



Lecture L-8 Business Partnerships

Abbreviations

- Shh(s) – Shareholder(s)
- Sh(s) – Share(s)
- D – Director
- P - Partner
- MA – Model Articles
- CA – Companies Act 2006
- IA – Insolvency Act 1986
- PA – Partnership Act 1890
- PR – Personal Representative
- BR – Board Resolution
- SR – Special Resolution
- OR – Ordinary Resolution
- WR – Written Resolution
- GM – General Meeting of Shareholders
- BM – Board Meeting
- BD – Board of Directors
- Co – Company
- MC – Meeting of Creditors
- FM – Final Meeting

1) Limited Company:

Incorporation

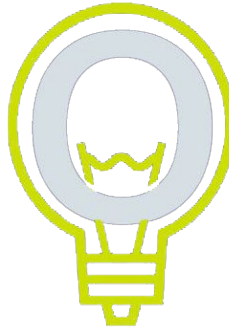
Decision Making

Shares

Directors

Minority Protection & Rights

Insolvency



3) Business Media and Taxation

Types of business media

Advantages / disadvantages

Taxation

Conversion from one to another

2) Partnerships:

Partnership Agreement

Limited Liability Partnerships

Joint Ventures

Insolvency / Bankruptcy

4) Commercial Contracts

5) Corporate Finance

6) Private Acquisitions

Partnerships:

1. Partnerships Introduction
2. Partnership Agreement
3. Insolvency / Bankruptcy
4. LLP
5. Joint Venture

Partnerships Introduction

Partnership is the relation which subsists between persons carrying on a business in common with a view of profit, but not relation between members of any company - s 1 PA

Duties of Partners	Description
Utmost in Good Faith ss 28-30 PA	<ol style="list-style-type: none">1. Provide the partners with all the relevant <u>information</u> regarding the business2. Only with <u>consent</u> of other partners regarding profits/benefits derived from:<ol style="list-style-type: none">(a) partnership property(b) competing business
Bear a share of losses ss 24(1) PA	Depends on the terms of the agreement
Indemnify fellow Ps against bearing losses over their share ss 24(2) PA	

Key implied terms

Description

Loans from the partners bear 5% interest per annum

Partners not entitled to interest on capital payments, before the ascertainment of profits [s 24, but see s 42 as to rights of out-going partner]

Every partner is entitled to take part in management

No new partner without consent of all the partners [**unanimous consent**]

Change in the nature of business requires consent of all the partners [**unanimous consent**]

Partnership

No limit on No of Ps

Obligation to notify HMRC on identity of the Ps

Min 2 Ps

Partnership Agreement

Key Provisions	Description
Commencement	s 1 PA - not a day of the agreement, but when they regard their mutual rights and interests: confusion in the area as to what behavior amounts to a partnership causes many problems. See also s 2 PA Rules for determining existence of partnership: e.g. joint tenancy, tenancy in common, remuneration of a servant or agent, advance of money by way of loan
Name	Firm's name may be different from trading name
Profit/Loss	<ol style="list-style-type: none">1. Salary – paid before any surplus profits if one of the P works more2. Interest – on loans by Ps / capital contributions3. Profit sharing – suitable ratio
Drawings	May impose monthly limit
Sharing decrease increase of assets	Equally or by 'assets sharing ratio'
Ownership of assets	Presumed the Ps are beneficial owners of all the assets; accounts should reflect contributions; but a P may continue to owe the asset, allowing the Partnership to use it
Work input	It is implied that all Ps take part in management (it is right, not obligation). No obligation to devote all the time, while other Ps are entitled to compensation for the extra work . May be an obligation not to be involved in any other business
Decision making	<p>1 P – 1 vote. Decisions – by simple majority <u>Except</u> (unanimity required, unless the Agreement provides otherwise):</p> <ol style="list-style-type: none">1. Changing the nature of the business;2. Join a new P3. Changes to the Agreement

Duration	<ul style="list-style-type: none"> - If at least 1 P wants to leave - <u>When</u>: at any time – called ‘Partnership at will’ <p>Ways:</p> <ol style="list-style-type: none"> 1. By notice – may have immediate effect and may be oral (unless the Agreement – by deed) <ul style="list-style-type: none"> - <u>Solution</u>: <ol style="list-style-type: none"> a) Minimum notice period b) Fixed term partnership c) Term – that the partnership will continue even if some of the Ps left 2. By death and bankruptcy – automatically unless contra-intention 3. Retirement – not in the act, insert into the Agreement, so P may not retire 4. Expulsion - not in the act, insert into the Agreement, so P may not be expelled
Restraining of trade	<ul style="list-style-type: none"> - Must be reasonable: what is the purpose - to protect the business or limit the partner? - «Non-dealing clause»: customers or employees
Payment to outgoing partner	<p>S 42 PA:</p> <ol style="list-style-type: none"> (i) Interest 5% on the share (ii) Profits pro rata <p>Terms to be included:</p> <ul style="list-style-type: none"> - Valuation; - Date of payment; - Other

Authority

Partnership & Agency:

1. Power to bind the firm s 5 PA, unless 3rd party knows that P has no authority or does not know he is a P
2. Bound by acts of the firm s.6 PA
3. Notice to 3rd parties that firm is not bound by the P

Types of authority :

1. Actual: expressed or implied;
2. Apparent authority – not actually authorised, but may have appeared to the 3rd parties as being authorised [TEST]:

a) Objective:

- I. Relates to the type of business
- II. The act is something a P in such firm would usually do

b) Subjective:

- I. 3rd party did not know
- II. 3rd party deals with a person whom he knows or believes a partner

Liability for breach of warranty of authority:

1. **Personally liable to indemnify the firm** – made firm bound
2. **Tortious liability** – Ps are jointly and severally liable for wrongful acts or omissions, who has actual or apparent authority
3. **Contractual liability** – as per partnership agreement

Who is liable:

1. P
2. Firm
3. If P paid for other P – entitled to indemnity
4. If left firm before or joint after, may be liable if:

A) Holding out :

- Representation as a P;
- Reliance by the creditor;
- Credit issued

B) Failure to give notice of retirement:

- Actual notice – to all existing clients;
- Future notice – advert in Gazette
- *If death or bankruptcy – no notice is needed*

C) Novation agreement – with existing clients: remove P, but no new P instead – must be consideration paid

Dissolution: (may be excluded by the Agreement)

1. Notice of dissolution (partnership at will): by any P; must give reason; immediate effect
2. Expiry of fixed term – if Ps continue – partnership at will
3. Charging order over P's assets: if court charges the share, the other Ps may either dissolve the partnership or pay the debt; if court orders to sell the share, the other Ps will have priority to purchase
4. Death or Bankruptcy – automatically
5. Illegality – loss of license
6. Court order – TEST: should be just and equitable; wide discretion
7. Express term

Insolvency / Bankruptcy

Insolvency Partnership Order 1994

If P cannot pay the debt and judgment obtained against the P: fresh proceedings against the firm and can be enforced against any P, if the firm cannot pay; If no money – the firm becomes insolvent

If firm cannot pay the debts: Ps will pay from own private assets

Can unregistered firm become insolvent? - yes and Ps become bankrupts

Who winds up firm's affairs: any P

Is there any order of priority in distribution of the assets:

1. Creditors;
2. Ps, who lend money to the firm + interest
3. Ps' capital entitlement
4. Surpluses - accordingly to the agreement

May insolvency procedures be used in regard to the partnership: yes, e.g. CVA, partnership is treated as unregistered Co; may apply for moratorium if meets requirements of 'small company' (e.g. less 50 employees - check GOV.UK); P may apply for debt relief order if no assets and no income

What about LLP: insolvency – same as for Ltd Co

Implied Terms:

- ❖ Ps owe duty to the LLP, but unclear if they owe to each other
- ❖ P's duty to act in good faith
- ❖ P is agent, same as under s 5 PA
- ❖ No shs-cap
- ❖ Min 2 Ps, no – maximum
- ❖ Ps have limited liability similar to Ds, liable for wrongful trading, fraudulent trading etc.
- ❖ For tax purpose treated as ordinary partnership
- ❖ Execution of documents – by 2 Ps or 1 P and a seal
- ❖ Change the name of LLP and introduction of a new P – consent of all Ps
- ❖ Designated P
- ❖ LLP can issue a debenture or give fixed/floating charge

Default Rules

- ❖ Sharing in capital and profit
- ❖ Indemnity to the other Ps
- ❖ Take part in management
- ❖ No entitlement to remuneration
- ❖ Introduction of a new P or assignment of the interest – consent of all Ps
- ❖ Ordinary matters – majority decision
- ❖ Books and records, accounts – available for inspection by any P
- ❖ Obligation to account for profits from competing business or use of the LLP's property without consent
- ❖ No majority power to expel
- ❖ No dissolution if P is bankrupt
- ❖ Cease to be P by reasonable notice to the register (14 days)

Joint Venture

Reasons: cost savings; risk sharing; access to technology; extension of the customers' base; entry into new market etc.

4 Types:

1. Short term – e.g. particular projects
2. Limited function – narrow field e.g. build a new facility
3. Full function - start up
4. Full scale world wide mergers – mergers of existing businesses

Structure:

1. Contractual JV
2. Collaboration agreement
3. Corporate JV
4. Partnership: fixed term, at will or specific project
5. European Economic Interest Grouping (EEIG)

Exit Routs for JV

Exit Routs Clauses

Russian Roulette

1. P "A" serves notice to P "B" to sell share/shs for the price
2. P "B" either:
 - a) Accepts;
 - b) Rejects and must sell his share/shs

Texas shout-out

1. P "A" – notice offering to buy for the price
2. P "B" – counter notice either:
 - a) Accepts the offer;
 - b) Counter offer to buy for higher price
3. Sealed bid system – if both want to buy

Dissolution

Under Agreement

Under PA / CA / LLP Act

1. Expiry
2. Termination
3. By court order:
 - a) Breach of Agreement (material) +
 - b) Just and equitable
4. Insolvency / Bankruptcy

Company Shares Reading

1. **Partnership Act 1890**
2. **LLP Act 2000**
3. **LLP (Application of the Companies Act 2006) Regulations 2009**
4. **Legal Practice Companion pp 294-299 or LPC Handbook**
5. **Business Law and Practice, Alexis Mavrikakis (CLP) Part 'Running Business as a Partnership' and Joint Ventures**
6. **Business Law, Slorach & Ellis (OUP) Part 'Partnerships'**
7. **[Article 'Problems Caused By Partnership Act 1890'](#) Law Teacher**



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