

Partnership Formation Checklist

1. Parties

- 1.1 Full names and addresses of all intended partners.
- 1.2 Professional qualifications required to remain a partner.

2. Business

- 2.1 Is the partnership new or a continuation of an existing partnership?
- 2.2 If there is a continuation of a pre-existing business, how are capital and assets to be treated?
- 2.3 Is the current business terminating prior to a new partnership commencing?

3. Firm name

- 3.1 Ensure compliance with the Business Names Act 1985.
- 3.2 Ensure that any professional restrictions or requirements are adhered to.

4. Commencement

- 4.1 When did the partnership actually commence or when it is intended that the partnership will commence.

5. Duration

- 5.1 What period is the partnership to run for? Is it to be definite or indefinite?
- 5.2 What events are intended to bring about termination of the partnership (e.g. death, retirement, expulsion or bankruptcy)?
- 5.3 Is loss of professional qualification to bring about termination?

6. Duties and responsibilities of partners

- 6.1 Is there to be a senior or managing partner?
- 6.2 Is there to be a management committee or executive board?
- 6.3 Are all the partners to devote their whole time and attention to the practice or are there any exceptions?
- 6.4 Are any partners allowed limited obligations in order to attend to other activities?

7. Restrictions on partners' authority

- 7.1 Are restrictions to be applied to all the partners?
- 7.2 Are there to be restrictions concerning:
 - 7.3 The engagement and dismissal of employees?
 - 7.4 The incurring of liabilities on behalf of the firm?
 - 7.5 Cheque signing?
 - 7.6 Ordering goods?
 - 7.7 Dealing with partnership assets?

Partnership Formation Checklist

8. Decision making

- 8.1 Are there to be regulations to govern delegated management?
- 8.2 What decisions are to be delegated?
- 8.3 What decisions and voting rights are to be settled?
- 8.4 What meetings are to be held and how frequently?
- 8.5 Indicate any quorum that may be required.
- 8.6 Is the senior or managing partner to have a casting vote?
- 8.7 Specify which matters require unanimity or other special majority.

9. Holidays and absences

- 9.1 What holiday entitlement is there to be?
- 9.2 What rotation or priority is there to be between partners?
- 9.3 Are sabbaticals to be allowed and on what terms?
- 9.4 Are female partners to be entitled to extended (more than statutory) maternity leave and what terms are to apply?
- 9.5 Are holidays, sabbaticals and maternity leave to be covered at the expense of the partnership or are individual partners to arrange cover at their own expense?

10. Partnership property

- 10.1 What will comprise the partnership assets?
- 10.2 What are the existing assets?
- 10.3 Are the assets to be owned by the partnership absolutely?
- 10.4 Are there any special terms and conditions affecting use or enjoyment of any of the assets?

11. Capital

- 11.1 How much capital is to be introduced and how is this to be calculated? 11.2 What rules govern the introduction of additional capital?
- 11.2 Consider provisions for interest on capital.
- 11.3 How are capital profits and losses to be handled?
- 11.4 How is withdrawal of capital to be managed?

12. Profits and losses

- 12.1 How are basic shares of profits and losses to be settled? Is equality to apply, or some other proportions?
- 12.2 How are fractional shares to be expressed, as percentages, fractions or points?
- 12.3 Is there to be any element of discretionary profit share and how is this to be administered?

Partnership Formation Checklist

- 12.4** Is any partner to have a first slice of profit other than in the basic proportions? 12.5 What are the partners' entitlements to drawings?
- 12.5** Clarify the basis of sharing losses.
- 13. Bank accounts**
- 13.1** Identify the partnership bank.
- 13.2** Identify bank mandate and cheque signing arrangements and protocols.
- 13.3** Are there any professional rules relating to banking arrangements and handling of client money?
- 14. Accounts**
- 14.1** Confirm the year end.
- 14.2** Confirm where the books of the firm are to be kept.
- 14.3** Confirm access of all partners to books and accounts.
- 14.4** Identify procedures for preparation and approval of annual accounts.
- 14.5** Are there any periodic or management accounting requirements?
- 14.6** Are there any audit requirements or other professional rules regulating the Preparation and disclosure of accounts?
- 15. Pension provision**
- 15.1** Is an express requirement for individual partners to make pension arrangements required?
- 15.2** Is the partnership liable in respect of any annuity contracts for former retired partners?
- 16. Insurance**
- 16.1** Is insurance required as a condition of practice?
- 16.2** Identify what assets and risks are to be insured.
- 16.3** Are partners to effect personal health and life insurance and on what basis?
- 17. Retirement**
- 17.1** Clarify notice requirements.
- 17.2** Is there to be any age or circumstance giving rise to compulsory retirement?
- 18. Expulsion**
- 18.1** Identify the events which would be material breaches of the partnership agreement giving a right to expel.
- 18.2** What notice provisions are to apply?
- 18.3** What special majority is to be required to carry a resolution to expel?
- 18.4** What procedures and hearings (if any) are to be adopted in the expulsion process?

Partnership Formation Checklist

19. Consequences of termination

- 19.1** An option to acquire an outgoing partner's share must be considered. 19.2 Consider provision as to termination accounts.
- 19.2** What are the terms for withdrawal of capital and payment of profit share?
- 19.3** What are the terms for payment of entitlement by instalments and interest provision?

20. Dissolution and winding up

- 20.1** Are any partners or majority of partners to have the right to dissolve the firm on notice?
- 20.2** What rules are to govern the manner of the winding up? Is the Partnership Act 1890 to apply?

21. Arbitration/Dispute resolution

- 21.1** Consider the alternatives of:
- Arbitration
 - Mediation
 - Reference to independent expert to determine.

22. Indemnities

Consider the use of indemnities amongst partners for any breaches, or damages or costs or claims that arise in the event of breach.

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