



Government  
of South Australia

Department of Trade and  
Economic Development

# BizFacts

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## Partnerships

### What is a Partnership?

It is an agreement between two, and up to 20 people, to carry on a business together for profit, with the partners each contributing time, talent and money to the undertaking and sharing the management responsibility. It must be a continuing, not a one-off venture.

Generally a Partnership means that you and the others share the profits and accept unlimited personal liability, both jointly and individually, for the debts and losses incurred.

### What is the law regarding Partnerships?

The Partnership Act defines the rights and obligations of equal partners. The Act sets out the rights and obligations of all parties. When there is a formal agreement, partners may decide upon the distribution of capital and profits. If there is no such agreement then the law states that all partners are equally entitled to share the capital and profits, and must also equally bear responsibility for, and must contribute funds to meet the losses and debts incurred.

### How is a Partnership agreement reached?

Partnership agreements should ideally be put in writing in order to reflect the interests of all concerned, and the nature of the business. A well thought out agreement will protect all partners and will set out the rules of conduct for future events and how problems will be settled. It will become the set of rules by which the business is to be conducted and should be agreed between all partners before the business is started.

It is advisable to contact your solicitor and accountant before forming a Partnership. The use of other business advisory services, such as those provided at the Department of Trade and Economic Development (DTED), may also be helpful in working out the points upon which you and your partners should agree.

An agreement should set out:

- names and addresses of the partners
- nature of the business
- duration of the Partnership
- business name
- business address

- capital required for the business
- capital contributions of each partner
- distribution of net profits
- provision for Partnership drawings (income)
- authority of partners in making decisions or signing financial and legal documents
- the way in which the business is to be conducted and controlled
- procedures to be followed in the event of the:
  - bankruptcy, death or retirement of a partner
  - admission of a new partner
  - dissolution of the Partnership.

### Do partnerships have to register the business name?

The Business Names Act can require registration for businesses carried out under Partnership arrangements.

Registration of a business name serves to identify a business and its owners clearly and distinctly from every other business in the State. This registration is not necessary if the business intends to trade only under the names of its owners. When this happens the name of the business is restricted to the surnames and first names and/or surnames and initials of the partners. A BIZFACT sheet on registering a business name is available from DTED.

### How do you choose a partner?

You should choose your intended partners very carefully before going into business. In order to make a wise decision you will need to think about what the person can contribute in terms of capital and expertise. Family and friends do not necessarily make the best partners if they cannot contribute positively to the operation of the business.

### What do you need to know before making a Partnership decision?

All people considering entering into a Partnership must be made aware that:

- Partnerships and partners are viewed by law as the same thing as the business itself

- all partners are personally liable for business debts and any obligations and actions which may arise from business dealings
- undischarged bankrupts and persons of unsound mind cannot enter into a Partnership
- unless otherwise provided for in the agreement:
  - each partner may take part in the management of the business
  - each partner may enter into contracts with third parties
  - no majority of partners may expel any other partner
  - a partner cannot sell a personal share of the business unless other partners agree
  - a partner cannot transfer ownership between partners or a third party without the agreement of the other partners
  - a new partner can only be brought in if all other partners agree
  - a partner who retires from the business is still liable for debts incurred before the retirement
- new partners are not liable for debts incurred before they entered the business
- death or bankruptcy of a partner will terminate the Partnership
- the Partnership has to be re-formed or reconstituted if a partner resigns, dies or retires
- partners may terminate the Partnership at any time by giving due notice of their intentions
- the life of the Partnership is limited to the duration of the association of the founding partners.

## How is taxation handled in a partnership?

For a business to be recognised as a Partnership by the Australian Taxation Office (ATO) it is necessary to show that the partners have real and effective control over the assets, liabilities and profits of the business.

A properly drawn up Partnership agreement can assist in establishing this claim.

An application for a Partnership Tax File Number is required and an annual taxation return must be filed.

The Partnership business is not taxed separately from the partners themselves. Each partner must pay tax on all income, including the share of the Partnership profit. Partners cannot treat income from the business as salary or wages. Partners may have the right to offset Partnership losses against other income.

Family members may benefit from a partnership by spreading the income over two or more family members, to minimise the impact of taxation – but remember all members must be active partners in the business.

## What about children in the family business?

The ATO may view the inclusion of children under the age of eighteen in the family business as an attempt at income-splitting and may impose penalty rates on any income shared with them. If your business is to include your children then you should seek the advice of an accountant or business adviser to avoid unwanted taxation penalty situations.

There are also legal considerations regarding the capacity of children to enter into contracts in their own right which are personally binding. If someone under the age of eighteen enters into an ill-considered contract then the results could become binding upon the partnership with no personal liability imposed on the partner who is under 18. Third parties might also be unwilling to enter into agreements with Partnerships that include children.

## Contacts for further information

Solicitors, accountants and business advisers can give you advice on entering into Partnership agreements. Phone an Information Officer on 1800 188 018 for contact details.