



## Client guidance note

### Guidance note for partnership disputes

*This publication gives general guidance only. It may not always apply and should not be relied on in place of specific legal advice.*

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Resolving a dispute within a partnership can be a tricky blend of politics and the law. The dynamics of each partnership will be different, but the key points that need to be considered in any partnership dispute to ensure a successful outcome are set out below.

#### **Is there a partnership?**

This may be obvious where a formal agreement exists, but a partnership may come into existence without any formal documentation and can be implied out of the relationship between the parties.

For a partnership to exist under the Partnership Act 1890 (the **Act**), a group of individuals must be carrying on business in common with a view to making a profit. If business is being conducted and no other formal business structure exists it is important to consider whether a partnership may have (perhaps inadvertently) come into existence.

#### **What are the terms of the partnership?**

Ideally there will be a partnership agreement documenting the terms agreed between the partners, but this is not always the case.

In the absence of an agreement the terms of the Act will apply. Even if an agreement exists it is common for the terms of the partnership to change over time so it is important to establish whether the agreement is kept up to date, or other agreements or conventions exist that govern the partnership.

#### **Who are the partners?**

The partners are jointly and severally liable for the debts of the partnership. If the partners have changed over time, it can be important to establish who was a partner at the time the liability was created.

Unless there is a clear agreement, there can sometimes be a debate over who the partners are. For example, if one 'partner' is paid a salary then it may be argued that they are an employee and do not have a vote in the decision making of the business.

#### **Decision making**

If there is dispute between the partners over a decision that has been made, then it is important to establish whether a vote has been passed with the requisite majority.

Unless there is an agreement to the contrary normal business decisions can be made by a simple majority of the partners. However, the Act requires that decisions regarding the nature of the partnership business require unanimity.

### **Alternative dispute resolution**

If a dispute has arisen, you should consider whether the partners have agreed to follow a dispute resolution mechanism in their partnership agreement? If so, it is important to ensure that this has been followed.

### **Removing a partner**

In the event of a dispute it may be desirable to remove one (or more) of the disgruntled partners from the partnership. Before doing so the remaining partners will need to ensure that they have the power to expel that member and the correct procedure is followed.

Unless there is an express power of expulsion in the partnership agreement, there is no automatic right to expel a partner and the partners will need to come to an agreement or it may be necessary to dissolve the partnership.

### **Is an exiting partner entitled to their profit share?**

If the partners have the power to expel a partner then it is important to consider whether this triggers a payment to be made to the outgoing partner under the partnership agreement. If so, the remaining partners will need to ensure they have the cash to make this payment.

There are situations where a partner may forfeit their right to a share of the partnership's profits. This is only in exceptional circumstances, but can be considered where, for example, a partner acts dishonestly or where they take secret profits.

### **Dissolution of the partnership**

Where an agreement cannot be reached, it is likely that the partnership will need to be dissolved. On dissolution any residue (if any) will be paid to the partners after any losses, debts and advances have been paid. The partnership agreement may specify how this will be split, but in the absence of any agreement this will be in accordance with the partners' profit sharing ratios.

For more information on Partnership Law please click [here](#).

If you require further guidance please contact [Tom Bourne](#) at [tom.bourne@crippspg.co.uk](mailto:tom.bourne@crippspg.co.uk) or on [+44 \(0\)1892 506 099](tel:+441892506099)