

Basic Principles of Partnership Law in Malaysia

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**BASIC PRINCIPLES OF
PARTNERSHIP LAW IN
MALAYSIA**

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CHAPTER 8

SHIRKAH

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DEFINITION

Shirkah means participation of two or more persons in a certain business with defined amounts of capital according to a contract, in jointly carrying out a business and sharing profit and loss in specified proportion.¹ Shirkah or Musyarakah could be compared with Mudarabah since the latter refers to a situation where two or more persons involved in a business venture where only one of them would involve in running the business.² Shirkah with reference to modern partnership has been described as Shirkah Al-aqd which can be divided into two i.e. Shirkah Mufawadah and Shirkah Al-Inan. However, it should be noted that there are different types of shirkah under the Shariah and the four schools of thought³ had assigned separate rules for each type. Thus a common definition that covers all types of shirkah is difficult to identify.⁴

¹ Muhammad Nejatullah Siddiqi, *Partnership and Profit-Sharing in Islamic Law*, The Islamic Foundation, United Kingdom, 1985 at 15.

² Sleeping partner in modern partnership.

³ Shafie, Hanafi, Hanbali and Maliki.

⁴ Imran Ahsan Khan Nyazee, *Islamic law of Business Organization*, The Other Press, Kuala Lumpur, 2006 at 17.