

# Partnership Act 1892 No 12

[1892-12]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Business Names Act 2002 No 97](#) (not commenced)
  - [Partnership Amendment \(Venture Capital Funds\) Act 2004 No 8](#) (not commenced)

### Authorisation

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# Partnership Act 1892 No 12



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# Partnership Act 1892 No 12



New South Wales

An Act to declare and amend the law of Partnership.

## Preamble

WHEREAS it is expedient to declare and amend the law of Partnership:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

## Part 1 Preliminary

### 1A Name of Act

This Act may be cited as the *Partnership Act 1892*.

### 1B Definitions

In this Act:

**business** includes trade, occupation and profession.

**Court** means the court having jurisdiction in the case concerned.

## Part 2 Partnerships generally

### Division 1 Nature of partnership

#### 1 Definition of partnership

- (1) Partnership is the relation which exists between persons carrying on a business in common with a view of profit.
- (2) But the relation between members of any company or association which is:
  - (a) incorporated under the *Corporations Act 2001* of the Commonwealth, or
  - (b) Formed or incorporated by or in pursuance of any other Act of Parliament or Letters Patent or Royal Charter,

is not a Partnership within the meaning of this Act.

## **2 Rules for determining existence of partnership**

In determining whether a partnership does or does not exist, regard shall be had to the following rules:

- (1) Joint tenancy, tenancy in common, joint property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.
- (2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.
- (3) The receipt by a person of a share of the profits of a business is prima facie evidence that the person is a partner in the business, but the receipt of such a share, or of a payment contingent on, or varying with the profits of a business does not of itself make the person a partner in the business; and in particular:
  - (a) The receipt by a person of a debt or other liquidated demand by instalments or otherwise out of the accruing profits of a business does not of itself make the person a partner in the business or liable as such:
  - (b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:
  - (c) A person being the widow, widower or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such:
  - (d) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person, that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such: Provided that the contract is in writing and signed by or on behalf of all the parties thereto:
  - (e) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by the person of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

## **3 Postponement of rights of persons lending or selling in consideration of share of profits in case of insolvency**

In the event of any person to whom money has been advanced by way of loan upon such

a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business being adjudged a bankrupt, entering into an arrangement to pay the person's creditors less than one hundred cents in the dollar, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of the loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

#### **4 Meaning of firms**

Persons who have entered into partnership with one another are for the purpose of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

### **Division 2 Relationship of partners to persons dealing with them**

#### **5 Power of partner to bind the firm**

Every partner is an agent of the firm and of the other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which the partner is a member, binds the firm and the other partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom the partner is dealing either knows that the partner has no authority, or does not know or believe the partner to be a partner.

#### **6 Partners bound by acts on behalf of firm**

An act or instrument relating to the business of the firm, and done or executed in the firm-name, or in any other manner, showing an intention to bind the firm by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners: Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

#### **7 Partner using credit of firm for private purposes**

Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless the partner is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

#### **8 Effect of notice that firm will not be bound by acts of partner**

If it has been agreed between the partners that any restrictions shall be placed upon the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.



## **9 Liability of partner**

Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while the partner is a partner; and after the partner's death the partner's estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject to the prior payment of the partner's separate debts.

## **10 Liability of the firm for wrongs**

- (1) Subject to subsection (2), where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of the partner's co-partners, loss or injury is caused to any person not being a partner of the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.
- (2) For the purposes of subsection (1), a partner who commits a wrongful act or omission as a director of a body corporate, within the meaning of the [Corporations Act 2001](#) of the Commonwealth, is not to be taken to be acting in the ordinary course of the business of the firm or with the authority of the partner's co-partners only because of any one or more of the following:
  - (a) the partner obtained the agreement or authority of the partner's co-partners, or some of them, to be appointed or to act as a director of the body corporate,
  - (b) remuneration that the partner receives for acting as a director of the body corporate forms part of the income of the firm,
  - (c) any co-partner is also a director of that or any other body corporate.

