

RFBT 01 - LAW ON PARTNERSHIP

Clean TTS Copy

Contract of Partnership

A contract of partnership exists when two or more persons contribute money, property, or industry to a common fund, with the intention to divide profits or exercise a profession, and with a lawful purpose.

In determining the existence of a partnership, the general rule is that sharing of profits indicates a partnership. Sharing of gross returns or revenue, co-possession or co-ownership, and being non-partners to each other do not by themselves establish a partnership. Under Article 1769, profit received as payment of debt, wages or rent, an annuity to a widow, or interest from a loan does not establish a partnership.

As a general rule, a partnership is consensual and is perfected by mere consent, whether written or oral. Exceptions in the source involve immovables and capital exceeding three thousand pesos. Where immovables are contributed, the contribution must be inventoried and signed in a public instrument; otherwise the partnership is void. For capital exceeding three thousand pesos, a public instrument and SEC registration are required; otherwise the partnership remains valid, with registration intended to affect third persons.

Two principles are *Affectio Societatis*, meaning mutual confidence and trust, and *Delectus Personae*, meaning personal choice.

Kinds of Partnership

As to object, a partnership may be universal or particular. A universal partnership may be a universal partnership of all present property or of all profits. In all present property, present property and its fruits form part of the common fund; subsequent properties are included only if stipulated, subject to the source limitation on properties subsequently acquired through inheritance, legacy, or donation. In a universal partnership of all profits, fruits acquired by work and industry form part of the common fund; present property itself is generally only subject to usufruct if the agreement is silent. A particular partnership is for specific undertakings.

As to liability to third persons, there may be a general partnership or a limited partnership. In a general partnership, all partners are general partners. In a limited partnership, there must be at least one general partner and one limited partner.

The source lists persons not allowed to form a universal partnership: husband and wife; persons guilty of adultery and concubinage; and persons guilty of the criminal offense referred to in the notes.

Partnership by Estoppel and Liability

Estoppel applies when a third person is misled by a misrepresentation. If an actual partnership exists and all partners consented, partnership liability may result and the partnership and partners are liable. If there is no actual partnership, or there is a partnership but not all partners consented, personal liability may attach to the person held out by estoppel and the partners who consented.

The source states that liability is up to personal property, jointly and pro-rata, and notes that for liability to third persons, pro-rata means equally.

Kinds of Partners

As to contribution, a partner may be capitalist or industrial. A capitalist partner contributes money or property. An industrial partner contributes industry.

As to liability, partners may be general partners, limited partners, or general-limited partners. A general partner is liable up to personal properties. A limited partner is liable only to the properties contributed. A general-limited partner is liable up to personal properties, with the limited-partner preference applying to returns while the rest is treated as a general partner.

For profit and loss sharing, follow the partnership agreement when there is one. The source also provides rules based on capital contribution and just-and-equitable sharing. An industrial partner may be exempt from losses when so provided by the applicable rule in the notes.

A stipulation excluding a partner from profit sharing is void. A stipulation excluding a capitalist partner from profit sharing is void. A stipulation excluding an industrial partner from loss sharing is valid.

When profit-and-loss distribution is entrusted to a third party, the determination binds the partners but may be impugned when inequitable, except by a partner who has begun to execute it or when three months have elapsed from obtaining knowledge.

Obligations of a Partner to the Partnership and Other Partners

A partner must give the agreed contribution. General rule: contributions are equal; exception: stipulation. General rule: contribution is provided upon perfection; exception: stipulation.

For risk of loss, when the thing contributed is fungible, will deteriorate, or is to be sold, the risk is borne by the partnership, with appraisal of inventory if stipulated. When the thing contributed is a non-fungible specific or determinate thing, the risk is borne by the partners under the source rule, with appraisal of inventory generally.

A partner must make an additional contribution in case of imminent loss; otherwise, the partner may have to sell his interest to the other partners, except industrial partners unless they were stipulated to contribute.

An industrial partner cannot engage in another business unless permitted. Otherwise, the capitalist partners may exclude the industrial partner from the partnership with damages or avail themselves of the benefits obtained, with damages.

A capitalist partner cannot engage in the same business unless permitted. Otherwise, the partner must bring to the partnership the profits illegally obtained and is personally liable for losses; the source also lists ouster from the partnership.

When a debtor owes both the partnership and the managing partner, a receipt in the partnership's name applies the whole amount to the partnership. A receipt in the managing partner's name, or by another partner authorized to accept payment, is applied proportionately, except that the whole amount may go to the partner if that debt is more onerous.

Obligations to Third Parties

For the firm name, a general partner may or may not be included, while a limited partner is not included, subject to the limited-partnership exceptions stated later.

After exhaustion of partnership assets, a general partner is liable to personal assets jointly and pro-rata; a limited partner is not liable beyond the limited-partner rules.

For torts, quasi-delicts, and misappropriations, general partners may be liable solidarily. The limited-partner rule is not applicable unless the limited partner acts beyond the permitted scope and thereby acquires the liability of a general partner.

A general partner has authority to act for and on behalf of the partnership. The act binds the partnership when done in the ordinary course or when consented to by the other partners. A limited partner is not authorized to manage.

