

INFORMATION BOOKLET

PARTNERSHIP ?

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INTRODUCTION

This booklet aims to assist solicitors who are considering partnership.

The profile of solicitors' firms in this jurisdiction is unusual in that the percentage of firms operating as partnerships is very small as compared with that percentage in the solicitors' profession in England and Wales, and also in Scotland. We have a far higher proportion of sole practitioner/sole principal firms. Currently these firms make up approximately 60% of all firms.

There are many advantages to partnership, not least being in a position, as a firm, to keep abreast of new developments in legislation, technology and other matters. The partnership model is a model within which many practitioners operate happily and successfully and is one which could usefully be considered by other practitioners.

Solicitors' training gives them a basic understanding of the law relating to partnership. Solicitors are competent to advise their clients on the legal technicalities of entering or exiting a partnership. However, it is quite a different matter for solicitors to make a practical decision for themselves as to whether they should enter into partnership. Queries to the Guidance & Ethics Helpline demonstrate quite a poor understanding of the practical implications of being a partner.

This booklet seeks to provide information which will assist solicitors make good decisions about partnership. It also identifies the questions which the prospective partner must ask his/her future partners.

It is hoped that the booklet will also assist the partners who are considering inviting the assistant solicitor join them, by reminding them of the novelty of the issues arising for the assistant solicitor and of the necessity to ensure that before any agreement is reached the terms of any proposal are fully explained and understood.

Queries to the Guidance & Ethics Helpline also indicate, surprisingly, that many solicitors are not at all clear about their current status within their firm. This is typically so if they carry the title "Salaried Partner". We have sought to clarify some of the issues involved.

This booklet is not about partnership law. Solicitors are referred at the end of the booklet to further recommended reading on the law.

The committee would welcome feedback in relation to this booklet with a view to future editions including additional useful information.

**John P. O'Malley,
Chairman,
Guidance & Ethics Committee.**

September, 2003.

1. WHAT BEING A PARTNER MEANS

- Running a business with other people
- Sharing the profits, sharing the losses
- Being self-employed
- Being responsible for your own tax
- Being responsible for everything in the firm – negligence, theft, fraud and the overdraft
- Making yourself available to be sued
- Putting personal assets at risk

Being a partner means running a business with the other partners. The business is a business providing legal services to the public. Are you interested in running a business or would you prefer to concentrate on being a lawyer?

Because you are in business, this changes several things you may have taken for granted up until now. One important issue is your remuneration. It is no longer guaranteed that you will receive an amount equivalent to your former salary. The partners, being the owners of the firm, will always be the last to be paid. They can only be paid out of the profits. Other expenses, including the wages of the employed staff, must be paid first. In a bad year, your share of the profits, your “salary”, may be less than the salary of the most junior secretary. On the other hand, in a good year your reward may be far greater than your previous salary. Can you cope with the uncertainty of business?

As a partner you are outside the protection of employment legislation. If you find yourself having to leave the partnership, issues of minimum notice, redundancy or other employment issues are not relevant. There are no statutory rights. You are simply ceasing to be in a business with your former partners and your only rights are those which emanate from partnership law and the agreement between you.

As a partner your tax will no longer be deducted under the PAYE system. It will be your own responsibility to make returns to the Revenue Commissioners and to manage your finances so that you have funds available to pay your tax when it becomes due. This will not be a matter for the partnership.

2. IS PARTNERSHIP THE BEST OPTION?

Partnership

- Pooling of expertise
- Complimentary skills
- Sharing overheads
- Support during illness or holidays
- Support in crises

Assistant Solicitor

- Responsible only for your own legal work
- Relatively fixed hours
- Guaranteed salary

Sole Principal

- Being your own boss
- Controlling the direction of the firm
- Keeping all the profits

Employment in-house or in the State

- Working in a non-legal organisation
- Interesting career paths
- Guaranteed salary

Partnership may, or may not, be the best option for you. There are advantages and disadvantages to each practice situation.

3. WHICH FIRM?

- The firm in which you are currently employed
- A different firm
- A new firm
- A sole practitioner/sole principal firm

After some years as an assistant solicitor most people begin to think about the next phase in their careers. Some decide for various reasons, including lifestyle choices, that they are quite content to remain as assistant solicitors for the future. Others decide that they will not be happy except in a situation where they are their own boss. They will move to setting up practice on their own. Among the remainder are those who decide that they would like to be a member of a partnership. They then have to consider whether they would like to be in the firm in which they are currently employed, in a different firm or to set up a new firm with other solicitors.

Joining an existing firm – your current firm

If you are employed in a firm and are invited to join that firm as a partner you have the advantage of knowing quite a bit about the firm. However, it is important that you do not see the invitation to partnership merely as promotion or the next logical step in the progression which started with getting the leaving cert. points to go to college, graduating, enrolling as a solicitor and securing an assistant solicitor position.

