

(Reprint No. 1)

SOUTH AUSTRALIA

**PARTNERSHIP ACT 1891**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 January 1998.*

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# PARTNERSHIP ACT 1891

being

The Partnership Act 1891 No. 506 of 1891  
[Assented to 14 October 1891]

as amended by

Statute Law Revision Act 1935 No. 2246 of 1935 [Assented to 19 December 1935]

Statute Law Revision Act (No. 2) 1975 No. 118 of 1975 [Assented to 4 December 1975]

Partnership (Limited Partnerships) Amendment Act 1997 No. 54 of 1997 [Assented to 31 July 1997]<sup>1</sup>

<sup>1</sup> Came into operation 1 January 1998: *Gaz.* 18 December 1997, p. 1644.

**NOTE:**

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix.*

**An Act to declare and amend the law of partnership.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

**1A.** This Act may be cited as the *Partnership Act 1891*.

**Interpretation**

**1B.** In this Act—

"**business**" includes any trade, occupation or profession;

"**Court**" means the Supreme Court of South Australia.

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**PART 2  
PARTNERSHIPS GENERALLY**

**DIVISION 1—NATURE OF PARTNERSHIPS**

**Definition of partnership**

1. (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(2) But the relation between members of any company or association which is—

(a) incorporated under the *Corporations Law*; or

(b) formed or incorporated by or in pursuance of any other Act of Parliament, or letters patent, or Royal Charter:

is not a partnership within the meaning of this Act.

**Rules for determining existence of partnership**

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

(a) joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use of the property so held;

(b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or do not have a joint or common right or interest in any property from which or from the use of which the returns are derived;

(c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that the person is a partner in the business; but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make the person a partner in the business; and, in particular—

(i) the receipt by a person of a debt or other liquidated amount, by instalments or otherwise, out of the accruing profits of a business, does not of itself make the person a partner in the business or liable as such;

(ii) a contract for the remuneration of a servant or agent of a person engaged in a business, by a share of the profits of the business, does not of itself make the servant or agent a partner in the business or liable as such;

(iii) a person being the spouse or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;

(iv) the advance of money by way of loan to a person engaged or about to engage in any business, on a contract with that person that the lender will receive a rate of interest varying with the profits, or will receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such if the contract is in writing and is signed by or on behalf of all the parties to the contract;

- (v) a person receiving, by way of annuity or otherwise, a portion of the profits of a business in consideration of the sale by the person of the goodwill of the business, is not by reason only of such receipt a partner in the business or liable as such.

**Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency**

3. In the event of any person to whom money has been advanced by way of loan under a contract of a type mentioned in section 2, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudicated insolvent or taking the benefit of any Act for the relief of insolvent debtors, or entering into an arrangement to pay the person's creditors less than one hundred cents in the dollar, or dying in insolvent circumstances, the lender of the loan is not entitled to recover anything in respect of the loan, and the seller of the goodwill is not entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

**Meaning of "firm"**

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

**DIVISION 2—RELATIONSHIP OF PARTNERS TO PERSONS DEALING WITH THEM**

**Power of partner to bind the firm**

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

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

6. (1) An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person authorised, whether a partner or not, is binding on the firm and all the partners.

(2) This section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

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

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

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

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



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**Liability of partners**

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

**Liability of the firm for wrongs**

10. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of the partner's co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable for the loss, injury or penalty to the same extent as the partner so acting or omitting to act.

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

11. In the following cases, namely—

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

the firm is liable to make good the loss.

**Liability for wrongs joint and several**

12. Every partner is liable jointly with the partner's co-partners, and also severally, for everything for which the firm, while the partner is a partner of it, becomes liable under section 10 or 11.

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

13. (1) If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested in it.

(2) However—

- (a) this section does not affect any liability incurred by a partner by reason of the partner's having notice of a breach of trust; and
- (b) nothing in this section prevents trust money from being followed and recovered from the firm if it is still in the firm's possession or under its control.

