advice ni
the independent advice network

Freephone
0800 915 4604
www.adviceni.net/business-debtservice

PARTNERSHIPS

FACTSHEET 8 (April 2021)

What is a partnership?

When two or more people carry on a business to try and make a profit, it is known as a partnership. The word 'firm' is also used when referring to a partnership. We use both words in this factsheet.

A partnership must have at least two partners. Most partnerships can have no more than 20 partners, except for firms of solicitors and accountants. The partnership is known as the 'principle' and the partners as its 'agents'.

How do I know if a partnership exists?

When deciding whether a partnership exists, the **Partnership Act 1890** applies.

Some partnerships are set up on the basis of a partnership agreement signed by all of the partners. A partnership agreement is normally prepared by a solicitor and usually includes information about:

- how the profits and losses should be shared;
- who has the authority to enter into contracts on behalf of the firm;
- whether salaries will be paid;
- how much of the firm's debts each partner agrees to pay; **and**
- the circumstances in which the partnership will be dissolved (closed).

> **BDS**
>
> Partners are not jointly and severally liable for income tax. Each partner must pay income tax on their own share of the firm's profits.
>
> If you need further advice on this **contact us**.

What if there is no partnership agreement?

If there is no written agreement, it can be difficult to know whether a partnership exists. The **Partnership Act 1890** states that if more than one person receives a share of the business profits, this is good evidence that the business is a partnership. The way that the business completes its income tax returns is also important. If you are unsure whether your business is a partnership, **contact us for advice**.

Who is liable for the debts of a partnership?

Creditors will initially ask the firm to pay its own debts. If the firm cannot pay, the creditors are likely to ask the individual partners to pay. Partners are 'jointly and severally liable' for the firm's debts. This means that the firm's creditors can take action against any partner. Also, they can take action against more than one partner at the same time. This applies even if there is a partnership agreement that says otherwise. If one partner pays more than their agreed share of the firm's debts, they can recover the money that another partner should have paid by taking court action against them, if necessary.

PARTNERSHIPS

A person who joins a partnership will not be liable for the debts it built up before they joined, unless an agreement is made that says something different.

A person who leaves a partnership will still be liable for the firm's debts that were built up before they left.

A person who leaves a partnership may still be liable for any debts the firm builds up after they leave. However, they will not be liable if:

- they have written agreement to this from the creditors and other partners; **and**
- their name is removed from the firm's stationery.

If a partner dies, or is made bankrupt, the partnership and creditors can claim the deceased partner's share of the debt from their estate.

All partners have a 'fiduciary relationship' with the firm. This means that all their actions must be in the best interests of the firm and the other partners. All partners are liable for the actions individual partners take on behalf of the firm.

BDS

A 'silent partner' (or 'sleeping partner') does not take part in the day-to-day running of the business. However, they are still jointly and severally liable for the firm's debts and they have the same fiduciary relationship with the firm.

If you need further information on this **contact us for advice**.

Dealing with the debts of a partnership

If your firm is struggling to pay its debts, consider whether it can negotiate with its creditors and trade through its financial difficulties. To do this, you will need to complete a business budget sheet showing the firm's income and outgoings.

You may need help from your accountant as you will need to look at the average income for the firm (normally over a period of between the last **3** and **12 months**) as well as its outgoings. The firm may also need to budget for income tax on its profits and value added tax (VAT).

If the firm is making a profit after all its outgoings have been taken into account (a 'net' profit), consider whether offers can then be made to its creditors.

Options if there is a net monthly profit available

Informal Negotiation

Use your business budget to show how much money is available and how much the firm can offer to its creditors. Business Debtline can help you to complete a partnership budget sheet, **contact us for advice.**

BDS

If you need assistance to complete a budget sheet,
contact us for advice.

Consider which debts are priority and which are non-priority. Priority creditors have stronger powers to get their money back. If you are unsure of the type of debt your firm has **contact us for advice.**

PARTNERSHIPS

Individual Voluntary Arrangement (IVA)
An individual voluntary arrangement (IVA) is a formal agreement with creditors to repay them part of what is owed. It is set up and managed by an insolvency practitioner (IP). A firm can enter into an IVA (which can be called a partnership IVA, or PVA).

It is also common for the individual partners to enter into an IVA themselves alongside the firm. This is because a PVA would normally only pay back some of the debt. Once a PVA has finished, the individual partners would be liable for the remainder of the debt and would be expected to pay it back. If the individual partners also entered into an IVA, this debt is dealt with.

