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## **THE RISKS OF VERBAL AGREEMENTS**

A very common misconception exists that a contract must be written and signed by all those that are a party thereto in order to have legal consequence and effect. The stark reality, however, is that South African law only explicitly requires two types of agreements to be in writing, being an agreement for the sale of immovable property and a suretyship. In other forms of agreements, the legal rights and obligations created will not differ regardless of whether an agreement was reduced to writing or verbally agreed to between the parties. In other words, verbal agreements are no less binding than written agreements. Proving these agreements and the exact terms thereof on the other hand is another matter.

When one considers the regularity with which we conclude such agreements, and considering further the emphasis that South African law places on holding consenting and informed adults to their legally created obligations, it is evident that we are traversing a minefield. In many instances these agreements are relatively risk-free due to the simplicity thereof, all be it no less binding. For example an agreement to buy groceries at the local supermarket. In contrast, it is not difficult to fathom examples where verbal agreements can create more onerous obligations with far-reaching and complicated legal consequences for the parties involved. Nowhere is this truer than when considering the often unwitting creation of verbal partnerships.

Parties regularly conduct what is legally and commercially referred to as a joint venture, simply holding the intention to assist one another to complete a business project by pooling ideas and resources for their mutual benefit. The intention is usually not to create a full-fledged and longstanding partnership with the encompassing legal consequences. However, a very thin line exists between a joint venture and a partnership agreement. The essential requirements to create a partnership were set out in *Joubert v Tally and Company* 1915 and are summarised as the following:

1. Each partner contributes something to the partnership, whether it be money, skills or labour.

2. The business should be carried on for the joint benefit of the parties.
3. The objective of the partnership should be to make a profit.
4. The contract between the parties should be legitimate. (it has subsequently been found that this is not necessarily an essential requirement)

On the other hand the sole requirement to create a contractual joint venture is agreeing to conduct an activity that parties hold in common, for any purpose within the laws of South Africa. It is very evident from the above that the requirements to create a partnership overlap greatly with a simple joint venture project. A joint venture will more often than not be conducted with the purpose of earning a profit and for the joint benefit of the parties involved. This will naturally involve both parties contributing something to the joint venture.

With this in mind, parties need to be extra vigilant to avoid unwittingly falling into the trap of a verbal partnership. A partnership is one of the most burdensome legal relationships in our law, as partners become jointly and severally liable for all debts incurred during the existence of said partnership. In other words, creditors can claim outstanding debts from either partner and seize their personal assets. Furthermore, the uncertainty that surrounds a verbal partnership carries with it even greater risk, as it more often than not leads to disputes as to the exact terms of the agreement. In the absence of a written and signed agreement that provides the necessary clarity, these disputes must be arbitrated or adjudicated on nothing more than circumstantial evidence that speaks to the intention of the parties.

In conclusion the risks associated with verbal agreements, especially verbal partnerships, may be avoided by reducing the agreement to writing in a clear and unambiguous manner as soon a decision to conduct business together is made. Whether the intention is to limit the agreement to a single joint venture project, a short-term partnership or a long-term partnership with specific terms, the parties can specify their precise intentions clearly and unambiguously. A proper written agreement can avoid significant hardships, costs and court battles in the future.

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