

Authorised Version No. 080

Partnership Act 1958

No. 6330 of 1958

Authorised Version incorporating amendments as at
17 March 2011

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No. 6330 of 1958

Authorised Version incorporating amendments as at
17 March 2011

An Act to consolidate the Law relating to Partnership.

**BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):**

PART 1—PRELIMINARY

Pt 1
(Heading)
inserted by
No. 43/1992
s. 4(a).

1 Short title and commencement

This Act may be cited as the **Partnership Act 1958** and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

2 Repeal

- (1) The Act mentioned in the Schedule to the extent thereby expressed to be repealed is hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under the repealed Act or existing or continuing under that Act immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation

and effect as they respectively would have had if that Act had not been so repealed;

- (b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any order appointment notice consent agreement liability or right made effected issued granted given accrued incurred or acquired or existing or continuing by or under that Act before the commencement of this Act.

No. 3745 s. 3.

3 Definitions

S. 3
amended by
No. 27/2001
s. 8(Sch. 6
item 4.2) (ILA
s. 39B(1)).

- (1) In this Act unless inconsistent with the context or subject-matter—

S. 3(1) def. of
court
amended by
No. 19/1989
s. 16(Sch.
item 41.1).

court includes every court having jurisdiction in the case;

business includes every trade occupation or profession.

S. 3(1)
def. of
*domestic
partner*
inserted by
No. 27/2001
s. 8(Sch. 6
item 4.1),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 44.1).

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
(b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not

include a person who provides domestic support and personal care to the person—

- (i) for fee or reward; or
- (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

spouse of a person means a person to whom the person is married;

S. 3(1)
def. of *spouse*
inserted by
No. 27/2001
s. 8(Sch. 6
item 4.1).

(2) For the purposes of the definition of *domestic partner* in subsection (1)—

- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
- (c) a person is not a domestic partner of another person only because they are co-tenants.

S. 3(2)
inserted by
No. 27/2001
s. 8(Sch. 6
item 4.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 44.2).

No. 3745 s. 4.

4 Saving of rules of equity and common law

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

PART 2—PARTNERSHIPS GENERALLY

**Pt 2
(Heading)
inserted by
No. 43/1992
s. 4(b).**

Division 1—Nature of partnerships

**Heading
substituted as
Pt 2 Div. 1
(Heading) by
No. 43/1992
s. 4(b).**

5 Definition of partnership

No. 3745 s. 5.

(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit and includes an incorporated limited partnership within the meaning of Part 5.

**S. 5(1)
amended by
No. 99/2003
s. 5(1).**

(1A) A reference in the following sections to a partnership includes a reference to a partnership formed in accordance with a law of another State, a Territory or another country or jurisdiction, whether or not under that law the liability of any partner for the liabilities of the partnership is limited and whether or not under that law the partnership is incorporated or is otherwise a separate legal entity—

**S. 5(1A)
inserted by
No. 99/2003
s. 5(2).**

- (a) section 51(3);
- (b) section 54(2)(d), (e), (fa) and (h) as applying in cases where a partner is a partnership;
- (c) section 60(3);
- (d) section 64(5);
- (e) section 85(3);
- (f) section 88(2)(d), (e) and (g) as applying in cases where a partner or proposed partner is a partnership;
- (g) section 95(b)(vi);
- (h) section 96(2);

S. 5(2)
amended by
No. 99/2003
s. 5(3).

S. 5(3)
inserted by
No. 99/2003
s. 5(4).

No. 3745 s. 6.

- (i) sections 99(1)(a)(i), (1)(b)(i), (1)(c) and 99(2);
 - (j) sections 104(1) (definition of *recognised incorporated limited partnership*), 104(2), 104(5) and 104(6).
- (2) But the relation between members of any company or association (other than, for the purposes of the sections specified in subsection (1A), a partnership which under the law of the place where it is formed is incorporated or is otherwise a separate legal entity) which is—
- (a) registered as a company under any Act for the time being in force and relating to the registration constitution or incorporation of companies; or
 - (b) formed or incorporated by or in pursuance of any Act or letters patent or Royal Charter—
- is not a partnership within the meaning of this Act.
- (3) A reference in this Act to a firm includes a reference to an incorporated limited partnership within the meaning of Part 5.

6 Rules for determining existence of partnership

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

- (1) Joint tenancy tenancy in common joint property 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 thereof.
- (2) The sharing of gross returns does not of itself create a partnership whether the persons sharing such returns have or have not a joint

or common right or interest in any property from which or from the use of which the returns are derived.

- (3) The receipt by a person of a share of the profits of a business is prima facie evidence that that 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 that person a partner in the business and in particular—

S. 6(3)
amended by
No. 46/1987
s. 6.

- (a) 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 that person a partner in the business or liable as such;

S. 6(3)(a)
amended by
No. 46/1987
s. 6.

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

- (c) a person being the spouse, domestic partner 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;

S. 6(3)(c)
amended by
Nos 46/1987
s. 6, 27/2001
s. 8(Sch. 6
item 4.3).

- (d) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits

s. 7

arising from carrying on the business does not of itself make the lender a partner with the person or persons carrying on the business or liable as such: Provided that the contract is in writing and signed by or on behalf of all the parties thereto;

S. 6(3)(e)
amended by
No. 46/1987
s. 6.

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

No. 3745 s. 7.
S. 7
amended by
No. 7315 s. 3
(Sch. 1 Pt B).

7 Postponement of rights of person lending or selling in case of bankruptcy¹

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

No. 3745 s. 8.

8 Meaning of firm

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**

Heading
substituted as
Pt 2 Div. 2
(Heading) by
No. 43/1992
s. 4(c).

9 Power of partner to bind the firm

No. 3745 s. 9.

Every partner is an agent of the firm and his 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 he is a member bind the firm and his 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 he is dealing either knows that he has no authority or does not know or believe him to be a partner.

10 Partners bound by acts on behalf of firm

No. 3745 s. 10.

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

This section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

11 Partner using credit of firm for private purposes

No. 3745 s. 11.

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 he is in fact specially authorized by the other partners, but this section does not affect any personal liability incurred by an individual partner.

s. 12

No. 3745 s. 12. **12 Effect of notice that firm will not be bound by acts of partner**

If it has been agreed between the partners that any restriction shall 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.

No. 3745 s. 13. **13 Liability of partners**

Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his 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 his separate debts.

No. 3745 s. 14. **14 Liability of the firm for wrongs**

S. 14
amended by
No. 35/1996
s. 449(1)(a)(b).

(1) Subject to subsection (2), where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm or with the authority of his or her 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 therefor to the same extent as the partner so acting or omitting to act.

(2) For the purposes of subsection (1), a partner who commits a wrongful act or omission as a director of a body corporate, within the meaning of the Corporations Act, is not to be taken to be acting in the ordinary course of the business of the firm or with the authority of his or her co-partners only because—

(a) the partner obtained the agreement or authority of his or her co-partners, or some of them, to be appointed or to act as a director; or

S. 14(2)
inserted by
No. 35/1996
s. 449(2),
amended by
No. 44/2001
s. 3(Sch.
item 87.1).

- (b) remuneration that the partner receives for acting as a director of a body corporate forms part of the income of the firm; or
- (c) any co-partner is also a director of that or any other body corporate.

15 Misapplication of money or property

No. 3745 s. 15.

In the following cases, namely—

- (a) where one partner acting within the scope of his 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.

16 Liability for wrongs joint and several

No. 3745 s. 16.

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

17 Improper employment of trust property for partnership purposes

No. 3745 s. 17.

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 therein:

Provided as follows—

- (1) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

- (2) Nothing in this section shall prevent trust-money from being followed and recovered from the firm if still in its possession or under its control.

No. 3745 s. 18.

18 Persons liable by *holding out*

- (1) Every one who by words spoken or written or by conduct represents himself or who knowingly suffers himself 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) Where after a partner's death the partnership business is continued in the old firm-name the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators estate or effects liable for any partnership debts contracted after his death.

No. 3745 s. 19.

19 Admissions and representations of partners

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

No. 3745 s. 20.

20 Notice to acting partner to be notice to the firm

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

21 Liabilities of incoming and outgoing partners

No. 3745 s. 21.

- (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.
- (2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.
- (3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself 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.

22 Revocation of continuing guaranty by change in firm

No. 3745 s. 22.

A continuing guaranty 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 was given.

Division 3—Relationship between partners

Heading substituted as Pt 2 Div. 3 (Heading) by No. 43/1992 s. 4(d).

23 Variation by consent of terms of partnership

No. 3745 s. 23.

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.

No. 3745 s. 24.

24 Partnership property

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

No. 3745 s. 25.

25 Property bought with partnership money

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

No. 3745 s. 26.

26 Personal estate held as partnership property

Where land or any interest therein has become partnership property it shall unless the contrary intention appears be treated as between the

partners (including the representatives of a deceased partner) as personal estate.

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

No. 3745 s. 27.

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

S. 27(2)
amended by
Nos 110/1986
s. 140(2),
19/1989
s. 16(Sch.
item 41.2).

28 Rules etc. of partners when not subject to special agreement

No. 3745 s. 28.

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

- (1) All the partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses

- whether of capital or otherwise sustained by the firm.
- (2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—
 - (a) in the ordinary and proper conduct of the business of the firm; or
 - (b) in or about anything necessarily done for the preservation of the business or property of the firm.
 - (3) A partner making for the purpose of the partnership any actual payment or advance beyond the amount of capital which he 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.
 - (4) A partner is not entitled before the ascertainment of profits to interest on the capital subscribed by him.
 - (5) Every partner may take part in the management of the partnership business.
 - (6) No partner shall be entitled to remuneration for acting in the partnership business.
 - (7) No person may be introduced as a partner without the consent of all existing partners.
 - (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners but no change may be made in the nature of the partnership business without the consent of all existing partners.

- (9) The partnership books are to be kept at the place of business of the partnership (or the principal place if there is more than one) and every partner may when he thinks fit have access to and inspect and copy any of them.

28A Credit law excluded matter

S. 28A
inserted by
No. 11/2010
s. 57.

For the purposes of section 24 of the National Consumer Credit Protection Act 2009 of the Commonwealth, the matter provided for in section 28(3) is declared to be excluded matter in relation to the whole of the National Consumer Credit Protection Act 2009 of the Commonwealth.

29 Expulsion of partner

No. 3745 s. 29.

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

30 Retirement from partnership at will

No. 3745 s. 30.

- (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 his 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 shall be sufficient for this purpose.

