IPA-C02 - 5 PROVISIONS

Nature and Existence of Partnership

Indian Partnership Act, 1932

Full local statutory text **Finin2min implementation edition** **CA Nikhil Gupta and Kajri Singh**

Finin2min Summary - Chapter in 2 Minutes

Purpose

This unit converts nature and existence of partnership into statutory, transaction, evidence and remedy decisions.

Who is covered

Businesses, contracting parties, partners, buyers, sellers, principals, agents and litigants affected by this chapter.

Main obligations

Read the transaction documents and actual conduct against every statutory limb, exception and connected law.

Key timelines

Record event, breach, refusal, notice, acknowledgment and filing dates; apply the correct Limitation Act article.

Forms and evidence

Use the chapter evidence checklist and State/UT forms where registration or public notice applies.

Top risk

Wrong classification, missing authority, weak evidence, ineffective notice, unverified State process or wrong remedy.

Remedy

Preserve rights, mitigate loss, quantify exposure and confirm forum, arbitration, limitation and interim relief.

Finin2min takeaway

Classify - map law - verify authority - prove performance - quantify consequence - select remedy and forum.

Section-by-section provision map

Provision	Title	Status	Decision theme
s.4	Definition of partnership, partner, firm and firm name	operative	scope and classification
s.5	Partnership not created by status	operative	partnership authority and liability
s.6	Mode of determining existence of partnership	operative	

			partnership authority and liability
s.7	Partnership at will	operative	partnership authority and liability
s.8	Particular partnership	operative	partnership authority and liability

Legal status, amendments and source protocol

Act: Indian Partnership Act, 1932; Act 9 of 1932; commencement 1 October 1932; section 69 from 1 October 1933.

Source protocol: Complete central provision text is reproduced locally. Local public-domain central Act transcription reconciled to India Code structure. Official India Code and Gazette instruments prevail if any discrepancy is identified.

Full statutory text and Finin2min decode

Section 4 - Definition of partnership, partner, firm and firm name

Local statutory-text source control: Local public-domain central Act transcription reconciled to India Code structure. [Official India Code source] prevails.

Current statutory text

"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm", and the name under which their business is carried on is called the "firm name".

Finin2min clause-by-clause decode

Clause	Statutory requirement	Finin2min meaning	Evidence/control
Main rule	"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm", and the name under which their business is carried on is called the "firm name".	Test this main limb within the scope and classification framework. Operational focus: "partnership" is the relation between persons who have agreed to share the profits of a business carried on.	Contract/deed, authority, chronology, notices, performance and payment records tied to this limb.

Finin2min implementation explanation

Section 4 is a scope and classification provision dealing with definition of partnership, partner, firm and firm name. Identify the actor, trigger, cumulative or alternative conditions, provisos, exceptions and legal consequence before reaching a conclusion.

Implementation control: Freeze the event date and statutory definitions before applying the remaining provisions. Record why each party, asset, instrument and transaction falls inside or outside the defined class.

Section-level practical application

Transaction test

Apply this provision to the event-date facts and record every satisfied, disputed or inapplicable limb.

Consequence and remedy

Identify how it changes validity, title, authority, liability, payment, rejection, recovery, registration, evidence or relief.

Section 5 - Partnership not created by status

Local statutory-text source control: Local public-domain central Act transcription reconciled to India Code structure. [Official India Code source] prevails.

Current statutory text

The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such, are not partners in such business.

Finin2min clause-by-clause decode

Clause	Statutory requirement	Finin2min meaning	Evidence/control
Main rule	The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such, are not partners in such business.	Test this main limb within the partnership authority and liability framework. Operational focus: the relation of partnership arises from contract and not from status; and, in particular, the members of a.	Contract/deed, authority, chronology, notices, performance and payment records tied to this limb.

Finin2min implementation explanation

Section 5 is a partnership authority and liability provision dealing with partnership not created by status. Identify the actor, trigger, cumulative or alternative conditions, provisos, exceptions and legal consequence before reaching a conclusion.