**Persons liable by "holding out"**

14. (1) Every one who by words spoken or written or by conduct represents himself or herself, or who knowingly suffers himself or herself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation, or suffering it to be made.

(2) However, where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name, or of the deceased partner's name as part of that name, does not of itself make the partner's executor's or administrator's estate or effects liable for any partnership debts contracted after the partner's death.

**Admissions and representations of partners**

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

**Notice to acting partners to be notice to the firm**

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

**Liability of incoming and outgoing partners**

**17.** (1) A person who is admitted as a partner into an existing firm does not as a result of being so admitted become liable to the creditors of the firm for anything done before the person became a partner.

(2) A partner who retires from a firm does not as a result of that retirement cease to be liable for partnership debts or obligations incurred before the partner's retirement.

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between that partner and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

**Revocation of continuing guaranty by change in firm**

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

**DIVISION 3—RELATIONSHIP BETWEEN PARTNERS**

**Variation by consent of terms of partnership**

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

**Partnership property**

**20.** (1) All property and rights and interests in property originally brought into the partnership stock, or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) However, the legal estate or interest in any land which belongs to the partnership will devolve according to the nature and tenure of the estate or interest and the general rules of law applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) When co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

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**Property bought with partnership money**

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

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

22. Where land or any interest in land has become partnership property, it will, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner) as personal and not real estate.

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

23. (1) After the commencement of this Act a writ of execution will not issue against any partnership property, except on a judgment against the firm.

(2) A court may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest on the judgment debt, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to the partner in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners will be at liberty at any time to redeem the interest charged, or, in case of a sale being directed, to purchase the same.

**Rules as to interests and duties of partners subject to special agreement**

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

- (a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;
- (b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by the partner—
  - (i) in the ordinary and proper conduct of the business of the firm; or
  - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which the partner has agreed to subscribe, is entitled to interest at the rate of seven per centum per annum from the date of the payment or advance;
- (d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by the partner;
- (e) every partner may take part in the management of the partnership business;
- (f) no partner will be entitled to remuneration for acting in the partnership business;
- (g) no person may be introduced as a partner without the consent of all existing partners;

- (h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners;
- (i) the partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when the partner thinks fit, have access to and inspect and copy any of them.

#### **Expulsion of partner**

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

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

26. (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of the partner's intention so to do to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, will be sufficient for this purpose.

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

27. (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners, or such of them as habitually acted in the business during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

#### **Duties of partners to render accounts, etc.**

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

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

29. (1) Every partner must account to the firm for any benefit derived by the partner without the consent of the other partners from any transaction concerning the partnership, or from any use by the partner of the partnership property, name, or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs of the partnership have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

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

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

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

31. (1) An assignment by any partner of the partner's share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

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(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between the partner and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

**DIVISION 4—DISSOLUTION OF PARTNERSHIP**

**Dissolution by expiration or notice**

**32.** Subject to any agreement between the partners, a partnership is dissolved—

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

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

**Dissolution by insolvency, death, or charge**

**33.** (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or insolvency of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers the partner's share of the partnership property to be charged under this Act for the partner's separate debt.

**Dissolution by illegality of partnership**

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

**Dissolution by the court**

**35.** On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:

- (a) when a partner becomes, through permanent mental incapacity, incapable of managing the partner's affairs, in which case the application may be made on behalf of that partner by the partner's guardian, committee, next friend or other person having title to intervene or by any other partner;
- (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing the partner's part of the partnership contract;
- (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
- (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself or herself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with the partner;

- (e) when the business of the partnership can only be carried on at a loss;
- (f) whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

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

**36.** (1) Where a person deals with a firm after a change in its constitution, the person is entitled to treat all apparent members of the old firm as still being members of the firm until the person has notice of the change.

(2) An advertisement in the *Gazette* will be notice as to persons who did not have dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, insolvency, or retirement, respectively.