31 Continuance of partnership on old terms

No. 3745 s. 31.

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

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

No. 3745 s. 32.

32 Duty of partners to render accounts etc.

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

No. 3745 s. 33.

33 Accountability of partners for private profits

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

No. 3745 s. 34.

34 Duty of partner not to compete with firm

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

No. 3745 s. 35.

35 Rights of assignee of share in partnership

- (1) An assignment by any partner of his 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.

- (2) In the 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 himself 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

Heading substituted as Pt 2 Div. 4 (Heading) by No. 43/1992 s. 4(e).

36 Dissolution by expiration or notice

No. 3745 s. 36.

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 his 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.

- No. 3745 s. 37. **37 Dissolution by death or bankruptcy or charge²**
- (1) Subject to any agreement between the partners every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.
 - (2) A partnership may at the option of the other partners be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.
- No. 3745 s. 38. **38 Dissolution by illegality of partnership**
- A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.
- No. 3745 s. 39. **39 Dissolution by the court**
- On application by a partner the court may decree a dissolution of the partnership in any of the following cases—
- (a) when a partner is found to be mentally ill, in which case the application may be made as well on behalf of that partner by his or her guardian or administrator if appointed under the **Guardianship and Administration Act 1986** or other person having title to intervene as by any other partner;
 - (b) when a partner other than the partner suing becomes in any other way permanently incapable of performing his 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;

S. 39(a)
substituted by
No. 55/1987
s. 57(3)(Sch. 5
item 37),
amended by
No. 52/1998
s. 311(Sch. 1
item 71).

- (d) when a partner other than the partner suing wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself 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 him;
- (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.

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

No. 3745 s. 40.

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

No. 3745 s. 41.

41 Right of partners to notify dissolution

On the dissolution of a partnership or retirement of a partner any partner may but one of such partners shall publicly notify the same in the Government Gazette and in at least one newspaper circulating in each district in which the firm carries on business 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 his or their concurrence.

No. 3745 s. 42.

42 Continuing authority of partners for purposes of winding up

After the dissolution of a partnership the authority of each partner to bind the firm and the other rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

No. 3745 s. 43.

43 Rights of partners as to application of partnership property

On the dissolution of a partnership every partner is entitled as against the other partners in the firm and all persons claiming through them in respect of their interests as partners to have the property of the partnership applied in payment of the debts and liabilities of the firm and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners

to the firm, and for that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind up the business and affairs of the firm.

44 Apportionment of premium where partnership prematurely dissolved

No. 3745 s. 44.

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 thereof 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.

45 Rights where partnership dissolved for fraud or misrepresentation

No. 3745 s. 45.

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

- (a) to a lien on or right of retention of the surplus of the partnership assets after satisfying the partnership liabilities for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him;
- (b) to stand in the place of the creditors of the firm for any payments made by him 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.

No. 3745 s. 46.

46 Share of profits made after dissolution

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 his estate then in the absence of any agreement to the contrary the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets or to interest at the rate of seven per centum per annum on the amount of his share of the partnership assets:

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

No. 3745 s. 47.

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

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

48 Rule for distribution of assets on final settlement of accounts

No. 3745 s. 48.

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

- (a) losses including losses and deficiencies of capital shall be paid first out of profits next out of capital and lastly if necessary by the partners individually in the proportion in which they were entitled to share profits;
- (b) the assets of the firm including the sums (if any) contributed by the partners to make up losses or deficiencies of capital shall be applied in the following manner and order—
 - (i) in paying the debts and liabilities of the firm to persons who are not partners therein;
 - (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
 - (iii) in paying to each partner rateably what is due from the firm to him in respect of capital;
 - (iv) the ultimate residue (if any) shall be divided among the partners in the proportion in which profits are divisible.

Pt 3
(Headings
and ss 49–80)
inserted by
No. 43/1992
s. 5.

PART 3—LIMITED PARTNERSHIPS

Division 1—Preliminary

S. 49
inserted by
No. 43/1992
s. 5.

49 Definitions and application of Parts 1 and 2

(1) In this Part—

S. 49(1) def. of
Commissioner
repealed by
No. 30/2003
s. 88(1)(a).

* * * *

S. 49(1) def. of
debt
repealed by
No. 99/2003
s. 6(1)(a).

* * * *

S. 49(1) def. of
Director
inserted by
No. 30/2003
s. 88(1)(b).

Director means Director within the meaning of
the **Fair Trading Act 1999**;

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

S. 49(1) def. of
liability
inserted by
No. 99/2003
s. 6(1)(b).

liability includes any debt, obligation or liability
of any kind, wherever and however incurred;

S. 49(1) def. of
limited partner
amended by
No. 99/2003
s. 6(1)(c).

limited partner means a partner in a limited
partnership whose liability for the liabilities
of the partnership is limited in accordance
with this Part;

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

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

- (2) If there is in force an agreement or arrangement with the Australian Securities and Investments Commission of a kind referred to in section 11(8) of the ASIC Act for the performance of the functions and exercise of the powers of the Director by the Commission, a reference in this Part to the Director is taken to be a reference to the Commission.
- (3) Parts 1 and 2 of this Act apply to limited partnerships, except as provided by this Part.

S. 49(2) substituted by No. 44/2001 s. 3(Sch. item 87.2), amended by No. 30/2003 s. 88(2).

Division 2—Nature and formation of limited partnerships

50 Composition of limited partnership

- (1) A limited partnership is a partnership consisting of—
- (a) at least one general partner; and
 - (b) at least one limited partner.
- (2) A body corporate may be a general partner or a limited partner.

S. 50 inserted by No. 43/1992 s. 5.

51 Size of limited partnership

- (1) A limited partnership may have any number of limited partners.
- (2) The number of general partners must not (if the partnership consisted only of those general partners) exceed—
- (a) 20; or
 - (b) if the partnership is of a particular kind in respect of which a higher number applies in accordance with section 115(2) of the Corporations Act—that higher number.

S. 51 inserted by No. 43/1992 s. 5.

S. 51(2) substituted by No. 44/2001 s. 3(Sch. item 87.3).

S. 51(3)
inserted by
No. 99/2003
s. 6(2).

- (3) For the purposes of subsection (2)—
- (a) if a general partner is a partnership and no partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership, the number of partners in that partnership is to be counted; and
 - (b) if a general partner is a partnership and any partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership, the number of partners in that partnership whose liability is not so limited is to be counted but no account is to be taken of the number of partners in that partnership whose liability is so limited.

S. 52
inserted by
No. 43/1992
s. 5.

52 How formed

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

Division 3—Registration of limited partnerships

S. 54
inserted by
No. 43/1992
s. 5.

54 Application for registration

S. 54(1)
amended by
No. 30/2003
s. 88(2).

- (1) An application for the registration as a limited partnership of a partnership is made by lodging with the Director in accordance with this Part a statement signed by each partner or proposed partner.

S. 54(2)
amended by
No. 30/2003
s. 88(2).

- (2) The statement must be in the form approved by the Director and must contain the following particulars—
- (a) the firm-name;

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- (b) particulars of the order under Division 2 designating the partnership;
- (c) the full address in Victoria of the office or, if there is more than one office, the principal office, of the firm (to be called the *registered office* of the partnership);
- (d) the full name of each partner or, if the partner is a partnership, the name of the firm or, if the firm does not have a name, the full name of each partner in the firm; S. 54(2)(d)
amended by
No. 99/2003
s. 6(3)(a).
- (e) the full address of each partner, being (in the case of an individual) his or her principal place of residence or (in the case of a body corporate) its registered office or principal place of business or (in the case of a partnership) its registered office or principal office; S. 54(2)(e)
amended by
No. 99/2003
s. 6(3)(b).
- (f) a statement in relation to each partner as to whether that partner is a general partner or a limited partner;
- (fa) a statement in relation to each partner that is a partnership to the effect that the partner is a partnership; S. 54(2)(fa)
inserted by
No. 99/2003
s. 6(3)(c).
- (g) a statement in relation to each limited partner to the effect that he or she, or it, is a limited partner whose liability to contribute is limited to the extent of the amount specified in the statement (being the amount of any capital, or the value of any property, that the limited partner has agreed to contribute to the partnership);
- (h) a statement, in relation to each limited partner, of the amount of any capital and the value of any property (or, in the case of a limited partner that is a partnership, the aggregate amounts of capital or values of

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 (or, in the case of a limited partner that is a partnership, the aggregate amounts or values actually contributed and the aggregate amounts or values outstanding);

- (i) such other particulars as are required by the regulations or by the approved form of statement.

S. 55
inserted by
No. 43/1992
s. 5.

55 Registration of limited partnership

S. 55(1)
amended by
No. 30/2003
s. 88(2).

- (1) If an application for registration of a limited partnership has been made in accordance with section 54, the Director must register the limited partnership.

S. 55(2)
amended by
No. 30/2003
s. 88(2).

- (2) However, the limited partnership must not be registered if the Director is of the opinion that the firm-name would not be eligible for registration as a business name under the **Business Names Act 1962**.

S. 55(3)
amended by
No. 30/2003
s. 88(2).

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

S. 56
inserted by
No. 43/1992
s. 5.

56 Changes in registered particulars

S. 56(1)
amended by
No. 30/2003
s. 88(2).

- (1) If any change occurs in relation to the registered particulars of a limited partnership, a statement setting out the changed particulars must be lodged with the Director within 7 days after the change occurred.

- (2) The statement must be signed—
- (a) by all the general partners, or by a general partner authorised by all the general partners for the purposes of this section; and
 - (b) if the change relates to the admission of a limited partner or a change in the liability of a limited partner to contribute, by the limited partner concerned or, if that limited partner is a limited partnership, by all the general partners in that limited partnership or by a general partner in that limited partnership authorised by all the general partners in that limited partnership for the purposes of this section.
- (3) The statement must be in the form approved by the Director and contain the particulars required by the regulations or the approved form of statement.
- (4) If the statement is duly lodged, the Director must record the change in the Register as soon as possible, unless as a result of the change the partnership is not eligible to be registered as a limited partnership.
- (5) If subsection (1) is not complied with, each general partner of the limited partnership is guilty of an offence.

S. 56(2)(b)
amended by
No. 99/2003
s. 6(4).

S. 56(3)
amended by
No. 30/2003
s. 88(2).

S. 56(4)
amended by
No. 30/2003
s. 88(2).

Penalty: 10 penalty units.

57 Register of Limited Partnerships

S. 57
inserted by
No. 43/1992
s. 5.

- (1) The Director must keep a register of limited partnerships registered under this Part (to be called the *Register of Limited Partnerships*).