An industrial partner remains included in liability to third persons even if there is a stipulation excluding that partner, because the stipulation is not valid against third persons; the partner may seek reimbursement.

A new partner is liable only up to the contribution for debts incurred before admission. For debts incurred after admission, the source states liability up to personal assets.

Admissions, Notice, and Real Property

An admission or representation of a partner is evidence against the partnership when it concerns partnership affairs, is made within the scope of authority, and is made during the existence of the partnership.

Notice to a partner relating to the partnership is notice to the partnership. Knowledge of a partner acting on a particular matter is knowledge of the partnership when acquired while already a partner, acquired before admission but still present in mind, or when another partner could reasonably communicate the knowledge to the partner acting on the matter. The source states that this does not bind the partnership in case of fraud committed by that partner.

For conveyance of real property, the effect depends on whose name the property is in, whose name the conveyance is in, and who conveyed it. Where property and conveyance are in the partnership name and a partner conveys it, the transfer is valid but the partnership may recover, except when the transfer binds the partnership or the transferee had no knowledge of lack or excess of authority. Other configurations in the chart distinguish transfer of equitable interest from a valid transfer by all partners.

Property Rights of a Partner

A partner has rights in specific partnership property, an interest in the partnership, and the right to participate in management.

For specific property, the general rule is equal rights with partners. It is not assignable, not subject to attachment or execution, and not subject to legal support. Exceptions in the chart include agreement of the partners, use for other purposes with consent, assignment of the rights of all partners in the same property, and claims against the partnership.

A partner's interest means profit and surplus. Conveyance of the right to an interest does not necessarily dissolve the partnership, and the assignee does not necessarily become a partner.

The right to participate in management concerns acts of administration in the ordinary course of business. General rule: mutual agency. Exception: an appointed managing partner.

Rules on Management

When one managing partner is appointed in the articles of partnership, that partner may perform all acts of administration despite opposition, except when acting in bad faith. Revocation requires controlling interest and a just and lawful cause.

When one managing partner is appointed after execution of the articles, the partner may perform acts but may be opposed by partners. Revocation may be made by controlling interest with or without just or lawful cause.

For multiple managing partners, if there is a stipulation that no managing partner may act without the consent of the others, no act may be performed without such consent. If duties are specified, each managing partner acts only within the respective duties. If there is no stipulation or specification, each may separately execute acts of administration; opposition is decided by majority, and in case of tie by controlling interest.

When there is no managing partner and there is a stipulation that no partner may act without consent, concurrence of all is generally necessary and absence or disability of one cannot be alleged. Exception: imminent danger of grave or irreparable injury.

When there is no agreement as to management, all partners are agents and may bind the partnership. For alteration of immovable property, even if useful to the partnership, consent is required; the court may intervene when refusal is prejudicial to the partnership's interest.

Dissolution and Winding Up

Extrajudicial causes of dissolution without violation of the agreement include termination of a definite term, express will of partners acting in good faith, and expulsion of a partner. Dissolution in contravention of the agreement makes the partner who caused it liable for damages.

By operation of law, dissolution may arise from an event making the business unlawful, the perishing of a specific thing before delivery, or the death, insolvency, or civil interdiction of any partner.

Judicial causes listed are insanity, incapability of performance, conduct tending to affect the carrying on of the business, willful breach of agreement, and a business that can only be carried on at a loss.

Upon dissolution, mutual agency ceases. Acts for winding up, transactions begun before dissolution, and certain contracts with creditors without notice may remain binding. The source states that an old creditor needs special notice of dissolution, while a new creditor needs publication or notice. Notice is needed when the cause of dissolution is act, insolvency, or death.

The liquidator is a party who did not wrongfully cause dissolution; the legal representative of the last surviving partner if all partners are dead and the representative is not insolvent; or, under court direction, a person appointed upon cause by a partner or legal representative.

Order of distribution of partnership assets: first, creditors other than partners; second, partners other than for capital and profits; third, partners in respect of capital; fourth, partners in respect of profits. For a limited partnership, the source notes that profit is preferred over capital.

Preference to a partner's separate assets is: first, personal creditors; second, partnership creditors; third, partners.

Limited Partnership

Formation requires signing and swearing to a certificate stating, among other matters, the partnership name with Limited or LTD, the amount or agreed value of money or property contributed by each limited partner, additional contributions if any, the time for return of each limited partner's contribution, and the right to substitute an assignee if granted.

Amendment must be in writing and signed and sworn to by all members. Cancellation must be in writing, signed by all members, and filed with the SEC.

A limited partner cannot contribute service or industry, generally cannot have the surname included in the partnership name, and cannot take part in management. The surname exceptions are when it is also the surname of a general partner or when, before becoming a limited partner, the business had already been carried on under a name containing that surname.

General rule: retirement, death, insolvency, insanity, or civil interdiction of a general partner dissolves a limited partnership. Exception: the partnership is continued by the remaining general partners.

For a limited partnership, distribution of assets follows this order: creditors other than partners; limited partners for items other than capital or profits; limited partners for profits; limited partners for capital; general partners for items other than capital or profits; general partners for profits; and general partners for capital.