So the risks and rewards pertaining to the activity for which the joint venture is agreed upon can be shared between the parties as decided and entered into the legal agreement.

3. No Separate Laws

As for joint venture, there is no separate governing body which regulates the activities of the joint venture. Once they are into a corporate structure, then the Ministry of Corporate Affairs in association with Registrar of Companies keep a check on companies. Apart from that, there is no separate law for governing joint ventures.

Advantages of Joint Venture

1. Economies of Scale

Joint Venture helps the organizations to scale up with their limited capacity. The strength of one organization can be utilized by the other. This gives the competitive advantage to both the organizations to generate economies of scalability.

2. Access to New Markets and Distribution Networks

When one organization enters into joint venture with another organization, it opens a vast market which has a potential to grow and develop. For example, when an organization of United States of America enters into a joint venture with another organization based at India, then the company of United States has an advantage of accessing vast Indian markets with various variants of paying capacity and diversification of choice.

At the same time, the Indian company has the advantage to access the markets of the United States which is geographically scattered and has good paying capacity where the quality of the product is not compromised. Unique Indian products have big markets across the globe.

3. Innovation

Joint ventures give an added advantage to upgrading the products and services with respect to technology. Marketing can be done with various innovative platforms and technological up gradation helps in making good products at efficient cost. International companies can come up with new ideas and technology to reduce cost and provide better quality products.

4. Low Cost of Production

When two or more companies join hands together, the main motive is to provide the products at a most efficient price. And this can be done when the cost of production can be reduced or cost of services can be managed. A genuine joint venture aims at this only to provide best products and services to its consumers.

5. Brand Name

A separate brand name can be created for the Joint Venture. This helps in giving a distinctive look and recognition to the brand. When two parties enter into a joint venture, then goodwill of one company which is already established in the market can be utilized by another organization for gaining a competitive advantage over other players in the market.

For example, a big brand of Europe enters into a joint venture with an Indian company will give a synergic advantage as the brand is already established across the globe.

6. Access to Technology

Technology is an attractive reason for organizations to enter into a joint venture. Advanced technology with one organization to produce superior quality of products saves a lot of time, energy, and resources.

Without the further investment of huge amount again to create a technology which is already in existence, the access to same technology can be done only when companies enter into joint venture and give a competitive advantage.

7.New insights & expertise

Starting a joint venture brings in opportunities to gain new insights and expertise. As the market is now way easier to understand given the short-term partnerships.

8.Better resources

A joint venture gives access to better resources like specialized staff and technology. All the high-end equipment and capital required are also easily available for use.

9.Temporary

A joint venture is a temporary arrangement between two or more companies. Hence, there is no long-term commitment involved.

10.Sharing of risks and costs

Both parties share the risks and costs in a predetermined manner. In case the joint venture project fails, it is not the responsibility of just one entity to bear the loss and the costs of its failure.

11.Flexibility

Joint ventures have a limited lifespan and can only cover a fraction of the main business, thereby limiting the commitment as well as business' exposure.

12.Many ways to exit a joint venture

In the term of its business and consolidation, a joint venture offers many creative ways for the companies to escape non-core businesses.

13.Greater success

The chances of a business succeeding is higher as the companies already own a renowned brand. As a result, the company's credibility doubles as well.

14.Increased networking opportunities

Even though the joint venture is for a specific goal, the move will enable businesses to create long-lasting business relationships.

Disadvantages of Joint Ventures

In this section, we shall learn about how joint ventures also carry a few drawbacks along with the aforementioned advantages.

1.Vague objectives

The objectives of a joint venture are not 100% clear and rarely communicated to all the parties involved.

2.Restricted flexibility

There are times when flexibility of operations is restricted in a joint venture. When that happens, participants have to focus on the joint venture only, setting aside their own business.

3.No equal involvement

An equal pay may be possible, but it is extremely unlikely for all the companies working together to share the same involvement and responsibilities.

For instance, company A is working on the production process, while company B is responsible for the production, and company C is in-charge of planning and implementing market strategies. Since company A is not directly involved in the production and promotion process, the pressure is on the latter companies. It will also affect their individual businesses.