S. 57(1)
amended by
No. 30/2003
s. 88(2).

s. 58

S. 57(2)
amended by
No. 30/2003
s. 88(2).

(2) The Register may be kept in such form as the Director thinks fit.

S. 57(3)
amended by
No. 30/2003
s. 88(2).

(3) The Director must make the information recorded in the Register available for public inspection at the office of the Director during the ordinary business hours of that office.

S. 57(4)
inserted by
No. 35/2000
s. 35,
amended by
No. 30/2003
s. 88(2).

(4) The Director may correct any error or omission in the Register by—
(a) inserting an entry; or
(b) amending an entry; or
(c) omitting an entry—

if he or she decides that the correction is necessary.

S. 57(5)
inserted by
No. 35/2000
s. 35,
amended by
No. 30/2003
s. 88(2).

(5) The Director must not omit an entry in the Register unless satisfied that the whole of the entry was included in error.

S. 58
inserted by
No. 43/1992
s. 5.

58 Certificates of registration etc.

S. 58(1)
amended by
No. 30/2003
s. 88(2).

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

S. 58(2)
amended by
No. 30/2003
s. 88(2).

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

(3) A certificate under this section is to be in such form as the Director thinks fit.

S. 58(3)
amended by
No. 30/2003
s. 88(2).

(4) A certificate under this section—

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

59 Business Names Act 1962 not to apply

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

S. 59
inserted by
No. 43/1992
s. 5.

Division 4—Limitation of liability of limited partners

60 Liability of limited partner limited to amount shown in Register

- (1) The liability of a limited partner to contribute to the liabilities 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.

S. 60
inserted by
No. 43/1992
s. 5.

S. 60(1)
amended by
No. 99/2003
s. 6(5).

s. 61

- (2) If a limited partner makes a contribution towards the amount of any capital or the value of any property that the limited partner has agreed to contribute to the limited partnership, the liability of the limited partner is reduced to such part of the amount shown in the Register as remains outstanding.
- (3) If a partnership (the **investing partnership**) is a limited partner in a limited partnership (the **principal partnership**), a partner in the investing partnership has no separate liability to contribute to the liabilities of the principal partnership, but nothing in this subsection affects any liability of the investing partnership as a limited partner to contribute to those liabilities.

S. 60(3)
inserted by
No. 99/2003
s. 6(6).

61 Change in liability of limited partner

S. 61
inserted by
No. 43/1992
s. 5.

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

S. 61(1)
amended by
No. 99/2003
s. 6(7).

S. 61(2)
amended by
No. 99/2003
s. 6(7).

62 Change in status of partners

S. 62
inserted by
No. 43/1992
s. 5.

- (1) If a general partner becomes a limited partner, the limitation on liability does not extend to any liability of the limited partnership that arose before the partner became a limited partner.
- (2) If a limited partner becomes a general partner, the limitation on liability no longer extends to any liability of the limited partnership that arose before the partner became a general partner.

S. 62(1)
amended by
No. 99/2003
s. 6(7).

S. 62(2)
amended by
No. 99/2003
s. 6(7).

63 Liability for business conducted outside the State

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

S. 63
inserted by
No. 43/1992
s. 5,
amended by
No. 99/2003
s. 6(7).

64 Liability for limited partnerships formed under corresponding laws

S. 64
inserted by
No. 43/1992
s. 5.

- (1) In this section—

corresponding law means a law of another State, a Territory or another country that is declared by Order of the Governor in Council published in the Government Gazette 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 liability incurred in connection with the conduct of the partnership's business in this State.

S. 64(2)
amended by
No. 99/2003
s. 6(7).

s. 64A

S. 64(3)
amended by
No. 99/2003
s. 6(7).

- (3) The law of another State or a Territory may not be declared to be a corresponding law unless the Minister has certified to the Governor in Council that under that law the limitation of liability of limited partners in a limited partnership formed in accordance with this Part and registered or otherwise recognised under that law extends to any liability 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 in Council that the law provides for the limitation of liability for partners in certain partnerships.

S. 64(5)
inserted by
No. 99/2003
s. 6(8).

- (5) This section is additional to, and does not derogate from, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership.

S. 64A
inserted by
No. 99/2003
s. 7.

64A Effect of sections 63 and 64

No implication is to be taken as arising from section 63 or 64 that a limited partner has any liability (or but for that section would have any liability) in connection with the conduct of a partnership's business outside the State that the limited partner would not have in connection with the conduct of a partnership's business within the State.

S. 65
inserted by
No. 43/1992
s. 5.

65 Contribution towards discharge of debts etc.

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

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

S. 66
inserted by
No. 43/1992
s. 5.

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

Division 5—Other modifications of general law of partnership

67 Limited partner not to take part in management of partnership

S. 67
inserted by
No. 43/1992
s. 5.

- (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 liabilities 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

S. 67(2)
amended by
No. 99/2003
s. 6(9).

S. 67(3)(c)
amended by
No. 99/2003
s. 6(7).

- (c) gives a guarantee or indemnity in respect of any liability 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, gives advice or expresses opinions at 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.

S. 68
inserted by
No. 43/1992
s. 5.

68 Differences between partners

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

69 Change in partners

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

S. 69
inserted by
No. 43/1992
s. 5.

Division 6—Dissolution and cessation of limited partnerships

70 Dissolution not available in certain cases

- (1) Subject to the terms of any agreement between the partners in a limited partnership—
 - (a) a limited partner is not entitled to dissolve the partnership by notice; and
 - (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed the limited partner's share of the partnership property to be charged for the limited partner's separate liabilities; and
 - (c) the death, bankruptcy 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 is declared to be of unsound mind and incapable of managing his or her affairs is not a ground for dissolution of the partnership by a

S. 70
inserted by
No. 43/1992
s. 5.

S. 70(1)(b)
amended by
No. 99/2003
s. 6(10).

court unless the share and interest of the partner in the partnership cannot be otherwise ascertained or realised.

S. 71
inserted by
No. 43/1992
s. 5.

71 Cessation of limited partnerships

- (1) A partnership ceases to be a limited partnership if—
 - (a) none of the partners is a limited partner; or
 - (b) the partners agree that they will carry on the business of the partnership otherwise than as a limited partnership.
- (2) If a limited partnership ceases to be a limited partnership and the forming members of the partnership or some of them continue in association or partnership, that association or partnership is no longer taken to be formed in accordance with this Part.

S. 72
inserted by
No. 43/1992
s. 5.

72 Registration of dissolution or cessation of limited partnership

S. 72(1)
amended by
No. 30/2003
s. 88(2).

- (1) If a limited partnership—
 - (a) is dissolved; or
 - (b) ceases to carry on business—

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

S. 72(2)
amended by
No. 30/2003
s. 88(2).

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

S. 72(3)
amended by
No. 30/2003
s. 88(2).

- (3) The Director is required to record in the Register the fact of the dissolution or cessation and the date on which it took effect.

- (4) If subsections (1) and (2) are not complied with, each general partner in the limited partnership concerned is guilty of an offence.

Penalty: 10 penalty units.

73 Winding up by general partners

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

S. 73
inserted by
No. 43/1992
s. 5.

Division 7—Interests in partnerships

74 Regulations relating to interests

- (1) The regulations may make provision for or with respect to—

(a) interests in partnerships which are the subject of an offer, invitation, sale or issue by a limited partnership; and

(b) the making of any such offer, invitation, sale or issue.

- (2) Regulations under subsection (1) may include regulations based on Parts 1.2A (Disclosing entities) and 7.10 (Market misconduct) and Chapters 5C (Managed investment schemes) and 6D (Fundraising) of the Corporations Act.

S. 74
inserted by
No. 43/1992
s. 5.

S. 74(1)(a)
amended by
No. 44/2001
s. 3(Sch.
item 87.4).

S. 74(1)(b)
amended by
No. 44/2001
s. 3(Sch.
item 87.4).

S. 74(2)
substituted by
No. 44/2001
s. 3(Sch.
item 87.5),
amended by
No. 9/2002
s. 3(Sch.
item 13).

Division 8—Miscellaneous provisions

75 Identification of limited partnerships

S. 75
inserted by
No. 43/1992
s. 5.

- (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.
Penalty: 20 penalty units.
- (4) The certificate of registration of a limited partnership must be displayed at all times in a conspicuous position at the registered office of the partnership.
- (5) If the certificate of registration is not so displayed, each general partner is guilty of an offence.
Penalty: 20 penalty units.

76 Registered office

- (1) A limited partnership must keep in Victoria (at the place shown in the Register as the address of the registered office of the firm) an office to which all communications with the partnership may be addressed.
- (2) The regulations may prescribe the hours during which the registered office is to be open and accessible to the public.
- (3) If subsection (1) is not complied with, each general partner in the limited partnership concerned is guilty of an offence.

Penalty: 10 penalty units.

S. 76
inserted by
No. 43/1992
s. 5.

77 Service

- (1) Without affecting any other method of serving documents on partners in a partnership, a document concerning the business of a limited partnership may be duly served on the partners if it is left at, or sent by post addressed to, the registered office of the firm for the time being shown in the Register.
- (2) This section does not apply to a document relating to proceedings before a court.

S. 77
inserted by
No. 43/1992
s. 5.

78 Entry in Register constitutes notice

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

- (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 40(2), as if it were an advertisement in the Government Gazette.

S. 78
inserted by
No. 43/1992
s. 5,
amended by
No. 30/2003
s. 88(2).

79 False and misleading statements

S. 79
inserted by
No. 43/1992
s. 5,
substituted by
No. 35/2000
s. 36.

S. 79(1)
amended by
No. 30/2003
s. 88(2).

S. 79(2)
amended by
No. 30/2003
s. 88(2).

- (1) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Director or in a declaration made under this Act, makes or authorizes the making of a statement that to his or her knowledge is false or misleading in a material particular or omits or authorizes the omission of any matter or thing without which the statement is to his or her knowledge misleading in a material respect, is guilty of an offence and liable to a penalty not exceeding 60 penalty units.
- (2) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Director or in a declaration made under this Act—
 - (a) makes or authorizes the making of a statement that is false or misleading in a material particular; or
 - (b) omits or authorizes the omission of any matter or thing without which the statement would be misleading—

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

PART 4—GENERAL REQUIREMENTS

Pt 4
(Heading and
ss 79A–79F)
inserted by
No. 35/2000
s. 37.

