

CM
MURRAY

The Little Book of
Partnership Law

There are many sacred laws along the journey to becoming a partner...

Please reference our scriptures: The Limited Liability Partnerships Act 2000 and related Regulations, and our Secret text known only to the chosen few, the Members' Agreement



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Welcome

We thought it would be helpful to create a Little Book which sets out the basic partnership principles in a practical and accessible manner for our clients and contacts. It features the work of talented illustrator, David Orme.

This is very much a brief overview, as partnership law is a complex area. It aims to touch on just some of the key legal and practical

issues relevant to modern partnerships under English law.

Where we refer just to partner or partnership agreement, this also includes LLP member and LLP agreement.

We hope you like it!

The Team at CM Murray LLP

This booklet is for general purposes only. We would be pleased to help you with specialist legal advice for specific circumstances. Information correct as of 1st December 2009.

The pros and cons of partnership – an overview

Partnership typically provides direct participation in the success and profits of the business, involvement (to one extent or another) in the running of the firm, and favourable tax treatment.


But it also brings fiduciary duties and potential liability, depending on the type of partnership structure.

Partners also have fewer statutory rights than employees and are more likely to be bound by restrictive covenants.

Partnership laws and liabilities

Partnerships are governed by the relevant partnership agreement and the Partnership Act 1890. A partnership is a collection of individuals in business with a view to a profit. Partners in a partnership have unlimited personal responsibility for the debts, liabilities and losses of the firm.

LLPs are governed primarily by their Members' Agreement, the Limited Liability Partnerships Act 2000 and related Regulations. An LLP is a legal entity separate from its members (unlike a partnership). An LLP member's liability is (except in certain circumstances) limited to their capital contribution.



Are you sure the duty of good faith requires me to do this?

Yes, I'm sure, now release the dogs!

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Partner duty of good faith

This is the fiduciary duty owed between partners in a general partnership, and usually from LLP members to the LLP.

In essence a partner must act in the best interests of the firm.

A breach of this duty could result in the partner or LLP member having to account for profits unlawfully earned as a result of any breach.

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The duty of good faith therefore prevents an exiting partner, even during their notice period, from e.g.:

- competing with their current firm;
- soliciting clients and or colleagues;
- diverting business opportunities;
- misusing confidential information.

They must provide full information to the firm, including on any material changes likely to affect the business.

Due diligence for new equity partners

Prospective partners should consider requesting the following information and documents when offered equity partnership by a firm:

- current partnership agreement;
- accounts for the last three years and current year management reports;
- major liabilities current or planned, e.g. office move;
- capital contribution required and financing options;

- how profit shares and drawings are determined;
- level of professional indemnity cover;
- details of current major claims and partner disputes; and
- the age profile of the firm, succession planning and existence of an up-to-date business plan.

Partner or employee? Spotting the difference

It is often important, especially on partner exits, to ascertain if someone is a genuine partner or employee.

An equity partner is usually a genuine partner, whereas a salaried partner is more likely to be an employee with employment law protections.

A fixed share partner's status will depend on the nature of the relationship, rather than the title.

Relevant factors include whether they:

- receive fixed pay or participate in profits and losses;
- are indemnified against losses;
- contribute capital;
- share in the firm's surplus assets on a winding up;
- participate in management decisions and control.

If a firm expels a partner who is in reality an employee, without a fair reason and process, the firm may face statutory employment law claims, including unfair dismissal.

Partner remuneration structures

Partners receive a share of profit, the size of which depends on the structure of the profit system.

Simply put, some firms share profits based on a lockstep system which allocates additional points in the profit share pool for every year of partnership service (but often subject to gateways and a plateau). This system essentially rewards longevity, collegiality and performance across the firm.



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Some share profits on primarily a merits basis, recognising the individual performance and introductions of the partner (and their team).

Other firms have a hybrid system, with elements of both of the above including a discretionary element reflecting individual and team contribution.

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Partner protections from discrimination

Partners are protected against unlawful discrimination on grounds of their sex (including marital status), race, disability, age, sexual orientation, religion and belief.