## **11 Misapplication of money or property received for or in custody of the firm**

In the following cases, namely:

- (a) Where one partner acting within the scope of the partner's apparent authority receives the money or property of a third person and misapplies it, and
- (b) When a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

## **12 Liability for wrongs joint and several**

Every partner is liable jointly with the partner's co-partners and also severally for everything for which the firm while the partner is a partner therein becomes liable under either of the two last preceding sections.

### **13 Improper employment of trust property for partnership purposes**

If a partner being a trustee improperly employs trust property in the business or on account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein:

Provided as follows:

- (1) This section shall not affect any liability incurred by any partner by reason of the partner's having notice of a breach of trust, and
- (2) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

### **14 Persons liable by "holding out"**

- (1) Every one who by words spoken or written, or by conduct represents himself or herself, or who knowingly suffers himself or herself to be represented as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.
- (2) Provided that where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make the partner's executors or administrators' estate or effects liable for any partnership debts contracted after the partner's death.

### **15 Admissions and representations of partners**

An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

### **16 Notice to acting partner to be notice to the firm**

Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

### **17 Liabilities of incoming and outgoing partners**

- (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before the person became a partner.
- (2) A partner who retires from a firm does not thereby cease to be liable for partnership debt and obligation incurred before the partner's retirement.
- (3) A retiring partner may be discharged from any existing liabilities by an agreement to

that effect between the partner and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

### **18 Revocation of continuing guaranty by change of firm**

A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of whose transactions, the guaranty or obligation was given.

## **Division 3 Relationship between partners**

### **19 Variation by consent of terms of partnership**

The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing.

### **20 Partnership property**

- (1) All property, and rights and interests in property, originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement.
- (2) Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust so far as is necessary for the persons beneficially interested in the land under this section.
- (3) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other lands and estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first-mentioned at the date of the purchase.

### **21 Property bought with partnership money**

Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

## **22 Conversion into personal estate of land held as partnership property**

Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and the deceased partner's executors or administrators as personal or movable and not real or heritable estate.

## **23 Procedure against partnership property for a partner's separate judgment debt**

- (1) After the commencement of this Act a writ of execution shall not issue against any partnership property except on a judgment against the firm.
- (2) The Supreme Court may, on the application of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to the partner in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.
- (3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in the case of a sale being directed to purchase the same.

## **24 Rules as to the interests and duty of partners subject to special agreement**

The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement expressed or implied between the partners, by the following rules:

- (1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.
- (2) The firm must indemnify every partner in respect of payment made and personal liabilities incurred by the partner.
  - (a) In the ordinary and proper conduct of the business of the firm, or
  - (b) In or about anything necessarily done for the preservation of the business or property of the firm.
- (3) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which the partner has agreed to subscribe is entitled to interest at the rate of seven per centum per annum from the date of the payment or advances.

- (4) A partner is not entitled before the ascertainment of profits to interest on the capital subscribed by the partner.
- (5) Every partner may take part in the management of the partnership business.
- (6) No partner shall be entitled to remuneration for acting in the partnership business.
- (7) No person may be introduced as a partner without the consent of all existing partners.
- (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.
- (9) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when the partner thinks fit, have access to and inspect and copy any of them.

## **25 Expulsion of partner**

No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

## **26 Retirement from partnership at will**

- (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of the partner's intention so to do to all the other partners.
- (2) Where the partnership has originally been constituted by deed, a notice signed by the partner giving it, shall be sufficient for this purpose.

## **27 Where partnership for term is continued over, continuance on old terms presumed**

- (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.
- (2) A continuance of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

## **28 Duty of partners to render accounts**

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or the partner's legal representatives.

### **29 Accountability of partners for private profits**

- (1) Every partner must account to the firm for any benefit derived by the partner without the consent of the other partners from any transaction concerning the partnership, or for any use by the partner of the partnership property, name, or business connexion.
- (2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

### **30 Duty of partner not to compete with firm**

If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, the partner must account for and pay over to the firm all profits made by the partner in that business.

