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LL.B THESIS

**THE LAW AND PRACTICE RELATING TO
GENERAL PARTNER SHIP**

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**THE LAW AND PRACTICE RELATING TO GENERAL
PARTNER SHIP IN ETHIOPIA**

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Statement of the problem

Under Ethiopia law although general partnership can be formed in many ways as stated in article 210,211,280,283...being commercial business organization of him commercial on the account of its organization or commercial on the account of its purpose. It may also be come in to existence due to circumstances stipulated in Article 272(4).

Further more a general partnership could be and the child of operation of a law as Article 213(2) clearly provides under the laws relating to the above mentioned modes of formation of a general partner ship are too vague to comprehend the practice is also surrounded number of problem besides provisions of management of General partner ship and the practice are not only vague but are also at odds.

Rues relating to legal personality of General partner ship shares of partners liability of the members and the partnership are abscule , hence the laws and the practice pertaining to the general partnership & dissolves a careful legal research.

Objective of the Research paper

The objective of this research paper are

1. To examine and demonstrate the problems the provisions of the commercial code governing the provision's of the commercial code governing the law and practice relating to general partnership.
2. The objective of the study among others to identify some vague provisions in brief and also include to comprehend the practice is also surrounded by a number of problem with relating to general partnership in accordance with law.
3. View to enabling those concerned bodies understand vague and in complete nature of the law governing general partnership and come up with a better law.

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4. By amending the existence law or by issuing new area of law also to solve the problem besides proviso's on management of general partnership and the practice are not only vague but are also odds.
5. To recommend measure to be taken.

Literature Review

I can boldly say that there are no written materials of the Ethiopian laws and practice relating to general partnership. There are no sufficient materials to under take for this research paper hence pertinent foreign literature and practice relating to the law of general partner ship would mainly used to support the analysis of the law and practice relating to general partnership under Ethiopia law.

Research methodology

The research of this paper which I prepared by the literature dealing with general partner ship and published in prints sources vise, books, internet and article's and closely reading and interpreting the law's relating to general partnership under Ethiopia law.

I have also reflected my own understanding, which I have developed from the lectures on laws of business organization law's of contracts and law of agency.

Organization of the paper

Giving a break down of the paper is essential. This research consists of four chapter one, present, research proposal viz the objective of the research, significance of the study and scope of the research etc. chapter two discussed the historical back ground, and partnership in general. Chapter three and four formation, management, and dissolution of general partnership .conclusions and recommendations follows chapter four

Significance of the research

The benefit that will be gained out of this research is that

It could serve as source analytical for students other researcher deal with the subject matter in depth.

It can also give clue t those who shoulder the task of amending the law and those who study or under take research in similar areas.

Readers will have better under standing of what general partnership under Ethiopian law.

Limitation of the research

The area of the research is challenging because of the shortage of domestic reference materials on the topic. More over there is lack of cooperation of some person's who work's in court there are willingness to give dead case's are and of the problem's I faced in the course of writing this research, how ever I have try to do best produced a useful paper.

These research does not deal with matter's other than the law's and practice relating to general partner ship under Ethiopia law.

Scope of the Research

The research is concern about almost all matter relating to general partnership in Ethiopia. It deals also with the historical background and general features of general partnership thoroughly.

Chapter Two

General Back Ground

Historical Back ground

The writer of this paper would like to state few point's regarding the evolution of partnership in the commercial code of Ethiopia in general and general partner ship in particular

Partner ships have so many forms and structures they have been know to date. The change's of the revaluation it also change.

In ancient time there are so many types of business organization. ¹

So there are as such big different from the present one in ancient time the commercial activity used to not by the group members they do by them selves independently . ²

The modern partnership law has existed in Ethiopia since 1960 with the adoption of commercial code before 1960 indeed, there were certain regulation of partner ship in the "law of king's" the law of kings in Ethiopia known as the Fetha Negest is translated from Ge.eZ to English by Abba Paoules J.Zadua in 1968 this ancient 15th C law combines both spiritual and Secular law which was borrowed from Roman Judaeo Christian sources and has 34 provisions on partner ship. ³ How ever it is doubtful whether it was applied in the count's at that time in 1933 the law of companies which was largely copied from French law represented an attempt to reduce modern legal regulations for business organization in clouding partner ship.⁴

In 1960 commercial code was adopted ton equal the formation and activities of all business organizations including partner ship to this end. It provides the legal principles controlling the formation and operation of

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the business organizations, how ever they may be supplemented by the provisions of the civil code, that particularity law with counters in general, agency...etc Art 1 of comm. code of Eth.⁵

There fore the commercial code on one hand contains commercial institutions and on the other hand makes reference to the civil code. Particular the general rules of contract and agency, that is to mean, the civil code provisions that deal with contract's in general my be adopted to the needs of both civil and commercial transitions, as the French comparative lawyer's because of the influence the French commercial low, drafted the code.⁶ It requires legal personality for all business organization including partnership expect the joint venture Art. 210(1) Commercial code.⁷ The outer of this paper would like brief discussion in the next section.

