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1. Introduction

This Guidance Note is designed primarily for the purpose of assisting those who are subsequently entering into a partnership.

The main principles of partnership law apply to all parties forming a partnership and to the partnership itself.

2. Choosing the Right Business Structure

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- 2.1 Registering as a sole trader
- 2.2 Forming a partnership
- 2.3 Incorporating as a limited liability company
- 2.4 Incorporating as an LLP

3. Forming a Partnership

If a business is offering services to the public, they will often set up as a partnership or a limited liability company with Companies Act 2006. A sole trader business model is often used for a sole trader business. This could be a sole trader business. Building and domestic services are often provided by those that often choose to set up as a partnership.

When setting up a business with people they know, they often choose to set up as a partnership or a limited liability company with Companies Act 2006. Partnerships are often extensions of the sole trader business model where one person working together in a partnership with two or more unrelated parties. Examples of the types of businesses that often choose to set up as a partnership include:

Partnerships offer a flexible structure that can meet the demands of a limited liability company with Companies Act 2006. Unlike a sole trader business model, another partner is sick or another partner is brought in and to leave or to leave or to leave or to leave or tax issues and really the cost of setting up a partnership is that each partner is registered as self-employed.

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The activities of the partnership are carried out by the individual partners and not by the partnership itself (see below). Accordingly, the profits of the partnership are taxed separately as though derived from a sole trader business. This is in contrast with UK limited liability companies where the shareholders are taxed separately from their shareholdings. The price for the limited liability is that each partner is registered as self-employed.

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afforded any statutory protection for the purposes of the Employment

members of an LLP as “workers” for the

**4. Legal Definition of a Partnership**

The law of partnership was established by the Partnership Act 1890. Section 1 of the Act defines partnership as the relationship between persons carrying on a business in common with a view to profit. This concept still forms the basis of today's partnership law.

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Under the Partnership Act 1890, all partners are jointly and severally liable for the debts of the partnership and they are jointly liable for loss or damage arising from the wrongful acts or omissions of the partnership. However, because of the provisions of the Partnership Act 1890, the partnership relationship is not governed by a formal contractual partnership agreement. The terms of the partnership are determined by the ownership and profits of the partnership, and what happens if one partner wants to leave, etc. However, the relationship between the partners is governed by the partnership agreement being just one of the factors.

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**5. Partners Implied Duty of Good Faith**

Within a partnership, the partners have a duty of good faith towards one another and the partnership.

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- 5.1 act honestly in the business and not for some ulterior motive;
- 5.2 be truthful at all times;
- 5.3 account for any benefits received;
- 5.4 disclose all information to the other partners.

Within a partnership, the partners have a duty of good faith towards one another and the partnership. They must act honestly in the business and not for some ulterior motive; be truthful at all times; account for any benefits received; and disclose all information to the other partners.

The duty of good faith applies throughout the life of the partnership, from its commencement and during its dissolution. It also applies to the powers of the partners to change the Partnership Agreement without regard to the minority. The duty of good faith imposes the obligation to exercise powers conferred on the partners without being exercised capriciously or irrationally.

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**6. Partnership Agreement**

As stated above the Partnership Act 1890 defines a partnership as well as the implied duties of the partners. Much of this will be supplemented by the partnership agreement entered into by all the partners.

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The usual provisions covered in a Partnership Agreement are:

- 6.1 name;
- 6.2 duration and dissolution;
- 6.3 capital;
- 6.4 partnership property;
- 6.5 profits and losses;
- 6.6 accounts;
- 6.7 relationship between partners;
- 6.8 relationship between partners and the business, including powers, decisions, best endeavours towards business objectives;
- 6.9 admission of new partners;
- 6.10 retirement, death and withdrawal;
- 6.11 expulsion from partnership;
- 6.12 disputes between partners.

The parties (as partners) to a Partnership Agreement can be individuals, companies and LLPs. Spouses can be partners. HMRC is particularly alive to the possibility of a sham for tax purposes. A partner who does not play an active part in the running of the business and has no control over the business is not a partner.

It is also worth noting that the date of commencement of a partnership can be hard to determine but usually the date of the Partnership Agreement will be a determining factor. However, if business activities have commenced on the commencement date stated in the Partnership Agreement, the partnership will have started then and not on the date stated in the agreement.

Our Basic Partnership Agreement is available on the website accessed [here](#) and our Long Form Partnership Agreement can be accessed [here](#).

## 7. Business Legal Structure

Structure	Pros	Cons
Sole Trader	Low tax Easy to set up Full control Limited liability	Full liability for debt Pay more in tax Less market credibility
Partnership	Low tax Easy to set up	Full liability for debt Pay more in tax

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	Full Pote	Can be difficult to wind up
Limited Company	Less exp Fav	Administrative and regulatory demands heavier  Annual accounts and financial reports must be filed and in public domain
Limited Liability Partnership	Flex inco agre  Adv com com	Profit taxed as income  Partners must disclose income  LLPs must start to trade within a year of registration – or be struck off

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