

# **Partnership Law Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This is a Bill to re-enact, in an up-to-date and accessible form, the Partnership Act 1908 the **(1908 Act)**.

The Bill is a revision Bill prepared under subpart 3 of Part 2 of the Legislation Act 2012.

The revision powers are set out in section 31 of the Legislation Act 2012. In summary, a revision Bill may—

- revise the whole or part of 1 or more Acts, and for that purpose may combine or divide Acts or parts of Acts:
- omit redundant and spent provisions:
- renumber and rearrange provisions from the Acts revised:
- make changes in language, format, and punctuation to achieve a clear, consistent, gender-neutral, and modern style of expression, to achieve consistency with current drafting style and format, and generally to better express the spirit and meaning of the law:
- include new or additional purpose provisions, outline or overview provisions, examples, diagrams, graphics, flowcharts, readers' notes, lists of defined terms, and other similar devices to aid accessibility and readability:
- correct typographical, punctuation, and grammatical errors and other similar errors:
- make minor amendments to clarify Parliament's intent, or reconcile inconsistencies between provisions:
- make consequential amendments to other enactments:
- include any necessary repeals, savings, and transitional provisions.

However, a revision Bill must not change the effect of the law, except as authorised by section 31(2)(i) or (j) of the Legislation Act 2012 (minor amendments to clarify Parliament’s intent or reconcile inconsistencies or to update monetary amounts).

Accordingly, this Bill does not make any substantive policy changes.

A number of relatively minor inconsistencies, anomalies, discrepancies, and omissions were identified in the course of the preparation of this revision Bill. The following sets out, in general terms, the kinds of matters that were identified and how they have been remedied:

- various provisions of the 1908 Act refer to “retirement”. This has been interpreted to include partners who have been expelled or “compulsorily retired” under the terms of the partnership agreement. References in the 1908 Act to a “partner who retires” (and similar references) have been replaced with references to leaving the firm (in combination with a definition of leaves in *clause 7(2)*):
- section 4(2) of the 1908 Act refers to certain entities that are not partnerships. The language used has been updated by—
  - omitting an obsolete reference to “joint-stock, trading, or mining companies”; and
  - expressly referring to limited partnerships for clarity; and
  - referring to a body corporate rather than a company:
- some provisions of the 1908 Act contain inconsistent terms and expressions. For example, some provisions refer to “a portion of the profits made in the business” while other provisions refer to “a share of the profits of the business”. A second example is provisions that refer to a “partnership agreement” while other provisions refer to a “partnership contract”. A third example is provisions that refer to a “partnership business” while other provisions refer to the “business of the firm” or just the “business”. The wording of these provisions has been aligned for consistency:
- section 16(b) of the 1908 Act (which relates to the improper employment of trust property) refers only to trust money while the rest of the section refers to trust property. Paragraph (b) has been amended to refer to trust property:
- section 17 of the 1908 Act refers to the executors’ or administrators’ estate or effects (as opposed to the deceased partner’s estate). For consistency with other provisions, this provision has been amended to just refer to the partner’s estate:
- section 20 of the 1908 Act (which relates to the liabilities of incoming and outgoing partners) refers to an agreement between the firm and “creditors” plural (which could be misinterpreted as a reference to the creditors as a group). The provision has been amended to clarify that an agreement can be reached with each particular creditor (rather than all creditors acting together):
- the 1908 Act refers to the “constitution” of a firm or the firm as “constituted”. This could be misconstrued as referring to the governing rules of an entity

(similar to the “constitution” of a company). To avoid confusion, the provisions have been amended to refer to “composition” or “composed”:

- in some places, section 23(3) of the 1908 Act refers to “an estate or interest in any land” while in other places it refers to “land or estate”. Amendments have been made to consistently refer to an estate or interest in land. Section 23(3) also refers to the purchased land being used “in like manner”. This has been clarified by referring to a “similar” manner:
- section 26(2) of the 1908 Act (which relates to the procedure against partnership property for a partner’s separate judgment debt) refers to the High Court both making orders and giving directions. However, section 26(2A) refers only to the District Court making orders. This has been extended to allow the District Court to give directions:
- section 27(i) of the 1908 Act contains an archaic reference to “books”. The provision relates to each partner’s right to have access to and to inspect the partnership books. This has been replaced with a reference to records. The provision also requires the “books” to be kept at the place of business of the partnership. This does not reflect technological changes (for example, keeping records “in the cloud”). To take into account these changes, the provision has been amended to require the records to be reasonably available at the place of business of the partnership:
- archaic terminology has been updated (for example, “thereto”, “therein”, “thereby”, and “thereof”). In addition, the reference to “servant” in section 5(c)(ii) of the 1908 Act has been updated to “employee” in *clause 15(1)(b)*:
- section 38(a) of the 1908 Act allows a court to dissolve a partnership if a partner is found to be mentally disordered by inquisition or is shown to the satisfaction of the court to be of permanently unsound mind. The terminology has been updated to align with the wording in section 14(1)(a) of the Senior Courts Act 2016. In addition, the provision allows a partner’s “committee” to apply for an order. Section 129(7) of the Mental Health Act 1969 provided that references to a committee may be references to a manager appointed under Part 7 of that Act. Section 113 of the Protection of Personal and Property Rights Act 1988 in turn refers to references to Part 7 being treated as references to that Act. In this context, a reference to a manager appointed under the Protection of Personal and Property Rights Act 1988 has replaced the reference to a committee.

The Justice Committee is nominated for the purposes of Standing Order 271(3).

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides for the Bill to come into force 6 months after enactment.

## Part 1

### Purpose, overview, and other preliminary provisions

*Clause 3* states that the purpose of the Bill is to re-enact the Partnership Act 1908 in an up-to-date and accessible form.

*Clause 4* states that the Bill is a revision Act for the purposes of section 35 of the Legislation Act 2012. Section 35 provides that revision Acts are not intended to change the effect of the law (except to the extent expressly indicated).

*Clause 5* is an overview of the Bill.

*Clause 6* provides for the transitional, savings, and related provisions set out in *Schedule 1*.

*Clause 7* defines certain terms used in the Bill.