If you are invited to join an existing partnership this will not be as a reward for your contribution to the work of the firm to date. You could be rewarded for that by an increase in salary. Neither will it be because you have a pleasant personality or because you are competent. To a large extent the issue of competence will be taken for granted. The partners will have specific business reasons for inviting you to join them in the business and it is important that you understand their expectations so that you can decide whether you are likely to meet those expectations.

If you have already shown that you have a flair for introducing new clients to the firm from the circles in which you move, this may be attractive to the partners. If the partners are somewhat older than you, they may believe that by you joining, clients of your age group will be attracted to the firm.

The business focus will necessitate a change in your own focus in a practical way. As an employed assistant solicitor your focus will have been on the quality of service to clients. As a partner, the agenda is much broader and the focus must be to ensure that a profit is made, while maintaining the quality of service.

There are other factors influencing a firm's decision to take on the new partner. For instance, the existing partners may wish to share the administrative burden involved in running the firm.

Another reason may be to save PRSI. By having employees PRSI expenses are incurred. By making people partners these expenses are saved. However, this is unlikely to be the main reason you are offered a partnership by the firm.

Joining an existing firm – a different firm

Much the same considerations will arise if you are considering joining a different firm. In this situation both sides are taking more of a risk because they do not know each other so well.

Creating a new firm

When a new firm is being created it is important to approach the matter as for any new business set up situation. There is a lot of advice available in the way of courses and seminars from the Law Society and from other agencies.¹

Joining a sole practitioner/sole principal

If you are considering joining a sole practitioner who is taking on a partner because the business is expanding, there are additional factors to be taken into account. This is a new structure for the firm. The role of the former principal will change substantially. It is important that the changes are planned and managed satisfactorily within the firm as otherwise difficulties are likely to arise.

The risk of difficulties arising is increased in a situation where an elderly partner invites a younger solicitor to join him/her with a view to partnership for a transitional period to allow the older person retire, perhaps on a phased basis. The reality may be that the older solicitor will be unwilling to change systems which have operated satisfactorily for him/her for a lifetime. This will be frustrating for the new partner. There will inevitably be a change in status for the older solicitor which may be particularly difficult for a former principal. On the other hand, many such partnerships leading towards retirement for one partner have proved to be ideal arrangements for both sides.

¹ *“Information for Solicitors Setting Up in Private Practice” – Law Society Booklet*
“Factsheets on topics of interest to new business” – Enterprise Link, Glasnevin, Dublin, 9.

4. THE PROCESS OF BECOMING A PARTNER

- The approach
- The courtship - Taking time to consider
- The engagement – negotiating the terms
- The pre-nuptial agreement – signing a partnership agreement
- The wedding – declaring the partnership to the world

Think of becoming a partner as a process, rather than a single event. The stages in the process are analagous to the stages which most societies in their wisdom believe should be observed in the lead up to marriage – the approach, the courtship, the engagement, some type of pre-nuptial agreement, the marriage and the wedding.

It is prudent before entering into any relationship, whether it be a business or personal relationship, to do some thinking beforehand about whether this relationship will suit you.

The process should be formal. As lawyers, we know that formality ensures that attention is paid to the details.

It is important to make sure that all parties are in agreement about what the commitment from each person is to be. If they are, a good foundation is set on which to build the new relationship and, the chances of the relationship being successful are increased.

5. THE APPROACH

- Waiting for the approach
- An unwanted approach
- Are you definitely being asked to be a partner?

If you like the firm in which you are currently employed and hope to become a partner in that firm it is important that you ask yourself whether it is likely that a partnership will become available in that firm. It may be a family firm where partnerships are offered only to family members.

If you believe there is a likelihood of partnership, you should take whatever opportunities present themselves to indicate your interest in a partnership, if this is available. It may then require some patience on your part, perhaps over several years, until you are actually made a partner.

You may hope to become a partner in some firm but you may not particularly like the firm you are in. If you actually get an approach to be a partner in that firm you should decline the offer and think about moving elsewhere. It would be foolish to accept an offer of a partnership just because it has been made, your intention being to abandon that particular ship when it suits you. You may find at that point that it is difficult to extricate yourself from the situation.

The approach when it comes may be formal or informal. You may be called to a meeting or it may be something which is mentioned informally.

Particularly when the approach is informal, you will need to follow up formally with the partners to satisfy yourself that you are indeed being asked to be a partner and to agree the terms. See the discussion of salaried partnerships later.

