



REPUBLIC OF NAURU  
**PARTNERSHIP ACT 2018**

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No. 35 of 2018

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An Act to repeal and replace the Partnership Act 1976 and to provide for the registration of partnerships and for related purposes

Certified: 18<sup>th</sup> December 2018

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Enacted by the Parliament of Nauru as follows:

## **PART 1 - PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Partnership Act 2018*.

### **2 Commencement**

This Act commences on 15 January 2019.

### **3 Interpretation**

**'business'** means any form of economic activity, trade, profession, commerce, craftsmanship, calling or other activity carried on for the purpose of generating revenue for gain;

**'business name'** for the purposes of this Act means the name and style under which a business is carried by the partnership either in its own name or a different business name and registered under the Business Names Registration Act 2018 as a firm;

**'certificate'** means a certificate of registration of partnership issued under section 12;

**'corporation'** includes a corporation incorporated under the Corporations Act 1972 and a foreign corporation;

**'firm'** has the same meaning given to it under the Business Names Registration Act 2018 and in case of a partnership, the partners shall register a firm in addition to registration of the partnership under this Act;

**'firm-name'** means the name under which the business of a firm is registered under the Business Names Registration Act 2018 and carried on;

**'Minister'** means the Minister for Justice;

**'partner'** means a person who is involved in a partnership;

**'Partnership'** means an unincorporated body of two or more individuals or of one or more individuals and one or more corporations, or two or more corporations, who or which have entered into partnership with one another with a view to carry on business registered under this Act and trading as a firm under the Business Names Registration Act 2018;

**'partnership property'**, in relation to any partnership, means property, and rights and interests in property, originally brought into the partnership business or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business;

**'person'** includes an individual, partnership and an unincorporated or corporate body to which this Act applies and any branch thereof;

**'Registrar'** means the Registrar of Partnerships;

**'Register'** means a register kept and maintained by the Registrar under section 7;

**'the Court'** means the District Court.

#### **4 Scope**

A Partnership registered under this Act shall comply with the Business Licences Act 2017 and Business Names Registration Act 2018 prior to carrying out any business activity.

#### **5 Application of the Act**

This Act shall not apply to:

- (a) Nauru Phosphate Royalties Trust;
- (b) any decision as to the joint ownership of land by the Nauru Lands Committee exercising its jurisdiction under the Nauru Lands Committee Act 1956;
- (c) any ownership of land under the Regulations Governing Intestate Estate 1938 also referred to as Administration Order No. 3 of 1938; and
- (d) ownership of land as joint tenants or tenants in common whether such ownership results in the generation of revenue for profit or gain.

### **PART 2 – PARTNERSHIP REGISTRATION**

#### **6 Registrar of Partnerships**

- (1) There shall be established an office of the Registrar of Partnerships.
- (2) The Secretary for Justice shall be the Registrar.
- (3) The Registrar shall:
  - (a) keep and maintain the Register;
  - (b) perform the functions and duties conferred on him or her under this Act;
  - (c) do all things as are necessary to be done in the proper administration of this Act; and
  - (d) keep and maintain the records for applications, and other documents required to be lodged or filed by persons seeking registration of the partnership under this Act.
- (4) The Registrar has the powers expressly conferred by this Act to be able to perform his or her functions and exercise powers under this Act.

- (5) The Minister may, on the recommendation of the Registrar appoint a Deputy Registrar.
- (6) The Deputy Registrar may perform such functions and exercise such powers of the Registrar under this Act, as the Registrar may in writing from time to time direct or authorise him or her to perform or exercise.
- (7) The Deputy Registrar shall have the same functions and powers as the Registrar in exercising the powers under subsection (6).

## **7 Register of Partnerships**

- (1) There shall be a Register of Partnerships.
- (2) The Registrar shall be responsible for keeping and maintaining a Register of Partnerships as prescribed by regulations.
- (3) Upon the payment of prescribed fees:
  - (a) the Register shall be made available for inspection by a person during business hours; and
  - (b) certified copies of the entries in the Register shall be provided.
- (4) The particulars registered in the Register and the records kept and maintained by the Registrar under this section shall be evidence of the record of the partnership kept and maintained by the Registrar.
- (5) A copy of or extract of any document contained in the Register certified to be a true copy or extract under the hand and seal of the Registrar is admissible as evidence in any legal proceedings as if it were the original document or a part of the document as extracted.
- (6) In any legal proceedings, a certificate under the hand and seal of the Registrar is prima facie evidence of the fact that a requirement of this Act specified in the certificate:
  - (a) had or had not been complied with at a date or within a period specified in the certificate;
  - (b) had been complied with, but at a date later than that specified in the certificate.
- (7) The Registrar may refuse to accept any document lodged and request that the document be amended, completed and re-lodged or a new document be lodged, if he or she is of the opinion that the document:
  - (a) contains matters contrary to law;
  - (b) by reason of any omission or misdescription has not been duly completed;

(c) does not comply with the requirements of this Act; or

(d) contains any error, alteration or eraser.