## Part 2

### Nature of partnership

#### *Meaning of partnership and firm name*

*Clause 8* defines a partnership as the relationship that exists between persons who carry on a business in common with a view to profit.

*Clause 9* refers to entities that are not partnerships (including companies, limited partnerships, and other bodies corporate).

*Clause 10* provides that partners are collectively called a firm.

#### *Determining whether partnership exists*

*Clauses 11 to 15* set out rules for determining whether a partnership exists, including providing that—

- co-ownership of property does not by itself create a partnership (*clause 12*);
- sharing gross returns does not by itself create a partnership (*clause 13*);
- receiving a share of profits is presumptive evidence that a person is a partner (*clause 14*). However, receiving certain profits or payments does not by itself make a person a partner in certain circumstances (*clause 15*).

*Clause 16* sets out ancillary rules relating to 2 situations referred to in *clause 15*.

## Part 3

### Relationship of partners to third persons and to each other

#### Subpart 1—Relationship of partners to third persons

*Clause 17* provides that each partner is an agent of the other partners for the purpose of the partnership.

*Clause 18* provides for the power of each partner to bind the firm.

*Clause 19* refers to where the partners agree on restrictions on a partner's power to bind the firm. If the partner breaches the agreement, the firm is not bound if the person dealing with the partner has notice of the agreement.

*Clause 20* provides for partners to be bound by acts done or instruments executed on behalf of the firm.

*Clause 21* provides that the firm may not be bound if a partner pledges the credit of the firm for a private purpose.

*Clause 22* provides for partners to be jointly liable for the firm's debts.

*Clause 23* deals with the firm's liability for a partner's wrongful acts or omissions. This applies when the partner is acting in the ordinary course of the business of the firm or with the authority of the other partners.

*Clause 24* deals with the firm's liability if a partner misapplies money or property.

*Clause 25* states that the liability of the partners for those wrongful acts or omissions is joint and several.

*Clause 26* provides that if a partner improperly uses trust property in the partnership, the other partners are not liable (unless the other partner has notice of a breach of trust).

*Clause 27* provides that a person may be liable as a partner if they represent themselves as being a partner and another person relies on the representation when giving credit to the firm.

*Clause 28* provides that the continued use of a firm name after a partner's death does not make the partner's estate liable for any partnership debts incurred after that death.

*Clause 29* provides for when a partner's admission or representation can be used as evidence against the firm.

*Clause 30* sets out when notice to a partner operates as notice to the firm.

*Clauses 31 and 32* set out the liability of incoming and outgoing partners.

*Clause 33* provides that if a person deals with a firm after a partner leaves, the person may treat all apparent members of the firm as still being partners until the person has notice of the change.

*Clause 34* provides for guarantees to be revoked by the change in the composition of a firm.

### Subpart 2—Relationship of partners to one another

*Clause 35* allows the partners' rights and duties to be varied by consent.

*Clause 36* requires partnership property to be held and applied exclusively for the partnership's purposes and in accordance with the partnership agreement.

*Clause 37* concerns how partnership land is held for the purposes of the partnership.

*Clause 38* provides that where persons are partners with regard to the profits made by the use of land that is not itself partnership land and those profits are used to purchase

other land, the new land is also not partnership land (unless the partners agree otherwise).

*Clause 39* provides that property bought with partnership money is treated as being bought for the firm.

*Clause 40* provides that partnership land is treated as between the partners as personal property and not real property.

*Clause 41* prevents a writ of execution from being issued against partnership property except on a judgment against the firm.

*Clause 42* allows the High Court and District Court to charge a partner's interest in the partnership property and profits for their separate judgment debt. *Clause 43* allows the other partners to redeem or purchase that interest.

*Clauses 44 to 52* provide for default rules about the partners' interests and duties. These rules are subject to any agreement between the partners.

In summary,—

- partners share equally in the capital and profits of the partnership and contribute equally to losses (*clause 45*):
- the firm must indemnify a partner for payments made, and personal liabilities incurred, by the partner for the firm (*clause 46*):
- interest must be paid where a partner contributes more capital than the partner agreed to provide (*clause 47*):
- every partner may take part in the management of the business (*clause 48*):
- partners are not entitled to remuneration (*clause 49*):
- new partners cannot be introduced without the consent of all the partners (*clause 50*):
- most decisions about the partnership are made by majority (*clause 51*):
- the partners have a right of access to the records (*clause 52*).

*Clause 53* provides that a majority of partners cannot expel a partner unless this power has been expressly given.

*Clause 54* requires a partner to give full information about the partnership to the other partners.

*Clause 55* requires a partner to account to the other partners for private profits derived from transactions involving the partnership or from the use of the partnership property, name, or business connections.

*Clause 56* requires a partner to account for the profits of a competing business.

*Clause 57* specifies an assignee's rights when a partner's share in the partnership is assigned.

## Part 4

### Financial reporting, dissolution of partnership, and other miscellaneous provisions

#### Subpart 1—Financial reporting for large partnerships

This subpart imposes financial reporting obligations on large partnerships. A partnership is large if,—

- as at the balance date of each of the 2 preceding accounting periods, the total assets of the partnership exceed \$60 million:
- in each of the 2 preceding accounting periods, the total revenue of the partnership exceeds \$30 million.

*See* section 45 of the Financial Reporting Act 2013.

The subpart—

- requires accounting records to be kept (*clause 59*):
- requires financial statements to be prepared in accordance with generally accepted accounting practice (*clause 60*):
- requires the financial statements to be audited unless the partnership opts out (*clauses 61, 62, and 64*):
- imposes offences on each partner relating to breaches of these requirements. The maximum fine for a partner is \$50,000 (*clause 63*).

*Clause 65* provides that the requirements do not apply if the partnership has financial reporting duties under the Financial Markets Conduct Act 2013.