Implementation control: Reconcile the deed, ordinary course, internal limits, third-party knowledge, firm-name execution, admissions and holding out. Internal restrictions may not defeat external liability.

Section-level practical application

Transaction test

Apply this provision to the event-date facts and record every satisfied, disputed or inapplicable limb.

Consequence and remedy

Identify how it changes validity, title, authority, liability, payment, rejection, recovery, registration, evidence or relief.

Section 6 - Mode of determining existence of partnership

Local statutory-text source control: Local public-domain central Act transcription reconciled to India Code structure. [Official India Code source] prevails.

Current statutory text

In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.
Explanation 1.- The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.
Explanation 2.- The receipt by a person of a share of the profits of a business, or of a payment contingent upon or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business; and, in particular, the receipt of such share or payment-
(a) by a lender of money to persons engaged or about to engage in any business;
(b) by a servant or agent as remuneration;
(c) by the widow or child of a deceased partner as annuity; or
(d) by a previous owner or part-owner of the business as consideration for the sale of the goodwill or share thereof,
does not of itself make the receiver a partner with the persons carrying on the business.

Finin2min clause-by-clause decode

Clause	Statutory requirement	Finin2min meaning	Evidence/ control
Main rule	In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. Explanation 1.- The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners. Explanation 2.- The receipt by a person of a share of the profits of a business, or of a payment contingent upon or varying with the profits earned by a business, does not of itself make him a partner with the persons...	Test this main limb within the partnership authority and liability framework. Operational focus: in determining whether a group of persons is or is not a firm, or whether a person is.	Contract/deed, authority, chronology, notices, performance and payment records tied to this limb.
(a)	by a lender of money to persons engaged or about to engage in any business	Test this (a) within the partnership authority and liability	Contract/deed, authority, chronology,

		framework. Operational focus: by a lender of money to persons engaged or about to engage in any business.	notices, performance and payment records tied to this limb.
(b)	by a servant or agent as remuneration	Test this (b) within the partnership authority and liability framework. Operational focus: by a servant or agent as remuneration.	Contract/deed, authority, chronology, notices, performance and payment records tied to this limb.
(c)	by the widow or child of a deceased partner as annuity; or	Test this (c) within the partnership authority and liability framework. Operational focus: by the widow or child of a deceased partner as annuity; or.	Contract/deed, authority, chronology, notices, performance and payment records tied to this limb.
(d)	by a previous owner or part-owner of the business as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business.	Test this (d) within the partnership authority and liability framework. Operational focus: by a previous owner or part-owner of the business as consideration for the sale of the goodwill or.	Contract/deed, authority, chronology, notices, performance and payment records tied to this limb.

Finin2min implementation explanation

Section 6 is a partnership authority and liability provision dealing with mode of determining existence of partnership. Identify the actor, trigger, cumulative or alternative conditions, provisos, exceptions and legal consequence before reaching a conclusion.

Implementation control: Reconcile the deed, ordinary course, internal limits, third-party knowledge, firm-name execution, admissions and holding out. Internal restrictions may not defeat external liability.

Section-level practical application

Transaction test

Apply this provision to the event-date facts and record every satisfied, disputed or inapplicable limb.

Consequence and remedy

Identify how it changes validity, title, authority, liability, payment, rejection, recovery, registration, evidence or relief.

Section 7 - Partnership at will

Local statutory-text source control: Local public-domain central Act transcription reconciled to India Code structure. Official India Code source prevails.

Current statutory text

Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is a partnership at will.

Finin2min clause-by-clause decode

Clause	Statutory requirement	Finin2min meaning	Evidence/control
Main rule	Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is a partnership at will.	Test this main limb within the partnership authority and liability framework. Operational focus: where no provision is made by contract between the partners for the duration of their partnership, or for.	Contract/deed, authority, chronology, notices, performance and payment records tied to this limb.

