

Specimen Succession Agreement Succession Farm Partnership



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With Notes*

*(Sample particulars have been inserted into the specimen agreement in Bold Italic Script for the purposes of illustration)

Specimen Template Succession Agreement

Acknowledgements

Teagasc would like to acknowledge the professional input and expertise of the following people in the drafting of this specimen template succession agreement.

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May 2017

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Table of Contents

Introduction	6
Succession Agreement	9
1. Definitions & Interpretations	11
2. Conditions Precedent	14
3. Agreement	15
4. Consideration	17
5 Value Added Tax (VAT)	17
6. Registration	18
7. The Partnership Agreement	18
8. Liabilities	19
9. Accounts	20
10. General Conditions	21
11. Transfer	22
Schedule 1	24
Schedule 2	25
Schedule 3	26
Schedule 4	29
Example Calculation	30

Introduction

Succession farm partnerships are a new income tax incentive under Section 667D of the Taxes Consolidation Act 1997 to encourage Farmers to transfer the farm business to their identified farming Successor (s). This incentive has received EU state aid approval and can be availed of for the 2017 and subsequent income tax years. It applies only to partnerships that are registered on the register of succession farm partnerships maintained by the Department of Agriculture, Food and the Marine (DAFM).

The new register will be open for applications from the 1st of June 2017. Existing partnerships that are registered with the Department of Agriculture, Food and the Marine can transfer to the succession farm partnership register by fulfilling the additional criteria required by the incentive.

The incentive at the time of compilation of this booklet is in the form of an annual income tax credit of €5,000 for up to five years. The credit is split annually based on the profit sharing ratio of the partnership between the Farmer and the Successor. The key criteria to be met to qualify for the income tax credit are as follows:

1. Make a valid application to be placed on the register of succession farm partnerships maintained by the Department of Agriculture, Food and the Marine.
2. At least one partner in the Succession Farm Partnership must be a natural person who has farmed at least 3 hectares in his/her own right for the two previous years. This person is defined as the “Farmer”.
3. Aside from the Farmer at 2 above, the other partner(s) must be a young trained Farmer who is in receipt of 20% of the partnership profits. This Partner is defined as the “Successor”. Provided all successors are under 40 years of age at the start of the year of assessment, then the credit will be available for that assessment year.
4. The Teagasc My Farm My Plan Booklet must be completed for the partnership. Teagasc is the certification body for this farm plan. This is freely available to download from the Teagasc website www.teagasc.ie.
5. A legally binding agreement (such as the one within, adapted to the needs of the parties), separate to the farm partnership agreement must be signed by the “Farmer” and “Successor” who are partners in the same registered farm partnership. The succession agreement must specify the year of transfer and outline the assets to be transferred. The agreement must clearly identify the lands which will be transferred on the transfer date. The year of transfer must be within 3 to 10 years of registering with the DAFM to claim the tax credit and a minimum of 80% of the farm assets outlined in the agreement must be transferred. This booklet is an example of a specimen template legal agreement for a Succession Farm Partnership. It also includes a practical example of a typical farm transfer situation such as may meet the needs of the income tax incentive.

6. **Bank mortgages/charges**

When a bank lends money it normally looks for security, that is, some asset which they can call on to satisfy their loan if it remains unpaid. In farming, the security is usually a legal mortgage or charge over land so that the bank can sell or let the land themselves if their loan is not repaid.

This succession agreement agrees to transfer farming assets including land. If a person takes a transfer of land which is mortgaged or charged, the person taking the transfer (for example son/daughter) will also become liable for the mortgage/charge. A bank might also require the two parties to enter into a new mortgage/charge in connection with the agreement/transfer. Modern mortgage/charge documents are very broad in their scope. Particular care must be exercised if a new loan document is to be executed by the parties to the agreement.

It is essential that the Parties consult with their Solicitor, Accountant and Lending Institution to clarify the existing borrowing arrangements of the Farmer, the existing borrowing arrangements of the Successor, and the proposed borrowing arrangements proposed in connection with this agreement. Matters which should not be overlooked include liability for guarantees given and security for present and future advances, and the liability of other parties in the event of default by one of them. The following are some of the questions which need to be clarified before any documentation is signed or assets transferred:

- Are any of the assets to be transferred, in particular the land, provided as security in any way for borrowings or loans of any kind?
- What are the borrowing commitments of the Farmer (if any), farming and non-farming?
- What has the Farmer offered as security (if any) for any/each of those borrowings? (In this context, a copy of the latest facility letter from any bank involved will be helpful).
- Has the Farmer guaranteed loans for any other person (e.g. son/daughter/spouse)?
- What are the borrowing commitments of the Successor (if any), farming and non-farming?
- What has the Successor offered as security (if any) for any/each of those borrowings. (In this context, a copy of the latest facility letter from any bank involved will be helpful).
- Has the Successor guaranteed loans for any other person (e.g. son/daughter/spouse)?

7. **Legal title**

The Successor should satisfy him/herself that he/she will be acquiring good marketable title to the lands to be transferred on foot of this agreement, or if not, should be fully aware, on advice, of any relevant matter, burden, charge, etc. Independent legal advice should be obtained.

