



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

---

---

**PARTNERSHIPS ACT**

NO. 16 OF 2012

Published by the National Council for Law Reporting  
with the Authority of the Attorney-General

[www.kenyalaw.org](http://www.kenyalaw.org)



**NO. 16 OF 2012**

**PARTNERSHIPS ACT**

**ARRANGEMENT OF SECTIONS**

**PART I – PRELIMINARY**

*Section*

1. Short title and commencement.
2. Interpretation.
3. Bodies excluded from scope of this Act.
4. Liability of partners.
5. Variation of Partnership agreement.
6. When Default rule applies.

**PART II – GENERAL PARTNERSHIPS**

7. The carrying on of partnership business.
8. Partnership to have unlimited capacity.
9. Incapacity to commit offences.

*Good faith and disclosure*

10. Duty of good faith.
11. Duty of disclosure on forming or joining a partnership.

*Share of profits and management of business.*

12. Share of profits and losses.
13. Remuneration, expenses, personal liabilities.
14. Capital contribution by partner.
15. Management of partnership business and affairs.
16. Accounting and partnership records.

*Power of partners to bind partnership*

17. Partnership bound by acts of partners carrying on business in usual manner.

*Partnership property*

18. Rules for identifying partnership property.
19. Land acquired out of partnership profits.
20. Execution of deeds.

*Liability of partnership*

21. Liability of partnership for loss or injury caused by partner.
22. Unlimited liability of partners.
23. Secondary nature of partner's liability.
24. Chief Justice may make rules on partner's secondary liability.
25. Non-Partners who are liable by "holding out".

*Change in partners*

26. Admission of new partners.
27. Ceasing to be a partner.
28. Resignation of a partner.

*Section*

- 29. Power to expel a partner.
- 30. Realization of shares of former partner (other than on winding up).
- 31. Liability of former partner for obligations incurred while a partner.
- 32. Former partners: indemnity and contribution, and return of property.
- 33. Restrictions on liability of former partners or employees by "holding out".
- 34. Position of assignee of partner's share.

*Break up of partnership*

- 35. Break up of partnership.
- 36. Effects of break up.
- 37. Restriction on ceasing to be a partner on or after break up.

*Changes in partners and break up of partnerships*

- 38. Publicity for departure of partner or break up of partnership.
- 39. Protection for property acquired after break up.

*Winding up and dissolution of partnership*

- 40. Winding up by partners.
- 41. Distribution of partner's assets on winding up.
- 42. Dissolution of partnership which has broken up.

*Court's powers in relation to partnerships*

- 43. Power of Court to make order charging partner's share.
- 44. Power of Court to make order removing partner or breaking up partnership.
- 45. Order to specify date of removal or break up.
- 46. Combination orders.
- 47. Court may give directions.
- 48. Fraud, misrepresentation or non-disclosure.
- 49. Meaning of "non disclosure".
- 50. Interim orders.
- 51. Order breaking up partnership on application of the Minister.
- 52. Power of Court to appoint liquidator.
- 53. Order appointing provisional liquidator.
- 54. Order for repayment of premium on premature breakup of partnership.
- 55. Order for benefit of former partner.

**PART III – LIMITED PARTNERSHIPS**

*Limited partners and limited liability*

- 56. What constitutes to a limited partnership.
- 57. Becoming and ceasing to be a limited partner.
- 58. Role of limited partner to be restricted.
- 59. Limited partner's liability to be limited.
- 60. General applicant of Act to limited partnerships.
- 61. Rights and duties of the partners, etc.
- 62. Changes in partners.
- 63. Break up and winding up of limited partnership.

*Partnerships**Section*

- 64. Limited partnership Registered Office.
- 65. Name of a limited partnership.
- 66. Improper use of the expression "limited partnership", etc.
- 67. Information to be provided on partnership documents.

*Registration*

- 68. Application for registration.
- 69. Registration and registration certificate.
- 70. Registration of charges, deregistration and other matters.
- 71. Offences of providing false information.
- 72. Offences by bodies corporate.
- 73. Evidence.
- 74. Disclosure of information about partners, etc.

## PART IV – MISCELLANEOUS PROVISIONS

- 75. Rules.
- 76. Regulations.
- 77. Repeal of Cap. 29.
- 78. Transitional provisions.
- 79. Amendment of Cap. 22.

## SCHEDULES

FIRST SCHEDULE —	WHEN PERSONS DO NOT CARRY ON BUSINESS TOGETHER
SECOND SCHEDULE —	WINDING UP BY LIQUIDATOR
THIRD SCHEDULE —	FUNCTIONS OF PROVISIONAL LIQUIDATOR
FOURTH SCHEDULE —	PERMITTED ACTIVITIES FOR LIMITED PARTNERS
FIFTH SCHEDULE —	SPECIAL PROVISIONS FOR LIMITED PARTNERSHIPS



**NO. 16 OF 2012**

**PARTNERSHIP ACT**

[Date of assent: 15th June, 2012.]

[Date of commencement: By Notice.]

**An Act of Parliament to provide for partnerships and for connected purposes**

[Act No. 16 of 2012.]

**PART I – PRELIMINARY**

**1. Short title and commencement**

This Act may be cited as the Partnerships Act, 2012 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**address**”, means—

- (a) for an individual, the usual residential and postal address of that individual;
- (b) for a company or a limited partnership, means the registered office of the company or limited partnership; and
- (c) for a partnership which is not a limited partnership, the principal place of business of the partnership;

“**business**” includes any trade, profession or occupation;

“**Court**” means the High Court or, where the gross assets of a partnership do not exceed three hundred thousand shillings, the Resident Magistrate’s Court;

“**default rule**” means a rule that applies in relation to a partnership if the rule is not dealt with in the partnership agreement;

“**foreign limited partnership**” means a partnership—

- (a) constituted under the law of a country other than Kenya; and
- (b) in which one or more of the partners has limited liability in respect of a partnership obligation;

“**Minister**” means the Minister responsible for matters relating to partnerships;

“**partnership**” means the relationship which exists between persons who carry on business in common with a view to making a profit;

“**partnership agreement**” means an agreement between, persons carrying on business in common with a view to making a profit;

“**partnership document**” in relation to a partnership, includes—

- (a) a business letter;
- (b) a written order for goods or services to be supplied to the partnership;
- (c) an invoice or receipt issued in the course of the partnership business; or

- (d) a written demand for payment of a debt arising in the course of the partnership business;

**“partnership loss”** in relation to a person who is a partner, means the loss incurred by the relevant partnership business incurred while the person is a partner and includes a loss of a capital nature;

**“partnership obligation”** means—

- (a) a partnership debt; or  
(b) any partnership liability;

**“partnership of defined duration”** means a partnership in respect of which the partnership agreement provides that the partnership is to end—

- (a) on the expiry of a specified period; or  
(b) on the completion, of a venture that the partnership was formed to undertake;

**“partnership profit”** in relation to a person who is a partner, means the profit of a partnership business derived while the person is a partner;

**“partnership property”** means property to which the partnership is beneficially entitled, whether or not the property is held in the partnership name;

**“person interested in winding up of a partnership”** means—

- (a) a person who ceases to be a partner on or after the break up;  
(b) in the case of a deceased partner, the partner’s personal representative;  
(c) if a person ceases to be a partner by virtue of his bankruptcy, the insolvency practitioner appointed in relation to the partner;

**“profits”** includes profits of a capital nature;

**“property”** includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property;

**“relevant capital contribution”** means a capital contribution consisting of—

- (a) a sum or sums of money; or  
(b) property which has an agreed capital value;

**“Repealed Act”** means the Partnership Act (Cap. 29) repealed by section 77;

**“the Registrar”** means the Registrar of Companies;

**“the regulations”** means regulations made and in force under this Act;

**“trust property”** means property which is held in the name of a partnership but to which a partnership is not beneficially entitled.

(2) In this Act, any reference to an agreement or to the terms of an agreement includes a reference to an agreement or to terms established by conduct.

### 3. Bodies excluded from scope of this Act

For the purpose of this Act, the following bodies shall not be considered as a partnership—

- (a) a limited liability partnership;



- (b) a corporate body; or
- (c) a foreign limited partnership.

**4. Liability of partners**

- (1) Each partner in a partnership has unlimited liability.
- (2) To be a limited partnership, a partnership shall have—
  - (a) one or more general partners, each with unlimited liability; and
  - (b) one or more registered limited partners, each with limited liability.

**5. Variation of partnership agreement**

A partnership agreement may, if it so provides, be varied—

- (a) before the formation of the partnership, with the agreement of all proposed partners; or
- (b) after the formation of the partnership, with the agreement of all existing partners.

**6. When default rule applies**

- (1) Where a default rule applies in relation to a partnership, it shall be treated as a term of the partnership agreement.
- (2) The application of a default rule in relation to a partnership may be modified or excluded—
  - (a) in accordance with the terms of the partnership agreement; or
  - (b) with the agreement of all the partners.

**PART II – GENERAL PARTNERSHIPS****7. The carrying on of partnership business**

- (1) Each partner in a partnership shall have responsibility for the business of the partnership.
- (2) A partnership shall be capable of—
  - (a) suing and being sued in its own name;
  - (b) entering into contracts and owning or holding property for the purposes of the business of the partnership; and
  - (c) subject to the partnership agreement, providing continuity for the partnership business despite a change in the partners.
- (3) Each partner shall be an agent of the partnership for the purpose of the business of the partnership.
- (4) A change in the nature of the business of a partnership shall require the agreement of all the partners.

**8. Partnership to have unlimited capacity**

- (1) Subject to section 9, the capacity of a partnership as a legal person is unlimited.
- (2) A partnership shall not employ a partner as an employee of the firm.

**9. Incapacity to commit offences**

A partnership is not capable of committing an offence except so far as is provided under any written law.

*Good faith and disclosure*

**10. Duty of good faith**

(1) A partner has a duty to act in good faith towards—

- (a) the partnership; and
- (b) the other partners in the partnership,

in relation to all matters affecting the partnership.

