

## Partnership agreement — formation checklist

### **1 Parties**

- 1.1 Full names and addresses of all intended partners.
- 1.2 Do any partners need to be approved by any regulator before appointment?

### **2 Commencement**

- 2.1 Has the partnership business already commenced operations?
- 2.2 If so, to what date should the agreement refer for the deemed commencement of its terms?
- 2.3 Are there any pre-formation contracts which may need expressly to be ratified?
- 2.4 Do any partners need an indemnity in respect of such contracts?
- 2.5 If the partnership has not commenced, when is it to do so?

### **3 Nature of business**

- 3.1 What is the nature of the business?
- 3.2 Is there a pre-existing business which is being transferred into the partnership?
- 3.3 If so, is there any element of the previous business which is to continue separate from the new partnership?
- 3.4 Is the partnership to have the freedom to undertake other businesses?

### **4 Duration**

- 4.1 Is the partnership intended to be indefinite?
- 4.2 If so, is it to be referred to in terms of the joint lives of the partners?

- 4.3 If so, is that to be all the partners, or merely some?
- 4.4 If some, which?
- 4.5 If the partnership is to be a finite term, is that to be defined by:
  - 4.5.1 a term of years: if so how long and commencing when?
  - 4.5.2 reference to some external event: if so what?
  - 4.5.3 completion of a particular task or venture: if so how is this to be defined?
- 4.6 Are any of the events which, by statute, normally give rise to termination (eg death, bankruptcy etc) to be excluded from having that effect?

## **5 Name of partnership**

- 5.1 What is to be the name of the partnership?
- 5.2 Are there any professional restrictions upon the choice, and if so have they been complied with?
- 5.3 Are any subsidiary names to be used, for which the above questions will be relevant?

## **6 Property**

- 6.1 What are the addresses of the property or properties from which the business is to be carried on?
- 6.2 In respect of each such property:
  - 6.2.1 is it freehold or leasehold?
  - 6.2.2 in whose name(s) is it?
  - 6.2.3 do those persons hold the interest in the property on trust for the partnership?
  - 6.2.4 if not, upon what terms is the partnership to be able to occupy the property?

- 6.2.5 are those terms to be recorded in the agreement, or in any other documentation?
- 6.2.6 is any transfer or assignment proposed?
- 6.2.7 if so, are any consents needed?
- 6.2.8 if so, what steps are being taken to identify whose consent, and to obtain them?

## **7 Chattels & other property**

- 7.1 Are all chattels to be used by the firm its own property?
- 7.2 If not, whose property are they?
- 7.3 Upon what terms are they to be used?
- 7.4 What intellectual property is to be used by the firm?
- 7.5 Whose property is this?
- 7.6 Upon what terms is it to be used?

## **8 Accounts**

- 8.1 What system is to be used for the keeping of the firm's accounts?
- 8.2 Where are the books of the firm to be kept?
- 8.3 Are there to be any limits of a partner's ability to inspect and copy the books?
- 8.4 Who are to be the firm's accountants?
- 8.5 What is the accounts date of the firm to be?
- 8.6 If the firm is to be the successor to another business, what provisions are to be applied to such intangible items as goodwill, and work in progress?
- 8.7 Is goodwill in any event to be expressly excluded from the accounts?

## **9 Bank arrangements**

- 9.1 What bank(s) is the firm to use?
- 9.2 What bank accounts will the firm need to operate?
- 9.3 What procedures and authorities will be needed to operate the bank accounts?
- 9.4 In particular, what are the obligations to be, eg as to a need for authority from more than one partner, in respect of:
  - 9.4.1 the signing of cheques?
  - 9.4.2 the giving of verbal or written instructions for electronic transmission of funds?
  - 9.4.3 the direct inputting of such instructions via the firm's own terminal?
- 9.5 May the obligations differ as the value of cheques etc increases?
- 9.6 Do professional regulations restrict who can give any banking authorities?