#### Subpart 2—End of partnership

##### *How partnership may end*

*Clauses 66, 67, and 69 to 73* set out various ways in which a partnership may be dissolved, including—

- at the end of a partnership's fixed term (*clause 66*):
- by any partner giving notice, in the case of a partnership without a fixed term duration (*clause 67*):
- by the death or bankruptcy of a partner (*clause 69*):
- if a partner's interest is charged for a separate debt, when the other partners agree to dissolve the partnership (*clause 70*):
- if it is unlawful for the partnership business to be carried on (*clause 71*):
- by an order of the court (*clauses 72 and 73*). An order may be made if, for example, a partner is permanently incapable of performing the partner's part of the partnership agreement or a partner has wilfully or persistently breached the partnership agreement.

*Clause 68* provides that the partners' rights and duties generally remain the same if the partnership continues after the end of its fixed term.

### *Dissolving a partnership*

*Clause 74* allows any partner to give public notice when a partnership is dissolved or a partner leaves the firm.

*Clause 75* gives authority to the partners to wind up the affairs of a partnership that is dissolved.

*Clause 76* sets out how the partnership property is to be applied when the partnership is dissolved.

*Clause 77* allows the court to order a premium to be repaid if a partnership is dissolved before the end of a fixed term.

*Clause 78* gives certain rights to a partner who is entitled to rescind a partnership because of the fraud or a misrepresentation of another partner. For example, the partner is entitled to be indemnified by the guilty party for all the debts and liabilities of the firm.

*Clauses 79 to 81* set out the rights of the estate of a deceased partner or of an outgoing partner when the partnership is carried on without a final settlement of accounts.

*Clauses 82 to 84* provide for the final settling of accounts when the partnership is dissolved.

### Subpart 3—Repeal and consequential amendments

This subpart repeals the Partnership Act 1908 and provides for consequential amendments.

*Hon David Parker*

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## **Contents**

		Page
1	Title	4
2	Commencement	4
<b>Part 1</b>		
<b>Purpose, overview, and other preliminary provisions</b>		
3	Purpose of this Act	4
4	Revision Act	4
5	Overview	5
6	Transitional, savings, and related provisions	6
7	Interpretation	6
<b>Part 2</b>		
<b>Nature of partnership</b>		
<i>Meaning of partnership and firm name</i>		
8	Definition of partnership	6
9	Relationships that are not partnerships	6
10	Meaning of firm and firm name	7
<i>Determining whether partnership exists</i>		
11	Determining whether partnership exists	7
12	Co-ownership of property	7
13	Sharing gross returns	7
14	Effect of receiving share of profits	7
15	Where receiving profits or payments does not make person partner or liable as partner	8
16	What happens if borrower or buyer is insolvent	8

**Part 3**

**Relationship of partners to third persons and to each other**

Subpart 1—Relationship of partners to third persons

17	Partner is agent of firm and other partners	9
18	Power of partner to bind firm	9
19	Effect of notice that firm will not be bound by acts of partner	9
20	Partners bound by acts done or instruments executed on behalf of firm	10
21	Partner using credit of firm for private purposes	10
22	Liability of partners for firm's debts and obligations	10
23	Liability of firm for partner's wrongful acts or omissions	10
24	Misapplication of money or property received for or in custody of firm	11
25	Liability for wrongful acts or omissions is joint and several	11
26	Improper use of trust property for partnership purposes	11
27	Person liable if they represent themselves as partner	11
28	Continued use of firm name when partner dies	12
29	Admissions and representations of partners	12
30	Notice to acting partner is notice to firm	12
31	Liability of incoming partner	12
32	Liability of partner who leaves firm	12
33	Rights of persons dealing with firm against apparent members of firm	13
34	Continuing guarantee revoked by change in firm	13

Subpart 2—Relationship of partners to one another

35	Partners' rights and duties may be varied by consent	13
36	Partnership property	13
37	Partnership land	14
38	Co-owners of land who purchase other land out of profits	14
39	Property bought with partnership money	14
40	Partnership land treated as personal property as between partners	15
41	Writ of execution against partnership property	15
42	Court may charge partner's interest for their separate judgment debt	15
43	Other partners may redeem or purchase interest	16
44	Rules about interests and duties of partners	16
45	Partners share equally in capital and profits and contribute equally to losses	16
46	Firm must indemnify partner for payments made, and personal liabilities incurred, for firm	16
47	Entitlement to interest	16
48	Partner may manage business	17
49	Partner not entitled to remuneration	17

## Partnership Law Bill

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50	No new partner without consent	17
51	Most decisions may be made by majority	17
52	Access to partnership's records	17
53	Expulsion of partner	17
54	Duty of partners to provide accounts and full information on things affecting partnership	17
55	Accountability of partners for private benefit	18
56	Duty to account for profits of competing business	18
57	Rights of assignee of share in partnership	18

### Part 4

#### Financial reporting, dissolution of partnership, and other miscellaneous provisions

##### Subpart 1—Financial reporting for large partnerships

58	Definitions of terms used in this subpart	19
59	Accounting records	19
60	Financial statements must be prepared	20
61	Financial statements must be audited	20
62	Audit must comply with auditing and assurance standards	20
63	Financial reporting offences	20
64	Partnerships may opt out of audit requirement	21
65	Duties do not apply if alternative financial reporting duties under Financial Markets Conduct Act 2013	21

##### Subpart 2—End of partnership

###### *How partnership may end*

66	Partnership dissolved at end of term, by end of venture or undertaking, or by notice	21
67	Ending partnership at will	22
68	Partnership that continues after end of fixed term	22
69	Partnership dissolved by death or bankruptcy	22
70	Partnership may be dissolved if partner's interest in property is charged	23
71	Partnership dissolved if unlawful	23
72	Court may dissolve partnership	23
73	Application to court	23

###### *Dissolving a partnership*

74	Right to notify dissolution	24
75	Continuing authority of partners for purposes of winding up and completing transactions	24
76	Application of partnership property	25
77	Court may order repayment of premium if partnership prematurely dissolved	25
78	Rights where partnership dissolved for fraud or misrepresentation	25

79	Right of outgoing partner or partner's estate to share profits or obtain interest	26
80	Option to purchase share of outgoing or deceased partner	26
81	Retiring or deceased partner's share is debt	27
82	Rules for distributing assets on final settlement of accounts	27
83	Losses	27
84	Application of assets	27
	Subpart 3—Repeal and consequential amendments	
85	Partnership Act 1908 repealed	27
86	Amendments to other enactments	28
	<b>Schedule 1</b>	29
	<b>Transitional, savings, and related provisions</b>	
	<b>Schedule 2</b>	30
	<b>Minor amendments to clarify Parliament's intent or reconcile inconsistencies</b>	
	<b>Schedule 3</b>	32
	<b>Comparative table</b>	
	<b>Schedule 4</b>	35
	<b>Consequential amendments</b>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Partnership Law Act **2019**.

