



# Preparing a partnership agreement; 5 key matters we forget to include

By Geoffrey E. Odongo



When preparing a partnership deed or partnership agreement we include in the agreement general matters such as the initial capital contributions of partners, duties and responsibilities of partners and the ratio for sharing of profits. However, certain pertinent matters tend to be forgotten yet they are important for the sustainable operation of a partnership. Five such matters include:

## 1. Procedure for admission of new partners

A partnership deed needs to provide for a procedure by which new partners are admitted into the partnership.

## 2. Expulsion

A partnership will in its partnership agreement usually reserve the right, with the consent of a specified majority of partners, to expel a partner in the case of bankruptcy, long-term illness, mental illness or serious breach of the partnership agreement.

## 3. Mode of determining outgoing partner's share of partnership profits/assets

Provision should be made in the partnership deed for treatment of the partnership assets/profits in the event a partner decides to leave. Such provision may provide for acquisition by the remaining partners of the outgoing partner's share in the partnership, in the case of the death, retirement or expulsion of a partner.

## 4. Restrictions on competition

A partnership deed should provide for restriction of a partners involvement in any similar business while they are partners and in any competing business after retirement or expulsion. The post-retirement restrictions will usually be defined by reference to a period of time, geographical area and by reference to categories of customers or clients.

Such restrictions must be discussed at length so that they are no greater than is reasonably required to protect the legitimate interests of the partnership.

## 5. Dispute resolution

Where some privacy is desired in relation to disputes between the partners due to the personal nature of a partnership, an alternative dispute resolution clause needs to be included. This may take the form of arbitration.