8. Co-ownership of land/Multiple Successors

In situations where there is co-ownership of the land intended for transfer to the Successor, this specimen agreement will have to be amended accordingly to take account of such circumstances. Similarly, in situations where there is more than one Successor, this specimen agreement will have to be amended to take account of the particular circumstances.

DISCLAIMER

This booklet contains material in relation to Succession Farm Partnerships. It has been compiled to assist Farmers to make inquiries and to discuss proposals and alternatives with their Solicitors, Financial Advisor, Accountant, and other advisors. It is not intended for any other purpose. Independent advice should be obtained by each partner in the Succession Farm Partnership. It is essential that a Solicitor and Accountant be consulted prior to entering any agreement.

While every effort has been made to ensure that information in this booklet is correct as at the time of preparation, no liability whatsoever can be accepted by those who compiled this booklet or by Teagasc for any loss suffered by any person as a consequence of relying on any matter published in it or for any matter whatsoever. The draft legal document is intended as a specimen only. It should not be adopted even in part without taking specific legal advice from Solicitors and advice in relation to all relevant matters from Accountants or appropriate experts. Persons proposing to form a Succession Farm Partnership should request their own Advisors to draft a document adapted to the needs and circumstances of the persons involved and which complies also with the terms of all relevant legislation.

Professional advice should be sought in relation to all relevant legislation and regulations. As of the date of preparation of this booklet these include:

- * Section 667C of the Taxes Consolidation Act
- * Section 667D of the Taxes Consolidation Act
- * Succession Farm Partnership Regulations SI 273 of 2017
- * Requirements for Farm Partnership Registration April 2015
- * Succession Farm Partnerships – Terms & Conditions

Suggested Further Reading

Áine Macken-Walsh & Ben Roche, Facilitating Farmers' Establishment of Farm Partnerships: a Participatory Template (Teagasc, 2012) Website: www.teagasc.ie

Ben Roche, Partnerships and Farming (Teagasc, 2012)

Michael Twomey, Partnership Law (Butterworth: Dublin, 2000).

Taxation Issues for Registered Farm Partnerships (Revenue Commissioners, 2016) Revenue Website: www.revenue.ie

Thomas Curran, Guidelines to forming a Registered Farm Partnership (Teagasc, 2016) <https://www.teagasc.ie/rural-economy/farm-management/collaborative-farming/>

SUCCESSION AGREEMENT

[All Blanks in Square Brackets are to be completed]

MEMORANDUM OF AGREEMENT made this [8th]day of
[____July____] 20 [17__]

BETWEEN

(Name)[__John Brown_____] of
(Address)[__Jamestown, Co. Galway_____]]
PPS Number: [____1234567Z_____]]
herein referred to as ‘The Farmer’

AND

(Name)[__David Brown_____] of
(Address)[__Jamestown, Co. Galway_____]]
PPS Number: [__9876543X_____]]
herein referred to as ‘The Successor’

PREAMBLE

- A. The parties hereto are partners under and on the terms of the Partnership Agreement as defined herein and references herein to the Partnership are references to the partnership formed by the Partnership Agreement.
- B. The Farmer complies with clause (I) of section 667C(1A)(b)(v) of The Act in so far as that clause refers to owned farm land.

EXPLORATORY NOTES

The date that the agreement is completed and signed.

The “Farmer” is a natural person who has farmed at least 3 hectares for two years immediately prior to entering this succession farm partnership.

Where any of the farm assets (including and in particular the land) to be sold/transferred are jointly owned all owners must consent and join in the agreement per S.667D(3) of the Act.

If the land includes a Family Home the prior consent of the non-owning spouse/civil partner must be given and he or she should receive independent legal advice.

The “Successor” is a natural person or persons who is/are the intended transferee(s).

If the Successor’s spouse or civil partner is to become a partner the agreement may provide for the sale/transfer of farm assets to them both per Section 667D(4) of the Act.

This confirms that the Farmer and Successor named in this agreement are also the same partners who form a Registered Farm Partnership

Confirmation that the Farmer owns the land intended for transfer.

C. The Successor has not yet reached 40 years of age, (having been born on the [3rd] day of [September 1987] and complies with subclauses (A) and (B) of section 667C(1A)(b) (v)(II) of The Act.

The date of birth of the “Successor” confirming that he/she is under 40 years of age has completed the required agricultural education qualification and is in receipt of 20% of the partnership profits.

D. The business plan of the Farm Partnership has been submitted to, and approved by, the Minister in compliance with section 667D(2)(c) of The Act.

The Teagasc My Farm My Plan Booklet has to be completed and a certificate of satisfactory completion obtained from Teagasc. This certificate of satisfactory completion must be included, along with other required documentation, to the Partnership Registration Office as part of an application to register a Succession Farm Partnership.

At the end of the lifetime of the Business Plan, the Partnership Registration Office may require the Farmer and the Successor to sign a declaration that this Business Plan has been implemented by the partnership.

E. It is the intention of the parties to make application to the Minister to enter the Farm Partnership in the register of succession farm partnerships referred to in section 667D(1) of The Act.

The Farmer and the Successor intend to apply to register a Succession Farm Partnership.

