

The great thing about partnerships is that they are versatile enough to handle the scope of your business activity, whether you are involved in a small enterprise or looking to set up an investment fund.

Under Bermuda law a partnership arises where two or more persons agree that they will run a business together with a view to profit and actually do so. The business of the partnership is carried out according to the partnership agreement and applicable Bermuda partnership law, and the partnership agreement can be oral or in writing or may even be implied by conduct.

The typical rights and responsibilities of partners include the right to be involved in decision making, to share in the profits, to examine the accounts of the business, to insist on openness and honesty from fellow partners as well as the responsibility for sharing losses made by the business. Partners must also be prepared to share with their fellow partners any profits they make from carrying on a competing business without the consent of the other partners.

Any of these rights or obligations can be varied or excluded by an agreement that governs the relationship between the partners. A written partnership agreement is invaluable as it may provide solutions should a disagreement arise between the partners. Topics that should be addressed in any such agreement include:

- the financial input of each partner and the possibility of future contributions;
- how the partners will share income, profits or losses, which will be divided equally unless there is evidence of a contrary agreement;
- whether interest might be allowed on a partner's contribution before any surplus or profit is divided between the partners; and
- profit sharing whereby a suitable ratio in which profits remaining after salary and interest on capital are to be shared.

Our partnership law closely mirrors general English partnership law. Our first governing statute was the Partnership Act 1902, which is similar in content to the U.K. Partnership Act 1890. Legislation here has been updated frequently, and the Exempted Partnership Act 1992 and the Overseas Partnership Act 1995 are now included as governing statutes.

In Bermuda, two types of partnerships can be created namely, ordinary or general partnerships, and limited partnerships. In the case of ordinary or general partnerships the liability of the partners for the partnership's debts and liabilities is not limited. Each of the partners will be jointly and severally liable with the other partners. A limited partnership will consist of one or more general partners and one or more limited partners. Generally a limited partner will be limited, in terms of liability, to the value of money and property that it contributes or agrees to contribute to the limited partnership. The liability of the general partners however is not limited. Limited partners may not participate in the management of the partnership business, and to the extent they do, the limited partner's liability may convert to that of a general partner.

Partnerships carry on business in their own name and can sue or be sued in the partnership's name. Both types of partnerships can either operate as an unincorporated entity or may instead elect to operate with separate "*legal personality*". Separate legal personality creates a partnership that is separate from its partners. If this is desired, the election must be done at formation and is irrevocable.

For partnerships that have elected to have legal personality charges on the partnership assets (whether such assets are located in or outside of Bermuda) can now be registered at the Registrar of Companies. The charges register maintenance and requirements are closely modelled after that for Bermuda companies. Registration of the charge does not affect the validity or enforceability of the charge but rather establishes priority based on the date of registration and establishes priority over unregistered charges.

Bermudians may form partnerships for local trade, while non-Bermudians may form exempted partnerships to carry on business from Bermuda from a place of business in Bermuda. Overseas partnerships are also permitted to be registered in Bermuda, and operate here on a permit basis. An overseas partnership is either a general or limited partnership that has been formed outside Bermuda but is able to maintain a registered office and place of business in Bermuda and which is subject to similar treatment as an exempted partnership.

The range of activities open to exempted and overseas partnerships is very wide and they are not subject to a minimum capitalisation requirement. A permit granted for an overseas partnership may however specify any conditions of restrictions that the Minister of Finance deems appropriate. Additional flexibility granted to exempted and limited partnerships, especially when looking to restructure the business, is that they can be converted to an exempted company, continue overseas, or easily transfer the general partner to an affiliate.

Neither the Bermuda Monetary Authority, nor any other governmental agency, plays a supervisory role in respect of the business conducted by exempted or overseas partnerships, which must only conduct their affairs in accordance with their articles or partnership agreements and any applicable provisions of law. Both exempted and overseas partnerships are designated non-resident for exchange control purposes and are therefore free to designate their capital and deal in any currency of their choosing with the exception of Bermuda dollars.

Partnerships are not subject to taxes on profits, income or dividends nor is there a capital gains tax, estate duty or death duty. These financial benefits, together with the modernisation of Bermuda partnership statute law, have prompted many partnerships to set up in Bermuda for transactions ranging from funds to the development of commercial real estate.

Our partnership law and regulations provide yet another example of Bermuda's ability to move with the times and to provide internationally sound vehicles that allow global transactions to be carried out from within our jurisdiction.

For more specific advice on partnerships in Bermuda, we invite you to contact:

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