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## Partnership agreements

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If you wish to enter into partnership then it is highly advisable to have a written partnership agreement.

### What does it do?

The purpose of the partnership agreement is to provide a formal structure for your business with respect to each partner's responsibilities and rights, particularly relating to profit sharing, management, expulsion, retirement and termination.

### Why do I need one?

- Typically, and wrongly, enthusiasm for the initial stages of a partnership venture often propels people into partnership without the safety net of a formal agreement. The devil is always in the detail so it is better to discuss detailed issues and discover that you may not be compatible with your prospective partner(s) before taking on joint liabilities.
- Without a written partnership agreement any issues or conflicts will ultimately be determined by the implied terms set out in the Partnership Act 1890 or the Limited Partnership Act 1907 ('Partnership Acts'), which are unlikely to be fully suited to your business's needs.
- In addition, if you have a written partnership agreement but it does not deal with a particular issue, then the Partnership Acts will also apply. It therefore makes sense to ensure you get proper legal advice in drafting an agreement.

### What should be in it?

Whilst every partnership and the business they conduct will be different, the following points should be assessed when considering the content of a partnership agreement:

- **Identification of the partners**

The partners' names and addresses should be included.

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- **Date**

The date upon which the partnership is to commence trading.

- **Duration**

The time limit set upon the partnership. If it is not date limited it might, for instance, be for the joint lives of the partners, effectively making it continuous until one of the partners dies.

- **Name of the business**

The agreed trading name of the business should be stated. This can be made up of the partners' names (Pew, Pew, Barney McGrew) or can be a fictitious name (Carpe Diem).

- **Location**

The address or addresses from which the business is to trade.

- **Capital**

A record of the initial amount of capital each partner has invested into the business. If capital investment is not equal between the partners it may affect how you wish to treat the share of profit. If profit share is not specifically dealt with later in the agreement then it will be assumed to be split in proportion to the capital invested, regardless of whatever other contributions are made in terms of resources, time or skills.

- **Contributions**

A specific note should be made of individual partner's contributions to the business. For instance one partner may contribute the use of their home as an office. This might be in lieu of a proportion of capital.

- **Ownership**

How the ownership of the business is to be split. This may depend on factors such as the amount of capital invested, contributions made and the amount of time committed to the business relative to other partners.

- **Profit and loss sharing**

How profits (losses) will be divided between the partners. This should include when each partners has the right to draw money from the business, e.g. monthly, quarterly etc., and how much each partner may draw on account of share of profit.

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- **Accounts**

When the accounts will be completed and by whom.

- **Banking**

The name and address of the businesses chosen bank together with any terms and condition agreed between the partners as to how they interact with the bank. This might include, for example, timescales for paying money and cheques into the account and the maximum amount any individual partner can draw from the account.

- **Holidays**

The number of days per given period that any partner can take off work and still receive full pay/profit share.

- **Illness/incapacity**

What benefits a partner will be entitled to should they develop an illness or have an accident making them incapable of doing their job.

- **Responsibilities of the partners**

An outline of the level of employment of each partner and a summary of their role in the business. It should include their role in decision making and their voting rights, their level of liability for the debts and other liabilities of the business and an agreement on how they will conduct themselves generally in relation to the business.

- **Restrictions**

Any limitations set upon partners for the general protection of the business. These might include, for instance, restrictions on not working in another business and not to use, pass on or sell confidential information.

- **Termination**

Ways in which the partnership can be brought to an end. This may be for several reasons, e.g. the reason for the business has ended (e.g. if the partnership was formed specifically to deal with a one off event that has finished), a partner wishes to retire or has developed a long term incapacity, a partner has died or a partner is being expelled due to misconduct.

In cases such as retirement, death or expulsion, there should be some mechanism to allow the other partners an option of buying the outgoing partner's share in the business to enable the business to continue.

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- **Disputes**

If the partners cannot agree over any particular issue then the agreement should provide for how issues or disputes are to be resolved, e.g. by the appointment of a third party to arbitrate. If the partnership has reached this point it is unlikely to survive much beyond it but at least there is a path to resolution, even if that resolution ends up being how to terminate!

If you would like further information or advice please contact Steven, Tom or Philip who will be happy to assist you or visit [www.gardandco.com](http://www.gardandco.com).

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