

Think before you link

Having taken the decision to establish their own business, most people have probably given consideration to the question of whether they should go it alone or with a partner. I am not talking in a strictly legal sense (partner versus trust or company) but in the broader context of operating by oneself or with another party.

This article deals with the issues of entering into a business with another party, and what you need to consider for it to have the greatest chance for success.

Initially, anyone entering into a business needs not just to consider the alternatives but also what it will mean operationally, financially and psychologically. There are no hard and fast rules, but each position (solo or partnership) has its distinct attributes. On summary, however, one of the largest challenges and most common observations noted by sole practitioners is that they have no one with whom to talk, share decisions and bounce off ideas and strategies. The old adage, 'a problem shared is a problem halved', rings very true. It is human nature to be very hard on ourselves when something goes wrong due to a poor decision, resulting in a loss or a setback. Importantly, it may lead to poor decision-making in the future. In the absence of a partner many sole practitioners seek a higher level of support by meeting with their advisers on a regular basis.

This does not mean that seeking out a partner is the most appropriate or desirable course of action, but it is an option worth investigating. Neither is it suggested that someone should seek a partner with whom they have little or no experience – on the contrary. The decision to seek out a suitable partner may be driven by a number of factors, such as limitations on one party's financial capacity, or a party bringing a special skill set to the business.

Whatever the reason, for those who have determined to seek a partner (or have already done so), it is strongly recommended that an agreement dealing with all the relevant issues that confront a business be drafted and signed. The legal road is paved with disputes between parties who had inadequate agreements in place. Having no agreement will still see you with the same limited protection offered by either partnership or corporations law; and these are not really comprehensive enough.

Having an agreement will not necessarily stop a dispute but it will minimise the points of contention that can arise, by ensuring that all parties have fully considered the various issues before commencing their business. In many cases disputes arise due to a genuine

misunderstanding, which has spiralled out of control unnecessarily. By identifying the issues at the outset, discussion may have led to a resolution before business commenced or resulted in deciding not to proceed. While this may feel like a disappointment initially, it's better to pull back now than end up in court later. Do not fall into the trap of thinking that an agreement is unnecessary because you know each other, have worked together, or are genuine friends. Many long-standing friendships have been sacrificed on the altar of business.



There is a case both for and against being in partnership and, while the statistics are not readily available in the context of REIV membership, it is clear that

a significant number of agents operate in a partnership. Some of the key differences can be summarised as follows:

	Sole stakeholder	Various stakeholders
Lower profitability requirement	+ve	
Ability to grow may be harder	-ve	
Faster decision-making if person is a decisive personality	+ve	
Some lower costs: legal, cross life insurance	+ve	
Spreading of risk and financial exposure including guarantees		+ve
Sharing decisions		+ve
More complicated to separate		-ve
Succession may be easier depending on the business plan	+ve	+ve
Sharing of duties		+ve
Continuity in case of illness		+ve

The following checklist is a guide to what should be considered but needs tailoring to the specific needs of each case. *It is not to be taken as a comprehensive guide.*

Check List		
<p>Structure(s) defined</p> <p>Areas of responsibility to be defined</p> <p>Remuneration (wages/salary/directors' fees/FBT/vehicles)</p> <p>Profit split</p> <p>Finance</p> <ul style="list-style-type: none"> • What level of equity vs debt and what occurs if additional capital is required? • What happens if one of the stakeholders cannot make a contribution? • Are business debts to be secured jointly and severally? • Funding of retirement <p>New stakeholder admission</p> <ul style="list-style-type: none"> • Rights for existing stakeholders to take up additional equity (pre-emptive rights) • Valuation method – incoming and exiting stakeholders 	<p>Exiting stakeholder and varying circumstances</p> <ul style="list-style-type: none"> • Resignation - Restrictive covenants • Retirement • Compulsory retirement age (y/n) • Illness • Death • Inappropriate behaviour <p>Each situation will require a different approach re timing, valuation etc</p> <p>Taxation issues such as Capital Gains Tax</p> <p>Dispute resolution clauses</p> <ul style="list-style-type: none"> • Arbitration • Court 	<p>Insurances</p> <ul style="list-style-type: none"> • Life cover protection for family of partner who has died • Sickness, accident <p>Consider an insurance trust as a safeguard for all concerned</p> <p>Administration</p> <p>Internal controls regarding levels of authority. e.g. authorisation for spending and cheque signing</p> <ul style="list-style-type: none"> • Frequency of internal management meetings • Who is the chairperson and how does the position change

Your accountants/advisers can discuss with you the various aspects of the agreement relevant to your circumstances but you will need a lawyer to draft the document. The agreement should be viewed like an insurance policy: take it out and hope you never need to use it. Nobody can predict the future; if you are unfortunate enough to

have a partner pass away, you must deal with the surviving spouse and possibly an executor of the estate with whom you have never had any business dealings. Their sole purpose is to maximise the estate of the deceased and a robust agreement will make the process so much easier for all concerned.

This is only an example of why it is important for the agreement to be put in place.

The next article by Sothertons will address the issue of structure alternatives.

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