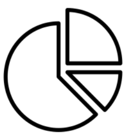
PARTNERSHIP AGREEMENT GUIDE

Three facts about partnership agreements:

a) There is no requirement in law for partners who are carrying on business together to have a partnership agreement. Most business owners see a partnership agreement as a good way of setting out what will happen between them in various scenarios that naturally occur in the life of a business.
b) Without a partnership agreement the business partners have to look to the Partnership Act 1890 – one of the oldest laws still in common use (which usually means having to consult a business solicitor). It can reduce the possibility of expensive and acrimonious disputes in the future.
c) A partnership agreement does not need to be registered anywhere once it has been signed by the partners.

1. Commencement & Duration

A Partnership Agreement is a bit like setting out the “rules of the game”. The Agreement will state when the rules start from and what events will cause a termination or finish for the partnership. A partnership can be perpetual or for a specific term length.



2. Capital Contributions

The Partnership Agreement can recognise any personal loans that are made to start the partnership by the partners and it can specify how and when those loans will be repaid, and if interest is payable. What will happen if the business needs more money?

3. Partnership Property

Property will be held by the partners individually on behalf of the partnership – as the partnership is not capable of taking a lease or buying a property in its own name. The partnership agreement can outline how partnership property is dealt with if one of the partners dies/leaves.

4. Profits & Losses

The partnership agreement will outline how the profits are to be split between the partners, but also how losses are to be accounted for by the partners.

5. Drawings

When will the partners be able to take money out of the business? A drawing is generally a cash distribution on a regular reoccurring basis similar to a paycheck, without any taxes withheld. It’s considered an advance payment of profits from the partnership business to the partners. As partners are the owners of the business, any amounts that are paid to them under the partnership agreement are part of their share of the profit. Charging interest on drawings is a means of discouraging partners from withdrawing excessive amounts from the business.

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6. Current Accounts

In practice, however, it is convenient to separate the amount invested by the partner (the capital account) from the amount they have earned through the trading activities of the partnership (the current account).

7. Meetings & Voting

Consider how you will make decisions, especially in those cases when it's an important topic and there is no consensus. If agreement cannot be reached then the partnership will not be able to move forward. Therefore, you need to establish who holds decision-making powers and how disputes will be settled in advance so your business operations can move along smoothly.

Who can bind the partnership? Generally speaking, any partner can bind the partnership without consent from the others partners. Imagine if your partner, without your knowledge, signed a contract that you couldn't get out of? Take time to clarify what type of consent a partner must obtain before they can bind the other partners to

8. Roles and responsibilities of Partners

This section is very important and should specify exactly what each partner is expected to do. The roles and responsibilities will vary depending on the partnership but you need to think very carefully about all the different roles and who is responsible for them. This may include non-compete provisions.

9. Joining or Leaving the Partnership

When a new partner is admitted to the partnership, the new partners effectively buy the assets of the old partnership from the old partners. The admission of a new partner will also mean that the profit/loss sharing ratio will change. What happens if one partner dies or wants to leave the partnership? To manage these situations you need a method by which the partnership interest can be valued and the interest purchased either by the partnership or individual partners.

10. Expulsion

Clarify what happens in case of a breach of the partnership agreement by a partner. If such a breach occurs in bad faith, the penalty is usually the immediate and total return of the partner's partnership share. The purchase price can be fixed by an expert or through a method set out in the agreement.

Perhaps also include a mediation clause in your partnership agreement which will provide a procedure by which you can resolve major conflicts between partners.

What to do next?

A good partnership agreement starts from £2,500 + VAT.

If you know what you want to do (or even if you and not yet sure) email David Hughes, who can arrange a phone call, or video chat to discuss your requirements.

A draft partnership agreement takes about a week or two to prepare, plus whatever time you need to discuss the draft internally between the partners.

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