



## Isle of Man Partnerships

# A Guide to Isle of Man Partnerships

## Legislation

The law relating to partnerships is contained in the Partnership Act 1909. This provides for two types of Partnership:

- General Partnership
- Limited Partnership

## Definition of a Partnership

“Partnership is the relationship which subsists between persons carrying on a business in common with a view to profit”.

A company incorporated under the Companies Acts or any other Act of Tynwald is not a Partnership within the terms of the Partnership Act.

## Taxation of Partnerships

For the purpose of Manx income tax a Partnership is not a taxable entity and so is not assessable in its own right in respect of the Partnership’s annual profits or gains. However, each partner is liable to pay income tax on their share of Partnership profits. A non-resident partner is only liable to Manx income tax on income derived from Manx sources.

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A company incorporated under the Companies Acts or any other Act of Tynwald is not a Partnership within the terms of the Partnership Act.

Any association of more than twenty persons formed for the purpose of carrying on any business in common with a view to gain or profit must be registered under the Companies Acts and may not be a Partnership under the Partnership Act 1909, but this is modified by excluding from this prohibition:

- a. Firms of advocates (Manx lawyers), all of whose partners are advocates;
- b. Firms of accountants, all of whose partners belong to recognised bodies;
- c. Firms of stockbrokers in a Stock Exchange, all of whose partners are members of that Stock Exchange;
- d. Any other firms specified by the Isle of Man Treasury by regulation.

Regulated Collective Investment Schemes have been excluded from this prohibition, as have Partnerships for the ownership, management or charter of ships and aircraft.

In determining whether a Partnership does or does not exist, the following rules are applied:

- a. Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
- b. The sharing of gross returns does not itself create a Partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

c. The receipt by a person of a share of the profits of a business in prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular:

- (i) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
- (ii) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
- (iii) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;
- (iv) The advance of money by way of a loan to a person engaged, or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not itself make the lender a partner with the person or persons carrying on the business or liable as such; provided that the contract is in writing, and signed by or on behalf of all the parties thereto;
- (v) A person receiving, by way of annuity or otherwise, a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

## General Partnerships

### Partnership Property

A Partnership is not a legal person in its own right, as is a company. As such therefore, assets of a partnership are owned in the joint names of all partners, or, where this is inconvenient, the assets will be owned in the name of a trustee who will hold the assets in trust for the partners.

Assets acquired for the partnership must be held and applied exclusively for the partnership and in accordance with the partnership agreement. The assets of a partnership are owned jointly by the partners. Thus, a judgement for debt against an individual partner cannot be enforced against partnership property, although the interests of an individual partner in that property can be charged.

The interests of the partners in the Partnership assets, and the rights and duties of the partners are governed by the partnership agreement, if there is one, which may be express or implied. In the absence of any agreement to the contrary the following rules apply in relation to the partnership property:

- a. All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards all losses;
- b. The Partnership (or "firm", as it is sometimes styled) must indemnify every partner in respect of all payments and liabilities made and incurred by him on behalf of the firm;
- c. Any individual partner who makes capital available to a partnership in excess of the capital required from him or her is entitled to have the excess treated as a loan, with interest payable to him at 5 per cent. Interest is not payable on the capital that is required from partners under the Partnership agreement.
- d. If a partner assigns his partnership interests, the assignee is not entitled to exercise the rights of a partner, other than to receive such profits or, on termination of the Partnership, to receive such capital distributed by the partnerships as is distributable to the assignor.

### Relations of Partners to Persons Dealing with the Partnership

Every partner is an agent of the partnership for the purpose of the business of the partnership, and an act or instrument relating to the business and executed in the name of the Partnership by a partner is binding on the partnership.

An admission or representation made by a partner concerning the partnership affairs and in the ordinary course of business is evidence against the partnership.

Where notice is given to an active partner, such notice also operates as notice to the Partnership (except where that partner is party to fraud against the partnership). Where notice is given by a partnership that a restriction has been placed on the power of one or more partners to bind the partnership, persons having received such notice cannot bind the Partnership to acts done in contravention of such restriction.

Where an action of a partner in the course of business of the Partnership gives rise to loss or injury to another person, not being a partner, the Partnership is liable to the same extent as the partner concerned. If a partner misappropriates the assets of a third party which are in the custody of the Partnership, the partnership is liable to make good the loss. In respect of the liability of a partnership in this context, each partner is jointly and severally liable, i.e. each partner has full individual liability as well as liability jointly with his partners for the liabilities of the Partnership.

If a partner, being a trustee, improperly uses the property of the trust in the Partnership, the liability of such partner for breach of trust is confined to himself. The other partners are not liable. But any other partner who has received notice of the breach of

trust may become individually liable. Trust property in the possession of the Partnership can be reserved for the trust.

Every partner in a Partnership is liable jointly with the other partners for all debts incurred while he is a partner. After his retirement or death, he or his estate continues to be liable. Where a partner pledges the credit of the Partnership for a purpose apparently not connected with the business of the partnership, the partnership is not bound by that partner's action.

