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MEMO TO CLIENT: DIFFERENCE BETWEEN PARTNERSHIP AND PERSONAL LIABILITY COMPANY

Dear Doctor

Your telephonic enquiry bears reference.

The following options are available to practitioners who what to join forces:

A. You can practice in partnership

This is an association of a minimum of two and a maximum of 20 partners, each of whom is expected to contribute money, skill or labour to the business. When forming a partnership, a "partnership agreement" is essential, this agreement deals with formation, profit sharing, salaries, banking arrangements, changes of partners, liquidation and partners' responsibilities. A partnership doesn't have limited liability; every partner is liable for the partnership debts.

A Partnership is quite cheap to set up, as it does not have to be legally registered (at the Registrar of Companies).

The nature of a Partnership is described below. Depending on your needs, this could either be seen as advantages or disadvantages, so weigh your options.

Characteristics of Partnerships

- Each partner must make a contribution to the Partnership
- It does not have a juristic personality separate from the partners. Each partner can bind the Partnership
- If the Partnership's estate is sequestrated, the estates of the partners can follow unless the partners undertake to pay the debts of the Partnership
- The profits and net assets are usually distributed amongst the partners on dissolution of the Partnership in proportion of their respective interests
- The life of the Partnership is not separate from the lives of the partners (so if one partner dies, leaves or is declared personally insolvent the Partnership becomes null and void)
- On dissolution, the assets are liquidated, creditors are paid and partners must stand in for any shortfall
- The Partnership is not a "person" for tax purposes and is not taxed as a company would be
- There are no statuary audit requirements

Advantages of a partnership

1. Partnerships are relatively easy to establish. There are no formal requirements for the creation and running of a partnership. This makes partnerships an inexpensive business entity to run. There are few legal requirements involved in drawing up a partnership agreement.
2. Partners invest new capital into the business to finance expansion.
3. Partners contribute new skills and ideas into a business. A partnership may benefit from the combination of complementary skills of two or more people and this eases a burden on one man.
4. Partners share responsibilities for decision making and managing the business.
5. Partners share any profits and are therefore motivated to work hard.
6. Raising additional capital to finance further business expansion is easy, because there is no limit on the number of partners allowed in each partnership.
7. Partnerships can be cost-effective as each partner specializes in certain aspects of their business.
8. Partners are taxed in their own capacities, which could lead to lower taxation, depending on the level of income of the individual.
9. Partnerships provide moral support and will allow for more creative thinking and brainstorming.
10. Partnership information is available to partners.
11. Partnerships are not compelled by law to prepare audited financial statements.

Disadvantages of a partnership

1. Partnership is not a separate legal entity and therefore partners are liable for the debts in their own capacity.
2. Partners are jointly and severally liable for the actions of the other partners. The personal, individual assets of the partner may be attached for the liabilities of the partnership under certain circumstances.
3. Discussion between partners can slow down decision making and they may disagree on important business decisions.
4. Problems can arise if one or more partners are lazy, inefficient or even dishonest. There may be arguments, the business may lose money and other partners will have to work harder.
5. The partnership may terminate on the death of a partner, unless there are sufficient funds available to buy the deceased partner's interest or indicated otherwise in the partnership agreement .
6. Changes or transfer of ownership can be difficult and generally require a new partnership to be established unless indicated otherwise in the partnership agreement.
7. On dissolution, the assets are liquidated, creditors are paid and partners must stand in for any shortfall.
8. If the Partnership's estate is sequestrated, the estates of the partners can follow unless the partners undertake to pay the debts of the Partnership.

B. You can Practice as a juristic person incorporated in terms of section 54A of the health professions Act (Personal Liability Companies)

Section 54A gives you an option to incorporate a company in terms of section 8(2)(c) of the Companies Act. In short, companies incorporated in terms of this section provide, in terms of its MOI, that the directors and past directors are jointly and severally liable, together with the company, for any debts and liabilities of the company as are or were contracted during their respective periods of office. Companies incorporated under section 8(2)(c) are identified by the suffix "Incorporated" or "Inc".

