

ITALIAN CIVIL CODE

TITOLO V On partnerships and companies

CHAPTER I GENERAL RULES

Art. 2247. (Partnership/company agreement)

By a partnership/company agreement two or more persons contribute goods or services for the joint exercise of an economic activity in order to share the profits deriving therefrom.

[...]

CHAPTER II SIMPLE PARTNERSHIP

Section I – General rules

Art. 2251. (Partnership agreement).

In the simple partnership, the agreement is not subject to special forms, except those required by the nature of the assets contributed.

Art. 2252. (Amendments to the partnership agreement).

The partnership agreement can be amended only with the consent of all the partners, unless otherwise agreed.

Section II – Relationship between partners

Art. 2253. (Contributions).

The partner is obliged to fulfil the contributions determined in the partnership agreement.

If the contributions are not determined, it is presumed that the partners are obliged to contribute, in equal parts among themselves, what is necessary for the achievement of the corporate object.

Art. 2254. (Warranty and risks of contributions).

For goods conferred in ownership, the warranty due by the partner and the transfer of risks shall be governed by the rules on sale.

The risk of goods conferred in use shall remain on the partner who conferred them. The guarantee for enjoyment is governed by the rules on leasing.

Art. 2255. (Contribution of receivables).

A partner who has contributed a receivable is liable for the insolvency of the debtor, within the limits indicated in Article 1267 for the case of conventional assumption of the guarantee.

Art. 2256. (Unlawful use of corporate assets).

A partner may not use, without the consent of the other partners, of goods belonging to the corporate assets for purposes unrelated to those of the partnership.

Art. 2257. (Disjunctive administration).

The management of the enterprise shall be carried out in compliance with the provision of Article 2086, second paragraph, and is the exclusively responsibility of the directors, who carry out the operations necessary for the implementation of the corporate object. Unless otherwise agreed, partnership management shall be entrusted to each partner, severally from the others.

If management powers are exercised severally by different partners, then each managing-partner has the right to object to any operations proposed by another managing-partner before it is completed.

On the objection shall decide the majority of the partners, determined according to the portion in the profits attributed to each of them.

Art. 2258. (Joint administration).

If management is entrusted to several partners jointly, then all managing-partners must give their consent for partnership operations to be carried out.

If it is agreed that for the management or for certain acts is required the consent of the majority, the majority is determined in accordance with the last paragraph of the previous article.

In the cases provided for in this article, individual managing-partners cannot take any action on their own, except in the case of urgency to avoid a damage to the partnership.

Art. 2259. (Removal of the power to administration).

The removal of the managing-partners appointed by the partnership agreement shall not have effect if there isn't a just cause.

The director appointed by separate act is removable according to the rules on the mandate.

The removal for just cause may in any case be requested judicially by each partner.

Art. 2260. (Rights and obligations of directors).

The rights and obligations of directors are regulated by the rules on agency.

The directors are jointly and severally liable toward the partnership for the fulfilment of the obligations imposed by the law and by the partnership agreement. However, the liability does not extend to those who prove that they are exempt from fault.

Art. 2261. (Control of partners).

Partners who do not participate in the administration have the right to have notice from the directors of the conduct of the partnership's business activities, to consult the documents relating to the administration and to obtain a financial account when the business for which the partnership was incorporated has been fulfilled.

If the conduct of the partnership's business activities lasts for more than one year, the partners shall be entitled to have an account of the administration at the end of each year, unless the partnership agreement provides for a different term.

Art. 2262. (Profits).

Unless otherwise agreed, each partner is entitled to receive his part of profits after the approval of the financial accounts.

Art. 2263. (Allocation of profits and losses).

Partners' participation in profits and losses are presumed to be proportional to their contributions. If the value of the contributions is not determined by the partnership agreement, they shall be presumed equal.

The participation due to the working partner, if not determined by the partnership agreement, shall be determined by the court according to fairness.

If the partnership agreement determines only the participation of each partner in the profits, to the same extent shall be presumed to be determine the participation in losses.

Art. 2264. (Participation in profits and losses deferred to the determination of a third party)

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Art. 2265. (Leonine pact).

A pact by which one or more partners are excluded from all participation in profits or losses is null and void.

Section III – Relationship with third parties

Art. 2266. (Representation of the partnership).

The partnership acquires rights and assumes obligations through the partners who are its representatives and stands in court in the person of the same.

