

FORMS OF BUSINESS OWNERSHIP

Business units in East Africa, Uganda inclusive are classified into two broad groups or sectors, i.e. the private sector and the public sector. The private sector consists of businesses owned by private individuals and the public sector comprises establishments owned by the government.

Business units owned by individuals are:

- (i) Sole traders
- (ii) Partnerships
- (iii) Joint stock companies
- (iv) Co-operatives

The public sector consists of the following units:

- (i) Public corporations
- (ii) Parastatals
- (iii) Local government authorities

FACTORS CONSIDERED WHEN SELECTION A BUSINESS UNIT

1. Commencement of business operations. Sole proprietors and partnerships can start business operations as soon as they pay and obtain a trading license.

However, a limited liability company cannot start operations until it is registered with the registrar of companies and has been given a certificate of incorporation.

In addition, the business may register Value Added Tax if its sales/income falls within the VAT registration threshold.

2. Liability of the business owners. A sole trader is responsible for the debts of the business up to the extent of selling his/her personal property.

On the other hand, companies have limited liabilities where the shareholders are only responsible for the debts of the business to the extent of their capital contribution only.

3. Continuity of the business. In case of death or bankruptcy of the owner, the sole proprietorship business comes to an end.

Likewise in partnership death, bankruptcy or retirement of a major/general partner can lead to closing of the business depending on the provisions of the partnership agreement. On the other hand, under companies there is perpetual succession whereby if one of the shareholders dies, the company can continue existing like nothing has happened to it since a company is a separate person or entity from its owners.

4. Capital and how it can be raised. A sole proprietor must on his/her own raise all the necessary capital that his/her business requires to start.

This also applies to partnership business where capital is raised by the partners in the business of two to a maximum of twenty members.

However, in a company capital is raised through selling shares to the public.

SOLE TRADE/Sole Proprietorship

A sole trader or sole proprietor. This is a person who owns a business alone/singly.

Sole proprietorship or sole trade. This is a form of business organization whereby one man finances, controls and manages the affairs of the business alone. Or; this is a business setting in which an individual introduces his own capital, uses his own skill and intelligence in the management of the business affairs and is solely responsible for the results of its operations.

Sole proprietorship is sometimes called the one man's business.

Note. Sole proprietorship is the most common and simplest form of business in East Africa.

CHARACTERISTICS OF SOLE PROPRIETORSHIP BUSINESS

1. The business is owned by a single individual.
2. The business is managed and controlled by the owner himself since it is small.
3. The necessary capital to run the business is provided by the sole owner.
4. The proprietor himself bears all the risks.
5. There is unlimited liability where the sole trader is personally liable for the debts of the business.
6. There is no separate legal entity, i.e. the sole trader and his business are considered as one where all assets and liabilities of the business are personal assets and liabilities of the proprietor.
7. There is minimum government regulation i.e. sole traders are not governed by any special act or ordinance.
8. There is independent decision making where planning and direction of the business lies in the hands of the sole proprietor.

REASONS WHY MOST BUSINESSES UNITS IN UGANDA ARE SOLE PROPRIETORSHIP

1. To enjoy top secrecy since the sole trader is the only person who knows his business secrets and has a better chance to preserve them.
2. Flexibility of the business whereby the sole trader can make decisions and changes in a minimum of time, he can change from one type of business to another or its premises.
3. To establish direct contact with customers and employees since the business is on small scale.

4. There is easy and quick decision making due to independency in decision making relating to the affairs of the business without consulting anybody.
5. To enjoy all the profits and this provides him a very high degree of incentive to work hard.
6. Ease of formation since the business requires no legal formalities and it does not require a lot of capital.
7. To enjoy freedom from government regulation as sole proprietorship is the least regulated form of business organization.
8. Ease of coordinate because of its small size where the sole owner can take all decisions and supervise every part of the business.