Partner ship in General

Two or more person's may plan to carry out business activity jointly forming partnership they combine their monetary and managerial power to gather and pursue business activity that would not be attained other wise or would not be efficient, it operated individually.⁸ Partnership is only one of a number of possibilities other possible include the relation ships of employer and employee, principles and agent. ⁹

Partner ship in general can be either in the from of personal business organization like General partner ship, limited partner ship and Capital companies.

In general partner ship the individual persons of each members play's a vital role even when it is a legal entity.¹⁰ On the contrary, in the case of Capital company's the personal roles members disappear and replaced by capital.¹¹ in General partner ship there is a private arrangement between members

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Article 212(1) of our com. code recognizes six forms of business organization namely, ordinary partner ship, general partnership, limited partnership joint venture share company and private limited company. Each business organizations¹² has peculiar feature distinguishing it from other business organizations, how ever on business organization under Ethiopian low have some common features stated here below.

1. They are characterized by the dominate role of person and as the result of which the assignment of the partner share is usually restricts with out agreement from the other partner's.¹³
2. All business organization arise from partnership agreement com. code Art 201-212 ¹⁴
3. All have legal personality except joint venture Acc. Art 210-212 ¹⁵
4. Formation of a business organization other than a joint venture shall be made in writing Acc. Art 214, ¹⁶
5. Any provision giving the to one partner or relieving him from share in loss shall be of no effect com. Code 215 ¹⁷
6. And also all business organization other than joint venture must be made known to third party Art. 219 com. Code.¹⁸

In the civil law system which recognizes a difference between civil law and commercial law. ¹⁹ there is civil partnership carry commercial activity and has no legal personality and essentially a matter of agreement between the partner's .²⁰

In continental legal system line in France Belgium, nether and there is also participation association.²¹

In continental legal system legal system like in France, Belgium, and Netherlands there is participation association.²²

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The participation association in nothing more than a simple contact which need not be disclosed to public.²³ It is only one of the members who enter for in to legal relations with third parties in his name but in common law account like our country such business organization has no, separate existence. The relation between the members are governed by the general rules of contract²⁴ and members are governed by the general rules of contract and partners ship, such personal business organization can have a commercial or non commercial activity as its object.²⁴

If the partners expressly represents them selves as acting a partner's in their relations with a third party , they are indefinitely and joints and severally liable by each other's under taking this means , if the existence of participation association has been disclosed, the third parties have right's and duties against the member's as partnership.²⁵

Feature's of general partner's ship

From the cumulative reading art. 210(1), 223, 255(1)(2) and 287 and 276(4) of commercial code of Ethiopia in 1960 that a general partners ship is formed , published , registered , managed and dissolved vine(1) other commercial business organization except they lid not have legal personality, hence , general partner ship has feature's which the writer of this paper also list's below ²⁶

Legal personality

In Ethiopia commercial code Art. 210(2) requires a business organization either partnerships or companies except joint venture have legal personality. ²⁷

There is formal requirement that required meeting by all business organization under Art 214 commercial code.

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“All business organization except joint venture shall be formed by partnership agreement that made in writing”²⁸

These agreements after fulfilling the necessary element of the memorandum of association shall be made known to third parties through publication and depositing the copy of required document according to Art.219-221 and 284. There is also registration in the commercial registrar to acquire legal personality.²⁹

After registration until the procedures of the registration and publicity have been complied with the business organization have no legal existence or legal personality Art. 222 Art 87 commercial code on the other hand 285(2) under the term formation stipulates that the partnership a general partnership is instituted when the deed. The application shall be signed by manager or person acting on behalf.³⁰

The procedure of registrations is not only governed by the rules of the commercial code. There are also other laws for example according to proclamation no 067/1996/ registration is said to be complete from the date of publication in the news's paper. There is also notary public for authentication of such agreement and no proclamation no 334/2000 authentication and registration document.³¹

The writer of this paper will not concern what is meant by legal person which is also formed by legal or natural person.

The aim of these research papers is state what the attributes of a general partnership as legal person are.

In Ethiopia the general partnership has legal personality it can be sue and be sued and enter in to contract in its name Acc. to 210(2)³² unlike in those countries that do not require personality for instance in many European countries like, Germany Netherlands e.t.c and common law systems, personal business organizations are not treated as a separate legal entity.³³

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As the result the personal business organization is not considered as distend person from that of its member's. Even in cases when the legal systems require legal personality for general partnership the member's liability is not limited as companies.

There for, in Ethiopia the legal personality of general partner ship is tine because there are circumstances that general partnership lost. It's personality in the case of at the time when the general partners ship in capable pay its debts, the creditor ask payment from the stake holder's so what is the use of personality, the member's doesn't relief from liability .

And also for Share Company and privet limited company legal personality is strong but in case of general partner ship is week because there are circumstance's that the liability of the partner ship enter in to the personal property of the partner so the purpose of legal personality for partner ship (general partner ship)is meaningless.