F. The Parties have resolved to enter this agreement to satisfy the requirements of section 667D(2)(d) of the Act in compliance with section 667D(2)(e) thereof and regulations made under section 667D(7) thereof.

The “Farmer” and the “Successor” agree to satisfy the requirements of the scheme regulations.

G. [John Brown] is the primary participant within the meaning of section 667C(1) of The Act in relation to the Farm Partnership.

The primary participant is the person who is making the application to register a Succession Farm Partnership on behalf of the partnership. This person will be point of contact for correspondence from the Department’s Registration Office.

H. The farm assets of the Partnership as at the date of the said application to the Minister are as set out in Schedule 3 - The Partnership Farm Assets Schedule to this Agreement.

Schedule 3 sets out the farm assets on the date of application to the Minister to be put on the Register of Succession Farm Partnerships. The Scheme requires that this information be set out now. With the

exception of the land and buildings, these are not necessarily identical to the assets to be transferred to the Successor under this agreement which may change over time. The assets agreed to be transferred are set out in Schedule 2.

- I. The Farmer has agreed to sell/transfer the share or interest specified in Part I of Schedule 2 in the land, buildings and CAP payment entitlements that he owns and licenses in and to the Partnership and the share or interest specified in Part II of Schedule 2 of his share or interest of or in the livestock and machinery owned by the Partnership to the Successor on the Transfer Date.

As part of this agreement, this clause is a statement of intent of the Farmer to transfer assets to the Successor

1. DEFINITIONS AND INTERPRETATION:

For clarity, it is standard practice to define important words and phrases

- 1.1 In this agreement the following terms shall have the following meanings save where the context otherwise requires

“Accounts” means the annual accounts prepared in accordance with the Partnership Agreement

‘The Act’ means the Taxes Consolidation Act 1997 as Amended

‘The Bank’ means [Bank of Ireland/AIB/Ulster Bank] (insert name and address) the holder/owner of the charge described in Schedule 4 to this Agreement.

The banking institution of the partnership that may have a charge on assets used by the partnership that are intended to be transferred.

If there is a bank mortgage or charge involved it is most important to read Section 6 on bank mortgages/charges in the introduction to this booklet and discuss with both solicitor and accountant.

“Bank Debt” means all monies owed to the Bank by the partnership (or by any one or more of the partners as nominee for the partnership) on any account whatsoever.

See above

‘The General Conditions’ means the Law Society of Ireland General Conditions of Sale 2017 Edition or if a later edition thereof has been published and is in use as at the date of this agreement the latest such edition.

‘Mental Incapacity’ for the purposes of Clause 3.1.6 refers to where a person becomes a person of unsound mind so found or is involuntarily admitted to an Approved Centre pursuant to the Mental Health Act 2001 or in respect of whom a declaration is made that he or she lacks capacity pursuant to section 37 of the Assisted Decision-Making (Capacity) Act 2015.

“Long Term Liabilities” means all or any liabilities owed to any lender or finance company by the partnership (or by any one or more of the partners as nominee for the partnership) on any account whatsoever in connection with any agreement for hire purchase, condition of sale, lease, purchase or lease.

‘The Minister’ means the Minister within the meaning of section 667C of the Act.

‘Partnership Agreement’ means the registered farm partnership agreement complying with Section 667C of the Act dated the [2nd] day of [March] 2016 and made between [John Brown and David Brown], entered on the register of farm partnerships established and maintained under and in accordance with section 667C of the Act by the Department of Agriculture, Food and the Marine Farm Partnership Registration Office, Agriculture House, Kildare Street, Dublin 2. And having registration number [GFP001] as the same may be amended or novated (however fundamentally) from time to time

These conditions are used for sales of land generally in Ireland. Only the appropriate general conditions should be included in the particular circumstances this document. A solicitor will advise on this matter.

If there is a bank mortgage or charge involved it is most important to read Section 6 on bank mortgages/charges in the introduction to this booklet and discuss with both your solicitor and accountant

The date on which the existing partnership agreement was signed by the parties and registered with the Department of Agriculture, Food and the Marine Farm Partnership Registration Office.

‘Primary Participant’ means the person identified as the primary participant within the meaning of section 667C(1) of The Act in relation to the Farm Partnership in the Preamble to the Agreement

The primary participant is the person who is making the application to register a Succession Farm Partnership on behalf of the partnership. This person will be the point of contact for correspondence from the Department’s Registration Office.

‘Transfer Date’: the [*3rd*] day of [*May* _____ 2026_] being the date on which it is agreed that the transfer of farm assets the subject matter of this agreement will take place, being a transfer in accordance with Section 667D(2)(d) of the Act.

This date, chosen by the partners as the date on which at least 80% of the “Farm Assets” will transfer to the Successor in the Succession Farm Partnership

- 1.2 Any reference to any party to this Agreement shall include his or her Successors in title and personal representatives subject always to the provisions of Clause 3.1.6 hereof.
- 1.3 Words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter and vice versa.
- 1.4 Words such as “hereunder” and “hereto”, “hereof”, and “herein” and such words commencing with “here” shall unless the context clearly indicates to the contrary refer to the whole of This Agreement and not to any particular section or clause.
- 1.5 Each covenant or agreement given or made by a party shall be deemed to have been given or made by him with the other parties jointly and severally and with each of them separately.
- 1.6 The section and clause headings and notes are inserted for convenience only and shall not be considered a part of or affect the construction or interpretation of This Agreement.

