



## WHY HAVE A PARTNERSHIP AGREEMENT?

Many businesses operate as a partnership without realising the implications of doing so. Just because your business is not called a partnership and does not have a partnership agreement does not mean that it will not be deemed to be a partnership by a court.

In order to for a partnership to exist, there simply needs to be “persons carrying on business in common with a view to profit”.

The Partnership Act 1890 (Act) governs partnerships in the absence of a written agreement between the parties and, as you might imagine for an Act that is over 120 years old, does not cater for modern business needs.

The Act sets out what will happen in various circumstances in the absence of a partnership agreement:

- Every partner in a firm is liable jointly with the other partners for all the debts and liabilities of the firm while he is a partner.
- Every partner is jointly and severally liable for wrongful acts or omissions of any partner.
- Any act or document relating to the business of the partnership done or executed in the firm’s name by a partner is binding on the firm and all the partners.
- Any partner can dissolve a partnership by serving notice on the other partners.
- Death or bankruptcy of any partner will automatically terminate the partnership.
- All partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses sustained by the partnership.

As you can see from the points above, the provisions of the Act will not suit most partnerships. A partnership should have a partnership agreement, signed by all the partners, to set out how the partnership is to be run and to provide what will happen in certain circumstances. Although this may seem expensive and time consuming in the short term, it may prevent more costly argument and uncertainty in the long term. A partnership agreement should cover the following matters:

- Name and commencement date of partnership.
- Capital contributions made by each partner and future contributions.
- Shares in income profits/losses.
- Drawings.
- Ownership of assets.
- Decision-making.
- Duration of partnership.
- Retirement/expulsion.
- Payment for outgoing partner’s share.
- Restrictive covenants following departure.

For further information on partnership agreements or any other company commercial matter, please contact Will Bankes – 01492 860420 or [william.bankes@gamlins.com](mailto:william.bankes@gamlins.com)

*This information is for general guidance only. Specific advice should be obtained in all cases. Gamlins Solicitors LLP is regulated by the Solicitors’ Regulation Authority*

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