To analyze it, it is possible to hold separate asset's that exercised collectively with our legal personality; we have to see the situation of other legal system that do not require legal personality.

In Germany, general partnership has no legal personality there is the concept of group owner ship, some times called community collective hand and in similar to joint tenant is USA the group ownership forms a separate assets which distinct from the private owner ship of the partner.³⁴

The group exercise these right's over separate asset's collectively. as a result , the creditor of partner may not dispose his share in the partnership freely with out consent of other partner's , the German approach, even it is gives a clue about how it is not the modal to solve the problem entire ([http://www.intconselor.com/real property, html](http://www.intconselor.com/real_property.html), p.1)³⁵

Unlimited liability

Unlimited liabilities are those in also the liabilities of the organization are also liability of as individual owner's. The liabilities of such entries are unlimited in the sense that they are not limited to the entries on in, but they, transcend to its individuals owner's.

Thus where the assets of the firm are in sufficient to fully cover the liabilities of the firm creditor's of the firm who are also creditor's of individual partner's may proceed against individual partner's jointly, fully or severally to the extent of remainder of the total debt's of the firm. Art 280 commercial code. ³⁶

Our commercial code does not expressly provide for unlimited liability of the partner ship nevertheless, we can not say that our law does not adhere to the partnership of unlimited liability partner ships because it would be contrary to the principle underlining the nature of partner ship to do away with the principle of unlimited liability. When dealing with the law of the partner ship (general partner ship) according to Art 280(1) ³⁷

It has been discuss earlier that legal personality facilities unlimited liability were a general partner ship is legal personality can be guarantee in unlimited liability

General partner ships are subject to unlimited liability to partner ship claimants such liability is jointly, fully and several for tort or breach of trust and joint for all other partner ship obligation's Art 295(1) ³⁸

The reason behind this is because the liabilities of the partner ships are also the liability of its partner's ⁴³. The liability of such entries are unlimited in the sense that they are not limited to the entries on in but they transient do its partner's, There fore under the Ethiopian law of business organization . General partner ship is a business organization,

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with unlimited liabilities our law clearly provides in Art.280 commercial code.³⁹

Even if the law provides the problem may be analyzed from the practical angles, from legal point of view. The general partnership is characterized by the dominated role of the individual it is based on the quality partner's that trust each other in business relation the character has affect the business of partnership on the basis of the trust and close relationship, parties from without considering the character and check the capital each members. If the one failed to pay the debit because of haven't money all member's obliged to pay.

Even if the commercial code adopted to assure the necessary element of stability and security in business transaction, the result is not as intended when one sees court practice, it is rather variation and thus uncertainty in business transaction is lacking due to the variation in the judicial dissition.⁴⁰

Non- transferability of membership

In general partnership, members do have shares in the partnership but it is not negotiable Art.282 (1) instrument. Therefore a partner can not transfer or assign his interest in the firm to an outsider or third party and make the transferee or assignee a partner without the consent of the other partners ⁴¹

general partnership, partners are generally not transferable but partners have three property rights under Art.282(1) commercial code ⁴²

They are a partner's right in specific partnership property are not assignable unless all the partners assigned their rights. The specific partnership property attachable by the creditor but not attachable by creditor's of individual partner, interest in the partnership (share of profits and surplus) assignable, subjected to charging order by creditor's

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of individual partner, and also right to participate in management (non assignable and non attachable)

Centralized de centralized management

Un like private limited company , that are not obliged to have decentralized management, general partner ship under Ethiopian law is required to have a centralized and decentralized management Art. 288(10, 287, (2), 281 of the commercial code stipulates that a general partnership Shaw be managed by one or more manager thus it can be said that the management is left to the members and under the control of the members.⁴³

The administration of general partner ship can entirely by left with the members. Generally parties in their agreement can appoint a manager and determine his right and duties According to Art 2479 civil code the authority to act on behave of another may be derived from the law or a contrat.⁴⁴

Chapter Three

Formation and management of general partner ship

At 214 states that the formation of any business organization except a joint venture be made in writing thus the memorandum of association forming the partnership should be prepared in order it satisfy what is required under our commercial law ¹

Partner ship is an association formed by two or more persons to carry on a business. Persons they run a business together and share the profit are usually considered partner's even if they did not intend to be.

Under our commercial, code, persons wishing to upgrade a business through the instrumentally of partnership should be engage in to an agreement and settle all the issue that end to be negotiated before forming partner ship as stipulated in Art 214 of commercial code ³, matters, that should be agreed up on at the time of conclusion of a partner ship agreement are those enumerated in art 284. of the commercial code²

Art. 284 of the commercial code provides those are partnership name, date of agreement, purpose of partner ship, location of businesses, duration of partner ship,. Cashes action, service and loans to partnership of asset's or cash, and remuneration for services, management. ³

The general partnership agreement must fulfill the essential elements of valid contract's that are provided under Art. 1678 civil code these are ⁴

1. The member's must be capable under the law
2. The member's should give their consent freely Art 1711-1718.⁵

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3. The object of the partnership must be sufficiently defined, possible and lawful and ⁶
4. The formal requirement must be fulfilled ⁷

As regards to the maximum number of partners there is no limitation but from the basic nature of the person's business organization, the maximum number of members must be reasonable.