79A Signing of documents

S. 79A
inserted by
No. 35/2000
s. 37.

- (1) Despite any other provision of this Act if the Director is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a document the Director may accept the document without its being signed by that person but the person is not relieved of the requirement to sign the document.

S. 79A(1)
amended by
No. 30/2003
s. 88(2).

- (2) If a copy of a document has been received by the Director for the purposes of lodgement under this Act or the regulations made under this Act, it is sufficient compliance with a requirement for the document to be signed if the original document is signed.

S. 79A(2)
amended by
No. 30/2003
s. 88(2).

79B Lodgment of documents

A document is not to be taken to have been lodged under this Act or the regulations unless the prescribed fee (if any) has been paid.

S. 79B
inserted by
No. 35/2000
s. 37.

79C Method of lodgment

S. 79C
inserted by
No. 35/2000
s. 37.

- (1) Subject to section 79B, it is sufficient compliance with a requirement under this Act or the regulations that a document be lodged with the Director if the Director receives a copy of the document by facsimile or electronic transmission.

S. 79C(1)
amended by
No. 30/2003
s. 88(2).

s. 79D

S. 79C(2)
amended by
No. 30/2003
s. 88(2).

(2) If the Director receives from a person a copy of a document under subsection (1), the Director may require that person to produce and lodge the original within the time specified by the Director.

S. 79C(3)
amended by
No. 30/2003
s. 88(2).

(3) If the person does not comply with a requirement of the Director within the specified time, the person is to be taken not to have lodged the document.

S. 79D
inserted by
No. 35/2000
s. 37.

79D Approval of special lodging arrangements

S. 79D(1)
amended by
No. 30/2003
s. 88(2).

(1) Despite the requirements of this Act, the Director, by written notice, may give approval for a special arrangement for the electronic transmission or lodging of copies of documents under this Act to a specified agent or person on behalf of a specified person or persons or class of persons.

(2) An approval may provide an exemption (or a partial exemption) for the person or persons for or on behalf of whom the documents are lodged from specified provisions of this Act relating to the authentication or signature of documents and the lodging of documents.

S. 79D(3)
amended by
No. 30/2003
s. 88(2).

(3) The Director may grant or refuse an approval to a person who applies in writing for that approval.

S. 79D(4)
amended by
No. 30/2003
s. 88(2).

(4) The Director may vary or cancel an approval by written notice.

S. 79D(5)
amended by
No. 30/2003
s. 88(2).

(5) The Director may impose any condition on an approval under this section including a condition that the Director will refuse to accept a document for lodgement unless the Director is satisfied that all the partners in the partnership have given

written authorisation to the agent or other person specified in the approval—

- (a) to sign copies of specified documents for or on behalf of the person or persons who would otherwise be required by or under this Act to sign the documents;
- (b) to lodge with the Director copies of specified documents for or on behalf of the person who would otherwise be required by or under this Act to lodge the documents. S. 79D(5)(b) amended by No. 30/2003 s. 88(2).
- (6) The Director must note on the Register details of any authorisations required under subsection (5). S. 79D(6) amended by No. 30/2003 s. 88(2).
- (7) A document required to be lodged by a person under this Act is deemed to be signed by the person or persons required to sign the document if a copy of the document is signed on the person's or persons' behalf by a person authorised in accordance with subsection (5) to so sign the copy of the document.
- (8) Subsection (7) does not relieve any person who would otherwise be required to sign the document from signing the original document.

79E Retention of records

If an agent or other person has lodged a copy of a document under this Act signed by the agent or other person in accordance with an approval under section 79D, the agent or person must ensure that the original document signed by the person who is required to sign the document is kept so that it is able to be produced readily to the Director for not less than 7 years after the document was lodged with the Director.

S. 79E inserted by No. 35/2000 s. 37, amended by No. 30/2003 s. 88(2).

Penalty: 30 penalty units.

s. 79F

79F Power of Director to refuse to register or reject documents

S. 79F
(Heading)
inserted by
No. 30/2003
s. 88(3).

S. 79F
inserted by
No. 35/2000
s. 37.

S. 79F(1)
amended by
No. 30/2003
s. 88(2).

- (1) The Director may refuse to register or may reject a document submitted to the Director if the Director considers that the document—
- (a) contains matter contrary to law; or
 - (b) contains matter, that in a material particular, is false or misleading in the form or context in which it is included; or
 - (c) by reason of an omission or misdescription, has not been duly completed; or
 - (d) does not comply with the requirements of this Act; or
 - (e) contains any error, alteration or erasure; or
 - (f) if submitted in electronic form, is not readily accessible by the Director so as to be useable by the Director.

S. 79F(1)(f)
amended by
No. 30/2003
s. 88(2).

S. 79F(2)
amended by
No. 30/2003
s. 88(2).

- (2) If the Director refuses to register or rejects a document under subsection (1), the Director may request—
- (a) that the document be appropriately amended; or
 - (b) that a fresh document be submitted in its place; or
 - (c) if the document has not been duly completed, that a supplementary document in the form approved by the Director be submitted.

S. 79F(2)(c)
amended by
No. 30/2003
s. 88(2).

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S. 79G
inserted by
No. 30/2003
s. 89,
repealed by
No. 1/2010
s. 98.

80 Regulations

S. 80
inserted by
No. 43/1992
s. 5.

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to—
- (a) the keeping of records of documents required under this Act in any form approved by the Director; and
- (b) creating penalties for offences not exceeding 5 penalty units; and
- (c) the fees required to accompany a statement under this Part or the fees payable for the inspection of the Register or for the supply of certificates of information recorded in the Register.
- (3) Regulations made under this section may be disallowed in whole or in part by resolution of either House of Parliament.

S. 80(1)
amended by
No. 99/2003
s. 8.

S. 80(2)
amended by
No. 35/2000
s. 38.

S. 80(2)(a)
inserted by
No. 35/2000
s. 38,
amended by
No. 30/2003
s. 88(2).

S. 80(2)(b)
inserted by
No. 35/2000
s. 38.

S. 80(2)(c)
inserted by
No. 35/2000
s. 38.

S. 80(3)
amended by
No. 78/2010
s. 24(Sch. 1
item 22.1).

Partnership Act 1958
No. 6330 of 1958
Part 4—General Requirements

s. 80

S. 80(4)
repealed by
No. 78/2010
s. 24(Sch. 1
item 22.2).

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PART 5—INCORPORATED LIMITED PARTNERSHIPS

Pt 5
(Heading and
ss 81–128)
inserted by
No. 99/2003
s. 4.

Division 1—Preliminary

81 Definitions

S. 81
inserted by
No. 99/2003
s. 4.

In this Part—

Director means Director within the meaning of the **Fair Trading Act 1999**;

firm-name, in relation to an incorporated limited partnership, means the name of the partnership as recorded in the Register;

general partner means a person admitted as a partner in an incorporated limited partnership in accordance with the partnership agreement and who is not a limited partner;

incorporated limited partnership means a partnership formed in accordance with this Part;

liability includes any debt, obligation or liability of any kind, wherever and however incurred;

limited partner means a person admitted as a partner in an incorporated limited partnership in accordance with the partnership agreement and whose liability for the liabilities of the partnership is limited in accordance with this Part;

limited partnership has the same meaning as in Part 3;

partner, in relation to an incorporated limited partnership, means a general partner or a limited partner;

person includes a partnership;

Register means the Register of Incorporated Limited Partnerships kept under this Part;

special resolution, in relation to the limited partners, means a resolution that has been passed by at least 75% of the limited partners.

S. 82
inserted by
No. 99/2003
s. 4.

82 Application of other provisions of this Act

- (1) Parts 1 and 2 (except sections 22, 26, 27(2) and (3), 30, 31 and 34 and Division 4 of Part 2) apply to incorporated limited partnerships, except as provided by this Part.

Note

Section 96(5) and (6) modify the application of certain provisions of Part 2.

- (2) If a provision made by or under this Part is inconsistent with a provision made by or under any other Part that applies to incorporated limited partnerships, the provision made by or under this Part prevails and the other provision is (to the extent of the inconsistency) of no force or effect in relation to incorporated limited partnerships.

Division 2—Nature and formation of incorporated limited partnerships

S. 83
inserted by
No. 99/2003
s. 4.

83 Partnership is formed on registration

An incorporated limited partnership is formed on registration under this Part.

S. 84
inserted by
No. 99/2003
s. 4.

84 Partnership is separate legal entity

- (1) An incorporated limited partnership—
 - (a) is a body corporate with legal personality separate from that of the partners in it and with perpetual succession; and
 - (b) may have a common seal; and
 - (c) may sue and be sued in its firm-name.

- (2) The common seal of an incorporated limited partnership must be kept in such custody as the partnership directs and must not be used except as authorised by it.

85 Partners in an incorporated limited partnership

S. 85
inserted by
No. 99/2003
s. 4.

- (1) An incorporated limited partnership must have—
- (a) at least one general partner but no more than 20 general partners; and
 - (b) at least one limited partner.

Note

There is no limit on the number of limited partners.

- (2) A body corporate may be a general partner or a limited partner.
- (3) For the purposes of subsection (1)(a)—
- (a) if a general partner is a partnership and no partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership, the number of partners in that partnership is to be counted; and
 - (b) if a general partner is a partnership and any partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership, the number of partners in that partnership whose liability is not so limited is to be counted but no account is to be taken of the number of partners in that partnership whose liability is so limited.

86 Partnership agreement

S. 86
inserted by
No. 99/2003
s. 4.

- (1) There must at all times be in force a written partnership agreement between the partners in an incorporated limited partnership.

- (2) A partnership agreement also has effect as a contract between the incorporated limited partnership and each partner under which the partnership and each partner agree to observe and perform the agreement so far as it applies to them.
- (3) Nothing in subsection (2) prevents an incorporated limited partnership itself executing a partnership agreement.

Division 3—Registration of incorporated limited partnerships

87 Who may apply for registration?

- (1) An application for registration as an incorporated limited partnership may be made, in the circumstances described in subsection (2), by a partnership or by persons proposing to be the partners in the proposed incorporated limited partnership.
- (2) The circumstances are—
 - (a) that the partnership is registered under Part 2 of the Venture Capital Act 2002 of the Commonwealth as, or a general partner in the partnership or a proposed general partner in the proposed incorporated limited partnership intends to apply for registration of the partnership or proposed partnership under that Part as—
 - (i) a VCLP within the meaning of that Act; or
 - (ii) an AFOF within the meaning of that Act; or
 - (iii) an ESVCLP within the meaning of that Act; or

S. 87
inserted by
No. 99/2003
s. 4.

S. 87(2)(a)(iii)
inserted by
No. 2/2008
s. 23.

- (b) that the partnership is a venture capital management partnership within the meaning of section 94D(3) of the Income Tax Assessment Act 1936 of the Commonwealth or the partners in the partnership or the proposed partners in the proposed incorporated limited partnership intend that the partnership or proposed partnership will meet the requirements set out in that section for recognition as a venture capital management partnership; or
- (c) such other circumstances as are prescribed.