**2 Commencement**

This Act comes into force immediately after the expiry of the 6-month period that starts on the date of Royal assent. 5

**Part 1**

**Purpose, overview, and other preliminary provisions**

**3 Purpose of this Act**

The purpose of this Act is to re-enact the Partnership Act 1908 in an up-to-date and accessible form. 10

**4 Revision Act**

- (1) This is a revision Act for the purposes of section 35 of the Legislation Act 2012 (which provides that revision Acts are not intended to change the effect of the law, except as expressly provided). 15

- (2) **Schedule 2** expressly provides for the minor amendments that have been made under section 31(2)(i) of the Legislation Act 2012.
- (3) **Schedule 3** sets out where the corresponding provisions of the Partnership Act 1908 can be found in this Act on its commencement. The purpose of the schedule is to assist readers. It must not be interpreted as a definitive or ongoing guide to how the provisions correspond. 5

## 5 Overview

- (1) In this Act,—
- (a) this Part contains the purpose and overview of this Act:
- (b) **Part 2** provides for the nature of partnership, including rules for determining whether a partnership exists: 10
- (c) **subpart 1 of Part 3** provides for the relationship between partners and third persons, including—
- (i) the power of partners to bind the partnership; and
- (ii) the liability of partners for the debts and obligations of the partnership; and 15
- (iii) the liability of the partnership for a partner's wrongful acts or omissions; and
- (iv) the liability of persons who represent themselves as partners; and
- (v) the liability of incoming and outgoing partners; and 20
- (vi) the rights of third persons against persons who appear to be partners:
- (d) **subpart 2 of Part 3** provides for the relationship of partners to each other, including—
- (i) the variation of rights and duties by consent; and 25
- (ii) how partnership property must be held and applied; and
- (iii) the interests, rights, and duties of partners in relation to partnership property; and
- (iv) the payment of a partner's separate debts out of partnership property; and 30
- (v) the right of every partner to take part in the management of the partnership business; and
- (vi) the duty of partners to provide accounts and full information about the partnership; and
- (vii) the duty of partners to account for private profits or the profits of a competing business: 35
- (e) **Part 4** provides for financial reporting and the end of a partnership.
- (2) This section is only a guide to the general scheme and effect of this Act.

**6 Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

**7 Interpretation**

- (1) In this Act, unless the context otherwise requires,— 5  
**business** includes every trade, occupation, or profession  
**court** includes every court and Judge that has jurisdiction  
**firm** and **firm name** have the meanings set out in **section 10**  
**partnership** has the meaning set out in **sections 8 and 9**  
**partnership property** has the meaning set out in **section 36(2)** 10  
**personal representative** means an executor, an administrator, or a trustee of the estate of an individual who has died.
- (2) In this Act, unless the context otherwise requires, a partner (**A**) **leaves** a firm if **A**— 15
- (a) retires from the firm (whether voluntarily or under a duty to retire imposed under the partnership agreement); or
- (b) is expelled from the partnership (*see* **section 53**).
- Compare: 1908 No 139 s 2

**Part 2****Nature of partnership** 20*Meaning of partnership and firm name***8 Definition of partnership**

- (1) **Partnership** is the relationship that exists between persons carrying on a business in common with a view to profit.
- (2) This section is subject to **section 9**. 25  
 Compare: 1908 No 139 s 4(1)

**9 Relationships that are not partnerships**

The relationship between the shareholders or members of any of the following is not a partnership within the meaning of this Act:

- (a) a company registered under the Companies Act 1993: 30
- (b) a limited partnership that is registered under the Limited Partnerships Act 2008:
- (c) an association registered as a body corporate under any Act:

- (d) a body corporate or other association formed or incorporated by or under any Act, letters patent, or Royal Charter.

Compare: 1908 No 139 s 4(2)

## 10 Meaning of firm and firm name

In this Act,— 5

- (a) persons who have entered into partnership with one another are collectively called a **firm**; and
- (b) the name under which their business is carried on is the **firm name**.

Compare: 1908 No 139 s 7

*Determining whether partnership exists* 10

## 11 Determining whether partnership exists

In determining whether a partnership exists, regard must be had to **sections 12 to 15**.

Compare: 1908 No 139 s 5

## 12 Co-ownership of property 15

- (1) If 2 or more persons own or hold property as joint tenants, tenants in common, or joint or part owners, the ownership or holding of the property does not by itself create a partnership in relation to the property.
- (2) This section applies whether or not the tenants or owners share any profits made by the use of the property. 20

Compare: 1908 No 139 s 5(a)

## 13 Sharing gross returns

- (1) Sharing gross returns does not by itself create a partnership.
- (2) This section applies whether or not the persons sharing the returns have a joint or common right or interest in a property from which, or from the use of which, the returns are derived. 25

Compare: 1908 No 139 s 5(b)

## 14 Effect of receiving share of profits

- (1) If a person receives a share of the profits of a business it is presumed, in the absence of evidence to the contrary, that the person is a partner in the business. 30
- (2) However, neither of the following by itself makes a person a partner in a business:
- (a) the receipt by the person of a share of the profits of the business:
- (b) the receipt by the person of a payment that is contingent on, or varies with, the profits of the business. 35

- (3) *See*, in particular, **section 15**.