With regard to qualification of member's whether each partner shall have the status of a trader, as this is a requirement of the formation a general partnership Art. 280(2).

Memorandum of association

It is Article 284 of commercial code that deal the contents of the memorandum of a general partnership.⁸ A memorandum of association is a partnership agreement and these document prove the mere existence of the partnership contract and by should be deposited with officer in charge of the commercial register.⁹

In the memorandum of association, parties may govern their respective rights and duties between each other and the partnership as per Art 284 the come code partners may also appoint the manger that represents the partnership in relation to third parties ¹⁰

Rules relating to general partner ship

A. The name, Nationality and address of the members.

As It is provided under Article 284 (1) of the com. Code the name of a general partnership is written, The name of partnership is freely chosen, but there are certain guidelines that need to be observed when naming the partnership First at least the name of two partner's and the words "general partnership should be included in the name the partnership as per Art 281 and 297 commercial code". ¹¹

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This applies where a person who is not an actual partner as partners by permitting his name to be used in the firm's name, at that he may be deemed as a partner without being an actual partner similarly Art. 289 of comm. code which deals with general partnership provides "where a person not being a partner, permits his name in the firm name, he shall be liable as a full partner. The firm name may be different from the business name, in which case both names should be stated in the agreement".¹²

The address of the partner is mandatory for serving notice to the partners.¹³ The activity of the partnership is governed by law even where member's or the partnership are foreigner's. The partnership has separate legal personality, actions may be brought by and against the partnership in the firm name except in diversity cases where in the applicable state rule will be followed. Diversity of Citizenship is determined by looking to the nationality of each partner and not by considering the partnership an entity so nationality must be cited in the memorandum of association 284(3)¹⁴

B. the firm name head office and branches General partnership like other partnership except joint venture has its own legal personality. According to Art. 284(2) (3) that it is the firm name that expresses the nature of the business of the partnership.¹⁵

In practice the most appropriate way of proceeding in court action is necessary is to use the partnership as a group of persons in the firm's name the merit of that is if judgment is obtained against the partnership assets and potentially against assets owned by any of the persons who were partners at the time that the debt or obligation was incurred. The firm name contains all the documents that indicate of branches if any mandatory because of the partnership is its own legal existence and enters into contract by its own firm name and also to giving notice to the public with the business is transacting. 281(3) com code¹⁶

C. rules relating to proposes of the partnership

art 5 and Art 10 (1) together with 280 of commercial code they are partner ship that have commercial objective and that have not in the memorandum of association the depends wither commercial or not so general partner ship which is formed to carry on commercial activity but it type is not specified art 5 com. Code there fore unlike French law in Ethiopian follows both commercial and not commercial .¹⁷

D. Rules relating to the capital:- a general partnership require no minimum capital, partner's usually to be putting capital or form his own resources , or giving services name under Ethiopian law contribution are categorized in to three the obligation to make a contribution in exchange of member ship right is one of essential rule of general partnership with out contribution , one may not be treated as member's, and may not be give membership right's at to Art. 229,273, and 303 comm. Code. ¹⁸

A contribution in kind

It is a contribution of tangible or intangible property in these case the contribution in kind, it may be of the property it self or the right to use as per art. 229, 305 come code.¹⁹ the partnership position in this time to use property , and to be the holders use fruit or of a lease and the contributor remains owner and subject t the risk's of ownership were there is contribution of property , the legal relation ship resembles a sale even if the contributor grants that his contributed property. Further more the risks shall also passes to guarantees with owner ship art 331 com code ²⁰

B. skill contribution

It is an undertaking of presently engage in an activity for the benefits of the association. It must be involved in form of money like property contribution other wise it is difficult to distribution other profit and looses art 252 com. Code 21

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The contributor may be prohibited from carrying on the same activities for his personal profit or for the profit of others art 244,292,300 com. Code .²² However the contributor may not be prohibited from carrying on a different activity outside the framework of partnership.

C. contribution in Cash

In case contribution in cash the contributor may effect payment of promise to make payment in cash Art 230 (3) ²³ if a contributor to make payment at the time he is required to guarantee the existence of the debt and not the solvency of the debtor Art. 230, however the parties in their agreement can determine the contributor to guarantee the insolvency of the debtor, if the contributor to effect payment in the due date, he will be liable to pay interest from the date of default of the debt.²⁴

E rules relating to duration

Art 284(9) the members in the memorandum of association cited the term of existence for a partnership lifetime. Where the partners do not desire to limit life of the partnership they state that the partnership is set up for an undefined period of time or even they may keep silent as to the life of the partnership. ²⁵ but it is highly desirable that some term be adopted providing for a definite term is also useful as a means for discouraging partners from withdrawing from the firm prematurely.