88 How is an application made?

S. 88
inserted by
No. 99/2003
s. 4.

- (1) An application for registration as an incorporated limited partnership is made by lodging with the Director in accordance with this Part a statement signed by each partner or proposed partner.
- (2) The statement must be made in the form approved by the Director and must—
 - (a) in the case of an application by a partnership, contain particulars of—
 - (i) the firm-name of the partnership; and
 - (ii) the full address of the office or principal office in Victoria of the partnership (to be called the "registered office" of the proposed incorporated limited partnership);
 - (b) in the case of an application by persons proposing to be the partners in the proposed incorporated limited partnership, contain particulars of—
 - (i) the proposed firm-name of the proposed incorporated limited partnership; and

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- (ii) the full address of the proposed office or principal office in Victoria of the proposed incorporated limited partnership (to be called the *registered office* of the proposed incorporated limited partnership);
- (c) contain a statement as to whether it is proposed to have at the end of the firm-name of the proposed incorporated limited partnership—
- (i) the words "An Incorporated Limited Partnership"; or
 - (ii) the expression "L.P."; or
 - (iii) the expression "LP";
- (d) contain particulars of the full name of each partner or proposed partner or, if the partner or proposed partner is a partnership, the name of the firm or, if the firm does not have a name, the full name of each partner in the firm;
- (e) contain particulars of the full address of each partner or proposed partner, being (in the case of an individual) his or her principal place of residence or (in the case of a body corporate) its registered office or principal place of business or (in the case of a partnership) its registered office or principal office;
- (f) contain a statement in relation to each partner or proposed partner as to whether that partner or proposed partner is, or is proposed to be, a general partner or a limited partner;

- (g) contain a statement in relation to each partner or proposed partner that is a partnership to the effect that the partner or proposed partner is a partnership;
 - (h) in the case of an application by a partnership that is registered as a VCLP, an AFOF or an ESVCLP under Part 2 of the Venture Capital Act 2002 of the Commonwealth, be accompanied by a copy of a document evidencing its status as a VCLP, an AFOF or an ESVCLP;
 - (i) in the case of an application by a partnership that is a venture capital management partnership within the meaning of section 94D(3) of the Income Tax Assessment Act 1936 of the Commonwealth, contain a statement that it is such a partnership;
 - (j) contain such other particulars as are required by the regulations or by the approved form of statement.
- (3) An application under this section must be accompanied by the prescribed fee or, if no fee is prescribed, a fee of \$500.00.

S. 88(2)(h)
amended by
No. 2/2008
s. 24.

89 Registration of incorporated limited partnership

- (1) If an application for registration of an incorporated limited partnership has been made in accordance with section 88, the Director may register the incorporated limited partnership.
- (2) If the Director registers an incorporated limited partnership, the firm-name of the partnership is its name as recorded in the Register.
- (3) An incorporated limited partnership must have the words "An Incorporated Limited Partnership" (or the expression "L.P." or "LP" as an abbreviation) at the end of its firm-name, as recorded in the Register.

S. 89
inserted by
No. 99/2003
s. 4.

- (4) However, the Director must not record in the Register as the firm-name of an incorporated limited partnership a name that, in the opinion of the Director, would not be eligible for registration as a business name under the **Business Names Act 1962**.
- (5) Subject to subsection (4), registration is effected by recording in the Register the particulars in the statement lodged with the Director.

S. 90
inserted by
No. 99/2003
s. 4.

90 Register of Incorporated Limited Partnerships

- (1) The Director must keep a register of incorporated limited partnerships registered under this Part (to be called the *Register of Incorporated Limited Partnerships*).
- (2) The Register may be kept in such form as the Director thinks fit.
- (3) The Director must make the information recorded in the Register available for public inspection, on payment of the prescribed fee or, if no fee is prescribed, a fee of \$30.00, at the office of the Director during the ordinary business hours of that office.
- (4) The Director may correct any error or omission in the Register by—
 - (a) inserting an entry; or
 - (b) amending an entry; or
 - (c) omitting an entry—if he or she decides that the correction is necessary.
- (5) The Director must not omit an entry in the Register unless satisfied that the whole of the entry was included in error.

91 Changes in registered particulars

S. 91
inserted by
No. 99/2003
s. 4.

- (1) If any change occurs in relation to the registered particulars of an incorporated limited partnership, a statement setting out the changed particulars must be lodged with the Director within 7 days after the change occurred.
- (2) The statement must be signed by all the general partners, or by a general partner authorised by all the general partners for the purposes of this section.
- (3) The statement must—
 - (a) be in the form approved by the Director; and
 - (b) contain the particulars required by the regulations or by the approved form of statement; and
 - (c) be accompanied by the prescribed fee or, if no fee is prescribed, a fee of \$70.00.
- (4) If the statement is duly lodged, the Director must record the change in the Register as soon as possible.
- (5) If subsection (1) is not complied with, each general partner in the incorporated limited partnership is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

92 Certificates of registration etc.

S. 92
inserted by
No. 99/2003
s. 4.

- (1) The Director, at the time of—
 - (a) registering an incorporated limited partnership; or
 - (b) recording a change in the registered particulars of an incorporated limited partnership; or

- (c) correcting an error or omission in the Register in relation to an incorporated limited partnership—

must issue to the general partners a certificate as to the formation and registered particulars as at that time of the incorporated limited partnership.

- (2) The prescribed fee or, if no fee is prescribed, a fee of \$50.00, is payable on the issue of—
- (a) a certificate under subsection (1)(b); or
 - (b) a certificate under subsection (1)(c) if the error or omission was not attributable to the Director or a person employed or engaged in the administration of this Part.
- (3) The Director may, on application accompanied by the prescribed fee or, if no fee is prescribed, a fee of \$50.00, issue to the applicant a certificate in relation to an incorporated limited partnership as to the formation and registered particulars as at that time of the incorporated limited partnership.
- (4) A certificate under this section is to be in such form as the Director thinks fit.
- (5) A certificate under this section—
- (a) as to the formation of an incorporated limited partnership, is conclusive evidence that the incorporated limited partnership was formed on the date of registration referred to in the certificate; and
 - (b) as to the registered particulars as at a specified time of an incorporated limited partnership, is (unless the contrary is established) conclusive evidence that the partnership existed at that time; and

- (c) as to the general partners and limited partners in an incorporated limited partnership as at a specified time, is (unless the contrary is established) conclusive evidence of the general partners and limited partners as at that time; and
- (d) as to any other particular of an incorporated limited partnership recorded in the Register as at a specified time, is (unless the contrary is established) conclusive evidence of that particular as at that time.

93 Business Names Act 1962 not to apply

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

S. 93
inserted by
No. 99/2003
s. 4.

94 Acts preparatory to registration do not constitute partnership

Any act done in connection with the making of an application for registration under this Part by or on behalf of persons proposing to be the partners in a proposed incorporated limited partnership does not of itself create a partnership between those persons.

S. 94
inserted by
No. 99/2003
s. 4.

Division 4—Powers of incorporated limited partnerships

95 Powers of partnership

Subject to the partnership agreement, an incorporated limited partnership has the legal capacity and powers of an individual and also all the powers of a body corporate including (for example) the power, whether within or outside Victoria or outside Australia—

- (a) to carry on the business of the partnership; and

S. 95
inserted by
No. 99/2003
s. 4.

- (b) to do all things necessary or convenient to be done for, or in connection with, the carrying on of the business of the partnership including (for example) the power to—
- (i) enter into contracts or otherwise acquire rights or liabilities; or
 - (ii) create, confer, vary or cancel interests in the partnership; or
 - (iii) acquire, hold and dispose of real or personal property or of an interest (whether beneficial or legal) in real or personal property; or
 - (iv) appoint agents and attorneys, and act as agent for other persons; or
 - (v) form, and participate in the formation of, companies or incorporated limited partnerships; or
 - (vi) participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits; or
 - (vii) do such other things as it is authorised to do by or under this Part or the partnership agreement.

S. 96
inserted by
No. 99/2003
s. 4.

96 Relationship of partners to others and between themselves

- (1) Except as otherwise provided by the partnership agreement or agreed between the partners—
- (a) a general partner, the incorporated limited partnership or an officer, employee or agent of a general partner or of the incorporated limited partnership is not an agent of a limited partner and the acts of a general partner or of the incorporated limited

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- partnership or of such an officer, employee or agent do not bind a limited partner; and
- (b) a limited partner is not an agent of a general partner or of another limited partner or of the incorporated limited partnership and the acts of a limited partner do not bind a general partner or another limited partner or the incorporated limited partnership itself.
- (2) A reference in subsection (1) to a general partner includes, if the general partner is a partnership, a partner in that partnership.
- (3) Nothing in subsection (1) prevents the making of, or limits or restricts, an agreement between two partners or between a partner and the incorporated limited partnership under which—
- (a) one partner acts as an agent of another partner or of the partnership and, by so acting, binds the other partner or the partnership; or
- (b) the partnership acts as an agent of a partner and, by so acting, binds the partner.
- (4) Any consent or authority which under this Act is required or permitted to be given by a partner or two or more partners or all the partners may, in the case of an incorporated limited partnership and without limiting any other way in which it might be given, be given by that partner or those partners by or under the partnership agreement either in relation to all cases, or in relation to all cases subject to specified exceptions, or in relation to any specified case or class of case.