**8 Partnership to also register a firm**

A Partnership shall register:

- (a) a Partnership under this Act; and
- (b) as a firm either in the name of the registered partnership or any other business name under the Business Names Registration Act 2018.

**9 Time for registration and renewal of registration**

- (1) Where two or more persons intend to carry out a business as partners, they shall comply with section 8 prior to the commencement of any business activity.
- (2) Where a partnership complies with section 8, it shall apply and may be granted a business licence before carrying out any business activity.
- (3) The Partnership trading as a firm shall on an annual basis renew the business licence under the Business Licences Act 2017.

**10 Application for registration**

An application for the registration of a partnership shall:

- (a) be in the prescribed form;
- (b) provide the relevant information;
- (c) provide copies of relevant documents;
- (d) be declared and signed by all the individuals who are partners; and
- (e) accompanied by the prescribed fee.

**11 Certificate not to be granted to minors**

A certificate shall not be granted to a person under the age of 18 years.

**12 Consideration of application for partnership and issue of certificate**

- (1) The Registrar shall consider each application lodged and inform the applicant of the partners of the decision within 7 days of the date of the lodgement of the registration form.

- (2) Where the Registrar is satisfied that the application complies with the requirements of this Act, he or she shall issue the certificate of registration of partnership in the prescribed form.
- (3) Every certificate issued under this section shall show the full names of the partners in the Partnership.
- (4) A certificate issued under subsection (2) shall be valid until cancelled or removed from the Register.

### **13 Certificate shall be displayed**

- (1) A certificate shall be displayed in a conspicuous place in or at the Partnership's registered or principal place of business.
- (2) Where a partnership registered under this Act has multiple places of business, the original certificate shall be exhibited and maintained as required under subsection (1) at the registered or principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and maintained in a conspicuous position in each of such places of businesses.
- (3) A person who contravenes subsection (1) or (2) shall:
  - (a) be liable to a fixed penalty of \$1,000; and
  - (b) pay the fixed penalty within 7 days of a notice of the breach after being served by an authorised officer.
- (4) A person who fails to comply with subsection (3), commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.
- (5) A person who complies with subsection (3) shall not be prosecuted for an offence under subsection (4).

### **14 Variation of particulars**

- (1) All the partners shall notify the Registrar in the prescribed form and manner within 7 days of any change in the registered particulars of the registered partnership.
- (2) The Registrar shall upon receipt of the notice in subsection (1) amend the particulars contained in the Register.
- (3) Where the change is in respect of the registered partnership, ownership, address or nature of the partnership, the Registrar shall issue an amended certificate of partnership accordingly.
- (4) Where the change is in respect of the registered partnership, the Registrar shall issue an amended certificate accordingly.

- (5) A person who fails to comply with subsection (1) commits an offence and upon conviction is liable to a term of imprisonment not exceeding 2 years or a fine not exceeding \$10,000 or to both.

**15 Registered partnership not to be assigned**

- (1) A registered partnership shall not be assigned or permitted to be used by another person.
- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a term of imprisonment not exceeding 2 years or a fine not exceeding \$10,000 or to both.

**16 Registered partnership not to be transferred**

- (1) A registered partnership shall not be transferred to other persons without the prior written approval of the Registrar.
- (2) An application for the transfer of the certificate shall be made to the Registrar in the prescribed form and payment of the prescribed fee.
- (3) The Registrar shall consider the application and inform the partners of his or her decision.
- (4) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or both.

**17 Loss or destruction of documents**

- (1) Where a certificate is lost or destroyed, the partners shall notify and apply to the Registrar for a duplicate copy of the certificate in the prescribed form and pay the prescribed fee.
- (2) The Registrar shall within 7 days issue a duplicate copy of the certificate.
- (3) A person who without any reasonable excuse fails to notify the Registrar of the loss or destruction of a certificate under subsection (1) commits an offence and is liable to a fixed penalty of \$300.

