

Partnership Agreement Checklist

This checklist is a starting point for discussions on partnership agreements. It should not be considered as legal and/or financial advice. For that you must consult with your lawyer and financial advisor.

Here are some questions all potential partners should ask themselves before signing an agreement:

1. Does everyone share the same vision for the business?
2. As the founder am I satisfied with my ownership stake?
3. Do I feel I am treating the other partners fairly?
4. Can I increase my ownership stake if I want to?
5. Is my exit strategy clear and satisfactory?
6. What are my financial risks?
7. What are my legal obligations?
8. Is the agreement consistent with my long term plans?
9. What is the worst thing that can happen under this agreement?

To put context around a Partners Agreement here are some excellent points from a white paper put together by the law firm McIntosh & Pease:

There is no such thing as a “simple” partners agreement. That does not mean that the agreement should be written in legalese or should be difficult for a business person to understand. What it means is that the issues and contingencies that need to be addressed in a partners’ agreement are complex. There is no way around that.

Partners agreements are not about trust or acrimony. They are about communication and common understanding. They are about building a strong relationship. They are about doing an agreement today that avoids messy and expensive disputes in the future.

No partnership lasts forever. If it breaks down or one partner wants to end it, we want to unwind it as quickly, as fairly and as cheaply as possible, and without destroying the value in the underlying business.

The best partner agreements are often put in the drawer and never looked at again because that level of good communication and common understanding that good partnership agreements are based upon has been accomplished in the process of doing your partners agreement.

Checklist

1. Corporate structure & governance
 - Partners obligations, commitments and restrictions
 - Partners authority (e.g. bank accounts, leases etc)
 - Rights of partners (e.g. sharing of financial information)
 - Non-Competes
 - Employee partners rights

2. Share structure:
 - Tax implications; now and later
 - Ownership
 - Remuneration
 - New equity issues
 - Restrictions on new equity
 - Buying, selling shares
 - Valuation of shares
 - Bringing on new partners
 - Can partners donate their shares to family or other 3rd parties?
 - Voting rights

3. Roles & responsibilities:
 - Directors
 - Officers
 - Think about day to day management roles & responsibilities

4. Partners Compensation:
 - Salaries
 - Dividends
 - Bonuses
 - Distribution of profits
 - What happens when we are losing money?

5. Bringing in new partners
 - Share structure
 - Value of Shares
 - Payment terms; time, money, payroll deduction
 - Compensation
 - Liabilities for new partner

6. Decision making process:
 - How will decisions be made?
 - What decisions need partners approval?

- Different “types” of decisions? Strategic versus operational
 - Binding commitments
 - Hiring/firing
 - Quorums required
 - Unanimous or majority
 - Arbitration process
7. Resolving deadlocks/conflicts:
- Arbitration process
 - Shotgun, Buy/Sell
 - Majority rules
8. Death & Disability
- Insurance
 - Length of disability
 - Rights of heirs
9. Voluntary Exit
- Value of shares
 - Buy outs
10. Involuntary Exit
- Value of shares
 - Buy outs
11. Employee partners
- They leave the company
 - Valuation
 - Payment terms; cash, time?

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