

## **All About Partnership Act, 1932**

### **By Jharna Saksena & Sharad Trivedi**

**Q1. What is Partnership and what are the essential elements of Partnership?**

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. A partnership can be for a fixed period of time or it may be limited to a specific project or it may be dissolved at will.

Essential elements of Partnership are:-

- There must be an agreement among all partners.
- Partner should agree to share the profits or the losses.
- All partners together, or any one, on behalf of the others must carry on the business.

**Q2. Can a person who is not the citizen of India become a partner in Indian firm?**

The Partnership Act does not prohibit a non-citizen from joining a Indian Partnership firm, subject to necessary clearances and permission from satisfactory authorities in this regard.

**Q3. What is the capital of the partnership firm?**

Capital is the initial amount in cash or kind contributed by the partners to start the business. It is not necessary for each partner to contribute equally to the capital. Contribution is based on the agreement between the parties.

**Q4. Can a minor be admitted to the benefits of Partnership?**

Since a minor has no legal capacity to enter cannot become a partner in a firm. Moreover, partnership with a minor is voidable initio. However, a minor may be admitted to the benefits of partnership according to Sec. 30.

- With the consent of all the partners of a firm, a minor gets a right to such a share of the property and of the profits of the firm as may be agreed upon by the partners. The minor may have the right of access to inspect and copy the accounts of the firm.

- The minor's share is liable for the acts of the firm but the minor is not personally liable for any such act.
- The minor has no right to sue for accounts or for payment of share etc., except when severing his connections with the firm. In such a case the valuation is to be made as per rules. When there is such a suit by the minor (through his guardian), the partners may dissolve the firm. The court may proceed as in a suit for dissolution and for settlement of accounts. It may determine the share of the minor.

**Q5. What is holding out?**

According to Section 28, a person who by written or spoken words, or by conduct, represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable, as a partner in that firm, to anyone who has, on the faith of any such representation, given credit to the firm. This is the doctrine of holding out, which is part of the law of estoppel. A person becomes ordinarily liable for the debts of a firm if he is a partner. But a person who is not a partner may also become liable to a third party, if he represent himself as a partner and induces the third party to give credit to the firm. The objective is to protect the interests of innocent third persons.

The example is the case of a retiring partner. If he retires, without giving public notice but uses the firm name, bills, letter heads etc., he will be holding out as a partner. If A has given advances to such a retired partner R, he may sue R as a partner of the firm, and recover his advances.

**Q6. What are rights of a partner?**

The following are the rights of a partner:

- To take part in the business.
- To share the profit or loss of the business.
- To inspect and make copies of the books of the firm.
- To receive remuneration for taking part in the business if specified in the partnership deed.
- To receive interest on capital if specified in the partnership deed.

**Q7. What are limitations of a partner?**

As a partner one cannot do following things without the consent of the other partners:

- Submit a dispute relating to the business to arbitration.
- Open a bank account on behalf of the firm in your own name.
- Compromise or relinquish any claim or portion of a claim of the firm.
- Withdraw a suit or proceeding filed on behalf of the firm.
- Enter into a partnership with an outsider on behalf of the firm.
- Acquire or transfer immovable property belonging to the firm.
- Admit any liability in a suit or proceeding against the firm.

**Q8. What are the implications for the notice served to the partner of a firm?**

A notice served on any one of the partners who manages the affairs of the firm is treated as a notice on the firm under the law. However, in case of fraud being committed on the firm by or with the consent of the managing partner it shall not be treated as a notice to the firm but as a notice to only that partner who has committed fraud on the firm.

**Q9. Can a new partner be admitted into the partnership firm?**

A partner can nominate a successor to take his place in the event of death or retirement of the partner. The mode of introducing a new partner or successor is based on provisions in the partnership deed. A new partnership deed is required once the new partner is admitted into the firm.

**Q10. Can a partner nominate a successor?**

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**Q11. Can a Hindu Undivided Family and a 'Karta' of a Hindu Undivided Family become a partner of a firm?**

A Hindu Undivided Family is not a legal person and so cannot enter into partnership with either an individual or another Hindu Undivided Family. The Karta or the manager of the Hindu Undivided Family can become a partner of a firm in his individual capacity. The Karta will be treated as the representative of the Hindu Undivided Family by the partnership firm.

**Q12. Can a firm become a partner in another firm?**

A partnership firm cannot become a partner of another firm because it is not a legal person. However, the partners may be partners in another firm in their individual capacity.