**Right of partners to notify dissolution**

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

**Continuing authority of partners for purposes of winding up**

**38.** (1) Subject to this section, after the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

(2) The firm is not bound by the acts of an insolvent partner (however this does not affect the liability of a person who, after the insolvency, represents himself or herself, or knowingly suffers himself or herself to be represented, as a partner of the insolvent).

**Rights of partners as to application of partnership property**

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

**Apportionment of premium where partnership prematurely dissolved**

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

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

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

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

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

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

**42.** (1) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or the partner's estate, then, in the absence of any agreement to the contrary, the outgoing partner or the partner's estate is entitled, at the option of the partner or the partner's representatives, to such share of the profits made since the dissolution as the Court may find to be attributable to the use of the partner's share of the partnership assets, or to interest at the rate of seven per cent per annum on the amount of the partner's share of the partnership assets.

(2) However, where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or the partner's estate, as the case may be, is not entitled to any further or other share of profits; but if any partner, assuming to act in exercise of the option, does not in all material respects comply with the terms of the option contained in the contract, the partner is liable to account under the foregoing provisions of this section.

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

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

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

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

- (a) losses, including losses and deficiencies of capital, will be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;
- (b) the assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, will be applied in the following manner and order:
  - (i) in paying the debts and liabilities of the firm to persons who are not partners of the firm;
  - (ii) in paying to each partner ratably what is due from the firm to the partner for advances, as distinguished from capital;

- (iii) in paying to each partner ratably what is due from the firm to the partner in respect of capital;
- (iv) the ultimate residue, if any, will be divided among the partners in the proportion in which profits are divisible.

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**DIVISION 5—MISCELLANEOUS PROVISIONS**

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

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



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**PART 3  
LIMITED PARTNERSHIPS**

**DIVISION 1—PRELIMINARY**

**Definitions**

47. In this Part—

"**Commission**" means the Corporate Affairs Commission;

"**general partner**" means a partner in a limited partnership who is not a limited partner;

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

"**limited partnership**" means a partnership formed in accordance with this Part;

"**Register**" means the Register of Limited Partnerships maintained under this Part.

**Application of general law to limited partnerships**

48. Parts 1 and 2 of this Act apply to limited partnerships, except as provided by this Part.

**DIVISION 2—NATURE AND FORMATION OF LIMITED PARTNERSHIPS**

**Composition of limited partnership**

49. (1) A limited partnership will consist of at least one general partner and at least one limited partner.

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

**Size of a limited partnership**

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

(2) The number of general partners must not (if the partnership consisted only of those general partners) result in the partnership being an outside partnership for the purposes of section 112 of the *Corporations Law*.

**Formation of a limited partnership**

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

**DIVISION 3—REGISTRATION OF LIMITED PARTNERSHIPS**

**Application for registration**

52. (1) An application for registration of a limited partnership must—

(a) be made to the Commission in the manner and form approved by the Commission; and

(b) be signed—

(i) by each proposed general partner; and

(ii) by each proposed limited partner; and

- (c) where the firm-name proposed in the application would require registration as a business name under the *Business Names Act 1996*—be lodged not earlier than two months before the date shown in the application as the proposed date on which business will commence to be carried on under the firm-name; and
- (d) be accompanied by the fee fixed by regulation.

(2) An application will, for the purposes of this Act, be taken to be deficient and not to have been lodged with the Commission if—

- (a) it is incomplete or inaccurate in a material particular; or
- (b) the applicant fails to provide the Commission with any information or document required by the Commission for the purposes of determining the application; or
- (c) it is lodged outside the period allowed; or
- (d) the fee payable in respect of the application is not paid (whether because of the dishonouring of a cheque or otherwise).

(3) Where the firm-name proposed in an application under this section would require registration as a business name under the *Business Names Act 1996*, the application under this section will be taken also to operate as an application for registration of the firm-name as a business name under that Act (and the fee that would otherwise be payable in respect of an application for registration under that Act is waived).