(2) A partner shall—

- (a) keep each of the other partners or their legal representatives informed of all matters affecting the partnership;
- (b) account to the partnership for any profits or benefits derived by the partner without the consent of the other partners, from any business of the partnership or the use by the partner of the property of the partnership, the name of the partnership or business connection; and
- (c) account to the partnership for any profits derived by the partner from a business carried on by the partner without the consent of the other partners, which competes with and is of the same nature as the partnership business.

(3) The mutual rights and duties of the partners, and the mutual rights and duties of the partnership and the partners, whether arising under this Act or the partnership agreement, are subject to the duty imposed on a partner by subsection (1).

(4) This section applies to all transactions undertaken by a partner after a partnership has broken up and before the affairs of the partnership have been dissolved or wound up under the provisions of this Act.

**11. Duty of disclosure on forming or joining a partnership**

(1) A person shall, before forming a partnership, disclose to a prospective partner anything known to the person which would reasonably be expected to influence the decision of the prospective partner to form the partnership.

(2) An existing partner in a partnership shall, before admitting a prospective partner into the partnership, disclose anything known to the partner which would reasonably be expected to influence the decision of a prospective partner to join the partnership.

(3) A prospective partner shall, before entering into a partnership disclose anything known to the partner which would reasonably be expected to influence the decision of the existing partners in a partnership to admit the partner into the partnership.

(4) The duty of a partner under this section may be waived in whole or in part by agreement between the prospective partners, or between the prospective partner and the existing partners.

*Share of profits and management of the business*

**12. Share of profits and losses**

(1) A partner is entitled to share equally in the profits of the partnership and is liable to contribute equally towards the losses incurred by the partnership in equal proportions.

(2) A partner is not entitled to a share in the profits of the partnership, and is not liable to contribute to any losses incurred by the partnership, before he became a partner.

(3) The estate of a partner who dies is liable for debts and obligations incurred by the partnership after becoming partner.

### **13. Remuneration, expenses, personal liabilities**

(1) A partner is not entitled to remuneration from the partnership for acting in the business of the partnership.

(2) A partnership shall indemnify a partner in respect of payments made by the partner—

- (a) in the ordinary and proper conduct of the partnership business, or in connection with anything done for the preservation of the partnership business or property; or
- (b) to discharge the whole or a part of the partner's personal liability for a partnership obligation.

(3) An indemnity under subsection (2) shall not affect any claim, which the partnership or another partner may have against the partner.

(4) Where the partnership fails to indemnify a partner under subsection (2), the partner shall be entitled to contribution from any partner in the partnership on the same basis as if the amount unpaid were a debt for which each of the partners was a co-guarantor in the same proportion as they would be liable to bear any partnership loss.

(5) Where a partnership fails to pay a partner any other amount for which it is liable to account to the partner under section 10(2), the partner shall be entitled to contributions from the other partners in the same proportions as if the amount were a partnership loss.

### **14. Capital contribution by partner**

(1) A partner may only—

- (a) contribute capital to the partnership; or
- (b) vary the amount of the partner's capital contribution to the partnership, where all partners in the partnership agree.

(2) A partner who contributes to the capital of a partnership is not entitled to interest on the contribution.

(3) A partner who makes an advance to a partnership of an amount beyond his contribution to the capital of the partnership is entitled to receive interest from the partnership at the rate of three percent per annum with effect from the date of the advance where prevailing economic circumstances permit.

### **15. Management of partnership business and affairs**

(1) A partner is entitled to participate part in the management of the business of the partnership.

(2) Differences arising out of an ordinary matter connected with the business of the partnership shall be decided by the vote of a majority of the partners.

(3) Differences arising out of other matters connected with the business of the partnership shall be decided by the unanimous decision of all the partners.

(4) The question on whether a partnership should take legal or arbitral proceedings against, or defend proceedings brought by a person is an ordinary matter.

(5) The partners may not, by an agreement whether orally or in writing, vary the provisions of subsection (2), (3) or (4).

**16. Accounting and partnership records**

(1) Every partner shall have the responsibility to ensure that—

- (a) accounting records of transactions affecting the partnership in which he is involved are properly kept; and
- (b) the records are, on request, made available to the partnership or to any partner.

(2) A partner shall have the duty to co-operate with the person responsible for keeping records of the partnership or drawing up the accounts of the partnership on behalf of the partnership.

*Power of partners to bind partnership*

**17. Partnership bound by acts of partners carrying on business in usual manner**

(1) A partnership is bound by an act done by a partner who is carrying on the business of the partnership.

(2) A partnership is not bound by an act or omission of a partner under subsection (1) if—

- (a) the partner has no authority to act on behalf of the partnership; and
- (b) the person with whom the partner is dealing—
  - (i) has notice that the partner does not have authority to act on behalf of the partnership; or
  - (ii) does not know that the partner is a partner in the partnership or does not believe that the partner is a partner in the partnership.

*Partnership property*

**18. Rules for identifying partnership property**

(1) All rights and interest in the property acquired on behalf of the partnership or for the purpose and in the course of business of the partnership, and acquired on behalf of the partnership, is partnership property.

(2) Property which is held in the name of the partners and which is—

- (a) acquired on behalf of the partnership; or
- (b) contributed to the partnership as capital, is held in trust for the partnership by the partner who acquired the property or contributed the capital.

**19. Land acquired out of partnership profits**

Where co-owners of an estate or interest in any land, not being itself partnership property, are partners with regard to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in the same manner, the land or estate so purchased—

- (a) is co-owned by the partners in the same manner as the original land was co-owned by them at the date of the acquisition; and

- (b) is not, in the absence of an agreement to the contrary, partnership property.

## 20. Execution of deeds

(1) A document is validly executed by a partnership as a deed under this Act if it is—

- (a) executed by at least two partners, each with the authority of all the partners to execute on behalf of the partnership;
- (b) expressed to be executed on behalf of the partnership; and
- (c) delivered as a deed.

(2) In the case of a limited partnership with only one general partner, the provision of paragraph (1)(a) is compiled with if—

- (i) the document is executed by the general partner; and
- (ii) that partner has authority to execute the document on behalf of the partnership.

(3) A document shall be presumed to be delivered for the purposes of subsection (1)(c) upon its being executed in accordance with subsection (2), unless a contrary intention is shown.

(4) If—

- (a) a partnership is being wound up under section 42; and
- (b) there is only one partner remaining in the partnership,

subsection (1)(a) is satisfied if the document is signed by that partner, whether or not he has authority to execute the document.

(5) In the case of a partner who is not a natural person, a document is signed by a partner for the purposes of this section if it is signed by an individual who has authority to sign on behalf of the partner.

(6) A document which has been signed by two or more persons in favour of a purchaser, each of whom purports to sign—

- (a) as a partner; or
- (b) as an individual who has authority to sign on behalf of a partner who not a natural person,

is considered to have been signed in accordance with subsection (2)(a).

### *Liability of partnership*

## 21. Liability of partnership for loss or injury caused by partner

A partnership shall be liable for loss or injury caused by the wrongful act or omission of a partner to a person who is not a partner, if the loss or injury is caused by a partner—

- (a) acting in the ordinary course of the business of the partnership; or
- (b) acting with the authority of the partnership.

## 22. Unlimited liability of partners

(1) A partner who has unlimited liability is personally liable for the whole amount of any obligation incurred by the partnership while he is a partner where—

- (a) a judgment, order or arbitral award has been made against the partnership in the same or earlier proceedings, establishing the amount of the partnership obligation; or

- (b) the Court has ordered the partnership to make payment in respect of the partnership obligation.

(3) A partner is not liable under subsection (1) for a partnership obligation owed to a co-partner or former partner if the partnership agreement or any other agreement to which the partner and co-partner or former partner are parties provides otherwise.

(4) Subsection (1) shall not affect the liability of the partnership for the partnership obligation.

(5) If a partner pays an amount to discharge the whole or a part of his personal liability for a partnership obligation, the partnership obligation is discharged to the extent of the amount paid by the partner.

(6) If a partnership obligation is—

- (a) discharged in whole or in part; or  
(b) otherwise reduced or extinguished;

the personal liability of any partner for that partnership obligation is discharged or reduced to the same extent.

(7) A partnership obligation which arises as a result of—

- (a) a breach of a duty in tort;  
(b) a breach of trust; or  
(c) a breach of a fiduciary duty,

is taken to have been incurred at the time the act or omission gave rise to the breach.

### **23. Secondary nature of partner's liability**

A partner may not in any proceedings, be held personally liable under section 22(1) unless—

- (a) there has been a judgment, order or arbitral award against the partnership in the same or earlier proceedings, establishing the amount of the partnership obligation; or  
(b) the Court has ordered the partnership to make payment in respect of the partnership obligation.

### **24. Chief Justice may make rules on partner's secondary liability**

(1) The Chief Justice may make rules—

- (a) preventing a partner from defending; or  
(b) restricting the extent to which, or the way in which, a partner may defend,

proceedings in respect of personal liability for a partnership obligation if the partner has had an opportunity to participate in related proceedings.

(2) A judgment, order or arbitral award against a partnership in respect of a partnership obligation is not enforceable against the property of the partner.

(3) The periods of limitation and prescription applicable to the personal liability of a partner for partnership obligations shall be those set out in the Second Schedule.

(4) In this section, “**related proceedings**” means earlier proceedings in which a judgment or order has been made against the partnership establishing the existence or amount of the partnership obligation.

**25. Non-partners who are liable by “holding out”**

(1) A person who is not a partner in a partnership and who by words spoken or written or by conduct—

- (a) represents the partnership as a partner; or
- (b) knowingly allows the partnership to be represented as a partner,

is personally liable as a partner, for any obligation incurred to anyone who, on the faith of that representation, deals with the person.

(2) A person who was a partner at the time a representation was made is liable under subsection (1) even if the representation was not acted on until after the person ceased to be a partner.

(3) Subsection (1) applies—

- (a) even if the former partner does not know that the representation has been made or communicated to a person; and
- (b) whether the representation is made or communicated in writing, by conduct or otherwise.

(4) A former partner shall be entitled to be indemnified by the partnership in respect of a payment made by the partner to discharge the whole or a part of personal liability under subsection (1) for a partnership obligation or in reasonable settlement of an alleged personal liability under subsection (1).