6. THE COURTSHIP – TAKING TIME TO CONSIDER

- Getting information
- Personalities
- Status in the team
- Ethos of the firm

It is important that time is taken, after the approach and before actually entering into a partnership, during which you consider the actual proposal carefully. Even if you are made an offer with detailed terms already worked out, you should insist on having a reasonable period, probably a minimum of a few weeks, during which you can consider the matter in general as well as considering the specific terms.

Do not let the pace be dictated unilaterally by the existing partners. It is unlikely that one meeting will be enough to finalise all the issues. This is a big decision, so take your time. If there is a deadline looming, such as the end of the firm's financial year, do not allow yourself be forced into too hasty a decision.

Firstly, you must consider your own personal situation. Are you ready to make a commitment to the business. Did you have a gap year before or during college? Are you ready to settle down? Would taking a partnership tie in with your plans for the next five years? Would you be prepared to commit to the partnership for a longer period or an indefinite period?.

You will need as much information as is available in order to make an informed decision about whether you join a particular partnership. You will need information about the firm from the partners. You will also need information in relation to firms in general for comparison purposes. You can obtain the latter from talking to friends and colleagues who have already been through the process.

You need to know the current financial state of the partnership. The usual information which is made available is the previous three years' accounts. You should study the accounts. If you do not have the expertise to make a proper assessment of them, you need professional advice. Because the accounts are utterly confidential to the partnership, you will need specific permission from the partners to show the accounts to your accountant.

Does the firm carry an overdraft? If so, you should be aware that when you become a partner you become liable for the overdraft. If a situation later arises where you want to leave the partnership you may find that the bank will not release you unless the overdraft is cleared.

Does the partnership have potential to be a good business into the future? What is the profile of the clients? What areas of practice are likely to continue to be profitable and what new areas can be developed? Where does the competition lie? There are many recognised methods of assessing the

strengths and weaknesses of a business so that an overall picture can be obtained. You should make such an assessment.

It is important that all partners are compatible to ensure a good working relationship. You need to consider your own personality and those of the people you are joining. This applies whether you are joining an existing partnership or setting up a new firm. Have you the right personality to be a happy team player?

If there is constant friction between partners, which, some would say, is more likely to happen than between employers and employees, then this can interfere with the business of the firm to the detriment of that business.

You will not necessarily become friends with all the partners but it will be important that you get along at a personal level, so that in times of difficulty you can be good mentors to each other.

Will some partners, whether formally or informally, always be “lead” partners. If you are joining the firm in which you were employed as an assistant solicitor there will be a change of status for you within the firm. This will come about to a large extent from your own response to the new situation. However, will other changes also be necessary within the firm to allow the change happen?

If you are joining a solicitor who founded the firm as a sole practitioner, will it be difficult to change the dynamic between you? Will the person always be of the view, which can be perfectly valid, that no matter how long the firm exists into the future, they will be entitled to greater status than other partners and to extra reward for having had the original inspiration for setting up the firm.

Every organisation has an ethos unique to that organisation and so it is with every solicitor’s firm. Is your knowledge of your future partners limited to your knowledge of their ability or competence as lawyers? Do you share the same values as your future partners? The partners’ values will dictate how clients and the staff of the firm are treated and how other important issues are dealt with. If there are not common views and values there will inevitably be tension when such issues have to be considered. Do you know how your partners would respond to professional conduct issues which might arise in the course of the partnership?

These matters go to the root of the relationship of partners. The reality is that if the partners values are different to yours or there are aspects of the partners’ behaviour which do not particularly appeal to you, it is unlikely that either will change. Accordingly you will have to decide if these matters are of a sufficiently minor nature such that they will not affect your decision to join, or if they are, you should not take up the offer of partnership.

7. THE ENGAGEMENT – NEGOTIATING THE TERMS

- What model?
- Equity partnership
- Distribution of profits
- The premises
- Exiting arrangements
- Break clause
- Other terms

What model?

As already stated, being a partner is about running a business with other people. However, there are many different ways of doing this, many models of partnership.

Again, by doing research and speaking to friends and colleagues, you can inform yourself about the matter. If you are joining an existing firm, the model will already have been established, but may be open to some negotiation.

If you are setting up a new firm, you will have the opportunity of agreeing with your future partners the best possible model to suit your circumstances.

Equity partnership

It is important to be very clear about the nature of the partnership being offered to you. If you are being offered a full partnership, this is usually referred to as an equity partnership. You will be a full partner of the firm.

You may be asked to contribute a capital sum to pay for your share of the assets of the partnership. You are said to be “buying into the partnership”.

You may have to borrow funds to invest the relevant sum in the firm immediately. Alternatively, you may be permitted to build up your capital over a period. You do this by not drawing your full share of the annual profits over several years and transferring these amounts to your capital account in the firm.

