

Legal Principles Governing Partnership Agreements

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Abstract

A partnership agreement is a contract in which two or more individuals agree to share their financial resources, expertise, and responsibilities to initiate or continue a joint business venture. In this type of contract, each partner is committed to their respective share of the profits and losses of the business and jointly assumes management and decision-making responsibilities. Under Iranian law, partnerships can take various forms, such as civil partnerships and commercial partnerships, each of which is subject to specific legal provisions. In this context, the sharing economy, as a manifestation of transformation in the contemporary economic system, has provided a framework in which natural persons deliver goods and services through digital platforms. These developments have challenged the traditional structuring of contractual relationships and require reconsideration within existing legal frameworks. One of the most significant manifestations of this transformation is the formation of decentralized distribution networks and novel contracts characterized by reciprocity, vertical structure, adhesion, and, in some cases, exclusivity. This article adopts a descriptive approach to examine the legal principles governing partnership agreements.

Keywords: Contractual relations, partnership agreements, sharing economy, public-private partnership.

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1. Introduction

Participation is a concept applied in diverse fields such as philosophy, social sciences (sociology and psychology), political science, economics, management and urban planning, and architecture, encompassing a wide range of meanings according to the social, cultural, and practical context. At times, it is considered spontaneous, public-driven, and based on individual ideas, while in other cases, it is managerial and imposed (Norouzi & Javan Forouzandeh, 2021).

Today, contracts play a fundamental role in delivering public services, and considering the increasing demand for such services alongside the financial constraints of governments (public sector), the importance of public-private partnership contracts is amplified. The principles governing these contracts require comprehensive awareness of general and specific regulations and rules, which must be carefully examined by the contracting parties. Factors such as the type of partnership, the

duration of partnership projects, the provision of financial resources, political, social, and especially economic developments, and ultimately the applicable laws may shape the specific form of a partnership contract. Moreover, the legal effects resulting from these contracts and the incentives they create for participation are of significant importance. Compliance with partnership regulations in projects minimizes disputes among participants and ensures the rights of all parties involved (Mohammadi et al., 2021).

Public-private partnerships (PPPs) are based on the sharing of assets and skills, long-term relationships, shared profits and risks, and collective decision-making, achieved through cooperation between public and private actors. In this model, the government, instead of executing a project directly, grants a private partner the right to construct and operate it for a specified period. The private partner assumes responsibility for securing necessary capital and project design, whereas in public contracting agreements, contract terms are formulated according to an employer-contractor perspective rather than partnership and balance among the parties. To realize a true public-private partnership, the public sector may even be obligated to provide guarantees to the private sector to enable collaboration in implementing infrastructure projects. Since many public entities still attempt to impose conditions on private partners similar to public contracting agreements, reforming the legal framework governing public and administrative contracts to facilitate cooperation between public and private sectors—and particularly to foster a perception of the public sector as a partner rather than an employer—requires a comprehensive set of rules and regulations (Setoudeh Tehrani, 2023).

2. Concept and Meaning of Participation

Etymologically, the term “participation” refers to involvement and gathering for a specific purpose. The concept has been extensively debated in the literature, but its essence can be understood as engagement in activity and mutual influence (Jamshidzadeh & Ghaffari, 2011). Since the late 1950s, the concepts of “participation” and “participatory development” have emerged as significant notions in economic and social development discussions. At that time, two fundamental challenges in development plans led policymakers and planners to reassess and revise these programs. The failure of these plans to achieve their goals reinforced the idea that the absence of public participation in the design, implementation, and evaluation of programs contributed to their shortcomings. This perspective, considered instrumental in evaluating participation, does not treat participation as an end in itself but as a tool to enhance the success of development programs. This viewpoint laid the foundation for establishing public-private partnerships (Rahnama, 1998).

Innovatively preparing private partners, attracting and negotiating with the most suitable future partners, and forming strategic links with external organizations are among the keys to the success of PPPs. Regardless of the outcome of a partnership, PPPs must be purposeful. Therefore, planning and foresight are essential for the continuity and success of partnerships (Azizi, 2013).

3. Concept of Partnership Contracts

A partnership contract is an agreement whereby natural or legal persons contribute their capital (tangible or intangible) as cash or in-kind shares and use it collectively for a specified purpose in production, trade, or service activities for a limited period with the aim of profit. Some individuals rely on verbal agreements instead of written contracts, which can result in significant issues, particularly the absence of documentation in case of disputes.

According to some experts, the sharing economy represents one of the largest revenue-generating industries, with substantial social and economic impacts. Its development is particularly important for developing countries facing high unemployment, limited foreign exchange, and mono-product economies (primarily dependent on a single product such as oil). Furthermore, the sharing economy can significantly influence national production and employment in the coming years. Since reduced national production and rising unemployment are major economic challenges in Iran, the sharing economy has become a serious focus for policymakers and planners, and the sustainability of sharing-based transactions is increasingly viewed as a national priority. These transactions encompass diverse sectors, including car-sharing, accommodation, labor for individual businesses, legal and human resources services, transportation, procurement, and others (Pasha'ei et al., 2017).