## **10 Capital**

- 10.1 What initial capital contributions are the partners to make?
- 10.2 If any of those contributions is to be in a non-monetary form, how is its value to be measured and recorded?
- 10.3 Is capital being introduced from a predecessor business?
- 10.4 If so, is its value to be indicated by and transferred from the books of account of that business?
- 10.5 If so:
  - 10.5.1 upon what date are those accounts to be taken?
  - 10.5.2 are the transferred assets to be revalued, or simply transferred at book value?

- 10.5.3 what is to be credited as 'capital' – all funds being transferred or merely the capital accounts?
  
- 10.6 Are separate capital and current accounts to be maintained in the partnership's books?
  
- 10.7 Is the partnership to have the right to:
  - 10.7.1 make calls for further capital contribution?
  
  - 10.7.2 make repayments of capital?
  
- 10.8 If so, upon what terms?
  
- 10.9 Is interest to be paid on capital?
  
- 10.10 If so:
  - 10.10.1 at what rate?
  
  - 10.10.2 are payments to be annual, or at more frequent intervals?
  
  - 10.10.3 is it to be calculated on the potentially fluctuating amounts of capital, or merely the balance on the first, or last, day of the year?
  
- 10.11 What is the process to be for considering whether to capitalise excess and undrawn profits?
  
- 10.12 If, on a winding up, there is a surplus after all debts are paid and capital returned, in what proportions is that surplus owned?

## **11 Current accounts**

- 11.1 Are tax reserves to be made?
  
- 11.2 Are there any payments to be made to third parties (eg insurance premiums) to be treated as drawings?
  
- 11.3 Are any other types of payment to be debited against current accounts?

- 11.4 Are the current account balances at the year end to be:
  - 11.4.1 paid out in cash to partners,
  - 11.4.2 transferred to partners' capital accounts, or
  - 11.4.3 allowed to remain as opening balances for the following year?
- 11.5 Are partners (in default of other agreement) who are in deficit once the year-end current account figures are known, to be:
  - 11.5.1 automatically obliged to repay overdrawn profits, or
  - 11.5.2 subject to a potential notice requiring them to repay, and
  - 11.5.3 are they to be obliged to pay interest on any such overdrawn amount?

## **12 Drawings**

- 12.1 What is to be the frequency with which normal drawings may be taken?
- 12.2 Is the initial amount of such drawings to be specified in the agreement?
- 12.3 If so, what are the relevant figures?
- 12.4 What process is there to govern the situation where cash problems may require a reduction in drawings?
- 12.5 Does variation of the drawings level require a special resolution?
- 12.6 If tax reserves are to be made,
  - 12.6.1 who decides upon the rate?
  - 12.6.2 are the reserves to be merely notional, or will funds actually be transferred to separate accounts?

## **13 Profits and losses**

- 13.1 Are there to be any prior shares of profit payable to certain partners, by way of a charge on profits, as an equivalent to a 'salary'?
- 13.2 If so, how are they to abate if the payments due exceed the actual profit made?
- 13.3 If both interest and 'salaries' are to be provided for, which is to take precedence in the event that there is insufficient profit to pay for both in full?
- 13.4 What are to be the underlying profit shares?
- 13.5 Are the same sharing arrangements to apply to losses?
- 13.6 Are the same proportions to apply to capital profits and losses as apply to trading profits and losses, or will the former follow the ratios of capital account balances held?
- 13.7 What provisions are to apply to entitlement to profits of a partner who is ill for a lengthy period?
- 13.8 Are there any provisions in place to provide insurance cover for such a partner, and if so:
  - 13.8.1 what is the 'trigger period' of illness which must elapse before payments are made under such a policy, and
  - 13.8.2 what amounts of payment will come from the policy?
- 13.9 What is to happen to the profit entitlement of a partner who is absent for a length of time without illness or leave justification.