- 1.7 Save where otherwise expressly stated references in This Agreement to parties or schedules are to the parties and schedules hereto.
- 1.8 Reference to a statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted.
- 1.9 Terms used and defined in the Partnership Agreement but not defined in this Agreement have the meanings given to them in the Partnership Agreement when used in this Agreement.

2. CONDITIONS PRECEDENT

- 2.1 The transfer of assets provided for in this Agreement is subject to the following conditions being satisfied on or prior to the Transfer Date:

[NOTE:
SPECIFY HERE ANY CONDITIONS TO WHICH THE AGREEMENT IS SUBJECT

IN CERTAIN CIRCUMSTANCES AN AGREEMENT ON THE PART OF THE BANKERS TO THE PARTNERSHIP TO VARY THE TERMS OF THEIR LOANS MAY BE A REQUIREMENT OF EITHER PARTY

IT MAY BE NECESSARY TO PROCURE THE RELEASE OF CHARGES OVER ASSETS BEING TRANSFERRED E.G. WHERE THE CHARGES SECURE LIABILITIES THAT WILL NOT BE ASSUMED BY THE SUCCESSOR.

'Conditions Precedent' are conditions that must be satisfied before the agreement can take effect.

Where it happens that for some reason, (any of) the conditions precedent are not satisfied by the date agreed for the transfer either party can rescind the agreement and for the purposes of the Act, this is deemed to be done by agreement.

NOTES appearing in block capitals in the draft should be deleted from the engrossment before signing.

This issue should be addressed here if it will be an absolute pre-condition for making the transfer. An alternative less prescriptive approach is contemplated under the Liabilities Heading in Clause 8 below – only one of these alternatives should be used

NOTE CARE SHOULD BE TAKEN TO CHECK IF BANK CONSENT TO THE TRANSFERS IS REQUIRED SO THAT THE PARTNESHIP IS NOT IN BREACH OF ITS BANKING FACILITIES.

LANDLORD'S CONSENT WHERE THERE IS LEASED LAND MAY BE REQUIRED.]

2.2 If the above conditions are not satisfied by the Transfer Date the Farmer/Successor/either of the parties hereto may rescind this Agreement by notice in writing to the Successor/Farmer/other party and in that event this Agreement shall be at an end and the farm assets shall be deemed not transferred because of mutual agreement between the Farmer and the Successor in accordance with the provisions of section 667D(6)(e) of the Act.

Where the succession agreement is not implemented as agreed, the amount of tax credit claimed must be repaid in full to the Revenue Commissioners.

3. AGREEMENT

3.1 It is hereby agreed for the Consideration set out herein by and between the parties hereto as follows:

3.1.1 On the Transfer Date the Farmer shall sell/transfer and make over to the Successor and the Successor shall purchase/accept and take in accordance with the terms and conditions hereof the farm assets described in Schedule 2 to this Agreement.

The "Farmer" commits under this clause to transfer the farm assets to the Successor. The assets involved are set out in Schedule 2.

3.1.2 The transfers hereby agreed to be made shall unless otherwise expressly agreed be made subject to the charges and other securities specified in Schedule 4 to this Agreement, the Successor shall take and accept the farm assets subject thereto and the Farmer shall not be required to procure the release of the said farm assets from the said charges and other securities.

By this clause the Successor agrees to accept the transfer of farm assets from the Farmer subject to any security/charges set out in Schedule 4. Refer to Section 6 of introduction: Bank mortgages/charges.

3.1.3 Unless otherwise expressly stated in this Agreement the parties agree that the farm assets shall be transferred in their “as is” condition as at the transfer date and the Successor agrees to purchase/accept them with full notice of their state and condition at the date hereof and subject to the risk of any loss or damage to them that may occur prior to the Transfer Date.

The parties agree that the farm assets will transfer in their “as is” condition at the date of transfer.

3.1.4 The Farmer provides no warranties or representations of any kind in relation to the state or condition of the farm assets. No warranty or representation is given or shall be deemed to be given by the Farmer in relation to compliance with planning permission, building control legislation or regulation or any law relating to the environment or otherwise whether Irish law, European Community Law, any common or customary law or legislation and/or any order, rule, regulation, directive, statutory instrument, bye law or any legislative measure. The Successor hereby acknowledges that it is a matter for him to satisfy himself in that regard prior to the execution of this Agreement.

3.1.5 The Successor shall be deemed to have satisfied himself prior to the execution of this Agreement that the land to be sold/transferred is adequately serviced and has the benefit of all easements, rights and privileges required for the proper use and enjoyment of same and the extent to which the roads, laneways and services to and abutting the land to be sold/transferred have been taken in charge by the Local Authority.

The Successor should take independent legal advice on the condition of the lands and the services, access etc., and on any rights which may affect the lands.