Compare: 1908 No 139 s 5(c)

## **15 Where receiving profits or payments does not make person partner or liable as partner**

- (1) None of the following by itself makes a person **(A)** a partner in a business or liable as a partner: 5
- (a) A receives a payment of a debt or any other liquidated amount, by instalments or otherwise, out of the accruing profits of the business:
- (b) A is an employee or agent of a person who is engaged in the business and A has a contract for remuneration by a share of the profits of the business: 10
- (c) A is a relative of a deceased partner and receives by way of an annuity a share of the profits of the business in which the deceased person was a partner:
- (d) A is a lender who advances money in the circumstances specified in **subsection (3)**: 15
- (e) A receives a share of the profits of the business by way of an annuity or otherwise in consideration of the sale by A of the goodwill of the business.
- (2) In **subsection (1)(c), relative**, in relation to a deceased partner, means the widow, widower, surviving civil union partner, surviving de facto partner, or child of the deceased partner. 20
- (3) For the purposes of **subsection (1)(d)**, the circumstances are that—
- (a) the money is or will be advanced as a loan under a contract to a person who is engaged or about to engage in the business; and 25
- (b) under the contract, A will receive—
- (i) a share of the profits arising from carrying on the business; or
- (ii) a rate of interest that varies with those profits.
- (4) For the purposes of **subsection (1)(d)**, the contract referred to in **subsection (3)** must be in writing and signed by or on behalf of all the parties to the contract. 30

Compare: 1908 No 139 s 5(c)

## **16 What happens if borrower or buyer is insolvent**

- (1) This section applies if a borrower under a contract referred to in **section 15(3)**, or a buyer of goodwill in consideration of a share of the profits of a business,— 35
- (a) is adjudged bankrupt; or

- (b) enters into an arrangement to pay the borrower's or buyer's creditors less than the full amount that is owed to those creditors; or
  - (c) dies in insolvent circumstances.
  - (2) The lender under the contract referred to in **section 15(3)** is not entitled to recover anything in respect of the loan until the claims of the borrower's other creditors have been satisfied. 5
  - (3) The seller of the goodwill is not entitled to recover anything in respect of the share of profits contracted for until the claims of the buyer's other creditors have been satisfied.
  - (4) In this section, **creditors** means creditors for valuable consideration in money or money's worth. 10
- Compare: 1908 No 139 s 6

### Part 3

#### Relationship of partners to third persons and to each other

##### Subpart 1—Relationship of partners to third persons 15

#### 17 Partner is agent of firm and other partners

Every partner (**A**) is an agent of the firm and of **A**'s partners for the purpose of the business of the partnership.

Compare: 1908 No 139 s 8

#### 18 Power of partner to bind firm 20

- (1) An act of a partner (**A**) binds the firm and **A**'s partners if the act is done for carrying on in the usual way business of the kind carried on by the firm.
- (2) However, this section does not apply if—
  - (a) **A** has no authority to act for the firm in the particular matter; and
  - (b) the person with whom **A** is dealing— 25
    - (i) knows that **A** has no authority; or
    - (ii) does not know or believe **A** to be a partner.

Compare: 1908 No 139 s 8

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

- (1) This section applies if— 30
  - (a) the partners agree that the power of 1 or more of them to bind the firm is restricted; and
  - (b) an act contravenes the agreement.

- (2) The act is not binding on the firm with respect to any person who has notice of the agreement.

Compare: 1908 No 139 s 11

## **20 Partners bound by acts done or instruments executed on behalf of firm**

- (1) An act or instrument relating to the business of the firm is binding on the firm and all the partners if it is done or executed— 5
- (a) in the firm’s name or in any other manner that shows an intention to bind the firm; and
- (b) by a person who is authorised to do the act or execute the instrument (whether or not the person is a partner). 10
- (2) However, this section does not affect any general rule of law about the execution of deeds or negotiable instruments.

Compare: 1908 No 139 s 9

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

- (1) This section applies if a partner (A) pledges the credit of the firm for a purpose apparently not connected with the firm’s ordinary course of business. 15
- (2) The firm is not bound unless A is specially authorised by the other partners.
- (3) This section does not affect any personal liability incurred by a particular partner.

Compare: 1908 No 139 s 10

20

## **22 Liability of partners for firm’s debts and obligations**

- (1) Every partner (A) is liable jointly with the other partners for all debts and obligations of the firm incurred while A is a partner.
- (2) After A’s death, A’s estate is also severally liable in a due course of administration for those debts and obligations to the extent that they remain unsatisfied. 25
- (3) However, **subsection (2)** is subject to the prior payment of A’s separate debts.

Compare: 1908 No 139 s 12

## **23 Liability of firm for partner’s wrongful acts or omissions**

- (1) This section applies if—
- (a) a partner (A) wrongfully acts or omits to do an act while acting— 30
- (i) in the ordinary course of the business of the firm; or
- (ii) with the authority of A’s partners; and
- (b) the wrongful act or omission—
- (i) causes loss or injury to any person (other than a partner in the firm); or 35
- (ii) results in a penalty being incurred.

- (2) The firm is liable for the loss, injury, or penalty to the same extent as A.  
Compare: 1908 No 139 s 13
- 24 Misapplication of money or property received for or in custody of firm**  
A firm is liable for a loss if—
- (a) a partner— 5
- (i) receives the money or property of a third person while acting within the scope of the partner’s apparent authority; and
- (ii) misapplies the money or property; or
- (b) the firm, in the course of its business, receives the money or property of a third person and the money or property is misapplied by 1 or more of the partners while it is in the custody of the firm. 10
- Compare: 1908 No 139 s 14
- 25 Liability for wrongful acts or omissions is joint and several**  
Each partner (**A**) is liable jointly with A’s partners and also severally for everything for which the firm, while A is a partner, becomes liable under **section 23 or 24.** 15
- Compare: 1908 No 139 s 15
- 26 Improper use of trust property for partnership purposes**
- (1) If a partner who is a trustee improperly uses trust property in the partnership business or for the partnership, no other partner is liable for the trust property to the persons beneficially interested in the trust property. 20
- (2) However, this section does not—
- (a) affect any liability incurred by a partner because the partner has notice of a breach of trust; or
- (b) prevent trust property from being followed and recovered from the firm if it is still in the firm’s possession or under its control. 25
- Compare: 1908 No 139 s 16
- 27 Person liable if they represent themselves as partner**
- (1) This section applies to a person (**A**) who—
- (a) represents themselves as a partner in a firm (whether the representation is made orally, in writing, or by the person’s conduct); or 30
- (b) knowingly allows themselves to be represented as a partner in a firm.
- (2) A is liable as a partner of the firm to any person (**B**) who has, in reliance on the representation, given credit to the firm.
- (3) This section applies whether or not the representation has been made or communicated to B by A or with A’s knowledge. 35