**18 Suspension or cancellation of certificate of partnership**

- (1) The Registrar may suspend or cancel a certificate where:
  - (a) the certificate was obtained by fraud, misrepresentation or deliberate or negligent submission of false information;
  - (b) in case of an individual as a partner, he or she is adjudged bankrupt;
  - (c) in case of a corporation as a partner, the corporation is wound up;

- (d) the partnership fails to file annual returns for 2 consecutive years;
  - (e) the partners or partnership contravenes this Act;
  - (f) any registered partnership ceases to carry on its business activity and the partners or partnership fails to notify the Registrar of such cessation of business; or
  - (g) the partnership fails to commence business within 2 years:
    - (i) from the date of the registration of the firm; or
    - (ii) from the date of giving notice to the Registrar for temporary cessation business.
- (2) Before suspending or cancelling a certificate in accordance with subsection (1), the Registrar shall:
- (a) give a written notice to the partners;
  - (b) provide reasons for the intention to suspend or cancel; and
  - (c) require the partners to show cause within 14 days as to why the certificate shall not be suspended or cancelled.
- (3) The Registrar may not suspend or cancel a certificate under this section if the partnership takes remedial measures to the satisfaction of the Registrar within 21 days of receipt of the notice under subsection (2).
- (4) Where the partnership fails to show cause under subsection (2) the Registrar may suspend or cancel the certificate from the Register.

**19 Duty to notify Registrar on cessation of partnership**

- (1) The partners who intend to cease to continue the partnership on a temporary basis in the registered partnership name shall notify the Registrar of such cessation and the duration of such temporary cessation.
- (2) Where Partnership ceases to carry on with the business under the registered partnership permanently, the partners shall notify the Registrar of the permanent cessation of the partnership 30 days before the partnership ceases to continue.
- (3) A partner who fails to comply with subsection (1) or (2) commits an offence and upon conviction is liable to a term of imprisonment not exceeding 2 years or a fine not exceeding \$10,000 or to both.

**20 Failure to register any variations**

- (1) The partners or the partnership shall notify the Registrar of any change of the registration of any particulars in the Register of the Partnership within 14 days of such change.
- (2) All partners jointly or severally who contravene subsection (1) commits an offence and upon conviction shall be liable to a term of imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or to both.

**PART 3 – NATURE OF PARTNERSHIP**

**21 Rules for determining existence of Partnership**

Subject to this Act, in determining whether a partnership exists, regard shall be had to the following rules:

- (a) joint tenancy, tenancy in common, joint property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
- (b) the sharing of gross return 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;
- (c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that the person is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business does not itself make the person a partner in the business.

**PART 4 – RELATIONS OF PARTNERS WITH PERSONS DEALING WITH THEM**

**22 Power of partner to bind the firm**

- (1) An act done or executed by the Partnership as a firm with an intention to bind the partnership by any authorised person, whether a partner or not, is binding on the Partnership and all the partners.
- (2) This section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

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

- (1) Where one partner pledges the credit of the Partnership for a purpose apparently not connected with the partnership's business, the partners nor the partnership trading as a firm shall be bound unless authorised by the other partners.
- (2) This section does not absolve the personal liability incurred by an individual partner without the authority of the other partners.

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

Where 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 partnership, any act done in contravention of the agreement shall not be binding on the partnership.

**25 Liability of partners**

Every partner in a partnership is liable:

- (a) jointly with the other partners for all debts and obligations of the partnership; and
- (b) after the death of the partner the estate is also severally liable in due course of administration for such debts and obligation.

**26 Liability of partnership for wrongs**

Where any loss or injury is caused to any person other than a partner by any wrongful act or omission of:

- (a) a partner acting in the ordinary course of the business of the partnership; or
- (b) with the authority of his or her co-partners, -

the Partnership is liable the same extent as the partner so acting or omitting to act.

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

Where:

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

the partnership is liable to make good the loss.

**28 Liability jointly and severally**

A partner shall be jointly and severally liable with his or her co-partners for everything for which the firm while he or she is a partner therein becomes liable.

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

- (1) Where a partner, being a trustee, improperly uses 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.
- (2) This section shall not affect any liability incurred by any partner by reason of his or her having notice of a breach of trust.
- (3) Nothing in this section prevents trust money from being followed and recovered from the firm if still in its possession or under its control.