Your cash contribution may go towards balancing the books of the firm. This is often necessary taking into account that some of the firm's assets, such as debtors and the value of work-in-progress, that is, the work done but not yet billed and paid, are not realised. Alternatively, it will be a cash

windfall for the existing partners, allowing them to withdraw more cash than would otherwise have been possible.

When a partner leaves a firm the capital sum is repaid and is often used by the retiring partner to buy a pension.

There is a trend, especially in larger firms, not to take capital from new partners. No capital sum is paid by the partner on entry and it follows that no capital sum is due when the partner leaves. This means that partners can come and go with much less disruption to the firm's financial position. In these firms it is expected that the level of earnings will be sufficient to allow partners provide for pensions during their working lives.

The important issue to decide, if you are being asked for capital, is whether your stake in the firm will lead to a level of earnings which justifies your capital outlay. In this context, the solvency of the firm generally must be assessed.

Distribution of profits

How will the profits be distributed? If joining an existing firm, it is unlikely that you will be offered a share in the partnership equal to the more senior partners. If you are to have the smallest percentage, will this change over time? In partnerships of only two or a few partners, it is more likely to find a fairly even distribution of profits. In larger firms, the environment is more likely to be competitive with the division of profits being based, at least to some extent, on performance, mainly measured by fees earned for the firm.

There are also many other measures which can be brought into the formula, including seniority and non-measurable contributions, such as responsibility for administration.

If your share of the profits is to be dictated by the fees you earn, it is important to consider your own client base and whether you will have a say in the allocation of good quality work to you in the future.

If a very competitive environment does not bring out the best in you, then a partnership in a very competitive partnership will not be right for you and should be declined.

The premises

The premises out of which the firm operates may, or may not, be an asset of the partnership. In other situations, it is owned by one or more of the partners and rented at market value to the firm, or it is simply rented from a third party. Be clear about the arrangement.

Exiting arrangements

Is there clarity about exiting arrangements - whether a partner leaves because of a decision on his/her own part to move on, because of retirement on age grounds or because of expulsion?

Is expulsion to be limited to situations where there has been serious misconduct on the part of one partner or might it also come into play because the other partners agree for strategic or practice development reasons that one or more partners should leave?

Are all the partners required to take out permanent health and other insurances so that, for instance, if a partner becomes seriously ill, arrangements are in place to ensure an income for that partner at a time when he/she is not contributing to fees? Has the partnership got “keyman” insurance to cover the risk of loss to the firm should one or more particular key partners become seriously ill or die.

Break clause

Committing to a partnership for an indefinite period is quite a daunting prospect. You may feel you can only make a decision in the medium term. For instance, you may not yet have decided that the geographic location of the firm is necessarily where you want to live in the medium to long term. One option is to have a break clause after a few years when the terms of the partnership can be re-examined and when there will be an option to review the matter at that point or even to exit from the partnership.

New Partners

The issue of who joins the partnership in the future will be a matter for all the partners to agree.

Other terms

Other practical matters which you should inquire about are the following:-

- Whether there will be one managing partner who will take the main burden of the administrative work and have less client contact than other partners.
- Whether the hiring and firing of staff will be a matter for all the partners to agree on.
- Whether there are specific arrangements for dissolution/termination.
- Whether there will be restrictive covenants prohibiting former partners practising in the future within a certain radius of the firm.
- Whether the name of the firm will change if you join.

8. THE PRE-NUPTIAL AGREEMENT - SIGNING A PARTNERSHIP AGREEMENT

- The partnership agreement
- Partnership law

As lawyers, we know that it is best that any agreement is committed to writing for certainty. Accordingly, it is best that there should be a written partnership agreement.

It is also vital to have a written partnership agreement to ensure that the wishes of the partners can be legally enforced and are not subject to being overridden by partnership law. Partnership law lays down certain terms which will apply to all partnership agreements, written or oral, unless they are specifically excluded. It is important to consult the legal textbooks and to be aware of the relevant issues.

There may be merit in the partners taking legal advice and instructing an independent solicitor to draft the agreement made between them.

It is much easier to enter into a written partnership agreement at the beginning of the relationship rather than deciding, perhaps during a period of tension, that a written partnership agreement is necessary. There have been instances of partnerships which operated happily on an informal basis for many years which did not survive the exercise of negotiating and drafting a formal partnership agreement further on in the relationship.

9. THE WEDDING – DECLARING THE PARTNERSHIP TO THE WORLD

- Partners
- Staff
- Clients
- The outside world

A new partner joining the firm is a cause for celebration and every firm will celebrate in its own way. It is a cause for celebration among the partners because it strengthens the group.

It is equally important that the appointment is celebrated with staff even if this is as simple as buying cakes for the tea break. It is also a signal internally of the new status of the solicitor.

