

PARTNERSHIP

1) PROBLEMS FACED BY PROFESSIONALS

2) REASONS

3) CHANGES W.E.F 1/1/1985 & 1/10/1989 – Prior to 1/1/1985 registration was not compulsory.

DEFINITION OF PARTNERSHIP

Section 4 – Partnership is a relationship between persons who have agreed to share the profits of the business carried on by all or any of them acting for all.

Per definition, 3 minimum requirements –

1. Relationship which is supported by Agreement
2. Sharing of Profits of business
3. Carried on by all partners or any of them – Principal of Agency

Drafting of partnership Deeds

- Partnership Deed is a document of utmost faith. – Requirement of Law
 - It's a reflection of relationship in commercial sense.
 - Elaborate – Clarity – Lengthy (not too much) - See the relationship of partners
 - Important paras – Remuneration – Share of profit / loss – Admission – Retirement – Expulsion – Arbitration – Investments – Drawings – Use of personal assets and properties of partners for the purpose of business.
 - Other clauses – date – names of partners – recitals
 - Main clauses – Name – Date of Commencement – Address – Nature of Business – Duration – Capital – Loans – Remuneration – Profit & Loss sharing – Withdrawals – Bank Account – Books of Account – Partners' share in Assets & Liabilities – Assignment of Share of Profit etc. – Statement of Goodwill – Obligations, Rights and Duties – Restrictions on partners – Retirement – Eventualities like Insolvency etc. and Admission of other partner in such eventuality – Minors admitted – Benefits to the families of partners after death or retirement – Arbitration – Residuary clause
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IMPORTANT POINTS & SECTIONS RELATED TO REGISTRATION

DEED W.E.F 1/1/1985 – Amnesty was declared for one year

DURATION - Sec. 7 If not specifically provided -AT WILL
Sec 8 particular partnership for transaction or adventure or Undertaking

Sections 58 To 64 deals with procedural aspects of registration and subsequent changes as amended w.e.f. 1/1/1985

Section 58 (Form A) - Time limit one year [Section 58(1-A)] – True copy of Deed of Partnership required duly attested – nature of business in Form A to be mentioned - **only a firm which is in existence can be registered.** W.e.f. 1/1/1989, Marathi translation is required.

Section 59 – Deals with registration process – use of word “Registered”

Section 59 A-1 – Prescribes payment of penalty of Rs. 100/- p.a.

Section 60 (Form B) - Deals with change in Firm name or principal place of business or nature of business - Time limit 90 days – True Copy of Deed

Section 61 (Form C) – Deals with Additional place of business – Time limit 90 days – Deed required following Rule 16 (unlike Form A and B where it is required by section itself).

Section 62 (Form D) – Deals with Change in name and / or address of partner – Time limit 90 days - Deed required following Rule 16 (unlike Form A and B where it is required by section itself).

Section 63 (1) (Form E) – Deals with change in Constitution and / or Dissolution – Time limit 90 days - Deed required following Rule 16 (unlike Form A and B where it is required by section itself) – Form E to be signed by every partner i.e. Incoming, Outgoing and Continuing or every partner before dissolution. **(Language of Section is confusing).** Section 63(1-A) provides that Retiring Partner may not sign. Follow practice of taking signatures of everybody and also in time.

Section 63(2) (Form F) – Deals with minor becoming major – Time limit 90 Days - Deed required following Rule 16 (unlike Form A and B where it is required by section itself) – If no Form is submitted within 90 days, minor automatically continues as partner, however, his status on record remains as minor, though he can sign as partner.

Section 64 - Rectification of mistakes – proof should be submitted along with a letter signed by all the partners – e.g. clerical errors – genuine errors – wrong Birth date – wrong spelling or missing a particular word etc.

Amendments w.e.f. 1/1/1989 provides for attestation by notary (only the forms) and Marathi translation

Frequently faced problems

1. Why Deed and supportings necessary – Refer Rule 16
 2. Notary – W.e.f. 18/12/2001, notary registered in Maharashtra is required to use the **red ink** and papers duly notarised be submitted within one month – Important to follow the date of notary – date put by partners on all forms
 3. Other important dates – Date of Stamp paper – Date of Execution – Effective date of the Deed and Date of signing by partners
 4. Names in Full and jurisdiction of partners is important in the Deed – Addresses of partners are required only on Forms – check spellings
 5. Always keep track on Deed/s / Form/s / Entry o record - mention of anything in the deed is not an intimation
 6. Mention correctly the capacity of a person signing the Deed or any Form – e.g. Karta / Director / Power of Attorney Holder / Guardian etc.
 7. Affidavit for early recording – State reason
 8. Letter of Authority on Letterhead of the firm signed by all the partners and by one who accepts authority is required while making any submissions and also similar separate authority for personal hearing is required. State the reason, if early hearing is required.
 9. Payment of filing fees in respect of Forms (Refer latest circular)
 10. Register is permanent – other records are destroyed over a period.
 11. Public notice – in case of documents which are required but missing, hence not available.
 12. Stamp duty – minimum Rs. 500/-, maximum Rs. 15,000/- in case of Deed of Partnership or change in constitution – and Rs. 500 in case of Dissolution
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Cases

1. Various changes can be intimated in single Form E with proper annexures – signs of Incoming Partners except diseased are required. Penalty will be applicable on the basis of date of respective changes.
2. Why outgoing partner's signature is necessary – If 2 different Deeds are prepared ?
3. Form F if submitted late, penalty is attracted.
4. No need to intimate change in share of profit.

5. Old unregistered firm can be registered with
 - a) Registration with changes from time to time – submit respective forms and deeds – pay penalty accordingly
 - b) Only latest position with all the deeds along with translation of all of them – effective date of registration will be the earliest date from which minimum 2 present partners are on record. – penalty Rs. 100/- p.a.
 6. Change in name of Lady Partners – particularly after marriage or divorce – signature changed without change in name – consequences.
 7. Changes in representative capacity requires proper intimation in Form E.
 8. Proof of Residence – Supplementary Deed is advisable.
 9. Change in Constitution on account of death – Death Certificate – copy required.
 10. Any business which requires specific registration or licence – copy or undertaking is required.
 11. Submission of Form A and E simultaneously done – submit 2 copies of the Deeds, since jurisdiction of staff is different.
 12. Change in jurisdiction from one city to another – submit 2 sets of deeds
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Tips

- i) Keep photocopies and use covering letter all the time.
- ii) Marathi translation to be matched with English Deed.
- iii) Appropriate Court Fee stamp to be affixed on covering letter.
- iv) Submit blank stamp paper in the name of the firm for entry on record.
- v) Submit self addressed stamped envelope.
- vi) Timely follow-up
- vii) Spell out the things properly and fully – no short forms or abbreviations.
- viii) Always visit website of Registrar of Firms to know latest requirements and instructions and circulars if any.