

IO3 – 12

LEGAL ASPECTS, INCLUDING PARTNERS AGREEMENT



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Module Objectives

By the end of this module:

- *Participants will be able to name different types of business legal arrangements in the UK and/or EU*
- *Participants will be able to identify the essential elements to be included in a Partnership Agreement*
- *Participants will draft their own Partnership Agreement*

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Module S12

Pre-Assignment: 30 minutes

What does “legal” mean?

Provide examples from your own country where there are areas of society covered by law.

Are there any penalties if you do not do as the law says?

Are laws fixed, or fluid?

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Module S12

Pre-Assignment: Suggested answers

What does “legal” mean: Related to law, based on law, something that is allowed to happen according to law. Law being the system of rules which a particular country or community recognises as regulating the actions of its members and which it may enforce by the imposition of penalties.

Provide examples from your own country where there are areas of society covered by law. Marriage/civil partnerships, financial agreements, trespassing, ownership

Are there any penalties if you do not do as the law says? Yes, these vary from country to country.

Are laws fixed, or fluid? Fluid: It is important to know laws and legal precedents continually evolve, and this module will provide an overview of areas of legality you should consider when setting up a social enterprise, however you will need to ensure you abide by current laws.

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A Guide to Legal Forms of Social Enterprise

We know what a “Social Enterprise” is, and we are beginning to understand how it differs from a profit making business.

Although your social enterprise is still defined as a **business**, with primarily **social objectives** whose surpluses are reinvested in the community, rather than personal profit for shareholders and owners - it is important to be aware that in law **it is different**.

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Legal Forms for Social Enterprise in the UK

The Department for Business, Innovation and Skills explains that in the UK a social enterprise can be formalised legally as either:

- Sole Trader
- Limited Company
- Community Interest Company
- Unincorporated Association/Trust
- Limited Liability Partners

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31677/11-1400-guide-legal-forms-for-social-enterprise.pdf

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Legal Forms for Social Enterprise in the EU

Throughout the EU there is no single legal form for social enterprises. Many social enterprises operate in the form of social cooperatives.

Some are registered as:

- Private companies
- Limited by guarantee
- Mutuals
- Provident societies and associations
- Voluntary organisations, charities or foundations

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Regardless of how you decide to be registered, if you choose to go into a partnership with others, you will need to create a **Partnership Agreement**.



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What is a Partners (Partnership) Agreement?

A partnership agreement is a written **contract** between all parties involved in starting a partnership structured business.

The contract covers the **rights & responsibilities** of each partner.

If you take the time to do this properly, then it will reduce any conflicts and complications.



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In the UK, there is the Partnership Act (1890) that applies if you **do not** form a partnership agreement - resulting in rights and responsibilities being divided equally.

The outcome of such a ruling may not reflect the fairness that has gone into your social enterprise and leave you without control of your own “ideas” and out of pocket. <https://www.legislation.gov.uk/ukpga/Vict/53-54/39/contents>



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Each EU country will have their own laws relating to business partnerships when there is no formal agreement in place.

Ensure you are aware of your rights when forming partnerships without a legal agreement, should any complications or disagreements arise.

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If you do not have a Partnership Agreement then you **MUST** know what the law says in the country you are trading relating to non-partnership agreements.

- What happens if one partner wants to leave?
- Who is responsible for paying back loans?
- What happens if you stop trading - who owns the assets?

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So we know why we need an agreement, but what should be included in a partnership agreement?



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1. Name of the Partnership and the Purpose

You must decide on a name for your partnership and what it is you do, i.e what is the purpose of your social enterprise.

You can use your own names, or you can adopt and register an individual business name. You must make sure the name isn't already in use - use the links below to check.

EU: https://e-justice.europa.eu/489/EN/business_registers_search_for_a_company_in_the_eu

UK: <https://www.gov.uk/get-information-about-a-company>

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2. Contributions to the Partnership.

You must record who's going to contribute money, assets, e.g. property, or services to your social enterprise before it starts trading, and what ownership percentage each partner will have.

divide decisions
ownership leaving
capital responsibilities
profits nominated
percentage partners

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3. Allocation of profits, losses, and draws - compensation

Will any profits and losses be allocated in proportion to a partner's percentage?

Will each partner be entitled to any allocated profits from the social enterprise, or will 100% of profits be redistributed at the end of each year into the business.

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3. Cntd.