ADVANTAGES OF SOLE PROPRIETORSHIP

1. The sole trader enjoys top secrecy since he is the only person who knows his business secrets and has a better chance to preserve them.
2. The business is very flexible. The sole trader can make decisions and changes in a minimum of time; he can change from one type of business to another or its premises.
3. The sole trader is able to establish as direct contact with his customers and employees since the business is on small scale.
4. There is easy and quick decision making due to independency in decision making relating to the affairs of the business without consulting anybody.
5. The sole proprietor takes all the profits and this provides him a very high degree of incentive to work hard.
6. The business is easy and cheap to set up since it requires no legal formalities and it does not require a lot of capital.
7. There is freedom from government regulation. Sole proprietorship is the least regulated form of business organization.

8. It is easy to coordinate because of its small size where the sole owner can take all decisions and supervise every part of the business.

DISADVANTAGES/SHORTCOMINGS OF SOLE PROPRIETORSHIP

1. The capital resources are limited which makes expansion of the business difficult, if not impossible.
2. There is unlimited liability where the sole trader is personally responsible for the debts of the business to the extent of selling his personal possessions.
3. There is often lack of continuity in this type of the business its success depends on the owners ability and effort whose sickness or bankruptcy immediately puts the business into difficulties and his/her death must mean its end.
4. It is difficult for a sole trader to get financial assistance from banks due to lack of collateral security.
5. There is a possibility of coming up with wrong decisions in the business due to independent decision making.
6. It is difficult to carry out research in the business due to low profit levels and fear of risks.
7. The sole trader works for long and irregular hours each day and has less time for holidays and this leads to fatigue and exhaustion.
8. There is poor management and inefficiency due to absence of specialization and division of labour.
9. There are no proper records maintained in a sole trade business due to poor record keeping.

PARTNERSHIPS

A partnership. This is a relationship which subsists/exists between two or more persons who have agreed to carry on business with the view of making profits.

Or; this is an association of between two to twenty persons or fifty in the case of professionals like doctors, lawyers, etc. who have come together or who have pulled together their capital and management resources to establish a firm with a view of making profits.

Each of these persons is called a partner. The relationship that exists between these partners is referred to as the partnership and the business is called a firm.

When a sole trader finds it hard to cope with the increasing problems of an expanding business, he/she takes on employees or associates in business to help him/her and this may convert his/her business into a partnership business in which there is joint ownership.

In East Africa partnerships are mostly found in professionals and most firms in accountancy, law, media and estate agency workers are organized as partnerships.

MEMBERSHIP

A partnership consists of a minimum number of two and a maximum of twenty members.

However, the Partnership Act provides that the maximum number of partners in a firm that offers personal and professional services may be fifty (50), if each of the partners is a professionally qualified person, e.g. a firm of practicing accountants may have a maximum of fifty partners if each of them is a professionally qualified accountant.

CHARACTERISTICS OF PARTNERSHIP BUSINESS/PROPERTIES OF PARTNERSHIP

1. Membership ranges from two to twenty or two to fifty incase of professional services.
2. It results from contractual agreement between or among partners.
3. Management is carried out by all the partners.

4. Each partner is an agent of the firm i.e. there is a principal-agent relationship.
5. A partnership firm has no separate legal existence.
6. There is no transfer of capital without knowledge of other partners.
7. Major decisions are taken by majority and based on mutual understanding.
8. There is unlimited liability where all partners except limited partners are personally liable for all the debts of the partnership.
9. The firm is registered with the registrar of business names.
10. Each partner must act on good faith with each other and present true accounts.
11. There is division of profits or losses between or among the partners to the firm.
12. The purpose of any partnership business is to make profit.
13. A partnership has limited life in that it may be dissolved at any time.
14. There is co-ownership of contributed assets i.e. all assets contributed into the firm are owned by the partnership.
15. Business capital is got from partners whereby partners contribute capital and no appeal is made to the public for subscriptions.

TYPES OF PARTNERSHIP

1. **Permanent partnership.** This is a partnership intended to continue indefinitely, i.e. its end is not known at the time of formation.