**30 Holding out as partner**

- (1) A person who:
  - (a) by words spoken or written, or by conduct, represents himself or herself;
  - (b) knowingly suffers himself or herself to be represented; or
  - (c) as a partner in the partnership trading as a firm, –is liable as a partner to a person who has, on the faith of any such representation, given credit to the partners, 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 continues in the name of the firm of which the deceased was a partner, the continued use of that name or of the deceased partner's name shall not of itself make his or her executors or administrators liable for any partnership debts contracted after the partner's death.

**31 Evidence against firm**

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

**32 Notice to a partner to be notice to firm**

A notice to a partner who usually 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.

**33 Liabilities of incoming and outgoing partners**

- (1) A person who is admitted as a partner into an existing firm is not liable to the creditors of the firm for anything done before he or she became a partner.

- (2) A partner who retires from a firm does not cease to be liable for partnership debts or obligations incurred before his or her retirement.
- (3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself or herself and the members of the partnership as newly constituted and the creditors.

**34 In case of insolvency rights of person lending or selling in consideration of share of profits postponed**

Where a partnership becomes insolvent, the priority of payments shall be:

- (a) bona fide creditors other than the partners being the creditors of the partnership;
- (b) all expenses of the administration of insolvency; and
- (c) the partners.

**35 Continuing guarantee**

- (1) A continuing guarantee given to any person in respect of the transactions of the partnership shall revoke the future transactions by any change in the deed or constitution of the partnership.
- (2) Subsection (1) shall not apply to any such arrangement where there is an agreement which shall bind all such future transactions.

**PART 5 – RELATIONS OF PARTNERS TO ONE ANOTHER**

**36 Mutual rights and duties of partners**

The mutual rights and duties of partners, whether determined 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 implied from a course of dealing.

**37 Partnership property**

- (1) Subject to subsection (2), all partnership property shall 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 its nature and tenure and the general rules of law as 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 at the date of the purchase held by them in the land or estate first mentioned at the date of purchase.

**38 Property bought with partnership money**

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

**39 Partnership property acquired deemed personalty**

Where land or any interest in it has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners, including the representatives of a deceased partner and also as between the heirs of a deceased partner and his or her executors or administrators, as personalty and not realty.

**40 Charging partner's interest to satisfy judgment**

(1) The Court may:

- (a) on an application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and any interest;
- (b) 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 coming to him or her in respect of the partnership; and
- (c) 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 require.

(2) 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.

**41 Rules as to interests and duties of partners**

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

- (a) all the partners are entitled to share equally in the capital and profits of the business and shall contribute equally towards the losses, whether of capital or otherwise, sustained by the partnership;
- (b) the partnership shall indemnify every partner for payments made and personal liabilities incurred by the partner:
  - (i) in the ordinary and proper conduct of the business of the firm; or

- (ii) in or about anything necessarily done for the preservation of the business or property of the Partnership;
- (c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he or she has agreed to subscribe is entitled to interest at the rate of 5% per annum from the date of payment or advance;
- (d) a partner is not entitled, before the ascertainment of profits, to interest on the capital of the firm subscribed by him or her;
- (e) a partner may take part in the management of the partnership business;
- (f) a partner shall not be entitled to remuneration for acting in the partnership business;
- (g) no person may be introduced as a partner without the consent of all the existing partners;
- (h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners; and
- (i) the partnership books are to be kept at the place of business of the partnership, or the principal place, if there is more than one, and every partner may, when he or she thinks fit, have access to and inspect and copy any of them.

#### **42 Expelling a partner**

A majority of the partners cannot expel any partner unless a power to do so has been conferred by express agreement between the partners.

#### **43 Determination of partnership**

- (1) Where no fixed term has been agreed upon for the duration of a partnership, any partner may determine the partnership at any time on giving 30 days' 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.

#### **44 Continuation of partnership after fixed term**

- (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 of a partnership by the partners or such of them as habitually acted therein during the fixed term for which the partnership was

entered into, without any settlement or liquidation of the partnership affairs, is deemed to be a continuance of the partnership.

**45 Duty of partners to render accounts, etc.**

- (1) Partners shall render true accounts and full information of all things affecting the partnership to any partner to or his or her legal representatives.
- (2) Every partnership shall keep and maintain proper accounts and records including underlying documentation such as invoices and contracts with respect to:
  - (a) all sums of money received and expended by the partnership, specifically the items or matters in respect of which the receipt took place;
  - (b) all sales and purchases of goods and services by the partnership;
  - (c) all assignments of rights or assumption of liabilities by the partnership;
  - (d) all transactions of the partnership, or affecting the assets or liabilities of the partnership;
  - (e) the assets and liabilities of the partnership.
- (3) All documents, records and accounts kept in accordance with subsection (2) must be retained by the partnership for a minimum period of 7 years.

