

Partnerships 2019

Contributing editors
Tina Williams and Daniel Sutherland
Fox Williams LLP



Legal experts for professional practices

“Tina Williams’ experience is second to none and this makes for simple, pragmatic, commercial solutions – coupled with great client service, this is the compelling combination that all clients are seeking.”

Client quote in Chambers UK, 2019

“Daniel Sutherland’s strength is in listening and understanding exactly what we as clients wanted and finding practical solutions to the queries we raised.”

Client quote in Chambers UK, 2019

Contact our team:

Tina Williams – cjwilliams@foxwilliams.com

Daniel Sutherland - dsutherland@foxwilliams.com

10 Finsbury Square
London EC2A 1AF
+44 (0)20 7628 2000
info@foxwilliams.com
www.foxwilliams.com

Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development managers

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

Published by

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between July and August 2019. Be advised that this is a developing area.

© Law Business Research Ltd 2019

No photocopying without a CLA licence.

First published 2019

First edition

ISBN 978-1-83862-092-9

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Partnerships

2019

Contributing editors**Tina Williams and Daniel Sutherland****Fox Williams LLP**

Lexology Getting The Deal Through is delighted to publish the first edition of *Partnerships*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Tina Williams and Daniel Sutherland of Fox Williams LLP, the contributing editors, for their assistance in devising and editing this volume.



London

August 2019

Reproduced with permission from Law Business Research Ltd

This article was first published in September 2019

For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	3	Mexico	24
Tina Williams and Daniel Sutherland Fox Williams LLP		Zita Horváth Leal Isla & Horváth SC	
Brazil	4	Saudi Arabia	27
Alice Dourado, Bruno Augustin, Fernanda Andrade, Lara Sturion, Maíra Leitoguinhos and Pedro Magalhães Fialho Salles Advogados		Mohammed AlAmmar and Saud Aldawsari The Law Office of Mohammed AlAmmar in cooperation with King & Spalding LLP	
Colombia	10	Switzerland	32
Mónica Reyes and Omar Díaz Reyes Abogados Asociados		L Mattias Johnson and Ivo Cathry FRORIEP Legal AG	
France	15	United Kingdom	37
Philippe Derouin Philippe Derouin Avocats		Tina Williams and Daniel Sutherland Fox Williams LLP	
India	21	United States	43
Vineet Aneja Clasis Law		Anna Elento-Sneed, Trisha Gibo, Sam Sneed, Jessica Sneed and Ryan Loeffers ES&A	

Introduction

Tina Williams and Daniel Sutherland

Fox Williams LLP

The simple notion of two or more people working together in business has spawned a dizzying array of legal vehicles through which such relationships can be mediated. Partnerships are a popular and important part of the business landscape, yet an understanding of partnerships is often lacking compared with the many other vehicles through which business may be conducted.

Although the specific meaning of 'partnership' varies between jurisdictions, there is a fundamental near-worldwide consistency in the acknowledgement that, when people work together for a common purpose as partners, the law must recognise and respect that relationship.

Although there are businesses of all kinds that use partnerships, it is true to say that partnerships have most enthusiastically been adopted (and in some jurisdictions, are the only vehicles permitted to be used) by professional services businesses, such as lawyers, accountants and doctors. Various flavours of partnership have also been the bedrock of much of the financial services sector, with limited partnerships in particular finding favour in this area. Outside of these sectors, businesses as diverse as rock bands, restaurants, farms and football clubs are often run through partnerships.

Choosing to adopt a partnership rather than a corporate model typically offers partners far greater freedom than is found in companies as to how and when the participants choose to divide profits and require capital to be invested, and how they allocate votes and management roles. This freedom to define a partnership's constitution by agreement, rather than being constrained by statute, is among the most appealing aspects of the partnership and is one of the reasons for its success as a model.

However, this freedom does have the potential to create traps for the unwary. It is easy for partners to agree on the unrealistic or to fail to recognise that their agreement goes against their interests. For example, whereas companies are prohibited from paying dividends that exceed their profits, partners in many jurisdictions have no such prohibition and may find that they have drawn too much cash in anticipation of profits that do not in the event materialise, thus owing money to their firm and, ultimately, its creditors. This may come as a particular surprise to those who are in a partnership without meaning to be. Unlike a company, a partnership need not always be formally registered before it comes into being. Given such pitfalls, it is critical that partners and partnerships are well advised from the outset to avoid accumulating future problems.

Culture

This work focuses on the legal aspects of the various types of partnerships around the world, but advisers in this area need also to bear in mind the culture and ethos that a partnership engenders when considering how best to advise. Although limited liability status is now available for many forms of partnership, the traditional partnership is one in which partners are jointly and severally liable for the debts and liabilities of the business and each partner is capable of binding the other partners to such obligations. This mutual responsibility imposes a very high standard of behaviour on partners towards one another, which is reflected in the law of many jurisdictions.

Advisers often find, even in limited liability partnerships (LLPs), that expectations as to personal conduct and behaviour are of a higher standard than is often the case in other business vehicles. Whereas one might expect a shareholder to think only, or at least primarily, of his or her own interest, there is a notion that, in a partnership, each partner must act in all respects for the benefit of the other partners rather than for himself or herself alone.

