



Partnerships and the *Essentialia* requirements:

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A partnership is the most common form of operating a business as no formalities are required. A partnership is established by contract and regulates the relationship between two (2) or more individuals. Contractual freedom applies here and therefore you are able to formulate the parties' relationship according to your wishes. There is no limit on the maximum amount of individuals entering into an agreement where after the rules of contract law apply.

How do one determine if an agreement is a partnership agreement? There is five (5) important minimum requirements (*essentialia*) for a partnership agreement to be classified as a partnership agreement.

The **first** requirement is that every partner must agree to make a contribution. Every partner must contribute something of commercial or economic value to the partnership. Experience can also be seen as a valued contribution. Furthermore, the partnership is not created by the making of the contributions, but rather by the undertaking to make a contribution.

The **second** requirement is that the contractual partners must undertake to carry on business together and for the joint benefit of the partners. The word "business" relates to any activity undertaken with the purpose to make a profit. The partners must agree that they will conduct this business together, it is not sufficient to put assets together so that each person can use the assets for their own separate purpose.

The **third** requirement is for the parties to agree to conduct the partnership in a profitable way. It does not mean that the partnership has to generate a profit, as long as the goal is for it to make a profit.

The **fourth** requirement is for both individuals to have the intention and will to create a partnership. The parties therefore need to be direct and clear of their intentions and focus of concluding a partnership agreement.

The **fifth** and final requirement is that the partnership must be lawful with a lawful purpose.

It is important that all five (5) of these requirements are present in the partnership agreement for the agreement to be classified as such.

Our courts view a partnership as a special trust relationship and for the parties to act with utmost good faith. The court compares this relationship with a relationship between brothers, as confirmed in *Purdon v Muller*¹. Although a partnership is easy to establish, there still rest a major responsibility on the parties' shoulders who conclude such an agreement to act in the best interest of one another.

The sole focus of the above article is to underline the essentialia requirements of a partnership agreement. The purpose will not be to inform the reader of the potential advantages and/or disadvantages that may arise out of a partnership agreement.

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¹ 1961 (2) SA 211 (A).