### Registration

**53.** (1) On receipt of a sufficient application for registration of a limited partnership, the Commission must register the limited partnership by recording in the Register the following particulars:

- (a) the firm-name;
- (b) a concise description of the true nature of the business being carried on or proposed to be carried on under that firm-name;
- (c) an address for service of the partnership (the "**registered office**" of the partnership) and the address of each place in this State at which the business of the partnership is or is proposed to be carried on;
- (d) in the case of each partner who is a natural person—the full name, date of birth and residential address of the person;
- (e) in the case of each partner that is a body corporate—the corporate name and the address of the registered office (within the meaning of the *Corporations Law*) or the principal office, in the State of the body corporate;
- (f) a statement, in relation to each partner, as to whether that partner is a general partner or a limited partner;
- (g) a statement, in relation to each limited partner, to the effect that the partner is a limited partner whose liability to contribute is to be limited to the extent of the amount specified in the statement (being the amount of any capital, or the value of any property, that the limited partner has agreed to contribute to the partnership);

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- (h) a statement, in relation to each limited partner, of the amount of any capital and the value of any property that the partner has agreed to contribute to the partnership, showing separately the amount or value actually contributed and the amount or value outstanding;
  - (i) any other particulars prescribed by regulation.
- (2) However, the Commission—
- (a) must not register the limited partnership if any general partner would, because of a conviction for an offence, be prohibited under Division 7 from carrying on business as a general partner; and
  - (b) may, where the firm-name proposed in an application under this section requires registration as a business name under the *Business Names Act 1996*, postpone registration of the limited partnership pending registration of the name as a business name under that Act.

**Register of limited partnerships**

**54.** (1) For the purposes of this Part, the Commission must keep, in such form as it considers appropriate, a register of limited partnerships registered under this Part (the "**Register of Limited Partnerships**").

(2) The Commission may accept and register a notice lodged by or on behalf of the partners of a limited partnership (whether lodged before or after registration of the limited partnership), in which event the notice is to be treated as forming part of the Register.

(3) On payment of the prescribed fee, the Commission must make the information recorded in the Register available for public inspection.

**Changes in registered particulars**

**55.** (1) If any change occurs such that particulars contained in the Register in relation to a limited partnership are no longer accurate or complete, the partnership must, within 28 days of the change, give the Commission notice of the change in accordance with this section.

(2) If a partnership fails to comply with subsection (1) each of the partners required to sign the notice in accordance with subsection (3) is guilty of an offence.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (3) A notice under this section must—
- (a) be in writing in the form approved by the Commission; and
  - (b) contain such particulars as are necessary to correct or supply the deficiency in the Register; and
  - (c) be signed—
    - (i) by all the general partners or, if the regulations so provide, by such of the general partners as may be prescribed; and
    - (ii) if the change relates to the admission of a limited partner or a change in the liability of a limited partner to contribute—by the limited partner.

(4) If the statement is duly lodged, the Commission must record the change in the Register unless—

- (a) as a result of the change the partnership is not eligible to be registered as a limited partnership; or
- (b) the change involves the conversion of the firm-name to a business name, or a different business name, that requires registration under the *Business Names Act 1996*, in which case, the Commission may postpone recording the change pending registration of the name under that Act.

**Certificates of registration, etc.**

**56.** (1) The Commission must, at the time of registering a limited partnership or of recording a change in the composition of a limited partnership, issue to the general partners a certificate as to the formation and composition at that time of the limited partnership.

(2) The Commission may, on application and payment of the prescribed fee, issue to the applicant a certificate as to the formation and composition of a limited partnership or as to any other particulars recorded in the Register.

(3) A certificate under this section may be in such form as the Commission thinks fit.

(4) A certificate under this section—

- (a) as to the formation of a limited partnership, is conclusive evidence that the partnership was formed on the date of registration referred to in the certificate;
- (b) as to the composition of a limited partnership, is (unless the contrary is established) conclusive evidence that the partnership consisted at the relevant time of the general partners and limited partners named in the certificate;
- (c) as to any other particular of a limited partnership recorded in the Register, is (unless the contrary is established) conclusive evidence of that particular.

