

SECTION – 5

QUESTION-1.

ANSWER:-

Partnership Deed

Now a partnership is when two persons form an association to carry out a business with the motive to earn profits. They share the profits from such a business. Such an association will be voluntarily entered into by the partners based on an agreement between them.

Such an agreement between partners can be written or can even be oral. However, it is strongly advised for legal and practical purposes that such an agreement or contract be in the written form. And this written agreement between partners to form a partnership firm is what we call a Partnership Deed.

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Contents of Partnership Deed

This partnership deed will contain all the conditions and the legalities of the partnership deed. It will provide a guiding basis for all future activities. And in case of a dispute or legal proceedings, it can also be used as evidence. A general partnership deed will contain the following information,

The agreed name of the Partnership Firm. Please note that such a name cannot have the words “company” or “private company” in it.

The nature of the business will also be mentioned in the deed

Date of commencement of such business

The place of business, i.e addresses of main office or branch offices if any, where communication can be sent

The duration of a partnership if it is a partnership for a specific purpose or time. If it is a partnership at will then no such duration will be mentioned

Contribution to the capital of all the partners

Profit sharing ratio. However, if no ratio is given it is assumed that the profit is shared by all the partners equally.

Salary of all active partners

Interest on contribution and the interest on drawings (must be according to the provisions of the Indian Partnership Act 1932)

Terms and conditions of the retirement or expulsion of a partner, and the terms to continue the partnership after such an incident

The day-to-day functioning of the firm and the distribution of the managerial duties among the partners

Preparation of the firm’s accounts and the provisions for internal and statutory audit

Procedure for voluntary or forced dissolution of the firm

Guidelines for solving any disputes and arbitration process to be followed

Image result for partnership deed

(Source: coinsage)

Registration of Partnership

As per the Partnership Act 1932, it is not compulsory to register a partnership firm. The firm does not have a separate legal identity and registration will not alter this fact. However, registration is the definite proof of the existence of the firm and its legality.

Non-registration of a firm has some real-life legal consequences for the partners and the firm itself. So it is always advisable to draw up a written partnership deed and register the firm with the Registrar of Firms. The consequences of not doing so are as follows,

The firm cannot file legal proceedings against any third party for any situation. For example, if the client has not paid his dues to the firm, the firm cannot sue him if it is unregistered.

An unregistered firm cannot fail a case against a partner for any reason (like mismanagement, theft etc)

A partner of an unregistered firm cannot file a suit against one of the other partners either.

Procedure of Registration

According to the India Partnership Act 1932, there is no time limit as such for the registration of a firm. The firm can be registered on the date when it is incorporated or any such date after so. The requisite fees and fines must be paid. The procedure for such a registration is as follows,

1] Application to the Registrar of Firms in the prescribed form (Form A). Nowadays this facility is even available online. Such an application must contain certain basic details about the firm such as,

Name of the Partnership Firm

Name and address of all partners

Place of business (address of main and branch offices)

Duration of the partnership

Date of joining of partners

Date of commencement of business

2] The duly signed copy of the Partnership Deed (which contains all the terms and conditions) must be filled with the registrar

3] Deposit/pay the necessary fees and stamp duties

4] Once the registrar approves the application, the firm will be entered into the records. And the registrar will also issue a certificate of incorporation.

And this is how the process of registration will be completed and the firm will attain legal recognition.

Solved Question for You

Q: A firm has 12 partners and it is in the business of trading of goods. They have an oral agreement among themselves. Is the firm an illegal entity? Explain.

Ans: This firm is not an illegal entity. It is a perfectly legal partnership or association. Let us look at the reasons why

The number of partners is 12, which is within the legal limit of 20 for a non-banking business (which this is)

The Partnership Act does not require a written agreement or Partnership Deed. There should only be a mutual agreement between partners, even if it is an oral agreement

The firm's registration also does not have any bearing on its legal status, i.e. not all partnerships have to be registered.