**Q13. Should a partnership deed registered?**

There is no provision under the partnership Act, 1932 which mandates the registration of partnership. However, the act itself provides for the procedure of registration of firm. Thus the registration is optional but highly recommended, as an unregistered firm shall not be able to recover any money in excess of INR 100/-. Apart from the above legal impediment, from the practical point of view also the firm should get registered in order to bring certainty in the relationship of partners and the firm per se.

**Q14. Is a written partnership deed necessary to form a partnership firm?**

No, it is not necessary. As the contract act does not makes it necessary to have the agreement in writing. However, it is always prudent to make a partnership deed to produce to the bank, income tax authorities and to clients with whom the partnership firm deals with. Apart from serving as a reference document a written partnership deed also helps in reducing conflict and confusion in due course of time.

**Q15. Can partnership be sued in the name of the firm?**

Yes. A partnership firm can sue or be sued in its own name. The firm is treated separately from its partners. However, the partners do not enjoy limited liability as available in case of LLP or a company. In a situation where the firm is not in a position to discharge its liabilities, the partners shall be called in to pay the liabilities of the firm.

**Q16. Can a partnership be constituted for a particular business undertaking?**

Yes. A person may become a partner with another for a single adventure or undertaking. The term of partnership firm can be for a specific period or for the completion of a specific project or at will. The deed must have a specific mention about the tenure of the partnership agreement. The Even partnership which is created for a specific purpose can be closed before the term with the consent of all the partners.

**Q17. Can one deal with one of the partners of a partnership firm?**

Yes, the law presumes that each partner is an agent of the other and while dealing with third parties the partner is representing the partnership firm in good faith. The acts done by one partner is binding on another even if it is not in the knowledge of the other party.

**Q18. What are modes of dissolution of a firm?**

The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm".

- Dissolution by agreement
- Compulsory dissolution
- Dissolution on the happening of certain contingencies
- Dissolution by notice of partnership at will
- Dissolution by the court

**Q19. What is meant by dissolution by notice?**

In a partnership at will, any partner can dissolve the firm at any time by giving a notice to dissolve the firm. That notice should be in writing and signed by the partners who gives it. The firm is dissolved on the date mentioned in the notice. If the date is not mentioned then the firm is dissolved from the date of communication of such notice.

**Q20. When can a partnership firm be compulsorily dissolved?**

A firm is compulsorily dissolved:

- When all the partners are declared insolvent.
- When all the partners but one as insolvent.
- When the business becomes illegal due to changes in laws.
- The firm is compulsorily dissolved even when the business is lawful but carrying it under the partnership becomes unlawful. For eg. License to carry on liquor business may be granted to individuals but the same may be unlawful if an association of persons or partnership carries it.

**Q21. What is meant by dissolution on happening of certain events?**

A firm may be dissolved due to any of these following events:

- If the firm has been constituted for a fixed period then on the expiry of that period.
- If the firm has been constituted for one or more project, the on the completion of that project.
- On the death of the partner.
- On the declaration of a partner as insolvent.

**Q22. When is a partnership dissolved by the court?**

A partner may approach the court to dissolve the partnership firm on the following grounds:

- When one of the partners becomes insane.
- When one of the partner is permanently incapable of performing his duties due to illness.
- When a partner is guilty of misconduct, which is harmful to the business.
- If a partner frequently breaks the rules of the firm.
- When a partner transfers his interest in the firm to a third party without the consent of other partners.
- When the business of the firm incurs repeated losses.
- On any other ground which the court deems fit.

**Q23. Is a public notice necessary for the dissolution of the firm?**

Yes, it is necessary to give a public notice at the time of dissolution. Otherwise the partners remain liable to third parties for their actions, even after the dissolution.

However public notice is not necessary in case of:

- Deceased Partner
- Insolvent Partner
- Partner who is not known to be a partner and who has retired.

**Q24. Explain the mode of settlement of accounts between partners after dissolution.**

In settling the accounts of a firm after dissolution the following rules shall be observed:

- Losses including deficiencies of capital, shall be paid first out of profits, next out of capital and lastly by partners personally according to their shares.
- The assets of the firm, including partner's contributions are to be applied in the following manner and order :
  - i. To pay the debts to third parties.
  - ii. To pay each partner rateably towards his advance.
  - iii. To pay each partner rateably towards his capital.
  - iv. The residue, if any, shall be divided among the partners in the proportion in which they were entitled to share profits.