

# Partnerships

## Guidance

### Disclaimer

This guide provides information on collaborating with other organisations. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding about what to do.

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## What is a partnership?

Although the term 'partnership' is often used by community groups and organisations to describe a wide variety of relationships between two organisations, the term refers to a specific type of legal relationship and as such will attract specific legal and tax obligations on its parties.

According to the strict legal definition, a partnership is when two to twenty parties go into business together. Under this arrangement all parties (known as partners) own and control the business, with all income belonging jointly to the partners. The defining characteristics of a partnership include that it is not a separate legal entity, that partners have unlimited liability for the debts of the business and that each partner is joint and severally liable for the actions of another.

There are 3 main types of partnerships:

**General partnership** – all partners are equally responsible for the management of the business, and each has unlimited liability for the debts and obligations it may incur.

**Limited partnership** – comprised of general partners and limited partners. The liability of general partners is limited to the amount of money they have contributed to the partnership. In comparison, limited partners are usually passive investors who don't play any role in the day-to-day management of the business.

**Incorporated Limited Partnership** - partners can have limited liability for the debts of the business. However, there must be at least one general partner with unlimited liability. If the business cannot meet its obligations, the general partner (or partners) become personally liable for the shortfall.

## How is a partnership different from a joint venture?

A joint venture is typically created for a single task or project, whereas a partnership is typically formed with the intention of continual business. The three main differences between joint ventures and partnerships are regulations, liability and tax.

### Regulations

Joint ventures are governed by the joint venture agreement created by the parties, along with common law and contract law. If the parties to the joint venture are corporations, the *Corporations Act 2001* (Cth) will also regulate the agreement. In comparison, partnerships are governed by State and Territory-based Partnership Acts. Under these legislations different types of partners are bound by specific obligations and liabilities irrespective of the unique partnership agreement created.

### Liability

Under a joint venture, the actions of one party do not bind the other(s) without the consent to being bound. Typically, this issue will be addressed within the joint venture agreement prior to activities commencing. For instance, parties may include a clause in their joint venture agreement that describes whether they will share liabilities or be held separately responsible and if so, under what circumstances. In comparison, a partnership will automatically bind parties with certain liabilities in relation to debts and fiduciary duties.

### *Tax*

All parties involved in a joint venture can make and claim their own tax deductions. In comparison, partners (under a partnership arrangement) must pay tax on their share of the partnership profit at their individual tax rate.

### **When is a partnership used?**

Partnerships are used to support an ongoing business venture between the parties. It is often used as an alternative to incorporating as the cost of setting up a partnership is inexpensive in comparison to incorporation and has fewer legal requirements. There is also little external regulation by government bodies such as the Australian Securities and Investment Commission (ASIC) and less administrative burdens e.g. partnerships are not required to publish their annual financial records as companies do. It can also be used to attract additional funding as funders are more likely to fund a partnership than a sole trader.

### **How long can you use a partnership?**

There is no fixed time on how long a partnership can be used, however, it is typically established for the purpose of ongoing business activities, much like a company. After leaving a partnership, partners may still be liable for the activities of the partnership depending on the terms and conditions of the partnership agreement.

### **Who can use a partnership?**

Partnerships can be used by two to twenty natural persons and/or entities seeking to go into business together.

### **How is a partnership created?**



Partnerships are relatively easy and inexpensive to set up and have minimal reporting requirements. The first steps to setting up a partnership are to:

- [Register a business name](#)
- [Obtain an Australian Business Number \(ABN\)](#) for the partnership
- [Obtain a Tax File Number \(TFN\)](#) for the partnership
- [Register for Goods and Services Tax \(GST\)](#) if the partnership annual turnover equals or exceeds the threshold of \$75,000
- Set up a method for payment of [Payroll Tax](#) (if the partnership has a wages bill in excess of the relevant threshold amount in the state / territory in which it operates)

### What are the typical obligations of each party?

Each partnership is unique so the only authoritative source for the obligations of each party is the unique agreement the parties have created, along with the relevant legislation which regulates partnerships. The legal and tax obligations of a partnership are stepped out in more detail below.

