

# NEWSLETTER

AUGUST 7, 2024



*We do not own the rights to this photo.*

## NAVIGATING DISPUTES IN PARTNERSHIPS

### INTRODUCTION

Partnerships can be the powerhouse behind success, but what happens when the gears start grinding?

Partnerships involve business arrangements between two or more parties who pool resources together to create and run a business or project with the aim of making profit or creating an impact. In Ghana, partnership is defined under Section 3 of the Incorporated Partnerships Act, 1962, (Act 152) as the association of two or more individuals carrying on business jointly for the purpose of making profits and is required to be registered.

It is important to note that the Act expressly excludes certain associations and arrangements from being considered partnerships under the law, such as companies registered under the Companies Act, 2019 (Act 992), body corporates or unincorporated association formed under other enactments or foreign

laws, joint ventures set up for specific operations, associations between persons where one or more companies are members, and family-related co-ownerships.

While partnerships in Ghana have specific legal definitions and requirements, partnerships in general, whether contractual or otherwise, can take various forms and structures around the world. Regardless of the legal framework, all partnerships face common challenges. Like any other business arrangement, disagreements or conflicts between partners are inevitable and can be difficult to resolve. These conflicts, although inevitable, can be effectively mitigated. Understanding how to navigate these conflicts is crucial for maintaining a thriving partnership.

This newsletter provides guidelines on how to mitigate or resolve partnership disputes, to build and maintain a thriving business.

### **THE IMPORTANCE OF A SOLID FOUNDATION**

Every successful partnership starts with a strong foundation built on a clear and comprehensive agreement. This is essential as it outlines the roles, responsibilities, and expectations of each partner. These agreements should include:

- 1. Ownership Structure:** A good agreement should define the percentage of ownership each partner holds.
- 2. Roles and Responsibilities:** It should detail the specific duties and decision-making authority.
- 3. Profit and Loss Sharing:** Outline how profits and losses will be distributed.
- 4. Dispute Resolution Mechanism:** A well drafted partnership agreement should incorporate a dispute resolution clause, outlining the steps to be taken in the event of a disagreement. This might include negotiation, mediation, and arbitration steps before any party can initiate litigation. Having a clear, agreed-upon process can help manage expectations and provide a roadmap for resolving conflicts.

Although this may sound like a broken record, contracts are crucial documents needed for the resolution of disputes. Many a time, partners fail to see the importance of having a written contract due to personal relationships. However, it is important to know that in building a thriving partnership in any business one must be ready to have all uncomfortable conversations regarding the liabilities and responsibilities of the parties involved in the partnership. Discussing the likelihood of disputes and addressing them in a manner that seeks to preserve the relationship is essential.

Having partnership agreements drafted by legal professionals ensures they are tailored to the specific ventures and roles of the parties involved as this prevents partiality and unfairness in such arrangements. There are many instances where parties intended to form a partnership but ended up signing documents that did not reflect their intentions, such as mistakenly drafting an employment or service agreement instead. These misunderstandings can be avoided with a carefully crafted document that clearly defines the partnership terms and accurately reflects the parties' intentions.

## **KNOW THE COMMON SOURCES OF DISPUTES**

Understanding the common sources of disputes can help in proactively addressing and mitigating conflicts before they escalate. Here are some frequent areas where disagreements arise:

- 1. Decision Making:** Disputes often occur when decision-making roles are not clearly defined. Conflicts can arise if partners have overlapping authorities or if there is ambiguity about who makes specific decisions. Establishing a clear framework for decision-making, including who has the final say on various matters, can help avoid these issues. It is important to have a process in place for resolving disagreements that may arise in this area.
- 2. Financial Disagreement:** These types of conflicts can stem from disagreements over financial management practices, the distribution of profits, or variations in capital contributions. Clear terms in the partnership agreement regarding how finances will be handled can help prevent such issues. Regular financial reviews and transparent accounting practices also play a crucial role in minimizing misunderstandings.
- 3. Workload and Contribution:** Disputes can emerge over the perceived imbalance in the workload and contributions of each partner. Issues may arise if one partner feels they are contributing more effort or resources compared to others, leading to feelings of unfairness. Addressing these concerns through a detailed agreement that outlines each partner's responsibilities and expectations can help prevent disputes. Regular assessments of contributions and workloads can also ensure fairness.
- 4. Strategic Direction:** Differing visions for the future direction of the business can lead to significant disputes. Partners may have conflicting ideas about the strategic goals and growth trajectory of the business. To manage these differences, it is essential to have open discussions and agree on a shared vision. Including a process for strategic planning and decision-making in the partnership agreement can provide a framework for resolving such disagreements.

## **EFFECTIVE COMMUNICATION**

Remember, a partnership is fundamentally a relationship and should be managed as such. When disagreements occur the simplest and often most effective method for resolution is through direct conversation. A sit-down discussion should be the first approach to addressing conflicts. Maintaining open lines of communication can help prevent minor disagreements from escalating into more significant disputes. Encouraging regular check-ins and open discussions about the business and any concerns partners might have is crucial. Transparency and trust are the bedrock of all partnerships and effective communication is the way to succeed in this regard.

## **DISPUTE RESOLUTION STRATEGIES**

Even with the best preventative measures, disputes can still occur and you need to employ some dispute resolution mechanisms. If direct communication fails to resolve the dispute, consider mediation or arbitration before resorting to litigation. Mediation involves a neutral third party who can assist the partners come to a mutually acceptable resolution. Arbitration, on the other hand, involves a neutral arbitrator who listens to both sides and makes a binding decision. These methods are less adversarial than court proceedings and can often lead to a quicker, more amicable resolution. As a last resort, legal action may be necessary to resolve the dispute. This should be considered only after all other methods have been exhausted due to the time, expense, and potential damage to the partnership that litigation can entail.

## **SEEKING PROFESSIONAL ADVICE**

When in doubt, seek professional advice. Legal and financial advisors can provide valuable guidance and help navigate complex disputes. They can also assist in drafting agreements that minimize the risk of future conflicts. If a dispute arises, seeking legal advice early can help clarify your position and explore options for resolution. Legal professionals can provide objective insights and recommend strategies that might not be immediately apparent to the parties involved.

## **FOCUS ON THE BIGGER PICTURE**

Finally, in the heat of a dispute, it can be easy to lose sight of the bigger picture. Remember why you entered into the partnership in the first place. Focus on the common goals and interests that brought you together. Sometimes, stepping back and considering the long-term implications of a dispute can help partners find common ground and work towards a resolution that benefits everyone involved.

## **CONCLUSION**

Disputes in a partnership are inevitable, but with the right tools and strategies, they can be managed effectively. By building a strong foundation, maintaining open communication, and having clear dispute resolution mechanisms in place, partners can navigate conflicts and maintain a healthy, productive relationship. Remember seeking personalized advice from legal professionals is highly encouraged.

If you have any questions or need further assistance, please do not hesitate to reach out. Subscribe to our newsletter for more updates and insights

## **DISCLAIMER**

*The information provided in this newsletter is for general informational purposes only and should not be construed as legal or financial advice. Readers are encouraged to seek professional legal or financial advice tailored to their specific circumstances. We are not responsible for any actions taken based on the information provided herein.*