

FORMATION OF A PARTNERSHIP

Hegarty LLP was formed in 1974 and is now a major regional player in the law marketplace, serving clients both locally and across the UK. Our rapid growth is a result of offering a top quality service, backed by an innovative approach to the law. We have been first with many services and marketing initiatives, and continually drive to exceed client expectations.

If you want help regarding forming a partnership and the legal implications of this please contact Andrew Heeler on 01733 295661 or email andrew.heeler@hegarty.co.uk

The following information explains more about the practicalities of formation to help guide you through the process.

Why chose a Partnership?

A partnership is defined as two or more persons carrying on a business in common with a view to profit. Therefore if you do nothing except start trading, you will be a partnership. Because there are no formalities to starting a business in this way it can be a popular choice.

What you need to know:

1 Choice of name

A partnership does not have to register its name and theoretically could start trading under any name it wishes. The choice is subject to the Business Names Act 1985, however, which prevents a business from using certain names – for example you cannot trade as Smith Europe unless you trade in Europe. Certain sensitive names are also restricted, for example in order to use the name 'Windsor' you need the consent of the Lord Chancellor.

Your name must be displayed outside your offices and also on your stationary (see below). Hegarty LLP can help you to choose the best name to comply with the statutes and suit your needs.

2 Partnership Agreement

There is very little statutory control over the running of a partnership. The partners are free to decide between themselves how their business is run. Also, unlike the articles of a company, the partnership agreement is a private document.

A partnership agreement can contain as much or as little control as the partners wish. It can cover for example how decisions will be made, how profits will be shared, and what will happen in the event of a partner wishing to leave the partnership (or indeed the majority of the partners wishing to expel a partner).

It is also entirely possible to have no agreement at all. In this case, the partnership Act 1890 sets out default rules to cover the running of the business. These include for example that profits will be shared equally, that there is no right to be paid for working for the business, all partners can take part in the management, and that if one partner wishes to leave the partnership, then the partnership will be dissolved.

How much or how little is included will obviously depend on your individual circumstances.

3 Liability

The main disadvantage of a partnership is that there is no limited liability. As a general rule, the liability of a company will only extend to the amount of its share capital, and so long as the shares have been issued fully paid up there will be no reason for the shareholders to have to pay further money. In the case of a partnership on the other hand, all the partners are jointly and severally liable for all the partnership debts. This means that any partner will be liable for the full amount of all the debts of the partnership, regardless of whether they were responsible for incurring the debt. This liability is unlimited and can extend to all the personal assets of each partner, including their home.

While this may seem to be a reason for choosing a company rather than a partnership, it is worth remembering that there are cases where directors of a company will be held personally liable for debts incurred by the company and, in the case of small business, banks often ask for personal guarantees from directors to avoid the risk of the company not having enough money to pay.

4 Stationery

All businesses must make sure all their business stationery contains certain information such as the principal place of business and the names of each partner. Extra information must also be included in certain situations. Hegarty LLP can tell you exactly what information you need to provide for your situation.

5 Insurance

It is essential to think about what insurance you will need for your new business. Any property and other assets obviously need to be insured, but you may also need other insurance including Public Liability Insurance, Professional Indemnity Insurance, and if you will have employees, Employers Liability Insurance.

6 Accountants and Auditors

The business must prepare annual accounts and therefore in most cases will require accountants. Also remember that once a business reaches a set turnover (currently £60,000) it must register for VAT and will thereafter have to file a VAT return with Customs & Excise. You may also wish to have your accounts audited by independent auditors. These are things you may want to discuss with your accountants.

7 **Bankers**

Your business must also appoint bankers. All the high street banks have business advisors and it is a matter of choosing the right bank for you.

The contents of this information sheet is for information only. You should never act on the contents of the information sheet alone, and should always seek professional legal advice regarding to your particular situation before taking any action. For more information about this, or any other aspect of company law, please ring Andrew Heeler on 01733 295661 or email: andrew.heeler@hegarty.co.uk. (Last updated May 2006.)