

# How a partnership agreement can help you manage change

## Partnership agreements - some useful info

When there's a change in a partnership, a few issues can crop up. If there's a **change of partner** and you don't have a suitably worded partnership agreement, it may cause some problems. And if a partner dies, retires, is made bankrupt, is expelled or a new partner joins, it's a good idea to be prepared.

We thought it would be helpful to explain some of the solutions but just so you know, this info isn't formal advice. You should get your own guidance from professional advisers (legal, tax and accountancy) as it's important to make sure a partnership agreement is right for you.

## Do you need a partnership agreement?

You don't have to have a partnership agreement. However, the partnership will be governed by the Partnership Act 1890 (**Partnership Act**) if you don't have one.

## How can a partnership agreement help when there's a change of partner?

If your partnership is governed by the Partnership Act and there's a change of partner, the partnership will dissolve. If the continuing / new partners want to carry on the business, a new partnership will be formed. The business will continue as a sole trader if only one former partner is involved.

## Can a partnership agreement change this?

Absolutely. If you have a partnership agreement that confirms the partnership will continue with a change of partner (**continuity clause**), it won't dissolve. However, the continuity clause must cover all possible changes (there's more on this below).

## Does this affect your partnership bank account?

If you don't have a partnership agreement which includes a continuity clause covering the relevant change of partner, we'll have to freeze your partnership account.

## What does freezing the partnership account mean?

Unfortunately, it means you can't use your account. If you want to continue the business after the change of partner / dissolution of the partnership, you'll need to open a new account for the new partnership or sole trader.

## Can you access the funds in your frozen partnership account?

If your account is frozen after the partnership is dissolved due to a partner dying, we'd need instructions before funds are transferred from your frozen account. These would need to come from the personal representatives of the deceased partner and any surviving partners. This could result in a significant delay as the court process to appoint personal representatives may take some time. The estate of the deceased partner will also have to pay professional and court fees for the appointment of the representatives.

If your account is frozen after the partnership is dissolved due to a bankrupt partner, we'd need instructions before funds are transferred from your frozen account. These need to be from the bankrupt partner's trustee in bankruptcy and the other partners.

We'd need instructions before money is transferred from your frozen account if your partnership is dissolved because of another change of partner. These should come from all former partners of the dissolved partnership (including the outgoing partner).

## Would your account be frozen if you had a partnership agreement with a continuity clause for the change of partner?

No. You could continue using your existing partnership bank account.

The continuity clause would have to cover the change though. For example, if the continuity clause only confirmed the partnership continues on the death or retirement of a partner but the change of partner is the admission of a new one, the partnership would still dissolve. We'd also have to freeze your partnership account.

It's important the wording of the continuity clause covers all potential changes of partner. You should get legal advice to make sure there's no disruption to the operation of the partnership bank account.

## What happens to borrowing if the partnership is dissolved?

Any borrowing would have to be repaid. If the business was taken over by a new partnership or former partner as sole trader, they could apply to refinance the borrowing (subject to status, of course).

## What if only one partner stays on?

A partnership must have two or more people in business together with a view to making a profit. The partnership will dissolve if only one partner remains - even if your partnership agreement includes a suitably worded continuity clause.

## Does all of this apply to both Scottish and English partnerships?

That's right. Both Scottish and English partnerships are governed by the Partnership Act.

## Are there other advantages to having a partnership agreement?

Quite possibly, yes. The Partnership Act (a Victorian Act of Parliament) may not reflect the way you want to run your partnership. You should get your own professional advice (legal, tax and accountancy) on whether a partnership agreement, and its content, is right for you.