### **31 Rights of assignee of share in partnership**

- (1) An assignment by any partner of the partner's share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any account of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.
- (2) In case of a dissolution of the partnership, whether as respect all the partners, or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between the partner and the other partners, and for the purpose of ascertaining that share, to an account as from the date of the dissolution.

## **Division 4 Dissolution of partnership**

### **32 Dissolution by expiration or otherwise**

Subject to any agreement between the partners, a partnership is dissolved:

- (a) If entered into for a fixed term, by the expiration of that term:
- (b) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking:
- (c) If entered into for an undefined time, by any partner giving notice to the other or others of the partner's intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is mentioned, as from the date of the communication of the notice.

### **33 Dissolution by bankruptcy, death, or change**

- (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.
- (2) A partnership may, at the option of the other partners, be dissolved if any partner suffers the partner's share of the partnership property to be charged under this Act for the partner's separate debt.

### **34 Dissolution by illegality of partnership**

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on, or for the members of the firm to carry it on in partnership.

### **35 Dissolution by the Court**

On application by a partner the Court may order a dissolution of the partnership in any of the following cases:

- (a) When a partner has been declared in accordance with law to be of unsound mind and incapable of managing the partner's affairs, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by the partner's committee or next friend or person having title to intervene as by any other partner.
- (b) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing the partner's part of the partnership contract.
- (c) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business.
- (d) When a partner, other than the party suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise conducts himself or herself in matters relating to the partnership business so that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with the partner.
- (e) When the business of the partnership can only be carried on at a loss.
- (f) Whenever in any case circumstances have arisen, which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

### **36 Rights of persons dealing with firm against apparent members of firm**

- (1) When a person deals with a firm after a change in its constitution, the person is entitled to treat all apparent members of the old firm as still being members of the firm until the person has notice of the change.
- (2) An advertisement in the Gazette and in at least one newspaper circulating in Sydney and one newspaper circulating in the district in which the firm carries on business shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.
- (3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

### **37 Right of partners to notify dissolution**

On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary and proper acts, if any, which cannot be done without the partner's or their concurrence.

### **38 Continuing authority of partners for purposes of winding-up**

After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise: Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has, after the bankruptcy, represented himself or herself or knowingly suffered himself or herself to be represented as a partner of the bankrupt.

### **39 Rights of partners to application of partnership property**

On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or the partner's representatives may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm.



#### **40 Apportionment of premium when partnership prematurely dissolved**

Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part as it thinks just, having regard to the terms of the partnership contract, and to the length of time during which the partnership has continued; unless:

- (a) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

#### **41 Rights where partnership dissolved for fraud or misrepresentation**

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by the party for the purchase of a share in the partnership and for any capital contributed by the party, and is
- (b) to stand in the place of the creditors of the firm for any payments made by the party in respect of the partnership liabilities, and
- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

#### **42 Right of outgoing partner in certain cases to share profits made after dissolution**

- (1) Where any member of a firm has died, or otherwise ceased to be a partner, and the surviving and continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner, or the partner's estate, then, in the absence of any agreement to the contrary, the outgoing partner or the partner's estate is entitled, at the option of the partner or the partner's representatives, to such share of the profits made since the dissolution as the Court may find to be attributable to the use of the partner's share of the partnership assets, or to interest at the rate of six per centum per annum on the amount of the partner's share of the partnership assets.
- (2) Provided that where, by the partnership contract, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or the partner's estate, as the case may be, is not entitled to any further or

other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, the partner is liable to account under the foregoing provisions of this section.

#### **43 Retiring or deceased partner's share to be a debt**

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner, or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death.