## **14 Partners obligations**

- 14.1 Are all partners to be obliged to devote full time and attention to the business of the partnership?
- 14.2 If not, and part-time involvement is to be permitted

- 14.2.1 are all partners to have the right to work part time,
- 14.2.2 what is the extent of their time commitment to be, and
- 14.2.3 can they opt in and out of such status?
- 14.3 Are any partners to be 'sleeping' partners, with no obligation for time input?
- 14.4 Are partners to be obliged to comply with any quality assurance standards?
- 14.5 What obligations are there to be in respect of disclosure of the investment and other interests of partners and their families, in order to avoid conflicts of interest?
- 14.6 Are partners to be prohibited from assigning or charging their interests in the partnership?
- 14.7 Are partners to be obliged to provide for their retirement by making contributions to a pension fund?
- 14.8 If so:
  - 14.8.1 what is the level of payments to be?
  - 14.8.2 is the identity of the pension fund holder to be specified?

## **15 Leave**

- 15.1 What is the normal holiday entitlement of partners to be?
- 15.2 Are there to be any particular provisions for clearing holiday dates, or avoiding clashes with other partners etc?
- 15.3 Are there to be any provisions as to carrying holiday entitlement over from year to year?
- 15.4 Is there to be a maximum length of holiday which can be taken at one time without specific consent?



- 15.5 Are there any female partners for whom maternity leave provisions should be made?
- 15.6 If so:
- 15.6.1 is the extent of that entitlement to be analogous to the statutory entitlement of staff?
- 15.6.2 are there to be requirements for the timing of the partner's return to work?
- 15.7 What is to be the profit entitlement of any partner on maternity leave?
- 15.8 Are there to be any provisions for contractual entitlements to leave analogous to the statutory provisions for staff in respect of:
- 15.8.1 adoption leave?
- 15.8.2 paternal leave?
- 15.8.3 parental leave?
- 15.8.4 leave for family emergencies?
- 15.9 If any such types of leave are to be provided for, what is to be the profit entitlement of any partner taking such leave?
- 15.10 If it is necessary for the partnership to hire a locum for any period, to cover a partner's leave, is that to be an expense of the firm or to be deducted from the current account of the partner in question?
- 15.11 Are partners to have any rights analogous to the flexible working entitlement of staff?

## **16 Management**

- 16.1 What is to be the normal frequency of partners' meetings?
- 16.2 What number or proportion of partners may requisition an extraordinary partners' meeting?

- 16.3 Must written notice of a meeting be given, and if so:
  - 16.3.1 who is to give the notice?
  - 16.3.2 what is the minimum period of notice to be?
  - 16.3.3 may the partners agree to abridge that period?
  - 16.3.4 must the resolutions to be considered at the meeting be specified in an agenda sent with the notice?
- 16.4 Can a written resolution have the same force as one passed at a meeting?
- 16.5 Who is to chair the meetings?
- 16.6 What quorum is to apply to meetings?
- 16.7 Will some sorts of decision require a special resolution rather than a simple majority, and if so:
  - 16.7.1 will they require unanimity or a specified majority?
  - 16.7.2 if a specified majority, what is that to be?
  - 16.7.3 will partners other than those present and voting be included in the calculation?
  - 16.7.4 what will the nature be of the decisions which need this extra layer of endorsement?
  - 16.7.5 if the motion is for eg the expulsion of a partner, will his vote be excluded?
- 16.8 Is proxy voting to be permitted?
- 16.9 In the event of deadlock, is a named partner to have a casting vote?
- 17 Limitations on partners' authority**
  - 17.1 Are there to be any general limitations on the authority of individual partners?

- 17.2 Is there to be a limit of authority for the amount any partner can spend without specific consent?
- 17.3 Are there to be any such limitations on specific partners (eg if they cannot undertake certain types of work)?
- 17.4 If there are to be any such limitations:
  - 17.4.1 do any third parties need to be made aware of them?
  - 17.4.2 how is such information to be conveyed to those third parties?

## **18 Indemnity for partnership expenses**

- 18.1 What procedures are to apply to the vouching of expenses reclaimable by partners?
- 18.2 Are there to be any upper limits on the partners' rights to recover certain types of expenditure?