**Commission may correct Register**

**57.** (1) The Commission may, on evidence that appears sufficient to it, correct an error or supply a deficiency in the Register or in a certificate issued under this Act.

(2) The Commission may accept and register a notice lodged by or on behalf of the partners of a limited partnership to correct an error in, or to supply a particular omitted from, a notice previously lodged and registered and, in that event, the notice previously lodged and the notice lodged under this subsection must be read as one and are both to be treated as forming part of the Register.

**DIVISION 4—LIMITATION OF LIABILITY OF LIMITED PARTNERS**

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

**58.** (1) The liability of a limited partner to contribute to the debts or obligations of the limited partnership is (subject to this Part) not to exceed the amount shown in relation to the limited partner in the Register as the extent to which the limited partner is liable to contribute.

(2) If a limited partner makes a contribution towards the debts or obligations of the limited partnership, the liability of the limited partner is reduced to such part of the amount shown in the Register as remains unpaid.

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**Change in liability of limited partner**

**59.** (1) Any reduction in the liability of a limited partner caused by a reduction in the relevant amount shown in the Register in relation to the partner does not extend to any debt or obligation of the limited partnership that arose before the reduction was recorded in the Register.

(2) Any increase in the liability of a limited partner caused by an increase in the relevant amount shown in the Register in relation to the partner extends to any debt or obligation of the limited partnership that arose before the increase was recorded in the Register.

**Change in status of partners**

**60.** (1) If a general partner becomes a limited partner, the limitation on liability does not extend to any debt or obligation of the limited partnership that arose before the partner became a limited partner.

(2) If a limited partner becomes a general partner, the limitation on liability does not extend to any debt or obligation of the limited partnership arising after the partner becomes a general partner.

**Liability for business conducted outside the State**

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

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

**62.** (1) In this section—

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

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

(2) Any limitation under a corresponding law on the liability of a limited partner in a recognised limited partnership extends to any debt or obligation incurred in connection with the conduct of the partnership's business in this State.

(3) The law of another State or Territory may not be declared to be a corresponding law unless the Minister has certified to the Governor—

(a) that the provisions of the law are similar to the provisions of this Part; and

(b) that under the law the limitation of liability of limited partners in a limited partnership formed in accordance with this Part extends to any debt or obligation incurred in connection with the conduct of the partnership's business in that State or Territory.

(4) The law of another country may not be declared to be a corresponding law unless the Minister has certified to the Governor that the law provides for the limitation of liability for partners in certain partnerships.

**Contribution towards discharge of debts, etc.**

**63.** (1) A contribution made by a limited partner towards the discharge of debts or obligations of a limited partnership is to be in the form of money only.

(2) If the whole or any part of such a contribution is received back by the limited partner, the liability of the limited partner is restored accordingly.

**Limitation on liability may not be varied by partnership agreement, etc.**

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

**DIVISION 5—OTHER MODIFICATIONS OF GENERAL LAW OF PARTNERSHIP**

**Limited partner not to take part in the management of partnership**

**65.** (1) A limited partner must not take part in the management of the business of the limited partnership and does not have power to bind the limited partnership.

(2) If a limited partner takes part in the management of the business of the limited partnership, the limited partner is liable, as if the partner were a general partner, for the debts and obligations of the partnership incurred while the limited partner takes part in the management of that business.

(3) A limited partner is not to be regarded as taking part in the management of the business of the limited partnership merely because the limited partner—

- (a) is an employee or an independent contractor of the partnership or of a general partner, or is an officer of a general partner that is a body corporate; or
- (b) gives advice to, or on behalf of, the limited partnership or a general partner in the proper exercise of functions arising from the engagement of the limited partner in a professional capacity or arising from business dealings between the limited partner and the partnership or a general partner; or
- (c) gives a guarantee or indemnity in respect of any debt or obligation of the partnership or of a general partner; or
- (d) takes any action, or participates in any action by any other limited partner, for the purpose of enforcing rights or safeguarding interests as a limited partner; or
- (e) if authorised by the partnership agreement, participates in general meetings of all the partners; or
- (f) exercises any power conferred on the limited partner by subsection (4).

