

# Are You Considering a Partnership?

If you have already decided that the appropriate structure for your business is a partnership, it is recommended that you consider a formal partnership agreement to govern arrangements between the partners.

If you want to know more about different business structures, then read about the different business structures in our **Small Business Legal Guide**.

The following is a list of questions to answer when drafting a partnership agreement. The list is not exhaustive and you should seek specialist professional advice before entering into any business arrangement with others.

## **When will the partnership commence?**

### **What will be the duration of the partnership?**

These points should be included in the agreement, particularly if the partnership is for a set period only.

### **How will partnership land be held?**

If the land is already owned by one of the partners, will the land be transferred to all the partners or held in trust for the partnership? Or will a lease be granted to the partnership? Normally an agreement would be drawn up to allow the partnership to lease the land/buildings from the partner/owner.

### **If the place where the partnership business will be carried out is already leased by one of the partners, will the lease be assigned to all partners?**

Usually, the lease is rewritten or assigned to the new partnership as lessee.

### **Will separate accountants be appointed to draw up the partnership accounts?**

It is advisable to engage an accountant to attend to the affairs of the partnership who is NOT the accountant used by any partner for their private affairs.

### **Will there be any prohibition on partners assigning or changing their interest in the partnership?**

It is essential to have these points clearly defined in the partnership agreement.

### **In what proportions will profits and losses (including capital and losses) be shared?**

### **Will any partner be entitled to draw sums on account of profits?**

The usual practice is for all partners to work equal hours and profits and losses to be distributed equally. Partners would normally take equal drawings per month against profits.

**If one partner decides to sell his/her interest, how is the business valued? Do other partners get the right of first refusal?**

Partnership agreements should detail the method of valuing the business and whether the right of first refusal to other partners, either singularly or collectively, will be applicable.

**In what proportions will capital be contributed and belong to the partners? Will capital carry interest?**

In the great majority of partnerships, all members contribute an equal amount of capital, which does not carry interest.

**If a loan from a partner is contemplated, what will be the terms of the loan?**

This could be covered in the partnership agreement, usually stated as at current bank lending rate for business loans.

**Is it understood that all partners are jointly and severally liable to the full extent of their private assets for debts of the partnership?**

In this regard, a partner who has more private assets than the other partner/s has more at risk. All partners should check their individual liability in relation to partnership deals with their own solicitor.

**Will the majority decisions of partners govern all matters?**

This could apply, however, in large partnerships to maintain harmony. A consensus of all partners may be appropriate for major decisions.

**What happens if there are two partners and they disagree?**

Generally in this situation, the status quo would prevail.

**Are partners required to insure each other for the protection of the remaining partner/s in the event of the death of a partner?**

Worth considering. This is one method used to finance the purchase of a deceased partner's equity.