



DOLGIN PROFESSIONAL CORPORATION
BUILD A BETTER BUSINESS

GENERAL PARTNERSHIP CONSIDERATIONS

The following is a non-exhaustive list of basic topics to consider in the preparation of a partnership agreement relating to the business and affairs of a firm of general partners proposing to carry on business in the Province of Ontario subject to the Partnerships Act (Ontario):

Preliminary Matters

- What is the effective date for both (a) the partnership agreement and (b) the formation of the partnership?
- Select a firm name and obtain usual trade name/trademark searches and attend to *Business Names Act* registrations as appropriate.
- Where is the location of the firm's principal office? Consider any geographical restrictions on scope of business are relevant.
- What is the process/approval threshold for amending the partnership agreement?
- Consider available creditor protection options for each partner.
- Consider insurance requirements at both firm and individual partner level relating to usual risks and buyout funding as desired (e.g., professional liability/E & O, commercial general liability, key-person, disability, critical illness, life).

Formation and Scope

- Will the agreement have a fixed term (i.e., tied to the completion of a particular event or venture) or terminate upon dissolution?
- Confirm the firm's fiscal year end.
- What is the general business of the firm? Consider if any restrictions on scope of business are relevant.

Admission to Partnership

- Consider the criteria, approval threshold(s) and mechanics for admission of new partners.
- How are additional capital requirements and financial participation/division of net income to be determined for newly admitted partners?
- Consider any "pre-admission" liabilities or obligations which new partners will be required to expressly assume or whether new partners require "carve out" and indemnity for future liabilities relating to facts or circumstances arising prior to their respective admission dates.

Capital Contributions

- Consider quantum (whether in dollar terms or percentages), valuation and timing of initial capital contributions. Capital contributions need to be clear and complete.
- If initial capital contributions consist of property, determine the valuation of same and consider tax implications and need to utilize available ITA rollover provisions.
- Determine if partners are entitled to any interest on all/part of their respective capital contributions.
- What is the partnership's future financing requirements? What are the obligations of the current partners with respect to future capital contributions and/or any personal guarantees required with respect to any bank or other financing?

Accounting and Records

- Consider access of partners to the firm's financial information generally.
Consider who will be responsible to maintain firm books and records and the manner of same.
- Consider the content and frequency of reporting of partnership financial and other information (e.g., financial statements, interim year-to-date results, annual or periodic operating/capital budgets, etc.).
- Consider whether a financial audit will be required/desired and whether books and records are required to be maintained in accordance with GAAP or otherwise.
- Consider selection of firm of auditors/accountants.
- Consider firm banking arrangements.
- Consider file and document storage and retention issues.

Financial Participation

What is the respective participation/division of partners in firm profits and losses? Consider a formula/mechanism which is suitable based on the nature of the business, the nature of the relative contributions of the partners to firm profits and the number of partners of the firm.

- Is income from related sources (e.g., teaching, publishing, directorships) considered firm income and, if so, do any special allocation rules apply?
- How is net income/net losses determined for accounting and tax purposes?
- Consider rules relating to the distribution of allocated net income. For example, how are draws against projected partnership income to be determined and paid? Factors to consider include projected firm net income, monthly partner cash needs and timing of tax instalments, etc.

- Consider rules relating to fair sharing of firm resources and reimbursement for marketing and other out-of-pocket firm expenses.

Management and Administration

- Detail the time commitments required by the various partners and individuals involved (e.g., full time vs. part-time).
- Who is entitled to participate in management and decision making for the firm? Will the firm have any special committees of partners or a managing partner to address managerial issues?
- What restrictions, if any, should there be on the execution of cheques and contracts binding the partnership (since at law each partner has the authority and the capacity to individually bind the entire partnership)?
- What matters require formal partnership meetings or can written resolutions be used in lieu of convening formal meetings (especially in smaller firms)?
- What procedures are to be followed relating to convening partnership meetings (e.g., method of giving notice/calling the meeting, number of partners constituting quorum, place of meeting, level of approval to pass an ordinary/special resolution, casting votes for meeting chairman, etc.)?
- Consider those fundamental matters which require unanimous (or super-majority) approval of the partners.
- Given the joint and several liability of general partners, consider if any particular partner's ability to bind the partnership needs to be limited. If so, consider how such limitation will be communicated to the general public.