You and your partners may have different financial needs, and different ideas about how the money should be divided up and distributed, so this is an area to which you should pay particular attention.

Company Name			
Profit and Loss Statement			
Years Ending:			
Revenue		2016	2015
Sales revenue		₹ 150,000	₹ 175,000
(Less: sales returns and allowances)			
Service revenue		₹ 50,500	₹ 75,000
Interest revenue			
Other revenue			
Total Revenues		₹ 200,500	₹ 250,000

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4. Partners' authority.



Without an explicit agreement to the contrary, any partner can bind the partnership (to a contract or debt, for example) without the consent of the other partners.

If you want all of the partners to obtain consent before making arrangements, then you must make this clear in your partnership agreement.

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5. Partnership decision making.

Although there's no formula on making decisions among partners, you must set out how they will be made in your agreement.

Do you need a unanimous vote of all the partners for every business decision? Or just for major decisions - but what is a major decision? Can individual partners make minor decisions on their own?

These questions must have clear answers in your agreement to avoid conflict later down the line.

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6. Management and workload duties.

You might aim to be flexible about some rules but it is essential to work out some guidelines in advance.

Areas to consider could be, who will do the financials? Who will bring in customers? Will you have employees - who will be the “people manager”?

Think through the management needs of your partnership and be sure you've got everything covered.

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7. Admitting new partners.

What will you do if you want to expand your social enterprise, and bring in new partners?

Agreeing on a procedure for admitting new partners before you need to makes great business sense.

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8. Withdrawal or death of a partner.



Equally, the rules for partner withdrawal are just as prudent as for admitting new partners.

In the event of a partner dying, what process will you follow?

You could set up a buyout scheme in your partnership agreement for those who want to leave.

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9. Resolving disputes.

If you and your partners cannot agree on an issue, what are your options:

- Do you go straight to court?
- Agree to access mediation or arbitration?



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The partnership agreement can include just about *anything* you think may be relevant to your business.

Watch this video outlining the essentials.



<https://youtu.be/x09DaDHyqpQ>

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- Decisions - who makes the decisions, is it democratic by voting
- Responsibilities - who is responsible for finance, promotion/marketing, people etc.
- Partners - how many partners will there be and how do you bring in new partners and how to leave a partnership. How to manage the death of a partner
- Capital - where does the initial cash injection come from
- Profits - how are they divided and where are they reinvested
- Percentage of ownership - how is it broken down
- Disputes - what happens next?

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Creating a DRAFT agreement

PARTNERSHIP AGREEMENT

THIS PARTNERSHIP AGREEMENT (the "Agreement") made and entered into this _____ (the "Execution Date"),

BETWEEN:

Mrs Dacorum of 48 High St, Hemel Hempstead HP1 3AF, UK, and
Mr Dacorum of 48 High St, Hemel Hempstead HP1 3AF, UK
(individually the "Partner" and collectively the "Partners").

BACKGROUND:

- A. The Partners wish to associate themselves as partners in business.
- B. This Agreement sets out the terms and conditions that govern the Partners within the Partnership.

IN CONSIDERATION OF and as a condition of the Partners entering into this Agreement and other valuable consideration, the receipt and sufficiency of which consideration is acknowledged, the parties to this Agreement agree as follows:

Formation

1. By this Agreement the Partners enter into a general partnership (the "Partnership") in accordance with the laws of England. The rights and obligations of the Partners will be as provided under the common law and as stated in the Partnership Act 1890 and any other applicable legislation (the "Act") except as otherwise provided in this Agreement.

https://www.lawdepot.co.uk/contracts/partnership-agreement/?s=QSGovLaw&g=qgIndustry&webuser_data_id=142160896#.YovvTajMI2w

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Before you finalise your agreement it is recommended you discuss your contract with a lawyer to ensure that all of the important aspects are covered.



<https://youtu.be/Q9VS8ZCdmP0>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31677/11-1400-guide-legal-forms-for-social-enterprise.pdf

European Social Fund

<https://www.eurodiaconia.org/2021/07/framework-partnership-agreements-for-the-period-2022-2025-under-the-european-social-fund/>

<https://www.nolo.com/legal-encyclopedia/creating-partnership-agreement-29906.html>

<https://youtu.be/Q9VS8ZCdmP0>

<https://www.legislation.gov.uk/ukpga/Vict/53-54/39/contents>

<https://youtu.be/x09DaDHyqpQ>