(5) An indemnity under subsection (4) shall not affect any claim which the partnership or a partner may have against a former partner.

(6) This section shall apply subject to section 33.

*Change in partners***26. Admission of new partners**

(1) A person may become a partner in an existing partnership with the consent of all existing partners.

(2) The consent referred to in subsection (1) may either be express in writing or inferred from the conduct of the existing partners, and in particular, from the fact that the person who is admitted as a partner starts to carry on the business of the partnership together with the existing partners with the object of making a profit.

**27. Ceasing to be a partner**

A person shall cease to be a partner in a partnership if—

- (a) the person dies;
- (b) the person is expelled as a partner by his co-partners under the provisions of section 29;
- (c) the partnership is dissolved;
- (d) the Court makes an order under section 44(1)(a) or (b) to remove the person as a partner; or
- (e) a bankruptcy order or an award for sequestration is made against the person.

**28. Resignation of a partner**

(1) A partner may resign from a partnership only by giving to the other partners notice of intention to do so not less than three months before the resignation is to take effect.

(2) If—

- (a) a partnership comprises three or more partners; and
- (b) one partner gives a resignation notice under subsection (1),

another partner may, within the period of the notice given under subsection (1), also resign from the partnership with effect from the time the notice takes effect, but only on giving to the remaining partners from written notice of intention to resign not less than two weeks before the resignation is to take effect.

### **29. Power to expel partner**

(1) A majority of partners in a partnership may expel a partner if—

- (a) an order is made against the partner under section 44; or
- (b) the whole or a part of the partner's shares in the partnership is subject to an attachment in execution in respect of a debt which is not a partnership debt.

(2) The partners in a partnership may only expel a partner under subsection (1) if they issue the partner with a notice of not less than three months of their intention to do so.

(3) An expulsion notice under subsection (2) shall not have effect if before its expiration—

- (a) the order referred to in section 44 is revoked; or
- (b) the attachment referred to in subsection (1)(b) is recalled or withdrawn or otherwise ceases to have effect.

### **30. Realization of shares of former partner (other than on winding up)**

A person who ceases to be a partner before the break up of a partnership shall be entitled to the assets or shall be liable for any losses or obligations which he would have been entitled to or liable for, if on that date—

- (a) the partnership had broken up;
- (b) the partnership assets were realized for the greater of—
  - (i) the market value of the partnership property; and
  - (ii) the market value of the partnership business if sold as a going concern without the partner; and
- (c) the partnership assets were then distributed under section 41 or in accordance with the partnership agreement.

### **31. Liability of former partner for obligations incurred while a partner**

(1) A person who ceases to be a partner does not cease to be personally liable under section 22(1) for partnership obligations incurred while a partner.

(2) An agreement between a former partner, the partnership and a creditor to discharge the former partner from personal liability for a partnership obligation shall not require valuable consideration.

### **32. Former partners: indemnity and contribution, and return of property**

(1) A partnership shall indemnify a former partner in respect of payment made by the partner to discharge the whole or part of his personal liability for a partnership obligation.

(2) An indemnity under subsection (1) shall not affect any claim which the partnership or a partner may have against the former partner.



(3) If a partnership fails to indemnify a former partner under subsection (1), the former partner may seek—

- (a) indemnity from any person who was a partner at the time the partner ceased to be a partner and who continued to be a partner after he ceased to be a partner; or
- (b) contribution from any person who was also liable for the obligation.

(4) Subsection (3) shall not apply if the former partner ceased to be a partner on or after the break up of the partnership.

(5) A former partner shall, on request by a partnership, transfer any partnership property which is held in the former partner's name to—

- (a) the partnership; or
- (b) a trustee for the partnership.

### **33. Restrictions on liability of former partners or employees by “holding out”**

(1) A former partner is not personally liable for a debt or obligation incurred by the partnership as a result of any dealings between the partnership and a person who deals with the partnership relying on representation made to the person that a former partner is a partner in a firm at the time of the dealings if—

- (a) the representation is made to the person more than one year before the former partner ceased to be a partner; or
- (b) a notice has been issued by the partnership prior to any dealings with the person that the former partner has ceased to be a partner.

(2) A former partner is not personally liable for any obligation incurred by the partnership if the partnership business—

- (a) continues to be carried on in the same partnership name; or
- (b) continues to include the former partner's in its list of partners after he has ceased to be a partner.

(3) In this section, references to a partner in a partnership include an employee of the partnership.

### **34. Position of assignee of partner's share**

(1) An assignment of a share in a partnership shall not entitle the assignee to—

- (a) participate in the management or administration of the partnership business or affairs; or
- (b) inspect the partnership records.

(2) An assignee of a share in a partnership shall be entitled to receive—

- (a) a share in the partnership profits if any, to which the assigning partner would be entitled; or
- (b) in the case of a dissolution of the partnership, the share of the entitlement of the assigning partner.

(3) A person to whom an assigning partner has assigned his share in the partnership may replace the assigning partner only with the agreement of all the other partners.

### *Break up of partnership*

### **35. Break up of partnership**

(1) A partnership breaks up if—

- (a) the number of partners falls below two;
- (b) the partnership is for a fixed term and the term expires;
- (c) an order to break up the partnership is made by the Court on the application of a partner;
- (d) an order is made by a Court under section 51(1) on the application of the Minister; or
- (e) an order is made by a Court under section 51(2) of this Act.

(2) A partnership—

- (a) whose term is not fixed; or
- (b) that is for a fixed term and one or more partners has at any time in the course of the partnership, ceased to be partners,

shall be dissolved if at least half the number of partners decide that the partnership should be dissolved.

(3) The date at which the partnership breaks up under subsection 2(a) of this section shall be the date on which the partners agree to break up the partnership.

(4) A partner who gives a resignation notice under section 29 shall not be taken to be a partner for the purposes of subsection (2).

(5) If a partnership entered into for a fixed term continues after the expiration of the term without any express new agreement, the rights and duties of a partner shall 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.

(6) An agreement to break up or to continue a partnership may be inferred either—

- (a) from the fact that the partners cease to carry on the partnership business; or
- (b) from the fact that the partners continue that business with a view to making a profit.

### **36. Effects of break up**

(1) A partnership which breaks up in the manner described in section 35 shall carry on with partnership business in so far as it is necessary for—

- (a) the dissolution of the partnership;
- (b) the winding up of the partnership by partners under section 40; or
- (c) the winding up of the partnership by a liquidator.

(2) The authority of a partner to bind the partnership and other rights and obligations of a partner continue notwithstanding the break up of the partnership in so far as may be necessary to dissolve the partnership and to complete transactions begun but unfinished at the time of the break up.

(3) The partners may, by an agreement in writing, confer on one or more of the partners authority to carry on the partnership business for the purposes of subsection (1).

(4) Subsection (2) shall not apply to a person who ceased to be a partner involuntarily.

**37. Restriction on ceasing to be a partner on or after break up**

(1) A person who ceases to be a partner on the break up of a partnership is nevertheless to be treated as continuing to be a partner only for purposes of winding up the partnership.

(2) Subsection (1) shall not apply to a person who ceases to be a partner involuntarily.

(3) A person ceases to be a partner in a partnership if after the break up of the partnership but before its dissolution, the person—

- (a) dies;
- (b) is declared insolvent;
- (c) is expelled from the partnership; or
- (d) is removed under an order made under section 45(1)(a) or (b).

*Changes in partners and break up of partnerships***38. Publicity for departure of partner or break up of partnership**

(1) A person who voluntarily ceases to be a partner in a partnership—

- (a) may publish notice of the fact that he has ceased to be a partner; and
- (b) may require the other partners to give any necessary consent.

(2) If a partnership breaks up, any partner who ceases to be a partner on or after the break up may—

- (a) publish notice of the break up; and
- (b) require the partnership or any other partner to give any necessary consents.

(3) In this section, “**necessary consent**” means the consent to any act which is necessary or proper for the publication of the notice and cannot be done without the agreement of the partnership or partner.

**39. Protection for property acquired after break-up**

(1) In this section, “**successor partnership**” means a partnership—

- (a) formed on or after the break up of a partnership which has not been dissolved; and
- (b) consisting of at least one person who was a partner in the former partnership.

(2) The title to the property acquired by a person and that of any person to whom the property is subsequently transferred shall not be challenged on the ground that the property was in fact partnership property of a former partnership.

(3) Subsection (2) applies if a successor partnership purports to transfer property to another person who—

- (a) acts in good faith;
- (b) provides valuable consideration; and
- (c) has no notice that the property is partnership property.

(4) For the purposes of this section, the transfer of property to a person includes the grant to the partner of an interest created out of the property.

---

*Winding up and dissolution of partnership***40. Winding up by partners**

(1) A partnership which breaks up may be wound up under this section by one or more partners in the partnership.

(2) Differences arising as to matters connected with the winding up of the partnership shall be decided by a majority of the partners.

**41. Distribution of partner's assets on winding up**

(1) The interests of partners in the partnership property and their rights and duties in relation to the partnership property shall, on the winding up of the partnership, be determined by the following rules and in the following order—

- (a) each partner shall pay into the partnership any amounts which the partner owes to the partnership;
- (b) the partnership shall pay all amounts it owes to persons other than partners;
- (c) the partnership shall pay to each partner any amount owed to him, but excluding the partner's contribution towards the capital of the partnership, on which it shall pay to each partner the amount, if any, which it owes to the partner in respect of capital;
- (d) the partners shall share among themselves any surplus assets in the same proportion as they would be entitled to share the partnership profits, if any;
- (e) if the partnership is unable to meet its obligations under paragraph (b), the partners shall contribute towards the deficiency in the same proportions as they would be liable to share any partnership losses in order to meet a partnership obligation;
- (f) if a partnership is unable to pay to each partner the amount contributed by the partner towards the capital of the partnership, it shall transfer to the partners, the remaining assets of the partnership in equal proportion to the capital contributed by the partner.

