

South Australia

## Partnership Regulations 2021

under the *Partnership Act 1891*

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### Schedule 1—Revocation of *Partnership Regulations 2006*

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#### 1—Short title

These regulations may be cited as the *Partnership Regulations 2021*.

#### 2—Commencement

These regulations come into operation on 1 August 2021.

#### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Partnership Act 1891*;

*assets*, in relation to an incorporated limited partnership, means the assets remaining after satisfaction of the liabilities of the partnership and the costs, charges and expenses of the winding up of the incorporated limited partnership;

*Corporations Act* means the *Corporations Act 2001* of the Commonwealth.

#### 4—Voluntary winding up of incorporated limited partnerships

- (1) Subject to subregulation (2), an incorporated limited partnership may be wound up voluntarily—
  - (a) if the partnership agreement sets out the terms on which the partnership may be voluntarily wound up—in accordance with the agreement; or

- (b) subject to the partnership agreement—if the limited partners so resolve by special resolution.
- (2) An incorporated limited partnership may not be wound up voluntarily if—
  - (a) an application for the partnership to be wound up in insolvency has been filed in the Court; or
  - (b) the Court has ordered that the partnership be wound up in insolvency (whether or not the order was made on such an application).
- (3) On a voluntary winding up of an incorporated limited partnership—
  - (a) if the partnership agreement sets out how the assets are to be dealt with on a voluntary winding up—the assets must be dealt with accordingly;
  - (b) in any other case—the assets must be distributed among the partners in shares that are proportionate to their respective contributions of capital or property to the partnership.
- (4) A person aggrieved by the operation of this regulation in relation to the assets of an incorporated limited partnership may apply to the Court.
- (5) On an application under subregulation (4), the Court may make such orders as it considers necessary or appropriate in the circumstances.

### **5—Winding up of incorporated limited partnership on Commission's certificate**

- (1) The Commission may, by written notice given to an incorporated limited partnership, require the partnership to show good cause as to why it should not be required to be wound up if the Commission considers that—
  - (a) the partnership has ceased to carry on business; or
  - (b) having been registered under Part 3 of the Act on the basis that the partnership is or is intended to be registered as a VCLP, AFOF or ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth—
    - (i) the partnership has not, within 2 years after its incorporation, registered under Part 2 of that Act as a VCLP, AFOF or ESVCLP; or
    - (ii) the partnership's registration under Part 2 of that Act has been revoked; or
  - (c) having been registered under Part 3 of the Act on the basis that the partnership is or is intended to be a venture capital management partnership (*VCMP*) within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth—it has ceased to meet, or has not within the period of 2 years after its incorporation met, the requirements set out in that section of that Act for recognition as a VCMP; or
  - (d) none of the partners is a limited partner; or
  - (e) incorporation of the partnership has been obtained by mistake or fraud; or
  - (f) the partnership exists for an illegal purpose.

- (2) If, at the end of 28 days after notice is given under subregulation (1), the Commission is satisfied that—
  - (a) the incorporated limited partnership should be required to be wound up; and
  - (b) good cause has not been shown why the incorporated limited partnership should not be required to be wound up,the Commission may publish in the Gazette a certificate as to the requirement that the incorporated limited partnership be wound up.
- (3) The Commission must—
  - (a) as soon as possible after the publication of the certificate—give notice of the publication to the incorporated limited partnership; and
  - (b) as soon as practicable after giving notice of the publication under paragraph (a)—record the giving of the notice in the register.

#### **6—Review of certificate as to requirement that incorporated limited partnership be wound up**

- (1) A person whose interests are affected by a decision of the Commission to publish a certificate as to the requirement that an incorporated limited partnership be wound up may, within 28 days after the certificate is published, apply to the Court for review of the decision.
- (2) The operation of the certificate is suspended on the making of an application for review until the application is withdrawn or the review is decided.
- (3) The Court may, on a review—
  - (a) affirm the decision under review; or
  - (b) set aside the decision under review and cancel the certificate.
- (4) Nothing in this regulation prevents the Commission cancelling a certificate at any time after an application is made under subregulation (1).

#### **7—Procedure for winding up required on Commission's certificate**

- (1) The winding up of an incorporated limited partnership required on a certificate of the Commission—
  - (a) must commence—
    - (i) if no application for review is made under regulation 6—within 28 days after the day on which the certificate is published;
    - (ii) if an application for review is made under regulation 6 and the Court affirms the decision to publish the certificate—within 28 days after the decision is affirmed by the Court; and
  - (b) must end by the day stated by the Commission in a notice given to the partnership, being a day not earlier than 60 days after the day on which the winding up must be so commenced.
- (2) On the commencement of the winding up of an incorporated limited partnership, the Commission may appoint a person, subject to conditions specified in the instrument of appointment, to be the liquidator of the partnership.