4.Imbalance

As different companies come together in a joint venture, there are greater chances of imbalance of expertise, assets, and investment as well. This results in a negative impact on the effectiveness of the joint venture.

5.Clash of cultures

A clash of cultures and management styles may result in poor cooperation and integration. People with different beliefs, tastes, and preferences can get in the way if not looked after well.

6.Limited outside opportunities

It is very common for joint venture contracts to restrict outside activities of participant companies while working on a joint venture project. Businesses need to make sure that they understand what they are dealing with if they do not wish to have any adverse effects on the entire business.

7.Much research & planning required

The success of a joint venture greatly depends on thorough research and analysis of the objectives.

8.Unreliable partners

As the nature of the joint venture is separate, it is possible that the partners do not devote their 100% attention and commitment to the project thus resulting in unreliability.

9.Lack of clear communication

As a joint venture involves different companies from different fields with different goals, there are often chances of lack of proper and clear communication between them.

Joint Venture Vs Partnership

To understand joint venture companies in India in a better way, it is necessary to know what differs them from the partnership form of business. Hence, the following key differences of joint venture vs partnership is put together:

Joint Venture	Partnership
It is a type of business arrangement formed for accomplishing a particular project.	It is an agreement between two or more than two individuals for carrying out business and sharing profits and/ or losses thereof.
There is no act or statute governing the joint venture form of business.	It is governed by the Indian Partnership Act of 1932.
The parties involved in the joint venture are known as co-venturers.	Members of the partnership are called partners.

A minor cannot become a party to a joint venture.	A minor can actively take part in becoming a partner.
There is no specific trade name.	There is a specific trade name.
A joint venture is formed for a short duration, hence, the going concern concept does not apply.	Partnership is based on the going concern concept as it is for a longer term.
There is no specific requirement to maintain books of accounts.	It is compulsory to maintain the books of accounts.

Joint Venture Companies in India – Examples

In this section, we shall know more about the currently operational joint venture companies in India.

Company	**Description**
Star Union Dai-ichi Life Insurance Co. Ltd. (SUD Life)	It is a joint venture of Union Bank of India, Bank of India, and Dai-ichi life, a leading life insurance company of Japan
ICICI Prudential Life Insurance Company (ICICI Prudential Life)	It is a joint venture of ICICI Bank, India's leading private sector bank, and Prudential plc, a prominent international financial services group headquartered in the UK
Cholmoodeley MS General Insurance Company (Chola MS)	It is a joint venture between the Murugappa Group, an Indian Conglomerate, and the Mitsui Sumitomo Insurance Group (MSIG), a Japanese assurance company
Future Generali Life Insurance	It is a joint venture of three leading groups: Future Group – a leading retailer of India, Generali Group – a global insurance group featuring in the top 50 largest companies of the world, and the Industrial Investment Trust Limited (IITL) – a leading investment company
ICICI Lombard General Insurance Company Ltd.	It is a joint venture between the ICICI Bank Ltd., India's second largest bank and the Fairfax Financial Holdings Limited – a Canada-based diversified financial services company
IFFCO Tokio General Insurance	It is a joint venture between the Indian Farmers Fertilizer Cooperative (IFFCO) and the Tokio Marine and Nichido Fire Group
Tata AIG General Insurance Co. Ltd.	It is an Indian general insurance company which is a joint venture between the Tata Group and the American International Group (AIG). The Tata Group holds 74% stake in the venture, while that of the AIG is 26%

What is a Joint Venture Agreement?

A joint venture (JV) agreement is a legal contract between two or more parties who come together to undertake a specific business project. Unlike mergers or acquisitions, where companies combine entirely, a joint venture allows each party to retain its distinct legal identity while pooling resources, sharing risks and enjoying mutual benefits. In India, joint ventures are often used for large infrastructure projects, technology collaborations and other significant business ventures.

Types of Joint Ventures in India

1. **Equity-Based Joint Venture**: In this type, the parties create a new legal entity and contribute equity to it. The profits, losses and management responsibilities are shared according to the equity stakes. This is the most common form of joint venture in India and is popular among foreign companies looking to enter the Indian market.
2. **Contractual Joint Venture**: Unlike an equity-based JV, a contractual joint venture does not involve creating a new legal entity. Instead, the parties agree to collaborate on a specific project while retaining their separate legal identities. This type is often used for short-term projects or where the creation of a new entity is unnecessary.