3.1.6 In the event of the death of the Farmer prior to the Transfer date this Agreement shall be binding on his or her personal representatives and Successors in title (if other than the Successor) by and against whom this Agreement shall be enforceable as if they had been originally named as parties but in the event of the death, bankruptcy or Mental Incapacity of the Successor this Agreement shall no longer be enforceable against the Farmer.

4. Consideration

The Consideration for the transfer shall be the payment by the Successor to the Farmer on the Transfer Date of the sum of €10 (Ten Euro) and the Successor continuing to farm the farm assets the subject hereof in partnership with the Farmer pursuant to the Partnership Agreement until the Transfer Date.

5. VAT

NOTE: [WHERE THE FARMER OR THE PARTNERSHIP IS VAT REGISTERED, THE PARTIES SHOULD SEEK SPECIFIC ADVICE ON WHETHER THERE WILL BE VAT IMPLICATIONS FROM THE TRANSFER. IN PARTICULAR THE IMPLICATIONS OF THE CAPITAL GOODS SCHEME APPLYING TO FARM BUILDINGS SHOULD BE CONSIDERED].

The provisions of this Clause must be carefully considered in the light of the personal and particular circumstances of the parties in any given case. The parties should review and revise where necessary their wills to comply with their intentions with respect to this Agreement. Consideration should be given to the implications of the Partnership ceasing or no longer being a registered farm partnership.

A nominal amount is specified here to satisfy the legal requirement for consideration for a binding contract. If the parties agree a price other than the nominal amount that price should be specified here instead of the nominal amount.

Likewise if it is agreed that the Successor will assume responsibility for a loan or other liability of the Farmer – that may form part of the Consideration. Part of the consideration is that the Successor will continue to farm in partnership with the Farmer until the transfer date.

It is assumed that in most cases there will be no VAT issues but if otherwise, a suitable condition providing for the VAT treatment of the transaction should be added here noting the complications that may arise from entering an agreement now providing for property to transfer some 3 to 10 years later.

On the creation of the Succession Farm Partnership and where a Farmer is VAT registered, it should be noted that the Capital Goods Scheme may apply to the farm buildings that are licensed in the partnership

6. Registration

The Primary Participant shall within 30 days after the date hereof make application to the Minister to enter the Farm Partnership in the register of succession farm partnerships established and maintained under and in accordance with section 667D(1) of The Act and regulations under subsection (7) thereof. The parties hereto shall do all acts and things necessary to complete such entry in that register and they shall co-operate with each other in so far as it may be required of them to do so for that purpose.

7. The Partnership Agreement

7.1 This Agreement shall be read in conjunction with and deemed a graft onto The Partnership Agreement and an extension thereof and so that the provisions of The Partnership Agreement as to DEFINITIONS AND INTERPRETATION, PREVENTION AND RESOLUTION OF DISPUTES and MISCELLANEOUS in so far as they are compatible with the provisions hereof, appropriate and capable of application hereto shall apply to this agreement provided however that in the event of a conflict between the provisions hereof and of The Partnership Agreement the provisions of The Partnership Agreement shall apply until the Transfer Date and the provisions hereof shall apply after the Transfer Date.

7.2 The Parties hereby agree that:

7.2.1 the Partnership shall continue on the same terms as heretofore until the Transfer Date and likewise thereafter save as expressly varied by the provisions of this Agreement and specifically so that as and from the Transfer Date the profits and losses of the Partnership shall be divided as to _____% thereof to the Farmer and _____% thereof to the Successor.

The person named as primary participant in this agreement will have responsibility for the preparation and submission of the application documents required by the Department of Agriculture, Food and the Marine farm partnership registration office for a successful registration.

Reference should be made to the Partnership Agreement to identify the provisions to be imported.

This succession agreement is a supplementary requirement to the main partnership agreement. Clauses contained in the partnership agreement in relation to definitions, interpretations prevention and resolution of dispute and miscellaneous items apply to this agreement until the transfer date.

If the partnership is to continue after the transfer has taken place the division of partnership profits is specified here. The transfer of the land involves such a profound change in the partnership that the profit-sharing ratio should be reviewed. Detailed discussion should take place with the assistance of the partnership Accountant. The different circumstances, commitments and requirements of the parties at the time need to be taken into account.

The parties should agree the profit/loss split to apply after the Transfer

- 7.2.2 Where the partnership continues after the transfer date, the licensing arrangements in place in respect of the farm land and the buildings described in Part II of Schedule 2 to this Agreement shall continue in force as well after as before the Transfer Date save where otherwise expressly provided in this Agreement.
- 7.3 The Parties agree to review the Partnership Agreement and where necessary to amend or replace it with a revised partnership agreement between the parties to take effect as and from the Transfer Date taking into account the new circumstances resulting from the transfer hereby agreed to be made.
- 7.4 Where implementation of this Agreement and/or the review of the Partnership Agreement contemplated in Clause 7.3 results in a change to the Partnership or its activities the Primary Participant shall within 21 days of any such change notify the Minister of that change accordance with section 667C(1B) of The Act.