The writer of this paper would like you raise another method of obtaining continuity of existence is to provide for the purchase of the interest of partner who does not wish to continue in business when the end of the partnership term is reached.

Drafting the memorandum and article of association

In the commercial code of Ethiopia does not elaborate but for its article 284 states the requirement which is listed in the memorandum of association. ²⁶

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It is the first important document to be filed with the registrar article 313, in article of association is the document that governs the relationship between the partners' as between themselves. ²⁷ it is an integral part of the memorandum of association together as a single unit; the two documents may be taken as the constitution of the partnership. ²⁸

Publicity and registration

A further formality requirement imposed on the parties to valid partnership (general partnership) agreement is publicity according to article 218(1) "any business organization other than a joint venture shall be made to know third parties" ²⁹

Publicity considers in cumulative full fulfillment of the requirement relating to publication of notice, deposit of document and registration in commercial registrar art 220-224 com code. ³⁰

There is also registration in the commercial registrar to acquire legal personality.

After registration, the registrar has to give the certificate of registration until the procedures of the registration of public have been complied with the business organization has no legal existence or legal personality to Art 228, 87 of com. Code ³¹

The procedure of registrations is not only governed by the rules of the commercial code. There are also other laws such as according to the proclamation No 67 19 97 registration is said to be complete from the date of publication in the news's paper. There is also notary public for authentication of such agreement. ³² therefore the business organization acquires legal personality. Generally the non observance of public requirement makes partnership as non existence Art 223 com Code where as art 1720(3) civil code the requirement of publication shall

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render the contract in effective against third parties but not between contracting members. ³³

Even it is was said that the general partner ship Ethiopian was grounded in the Ethiopian an ancient laws and customs, the penetration of this law , particularly , the registration of the general partnership , is highly superficial from the general investigation of office of notary of public in Addis Ababa (the main city and relatively the center of business activities), there is 99 general partnership registered from 2003 -2004 this is small when compared from private limited companies and share companies as in the same year the number of registered limited company's and share companies goes to 1773 but the come code that was influenced by the French commercial law and drifted by the French comparative lawyer introduces but less practiced in Ethiopia. ³⁴

Management of general partner ship

Under the commercial code of Ethiopia as I, discussed in the previous chapter, all personal business organization except joint venture is required to have personality.

The legal persona, as being an artificial creation of the law can not act by it self. There fore it can act by the instrumentality of physical person, which is referred as a gent's, representatives or mangers' the parties in their partnership agreement may appoint one or more manager to act in the name and on behalf of legal person art 236 com cod.³⁵

In case of partnership, as they has no separate legal existence under its not disclosed to the third panty in his own name but for the common interest Art 276 (5) in such situation the creditors have no right against partnership as simply or personal property of the other member³⁶ like even those legal system's that do not require legal personality for the partnership for instance USA and Germany consider for the partnership close to an entity to some its internal and external operation. It after per-

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formation general partnerships are not treated as separate legal entities³⁷ unlike Ethiopia so the partnership should be governed by manager.

In the preceding section, I have mentioned that the management of general partnership can entirely be left with the member's unlike that of the management at private limited company's as partnership can have either centralized management or each partner could be a manager under the name of the partnership.

One has to bear in mind of general partnership is appointed manager, limit the power, remuneration, removal and resignation Art 287, 288, 289, 290, 293 commercial code.³⁸

Appointment of manager in the first place our commercial code depends up on manager's acts of management as these acts of management require professional and he may be insider or an outsider Art. 281(1) the requirement of a manager as started earlier centralized management or decentralized management –unless otherwise agree, all general partner's have an equal voice in the management and control of the partnership.³⁹

In the time of appointing a manager the manager may be insider or outsider, it is worth noting the provision under article 284(8) of commercial code in memorandum of association shall as to the person's who manage that but if the memorandum of association not cited, all the member's presumed to be a manager and art.236 of commercial code declares all the partner's shall have the right to act as manager's unless the partnership agreement or a decision of the partnership has appointed one or more of the partner's or a third party to be the manager. and also Art 287(2) commercial code which states

“Were no manager is appointed each partner shall be a manager”

So a manager appointed by the memorandum of association vague because manager's are always appointed by member's and in the memorandum of association.⁴⁰

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Where as, it should be noted that the law does provide for office tenure for manger Art 282(2) but not reelection of mangers of general partnership , there issue for member's to decide either at the formation at general partnership or after the formation. ⁴¹

Power of manger

It is Art 237 com. Code that provides for the power of mangers according to these articles. As partner ship agreement may specify the power's of the manger unlike in Germany the power of representing the partners ship vested in it's organ is practically with out limit, it cover's all transaction's whether with in legal proceeding or not, ordinary or extra ordinarily, including statement but not in France it's power of representing the partner ship restricted by any doctrine of ultra virus like in Ethiopia. ⁴²