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- (5) Division 2 of Part 2, in its application to an incorporated limited partnership, has effect as if—
- (a) any reference in it to a partner (other than the reference in section 12 to the partners and any reference in section 14 to a co-partner) were a reference to a general partner only; and
 - (b) the reference in section 10 to a person did not include a reference to a limited partner; and
 - (c) the words "the incorporated limited partnership" were substituted in section 13 for the words "the other partners"; and
 - (d) section 13 contained the following subsection—

"(2) Despite subsection (1), a general partner in an incorporated limited partnership within the meaning of Part 5 is only liable for any liability of the partnership if the partnership is unable to satisfy the liability except as otherwise provided by the partnership agreement."; and
 - (e) any reference in section 13 or 21(2) to the debts or obligations of the firm were a reference to the liabilities (within the meaning of Part 5) of the incorporated limited partnership; and
 - (f) the words "or a limited partner" were inserted in section 14(1) after the words "not being a partner"; and
 - (g) the expression "(not including any act or omission as a general partner of an incorporated limited partnership)" were inserted in section 14(2) after the expression "Corporations Act,"; and

- (h) the words "as newly constituted" were omitted in section 21(3).
- (6) Section 24(1), in its application to an incorporated limited partnership, has effect as if the words "the incorporated limited partnership" were substituted for the words "the partners".
- (7) A limited partner, as limited partner, is not a proper party to any proceeding commenced in a court or tribunal by or against the incorporated limited partnership, other than a proceeding commenced by the incorporated limited partnership against the limited partner or by the limited partner against the incorporated limited partnership.
- (8) This section is subject to section 98 (limited partner not to take part in the management of the incorporated limited partnership).

Division 5—Liability and powers of limited partners

97 Limitation of liability of limited partners

- (1) A limited partner has no liability for the liabilities of the incorporated limited partnership or of a general partner.
- (2) Nothing in subsection (1) prevents—
- (a) a contribution of capital or property made by a limited partner to the incorporated limited partnership being used; or
- (b) an obligation of a limited partner to contribute capital or property to the incorporated limited partnership being enforced by any person to whom the obligation is owed—

in satisfaction of a liability of the partnership or of a general partner.

S. 97
inserted by
No. 99/2003
s. 4.

- (3) This section is subject to section 98 (limited partner not to take part in the management of the incorporated limited partnership).

S. 98
inserted by
No. 99/2003
s. 4.

98 Limited partner not to take part in the management of the incorporated limited partnership

- (1) A limited partner must not take part in the management of the business of the incorporated limited partnership.
- (2) If a limited partner takes part in the management of the business of the incorporated limited partnership—
- (a) the acts of the limited partner bind the partnership in circumstances where—
 - (i) they would be binding on the partnership if they were the acts of a general partner in the partnership; and
 - (ii) the person to whom the liability was incurred reasonably believed, having regard to the limited partner's conduct at the time the liability was incurred, that the limited partner was a general partner in the partnership; and
 - (b) where under paragraph (a) the partnership is bound by the acts of the limited partner, the limited partner is liable, as if a general partner, for any liability incurred by the partnership to a person as a direct result of the acts of the limited partner if the partnership is unable to satisfy the liability.
- (3) A limited partner is not to be regarded as taking part in the management of the business of the incorporated limited partnership merely because the limited partner or a person acting on behalf of the limited partner—

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- (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 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 between the limited partner and a general partner; or
 - (c) gives a guarantee or indemnity in respect of any liability of the partnership or of a general partner; or
 - (d) takes any action, or participates in any action taken by any other limited partner, for the purpose of enforcing the rights, or safeguarding the interests, of the limited partner as a limited partner; or
 - (e) if permitted by the partnership agreement—
 - (i) calls, requisitions, convenes, chairs, participates in, postpones, adjourns or makes a record of a meeting of the partners or of the limited partners or of any of them; or
 - (ii) whether at the meeting or in writing or otherwise, requisitions, formulates, signs, approves, disapproves, proposes, moves, supports, opposes, speaks to or votes on any resolution, or an amendment to any resolution, whether or not considered or to be considered at a meeting of the partners or of the limited partners or of any of them; or

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- (f) exercises a power conferred on the limited partner by subsection (4) or under the partnership agreement or otherwise has, or exercises, a right to—
- (i) have access to and inspect the books or records of the partnership or copy any of them; or
 - (ii) examine the state or prospects of the business of the partnership or advise, or consult with, other partners in relation to such matters; or
- (g) gives advice to, or consults with, or is or acts as an officer, director, security holder, partner, agent, employee or independent contractor of, an associate of the partnership; or
- (h) is or acts as a lender to, or fiduciary for, an associate of the partnership; or
- (i) to the extent authorised by the partnership agreement, participates on, or has or exercises any right to appoint one or more persons to, or remove one or more persons from, a committee which considers, approves of, consents to or disapproves of any one or more of the following proposals from a general partner—
- (i) a proposal involving a material change in the nature of the business of the partnership (including a change in, or departure from, any investment guidelines, policies or conditions relating to the business of the partnership); or
 - (ii) a proposal for the adoption of a method for valuing some or all of the assets of the partnership (including a change to,

replacement of or variation from such a method); or

- (iii) a proposal for an extension or reduction in the period in which, under the partnership agreement, investments (or certain types of investments) can be made by the partnership, or for any approval or disapproval of investments that the partnership does not otherwise have a right to make; or
- (iv) a proposal relating to any actual or potential transaction or other matter involving any actual or potential conflict of interest; or
- (v) a proposal relating to any actual or potential transaction, contract, arrangement or understanding between one or more of the partners, or their associates, and the general partner, the partnership or any associate of the general partner or of the partnership; or
- (vi) a proposal for the delegation, waiver, release or variation of an authority, right, duty or obligation of the general partner; or
- (vii) a proposal for the appointment of any person as a senior executive of the general partner or of an associate of the general partner—

but not so as to permit any direction of the general partner by a limited partner as to any matter regarding the management of the business of the partnership where the general partner is acting within the terms of the partnership agreement; or

- (j) nominates, selects, investigates, evaluates or negotiates with, or participates on a committee which proposes, considers, approves of, consents to or disapproves of any nomination, selection, appointment, change in control or ownership, suspension, replacement or removal of a general partner or an associate of a general partner.
- (4) Subject to the partnership agreement, a limited partner or a person authorised by the limited partner may at any time—
 - (a) have access to and inspect the books or records of the partnership or copy any of them; and
 - (b) examine the state or prospects of the business of the partnership and advise, or consult with, other partners in relation to such matters.
- (5) The provisions of this section (other than subsection (4)) may not be varied by the partnership agreement or with the consent of the partners, whether given by or under the partnership agreement or otherwise.

Note

Section 96(4) enables partners to give consent by or under the partnership agreement.

99 Definitions, etc. applicable to section 98

- (1) In section 98—
 - (a) a reference to an associate of a general partner includes a reference to—
 - (i) if the general partner is a partnership, a partner in that partnership (**a partner in the general partner**); and

S. 99
inserted by
No. 99/2003
s. 4.

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- (ii) any person who has an interest in the general partner or in any partner in the general partner, whether as security holder, trustee, responsible entity, manager, custodian, sub-custodian, nominee, administrator, executor, legal personal representative, beneficiary or otherwise; and
 - (iii) any person to whom the general partner or any partner in the general partner has delegated any power, authority, right, duty or obligation of the general partner in relation to the partnership; and
 - (iv) if the general partner or a partner in the general partner or a person covered by subparagraph (ii) or (iii) is a body corporate, a related body corporate of that body corporate; and
 - (v) a director, officer, employee, agent, representative or security holder of the general partner or of any partner in the general partner or of a person covered by subparagraph (ii), (iii) or (iv); and
- (b) a reference to an associate of a limited partner includes a reference to—
- (i) if the limited partner is a partnership, a partner in that partnership (a **partner in the limited partner**); and
 - (ii) any person who has an interest in the limited partner or in any partner in the limited partner, whether as security holder, trustee, responsible entity, manager, custodian, sub-custodian, nominee, administrator, executor, legal personal representative, beneficiary or otherwise; and

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- (iii) if the limited partner or a partner in the limited partner or a person covered by subparagraph (ii) is a body corporate, a related body corporate of that body corporate; and
- (iv) a director, officer, employee, agent, representative or security holder of the limited partner or of any partner in the limited partner or of a person covered by subparagraph (ii) or (iii); and
- (c) a reference to an associate of an incorporated limited partnership includes a reference to—
- (i) any person or partnership in which the incorporated limited partnership has an interest, whether as security holder or otherwise; and
- (ii) if a person or partnership covered by subparagraph (i) is a body corporate, a related body corporate of that body corporate.
- (2) In section 98 and this section, a reference to a general partner in an incorporated limited partnership includes, if the general partner is a partnership, a partner in that partnership.
- (3) In section 98 and this section—
- security holder**, in relation to a body (whether corporate or unincorporated) includes a holder of securities (within the meaning given by section 92(3) of the Corporations Act) in or of the body;
- related body corporate** has the meaning given by section 9 of the Corporations Act.

100 Differences between partners

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

S. 100
inserted by
No. 99/2003
s. 4.

101 Change in partners

- (1) A limited partner may, with the consent of the general partners and the agreement of the transferee, transfer the whole or a portion of the limited partner's interest in the incorporated limited partnership.
- (2) If the whole of the limited partner's interest in the incorporated limited partnership is transferred to the one transferee, the transferee becomes a limited partner in substitution for the transferor with all the rights and obligations of the transferor.
- (3) If only a portion of the limited partner's interest in the incorporated limited partnership is transferred to a transferee, the transferee becomes a limited partner in substitution for the transferor in respect of the transferred portion and with all the rights and obligations of the transferor in respect of that portion.
- (4) A person may be admitted as a partner in an incorporated limited partnership without the necessity to obtain the consent of any limited partner.
- (5) The provisions of this section may be varied with the consent of the partners.

S. 101
inserted by
No. 99/2003
s. 4.

s. 102

S. 102
inserted by
No. 99/2003
s. 4.

102 Change in status of partners

- (1) If a general partner becomes a limited partner, the partner remains liable for any liability of the incorporated limited partnership that arose before the partner became a limited partner.
- (2) If a limited partner becomes a general partner, the partner remains not liable (subject to section 98(2)) for any liability of the incorporated limited partnership that arose before the partner became a general partner.

Note

Section 98(2) imposes liability in certain circumstances on a limited partner who takes part in the management of the business of the incorporated limited partnership.

S. 103
inserted by
No. 99/2003
s. 4.

103 Liability in respect of conduct or acts outside the State

A limited partner in an incorporated limited partnership may only be liable for a liability incurred by the partnership as a result of—

- (a) the conduct of the incorporated limited partnership's business outside the State; or
- (b) acts outside the State of a general partner, a limited partner or the incorporated limited partnership or of any officer, employee or agent of a general partner or of the incorporated limited partnership—

in circumstances where the limited partner would be so liable if the conduct or acts occurred within the State.

Note

Section 98(2) imposes liability in certain circumstances on a limited partner who takes part in the management of the business of the incorporated limited partnership.