Entering into a PVA can make it very difficult to continue trading because the PVA is marked on your credit reference file for **six years.**

BDS

We have a fact sheet on **Individual Voluntary Arrangements**, which may be of assistance to you.

Options if there is no net monthly profit available

Ceasing to trade
If a firm is insolvent, it means that:

- it cannot pay its debts as they fall due; **or**
- the value of its assets is less than the total debt that it owes.

Ask your accountant for help with drawing up a balance sheet of the firm's assets and debts.

A firm will also be considered as insolvent if it has received a 'statutory demand' and the time limit stated has run out. A statutory demand is a formal demand for money that may be sent by creditors when collecting a debt.

If you are unsure whether your firm is insolvent, **contact us for advice**.

BDS

If you are on a low income and you need further help with personal tax issues, contact Advice NI Tax and Benefits Service. See 'Useful contacts' at the end of this factsheet.

If you think that your firm is insolvent, you may need to consider ceasing to trade. If you do decide to cease trading, take the following actions:

- Inform HM Revenue and Customs (HMRC) for income tax purposes. You will need to complete a final tax return. This cannot normally be done until the **5 April** after the date the firm ceases trading. If you have an arrangement in place to pay your income tax, tell HMRC about this when you inform them that you have ceased trading. This is because you may not be able to continue making the agreed payments. If necessary, renegotiate your payments based on your new circumstances. It is usually easier to negotiate an arrangement to repay income tax after you have ceased trading. **Contact us for advice.**

BDS

We have a fact sheet on **Dealing with income tax debt**, which may be of assistance to you.

PARTNERSHIPS

- If you trade from business premises, check your lease or tenancy agreement to see if you can end it. If you are able to end it, give your landlord the correct written notice. If you are tied into the lease or tenancy, speak to your landlord about transferring it to someone else. If the landlord does not agree to this, they may be able to ask you to pay rent for the remaining term of your lease or tenancy.

We have a fact sheet on **Business Property Leases**, which may be of assistance to you. BDS

- Inform Land and Property Services (LPS) that you have ceased trading for business rates purposes. If you are no longer the tenant or occupier of a property, you may not have to pay business rates for it. Contact LPS on **0300 200 7801** or if you require more information **contact us for advice.**

We have a fact sheet on **Business Rates**, which may be of assistance to you. BDS

- Tell the firm's gas and electric suppliers, and if applicable NI Water, that you have ceased to trade and give them final meter readings. Ask for final bills.
- Check your agreements for telephone and equipment leases to see if you can terminate them. You may need to give a certain period of written notice. If you are not able to terminate these agreements, ask for final bills and **contact us for advice**.
- Inform any other creditors that the firm has ceased trading. Ask for final invoices and make arrangements to clear any remaining debts.

If you do cease trading, you may want to formally dissolve (close) your partnership. Any partner can dissolve a partnership by giving a 'notice of dissolution', which takes effect straight away. This notice does not have to state the reason for the dissolution.

When the partnership is dissolved, its assets will be sold to raise money to pay creditors. If anything is left over, it should first be paid to partners who have lent money to the firm and then shared between all the partners. If the firm's assets are not worth enough to clear its debts, the partners will be liable for the debts that are left. The partners would need to make their own personal arrangements with these creditors. If you need more advice on how to deal with these types of debts, **contact us for advice**.

Bankruptcy

Bankruptcy is a court order which ends liability for most debts and means that assets may be sold to raise money to pay creditors. However, a firm cannot make itself bankrupt. If the partners or any creditors want to do this they will need to petition for the partnership to be made bankrupt and then petition for all of the individual partners to be made bankrupt.

If one partner is declared bankrupt, then the whole partnership is dissolved. An insolvency practitioner (known as the trustee) may be appointed. They can use the firm's assets to pay off the partners' personal debts. For more information on bankruptcy, **contact us for advice**.

PARTNERSHIPS

Useful Contacts

Advice NI Tax and Benefits Service

This is a fee helpline that offers advice on all personal tax and benefit issues.

Phone: 0800 915 4604

(Monday to Friday 9am to 5pm).

Land and Property (LPS) General Rating Enquiries

Phone:	0300 200 7801 - charged at local rate
Phone:	0044 28 9051 4613 - If you are calling from outside the UK
Textphone:	1800 1101
Website:	www.finance-ni.gov.uk/land-property-services-lps