4. Different Forms of Sharing in the Participatory Economy

The different forms of sharing are as follows:

1. The pure sharing economy, which serves as an integration of peer-to-peer operating systems to temporarily facilitate payments and access to physical assets.
2. The second-hand economy, functioning as a market to facilitate the transfer of ownership, including the sale of second-hand goods, gifts, exchanges, and other transactional activities that minimize waste.
3. The on-demand economy, including markets that provide access to individuals' intangible assets, such as time and various skills.
4. Product-service systems, in which customers pay for the benefits of a product without needing to own it, particularly useful for items that are idle for extended periods (Pasha'ei et al., 2017).

5. Legal Principles Governing Partnership Agreements

Principle of Legality of Participation Based on the Legitimacy of Public-Private Contracts:

The principle of legality is one of the most fundamental principles of public law and directly governs contractual relationships between public and private sectors under the framework of public-private partnerships (PPPs). This principle implies that no public entity, particularly the government and executive agencies, has the right to perform legal acts or enter contracts unless specifically authorized by law. In practice, while private individuals can freely conclude any contract not explicitly prohibited by law, public entities are permitted to enter contracts only where law allows. Otherwise, such contracts may be null or unenforceable. Accordingly, the public sector must share decision-making authority with the private sector. For example, if a municipality intends to contract with a private company to build a cultural complex, this action must comply with municipal regulations or other applicable laws.

Legality also encompasses the execution and oversight of contracts. Every stage—from calls for partners, drafting contract terms, financial arrangements, allocation methods, to project termination—must comply with the law. This principle not only guarantees the legitimacy of public institutions but also serves as a tool to protect legal rights, prevent corruption, and promote transparency in government settings. As the rule of law is a foundational principle of public law and a key element of modern legal and political systems, it plays a determining role in legitimizing partnership contracts. A contract, as a social institution, receives legal and enforceable support only when drafted and executed within the legal framework. Therefore, the principle of legality requires that all PPP contracts not only derive from law but fully comply with current regulations. In case of disputes, this legal framework serves as the standard for arbitration and resolution, simultaneously protecting public interests and the legitimate rights of private entities (Bastani, 2011).

In Iran's constitutional law, the principle of legal and legitimate participation and investment is emphasized. Specifically, Article 3, Clause 8 of the Constitution obliges the government to employ all its resources to ensure "the public participation of citizens in determining their political, economic, social, and cultural destiny." This underscores the necessity of engaging the public, including through investment and participatory economic activities. Article 29 of the Constitution further stipulates that the government must provide services and financial support for citizens based on public revenues and public participation. This explicit and implicit emphasis on public participation strengthens the legal foundation of PPPs and authorizes executive entities to enter such contracts. Therefore, the principle of legality not only enables the implementation of PPPs but also ensures the protection of all stakeholders' rights within a transparent, legitimate, and legally defensible framework.

Principle of Confidentiality of Participant Information:

A fundamental principle in partnership contracts is the "confidentiality of information," which guarantees the informational, economic, and legal security of participants in PPPs. Adherence to this principle, particularly in high-value investment projects, plays a critical role in attracting private sector trust and encouraging investors to participate. A participant can only trust a public agency and provide financial and technical documents if assured that such information will remain legally protected (Hatami & Karimian, 2014; Setoudeh Tehrani, 2023).

Contract-related information, particularly in sensitive economic sectors, may confer advantages to one party or, if disclosed, cause losses to the other party. Therefore, a primary condition of such contracts is the precise determination of how secrets will

be preserved and the commitment to non-disclosure. This includes financial data, technical plans, contractual terms, or even business strategies. This issue is especially critical during public calls for projects, where disclosure of an investor's information could disrupt competitive conditions (Hatami & Karimian, 2014).

Maintaining confidentiality is not only a contractual obligation but also has legal backing. Article 648 of the Islamic Penal Code criminalizes the disclosure of professional and administrative secrets, prescribing penalties. Additionally, Articles 8 and 9 of the Law on Administrative Violations of Government Employees explicitly recognize the disclosure of confidential information as an administrative violation in clauses 2, 11, 18, and 31. Accordingly, government employees are required to protect confidential information throughout all stages—from the initial call for investment to the final execution of the contract (Hatami & Karimian, 2014).

To reinforce this principle, PPP contracts often include mechanisms such as bank guarantees, contractual insurance, or penalty clauses for disclosure of information. These measures not only create strong enforceability but also provide a secure environment for private sector engagement in construction, service, and economic projects. Ultimately, adherence to the confidentiality principle is both an ethical and legal necessity, safeguarding national interests, preventing administrative corruption, and enhancing public trust in government-private sector collaboration (Hatami & Karimian, 2014; Setoudeh Tehrani, 2023).

Principle of Equality in Partnership Contracts:

Equality in participation is a fundamental principle of public law and a cornerstone of modern democracy. Today, participation is not only regarded as a basic right of citizens but, in many legal systems, is also imposed as an obligation on governments, since the realization of democracy is impossible without ensuring equal participation for all individuals (Isaei Tafreshi & Kabiri Shah Abadi, 2014). Accordingly, the government must avoid discrimination and provide equal opportunities for all members of society to participate, regardless of race, gender, ethnicity, or political and religious beliefs.

