

LEGAL ASPECTS OF BUSINESS

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The Indian Partnership Act, 1932

Definition

Sec.4 of the Indian Partnership Act, 1932 defines, the term 'partnership' as under; partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Elements \ Characteristics \ Features of a Partnership

- a. Association of two or more persons
- b. Agreement between the persons
- c. Common business
- d. Share profits/losses
- e. Business carried by all or any of them acting for all.

Each of these elements is explained below in detail;

1. Association of two or more persons

The term 'person' does not include firms or companies. It simply means a natural person who is otherwise competent to contract. At least two persons should join together to constitute a partnership because a person cannot become a partner with himself.

2. Agreement

The relation of partnership arises out of an agreement and is not a product of status as in joint Hindu family business. It also does not arise by operation of law as in case of co-ownership. Such an agreement between the partners may be express or implied i.e., it may be in writer; words or may be inferred from the course of conduct of the parties to the agreement.

3. Business

Partnership is formed for carrying on some lawful business. The term 'business' includes every trade, occupation and profession.

4. Sharing of profits

To constitute a partnership, the parties must have agreed to carry on a business, and to share profits in common. It is open to one or more partners to bear all the losses of the business.

5. Mutual Agency

The partnership business may be carried on by all the partners or any of them acting for all. This is the most essential or cardinal principle of partnership. Each partner is the agent of the firm as well as of the other partners. He can act on behalf of the firm and can bind it by his acts done in the usual course of business. Similarly, each partner is a principal for all other partners and may be bound by the acts of the other partners. The relationship among partners is governed by the law of agency and the partners are largely regulated by the law of a principal and an agent.

Classification of partnership

I. On the basis of Duration

a. Partnership at will

It is a partnership firm in which its duration not fixed but can be dissolved by any one of the partners at his will at any time. Thus, a partnership at will.

b. Partnership on the basis of duration

It is a partnership in which its duration is fixed and cannot be dissolved by any partner at his will. Such a partnership is dissolved at the expiry of the fixed period.

II. On the basis on extent of business

The partners are also liberty to carry on one or more adventures or undertaking is a business.

III. On the basis of liability

- a. Limited Liability
- b. Unlimited Liability

Classification of Partners

1. Actual or Active Partners

Actual partner is one who becomes partner by agreement and takes active part in the conduct of the partnership business. He is also called ostensible or working partner.

2. Dormant or Sleeping Partner

A dormant partner is one who is neither known nor known to the outsider. He is also called as secret partner.

3. Nominal Partner

A nominal partner is one who has no real interest in the business. He is entitled to share the profits of the business. A nominal partner only lends his name to the firm and his name is used in the firm as if he is an actual partner.

4. Partner by Estoppels or holding

A partner by estoppel is one who represents himself to be a partner in the firm, but in reality he is not so.

5. Sub – Partner

A sub partner is one who shares the profit of another partner. Sometimes, a partner of a firm agrees to share his own share of profits with an outsider.

6. Minor Partner

A minor partner is one who is below the age of 18 years. It may however, be noted that a minor can't be a full-fledged partner in a firm. He can be admitted to avail the benefits of an already existing firm.

Rights of partners

- Right to take part in business
- Right to be consulted
- Right to access to accounts
- Right to share in profits
- Right to interest on capital
- Right to interest on advances
- Right to be indemnified
- Right to the use of partnership property
- Right to partner as agent of the firm
- No new partner to be introduced

- No liability before joining
- Right to retire
- Right not be expelled

Duties of partners

- To carry on business to the greatest common advantage
- To observe faith
- To indemnify for fraud
- To attend to duties diligently
- Not to claim remuneration
- To share losses
- To indemnify for willful neglect
- To hold and use property of the firm exclusively for the firm
- To account for personnel profits
- To act within authority
- To be liable jointly and severally
- Not to assign his rights
- Duty not to compete with the business of the firm.