The regulations governing professional notepaper provide that all the partners names must appear on the notepaper. Clients may become aware of the matter in this way. Additionally, firms often like to publicise the event, perhaps by a mailshot to their clients or publicity in the media. The making of a new partner is a statement of confidence in the future of the firm.

10. HOW THE PARTNERSHIP FUNCTIONS

- Structures
- Disputes
- Joint responsibility
- Solicitors Acts and Regulations

Structures

When you become a partner your day to day work in the firm may not be very different from that of an assistant solicitor. While every solicitors' partnership is a business run with the other partners, in some partnerships the partners work quite independently of each other, each one operating essentially as a general solicitor and simply sharing the overheads and dividing the profits on an agreed percentage at the end of the year.

However, ideally in a partnership, there will be a management structure, regular meetings will be held and decisions will be made on an ongoing basis to deal with problems as they arise, with a view to improving efficiency which in turn will lead to delivery of a better quality of service to clients and ultimately to maximising the profits for the firm.

Some firms opt to appoint one partner as a managing partner. This person does more of the administrative work and less of the legal work. In a firm where profits are based on performance this partners' remuneration will not be based only on the fees earned for the firm. The partners vest in that person authority to make many of the decisions in the firm. However, usually decisions relating to the hiring and firing of staff and other important matters will be reserved for decision by the partners as a group.

Disputes

It is part and parcel of any work situation that disputes will arise from time to time. One obvious issue which can be the subject of dispute is the question of profit sharing. As stated previously, this can be avoided to a large extent if there is a written partnership agreement which has a clear formula for arriving at a fair distribution, with flexibility for review in response to stated changed circumstances.

Another issue often in dispute is the question of the relative contribution of the partners to the work of the firm. Partners may complain that one of their number is not pulling their weight in terms of effort, workload, hours worked or new business brought to the firm. Again, ideally, the partnership agreement will have mechanisms for dealing with these situations.

The allocation of work is also an important issue among the partners and can be a source of friction because most of the partners will wish to have the highest fee earning work to ensure a good share of the profits, if this is the basis on which the profits are divided, even if this is only to a limited extent.

Partners often have difficulty agreeing among themselves about levels of spending and borrowing by the firm. For instance, how will the amounts which are to be spent on maintenance and refurbishment of the premises be agreed? In what circumstances will the firm borrow, bearing in mind that all the partners will be responsible for the debt. Some partners are quite comfortable borrowing for cars and other expenditure, even in lean years, to maintain a confident image for the firm. Other partners would prefer not to borrow at all. Some partners, because of their personal financial commitments, might always want to withdraw their full share of the profits allowing for only minimal amounts to be re-invested in the firm.

The less profit that is available, the more likely there is to be friction about financial matters.

Disputes in a partnership relating to work matters can usually be dealt with on a day to day basis. Other matters which go to the root of the partnership relationship, if not resolved internally, may need assistance from outside. This could be by way of mediation, arbitration or litigation.

Mediation is often the preferred choice for dispute resolution in partnerships because it offers privacy to the partnership. The partnership agreement may provide that if a dispute is not resolved internally the next step must be to go to mediation.

Joint responsibility

As soon as you become a partner you are responsible for everything which happens in the firm to the same extent as if you were a solicitor in practice on your own. The partnership is jointly responsible but you are each severally or individually responsible for the whole operation. Accordingly, it is important that all partners have sufficient information to allow them monitor the situation. Sometimes, as we have seen, one partner will manage the practice and should report regularly to the partnership as a whole. However, even in this situation all the partners remain responsible. There is responsibility for all aspects of the business – delivery of services, staffing etc.

Partnership responsibility also includes responsibility for compliance with the Solicitors Acts and regulations.

If you are a partner you should know the following:-

- The scope of the Solicitors Acts, 1954 to 2002
- The scope of the regulations made under those acts.
- That each year, the firm's own reporting accountant has submitted the annual Reporting Certificate to the Law Society on time.
- That each year, applications for practising certificates for all solicitors in the firm have been submitted on a timely basis.
- Whether any complaints against the firm or issues of non-compliance with regulations are currently being investigated by the Law Society.
- Whether any matter relating to the firm is before the Disciplinary Tribunal.
- That Professional Indemnity Insurance, at an appropriate level relative to the work of the firm, is in place for the firm.

- Whether any circumstances have arisen in the firm which should be reported to the insurers.¹

The Law Society will look to each of the partners in the event of any difficulty arising in the firm.

Likewise, if there is a claim for negligence against the firm all the partners are likely to be sued by the clients, not just the person who, for instance, made the mistake which led to the loss arising for the clients.

Currently, the incorporation of solicitors practices is not permitted and there is no limited liability in partnerships.

