

Introduction

Partnerships are a popular business structure. In simple terms, a partnership exists when a business is run by at least two people or companies who agree to share (in at least some degree) the risks and rewards of the business.

Forming a partnership can bring new skills into the business, allow the workload to be shared, which might enable each partner to specialise in their own area of the business, as well as cover for other partners' absences through holiday or illness.

More finance can be raised via a partnership, through capital contributions of the partners and the greater chance of securing other sources of funding, such as bank loans.

However, unless the partnership is a limited liability partnership or 'LLP', each partner is responsible for the others' partnership debts.

Due to this liability, it is wisest to go into partnership with people you trust. However, things can still go wrong and business partners may fall out, which is why you should draw up a partnership agreement before you start.

An English general partnership is not a separate legal entity: it is a collective of its partners. This contrasts with an LLP, which like a company, has a separate legal identity. This guidance largely concerns general partnerships - separate advice should be obtained regarding LLP's and limited partnerships.

What is a partnership agreement?

A partnership agreement enables you to structure your business in the way that is most suitable to you and your partners. It also defines the share of the profits and losses, responsibilities and rights for each partner.

It is always best to use a solicitor when drawing up an agreement, to ensure you receive the right advice before defining your level of commitment to the business.

Any issues not included within the agreement will be determined by the statutory rules, which may be impractical or inappropriate for your business.

It is important that all the partners are present when the partnership agreement is created and that they all sign to confirm they understand and agree to the terms it contains.

Why should we have a partnership agreement?

The primary purpose of a partnership agreement is to protect the partners' investment in the company and to establish a fair relationship between them.

Disagreements will occur in any partnership, which can result in partners dissolving the business if the difficulty cannot be resolved. A partnership agreement tackles all the issues that may occur and sets out the actions that will be taken to solve them.

Without an agreement, conflicts will be settled according to the Partnership Act, 1890. This allows parties to terminate their partnership and as a result dissolve the entire partnership by simply giving notice to that effect. Notice does not even have to be in writing.

What should be contained in a partnership agreement?

A partnership agreement sets out detailed and practical rules for the business and its partners, and will generally cover, among other things:

- **The name of the business and its partners:** the agreed trading name of the business and the full names of all the partners
- **Commencement of the partnership:** the exact date when the partnership begins
- **The nature of the business:** a brief description of what your business offers, for example the products you make or sell or the services provided
- **The business location:** a list of all the addresses that the business will be run from.
- **Investment:** the initial amount of capital invested in the business by each partner
- **Ownership:** the percentage of the business each partner owns, (owning a smaller percentage does not make a partner less liable)
- **Contribution:** what each partner will bring to the business, whether it be premises, use of their car or their home computer in emergencies
- **Job description:** the role each partner will play in the business and whether they will work full or part-time
- **Decision-making and voting rights:** outlining circumstances where a joint decision will be required and the action to take if the partners can't agree
- **Profit-sharing:** how the profits will be shared, when the partners can withdraw this money and any reinvestment back into the business
- **Drawings and expenses:** the amount of money each partner can draw from the business and the limit on the amount of expenses that can be claimed
- **Liability sharing:** the level of liability each partner will be responsible for
- **Bank account and account management:** the name and address of the bank and any terms related to managing the account or interacting with the bank
- **Accounts:** the date to which the partnership's annual account will be prepared, when they will be completed and by whom.

- **Holidays:** the number of days each partner can take off while receiving full pay
- **Illness and maternity/paternity:** what will happen if one of the partners falls ill or has an accident, making them incapable of doing their work, and the terms for maternity or paternity leave or other special leave, for example after a bereavement
- **New partners:** the terms and conditions for partners joining, their level of investment and their rights and benefits for doing so
- **Retirement:** what the retirement package will be for the partner leaving and how the business will continue to be run
- **Dissolution:** how the business will be split between the partners if it ceases to trade
- **Death:** how to split a partner's share in the business if they die
- **Unfair competition:** what type of employment a partner can go into if they leave, especially in terms of not being in direct competition
- **Expulsion:** under what circumstances a partner can be expelled from the partnership and any payout they will receive

Every business and every partnership is different so although partnership agreements may contain the same basic elements, they need to be tailored to individual circumstances.

By seeking the advice of solicitors experienced in this area of law, you'll receive expert advice on how the right partnership agreement can benefit your business and ensure that your agreement is drafted to your specific needs.

To find out more about how we can help you, please contact us on 0117 906 9400 or email enquiries@gregglatchams.com