

"Opportunities don't happen. You create them." - Chris Grosser

September 2017

TO BE A SILENT PARTNER OR A CAPITALIST

A partnership is a legal relationship brought about by a contract between two or more persons, creating a concept of participation amongst the partners. Each partner will contribute to the business, with the object of making and sharing profits. For the duration of an ordinary partnership all the partners will be deemed to be joint co-creditors and joint co-debtors towards third parties.

However, two kinds of extraordinary partnerships can be established, i.e. the 'partnership *en commandite*' and the 'silent partnership'. The silent partnership is one where parties agree to share in the profits of a business, however, the business is to be carried on by one or certain of the partners, while the silent partners' names are not disclosed to third parties. The silent partner(s) share in the risk of the business with his or her co-partners and remain liable to them for his or her pro rata share of the partnership's losses.

The partnership *en commandite* is an arrangement by which a capitalist (the limited partner) advances capital to a trader / entrepreneur provided he / she receives an agreed share of the profits. In the event of a loss, the limited partner is only liable to its co-partners to the extent of the fixed amount of his / her capital contribution to the partnership. The limited partner will not in name be deemed to be a partner to the business.

Further, the limited partner is not liable for the partnership debts to the creditors of the partnership, but only to their co-partners. The capital amount entrusted to the partnership *en commandite* cannot be reclaimed in competition with the creditors of the partnership, nor may the limited partner claim payment of the partnerships profits in competition with the creditors of the partnership.

The parties' intention to establish an 'partnership *en commandite*' or a 'silent partnership' must clear. The relationship between the partners is purely contractual and is not regulated by legislation nor are there any registration requirements in respect of the partnership.

Law & Laughter

Joke: What is the difference between a Lawyer and a herd of Buffalo?

Answer: The Lawyer charges more!

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