#### *Regulatory obligations and liabilities*

See above our general advice on how to establish a partnership under law. Once established, the individual obligations of all partners and partnerships are regulated differently between jurisdictions. These regulations are set out in the following state / territory legislation and under common law:

- ACT – [Partnership Act 1963](#)
- NSW – [Partnership Act 1892](#)
- NT – [Partnership Act 1997](#)
- QLD – [Partnership Act 1891](#)
- SA – [Partnership Act 1891](#)
- TAS – [Partnership Act 1891](#)
- VIC – [Partnership Act 1958](#)
- WA – [Partnership Act 1895](#)

Commonly, these obligations will include the following, however, it is important to check the specific legislation of the state / territory you are doing business in as obligations between jurisdictions vary:

- **Profits and losses** - All partners are entitled to equally share in income of the business and must contribute equally to its losses.
- **Indemnity** - The partnership must indemnify each partner for payments made (and personal liabilities incurred) in the ordinary running of the business or anything done to preserve the business or its property.

- **Management** - Generally, every partner may take part in managing the business but no partner is entitled to be paid for this. Any differences that arise in the day-to-day running of the business can be decided by a majority of the partners but no change may be made to the nature of the business without the consent of all partners.
- **Accounting** - Partnership books need to be kept at the principal place of business and be available for every partner to inspect and copy. A partner must account to the business for any benefit they gain from a transaction concerning the partnership, or from using the partnership's property or business connection, without the consent of the other partners.
- **Dissolution** - If a partner dies or becomes insolvent, the partnership is dissolved (unless otherwise stated in the partnership agreement)
- **Competition** - If a partner, without the consent of the other partners, runs a competing business, they must account for and pay to the partnership business all profits made in the competing business.

### *Tax obligations*

All parties within the partnership share the following tax obligations:

- To acquire a separate tax file number (TFN) for the partnership.
- To lodge an annual partnership return showing all business income and deductions and how its income or losses are distributed to the partners.
- Must [apply for an Australian Business Number \(ABN\)](#) and use it for all business activities.
- Must [register for Goods and Services Tax \(GST\)](#) if it
  - has annual [GST turnover](#) of \$75,000 (\$150,000 for not-for-profit organisations) or more;
  - provides taxi, limousine or ride-sourcing services (regardless of GST turnover); and
  - wants to claim fuel tax credits.
- May be required to lodge [business activity statements \(BAS\)](#), for example if it is registered for GST, has employer obligations such as pay as you go withholding, or have pay as you go instalments
- Does not pay tax
  - This is because each partner reports their share of the net partnership income or loss in their own tax return and is personally liable for any tax that may be due on that income.

A partnership and its partners cannot claim a deduction for money they withdraw from the business. Amounts you take from a partnership:

- Are not wages for tax purposes
- May affect what your share of the partnership income is that you have to pay tax on.

You will also need to be aware of the steps to take if you change the makeup of your [partnership](#).

## How to decide if a partnership is right for you

### *Benefits*

The advantages of forming a partnership include:

- Inexpensive to set up
- No formalities, registration or reporting obligations other than tax returns
- More privacy than other business structures such as a trust or company
- A broader management base, with a wider pool of expertise and capital

### *Risks*

The risks include:

- Unlimited liability for the partners, which means that the partners' personal assets are exposed if the partnership's assets are insufficient
- If a partner will not or cannot pay his or her share of the partnership liability, then the other partners must do so personally, jointly and severally
- Partners can be sued personally for anything done in the name of the partnership
- Potential for disputes and loss of trust between the partners
- Difficulties with the transfer or termination of partners
- Limitations on size (generally the maximum number of partners in a partnership is 20)

## Drafting a partnership agreement

It is important to have a written partnership agreement so that all parties understand their roles, responsibilities, and liabilities under the arrangement. The best way to take care in drafting this agreement is by seeking legal advice that is unique to your circumstances.

