

Introduction 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. The term is defined as a voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a communion of the profits thereof between them. Halsbury defines a partnership as “the relation which subsists between persons carrying on a business in common with a view of profit

Important elements necessary to constitute partnership

There are four important elements necessary to constitute partnership.

1. There must be an association of two or more persons to carry on a business.
2. There must be an agreement entered into by all the persons concerned.
3. The agreement must be to share the profits of a business.
4. The business must be carried on by all or any of the persons concerned acting for all.

Types of Partnership

Thus, when all these conditions are fulfilled, a group can be registered as partners. Now there are various types of partnerships.

1. Ordinary Partnerships
2. Limited Partnerships
3. Partnership at-will

Ordinary Partnership

All of the partners share equal rights and responsibilities in the management of the business. Likewise, each partner in an ordinary partnership assumes full personal liability for the debts and obligations of the business. And one partner can enter into a contract on behalf of the partnership, making the other partner(s) legally bound to the terms of the contract. The profit of a general partnership passes through to its owners, making it taxable at each

partner's individual income tax rate. (Partnership losses are also "pass-through", giving each partner the ability to offset taxable income from other sources.)

Limited Partnership

In this kind of partnership one or more partners have limited liability and at least one of the partners has unlimited liability. The liability of the limited

partner is limited to the extent of his investment in the business.

- a) It is formed under Limited Partnership Act 1907 (of England)
- b) One or more partners have limited liability
- c) There is at least one partner with unlimited liability
- d) The firm must be registered. Once this is done the rights and duties of the partners are also recognized.
- e) A limited partner has no right to take an active role in the management of partnership.
- f) The capital invested by the limited partner will not be returned to him as long as he remains a limited partner on the firm.
- g) The limited partner can inspect the accounts of the firm at any time.
- h) A new partner can be introduced into the firm at any time without the consent of the limited partners.
- i) The partnership should not consist of more than 20 partners (whether limited or not) except in the case of banking where they should not exceed 10.
- j) The registrar of Joint Stock Companies shall be the registrar of Limited Partnerships.

Partnership at-will

The essence of a “partnership at-will” is that the partners do not limit the duration of their partnership, and are free to break their relationship at any time they see fit. It is a partnership for indefinite period. The partnership may be dissolved at any point as long as the partner gives notice to all the other partners. An ordinary partnership becomes a partnership at-will under the following circumstances:

- a) If the partnership is of a indefinite period
- b) If a partnership is formed for a limited period of time, and the firm continues to function after the expiry of this period.
- c) If a partnership is formed to conduct a particular venture, and then continues to function after the venture is complete.

Rights Duties and Liabilities of Partners

Rights of Partners

The different rights of the partners are as follows.

1. Right to take part in business.
2. Right to express opinion.
3. Right to inspect books.
4. Right to share the profits.
5. Right to interest on capital.
6. Right to interest on advances.
7. Right to be indemnified.
8. Right to act in emergency.
9. Right to give Consent.
10. Right to retire.
11. Right not to be expelled.
12. Right to carry on competing business.
13. Right to enforce.
14. Right to share in profits or interest.
15. Right to bind other partners.

Duties of Partners (General/ Fundamental /Absolute)

The following are the duties of the partners.

1. Duty of good faith.
2. Duty to carry on business.
3. Duty to share losses.
4. Duty to use firm's property for the firm.
5. Duty to account for personal profits.
6. Duty to be liable individually and jointly.
7. Duty to work for the greatest common advantage.
8. Duty to render accounts.
9. Duty of disclosure.
10. Duty to indemnify for frauds.
11. Duty to act within authority.
12. Duty in emergency.
13. Duty not to transfer interest.

Liabilities of Partners

The liabilities of the partners are given below.

1. Liability of partner for acts of the firms.
- 2..Liability of the firm for the wrongful acts.
3. Liability of firm for misapplication.
4. Liability of retiring partner for all the liabilities of the firm prior to his retirement.

Registration of Partnership

Procedure and Requirements

The registration of Partnership firm is not required by law and there is no penalty for non-registration. Nevertheless registration can give my advantages to the firm. First of all Form – I needs to be filled. It is attached in appendix B. Then Partnership Deed is prepared on the Stamp Paper of worth Rs. 500. A sample for the statement of Partnership Deed is also added in appendix B. Registration fee of Rs. 500 also needs to be deposited in National Bank of Pakistan through Challan Form. It is mandatory for the firm to be located in commercial area. Copy of Lease Agreement or Ownership proof needs to be provided as well. A template of Lease Agreement is attached in appendix B.

The next requirement is the attachment of computerized National Identity Cards of Partners and Witnesses. It is mandatory that all papers should be attested from Notary Public. And the partners should contact the office after three days of submission of papers. All partners are required to appear before Registrar of Firm during 9:00am to 11:00am with their original National Identity Cards. Lastly an affidavit regarding accuracy of papers and existence of office needs to be submitted on stamp paper worth Rs. 5.