#### **44 Rule for distribution of assets on final settlement of accounts**

In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

- (a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.
- (b) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:
  - 1 In paying the debts and liabilities of the firm to persons who are not partners therein.
  - 2 In paying to each partner ratably what is due by the firm to the partner for advances as distinguished from capital.
  - 3 In paying to each partner ratably what is due from the firm to the partner in respect of capital.
  - 4 The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

#### **45 (Repealed)**

### **Division 5 Miscellaneous provisions**

#### **46 Saving for rules of equity and common law**

The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

#### **47 Repeal of 30 Vic No 14**

The Act thirtieth Victoria number fourteen is hereby repealed.

#### **48 (Repealed)**

## Part 3 Limited partnerships

### Division 1 Preliminary

#### 49 Definitions

In this Part:

**general partner** means a partner in a limited partnership who is not a limited partner.

**limited partner** means a partner in a limited partnership whose liability to contribute to the debts or obligations of the partnership is limited in accordance with this Part.

**limited partnership** means a partnership formed in accordance with this Part.

**Register** means the Register of Limited Partnerships kept under this Part.

**Registrar** means the person who keeps the Register of Business Names under the [Business Names Act 1962](#).

#### 50 Application to limited partnerships of general law relating to partnership

The other Parts of this Act apply to limited partnerships, except as provided by this Part.

### Division 2 Nature and formation of limited partnership

#### 51 Composition of limited partnership

(1) A limited partnership is a partnership consisting of:

- (a) at least one general partner, and
- (b) at least one limited partner.

(2) A corporation may be a general partner or a limited partner.

#### 52 Size of limited partnership

(1) A limited partnership may have any number of limited partners.

(2) The number of general partners must not (if the partnership consists only of those general partners) exceed:

- (a) 20, or
- (b) if the partnership is of a particular kind in respect of which a higher number applies in accordance with section 115 (2) of the [Corporations Act 2001](#) of the Commonwealth—that higher number.

### **53 How formed**

A limited partnership is formed on the registration of the partnership under this Part as a limited partnership.

## **Division 3 Registration of limited partnerships**

### **54 Application for registration**

- (1) An application for the registration of a limited partnership is made by lodging with the Registrar in accordance with this Part a statement signed by each proposed partner.
- (2) The statement must be in the form approved by the Registrar and must contain the following particulars:
  - (a) the firm-name,
  - (b) the full address in New South Wales of the office or, if there is more than one office, the principal office of the firm (to be called the “registered office” of the partnership),
  - (c) a statement that the partnership is to be a limited partnership,
  - (d) the full name of each partner,
  - (e) the full address of each partner, being (in the case of an individual) the partner’s principal place of residence or (in the case of a corporation) its registered office or principal place of business,
  - (f) a statement in relation to each partner as to whether that partner is a general partner or a limited partner,
  - (g) a statement in relation to each limited partner to the effect that the partner is a limited partner whose liability to contribute is limited to the extent of the amount specified in the statement (being the amount of any capital, or the value of any property, that the limited partner has agreed to contribute to the partnership),
  - (h) such other particulars as are required by the regulations or by the approved form of statement.

### **55 Registration of limited partnership**

- (1) If an application for registration of a limited partnership has been duly made, the Registrar is to register the limited partnership.
- (2) However, the limited partnership is not to be registered if the Registrar is of the opinion that the firm-name would not be eligible for registration as a business name under the [Business Names Act 1962](#).

- (3) Registration is effected by recording in the Register the particulars in the statement lodged with the Registrar.

#### **56 Changes in registered particulars**

- (1) If any change occurs in relation to the registered particulars of a limited partnership, a statement setting out the changed particulars must be lodged with the Registrar within 7 days after the change occurred.
- (2) The statement must be signed:
  - (a) by all the general partners or by a general partner authorised by all the general partners for the purposes of this section, and
  - (b) if the change relates to the admission of a limited partner or a change in the liability of a limited partner to contribute—by the limited partner concerned.
- (3) The statement must be in the form approved by the Registrar and contain the particulars required by the regulations or the approved form of statement.
- (4) If the statement is duly lodged, the Registrar is to record the change in the Register, unless as a result of the change the partnership is not eligible to be registered as a limited partnership.
- (5) If subsection (1) is not complied with, each general partner of the limited partnership is guilty of an offence.

