CONVERSION OF LIMITED LIABILITY COMPANY TO PARTNERSHIP

While it is more common to find a Partnership business converted to a limited liability company; it is not strange to find a limited liability being converted to a partnership business. This will usually be to avoid certain disadvantages that a company may have when compared to a partnership business. These disadvantages include:

i. Relative lack of Privacy – a company is subject to much more scrutiny and regulations by government and its agencies. By law, a company is required to appoint an auditor to examine and report on its accounts; whereas such is not required of partnership businesses. Also, partnerships aren't required to make returns to the Corporate Affairs Commission like companies are required to.
ii. More expensive to maintain records – it is much more expensive to keep and maintain records concerning shareholders in a company than it is to maintain the records of partners in a partnership. This is because the law requires a more elaborate reporting procedures for a company regarding changes in ownership, notice of meetings etc.

Purchase Consideration

The purchase consideration in this case (as it is to be assumed that the partnership is taking over the company) is the **Net Assets** taken over by the partnership from the company, after given attention to revaluations. Hence the purchase consideration does not include payments in pecuniary terms.

DISSOLUTION OF PARTNERSHIP

Dissolution implies bringing to an end the existence of a business. With respect to a partnership, it implies that the partnership does not only cease (as in amalgamation, absorption or conversion), but business activities are brought to an end as well.

Upon dissolution of a partnership, the Partnership Act provides that the assets of the firm, including sums, if any, contributed by the partners to make up losses and deficiencies of capital, must be applied in the following order:

i. Pay the debts and liabilities of the firm to persons who are not partners in the firm;
ii. Pay, rateably, partners' loans;
iii. Pay each partner the amount due to him in respect of his capital and current account balances

Reasons for Dissolution

i. Expiration of the period for which the firm was set up, if a fixed term was agreed upon;
ii. Attainment of the objectives for which the firm was set up, if a specific objective was agrred upon;

iii. Death of a partner;
iv. Retirement of a partner;
v. Bankruptcy of a partner;
vi. The occurrence of an event which causes the partnership to become illegal;
vii. When one partner allows his share of the partnership to be charged for his separate debts.

Deficiency of Partner(s) on Dissolution

If the capital account of any partner is in debit after being credited/debited with his share of profit/loss on realisation, such a partner is said to have a deficit or deficiency. Such deficit is expected to be settled by payment to the partnership.

If the deficient partner, by reason of insolvency or bankruptcy, is unable to make good the deficiency, such deficiency will be borne by the remaining solvent partners in the agreed ratio if an agreement is reached on the matter of deficiency. If there is no agreement in place, the deficiency will be borne by the solvent partners in the ratio of their last agreed capital. This is the rule laid down in decision of the case of GARNER Vs. MURRAY (1904). The last agreed capitals are the combined balances on the capital and current accounts per the last Statement of Financial Position, unless you are otherwise told.

Realisation and Distribution of Assets

When a partnership is to be dissolved, realisation and distribution can be done in either of the 2 ways:

i. Lump Sum; and
ii. Piecemeal

i. **Lump Sum Realisation and Distribution:**
Lump sum realisation and distribution is seen in a situation where the assets are realised at a time and only one lump-sum distribution is made to partners in repayment of their capital and current account balances after all external liabilities (including dissolution/realisation expenses) and partners' loans have been repaid.

ii. **Piecemeal Realisation and Interim Distribution:**
Except where the firm is sold as a going concern, the realisation of the assets of a partnership that is being dissolved will usually take a long period. This is because selling non-current assets may require an auction or tender; while some debtors may have to be pressurised or even charged top court before they pay.
Since the partners may not be willing to wait until all assets are realised before they receive the refund of capital that is due them; it is common to make interim cash distributions to partners after all the liabilities of the firm, including partners' loans, have been discharged. In making interim distributions, care must be taken to ensure that even if the remaining assets are worthless, no partner will have received more than the amount he is ultimately found to be entitled to receive. This implies that the distributions should be done in such a way that each partner bears his share of possible losses at each

distribution stage. This ensures that it would not be necessary to ask a partner to make a refund at a subsequent stage.
There are two methods of calculating the interim distribution in order to achieve the above objective.

These are the Surplus Capital Method and the Assumed Loss Method.

a. **Surplus Capital Method**

This method is suitable where all the partners are solvent and are likely to remain so. The capitals of the partners are geared to their profit sharing ratio in order to disclose the partner(s) that has/have disproportionately large amount of capital in comparison with the others. Such partner(s) is/are said to have surplus capital(s). a distribution sequence is established, by series of calculations to ensure that all partners with surplus capitals receive a refund of the surplus in priority. This will reduce all the partners' capital balances to the same proportions in which they share profits or losses. Further realisations are then distributed to all partners in their profit sharing ratio**.**

b. Assumed Loss Method

This method is suitable where a partner is known to be insolvent or is likely to become insolvent. It incorporates the rule in GARNER VS MURRAY. After each realisation, the net assets yet to be realised are assumed to be lost. This assumed loss is shared to the partners in their profit sharing ratio. If the loss apportioned to any partner is higher than his combined capital balance, his capital will be thrown into debit. For this purpose, the partner is assumed to be insolvent and his assumed deficiency is charged to the other partners in the ratio of their capitals in line with the rule in GARNER VS MURRAY. If the partners had reached an agreement inconsistent with the rule in GARNER VS MURRAY, the assumed deficiency will be charged to the other partners in the ratio they agreed upon. Thereafter the balances on the partners' capital accounts, after deducting the amount of the previous distributions, shall be their respective share of the amount available for distribution, which is then paid to them. This process is repeated after each realisation until the last realisation the final distribution is made. After the final distribution, each partner will have borne his proper share of the ultimate loss.