(2) A partner shall not be liable to contribute—

- (a) under subsection (1)(b) and (c) in respect of a partnership obligation for which he is not secondarily liable;
- (b) under subsection (1)(c) in respect of a partnership obligation to indemnify another partner under section 12(3), if the partner would not be liable under this Act to make contribution to that partner in respect of the obligation; or
- (c) under subsection (1)(c) in respect of an amount which is owed to another partner and to which this section applies, if the partner would not be liable under that provision to make a contribution to that other partner in respect of the amount.

(3) If a partner—

- (a) is not required to contribute an amount under subsection (2); or
- (b) is, because of insolvency, unable to contribute an amount required under subsection (1)(b) and (c),

the other partners shall contribute that amount according to the proportions in which they are liable as among themselves.

**42. Dissolution of partnership which has broken up**

- (1) A partnership which breaks up under section 35 shall stand dissolved if—
- (a) all partnership property is distributed to persons entitled to it;
  - (b) any trust property has been transferred to—
    - (i) the person entitled to it; or
    - (ii) a trustee for that person;
  - (c) no liabilities are outstanding against the partnership;
  - (d) no claims are outstanding by or against the partnership; and
  - (e) if a liquidator has been appointed under section 53, the liquidator has ceased to hold office without being replaced.

*Court's powers in relation to partnerships***43. Power of Court to make order charging partner's share**

(1) The Court may, on the application by a judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the judgement debt and interest thereon.

- (2) The Court may, by the same or a subsequent order—
- (a) appoint a receiver of the partner's share of profits and of any other money which may come to the partner in respect of the partnership;
  - (b) give such directions for the taking of accounts and inquiries as it could have given if the charge had been made in favour of the judgment creditor by the partner.

(3) The other partners in the partnership may at any time redeem the interest charged, or, where a sale is directed by the Court, purchase the partner's interest in the share.

**44. Power of Court to make order removing partner or breaking up partnership**

- (1) The Court may, on the application of any partner, make an order—
- (a) removing the partner from the partnership;
  - (b) removing another partner from the partnership; or
  - (c) breaking up the partnership.
- (2) In making an order under subsection (1), the Court shall have regard to—
- (a) the partner's capability of performing a partner's duties in the partnership;
  - (b) the effect of the partner's conduct on the partnership business;
  - (c) any breach, by a partner, of a term of the partnership agreement;
  - (d) any fraud, misrepresentation or non-disclosure by any partner when the partners enter into a partnership or modify a partnership agreement;
  - (e) any event that occurs making it unlawful for the partner to remain a partner;
  - (f) any losses incurred by the partnership and the prospects of carrying on the business partnership profitably;

(g) any other ground the Court considers appropriate.

#### **45. Order to specify date of removal or break up**

(1) An order under section 44(1)(a) or (b) shall specify the date a partner ceases to be a partner, which may be any date not earlier than the date on which the applicant became partner.

(2) An order under section 44(1)(c) shall specify the date on which the partnership broke up or is expected to break up.

#### **46. Combination orders**

(1) An application for an order breaking up a partnership under section 44(1)(c) may include an application for an order under section 50 or 51.

(2) An order under section 44(1)(c) may be combined with an order under section 54 or 55, whether or not such an order was applied for in accordance with subparagraph (1).

#### **47. Court may give directions**

(1) The Court may, by an order under section 44, give such directions as it thinks fit for giving effect to the order, including, in particular—

- (a) directions as to the rights of a specified partner to realise the partner's share in the partnership; and
- (b) in the case of an order under section 51, a direction restricting the rights conferred on a specified partner by section 42 or the Second Schedule.

(2) If an order under section 51 specifies that the applicant ceases to be a partner from a date before the date of the order, the Court may by the order give such directions as it thinks just and equitable for putting the applicant and other persons—

- (a) in the position they would have been in if the partner had in fact ceased to be a partner on that date; or
- (b) so near that position as the Court considers just and equitable.

#### **48. Fraud, misrepresentation or non-disclosure**

(1) Sections 50 and 51 shall apply, if the ground on which the Court makes an order under section 50 is that of fraud, misrepresentation or non-disclosure by a partner.

(2) Each applicant for the order is entitled to be indemnified by the partner at fault in respect of any loss suffered by the applicant which is attributable to the fraud, misrepresentation or non-disclosure.

(3) If an order is made under section 51, each partner not at fault is entitled, when the partnership assets are distributed, to be paid all amounts which the partnership owes to the partner before any amount is paid to the partner at fault.

(4) Subject to section 51, a partner who ceases to be a partner under an order made under that section retains any rights he would otherwise have had to realise his share in the partnership.

#### **49. Meaning of “non-disclosure”**

In section 48, “non-disclosure” means breach of a duty of disclosure—

- (a) under section 9(2)(a) or 10; or

- (b) under the default rule in section 15(2)(b) or any substituted provision in the partnership agreement.

**50. Interim orders**

In relation to an application made under section 44(1)(a) or (b), the Court may make an order prohibiting or limiting the extent to which the partner sought to be removed takes part in the partnership business pending the determination of the application.

**51. Order breaking up partnership on application of the Minister**

(1) Where it appears to the Minister that a partnership should be broken up, the Minister may apply to the Court for an Order breaking up the partnership.

(2) On an application under subsection (1), the Court may make an order for the partnership to be broken up on such terms and conditions as it may consider appropriate.

(3) If the Court fails to specify in the order made under subsection (1) the date on which the partnership breaks up, the date of the breakup shall be the date on which such an order is made.

**52. Power of Court to appoint liquidator**

(1) The Court may on the application made by—

- (a) a partner;
- (b) a person interested in the winding up of the partnership; or
- (c) a creditor of the partnership,

make an order appointing a liquidator for the purpose of winding up the partnership and distributing the partnership property.

(2) If the Court makes an order under subsection (1), it may also make an order requiring the liquidator to give security for the proper performance of his duties under this Act.

**53. Order appointing provisional liquidator**

(1) If an application made under section 52 has not yet been determined, the Court may, on the application of—

- (a) a partner;
- (b) a person interested in the winding up of the partnership; or
- (c) a creditor of the partnership,

make an order appointing a provisional liquidator pending the determination of the application.

(2) The Court may make an order requiring the provisional liquidator to give security for the proper performance of the liquidator's duties under this Act.

**54. Order for repayment of premium on premature break up of partnership**

(1) A person who—

- (a) joins a partnership whose duration is fixed;
- (b) pays a joining premium to an existing partner in the partnership; and
- (c) the partnership breaks up before its term expires,

may make an application to the Court for an order for the refund of the whole or part of the joining premium.

- (2) In making an order under subsection (1), the Court shall have regard to—
- (a) the terms of the partnership agreement;
  - (b) the duration of the partnership; and
  - (c) the conduct of the applicant during the period in which he was a partner.
- (3) In this section, “**joining premium**” means a payment made in respect of—
- (a) becoming a partner when a partnership is formed; or
  - (b) becoming a partner after its formation.

#### **55. Order for benefit of former partner**

(1) A person who is interested in the winding up of a partnership may make an application for one or more orders under subsection (2).

(2) On the hearing of an application under subsection (1), the Court may make one or more of the following orders—

- (a) an order requiring accounts to be drawn up to establish the former partner’s rights under section 30 or under the terms of a partnership agreement;
  - (b) an order requiring interim payments to be made to the former partner in respect of rights;
  - (c) an order requiring security to be provided in respect of such rights;
  - (d) an order for the break up of the partnership; or
  - (e) if the partnership has already broken up, directions as to the manner in which the partnership is to be wound up.
- (2) The Court in making an order under subsection (1)—
- (a) shall specify the date on which the partnership is to break up; and
  - (b) may provide for the appointment of a liquidator under section 52 or a provisional liquidator under section 53.

### **PART III – LIMITED PARTNERSHIPS**

#### *Limited partners and limited liability*

#### **56. What constitutes a limited partnership**

(1) A partnership is a limited partnership for the purposes of this Part only if it has—

- (a) one or more general partners, each of whom has unlimited liability; and
- (b) one or more limited partners, each of whom has limited liability.

(2) A general partner shall be liable for all debts and obligations of the partnership.

(3) A limited partner shall be liable for the debts or obligations of the partnership to the extent of the amount contributed to the partnership at the time of joining the partnership.

#### **57. Becoming and ceasing to be a limited partner**

(1) A person shall become a limited partner in a limited partnership when the person is registered as such.

(2) A person shall cease to be a limited partner if—

---



- (a) the person is deregistered as a limited partner;
- (b) the person dies; or
- (c) the partnership is dissolved.

**58. Role of limited partner to be restricted**

(1) A limited partner shall not take part in the management of the partnership business.

(2) A person who contravenes subsection (1) is personally liable for—

- (a) any partnership obligation incurred as a result of the contravention; and
- (b) any other partnership obligation incurred during the period of contravention.

(3) Nothing in subsection (1) shall prevent a limited partner from doing anything which is a permitted activity under the Sixth Schedule.

**59. Limited partner's liability to be limited**

(1) A limited partner shall not be entitled either directly or indirectly to draw out or receive back the whole or part of the capital contribution that the partner has made to the partnership.

(2) A limited partner shall not, during the continuance of the partnership, either directly or indirectly draw out or receive back the whole any part of any capital contribution that the partner has made to the partnership.

(3) A limited partner who contravenes subsection (2) shall be personally liable for any partnership obligation incurred while he is a limited partner.

(4) A limited partner's liability under subsection (3) exceed the amount drawn out or received back by the partner.

(5) In this section, "**capital contribution**" means a capital contribution consisting of—

- (a) a sum or sums of money; or
- (b) property that has an agreed capital value.

**60. General application of Act to limited partnerships**

Subject to sections 62, 63 and 64, this Act applies in relation to limited partnerships as it applies in relation to general partnerships.

**61. Rights and duties of the partners, etc.**

(1) Differences arising relating to ordinary matters connected with the partnership business or affairs shall to decided by—

- (a) the general partner; or
- (b) if there is more than one general partner, a majority of them.

(2) Differences arising relating to other matters connected with the partnership business or affairs shall be decided by—

- (a) the general partner; or
- (b) if there is more than one general partner, all of them acting together.

(3) The question as to whether a limited partner should be given authority to act on behalf of the partnership is not an ordinary matter.

