

## COMPARE LIMITED COMPANIES WITH PARTNERSHIP

### SETTING UP

A partnership is a relationship existing between two or more persons who join together to do business. To set up a business you need to make a contract also the agreement need to be a formal document, but not recommended.

To set up a business such as a LTD must register with the registrar of companies (no less than 20 partners). A Memorandum of Association must be prepared which establishes the company and determines the objects of the business, which it is to conduct. Additionally, the Articles of Association, which contains the internal constraints governing the conduct of the company as between the shareholders and the board of directors of the company. Furthermore a Statutory Declaration must be signed which states the company agrees to act upon the company acts and their requirements. Once these documents have been lodged with the registrar and accepted, a certificate of incorporation is issued and the company may begin trading under the title LTD.

### OBLIGATIONS

The key word in partnership is "sharing". Sharing profits, sharing risk, sharing opportunity, and, often, sharing worry. The whole idea of partnership depends on absolute trust and good faith between partners. The difficulties come when the trust and respect between partners has broken down. Partners can act only within their legal authority and must carry out their duties with reasonable care and skill. Each partner contributes money, property, labour or skill to the partnership and in way to share in the profits or losses of the business. The concept is that there is one pool which receives an income and pays out expenses and when that has been done the remainder (hopefully a profit) is shared between the partners on whatever basis they have agreed and any resulting contract is binding on the other partners whether or not they actually authorized (The Partnership Act 1890).

Unlike partnership the legal position of the company is completely unaffected by the death or retirement of one of its shareholders. Shareholders enjoy the privilege of limited liability, which means they are only liable to meet the debts of the company only to the extent that they have invested into the business. The shareholders elect directors at the companies Annual General Meeting, who controls the company. Policies are decided by the board of directors and are carried out by delegation. If it is a Private Limited Company shares must be owned by friends, families, employees of the company and are unable to float their shares via the stock exchange. There must be a minimum of one shareholder and at least one director.

### LIABILITY

There are two classes of partnerships – general partnerships (GP) and limited partnerships (LP). In a GP all partners are equal. Each partner has equal power of obligations on behalf of other partners and each partner has unlimited liability for its debts. Furthermore, there is also the potential for personal legal liability for the negligence partner as well. In fact, each partner may even be liable for the negligence of employee on partnership if such negligence takes place during the usual course of business of the partner in general liability insurance can counteract this drawback to some extent to protect the person partnership assets of each partner. With respect to a LP participation is usually limited to insure contributing capital and later receiving a proportionate share of the profits. A LP is insuring only a passive investor. A major disadvantages of a LP is that all partners are not protected from liability general partner has all the power.

If you have a Limited company you are limiting your personal liabilities. A Limited Company is a legal entity in its own right. You are not personally liable for the company's debts, as long as you have traded legally or you have not given personal guarantees regarding contracts or suppliers etc. If things go wrong the creditors are paid out of the company's assets not from your own personal assets. Also once you have chosen and registered your company name no other company can use the same name, unlike business where names can be duplicated.

Limited companies are a great idea. The shareholders can invest and not take any responsibility for the debts their liability would be limited to the money they had invested in the company. For example if a shareholder bought £100 worth of shares they could lose all of it but not a penny more than what they put in. After the creditors have been paid (the people who were owed money by the company) the shareholders may get a bit of their money back. A limited company has some good advantages

- It can buy and sell assets
- Make contracts
- Sue other companies
- Shares can be bought and sold
- Shareholders have control over the company's affairs

They can sue, hold property and enter into contracts in their own names. The owners will not be liable for debts and liabilities though if the company needs to borrow money, they are often asked to give personal guarantees to the bank. However, directors can be personally liable for debts incurred while the company is, or is near, insolvent. It is also possible for a director to be personally responsible for negligent acts of the company

## PUBLIC SCRUTINY

An Annual Return (plus filing fee of £15) must be filed at Companies House. This and all other documents held at Companies House are open to public scrutiny. In addition the statutory books of the Company must be open to the public at the Company's registered office. On the other hand for partnerships there is no requirement to make business information public.