- (3) The liquidator of an incorporated limited partnership—
  - (a) need not be a registered liquidator under the Corporations Act; and
  - (b) has, subject to the conditions of appointment, all the powers and duties of a liquidator appointed to wind up a company under the Corporations Act; and
  - (c) may be a general partner in the partnership; and
  - (d) must, within 10 days after being appointed, publish a notice of the appointment in a newspaper circulating generally throughout the State; and
  - (e) must give the security (if any) for the exercise of the liquidator's functions that the Commission directs; and
  - (f) is entitled to receive the fees decided by the Commission; and
  - (g) may resign or, on cause shown, be removed by the Commission.
- (4) A vacancy occurring in the office of liquidator is to be filled by a person appointed by the Commission.
- (5) A liquidator who contravenes or fails to comply with a condition of appointment is guilty of an offence.  
Maximum penalty: \$5 000.
- (6) The reasonable costs of the winding up of an incorporated limited partnership required on a certificate of the Commission are payable out of the property of the partnership.

### **8—Power to apply for directions on winding up required on Commission's certificate**

- (1) The liquidator of an incorporated limited partnership required to be wound up on a certificate of the Commission may apply to the Court for directions about the winding up.
- (2) On an application under subregulation (1), the Court may give directions and guidance, and make such orders, as it considers necessary or appropriate in the circumstances.

### **9—Distribution of assets on winding up required on Commission's certificate**

- (1) On a winding up of an incorporated limited partnership required on a certificate of the Commission—
  - (a) if the partnership agreement sets out how the assets are to be dealt with on such a winding up—the assets must be dealt with accordingly;
  - (b) in any other case—the assets are to be distributed among the partners in shares that are proportionate to their respective contributions of capital or property to the partnership.
- (2) A person aggrieved by the operation of this regulation in relation to the assets of an incorporated limited partnership may apply to the Court.
- (3) On an application under subregulation (2), the Court may make such orders as it considers necessary or appropriate in the circumstances.

## 10—Displacement and application of Corporations legislation in relation to winding up

- (1) The winding up of an incorporated limited partnership is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to Part 5.7 (Winding up bodies other than companies) of that Act.
- (2) Part 5.7 of the Corporations Act applies, subject to the following changes, to the winding up of an incorporated limited partnership (other than a voluntary winding up or a winding up required on a certificate of the Commission):
  - (a) as if the incorporated limited partnership were a Part 5.7 body within the meaning of that Act;
  - (b) as if "or in the public interest" were inserted after "just and equitable" in section 583(c)(ii);
  - (c) as if paragraph (d) were deleted from section 583.
- (3) The Australian Securities and Investments Commission (*ASIC*) may exercise a function given to it under Part 5.7 of the Corporations Act as amended by subregulation (2) if—
  - (a) the function is exercised under an agreement or arrangement of the kind mentioned in section 11(8) or (9A)(b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth; and
  - (b) ASIC is authorised to exercise that function under section 11 of that Act.
- (4) Except where a function under Part 5.7 of the Corporations Act as amended by subregulation (2) has been given to ASIC (see subregulation (3)), that Part applies as if a reference in it to ASIC were a reference to the Commission.

## 11—Commission to be notified of winding up

- (1) An incorporated limited partnership must give the Commission written notice of the commencement of the winding up of the partnership within 7 days after—
  - (a) the passing of a special resolution under regulation 4(1); or
  - (b) if paragraph (a) does not apply—the commencement of the winding up.
- (2) An incorporated limited partnership must give to the Commission written notice of the completion of the winding up of the partnership within 28 days after the completion stating the date on which the winding up was completed.
- (3) The Commission must, as soon as practicable after receiving a notice under this regulation, record the receipt of the notice in the register.
- (4) If subregulation (1) or (2) is not complied with, each general partner is guilty of an offence.

Maximum penalty: \$2 500.

## 12—Cancellation of registration

- (1) The Commission must—
  - (a) by notice in the Gazette—cancel the registration of an incorporated limited partnership as soon as practicable after the partnership is wound up; and

- (b) as soon as practicable after publication of the notice of cancellation—record the cancellation of the registration in the register.
- (2) An incorporated limited partnership ceases to exist on the cancellation of its registration.

### **13—Copy of order to be lodged with Commission**

A limited partnership or incorporated limited partnership must, within 7 days of an order having been made under section 74 of the Act, lodge a copy of the order with the Commission.

Maximum penalty: \$1 250.

### **14—Fees**

The Commission may waive, reduce or refund a prescribed fee (or part of a prescribed fee) if satisfied that it is appropriate to do so in a particular case.

## **Schedule 1—Revocation of *Partnership Regulations 2006***

The *Partnership Regulations 2006* are revoked.

### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### **Made by the Governor**

with the advice and consent of the Executive Council  
on 1 July 2021

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