It parties have not specified the power of the mangers the manger can carry on the act's of management that is provided under art 2204 civil code and art 35 commercial code, but in Art. 237 power of manger is vague and general. because of the low list's the art of manger in art. 35 commercial and 2204 civil code and the manger can carry on the act's of management but art 237 com. code is the power is not clear, whether the manger do borrow or land money, pledge property and etc can not understand with in these provision, and also , even except with the special approval the manger may not have dealing with the firm on his own be half unlike private limited company , manger's have tall power's even where these power's of manger's could be restricted by the provision's in theatrical of association art 528(1) ⁴³

Art 290(3) in case of general partnership, if a manger act's beyond the scope of his power , that is given expressly or by law, the partner ship may not be bind unless it is ratified Art 2190-2191 civil code and the act's fall on un authorized agency, there must be certain requirements

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to be full filled, the first one is, the act should be vital for the partnership, secondly, there should be possibility of the permission had the partnership aware such fact at the time of appointment Further more there was no means to inform to the partnership by the agent before performing un authorized act and the unauthorized manger should report his un authorized act as soon as possible art 2207 civil code ⁴⁵

The power must be published to have effect on the third parties art 360 commercial code Art 2197 civil code in case of and is closed agency the third parties have no direct action against the partnership and may only exercise against the partnership on behalf of agency, the right's pertaining to agent, on the other hand we also see the civil code art 2179-2265 cumulative reading from Art 241 com. Code ⁴⁶

Therefore the internal limitation of power of manger may invoked against third party these limitation is registered Art. 361(1) (2) commercial code.⁴⁷

Remuneration of manger's

If the manger is a partner, he general receives special share of the profit's, if he is not a member mean an outside manger, he will usually receive a fixed salary or remuneration based on percentage the profit's unlike private limited company Art 529 com. code fixed salary or monthly annually express or it could be a share in profit where as in general partnership if the manger is decentralized even there is no distribution of profit or losses so they haven't not pay the manger because each partner are manger for their property.⁴⁸

Removal and resignation of manger

It is art293 (1)(2) that provides the removal of manager a manager appointed in the memorandum of association or following an amendment of the memorandum can be dismissed by the court for good cause if the manager is not a partner, he may be dismissed by simple

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majority decisions of the partner's, manager who is dismissed groundlessly is entitled to damages. There is no provision with regard to resignation of manager, but in practice there is, the manager resigns by himself if manager resigns without good reason, the partnership may claim damages from him for any loss it suffers.⁴⁹

If one or more of the partner's are manager's but are not so designated in the statutes, they may be dismissed in the circumstance laid down in the statutes or by unanimous decision of the partner's, this decision is sovereign.

The court may remove a manager for good reasons at the request of one or more of the partners. Such reasons include dishonesty or incompetence of the manager in the interest of the partner's.

If the manager is not a partner's (an outsider) he may be dismissed by a simple majority decision of the partner's Art 293(2)⁵⁰

Chapter Four

Dissolution of General partner ship

In the preceding chapter I have mention that the general partnership, put the period of time in the memorandum of association, even if it is said so there is a time to dissolve it.

Dissolution in business sense means being free from a business chain where a partner ship bound is through un desirable it may be avoided and properties will be shared among the partners and partner ship debt's will be paid . The process of paying out of the partnership debts distributing partner ship is the process paving a way for a virtual dissolution.

Ground's of dissolution

They are number of grounds for dissolution of a partner ship means once a partner ship (general partner ship) is formed there may by time when the partner ship dissolved by a number of reason's Art 217 ¹

Ground of dissolution may be arranged in three categories

1. Those which are only derived from the application of the general rules of contract.²
2. those resulting from the disappearance of an essential element of a control of association ³
3. those resulting from the very personal nature of personal business associations .⁴

A. Expiry of the term tired for the business association

258(1) the member are usually to mention the life time of partners hip in the memorandum of association this is determined by the

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requirement of the business enter price and the interest of person's intending to be tied though this chain, after lapse of is period partner ship are presume not useful and the law lakes them away, unless they state the partnership is set up for undefined period of time or even they may keep silent is to the life of the partner ship.⁵

B. Where as partners using freedom of contract where there is unanimity, can decide to put an end to the life of their business chain. The partner ship unless deprived by court order , on the requirement of interest of the entity or public at large their right in this regards unrestricted , where for instance partner's wishes so they can dissolve the partner ship at every movement are 217(1) ⁶

The partners have the power to dissociate at any time right fully or wrong fully by expressing with draw, voluntary dissection may be

- a) partners ship was formed for un defined period of time
- b) a power to dissolve the partner ship on notice is provided by a partner ship agreement where one of the condition exists a partner desiring to end the life of the partnership can require 6 month's prior notice Art 258 (1) ⁷ but in France , dissolution is effected by a document of notification sent to all the member's . It is the same in Germany the notification must be sent to all the members' or to the manger, if he is empowered to receive it. The partner desiring to end up the life of the requirement of good faith to disserve the partner a reasonable motive.

