ST. LAWRENCE HIGH SCHOOL

A Jesuit Christian Minority Institution
STUDY MATERIAL
CLASS –XI

SUBJECT –BSTD **CHAPTER 2 – Forms of Business Org – Part 2** **Date -17.08.20**

Partnership

In India, we have a definite law that covers all aspects and functioning of a partnership, The Indian Partnership Act 1932. The act also defines a partnership as "the relation between two or more persons who have agreed to share the profits from a business carried on by either all of them or any of them on behalf of/acting for all"

So in such a case two or more (maximum numbers will differ according to the business being carried) persons come together as a unit to achieve some common objective. And the profits earned in pursuit of this objective will be shared amongst themselves.

The entity is collectively called a "Partnership Firm" and all the individual members are the "Partners".

Features of a Partnership

1] Formation/Partnership Agreement

A partnership firm is not a separate legal entity. But according to the act, a firm must be formed via a legal agreement between all the partners. So a contract must be entered into to form a partnership firm.

Its business activity must be lawful, and the motive should be one of profit. So two people forming an alliance to carry out charity and/or social work will not constitute this form of organisation. Similarly, a partnership contract to carry out illegal work, such as smuggling, is void as well.

2] Unlimited Liability

In a unique feature, all partners have unlimited liability in the business. The partners are all individually and jointly liable for the firm and the payment of all debts. This means that even personal assets of a partner can be liquidated to meet the debts of the firm.

If the money is recovered from a single partner, he can, in turn, sue the other partners for their share of the debt as per the contract of the partnership.

3] Continuity

A partnership cannot carry out in perpetuity. The death or retirement or bankruptcy or insolvency or insanity of a partner will dissolve the firm. The remaining partners may continue the partnership if they so choose, but a new contract must be drawn up. Also, the partnership of a father cannot be inherited by his son. If all the other partners agree, he can be added on as a new partner.

4] Number of Members

As we know that there should be a minimum of two members. However, the maximum number will vary according to a few conditions. The Partnership Act itself is silent on this issue, but the Companies Act, 2013 provides clarity.

For a banking business, the number of partners must not exceed ten. For a business of any other nature, the maximum number is twenty. If the number of partners increases it will become an illegal entity or association.

5] Mutual Agency

In this type of organisation, the business must be carried out by all the partners together. Or alternatively, it can be carried out by any of the partners (one or several) acting for all of them or on behalf of all of them. So this means every partner is an agent as well as the principal of the partnership.

He represents the other partners in some cases so he is their agent. But in other circumstances, he is bound by the actions of any of the other partners aking him the principal as well.

Types of Partners

Not all partners of a firm have the same responsibilities and functions. There can be various types of partners in a partnership. Let us study the types of partners and their rights and duties.

- **Active Partner**: As the name suggests he takes active participation in the business of the firm. He contributes to the capital, has a share in the profit and also participates in the daily activities of the firm. His liability in the firm will be unlimited. And he often will act as an agent for the other partners.
- **Dormant Partner**: Also known as a sleeping partner, he will not participate in the daily functioning of the business. But he will still have to make his share of contribution to the capital. In return, he will have a share in the profits. His liability will also be unlimited.
- **Secret Partner**: Here the partner's association with the firm is not public knowledge. He will not represent the firm to outside agents or parties. Other than this his participation with respect to capital, profits, management and liability will be the same as all the other partners.

- **Nominal Partner**: This partner is only a partner in name. He allows the firm to use the name of his firm, and the attached goodwill. But he in no way contributes to the capital and hence has no share in the profits. He does not involve himself in the firm's business. But his liability too will be unlimited.

- **Partner by Estoppel**: If a person makes it out to be, through their conduct or behaviour, that they are partners in a firm and he does not correct them, then he becomes a partner by estoppel. However, this partner too will have unlimited liability.
- **Partner by Holding Out** A partner 'holding out' is a person who though is not a partner in a firm but knowingly allows himself to be represented as a partner in a firm.

