

SETTING UP AND REGISTERING A PARTNERSHIP

Types of partnership

There are a number of types of partnerships under English law. Two types are identical to the types of partnerships found in Ireland. The third type, a limited liability company (known as an LLP), is unknown in Ireland and is a hybrid of the traditional type of partnership and a company. See our separate note on LLPs. This note concentrates on the traditional type of partnerships.

Ordinary (Unlimited Liability) Partnerships

An ordinary partnership is an agreement or arrangement between individuals who undertake business in common. The partnership is not a separate entity to its members. It is not taxed in its own right nor can it hold property or be sued in its own name. Instead, a partnership is simply the individuals concerned, acting collectively. One partner may bind the other partners. However, all that exists from a legal perspective is the individual partners.

The Partnership Act and / or the partnership agreement define the relationship, rights and obligation of the partners. The Partnership Act 1890 (the same Act as applies in Ireland) provides default rules which apply unless the partnership agreement states otherwise. These can be inappropriate in many, if not most particular circumstances. Therefore a partnership agreement is generally desirable.

A partnership agreement is a legally binding agreement between the partners. A partnership can be formed informally, but it is advisable to have a professionally drafted agreement. The agreement can avoid misunderstandings and disputes. It does not have to be registered in public.

A modern partnership agreement can provide for certain matters which experience shows, are not adequately dealt with under Partnership legislation. Moreover, the

particular circumstances of partners can be catered for in a partnership agreement in a way that the one size fits all Partnership Act, 1890 is not likely to achieve.

A partnership agreement should specify the capital and other monetary contributions made by each partner. It should specify the respective shares in which profits and losses are taken. It should specify salaries and working arrangements. It should specify procedures regarding crucial decisions such as admission of new partners, borrowing and significant expenditure etc.

Liability of Partners

Partners are personally liable for the debts and obligations entered by the partnership. Each partner is liable for the wrongful acts and omissions of other parties within the scope of the partnership business. Irrespective of the partners' profit and liabilities sharing ratios, each is liable to third parties for all partnership debts and obligations.

The partnership assets are available to meet partnership liabilities and obligations. If there are insufficient assets, the personal assets of the partners can be pursued by creditors. If there are insufficient partnership assets, the partners personally, must pay the partnership debt or obligation to a third party from their own resources. A partner who pays disproportionately to his fellow partners, he may claim a contribution from his fellow partners.

Some Consequences of Partnership

The Partnership Act contains some statutory obligations which cannot be overridden and which will automatically apply.

Partners must act in good faith in their dealings with one another. They have so called "fiduciary" duties. This means, for example, that a partner cannot take advantage of his position as partner to make a secret profit.

Each partner is deemed by law to be the agent of all other partners. Therefore, irrespective of what the partnership agreement says, the acts of a partner in the course

of business are those of the firm and they are legally binding on the other partners, unless the third party is aware of the lack of actual authority.

Taxation of Partners

Partners share the profits and losses of the partnership business directly. They are therefore directly assessed for tax of their proportionate part of the profits or losses, as the case may be. This applies to partnerships, limited liability partnerships and LLPs.

Where a partnership has employees, it will need to register for PAYE and collect and pay income tax and National Insurance contributions on their behalf.

A partnership must appoint one of its officers to make the partnership tax returns. Each partner must complete his own partnership statements and make his own personal tax returns including full partnership income, capital gains and losses. This is in addition to the partnership returns. As self employed persons, partners are responsible for their own National Insurance contributions and income tax. They must each register with HMRC.

Limited Liability Partnerships

The Limited Liability Partners Act 1907 which is in force in Ireland and the United Kingdom, allows for a limited liability partnership in which there is a general partner with unlimited liability (which can be a limited liability company) and other limited liability partners.

The limited partners cannot participate in the management of the partnership without losing their right to limited liability. Accordingly, this mechanism may not be suitable for undertakings, may only be suitable for undertakings where the participants are passive investors.

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.

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