## **19 Cars**

- 19.1 Should the agreement provide for what the partnership is to do in respect of cars used by partners?
- 19.2 Is the partnership to buy or lease in its name the cars to be used by the partners?
- 19.3 If so:
  - 19.3.1 is there to be a maximum sum payable for the cars?
  - 19.3.2 if so, what is that to be?
  - 19.3.3 can partners top up the amount so provided from their own funds if they wish?
  - 19.3.4 with what frequency are cars to be replaced?
- 19.4 If the partnership does provide partners with cars, or if it agrees to pay expenses for the use of partners' own cars, which of the following are payable:

- 19.4.1 insurance,
- 19.4.2 vehicle licence,
- 19.4.3 servicing and general maintenance,
- 19.4.4 repairs,
- 19.4.5 fuel?
- 19.5 In such circumstances, are partners to compensate the firm at all for private mileage?
- 19.6 If so, how is this to be assessed and implemented?
- 19.7 If, as an alternative, the firm is merely to pay partners a mileage allowance for the business use of their own cars, what is the rate of that to be?
- 19.8 If private and business mileage are to be treated differently, how is mileage between home and business to be categorised?

## **20 Insurance**

- 20.1 What are the general insurance obligations of the firm likely to be?
- 20.2 Is the partnership to provide life insurance and/or critical illness cover for the partners?
- 20.3 If so:
  - 20.3.1 for whose benefit is the insurance to be (ie the individual partner or the firm)?
  - 20.3.2 what is the level of cover to be?
  - 20.3.3 are the premiums to be treated as drawings, or a shared business expense?
- 20.4 Is the firm to provide permanent health insurance for partners?
- 20.5 Is the firm to provide hospital and medical expenses cover for partners?

20.6 If so, should this extend to families as well?

## **21 Retirement**

21.1 Is each partner to have the right to retire, upon giving written notice?

21.2 If so, is the right for any one partner to dissolve the partnership on notice to be excluded?

21.3 What is the length of notice to be?

21.4 Must any such notice expire on an accounts date?

21.5 Is there to be an agreed compulsory retirement age?

21.6 May the partners force a partner to retire in the event of long-term illness?

21.7 If so, what should the trigger period be:

21.7.1 if there is a single period of absence?

21.7.2 if there are aggregated periods of absence?

21.8 How is the possibility of the partner's recovery and return to be dealt with?

21.9 Are the partners to be able to require a partner to retire in the event of his becoming a mental patient?

## **22 Expulsion**

22.1 Are there to be provisions for the conduct of partners' meetings which may consider the expulsion of a partner?

22.2 Should the partner whose expulsion is proposed have the opportunity to address the relevant meeting?

22.3 Are partners to have the right to expel a partner if there are proceedings which may disqualify the partner, before any such decision is reached?

22.4 What qualifications are necessary for partners, so that the loss of qualification will lead to expulsion?

22.5 In respect of an expulsion for cause:

22.5.1 is there to be an obligation to notify the partner of the reasons for expulsion?

22.5.2 is he to have a right to contest the decision?

22.5.3 if so, how is the question to be determined?

22.6 Is there to be a right of expulsion without cause?

22.7 If so, what procedures are to apply to the exercise of any such power?

## **23 Suspension and garden leave**

23.1 Is the firm to have power to suspend a partner in order to investigate alleged breach of obligations?

23.2 If so:

23.2.1 how is the decision to be taken?

23.2.2 is there to be a maximum period for suspension?

23.2.3 if so, what is it?

23.2.4 what is to be the position of the suspended partner as to profit and loss sharing during suspension?

23.2.5 what is the range of restrictions which may be placed upon the affected partner during the period of suspension?

23.3 Is the firm to have power to impose 'garden leave' upon a partner who is about to leave?

23.4 If so:

- 23.4.1 is garden leave to be automatic, or only imposed at the discretion of the other partners?
- 23.4.2 if the latter, what process is needed for the decision to be taken?
- 23.4.3 what is to be the position of the suspended partner as to profit and loss sharing during garden leave?
- 23.4.4 what is the range of restrictions which may be placed upon the affected partner during the period of garden leave?

