



Law Society Practice Information
Session:

**Partnership Agreements and
Succeeding Practice Rules**

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Legal Services Regulation Executive
Law Society of Ireland

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Practice Support Lunchtime Session



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What is a partnership?



- Partnership is the relation which subsists between persons carrying on a business in common with a view of profit – Partnership Act 1890
- Solicitor firm with 2 or more practising solicitors who have agreed to enter partnership
- Partnerships do not have a separate legal personality
- Partnership contracts are private matters and not regulatory matters
- Salaried Partner v Equity Partner
 - Both have joint and several liability for the firm **in terms of regulation**
- “Holding out as a partner”

LIABILITY AS PARTNER



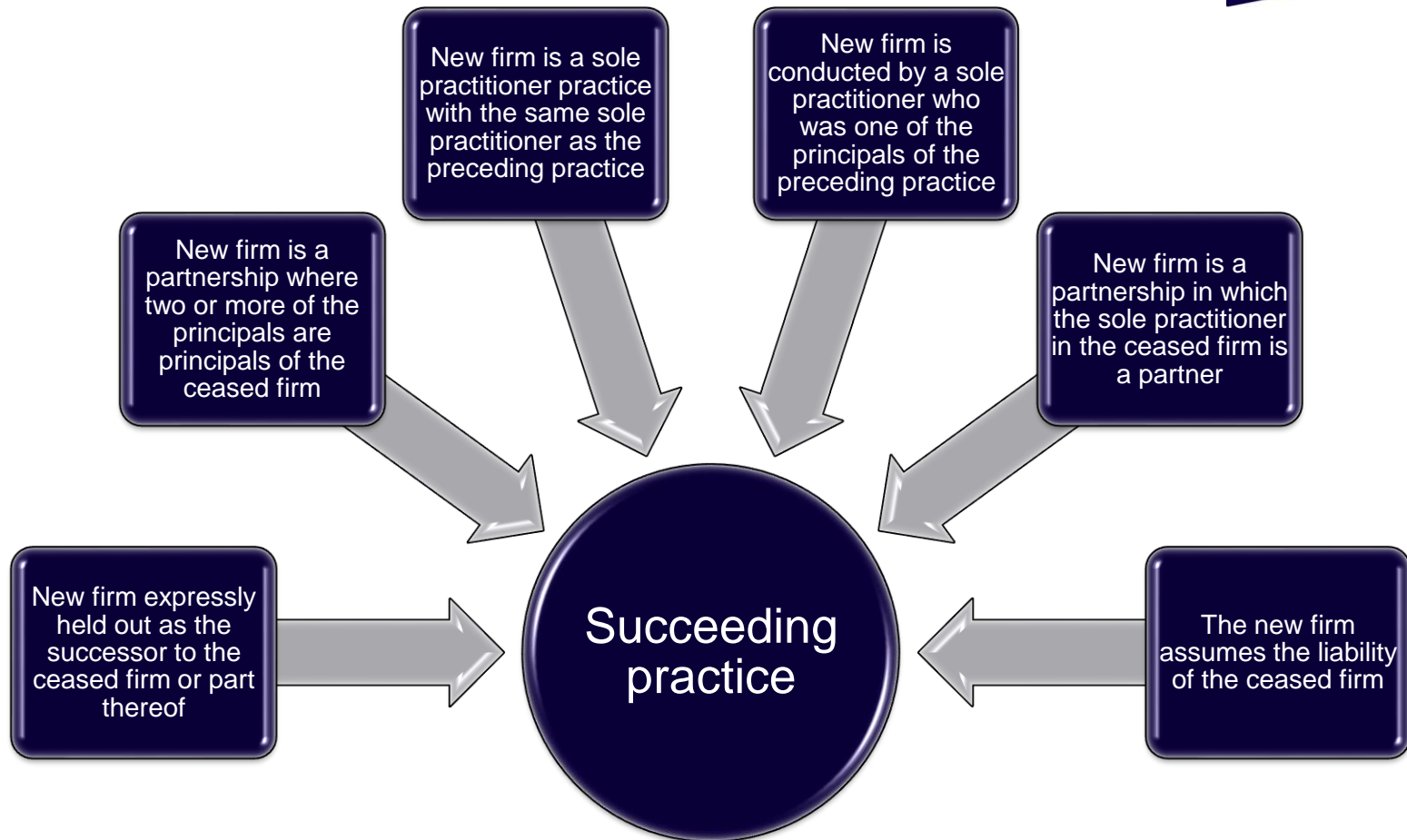
- Agent for each other
- Liable to third parties for:-
 - act done in relation to partnership business
 - in ordinary course of business
 - done as partner, not as individual
- Obligation to contribute to discharge losses
- Right of indemnity in respect of liabilities (save fraud and gross negligence)
- Fiduciary duties to each other and partnership