Maximum penalty: 10 penalty units.

#### **57 Register of Limited Partnerships**

- (1) The Registrar is required to keep a register of limited partnerships registered under this Part (to be called the “Register of Limited Partnerships”).
- (2) The Register may be kept in such form as the Registrar thinks fit.
- (3) The Registrar must make the information recorded in the Register available for public inspection at the office of the Registrar during the ordinary business hours of that office.

#### **58 Certificates of registration etc**

- (1) The Registrar must, at the time of registering a limited partnership or of recording a change in the composition of a limited partnership, issue to the general partners a certificate as to the formation and composition at that time of the limited partnership.
- (2) The Registrar may, on application, issue to the applicant a certificate as to the formation and composition of a limited partnership or as to any other particulars recorded in the Register.

- (3) A certificate under this section is to be in such form as the Registrar thinks fit.
- (4) A certificate under this section:
  - (a) as to the formation of a limited partnership, is conclusive evidence that the limited partnership was formed on the date of registration referred to in the certificate, and
  - (b) as to the composition of a limited partnership, is (unless the contrary is established) conclusive evidence that the partnership consisted at the relevant time of the general partners and limited partners named in the certificate, and
  - (c) as to any other particular of a limited partnership recorded in the Register, is (unless the contrary is established) conclusive evidence of that particular.

#### **59 Business Names Act 1962 not to apply**

The *Business Names Act 1962* does not apply so as to require the partners in a limited partnership to register a business name if that name is the firm-name registered under this Part.

### **Division 4 Limitation of liability of limited partners**

#### **60 Liability of limited partner limited to amount shown in Register**

- (1) The liability of a limited partner to contribute to the debts or obligations of the limited partnership is (subject to this Part) not to exceed the amount shown in relation to the limited partner in the Register as the extent to which the limited partner is liable to contribute.
- (2) If a limited partner makes a contribution towards the debts or obligations of the limited partnership, the liability of the limited partner is reduced to such part of the amount shown in the Register as remains unpaid.

#### **61 Change in liability of limited partner**

- (1) Any reduction in the liability of a limited partner caused by a reduction in the relevant amount shown in the Register in relation to the partner does not extend to any debt or obligation of the limited partnership that arose before the reduction is recorded in the Register.
- (2) Any increase in the liability of a limited partner caused by an increase in the relevant amount shown in the Register in relation to the partner extends to any debt or obligation of the limited partnership that arose before the increase is recorded in the Register.

#### **62 Change in status of partners**

- (1) If a general partner becomes a limited partner, the limitation on liability does not

extend to any debt or obligation of the limited partnership that arose before the partner became a limited partner.

- (2) If a limited partner becomes a general partner, the limitation on liability no longer extends to any debt or obligation of the limited partnership that arose before the partner became a general partner.

### **63 Liability for business conducted outside the State**

The limitation on the liability of a limited partner extends to any debt or obligation incurred in connection with the conduct of the partnership's business outside the State.

### **64 Liability for limited partnerships formed under corresponding laws**

- (1) In this section:

**corresponding law** means a law of another State, a Territory or another country that is declared by the regulations to be a corresponding law for the purposes of this Part.

**recognised limited partnership** means a partnership formed in accordance with a corresponding law.

- (2) Any limitation under a corresponding law on the liability of a limited partner in a recognised limited partnership extends to any debt or obligation incurred in connection with the conduct of the partnership's business in this State.
- (3) The law of another State or a Territory may not be declared to be a corresponding law unless the Minister has certified to the Governor:
- (a) that the provisions of the law are similar to the provisions of this Part, and
  - (b) that under that law the limitation of liability of limited partners in a limited partnership formed in accordance with this Part extends to any debt or obligation incurred in connection with the conduct of the partnership's business in that State or Territory.
- (4) The law of another country may not be declared to be a corresponding law unless the Minister has certified to the Governor that the law provides for the limitation of liability for partners in certain partnerships.

