

Chapter 03

Partnership

❖ How to Form a usual Partnership Business?

A business partnership is an agreement between two or more individuals to operate a business jointly. When two or more persons agreed to form a business and run by them with a view to earning a profit is called partnership business. Partners are responsible for the other partner's business actions, as well as their own. To form a business partnership:

- List the amount of equity to be invested by each partner.
- Determine how the profit or loss will be divided among the partners.
- Establish compensation levels for each partner, including when the compensation will be given and any restrictions and might affect that compensation.
- Set guidelines for how the business will be modified or dissolved should one or more partners wish to end the partnership.
- Define procedures for settling any disputes which might arise.
- Determine who has authority for which expenditures and how expenditure decisions are to be made.
- Develop procedures to follow in case of death or incapacitation of a partner.
- Write and sign an agreement detailing the responses to the questions above.
- A general partnership can be formal simply by an oral agreement, but a legal partnership agreement drawn up by an authority is highly recommended.

❖ “Contract is the Essence of Partnership Business”

A contract is the essence of the partnership business. The document in which the respective rights and obligations of partners are settled is identified as partnership contract or deed. A deed may be oral or written. But the written document is preferred to other documents, Partnership Act 1932 (sec-5) pointed out, “Partnership relation arises from the contract and not from status”.

The following issues clarify the topic more brightly:

Inherent right: If the son becomes the owner of a firm after the death of his father, he leads if he gets profit as per inherent rights. Although for that moment he seems to have been partners of business but in reality, which is stated by partnership act that he can't be a partner of the partnership business. The business has not been maintained by under contract relation.

Retired partners: When the retired partners take a leave from partnership business, he may keep his capital in the business and get profit as usual. After leaving from the firm the contract relations finish to exist. Although he gets the portion of profit he will not be considered as a partner of the partnership business.

Hindus joint family business: Generally, Hindus Joint families do business mutually and distribute acquired profit among them. As it is not the result of a contract, so it can't be said a partnership business.

Family relationship: Particularly the inheritors avail the portion of profit after the death of any partner. Despite they get the portion of profit but are get to consider a partner as they are beyond partnership deed.

Designation: Partnership deed arises from a contract, not from the designation. If any partner gets the benefits from the firm after investing goodwill that firm, on the other hand, he will not be treated an inclusive partner since no contract with him is held in earlier.

Social position: If a number of artists acquire income from showing exhibition socially then it can't be said partnership business because no contract is signed between them.

From the above discussion, it is clarified that if partners reluctant to prepare deed with other partners then the relation held among them it is beyond partnership business. So, we can say that contract is the essence of the partnership business.

❖ Types of Partnership

- By duration:
 - **Partnership at will:** Partnership existing as per the will of the partners.
 - **Particular partnership:** When the partnership is created, to carry on a certain project, for a specified time.
- By liability:
 - **General Partnership:** Partnership in which partners have unlimited and joint liabilities. All the partners can take part in the management, and they are bound by the acts of one another as well as of the firm.
 - **Limited Partnership:** The type of partnership in which except one partner all the partners have limited liability.

This form of business organization is easy to set up because it does not require any fees or process. In addition to this, partners enjoy **tax benefit**, as in, the profit earned or loss incurred by the business **pass through to the partner's personal income tax return**.

❖ Partnership Deed

The document on which the respective rights and obligations of the members of a partnership are created is called a partnership deed. It should be drafted with care and be signed by all the partners. Partnership deed plays a vital role in identifying duties and responsibilities and saving rights of all partners with regard to any subject. According to the nature of the partnership business, the deed may be following types: There are some definitions derived from the different corner are given below:

Partnership Act. 1932 (Sec-5): "The relation of partnership arises from a contract, not from status".

Oxford dictionary of business: “Deed of the partnership is a partnership agreement drawn up in the form of a deed”.

J.L.Hanson: “Deed of a partnership is s document drawn up to clarify the respective position of the partners in a business.”

To sum up, it can be said that the partnership deed is a document related to the rights and obligations of the member of a partnership. It is a document that outlines in details the rights and responsibilities of all parties to a business process. It has obliged of law and is intended to conduct the partners in accomplishing of the business.

❖ Partnership Deed

As explained above, partners are free to define the terms of their relationships, even if they go contrary to the Act in certain cases. They can either decide on such terms with an oral agreement or a written one.

Partnership deeds, in very simple words, are an agreement between partners of a firm. This agreement defines details like the nature of the firm, duties, and rights of partners, their liabilities and the ratio in which they will divide profits or losses of the firm.

Although the drafting of partnership deeds is not compulsory, it is always advised to do so. This helps in ensuring that all terms agreed by partners exist in written form on paper. Doing so can reduce disputes between partners and govern their functioning better.

Unlike similar documents like articles of association of companies, partnership deeds need not be registered mandatorily. However, registration can ensure the prevention of legal challenges to its validity when disputes arise. An ideal partnership deed is comprehensive and clear about all details pertaining to the functioning of a firm. It should not contain any ambiguities.

❖ Contents of Partnership Deeds

Although there is no specific format prescribed for drafting a partnership deed, a typical deed contains the below mentioned clauses.

1. The name of the firm
2. Name and details of all partners
3. Date of commencement of business
4. Duration of the firm's existence
5. Capital contributed by each partner
6. Profit/loss sharing ratio
7. Interest on capital payable to partners
8. The extent of borrowings each partner can draw
9. Salary payable to partners, if any
10. The procedure of admission or retirement of a partner
11. The method used for calculating goodwill
12. Preparation of accounts of the firm
13. Mode of settlement of dues with a deceased partner's executors
14. The procedure followed in case disputes arise between partners