In most jurisdictions, there is no upper practical limit on a partnership's size. As partnerships have grown, sometimes with partners numbering in the hundreds or even thousands, the partnership ethos necessarily changes. A collegiate group comprising a small number of individuals will need to adopt a more corporate culture once the firm reaches a certain size. The flexibility of partnerships allows the centralisation of power to a single management board, much like a company's board of directors.

Evolution

Although the traditional partnership offered little or no protection to partners from their creditors, governments across the world have moved towards offering various forms of limited liability partnership. The quid pro quo for limited liability varies from place to place, with some jurisdictions, such as the United Kingdom, requiring public disclosure of financial information, whereas others, such as some US states, only limit certain types of liability and prohibit their use, save by certain professions. For many partners, the reduced personal risk makes these compromises a price worth paying.

The United Kingdom is home to one of the more unusual forms of LLP, which has been copied by some other jurisdictions, such as Gibraltar, in that an English LLP is a body corporate separate from the partners, yet its constitution can be arranged much as a traditional partnership would be and it is taxed in the same way as a partnership. This hybrid structure may prove to be popular, but in other jurisdictions, such as Jersey and many jurisdictions in the United States, the LLP is much closer to a typical general partnership. Whether the English LLP represents a path for the future or will stand alone remains to be seen. For advisers, such hybrid models require a working knowledge of both company and partnership law to understand the rights and obligations they give rise to in any particular scenario.

Whatever the precise form of LLP a jurisdiction provides (if any), the availability of LLP status has led to the conversion of many partnerships to LLP. It may prove hard to communicate to clients the need to have a substantially different constitution when changing status from partnership to LLP. It is not unheard of for LLPs to have used an unmodified partnership agreement as a constitution, resulting in a nasty shock on the LLP's insolvency. The provisions in a partnership agreement by which the partners are to share losses, for example, have the potential, in the context of an LLP, inadvertently to disapply by contract the limitation of liability enjoyed by the members. Although the personal risks of partnership are lessened by LLPs, the need for competent professional advice is not.

Legal experts for professional practices

Fox Williams' specialist professional practices legal team is recognised as being the UK market leader.

Our many years of experience give us an unrivalled depth of understanding of the management and regulation of professional practices.

Contact our team:

Tina Williams – cjwilliams@foxwilliams.com

Daniel Sutherland - dsutherland@foxwilliams.com

“Highly experienced, comprehensive partnership offering, particularly well known for its handling of complex strategic issues. Clients report: They have got the big picture and know the details. They inspire confidence.”

Chambers UK 2019

10 Finsbury Square
London EC2A 1AF
+44 (0)20 7628 2000
info@foxwilliams.com
www.foxwilliams.com

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Rail Transport
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Real Estate
Agribusiness	Dominance	Joint Ventures	Real Estate M&A
Air Transport	e-Commerce	Labour & Employment	Renewable Energy
Anti-Corruption Regulation	Electricity Regulation	Legal Privilege & Professional Secrecy	Restructuring & Insolvency
Anti-Money Laundering	Energy Disputes	Licensing	Right of Publicity
Appeals	Enforcement of Foreign Judgments	Life Sciences	Risk & Compliance Management
Arbitration	Environment & Climate Regulation	Litigation Funding	Securities Finance
Art Law	Equity Derivatives	Loans & Secured Financing	Securities Litigation
Asset Recovery	Executive Compensation & Employee Benefits	M&A Litigation	Shareholder Activism & Engagement
Automotive	Financial Services Compliance	Mediation	Ship Finance
Aviation Finance & Leasing	Financial Services Litigation	Merger Control	Shipbuilding
Aviation Liability	Fintech	Mining	Shipping
Banking Regulation	Foreign Investment Review	Oil Regulation	Shipping
Cartel Regulation	Franchise	Partnerships	Sovereign Immunity
Class Actions	Fund Management	Patents	Sports Law
Cloud Computing	Gaming	Pensions & Retirement Plans	State Aid
Commercial Contracts	Gas Regulation	Pharmaceutical Antitrust	Structured Finance & Securitisation
Competition Compliance	Government Investigations	Ports & Terminals	Tax Controversy
Complex Commercial Litigation	Government Relations	Private Antitrust Litigation	Tax on Inbound Investment
Construction	Healthcare Enforcement & Litigation	Private Banking & Wealth Management	Technology M&A
Copyright	Healthcare M&A	Private Client	Telecoms & Media
Corporate Governance	High-Yield Debt	Private Equity	Trade & Customs
Corporate Immigration	Initial Public Offerings	Private M&A	Trademarks
Corporate Reorganisations	Insurance & Reinsurance	Product Liability	Transfer Pricing
Cybersecurity	Insurance Litigation	Product Recall	Vertical Agreements
Data Protection & Privacy	Intellectual Property & Antitrust	Project Finance	
Debt Capital Markets		Public M&A	
Defence & Security		Public Procurement	
Procurement		Public-Private Partnerships	
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)