

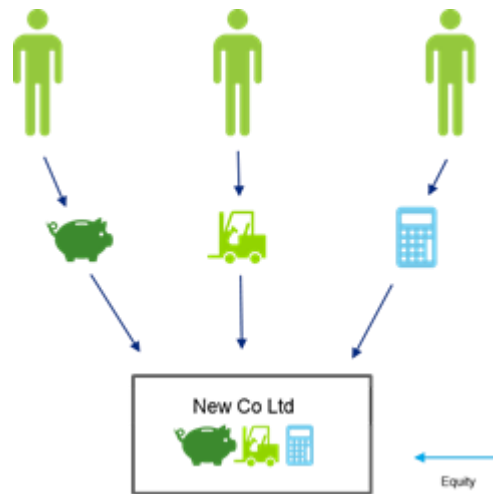


EQUITY PARTNERSHIPS
Setting up the Agreement
User Guide & Questionnaire

June 2017



- 1 This user guide explains the steps you will need to take and the key things to consider, when you are looking to establish an Equity Partnership Agreement using a Company structure.
- 2 Please note that although equity partnerships commonly involve a company structure, they can be structured in other ways, for example using a limited partnership.
- 3 In summary, with a company structure, each equity partner makes cash or “in kind” contributions to the new company and in return the partner is issued shares in the company, as shown in the graphic below.

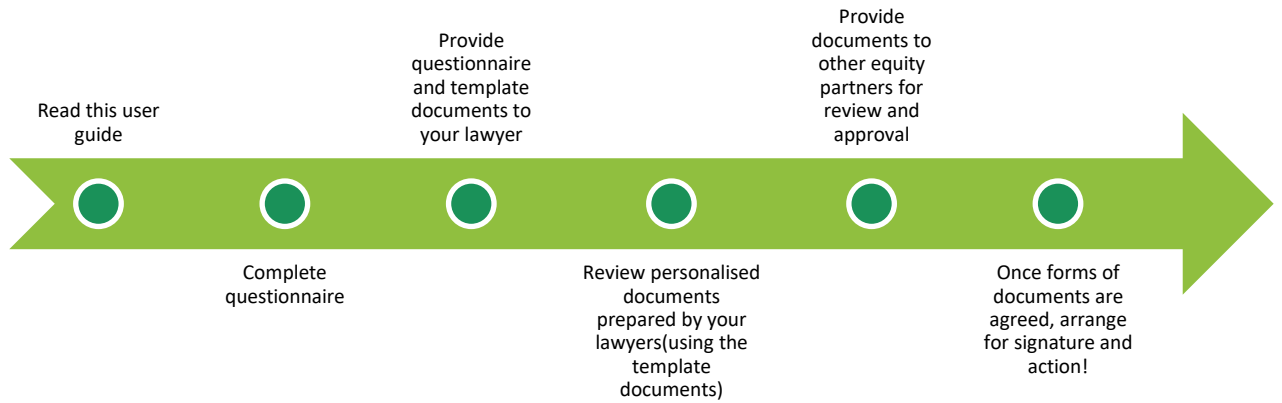


A company can have two or more partners and is governed by a board of directors who are appointed by the shareholders.

- 4 If you decide to go ahead with a company structure, the key documents that you will need for an equity partnership are a Shareholders’ Agreement and a Company Constitution.

Where do we start?

1. We recommend working through the following steps to establish the legal documents to support a new Equity Partnership:



2. The rest of this user guide explains some of the key concepts used in the shareholders' agreement and constitution.
3. The references in brackets throughout this user guide refer to questions in the questionnaire and relevant clauses in the shareholders' agreement (referred to as the "SA") and constitution. For example:

Directors (Ref: Questionnaire question 6, SA clause 6)

26 Companies are generally managed at two levels, the board of directors, and the shareholders.

This is a reference to question 6 of the questionnaire.

This is a reference to clause 6 of the shareholders' agreement.

4. So let's get started.

Work your way through the Questionnaire to see what information you need to capture and record the new farm business entity being farmed as an Equity Partnership (EP).