The partner requiring to end life of the partner ship there fore should fix the time when requires the partnership to be dissolved and to it when the dissolution does not cause great tin ancil loss to the partner ship Art 258(3)⁸ indicating this "situation states" notice to disserve shall be deemed to be up seasonable where the situation is not

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determined and the dissolution of the partnership should be postponed.

Thus where an immediate dissolution is on contrary to the on going business of the partnership, the partnership may not dissolve. If the requiring partner was in bad faith and the state of his mind is proved. the court may not allow dissolution, in disagreement of all the other partners, even if a party requiring avoidance does not justify dissolution, dissolution may not necessary be ordered.

In the UNITED STATES, GERMANY, ITALY and FRANCE the governing agreement can give the power to take this decision to a majority in BELGIM the court of cassation seems to have decided that such a clause.⁹

In case of general partnership, the dissolution should be registered and published in the official commercial Gazette Art 226 commercial code the rationale behind of this is to inform third parties concerning the dissolution.¹⁰

A. Dissolution by operation of the law

Where certain conditions happen and partner's keep silent not to take an immediate action to prevent it or save the life of the partnership it may be avoided by virtue of law some of the factors entitling dissolution by operation of law.

1. **Death**, in capacity, or bankruptcy of partners even if it is not provided in general provision, dissolution may arise from personal nature of partnership like, the death, in capacity, bankruptcy or withdrawal of a partner for the commutative reading Art. 259, 260, 278, (1) (h) and 303 of the former Code¹¹ but the parties in the general partnership agreement may modify the rules relating to dissolution in the above ground. Acc. Art. 260(3), 278 (2) 303 and 295 in this case the partner

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ship may continue between the remaining partner's or with heirs or representative of the deceased, incapable or bankrupt partner.¹³

If one of the members may be die the partner will be exist unless the partner take other preventive measure one of the constitutes renders the partner ship to dissolved this is base on the importance of personality of partner's Art. 260(1) com. Code ¹³

In France, Belgium the Netherlands, Germany, England United States, death of a member is a cause of dissolution like Ethiopia but their a particular feature of German law is that, even if there is a winding up the heirs acquire not only the property rights of the deceased but also the other rights which were attached to his position as a member (right to manage , represent, and vote in the partner ship , etc) they have both the right and the duty to exercise those rights during the winding up.¹⁴

2. Bankruptcy

Art 260(2) states lass of capital and in ability to meet demands of creditor's because of such loss were ever on entity or a trader fails to discharge his obligation to word's creditor's bankruptcy proceeding may be instituted in according to Art 270(1) of commercial code loss or inability to discharge a debt are to words for declaration of bankruptcy, there must be a procedure¹⁵ to declare bankruptcy there should be count declaration like Germany cause of dissolution is considered as an effect of the bankruptcy, which requires the paying out of the bankrupts share for the benefit of the mass of creditor's rather than as consequences of the personal nature of the contract but both England and United States like Ethiopia unless other wise agreed the bankruptcy of a member is a ground for dissolution .¹⁶

Judicial dissolution /dissolution by court order

If the court get good reason's to justifying dissolution the court may order dissolution of partner ship agreement has in corporate contrary provision to Art 218(1)¹⁷ com. Code the court does not disturb a partner's ship by it self but partners or any interested party should make petition to the court seeking dissolution , thus what every justifying reason occur, the court may not dissolve the business organization by it's own invitation there should be application, requiring dissolution and establishing necessary proof disclosing prevalence of good cause

Failure or completion of business purpose

Art. 217(a) of commercial code

“Any business organization should be dissolved where it's purpose has been achieve or can not be achieved. ¹⁸

If business purposes of a partner ship (general partnership) is not met, the partnership would be no more useful and it may be dissolved by the same taken, where the purpose for which the business is set up can not be a chived that is impossible to attain the purpose, the partner ship may that be use full and may be dissolve by operation of law the impossibility for any fruitful co-operation, failure to make a promised. Sick partner making an active contribution in that case the dissolution may be request to the court. Even if the law says so most of the time general partnership is dissolved in practice is by equality among the member's can be considered as the major cause for the dissolution of the general partnership after formation.¹⁹

Consequences of dissolution

Some of the consequences of dissolution are

1. continuing liability of partner's after dissolution-the partners continue to be liabilities such to third parties for any act done by any of them which would have been an act of the partnership . If done before the dissolution, until public notice is given of the dissolution Art. 262 (3) ²⁰
2. Continuing authority of partners for purpose of winding up Art 264(1). After the dissolution of the firm the authority of each partner to bind the firm, and other mutual rights and obligation of the partners continue Art 264 com code. ²¹
3. Right of partner to enforce winding up –on the dissolution of a firm every partner or his representative is entitled to have the property of the firm realized and applied in payment of the debates and liabilities of the firm , and to have the surplus distribution among the partner's or their representatives in accordance with their right Art 262 com. Code ²²
4. liability to share personal partner's so long as the affairs of the dissolved partnership are in process of winding up, it is still the duty of every partner not to make any personal profit out of transaction's concerning the firm a partner, therefore must account to the firm for every benefit so derived by him and must share it with other partner's 262(2) com. Code ²³

