

A close-up photograph of a hand holding a silver pen, poised to write on a document. The document has several lines of text, which are blurred. A teal-colored overlay covers the top right portion of the image, containing the title and subtitle.

Partnership Agreement

Your questions answered

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Its members are Simon Franklin, Barbara Stewart, Richard Carter, Jane Williams, Giles Dobson, Andrew Ashley-Edwards, Paul Rothwell, Nameeta Gujral & Abdul Mutallib.

What is a Partnership Agreement?

It is a written agreement between the partners of a business which will include contractual obligations between the partners and the framework for the day-to-day running of the business.

What is a Partnership

A partnership is created when there is a relationship between two or more individuals carrying on a business in common with the view of making profit. This is the definition of a 'traditional partnership' which this leaflet will discuss.

There does not have to be an intention by the parties to be, or form, a partnership. No formality is required to create a partnership.

It is not a legal entity (i.e. a separate 'legal person') unlike a limited company.

There are many businesses that may be in operation under this structure and not realise they are operating as a partnership and subject to the governance of the relevant legislation. The existence of a partnership is determined by the facts of the circumstances.

The liability of a partnership is unlimited. This means if something goes wrong you may be personally liable without limitation

Why should I get a Partnership Agreement?

You may find your business being governed by laws which you did not intend and were not aware, through inadvertently creating a partnership.

In the absence of a Partnership Agreement, the partnership is governed by legislation from the 1800's (Partnership Act 1890). As you can imagine, the provisions in the 1890 Act may not be well suited for a modern business.

As there is no formal procedure that needs to be followed to create a partnership, it is important to identify if you have created a partnership with your business structure, and if so, consider creating a Partnership Agreement.

A Partnership Agreement will allow you to control how your business is run rather than leaving it to a law which may not correctly reflect your intentions.

What could a Partnership Agreement include?

Where the Partnership Agreement does not deal with any matter which is covered by the Partnership Act 1890 the relevant provisions in that Act will deal with that matter. It is a good idea to ensure that the Partnership Agreement not only deals with the specific concerns or requirements you have for your business, but also the items which will use statute as a default provision in the absence of other provisions in a Partnership Agreement.

By way of example, if there are no provisions in the Partnership Agreement which deal with the continuance of the partnership following the retirement of a partner, the provision in the Partnership Act 1890 will deal with it by default. The result in this situation would be for the partnership to be dissolved (cease to exist). It is therefore important that the Partnership Agreement deals with matters such as this to avoid potentially detrimental actions being taken where it can be avoided.

Other terms you may want to include in the Partnership Agreement include:

- ➔ Restrictions on partners from engaging with a competitor, dispose of partnership property or deal with any person who the partners have agreed not to deal with. In the absence of this provision any partner may bind all of the partners without prior consultation with the other partners.
- ➔ Requiring a minimum number of partners to be present at a meeting before it can be validly held as well as restrictions on how voting can be carried out.
- ➔ How the profits and losses of the business will be distributed or reduced to reflect particular circumstances should be recorded in a Partnership Agreement otherwise the default position of an equal split will apply.
- ➔ The terms on which drawings from the business are made is down to the partners. Provision can be included to reflect your specific requirements and actions to be taken in the event that the requirements are not complied with.

Can a Partnership Agreement be changed?

Yes. Partners may amend their partnership agreement at any time with the unanimous consent of all partners.

Can new partners become part of the Partnership Agreement?

Yes. A new partner can become bound by the Partnership Agreement and provisions can be set out for how this is effected. This is usually in writing and is something that Martin Tolhurst Solicitors can deal with.

Can existing partners be removed from the Partnership Agreement?



Yes. Provisions can be included to deal with the expulsion, retirement or death of a partner. A partner may choose simply to no longer be part of the partnership and provisions can be included to deal with this.

You can include restrictions on outgoing partners, such as non-compete and non-soliciting restrictions as well as confidentiality requirements.

When should we make the Partnership Agreement?

There is no wrong time to enter into a Partnership Agreement however the best time is before you have commenced business as a partnership or very early in your time as a partnership. It can sometimes be difficult to agree on more contentious matters once a business is already trading so it is best to have everything agreed at the outset so you can get on with what you do best - running your business.

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What should I do first?

Call us and arrange a free no-obligation telephone conversation with one of our experts on partnership agreements. We can discuss your options before you decide how you wish to proceed.

Tel: 01474 546013



Please contact your Martin Tolhurst Solicitor to discuss Partnership Agreements

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