- (4) This section is subject to **section 28**.  
Compare: 1908 No 139 s 17(1)
- 28 Continued use of firm name when partner dies**
- (1) This section applies if, after the death of a partner (**A**), the partnership business is continued in the old firm name. 5
- (2) The continued use of the old firm name, or of **A**'s name as part of that firm name, does not by itself make **A**'s estate liable for any partnership debts that are contracted after **A**'s death.  
Compare: 1908 No 139 s 17(2)
- 29 Admissions and representations of partners** 10
- An admission or a representation made by a partner is evidence against the firm if the admission or representation—
- (a) concerns the partnership affairs; and
- (b) is made in the ordinary course of the partnership business. 15
- Compare: 1908 No 139 s 18
- 30 Notice to acting partner is notice to firm**
- (1) Notice to a partner operates as notice to the firm if—
- (a) the partner habitually acts in the partnership business; and
- (b) the notice is about any matter that relates to partnership affairs.
- (2) This section does not apply in the case of fraud committed against the firm by, or with the consent of, the partner. 20
- Compare: 1908 No 139 s 19
- 31 Liability of incoming partner**
- If a person (**A**) becomes a partner of an existing firm, that does not make **A** liable to the firm's creditors for anything done before **A** became a partner. 25
- Compare: 1908 No 139 s 20(1)
- 32 Liability of partner who leaves firm**
- (1) A partner (**A**) who leaves a firm does not by leaving cease to be liable for partnership debts or obligations incurred before leaving.
- (2) **A** may be discharged from an existing liability by an agreement to that effect between— 30
- (a) **A**; and
- (b) the members of the firm as newly composed; and
- (c) the creditor.
- (3) The agreement may— 35
- (a) be an express agreement; or

- (b) be inferred as a fact from the course of dealing between the creditor and the firm as newly composed.

Compare: 1908 No 139 s 20(2), (3)

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

- (1) If a person deals with a firm after a change in its composition, the person may treat all apparent members of the old firm as still being members of the firm until the person has notice of the change. 5
- (2) An advertisement in the *Gazette* of the dissolution of a partnership or of a change in its composition is notice to persons who did not have dealings with the firm before the date of the dissolution or change. 10
- (3) However,—
- (a) the estate of a partner who dies or who becomes bankrupt is not liable for partnership debts contracted after the date of the death or bankruptcy:
- (b) a partner who leaves a firm is not liable for partnership debts contracted after the date of leaving if the person dealing with the firm did not know that the partner had been a partner of the firm. 15

Compare: 1908 No 139 s 39

### **34 Continuing guarantee revoked by change in firm**

- (1) The following are revoked in relation to future transactions by any change in the composition of a firm: 20
- (a) a continuing guarantee given to the firm in respect of the firm's transactions:
- (b) a continuing guarantee given to a third person in respect of the firm's transactions.
- (2) This section does not apply if there is an agreement to the contrary. 25

Compare: 1908 No 139 s 21

## Subpart 2—Relationship of partners to one another

### **35 Partners' rights and duties may be varied by consent**

- (1) The mutual rights and duties of partners may be varied by the consent of all the partners. 30
- (2) **Subsection (1)** applies whether the mutual rights and duties result from an agreement or are defined by this Act.
- (3) The consent may either be express or be inferred from a course of dealing.

Compare: 1908 No 139 s 22

### **36 Partnership property** 35

- (1) Partnership property must be held and applied by the partners—

- (a) exclusively for the purposes of the partnership; and
- (b) in accordance with the partnership agreement.
- (2) In this Act, **partnership property** means all property, and rights and interests in property,—
- (a) originally brought into the partnership stock; or 5
- (b) acquired (whether by purchase or otherwise)—
- (i) for the firm; or
- (ii) for the purposes, and in the course, of the partnership business.
- Compare: 1908 No 139 s 23(1)
- 37 Partnership land** 10
- Despite **section 36**, the legal estate or interest in any land that belongs to the partnership devolves according to the nature and tenure of the estate or interest and the general rules of law that apply, but in trust (to the extent that is necessary) for the persons beneficially interested in the land under that section or **section 38**. 15
- Compare: 1908 No 139 s 23(2)
- 38 Co-owners of land who purchase other land out of profits**
- (1) This section applies if—
- (a) co-owners of an estate or interest in any land (the **original property**) are partners with regard to profits made by the use of the original property; and 20
- (b) the original property is not itself partnership property; and
- (c) those co-owners purchase another estate or interest in land (the **second property**) out of the profits to be used in a similar manner.
- (2) The second property belongs to the persons referred to in **subsection (1)** as co-owners for the same estates and interests that are held by them in the original property at the date of the purchase (and, therefore, the second property does not belong to them as partners). 25
- (3) This section does not apply if there is an agreement to the contrary. 30
- Compare: 1908 No 139 s 23(3)
- 39 Property bought with partnership money**
- (1) Property bought with money belonging to the firm must be treated as having been bought for the firm.
- (2) This section applies unless the contrary intention appears. 35
- Compare: 1908 No 139 s 24