(4) The partners in a partnership may not vary the provisions of subsection (3) or (4).

**62. Changes in partners**

(1) A person may become a partner in an existing partnership if all the general partners in the partnership agree to the person's admission into the partnership.

(2) Partners in a partnership may not expel a limited partner under section 29.

(3) Nothing in section 34 prevents a person to whom a partner has assigned the whole of his share absolutely from becoming a partner in place of such partner if—

- (a) all the general partners agrees to the substitution; or
- (b) the substitution is made in accordance with the partnership agreement.

**63. Break up and winding up of limited partnership**

(1) Unless the Court orders otherwise the winding up of a limited partnership shall be conducted by a general partner.

(2) Sections 54 and 51 and the Second Schedule shall with necessary modifications, apply in relation to a limited partnership.

**64. Limited partnership Registered Office**

A limited partnership shall establish and maintain a registered office to which communications may be delivered or addressed.

**65. Name of a limited partnership**

(1) The name of a limited partnership shall have—

- (a) the word "limited partnership"; or
- (b) the abbreviation "lp" or "LP",

appearing at the end of its name.

(2) A partnership may not be registered in a name—

- (a) which is the same as a name appearing in the index kept under the Companies Act (Cap. 486);
- (b) the use of which would in the opinion of the Registrar constitute an offence; or
- (c) which in the opinion of the Registrar is offensive.

(3) In determining for the purposes of this section, whether one name is the same as another, the Registrar shall have regard to the existence of otherwise of—

- (a) the definite article as the first word of the name;
- (b) any of the following, or abbreviations of them, at the end of the name—
  - (i) "limited partnership";
  - (ii) "limited liability partnership";
  - (iii) "company";
  - (iv) "and company";
  - (v) "company limited";
  - (vi) "limited";
  - (vii) "unlimited";
  - (viii) "public limited company";

- (ix) “investment company with variable capital”; or
- (c) “open-ended investment company”.

(4) For the purposes of subsection (3), the type and case of letters, accents, spaces between letters and punctuation marks, and “and” and “&” shall be taken as the same.

#### **66. Improper use of the expression “limited partnership”, etc.**

(1) This section applies to the following entities—

- (a) a limited partnership;
- (b) a partner in a limited partnership;
- (c) a foreign limited partnership; or
- (d) a partner in a foreign limited partnership.

(2) An entity to which subsection (1) applies shall not carry on the business of a limited partnership under a name which is not registered as a limited partnership or which does not include at the end of its name, the words “limited partnership”; or any contraction or imitation of either of those.

(3) An entity which contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

#### **67. Information to be provided on partnership documents**

(1) The partners of a limited partnership shall state the name and the address of the registered office of the limited partnership on any partnership document.

(2) A general partner who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

#### *Registration*

#### **68. Application for registration**

(1) A person who wishes to register a partnership shall deliver to the Registrar an application for registration together with a statement specifying—

- (a) the name under which the limited partnership is to be registered;
- (b) the names and addresses of the proposed general partners;
- (c) the name of each proposed limited partner and the amount of capital contribution made by the partner to the partnership;
- (d) the location and address of the proposed registered office; and
- (e) if the application relates to an existing general partnership, the date of its formation.

(2) The statement shall be signed by—

- (a) the proposed general partner; or
- (b) if there is more than one proposed general partner, all of the proposed general partners.

#### **69. Registration and registration certificate**

(1) On receiving an application for the registration of a limited partnership under section 68, the Registrar shall, if satisfied that section 65 has been complied with—

- (a) register it as a limited liability partnership; and
- (b) issue it with a registration certificate.

(2) A registration certificate shall indicate—

- (a) the name of the limited partnership as specified in the application for registration;
- (b) the fact of its registration as a limited partnership; and
- (c) the date of registration,

and shall be signed by the Registrar.

(3) If the partnership to which the application relates was not formed before registration, the partnership is formed when it is registered.

#### **70. Registration of charges, deregistration and other matters**

(1) The Registrar may make rules relating to the procedures of registration under this Act.

(2) The Fifth Schedule shall have effect for purposes of this section.

#### **71. Offences of providing false information**

(1) A person who knowingly provides or causes to another person provide, false information commits an offence and is liable on conviction to a term not exceeding six years or to a fine not exceeding one hundred thousand shillings, or to both.

(2) A person who provides, or causes or allows another person to provide, in a notice to the Registrar, changes or corrections which the person knows to be false, commits an offence and is liable on conviction to imprisonment for a term not exceeding six years or a fine not exceeding one hundred thousand shillings, or to both.

#### **72. Offences by bodies corporate**

(1) If an offence under this Part committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to neglect on the part of such an officer,

the officer as well as the body corporate commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings, and the officer is liable in addition to the fine to imprisonment for a term not exceeding six months, or to both.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

(3) In this section, “officer” includes—

- (a) a director, manager or secretary; and
- (b) a person purporting to act as director, manager or secretary.

#### **73. Evidence**

(1) A certificate of the registration of a partnership is conclusive evidence that—

- (a) the requirements relating to registration, and other matters precedent and incidental to it, have been complied with;
- (b) the partnership was registered as a limited partnership on the date stated in the certificate; and
- (c) its partnership name is as specified in the certificate.

(2) A certificate of a change in the name of a partnership shall in the absence of evidence to the contrary, be evidence that—

- (a) the partnership was registered as having a new name on the date specified in the certificate; and
- (b) its partnership name is as specified in the certificate.

(3) A copy of an original document or of part of such a document sent to the Registrar shall, if purporting to be certified by the Registrar, be admissible in a legal proceeding as evidence of the contents of that document or part of the document.

#### **74. Disclosure of information about partners, etc.**

(1) A person dealing with a partnership shall be entitled, on request to the partnership or to a partner, to be informed of—

- (a) the full name of each partner; and
- (b) the address of service of each partner.

(2) A person who has a complaint against a partnership connected with the dealings the person has had with the partnership shall be entitled, on request made to the partnership, a partner of a former partner, to be given such information as the partnership, partner or former partner is reasonably able to provide or to obtain with regard to—

- (a) the full name of each person who was a partner at the time of the act or omission to which the complaint relates; and
- (b) an address for service, or the last known address, of each such person.

(3) The Registrar may in consultation with the Minister, make rules relating to—

- (a) the making of claims made against a partnership;
- (b) a partner or former partner in respect of a partnership obligation before legal proceedings are brought in respect of a claim for an order for the disclosure of the information in subsection (1) or (2).

### PART IV – MISCELLANEOUS PROVISIONS

#### **75. Rules**

The Minister may, on the recommendation of the Registrar, make rules for the better carrying into effect of the provisions of this Act.

#### **76. Regulations**

(1) The Minister may make regulations to provide for the registration of limited partnerships under this Act.

(2) The regulations may, in particular—

- (a) impose fees in respect of—
  - (i) the registration of a limited partnership or of obtaining information relating to a limited partnership;
  - (ii) the inspection of any registers, documents or information relating to limited partnerships; or
  - (iii) the provision of any certificate relating to a limited partnership or of a copy of such a document;

- (b) provide for the performance by the Registrar and other officers of acts which this Part requires to be done by the Registrar;
- (c) provide for the remuneration to be paid to a liquidator.

**77. Repeal of Cap. 29**

The Partnership Act is repealed.

**78. Transitional provisions**

Notwithstanding section 77—

- (a) a partnership, which has been duly registered under the Partnership's Act (now repealed) and is in existence at the commencement of this Act (hereinafter called "an existing partnership") shall be deemed to be a partnership under this Act;
- (b) all rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before coming into operation of this Act were vested in, imposed on or enforceable by or against the existing partnership, shall be transferred to, vested in, imposed on or be enforceable by or against the partnership under this Act;
- (c) all actions, suits or legal proceedings pending by or against the existing partnership shall be carried under this Act;
- (d) the officers and members of the existing partnership in office on the date of the commencement of this Act shall be deemed to be the duly appointed officers and members of the partnership for the purposes of this Act.

**79. Amendment of Cap. 22**

The Limitation of Actions Act is amended by inserting the following new section immediately after section 10—

10A. Special time limit for secondary liability of partners

- (1) An action to hold a partner personally liable under the law relating to partnerships for a partnership obligation may not be brought after—
    - (a) the date of the expiration of the period of limitation (if any) applicable under this Act to an action against the partnership in respect of the partnership obligation; or
    - (b) if the date of judgement against the partnership establishing the partnership obligation is after the date referred to in paragraph (a), two years after that date.
  - (2) Subsection (1)(b) applies—
    - (a) whether or not there is an appeal against the judgment; and
    - (b) whether or not execution of the judgment is stayed.
  - (3) Subsection (1) applies to a former partner as it applies to a partner.
-

## FIRST SCHEDULE

[Section 7.]

## WHEN PERSONS DO NOT CARRY ON BUSINESS TOGETHER

1. A person does not carry on a business with another merely because the person

- (a) receives a payment contingent on or varying with the profits of a business;
- (b) is an agent of a person engaged in a business and has a contract for his remuneration by a share of the profits of the business;
- (c) receives a debt or other liquidated amount, by instalments otherwise out of the accruing profits of a business;
- (d) is the beneficiary of the estate of a person who has died and receives in the form of annuity a share of profits made in a business in which the deceased was a partner;
- (e) lends money to a person engaged in or about to engage in a business and, under the contract for the loan, is to receive a rate of interest varying with the profits of the business or a share of those profits; or
- (f) sells the goodwill of a business and receives, in form of annuity or otherwise, a share of the profits of the business in return for the sale.

2. A person does not carry on a business with another merely because they share an interest in property whether or not they share profits made by the use of the property.

3. A person does not carry on a business with another merely because they share gross profits whether or not they have a joint or common interest in any property from which, or from the use of which, the returns are derived.

## SECOND SCHEDULE

[Section 52.]

## WINDING UP BY LIQUIDATOR

## PART 1 – GENERAL

**1. Effect of liquidator's appointment**

(1) On the appointment of a liquidator, all the powers of the partners cease, except so far as the liquidator sanctions their continuance.

