



# Partnership Act 1890

1890 CHAPTER 39 53 and 54 Vict

## *Nature of Partnership*

### **1 Definition of partnership.**

- (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
- (2) But the relation between members of any company or association which is—
  - (a) Registered as a company under the <sup>M1</sup>Companies Act 1862, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or
  - (b) Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter; or
  - (c) A company engaged in working mines within and subject to the jurisdiction of the Stannaries:is not a partnership within the meaning of this Act.

#### **Marginal Citations**

**M1** 1862 c. 89.

### **2 Rules for determining existence of partnership.**

In determining whether a partnership does or does not exist, regard shall be had to the following rules:

- (1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.
- (2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

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*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Partnership Act 1890, Cross Heading: Nature of Partnership. (See end of Document for details)*

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- (3) The receipt by a person of a share of the profits of a business is *primâ facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—
- (a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:
  - (b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:
  - (c) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such:
  - (d) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto:
  - (e) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

### 3 Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency.

In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than [<sup>F1</sup>100p] in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

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#### Textual Amendments

**F1** Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

### 4 Meaning of firm.

- (1) Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.
- (2) In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree or diligence directed against

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the firm, and on payment of the debts is entitled to relief *pro rata* from the firm and its other members.

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**Modifications etc. (not altering text)**

- C1** S. 4(2) excluded by Agricultural Holdings (Amendment) (Scotland) Act 1983 (c. 46, SIF 2:3), s. 1(3), **Sch. 1 para. 3(b)** and by Capital Transfer Tax Act 1984 (c. 51, SIF 65), **s.119(2)**
- C2** S. 4(2) excluded (S.) (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 25(5), 89(2), **Sch. 2 Pt. III**, para. 3(b) (with s. 45(3), Sch. 12 para. 3)

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