
PARTNERSHIPS



Level 3, 104 Frome Street
ADELAIDE SA 5000
Tel: (08) 8415 5000
Fax (08) 8415 5099

WHAT IS A PARTNERSHIP

The law defines a partnership as “*the relation which exists between persons carrying on business in common with a view of profit.*” Partnerships may exist between two to twenty people. Each partner owns an agreed part of the business assets and receives an agreed part of the profits of the business.

PARTNERSHIP DISTINCT FROM A SOLE TRADER

A “sole trader” is an *individual* who carries on a business. Unlike a partnership, a sole trader alone reaps the profit and bears the liabilities of the business. Partnerships are likely to have to register a business name unless you are using the names of all partners. A sole trader can use their own name to run their business.

PARTNERSHIP DISTINCT FROM A COMPANY

Whilst a partnership is not itself considered an entity distinct and separate from its partners, a company does create a new legal entity. This means that the property, profits and liabilities of a company are those of the corporate entity, not of the members of the company. On the other hand, property, profits and liabilities of a partnership are those of the partners.

ADVANTAGES OF A PARTNERSHIP OVER OTHER FORMS OF BUSINESS STRUCTURES

1. *Simplicity, informality & inexpensiveness.* There is no formality involved in forming a partnership, although it is advisable that a written agreement be prepared. The legal and accounting fees associated with partnerships are much less than those associated with companies.
2. *Flexibility.* Partners are not restricted in the nature of the business that they may carry on. Partners, by agreement may alter the nature of the business or other arrangements such as profit-sharing.
3. *Taxation Aspects.* Since a partnership is not a separate legal entity, it is not a taxpayer. The firm’s profits are taxed only in the hands of the partners.

DISADVANTAGES OF A PARTNERHIP

1. *Liability.* Each partner has an unlimited liability for the obligations of the firm. This means that should the firm be unable to meet its debts, each partner may become *personally* liable to ensure that all debts are paid, thereby exposing your personal assets.
2. *Lack of permanence.* Generally death or bankruptcy of even one member will dissolve the firm. For this reason, partnerships are not well equipped to cope with large scale and long-term projects.
3. *Transfer of interest.* To “get out” of a partnership it is necessary to find someone who is willing to “buy” your share in the partnership and then all partners must consent to the admission of the buyer as a new partner. A change of partners can involve a great deal of work and expense.
4. *Agency.* Each partner has an implied authority to bind the firm by any act done in the ordinary course of the firm’s business. This may leave partners largely at the mercy of their co-partners and liable for others actions.
5. *Continuing liability.* A partner who properly retires from a partnership remains liable for debts and liabilities incurred by the partnership before the retirement.

THINGS TO CONSIDER WHEN SETTING UP A PARTNERSHIP

- the full names, addresses and descriptions of the partners;
- the nature and location of the partnership business;
 - the firm name;
- the capital to be introduced by each partner;
- the proportions in which profits and losses are to be shared;
- the management of the business to be exercised by each partner;
- the manner in which accounts are to be kept and their audit;
- arrangements as to working partners “salaries”;
- prevention of competition by a retiring partner;
- method of dissolution of partnership;
- Partners authority to make payment on behalf of the business.
- Location and operation of the firm’s bank account;
- The method of dispute resolution.

GETTING ADVICE

It is advisable to seek professional advice when considering going into partnership with others. Your interests need to be protected and you need to understand all parties risks and responsibilities. It can prove difficult to unravel a partnership if it does not work out in the future. Therefore, to minimise expense and heartache later, get some advice before commencement.

Visit our website at www.adelta.com.au
or call our office to make an appointment with one of our friendly solicitors.