In the absence of any contrary provision in the partnership agreement, the representation is assigned to each managing-partner and extends to all acts within the corporate object.

Modification and extinction of powers of representation are regulated by Article 1396.

Art. 2267. (Liability for partnership obligations).

Creditors of the partnership may claim their rights towards the corporate assets. For partnership obligations also shall be liable personally, jointly and severally the partners who have acted in the name and on behalf of the partnership and, unless otherwise agreed, the other partners.

The partnership agreement must be brought to the knowledge of third parties by suitable means; failing this, the limitation of liability or the exclusion of the joint and several liability is not enforceable against those who did not have knowledge of it.

Art. 2268. (Preventive execution of partnership assets).

A partner required to pay partnership debts can request, even if the partnership is in liquidation, the preventive execution of the partnership assets, indicating the assets on which the creditor can easily satisfy himself/herself.

Art. 2269. (Liability of the new partner).

A person who joins an already incorporated partnership is liable with the other partners for corporate obligations prior to the acquisition of the status of partner.

Art. 2270. (Personal creditor of the partner).

A partner's personal creditor, as long as the partnership lasts, may enforce his/her rights to the profits due to the debtor and perform conservative acts on the quota due to the latter in the liquidation.

If the debtor's other assets are insufficient to satisfy the credits, the partner's personal creditor may also ask at any time the liquidation of his/her debtor's quota. The quota must be liquidated within three months by the request, unless is decided to dissolve the partnership.

[...]

Section IV – Dissolution of the partnership

Art. 2272. (Causes of dissolution).

The partnership is dissolved:

- 1) by the expiration of the term;
- 2) by the achievement of the corporate object or by the supervening impossibility of achieving it;
- 3) by the consent of all partners;
- 4) when the plurality of partners ceases, if within six months this is not reconstituted;
- 5) for other causes provided for in the partnership agreement;
- 5-bis) for the opening of the controlled liquidation procedure.

Art. 2273. (Tacit extension).

The partnership is tacitly extended indefinitely when, elapsed the time for which it was contracted, the partners continue to carry out the corporate operations.

Art. 2274. (Powers of directors after dissolution).

After the dissolution of the partnership occurred, the managing-partners maintain the power of administration, limited to the urgent affairs, until the necessary steps are taken for the liquidation.

Art. 2275. (Liquidators).

If the partnership agreement does not provide for the liquidation of the partnership assets and the partners do not agree to determine it, the liquidation is done by one or more liquidators, appointed with the consent of all the partners or, in case of disagreement, by the president of the court.

Liquidators may be removed by the will of all partners and in any case by the court for just cause upon the request of one or more partners.

Art. 2276. (Obligations and liability of liquidators).

The duties and the liability of liquidators shall be governed by the provisions established for directors, insofar as is not otherwise provided by the following rules or by the partnership agreement.

Art. 2277. (Inventory).

The directors shall hand over to the liquidators the partnership assets and documents and submit to them the account of the management for the period following the last account.

The liquidators must take delivery of the partnership assets and documents, and draw up, together with the directors, the inventory showing the assets and liabilities of the partnership assets. The inventory must be signed by the directors and the liquidators.

Art. 2278. (Powers of liquidators).

The liquidators may fulfil all the acts necessary for the liquidation and, if the partners have not provided otherwise, they may also sell the partnership assets in bloc and make transactions and compromises.

They also represent the partnership in court.

Art. 2279. (Prohibition of new transactions).

Liquidators may not engage in new transactions. If they breach this prohibition, they shall be liable personally, jointly and severally for the business activities fulfilled.

Art. 2280. (Payment of partnership debts).

The liquidators may not distribute the partnership assets even partially, among the partners, until the creditors of the partnership are paid or the sums necessary to pay them are set apart.

If the available funds are insufficient to pay the partnership debts, the liquidators may demand from the partners the payments still due on the respective quotas and, if necessary, the sums required, within the limits of their respective liability and in proportion to each one's participation in the losses. In the same proportion, the debt of the insolvent partner shall be divided among the other partners.

Art. 2281. (Return of assets conferred in use).

Partners who have conferred goods under use have the right to take them back in the state they are in. If the goods are perished or deteriorated due to a cause attributable to the directors, partners shall be entitled to compensation for the damage from the corporate assets, saved the action against the directors.

Art. 2282. (Allocation of assets).

Having extinguished the partnership debts, the remaining assets are allocated to the repayment of contributions. Any surplus shall be distributed among the partners in proportion to each one's participation in the profits.