Liquidity of Partnership Interests

- Consider general rules relating to the transfer of partnership interests and permitted transfer exceptions to related or affiliated entities.
- Will transfers to *bona fide* arm's length 3rd parties be permitted under any circumstances (e.g., rights of first refusal)?
- Will there be any restrictions on encumbering/pledging partnership interests?
- Consider whether any call or put rights arising upon a partner's incapacity, breach of agreement or bankruptcy/insolvency.
- Is it desirable to have a buy/sell mechanism similar to a shareholder agreement where one/group of partners want to require the other partners to sell or purchase partnership interests?

Retirement, Withdrawal, Expulsion and Termination/Wind-Up

- What is the approval threshold and process for partner retirement/withdrawal?

- What is the approval threshold and process for removal of a partner?
- What is the process for the liquidation, termination and dissolution of the partnership?
- Consider the impact of family law legislation and whether "family law events" should trigger a requirement by the "affected" partner to withdraw from the partnership.
- Consider whether the impact of a partner's incapacity, breach of agreement and/or bankruptcy/insolvency should trigger a requirement by the "affected" partner to withdraw from the partnership.
- Should spouses be required to disclaim any interest in the partnership assets?
- Does retirement from the partnership require a sale of related assets – i.e., interest in the building from which the partnership is operated, etc.?
- What notice requirements are desired in connection with the withdrawal or retirement of any partner?
- Consider financial and tax consequences of withdrawal, retirement and/or expulsion of a partner – i.e., return of capital, manner of satisfying return of capital (i.e., cash vs. assignment of client work-in-progress/receivables), set-offs for selected financial liabilities of partnership (e.g., lease obligations), payments to partnership to acquire customers/clients, allocation/distribution of net income for the current period, etc.
- Consider/confirm the continuation of the partnership following the withdrawal, retirement and/or expulsion of any partner.

Consider indemnity from partnership to departing partner for liabilities of the partnership incurred following departure.

- Consider detailed rules upon a voluntary winding-up of partnership – i.e., payment of firm debts, valuation/allocation of work-in-progress, receivables and other assets, responsibility for collection, assumption of employment obligations, etc.
- Consider maintenance of any "claims made" insurance coverages in relation to any departing partners.
- Practically, since the partnership will need an "unwinding period", consider procedures to maintain the existence of the partnership's business for some period following dissolution/wind-up.
- Consider file and document storage and retention following dissolution.

Death and Disability

- Consider financial participation and management/operational rules relating to temporary disability – i.e., entitlement to draws, participation in management, eventual deemed withdrawal upon "permanent disability", etc.

- Subject to applicable law, consider providing for reasonable extended vacation time (without significant penalty) relating to parental leave, childcare or related family or health issues.
- Consider what constitutes a “permanent disability” and whether same is to be treated as a “deemed retirement/withdrawal” by the affected partner.
- Determine if the partnership will obtain life and/or critical illness insurance for its partners to fully/partially fund buyout/funding obligations triggered by death.
- Consider internal contingency plan to maximize business continuity following death or permanent disability of a partner.

Consider/confirm the continuation of the partnership following the death or permanent disability of any partner.

Valuation & Dispute Resolution

- What process should be followed in the event a partnership interest needs to be valued for any purpose under the agreement (e.g., death, disability, retirement, deemed retirement, etc.)? If a 3rd party valuation is required, consider what type of valuation is desired (e.g., value indication, value estimate or value opinion)?
- Consider usual range of alternatives to resolve partner disputes (i.e., internal escalation, non-binding external mediation, binding arbitration, etc.).

Restrictive Covenants & Work Product Ownership

- What are the partners' obligations to each other regarding issues of confidentiality, work product/IP ownership, non-competition and non-solicitation both during their tenure as partners and thereafter?
- Will competition/solicitation be prohibited or permitted in exchange for some consideration (i.e., exiting partners can acquire clients/staff from firm at some determinable price set off against payables of partnership to exiting partner)?