8. Liabilities

- 8.1 As between the Farmer and the Successor the Successor shall assume liability for [_____] % of all debts of the partnership existing at the Transfer Date. With effect from the Transfer Date the Partners shall be responsible and liable to creditors of the Partnership in respect of partnership obligations in the proportions in which they are entitled to share profits after that date and in any case

Date – these shares need not necessarily follow the shares in which the assets are owned after the transfer completed. (The profit sharing ratio may be varied according to the income needs and personal circumstances of the Farmer and Successor after the transfer date).

The parties should review and consider what new licensing arrangements are required in the partnership after ownership of assets changes.

If the partnership is to continue after the transfer has taken place, the partnership agreement will need to be amended to reflect the changed circumstances of the partners (i.e. ownership of assets) in the partnership.

Where the partnership is to continue after the transfer date, the partners agree here that they will be liable as between themselves for debts of the partnership in the proportions in which they share profits and agree to indemnify one another accordingly. This does not affect liability that the partners may have to banks or other institutions on foot of documentation signed with those institutions.

where a Partner is liable for a Partnership obligation, then amongst the Partners themselves each Partner shall be entitled to an indemnity from the other Partner in so far as he is obligated to discharge and pay to a partnership creditor sums or amounts in excess of his proper proportion of such debt. Notwithstanding the Partnership Act, 1890, s.18 this indemnity amongst the Partners as between themselves will not be revoked by any change in the constitution of the Partnership.

- 8.2 Notwithstanding the above Indemnity the Successor shall use his best endeavours as soon as may be possible after the Transfer Date to procure the release and discharge of the Farmer from liability for the Bank Debt or any part of it and liability in connection with the Long Term Liabilities or any of them for any amounts or shares thereof in excess of proportions thereof equal to the Farmer's share of the profits of the Partnership after the Transfer Date.
- 8.3 If the procuring of the release and discharge of the Farmer in compliance with Clause 8.2 above requires the re-execution of security over the farm assets to be transferred consistent with the limitations to the liability of the Farmer as agreed the Farmer shall join in the execution of same at the request of the Successor.

9. Accounts

¹ Percentage will usually be based on the revised profit shares after the Transfer Date.

- 9.1 The Partners agree that no revaluation as at the Transfer Date of any of the assets of the Partnership is necessary and that the Accounts shall be prepared accordingly.

While this would be a desirable arrangement for the benefit of a Farmer giving away substantial assets the prospects of achieving such agreement may be limited. Each party should consult a solicitor and accountant about this.

Each party should consult a solicitor and accountant in relation to this matter.

Detailed advice is required from a tax advisor, accountant and solicitor in relation to the preparation of this agreement and annual farm accounts. Both parties to this agreement should consult with their Accountants on this matter.

9.2 The Partnership shall not be obliged to prepare any Accounts consequent upon the variations to shares of profit or otherwise arising from this Agreement other than the annual Accounts.

Annual accounts must be kept for the partnership to compute the net profit that will be divided among the partners based on the profit sharing ratio as set out in the written partnership agreement.

9.3 In the Accounts the profits of the Partnership shall be apportioned on a time basis in respect of the periods before and after the Transfer Date.

Both parties to this agreement should consult with their Accountants on this matter.

10. General Conditions

[NOTE - THE APPLICATION AND RELEVANCE OF THE GENERAL CONDITIONS TO THE SPECIFIC CIRCUMSTANCES OF THE PARTIES AND THEIR AGREEMENT SHOULD BE CONSIDERED IN EACH CASE AND THIS CLAUSE AMENDED TO SUIT IN ACCORDANCE WITH LEGAL ADVICE]

10.1 In so far as the General Conditions are capable of being applied to this agreement and the transfer of assets the subject hereof and in so far as they are compatible with the provisions hereof they shall apply as between the parties hereto to all intents and purposes as if same were set out in full and attached hereto on the basis that references therein to 'Vendor' shall be deemed to refer to the Farmer and references to 'Purchaser' shall be deemed to refer to the Successor provided however that in the event of any conflict between the General Conditions and the provisions hereof the provisions hereof shall take precedence.

By this condition the agreement imports the General Conditions of the Law Society Contract. These conditions are used for sales of land generally in Ireland. Only the appropriate general conditions should be included in the particular circumstances this document. Both parties should seek the advice of a solicitor on this matter.

10.2 The following General Conditions shall not apply to this Agreement: [_____]

List here the general conditions that do not apply to this agreement.

10.3 Save where the context otherwise requires or implies or

The definitions outlined in this document give the meaning of key terms used in this document.

the text hereof expresses to the contrary, the definitions and provisions as to the interpretation set forth in the General Conditions shall be applied for the purposes of this agreement.

- 10.4 The documents specified in Schedule 1 hereto shall be deemed to be the documents referred to in the Documents Schedule for the purposes of the General Conditions.

Schedule 1 sets out the documents by which legal title is shown to the land to be transferred. The Successor should take independent legal advice in regard to this prior to signature of the agreement.

11. Transfer

- 11.1 The Farmer shall, on the Transfer Date transfer by the execution and delivery of proper assurance effective to transfer from the Farmer to the Successor legal and beneficial title the lands described in Part I of Schedule 2 to this Agreement.