2. **Temporary partnership/joint venture.** This is a partnership formed for a specified period or specified purpose, at the end of which the partnership is dissolved.

For example, Roko Construction Company and Stirling Construction Company may form a partnership for the purpose of constructing a road and after the completion of the project the two cease to be partners.

3. **Limited partnership.** This is a partnership where all members in the firm have limited liabilities except for the general partner.

4. Ordinary partnership. This is where all members have equal rights and responsibilities and liabilities of the members are unlimited.

TYPES OF PARTNERS

1. **Active partner.** This is a partner who contributes capital, shares profits and losses and in addition takes an active role in the day-to-day affairs of the business. He takes part in the management of the business and often be given a fixed area of responsibility e.g. sales, accounts, etc.

2. **Dormant partner/sleeping partner/silent partner.** This is a partner who contributes capital, shares profits and losses, responsible for the debts of the business, but does not in take an active role in the day-to-day running of the business.

This usually happens when one has either a full-time job or another business to attend to and if he has faith in the active partners.

3. **Limited partner.** This is a partner whose liability towards the firms debts is limited to a stated sum, usually the capital contributed by him.

4. **General partner.** This is a partner whose liability towards the firms debts is unlimited i.e. he may be called upon to meet the firms debts from personal resources if the firm fails to settle them.

Note. The partnership Act provides that all partners cannot limited, i.e. there must be at least one general in a firm who has unlimited liability.

6. **Major partner.** This is a partner who is over 18 years of age.

7. Minor partner. This is a partner who is under 18 years of age. A minor partner is not liable for the debts of the business beyond his capital but, unlike a limited partner, he has a right to act on behalf of the business.

8. Real partner. This is a partner who contributes capital in form of property, takes an active part in the running of the business, shares profits and losses and is responsible for the debts of the business.

9. Quasi partner/nominal partner. This is a person who does not contribute any capital or take any part in running of the business but allows the firm to use his name as a partner. He is generally not responsible for the debts of the firm except when a creditor acts solely on the assumption that he (quasi partner) is a real partner.

Note. Partners sometimes find it useful to convince a reputable businessman to allow them to use his name as a partner in exchange for a small share in profit.

10. Partner by Estoppel. This is one who is actually not a partner but who represents himself as one.

He is not a partner in actual sense but the way he behaves/conducts himself makes other people to believe him as a partner. He does not contribute any capital towards the formation of the business.

11. Retiring partner. This is a partner who has withdrawn from the partnership but he is liable for all the debts and losses which were incurred by the firm before his withdrawal.

FORMATION OF A PARTNERSHIP

A partnership rests on a contract among persons. Therefore, its formation does not involve any special legal problems. Law does not make it compulsory for a partnership firm to be registered.

For example, if Mr. Wambuzi and Mr. Lubega desire to trade as “M/s Wambuzi and Lubega Wholesalers”, they don't need to apply for any registration.

But registration becomes necessary in view of the fact that an unregistered firm has certain disabilities. For example, an unregistered firm cannot file suit in court to enforce rights against outside parties under a contract.

Hence, if Mr. Wambuzi and Mr. Lubega decide to run the business under a name other than their own personal names, e.g. WALU Wholesalers, they will be required to register this name with the Registrar of Business Names.

They will also be required to print their personal names on all documents sent by their firm, e.g. letters, catalogues, etc. so that all the people with whom they deal remain informed of the true owners of the firm.

In Uganda, the same form as that filled by sole proprietors is filled by partners and submitted to the registrar who will clear usage of name and thereafter issue a Certificate of Registration.

WAYS OF FORMATION

1. By word of mouth. Here, the partners agree through spoken words that they have formed a partnership and acknowledge it. They do not need to put it in writing.

2. Implied partnership. This arises from the course of dealings. In this case, there is no explicit agreement either by word of mouth or written but, the partnership relationship is implied from behaviour or actions of the people concerned.