Types of Partnership

Based on the basis of time period, there are three types of partnership firm

- Partnership at will
- Fixed period partnership
- Particular partnership

On the basis of liability of members, there are two types of partnership. These are

- General partnership
- Limited partnership

Partnership Deed

The common contents of Partnership Deed are

- Name of the firm
- Name and address of the partners
- Nature of business the firm will carry on
- lace of business
- Capital contribution by each other
- Profit sharing ratio of partners
- The right and duties of the partners
- The mode of maintaining accounts
- The rate of interest payable to partners on their capital
- The rate of interest to be paid by partners on amount withdrawn by them
- The amount of salary payable to partners
- Provision regarding retirement and dissolution
- Methods of solving disputes
- Whether interest is payable on the loan provided by partners etc.

REGISTRATION OF PARTNERSHIP

Registration is not compulsory it is optional. But it is always beneficial to get the firm registered. The consequences of non-registration of a firm are as follows:

• A partner of an unregistered firm cannot file suit against the firm or the partner.

• The firm cannot file a suit against third party.

• The firm cannot file a case against its partner.

JOINT STOCK COMPANY

Meaning – Joint stock company is a voluntary association of persons for profit, having a capital divided into transferable shares, the ownership of which is the condition of membership.

FEATURES

1. Incorporated association – The company must be incorporated or registered tender the companies Act 1956. Without registration no company can come into existence.
2. Separate Legal Existence – It is created by law and it is a distinct legal entity independent of its members. It can own property, enter into contracts, can file suits in its own name.
3. Perpetual Existence – Death, insolvency and insanity or change of members as no effect on the life of a company. It can come to an end only through the prescribed legal procedure.
4. Limited Liability – The liability of every member is limited to the nominal value of the shares bought by him or to the amt. guaranteed by him. Transferability of shares – Shares of public Co. are easily transferable. But there are certain restrictions on transfer of share of private Co. Common Seal- It is the official signature of the company and it is affixed on all important documents of company.
5. Separation of ownership and control – Management of company is in the hands of elected representatives of shareholders known individually as director and collectively as board of directors.

MERITS

1. Limited Liability – Limited liability of shareholder reduces the degree of risk borne by him.
2. Transfer of Interest – Easy transferability of shares increases the attractiveness of shares for investment.
3. Perpetual Existence – Existence of a company is not affected by the death, insanity, Insolvency of member or change of membership. Company can be liquidated only as per the provisions of companies Act.

4. Scope for expansion – A company can collect huge amount of capital from unlimited no. of members who are ready to invest because of limited liability, easy transferability and chances of high return.

5. Professional management – A company can afford to employ highly qualified experts in different areas of business management.

LIMITATIONS

1. Legal formalities – The procedure of formation of Co. is very long, time consuming, expensive and requires lot of legal formalities to be fulfilled.
2. Lack of secrecy – It is very difficult to maintain secrecy in case of public company, as company is required to publish and file its annual accounts and reports.

3. Lack of Motivation – Divorce between ownership and control and absence of a direct link between efforts and reward lead to lack of personal interest and incentive.
4. Delay in decision making – Red papism and bureaucracy do not permit quick decisions and prompt actions. There is little scope for personal initiative.
5. Oligarchic management – Co. is said to be democratically managed but actually managed by few people i.e. board of directors. Sometimes they take decisions keeping in mind their personal interests and benefit, ignoring the interests of shareholders and Co.

TYPES OF COMPANIES
On the basis of ownership, companies can be divided into two categories – Private & Public.
Difference between Private Company & Public Co.

Private Co.	**Public Co.**
It has minimum 2 and maximum 50 members.	It has minimum 7 and maximum unlimited.
It cannot invite general public to buy its shares and debentures.	It invites general public to buy its shares and debentures.
There are certain restrictions on transfer of its shares.	Its shares are freely transferable.
It can commence business after incorporation.	It can commence business after obtaining certificate of commencement of business.
It has to write Private Ltd. After its name Ex- Tata Sons, Citi Bank, Hyundai Motor India.	It has to write only limited after its name Ex- Reliance Industries Ltd., Wipro Ltd. , Raymond's Ltd.