Key Components of a Joint Venture Agreement

A joint venture agreement is an important document that outlines the terms and conditions under which two or more parties collaborate for a specific business purpose. Given the complexities involved in such collaborations, it is essential that the agreement covers all key aspects to prevent misunderstandings and ensure a smooth partnership. Here's an overview of the key components that should be included in a joint venture agreement:

1. Objective and Scope

The objective and scope section is foundational to the joint venture agreement. It clearly defines the purpose of the joint venture and the specific business activities to be undertaken. This section ensures that all parties have a mutual understanding of the goals and the extent of the collaboration. By outlining the scope, the agreement also limits the activities to which the joint venture will be confined, preventing any party from overstepping the agreed boundaries.

2. Capital Contribution

Capital contribution is a critical component of the joint venture agreement. This section specifies the amount and form of capital each party will contribute, whether in cash, assets or services. It also details the timelines and conditions under which these contributions must be made. The capital contribution clause ensures that all parties are aware of their financial commitments and provides a basis for the subsequent allocation of profits and losses.

3. Profit and Loss Sharing

The profit and loss-sharing arrangement is a key aspect that determines how the financial outcomes of the joint venture will be distributed among the parties. This section usually aligns with the equity contributions but can be customised based on mutual agreement. The agreement should detail the formula or percentage used for profit-sharing and the process for covering any losses incurred by the venture. Clear guidelines on profit and loss sharing help prevent disputes and ensure fairness.

4. Management and Control

Management and control clauses outline how the joint venture will be governed and who will be responsible for its day-to-day operations. This section typically includes the composition of the board of directors, the appointment of key management personnel and the decision-making process. It should also address voting rights and the procedure for resolving deadlocks in decision-making. Proper management and control mechanisms are essential to maintaining a balanced partnership and ensuring that the venture operates efficiently.

5. Intellectual Property Rights

In ventures involving technology or innovation, intellectual property (IP) rights are of paramount importance. This section of the agreement defines the ownership, use and protection of IP created or used during the joint venture. It should specify whether IP rights will be jointly owned or if one party retains exclusive rights. Additionally, the agreement should address how any IP developed during the collaboration will be handled after the joint venture ends.

6. Exit Strategy

An exit strategy is a vital component that outlines the circumstances under which the joint venture can be terminated. This section should include the conditions that would trigger an exit, such as the achievement of the joint venture's goals, financial difficulties or irreconcilable disputes. It should also detail the procedure for dissolving the joint venture, including the distribution of assets and liabilities. Having a clear exit strategy helps ensure that the parties can part ways amicably if the need arises.

7. Dispute Resolution

Dispute resolution mechanisms are essential to handle conflicts that may arise during the joint venture. This section typically includes provisions for arbitration, mediation or other forms of alternative dispute resolution. It should also specify the jurisdiction in which disputes will be settled. By agreeing on a dispute resolution process upfront, the parties can avoid costly and time-consuming litigation.

Sample Joint Venture (JV) Agreement

The parties hereto declare that they have agreed to form a joint venture for the purpose of submitting the pre-qualification Application/ tender document initially and then tender and if successful for the execution of the works as an integrated joint venture. The parties are not, under this agreement, entering into any permanent partnership of Joint Venture to Tender or undertake any contract other than the subject works. Nothing herein contained shall be considered to constitute the parties of partners to constitute either partly or wholly the agent of the other.

I. Witness:

Where as Public Health Engineering Department has invited offers from intending bidders and PHED has permitted a group of Three firms forming a Joint Venture to be eligible to be a bidder and whereas ----------------------------the parties of Joint Venture are desirous to enter into a Joint Venture in the nature of partnership engaged in the joint undertaking for the specific purpose of execution of the work of preparing Detailed Project Report of Drinking Water

Supply Scheme of various district of M.P. and whereas the parties of the first and second part reached understanding to submit pre-qualification application / offer,

if pre-qualified and to execute the contract if awarded.

