

LEGAL

HOW TO MANAGE THE EXIT OF A PARTNER



Well drafted partnership deeds will minimise the pain and expense of a parting of the ways, says **Sarah Rushton**

Unlike a limited liability partnership, a true partnership has no identity separate from that of its partners. In an economic downturn, weeding out underperforming partners may be vital. How disruptive this is depends upon the skill of those advising the partnership and the partnership's ability to manage the exit. Staff, clients and other partners may be loyal to the person leaving and relationships must be managed carefully.

Partners owe each other a duty of good faith, so care must be taken to prevent the outgoing colleague from being able to claim a breach of those obligations. There is also the question of whether the partnership can afford to pay out an equity partner.

If considering expulsion, check that all partners have signed up to the partnership agreement, otherwise there may be an argument that it is a "partnership at will" and should be dissolved. In the absence of a partnership agreement, the Partnership Act 1890 provides a default structure: unless a partnership agreement provides to the contrary, a partner cannot be expelled by the remaining majority of partners, who must negotiate or apply to the court for dissolution. Since the court can only order the dissolution of the whole partnership and not merely expulsion, this is a last resort.

Most well-written partnership deeds set out the terms for expulsion. Typical deeds provide for termination "for cause" or "without cause" (retirement). The former is usually immediate and typically related to misconduct or incapacity. Retirement usually provides for either the partnership or the partner to give notice to the other, often up to 12 months.

Unless failing to perform to a certain level is set out as a reason for expulsion for cause, the partnership will have to rely on the retirement provisions.

Other factors need to be taken into consideration. There is a difference between a genuine partner and a salaried partner: the latter may also be an employee, in which case the partnership must have due regard to employment rights, including statutory disciplinary procedure. Genuine partners also have certain "employment"-related rights, such as the right not to be discriminated against unlawfully. Therefore, even when expelling a genuine partner, the firm should consider a compromise agreement. A mediation or arbitration clause in the partnership agreement may not exclude the right to bring an employment claim, and the partnership risks its dirty linen being washed in public if a deal cannot be made.

An outgoing partner has the right to inspect the partnership books, including client data and information about payments to other outgoing partners. This could make the remaining partners nervous and put them under pressure to agree more favourable departure terms. The consequent business risks can be mitigated if the partnership deed has effective post-termination restrictions on soliciting clients, competing, etc. A well-drafted deed may also impose a financial penalty for breach of any restriction (although if it does it may make an injunction harder to obtain) or may delay payments to the partner for a set period.

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