QUESTIONNAIRE TO ESTABLISH THE LEGAL DOCUMENTS REQUIRED FOR AN EQUITY PARTNERSHIP

This questionnaire will help you collect the information that you and your lawyer need to help structure the Agreements required to establish an equity partnership. These agreements are likely to comprise:

- Required Shareholders' Agreement;
- Constitution; and
- Land/stock/plant lease agreements.

Not all of the questions may be relevant to your circumstances. Mark n/a next to those that do not apply.

HOW TO FILL OUT THIS QUESTIONNAIRE:

- To fill out this questionnaire online you will need to have **Adobe Acrobat Reader**. If you don't have this software tool already, you can download it here: <https://get.adobe.com/reader/> Follow the install options **BEFORE** you click on the questionnaire link
- Once you have filled in the online questionnaire, you need to **EXPORT** your questionnaire. By exporting the questionnaire, you are saving an electronic copy to your computer. This is then the copy you can email on to your accountant or financial advisor or print a hard copy.

How do I export?

On the right hand side of the questionnaire you will see a panel with different actions listed. One says 'Export file'. Click on this and follow the instructions. It will ask you to give your questionnaire its own file name. Save the document in PDF Format directly to your desktop or a personal folder on your computer. For example: My documents\Equity Partnership\EP info.pdf

Once you have exported and saved the questionnaire to your computer, you can send it to your accountant, lawyer or banker by attaching it to an email to send to them or print out a copy to take with you to a meeting.

Business details		
1.1	What is the address and legal description of the farm?	
1.2	What type of farm business is operated? (Note: Farm classes taken from Beef + Lamb New Zealand)	<input type="checkbox"/> South Island high country <input type="checkbox"/> South Island hill country <input type="checkbox"/> North Island hard hill country <input type="checkbox"/> North Island hill country <input type="checkbox"/> North Island intensive finishing farm <input type="checkbox"/> South Island finishing-breeding farm <input type="checkbox"/> South Island intensive finishing farm <input type="checkbox"/> South Island mixed cropping and finishing farm <input type="checkbox"/> Other:
1.3	What are your goals or targets for the farm business? <i>Example: to increase gross farm income by \$100,000 over the next 5 years.</i>	<input type="checkbox"/> See attached Business Plan Or <input type="checkbox"/> Provide Details:
<i>A Business Planning tool is available on the B+LNZ website</i> www.beeflambnz.co.nz		<i>Workshops are also available which you and your business partners may find useful.</i>

1.4	How is the farm business <u>currently</u> operated?	<input type="checkbox"/> We run the business through a company. Company name and number (if known) is OR <input type="checkbox"/> We run the business through another structure, as follows: Entity name Type of entity (tick one) <input type="checkbox"/> Sole trader (owner/operators) <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Family Trust <input type="checkbox"/> Other (please specify) OR <input type="checkbox"/> This is a new business that we are looking to run as a: <input type="checkbox"/> company
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Land		
2.1	How are the land and buildings currently owned?	<input type="checkbox"/> In the company named above Go to question 3. <input type="checkbox"/> In our personal names. Please answer questions 2.2 to 2.5. <input type="checkbox"/> Owned by..... Please answer questions 2.2 to 2.5.
2.2	Do you wish to transfer ownership of land to the new company?	Yes <input type="checkbox"/> Go to question 3 No <input type="checkbox"/> Please answer question 2.3
2.3	Do you wish to lease the land to the new company?	Yes <input type="checkbox"/> Please answer question 2.4 No <input type="checkbox"/> Go to question 2.5
2.4	The terms of that lease should be as follows:	Term: Rights of renewal: Rental: \$ Rental payment dates: Rent review dates: Permitted use of land:

		<p>Pasture requirements:</p> <p>Expenses to be paid by company:.....</p> <p>Insurance:.....</p> <p>Guarantor (if applicable):.....</p> <p>Other specific terms:</p>
2.5	<p>How do you wish the land to be dealt with?</p> <p><i>For example - We wish to hold onto the land to use it for separate farm operations.</i></p>	

