



**Hirschowitz Flionis Attorneys & Conveyancers**

**With Compliments**

Upper Ground Level  
8 Arnold Road  
Rosebank  
2196

Tel: 011 880 3300  
Fax: 011 880 9128  
Email: [dunn@hfattorneys.co.za](mailto:dunn@hfattorneys.co.za)  
Website: [www.hirschowitz-flionis.co.za](http://www.hirschowitz-flionis.co.za)

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#### NEIGHBOURS BEHAVING BADLY: NIP ILLEGAL BUILDING IN THE BUD!

Bad neighbours don't just impinge on your enjoyment of your property; they can also cause serious harm to its value. So if you notice illegal building activity next door, move quickly to nip the problem in the bud.



Your hand in this regard has just been strengthened. An important new decision by the Supreme Court of Appeal (SCA) confirms that you aren't limited to trying to compel the municipality to enforce its own building and zoning laws – **you can apply for demolition directly.**

#### *Demolition ordered - despite a "supine" municipality*

- A new retail/office development exceeded the local Town Planning Scheme's coverage limit of 60% (the actual coverage as constructed

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was 86.13%), and insufficient parking bays were provided

- The developer claimed to have obtained municipal approval of its building plans but the “supine and uncooperative attitude of the municipality” made it difficult for the Court to determine any more than that, if the municipality had indeed given approval, it seemed later to have cancelled it
- In any event, held the Court, any such purported approval of the plans had to be set aside and the developer was ordered to partially demolish its building so as to bring it into compliance with the law.

### ***First prize, second prize***

The SCA has cleared the way for neighbours themselves to apply for demolition orders. That’s an important new weapon in the fight against illegal construction activity, but it’s still only second prize.

The problem is that where you (rather than the municipality) bring the demolition application, “private” or “neighbour” law applies and the court is not obliged to order demolition; it has a discretion whether or not to do so. And, demolition being a draconian remedy, the court may rather decide to make an alternative order such as a damages award. Indeed, had the developer in this particular case not incurred the court’s wrath by persisting in its illegal conduct after ignoring warnings of illegality, it might have escaped demolition altogether.

In contrast, where a municipality does its job properly and brings its own application for demolition, “public law” applies and our courts have previously held that they then have no discretion where unlawful buildings are concerned – they must order “total demolition”.

First prize it seems is still to force your municipality to fulfil its legal and moral duty to uphold the law by taking the offending builder to court itself.

Regardless, **the most important thing is to act quickly** – so get legal help as soon as you become aware of illegal construction!

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## **STARTING A BUSINESS? THE PARTNERSHIP OPTION**

***“Alone we can do so little; together we can do so much”  
(Helen Keller)***

In our last article in the series “Choosing the right legal entity for your business” we looked at the **sole proprietorship** option. Let’s move on to the partnership option, where a group of business owners replaces the sole owner/trader.



### ***Firstly, what exactly is a partnership?***

We talk loosely about our “partners” in various contexts, but it is important to understand how the law views the concept in a strictly business situation. In broad terms a partnership is an association of between 2 to 20 people/companies/trusts who agree to pool resources (such as money, property, services, skills etc – whatever is agreed upon) and to operate a jointly-owned business, trade or profession for profit. Partnership assets are jointly owned by the partners and profits are split between them as agreed.

### ***A quick note on the different types of partnership***

In this article we talk only about the most common form of partnership – the “ordinary” partnership. In specific circumstances you may also want to consider an “anonymous” partnership (where one or more of the partners are “sleeping partners”) or an *en commandite* or “limited” partnership. They differ from “ordinary” partnerships in several important respects so take specific legal advice if you are thinking of using them.

We’ll look at the “universal partnership” concept in a future article (it’s normally relevant in cases of cohabitation by unmarried couples).

### ***6 advantages of partnerships.....***

1. It’s relatively easy to set up and operate a partnership in the sense that there’s no need for formal registration as there is with a company or trust. **Just be sure to have a comprehensive written partnership agreement in place.** Although this is not a legal requirement, and although it adds an element of cost and delay, our law reports are full of bitter and costly partnership disputes resulting from the uncertainties that will always attend a verbal or poorly-drafted agreement. Good intentions and a handshake mean nothing when friction arises.
2. You have no statutory audit requirements and your administrative burden is low compared to, for example, running a company.
3. You are taxed at personal rates, which can sometimes (not always – see below) be to your advantage.
4. A partner often gives you access to another source of funding and/or assets for the business.
5. Most partners also bring new skills to the business.
6. It’s not nearly as lonely as being a sole trader – you have partners to share both the workload and the stresses and strains of management and decision-making. Just make sure you also share a common vision for the business, or friction is inevitable.