This agreement witness as follows:

(a) The parties do not enter into an agreement of any permanent partnership of Joint Venture to tender or undertake any contract other than the specified above.

(b) The operation of this joint venture firms, concerns is confined to the work of preparing Detailed Project Report of Drinking Water Supply Scheme of various district of M.P. being executed under the Office of The Engineer In Chief, Public Health Engineering Department, Bhopal.

(c) The name of the Joint Venture firm for convenience and continuity shall be -----------------
----

(d) The address of the Joint Venture for communication shall be as under-------------------------
----

(e) The Joint Venture shall jointly submit qualification criteria on the above name according to all terms and conditions stated in the relevant instructions contained in the bid documents.

(f) That this Joint Venture shall regulate the relations between the parties thereto and shall include without being limited to them the following conditions.

(1) ------------------------ firm shall be the lead company in charge of the Joint Venture for all intents and purpose.

(2) In case the said work is awarded to the Joint Venture the partners of the Joint Venture will nominate a person with duly notarized Power of Attorney on stamp paper, who will represent the Joint Venture with the authority to incur liabilities, receive instructions and payments, sign and execute the contract for and on behalf of the Joint Venture.

(g) The parties agree to make financial participation and to place at disposal of Joint Venture the benefits of its individual, technical knowledge, skill and shall in all respect bear its share as regards planning and execution of the work and responsibilities including provision of information, advice and other assistance required in the Joint Venture and participation shall be in proportion of

Firm A-----------------%

Firm B-----------------%

Firm C-----------------%

Total 100%

(h) All rights, interests, liabilities, obligations work experience and risks (and all net profit or net losses) arising out of the contract shall be borne by the parties in proportion to their share. Each of the parties shall furnish its proportionate share in any bonds, guarantees; sureties required for the works as well its proportionate share in connection with the works. The share and participation of the partners in working capital and other financial requirements shall be in ration as mentioned above.

(II) Internal responsibilities and liabilities:

(a) The division of individual scope of work may be worked out mutually by the parties but the party shall be jointly and severally liable to the Engineer In Chief , P.H.E.Deptt. Bhopal for the whole work. (b) The parties specifically under take to carry out their separate and full compliance with the contract with the Engineer In Chief. Each party shall be responsible jointly and severally for consequences if any arising out of defective or delayed execution of works which falls with in the individual party's area or responsibility and / or it has been caused due to acts and or omission of the concerned party.

(c) The parties jointly & severally agree to replace, modify or repair any defect in their respective portion of works in accordance with the terms and condition of the contract with the Engineer In Chief.

(d) The parties jointly and severally indemnify and hold harmless to each other against any claim made by the Engineer In Chief or any other third party for injury, damage loss or expenses is attributed to the breach/ non performance of his responsibilities by the indemnifying party in accordance with the agreements and / or contract with the Engineer In Chief.

(e) Non of parties have joined in any other Joint Venture for the said works.

(III) Responsibilities and liabilities of Joint Venture towards the Engineer In Chief:-

(a) Parties hereto shall be jointly & severally liable & responsible for acts, deeds, and things done or omitted (to be done) in respect of the execution of the contract & for any financial liabilities arising there from.

(b) Parties hereto shall be jointly & severally liable & responsible to the Engineer In Chief for the execution of works in accordance with the contract conditions.

(c) Parties hereto shall be jointly & severally indemnify to the Engineer In Chief against any claim made by the Engineer In Chief or any other third party for any injury, damage or loss which may be attributed to the breach of the obligation under the contract, pursuant to the contract.

(IV) Site Management

(a) The execution of the work on the site will be managed by a Project Manager appointed by the Joint Venture and who will report to the -------------------------(name of the JV). The Project Manager shall be authorised to represent the JV on site in respect of matters arising under the contract.

(b) The ------------------------(Name of the JV) shall be jointly and severally liable to the Engineer In Chief for the execution of the contract commitment in respect of the works in accordance with contract conditions.

(V) Termination of the Agreement

The agreement shall be terminated in the following circumstances:

(a) The Engineer in Chief awards the contract for the work to the other agencies.

(b) The Engineer in Chief elaborates the cause of cancellation the work to award the contract.