The valuation of non-cash contributions is determined in accordance with the valuation that was made in the partnership agreement or, failing that, according to the value they had at the time they were made.

Art. 2283. (Distribution of assets in kind).

If it is agreed that the division of partnership assets shall be made in kind, the provisions on the division of common ownership shall apply.

Section V – Dissolution of the relationship between the partnership and the partner

Art. 2284. (Death of the partner).

Unless the partnership agreement provides otherwise, in the event of the death of one of the partners, the others must liquidate the quota to the heirs, unless they prefer to dissolve the partnership, or to continue it with the heirs themselves and the latter agree to this.

Art. 2285. (Withdrawal of the partner).

Any partner may withdraw from the partnership when it is contracted for an indefinite period or for the lifetime of one of the partners.

He may also withdraw in the cases provided for in the partnership agreement or when a just cause exists.

In the cases provided in the first paragraph, the withdrawal must be communicated to the other partners with at least three months' notice.

Art. 2286. (Exclusion).

Exclusion of a partner may take place for serious breach of obligations arising from the law or the partnership agreement, as well as for the interdiction, incapacitation of the partners or for his/her condemnation to a punishment that entails disqualification, even temporary, from public office.

A partner who has contributed his/her work or the use of an asset in kind to the partnership may also be excluded for the supervening incapacity to fulfil the work conferred or for the loss of the asset in kind due to causes not attributable to the directors.

Likewise, a partner who has obligated himself/herself by the contribution to transfer the ownership of a good may be excluded if this has perished before the property is acquired by the partnership.

Art. 2287. (Exclusion procedure).

Exclusion is decided by the majority of the partners, not counting in the number of them the partner to be excluded and takes effect after thirty days from the date of notice to the excluded partner.

Within this period, the excluded partner may file an opposition before the court, which may suspend the enforcement.

If the partnership consists of two partners, the exclusion of one of them shall be pronounced by the court at the request of the other.

Art. 2288. (Exclusion by law).

A partner against whom judicial liquidation proceedings have been opened or extended in accordance with the Insolvency Code is excluded by right.

Likewise, a partner against one of his/her personal creditors has obtained the liquidation of the quota in accordance with Article 2270.

Art. 2289. (Liquidation of the quota of the leaving partner).

In cases where the corporate relationship is dissolved limited to a partner, the latter or his/her heirs shall be entitled only to receive a sum of money representing the value of the quota.

The liquidation of the quota is made on the basis of the partnership's assets and liabilities on the day on which the dissolution occurs.

If there are ongoing operations, the partner or his/her heirs shall participate in the profits and losses inherent the said operations.

Except as provided in Article 2270, payment of the quota due to the partner must be made within six months from the day on which the dissolution of the relationship occurs.

Art. 2290. (Liability of the ceasing partner or his/her heirs).

In the cases on which the corporate relationship is dissolved limited to a partner, the latter or his/her heirs shall be liable to third parties for the partnership obligations until the day on which the dissolution has occurred.

The dissolution must be brought to the knowledge of third parties by suitable means; failing this, it is not enforceable against third parties who have ignored it without fault.

CHAPTER III GENERAL PARTNERSHIP

Art. 2291. (Notion).

In a general partnership all partners are unlimitedly, jointly and severally liable for partnership obligations.

An agreement to the contrary has no effect against third parties.

Art. 2292. (Business name).

A general partnership acts under a business name consisting of the name of one or more partners with the indication of the corporate relationship.

The partnership may retain in the business name the name of the withdrawing or deceased partner, if the withdrawing partner or the deceased partner's heirs agrees to this.

Art. 2293. (Applicable rules).

A general partnership is governed by the rules of this chapter and, insofar as these do not provide, by the rules of the preceding chapter.

[...]

Art. 2295. (Instrument of incorporation).

The instrument of incorporation of the general partnership shall state:

- 1) the partners' last name and first name, domicile, citizenship;
- 2) the name of the partnership;
- 3) the partners who have the administration and the representation of the partnership;
- 4) the registered office of the partnership and any secondary offices;
- 5) the corporate object;
- 6) the contributions of each partner, the value attributed to them and the method of valuation;
- 7) the services to which the work partners are obliged;
- 8) the rules according to which profits are to be distributed and the participation of each partner in profits and losses;
- 9) the term of the partnership.

Art. 2296. (Publication).

