# THE INDIAN PARTNERSHIP ACT, 1932

# UNIT

Partnership Firm

Firm Name

- Relation between Partners
- Partners who have entered into Partnership are collectively called Firm Name under which their business is carried on

#### Association of 2 **More Persons**

- · Firm and minor cannot be Partner
- Limit 50

#### Agreement

- · Must be the result of an agreement
- · May be oral or written
- May be express or implied

#### **Business**

includes Trade occupation and Profession motive (acquisition of Gain)

#### **Sharing of Profit**

- · Sharing of profit is essential
- Sharing of loss is not essential

### Carried on by all Any of them acting for all

- Each partner is principal as well agent
- He can bind other Partner by his act (agent)
- · He is bound by the acts of other partner (Prinicipal)

### TEST OF PARTNERSHIP

#### Agreement

Relation of Partnership arises from contract not from status

### Sharing of Profit

Sharing of Profit is Prima facie evidence not conclusive evidence

#### Mutual Agency

- · Existence mutual agency is cardinal principal's law
- · Each Partner carrying on business is Principal as well as agent

#### TYPE OF PARTNERS

#### Active or Ostensible Partner

Who become Partner by agreement

Who actively participate in the conduct of business

#### Sleeping Partner or **Dormant Partner**

Who is Partner by agreement

who does not actively take part in the conduct of business

#### Nominal Partner

- Lends his name
- · Without having any real interest
- · Not entitled to share any profit
- · Does not take part in conduct of business
- · Liable to third party

### Partner in Profit Only

- Entitled to Share Profit only
- Not liable for losses
- Liable to third party for All acts of profit only

Incoming Partner—admitted with the consent of All Partners not liable for acts done before admission.

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Outgoing Partner—• who leaves the firm • Liable for All acts till Public notice is given

Partner by holding out only — Partner by estoppel

When a Person represent himself

OR

Knowingly permits himself

to be represented himself as Partner in a firm

he is Liable like a Partner in a firm

#### VARIOUS KINDS OF PARTNERSHIP

# WITH REGARD TO DURATION

### WITH REGARD TO EXTENT OF BUSINESS

# Partnership at Will

Not fixed period agreed upon & No provision as to determination of Partnership

partner is for fixed term Continued after Expiry of term

Can be dissolved any time by giving notice in Writing

#### Partnership for Fixed Period

Contract for duration of Partnership

#### **General Partnership**

Partnership constituted with respect to business in General

#### Particular Partnership

- Particular adventure or undertaking
- Liability extends to Particular venture or undertaking

#### **PARTNERSHIP DEED**

A document in writing containing various terms and conditions as to the relationship of Partner to each other is called Partnership deed.

#### **CLAUSES**

#### SPECIFIC POINTS

- Admission & retirement of Partner
- · Settlement of A/c on Dissolution
- Explusion of Partners

#### **GENERAL POINTS**

- · Name of Partners & Firm
- · Place of Business & Date
- Nature of Business & Duration
- Capital
- · IOD, IOC & Interest on Loan
- Salary & Commission
- · PSR

#### Partnership VS HUF

- Legal status
- Agency
- Distribution of profit
- Extent of liability
- Property
- Transfer of Shares
- Management
- Registration
- · Winding up
- · No. of membership
- Duration of Existence

#### Partnership VS Club

- Definition
- · relationship
- Intrest in Property
- Dissolution

#### Partnership VS HUF

- · Mode of creation
- · Death of member
- · Management
- · Authority to bind
- Liability
- Calling for accounts on clauses
- · Governing Law
- Minors capacity
- Continuity
- · Number of members
- · Share in business

Partnership VS Co ownership Partnership VS Association

## THE INDIAN PARTNERSHIP ACT, 1932

#### RELATION OF PARTNER TO ONE ANOTHER

### Agreement of Partner

Section 9

### Duty to Indemnity loss

caused due to Fraud Section 10

### Determination of

rights and duties of Partner by contract between the **Partners** Section 11

#### Conduct of business

Section 12 · Right to take part in conduct of business Right to be conducted

 Right of access of books · Right of legal heir/ representative/ duty authorised agent.