Any person who, not being a partner in a Partnership, holds himself out as a partner in that partnership shall be liable, as if he were a partner in that partnership, in respect of any liabilities incurred thereby. But where the name of a Partnership contains the name of an individual, the continued use of that individual's name after his death does not make his estate liable. A person admitted to an existing Partnership as a new partner does not become liable to the creditors of the partnership prior to his admission.

A continuing guarantee given by a Partnership to a third party, in the absence of an agreement to the contrary, automatically terminates on a change in the constitution of the partnership. An incoming partner cannot be bound by the commitments entered into by the previous partners.

### Relations of Partners to One Another

The rights and duties of the partners in the Partnership are determined in a partnership agreement. In the absence of such an agreement, whether express or implied, there are certain rules that are applied in relation to the partnership property. Other rules are:

- a. Every partner may take part in the management of the Partnership business;
- b. No partner may be paid a salary or remuneration;
- c. All partners must agree before any new partner is introduced;
- d. Day to day business decisions may be made by a majority of partners, but any fundamental change to the nature of the Partnership business requires unanimous agreement of the partners;
- e. The records of the Partnership are to be kept at the principal place of business, and every partner may have access to them and copy them.

The rights and duties of partners may be varied by the consent of all the partners, and such consent may be express or implied. A partner can be expelled only by the unanimous agreement of all other partners. A simple majority is insufficient, unless such arrangement has been expressly agreed by all the partners.

Where no fixed term has been agreed upon for the duration of the partnership, any partner may, by giving proper notice, terminate the partnership. If the Partnership agreement is in writing, the notice must also be in writing. Where a partnership entered into for a fixed term continues after the expiration date, and without any new express agreement, the previous arrangements will continue.

### Accounting Information - Conflicts of Interest

Partners must render true accounts and full information on everything affecting the partnership to any other partner or his legal representative. Every partner must account to the partnership for any benefit or profits made by him from any transaction concerning the Partnership, its assets or connections. If a partner without the consent of the other partners, carries on another competing business of the same character, he must account to any pay over to the Partnership all profits made from such other business.

## Limited Partnerships

In addition to the provisions applying to general partnerships, the following provisions apply additionally to Limited Partnerships which are also governed by the Partnership Act 1909.

A Limited Partnership may not have more than twenty members, unless it falls within the exempted categories.

It must consist of one or more "General Partners" with unlimited liability, and one or more "Limited Partners". A limited partner shall, at the time of entering the partnership, contribute a defined amount of capital or property, and his liability for the debts of the partnership is limited to that amount. A limited partner may not draw out or receive back, directly or indirectly, his contribution during the continuance of the partnership. A corporation may be a limited partner.

A Limited Partnership must be registered, and in default thereof, every limited partner shall be deemed a general partner with unlimited liability.

Notwithstanding the registration requirements, a Limited Partnership does not contribute a legal person in Manx law.

Limited partners may not take part in management, unless, following a Statutory Order made by the Manx Government, they are permitted to do so.

The Financial Supervision Commission is also the registrar of limited partnerships, and is required to keep appropriate records.

The following information must be supplied to the Companies Registry when registering a Limited Partnership:

- a. The name of the partnership;
- b. The general nature of the business;
- c. The principal place of business;
- d. The full name of each of the partners;
- e. The term, if any, for which the partnership is entered into, and the date of commencement;
- f. A statement that the partnership is limited, and the description of every limited partner as such;
- g. In respect of prescribed classes of limited partnership only, the sum contributed by each limited partner, and whether paid in cash or how otherwise.

Upon registration, the Financial Supervision Commission shall issue a certificate of registration.

During the continuance of a limited partnership, any change made in the particulars provided on establishment must be notified to the Financial Supervision Commission within a month.

A certificate of registration or a copy of or extract from any statement registered shall, if certified a true copy by the Financial Supervision Commission, be received in evidence in all legal proceedings.

Any person may inspect the statement filed by the Financial Supervision Commission for a small fee. Any person may require a certificate of registration or a copy of or extract from any registered statement certified by the Financial Supervision Commission for a prescribed fee.

### Public Notices

The following notices must be advertised in two newspapers published in the Isle of Man:

- a. Notice of any change whereby a general partner becomes a limited partner;
- b. Notice of any assignment by a limited partner of his share in the limited partnership to any other person.

### Modification of General Law of Partnership

The following modifications apply:

- a. A limited partner shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be grounds for a court dissolution, unless this is the only means of realising the lunatic's share of the assets;
- b. After a dissolution the affairs of a limited partnership will be wound up by the general partners;
- c. Applications to the court to wind up a limited partnership shall be by petition under the Companies Acts;
- d. Subject to any agreement expressed or implied between the partners:
  - (i) Any difference arising as to ordinary partnership business may be decided by a majority of general partners;
  - (ii) A limited partner may assign his share in the partnership to a third party, and the assignee shall then become the limited partner in place of the assignor;
  - (iii) The other partners may not dissolve the partnership by virtue of a limited partner charging his share of the partnership for his separate debt;
  - (iv) A person may be introduced as a partner without the consent of the existing limited partners;
  - (v) A limited partner shall not be entitled to dissolve the partnership by notice.



C O R P O R A T E   A N D   T R U S T

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