(4) A limited partner or a person authorised by the limited partner may at any time—

- (a) have access to and inspect the books of the partnership and copy any of them; and
- (b) examine the state and prospects of the business of the partnership and advise and consult with other partners in relation to such matters.

(5) The provisions of this section may not be varied by the partnership agreement or the consent of the partners.

**Differences between partners**

**66.** (1) A difference arising as to ordinary matters connected with the business of a limited partnership may be decided by a majority of the general partners.

(2) The provisions of this section may be varied by the partnership agreement or the consent of the partners.

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**Change in partners**

**67.** (1) A limited partner may, with the consent of the general partners, assign the limited partner's share in the limited partnership (in which case the assignee will be taken to be a limited partner in substitution for the assignor with all the rights and obligations of the assignor).

(2) A person may be admitted as a partner in a limited partnership without the necessity to obtain the consent of any limited partner.

(3) The provisions of this section may be varied by the partnership agreement or the consent of the partners.

**DIVISION 6—DISSOLUTION AND CESSATION OF LIMITED PARTNERSHIPS**

**Dissolution not available in certain cases**

**68.** (1) Subject to the terms of any agreement between the partners in a limited partnership—

- (a) a limited partner is not entitled to dissolve the partnership by notice; and
- (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed the partner's share of the partnership property to be charged for the partner's separate debts or obligations; and
- (c) the death, insolvency or retirement or, in the case of a body corporate, the dissolution of a limited partner does not dissolve the partnership.

(2) The fact that a limited partner in a limited partnership becomes, through permanent mental incapacity, incapable of managing the partner's affairs is not a ground for dissolution of the partnership by a court unless the share and interest of the partner in the partnership cannot be otherwise ascertained or realised.

**Cessation of limited partnerships**

**69.** (1) A partnership ceases to be a limited partnership if none of the partners is a limited partner or the partners agree that they will carry on the business of the partnership otherwise than as a limited partnership.

(2) If a limited partnership ceases to be a limited partnership and the former members of the limited partnership, or some of them, continue in association or partnership, that association or partnership is no longer taken to be formed in accordance with this Part.

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

**70.** (1) If a limited partnership—

- (a) is dissolved; or
- (b) ceases to carry on business; or
- (c) ceases to be a limited partnership,

the general partners who were registered immediately before the dissolution or cessation must, within 28 days of the dissolution or cessation, lodge with the Commission a notice, specifying the date on which it took effect.

Maximum penalty:       \$1 250.

Expiation fee:           \$160.

(2) The notice must be in the form approved by the Commission and contain the particulars required by the regulations or the approved form of notice.

(3) On receipt of a notice duly completed under this section, the Commission will record in the Register the fact of the dissolution or cessation and the date on which it took effect.

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

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

### **DIVISION 7—MISCELLANEOUS**

#### **Signing of documents to be lodged with Commission**

**72.** (1) A document lodged with the Commission will be taken to have been signed by a person required to sign the document if—

- (a) in the case of a natural person, the document is signed by another authorised by the person in writing to sign on the person's behalf;
- (b) in the case of a body corporate, the document is signed by a director of the body corporate or a person authorised by a director in writing to sign on behalf of the body corporate.

(2) A person must, if required by the Commission, produce the written authorisation to the Commission.

(3) If the Commission is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a document, the Commission may accept the document for registration without the person's signature.

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

**73.** (1) The regulations may prescribe a model limited partnership agreement or model limited partnership agreements.

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

#### **Certain convicted offenders not to carry on business as general partners**

**74.** (1) A person who has been convicted within or outside this State—

- (a) on an indictment of an offence in connection with the promotion, formation or management of a body corporate; or
- (b) of an offence involving fraud or dishonesty punishable by imprisonment for a period, or maximum period, of at least three months; or
- (c) of a prescribed offence against the *Companies (South Australia) Code* or the *Corporations Law*,

must not, within the period of five years after the conviction or, if the person was sentenced to imprisonment on such conviction, within the period of five years after release from prison, continue or commence (or recommence) to carry on business in this State as a general partner unless the person has obtained leave of the District Court to carry on business as a general partner.

