

INDIAN PARTNERSHIP ACT, 1932

Indian Partnership Act, 1932 is applicable to the whole of India

MEANING OF PARTNERSHIP (SEC. 4)

- Partnership = relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
- Persons, who have entered into partnership with one another are called individually 'partners
- Firm' is the collective of the partners.
- The 'firm name' is the name under which the business is carried on.

ESSENTIAL ELEMENTS TO CONSTITUTE PARTNERSHIP FIRM

- Atleast 2 parties. Persons must be competent to enter into a contract. Parties may be natural or Artificial.
- Agreement between the parties. Agreement may be oral or in writing. It may be express or implied.
- Agreement must be to share the profits of the business;
- Business must be carried on by all or any of them acting for all

MINOR AS A PARTNER OF THE FIRM (Sec. 30)

(a) Minor can become **partner for the benefits of the partnership** with the **consent of all the partners**

(b) For admitting minor as a partner, an agreement shall be executed through his guardian

Rights of minor in partnership firm	Liabilities of minor in partnership firm
<ul style="list-style-type: none">• Right to share profits of the firm• Right to share property of the firm• Right to inspect accounts of the firm• Right to take copy of the accounts	<ul style="list-style-type: none">• Minor is not personally liable• However, share of minor in the firm is liable

PARTNERSHIP DEED

- 1) Partnership Deed is not mandatory.
- 2) However, it is advisable to have partnership deed in writing.
- 3) If there is partnership deed then each partner should have 1 copy.

CONTENT OF PARTNERSHIP DEED

Partnership deed should contain the following details –

- Firm name;
- Names and addresses of partners;

- Details of business of partnership;
- Address of business place;
- Profit sharing ratio
- Date of commencement of partnership firm;
- Duration of partnership firm;
- Amount of capital contribution;
- Salaries, commission and remuneration to partners;
- Rights of the partners;
- Liabilities of the partners;
- Details of retirement of partners;
- Provision for expulsion of a partner;
- Arbitration clause for the settlement of disputes.

TYPES OF PARTNERSHIP

(a) Partnership at will is a partnership formed for an indefinite period. Time period of partnership is not fixed nor specified.

- 1) Such type of partnership can continue for any period of time depending upon the will of the partners.
- 2) It can be dissolved by any partner by giving a notice to the other partners of his desire to quit the firm.

(b) Particular Partnership is a partnership formed for a specific time for a specific purpose.

(c) Partnership for a fixed period is a partnership formed for a fixed period between partners.

TYPES OF PARTNERS

(A) Working partner or Active partner –

- Active partner contributes capital and also takes active part in the management of the firm.
- He bears an unlimited liability for the firm's debts.
- He is known to outsiders.
- He shares profits of the firm.
- He is a full-fledged partner.

(B) Sleeping or dormant partner –

- Only contributes capital;
- Does not take active part in the business;
- He shares in the profits or losses of the firm;
- His liability is unlimited;
- He is not known to the outsiders.
- A sleeping partner can retire from the firm without giving any public notice

(C) Partner in profits only –

- Partners in profit only share in the profits of the firm but not in the losses;
- His liability is unlimited;

- He is not allowed take active part in the business;
- Such a partner is associated for his money and goodwill.

(D) Nominal Partner –

- Nominal partner only lends his name and reputation for the benefit of the firm.
- He represents himself or knowingly allows himself to be represented as a partner
- Such type of partner neither contributes capital nor takes part in the management of business.
- He does not share in the profits or losses of the firm.

(E) Sub partner –

- Partner agrees to share his profit with third party.
- The third party has no right against the firm nor liable to act for the firm.

(F) Partner by estoppel-

- Partner falsely represent himself as a partner to third party
- Such person held liable to the third party.

RIGHTS AND DUTIES OF PARTNERS:

(a) Duties of Partners

- (i) to carry on the business of the firm to the greatest common advantage;
- (ii) to be just and faithful to each other; and
- (iii) to render true accounts and full information of all things affecting the firm, to any partner or his legal representative
- (iv) Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of business of the firm.

(b) Rights of Partners

- ✓ Every partner has a right to take part in the conduct of the business;
- ✓ Every partner , has a right of free access to all records, books and accounts of the business.
- ✓ the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm (however, this is subject to the contract)
- ✓ where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;
- ✓ a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.
- ✓ A partner has power to act in an emergency for protecting the firm from loss
- ✓ Every partner has a right to retire by giving notice where the partnership is at will
- ✓ Every partner has a right to continue in the partnership and not to be expelled from it

- ✓ Any difference, arising as to ordinary matters connected with the business, may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided.

DISSOLUTION OF PARTNERSHIP

A) Dissolution by agreement – Section 40

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

B) Compulsory dissolution – Section 41

a firm is dissolved –

- 1) If all the partners or of all the partners but one as insolvent; or
- 2) By the happening of any event which makes the business unlawful.

C) Dissolution on the happenings of certain contingencies – Section 42

A firm is dissolved –

- a) if constituted for a fixed term, by the expiry of that term;
- b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- c) by the death of a partner; and
- d) by the adjudication of a partner as an insolvent.

D) Dissolution by notice of partnership at will – Section 43

Where the partnership is at will, the firm may be dissolved by any partner giving notice, in writing, to all the other partners, of his intention to dissolve the firm.

The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of the notice.

E) Dissolution by the court – Section 44

Court may direct dissolution of a firm on the following grounds –

- ✓ if a partner has become of unsound mind;
- ✓ if a partner has become permanently incapable of performing his duties as partner;
- ✓ if a partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business;
- ✓ if a partner wilfully or persistently commits breach of agreements relating to-
 - a) the management of the affairs of the firm; or
 - b) the conduct of its business; or
 - c) otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
- ✓ If a partner has in any way –
 - a) transferred the whole of his interest in the firm to a third party; or
 - b) has allowed his share to be charged; or

- c) has allowed it to be sold in the recovery of the arrears of land revenue; or
- c) of any dues recoverable as arrears of land revenue due by the partner;
- ✓ the business of the firm cannot be carried on save at a loss; or
- ✓ on any other ground which renders it just and equitable that the firm should be dissolved.

EFFECT OF DISSOLUTION

A) Continuing authority of partners –

- 1) Authority of the partners continues even after dissolution so long as is necessary to wind up the business.
- 2) each partner has an equitable lien over the firm's assets which he can apply to pay the debts of the firm and to receive any amount due from partnership firm.

B) Continuing liability of partners –

- 1) Liability of partners continues till the public notice of dissolution is given.
- 2) Liability of partners continues for all things necessary for the winding up of the business. The partners may complete unfinished transactions

C) Right to Return of Premium –

- a) To buy entry into an existing firm, a new partner sometimes has to pay a premium to the existing partners in addition to any investment of capital.
- b) On dissolution, he is entitled to demand the return of a proportion of the premium if the partnership was for a fixed term and was dissolved before the expiry of that term
- c) However, in the following 3 cases, partner will not get the premium return –
 - 1) Where the partnership was dissolved by agreement; or
 - 2) misconduct of the party seeking return of the premium; or
 - 3) death of a partner.

D) Settlement of Accounts on Dissolution (order of payment) –

- a) Losses shall be paid first out of undistributed profits next out of capital, and lastly, if necessary, by the partners individually in the profit sharing ratio.
 - b) The assets of the firm including the losses contributed by the partner as above shall be applied in the following manner –
 - 1) in paying outside creditors;
 - 2) in repaying advances made by partners
 - 3) in repaying capital to partners; and
 - 4) if any amount is left then it shall be divided in PSR.
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