

## Partnerships: Are you in agreement?

Harminder Sandhu, managing director and head of Dispute Resolution at Hawkins Hatton provides some general guidance on partnerships.

A partnership consists of two or more people setting up in business together with a view to sharing profits and liabilities. As there is no necessity for a formal contract between the partners, a partnership can be formed through conduct. However, in the absence of a formal partnership agreement, all partnerships which are not LLPs or Limited Partnerships are regulated by the Partnership Act 1890 ("Act"). The obvious problem with the Act is that it is over 120 years old and therefore it cannot be expected to meet the requirements of modern day businesses.

There are certain aspects of the Act which many of those in partnerships do not realise can be a real issue, for example:

- A partner shares equally in the profits of the business regardless of the time and effort he/she spends in the business compared to other partners spending less time. Factors such as the devotion of time, degree of skill, and seniority in the business are not reflected in the equal share of income profits. The Act also provides for the equal distribution of surplus funds from the sale of partnership assets.
- There is no mechanism for the expulsion of a partner.
- A partner cannot retire. If a partner exits (even through death) the partnership dissolves and must be reformed which can be an expensive process.

The above are just a few reasons why we recommend that all partners enter into a formal partnership agreement to regulate matters such as expulsion, retirement, death and what is expected from each partner in terms of involvement in the business and roles. By way of example a partnership agreement can provide for grounds upon which a right to expel could be exercisable (i.e misconduct), how it would be exercised and provide for certainty. A formal agreement could also reflect the disparity between partners in relation to capital contributions and allow for salaries of differing fixed amounts to reflect individual partners' devotion to the business.

A partnership agreement will ensure the partners share a common vision for the business and mutually agreed goals thus avoiding costly misunderstandings. For any further information or advice contact Harminder Sandhu, Hawkins Hatton Corporate Lawyers at [hsandhu@hawkinshatton.co.uk](mailto:hsandhu@hawkinshatton.co.uk) or on 01384 216840.