

Avoiding the Pitfalls of Partnerships in Succession Law

We have found a number of our farming clients are unaware of the implications a business partnership can have on their succession planning.

Partnerships are typically created under formal partnership agreements. However informal partnerships can be created unintentionally, for example by spouses operating a farm together. It is important to identify whether a partnership exists and to consider what this means in terms of your current circumstances and succession plan.

What is a partnership?

The Partnership Act 2019 (**Act**) defines a partnership as:

"the relationship that exists between persons carrying on a business in common with a view to profit."

The Act's definition of partnership is wide and a partnership can begin when all elements of the definition are met, even where the parties did not intend to create a partnership.

Even where there is no partnership agreement in place, a number of factors may indicate a partnership exists, including:

- Jointly owned property (e.g. farmland) being used to generate a profit.
- Business profits and liabilities are shared between the parties.
- Partnership financial accounts are prepared.

What happens on the death of a partner?

The default position under the Act is the partnership will end on the death of one of the partners, unless there is a formal signed partnership agreement stating otherwise.

Where this occurs, generally every partner is entitled to have the partnership assets used to pay all partnership debts and liabilities, and to then share in any remaining partnership assets.

Where a partnership is only discovered after the death of one of the partners, this can have serious implications from a tax and legal perspective, for example:

- *Surviving partner continues to run partnership:*

Under the Act, the deceased partner's share will exist as a debt from the date the Partnership ended.

If a surviving partner continues to run the partnership without first settling with the deceased's estate, the Act provides they become liable to the deceased's estate for:

- the deceased's share of all partnership profits made after their death; and
- interest of 5% per annum on the deceased's share of the partnership assets.

- *GST implications:*

We cannot provide tax advice but understand a GST payment may be triggered by the dissolution of the partnership due to death of a partner. While a new partnership can be formed in this instance, the GST may not be accounted for which may cause significant tax issues in the future.

- *Succession planning:*

All partnership property is jointly owned and so cannot be disposed of by one partner alone. As a result, any gift of partnership property under a Will is in breach of the Act and will fail.

- *Potential conflicts of interest:*

A conflict of interest may arise where an executor of a deceased estate is also a partner of a

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partnership with the deceased. Partners and executors are subject to different duties and sometimes these duties may conflict. Where this occurs, the executor/partner may be restricted in acting in either of their capacities.

Recommendations for those in a partnership

If you are considering setting up a partnership or if you are already in partnership, we recommend contacting your lawyer and accountant to discuss whether a partnership agreement should be put in place.

Your lawyer and accountant can also assist in ensuring your succession plan is consistent with your partnership and does not give rise to any adverse tax or accounting consequences.

Want to know more?

If you have any questions about the matters raised in this article, please contact our specialist [Property team](#).