¹ *Information for Solicitors Setting Up in Private Practice – Booklet Law Society*

11. DIVORCE - CEASING TO BE A PARTNER

- Decision to leave
- Practical issues
- The continuing partners

Decision to leave

It is important to look at the position of partners when one partner exits from the partnership. You may find yourself in this situation some day. You may make the decision to leave or it may be made for you.

You may make a decision to move on because, having being with the partnership for a period, you decide that this is not the best place for you to be, you may wish to move to another location or you may wish to retire on grounds of age or for other reasons.

You might also be asked to leave by the other partners exercising relevant provisions in your partnership agreement. This might be for reasons of conduct or could simply be for economic reasons because your area of practice is not very profitable or as part of a strategy for the development of the practice.

Practical issues

When the decision to retire is made it is important to ensure that all the formalities are then put in place so that you exit as free as possible from the responsibilities of the partnership. If a partnership agreement is in place, it should dictate your entitlements on resignation. The usual arrangement, provided the firm is solvent, is that you will be entitled to the re-payment of the capital you invested in the firm and the amount standing in your current account, the latter being your share of the profits which are not fully drawn.

Your capital account reflects your share of the partnership assets.

The following is a check list of practical matters which will require attention:-

- Repayment of capital account
- Repayment of current account
- Formal release from bank commitments
- Cancellation of your authority to be a cheque signatory
- Formal release from commitments to suppliers
- Alteration of notepaper
- Other relevant notifications to banks, accountants, clients, suppliers and staff
- Reassignment of life policies, if applicable

- Dealing with the firm's premises, if applicable.
- Putting in place indemnities from the other partners as agreed.
- Relevant notification to professional indemnity insurers
- Putting run-off insurance cover in place, as necessary
- Arrangements in relation to transfer of files

Run-off cover

Professional indemnity insurance is on a "claims made" basis. This means that if a client makes a claim against a solicitor for professional negligence, the relevant insurance is the insurance in place at the time when the claim is notified, not at the time when the mistake was made. You will need this cover which will be effective after you leave the firm.

The professional indemnity insurance regulations require a solicitor to carry run-off cover for two years after the solicitor has ceased practice. However while the mandatory period of cover is two years the Law Society recommends that a minimum of six years run-off cover should be effected, to reflect the relevant Statute of Limitations period for actions based on contract.

The cost of the run-off cover has also to be considered.

Transfer of files

The arrangements in relation to the transfer of files will depend on whether you are setting up in practice locally. If you are not continuing in private practice, this will obviously not be an issue.¹

All these matters are for negotiation, where not dictated by the partnership agreement.

The continuing partners

If the other partners are continuing they will simply form a smaller partnership. Your partnership is not an asset which you can transfer to another solicitor.

If a partner exits, for whatever reason, or dies, this can be a very expensive time for the remaining partners. The essential point is that the exiting partner or, if deceased, his estate, is entitled to his full share of the partnership assets, subject to the provisions of the partnership agreement. That partner's capital and current accounts must be repaid. This may be a major strain on finances.

Younger solicitors sometimes decide to stay in a particular firm because their partner is considerably older, in the erroneous presumption that when he dies or retires that they will inherit the practice by default. This is completely incorrect and unlikely to happen. That solicitor's estate will be entitled to a share of everything. It is important to consult the legal textbooks in this regard. Getting together the funds to make a repayment of capital or current account may put considerable strain on the firm. It may be necessary to borrow funds to make the payment. If the office premises were part of the assets of the partnership it may be that these premises will have to be sold to realise the share of the retiring partner or his estate and the continuing partner or partners may find themselves purchasing smaller premises.²

¹ "Transferring files between Solicitors" – Practice Note Gazette December '96 - www.lawsociety.ie

² "Valuation of a Practice" – Law Society Practice Management Note, Jan. '95

Not everyone wishes to work at full steam until the age of 65 or older. Partnership agreements should be flexible enough to provide for an option of gradual withdrawal. This in turn would be reflected in

division of profits. This would help avoid difficulty in the event of the death of one partner who had ceased to make a full contribution. In those circumstances the continuing partners would only be required to pay a share of the assets reflecting the lesser involvement of the partner at the time of his departure.

The occasion of a retirement from a partnership or of the full dissolution of a partnership is generally a time of trouble and difficulty. However, the reality is that no partnership will continue forever and accordingly it is important to plan for these events so that when they happen all sides are as certain as they can be about the arrangements and that a minimum is left to negotiation. Often, the position of the parties at dissolution is not equal, with one party in a position of greater weakness. In better times, it would undoubtedly be the wish of all partners to have fair procedures in place for an exiting partner. This should be thought about at the commencement of any partnership and reflected in the partnership agreement.

Firms should not hesitate to take professional advice as necessary. This will be money well spent.