**46 Accountability of partners for private profits**

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

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

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

**48 Rights of assignee of share in partnership**

- (1) An assignment by any partner of his or her 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:

- (a) interfere in the management or administration of the partnership business or affairs;
- (b) require any accounts of the partnership transactions; and
- (c) 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 shall accept the account of profits agreed to by the partners.

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

## **PART 6 – DISSOLUTION OF PARTNERSHIP**

### **49      Dissolution by expiration or notice**

(1) 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 completion or termination of that adventure or undertaking; or
- (c) if entered into for an undefined time, by any partner giving notice to the other partner or partners of his intention to dissolve the partnership.

(2) In section (1)(c), 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.

### **50      Dissolution by death, bankruptcy or insolvency**

Subject to any agreement between the partners, a partnership is dissolved as regards all the partners by the death or bankruptcy of a partner.

### **51      Dissolution where partner's share charged**

A partnership may, at the option of the other partners, be dissolved if any partner suffers his or her share of the partnership property to be charged under this Act for his or her separate debt.

**52            Dissolution where event makes operation unlawful**

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.

**53            Dissolution by court**

On application by a partner, the Court may dissolve the partnership in any of the following cases:

- (a) where a partner is shown to the satisfaction of the Court to be permanently of unsound mind, in which case the application may be made as well on behalf of that partner by his or her committee or next friend or person having title to intervene as by any other partner;
- (b) where a partner, other than the partner suing, has become in any other way permanently incapable of performing his part of the partnership contract;
- (c) where a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
- (d) where 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) where the business of the partnership can only be carried on at a loss; or
- (f) wherever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

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

- (1) Where a person deals with a partnership after a change in its constitution, he or she is entitled to treat all apparent members of the former partnership as still being members of the partnership until he or she has notice of the change.
- (2) A notice in the Gazette shall be notice to persons who had no dealings with the partnership before the date of the dissolution or change so notified.
- (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.

**55 Right of partners to notify dissolution**

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

**56 Authority to bind firm after dissolution**

- (1) After the dissolution of a partnership, the authority of a partner to bind the firm and the other rights and obligations of the partners, continue despite the dissolution so far as may be necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.
- (2) Despite subsection (1), the firm is in no case bound by the acts of a partner who has become bankrupt but this does not affect the liability of any person who has after the bankruptcy represented himself or herself or knowingly suffered himself or herself to be represented as a partner of the bankrupt.

**57 Application of partnership property to debts**

On the dissolution of a partnership, a partner is entitled, as against the other partners and all persons claiming through them in respect of their interests as partners, to have:

- (a) the property of the partnership applied in payment of the debts and liabilities of the partnership; and
- (b) 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 partnership, and –

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

**58 Apportionment of premium where partnership prematurely dissolved**

Where one partner has paid a premium to another on entering into a partnership for a fixed term and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Supreme Court may, upon application, order the repayment of the premium or of such part of it as the Supreme Court deems fit, 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 Supreme Court, wholly or principally 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.

**59 Partnership dissolved for fraud or misrepresentation**

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties to it, 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 or her for the purchase of a share in the partnership and for any capital contributed by the party entitled to rescind;
- (b) to stand in the place of the creditors of the firm for any payments made by him or her 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.

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

(1) Where:

- (a) a member of a firm dies or otherwise ceases to be a partner; and
- (b) 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 or her estate, -

then, in the absence of any agreement to the contrary, the outgoing partner or his or her estate is entitled at the option of himself or herself or the outgoing partner's representatives, to such share of the profits made since the dissolution as the Supreme Court may find to be attributable to the use of his or her share of the partnership assets or to interest at the rate of 5% per annum on the amount of his or her share of the partnership assets.

- (2) 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 or her estate, as the case may be, is not entitled to any further or other share of profits, but, if any partner assuming to act in exercise of the option does not in all material respects comply with the terms of, he or she is liable to account under this section.

**61 Amount due from surviving partners accrue**

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.

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

In settling accounts between the partners after 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; and
  - (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

**PART 7- MISCELLANEOUS**

**63 Authorised officers**

The Minister may, by notice in the Gazette, authorise an officer of the Department of Justice or a police officer to be an authorised officer for the purposes of this Act.