104 Recognised incorporated limited partnerships under corresponding laws

S. 104
inserted by
No. 99/2003
s. 4.

(1) In this section—

corresponding law means—

- (a) a law of another State or of a Territory or of another country or jurisdiction that corresponds to this Part; or
- (b) a law declared under subsection (3) to be a corresponding law for the purposes of this Part;

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

- (2) A partner in a recognised incorporated limited partnership may only be liable for a liability incurred by the partnership as a result of—
- (a) the conduct of the recognised incorporated limited partnership's business in this State; or
 - (b) the acts in this State of a partner in the recognised incorporated limited partnership or of the partnership itself or of any officer, employee or agent of such a partner or of the partnership—

in circumstances where the partner would be so liable under the corresponding law if the conduct or acts occurred in the place where the recognised incorporated limited partnership was formed.

- (3) Subject to subsections (4) and (5), the Governor in Council may, by Order published in the Government Gazette, declare a law of another State, a Territory or another country or jurisdiction to be a corresponding law for the purposes of this Part.

- (4) The law of another State or of a Territory may not be declared to be a corresponding law unless the Minister has certified to the Governor in Council that under that law a partner in an incorporated limited partnership formed in accordance with this Part and registered or otherwise recognised under that law may only be liable for a liability incurred by the partnership as a result of—
- (a) the conduct in that State or Territory of the business of the partnership; or
 - (b) the acts in that State or Territory of a partner in the partnership or of the partnership itself or of any officer, employee or agent of such a partner or of the partnership—

in circumstances where the partner would be so liable under this Part if the conduct or acts occurred within the State.

- (5) The law of another country or jurisdiction (not being another State or a Territory) may not be declared to be a corresponding law unless the Minister has certified to the Governor in Council that that law provides for the limitation of liability of certain partners in certain partnerships.
- (6) This section is additional to, and does not derogate from, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership.

S. 105
inserted by
No. 99/2003
s. 4.

105 Effect of sections 103 and 104

No implication is to be taken as arising from section 103 or 104 that a limited partner has any liability (or but for that section would have any liability) in connection with conduct or acts outside the State that the limited partner would not have in connection with conduct or acts within the State.

Division 6—Winding up of incorporated limited partnership

106 Definition

In this Division—

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.

S. 106
inserted by
No. 99/2003
s. 4.

107 Voluntary winding up

- (1) An incorporated limited partnership may be wound up voluntarily—
 - (a) in accordance with the partnership agreement; or
 - (b) subject to the partnership agreement, if the limited partners so resolve by special resolution.
- (2) 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 in accordance with the partnership agreement; or
 - (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.
- (3) Any person aggrieved by the operation of this section in relation to the assets of an incorporated limited partnership may apply to the Supreme Court.

S. 107
inserted by
No. 99/2003
s. 4.

- (4) On an application under subsection (3) the Supreme Court may make any order relating to the disposal of the assets that it thinks fit.

S. 108
inserted by
No. 99/2003
s. 4.

108 Winding up on Director's certificate

- (1) The Director may, by notice given to the incorporated limited partnership, require an incorporated limited partnership to show good cause why it should not be required to be wound up if the Director is of the opinion—

- (a) that the partnership has ceased to carry on business; or
- (b) that, having been incorporated on the basis that the partnership is or is intended to be—
 - (i) registered as a VCLP, an AFOF or an ESVCLP under Part 2 of the Venture Capital Act 2002 of the Commonwealth; or
 - (ii) a venture capital management partnership within the meaning of section 94D(3) of the Income Tax Assessment Act 1936 of the Commonwealth—

the partnership has ceased to be, or has not within the period of 2 years after its incorporation become, so registered or such a partnership; or

- (c) that none of the partners is a limited partner; or
- (d) that incorporation of the partnership has been obtained by mistake or fraud; or
- (e) that the partnership exists for an illegal purpose.

S. 108(1)(b)(i)
amended by
No. 2/2008
s. 25.

- (2) If, on the expiration of 28 days after the notice is given under subsection (1), the Director is satisfied that the incorporated limited partnership should be required to be wound up, the Director may publish in the Government Gazette a certificate as to the requirement that the incorporated limited partnership be wound up.
- (3) The Director must give notice of the publication of the certificate to the incorporated limited partnership as soon as possible after the publication.
- (4) The Director must not publish a certificate under subsection (2) unless satisfied that good cause has not been shown why the incorporated limited partnership should not be required to be wound up.
- (5) A notice under subsection (1) or (3) must be given to the incorporated limited partnership—
 - (a) by being served on the incorporated limited partnership at its registered office; or
 - (b) if service cannot reasonably be effected, by being published in a newspaper circulating generally in the State.

109 Review of certificate

- (1) A person whose interests are affected by a decision of the Director to publish a certificate under section 108(2) may apply to the Supreme Court for review of the decision.
- (2) An application under subsection (1) must be made within 28 days after the certificate is published.
- (3) The operation of the certificate is suspended on the making of an application for review until the application is withdrawn or the review is determined.

S. 109
inserted by
No. 99/2003
s. 4.

- (4) In determining an application for review, the Supreme Court may—
 - (a) affirm the decision under review; or
 - (b) set aside the decision under review and cancel the certificate.
- (5) Nothing in this section prevents the Director cancelling a certificate published under section 108(2) at any time after an application is made under subsection (1).

S. 110
inserted by
No. 99/2003
s. 4.

110 Procedure for winding up on certificate

- (1) A winding up of an incorporated limited partnership required on a certificate of the Director published under section 108(2)—
 - (a) must be commenced—
 - (i) no later than the end of 28 days after the day on which the certificate is published unless an application is made under section 109(1); or
 - (ii) if an application is made under section 109(1) and the Supreme Court affirms the decision to publish the certificate, on the determination of the application; and
 - (b) must be completed by the day specified by the Director in a notice given to the partnership, not being a day earlier than 60 days after the day on which the notice is given.
- (2) On the commencement of the winding up, the Director may appoint a person to be the liquidator of the incorporated limited partnership.
- (3) The liquidator may be a general partner in the incorporated limited partnership and need not be a registered liquidator under the Corporations Act.

- (4) The liquidator must within 10 days publish notice of his or her appointment in the Government Gazette.
- (5) The liquidator must give such security as may be prescribed and is entitled to receive such fees as are fixed by the Director.
- (6) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Director.
- (7) The reasonable costs of a winding up required on a certificate of the Director published under section 108(2) are payable out of the property of the incorporated limited partnership.

111 Distribution of assets on winding up required on Director's certificate

S. 111
inserted by
No. 99/2003
s. 4.

- (1) On a winding up of an incorporated limited partnership required on a certificate of the Director published under section 108(2)—
 - (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 in accordance with the partnership agreement; or
 - (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) Any person aggrieved by the operation of this section in relation to the assets of an incorporated limited partnership may apply to the Supreme Court.
- (3) On an application under subsection (2) the Supreme Court may make any order relating to the disposal of the assets that it thinks fit.

S. 112
inserted by
No. 99/2003
s. 4.

112 Application of Corporations Act to winding up

(1) The winding up of an incorporated limited partnership (other than a voluntary winding up or a winding up required on a certificate of the Director published under section 108(2)) is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the provisions of Part 5.7 of the Corporations Act (Winding up bodies other than companies) and that Part applies as if the incorporated limited partnership were a Part 5.7 body within the meaning of that Act, subject to the following modifications—

- (a) as if the words "or in the public interest" were inserted in paragraph (c)(ii) of section 583 after the words "just and equitable";
- (b) as if paragraph (d) of section 583 did not form part of that section;
- (c) any other modifications (within the meaning of Part 3 of the **Corporations (Ancillary Provisions) Act 2001**) that are prescribed by the regulations.

Note

Part 3 of the **Corporations (Ancillary Provisions) Act 2001** provides for the application of provisions of the Corporations Act and Part 3 of the ASIC Act as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. This does not apply to any provisions that already apply to a matter as a law of the Commonwealth.

- (2) The Australian Securities and Investments Commission may perform a function conferred on it under a law applied by subsection (1)—
 - (a) pursuant to an agreement or arrangement of the kind referred to in section 11(8) or (9A)(b) of the ASIC Act; and
 - (b) if the Commission is authorised to perform that function under section 11 of that Act.
- (3) Unless a function under a law applied by subsection (1) is conferred on the Australian Securities and Investments Commission as referred to in subsection (2), that law applies as if a reference in it to the Commission were a reference to the Director.

113 Director to be notified of winding up

S. 113
inserted by
No. 99/2003
s. 4.

- (1) An incorporated limited partnership must lodge with the Director a notice of the commencement of the winding up of the partnership within 7 days after—
 - (a) the passing of a special resolution referred to in section 107(1)(b); or
 - (b) in any other case, the commencement of the winding up.
- (2) An incorporated limited partnership must lodge with the Director a notice of the completion of the winding up of the partnership within 7 days after that completion, specifying the date on which the winding up was completed.
- (3) The Director must, as soon as practicable after receiving a notice under subsection (1) or (2), record the receipt of the notice in the Register.
- (4) If subsection (1) or (2) is not complied with, each general partner in the incorporated limited partnership is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

s. 114

S. 114
inserted by
No. 99/2003
s. 4.

114 Cancellation of incorporation

- (1) The Director must, by notice published in the Government Gazette, cancel the incorporation of an incorporated limited partnership as soon as practicable after the partnership is wound up.
- (2) The Director must, as soon as practicable after the publication of a notice under subsection (1), record the cancellation of the incorporation in the Register.
- (3) An incorporated limited partnership ceases to exist on the cancellation of its incorporation under this Part.

Division 7—Miscellaneous provisions

S. 115
inserted by
No. 99/2003
s. 4.

115 Execution of documents

- (1) All courts must take judicial notice of the common seal of an incorporated limited partnership affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (2) Without limiting the ways in which an incorporated limited partnership may execute a document (including a deed), an incorporated limited partnership may execute a document—
 - (a) without using a common seal (whether it has one or not) if the document is signed by a general partner; or
 - (b) as a deed if the document is expressed to be executed as a deed and is executed with the use of a common seal or in accordance with paragraph (a).

116 Entitlement to make assumptions

S. 116
inserted by
No. 99/2003
s. 4.

- (1) A person is entitled to make the assumptions in section 117 in relation to dealings with an incorporated limited partnership. The incorporated limited partnership is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (2) A person is entitled to make the assumptions in section 117 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to property from an incorporated limited partnership. The incorporated limited partnership and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (3) The assumptions may be made even if a partner or agent of the incorporated limited partnership acts fraudulently, or forges a document, in connection with the dealings.
- (4) A person is not entitled to make an assumption in section 117 if at the time of the dealings they knew or suspected that the assumption was incorrect.