The principle of equality is also recognized in international law as a fundamental human rights standard. Documents such as the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* affirm that all humans are equal in dignity and rights and must have equal access to political, economic, social, and cultural opportunities. Based on this principle, participation in public-private partnership contracts must also be founded on equality between the parties. Unlike many administrative contracts, where the government assumes a dominant position, in partnership contracts, the public and private sectors must negotiate and act under equal conditions. The government should not unilaterally impose contractual terms such as the right of termination or amendment of provisions, since the private party may be the primary investor in the project and play an equal or even more significant role than the public entity.

Adherence to the principle of equality prevents corruption, rent-seeking, and discrimination in the selection of public or private partners, while increasing public trust, enhancing economic efficiency, and improving the quality of project execution. It also ensures that all economic actors, regardless of affiliations or political position, can compete fairly and equally in participatory processes.

Principle of Fair Trial in Partnership Contracts:

Fair trial is a fundamental achievement of human civilization and a critical manifestation of justice in modern societies. This principle is essential not only in criminal law but in all legal and administrative proceedings, and neglecting it is subject to serious human rights criticism.

Fair trial is based on the defense rights of the accused, which constitute a set of legal guarantees enabling a transparent and impartial judicial process. Key rights include the presumption of innocence, access to legal counsel, notification of charges, the right to be present at hearings, and the ability to appeal decisions. These rights not only ensure fairness in proceedings but also serve as checks on governmental power.

The presumption of innocence, as the cornerstone of fair trial, stipulates that no one is considered guilty unless their crime is proven in a competent court according to legal procedures and full observance of due process. This principle is also emphasized in international instruments, including Article 14 of the *International Covenant on Civil and Political Rights*.

Fair trial is equally significant in administrative law. Public authorities often hold superior positions relative to citizens, making the observance of neutrality and balance in proceedings even more necessary. While the government can influence proceedings through legislation, regulations, and access to extensive administrative resources, citizens often face a position of

inequality. Therefore, compliance with both procedural and substantive aspects of fair trial in disputes between the government and citizens serves as a measure of social justice and an indicator of judicial development (Kashani, 1986).

Principle of Free Negotiation in Partnership Contracts:

A contract, as a fundamental element in the creation of rights and obligations in legal systems, involves complex and extensive considerations. The formation of a contract requires multiple stages, one of the most critical being preliminary negotiations. These negotiations are particularly important in high-value contracts, as they shape the conditions and content of the agreement and are considered the foundation of the contract (Yāvarī, 2014).

According to legal theory, well-conducted negotiations result in the formation of a contract; however, sometimes negotiations fail due to internal or external factors (Katouzian, 1994). One essential principle in legal systems is contractual freedom, which governs not only the formation of contracts but also the decision not to contract. This principle allows parties to freely decide whether to enter into an agreement without coercion (Yāvarī, 2014).

Freedom of negotiation in partnership contracts is particularly critical, as these agreements require careful assessment of terms, circumstances, and risk-related costs. In partnership contracts, the government or executive agencies cannot impose unilateral conditions; negotiations must be consensual and bilateral (Isaei Tafreshi & Kabiri Shah Abadi, 2014).

If negotiations proceed properly, the parties can reach agreement on key issues, forming the foundation for “win-win” partnership contracts. Especially in participatory projects, supervision of compliance with agreements and designation of responsible individuals during negotiations are essential. In concession contracts, attention must also be given to differences in power and status of negotiating parties, whether public or private. Furthermore, legislative regulations should be considered to avoid limiting negotiation freedom, as such restrictions can disrupt the process. Based on international principles, guarantees should be provided to ensure free and fair negotiations in partnership projects, thereby enabling the execution of successful and high-quality contracts (Kashani, 1986).

6. Conclusion

A partnership contract is an agreement in which natural or legal persons contribute their capital, whether tangible or intangible, as cash or non-cash shares and employ it jointly for a specific purpose in production, commercial, or service activities for a limited period with the aim of generating profit.

Partnership contracts in Iran are recognized as a legal and valid instrument for commercial and economic collaboration. These contracts can bind the parties to fulfill specific obligations either as a one-time arrangement or over time, from both legal and financial perspectives.

This type of contract is used to facilitate cooperation between two or more partners to engage in joint economic activities and to share profits and losses. In civil partnership contracts, typically, each partner’s capital, the nature of the activity, and the method of profit distribution are specified.

The contract involves two or more parties who agree to jointly buy or sell a good or service. In such contracts, the parties must clearly specify details regarding the type of goods, amount, delivery time, and payment method.

Economic partnership plays a vital role in today’s business world, contributing significantly to business development and economic growth. Such cooperation, especially in volatile economic conditions, can be an effective mechanism to reduce investment risks and enhance productivity. One of the most important aspects of economic partnership is the careful selection of a business partner and precise drafting of the partnership contract. Beyond legal considerations, successful economic partnerships require mutual understanding, trust, and commitment of the parties to common goals. Proper management strategies, rigorous financial control systems, and transparent communication between partners can ensure the sustainability and profitability of the partnership.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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