

Partnership Firm Registration.

Authority : Registrar of Firms.

Registration : Under Section 58 of the Indian Partnership Act, 1932, a firm may be registered at any time (not merely at the time of its formation but subsequently also) by filing an application with the Registrar of Firms of the area in which any place of business of the firm is situated or proposed to be situated.

Other Information :

- It is optional for partners to get the firm registered and there are no penalties for non-registration.
- Section 69 of the Act which deals with the effects of non-registration denies certain rights to an unregistered firm. Under the Act :
 - (a) A partner of an unregistered firm cannot file a suit in any court against the firm or other partners for the enforcement of any right arising from a contract or right conferred by the Partnership Act unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
 - (b) No suits to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.
 - (c) An unregistered firm or any of its partners cannot claim a set of (i.e. mutual adjustment of debts owned by the disputants parties to one another) or other proceedings in a dispute with a third party. Hence, every firm finds it advisable to get itself registered sooner or later.

More Information : Registrar of Firms.

Summary on Partnership Business

1. DEFINITION OF "PARTNERSHIP", "PARTNER", "FIRM" AND "FIRM-NAME". "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. Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

2. PARTNERSHIP-AT-WILL. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership-at-will".

3. GENERAL DUTIES OF PARTNERS. Partners are bound to carry on the business of the firm to greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative.

4. DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS. (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing. Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing. (2) **AGREEMENTS IN RESTRAINT OF TRADE.** Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

5. THE CONDUCT OF THE BUSINESS. Subject to contract between the partners - (a) every partner has a right to take part in the conduct of the business; (b) every partner is bound to attend diligently to his duties in the conduct of the business; (c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; (d) every partner has a right to have access to and to inspect and copy any of the books of the firm; (e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

6. MUTUAL RIGHT AND LIABILITIES. Subject to contract between the partners - (a) a partner is not entitled to receive remuneration for taking part in the conduct of the business; (b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm; (c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits; (d) a partner making, for the purposes

of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum; (e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him (i) in the ordinary and proper conduct of the business; and (ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and (f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

7. THE PROPERTY OF THE FIRM. Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business. Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

8. APPLICATION OF THE PROPERTY OF THE FIRM. Subject to the contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

9. PERSONAL PROFITS EARNED BY PARTNERS. Subject to the contract between the partners, - (a) if a partner derives any profits for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm-name, he shall account for that profit and pay it to the firm; (b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

10. RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM. Subject to contract between the partners, - (a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be; (b) AFTER THE EXPIRY OF THE TERM OF THE FIRM. where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, and so far as they may be consistent with the incidents of partnership-at-will; and (c) WHERE ADDITIONAL UNDERTAKINGS ARE CARRIED OUT. where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

11. PARTNER TO BE AGENT OF THE FIRM. Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

12. IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM. (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm is called his "implied authority". (2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to - (a) submit a dispute relating to the

business of the firm to arbitration, (b) open a banking account on behalf of the firm in his own name, (c) compromise or relinquish any claim or portion of a claim by the firm, (d) withdraw a suit or proceeding filed on behalf of the firm, (e) admit any liability in a suit or proceeding against the firm, (f) acquire immovable property on behalf of the firm, (g) transfer immovable property belonging to the firm, or (h) enter into partnership on behalf of the firm.

13. EXTENSION AND RESTRICTION OF PARTNER'S IMPLIED AUTHORITY. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

14. PARTNER'S AUTHORITY IN AN EMERGENCY. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

15. MODE OF DOING ACT TO BIND FIRM. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm-name, or in any other manner expressing or implying an intention to bind the firm.

16. EFFECT OF ADMISSION BY A PARTNER. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

17. EFFECT OF NOTICE TO ACTING PARTNER.

Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

18. LIABILITY OF A PARTNER FOR ACTS OF THE FIRM. Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner

19. LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner.

20. HOLDINGOUT. (1) Anyone who by words spoken or written or by conduct represent 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, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. (2) Where after partner's death the business continued in the old firm-name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

21. INTRODUCTION OF A PARTNER. (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners. (2) Subject to the provisions of section 80, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

22. RETIREMENT OF A PARTNER. (1) A partner may retire - (a) with the consent of all the other partners, (b) in accordance with an express agreement by the partners, or (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire. (2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement. (3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement. Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner. (4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

23. EXPULSION OF A PARTNER. (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners. (2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

24. INSOLVENCY OF A PARTNER. (1) Where a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved. (2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

25. LIABILITY OF ESTATE OF DECEASED PARTNER. Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

26. RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS. (1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but subject to contract to the contrary, 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 he ceased to be a partner. (2) **AGREEMENT IN RESTRAINT OF TRADE.** A partner may make an agreement with his partners that on ceasing to be a partner

he 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 Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

27. DISSOLUTION OF A FIRM. The dissolution of a partnership between all the partners of a firm is called the "dissolution of the firm".

28. DISSOLUTION BY AGREEMENT. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

29. COMPULSORY DISSOLUTION. A firm is dissolved (a) by the adjudication of all the partners or of all the partners but one as insolvent, or (b) 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 : Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings

30. DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES. Subject to contract between the partners a firm is dissolved (a) if constituted for a fixed term, by the expiry of that term; (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof; (c) by the death of a partner; and (d) by the adjudication of a partner as an insolvent.

31. DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL. (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

32. DISSOLUTION BY THE COURT. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely :- (a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner; (b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner; (c) that a partner, other than the 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; (d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business; or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him; (e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner; (f) that the business of the firm cannot be carried on save at a loss; or (g) on any other ground which renders it just and equitable that the firm should be dissolved.

33. 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.

34. 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.