- 40 Partnership land treated as personal property as between partners**
- (1) Land that has become partnership property must be treated as between the partners as personal property and not real property.
- (2) If a partner is deceased,—
- (a) the reference to the partners in **subsection (1)** includes the personal representatives of the deceased partner; and 5
- (b) **subsection (1)** also applies as between the heirs of the deceased partner and the deceased partner's personal representatives.
- (3) This section applies unless the contrary intention appears. 10  
Compare: 1908 No 139 s 25
- 41 Writ of execution against partnership property**
- A writ of execution must not be issued against any partnership property except on a judgment against the firm.  
Compare: 1908 No 139 s 26(1)
- 42 Court may charge partner's interest for their separate judgment debt** 15
- (1) The High Court may,—
- (a) on the application of a judgment creditor of a partner (**A**), make an order charging A's interest in the partnership property and profits with payment of the amount of the judgment debt and interest on that debt; and
- (b) appoint a receiver of— 20
- (i) A's share of the partnership profits (whether already declared or accruing); and
- (ii) any other money that would otherwise be payable to A in respect of the partnership; and
- (c) direct all accounts and inquiries, and give all other orders and directions,— 25
- (i) that might have been directed or given if A had given the charge in favour of the judgment creditor; or
- (ii) that the circumstances of the case require.
- (2) The High Court may act under **subsection (1)(b) or (c)**— 30
- (a) when making an order under **subsection (1)(a)**; or
- (b) by making a subsequent order or direction.
- (3) The District Court may make any order, or give any directions, that may be made or given by the High Court under this section if—
- (a) a judgment creditor has obtained in, or removed into, the District Court a judgment, order, or decree for the payment of a sum of money; and 35

- (b) the judgment creditor applies for an order or a direction under this section.

Compare: 1908 No 139 s 26(2), (2A)

#### **43 Other partners may redeem or purchase interest**

If a partner's interest is charged under **section 42**, the other partner or partners may, at any time,— 5

- (a) redeem the interest; or  
 (b) purchase the interest if the court directs a sale of the interest.

Compare: 1908 No 139 s 26(3)

#### **44 Rules about interests and duties of partners** 10

(1) The rules in **sections 45 to 52** determine—

- (a) the interests of partners in the partnership property; and  
 (b) their rights and duties in relation to the partnership.

(2) However, this section and those sections are subject to any agreement (express or implied) between the partners. 15

Compare: 1908 No 139 s 27

#### **45 Partners share equally in capital and profits and contribute equally to losses**

(1) All the partners are entitled to share equally in the capital and profits of the partnership business. 20

(2) All the partners must contribute equally towards the losses of the firm (whether the losses are of capital or otherwise).

Compare: 1908 No 139 s 27(a)

#### **46 Firm must indemnify partner for payments made, and personal liabilities incurred, for firm** 25

The firm must indemnify a partner for payments made, and personal liabilities incurred, by the partner—

- (a) in the ordinary and proper conduct of the partnership business; or  
 (b) in or relating to doing any thing that is necessary to preserve the business or property of the firm. 30

Compare: 1908 No 139 s 27(b)

#### **47 Entitlement to interest**

(1) If a partner makes, for the purpose of the partnership, an actual payment or an advance that is more than the capital that the partner has agreed to provide, the partner is entitled to interest at the rate of 5% per year from the date of the payment or advance. 35

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- (2) A partner is not entitled, before the profits are ascertained, to interest on the capital provided by the partner.  
Compare: 1908 No 139 s 27(c), (d)
- 48 Partner may manage business** 5  
Every partner may take part in the management of the partnership business.  
Compare: 1908 No 139 s 27(e)
- 49 Partner not entitled to remuneration**  
No partner is entitled to remuneration for acting in the partnership business.  
Compare: 1908 No 139 s 27(f)
- 50 No new partner without consent** 10  
No person may be introduced as a partner without the consent of all existing partners.  
Compare: 1908 No 139 s 27(g)
- 51 Most decisions may be made by majority**  
(1) Any difference about ordinary matters connected with the partnership business may be decided by a majority of the partners. 15  
(2) However, no change may be made to the nature of the partnership business without the consent of all existing partners.  
Compare: 1908 No 139 s 27(h)
- 52 Access to partnership's records** 20  
(1) The partnership's records must be reasonably available at the place of business of the partnership (or at the principal place of business if there is more than 1).  
(2) Every partner may, when the partner thinks fit, have access to, inspect, and copy any of the partnership's records.  
Compare: 1908 No 139 s 27(i) 25
- 53 Expulsion of partner**  
A majority of the partners cannot expel a partner unless a power to do so has been given by express agreement between the partners.  
Compare: 1908 No 139 s 28
- 54 Duty of partners to provide accounts and full information on things affecting partnership** 30  
Partners must provide true accounts and full information of all things that affect the partnership to any partner or any partner's legal representatives.  
Compare: 1908 No 139 s 31

**55 Accountability of partners for private benefit**

- (1) Every partner must account to the firm for a benefit that the partner obtains, without the consent of the other partners, from—
- (a) any transaction concerning the partnership; or
  - (b) the partner's use of the partnership property, name, or business connections. 5
- (2) This section also applies to transactions undertaken after a partnership has been dissolved because of the death of a partner and before the affairs of the partnership have been completely wound up (where the transactions are undertaken either by a surviving partner or by the personal representatives of the deceased partner). 10

Compare: 1908 No 139 s 32

**56 Duty to account for profits of competing business**

- Every partner must account for and pay over to the firm all profits made by the partner in a business if— 15
- (a) the partner carries on the business without the consent of the other partners; and
  - (b) the business is of the same nature as, and competes with, the business of the firm.

Compare: 1908 No 139 s 33 20

**57 Rights of assignee of share in partnership**

- (1) This section applies if a partner assigns the partner's share in the partnership (either absolutely or by way of mortgage).
- (2) While the partnership continues, the assignment entitles the assignee only to receive the share of the profits to which the assigning partner would otherwise be entitled. 25
- (3) For the purposes of **subsection (2)**, the assignee must accept the account of profits agreed to by the partners.
- (4) The assignment does not, as against the other partners, entitle the assignee, while the partnership continues, to— 30
- (a) interfere in the management or administration of the partnership business or affairs; or
  - (b) require an account of the partnership transactions; or
  - (c) inspect the partnership's records.
- (5) If the partnership is dissolved (whether with respect to all the partners or with respect to the assigning partner), the assignee is entitled— 35

- (a) to receive the share of the partnership assets to which the assigning partner is entitled as between the assigning partner and the other partners; and
- (b) to an account as from the date on which the partnership is dissolved (for the purpose of ascertaining that share). 5