Maximum penalty: \$5 000.



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(2) A person who intends to make an application for leave of the District Court under this section must give the Commission at least 28 days' notice of the proposed application.

(3) The Commission may be represented and heard at the hearing of an application under this section.

(4) When granting leave under this section, the District Court may impose such conditions or limitations as it thinks fit and any person contravening or failing to comply with any such condition or limitation is guilty of an offence.

Maximum penalty: \$5 000.

**Identification of limited partnerships**

**75.** (1) In this section—

"**document**" includes any letter, notice, publication, written offer, contract, order for goods or services, invoice, bill of exchange, promissory note, cheque, negotiable instrument, endorsement, letter of credit, receipt and statement of account.

(2) Any document issued on behalf of a limited partnership in connection with the conduct of the partnership's business must contain in legible letters the words "A Limited Partnership" immediately adjacent to its firm-name.

(3) A person who—

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

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

is guilty of an offence.

Maximum penalty: \$1 250.

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

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

Maximum penalty: \$1 250.

**Registered office**

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

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

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

Maximum penalty: \$1 250.

**Service**

77. If—

- (a) under this or any other Act or rules of court any notice, process or other document is required or authorised to be served on a person by posting or delivering it to or leaving it at some place of business or other place or address; and
- (b) the person is a partner of a limited partnership,

then service of the notice, process or other document by that means to or at the address of the registered office of the partnership for the time being shown in the Register is to be taken to be sufficient service on the person for the purposes of that Act or those rules.

**Entry in Register constitutes notice**

78. An entry in the Register of any particular fact concerning a limited partnership, including any entry stating the effect of any notice received by the Commission—

- (a) is sufficient notice of the fact or of the effect of the notice to all persons who deal with the partnership; and
- (b) has effect, for the purposes of section 36(2), as if it were an advertisement in the *Gazette*.

**Giving false or misleading information**

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

Maximum penalty: \$5 000.

**Statutory declaration**

80. The Commission may, if it thinks fit, require a document lodged with the Commission under this Act to be verified by a statutory declaration made by the person who signed the document and, if it is not so verified, the document will be taken not to have been lodged with the Commission.

**General power of exemption of Commission**

81. (1) The Commission may, if it thinks fit—

- (a) extend any limitation of time prescribed by or under this Act whether or not the prescribed period has expired; or
- (b) exempt a person from the obligation to comply with any provision of this Act.

(2) An extension or exemption under subsection (1) may be granted by the Commission on such conditions as it thinks fit.

(3) A person must not contravene or fail to comply with a condition imposed by the Commission under subsection (2).

Maximum penalty: \$5 000.

(4) The Commission may, at any time by instrument in writing, revoke or vary an extension or exemption under subsection (1).

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**Immunity from liability**

**82.** (1) A person engaged in the administration or enforcement of this Act incurs no liability for an honest act or omission in the exercise or discharge or purported exercise or discharge of a power, duty or function under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies against the Crown.

**Regulations**

**83.** (1) The Governor may make such regulations as are contemplated by this Part or as are necessary or expedient for the purposes of this Part.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) fix and provide for the payment of fees (including fees for the late lodging of documents) to be paid by any person under this Part; and
- (b) fix a fine, not exceeding \$2 500, for contravention of or non-compliance with any regulation.

**APPENDIX**

**LEGISLATIVE HISTORY**

· Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 8 of The Public General Acts of South Australia 1837-1975 at page 1.