Partnership agreement



- In absence of a written agreement, the Partnership Act 1890 will apply
- A well drafted written partnership agreement will avoid issues arising in the future
- Important to address matters including:
 - Decision making and voting rights
 - Profit sharing
 - Day-to-day responsibilities
 - Retirement matters
 - Force majeure matters – incapacity and death
 - Suspension or expulsion from partnership
 - Dispute resolution

Succeeding practices



When is a firm not a succeeding practice



A firm is not a succeeding practice if any of the following apply:

1. None of the conditions in the definition of succeeding practice apply
2. Another practice is or was held out as a succeeding practice
3. A sole practitioner retires and passes their files to another firm that does not hold itself out as a succeeding practice i.e. preceding practice enters the Run-off Fund

How to avoid being a succeeding practice



- Do not include any reference to the ceased practice on any of your firm's business stationery including notepaper, business cards, or invoices.
- Do not advertise the fact that your firm has taken on the business of a ceased practice
- Do not lead clients of the ceased firm to believe that your firm is a continuation of the ceased firm
- Despite being desirable in business development terms, do not use the name of the ceased firm for promotional or any other purpose
- Send a formal written notification to the Law Society that your firm is not a succeeding practice to the ceased firm

What to say to clients of the ceased firm



- Make a clear distinction between your firm and the ceased firm
- Make it clear that your firm is a separate practice – it is not a continuation of the ceased firm
- Inform the clients that your firm has reached an agreement to take on the files of the ceased firm in order to offer a continuity of services to its clients to ensure that there is no disruption in the handling of their legal affairs
- Remember that the files belong to the client – give them the option to nominate your firm as their new solicitor, to have the file sent on to another nominated solicitor, or to have the file returned to the client

Phoenix firm provisions



- Phoenix firm provisions are in place to prevent abuse of the Run-off Fund by firms closing to dump their claims into the Run-off Fund, and then reopening in another form.
- It should be noted that the phoenix firm provisions apply regardless of how much time passes since the ceased firm entered the Run-off Fund.
- The ceasing firm entering the Run-off Fund is required to sign a declaration stating that the principal(s) have no intention in forming a succeeding practice at any time in the future, and confirming that all claims and circumstances have been notified to their existing insurers up to the expiry of the firm's insurance.

Phoenix firm anti-abuse provisions



- A “phoenix capture” system is run by the Society to identify any phoenix firm that attempts to open in practice and such firms will be designated as phoenix firms by the PII Committee
- Phoenix firms are required to declare and cover the new firm as a succeeding practice to the ceased firm in order to be permitted to commence in practice. Such insurance should cover all claims against the ceased firm since the date of cessation.
- Insurers will have a right of reimbursement for claims already paid by the ROF for the ceased firm
- Phoenix firms that do not obtain the required succeeding practice insurance will not be allowed to practice

Questions?



Further queries



Any further questions can be emailed to s.treanor@lawsociety.ie