# Mutual rights & liability

- No right of remuneration
  - · Right to Share Profit
  - Interest on Capital
  - Interest on Advance
- Right to be Indemnified
- Right to Indemnified the firm

#### PARTNERSHIP PROPERTY

#### **Property of Firm**

- · All Property right & Interest brought Partner
- All Properties right & Interest acquired by Firm
- Goodwill

Section 14

Note: Property of firm is different from Property of Partner

### Application of Property of Firm Section 15

Personal Profit earned by Partner Section 16

Rights and Duties of Partner after change in Constitution of Firm Section 17

After change in Constitution of firm

After expiry of term

Where additional undertakings are carried out

#### RELATION OF PARTNER TO THIRD PARTY

Partner to be agent of firm Section 18

Implied authority of Partner as agent of firm Section 19

Extension and restriction of Partners implied authority Section 20

Partners authority is an emergency Section 21

Mode of doing act to bind firm Section 22

#### Effect of Admission by a Partner Section 23

An admission or representation made by Partner concerning the affairs of the firm is evidence against the firm if made in ordinary course of business

#### Effect of Notice to an active Partner Section 24

Notice to Partner operates as a notice to firm Exception — fraud on the firm by OR with the consent of Partner

### **LIABILITY TO THIRD PARTY**

Liability of a Partner for acts of the firm Section 25

Liability of the firm wrongful act of a Partner Section 26

Liability of firm for misappropriation by Partner Section 27

# RIGHT OF A TRANSFREE OF A PARTNERS INTEREST(Section 29)

#### **During Continuance** of Partnership

Transferee is not entitled

- Interfere the conduct of business
- 2. Require an Account
- 3. Inspect books of firm

Transferee is entitled to receive Share of Profit only (cannot challenge the Account)

On dissolution of firm / retirement of transferring partner is entitled. Receive share of Asset of firm

Accounts from date of dissolution

## MINOR ADMITTED TO THE BENEFIT OF PARTNERSHIP

(Section 30)

after attaining

majority

Right

before attaining majority

Liability

when he elects to become Partner

elects not to become Partner

### LEGAL CONSEQUENCES OF PARTNER COMING IN & GOING OUT

Introduction of A Partner Section 31

Retirement of A Partner Section 32

**Expulsion of A Partner** 

**Insolvency of A Partner** Section 34

#### RIGHTS OF OUTGOING PARTNERS -

To carry on competing business Section 36

To share subsequent profit in certain cases Section 37

REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN CONSTITUTION OF FIRM Section 38

# THE INDIAN PARTNERSHIP ACT, 1932

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### **DISSOLUTION OF FIRM**

Application for Registration of Firm

#### Section 58

- Statement in prescribed form and accompanied by prescribed fees stating certain details.
- Statement shall be signed by All the partners or by their agent specifically authorised in this behalf also same should be verified
- Certain words expression or implying the sanction

#### OR

approval or patronage Govt. are, not allowed.

#### Registration

#### Section 59

Registrar shall record the entry of the statement in Register

### Late Registration on Payment of Penalty

#### Section 59A - 1

Late Registration on Payment of Penalty

### CONSEQUENCE OF NON-REGISTRATION

(Section 69)

Disabilities

**Exceptions** 

# CONSEQUENCE OF NON-REGISTRATION (Section 69)

Continuation of Business

Wending up

Order of Court

Scope

Final Closure of books

### **DISSOLUTION OF FIRM**

### Without the Court Order (Section 40 to 43)

- Mutual Agreement (Section 40)
- 2. Compulsory Dissolution (Section 41)
- On happening of certain event by notice (Section 42)
- By Notice
  (Partnership at Will) (Section 43)

### By Order of Court (Section 44)

- 1. Insanity
- 2. Misconduct
- 3. Permanent Capacity
- 4. Persistent breach of Agreement
- 5. Transfer of Interest
- 6. Continuous Loss
- 7. Just and Equitable Ground

#### RIGHT AND LIABILITIES OF PARTNERS AFTER DISSOLUTION

#### Section 45

Liabilities for Acts of Partner done after dissolution

#### Section 46

Right of Partner to have business wound up

#### Section 47

Continuing authority of Partner for the purpose of winding up

#### Section 48

Mode of settlement of Partnership Account

#### Section 49

Payment of firm debt and of separate debts