For example when a person always sells goods on behalf of another and shares in the profits and people believe he is a partner. While there may be no agreement, there is an implied partnership.

3. Partnership by holding out. This is a form of implied partnership where a person who is not a partner by word of mouth or deed acts in such a manner as described above, in the implied partnership.

He is said to be holding out as a partner if the public deal with him believing that he is one.

4. In writing (partnership deed). Here, partners agree and put their agreement in writing. A partners written agreement is called a partnership deed.

THE PARTNERSHIP AGREEMENT (DEED)

A partnership deed. This is a written agreement or document which outlines the basis on which the partnership business is being formed and conducted.

It spells out the rights and obligations of the partners.

CONTENTS OF THE PARTNERSHIP DEED

1. Name, address and location of the firm.
2. Name, address and occupation of each partner.
3. Status or type of each partner e.g. active partner, general partner, etc.
4. Capital to be contributed by each partner.
5. Ratios in which profits and losses are to be shared among partners.
6. The rights of each partner e.g. drawings allowable, interest on capital salaries, etc.
7. The duties allocated to each partner.
8. Methods of calculating goodwill at the time of retirement, death or admission of a new partner.
9. The manner in which books of accounts of the firm would be kept/prepared.
10. The procedure to be adopted at the time of dissolution of the partnership.
11. The duration of the partnership business.
12. The nature/purpose for which the partnership is formed.
13. How the management committee is to be elected.

Note. It is essential that intending partners have an agreement in a partnership deed. This is because by putting intentions in writing, partners will be more clear

and precise in their objectives and a permanent record is evidence of the terms actually agreed upon.

In the absence of a partnership deed, the provisions of the partnership Act will come in operation. The Act defines the rights and duties of a partner and is substitute for the deed.

This Act states that:

- i. Every partner has a right to take part in the conduct of the business.
- ii. In case of any difference arising as to ordinary matters connected with the business, the decision may be taken by the majority of the partners.
- iii. No change may be made in the nature of the business without the consent of all partners.
- iv. All profits and losses are to be shared equally by the partners.
- v. No interest is to be allowed on capital.
- vi. No salary is to be allowed to any partner.
- vii. 5% interest is to be paid on any loans advanced to the business by any partner.
- viii. Every partner will have a right to inspect the firm's books of accounts.

RIGHTS AND DUTIES OF PARTNERS

1. The firm must compensate a partner for liabilities incurred by him in the conduct of the business.
2. If a partner has private business that competes with the partnership, all profit made by him should be surrendered to the firm.
3. No partner may be expelled without dissolving the partnership.
4. All partners are personally liable for the debts incurred by the firm.
5. No new partner may be admitted without the consent of all partners and no partner can sell his share to any outsider without the consent of all other partners.

6. Every partner who has access to the firm's funds or properties must display utmost good faith and present true accounts.
7. Every partner has a right to act on behalf of the business, to sign documents on its behalf and to bind under contract as long as he acts within the provision of their partnership deed.

DISSOLUTION OF A PARTNERSHIP

This refers to a change in the relation of partners caused by any partner ceasing to be associated in the carrying on of the business.

CIRCUMSTANCES/CONDITIONS/SITUATIONS/STATE UNDER WHICH A PARTNERSHIP MAY BE DISSOLVED

1. In case partners agree voluntarily to dissolve the partnership.
2. If it is a temporary partnership, at the expiry of a specified period or fulfillment of the purpose of partnership, the partnership comes to an end.
3. If a partner notifies the others in writing of his intention to dissolve the partnership.
4. If a partner becomes insane or bankrupt or dies, a partnership may be dissolved.
5. In case of operation of courts of law where a partner or another interested party may apply to the court of law to have the partnership dissolved.
6. In case of frustration e.g. if a law is introduced banning the activities being carried out by the firm.