Partnership Deed

The partnership is created by agreement

The agreement may be oral or writing, the agreement can be inferred from the conduct of the parties. In India this agreement may be oral or writing. It is in the interest of the partners as well as business itself, which the agreement should be in writing. Through this agreement, the rights and duties of the partners are determined. This agreement is known as Partnership Deed.

Contents of Partnership Deed

1. Name and address of the firm
2. name and address of partners
3. scope and nature of the business
4. duration of partnership

5. ratio of profit and loss. In the absence of any contract to the contrary, the profit sharing ratio will be equal
6. amount of capital contributed by each partner
7. method of maintaining account books
8. audit of account books
9. interest on capita, if payable from the firm, to the partners
10. Commission and salaries of partners. In the absence of any contract to the contrary, no partner(s) is entitled to get salary commission for the firm's work.
11. The amount of drawings and interest thereon.
12. control over rights
13. allotment of work
14. method relating to admission of new partner and retirement of partners
15. death of partner and his legal executor
16. method of valuation and goodwill
17. dissolution of partnership
18. relinquishment of partnership relations
19. bank account
20. arbitration clause

When the partners have decided to enter into a deed of partnership, it would to stamp according to the provisions of the Indian Stamp Act, 1894. The deed of partnership (or deed of dissolution) need not be registered. It is not a public document like a memorandum of association of a company and only binds third parties so far they have notice of it.

Modes of Dissolution of a firm

Dissolution without the Intervention of the court

- a. dissolution by agreement between all the partners
- b. compulsory dissolution by operation of law dissolution of the happening of certain contingencies
- c. dissolution of partnership at will by notice

Dissolution by agreement

A firm may be dissolved with the consent of all the partners, or (ii) accordance with a contract between the partners. The consent required for dissolution should be the consent of all the partners. So a majority of the partners have no power to dissolve the firm against the wishes of the minority.

DISTINCTION BETWEEN PARTNERSHIP AND COMPANY

S. No.	BASIS OF DIFFERENCE	PARTNERSHIP FIRM	JOINT STOCK COMPANY
1.	The Acts	Partnership firm is governed by the Indian Partnership Act, 1932	Companies are governed mainly by the provisions of the Companies Act, 1956
2.	Registration	Registration is optional	Registration is compulsory
3.	Number of members	Minimum of two persons and maximum number is restricted to 10 in the case of banking business and to 20 in other types of businesses	Minimum number of members Public – 7 persons Private – 2 persons Maximum number of members Public – unlimited Private – 50 excluding members or employees
4.	Legal status	No separate legal existence	It is an artificial person created by law
5.	Liability	Liability of a partner is joint, several and unlimited	Limited to the unpaid amount of shares held
6.	Transfer of shares	A partner cannot transfer his interest in the firm without the consent of all other partners	Shares are fully transferable

7.	Management	Management of a firm is carried on by all or by any of them acting for all	Board of directors elected by the members carry out the management
8.	Stability	A partnership firm is not stable, it can be affected by death, insanity or insolvency of any one or all its partners	A company is stable as it is totally unaffected by any such contingencies
9.	Procedural complexities	Both for formation and dissolution, the procedures are simple	Both the formation and winding up are subject to many legal formalities
10.	Financial resources	The capital contribution as well as the finance that can be raised tend to be limited	The scope for mobilizing larger resources is very wide
11.	Membership	In a partnership only individuals can become its members	In a company, an institution can also become a member by purchasing its shares
12.	Nature	Partnership is the relation between persons who have agreed to share the profits or losses of a business	A company is an artificial person
13.	Mutual relationship of the members	In the partnership, each partner is an agent of the others	The members of the company are not its agents or representatives
14.	Audit	Audit of accounts is not except uncertain circumstances	It is essential for every company to get its accounts annually audited by chartered accountant

15.	Dissolution	Partnership can be mutually dissolved at time	Legal formalities for winding up are many
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- <https://www.simpletaxindia.net/2013/11/16-video-on-companies-act-2013-on-all.html>
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