

ISSUES CHECKLIST

Re: Partnership Exit

Date: April 2013

The following table lists a number of issues that should be considered when a partner (the **Exiting Partner**) leaves a partnership (an **Exit**):

The issue	What questions need to be answered?	What needs to be done?
The Exit		
The Exit	Do all the parties agree to the Exit? How has the Exit come about? Is the Exit avoidable?	Consider what other consequences the Exit may have within the business, e.g. other possible exists, loss of key staff, loss of key clients, etc.
Purchase obligation	Do the partners continuing the business (the Continuing Partners) have an obligation to buy the interest of the Exiting Partner?	What are the terms of the purchase obligation?
Timing of the Exit	When will the Exit take effect (the Exit Date)?	Has sufficient notice been given under the relevant documents? Will the notice period provide sufficient time to maximise the value of goodwill?
Partnership Agreement	Is there a formal Partnership Agreement? Is there any other documentation regulating the partnership?	Get a copy of the most up-to-date documents. Identify the provisions that regulate an exit.

Issues Checklist – Partnership Exit

Documentation	Is any formal notification required to commence the Exit, e.g. formal notice?	List documents to be prepared?
Entities	What entities are involved in the partnership? Is there a 'service entity', 'dual business structure', license arrangement, etc.	List the entities, including companies, trusts and partnerships involved in the business. Prepare an up-to-date structure diagram.
Purchasers	Who will buy the interest of the Exiting Partner, i.e. the legal entities? Is the Exit fundable by the continuing parties, i.e. do they have sufficient financial resources? Is bank funding required? Is the Exiting Partner obliged to provide any level of 'vendor funding' or instalment terms?	List the vendor entities. List the purchaser entities. Identify which entities will require funding.
Rights of pre-emption	Does anyone have a first-right to take up some or all of the interest being sold by the Exiting Partner?	Review the partnership documentation.
Documents	What documents will regulate the Exit?	Possibilities include: <ul style="list-style-type: none"> • Partnership Agreements • Buy-Sell Agreement • Common law principles of notice
Assets		
What assets?	What assets are being sold and purchased? Are any assets to be excluded from the deal?	List or define the assets being sold. List any assets to be excluded from the deal.
Plant and equipment	What plant and equipment is owned by the partnership (or associated entities)? What is the appropriate transfer value for the plant and equipment?	Value options include: <ul style="list-style-type: none"> • Agreed value • Book value • Current market value • Replacement value

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<p>Work-in-progress (WIP)</p>	<p>Does the partnership have WIP? What is the current face value of WIP? What has been the historical recovery of WIP? What is the likely recoverable value of WIP? Will the Exiting Partner take any WIP with them? Will the Exiting Partner retain an interest in WIP and receive payment when it is ultimately recovered? Will any adjustments apply if WIP is ultimately not invoiced?</p>	<p>Identify the extent and value of WIP. Consider the tax impact of a sale of WIP that is not ultimately recovered.</p>
<p>Debtors</p>	<p>What is the current level of the partnership's debtors? What has been the historical recovery rate of debtors, i.e. the level of bad debts? Will the Exiting Partner retain an interest in debtors, or sell the debtors to the Continuing Partners? How will bad debts be treated, i.e. will any clawback apply?</p>	<p>Note the issue regarding the impact on goodwill from aggressive collection of debtors. Consider the tax impact of a sale of debtors that are not ultimately recovered.</p>
<p>Pre-payments</p>	<p>Has the partnership made any significant pre-payments that will benefit the Continuing Partners after the Exit Date?</p>	<p>Quantify and allocate any pre-payments pre and post the Exit Date.</p>
<p>IP</p>	<p>Does the partnership own any valuable IP? Will the Exiting Partner retain an interest in, or right to use, any IP? Will the Exiting Partner have access to any future improvements to the IP?</p>	<p>List the partnership's IP assets, for example, software licenses, copyright, patents, trademarks and designs.</p>
<p>Business name</p>	<p>Which parties own the business name(s)? Will the business name need to be changed? Will the Exiting Partner be able to continue to use the business name, (or a variation thereof)?</p>	<p>List all business names and trademarks.</p>

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Goodwill	<p>Is the Exiting Partner entitled to a payment for goodwill? How and when is the value of goodwill to be calculated? Does a valuer need to be appointed, if so, when? Do the parties have the relevant financial information to calculate the value of goodwill? Do up-to-date accounts need to be prepared?</p>	<p>Identify relevant client lists. Identify the appropriate methodology for calculating the value of goodwill. Identify the information required to calculate the value of goodwill.</p>
Goodwill clawback	<p>Is the Exiting Partner obliged to assist preserve the value of goodwill? If the value of goodwill falls after the Exit, does a clawback apply to some or all of the Purchase Price? What are the terms of the clawback?</p>	<p>Identify the terms of any clawback, and a means to administer it.</p>