(2) Each partner and each person interested in the winding up has a duty to cooperate with the liquidator in relation to the winding up.

(3) In relation to the winding up by the liquidator, the duty imposed by section 10 applies not only to a partner but also to a person interested in the winding up.

**2. General duties of liquidator**

The liquidator shall—

- (a) get in and realise the partnership property;
- (b) pay the debts and discharge the liabilities of the partnership in accordance with the default rule in section 41(3) whether or not the partnership agreement provides otherwise;

- (c) distribute any surplus in accordance with the default rules in section 41(3) or any substitute provisions in the partnership agreement; and
- (d) ensure that all trust property is transferred to—
  - (i) the person entitled to the property; or
  - (ii) a trustee for that person.

### **3. General powers of liquidator**

(1) The liquidator may—

- (a) with the approval of each of the partners; or
- (b) with the sanction of the Court, exercise any of the powers specified in Part 2 of this Schedule.

(2) The liquidator may exercise [all or] any of the powers specified in Part 3 of this Schedule.

### **4. Distribution of partnership property to partners etc. in its existing form**

The liquidator may—

- (a) if so permitted by the partnership agreement;
- (b) with the approval of each of the partners; or
- (c) with the sanction of the Court, sell or transfer, according to its estimated value, to a partner or to a person interested in the winding up any particular partnership property in its existing form.

### **5. Contracts entered into by liquidator**

(1) A contract entered into by the liquidator in the performance of the liquidator's functions is taken to be entered into by the partner on behalf of the partnership, unless the contract provides that he should be personally liable on it.

(2) A liquidator who assumes personal liability under the contract, is entitled to an indemnity out of partnership property in respect of that liability.

(3) This paragraph does not—

- (a) limit a right to indemnity which the liquidator would have apart from it;
- (b) limit the liability of the liquidator on contracts entered into in breach of this Schedule or an order of the Court; or
- (c) confer a right to indemnity in respect of liability under subparagraph (b).

### **6. Court's power to vest property in liquidator**

(1) On the application of the liquidator, the Court may, by order, direct that all or any part of the partnership property is to vest in the liquidator by the liquidator's official name.

(2) If the Court makes such an order, the property to which the order relates vests accordingly.

(3) The liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any legal proceeding—

- (a) that relates to that property; or
- (b) that it is necessary to bring or defend for the purpose of effectively winding up the partnership and recovering partnership property.



**7. Disclaimer of onerous property**

(1) The Minister may make regulations conferring on the liquidator power to disclaim onerous property.

(2) The Minister may, in particular, provide for—

- (a) what constitutes onerous property;
- (b) the procedure for disclaiming such property;
- (c) the effect of the disclaimer with respect to the partnership and to persons affected by the operation of the disclaimer; and
- (d) the Court powers in relation to property which is disclaimed.

**8. Effect of partnership's insolvency**

(1) This paragraph applies if—

- (a) the partnership is unable to pay its debts; and
- (b) there is no reasonable prospect of its becoming able to pay its debts.

(2) For purposes of this paragraph, a partnership shall be taken to be unable to pay its debts if—

- (a) it is unable to pay its debts as they fall due; or
- (b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) If satisfied that the partnership is unable to pay its debts, the liquidator must apply to the Court for a winding-up order to be made against the partnership under the provisions of the Insolvency Act, 2010.

(4) Subparagraph (3) does not apply if the liquidator has reasonable grounds for believing that the Court does not have jurisdiction to make a winding-up order against the partnership under the Insolvency Act.

(5) If subparagraph (4) applies, the liquidator shall apply to the Court for directions and such order as it thinks fit.

(6) The Court may only deal with an application under subparagraph (3) or (5) if it is made or presented by the liquidator not later than one month after the commencement of this Act.

(7) The application shall contain a statement relating to the partnership business and affairs, including—

- (a) particulars of the partnership's assets, debts and liabilities;
- (b) a summary of the liquidator's receipts and payments;
- (c) the names and addresses of the partnership's creditors;
- (d) securities held by them respectively; and
- (e) dates when the securities were respectively given.

(8) A liquidator who, without reasonable excuse, fails to comply with this paragraph—

- (a) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings; and
- (b) in addition, is liable for any resulting loss suffered by a partner, a person interested in the winding up, or a creditor of the partnership.

**9. Annual accounts**

(1) If the winding up by the liquidator continues for more than one year, the liquidator shall prepare a full and true statement of accounts, specifying—

- (a) the liquidator's acts and dealings; and
- (b) the conduct of the winding up, during the year.

(2) The liquidator shall convene a partnership meeting for the purpose of—

- (a) laying the statement of accounts before the meeting; and
- (b) giving an explanation of it.

(3) The persons entitled to attend the meeting are—

- (a) each partner; and
- (b) each person interested in the winding up.

(4) The liquidator shall ensure that the meeting convened under subparagraph (2) shall be held—

- (a) at the end of the first year from the date of the appointment of the liquidator, and of each succeeding year; or
- (b) at the first convenient date within three months from the end of the year.

(5) A liquidator who fails to comply with this paragraph, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

**10. Final accounts**

(1) When the liquidator has, to the best of his knowledge and belief, complied with paragraph 2 of this Schedule, he shall prepare a full and true account of the conduct of the winding up showing, in particular—

- (a) a summary of his receipts and payments; and
- (b) how the partnership property and trust property has been disposed of.

(2) The liquidator shall convene a partnership meeting for the purpose of—

- (a) laying the accounts before the meeting; and
- (b) giving an explanation of it.

(3) The persons entitled to attend the meeting are—

- (a) each partner; and
- (b) the persons interested in the winding up.

(4) The persons attending the meeting may vote against the release of the liquidator under paragraph 15.

(5) Subparagraph (4) does not apply if the partnership agreement provides for a quorum for the meeting and such quorum is not present.

(6) It is a default rule that a resolution against the liquidator's release may be decided upon by a majority of the persons attending the meeting.

(7) The liquidator ceases to hold office at the end of the meeting or, if no one attends the meeting, at the time it was due to end.

(8) A liquidator who without reasonable excuse fails to comply with this paragraph, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

**11. Power of Court to order an account**

A partner or a person interested in the winding up may, if not satisfied with the way in which the liquidator is conducting the winding up of the partnership, apply to the Court to order an account to be taken of the partnership business and affairs.

**12. Reference of questions to Court**

(1) An application may be made to the Court to determine any question arising in the winding up of the partnership.

(2) The application may be made by—

- (a) the liquidator;
- (b) a partner;
- (c) a person interested in the winding up;
- (d) a creditor of the partnership; or
- (e) if not a creditor of the partnership, a person who ceased to be a partner before the break up of the partnership.

(3) If the Court is satisfied that the determination of the question will be just and beneficial, it may—

- (a) impose such terms and conditions as it thinks fit; or
- (b) make such other order as it thinks fit.

**13. Resignation of liquidator**

(1) A liquidator may, at any time, resign as liquidator by giving notice of intention to do so.

(2) A notice shall include a full and true account of the conduct of the winding up showing, in particular—

- (a) a summary of receipts and payments; and
- (b) how any partnership property or trust property has been disposed of.

(3) The notice shall be given to—

- (a) impose such Court;
- (b) each partner;
- (c) each person interested in the winding up; and
- (d) if the liquidator was appointed on the application of a creditor of the partnership, the creditor.

(4) A resignation notice takes effect—

- (a) at the end of eight weeks starting with the day on which it is given; or
- (b) at the time from which the liquidator's release has effect under paragraph 15(2).

**14. Appointment or removal of liquidation by Court**

(1) if for any reason no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another.

**15. Release of liquidator from liquidator's obligations**

(1) If the liquidator complies with paragraph 10 and either—

- (a) no one attends the meeting convened under paragraph 10(2);

- (b) the person or persons attending the meeting do not resolve against his release under paragraph 10(4); or
- (c) no vote against his release takes place by virtue of the liquidator paragraph 10(5), the liquidator is released with effect from the time at which the liquidator ceases to hold office.

(2) The Court may, on application, order that—

- (a) the liquidator; or
- (b) a person who has ceased to be the liquidator,

should be released with effect from a time specified in the order.

(3) An application under subparagraph (2) may be made by—

- (a) the person to whom the application relates; or
- (b) if that person has died, that person's personal representative.

(4) A liquidator who is released is, with effect from the time specified in subparagraph (1) or (2) discharged from all liability to partners, former partners and the partnership—

- (a) in respect of any acts or omissions of the liquidator in the winding up; and
- (b) otherwise in relation to conduct as liquidator.

(5) In subparagraph (4), “**liquidator**” includes a person who has ceased to be the liquidator.

#### 16. Expenses of winding up

All expenses properly incurred in the winding up, including the remuneration of the liquidator or any provisional liquidator appointed under section 55, are payable out of the partnership's assets in priority to all other claims.

#### PART 2 – POWER OF LIQUIDATOR EXERCISABLE WITH APPROVAL OR SANCTION

17. A liquidator has the following powers which are only exercisable with approval or sanctions—

- (a) a power to enter into arrangement with creditors or persons claiming to be creditors, any claim or in damages against the partnership, or whereby the partnership may be rendered liable;
- (b) a power to compromise, on such terms as may be agreed—
  - (i) all debts and other liabilities and liabilities which subsist or may subsist, between the partnership and any other person;
  - (ii) all questions relating to the assets or the winding up of the partnership; and
- (c) a power to take any security for the discharge of any such debt, liability or claim and to give a complete discharge in respect of it;
- (d) a power to carry on the partnership business so far as may be necessary for the beneficial winding up of the partnership.

#### PART 3 – POWERS OF LIQUIDATOR EXERCISABLE WITHOUT APPROVAL OR SANCTION

18. A liquidator has the following powers which may be exercised without approval or sanction—

- 
- (a) a power to bring or defend any action or other legal proceeding in the name and on behalf of the partnership;
  - (b) subject to paragraph 4 of Part 1, a power to sell any partnership property by public auction or private contract with power—
    - (i) to transfer the whole of it; or
    - (ii) to sell it in parcels;
  - (c) a power to do all acts and to execute, in the name and on behalf of the partnership, all deeds, receipts and other documents;
  - (d) a power to claim in the bankruptcy, insolvency or sequestration of any partner, former partner or other debtor of the partnership for any balance against his estate, and to receive dividends in respect of that balance, as a separate debt due from the bankrupt or insolvent partner; and
  - (e) a power to borrow any money required on the security of the partnership's assets;
  - (f) a power to appoint an agent to do any business which it would be unreasonable for the liquidator to have to do the partnership;
  - (g) a power to do all other things necessary for winding up the partnership.

