The Indian Partnership Act,1932

9 of 1932 As AMEMDED UP to DATE [8th April 1932]

An Act to define and amend the law relating to partner ship; it is hereby enacted as follows:

CHAPTER I

1. Short title extent and commencement-1.This Act may be called the Indian Partnership ; Act 1932

2. It extends to the whole of India {except the State of Jammu and Kashmir }

3. It shall come into force on the 1st day of October ,1932 except section 69, which shall come into force on the 1st day of October 1933.

2. Definitions – In this Act unless there is anything repugnant in the subject or context

1 "act of a firm " means any act or omission by all the partners or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm ;

2 " business " includes every trade occupation and profession ;

3 "prescribed "means prescribed by rules made under this Act;

4 "third party used in relation to a firm or to a partner therein means any person who is not a partner in this

5 expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 (9 of 1872), shall have the meanings assigned to them in that Act.

3. Application of provisions of Act 9 of 1872 - The unrepealed provisions of the Indian Contract Act,1872 save in so far as they are inconsistent with the express provisions of this Act , shall continue to

apply to firms.

CHAPTER II

The nature of Partnership

4. Definition of “partnership”, “partner”, “firm” and “firm name”-“Partnership” is the relation between person who have agreed to share the profit 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.

5. Partnership not created by status :- The relation of partnership arises from contract and not from status;

And in particular, the members of a Hindu undivided family carrying on a family business as such or Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

6. Mode of determining existence of partnership.-in determining whether a group of a persons is or is not a firm or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation 1. The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation 2. The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;

and in particular, the receipt of such share or payment –

a) by a lender of money to persons engaged or about to engage in any business.

b) by a servant or agent as remuneration ,

c) by the widow or child of a deceased partner as annuity, or

d) by a previous owner or part owner of the business as consideration for the sale of the goodwill or share thereof, does not itself make the receiver a partner with the persons carrying on the business.

7. 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".

8. Particular partnership.-A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III

Relation of Partners to one Another

9. General duties of partners.- Partners are bound to carry on the business of the firm to the 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 or his legal representative.

10. Duty to indemnify for loss caused by fraud..- Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm..

11. 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 partn

ers, and such contract may be expressed 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 expressed or may be implied by a course of dealing.

Agreements in restraint of trade.-(2) Notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872 (9 of1872),such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

12. The conduct of the business - Subject to cantact 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 ;and

d) every partner has a right to have access to and to inspect and copy any of the books of the firm 13. Mutual rights and liabilities;-Subject to contract between the partners

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 purpose of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entiled to interest thereon at the rate of six percent 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 pr otecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstanc es, and

iii) 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.

14. The property of the firm. Subject to contract between the partn ers, the property of the firm includes all property and rights and interests in property originally brought into the st ock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purpose and in the co urse 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.

15. Application of the property of the firm - Subject to contra ct between the partners, the property of the firm shall be held and used by the partners exclusively for the purpose of the business.

16. Personal profits earned by partners.-Subject to contract between the partners,-

a) if a partner derives any profit for himself from any transact ion of the firm, or from the use of the property or business connection of the firm or the firm – name, he shall account for the 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 any pay to the firm all profits made by him in that business
.

17. Subject to contract between the partners:

a) Rights and duties of partners after a c
hange in the firm.-Where a change occurs in the
constitution of a firm, the mutual rights and duties of the partners in the recon
stituted firm remain the same as they wer
e immediately before the change, as far as may be;

b) After the expiry of the term of the firm.- where a firm constitu
ted for a fixed term
continues to carry on business after the expiry of that term, the mutual right
s and duties
of the partners remain the same as they were before the expiry, so far as the
y may be
consistent with the incidents of partnership at will; and

c) And where additional undertakings are carried out. – Where a firm constituted to carry
out one or more adventures or undertakings carries out other adventures or u
ndertakings,
the mutual rights and duties of the partners in respect of the other adventure
s or undertakings
are the same as those in respect of the original adventures or undertaking.

CHAPTER IV

Relations of Partners to Third Parties

18. Partner to be agent of the firm-Subject to the provisio
n of this Act,a partner is the agent of the firm f
or the purpose of the buisness of the firm.

19. Implied authority of the 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 conferred by this section 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.

20. 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.

Not with standing 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.

21. 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.

22. 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.