### ***..... and 6 disadvantages***

1. Loss of control – you now have only part control and ownership of the business, and decisions can take longer than if you were on your own.
2. Any partner can bind the partnership contractually so it is essential that you find partners whom you can trust implicitly to act both honestly and wisely in relation to the partnership and its business.
3. As a partnership isn’t a separate legal entity, **you are personally liable for all the debts and obligations of the partnership business.** If the partnership can’t pay its debts, creditors can and will sue you for them. And if the partnership is sequestrated, your personal estate will simultaneously also be sequestrated unless you provide security for all partnership debts. As with sole proprietorship, sleepless nights await you if any important assets (like your house) are in your name.
4. When any partner dies, leaves the partnership or goes insolvent, or when a new partner joins, the partnership automatically ends. Once again you are then personally liable for any shortfalls in the partnership’s ability to pay its debts.
5. If you end up paying more than your pro-rata share of any partnership

shortfalls, your claim against the other partners (or their estates) will be worthless unless they have enough net assets to pay you.

6. Tax and estate planning – as with sole proprietorship, being taxed at your personal income tax rate may be a plus in some cases, but in others you will benefit far more from a tax-efficient structure incorporating one or more corporate entities or trusts as well.

### ***What about “Joint Ventures”?***

Before you agree on a joint venture (“JV”) with another individual or business, be careful. Although a JV normally applies only to a single transaction, it could well amount to a partnership, no matter what title or description you give it. And as we saw above, partnerships have many pitfalls for the unwary – rather put your JV into a separate entity or have your lawyer draw up a JV agreement giving you some form of liability protection.

Watch out incidentally for “inadvertent” partnerships – as a partnership can be formed verbally or even tacitly (implied from conduct), you could find yourself establishing a partnership by mistake! Another reason to have everything recorded in a full contract.

**Remember to take full professional advice on the legal and tax implications of using each type of entity before choosing.**

*This is the third article in our series “Choosing the right legal entity for your business”. Next time we’ll look in more depth at the private company option.*

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## **DIRECTORS, MANAGERS – YOUR NEW RISK OF “CARTEL CONDUCT” CRIMINAL LIABILITY IS EVEN WIDER THAN REPORTED**

***“A cartel involves an agreement or concerted practice between two or more competitors to engage in fixing prices and/or trading conditions, dividing markets and/or collusive tendering. By artificially limiting competition that would***



***normally prevail between them, firms avoid exactly the kind of pressures that lead them to innovate, both in terms of product development and production methods. This results ultimately in high prices and reduced consumer choice.” (Competition Commission)***

Government’s determination to crack down on cartel conduct is evidenced in the newly-introduced criminal liabilities imposed on individuals by amendments to the Competition Act. Offending businesses already face substantial penalties, and now any director or manager of a business guilty of causing or permitting it to engage in a “prohibited practice” is also personally liable to prosecution, risking heavy fines (up to R500,000) and/or imprisonment (up to 10 years).

A “prohibited practice” here means “directly or indirectly fixing a purchase or selling price or any other trading condition”, “dividing markets by allocating

customers, suppliers, territories, or specific types of goods or services”, or “collusive tendering”.

Legal commentators are suggesting that even more severe sanctions (possible life imprisonment, blacklisting from public tenders etc) imposed by separate anti-corruption legislation could also come into play.

Don't forget also that these penalties for directors and managers personally are in addition to the existing and substantial penalties already faced by the businesses themselves.

Don't take any chances here – get advice before embarking on any course of conduct which might be regarded as falling foul of these provisions.

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### **TAX SEASON STARTS 1 JULY: YOUR DEADLINES**

SARS has published the new Tax Season deadlines for individuals.



Your important dates for filing your ITR12 Tax Return Form for the period 1 March 2015 to 29 February 2016 are –

- 23 September 2016: Manual/postal submissions, or
- 25 November 2016: Non-provisional taxpayer returns submitted via eFiling or at a SARS branch, or
- 31 January 2017: Provisional taxpayers via eFiling.

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### **YOUR JULY WEBSITE: PROTECT YOUR ONLINE PRIVACY WITH PRIVACY BADGER**

Every time you surf the Internet, your activities are tracked by a host of commercial operations and governments. The depth of information they accumulate on you is staggering and will at the very least expose you to marketing and advertising targeted to your online behaviour patterns.



If that concerns you, consider installing Privacy Badger, which is currently only available for Chrome and Firefox, from the EFF (no, not that one - the non-profit “Electronic Frontier Foundation”) from their website at <https://www.eff.org/privacybadger>.

Privacy Badger blocks spying ads and invisible trackers, it learns as it goes along and you can tweak how it handles particular sites.

Note: If one of your apps or extensions stops working or starts behaving strangely, you may need to change the Privacy Badger

controls or even temporarily disable it.

***Dipping into the dictionary***

**“Drumble”**, v. - To move sluggishly, dawdle, be confused, or mumble.

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