Finin2min implementation explanation

Section 7 is a partnership authority and liability provision dealing with partnership at will. Identify the actor, trigger, cumulative or alternative conditions, provisos, exceptions and legal consequence before reaching a conclusion.

Implementation control: Reconcile the deed, ordinary course, internal limits, third-party knowledge, firm-name execution, admissions and holding out. Internal restrictions may not defeat external liability.

Section-level practical application

Transaction test

Apply this provision to the event-date facts and record every satisfied, disputed or inapplicable limb.

Consequence and remedy

Identify how it changes validity, title, authority, liability, payment, rejection, recovery, registration, evidence or relief.

Section 8 - Particular partnership

Local statutory-text source control: Local public-domain central Act transcription reconciled to India Code structure. [Official India Code source] prevails.

Current statutory text

A person may become a partner with another person in particular adventures or undertakings.

Finin2min clause-by-clause decode

Clause	Statutory requirement	Finin2min meaning	Evidence/control
Main rule	A person may become a partner with another person in particular adventures or undertakings.	Test this main limb within the partnership authority and liability framework. Operational focus: a person may become a partner with another person in particular adventures or undertakings.	Contract/deed, authority, chronology, notices, performance and payment records tied to this limb.

Finin2min implementation explanation

Section 8 is a partnership authority and liability provision dealing with particular partnership. Identify the actor, trigger, cumulative or alternative conditions, provisos, exceptions and legal consequence before reaching a conclusion.

Implementation control: Reconcile the deed, ordinary course, internal limits, third-party knowledge, firm-name execution, admissions and holding out. Internal restrictions may not defeat external liability.

Section-level practical application

Transaction test

Apply this provision to the event-date facts and record every satisfied, disputed or inapplicable limb.

Consequence and remedy

Identify how it changes validity, title, authority, liability, payment, rejection, recovery, registration, evidence or relief.

Practical examples and calculations

Chapter scenario

A live transaction raises issues concerning nature and existence of partnership. Freeze the event date, map each statutory condition, preserve authority and performance evidence, quantify exposure and choose remedy only after limitation and forum review.

Calculation	Method	Evidence
Price / consideration	Reconcile base amount, GST/tax, credits, retention, deductions and payment terms.	Contract, invoice, ledger, tax documents and bank proof.
Loss / compensation	Separate direct loss, consequential loss, avoided cost, mitigation, restitution, interest and stipulated sum.	Loss model, market evidence and mitigation log.
Partner settlement	Reconcile capital, current accounts, loans, drawings, profit share, assets, liabilities and goodwill.	Deed, ledgers, bank records and valuation.
Limitation	Record accrual, breach/refusal, notice, acknowledgment, exclusion and filing date.	Chronology and limitation memorandum.

Practical transaction application

1. Identify the transaction, relationship, parties and event date.
2. Map every provision to the contract/deed and actual conduct.
3. Record conditions satisfied, disputed, waived, excused or prevented.
4. Reconcile authority, delivery/performance, acceptance, payment and notices.
5. Quantify exposure and choose cure, termination, recovery, settlement or litigation strategy.

Authority, consent and execution controls

Authority

- Correct legal entities and counterparties.
- Board, partner, power-of-attorney or delegated authority.
- Ordinary-course and implied-authority limits.
- Third-party knowledge of restrictions.

Consent

- Offer, acceptance and agreed version.
- Capacity, free consent and disclosures.
- Conditions precedent and approvals.
- No unauthorised post-execution alteration.

Execution

- Complete schedules and annexures.
- Witnessing, attestation and e-sign audit trail.
- Counterparts, date and place.
- Original and certified-copy custody.

Stamp duty and registration alerts

Stamp duty is State/UT-specific. Classify the true instrument, place of execution or receipt, consideration and property. Registration is a separate enquiry. Insufficient stamping may require impounding; non-registration may affect property and third-party enforceability.

