

**PARTNERSHIP AGREEMENT CHECKLIST**

|           |  | <b>Included/<br/>Considered</b> |  | <b>Not<br/>Applicable</b> |
|-----------|--|---------------------------------|--|---------------------------|
| <b>1.</b> | <b>Date</b>  |                                 |  |                           |
|           | • date of agreement  | _____                           |  | _____                     |
| <b>2.</b> | <b>Parties</b>   |                                 |  |                           |
|           | • designate all parties as precisely as possible   | _____                           |  | _____                     |
|           | • can be corporations  | _____                           |  | _____                     |
|           | • if an individual, ensure that the individual is at least 18 years old  | _____                           |  | _____                     |
|           | • it is recommended that each partner is acquiring the interest for its own account                            | _____                           |  | _____                     |
| <b>3.</b> | <b>Definitions</b>   |                                 |  |                           |
|           | • define all terms as needed   | _____                           |  | _____                     |
| <b>4.</b> | <b>Partnership Name</b>  |                                 |  |                           |
|           | • business must be carried on under this name  | _____                           |  | _____                     |
|           | • consider the possibility of conflict with another name and loss of goodwill or injunction/passing off action | _____                           |  | _____                     |
|           | • consider conducting name search  | _____                           |  | _____                     |
|           | • consider registration under <i>Trade-Marks Act</i> (Canada)  | _____                           |  | _____                     |
|           | • corporate partner must register under <i>Business Names Act</i> (Ontario) or comparable legislation          | _____                           |  | _____                     |
| <b>5.</b> | <b>Term</b>  |                                 |  |                           |

- insert date of commencement,  
otherwise date of signing  
governs \_\_\_\_\_
- unless a specific term is  
stated, the partnership is  
terminable at the will of  
all partners \_\_\_\_\_

**6. Place of Business**

- not required if no desire to  
restrict geographical limits \_\_\_\_\_
- consider designation of a  
principal place of business  
or head office \_\_\_\_\_

**7. Description of Business**

- define the scope of the  
agency of each partner \_\_\_\_\_
- no changes without  
unanimous consent \_\_\_\_\_
- the description will set  
the parameters governing  
the scope of prohibited  
competition and other  
restrictive covenants \_\_\_\_\_
- ensure description not  
overly broad or narrow \_\_\_\_\_

**8. Capital Contributions**

- specify obligations to make  
future contributions to  
capital (could include a  
percentage of profits or that  
percentage of profits be  
retained as a reserve) \_\_\_\_\_
- if a limited partnership,  
a change in contributed  
capital as opposed to  
additional advances requires  
a new declaration \_\_\_\_\_
- in absence of agreement,

partners must contribute  
equally

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- attach a form of subscription  
for limited partners

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**9. Division of Net Profits**

- in absence of agreement,  
partners must share equally
- include provision for  
periodic review and criteria  
or basis for revising  
interests

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**10. Accounting and Other Records**

- describe the nature of  
records kept and nature  
of statements to be given  
to partners
- records should be sufficient  
for tax and legal purposes  
and efficient business  
operation
- auditor or accountant can  
advise as to adequate  
records
- in absence of an agreement,  
every partner entitled to  
access to partnership books  
and records

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**11. Auditor or Accountant**

- name auditor or accountant

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**12. Fiscal Year**

- designate year end of  
partnership
- seek advice from  
accountant or auditor

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**13. Accounting Principles**

- valuation of assets (cost, market, depreciated value) \_\_\_\_\_
- valuation of goodwill \_\_\_\_\_
- capital versus income \_\_\_\_\_
- depreciation policy \_\_\_\_\_
- interest on advances and capital \_\_\_\_\_
- write-offs \_\_\_\_\_
- reserves for working capital (receivables, overvalued inventory, etc.) \_\_\_\_\_
- partnership versus personal expenses \_\_\_\_\_
- calculation of profit \_\_\_\_\_

#### 14. Banking Arrangements

- designate banker \_\_\_\_\_
- designate types of accounts and who has signing authorities \_\_\_\_\_
- consider providing for two or more signatures on large amounts \_\_\_\_\_

#### 15. Encumbering Partnership Interest

- restrict partners from charging partnership interest to secure separate debts \_\_\_\_\_
- a partner's liability for personal obligations exigible out of his share of partnership assets (consequently, a partner's personal creditors may be able to dissolve the partnership) \_\_\_\_\_

#### 16. Full Time and Attention

- partnership legislation provides that partners are liable to account for certain outside income \_\_\_\_\_
- state all income/remuneration, etc., to be included in partnership income (*i.e.*, directors' fees, royalties) \_\_\_\_\_
- consider a no moonlighting clause \_\_\_\_\_
- where one partner is part-time, consider providing salary for full-time partners (and for the general partner in a limited partnership) \_\_\_\_\_

## 17. Management

- describe roles of partners and others (*i.e.*, who is in charge of sales, administration, production) Section 24(3) of the *Partnership Act* (Ontario) stipulates that unless there is an agreement to the contrary, all partners are entitled to share in management (this may result in confusion) \_\_\_\_\_
- describe meetings, frequency, notice, procedure; what can or must be done by any partners' vote \_\_\_\_\_
- unless agreement to the contrary, a simple majority governs (except for changes in partners, changes in nature of business and changes in agreement) \_\_\_\_\_
- if limited partnership, only general partner may manage (if limited partner takes part in management, \_\_\_\_\_

loses his limited liability status)