The instrument of incorporation of the partnership, with notarized signatures of the parties, or a certified copy if the stipulation was made by public deed, shall be filed for registration, within thirty days by the directors, at the Business register office in whose district the headquarters of the partnership is established.

If the directors fail to file within the period specified in the preceding paragraph, each partner may provide for it at the partnership's expense or obtain a court order against the directors to do so.

If the stipulation is made by public deed, the notary is also obliged to fulfil the deposit.

Art. 2297. (Failure to register).

Until the general partnership is registered in the Business register, the relations between the partnership and third parties, without prejudice to the unlimited and joint and several liability of all partners, shall be regulated by the provisions relating to the simple partnership.

However, each partner acting for the partnership is presumed to have partnership representation, including the processual representation. Agreements granting representation to some partner only or that limit the powers of representation are not enforceable against third parties, unless it is proved that the latter know it.

Art. 2298. (Representation of the partnership).

The director who has the representation of the partnership can perform all acts that fall within the corporate object, unless limitations result from the instrument of incorporation or the power of attorney. Limitations are not enforceable against third parties if they are not recorded in the Business register or if it is not proved that third parties had knowledge of them.

Art. 2299. (Branch offices).

An abstract of the instrument of incorporation shall be filed for registration at the Business register office of the place where the partnership establishes branch offices with a stable representation, within 30 days of the establishment of the same.

The abstract must indicate the register office at which the partnership is registered the partnership and the date of registration.

[...]

The establishment of branch offices must be reported in the same term also to the register office of the place where the partnership is registered.

Art. 2300. (Amendments to the instrument of incorporation).

The directors must apply within thirty days to the Business register for the recording of the amendments to the instrument of incorporation and other facts relating to the partnership when the registration of them is mandatory.

If the amendment to the instrument of incorporation results from a resolution of the partners, this must be filed in an certified copy.

Amendments to the instrument of incorporation, as long as they are not registered, are not enforceable against third parties, unless it is proved that the latter had knowledge of them.

Art. 2301. (Prohibition of competition).

A partner may not, without the consent of the other partners, carry on his/her own behalf or on behalf of others an activity competing with that of the partnership, nor participate as unlimited partner in other competing partnership.

Consent is presumed, if the exercise of the activity or the participation in another partnership pre-existed the partnership agreement, and the other partners were aware of it.

In case of failure to comply with the provisions of the first paragraph, the partnership is entitled to compensation for damages, save the application of Article 2286.

Art. 2302. (Accounting records).

Directors shall keep the registers and other accounting records provided in Article 2214.

Art. 2303. (Limits on distribution of profits).

No distribution of sums among partners may be made except for profits really achieved.

If there is a loss of capital, no distribution of profits may be fulfilled until the capital is replaced or reduced accordingly.

Art. 2304. (Liability of partners)

Partnership creditors, even if the partnership is in liquidation, may not demand payment from individual partners, except after the execution of the partnership's assets.

Art. 2305. (Personal creditor of the partner).

A partner's personal creditor, as long as the partnership lasts, cannot ask the liquidation of the quota of the debtor partner.

Art. 2306. (Capital reduction).

The resolution to reduce capital, by means of repayment to the partners of the paid-up quotas or by releasing them from the obligation of further payments, may be fulfilled only after three months from the day of recording in the Business register, if within this period no partnership creditor prior to the registration has filed an opposition.

The court, notwithstanding the opposition, may order that execution take place, subject to the provision by the partnership of a suitable guarantee.

Art. 2307. (Extension of partnership).

The personal creditor of the partner may oppose to the extension of the partnership, within three months after the recording of the extension resolution in the Business register.

If the opposition is upheld, the partnership must, within three months of the judgment notification, liquidate the quota of the opponent's debtor partner.

In case of tacit extension, each partner may always withdraw from the partnership, giving notice in accordance with Article 2285, and the partner's personal creditor may demand the liquidation of the quota of his/her debtor in accordance with Article 2270.

Art. 2308. (Dissolution of the partnership).

The partnership is dissolved, in addition to the causes indicated in Art. 2272, by order of the governmental authority in the cases provided by law and for the opening of judicial liquidation proceedings.

Art. 2309. (Publication of the appointment of liquidators).

The partners' resolution or judgment appointing the liquidators and any subsequent act involving a change in the persons of the liquidators must be, within fifteen days of the notice of the appointment, filed in certified copy by the liquidators themselves for registration in the Business register office.