(c) On completion of the defect liability period as stipulated in the agreement of the works and all the liabilities thereof are liquidated. (

d) No partner has the right to assign any benefits, obligation or liability under agreement to any third party without the written consent of the other partners as well as the Engineer In Chief.

(VII) Financial Matter

(a) Bank Account in the name of the JV will be opened with any schedule or nationalised bank to be operated by an individual signatory as decided mutually by the Joint Venture Partners.

(b) All the partners shall be responsible to maintain or cause to maintain proper Books of Accounts in respect of the JV firm as per the Indian Contract Regulation Act and shall be closed at the end of the every financial year ending 31 March. Upon closure of the books of accounts balance sheet and profit and loss account as to the stat of affairs of the firm as at the end of the financial year and as to the profit and loss made or incurred by the firm for the year ended on that date shall be prepared for the same, shall subject to audit by a chartered accountant.

(c) Non of the party shall be entitled to make any borrowing on behalf of the JV without prior written consent of all the other parties of JV.

(VIII) Negotiation

Any negotiations agreement between the parties hereto and the Engineer In Chief subsequent to the submission of the tender and prior to award shall take place only with the consent of each of the parties who shall be represented at the such negotiations or agreement.

IX)Legal Jurisdiction

All questions relating to validity interpretation of this agreement shall be governed by the law of India and shall be subject to jurisdiction of Court at Bhopal.

(X) Settlement of Disputes

Any dispute in interpretation of any condition mentioned herein shall be referred to an arbitrator/ tribunal by mutual consent of the partners and such proceedings shall be governed by the Indian Arbitration and Conciliation Act. 1996 and as amended from time to time. The award of arbitrator shall be final and binding on the party hereto. Neither the obligation of each party here to the performance of contract nor the execution of work shall stop during the course of arbitration proceeding or as a result thereof

(XI) Insurance

(a) The Joint Venture through the parties individually shall take such insurance in connection with the work in accordance with the tender condition acceptable to the Engineer In Chief. (b) The cost of insurance premium paid by the Joint Venture shall be borne by the parties in proportion to their respective shares of work. Insurance taken individually by the parties shall be fully borne by the respective parties.

(XII) No change shall be made in this agreement without prior written consent of the Engineer In Chief and other parties. However if the Engineer In Chief directs the parties to make changes in the agreement so as to fulfill tender conditions the parties shall discuss with Engineer In Chief and mutually agree such changes required to be made in the agreement.

(XIII) Default and withdrawal from the JV : In case that either party fails to observe the provision stipulated in this agreement withdrawal from the Joint Venture, loss and / or expenses incurred by other parties due to such default and /or withdrawal shall be fully compensated by the party who has defaulted.

(XIV) All matter relating to or arising due to this agreement shall be treated as confidential and shall not be disclosed to any other party. In witness whereof the parties have caused their duly authorized representative to sign below.

Witness

1. (Signed for and on behalf of firm A)

2.

Date :

Seal :

Witness

1. (Signed for and on behalf of firm B)

2.

Date :

Seal :

Witness

1. (Signed for and on behalf of firm C)

2.

Date :

Seal :

SPECIAL PURPOSE VEHICLE (SPV)

A Special Purpose Vehicle (SPV) is a legal entity established for a specific, well-defined purpose. It is frequently founded to meet the authors' objectives, such as isolating a company's assets and/or projects. The assets are brought under its authority to give investors more confidence in their investments. The SPV is primarily used to reduce risk and free up capital. As a result, both the SPV and the company that created it are safe from bankruptcy. Loans or any other sort of receivable can also be secured using SPVs.

What is Special Purpose Vehicle?

A Special Purpose Vehicle (SPV) is a separate legal entity. It is created for a specific purpose or activity. SPVs are commonly used to isolate assets or risks from the parent company. They are also used to structure complex financial transactions.

Overview of the Special Purpose Vehicle

A special purpose vehicle (SPV) is a legal entity created for a specific purpose. This may include financing a project or holding assets. SPVs are often used to isolate risk or to raise capital.