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- include specific powers of general partner, (i.e., no major borrowing or sale or encumbrance of assets out of ordinary course of business without consent of specified majority of limited partners)

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**18. Partnership Contracts**

- who signs what contracts
- if limited partnership, only general partner can sign

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**19. Drawing Arrangements**

- how often
- how much (not exceeding specified percentage of anticipated share of profit for year)

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**20. Retirement, Bankruptcy or Death of Partner**

- unless agree otherwise, retirement, bankruptcy or death of a partner results in dissolution
- provide a notice period and agreement by remaining partners to buy retiring, bankrupt or deceased partner's Units
- method of valuation of former partner's interest and terms of payment
- obligation to purchase by the continuing partners on retirement, expulsion or death of a partner

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- option to purchase by successors from continuing founder \_\_\_\_\_
- to mandatory retirement at specified age with right of younger partners to purchase 20 percent of older partners' interest in each of the 5 years prior to retirement date \_\_\_\_\_

## 21. Valuation of Partnership Interest

- how is amount to be paid to a retiring, expelled or deceased partner for his interest in the partnership (*i.e.*, is goodwill to be included -- if goodwill to be included, price could be based on a reasonable multiple of book value at cost or depreciated value or at a figure to be agreed upon periodically by all partners -- if goodwill is not to be included, price would equal advances or loans plus share of capital assets, including amounts contributed by partners, plus undrawn share of profits) \_\_\_\_\_
- review income tax consequences with regards to valuation \_\_\_\_\_
- auditor/accountant to assist in advising on a reasonable and workable formula which should be in the agreement \_\_\_\_\_
- make sure price is not based on future profits, since retiring partner may be considered to be a continuing partner \_\_\_\_\_

## 22. Non-Competition

- restrictive covenant on subsequent activities \_\_\_\_\_
- must be reasonable as to time, activity and geographical area both as between the parties and to the public \_\_\_\_\_

**23. Sale of Partnership Interest to Third Parties**

- unless all agree otherwise, cannot be done \_\_\_\_\_
- best to prohibit in usual case \_\_\_\_\_
- could provide for it if survivors refuse to buy out retiring partner \_\_\_\_\_

**24. Expulsion of Partner**

- unless there is an agreement to the contrary, a partner cannot be expelled from the partnership \_\_\_\_\_
- could allow on 75 percent vote or lesser vote on grounds of insolvency and those used as grounds for court order in partnership legislation \_\_\_\_\_

**25. Dissolution of Partnership**

- unless agreement to the contrary, death, insolvency and notice of partner dissolve a partnership \_\_\_\_\_
- partners may dissolve if any charge made to partnership for separate debts \_\_\_\_\_
- dissolution automatic on event making business unlawful or unlawful for \_\_\_\_\_

partners to carry on in partnership or by court order

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- could include some or all of grounds in partnership legislation

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**26. Admission of New Partners**

- unless agreement to contrary, cannot admit new partners without unanimous approval
- provide for majority vote
- contribution to be made to capital
- allocate new partners' interest in capital and profits *pro rata* from others and provide method of payment

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**27. Partnership Property**

- registered in firm name
- if registered in the name of one or more partners, then define the property

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**28. Liability**

- consider limiting liability of general partner to limited partners

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**29. Insurance**

- kinds, limits and deductibles
- errors and omissions
- products liability
- fire, boiler, theft, tenants' liability

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- obligation on each partner to purchase stipulated amount of term insurance on life of others sufficient to fund in whole or in part his obligation to purchase interest of a deceased partner
- agreement of partners to consent to and facilitate obtaining such insurance

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**30. Arbitration**

- keep disputes out of courts as it will only harm the partnership business
- consider the auditor as a final unappealable arbitrator on financial matters and named person on non-financial matters
- one or three arbitrators, under the *Arbitrations Act* whose decision is final and not appealable (expensive)

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**31. Registration**

- provide for requisite registration under the *Partnerships Registration Act* and the *Limited Partnerships Act* and undertaking by all partners to facilitate registration of any change made in accordance with the partnership agreement
- attach power of attorney making each partner attorney for the other (surviving death or any assignment of interest) for the purpose of any

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- registration requirements \_\_\_\_\_
- attach limited partnership declaration to be signed and registered \_\_\_\_\_
- provide for less than unanimous vote to change such terms of the partnership agreement as partners agree will not require unanimous consent \_\_\_\_\_

**32. General Contract Provisions**

- term of agreement \_\_\_\_\_
- arbitration clause \_\_\_\_\_
- notice procedure \_\_\_\_\_
- additional documents \_\_\_\_\_
- counterparts \_\_\_\_\_
- time of the essence \_\_\_\_\_
- entire agreement \_\_\_\_\_
- enurement \_\_\_\_\_
- currency \_\_\_\_\_
- headings for convenience only \_\_\_\_\_
- governing law \_\_\_\_\_
- gender \_\_\_\_\_
- calculation of time \_\_\_\_\_
- legislation references \_\_\_\_\_
- extended meaning of units \_\_\_\_\_
- severability \_\_\_\_\_
- termination of prior agreements \_\_\_\_\_

- assignability \_\_\_\_\_

**33. Signatures**

- who has signing authority \_\_\_\_\_
- corporate seal \_\_\_\_\_

**34. Schedules**

- include all required Schedules \_\_\_\_\_