- Legal advice
- Accountancy advice
- Mediation facilities

Partners could also consider availing of the mediation facilities offered by the Guidance & Ethics Committee of the Law Society. The committee will provide the services of a mediator for one session, free of charge except for the mediator's out of pocket expenses, if any. The committee secretary can be contacted at the Law Society for further information.

Retirement from a partnership can also be a time of emotional difficulty. Hopefully, both sides will have as their objective that everyone will come through the experience feeling that they have been dealt with fairly and ready to move on to retirement, to the next phase in their career or, if one of the remaining partners, to a continuation in partnership.

12. CURRENT CONFUSION ABOUT STATUS?

- Salaried partner
- Two distinct concepts
- A question of fact

Salaried partner

It is apparent from queries to the Guidance & Ethics Helpline that there are many solicitors who are unclear as to their status within their firms. This usually arises following a change for the solicitor from a situation where he/she was employed as an assistant solicitor with a fixed salary. The solicitor has been told at some point that he/she is to have a new status within the firm. However, there often is not sufficient discussion with the solicitor or clarity about what the change is to imply.

The solicitor may be given the title “salaried partner”. Some of the confusion centres around this term. This is understandable because the term is applied by some firms to employer/employee relationships and by others to partner relationships. Often the meaning which is to be attributed to the term in the particular situation is not stated and agreed.

Being made a partner is a positive and important step in a solicitor’s career. In some firms solicitors are made salaried partners as a first step, which it is hoped will be followed in due course by the solicitor being made a full partner.

When this first step is taken the solicitor is not asked to contribute to the capital of the firm. On the other hand the solicitor is not usually given access to all the information relating to the partnership. The solicitor may be given the title of partner but his/her role within the partnership may be very limited.

If you are made a salaried partner, it is an indication from the firm that you are held in high esteem. Firms make solicitors salaried partners to indicate to them and to the outside world that they are trusted solicitors. From the firm’s point of view, making additional partners may be thought to give the firm the appearance of substance.

It is important that you understand the implications, some negative, which follow from your status as salaried partner.

Two distinct concepts

A solicitor may be a partner by express agreement of the existing partners or may be deemed to be a partner only because they were “held out” as such.

In the former case, there has been an agreement between the solicitor and the partners that he/she is to become a partner. The written agreement, if there is one, will dictate the rights and liabilities which all

the partners have between them. The solicitor is a partner within the firm and is expressly held out as such to the outside world. There is no confusion about the situation.

Alternatively, a solicitor who is not a partner by express agreement, may be deemed to be a partner by “holding out”. This happens when the solicitor has been presented to the outside world as a partner. This may or may not have been the intention of the existing partners. In this situation although there has been no agreement between you and the partners of the firm that you are a full partner, the business may have been carried on in such a way either generally, or in a particular case, that you were held out to third parties as a partner. You are a partner but only by “holding out”. This may mean that you then have liabilities to third parties, for example, to clients. They can insist that you take responsibility for the liabilities of the firm to them. If you are a partner by holding out, you do not have responsibility as a partner to the other partners in the firm.

If you are to be appointed a salaried partner, the existing partners may be willing to put indemnities in place to protect you in the event that you are sued as a partner.

A question of fact

The question of whether a solicitor is a partner is a matter of fact not a matter of what the solicitor understands or believes.

The two questions about which every solicitor should be quite clear are:-

“Am I a partner by express agreement of the other partners?” **or**,
“Am I a partner by holding out?”

The following are some typical situations in which a former assistant solicitor may find themselves:

1. Being paid a salary
Being taxed under PAYE
Having the title “Salaried Partner”

Status: Not a partner by express agreement but may be a partner by holding out

2. Being paid a salary
Being paid a fixed bonus
Being taxed under PAYE
Having the title “Salaried Partner”

Status: Not a partner by express agreement but may be a partner by holding out.

3. Being paid a salary
Being paid a bonus based on a share of the profits
Being taxed under PAYE
Having the title “Salaried Partner”

Status: Not a partner by express agreement but may be a partner by holding out.

4. Being paid an amount equivalent to previous gross salary plus a percentage of the profits
Being responsible for own tax on a self-employed basis
Not contributing to equity/capital

Status: Partner.

5. Being paid a percentage of the profits
Being responsible for own tax on a self-employed basis
Contributing to equity/capital

Status: Partner

A bonus is no different from a bonus paid to any sales rep. who gets commission related to sales. It can be simply a different way of calculating a salary. A salary does not have to be a constantly fixed amount.

If you are paid on a PAYE basis, you are an employee, and could only be a partner by holding out.

If you make your own tax return you are self employed, and are either a contractor or a partner.¹

Check the position

It is very important that you are clear about your status within the firm and that this is confirmed by the partners.