- SPVs can be structured in a variety of ways. They typically have the following characteristics:
    - They are separate legal entities from their sponsors.
    - They have their own assets and liabilities.
    - A third party manages them.
    - It is frequently referred to as a bankruptcy-remote entity.
- SPVs are often used to finance large projects, such as power plants or oil pipelines. This is because SPVs can isolate the risk of the project from the sponsor. This makes it easier to raise capital.
- If accounting loopholes are abused, these vehicles can become a financially disastrous tool.
    - Example: Enron crisis in 2001.

Special Purpose Vehicle Examples

- An SPV can be used to securitize assets, such as mortgages or auto loans.
- SPVs are also commonly used in joint ventures between two or more companies.
- SPVs are also used in property deals, such as buying and selling buildings or developing land.
- SPVs can also be used to isolate assets or risks from the parent company. For example, a company may create an SPV to hold all of its hazardous waste.

Special Purpose Vehicle in India

- In India, SPVs are commonly used for infrastructure development projects, such as roads, bridges, power plants, etc.
- SPVs have been widely utilized in India's major infrastructure initiatives. This includes smart cities, metro rail projects, and renewable energy ventures.
- The Government of India often establishes SPVs to drive and oversee the implementation of key national projects.
- The use of SPVs helps streamline project execution and mitigate risks.

Types of Special Purpose Vehicles (SPVs)

There are many different types of SPVs, but some of the most common include:

Asset-backed securitization SPVs

These SPVs are used to securitize assets, such as mortgages, auto loans, and credit card receivables. This involves transferring the assets to the SPV. It then issues securities backed by the assets. This allows investors to buy into the assets without having to take on the full risk of the underlying loans.

Project finance SPVs

These SPVs are used to finance large infrastructure projects. This includes power plants, roads, and bridges. The SPVs are typically structured as non-recourse projects. This means that the lenders have limited recourse to the project sponsors.

Joint venture SPVs

These SPVs are used to create joint ventures between two or more companies. This allows the companies to pool their resources and expertise for a specific project without merging their businesses.

Real estate SPVs

These SPVs are used to acquire, develop, and manage real estate assets. This can be used to isolate the risks of real estate investments from the rest of the business.

Investment SPVs

These SPVs are used to invest in a variety of assets, such as stocks, bonds, and private equity. This can be used to diversify the investment portfolio or to invest in assets that are not suitable for direct investment.

How can SPV be formed?

- An SPV can be formed in several ways, such as a limited partnership, a trust, a corporation, or a limited liability corporation.
- It might be designed to be self-managed, funded, and owned.

- SPVs assist enterprises with asset securitization, joint venture formation, corporate asset isolation, and other financial processes.

Major Uses and Benefits of Special Purpose Vehicles (SPVs)

The primary purpose of creating an SPV is to legally isolate certain assets, liabilities, or risks from the parent company. This isolation offers several benefits:

Risk Management: By segregating assets or liabilities in an SPV, a company can protect itself from financial risk. If the SPV faces bankruptcy or legal challenges, these issues typically do not directly impact the parent company.

Asset Securitization: SPVs are instrumental in asset securitization processes, where they hold assets that generate cash flows. These assets can be anything from mortgages to receivables. By pooling these assets in an SPV, they can be repackaged into securities and sold to investors, providing liquidity and funding to the original asset owners.

Project Financing: For projects requiring significant capital investment, an SPV allows for the pooling of resources from various investors, limiting their risk exposure to the project itself rather than the broader operations of the parent company.

Tax Efficiency: Through careful planning and structuring, SPVs can be used to optimize tax liabilities, often by being domiciled in jurisdictions with more favorable tax laws.

Limitations of Special Purpose Vehicles (SPVs)

Creating and maintaining an SPV can be expensive. There are legal and accounting fees associated with setting up the SPV. There are ongoing costs for administrative and compliance purposes.

SPVs can be complex financial instruments. It is important to have a clear understanding of how they work before using one.

SPVs are often used for complex financial transactions. The details of these transactions may not be publicly disclosed. This can make it difficult to understand the risks associated with investing in an SPV.

