

Briefing note for solicitors offered a salaried partnership

1. The purpose of this note is to offer general advice for those considering becoming a salaried partner. Our advice is no substitute for taking specific advice in relation to the actual facts of any particular situation.
2. The law is stated as at 1 November 2008.
3. A salaried (sometimes called a fixed share or associate) partner is often seen as the first stepping stone to a full equity partnership. In some cases those accepting an offer as a salaried partner have no wish to become an equity partner preferring to avoid the vicissitudes of business. Whatever the motivation it is best to approach such an offer with a full awareness of what is involved. This note offers some guidance about the advantages and disadvantages of the position of salaried partner.
4. Under section 2(3)(b) of the Partnership Act 1890 salaried partners are defined in these terms:

“A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such.”
5. A salaried partner receives payment for his or her services by reference to a pre-determined and fixed level of remuneration usually monthly in arrears and subject to PAYE and National Insurance contributions being deducted by the firm in the same way as any other employee suffers such deductions.
6. One advantage of salaried partnership is that there is a guarantee of payment for services being received every month which is not present if one is an equity partner and dependent entirely on the fortunes of business to determine whether any drawings against expected profit can be paid.
7. There is not much law on the status of “salaried partner” and the leading authority is a decision of Megarry, J. in a case concerning an accountants’ partnership in which he held:

“The term “salaried partner” not a term of art, and to some extent it may be said to be a contradiction in terms. However, it is a convenient expression which is widely used to denote a person who is held out to the world as being a partner, with his name appearing on the notepaper of the firm and so on. At the same time he receives a salary as remuneration, rather than a share of the profits, though he may, in addition to his salary, receive some bonus or other sum of money dependent on the profits”¹

¹Stekel v Ellice [1973] 1 WLR 191, 193 D-F

8. The Learned Judge also held that whether there is a partnership in fact or not is a construction of the facts in each case.
9. The usual effect of becoming a salaried partner is to be held out on the firm's notepaper as a partner. The whole world, of course, does not know whether the individual concerned is salaried or not and need not be concerned. In order to ensure that the partners are bound to any creditor personally all the creditor has to show is that in dealing with the firm he or she relied on the holding out as a pre-condition for the creditor's entering into a contractual or other relationship with the firm².
10. If held out as a partner you will be treated by the Regulator (the Solicitors Regulation Authority – the SRA) as a Principal making the salaried partner liable for breaches of the Code of Conduct or the Solicitors Accounts Rules, 1998 (as amended). Typically a salaried partner will not see his or her firm's accounts or even know if the required Accountant's Report has been filed on time which makes this aspect of salaried partnership rather precarious.
11. In one Court of Appeal decision³ it was held that where an employee in a firm was held out as a partner he would not be liable for any loss caused by negligent advice given by the firm and relied upon by the client unless:
 - There was evidence that the employee gave the advice or played a part in its giving; or,
 - The client specifically relied on the holding out of that employee as a partner.
12. We would counsel particular care if being offered a salaried partnership by a sole practitioner solicitor subject to a condition on his or her practising certificate that the sole practitioner enter into partnership. In such circumstances the salaried partner is usually being used to enable the sole practitioner to continue in practice. In some cases this can lead to serious difficulties for the salaried partner if the sole practitioner causes further regulatory breaches. The decision of the Solicitors Disciplinary Tribunal is Law Society v Black (12.12.06 – 9488-2006) is a case in point. There the salaried partner left Mr Black but subsequently found herself being held liable for breaches of the Accounts Rules in relation to failure to file an Accountant's Report on time or at all, cash shortages, undischarged undertakings and liability to the firm's creditors for unpaid debts. We have been able to resolve all of these with the co-operation of Black & Co's professional indemnity insurers and a sympathetic approach by the SRA. Nevertheless it was a frightening experience for a recently admitted solicitor to suffer.
13. Another issue concerns allegations made by the Regulator about entering into a sham partnership which often arises where a sole practitioner wishes to secure a place on a conveyancing Panel but cannot do so as a sole practitioner.
14. Entering into a salaried partnership is therefore something to be approached with great care by both sides.

²section 14, Partnership Act, 1890

³Nationwide Building Society v Lewis [1998] 2 WLR 915

15. There are sensible steps that may be taken to protect oneself from such dangers.
16. Always ensure you have a written agreement, signed by both sides, confirming the status as salaried partner. Within that agreement ensure there is an express indemnity in respect of claims by your employer, creditors of the firm, clients and the Regulator. Although any indemnity is only as good as the money behind it.
17. Attend the office! It may seem a statement of the obvious but in sham partnerships problems stem from partners not attending the office and taking a full and active part in the business – including sharing profits on some basis.
18. The issue of reliance under section 14 of the Partnership Act, 1890 can be difficult for creditors to prove. We have developed approaches which can defeat such claims or minimise the level of settlement that is offered.
19. When contemplating leaving a role as a salaried partner always ensure that notice of you ceasing to be a salaried partner is given to whole world by way of an advertisement in the London Gazette. There are standard forms of advertisement and the cost (with a copy of the Gazette for your own use) should not be more than about £80. Also write to each creditor of the firm confirming that you are leaving and stating the date of departure.
20. Ensure you buy some before the event legal expenses insurance which covers employment related disputes. Subject to the terms of the policy in question they can provide up to £50,000 of cover for the legal costs of resolving creditor claims at a cost of about £12 per annum if taken as part of your household expenses insurance. Unfortunately such policies are rarely available to meet the cost of regulatory investigations. In such cases it may be possible to obtain cover under the firm's professional indemnity insurance (PII).
21. It has been said that salaried partners have all the burdens of partnership without any of the benefits. Before committing it is always best to take advice.

This technical paper has been written as a general guide only. It should not be relied upon as a substitute for specific legal advice. No responsibility can be accepted by the author or the firm for any loss occasioned as a consequence of acting or refraining from action on the basis of this paper.

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