

6. Partnership & Limited Companies Commercial and General (Page 1)

bira legal in-house team

We can help with all your commercial and general legal enquiries, as well as product sourcing and industry-specific advice.

What you need to know

Although there is no legal requirement for partnership agreements to be in writing it is really essential to have a written agreement for the following reasons:

1. There needs to be a clear statement of financial rights and liabilities between the partners to cover an agreed apportionment of profits and losses reflecting the relative amounts of capital, goodwill and labour put in to the venture.
2. The agreement should clarify the financial position on dissolution of the partnership so that there are no expensive and unpleasant disputes.
3. The agreement should clearly define jobs, duties etc. - again to pre-empt and avoid any subsequent suppressed or expressed resentment.
4. As partners are fully liable for liabilities incurred by each other in the partnership a written agreement concentrates the mind of each partner with the knowledge of each partner's liability to the other(s) in the event of claims against the partnership by third parties.

It is essential to understand that where two or more people are in business together with no written agreement, they still are liable to the extent of all their personal possessions for the liabilities of the business. Hence a written agreement and full insurance are essential.

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and Wales)

Drawing up an agreement

A partnership agreement should be drawn up by a solicitor. It is also essential to seek advice from your accountant at an early stage; he should vet and agree the document before you sign.

Dissolution provisions are just as important to the successful partnership as to the unsuccessful. For instance, imagine a partnership which has been in operation for several years without any particular provisions; the accounts and all the partners are in good health. Let's say the oldest partner has been there for some time and has a current account in excess of £50,000. He suddenly announces he wishes to retire.

Limited Companies

In law, a director of a company cannot use his position in any way which might prove to be expensive to shareholders and creditors. A director's personal assets are at risk in the event of the liquidator of an insolvent company deciding that the directors have not managed that company properly. Heavy fines can be imposed and also a debarring order to stop the fledging director from being a director of any other company for a considerable period of time.

An analysis follows which shows the differences between a limited company and a sole proprietor or partnership.