## DISSOLUTION

This process is also known as a voluntary dissolution. This is a provision in the Companies Act to allow the removal of the company from the companies Register, typically when the company is dormant. If the company serves no useful purpose its dissolution removes the need for filing annual returns and accounts. But bear in mind that the company can only be dissolved (removed from the Companies House register), if the following conditions apply:

- The company has not traded for three months; this must be a genuine cessation of trade!
- The company has no assets or property or cash at bank.
- The creditors must be circulated requesting their permission for the company to be dissolved under this process.
- Creditors are given three months to consider the request to dissolve the company and can reject such request.

- The company cannot have changed its name in this period.

The company may not have disposed of any property or assets (this may include land and buildings, plant and equipment, debtors and other assets).

Upon the dissolution of a Partnership, the authority of each Partner to bind the firm, and the other rights and obligations of the Partners, continues, but only so far as is necessary to wind up the affairs of the Partnership and to distribute the assets. The Partnership ceases from the date of dissolution. However, where a third party deals with a Partnership after a change in its Constitution (i.e. the dissolution of the old Partnership and the creation of a new Partnership) he is entitled to treat all apparent members of the old Partnership as continuing to be members of the new Partnership until he has had notice of the change.

#### Voluntary Dissolution

A Partnership is dissolved:-

- on the expiration of the fixed term for the Partnership, if there be such a fixed term.
- if the Partnership is entered into for a specific "adventure", upon the conclusion of that "adventure".
- by a Partner giving notice to his fellow Partners of his intention to dissolve the Partnership.
- on the death of a Partner.
- on the bankruptcy of a Partner.
- at the option of the Partners, if a Partner gives a charge to a third party on his share of the Partnership property in relation to his private debts .
- if it becomes illegal for the business of the Partnership to be carried on.

After the dissolution, the authority of a Partner continues but only in so far as it is necessary to wind up the affairs of the Partnership and to complete unfinished transactions. A bankrupt Partner has no authority. On the dissolution of a Partnership, every Partner is entitled to have the Partnership property firstly to be used to pay off the liabilities of the Partnership, and thereafter to be distributed to the Partners in accordance with the rights of the Partners. In this context, a Partner may, after the dissolution of the Partnership, apply to the court to wind-up the business and affairs of the Partnership. Where one Partner has paid a premium to another Partner on entering the Partnership for a fixed term, and the Partnership is prematurely dissolved otherwise than by the death of a Partner, the court may order the repayment of all or part of the premium.

Where a Partnership contract is rescinded on the grounds of the fraud or misrepresentation of one of the Partners, the injured Partner has certain rights as against the Partnership property and the Partner guilty of such fraud or misrepresentation.

Where a Partnership has been dissolved as the result of the retiral or death of a Partner, and the remaining Partners have carried on business in a new Partnership without settling accounts with the retired Partner, or his estate, the outgoing Partner, or his estate, is entitled to share in any post-dissolution profits, or to interest, on the amount of capital attributable to him and used in the Partnership.

On the dissolution of a Partnership, any Partner may give public notice and may require the other Partners to concur for such purposes.

The Partnership Act 1890 imposes no specific duties on the Partners after the dissolution of the Partnership, but there is an implied obligation to wind-up the affairs of the Partnership in accordance with the procedures and the rights of Partners set out in the Act.

In a dissolution of a Partnership, the following rules, subject to any Agreement, apply

1. Losses shall be paid first out of profits, second out of capital, lastly by the Partners individually in the proportion in which they were entitled to share profits.
2. Assets shall be applied:-
  - in paying the debts and liabilities of the Partnership.
  - in paying to each Partner rateably what is due to him for advances, as opposed to capital.
  - in paying to each Partner rateably what is due to him in respect of capital.
  - in paying the ultimate residue among the Partners in the proportions in which profits were divisible.

## REFERENCES

1. Alix Adams "Law for Business Students", second edition 2000
2. Handout about LTD Companies and Partnerships