The liquidators must also file in the same office their autograph signatures.

Art. 2310. (Representation of the partnership in liquidation).

From the recording of the appointment of the liquidators, the representation of the partnership, including in court, is held by the liquidators.

Art. 2311. (Final liquidation financial statements and distribution plan).

Once the liquidation is completed, the liquidators shall draw up the financial statements propose the distribution plan to the partners.

The financial statements, signed by the liquidators, and the distribution plan must be communicated by registered mail to the partners, and are deemed to be approved if they have not been claimed within two months of the communication.

If the financial statements and the distribution plan are claimed, the liquidator may request that matters relating to the liquidation be examined separately from those relating to the division, to which the liquidator may remain extraneous.

With the approval of the financial statements, the liquidators are released before the partners.

Art. 2312. (Cancellation of the partnership).

Having approved the final liquidation financial statements, the liquidators shall apply for the cancellation of the partnership from the Business register.

From the cancellation of the partnership, partnership creditors who have not been satisfied may assert their claims against the partners and, if the lack of payment is due to the lack of the liquidators, also against them.

Accounting records and documents not pertaining to individual partners shall be filed with the person designated by the majority.

Accounting records and documents must be conserved for ten years from the date of the cancellation of the partnership from the Business register.

CHAPTER IV LIMITED PARTNERSHIP

Art. 2313. (Notion).

In a limited partnership, the general partners are unlimitedly, jointly and severally liable for the partnership obligations, and limited partners are liable limited to the quota conferred.

The partners' quota cannot be represented by shares.

Art. 2314. (Business name).

The limited partnership acts under a business name consisting of the name of at least one of the general partners, with the indication of limited partnership, save as provided in the second paragraph of Article 2292.

The limited partner, who allows his/her name to be included in the business name, is liable towards third parties unlimitedly, jointly and severally with the limited partners for partnership obligations.

Art. 2315. (Applicable rules).

The provisions relating to general partnerships shall apply to the limited partnership, insofar as they are compatible with the following rules.

Art. 2316. (Instrument of incorporation).

The instrument of incorporation shall specify the general partners and the limited partners.

Art. 2317. (Failure to register).

Until the partnership is recorded in the Business register, the relations between the partnership and third parties shall be governed by the provisions of Art. 2297.

However, for partnership obligations the limited partners are liable only to the extent of their quota, unless they have participated in the partnership's operations.

Art. 2318. (General partners).

General partners have the rights and obligations of partners of the general partnership.

The administration of the partnership can only be carried out by the general partners.

Art. 2319. (Appointment and removal of directors).

Unless the instrument of incorporation provides otherwise, for the appointment of directors and for their removal in the case indicated in the second paragraph of Article 2259, is required the consent of all the general partners and the approval by the limited partners representing the majority of the capital subscribed by them.

Art. 2320. (Limited partners).

Limited partners may not fulfil acts of administration or transact or conclude operations in the name of the partnership, except by virtue of special power of attorney for individual operations. A limited partner who breaches this prohibition assumes unlimited, joint and several liability for all the partnership obligations and may be excluded under Article 2286.

Limited partners may, however, work under the direction of the directors and, if is permitted by the instrument of incorporation, give authorizations and opinions for certain operations, and perform acts of inspection and supervision.

In any case they shall have the right to have annual notice of the balance sheet and of the profit and loss account, and to check their accuracy by consulting the books and other documents of the partnership.

Art. 2321. (Profits received in good faith).

Limited partners are not required to return profits collected in good faith according to the duly approved financial statements.

Art. 2322. (Transfer of quota).

The limited partner's quota is transferable due to the death.

Unless otherwise provided in the instrument of incorporation, the quota may also be transferred, with effect towards the partnership, with the consent of the partners representing the majority of the capital.

Art. 2323. (Causes of dissolution).

The partnership is dissolved, in addition to the causes provided for in Article 2308, when remain only limited partners or general partners, if within six months the ceased partner has not been replaced.

If all the general partners fail, for the period indicated in the preceding paragraph the limited partners shall appoint a temporary director to carry out acts of ordinary administration. The temporary director does not assume the status of a general partner.

Art. 2324. (Rights of partnership creditors after liquidation).

Except for the right provided for in the second paragraph of Article 2312 towards the general partners and liquidators, the partnership creditors who have not been satisfied in the liquidation of the partnership may also assert their claims against the limited partners, limitedly to the liquidation quota.