Partnership Deed

“Partnership Deed” is a document that tells about the mutual rights and obligations of all partners. This needs to be signed by all the partners and subsequent copies held by each partner. At the time of registration, a copy of the deed has to be submitted with an application to the Registrar of Firms in the concerned area. This document may also be referred to as an “Article of partnership”. A partnership deed usually contains the following format:

1. The name of the firm
2. The nature of business that is to be carried out by the firm
3. The address at which the firm intends to conduct its business
4. The amount of capital that each partner contributes. The form of capital whether that be cash or property needs to be documented. If the capital is property, a full description of the property and the valued amount should be given also.
5. The names and addresses of each partner should be given
6. The duration of the partnership if any
7. The ratio of sharing profits and losses
8. The amount or percentage of interest, if any, which is to be allowed on capital
9. The amount of salary each partner is to receive
10. The manner in which a partnership is to be dissolved and the subsequent distribution of property among the partners.
11. In the case of insolvency the valuation and treatment of goodwill
12. Provisions regarding the accounting system and the fiscal year to be used
13. Rules to be followed in the case of retirement, death and admission of a partner
14. The method of settling disputes if any among partners. I.e. whether or not an arbitrator is to be appointed
15. Method of calculating amount issued to a deceased partner, and whether this is to be paid in full or in installments to his legal representative.
16. In the case of breach of duty by one partner, powers of other partners to expel him from the firm
17. The keeping of proper books of accounts and periodical preparation of accounts.
18. Any provisions to prevent any future misunderstanding and ill will.

Application

The procedure of registration is comparatively simple. An application in the Form No. 1 Partnership Act 1932) along with the fee has to be submitted to the Registrar of Firms. All the partners must sign the application. The application or statement must contain the following particulars:

1. The name of the firm
2. The place or principal place of business of the firm
3. The names and addresses of other places where the firm may conduct

business

4. The partner's date of joining the firm
5. The duration of the firm

6. The name and address of the partners.

Once the registrar is satisfied with the application, a certificate of registration is issued to the partners. As mentioned previously this is not required to commence business.

If at any time there are changes to the firm in relations to the partners, place of business, insolvency etc. the registrar must be notified

Dissolution of Firm/ Partnership

When an environment is created where a partnership is no longer possible, there are two main steps involved:

1. a drafting of deed for dissolution of partnership
2. Registration of deed for dissolution of partnership

There are various methods which can be adopted for this purpose. The first involves dissolution by agreement. This occurs when there is mutual agreement between the partners to terminate the firm and hence the firm is dissolved.

The second is the case of compulsory dissolution. In such a case the following circumstances need to prevail:

1. All the partners are declared insolvent or bankrupt.
2. All of the partners except one is declared are declared as insolvent or bankrupt.
3. The business being practiced by the firm is declared unlawful.

Under contingent dissolution, any of the following circumstances need to exist to give rise to the closing of a firm;

1. If the firm is constituted for a fixed term, on the expiry of that term.
2. If the firm is constituted to carry out one or more projects, on the completion thereof
 - a. A death of one of the partners in the firm
 - b. If a partner of the firm is declared as insolvent or bankrupt

In the case of dissolution by notice, the partnership is at-will, if any of the partners submits a written notice of his intention to dissolve the firm, then the firm may be dissolved. The firm is dissolved from the date mentioned in the notice as the date

for dissolution. However, if no date is mentioned, then the date for the communication of the notice is treated as such

Partnership may also be dissolved through dissolution by Court. In this case, the court may dissolve the firm if a partner files a suit for dissolution of the firm on any of the following basis:

- Insanity. The partner has become of unsound mind
- Permanent Incapacity: a partner, other than the partner suing, has become permanently incapable of performing his duties as partner
- Misconduct: a partner, other than partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business.
- Breach of Agreement: a partner, other than partner suing, willfully or persistently commits breach of agreement relating to the management of the affairs of the firm.
- transfer of Interest. That a partner, other than partner suing, has transferred whole of his interest in the firm to a third party or has allowed his share to be sold in execution of a decree.
- Losses. The business of the firm cannot be continued further on except at a loss.
- Just and Equitable Cause. On any other ground which renders it just and equitable that the firm should be dissolved.

Under Liability for acts of partners done after dissolution

(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner.

In the case of Right of partners to have business wound up after dissolution, on the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to

have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up

After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented him or knowingly permitted him to be represented as a partner of the insolvent.

Mode of settlement of accounts between partners

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

1. Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
2. The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:-
 - a. In paying the debts of the firm to third parties;
 - b. in paying to each partner ratably what is due to him from the firm for advances as distinguished from capital;
 - c. in paying to each partner ratably what is due to him on account of capital; and
 - d. The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Payment of firm's debts and of separate debts

Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Personal profits earned after dissolution

Subject to contract between the partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Return of premium on premature dissolution

Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless -

1. The dissolution is mainly due to his own misconduct, or
2. The dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Right to restrain from use of firm name or firm property

After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Agreements in restraint of trade

Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

Sale of goodwill after dissolution:

1. In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.
2. Rights of buyer and seller of goodwill: Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not-
 - a. Use the firm name,
 - b. Represent himself as carrying on the business of the firm, or
 - c. Solicit the custom of persons who were dealing with the firm before its dissolution.
3. Agreements in restraint of trade: Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Contract Act, 1872, IX of 1872 such agreement shall be valid if the restrictions imposed are reasonable.

