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L.E. LAW INFORMATION SHEET NO. 13

GUIDE TO PARTNERSHIP AGREEMENTS

Why do I need a Partnership Agreement?

- Partnerships come in many shapes and sizes, from two partners starting up in business together to professional partnerships of solicitors, accountants etc in large multi-national practices.
- Whatever the size however we strongly recommend that a written Partnership Agreement is entered into. How detailed the agreement needs to be and precisely what it needs to cover will depend very much on the nature of the business and the number of partners.
- In the absence of a written agreement, the partnership will be governed by the Partnership Act 1890. The Act, as the name suggests, was drafted over 100 years ago and in many respects is unsuitable for modern businesses.

What needs to be covered in a Partnership Agreement?

- Some of the factors that will usually need to be addressed in any partnership agreement are set out below:-

1. What is the duration of the partnership?

The partnership can either be for a fixed term or for unlimited duration (known as a "Partnership at Will").

If partners carry on after the end of a fixed term it will usually mean that the partnership becomes a Partnership at Will automatically.

2. Division of Profits and Losses:

Are the partners to divide profits equally, and be equally responsible for losses, or are different proportions to be provided for?

3. Contribution of Capital:

How is the business to be funded? Will it be by bank finance, investment of capital by the partners or a mixture of the two?

If partners are investing funds, will they be entitled to interest on their investment before calculation of profits? (The default position under the Act is that partners are not entitled to interest on capital).

4. Powers of Management:

What are the respective responsibilities and powers of the partners to manage the business day-to-day?

How are major decisions to be made, e.g. as to:

- a) Hiring and firing of staff.
- b) Acquisition of new business premises.
- c) Major capital expenditure.

5. Partnership Property:

It is sensible to set out clearly in writing what assets are to be treated as partnership property, and what assets which might be used in the business remain personal property of one or other of the partners.

6. Termination of the Partnership:

Under the Act, in the absence of contrary agreement, any partner can dissolve the partnership on notice and require the partnership to be wound up, assets sold and closing accounts prepared.

Whilst this may suit the partner wishing to leave, those wishing to remain and carry on the business will face great practical difficulties.

If therefore this is not what is required, partners need to consider:

- a) Can any one partner terminate the partnership?

- b) If so in any circumstances or only on the happening of specific events?
- c) What length of notice should they be required to give the other partners?
- d) Can the other partners elect to carry on the business as a going concern (which may well be advantageous for tax purposes amongst other things)?
- e) Can a partner leaving the partnership be allowed to compete or is a non-competition clause required?

7. How are any disputes to be resolved?

In the absence of agreement disputes will have to be taken to Court. This could prove time consuming and expensive.

There are various other options including:

- a) Arbitration – this is the traditional method for resolving partnership disputes. It takes place in private, and the arbitrator can be chosen for particular expertise, e.g. an accountant if the dispute is essentially financial. Arbitrations however have become increasingly costly and may be even more expensive than Court proceedings.
- b) Expert dispute resolution – this is usually done as a paper exercise whereby an agreed expert will review the dispute on paper having invited written submissions from the parties, and will then give a decision which will be binding on the parties in the absence of any manifest error.
- c) Mediation – This is a process whereby the parties are encouraged to settle their differences by a trained mediator. The mediator cannot impose his decision on the parties in the absence of agreement between them, but partners can be required under the terms of an agreement to at least try mediation before using other more expensive forms of dispute resolution.

What do I do next?

If you would like a Partnership Agreement prepared or advice on existing Agreement then please contact Neil Lloyd-Evans for a preliminary discussion and estimate of costs.

Disclaimer

This information sheet is for guidance only and does not remove the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

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