The clause is a central clause in This Agreement as it outlines that the Farmer will complete a full transfer of the land outlined in Schedule 2 on the transfer date agreed.

- 11.2 The Farmer shall simultaneously with the transfer of the lands described in Part I of Schedule 2 hereto transfer by delivery to the Successor the farm assets described in Part II of Schedule 2 hereto.

Here the Farmer agrees to transfer the farm assets to be transferred, other than land.

- 11.3 The Parties shall continue to farm the farm assets hereby agreed to be transferred in accordance with the Partnership Agreement until the completion of the transfers hereby agreed to be made.

The Farmer and Successor named in this agreement agree to continue to farm the lands as heretofore until the transfer date.

- 11.4 The parties agree that a note of the execution of this document shall be entered as a Caution/Inhibition in Folio [_____] of the Register maintained by the Property Registration Authority at the cost of the Successor as soon as practicable after this Agreement has been executed by the parties and the Farmer hereby irrevocably agrees to execute immediately upon request all further documentation necessary to facilitate such registration

The purpose of registration of this note in the Property Registration Authority records is to highlight on the folio that a legally binding agreement has been entered into by the parties to this agreement to transfer at least 80% of the land contained in the folio to the Successor.

11.5 The Parties, may by agreement in writing agree to vary the Transfer Date within the calendar year in which it falls always provided that such varied date complies with Section 667D(2)(e)iii of the Act.

The Act specifies that the year of transfer must be nominated. However, the date of transfer is at the discretion of the Farmer and Successor in this agreement. Detailed advice should be taken from both a solicitor and accountant in this respect.

11.6 The farm assets that are subject to this Agreement shall not be sold or otherwise disposed of unless by mutual prior agreement of the parties and without derogating from the foregoing the Farmer shall not contract to sell, lease, licence, dispose of, pledge, mortgage or charge, or deal in any way whatsoever with the lands described in Part I of Schedule 1 hereto adverse to the terms of this agreement PROVIDED ALWAYS that this restriction shall not apply to the sale of stock or produce in the ordinary course of the business of farming in accordance with the Partnership Agreement.

This clause is included so ensure that the farm assets such as land, buildings and basic payment entitlements (or future equivalents) are not sold or disposed of without agreement of the partners before this agreement is fulfilled. It also specifies that livestock may be sold in the normal course of business. (Machinery may also change by agreement during the normal course of business.)

11.7 It is hereby agreed that the assurance of the lands hereby agreed to be transferred shall reserve in favour of the Farmer[/Farmer's Spouse or other Party] the following rights/privileges: E.G. RIGHTS OF RESIDENCE/SUPPORT AND MAINTENANCE ETC.

This clause is to protect the rights of a spouse or partners where there is a right of residence or duty of care in place. Such rights must be reflected in the drafting of this agreement.

11.8 The parties shall within 21 days of the completion of the transfers hereby agreed to be made notify the Farm Partnership Registration Office of the transfers pursuant to Clause 7.3 of this Agreement.

In keeping with the farm partnership registration regulations, the partners in the succession farm partnership have 21 days from the date of the transfer to notify the Farm Partnership Registration office of the transfer and of amendments to the partnership agreement to reflect the changes as a result of the farm asset transfer in this succession agreement.

SCHEDULE 1

DOCUMENTS SCHEDULE

HERE SET OUT THE DOCUMENTS OF TITLE:

e.g. Copy Folio and Filed Plan Folio 12345 Co. Cork or (if reg. of deeds solicitor to list the documents of title relied upon).

The lands intended for transfer must be clearly identified on a folio map (known as a Filed Plan) or folio maps where multiple folios are involved in the transfer. It is the area of land intended for transfer rather than the value of the land that is included in this agreement.

Consultation with a banking institution will be required where they have a legal charge on the lands identified for transfer to the Successor.

SCHEDULE 2

(PARTICULARS OF PROPERTY TO BE TRANSFERRED ON THE TRANSFER DATE)

PART I

PARTICULARS AND TENURE OF THE LANDS TO BE TRANSFERRED

e.g. ALL THAT AND THOSE part of the lands of [Gurranes – Moycullen – Galway] as more particularly outlined in [red] on the map or plan annexed hereto and thereon marked with the letter [A] comprising __42__ hectares together with the Basic Farm Payment Entitlements (or any replacement thereof) owned by The Farmer and claimed on the lands hereby agreed to be transferred

Representing _85_ % of the farm land and CAP payment entitlements that the Farmer owns and licenses in and to the partnership

PART II

FARM ASSETS (OTHER THAN LAND) TO BE TRANSFERRED ON THE TRANSFER DATE

100 % of the Farmer's share of the livestock and machinery owned by the Partnership on the Transfer Date

The assets being transferred must be at least 80% of the Farmer's Farm Assets in the partnership as of the date of Transfer.

Here describe the land to be transferred by reference to Folios and Maps were necessary.

If registered in the Reg. of Deeds, map will be necessary and a sufficient description in the normal way, (Map to be marked by Engineer to Land Registry requirements).