A firm may not discriminate against a partner in the way in which it makes an offer of partnership, in the terms of any such offer or by refusing to make an offer of partnership.

Nor, where someone is already a partner, can it discriminate in the way it provides access to any partnership benefits, by expelling a partner or by subjecting them to any other detriment.

Harassing or victimising a partner is also unlawful.

Strict time limits apply.

Disabled Partners: Firms are also under a duty to make reasonable adjustments where a disabled person is placed at a disadvantage in the work place because of a provision, criterion or practice applied by the firm or a physical feature of its premises.

Age discrimination: Requiring partners to retire at a certain age under the partnership agreement or otherwise, could be potential age discrimination.

The firm must be in a position to show that compulsory retirement at that age is a proportionate means of achieving a legitimate aim of the firm.



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Partner restrictive covenants

Exiting partners may be subject to post-retirement restrictive covenants in the partnership agreement.

The restrictions must be no more than reasonably necessary to protect the firm's client connections, workforce stability and/or confidential information.

However partner restrictive covenants are far more likely to be binding than employee restrictive covenants. A separate body of case law has built up around partner restrictive covenants.

The leading partnership case of *Bridge v Deacons* (1984) upheld a five year prohibition on a partner soliciting any clients of the firm.

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Partner post-retirement restrictions typically include prohibitions on:

- joining a competitor within a geographical area;
- soliciting certain clients of the firm;
- dealing with certain clients of the firm;
- soliciting partners and key employees.

Occasionally agreements also include specific restrictions on team moves.

Modern partner restrictions typically last between 3-12 months (and sometimes longer) following departure.

In some agreements credit is given for time spent on garden leave.

Breach of restrictions may result in proceedings against the partner seeking an injunction and/or an award of compensation for losses sustained.

It may result in proceedings against the partner's new firm where they are alleged to have procured and/or induced those breaches.

Why does my exit package contain a parachute?



Well we are on the thirty third floor!



Key issues in partner retirement discussions

On leaving a firm, a partner may be asked to sign a retirement deed, to record the terms of departure and to receive any enhanced payments.

Careful thought needs to be given in the retirement discussions to issues such as:

- the actual right of the firm to remove the partner and the majority required;
- notice period;
- whether garden leave applies;
- if and when capital is to be re-paid;
- payment of profit-share and release of tax reserve;
- releases from liabilities such as overdrafts, loans and premises;

- indemnities which will apply post-retirement;
- internal and external announcements and agreed reference, if required;
- whether restrictive covenants are binding and apply, or should be waived or modified;
- payment of legal fees;

plus other issues relating to the partner's position and rights, including potential breach of the duty of good faith, of the partnership agreement and discrimination claims.

About The Team:

The Partnership Law Team at CM Murray LLP advises partnerships and equity partners, most notably in the professional services and hedge fund sectors.

We have a particular focus on partner exits, disputes, restrictive covenants, team moves and discrimination claims.

For more information and partnership law articles please visit our website:
www.cm-murray.com

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CM Murray LLP is a specialist UK Employment, Partnership and Business Immigration law firm.

Legal 500 2010 recommends CM Murray LLP for partnership law:

"Boutique employment and litigation practice CM Murray LLP provides clients with an 'excellent' and 'professional' service in the contentious partnership field. With a leading practice advising the partners of major City law firms, it is also developing a significant client list in the hedge fund industry. Clare Murray is 'among the very top partnership practitioners', and combines 'charm, energy and a steely determination with an in-depth knowledge of the law'. Susanne Foster is also recommended."

Chambers and Partners 2009 says:

Clare Murray founding and name partner of CM Murray LLP, is acknowledged as a well-respected and "**absolutely fantastic**" figure in the partnership community. Specialising in partnership and employment law, she is praised for her "**calm and unflappable presence**" and "**dynamic, yet client-friendly**" attitude.

More illustrations by David Orme can be found at www.woodenlog.co.uk | Design by gmtoucari.com

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