

JOINT VENTURE PITFALLS

5 KEY STRATEGIES

FOR AVOIDING OR RESOLVING PARTNERSHIP,
JOINT VENTURE, SHAREHOLDER OR FAMILY
BUSINESS DISPUTES



Why You Should Read This

This report is for you if:

- You are already in business with 'partners'
- You are thinking about going into business with partners
- In your existing business, tensions or disputes have arisen with your partners

Examples:

In this report, we use the words 'partner' and 'joint ventures'. These words are meant to include:

- Traditional partnerships
- Quasi partnership (joint shareholders in a limited company)
- Family businesses
- Professional partnerships, companies or LLPs (e.g. doctors, lawyers, accountants)

Disputes between partners can have tremendous costs:

1. Emotional stress, strain, worry and tension. This has been known to lead to physical ill health and, in certain cases, a shorter life span.
2. Financial losses. Partners may be so busy squabbling with each other that the business itself suffers leading to loss of income as well as value. In some cases, the business has failed altogether at tremendous personal cost, both financial and reputational, to the partners. This can in extreme cases give rise to personal insolvency and claims by creditors (such as banks pursuant to guarantees).

In this report you will discover:

- The ways in which you can avoid disputes arising in the first place, and
- If a dispute has arisen, strategies you should adopt for resolution

Whilst the process of implementing the strategies we have set out in this report are not totally pain free, if you do think about the practical steps and strategies set out in this report, you should be able to avoid or minimise the impact of actual or potential disputes.



Strategy 1 - Establish and Agree Goals

At the outset of any business venture, you must agree upon and establish the goals, not only of the business but also of the individual partners.

Possible Goals - in entering into a joint-venture, partners may have one or more of the following goals in mind:

- Income generation
- Employment for themselves/others
- Capital growth
- Freedom
- A particular lifestyle
- Kudos/status
- Securing the future for the next generation

Unless the partners are in agreement as to what the personal and business goals are, tensions can arise.

If you have not established firm goals from the outset, you may flounder and have partners pulling in different directions. This will in all likelihood prevent the business and the individual partners achieving their maximum potential and may waste a lot of time, money and energy in the process.

In dispute situations, you should be clear in your own mind as to what goal you wish to achieve:

- Do you wish to exit and recover the value of your share in the business?
- Do you wish your partners to exit and allow you to carry on without them?
- Do you wish to continue working together? Is that possible?



Case Study

We represented an individual who was a minority shareholder in a successful company. He was in dispute with the main shareholder. It was clear that our client had to exit the business on the basis that the majority shareholder would buy him out. That was the goal, and with our assistance, our client achieved an exit which reflected the value of his share in the business and the loss of his position.

But each case is different and depends on the individual circumstances. So, if you are in a dispute situation, you do need specialist advice to help you determine what your goal should be.

Strategy 2 - Devise and Implement Plans and Strategies for achieving your Goals

Once you have decided what your and the business' goals are, you must take steps to implement them.

The old adage is a good one: if you fail to plan, you plan to fail!

If you have established your goals but you do not have a plan in place to achieve them, your goals may never be realised. Again, the impact will be that you may continue to flounder and waste time at your personal expense and at the expense of the business.

At the outset

The following matters should be clarified:

- Individual responsibilities
- How the business is to be funded
- How profits are to be extracted
- How to deal with losses
- Partners' salaries and other benefits
- Exit strategies

Dispute situations

You should be clear in your own mind as to how you will achieve your goal. There are a number of plans and strategies you can adopt. They are likely to involve a combination of:

- Formal "without prejudice" or settlement discussions
- Mediation Strategy - formal or informal
- Litigation Strategy (involving Court proceedings)



Case Study

We once represented a family business in which there were 4 partners who were brothers. Unfortunately, two of the brothers passed away and this led to a difference of approach between the different generations within the family. Community leaders were involved to help resolve the dispute which was settled by a distribution of different parts of the business and business properties to different members of the family on agreed terms and without recourse to litigation. We successfully facilitated and assisted with those settlement terms.

Unfortunately, where certain partners are intransigent, there is no alternative but to litigate. In a very similar case involving 6 partners who were all members of the same family, the only way to achieve a resolution and distribution of assets was to litigate in the High Court. That was however a costly and protracted resolution.

Again, when deciding on how to implement your strategy, it is extremely important that you take advice from specialists with experience in these types of disputes so that you may be guided in implementing your strategy.

Strategy 3 - Document the Deal

Once you have established your goals and a strategy for how to implement them, it is important that this is documented.

Whilst it is possible for an agreement to be prepared without appropriate specialist advice, this can be dangerous with potentially disastrous consequences.

Advantages of formalised documents:

- Focuses the mind
- Foresees and provides for awkward issues at the outset
- Avoids hostility and uncertainty that can cause disputes in the future
- Clarifies roles and duties of all the parties

Examples:

Shareholder, LLP, and partnership agreements

Declaration of trusts

Executive contracts of employment



Case Study

One of our clients did prepare 'heads of terms' himself which documented certain agreements which had been reached between him and his partners relating to the exit of his partners. Unfortunately, the other partners reneged on the heads of terms arguing that, for certain technical reasons, they were not legally binding. This demonstrates the importance of taking specialist advice when it comes to negotiating, concluding and formalising such terms.

