

## Chapter 03

### Partnership

#### ❖ Formation of Partnership Business

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. Partnership business deals with earning profit taken by partners equally or as per the condition of partnership deed. The formation of the partnership business is not as difficult as its management under the legal formalities closely. The registration of these sorts of the firm is not mandatory. But deed formation is mandatory. The system and procedure for forming a partnership business are as follows:

**Initiating more than one member:** Partnership business is an association of more than one member, termed as a progressive business organization. The minimum members are 2 and the maximum is 20, but in terms of the banking business, it is 10.

**Making contractual relation:** Partnership is the result of a contract. It is handled and maintained by an association of members on the basis of a deed.

**Registration:** The registration for it is not mandatory as per the Partnership Act 1932. In case, it is one of the businesses as well as partners will get an extra benefit and the silent benefit is acquired. In the public who laid their confidence in business. For registration, it is needed to submit an application form in the registered office. If the register is satisfied to observe the conditions of the firm then he approves to run the business.

**Collecting licenses:** After completing the registration related activities, this is needed to collect license from a specific authority of government. The license is collected from union-parishad or City Corporation or related department of government on the basis of the category of business. For import-export business, travel agency business the license is collected from import-export run office and government and parjatan department respectively.

**Starting the business:** After completion of the above whole formalities, partners can start a real business as a whole. Here real business means; production, trading, and servicing for earning a profit. Indeed, the real activities of business start this level or point.

From the above discussion, it is concluded that the formation of the partnership business is needed to carry some formalities that specify the objectives of the partnership business.

## ❖ Dissolution of Partnership Firm

According to Section 39 of the Partnership Act, 1932, **“The dissolution of partnership between all the partners of a firm is called dissolution of the firm.”** The Indian Partnership Act, 1932 recognizes the difference between ‘dissolution of partnership’ and ‘dissolution of firm’.

Dissolution of a firm involves the complete breakdown of partnership relation. In the dissolution of partnership firm, the partners may by agreement provide for the continuance of the firm after its dissolution by death, lunacy or insolvency of any partner. In such cases the firm is reconstituted without any dissolution.

Thus, dissolution of firm does involve the dissolution of partnership while the dissolution of partnership does not necessarily involve dissolution of the firm.

### **Modes of Dissolution of a Firm:**

**Following are the modes of a dissolution of a partnership firm:**

1. Dissolution by Agreement:

**A firm may be dissolved:**

- (i) With the consent of all the partners.
- (ii) In accordance with a contract between the partners.

2. Compulsory Dissolution:

**A firm is compulsorily dissolved:**

- (i) By the adjudication as insolvent of all the partners or of all partners except one.

(ii) By the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

3. Dissolution on the Happening of Certain Contingencies:

**Subject to the contract between the partners, a firm can be dissolved by:**

- (i) The death of a partner.
- (ii) The insolvency of a partner,
- (iii) The retirement of a partner,
- (iv) The completion of the adventure,
- (v) The expiry of the term fixed.

4. Dissolution by Notice of Partnership at will:

If the partnership is 'at will' then any partner can get the firm dissolved by giving notice in writing to other partners of the firm.

5. Dissolution by Court:

**The court may order the dissolution of the firm at the suit of a partner in any of the following ways:**

- (i) Where a partner of the firm has become of unsound mind.
- (ii) Where a partner of the firm has become permanently incapable of performing his duties as a partner.
- (iii) Where a partner commits willful or persistent breaches of agreement.
- (iv) Where a partner is guilty of misconduct,
- (v) Where the business of a firm cannot be carried on save at a loss,
- (vi) Where a partner has transferred the whole of his interest in the partnership to an outsider.
- (vii) Where on any other ground the court is satisfied that it is just and equitable that the firm may be dissolved.

Settlement of Accounts on Dissolution:

On the dissolution of the partnership firm, the firm's assets are realized and liabilities are discharged. Section 48 deals with the mode of settlement of accounts between the partners after the dissolution of the firm.

**The accounts of a firm on the dissolution must be settled according to the following rules:**

1. Losses suffered by the firm shall be paid:

(i) Out of profit.

(ii) Out of capital.

(iii) If necessary by the partners individually in the proportion in which they were entitled to share profits.

2. Assets of the firm are to be distributed in the order given below:

(i) In paying the debts due to third parties.

(ii) In paying the partners rateably advances made by them to the firm.

(iii) In paying the partners rateably is due to them on account of capital.

(iv) If there is any surplus in the firm, it will be divided between the partners proportionately.