Characteristics of a Personal liability company

1. 1 or more persons (including juristic persons) may incorporate a personal liability company. There is no limit on number of shareholders.
2. The board of a personal liability company must comprise at least one director (1 or more directors) or any other minimum number as stipulated in its Memorandum of Incorporation (MOI). Each incorporator is a first director of the company.
3. Personal liability companies are subject to fewer disclosure and transparency requirements than limited liability companies.
4. The directors are jointly and severally liable with the company for all company debts and liabilities incurred. The Act imposes personal liability on directors who are knowingly part of the carrying on of the business in a reckless or fraudulent manner;
5. Certain professional persons, such as attorneys, doctors and accountants, who are statutorily prohibited from enjoying limited liability, often incorporate a personal liability company to regulate their affairs.
6. The company has the benefit of corporate existence and perpetual succession.
7. These companies are identified by the suffix 'Incorporated' or 'Inc'.
8. A personal liability company is prohibited by MOI from offering its shares to the public and the transferability of its shares is restricted.
9. Personal Liability Company must prepare annual financial statements, but is not required to lodge its annual financial statements with the Commission.
10. Annual financial statements need not be either audited or independently reviewed, unless prescribed by regulation / voluntary audit / independently review except exempted by regulation if one person or every holder holds a beneficial interest.
11. Shareholders of a personal liability company have a right of pre-emption in respect of the issue of new shares unless the MOI provides otherwise.
12. Where there are more than two shareholders (except in the case of a one-person company), the shareholder quorum at general meetings is three shareholders with voting rights, unless the MOI provide otherwise.
13. The person quorum for all meetings is the presence at the meeting of the holders of at least 25% of all the voting rights that are entitled to be exercised. The voting rights must be determined by MOI, i.e. the MOI may lower or higher the percentage.
14. A personal liability company has a separate legal personality. Shareholders have limited liability
15. A personal liability company is required to give 10 business days notice for shareholder meetings.
16. The Act imposes personal liability on directors who are knowingly part of the carrying on of the business in a reckless or fraudulent manner.
17. Information in the personal liability company is available to shareholders.

18. Each share has one general voting right unless class; preferences, rights and limitations in MOI provides otherwise.

19. All distributions to shareholders require board approval and need to satisfy the solvency and liquidity tests. Distributions are unfortunately extremely widely defined and include dividends and share buy-backs. Payments will be according to the class, preferences, rights and limitations of shares held.

Advantages of Personal Liability Company

1. The board of a personal liability company must comprise at least one director (1 or more directors) or any other minimum number as stipulated in its MOI. Each incorporator is a first director of the company.
2. The life span of a personal liability company is perpetual.
3. The company is a separate legal person it can buy property / assets in its own name.
4. The Act imposes personal liability on directors who are knowingly part of the carrying on of the business in a reckless or fraudulent manner.
5. Directors of a personal liability company are not compelled to attend the Annual General Meeting (AGM)
6. Audited financial statements are optional; otherwise the financial statements need to be independently reviewed unless exempted by regulation.
7. A personal liability company is not required to lodge its annual financial statements with the Commission.
8. Personal liability companies are subject to fewer disclosure and transparency requirements.
9. Shareholders of a personal liability company have a right of pre-emption in respect of the issue of new securities unless the MOI provides otherwise.

Disadvantages of Personal Liability Company

1. The directors and past directors are jointly & severally liable together with the company, for the debts and liabilities of the company that were contracted during their respective terms of office.
2. Subject to many legal requirements, hence it is difficult and expensive to establish compared to Sole Proprietorship / partnership
3. A personal liability company is prohibited by MOI from offering its shares to the public and the transferability of its shares is restricted.
4. The company is subjected to double taxation, i.e. on the taxable income and Standard Tax on Companies (STC) payable on declared dividends.
5. .A meeting may not begin or a matter may not be debated unless at least three shareholders are present.
6. The meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise in aggregate at least 25% of all the voting rights. The voting rights must be determined by MOI.
7. Personal liability companies are compelled to prepare annual financial statements.
8. All distributions to shareholders require board approval and need to satisfy the solvency and liquidity tests and the payment are also extremely widely defined

when incorporating this type of a company you will be exempted from the provisions of section 17, 32 and 36 up to and including 39 of the Health professions Act, however you will need to comply with the conditions of exemption contained in Government Gazette Notice number R. 706 published on the 16 April 1994, a copy of which notice is attached hereto for your ease of reference.

For a small entity a partnership is more hustle free, requires less administrative work and is more affordable to set up.

Trust the above proves to be of assistance to you.

Kind Regards

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