Specify the agreed percentage which must be not less than 80% measured by area

Specify the agreed percentage which must be not less than 80% measured by value on the Transfer Date

SCHEDULE 3

SCHEDULE OF FARM ASSETS OF THE PARTNERSHIP AS OF THE DATE OF APPLICATION TO THE MINISTER

The following are agreed to be the farm assets of the Partnership on the day of application by the parties to the Minister to have the Partnership entered on the register of succession farm partnerships:

Land:

This section sets out the Farm Assets (owned by the Farmer) in use by the partnership under license or as set out in the Partnership Agreement on the date of application to the Minister

Table 1: Details of lands owned by the Farmer licensed/leased to the partnership on the date of signing This Agreement			
Folio Number	<i>e.g. GY1045</i>		
County	<i>Galway</i>		
(Other Description)	<i>n/a</i>		
Registered Owner	<i>David Brown</i>		
Co-Owner	<i>n/a</i>		
Area	<i>42 ha</i>		

Entitlements:

Table 2: Details of Entitlements owned by the Farmer or the Successor in This Agreement on the date of application to the Minister			
Number of Basic Payment Entitlements	Value per hectare (€)		
42	€315		

Livestock:

Table 3: Details of livestock owned by the Partnership on the date of the application to the Minister			
	Number		
Dairy Cows	0		
Suckler Cows	25		
Cattle 0-1yrs	20		
Cattle 1-2yrs	10		
Sheep	150		
Pigs	0		
Goats	0		
Other Livestock	0		

Machinery:

Table 4: Details of machinery owned by the Partnership on the date of application to the Minister			
<i>Machine</i>	<i>Description</i>		
<i>Tractor</i>	<i>New Holland 7740</i>		
<i>Trailer</i>	<i>Tipping Trailer 3.6m x 2.1m</i>		
<i>Mower</i>	<i>Kuhn Disc Mower 2.6m</i>		
<i>Fertiliser Spreader</i>	<i>Rauch 1tonne</i>		
<i>Cattle/Sheep Trailer</i>	<i>Ifor Williams 3.6m x 1.8m</i>		
<i>Hydraulic Transport Box</i>	<i>Fleming 1.8m</i>		
<i>Land Roller</i>	<i>Donmac 2.1m</i>		

SCHEDULE 4

e.g. Charge for present and future advances in favour of the *Bank of Ireland/AIB/Ulster Bank* registered at No. 1, Part 3 of Folio 12345 Co. Cork.

SIGNED _____

SIGNED _____

_____ (Farmer)

_____ (Successor)

Witness _____

Witness _____

Occupation _____

Occupation _____

Address _____

Address _____

²Here set out any mortgage/charge in favour of any bank or lending institution affecting the property

Example Calculation:

To establish the proportion of livestock and machinery to transfer from the “Farmer” to the “Successor”

Background:

A beef and tillage farm currently managed by John (father) and his Son David. David is the intended farming successor. They formed a DAFM registered farm partnership for the first time in 2015.

In June of 2017, they are preparing to form a Succession Farm Partnership as part of their succession plan. They have agreed that 80% of land, BPS entitlements and all associated buildings owned by John and licensed in the partnership are to transfer to David on the chosen date of transfer as specified by them in their succession agreement. The land and associated buildings intended for transfer have been clearly identified on the folio map(s). John has also agreed to transfer 80% of his share of the livestock and machinery owned by the partnership. Table 5 below shows the breakdown of farm assets in the form of livestock and machinery to be transferred from John to David. It excludes a value on the land, buildings and entitlements as this is decided on area.

Farm Details:

- 50 hectares of land owned, 20 hectares of leased land and 15 hectares of short-term rented land.
- 60 suckler cows
- 55 Cattle 0-1 yrs
- 50 Cattle 1-2yrs
- 20 Cattle >2 yrs
- Machinery/Equipment
- Farm Buildings

Table 5: Example Calculation to establish the proportion of livestock and machinery to transfer from John “Farmer” and David “Successor”

1. It is agreed in the Succession Agreement that 40 hectares (80%) of owned land accompanied by 40 associated basic payment entitlements and all farm buildings are to transfer from John to David.		
Total Partnership Capital *		
	John	David
2. Capital Accounts balance on Date of Transfer	€261,000	€39,000
The total capital invested in the partnership by John and David is €300,000. John has invested 87% (€261,000) and David has invested 13% (€39,000) of the capital in the partnership. NB: This ratio is used to establish the proportional ownership of the livestock and machinery by John and David in the partnership.		
3. Livestock Value*	€172,250	
4. Machinery & Equipment Value*	€100,000	
	€272,250	
	(John) “Farmer”	(David) “Successor”
5. Livestock & Machinery owned in 87:13 ratio (split)	€236,857.50	€35,392.50
6. John transfers 80% of his share	-€189,486	+€189,486
7. Total value of livestock and machinery owned after transfer	€47,371.5 (17.4%)	€224,878.5 (82.6%)

* Value on date of transfer

** David has built up a €39,000 share in partnership capital since the beginning of the partnership through retained after tax profits that are recorded in the partnership capital account. His drawings from the partnership have been modest to date as he is living at home with his parents.



Published by

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May 2017



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AGRICULTURE AND FOOD DEVELOPMENT AUTHORITY