## **24 Treatment of an outgoing partner's share**

- 24.1 Is the acquisition by remaining partners of an outgoing partner's share in the firm to be automatic, or optional?
- 24.2 If optional:
  - 24.2.1 within what period must the option be exercised?
  - 24.2.2 must it be exercised by all partners?
  - 24.2.3 if not, what provisions are to apply if only one or some of the remaining partners wish to acquire the share?
  - 24.2.4 what is to happen if the option is not exercised, ie will the partnership be dissolved under the Partnership Act 1890?
- 24.3 Are interim payments to the family of a deceased partner to be provided for?
- 24.4 Are the main capital payments to an outgoing partner to be phased?
- 24.5 If not, within what period must payments be made to him?
- 24.6 If there is to be phasing:
  - 24.6.1 over what period is this to be?
  - 24.6.2 when is the first payment is to be made?

- 24.6.3 what is the frequency of payments to be?
- 24.6.4 what is the provision to be for the payment of interest on outstanding balances?
- 24.7 Are the answers to any of the last few questions to vary as between capital and current accounts?
- 24.8 Is there to be any different provision for a partner expelled without cause?
- 24.9 If so, within what period is payment out to him to be made?
- 24.10 Are partners to retain the right to make earlier payments if they wish?

## **25 Restrictions on an outgoing partner**

- 25.1 What restrictions (if any) is it going to be applicable to place upon an outgoing partner in terms of:
  - 25.1.1 solicitation of former clients, patients or customers?
  - 25.1.2 solicitation of introducers and referrers of work?
  - 25.1.3 persuading others to leave the firm?
  - 25.1.4 employing personnel formerly involved with the firm?
  - 25.1.5 operating a similar business?
- 25.2 What period(s) may be appropriate for any such restrictions?
- 25.3 If a restriction such as is mentioned in clause 25.1.5 is to apply:
  - 25.3.1 how is the prohibited business to be described?
  - 25.3.2 what geographical limitations (if any) are to be placed upon the operation of the restriction?
- 25.4 What obligations are there going to be on an outgoing partner to maintain confidentiality as to the firm's affairs?



## **26 Actions to be taken on a partner's departure**

- 26.1 How can the firm effectively get the partner to return partnership property?
- 26.2 In particular, how can it effectively secure the return of any computer equipment with all data and software intact?
- 26.3 Who needs to be notified of a partner's departure?
- 26.4 What advertisements/circulars are appropriate?
- 26.5 What provision is there to be about approval by the outgoing partner of any such announcement?
- 26.6 What indemnity is to be given to the outgoing partner?
- 26.7 In particular, should an indemnity apply to existing debts?
- 26.8 Should there be a requirement for the continuing partners to procure the outgoing partner's release from any specific obligations?
- 26.9 Are the continuing partners to be obliged to maintain professional indemnity insurance cover for the benefit of the outgoing partner?
- 26.10 Is any such obligation to extend to providing run-off cover in the event of the partnership ceasing?

## **27 Notices**

- 27.1 Must notices (if posted) be served by recorded delivery?
- 27.2 What is to be the deemed date of service of any posted notice?
- 27.3 Can notices be served by fax and/or e-mail?
- 27.4 If so, how is delivery to be validated or assumed?

**28 Disputes**

- 28.1 Should there be a clause requiring determination of disputes by a method other than litigation?
- 28.2 If so, which of mediation, arbitration or expert determination is preferred for
  - 28.2.1 any particular area of dispute, or
  - 28.2.2 all potential disputes?
- 28.3 By whom is any mediator, arbitrator or expert to be appointed in default of agreement?
- 28.4 What provisions are needed as to the conduct of the alternative dispute resolution technique(s)?
- 28.5 What provisions as to costs are needed?