

BUSINESS REGULATORY FRAMEWORK - II

INDIAN PARTNERSHIP ACT- 1932

PARTNERSHIP

The Indian Partnership Act, 1932 is an Act which regulates the formation and workings of a partnership firm. It defines a partnership as, “the relation between two or more persons who have agreed to share the profits from a business carried on by either all of them or any of them on behalf of/acting for all”

So in such a case two or more (maximum numbers will differ according to the business being carried) persons come together as a unit to achieve some common objective. And the profits earned in pursuit of this objective will be shared amongst themselves.

The entity is collectively called a “Partnership Firm” and all the members are the “Partners”.

FEATURES OF A PARTNERSHIP

Partnership business displays the following characteristics:

- 1. Formation/Contract:** According to the Act, a firm must be formed through a legal agreement between all the partners. So, a contract must be entered into to form a partnership firm. Its business activity must be lawful, and the motive has to be one of profit. So, two people forming an alliance to carry out charity and/or social work will not constitute a partnership.
- 2. Unlimited Liability:** In a unique feature, all partners have unlimited liability in the business. The partners are all individually and jointly liable for the firm and the payment of all debts. This means that even personal assets of a partner can be liquidated to meet the debts of the firm.
- 3. Continuity:** The death, retirement, bankruptcy, insolvency or insanity of a partner will dissolve the partnership. The remaining partners may continue the partnership if they so choose, but a new contract must be drawn up. Also, the partnership of a father cannot be inherited by his son. If all the other partners agree, he can be added on as a new partner.
- 4. Number of Members:** There should be a minimum of two individuals for a partnership. The Partnership Act is silent on the maximum number but the Companies Act, 2013 provides clarity in this regard. Accordingly, the maximum number of partners is 100.
- 5. Mutual Agency:** In a partnership, the business can be carried out by any of the partners (one or several) acting for all of them or on behalf of all of them. So there exists mutual agency among the partners. He represents the other partners in some cases so he is their agent. But in different circumstances, he is bound by the actions of any of the other partners making him the principal as well.

TEST OF A PARTNERSHIP

The true test of a partnership is a way for us to determine whether a group or association of persons is a partnership firm or not. It also helps us recognize the partners of the firm and separate them from the third parties. The idea behind such a true test is to examine the relevant facts and determine the real relations between parties and conclude about the presence of a partnership. Let us take a look at the three important aspects of a real test of a partnership, namely mutual agency, agreement and profit sharing.

- **Mutual Agency:** This is the truest test of a partnership. So if a partner is both the principle as well as an agent of the firm we can say that mutual agency exists. This means that the actions of any partner/s will bind all the other partners as well.
- **Agreement/Contract between Parties:** For there to be a partnership between two or more people there has to be an agreement of partnership between them.
- **Profit Sharing:** Sharing of profits is an aspect of the true test of a partnership. However, profit sharing is only a prima facie evidence of a partnership. The Act does not consider profit sharing as a conclusive evidence of a partnership. This is because there are cases of profit sharing that are still contradictory to a partnership. For example, if a share of the profit is given to a widow or child of a deceased partner does not make them partners.

PARTNERSHIP AND COMPANY

The key differences between a partnership and a company are enlisted below:

Sl. No.	Partnership	Company
1.	A partnership is an agreement between two or more persons who come together to carry out a business and share profit and losses mutually.	A company is an incorporated association, also called an artificial person having a separate identity, common seal and perpetual succession.
2.	Registration of partnership firm is not compulsory.	A company needs to be compulsorily registered.
3.	For the creation of partnership, there must be at least two partners.	For the formation of a company, there must be at least two members in case of a private company and seven in case of a public company.
4.	The limit for the maximum number of partners in a partnership firm is 100.	The maximum number of members in a private company is 200 and in case of a public company the maximum number is unlimited.

5.	There is no minimum capital requirement for starting a partnership firm.	There is minimum capital requirement for starting a company.
6.	There are no legal formalities in the event of dissolution of a partnership firm.	A company has many legal formalities for winding up.
7.	A partnership firm can be dissolved by any one of the partners.	A company cannot be wound up by any one of the members.
8.	A firm is not bound to use the words 'limited' or 'private limited' at the end of its name.	A company has to add the word 'limited' if it is a public company and 'private limited' if it is a private company.
9.	The liability of partners is unlimited.	The liability of members is limited to the extent of shares held by them or guarantee given by them.
10.	Partners are mutual agents of one another.	Shareholders of a company are not mutual agents of one another.