

Death, withdrawal and succession of a partner

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The life of a partnership is intimately bound up with that of its partners. The death, incapacity or withdrawal of a partner with unlimited liability raises legal and practical questions that private bankers have learned to anticipate. In the absence of a clause to the contrary, the law in principle provides for the dissolution of the partnership on the death of a partner, unless the partnership agreement provides otherwise.¹ The partnership agreements of private bankers therefore contain continuation clauses, which allow the house to carry on its business with the surviving partners, together with rules on the buy-out of the deceased partner's interest.

The withdrawal of a partner does not immediately bring his liability for debts incurred during the period of his membership to an end. For a certain period, creditors retain the possibility of claiming against him.² This residual liability gives departing partners an incentive to satisfy themselves of the sound health of the house at the moment of their departure, and it protects creditors against opportunistic withdrawals.

Succession also raises questions of a patrimonial nature. The heirs of a partner receive the value of his interest, but do not necessarily become partners themselves. The house must have sufficient liquidity to buy out that interest, or must arrange payment in instalments. Partners therefore plan their own succession in coordination with the house, so that the death of one of them does not destabilise the institution. This planning, which private bankers practise for themselves, is also one of the services they offer to their entrepreneur clients.

1 Notes

1. SECO SME portal, page “Causes de la fin” (Grounds for termination) (kmu.admin.ch): a simple partnership comes to an end when the partnership's purpose is achieved or has become impossible to achieve,

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by unanimous decision of the partners, on the death of a partner, by notice of termination, by the attachment or bankruptcy of a partner or by court judgement for good cause; a general partnership is dissolved on the same grounds and on the opening of bankruptcy proceedings, the creditors of an insolvent partner being able to demand dissolution on six months' notice, which the other partners may avert by excluding the bankrupt partner (Title XXIII, Art. 530–551 CO, and Title XXIV CO; analytical table of the Code of Obligations, opac.admin.ch). ↩

2. Analytical table of the Code of Obligations (opac.admin.ch): Art. 591 to 593 CO form Chapter VI “Prescription” (Limitation) of Title XXIV on the general partnership; Droit pour la pratique (droitpourlapratique.ch): ATF 136 V 268 examines the liability of a departing partner for the debts of a partnership continued as a sole proprietorship, including social security contributions, in the light of the limitation periods of Art. 181 and 591 CO. ↩

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