---

### THIRD SCHEDULE

[Section 53.]

#### FUNCTIONS OF PROVISIONAL LIQUIDATOR

##### 1. Effect of provisional liquidator's appointment

(1) On the appointment of a provisional liquidator, all the powers of the partners are suspended, except so far as the provisional liquidator sanctions their continuance, until the determination of the application under section 53.

(2) Each partner and each person interested in the winding up shall have the duty to cooperate with the provisional liquidator in relation to the performance of the functions of the liquidator.

(3) In relation to the performance of those functions, the duty of acting in good faith imposed by section 10 applies not only to a partner but also to a person interested in the winding up.

##### 2. General duty of provisional liquidator

(1) The provisional liquidator shall secure the preservation of—

- (a) partnership property; and
- (b) trust property, until the application under section 53 has been determined.

(2) The provisional liquidator may not begin to wind up the partnership until the application under section 53 is determined.

**3. General powers of provisional liquidator**

(1) A provisional liquidator may—

- (a) with the approval of all the partners; or
- (b) with the sanction of the Court, exercise any of the powers of a liquidator specified in the Second Schedule.

(2) For the purpose, of paragraph 3, the power specified in Part 3 of the Second Schedule is limited to power to carrying on the partnership business so far as may be necessary for the preservation of partnership property or trust property.

**4. Contracts entered into by provisional liquidator**

(1) A contract entered into by the provisional liquidator in the performance of his functions is to be taken to be entered into by the partner on behalf of the partnership, unless the contract provides that he should be personally liable on it.

(2) If the provisional liquidator assumes personal liability under the contract, he is entitled to an indemnity out of partnership property in respect of that liability.

(3) This paragraph does not—

- (a) limit any right to indemnity which the provisional liquidator would have apart from it;
- (b) limit the liability of the provisional liquidator on contracts entered into in breach of this Schedule or an order of the Court; or
- (c) confer a right to indemnity in respect of any liability under paragraph (b).

**5. Resignation of provisional liquidator**

(1) The provisional liquidator may, at any time, resign by giving notice of intention to do so.

(2) The notice shall include a full and true statement of his acts and dealings as provisional liquidator, and shall be given to—

- (a) the Court;
- (b) each partner;
- (c) each person interested in the winding up; and
- (d) if the provisional liquidator was appointed on the application of a creditor of the partnership, the creditor.

(3) The resignation notice shall take effect—

- (a) at the end of eight weeks starting with the day on which it is given; or
- (b) if the provisional liquidator's release has effect under paragraph 8(1) at an earlier time, at that time.

**6. Appointment or removal of provisional liquidator by Court**

(1) If for any reason there is no provisional liquidator acting, the Court may appoint a provisional liquidator.

(2) The Court may, on cause shown, remove a provisional liquidator and appoint another liquidator.

**7. Ceasing to hold office**

The provisional liquidator ceases to hold office on the determination of the application under section 53.

**8. Release of provisional liquidator**

- (1) The Court may, on application, order that—
- (a) the provisional liquidator; or
  - (b) a person who has ceased to be the provisional liquidator, be released with effect from a time specified in the order.
- (2) An application under subparagraph (1) may be made by—
- (a) the person to whom the application relates; or
  - (b) if such a person is deceased, a personal representative.
- (3) A provisional liquidator who shall released is, with effect from the time specified in subparagraph (1), be discharged from all liability to partners, former partners and the partnership—
- (a) in respect of any acts or omissions in the performance of the functions of provisional liquidator; and
  - (b) otherwise in relation to his conduct as provisional liquidator.

---

**FOURTH SCHEDULE**

[Section 58.]

**PERMITTED ACTIVITIES FOR LIMITED PARTNERS**

A limited partner may undertake any of the following activities—

- (a) taking part in a decision about the variation of the partnership agreement;
- (b) taking part in a decision about whether to approve, or veto, a class of investment by the limited partnership;
- (c) taking part in a decision about whether the general nature of the partnership business should change;
- (d) taking part in a decision about whether to dispose of the partnership business or to acquire another business;
- (e) taking part in a decision about whether a person should become or cease to be a partner;
- (f) taking part in a decision about whether the partnership should end;
- (g) taking part in a decision about how the partnership should be wound up;
- (h) enforcing a partner's rights under the partnership agreement, unless those rights are to carry out management functions;
- (i) approving the accounts of the limited partnership;
- (j) being engaged under a contract by the limited partnership or by a general partner in the limited partnership, unless the contract is to carry out management functions;
- (k) acting as a director or employee of, or a shareholder in, a corporate general partner;
- (l) taking part in a decision [that] involves an actual or potential conflict of interest between a limited partner or limited partners, and a general partner or general partners;

- (m) discussing the prospects of the partnership business;
- (n) consulting or advising a general partner, or the general partners, about the activities of the limited partnership or about its accounts, including doing so as a member of an advisory committee of the limited partnership.

---

FIFTH SCHEDULE

[Section 70.]

SPECIAL PROVISIONS FOR LIMITED PARTNERSHIPS

PART 1 – REGISTRATION OF CHANGES AND CORRECTIONS

**1. Change of partnership name**

(1) For the name of a limited partnership to be changed, notice of the proposed change shall be delivered to the Registrar.

(2) The notice shall—

- (a) specify the existing name of the limited partnership;
- (b) specify the proposed name of the limited partnership; and
- (c) if section 68 applies, contain the written consent of the partners.

(3) The notice shall be signed by—

- (a) the general partner or, if there is more than one general partner, all of them; or
- (b) a person, other than a general partner, who has authority to give the notice on behalf of the partnership.

(4) On receiving the notice, the Registrar shall—

- (a) amend the register to record the change of name; and
- (b) issue the partnership with a certificate of the change of name.

(5) The certificate shall specify the change of name and the date on which the change was registered and shall be signed by the Registrar.

(6) The change of name shall have effect from the date on which it was registered.

(7) A change of the name of a limited partnership shall not—

- (a) affect any rights or duties of the partnership; or
- (b) render defective any legal proceedings by or against it,

and any legal proceedings that might have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

**2. Change of registered office**

(1) For the registered office of a limited partnership to be changed, notice of the proposed change shall be delivered to the Registrar, specifying the existing registered office of the limited partnership and the proposed registered office.

(2) The notice shall be signed by—

- (a) general partner; or



(b) a person other than a general partner who has authority to give the notice on behalf of the partnership.

(4) On receiving the notice, the Registrar shall amend the register to record the change of registered office.

(5) The change shall have effect from the date on which it was registered.

### **3. Registration of new limited partners**

(1) For a person to become a limited partner in an existing limited partnership, notice that he is a proposed limited partner shall be delivered to the Registrar.

(2) The notice shall specify—

- (a) the name of the limited partnership;
- (b) the name of the proposed limited partner; and
- (c) the amount of any relevant capital contribution being made by the partner to the partnership.

(3) If the proposed limited partner is an existing general partner in the limited partnership, the notice shall state that fact.

(4) The notice shall be signed by—

- (a) a general partner; or
- (b) a person other than a general partner who has authority to give the notice on behalf of the partnership.

(5) If subparagraph (2)(b) applies, the notice may not be signed by the proposed limited partner.

(6) On receiving a notice under this paragraph, the Registrar shall—

- (a) register the proposed limited partner as a limited partner in the partnership; and
- (b) if subparagraph (2)(b) applies, ensure that the register is amended to record the fact that the partner has ceased to be a general partner in the partnership.

(7) The proposed limited partner becomes a limited partner on the date recorded in the register as the date of his registration.

### **4. Registration of persons ceasing to be limited partners**

(1) For a person to cease to be a limited partner in a limited partnership, otherwise than—

- (a) on his death; or
- (b) on the dissolution of the partnership,

notice that he is to cease to be a limited partner shall be delivered to the Registrar.

(2) The notice shall specify—

- (a) the name of the limited partnership; and
- (b) the name of the person who is to cease to be a limited partner.

(3) If the person to whom the notice relates is to become a general partner in the limited partnership, the notice shall state that fact.

(4) The notice shall be signed by—

- (a) a general partner; or

- (b) a person other than a general partner who has authority to give the notice on behalf of the partnership.

(5) If—

- (a) subparagraph (3) applies; and
- (b) the partnership does not have one or more general partners,

the notice shall be signed by the person to whom the notice relates.

(6) On receiving a notice under this paragraph, the Registrar shall—

- (a) register the person as no longer being a limited partner in the partnership; and
- (b) if subparagraph (3) applies, ensure that the register is amended to reflect the fact that the person has become a general partner in the partnership.

(7) The person ceases to be a limited partner on the date recorded in the register as the date on which he is no longer a limited partner in the partnership.

#### **5. Registration of certain changes relating to limited partnerships**

(1) In this paragraph “**relevant event**”, in relation to a limited partnership, means any of the following occurrences—

- (a) when a person becomes a general partner of the partnership;
- (b) when a person ceases to be a general partner of the partnership;
- (c) when a person ceases to be a limited partner of the partnership because of death or if not an individual dissolution;
- (d) when the name of an existing general or limited partner of the partnership changes;
- (e) when the address of an existing general partner of the partnership changes;
- (f) when there is a change in the amount of the relevant capital contribution of a limited partner of the partnership.

(2) Notwithstanding subparagraph (1), the following shall not be regarded as relevant events for the purposes of this clause—

- (a) when a person who is a limited partner becomes a general partner;
- (b) when a person who is a general partner becomes a limited partner.

(3) Within twenty-eight days after a relevant events in relation to limited partnership, the general partners shall ensure that a notice complying with this paragraph is lodged with the Registrar for registration.