Sometimes people think that they can save a few pounds in legal fees by drawing up such documents themselves. This is penny wise, pound foolish. An error in the document could cost you 100 times more in the future than the cost of getting the document right at the outset.

Case Study

We prepared a lease for our client. It was meant to be for just a small part of a building. In order to let a different part of the building, the client amended the document himself without referring back to us. The tenant subsequently argued that he had been granted a lease of the entire building at a fraction of the market rent. Whilst ultimately the client succeeded, this was after a delay of around 2 years, a 1 week trial in the High Court, and costs in the region of £100,000.

Strategy 4 - Stay Involved

Don't be embarrassed

Sometimes, when things are going well, it is difficult to raise awkward issues. However, it is going to be far more embarrassing later if a dispute arises.

Don't be a silent partner

It is often said that possession is 9/10th of the law. If you neglect your business, your partners will take over. If you allow one of your partners to deal with money and assets to your exclusion, he may develop a proprietorial attitude and begin to think of the business as his own to your exclusion and detriment.

Keep affairs under review

You should keep up-to-date with management accounts and regular reports about the business' activities to ensure that there are no untoward issues or problems on the horizon.

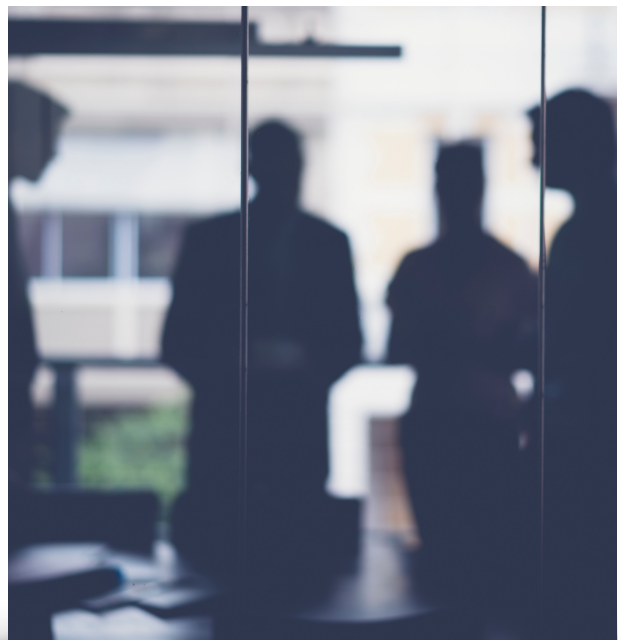
As time goes on and circumstances change (getting married, having children, having to pay for school fees, etc.) people's views and attitudes also change. Be prepared to revise your goals and strategies from time to time.

Keep proper records

It goes without saying, of course, that all businesses should keep proper records of their dealings. This is important from both a financial and tax perspective but also to avoid disputes arising.

Keeping proper records is particularly important if a dispute has arisen. If you do not record certain transactions or matters at the time they happen, and if it becomes an issue at a later stage, the lack of contemporaneous records may harm you. They carry much more weight than mere recollection of events which may or may not be 100% correct and which fades with the passage of time.

It is also important, particularly if a dispute has arisen, that you think very carefully about any written communications. You should not do or say anything which may prejudice your case.



Strategy 5 - Consider all Implications

In determining your goals and strategy, it is important that you consider all the implications, particularly in relation to the following areas:

1. Personal and Family - Before embarking upon business or litigation, consider the personal stress, the possibility of strained relationships and emotional upset.
2. Tax - Are any deals structured in the most tax efficient way? Or, any tax clearances that may be required?
3. Valuation - This is more relevant in the case of a breakup. If there is an agreed distribution of assets, consider agreeing independent valuations. These are also important if you need to raise finance.
4. Financial Matters - Do you have the financial wherewithal or backing to achieve your goals.



Case Study

This case involved the distribution of various property assets amongst the partners. Not only did all the properties have to be valued, the partners had to agree that the valuations were correct. Because the properties were to be distributed amongst the partners and various balancing payments were required the ability of the partners to raise finance in order to conclude the deal was also important. The taxation implications also had to be considered.



Joint-Venture Strategies Session

If you are serious about placing your business on a solid footing and are prepared to take action to get the results you want then this session is perfect for you.

In this session you will:

- Identify any issues that could arise in your actual or proposed business venture
- Identify the steps that can be taken in order to improve the stability of your business and future risks
- Identify possible strategies for dealing with pitfalls if they have already arisen

If you would like to learn more about the strategies set out in this report and how these may affect your own circumstances or business, please apply for a complimentary joint-venture strategies session by contacting our Client Relationship Manager, Mira Nammour on 020 8427 9080, or by email mira.nammour@vyman.co.uk.

Remember, if you do not take action, you will not get any results.

Harrow Office

Vyman House
104 College Road,
Harrow, Middlesex
HA1 1BQ

Tel: 020 8427 9080
Fax: 020 8427 9050

Maidstone Office

Queen Ann House
43 Albion Place
Maidstone, Kent
ME14 5DZ

Tel: 01622 671 517
Fax: 01622 671 514

Gravesend Office

26 Harmer Street
Gravesend, Kent
DA12 2AX

Tel: 01474 537 270
Fax: 01474 537 037

Pinner Office

10-12 Love Lane
Pinner, Middlesex
HA5 3EF

Tel: 020 8429 1010
Fax: 020 8429 8444