REASONS WHY PROFESSIONAL FIRMS OPERATE AS PARTNERSHIPS

1. To raise more capital from partners since they are two or more.
2. To allow work to be shared among partners so that no one partner is overworked.
3. To benefit from specialization where each partner concentrates in his area of specialization.

4. To share losses and liabilities and hence reduce what each partner would bear.
5. To encourage easy business expansion by acquiring loans from lending banks and by admitting new partners.
6. To enjoy limited liabilities incase of a limited partner where members are not personally liable for the business debts.
7. To enjoy business enjoys secrecy since they are not required to publish their accounts to the public.
8. To have shared decision making for better business decisions.
9. Ease of formation. This business is fairly simple since less legal formalities are involved.

ADVANTAGES OF PARTNERSHIP BUSINESS

1. More capital is raised from partners since they are two or more.
2. Work is shared among partners hence no one partner is overworked.
3. There is better combination of talents hence each partner concentrates in his area of specialization.
4. Losses and liabilities are shared and this reduces what each partners would bear.
5. Formation of the business is fairly simple since less legal formalities are involved.
6. The business can easily expand by acquiring loans from lending banks and by admitting new partners.
7. In a limited partnership, partners enjoy limited liabilities.
8. The business enjoys secrecy since they are not required to publish their accounts to the public.
9. Better decisions are made due to consultations among partners that allows shared decision making.
10. Incase of disagreements, mutual discussions among partners are likely to come to solution.

DISADVANTAGES OF PARTNERSHIP BUSINESS

1. The death, bankruptcy or withdrawal of a major partner affects the existence of the business.
2. Except a limited partner, all partners have unlimited liabilities where they are personally liable for the debts of the firm.
3. There exist disagreements among partners due to plurality of persons leading to different views from the different partners.
4. There is non-transferability of interest where no partner can transfer his/her share without the consent of all partners.
5. In case of ordinary partnership, the maximum number of members cannot exceed twenty which leads to limited finances.
6. There is delayed decision making since all major decisions must be taken by the consent of all partners,
7. A partnership has a limited life and it may be ended anytime by death, bankruptcy/insolvency or resignation/withdrawal of any capable member of the firm.
8. The sharing of profits reduces somebody's willingness to work hard since all profits received are shared by all partners which reduces the amount receivable.
9. Double taxation is possible under this type of business ownership. A partnership and the partners may be taxed as separate entities yet the business could be the only livelihood to its owners.
10. There is risk of implied authority due to the contractual relationship among the partners whereby all partners may be held liable for the acts or misconducts of their fellow members.

ADVANTAGES OF A PARTNERSHIP OVER SOLE PROPRIETORSHIP BUSINESS

1. A partnership raises more capital than sole proprietorship
2. The burden of losses/liabilities is distributed to all partners unlike in sole trade.
3. Partnerships have better combination of talent compared to sole proprietorship.
4. The work is divided among partners which reduces load for each partner unlike in sole trade.
5. The business can easily be expanded through admission of new partners unlike in sole proprietorship.
6. The absence of a member does not stop a partnership from operation but once a sole trader is away, the business comes to a standstill.
7. Partnerships have better chances of acquiring loans than a sole proprietor since a sole trader lacks collateral security.
8. There is shared decision making that result into better decisions compared to a sole trader who may make poor decisions.
9. Incase of limited partners, they have limited liabilities unlike in sole proprietorship where there is unlimited liabilities.

PLEASE ANSWER THE SE QUESTIONS

1. (a) Distinguish between sole trade and partnership forms of business units.
(b) Show the advantages and disadvantage of sole proprietorship.
2. (a) What are the sources of capital to a sole trader?
(b) What are the rights and duties of business partners?
3. (a) Under which conditions may the partnership business be terminated?
(b) Why are professional services mostly operated as partnership?
4. (a) Define a partnership deed.
(b) Identify the contents of a partnership deed.

5.(a) List the advantages and disadvantages of partnership business.

(b) How is partnership business different from a joint stock company?

God bless you.