3.3	Do you wish to transfer ownership of stock to the new company?	Yes <input type="checkbox"/> Go to question 3.5 No <input type="checkbox"/> Go to question 3.4
3.4	Do you wish to lease the stock to the new company?	Yes <input type="checkbox"/> Go to question 3.5 No <input type="checkbox"/> Go to question 3.6
3.5	The terms of that lease should be as follows: <i>Note: Fed Farmers have stock Lease Agreements that can be used to support the Equity Partnership.</i>	Term: Rental: \$ Rental payment dates: Stock condition: Mating: Stocking rate: Right of inspection: Transport:..... Other specific terms:
3.6	How do you wish the stock to be dealt with? <i>For example - we wish to hold the stock and then sell it to a third party.</i>	

Initial shareholder details					
5.1	Please provide details of the proposed shareholders of the Company.	Full name of shareholder	Address	Percentage shareholding	
5.2	<p>Do you want any shareholders to have different rights?</p> <p><i>Example: Some shareholders may have limited or no voting rights or rights to distributions/dividends</i></p>	<p>Yes <input type="checkbox"/> Please provide details:</p>			
		<p>No <input type="checkbox"/></p>			

5.3	<p>What do you anticipate each shareholder will contribute as payment for the shares set out at 5.1? This may not be payable/contributed at the outset but perhaps over time.</p> <p><i>Example: cash or non-cash consideration, e.g. contributions of land, stock or other assets</i></p>	
5.4	<p>Is there to be any other capital contribution?</p>	<p>Yes <input type="checkbox"/> If yes, please specify:</p> <p>From who:</p> <p>Amount provided \$</p> <p>When (date)</p> <p>No <input type="checkbox"/></p>
5.5	<p>Will the farm have any other financing (or security arrangements) in place?</p> <p><i>Example: bank loans, security agreements/mortgages, personal guarantees.</i></p>	<p>Yes <input type="checkbox"/></p> <p>If yes, please specify:</p> <p>No <input type="checkbox"/></p>

Directors			
6.1	Will each Shareholder have the right to nominate a director or directors?	Yes <input type="checkbox"/>	Go to question 6.4
		No <input type="checkbox"/>	Go to question 6.2
6.2	Will there be a minimum percentage of issued shares in the company that a shareholder will be required to hold to be able to appoint a director to the Board?	Yes <input type="checkbox"/>	Please specify percentage%
		No <input type="checkbox"/>	
6.3	Will there be an entitlement to appoint one director for each [X]% shares held? <i>Example: One director for every 20% shareholding. This means that a 40% shareholder would have the right to appoint two directors to the Board.</i>	Yes <input type="checkbox"/>	Please specify percentage%
		No <input type="checkbox"/>	
6.4	Please provide the full names of initial directors and who the nominating Shareholders will be (if you ticked yes at question 6.1 above).	Full name of director	
		Nominating shareholder	

6.5	Will there be any independent directors?	Yes <input type="checkbox"/> Please specify names: Yes <input type="checkbox"/> But not yet appointed. No <input type="checkbox"/>
6.6	Will there be a chairperson appointed?	Yes <input type="checkbox"/> Please specify initial chairperson: Yes <input type="checkbox"/> But not yet appointed. No <input type="checkbox"/>
6.7	What will be the quorum necessary for a meeting of directors <i>Example 1: a majority of directors</i> <i>Example 2: 1 director representing each Shareholder</i>	
6.8	How often and where will meetings of directors be held? <i>Example 1: Quarterly</i> <i>Example 2: At least 5 times a year.</i>	

Management/employees		
7.1	Will any of the shareholders or their representatives or directors be employees of the company?	<p>Yes <input type="checkbox"/> Please name these persons and their respective positions.</p> <p>No <input type="checkbox"/></p>
7.2	How are these employees currently employed and on what terms?	<p>Employee 1</p> <p><input type="checkbox"/> See copy of their Employment Agreement attached.</p> <p><input type="checkbox"/> Current salary: \$</p> <p>Employee 2</p> <p><input type="checkbox"/> See copy of their Employment Agreement attached.</p> <p><input type="checkbox"/> Current salary: \$</p>
7.3	Will any of the persons in 7.1 have written employment agreements?	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>