Liquidation and winding up

As I have discussed before dissolution may end business association, how ever, before the final extinction of the business organization, there is transitory phase called liquidation or winding up. The debt's of business

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organization have to be paid to the creditor's, residual asset's may be divided to the members, the contract, must be fulfilled.²⁴

After decision for the dissolution is passed until is practically wiped out you can analogies the state of the partnership, as a sick person whose death is in evitable but breathing for a while until ground's for death leveled. Thus the partnership during the process of winding up has life and breathing but it is on the way of death during a winding up the partnership as it has life can carry out, certain business but it can not commence as new business.

The business of liquidation is to be carried out not by the managers or directors of the business entity but by the people who are appointed for purpose of winding up those people are called Liquidators. Art. 264 com. Code²⁵

Liquidator shows have the same duties, right and responsibility as the law confers on the managers.

Liquidators begin their business making inventory manager are required to give property, document and other interests of the business organization to the liquidators. The liquidators, after state their business keeping correct record, making inventory , identifying the partnership creditor and other person who have interest in the partnership property and their address.²⁶

The next business and duration of the winding up is determined by the nature, the state of the business property of the business organization. The liquidators are not permitted to carry out new business on half of the organization but they can carry out it, if not completed, and where it should be carried out for purpose of facilitating the process of winding up. it can be any act that may be carried out by the managers during normal life of the business entity, but necessary for the liquidation process art 267 com code. ²⁷

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The liquidator's where necessary, can institute in the name of the dissolving business or defend when it is saved. They have also power to settle any dispute through arbitration when the interest of the business demands that art 267 com. Code ²⁸

Liquidators will call creditors of a partnership if their address is known through a registered letter but where their address is unknown; call will be made through news's paper.

After creditors are called , if there is no dispute as to amount of their claim, they will be paid , but disagreement on the amount and so froth , arises the amount to be paid to them will be kept aside until it is settle where creditor's whose claim is certain . But not appear be deposited in court or at a place the court order's.

The asset of the organization is not sufficient to pay the debt constituent members. The extent's of the contribution depends up on the amount of loss the partnership in curried and the method of distribution of loss mentioned in the partnership agreement by law.

After surplus asset is hared among constituents the next procedure is to get the name of the partnership cancelled from the office of registration art 226 com. Code where a business organization is dissolved and would up the liquidators shall apply for the registration of the business organization in the commercial register to be cancelled.³⁷ Then the general partner ship shall have no legal personality after cancellation has been published in the official commercial Gazettea from the time of cancellation the partner ship is assumed dissolved. ²⁹

Book, account and other document of partnership should be kept at ministry of commerce and industry or regional bureaus. Where is should be preserved for 10 years. ³⁰

Conclusion

This paper tries to explained the essence of the law's and practices relating to the general partner ship formation, feature, management and dissolution of general partnership and the research also discussed the historical back ground of partnership, particularly discussed general partnership

According the paper has identified that the general partnership in Ethiopia which is mostly based the continental European legal system, requires legal personality for general partnership. Accordingly general partnership shall be formed and acquire legal personality through registration and publicity of the partnership agreement. The observance of these requirements renders the partnership agreement involved and such even actually existed partnership is denied as a separate legal existence.

However, in spite of these requirements in the general partnership, it is common to get a general partner that actually exists and operates business with out having legal personality. From practical investigation, traders from general partnership and operate business on the basis of written (but not registered) agreement as the result, the number of registered general partnership is very few when compared to companies.

From a legal point of view , such partnership can not exercise right's and be subject of obligation , accordingly some court tend to consider after formation of general partnership as a matter of private arrangement and an entity as regards the issue of recognition and give effect's for non register and publicized partnership as an entity.

The law does not provide for retirement age of manger and no provisions on resignation the same.

Recommendation

General to solve the problem of after formation of general partnership the following few point may be suggested.

1. Among the choice where to recognized the general partnership as an entity and give effect's or to deny its existence as an entity the partnership have not give personality is preferable because . It is not protects the interest's of parties involved in the transaction and also the members.
2. The general partner ship provision should be amended so as to be flexible and clear to accommodate the problem of general a partner ship other wise the major advantages of general partner ship will be missed , in this regard the codification should not be as scarce thing to hind the business transactions.
3. General partnership should be also amended so as to prohibit outsider manger.
4. The law must put the requirement of limited capital like private limited company this is also relates to the concept of flexibility.
5. Creating awareness to the public about the related advantage of formal requirement of general partner ship.
6. The law must be revisited in order it include and clear provision of the resignation of manger.
7. Up grading judge's skill to reduce variations in their judgment publishing court cases also help full in creating to the judges in the lower level.

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