

Ref.No. UPAA / 01 -25 /10-2014

Dated-04.10.2014

Sub: Explanation of Legal Notice of COA

Dear Fellow Architects,

It's duty of UP Architects Association to keep the fraternity of Architects aware on various aspects of the profession. One of such issue is pertaining to the organizational status of Architectural offices for which the council of Architecture has drawn an attention through a public notice dated 20.05.2013 in various news papers. Hence we are forwarding a detailed note, prepared by the association, on the COA public notice for your information.

As on date many firms are proprietorship, partnership, Private Limited company (Pvt. Ltd.). Since the advertisement was in legal language hence needs explanation in simple words.

As per law every professional, including Architect, is registered with their respective council as an individual. This personalize registration ensures personal liabilities of a professional for his services. We can name our offices as per our choice but this name is not registered by the council of Architecture. An Architect can transfer/ share his duties and functions to others but not the professional liabilities. In other words the employees are not liable for any defect in service. In case of partnership firm of Architects all partner Architects share equal professional liability that is why all partners must be Architects. It is to be understood that professional liability of each partner remains equal in partnership firms and has no relation with the ratio of profit.

As per prevailing law the liability is of two type, first one is towards professional services and second one is towards financial liability. Professional liability encompasses all professional duties and functions as mutually agreed with the client. Financial liability again is of two types i.e. Govt. taxes/dues and other one compensation of losses in case of failure of services or defects in services.

Financial compensation of defect liabilities in proprietorship and partnership firms are unlimited and has no upper limit even all personal assets can be attached to the compensation. While Pvt. Ltd. companies are artificial legal entities and all promoters are directors which may retire at any point of time. This artificial entity (Pvt. Ltd. Company) has limited liability up to the limit of assets of the company only. The directors are the employees of the firm and their salaries/ savings/profits cannot be included in case of any defect liability compensation. This is major cause for the formation of Pvt. Ltd. Company for professional services. In the eyes of law, through Pvt. Ltd. Company, an Architect can enjoy all the financial benefits and escape safely in case any defect liability by tendering the resignation from the directorship of the company. Generally such Pvt. Ltd. companies do not own any major asset and consequently compensation becomes difficult.

Few years back Govt. of Indian has enacted a new law for the formation of LLP (limited liability partnership) firms. It is a kind of combination of partnership and private limited constitutional provisions. After the introduction of LLP concept by the Govt., it becomes imperative to incorporate the relevant provisions in our act also for which amendments are proposed in the act. As per law Individual liability in Pvt. Ltd. company is negligible while in partnership firm it is unlimited for all partners. While in LLP individual liability remains unlimited but restricted to such partner only who has signed the drawing/documents and is responsible for the design and execution of the project. Rest all partners are not personally liable for defect liability while for lapses other than professional liability, the company is liable up to the extent of the assets of the company.

Though the matter is sub judice in the court of law even Architects are advised to keep ownership status of their offices either as Proprietorship, Partnership and not as Pvt. Ltd. Company. Existing Pvt. Ltd. companies are also advised to change their organizational set up to avoid legal complexities. It is to be noted that in Partnership firms all the partners must be Architects. Govt. of India has issued directions to all registrar offices, who register Pvt. Ltd. companies, not to register Pvt. Ltd. Company for Architectural services.

For more details and formation of different type of ownership Architectural firms, you are advised to consult proper consultant like Chartered accountant/ Lawyer etc. as this note is for your information only.

Wishing you the best.

Yours Sincerely

Rajiv Kumar Dwivedi
President
U. P. Architects Association.

Below this line are the circulars issued by the Govt. of India in above context.

General Circular No. 2/2012

F. No. 17/165/2011-CL V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi,
Dated the 1st March, 2012

To,
All Regional Director,
All Registrars of Companies
Registrar of LLPs

Sub: Registration of Companies or LLPs which have one of their objects is to carry on the profession of Chartered Accountant, Cost Accountant, Architect, Company Secretary etc.

Sir,

I am directed to say that at the time of incorporation of companies where one of the Objects is to carry on the business of Banking, Insurance or to practice the profession of Chartered Accountancy, Cost Accountancy & Company Secretaries, then the concerned Registrar of Companies shall incorporate the same only on production of in-principle approval / NOC from the concerned regulator/professional Institutes.

2. Further, in this connection, it is also stated that where one of the objects is to carry on the business/profession of Architecture, then the concerned Registrar of Companies /Registrar of LLP shall incorporate the same only on production of in-principle approval / NOC from the concerned regulator.

3. This issues with the approval of CAM.

Kindly spread this message to all fellow Architects in your contact.

Yours faithfully,

(Monika Gupta)
Assistant Director

Copy to:

1. All concerned
2. PS to CAM and PS to MOS
3. PPS to Secretary, Additional Secretary, Joint Secretaries