Process for the dissolution of a Partnership firm

The process requires a Rs. 250 stamp paper called the dissolution deed which is submitted in National bank through a challan form. After this, the partnership is required to inform the general public through best possible means so an ad is placed in a newspaper. The copies of N.I.C. of all partners are attached to all the attested documents. Later, when all the documents are submitted, the partners are required to report to the office with their original N.I.C. from 9 am to 11 am.

References

- “Registration procedure for partnership” prepared by: Policy Planning and Strategy, SMEDA Pakistan, Dated June 1, 2008
- Business Law By Kalid Mehmood Cheema, Revised Edition 2009.
- Partnership Act of 1932 available from World Wide Web by links
 - [\[http://www.jamilandjamil.com/publications/pub_commercial_laws/act1932.htm\]](http://www.jamilandjamil.com/publications/pub_commercial_laws/act1932.htm)
 - <http://www.scribd.com/doc/2441358/Partnership-Act>

Form(D)

MEMORANDUM ACKNOWLEDGING RECEIPT
OF
DOCUMENT

The registrar of firm ,Multan District hereby acknowledges the receipt of the undermentioned document and intimates that it has been filed pursuant to the provisions of the Partnership Act ,1932.

Notice dated 16-02-2005 for change of capital share of the partners of firm M/s. A&A ENTERPRISES,422/c near chowk jalal mosque Gulgasht Colony Multan,w.e.f. 16-02-2005 as per amended partnership deed dated 15-02-2005 for record under section63(1) of partnership Act 1932.

Multan

(BashirAhmadNawaz)

PARTNERSHIP DEED

This deed of partnership is executed on 16th feburary , 2005 amongst:

1. Rana Muhammad Anwer son of Rana Jamal-ul-Din , resident of 588/c Gulgasht Colony Multan , hereinafter called the party of 1st Part
2. Anees junjua son of Sarif Junjua , resident of house #22 Gillani Colony Mulatn , hereafter called the 2nd party

wHEREAS the previous partnership Deed was executed between the aforesaid two partners of the firm on 15-03-2004 and;

WEREAS the aforesaid parties have constituted a firm and have settled the following terms and conditions of PARTNERSHIP which are reduced in writing herein under and shall be binding on all the parties.

THIS DEED OF PARTNERSHIP , THEREFORE , WITNESSETH AS FOLLOWS:

NAME : That the partnership shall be A&A Enterprises.

Place: that the business premises of the partnership should be situated at 422/c Gulgasht colony near chowk jalal mosque Multan, which may be shifted and branches thereof may be opened at any other place or places with mutual consent of the parties.

COMMENCEMENT OBJECTS: that the partnership deed shall be effective from 16-02-2005. That the partnership shall be run the business in the construction purpose.

CAPITAL: that the capital of parties shall be $\frac{1}{2}$ (1st part) and $\frac{1}{2}$ (2nd part) respectively.

Tjhat the capital of parties shall be increased or decreased according to the requirements of partnership business without affecting share proportion of the parties.

SHARING RATIO: That the net profit and loss of partnership shall be divided among the partners equally.

CLOSING OF BOOKS OF ACCOUNTS: That proper books of accounts shall be maintained which shall be closed on 30th of june every year.

MANAGEMENT AND BANK ACCOUNTS: That Rana Muhammad Anwer paty of 1st part will manage all the affairs of partnership in mutual consultation with other parties and shall also operate Bank accounts.

DRAWING OF PARTNERS: that all the parties may draw reasonable amount for private purposes delitable to the respectively personal accounts of the parties.

INSPECTION OF BOOKS OF ACCOUNTS: That all the parties or their duly authorized agents shall be entitled to inspect , examine and take copies of accounts at all reasonable hours.

ASSINGMENT OF SHARES: That none of the party shall be entitled to sell , transfer or mortgage its share , right or interest in partnership to any outsider.

LIABILITY OF PARTNERS: That the partnership shall not be responsible for personal debts or liabilities of any party and each party shall be liable to pay any government dues includind taxes etc ...to extend of its own share proportions.

DURATION: That the partnership shall be AT WILL , but it will not be dissolved till the clearance of loan.

IN CASE OF DEATH: That in case of death of any party ,the legal heir , successor or nominate of the deceased shall be treated as a party for all intents and purposes.

ARBITRATION LAW: That any dispute relating to partnership shall be settled mutually or through Arbitrators according to Arbitration Law.

PARTNERSHIP ACT: That subject to the above provisions , all other matters shall be decided according to partnership Act , 1932 as adopted by Pakistan Government.

THIS DEED OF PARTNERSHIP , SIGNED N=BY THE PARTIES AND WITNESSED HEREUNDER:

PARTIES

1.RANA MUHAMMAD ANWER

2.ANEES JUNJUA

WITNESSES

1-----

2-----