### *Terms and conditions to consider*

For general guidance only, we have provided examples of the common provisions that will be included within a partnership agreement. However, every partnership will be different and will need to reflect and respond to the unique circumstances and needs of the parties involved.

Key terms and conditions to consider include:

### *Key persons*

- Contact persons
- Decision-makers (this may be different for different areas of decision-making such as finance, strategy, communications)
- Project managers
- Project specialists (i.e. is there an individual(s) with specialists skills and experiences needed to undertake the work)

### *Scope, structure, and objectives*

- The nature and scope of the work to be completed
- Any key deliverables and/or milestones
- The process for revision of scope/strategy
- The legal structure of the parties as individuals and the intended legal structure/arrangement they are creating (e.g. joint venture through the establishment of a new corporation, association, contract, etc.)
- The extent to which the parties intend to be bound (regulations, tax, law, fiduciary obligations if applicable, etc.)

### *Collaboration period and schedule*

- Start and end date
- Date of review/renewal
- Due date for delivery of key deliverables and milestones
- Any fixed notice periods to the other party, etc.

### *The obligations and liabilities of each party*

- Resources to be contributed (e.g. funding, staffing, infrastructure, expertise, etc.)
- Division of roles and responsibilities between the parties
- The key accountabilities of each party
- Whether parties will share liabilities or be held separately responsible and if so, under what circumstances.

### *Key policies and procedures*

- Project management processes and responsibilities
- Reporting schedule, hierarchy, milestone and review meetings
- Strategic decision-making processes, approvals and delegations
- Communications processes, approvals and delegations

- Codes of conduct and other performance requirements

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### *Financial management*

- Financial contributions of each party
- Financial management, decision-making and reporting policies, processes, approvals and delegations for the project
- Accounting, book-keeping and auditing policies and processes
- Distribution of profit/loss between the parties
- Financial liability of each party
- Financial remedies in the event of a dispute

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### *Confidentiality*

Policies and processes for the protection of sensitive and confidential information, including:

- The type and nature of sensitive information likely to be accessed and/or used during the work
- Who is authorised to access and/or use it and under what circumstances
- How will breaches of this be dealt with and/or remedied

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### *Intellectual property rights and Data Sovereignty*

Policies and processes for the protection of intellectual property rights and Data Sovereignty, including:

- Who will own any property/data created
- Who and how can any property/data be used during the process
- How will the transfer of ownership take place once the collaboration ends
- How will personal and sensitive data collected during the project be monitored, stored, and protected (following the guidelines of the *Privacy Act 1998* and relevant state/territory legislation)
- How will breaches of this be dealt with and/or remedied

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### *Exclusivity and non-compete*

- Is there a need to put protect against other parties trying to poach employees, key partners and other personnel? To be effective such clauses need to specify a duration of time for this clause to apply after the project is completed.
- Can parties work with other external parties or are they in an exclusive collaboration with the other parties to the joint venture? It should also clarify whether and when can these parties collaborate with other entities engaged in similar businesses and/or projects with similar activities.



### *Dispute Resolution*

- The process for resolving disputes (e.g. you may agree to a specified style of dispute resolution, or to work with an agreed third party)
- Any preferred remedies in the event of certain circumstances (i.e. non-performance may incur a fixed penalty)

### *Termination*

- The process for dissolution (i.e. how will activities be wound up and project materials and assets be divided)
- The due process to follow in the event of termination (including division of project materials and assets, and in the case of multiple parties, add provisions regarding the process if only one party chooses to exit the contract)

### *Template Collaboration Agreement*

In our Collaboration Agreement Guide we provide a general template for drafting a collaboration agreement, which could include a partnership agreement. This template is a guide only and must be amended to suit your individual needs and circumstances, including the legal structure you intend to create. We encourage you to seek legal advice before entering any partnership arrangement.

### **More information**

For access to more resources on how to establish your JR initiative, [visit our resources hub](#) on the Justice Reinvestment Network Australia website, or contact the JR Partner team on [justicereinvestment@nintione.com.au](mailto:justicereinvestment@nintione.com.au).