FORMATION OF A COMPANY

Formation of a company means bringing a company into existence and starting its business. The steps involved in the formation of a company are:

(i) Promotion
(ii) Incorporation
(iii)Capital subscription
(iv) Commencement of business.

A private company has to undergo only first two steps but a public company has to undergo all the four stages.

1. Promotion:

Promotion means conceiving a business opportunity and taking an initiative to form a company.

Step in Promotion:

1. Identification of Business Opportunity : The first and foremost function of a promoter is to identify a business idea e.g. production of new product or service.
2. Feasibility Studies: After identifying a business opportunity the promoters undertake detailed studies of technical, Financial, Economic feasibility of a business.
3. Name Approval: After selecting the name of company the promotors submit an application to the Registrar of companies for its approval.
4. Fixing up signatories to the Memorandum of Association: Promotors have to decide about the director who will be signing the memorandum of Association.
5. Appointment of professional: Promoters appoint merchant bankers, auditors etc.
6. Preparation of necessary documents: The promoters prepare certain legal documents such as memorandum of Association, Articles of Association which have to be submitted to the Registrar of the companies.

2. Incorporation

Incorporation means registration of the company as body corporate under the companies Act 1956 and receiving certificate of Incorporation.

Steps for Incorporation

1. Application for incorporation: Promoters make an application for the incorporation of the company to the Registrar of companies.
2. Filing of necessary documents: Promoters files the following documents:
(i) Memorandum of Association.
(ii) Articles of Association.
(iii) Statement of Authorized Capital
(iv) Consent of proposed director.
(v) Agreement with proposed managing director.
(vi) Statutory declaration.

3. Payment of fees: Along with filing of above documents, registration fee has to be deposited which depends on amount of the authorized capital.
4. Registration: The Registrar verifies all the document submitted. If he is satisfied then he enters the name of the company in his Register.
5. Certificate of Incorporation: After entering the name of the company in the register. The Registrar issues a Certificate of Incorporation. This is called the birth certificate of the company.

3. Capital Subscription:

A public company can raise funds from the public by issuing shares and Debentures. For this it has to issue prospectus and undergo various other formalities:

4. COMMENCEMENT OF BUSINESS:

To commence business a public company has to obtain a certificate of commencement of Business. For this the following documents have to be filled with the registrar of companies.

1. A declaration that 90% of the issued amount has been subscribed.
2. A declaration that all directors have paid in cash in respect of allotment of shares made to them.
3. A statutory declaration that the above requirements have been completed and must be signed by the director of company.

Important documents used in the formation of company:

1. Memorandum of Association – It is the principal document of a company. No company can be registered without a memorandum of association and that is why it is sometimes called a life giving document.

2. Articles of Association:

The articles of Association are the rules for the internal management of the affairs of a company the articles defines the duties, rights and powers of the officers and the board of directors.

CHOICE OF FORM OF BUSINESS ORGANISATION

The following factors are important for taking decision about form of organization:

1. Cost and ease in setting up the organization: Sole proprietorship is least expensive and can be formed without any legal formalities to be fulfilled. Company is also expensive with lot of legal formalities.

2. Capital consideration: Business requiring less amount of finance prefer sole proprietorship & partnership form, where as business activities requiring huge financial resonances prefer company form.

3. Nature of business: If the work requires personal attention such as tailoring unit, cutting saloon, it is generally setup as a sole proprietorship. Unit engaged in large scale manufacturing are more likely to be organized in company form.

4. Degree of control desired: A person who desires full and exclusive control over business prefers proprietorship rather than partnership or company because control has to be shared in these cases.

5. Liability or Degree of Risk: Projects which are not very risky can be organized in the form of sole proprietorship partnership whereas the risky ventures should be done in company form of organization because the liability of shareholders is limited.

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