### **65 Contribution towards discharge of debts etc**

- (1) Any contribution made by a limited partner towards the discharge of the debts or obligations of a limited partnership is to be in the form of money only.
- (2) If the whole or any part of such a contribution is received back by the limited partner, the liability of the limited partner is restored accordingly.

## **66 Limitation on liability may not be varied by partnership agreement etc**

The provisions of this Part relating to the limitation on the liability of a limited partner may not be varied by the partnership agreement or the consent of the partners.

## **Division 5 Other modifications of general law of partnership**

### **67 Limited partner not to take part in management of partnership**

- (1) A limited partner must not take part in the management of the business of the limited partnership and does not have power to bind the limited partnership.
- (2) If a limited partner takes part in the management of the business of the limited partnership, the limited partner is liable, as if the partner were a general partner, for the debts and obligations of the partnership incurred while the limited partner takes part in the management of that business.
- (3) A limited partner is not to be regarded as taking part in the management of the business of the limited partnership merely because the limited partner:
  - (a) is an employee or an independent contractor of the partnership or of a general partner, or is an officer of a general partner that is a corporation, or
  - (b) gives advice to, or on behalf of, the limited partnership or a general partner in the proper exercise of functions arising from the engagement of the limited partner in a professional capacity or arising from business dealings between the limited partner and the partnership or a general partner, or
  - (c) gives a guarantee or indemnity in respect of any debt or obligation of the partnership or of a general partner, or
  - (d) participates in any action by other limited partners for the purpose of enforcing their rights or safeguarding their interests as limited partners, or
  - (e) if authorised by the partnership agreement, participates in general meetings of all the partners, or
  - (f) exercises any power conferred on the limited partner by subsection (4).
- (4) A limited partner or a person authorised by the limited partner may at any time:
  - (a) have access to and inspect the books of the partnership and copy any of them, and
  - (b) examine the state and prospects of the business of the partnership and advise and consult with other partners in relation to such matters.
- (5) The provisions of this section may not be varied by the partnership agreement or the consent of the partners.



### **68 Differences between partners**

- (1) A difference arising as to ordinary matters connected with the business of a limited partnership may be decided by a majority of the general partners.
- (2) The provisions of this section may be varied by the partnership agreement or the consent of the partners.

### **69 Change in partners**

- (1) A limited partner may, with the consent of the general partners, assign the limited partner's share in the limited partnership. In that case the assignee is taken to be a limited partner in substitution for the assignor with all the rights and obligations of the assignor.
- (2) A person may be admitted as a partner in a limited partnership without the necessity to obtain the consent of any limited partner.
- (3) The provisions of this section may be varied by the partnership agreement or the consent of the partners.

## **Division 6 Dissolution and cessation of limited partnerships**

### **70 Dissolution not available in certain cases**

- (1) Subject to the terms of any agreement between the partners in a limited partnership:
  - (a) a limited partner is not entitled to dissolve the partnership by notice, and
  - (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed the partner's share of the partnership property to be charged for the partner's separate debts or obligations, and
  - (c) the death, bankruptcy or retirement or, in the case of a corporation, the dissolution of a limited partner does not dissolve the partnership.
- (2) The fact that a limited partner in a limited partnership is declared to be of unsound mind and incapable of managing the partner's affairs is not a ground for dissolution of the partnership by a Court unless the share and interest of the partner in the partnership cannot be otherwise ascertained or realised.

### **71 Cessation of limited partnerships**

- (1) A partnership ceases to be a limited partnership if none of the partners is a limited partner or the partners agree that they will carry on the business of the partnership otherwise than as a limited partnership.
- (2) If a limited partnership ceases to be a limited partnership and the forming members

of the partnership or some of them continue in association or partnership, that association or partnership is no longer taken to be formed in accordance with this Part.

