

MANAGEMENT AGREEMENTS – a guide on what to include

A management agreement occurs where a Club and another entity seek to work together and manage certain services at the Club.

These can include activities such as running the kitchen, catering for functions and the management and or use of facilities and premises.

We have listed and explained a number of headings below which are recommended for inclusion when creating a Management Agreement. These can prevent issues and disputes arising at a future time

IMPORTANT

Profit Sharing – Revenue from Liquor Sales

The *Liquor Licensing Act 1997* prohibits profit sharing between a licensee and an unlicensed person.

The Liquor and Gambling Commissioner is however, permitted to approve an arrangement where a suitable Profit Share Agreement has been submitted to Consumer and Business Services (CBS).

This means that if a Club wants to allow a person to take over the running of the bar and that person does not hold a liquor licence in their own name, the Club and the person must:

- come to a formal arrangement that details how the management of liquor sales and the apportioning of profits arising from the sale/supply of liquor will proceed; and
- submit the agreement to CBS for approval by the Commissioner,

before undertaking the arrangement.

There is a template available in Members Only for such an application and we recommend discussing this matter with Clubs SA prior to submitting this to CBS.

Please note:

Where an agreement is made between two licensed entities, such as between two licensed Clubs or a licensed Club and a licensed café, it is highly recommended to still formalise the arrangement. However, approval by the Liquor and Gambling Commissioner is not needed in this case.

Headings to Include

Services

A Club needs to be very clear in the types of services the other party will be providing as per the agreement and to what standard e.g. will it just involve the sale, supply and provision of alcohol or will there also be other services such as catering.

It is also important to clearly outline who will have control over certain aspects of these services e.g. will the Club have the final say on all pricing?

Income

The Club and the other party will need to consider how any income generated from the agreement will be split.

Depending on the services that are being provided by either party, a percentage of the profits could be distributed to the partner with the rest being retained by the Club. For example, should the agreement be for the partner to come into the Club and provide alcoholic beverages and also have input into the Club's functions and events then they could be given a % of all the profits generated from this source.

When a Club is assessing the income to pay to the partner, they need to weigh up the potential costs and benefits of what the other party will bring and select an amount that is an incentive to the partner but also benefits the Club.

Liquor Licensing Act and other Legislation

A management agreement may include services being provided under the liquor licence meaning responsibilities under the *Liquor Licensing Act 1997 (SA)* (**Liquor Act**) will be of importance. The Liquor Act sets out the legislative framework around how a licence can be operated and what may constitute a breach.

As explained in the cover sheet, if one of the parties to a management agreement is unlicensed, section 99 of the Liquor Act becomes relevant and a profit sharing agreement is occurring. The parties must get approval from the Commissioner for Liquor and Gaming.

Whilst section 99 is the main legislative provision that needs to be considered when a party is unlicensed, as to not comply with this would constitute a breach, Clubs and the other party to a management agreement need to ensure compliance overall with the act and in particular:

- **s36 – Club Licence** – This section outlines the general restrictions and authorisations given by a Club Licence such as where the consumption of liquor is allowed, sales of alcohol via direct sales transactions etc.

- **s47 – How Licences are to be held** – Allows for a licence to be jointly held by two or more parties (provide that they are both either an association or company limited by guarantee) in which case all will be jointly and severally liable.
- **s97 – Supervision and Management of Licensee’s Business** – Requires a Responsible Person to be present at all times a licensed premises is open to the public, unless an exemption is granted
- **s105 – Prescribed Entertainment on Licensed Premises** – Prohibits the use of any part of licensed premises for the purpose of providing prescribed entertainment, that being entertainment of a sexually explicit nature or a professional public boxing or martial art event, without authorisation from the Commissioner.

As well as the Liquor Act, the *Liquor Licensing Act 1997* – General Code of Practice also needs to be followed which sets out the objects of the Liquor Act. Both parties should also ensure that they comply with any other legislation, instrument or by-law including harassment and discrimination laws, WHS laws, *Food Act 2001* (SA) as well as a Clubs internal policies.

Fees and Overheads

In addition to the distribution of any income, a Club should also consider if there will be a fee charged for allowing the provision of services under a management agreement to its members and the public. This could be a one off payment or one that is made in instalments throughout the duration of the agreement e.g. weekly, monthly etc.

A Club also needs to consider any overheads e.g. electricity and water that would be related to the services under the agreement and how they will be paid. For example, where the agreement will result in a water usage by the other party, such as a result of washing glasses and dishes, then they may wish to have them pay an amount towards this.

Confidentiality and Intellectual Property

One of the suggested inclusions into a management agreement would be to ensure that any confidential information the partner may be privy to is not allowed to be disclosed, during and after termination of the agreement. The inclusion of this clause provides a clear protection and reference for a Club should the partner seek to use confidential information such as a members’ list for their own benefit e.g. trying to poach Club customers for another venture they may have.

A Club should also consider if any intellectual property may be created (such as trademarks, images, signs etc. and if so who will get to retain this, i.e. will it be the Club or whoever creates it?

Indemnities

In order to lessen risk, a Club should seek indemnities (which is where a party agrees to legally exempt another party from any liability they may have) from the other party they enter into the agreement with.

In terms of what indemnities should be sought, a Club should look to have the other party indemnify them from any claim that may arise as a result of any act or omission by the other party. This should also be extended to any of the other parties' staff or agents as well for increased protection.

Insurance

In addition to any indemnity clauses, a Club should ensure that the other party holds adequate insurance and that this is included as a clause in the agreement.

In terms of the insurance needed, both public liability and indemnity insurance should be required as these will both ensure that any issues arising from the other party's acts or omissions should be covered. If insurance is not maintained by the other party then this will create risks for the Club as it could mean the other party can't cover the cost of any claim.

Clubs could also consider whether they want to also require a minimum coverage amount as well so as to reinforce the protection provided.

Other Considerations

In addition to the above, there are a number of other clauses that should be included or at least considered in any management agreement:

- **Equipment and Items** – Where parties are both providing equipment and items to be used in providing the services it should be specified who is responsible for their maintenance / repair.
- **Staff** – If the other party is going to use outside staff as well, then it should be outlined clearly that they are responsible for sourcing adequate staff and are responsible for all payments, entitlements, super, workers compensation coverage etc.
- **Alterations** – Will any alterations be allowed and if so then the Club should specify this is only to be done with their permission and with approval from Consumer and Business Services SA.
- **Parking** – In order to make access as easy as possible and/or limit any negative impact on parking spaces for members, a Club could include details on where parking will be provided/allowed.
- **Dispute Resolution** – It is highly recommended that a dispute resolution procedure is included in any agreement. This sets out how each party will proceed where there is a dispute and aims to avoid litigation / claims at court from arising where the issues could have been solved between the parties first.

Template

An editable Management Agreement template is available in Members Only.

You are reminded that this is a template only and Clubs will need to review and edit it appropriately for it to meet their individual needs whilst still ensuring the terms of the agreement are clear to avoid disputes arising.