Instrument	Alert
Commercial agreement	Do not default to a generic article if the substance is indemnity, guarantee, security, transfer, lease or another specifically charged instrument.
Partnership deed/ reconstitution	Check capital contribution, immovable property, retirement/dissolution and Registrar filing separately.
Sale of movable goods	Coordinate contract, invoice, GST/e-invoice, transport and sectoral records.
Property-related relief	Check compulsory registration, title, court fee and decree-registration effects.

Evidence and document-retention checklist

Core file

- Executed deed and amendments
- Partner identity and authority records
- Capital, current account and drawings ledger
- Profit-sharing and remuneration approvals
- Firm property and goodwill register
- Bank mandate and signing matrix
- Admission, retirement or expulsion documents
- Registrar filings and public notice evidence

Electronic evidence

- Native email/message and metadata.
- Version history and e-sign certificate.
- System logs and acknowledgements.
- Legal hold and defensible export.

Retention

- Executed originals and amendments.
- Authority and entity records.
- Tax, payment and accounting records.
- Claims and litigation records through final disposal.

Forms, registers and operational records

Record/form	Control
State registration statement	Form and fee are prescribed by the relevant State/UT rules under section 71.
Change intimation	State forms commonly apply to firm name, principal place, branches, partner changes and dissolution.
Public notice evidence	Registrar notice plus Official Gazette and vernacular-newspaper publication where section 72 requires it.

Performance, delivery and payment controls

Stage	Control	Proof
Obligation matrix	List each reciprocal obligation, owner, due date, dependency and consequence.	Signed matrix tied to contract sections.
Delivery/ performance	Record dispatch, carrier, title/risk point, milestones, inspection and acceptance/rejection.	Delivery documents, certificates and correspondence.
Payment	Reconcile invoice, tax, credit, retention, set-off, due date and bank receipt.	Invoice, e-invoice, ledger and bank proof.
Change/cure	Use authorised variation and cure procedures; avoid informal waiver.	Change order, approval and cure closure.

Breach, loss, mitigation and remedy framework

1. Identify the exact obligation and legally material breach.
2. Confirm causation, remoteness, foreseeability and proof of loss.
3. Record mitigation, avoided cost and substitute performance.
4. Test damages, price, restitution, lien, stoppage, accounts, dissolution, specific performance, injunction, rescission, rectification, cancellation or declaration.
5. Check remedy election, double recovery, caps/exclusions and public policy.

Limitation and forum controls

Control	Analysis
Accrual	Classify cause of action and record breach, refusal, knowledge, demand and continuing-obligation dates.
Limitation	Apply the correct article; test acknowledgment, part-payment, exclusion and disability.
Jurisdiction	Check territorial/pecuniary rules, Commercial Courts threshold, exclusive forum and special court.
Interim relief	Assess preservation, injunction, receiver, security and evidence protection.
Appeal/ enforcement	Map decree/award challenge, execution, interest and cross-border enforcement.

Arbitration and mediation interface

- Validate agreement, signatories, scope, seat, rules and appointment mechanism.
- Separate substantive rights from forum selection and identify non-arbitrable issues.
- Check interim measures, consolidation, joinder and multi-contract issues.
- Preserve limitation during negotiation or mediation.
- Record settlement authority, confidentiality, tax, stamp and enforceability.

Company, partnership, GST and tax overlays

Overlay	Questions
Companies Act	Authority, objects, approvals, related-party, loan/guarantee/security and disclosure requirements.
Partnership/LLP	Deed/LLP authority, current constitution and public records.
GST	Supply, time/place/value, invoice/e-invoice, ITC, credit note, advance, damages and settlement treatment.
Income tax/TDS	Withholding, partner remuneration/interest, capital/revenue, bad debt, settlement and transfer consequences.
IBC/FEMA/ consumer	Moratorium and avoidance, cross-border payment/governing law, consumer and e-commerce protection.