117 Assumptions that can be made under section 116

S. 117
inserted by
No. 99/2003
s. 4.

- (1) A person may assume that the partnership agreement of the incorporated limited partnership has been complied with.
- (2) A person may assume that anyone who appears, from information provided by the incorporated limited partnership that is available to the public from the Register, to be a general partner in the incorporated limited partnership—
 - (a) is a general partner in the incorporated limited partnership; and

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- (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a general partner in an incorporated limited partnership.
- (3) A person may assume that anyone who is held out by the incorporated limited partnership to be a general partner in, or an agent of, the incorporated limited partnership—
- (a) is a general partner in the incorporated limited partnership or has been duly appointed as an agent of the incorporated limited partnership, as the case requires; and
- (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of partner in, or agent of, an incorporated limited partnership.
- (4) A person may assume that the general partners in, and agents of, the incorporated limited partnership properly perform their duties to the incorporated limited partnership.
- (5) A person may assume that a document has been duly executed by the incorporated limited partnership if the document appears to have been signed in accordance with section 115(2).
- (6) A person may assume that a document has been duly executed by the incorporated limited partnership if the incorporated limited partnership's common seal appears to have been affixed to the document in accordance with section 115(1).
- (7) A person may assume that a general partner in, or agent of, the incorporated limited partnership who has authority to issue a document or certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.

- (8) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

118 Identification of incorporated limited partnerships

S. 118
inserted by
No. 99/2003
s. 4.

- (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 an incorporated limited partnership in connection with the conduct of the partnership's business must contain in legible letters the words "An Incorporated Limited Partnership" (or the expression "L.P." or "LP" as an abbreviation) at the end of the firm-name of the partnership.
- (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 incorporated limited partnership concerned—is aware that documents are being issued in contravention of this section—

is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

- (4) The certificate of registration of an incorporated 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 in the incorporated limited partnership is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

S. 119
inserted by
No. 99/2003
s. 4.

119 Registered office

- (1) An incorporated limited partnership must keep in Victoria (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 incorporated limited partnership is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

S. 120
inserted by
No. 99/2003
s. 4.

120 Lodgment of certain documents with the Director

S. 120(1)
amended by
No. 2/2008
s. 26.

- (1) An incorporated limited partnership that was incorporated on the basis of an intention to apply for registration of the partnership as a VCLP, an AFOF or an ESVCLP under Part 2 of the Venture Capital Act 2002 of the Commonwealth must, within one month after being so registered, lodge with the Director a copy of a document evidencing its status as a VCLP, an AFOF or an ESVCLP.
- (2) An incorporated limited partnership that was incorporated on the basis of an intention to meet the requirements for recognition as a venture capital management partnership within the meaning of section 94D(3) of the Income Tax Assessment Act 1936 of the Commonwealth must, within one month after becoming such a partnership, lodge with the Director a statement that it is such a partnership.

- (3) If—
- (a) the registration of an incorporated limited partnership as a VCLP, an AFOF or an ESVCLP under Part 2 of the Venture Capital Act 2002 of the Commonwealth is revoked; or
 - (b) an incorporated limited partnership ceases to be a venture capital management partnership within the meaning of section 94D(3) of the Income Tax Assessment Act 1936 of the Commonwealth—

S. 120(3)(a)
amended by
No. 2/2008
s. 26.

the incorporated limited partnership must, within 7 days after the date on which that revocation took effect or it ceased to be such a partnership, lodge with the Director a notice of that revocation or cessation, specifying the date on which it took effect.

- (4) If an incorporated limited partnership ceases to carry on business, the incorporated limited partnership must, as soon as practicable, lodge with the Director a notice of the cessation, specifying the date on which it took effect.
- (5) A copy of a document, a statement or a notice required to be lodged with the Director under this section must be accompanied by the prescribed fee or, if no fee is prescribed, a fee of \$70.00.
- (6) A notice required to be lodged with the Director under this section must be—
 - (a) in the form approved by the Director; and
 - (b) contain the particulars required by the regulations or the approved form of notice.
- (7) If subsection (1), (2), (3) or (4) is not complied with, each general partner in the incorporated limited partnership is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

s. 121

S. 121
inserted by
No. 99/2003
s. 4.

121 Service

- (1) Without affecting any other method of serving documents on an incorporated limited partnership, a document concerning the business of an incorporated limited partnership may be duly served on the partnership if it is left at, or sent by post addressed to, the registered office of the partnership for the time being shown in the Register.
- (2) This section does not apply to a document relating to proceedings before a court.

S. 122
inserted by
No. 99/2003
s. 4.

122 Entry in Register constitutes notice

An entry in the Register of any particular fact concerning an incorporated limited partnership, including an entry stating the effect of any notice received by the Director, is sufficient notice of the fact or of the effect of the notice to all persons who deal with the partnership.

S. 123
inserted by
No. 99/2003
s. 4.

123 False and misleading statements

- (1) A person who, in a document required by or for the purposes of this Part or lodged with or submitted to the Director under this Part—
 - (a) makes or authorises the making of a statement that to his or her knowledge is false or misleading in a material particular; or
 - (b) omits or authorises the omission of any matter or thing without which the statement is to his or her knowledge misleading in a material respect—

is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

- (2) A person who, in a document required by or for the purposes of this Part or lodged with or submitted to the Director under this Part—
- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
 - (b) omits or authorises the omission of any matter or thing without which the statement would be misleading—

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case requires, is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

124 Duty to furnish information

- (1) For the purpose of monitoring compliance with this Part or the regulations made for the purposes of this Part, the Director may by notice in writing require an incorporated limited partnership to furnish within a period specified in the notice (being a period of not less than 28 days) or within such further period as the Director may allow such information as is specified in the notice.
- (2) An incorporated limited partnership required under subsection (1) to furnish information to the Director must within the period specified in the notice or within such further period as the Director has allowed furnish such information as it is within its power to furnish and must not furnish any information which to its knowledge is false or misleading in a material particular.

Penalty: 60 penalty units.

S. 124
inserted by
No. 99/2003
s. 4.

S. 125
inserted by
No. 99/2003
s. 4.

125 Confidentiality

- (1) The Director or a person employed or engaged in the administration of this Part must not, except to the extent necessary to carry out their functions under this Part, give to any other person, whether directly or indirectly, any information acquired by the Director or that person (as the case requires) in carrying out those functions.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply to the giving of information—
 - (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth; or
 - (d) with the written authority of the person to whom the information relates.

S. 126
inserted by
No. 99/2003
s. 4.

126 Offences by partnerships and partners

- (1) If this Part provides that a person, being a partnership (other than a partnership that is incorporated or is otherwise a separate legal entity), is guilty of an offence, that reference to the person is to be read as a reference to—
 - (a) each partner in the partnership; or
 - (b) in the case of a partnership in which any partner has under the law of the place where it is formed limited liability for the liabilities of the partnership, each partner in the partnership whose liability is not so limited.

- (2) In any proceeding against a partner for an offence against this Part brought in reliance on subsection (1) or under section 91(5), 113(4), 118(5), 119(3) or 120(7) it is a defence to the charge for the partner to prove that the partner took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

127 Delegation

The Director, by instrument, may delegate to any person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Part, any of the Director's functions or powers under this Part, other than this power of delegation.

S. 127
inserted by
No. 99/2003
s. 4,
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 151).

128 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to—
- (a) the keeping of records by an incorporated limited partnership; and
 - (b) information or copies of records or documents required to be provided to the Director by an incorporated limited partnership; and
 - (c) the form in which any record required under this Part to be kept is to be kept; and

S. 128
inserted by
No. 99/2003
s. 4.

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- (d) the fees required to accompany an application, statement, notice or other document lodged under this Part or the fees payable for the inspection of the Register or for the issue of certificates of information recorded in the Register.
- (3) A power conferred by this Part to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (4) Regulations made under this Part may be made—
- (a) so as to apply at all times or at a specified time; and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or

-
- (iii) as specified in both subparagraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; and
 - (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
 - (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (f) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (5) Nothing in this section limits the operation of section 79B or 80.
-

Partnership Act 1958
No. 6330 of 1958

Sch.

Section 2.

SCHEDULE

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
3745	Partnership Act 1928	The whole

ENDNOTES

1. General Information

The **Partnership Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 892.

2. Table of Amendments

This Version incorporates amendments made to the **Partnership Act 1958** by Acts and subordinate instruments.

Decimal Currency Act 1965, No. 7315/1965

Assent Date: 30.11.65
Commencement Date: 30.11.65 (Appointed day was 14.2.66)
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Equal Opportunity (Amendment) Act 1987, No. 46/1987

Assent Date: 25.8.87
Commencement Date: 1.12.87: Government Gazette 21.10.87 p. 2777
Current State: All of Act in operation

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Partnership (Limited Partnerships) Act 1992, No. 43/1992

Assent Date: 23.6.92
Commencement Date: 12.8.92: Government Gazette 12.8.92 p. 2178
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 449 on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 71) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

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Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: Ss 35, 36, 38 on 19.6.00: Government Gazette 15.6.00 p. 1248; s. 37 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 8(Sch. 6 item 4) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 87) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. item 13) on 23.4.02: s. 2
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Fair Trading (Amendment) Act 2003, No. 30/2003

Assent Date: 27.5.03
Commencement Date: Ss 88, 89 on 28.5.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Partnership (Venture Capital Funds) Act 2003, No. 99/2003

Assent Date: 2.12.03
Commencement Date: 3.12.03: s. 2
Current State: All of Act in operation

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 151) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: Ss 23–26 on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

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Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 44) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010

Assent Date: 9.2.10
Commencement Date: S. 98 on 1.8.10: Government Gazette 22.7.10 p. 1628
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Credit (Commonwealth Powers) Act 2010, No. 11/2010

Assent Date: 30.3.10
Commencement Date: S. 57 on 1.7.10: Government Gazette 24.6.10 p. 1273
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

Subordinate Legislation Amendment Act 2010, No. 78/2010

Assent Date: 19.10.10
Commencement Date: S. 24(Sch. 1 item 22) on 1.1.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Partnership Act 1958**

3. Explanatory Details

¹ S. 7: See also Commonwealth Bankruptcy Act 1966.

² S. 37: As to the application of the joint and separate estates of partners in bankruptcy proceedings, see Commonwealth Bankruptcy Act 1966, No. 33/1966 section 110.

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