Liabilities		
Creditors	<p>What is the current level of creditors to the partnership? What payment terms apply to creditors? Have any personal guarantees been provided to creditors by the Exiting Partner?</p>	<p>Quantify the extent of creditors. List any personal guarantees.</p>
Lease facilities	<p>Does the partnership have any equipment leases in place? Has any security been granted by the partners or partnership entities for these leases? Have any personal guarantees been provided to the lessor by the Exiting Partner?</p>	<p>List all leased equipment, and lease terms, including amount outstanding, rate, and repayment terms.</p>

Issues Checklist – Partnership Exit

Lines of credit	<p>Does the partnership have a line of credit or overdraft facility?</p> <p>Has any security been granted by the partners or partnership entities for these liabilities?</p> <p>Have any personal guarantees been provided to the bank by the Exiting Partner?</p>	<p>Confirm the limits and current level of draw-down.</p> <p>List details of all lines of credit and overdrafts.</p> <p>Talk with the bank about the partner's exit.</p>
Bank loans	<p>Does the partnership have any long-term bank loans?</p> <p>Has any security been granted by the partners or partnership entities for these liabilities?</p> <p>Have any personal guarantees been provided to the bank by the Exiting Partner?</p>	<p>Confirm amounts outstanding and key loan terms.</p> <p>Talk with the bank about the partner's exit.</p>
Property		
Property ownership	<p>Does the partnership own any property?</p> <p>In what structure is the property owned?</p> <p>Is there any formal lease between the property owner and the partnership?</p> <p>Will the Exiting Partner retain an ownership interest in the property?</p> <p>How will the level of rent be set after the Exit?</p> <p>Is there any debt associated with the property?</p>	<p>Identify any real property owned by the partnership.</p> <p>Quantify the extent of debt outstanding on the property.</p> <p>Identify any lease terms, (including rate and renewal terms) between the property owner and the partnership.</p>
Property leases	<p>Does the partnership lease any property?</p> <p>In what structure is the property leased, e.g. the operating partnership, service entity, etc?</p> <p>Do any leases need to be assigned from the Exiting Partner to the Continuing Partners?</p> <p>Do any personal guarantees apply under the lease?</p> <p>Will they need to be released?</p>	<p>Obtain a copy of the lease and review the key lease terms.</p>

Issues Checklist – Partnership Exit

Purchase price/exit payment		
Purchase price	<p>How will the Purchase Price be determined?</p> <p>What payment terms apply?</p> <p>Does interest apply to any Purchase Price left outstanding?</p> <p>What post-Exit Date adjustments apply?</p>	Identify the terms to determine the Purchase Price.
In specie	Will the Exiting Partner take assets <i>in lieu</i> of some or all of the Purchase Price?	<p>Identify the assets to be distributed, and the values to be ascribed to them.</p> <p>Consider the tax impact to the Continuing Partners of the distribution of the assets.</p>
Valuation issues	<p>Who will undertake any valuations that are required to determine the transaction price?</p> <p>What is the mechanism to resolve any dispute that arises in relation to valuation?</p>	Agree on an independent person, or agree on a way to appoint one (if not already provided for in the Partnership Agreement).
Vendor funding	<p>Will the Exiting Partner be providing any 'vendor funding' to the Continuing Partners?</p> <p>If so, what will be the terms, including interest rate, repayment times, security?</p>	
Employees		
Employees	<p>Which entities employ staff?</p> <p>Will any employees need to be transferred to a new employer?</p>	Determine which entities are the legal employer of the staff.
Internal notification	When and how will employees be notified?	<p>This should occur sooner, rather than later.</p> <p>However, no internal announcement should be made until the important aspects of the Exit have been agreed between the partners, e.g. the Exit Date, and the likely impact on staff and clients.</p>

Issues Checklist – Partnership Exit

Client relationships		
Passing on clients	<p>Who will take over the Exiting Partner's client relationships?</p> <p>Are the client's likely to be concerned, or leave?</p> <p>How will this occur from a practical perspective?</p>	<p>Identify key clients and contacts.</p> <p>Schedule client meetings with the Exiting Partner and the Continuing Partners.</p> <p>Schedule hand-over time to train the Continuing Partners on the client work.</p>
Ongoing consultancy	<p>Will the Exiting Partner continue to consult to the partnership after the Exit?</p> <p>On what basis will the Exiting Partner consult, part-time, full-time, casual?</p> <p>For how long will the Exiting Partner consult?</p> <p>On what terms will the Exiting Partner consult?</p>	<p>What facilities will the Exiting Partner require, e.g. office, phone, computer, etc;</p> <p>What level of remuneration will be paid, bearing in mind the Exiting Partner is no longer an equity partner.</p> <p>What leave entitlements will the Exiting Partner accrue, (if any).</p> <p>To whom will the Exiting Partner report?</p>
Confidential information		
Confidential information and know-how	<p>Is there an obligation on the Exiting Partner to maintain certain information confidential?</p> <p>Do any materials need to be returned to the partnership by the Exiting Partner?</p>	<p>Identify any confidentiality obligations.</p> <p>Identify what materials will need to be returned.</p>
Access to documents	<p>Will the Exiting Partner have access to the partnership's books and records after the Exit?</p> <p>For how long will the right of access last to documents last after ceasing to be a partner?</p> <p>Do other parties need to be notified before access is made to the documents, or can the Exiting Partner simply access the documents as they see fit?</p>	<p>Documents may include:</p> <ul style="list-style-type: none"> • Financial records; • Debtor collection data; • WIP data; • Tax records; • Insurance documents; and • Regulator documents.

