Having a written partnership agreement in place is always advisable.

There are a large number of farming partnerships in existence in England and Wales. The use of partnerships amongst farming communities reflects their flexibility and the relative “light touch” when it comes to partnership regulation.

Partnerships can arise by virtue of a written or verbal agreement, or can sometimes be implied by conduct. However, having a written partnership agreement in place is always advisable. In the absence of such an agreement, the provisions of the Partnership Act 1890 (the “Act”) will regulate partners’ conduct in the context of a partnership. Crucially, the Act is limited in its scope and its provisions can create some potentially devastating outcomes.

Partnership agreements allow partners to consider and agree upon a variety of legal, commercial and tax-related matters relating to a partnership and to engineer a departure from the provisions of the Act to the extent desirable. In light of the relative complications which underly many farming partnerships, partnership agreements are a crucial tool in recording partners’ true intentions.

Summarised below are some of the key features and concepts relating to partnership agreements.

PARTNERSHIP PROPERTY

Partnership property broadly comprises property originally brought into a partnership and acquired during the course of a partnership business. Whilst this appears to be a simple concept, applying it in practice can be difficult. The use of a partnership agreement allows partners to specify what property belongs to a partnership (for example, land) and what belongs to individual partners (for example, specialist machinery or equipment). This is important for a number of reasons, particularly in relation to partnership insolvency, individual partner bankruptcy, Wills and inheritance tax (see further below).

PROFITS AND LOSSES

The Act provides that all partners in a partnership are entitled to share equally in partnership profits and must contribute equally towards partnership losses. In practice, a number of variations to this default provision may be desirable, which would need to be recorded in a partnership agreement. Shares of profits may be unequal, capital profits may be shared in different ratios to income profits (for example, by reference to the length of time a partner has been in the partnership since the acquisition of the asset from which the relevant capital profit arises) and losses may be treated differently from profits (for example, senior partners may shield junior partners against certain losses).

MANAGEMENT AND DECISION MAKING

The Act requires every partner to take part in the management of a partnership. It also provides that differences arising as to ordinary partnership matters must generally be decided by a majority of the partners (although no change can be
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made to the nature of the partnership business without the consent of all partners). Partnership agreements can offer alternative arrangements. In particular, it is often desirable for partner voting to be determined by reference to proportionate entitlements to partnership profits rather than on a per capita basis. Furthermore, a partnership agreement can allow for the election of a managing partner who is responsible for the day-to-day management of a partnership, and can also specify the frequency of partner meetings and the manner in which they take place.

TIME DEVOTION OF PARTNERS
The Act is silent on how much time partners are required to devote to partnership businesses. However, the Act does state that unless the other partners consent, if a partner carries on a competing business, he must account and pay over to the partnership his profits from that business. A partnership agreement can specify the amount of time partners are required to devote to a partnership business (whether this comprises the whole or a proportion of their time and attention). It can also specify the extent to which partners’ outside interests are permitted and can allow for profits deriving from such interests to be retained by partners.

RETIREMENT, DEATH AND BANKRUPTCY; DISSOLUTION AND WINDING UP
Under the Act, if a partner wishes to retire from or leave a partnership, or if he dies or becomes bankrupt, this will generally have the effect of dissolving the partnership. This will usually run contrary to the other partners’ intentions and wishes. Partners are however free to record in a partnership agreement a defined set of circumstances in which partners may retire and the consequences of the retirement, death or bankruptcy of a partner (which would usually include the continuation of the partnership).

WILLS AND PARTNERSHIP AGREEMENTS
Individuals can only bequeath to others what they rightfully own and are entitled to at the time of their death. In the context of a farming partnership, a partnership agreement would define what should happen to the deceased partner’s partnership share in the event of his death, which would comprise a debt due and owing to the deceased partner’s estate. This could involve the surviving partners buying out that share. The will of the deceased partner would ordinarily provide for how the money due to his estate is to be allocated between beneficiaries. It is important that any partnership agreement and the Wills of each of the partners complement each other, as the partnership agreement would take priority over a Will in the event of any inconsistency between the two.

INCOMING PARTNERS
If a new partner is admitted to a partnership, the Act dictates that, technically, a new partnership is formed. This scenario may be avoided by incorporating specific provisions into a partnership agreement catering for the admission of new partners and confirming that new partners agree to be bound by its terms. In addition, the Act provides that an incoming partner does not, as a result of his admission, acquire liability for anything done prior to his admission. It is, however, common for partnership agreements to allow new partners to agree to take on existing partnership liabilities.

EXPULSION
There is no power under the Act for a majority of partners to expel another partner. This is the case even where a particular partner is performing poorly or is neglecting to perform his partner duties. The use of a partnership agreement can allow a designated partner majority to expel another partner from a partnership in defined circumstances. Common grounds for partner expulsion include breaches of a partnership agreement, ceasing to hold relevant professional qualifications, conduct having an adverse affect upon the partnership business, ill health and, as mentioned above, poor performance and neglecting to perform partner duties.

THE NEXT STEP
If you would like to discuss your own requirements in relation to a partnership agreement or would like to know more about the rural and agricultural services we can offer, please contact our specialist:

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