Understanding the Risks and Considerations

Despite their benefits, SPVs are not without their risks and ethical considerations. The isolation of assets and liabilities can sometimes be used to obfuscate a company's true financial health or to engage in risky financial activities without directly impacting the parent company's balance sheet. Moreover, the use of SPVs in tax optimization strategies has raised questions about tax fairness and corporate responsibility.

Applications of SPVs in Different Industries

SPVs find applications across various sectors, each with unique purposes:

Real Estate: In real estate, SPVs are often created to own a single property or project, separating the financial risk of the project from the parent company or the real estate developer.

Infrastructure: Large-scale infrastructure projects, such as highways or energy plants, commonly use SPVs for project financing, allowing for the direct investment in the project by various stakeholders.

Film and Entertainment: The film industry frequently uses SPVs for individual projects or films, facilitating the management of production budgets, revenues, and rights.

Technology Startups: Startups often establish SPVs for specific rounds of funding, making it easier to manage investor relations and equity distribution.

Best Practices in Managing an SPV

Effective management of an SPV requires careful consideration of its structure, legal compliance, and the ethical implications of its use. Key practices include:

Transparent Financial Reporting: Ensuring that the financial activities of the SPV are transparent and accurately reflected in the parent company's financial statements.

Compliance with Legal and Regulatory Requirements: Adhering to the legal and regulatory framework of the jurisdiction in which the SPV operates is critical to avoid legal pitfalls and reputational damage.

Ethical Use: Companies should consider the ethical implications of using SPVs, particularly regarding tax strategies and financial transparency.

STEPS ON INCORPORATING SPV

- **Determine the type of legal entity suitable for the SPV**: The primary step is to set up a Special Purpose Vehicle (SPV) to choose the entity under which it will operate. The most commonly chosen entities for SPVs in India are Private limited Company and Limited Liability Partnerships, based on the objectives and operational requirements of a business.
- **Name Reservation**: For an SPV to function, it became pertinent to have a distinct name of its own. The suggested name or names shouldn’t be identical to, resemble, or be perplexingly akin to the names of any already registered business.
- **Obtain Director Identification Number (DIN) and Digital Signature for all proposed directors**: All potential directors must meet the aforementioned condition in order for the company’s incorporation procedures to begin.
- **Draft Incorporation Documents**: Memorandum and Articles of Association to be drafted & finalized for the incorporation of SPV. In case of SPV as a Limited Liability Partnership (“LLP”) agreement has to be drafted and finalized. All such documents should outline the scope and operation of SPV via “Object clause”.

File Incorporation Documents:

1. **For Private Limited Companies**:

- File **Form SPICe+ Part B** along with required documents:
- MOA and AOA
- Proof of registered office
- Identity and address proof of directors
- Consent letters from directors (Form DIR-2)
- Pay the requisite fees as prescribed

2. **For Limited Liability Partnerships**:

- File **FILLP (Form for Incorporation of LLP)** with required documents:
- Proof of registered office
- Identity and address proof of designated partners
- Subscriber's sheet signed by the partners
- Pay the requisite fees as prescribed under the LLP Rules, 2009.

- **Obtain the Certificate of Incorporation**: For both entities, upon verification of documents, the Registrar of Companies (ROC) issues the Certificate of Incorporation, which includes the Corporate Identification Number (CIN) for companies or the LLP Identification Number (LLPIN) for LLPs.
- **Apply for PAN and TAN**: Apply for the Permanent Account Number ("PAN") and Tax Deduction and Collection Account Number ("TAN") through the SPICe+ form for companies or separately for LLPs through the Income Tax Department.
- **Open a Bank Account**: Open a bank account in the SPV's name to facilitate financial transactions. Provide the Certificate of Insurance ("COI"), PAN, and other Know Your Customer ("KYC") documents to the bank.
- **Comply with Sector-Specific Regulations**: If the SPV operates in sectors like infrastructure, real estate, or renewable energy, ensure compliance with additional regulations, such as approvals from regulatory authorities (e.g., RERA for real estate projects).

CONCLUSION

An SPV in India involves a number of legal and procedural steps, but it is a well-structured process that the Ministry of Corporate Affairs ("MCA") has facilitated through its digital platforms. Following these steps and ensuring compliance with the applicable laws, businesses can establish SPVs for the efficient and secure achievement of their objectives.