

Partnership Registration

ABOUT PARTNERSHIP

When a group of individuals known as **partner**, decide to set up the business and form a relationship to share the profits of the business carried on by all or any one of them acting for all, they form a partnership amongst them which is governed and regulated by agreement formed between them. The partnership is the most popular form of organization to carry business in India.

As per section 4 of the Indian Partnership Act, 1932:

“Partnership is a relation amongst the partners who have agreed to share the profit of business carried on by all or any one of them acting for all”.

WHAT IS PARTNERSHIP FIRM?

A group of people comes together to form setup and to provide services and products through it. These firms are governed by the Indian Partnership Act, 1932. Rights and Duties of partners with each other as well with third parties are governed by this Act. In nutshell partnership firms are:

- The form of organization which is formed with 2 or more partner;
- To carry on the goals or objectives decided as per an agreement;
- To share profit;
- To run the business collectively by partners

Partnership firms are the result of an agreement formed between partners.

ELIGIBILITY TO ENTER INTO PARTNERSHIP

The following can enter into a partnership and becomes a partner:

- **Individual:** Any person who is *competent to enter into a contract* can become a member of a partnership firm.
- **Partner of any other partnership firm:** A Partnership firm cannot be the partner of any firm but its partner can enter into a partnership with another person.
- **Hindu Undivided Family:** Karta of HUF can be a partner in a partnership firm
- **Company:** A private limited/public limited company being an artificial legal person can be a partner in a partnership firm if authorized by an article.
- **Trustees:** Unless and until constitution or objects of trustees forbids to the contrary, trustees of religious trust/family trust/or any other religious endowments can be partners in a partnership firm.

TYPES OF PARTNERSHIP

There are two types of partnership:

1. Partnership at will: It's a form of partnership that can be dissolved by any partner during any time, i.e., it has no agreement and no clause about expiration or tenure of partnership

2. Fixed-term Partnership: Opposite of partnership at will, as the name suggests, this is a partnership with a fixed term. Partners may agree on duration in an agreement. After the expiry of such duration, such partnership comes to an end.

3. Particular Partnership: Certain partnerships are formed to carry out a particular business or venture. The scope of business to be carried out is defined in an agreement. Such partnership stand dissolved as and when such activity or venture is completed

4. General Partnership: When a partnership is created to carry out business in general with no particular scope, it is termed as a general partnership.

TYPES OF PARTNERS

Persons who have entered into a partnership with each other to carry on the business are known as “Partners”.

Partner is both an *agent and principle for himself as well as for other partners* of a partnership firm. He can bind others by his act and he can be bound by the acts of other partners.

Minimum Partners: A *minimum of two* people are mandatory to enter into a partnership.

Maximum Partners: Indian Partnership Act is silent for the maximum number of partners. Though as per Companies Act 1956, maximum number can be:

- *In the case of banking business- 10*
- *In the case of other business- 20*

And as per **companies act, 2013**, maximum number shall not exceed 100.

Following are types of partner as per the extent of their liabilities in partnership:

1. **ACTIVE PARTNER:** These partners become the partner by an agreement and they take active participation in the day-to-day activity and business of the firm. Active partners must give public notice when willing to retire.

2. **DORMANT OR SLEEPING PARTNER:** This partner doesn't actively participate in the daily functioning of partnership. He is though bound by the actions of all the partners. He needs not to give public notice for his retirement. Capital Contribution and profit-sharing are similar to those of other partners.

3. **NOMINAL PARTNER:** These partners only lend their name to the firm as a partner. They don't contribute to capital nor have any share in profit.

4. **PARTNER IN PROFIT:** These partners will share profits only. They are not liable for any loss.

5. **MINOR PARTNER:** A Minor cannot enter into a contract thus accordingly he can't be a partner; however he can be admitted to the benefits of partnership firm with the consent of all the partners.

KEY POINTS TO THE PARTNERSHIP FIRM

Essential elements that are the key necessity of any partnership firm are:

- Prior Agreement is the reason for the creation of this alliance. A partnership firm is voluntary and contractual. Since partnership is the result of a contract, a minimum of two people are necessary to constitute a partnership. Agreement jot down the following terms:
 - *Responsibilities* of partners;
 - *Duties and obligations* of partner;
 - Profits and loss sharing ratio and rate;
 - Other matters such as *withdrawal, capital contribution, financial reporting*.
- Profit is shared amongst partners as per the capital contributed by the partners or at any rate agreed upon between them. Thus sharing of loss is not an essential element of the agreement, but in case of damage or loss, the same has to be borne in profit-sharing ratio.
- Third and last essential element for a partnership firm is that there must be a certain goal for carrying on the business by all the partners or any one of them acting for all. That there should be a mutual agency. ***There cannot be a partnership if there is no intention to carry a business.***

STEPS FOR REGISTRATION OF PARTNERSHIP FIRM

Forming a partnership firm is easy and less complicated as compared to Companies. It even needs a minimum of compliances to be obligated. Following simple steps should be followed to register a partnership firm:

a. SELECT A NAME:

Select any name as per the discretion of partners. However the selected name:

- It should not be too identical or similar to the name of the already registered firm.
- The name should not make use of words like the Crown, Emperor, Empire, etc.

b. PREPARE AN AGREEMENT

The next step is to create a partnership deed. The terms and conditions to be noted in an agreement are as per the discretion of partners, also it is on the partner to get it down orally or written. However written deed is advisable in case of future conflict arise.

Written agreements should consist of the following:

- Full details of partners such as name address etc
- Name & Complete address of the firm
- Nature of the business to be conducted
- Date of entering into an agreement i.e., date of commencing the business
- Duration of partnership
- Capital Contribution;
- Profit and loss sharing ratio;
- Management;
- Voting;
- Tax Implications;
- Withdrawal;
- Dissolution;
- Interest on capital, loan, etc;
- Salaries and commissions;
- Retirement, death, and admission

Partnership deed so created should be made on stamp paper with necessary stamp duty paid as per the Indian Stamp Act.

c. SUBMIT AN APPLICATION TO REGISTRAR

Registration of a partnership is a very simple process. It's not complicated like Company registration. An application form along with specified fee has to be paid with necessary documents to be submitted to the registrar:

- Form-1 for applying for registration
- Duly filled specimen of an affidavit
- Certified original partnership deed
- Proof of address of firm (Owned registry in case of owned property or rent agreement/ lease deed in case property is rented or leased)

d. CERTIFICATE OF REGISTRATION

If the registrar verifies an application after scrutinizing an application and all the documents, he will register the firm and issue a Certificate of Registration.

IS REGISTRATION MANDATORY?

Unlike the company, registration of a partnership firm is not compulsory. It's as per the discretion of partners to whether get it registered or not. However, a registered firm can enjoy certain benefits over unregistered firm such as:

- Partner can file a case against firm or any other partner.
- Firm can file a case in a court against third party.
- Registered firm can always claim a set-off.

FAQs

Can the name of the partnership firm be changed later?

Yes, a name can be changed by sending a new application form along with a Prescribed fee, duly signed and verified by all partners

What are the effects of the un-registered partnership firm?

No partner can file any suit against firm or other partners for the enforcement of the right & unregistered firm or its partner cannot claim a set-off.

Who can inspect registers and documents of a partnership firm?

All the Registers and documents along with notices statement and intimation filed shall be kept at the registered office and should be made available for inspection by any person on payment of a prescribed fee.

What is the legal status of a partnership firm?

Unlike companies, a firm is not a separate legal entity. It has no legal identity separate from its partners.

Source courtesy: Taxguru