Decision making		
8.1	How will decisions at board meetings be made?	<input type="checkbox"/> Simple majority (i.e. over 50%) <input type="checkbox"/> Majority including one director representing each shareholder <input type="checkbox"/> Unanimous vote <input type="checkbox"/> Other (please specify below)
8.2	<p>If directors vote by simple majority will there be any specific matters that must be decided by shareholders</p> <p>See the SA clause 8.2 for ideas on what these matters may be.</p>	<input type="checkbox"/> Yes Go to question 8.3 <input type="checkbox"/> No Go to question 8.4
8.3	Please review the list of matters in clause 8.2 of the template shareholders' agreement and consider whether there are any you would like to change. If so, please provide details:	
8.4	How will decisions by shareholders be made?	<input type="checkbox"/> Percentage - specify% <i>Example: 75%</i> <input type="checkbox"/> Unanimous vote

8.5	What will be the quorum for a meeting of shareholders? <i>Example 1: a majority of shareholders</i> <i>Example 2: shareholders representing X% of shares?</i>	
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Accounting and financial		
9.1	What will be the company's balance date?	
9.2	Where will the company's bank account be held?	
9.3	How are payments from the company's bank account to be authorised? <i>Example 1: Any one (or two) director(s)</i> <i>Example 2: Named director(s)</i>	
9.4	Who will be the company's:	Accountants: Solicitors: Other professionals:
9.5	Will the accounts be audited?	Yes <input type="checkbox"/> Please specify auditors: No <input type="checkbox"/>
9.6	Other than annual financial statements, are any other reports to be provided regularly to shareholders <i>Example: monthly management accounts, half-yearly accounts?</i>	<input type="checkbox"/> Yes Please specify: <input type="checkbox"/> No

Annual business plan and budget		
10.1	Which of the following documents will the Company be required to produce (if any)?	<input type="checkbox"/> Annual budget Please answer questions 10.2 and 10.3 <input type="checkbox"/> Annual business plan Please answer questions 10.4 to 10.6 <input type="checkbox"/> Other (specify) Please specify below and answer question 10.7
10.2	Who will be required to approve the financial budget?	<input type="checkbox"/> the board <input type="checkbox"/> the shareholders
10.3	Is there currently a financial budget agreed or in substantially final form?	<input type="checkbox"/> Yes (please specify) <input type="checkbox"/> No
10.4	Who will be required to approve the annual business plan?	<input type="checkbox"/> the board <input type="checkbox"/> the shareholders

10.5	Is there currently a business plan agreed or in substantially final form?	<input type="checkbox"/> Yes (please specify) <input type="checkbox"/> No Please answer question 10.6
10.6	If there is to be an annual business plan, do you have a template you are going to use?	<input type="checkbox"/> Yes (please specify) <input type="checkbox"/> No
10.7	For any other documents set out in question 10.1, who will be required to approve the document and is there a form of document substantially agreed?	Document: Approved by: Document: Approved by:

Funding		
11.1	Will debt funding be required for the working capital requirements of the company?	<p>Yes <input type="checkbox"/> Please specify:</p> <p>No <input type="checkbox"/></p>
11.2	If debt funding will be by way of shareholder advances will they be documented and what are the terms?	<p>Yes <input type="checkbox"/> Please specify terms:</p> <p>No <input type="checkbox"/></p>
11.3	Which one or more of the following mechanisms may be used in the future to fund the working capital requirements of the company?	<p><input type="checkbox"/> Bank financing</p> <p><input type="checkbox"/> Advances from shareholders</p> <p><input type="checkbox"/> Issue of new shares</p> <p><input type="checkbox"/> Other (please specify)</p>

Distributions		
12.1	What will be the policy in relation to distributions to shareholders?	<input type="checkbox"/> Amount to be determined by the board <input type="checkbox"/> Different proportions distributed annually to be determined by the board <input type="checkbox"/> Different proportions to be distributed annually to be determined by the shareholders <input type="checkbox"/> All profits to be reinvested in the company <input type="checkbox"/> Other (please specify)

Events of default		
13.1	If a shareholder commits an event of default, it will enable the other shareholders to require a transfer of shares. Is this acceptable?	Yes <input type="checkbox"/> Go to question 14.3 No <input type="checkbox"/> Go to question 14.2
13.2	What should happen for events of default?	
13.3	Please review the events of default in clause 13.2 of the template shareholders' agreement and consider whether there are any you would like to change. If so, please provide details.	