(4) The notice shall give details of the relevant event and shall be signed by—

- (a) a general partner; or
- (b) a person other than a general partner who has authority to give the notice on behalf of the partnership.

(5) A person who has ceased to be a general partner in a limited partnership may, at any time during the existence of the partnership, lodge with the Registrar a notice—

- (a) signed by the person; and
- (b) stating that the person has ceased to be a general partner in the partnership.

(6) On receiving a notice of a relevant event in accordance with subparagraph (1) or (5), the Registrar shall amend the register so far as necessary to record the relevant event.

(7) If subparagraph (1) is not complied with, each of the general partners of the limited partnership commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(8) If, after the general partners of a limited partnership have been found guilty of an offence under subparagraph (7), the general partners continue to fail to lodge with the Registrar a notice of the relevant event that complies with this paragraph, each of those partners commit a further offence on each day during which the failure continues and is liable on conviction to a fine not exceeding fifty thousand shillings for each such offence.

## **6. Registration of corrections**

(1) As soon as practicable after becoming aware of an error in an entry in the register, the Registrar shall correct the error.

(2) Subparagraph (1) shall apply whether the error was discovered by the Registrar or as a result of being notified by a general partner of the partnership concerned, or by a person other than a general partner who has authority to act on behalf of the partnership.

(3) As soon as practicable after correcting an error relating to information contained in—

- (a) in a certificate of the registration of a limited partnership; or
- (b) in a certificate of a change in the name of such a partnership,

the Registrar shall issue to the partnership a revised certificate.

(4) In this paragraph, “error” includes an error resulting from incorrectly transposing information provided to the Registrar by or on behalf of a limited partnership as well as an error attributable to a failure to provide the Registrar with the correct information about a matter relating to such a partnership.

## **PART 2 – CANCELLATION OF REGISTRATION OF LIMITED PARTNERSHIPS**

### **7. Power to cancel the registration of limited partnership on application by partners**

(1) The Registrar may cancel the registration of a limited partnership if—

- (a) an application for cancellation has been lodged with the Registrar;
- (b) the application complies with this paragraph; and
- (c) the Registrar has published the requisite cancellation of registration warning notice and no person has, within three months after the publication of that notice, shown cause why the registration of the partnership should not be cancelled.

(2) An application may be made under this paragraph only if—

- (a) all the persons who are partners at the time of the application agree; or
- (b) if, at the time of the application, the partnership has been dissolved, all the persons who were partners immediately before dissolution agree.

(3) An application complies with this clause if—

- (a) it—

- (i) confirms that each of the persons whose agreement is required under subparagraph (2)(a) or (b) has agreed to make the application;
  - (ii) states who those persons are; and
  - (iii) confirms whether they are the persons named on the register as partners and, if not, explain why not; and
- (b) it is signed—
- (i) by the general partner or, if there is more than one general partner by all of them; or
  - (ii) by a person other than a general partner who has authority to make the application on behalf of the partnership; and
- (c) if the partnership has no general partners, it is signed by all of the persons whose agreement is required under subparagraph (2)(a) or (b).

(4) Paragraphs 4 and 5 apply in relation to the cancellation of registration of a limited partnership that has been dissolved as if the references to a limited partnership in those paragraphs were references to a dissolved limited partnership.

#### **8. Power of Registrar to cancel registration of limited partnership after inquiry**

- (1) The Registrar may cancel the registration of a limited partnership if—
- (a) the Registrar—
    - (i) reasonably believes that one or more grounds for doing so exists;
    - (ii) has made the requisite preliminary inquiries; and
    - (iii) has published the requisite cancellation of registration warning notice; and
  - (b) no person has, before the completion of those inquiries or within three months after the publication of that notice, shown cause why the registration of the partnership should not be cancelled.
- (2) The following are the grounds for cancelling the registration of a limited partnership—
- (a) that the partnership has been dissolved;
  - (b) that the partnership does not have—
    - (i) one or more general partners; and
    - (ii) one or more limited partners;
  - (c) that the partnership does not have a registered office as required by section 64;
  - (d) subject to subclause (4), if the limited partnership was formed under section 69, that the partners have not started to carry on a business with a view to making a profit.
- (3) The Registrar may not cancel the registration of a limited partnership on the ground that it does not have one or more general partners if—
- (a) an application has been made under section 52 for the appointment of a liquidator for the partnership and the application has not been determined; or

(b) a liquidator appointed in respect of the partnership has not ceased to hold office without being replaced.

(4) The Registrar may not deregister a limited partnership on the ground specified in subparagraph (2)(d) before the end of two years starting with the day on which the partnership was registered.

(5) Paragraphs 9 to 11 apply to the cancellation of registration of a limited partnership on the ground specified in subparagraph (2)(a) as if the references in those subparagraphs to a limited partnership were references to a dissolved limited partnership.

### **9. Preliminary inquiries to be made before cancellation**

(1) For the purposes of paragraph 8, the requisite preliminary inquiries before cancellation shall be made in respect of a limited considered partnership if the Registrar has sent two letters of inquiry to the registered office of the partnership in accordance with subparagraphs (2) to (5).

(2) The Registrar shall ensure that each of the letters referred to subparagraph (1)—

- (a) states that the Registrar reasonably believes that one or more of the grounds exist for cancelling the registration of the partnership;
- (b) specifies the relevant ground or grounds for cancellation; and
- (c) invites any person named on the register as a partner to show cause, within the period specified for responding to the letter, why the registration of the partnership should not be cancelled.

(3) The Registrar shall send the second letter—

- (a) at the end of two weeks after the expiry of the period specified for replying to the first letter or as soon as possible thereafter; and
- (b) by registered post or recorded delivery.

(4) The period for responding to each of the letters is one month from the date of receipt of the letter.

(5) If there are reasonable grounds for believing that the partnership does not have a registered office, the Registrar shall send the letters of inquiry—

- (a) in the case of each person named on the register as a general partner, to the address of that person as specified in the register; and
- (b) in the case of each person named on the register as a limited partner, to the address of such person, if known to the Registrar, address if known to the Registrar.

### **10. Deregistration warning**

(1) The requirements for a warning notice on cancellation of registration are that—

- (a) the notice shall comply with this paragraph; and
- (b) at least three months before the registration of the relevant limited partnership is cancelled, the notice shall be published in the *Gazette*.

(2) A cancellation of registration warning notice shall be considered to comply with this paragraph if it—

- (a) specifies the name under which the relevant limited partnership is registered;

- (b) states that the Registrar is contemplating cancelling the registration of the partnership under this Act; and
- (c) invites any person to show cause why the registration of that partnership should not be cancelled.

(6) In this paragraph, “**limited partnership**” includes a limited partnership that has been dissolved.

#### **11. Action after deregistration**

(1) If the Registrar deregisters a limited partnership, the Registrar shall publish notice of the fact in the *Gazette*, specifying the date on which the deregistration is effected.

(2) Cancellation of the registration of a limited partnership takes effect on the date specified in the relevant notice of cancellation.

(3) On deregistration—

- (a) the partnership becomes a general partnership; and
- (b) each general or limited partner in the partnership becomes a partner in the general partnership.

(4) Subparagraph (3) shall not apply if the limited partnership concerned had been dissolved before its registration was cancelled.

(5) Cancellation of registration shall not affect the personal liability of a partner for partnership obligations incurred while the partnership was registered as a limited partnership.

#### **12. Order where limited partnership should not have been deregistered**

(1) This paragraph applies if—

- (a) the registration of a limited partnership has been cancelled;
- (b) after the cancellation, the partnership continued to exist as a general partnership; and
- (c) the partnership was subsequently re-registered as a limited partnership under section 69.

(2) An application for an order under this paragraph may be made to the Court by a limited partnership to which this clause applies or by a partner of that partnership.

(3) On the hearing of an application made under subparagraph (2), the Court may by order make such provisions as it considers shall put the limited partnership concerned and other persons—

- (a) in the position they would have been in had the registration of that partnership not been cancelled; or
- (b) so nearly in that position as the Court considers just and equitable.

(4) Notwithstanding subparagraph (3), the Court may make such an order only if it considers that—

- (a) the condition in subparagraph (3) or (4) is satisfied; and
- (b) it is just and equitable to do so.

(5) If the registration of the limited partnership concerned was cancelled under paragraph 7, the condition is that the application for cancellation was made in contravention of subparagraph (2) of that paragraph 7.

(6) If the registration of the limited partnership concerned was cancelled under paragraph 8, the condition is that either—

- (a) none of the grounds for cancellation specified in subparagraph (2) of paragraph 8 were applicable to the partnership; or
- (b) the registration of the partnership was cancelled in contravention of paragraph 8(3) or (4).

(7) An application under subparagraph (2) shall be made before the end of three years starting with the day on which the notice of cancellation was published under paragraph 11.

### PART 3 – ADMINISTRATION OF THE REGISTRATION SYSTEM

#### **13. Power of Registrar in relation to lodgement of documents**

(1) For the purposes of this Schedule, “lodge”, in relation to a document required to be lodged with the Registrar, includes sending the document in a form and by means approved by the Registrar.

(2) If—

- (a) the Registrar directs that a class of documents are lodged with a person designated by the Registrar; and
- (d) the direction is printed and made available to the public with or without payment,

documents of that class which are delivered to a person other than the designated person shall be treated as if they had not been lodged with the Registrar for the purposes of this Act.

#### **14. Registration of information about limited partnerships**

(1) The information contained in a document lodged with the Registrar under this Part may be registered and kept by the Registrar in any form the Registrar thinks fit, provided it is possible to inspect the information and to produce a copy of it in legible form.

(2) The Registrar shall keep for not less than ten years the originals of documents lodged under his part, and may destroy them thereafter.

#### **15. Inspection of registers etc.**

(1) Any person may inspect information kept by the Registrar for the purposes of this Act and may require—

- (a) a copy, in such form as the Registrar considers appropriate, of information kept in the register; or
- (b) a certified copy of the original of a document or of any specified part of it.

(2) Any person may require a certificate, signed by the Registrar, of—

- (a) the registration of a partnership as a limited partnership; or
- (b) the registration of a change in the name of a limited partnership.