· Legislative history since 3 February 1976 is as follows:

Part 1 comprising ss. 1A, 1B and heading inserted by 54, 1997, s. 3

|                               |                                                                                             |
|-------------------------------|---------------------------------------------------------------------------------------------|
| Heading preceding section 1:  | repealed by 54, 1997, s. 4                                                                  |
| Part 2 Heading:               | inserted by 54, 1997, s. 4                                                                  |
| Part 2 Division 1 heading:    | inserted by 54, 1997, s. 4                                                                  |
| Section 1(2):                 | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 2:                    | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 2 I, II and III:      | redesignated as s. 2(a), (b) and (c) in pursuance of the <i>Acts Republication Act 1967</i> |
| Section 2 III(a) - (e):       | redesignated as s. 2(c)(i)-(v) in pursuance of the <i>Acts Republication Act 1967</i>       |
| Section 3:                    | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Heading preceding section 5:  | repealed by 54, 1997, s. 5                                                                  |
| Part 2 Division 2 heading:    | inserted by 54, 1997, s. 5                                                                  |
| Section 5:                    | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 6:                    | amended and redesignated as s. 6(1) by 54, 1997, s. 10 (Sched.)                             |
| Section 6(2):                 | inserted by 54, 1997, s. 10 (Sched.)                                                        |
| Sections 7 - 12:              | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 13:                   | amended and redesignated as s. 13(1) by 54, 1997, s. 10 (Sched.)                            |
| Section 13(2):                | inserted by 54, 1997, s. 10 (Sched.)                                                        |
| Section 14(1) and (2):        | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 17(1) - (3):          | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Heading preceding section 19: | repealed by 54, 1997, s. 6                                                                  |
| Part 2 Division 3 heading:    | inserted by 54, 1997, s. 6                                                                  |
| Section 20(2):                | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 22:                   | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 23(1) - (3):          | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 24:                   | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 24 I - IX:            | redesignated as s. 24(a)-(i) in pursuance of the <i>Acts Republication Act 1967</i>         |
| Section 26(1) and (2):        | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 27(2):                | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 28:                   | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 29(1) and (2):        | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 30:                   | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 31(1) and (2):        | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Heading preceding section 32: | repealed by 54, 1997, s. 7                                                                  |
| Part 2 Division 4 heading:    | inserted by 54, 1997, s. 7                                                                  |
| Section 32:                   | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 33(2):                | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 35:                   | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 36(1) and (2):        | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 37:                   | amended by 54, 1997, s. 10 (Sched.)                                                         |
| Section 38:                   | amended and redesignated as s. 38(1) by 54, 1997, s. 10 (Sched.)                            |
| Section 38(2):                | inserted by 54, 1997, s. 10 (Sched.)                                                        |
| Section 39:                   | amended in pursuance of the <i>Acts Republication Act 1967</i>                              |
| Section 40:                   | amended by 54, 1997, s. 10 (Sched.)                                                         |

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|                               |                                                                                                   |
|-------------------------------|---------------------------------------------------------------------------------------------------|
| Section 41:                   | amended by 54, 1997, s. 10 (Sched.) and in pursuance of the<br><i>Acts Republication Act 1967</i> |
| Section 42(1):                | amended by 54, 1997, s. 10 (Sched.) and in pursuance of the<br><i>Acts Republication Act 1967</i> |
| Section 42(2):                | amended by 54, 1997, s. 10 (Sched.)                                                               |
| Section 44:                   | amended by 54, 1997, s. 10 (Sched.) and in pursuance of the<br><i>Acts Republication Act 1967</i> |
| Section 44(b) I - IV:         | redesignated as s. 44(b)(i)-(iv) in pursuance of the <i>Acts<br/>Republication Act 1967</i>       |
| Heading preceding section 45: | repealed by 54, 1997, s. 8                                                                        |
| Part 2 Division 5 heading:    | inserted by 54, 1997, s. 8                                                                        |
| Section 45:                   | repealed by 54, 1997, s. 8                                                                        |
| Section 46:                   | amended by 54, 1997, s. 10 (Sched.)                                                               |
| Sections 47 and 48:           | repealed by 54, 1997, s. 9                                                                        |
|                               | Part 3 comprising ss. 47 - 83 and headings inserted by 54, 1997,<br>s. 9                          |