**64 Obstruction of authorised officers**

A person who obstructs, hinders or in any way interferes with an authorised officer in the performance of his or her duties commits an offence and upon conviction is liable to a term of imprisonment not exceeding 2 years or a fine not exceeding \$10,000 or to both.

**65 Liability of Registrar or authorised officers**

The Registrar or an authorised officer shall not be liable in any civil or criminal proceedings for anything done in the exercise of a power under this Act if the act or omission was done in good faith or on reasonable grounds.

**66 Records**

- (1) The firm partners shall ensure that the records including the underlying documentation such as proper accounts and records relating to the affairs of the firm operating under the registered firm name are kept and maintained.

- (2) The accounts and records under subsection (1) shall be kept for a period not less than 7 years from the end of the period to which the information relates.
- (3) The records kept under subsection (1) shall include underlying documentation such as:
  - (a) financial accounts;
  - (b) bank statements;
  - (c) business transactions;
  - (d) statutory taxes, licences, duties, fees;
  - (e) court proceedings;
  - (f) invoices;
  - (g) contracts;
  - (h) audited financial accounts;
  - (i) annual returns;
  - (j) details of the director, manager, secretary or officer;
  - (k) the assets and liabilities of the individual, firm or corporation; and
  - (l) other matters prescribed by regulations.
- (4) A firm who contravenes this section commits an offence and upon conviction is liable to a fine not exceeding \$5,000.

**67 Information sharing**

- (1) Subject to subsection (2), the Registrar may provide any information including any copy of a document, account or record that the Registrar has obtained under this Act to:
  - (a) a law enforcement or regulatory agency, whether in the Republic or in a foreign jurisdiction for the purposes of carrying out the agency's duty, power or function;
  - (b) the competent authority of a foreign government with which the Republic has entered into an agreement providing for the exchange of information to the extent permitted under that agreement;
  - (c) any treaties or international agreements entered into by the Republic for the purposes of exchange of information.

- (2) For information sharing under subsection (1), the Registrar shall ensure that necessary protections are in place for maintaining the confidentiality of the information.

**68 Compliance with Beneficial Ownership Act 2017**

- (1) A firm, corporation, trust or foreign business applying for a certificate under this Act shall concurrently comply with the requirements of the Beneficial Ownership Act 2017 by providing the details required for the purposes of that Act in the prescribed form.
- (2) The Registrar shall not register a partnership where the person applying for a certificate fails to provide the prescribed form under subsection (1).

**69 Jurisdiction of the Court**

The District Court shall have jurisdiction to hear and determine all offences under this Act and shall have the power to impose the full penalty or punishment in respect of the offences under this Act.

**70 General Penalty Provisions**

- (1) Any person who fails to comply with the requirements of the Act, or who fails to comply with the directions given by the Registrar, commits an offence and is liable to a penalty not exceeding \$1,000.
- (2) Any person who does not comply with the requirements of sections 8 and 45 commits an offence and is liable to a penalty not exceeding \$5,000.
- (3) A default in the payment of a penalty will automatically cause the operations of the partnership to cease.
- (4) Any penalty incurred under the Act that is not paid within 30 days of the penalty being imposed will become a debt owed to the Republic.

**71 Regulations**

- (1) Cabinet may make regulations prescribe all matters and things required for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
  - (a) prescribe fees for matters under this Act;
  - (b) prescribe the forms to be used under this Act;
  - (c) provide for further particulars and other requirements for registration under this Act; and
  - (d) prescribe penalties for breaches of the regulations.

## **PART 8- REPEAL, TRANSITIONAL AND SAVING**

### **72 Repeal**

The Partnership Act 1976 and any regulations made under that Act are repealed.

### **73 Transitional and saving**

- (1) Despite the repeal of the Partnership Act 1976, all firms registered under that Act remain registered until such firm registrations are cancelled under the provisions of this Act.
- (2) All applications submitted to the Registrar under the provisions of the Partnership Act 1976 shall be determined in accordance with the provisions of that Act as if this Act had not commenced and all other matters shall be dealt with in accordance with the provisions of this Act.
- (3) A certificate of registration issued under the repealed Act is taken to be the certificate of registration for the Partnership issued under this Act.
- (4) All proceedings, fines or decisions made under the Partnership Act 1976 remain enforceable and are deemed to have been made under this Act.
- (5) Any judicial or administrative proceedings taken under the Partnership Act 1976 shall continue as if it had commenced under this Act.