

Risk Manage Your Partnership

A Partnership is not something you jump in and jump out of on a regular basis. A solid, working partnership involves more than just a handshake. There is a lot of groundwork that needs to be done prior to establishing a Partnership. And once a Partnership is up and running, it takes a lot more work to keep it afloat.

Partnerships should not be formed merely for convenience. It should be borne from the idea that two or more people in the same track of mind, can go on to do greater and bigger things together, rather than hacking it on their own, separately.

We've covered some pointers below that you can use in managing your Partnership.



Partnership
Agreement



Understanding
Duties



Knowing
The Firm



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Management



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Management



Partnership Agreement

It is not uncommon for most lawyers to establish partnerships based on a gentlemen's agreements. Although a partnership does not require any specific formality to be established as such, lawyers are encouraged to execute a partnership agreement which should at least cover the vital issues.

These include details on managing expectations of all partners, address the varying degrees of participation of partners, each partner's interests or equity in the firm and the processes of admission, withdrawal and dismissal of partners.

A partnership agreement might seem unnecessary when you have comforting words from another partner, however, poorly organised partnerships without clear roles and responsibilities can lead to dispute among owners.

The following are details that should be included in a Partnership Agreement:

- The name of the Partnership;
- Names and identification of all Partners;
- Breakdown of Partners' shareholding or equity in the Partnership;
- Roles and responsibilities of each Partner;
- The clear distinction and identification of a Managing Partner;
- Cross sharing of data (if there are branches involved);
- Events that will lead to dissolution of the Partnership; and
- In the event of a dissolution, what is to happen to the Firm.

In absence of a Partnership Agreement, the Insurer will decide cover for "innocent partners" under the relevant clause of the COI in cases of misconduct. The Insurer will need to ensure that the partner who committed the misconduct was practicing as a genuine principal and carrying on practice in common with other partners. The Insurer will look at the following:

- The Firm's Professional Indemnity Insurance ("PII") Mandatory Scheme's Proposal Form and a letter to the Bar Council when the partnership was formed, as details of all Partners are included in both forms.
- The Insurer will also look at secondary evidence, such as purported partners' names appearing on the Firm's letterhead and Firm signage.



Knowing The Firm

- Before joining a partnership, it is advisable that lawyers understand the firm's liabilities, risks and its accounts to ensure that they will not be liable for any complications in the future.
- If lawyers realises that certain things about the firm are amiss, investigate further or get clarification with the current partners. If the irregularities about the firm's management or accounts are glaring, avoid joining the partnership.
- Partnership of convenience can be very risky. When forming a partnership, lawyers should be wary of having a rogue lawyer joining the firm. Not only do rogue lawyers bring the practice into disrepute; it may also cost financial losses.
- Before venturing into a partnership or opening a branch, lawyers are encouraged to assess the risks and future liabilities that may affect the partnership.



Firm Management

A genuine partnership would allow partners to have better control over the management of the firm and its branches since all partners are bound by common responsibilities as partners of the firm. A system of checks and balances between all partners could ensure no individual partner is given an ultimate authority and control over the accounts.

- Formulate a system of supervision so that all partners must report the progress of their files to other partners. This could ensure that partners do not engage in risky businesses which could bring the firm and the partners into financial loss and disrepute.
- Formulate internal procedures and controls to effectively manage a partnership. Partners need to monitor each other to ensure a strict compliance with the law and legal ethics.



Understanding Duties

- The law does not make any distinction between a salaried partner, a commissioned partner or an equity partner. Each and every partner of a firm faces unlimited liability jointly and severally for the acts of all other partners and employees. As such, it is imperative that all partners recognise that fiduciary duty is owed to each other in ensuring that the partnership is one of confidence, trust and honesty.
- In a partnership, all partners owe a fiduciary duty to each other which imposes upon the partners the duty to act for the common benefit of all partners and the duty to refrain from taking advantage of one another by misrepresentation, concealment or adverse pressure relating to the partnership and its business.
- All partners of a firm are jointly and severally liable for claims against the firm. However, when one partner was solely responsible for such claims, it is expected that conflicts will arise when other partners would want to absolve their liabilities towards the claim. A frank discussion among partners in resolving the conflict is essential to ensure that all partners' interests are protected.
- Every partner is liable jointly with the other partners for all debts and obligations of the firm incurred while the person is partner. Wrongful acts or omissions, misappropriation of money or property done in the ordinary course of practice will bind all partners. Hence it is imperative for lawyers to ask questions whether they genuinely need to form a partnership.



Financial Management

- If firms have branches, ensure that there is a mandatory reporting requirement to the main office especially on the office and clients' accounts.
- Request the bank to send the bank statement directly to the principal office and respective branch for reconciliation and perusal by partners. This internal supervision could ensure that discrepancies with the accounts could be investigated at the earliest opportunity.
- A branch would normally have its own office and clients' accounts; hence it is imperative that all partners are updated with the current financial status of each branch and the partnership as a whole.
- Establish an appropriate system of checks and balances and operational segregation of office and clients' monies between partners to avoid commingling of funds between one or more partners in the firm. For instance, dual authorised signatories for cheques.
- For a small firm, monthly account statements reconciliation may sound cumbersome and often overlooked by partners. Ensure that account statements reconciliation is done properly to ensure that the account balances and every single transaction are accurate.
- IP should ensure that the branches operate in common with the practices and processes at the main office. This includes a standard reporting requirement on the financial health of office and clients' accounts.
- If one branch is managed by only one partner, having at least two authorised signatories could reduce the risk of misappropriation of fund in their branches since the sole partner does not have full control of the clients' accounts. The check and balance system could ensure transparency in operating clients' accounts.
- Although it may sound impractical to have two signatories to operate clients' account where partners do not practice in the same branch, lawyers should be mindful that a having a good risk management system in place may protect the partners from being liable for other partners' misconduct.