

# General partnership

In most countries, a **general partnership** (the basic form of **partnership** under **common law**), is an association of persons or an unincorporated company with the following major features:

- Created by agreement, proof of existence and estoppel.
- Formed by two or more persons
- The owners are all personally **liable** for any legal actions and **debts** the company may face, unless otherwise provided by law or in the agreement.

It is a partnership in which partners share equally in both responsibility and liability.\* [1]

## 1 Characteristics

Partnerships have certain default characteristics relating to both (a) the relationship between the individual partners and (b) the relationship between the partnership and the outside world. The former can generally be overridden by agreement between the partners, whereas the latter generally cannot be overridden this way.

The assets of the business are owned on behalf of the other partners, and they are each personally liable, jointly and severally, for business debts, taxes or tortious liability. For example, if a partnership defaults on a payment to a creditor, the partners' personal assets are subject to attachment and liquidation to pay the creditor.

By default, profits are shared equally amongst the partners. However, a partnership agreement will almost invariably expressly provide for the manner in which profits and losses are to be shared.

Each general partner is deemed the **agent** of the partnership. Therefore, if that partner is apparently carrying on partnership business, all general partners can be held liable for his dealings with third persons.

By default a partnership will terminate upon the death, disability, or even withdrawal of any one partner. However, most partnership agreements provide for these types of events, with the share of the departed partner usually being purchased by the remaining partners in the partnership.

By default, each general partner has an equal right to participate in the management and control of the business.

Disagreements in the ordinary course of partnership business are decided by a majority of the partners, and disagreements of extraordinary matters and amendments to the partnership agreement require the consent of all partners. However, in a partnership of any size the partnership agreement will provide for certain electees to manage the partnership along the lines of a company board.

Unless otherwise provided in the partnership agreement, no one can become a member of the partnership without the consent of all partners, though a partner may assign his share of the profits and losses and right to receive distributions ( "transferable interest" ). A partner's judgment creditor may obtain an order charging the partner's "transferable interest" to satisfy a judgment.

## 2 Separate legal personality

There has been considerable debate in most states as to whether a partnership should remain aggregate or be allowed to become a **business entity** with a separate continuing legal personality.

In the **United States**, section 201 of the Revised **Uniform Partnership Act (RUPA)** of 1997 provides that "A partnership is an entity distinct from its partners." This is one of the more significant departures of RUPA from the 1917 Uniform Partnership Act, which does not recognize separate legal personality for partnerships; however, the degree to which this theory was actually respected varied by jurisdiction and over time.

In **England and Wales**, a partnership does not have separate legal personality. Although the **English & Welsh Law Commission** in Report 283 proposed to amend the law to create separate personality for all general partnerships, the British government decided not to implement the proposals relating to general partnerships. The *Limited Liability Partnerships Act 2000* confers separate personality on limited liability partnerships—separating them almost entirely from general partnerships and limited partnerships, despite the naming similarities. In **Scotland** partnerships do have some degree of legal personality.

While **France**, **Luxembourg**, **Norway**, the **Czech Republic** and **Sweden** also grant some degree of legal personality to business partnerships, other countries such as **Belgium**, **Germany**, **Italy**, **Switzerland** and **Poland** do not allow partnerships to acquire a separate legal personality, but permit partnerships the rights to sue and be sued, to hold property, and to postpone a creditor's lawsuit against

the partners until he or she has exhausted all remedies against the partnership assets.

In December 2002 the Netherlands proposed to replace their general partnership, which does not have legal personality, with a public partnership which allows the partners to opt for legal personality.

Japanese law provides for Civil Code partnerships (組合 *kumiai*), which have no legal personality, and Commercial Code partnership corporations (持分会社 *mochibun kaisha*) which have full corporate personhood but otherwise function similarly to partnerships.

The two main consequences of allowing separate personality are that one partnership will be able to become a partner in another partnership in the same way that a registered company can, and a partnership will not be bound by the doctrine of *ultra vires* but will have unlimited legal capacity like any other natural person.

### 3 See also

- Investment clubs
- Types of business entity (listed by country)

### 4 References

- [1] Sullivan, arthur; Steven M. Sheffrin (2003). *Economics: Principles in action*. Upper Saddle River, New Jersey 07458: Pearson Prentice Hall. p. 190. ISBN 0-13-063085-3.

DeMott, Deborah A. “Transatlantic Perspectives on Partnership Law: Risk and Instability” , (2001) 26 *Journal of Corporation Law*. 879-895.

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