

Partnership – Everything you want to know

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In brief

Think about an individual who wants to establish his own foundation, the available options are sole proprietor, company, partnership or any other combination.

The option sole proprietorship comes with the struggle of capital resources and minuscule growth and on the other side the complications associated with company along with vast compliances would scare its endurance during initial stage.

Here comes up partnership form of business which gives an upper hand in stabilizing the business and is governed by the **Indian Partnership Act, 1932**.

In detail

Meaning of Partnership

As per section 4 of Indian Partnership Act, 1932, "Partnership is the relation between the persons who have agreed to share the profits of the business carried on by all or any of them acting for all."

Does merely sharing of profit constitute partnership?

Sharing of profit is essential element of partnership but it is not the absolute test for determining the existence of partnership. A person may have a share in profit but he might not be a partner.

So, what is the conclusive test of partnership?

Mutual agency is the conclusive test of partnership. A partner works in Dual capacity i.e. as an agent and as principle. A partner is an agent of the firm for the purpose of business of the FIRM, who can bind other partners, who are his principles, by his act and he is a principle who is bound by the act of another partner. Thus, mutual agency is indisputable test for determining the existence of partnership.

Advantage of Partnership

1. **Flexibility in operation** as less legal formality is involved and swift decision-making process as compared to company.
2. **Ease in formation** due to straight forward procedure for registration of partnership.

3. **Wider pool of resources** as all the partners contribute their capital along with their knowledge and experience which helps in expansion of business.
4. **Sharing of risk** as the risk is equalized amongst all the partners.
5. **Dissolution** of partnership business involves less complex procedure and it is not time consuming as compared to company.

Registration of Partnership

The essence of partnership lies in the fact that it can be created by mere handshake. The registration of partnership is not compulsory though it is advisable to register a partnership firm due to the following **benefits**:

1. **Power to file case in a Court by a partner against the firm or other co-partners**
The partner of the firm can file a suit against any other partner for any right arising from a contract or by provisions of the act.
2. **Power to file case in Court by firm against 3rd parties**
The partnership firm can file a suit against third party for claiming any right arising from a contract.
3. **Power to claim set-off**
When any third-party files a suit against the Partnership Firm, the Partnership Firm can claim the set-off, if any against the claim

of third party. The said power to claim set-off is not available when the Partnership Firm is not yet registered under the Act.

There is no one stop application portal for registration of partnership firm. Each state has its own procedure; however, the basic requirements remain the same which is explained as below:

Documents Required for Registration

1. Partnership deed

Partnership deed should be created on judicial stamp paper and shall be signed by all the partners. The deed shall contain the following:

- the firm name;
- nature of business of the firm;
- the place or principal place of business of the firm;
- the names of any other places where the firm carries on business;
- the date when each partner joined the firm;
- the names in full and permanent addresses of the partners;
- the duration of the firm; and
- any other important clause as may be needed.

2. Documents of Partners

- PAN Card of Partner: It is required to be submitted by all the partners as identity proof.
- Address Proof of Partner: Aadhar Card, Driving License, Passport etc. can be submitted by the partners.

3. Documents of partnership firm

- PAN Card of Firm: The partner can apply online for getting the PAN of the firm.
- Address Proof of Firm: Ownership Proof or Rent Agreement along with NOC shall be submitted.

4. Other documents

- A sworn statement i.e. affidavit verifying the correctness of all the details mentioned in the documents and deed.

Procedure for Registration (Section 58 and 59)

Step 1: Submit the documents

All the required documents along with the statement verifying the contents of the documents shall be sent to the registrar of the area where the location of the firm is situated or proposed to be situated. The statement shall be sent to the Registrar within one year of constitution of firm.

Step 2: Select the name of the firm

A firm shall not have any of the names or emblems specified in the schedule to the Emblems and Name (Prevention of Improper Use) Act, 1950 or the name which is similar to other firm or it is improper in the opinion of registrar.

Step 3: Order of Registrar

Appeal against the order of registrar shall be made within 30 days of communication of order to the officer not below the rank of Deputy Secretary. The authorized officer shall give an opportunity of being heard and then pass the order which shall be final.

Step 4: Registration

Once the Registrar is satisfied about all the requirements then he will record an entry of statement in a register called **Registrar of Firms** and file the statement. On the date of such entry the firm shall be deemed to be registered. The firm, which is registered, shall use

the brackets and word (Registered) immediately after its name.

Incoming and Outgoing Partners

Admission of a Partner

No person shall be introduced as a partner into a firm without the consent of all the existing partners. A person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a Partner

- A partner may retire –
 - a) with the consent of all the other partners,
 - b) in accordance with an express agreement by the partners, or
 - c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

- A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement.

- Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement. A retired partner is not liable to any third party who deals with the firm without knowing that he was a party.

- Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Expulsion/ removal of a Partner

- A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith or powers conferred by contract between the partners.

- The provisions of sub-sections (2), (3) and (4) of shall apply to an expelled partner as if he were a retired partner.

Insolvency of a Partner

- Where a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

- under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Conclusion

The lucid procedure and feasible growth of partnership makes it the most prominent form of business amongst entrepreneurs. The successful working of a partnership depends upon the mutual confidence and utmost good faith among the partners. It is, therefore advisable that the partners should be selected with extreme care and caution.



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