You may be delegated many responsibilities within the firm but these are not necessarily indicators that you are a partner by agreement. For instance, you may have authority to sign undertakings or you may have a trainee solicitor assigned to you.

If you believe yourself to be a salaried partner, although you are not quite clear about the implications, you may have decided that you will allow matters rest. You may be happy that you have reached a certain status in the firm as reflected in your title of “salaried partner”. This should not be your attitude.

The nub of the matter is that if you are a partner by holding out you may be deemed to carry the responsibilities which go with that partnership including responsibility for financial and compliance matters. If you are in that situation you should be quite clear about the matter. If you have the responsibility you need to ensure that you have access to sufficient information to allow you check these matters for yourself.

Are you entitled to see all information relating to the partnership, including the annual accounts? If you are not allowed to have this information then you should make sure that you are not held out as a partner in an inappropriate way.

You should check out the position by liaising with one of the partners and simply asking the relevant questions. Is the paper work in order – are you declared a partner on the notepaper or on the professional indemnity insurance proposal form?

¹ *Code of Practice for determining Employment or Self Employed status of Individuals – Revenue Commissioners*

Do not leave these matters to be decided by a court in the context of litigation against the firm. If you are not a full partner by agreement of the partners and enjoying whatever benefits flow from that, you will not wish to be declared a partner by a court, by virtue of holding out, in a context where it can only have negative implications and result in loss for you.

If you are not clear, this is an indication that it could at least be argued by third parties that you are a partner. If a person has allowed themselves to be described as a partner, or has been careless about checking whether they have been described as a partner, it may be difficult to deny that they were content to be held out as a partner. A person who had signed a practising certificate declaration form as a partner because they had the title “salaried partner” would find it very difficult to deny that they were satisfied to be held out as a partner.

Firms should check their own position

Lack of clarity results in confusion on both sides and not just on the part of the former assistant solicitor. The confusion is often reflected in the forms of declaration for practising certificates which are submitted by solicitors to the Law Society on an annual basis. Sometimes in a two solicitor firm one solicitor describes himself as sole principal but the other describes himself/herself as a partner. This is clearly inconsistent.

There have been instances where a solicitor has described himself as a partner in the practising certificate declaration form for one year but in the following year has described himself as an assistant, although, on investigation, there has been no change in the solicitor’s status within the firm in the intervening year.

Existing partners should ensure that there is total clarity in their own firm about the identity of partners and salaried partners and the implications of their status for salaried partners. There should be a written statement as to the implications of being a “salaried partner” in the firm.

A good exercise would be to review the practising certificate declaration forms for the previous three years. How have the individual solicitors described themselves? Are the declarations consistent? Copies of these declarations could be held centrally so that one partner/administrator could co-ordinate the matter. These forms should also tie in with the professional indemnity insurance proposal forms.

APPENDIX

FURTHER READING

- 1. “Partnership Law” Michael Twomey (Butterworths 2000)**
This is the recognised Irish text book on partnership law. It is available to members on loan from the Library of the Law Society of Ireland.
- 2. “Solicitors Partnerships” Law Society CLE Seminar, May 1997.**
Speakers:
Rory O’Donnell, O’Donnell Sweeney, Solicitors
Des Peelo, Peelo & Partners, Chartered Accountants
Tom Shaw, J.A. Shaw & Co., Solicitors
Michael Twomey, Solicitor, Consultant in Partnership Law
- 3. “Current issues in Partnership Law and Practice” Law Society CLE Seminar, September 2001.**
Speakers:
Michael Houlihan, Michael Houlihan & Partners, Solicitors
Laurence K. Shields, LK Shields, Solicitors
Michael Twomey, Solicitor, Consultant in Partnership Law
Michael Ryan, Accountant, McCann Fitzgerald, Solicitors
- 4. “Setting Up in Practice” Law Society CLE Seminar – February 2003**
Speakers:
Philip Joyce, Philip M. Joyce & Company, Solicitors
Charles Russell, Russell & Co., Chartered Accountant
Michael Houlihan, Michael P. Houlihan & Partners, Solicitors
Therese Clarke, Law Society Solicitor
Eamonn Keenan, Sexton Keenan, Solicitors
Tim Bolger, Investigating Accountant, Law Society
John A. Campbell, J.A. Campbell & Co., Solicitors

This seminar is usually held on an annual basis.

CLE/CPD Seminar material is available for purchase from the CPD Section of the Law Society.
- 5. DSBA Specimen Partnership Agreement**
This Dublin Solicitors Bar Association precedent is available for purchase on CD Rom from the DSBA Price €133 inclusive P & P. See www.dsba.ie
- 6. “Code of Practice for determining Employment or Self-Employment status of Individuals” by Employment Status Group under the Programme for Prosperity and Fairness, July 2001.**

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