## **72 Registration of dissolution or cessation of limited partnership**

(1) If a limited partnership:

- (a) is dissolved, or
- (b) ceases to carry on business,

the general partners who were registered immediately before the dissolution or cessation must, as soon as practicable, lodge with the Registrar a notice of the dissolution or cessation, specifying the date on which it took effect.

Maximum penalty: 10 penalty units.

- (2) The notice must be in the form approved by the Registrar and contain the particulars required by the regulations or the approved form of notice.
- (3) The Registrar is required to record in the Register the fact of the dissolution or cessation and the date on which it took effect.

## **73 Winding up by general partners**

If the affairs of a limited partnership are to be wound up by the partners with a view to its dissolution, the winding up is to be carried out by the general partners unless a Court otherwise orders.

## **Division 7 Miscellaneous provisions**

### **74 Model limited partnership agreement**

- (1) The regulations may prescribe a model limited partnership agreement or model limited partnership agreements.
- (2) The partnership agreement of a limited partnership may adopt any such model agreement (or any part of it) whether as in force at a particular time or as in force from time to time.

### **75 Identification of limited partnerships**

- (1) In this section, **document** includes any letter, notice, publication, written offer, contract, order for goods or services, invoice, bill of exchange, promissory note, cheque, negotiable instrument, endorsement, letter of credit, receipt and statement of account.
- (2) Any document issued on behalf of a limited partnership in connection with the conduct of the partnership's business must contain in legible letters the words "A

Limited Partnership” immediately adjacent to its firm-name.

(3) A person who:

(a) issues or authorises the issue of a document in contravention of this section, or

(b) being a general partner in the limited partnership concerned—is aware that documents are being issued in contravention of this section,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(4) The certificate of registration of a limited partnership must be displayed at all times in a conspicuous position at the registered office of the partnership.

(5) If the certificate of registration is not so displayed, each general partner is guilty of an offence.

Maximum penalty: 20 penalty units.

## **76 Registered office**

(1) A limited partnership must keep in New South Wales (at the place shown in the Register as the address of the registered office of the firm) an office to which all communications with the partnership may be addressed.

(2) The regulations may prescribe the hours during which the registered office is to be open and accessible to the public.

(3) If subsection (1) is not complied with, each general partner in the limited partnership concerned is guilty of an offence.

Maximum penalty: 10 penalty units.

## **77 Service**

(1) Without affecting any other method of serving documents on partners in a partnership, a document concerning the business of a limited partnership may be duly served on the partners if it is left at, or sent by post addressed to, the registered office of the firm for the time being shown in the Register.

(2) This section does not apply to a document relating to proceedings before a Court.

## **78 Entry in Register constitutes notice**

An entry in the Register of any particular fact concerning a limited partnership, including an entry stating the effect of any notice received by the Registrar:

(a) is sufficient notice of the fact or of the effect of the notice to all persons who deal with

the partnership, and

- (b) has effect, for the purposes of section 36 (2), as if it were an advertisement in the Gazette.

### **79 Giving false or misleading information**

A person who, under this Part, provides the Registrar with a document that the person knows is false or misleading in a material particular (whether by way of a statement in the document or by an omission from the document) is guilty of an offence.

Maximum penalty: 50 penalty units.

### **80 Criminal proceedings**

Proceedings for an offence against this Part are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **81 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, the regulations may make provision for or with respect to the fees required to accompany a statement under this Part or the fees payable for the inspection of the Register or for the supply of certificates of information recorded in the Register.

## **Part 4 Miscellaneous**

### **82 Application of amendments**

- (1) This section applies to section 10 as amended by the [Partnership Amendment Act 1998](#).
- (2) Section 10 (2) does not apply to wrongful acts or omissions of the kind referred to in that subsection and that occurred before the commencement of that Act.
- (3) Section 10 (2) (a), (b) and (c) extend to acts, matters and things of the kind referred to in those paragraphs and that occurred before the commencement of that Act.