

Partnership Agreements

Overview

A partnership is a contract between persons to carry on a business in common. The terms of the agreement decide the legal rights and obligations of the partners. The Partnership Act 1890 (which is the same Act in force in Ireland), determines what rules applies on particular matters, if nothing is stated to the contrary in a Partnership Agreement. There are some fundamental rules in the Partnership Act which cannot be changed by the term of a partnership agreement.

A partnership agreement is desirable in order to ensure that the default Partnership Act rules, which may be inappropriate to the circumstances, are changed. A partnership agreement need not be in writing. However, a written partnership agreement is desirable from the perspective of certainty.

A partnership agreement should reflect the particular circumstances, needs and relationships of the partners. A partnership arrangement can vary from groups of individuals who come together as equals to a partnership of senior partners holding most, if not all, equity and a number of junior partners. There would be fundamental differences between both that would be reflected in differences in relation to allocations of profit, capital, and voting rights.

Fundamental Matters

A partnership must be for the purpose of a business. The partnership agreement should specify the partnership name, the nature of the business and the duration. A partnership may be perpetual, for the joint lives of individuals or for a fixed term. It is desirable to

provide that the partnership continues beyond the retirement or death of individual partners.

There is a duty on partners to act in good faith to the other partners and to disclose all matters relating to the partnership. Partners owe each other fiduciary duties. They are not entitled to make a secret profit in their dealings with outsiders. A partner must account for all fees and commissions received by him, while a partner. A partner is obliged to use due care and skill in the conduct of the partnership business.

The Partnership Act provides that a partnership is dissolved by the death of a partner. It is usual to provide for the death of a partner in the partnership agreement so that there is no automatic termination. There may be provision by which the surviving partners may or must buy out the deceased partner's share. Insurance may be held to finance this obligation or option. A number of variations exist.

Is desirable that the agreement should contain provision for expulsion of a partner in serious breach of its obligations. The agreement should specify breaches which are sufficiently serious to justify expulsion. There should be provision for hearings and fair procedures

Financial Provisions

The partnership agreement should specify what capital contributions are to be made by the partners. Property may be contributed by the partners. Property may be transferred to the partners or could be leased, licensed or made available in another way. Contributions of assets should be expressed in money. Assets should be valued and the value should be expressed in the accounts.

Funds contributed by partners in excess of their agreed capital contribution, will generally be by way of a loan. There is favourable taxation treatment for loans by partners to partnerships, both under Irish and UK tax law.

Unless it is agreed to the contrary, the profit and losses of the partnership business are

to be shared equally. Therefore, it is usually necessary to set out the actual partnership shares and profit sharing ratios in the Partnership agreement. There is complete flexibility in defining the profit and capital sharing arrangements.

The profit sharing ratios may, for example, be fixed percentages. There may be a provision allowing a junior partner an increasing share over time. The share split may be decided annually and allocated by an equity committee or by a senior partner. A points basis may be used, depending on factors such as length of service, earnings etc..

Management

In the absence of agreement to the contrary, each partner is entitled to participate in the management of the partnership. This may not reflect the particular needs and circumstances of the business. For example, a dormant or sleeping partner would not normally have management rights on a day-to-day basis.

The voting rights of partners in making key the decisions should be set out. The general rule is that decisions are made by majority vote, in accordance with the value of the partnership shares. It may be desirable to provide that certain important decisions require the consent of all partners.

Day-to-day management may be delegated to a manager who may work in accordance with the guidelines or under the direction of the partner or a committee of the partners. Some businesses provide for an executive committee to manage or supervise the management of the partnership business.

Partners should undertake obligations in relation to the provision of services for the partnership. They may agree to commit to spend substantial or minimum time working in the business. There are usually provisions preventing partners competing with the partnership. There is usually a restrictive covenant prohibiting and restricting certain dealings by partners which may damage the partnership after they cease to be partners.

Common Terms and Provisions

The following are matters which are commonly dealt with in partnership agreements

- Duration
- Duties and obligations of the partners
- Authority and responsibilities of the partners
- decision-making procedures, including partners meetings, quorum
- duty to provide services, salary, holidays and absence
- ownership and use of partnership assets
- capital and loan contribution
- return on capital
- profits and loss sharing ratios
- withdrawal of capital
- discretionary profit share
- accounts, accounting procedures, rights of access to books
- pensions
- insurance
- retirement
- death and purchase out

- discipline and expulsion
- withdrawal of capital
- termination and winding up
- dispute resolution

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.