Issues Checklist – Partnership Exit

Restraint of trade/gardening leave	<p>Will the Exiting Partner be under a commercial restraint after the Exit Date?</p> <p>Are the parties likely to vary the terms of this restraint to fit any particular circumstances?</p>	<p>What actions are covered by the restraint, e.g. competition, solicitation of clients, poaching of employees, interfering with suppliers, etc?</p> <p>For what term does the restraint apply?</p> <p>Over what are does the restraint apply?</p> <p>What are the consequences of the Exiting Partner breaching this restraint?</p>
Insurance		
Run-off insurance	<p>Does the partnership have professional indemnity or product liability insurance?</p> <p>Do the parties agree to maintain on-going and/or run-off insurance in respect of liabilities up to the Exit Date?</p> <p>How long will the run-off insurance last for?</p> <p>Who will be responsible for paying for the run-off insurance?</p>	<p>Determine the basis of insurance, (e.g. 'claims made' or 'occurrence based'). If claims made, then run-off insurance is likely to be necessary.</p>
Tax		
Accrued tax liabilities	<p>Are there any accrued but unpaid tax, CGT, super or PAYG withholding amounts outstanding for the pre-Exit Date period?</p>	<p>Determine the status and extent of accrued tax liabilities.</p>
Tax returns	<p>Who will be responsible for completing and filing the tax and GST returns for the partnership up to the Exit Date?</p>	<p>Determine the relevant balance and payment dates. Identify when the last returns were lodged.</p>
Tax elections and notifications	<p>Does the Tax Office need to be notified of the change to the partnership?</p> <p>Are any tax-elections required to be made by the existing or Continuing Partners?</p>	<p>Possible elections include P&E depreciation roll-over elections, trading stock elections, and fixed asset capital gains tax elections. These may not be available on a complete exit.</p>

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GST treatment	Are any of the vendors registered for GST in their own right?	Confirm GST registration status of the entities involved in the transaction. If relevant, consider 'going concern' treatment.
Tax impact	What will be the taxation impact on the Exiting Partner and the Continuing Partners?	Consider the possible application of CGT concessions.
Stamp duty	Will stamp duty apply to the Exit? On what value will stamp duty apply? Is it possible to mitigate the impact of stamp duty (e.g. by not transferring WIP, debtors, stock, etc)	Consider how best to structure the transaction to mitigate stamp duty.

Notifications		
Notifications	A number of parties will need to be notified. When will the parties be notified? How will the parties be notified (letter, phone call, email, other)?	The most important being: <ul style="list-style-type: none"> • Staff • Clients • Suppliers • Bankers • Professional bodies Agree on notification dates. Prepare a list of persons to be notified, and make sure the contact details are up to date.
Public relations	Will there be a joint announcement to the public? When will the announcement be made?	An informal announcement to close associates usually takes place before any wider public announcement. It is a good idea to agree on a simple message at this early stage. Agree on the terms of the simple message. Nominate a date for the wider public announcement. Agree on the terms of the public announcement.

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Professional associations and registrations	<p>Do any professional associations need to be notified of the change in partners?</p> <p>Do any professional registrations need to be updated?</p> <p>Will the Exit cause the business to lose the right to maintain a professional registration or designation?</p>	For example, the Institution, CPA, FPA, etc.
Government and regulatory registrations and licenses	<p>Do any government or regulatory bodies need to be notified of the Exit?</p> <p>What notice periods must be met? Will this impact the ability to continue the business in the interim (e.g. liquor licensing)?</p> <p>Will there be any delay in updating the registrations and licenses?</p> <p>Is the Exiting Partner a 'key person' on any license?</p>	<p>List agencies impacted by the business.</p> <p>Identify involvement of Exiting Partner in licensing.</p> <p>For example:</p> <ul style="list-style-type: none"> • Consumer & Business Services (CBS) • Tax Agents Board
Documentation	<p>What documentation is required to achieve the Exit?</p> <p>Have the parties appointed lawyers to draft and review the documentation?</p>	<p>Possible documents required:</p> <ul style="list-style-type: none"> • Formal notices • MOUs • 'Exit Deed' • Asset transfers/assignments • Lease assignments • Contract assignments • Liability/guarantee releases/assumptions • Mutual indemnities

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April 2013 ©