Binding and foundational judicial principles

Authority	Principle	Verification
Cox v. Hickman	Profit sharing is relevant but mutual agency is the decisive partnership test.	Verify official judgment and later treatment.
Dulichand Laxminarayan v. CIT	A firm is not a separate legal person in the same sense as a company; statutory context controls treatment.	Verify official judgment and later treatment.
Addanki Narayanappa v. Bhaskara Krishnappa	A partner has a right to a share in partnership assets and profits, not ownership of a specific item of firm property during subsistence.	Verify official judgment and later treatment.
Jagdish Chandra Gupta v. Kajaria Traders	Section 69 disabilities are construed with the statutory nature of the claim and firm registration status.	Verify official judgment and later treatment.

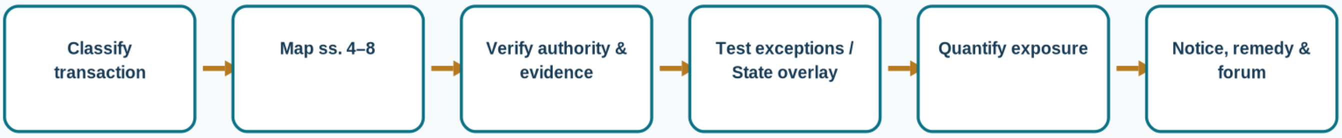
Central and State/UT variation alerts

> Partnership Rules, forms, fees, Registrar portals, stamp duty and public-notice practice are State/UT-specific.

Use the State/UT variation register in the data folder for the live source checklist.

Chapter-specific decision flowchart

IPA-C02 · Finin2min decision path



Mutual agency, status, profit sharing, property returns, duration and particular partnership. Verify the current official source before professional reliance.

Finin2min Q&A

What decision does IPA-C02 help a business make?

It determines how nature and existence of partnership should be classified, documented, performed and enforced under sections 4-8 of the Indian Partnership Act, 1932.

Which provision should be read first in IPA-C02?

Begin with section 4 (Definition of partnership, partner, firm and firm name) and then read the connected definitions, exceptions and remedy provisions in sequence.

What is the principal implementation risk in IPA-C02?

Applying a commercial label without proving the statutory conditions for nature and existence of partnership, or acting without authority, notice, performance and payment evidence.

Which execution checks are specific to IPA-C02?

Confirm the correct entities, signatory authority, consent, complete annexures, stamp and registration treatment, digital audit trail and approvals relevant to nature and existence of partnership.

How should evidence be indexed for IPA-C02?

Link every section in the chapter with the contract or deed, authority, chronology, notices, performance, delivery, payment, loss and remedy evidence supporting it.

What calculation should be retained for IPA-C02?

Retain the relevant price, tax, interest, partner-account, loss, mitigation, restitution or relief working with sources and assumptions, not only the final number.

How does limitation affect IPA-C02?

Classify the precise cause of action associated with nature and existence of partnership, record accrual, refusal, notice, acknowledgment and exclusion dates, and apply the correct Limitation Act article.

Can arbitration resolve every dispute arising under IPA-C02?

Arbitration may govern the forum, but it does not validate illegality, remove mandatory rules or make a non-arbitrable subject arbitrable. Check scope, seat and interim relief.

Which tax and entity overlays should be checked for IPA-C02?

Check Companies Act authority and related-party controls, partnership constitution, GST supply and invoice consequences, withholding, accounting and insolvency effects.

What is the final professional sign-off for IPA-C02?

Confirm the current statutory source, section conclusions, State variation, authority, calculation, limitation, remedy, forum and complete evidence trail.

Why is section 8 important to IPA-C02?

Section 8 (Particular partnership) completes the chapter control and must be tested independently.

Official sources and verification status

- Indian Partnership Act, 1932 - India Code
- Official Gazette and applicable State/UT Gazette, Registrar and court portals.
- Review date: 2026-07-18.