Compare: 1908 No 139 s 34

## Part 4

### Financial reporting, dissolution of partnership, and other miscellaneous provisions

#### Subpart 1—Financial reporting for large partnerships 10

#### 58 Definitions of terms used in this subpart

- (1) In this subpart, **accounting period**, **applicable auditing and assurance standard**, and **applicable financial reporting standard** have the same meanings as in section 5(1) of the Financial Reporting Act 2013.
- (2) In this subpart,— 15
  - balance date** has the same meaning as in section 41 of the Financial Reporting Act 2013
  - financial statements** has the same meaning as in section 6 of the Financial Reporting Act 2013
  - generally accepted accounting practice** has the same meaning as in section 8 of the Financial Reporting Act 2013 20
  - large partnership** means a partnership that is large under section 45 of the Financial Reporting Act 2013
  - qualified auditor** has the same meaning as in section 35 of the Financial Reporting Act 2013. 25

Compare: 1908 No 139 s 34D

#### 59 Accounting records

- (1) The partners of a large partnership must ensure that, at all times, accounting records are kept that—
  - (a) correctly record the transactions of the partnership; and 30
  - (b) will enable the partnership to ensure that the financial statements of the partnership comply with generally accepted accounting practice; and
  - (c) will enable the partnership's financial statements to be readily and properly audited (if those statements are required to be audited).
- (2) The partners of a large partnership must establish and maintain a satisfactory system of control of its accounting records. 35

- (3) The accounting records must be kept—
- (a) in written form in English; or
  - (b) in a form or manner in which they are easily accessible and convertible into written form in English.
- Compare: 1908 No 139 s 34B 5
- 60 Financial statements must be prepared**
- The partners of a large partnership must ensure that, within 5 months after the balance date of the partnership, financial statements that comply with generally accepted accounting practice are—
- (a) completed for the partnership and that balance date; and 10
  - (b) dated and signed on behalf of the partners by 2 partners.
- Compare: 1908 No 139 s 34C
- 61 Financial statements must be audited**
- (1) The partners of a large partnership must ensure that the financial statements of the partnership are audited by a qualified auditor. 15
  - (2) This section does not apply to a partnership if the partnership opts out of this section under **section 64**.
  - (3) *See* sections 37 to 39 of the Financial Reporting Act 2013 (which provide for the appointment of a partnership to be the auditor and access to information in relation to a large partnership). 20
- Compare: 1908 No 139 s 34E
- 62 Audit must comply with auditing and assurance standards**
- (1) An auditor must, in carrying out an audit for the purposes of **section 61**, comply with all applicable auditing and assurance standards.
  - (2) The auditor's report must comply with the requirements of all applicable auditing and assurance standards. 25
- Compare: 1908 No 139 s 34F
- 63 Financial reporting offences**
- (1) Every partner of a partnership commits an offence and is liable on conviction to a fine not exceeding \$50,000 if— 30
    - (a) the partners fail to comply with **section 59**; or
    - (b) the partners are required to comply with **section 60** and the financial statements of the partnership—
      - (i) are not completed and signed within the time specified in that section; or 35
      - (ii) fail to comply with an applicable financial reporting standard; or
    - (c) the partners fail to comply with **section 61**.

- (2) It is a defence for a partner charged with an offence under this section in respect of a requirement if the partner proves that—
- (a) the partnership took all reasonable and proper steps to ensure that the requirement would be complied with; or
  - (b) the partner took all reasonable steps to ensure that the requirement would be complied with; or
  - (c) in the circumstances, the partner could not reasonably have been expected to take steps to ensure that the requirement would be complied with.

Compare: 1908 No 139 s 34G

#### **64 Partnerships may opt out of audit requirement** 10

- (1) This section applies to a large partnership unless the partnership agreement expressly provides that this section does not apply.
- (2) The partnership may, within 6 months from the start of an accounting period, opt out of compliance with **section 61** (audit requirement) in relation to an accounting period. 15
- (3) The partnership opts out by a resolution that is passed or signed by partners who together are entitled to share in at least 95% of the capital of the firm.
- (4) If the partnership opts out in relation to an accounting period, **section 61** does not apply to the partnership in relation to that period.

Compare: 1908 No 139 s 34H

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#### **65 Duties do not apply if alternative financial reporting duties under Financial Markets Conduct Act 2013**

**Sections 60 to 64** do not apply to a partnership in relation to an accounting period if financial statements of the partnership are required to be prepared for that period under subpart 3 of Part 7 of the Financial Markets Conduct Act 2013. 25

Compare: 1908 No 139 s 34A

### Subpart 2—End of partnership

#### *How partnership may end*

#### **66 Partnership dissolved at end of term, by end of venture or undertaking, or by notice** 30

- (1) A partnership is dissolved,—
  - (a) if entered into for a fixed term, at the end of the term;
  - (b) if entered into for a single venture or undertaking, by the end of the venture or undertaking: 35
  - (c) if entered into for an undefined time, by any partner giving notice to all the other partners of the partner's intention to dissolve the partnership.

- (2) However, *see* **section 68**, which provides for rights and duties to continue if a partnership that was entered into for a fixed term is continued at the end of the term.
- (3) **Subsection (1)** is subject to any agreement between the partners.
- (4) In the case of **subsection (1)(c)**, the partnership is dissolved from— 5
- (a) the date stated in the notice as the date of dissolution; or
- (b) if no date is stated, the date on which the notice is received by the other partner or partners.
- Compare: 1908 No 139 s 35
- 67 Ending partnership at will** 10
- (1) If the partners have not agreed on a fixed term for the duration of the partnership, any partner may dissolve the partnership at any time by giving notice to all the other partners of the partner's intention to dissolve the partnership.
- (2) If the partnership was originally constituted by deed, a notice in writing, signed by the partner giving the notice, is sufficient for the purpose of **subsection (1)**. 15
- Compare: 1908 No 139 s 29
- 68 Partnership that continues after end of fixed term**
- (1) This section applies if a partnership that was entered into for a fixed term is continued— 20
- (a) after the term has ended; and
- (b) without any new express agreement.
- (2) The rights and duties of the partners remain the same as they were at the end of the fixed term (to the extent that those rights and duties are consistent with the features of a partnership at will). 25
- (3) A partnership is presumed to be continued if the business is continued—
- (a) by the partners or by those partners who habitually acted in the business during the fixed term; and
- (b) without any settlement or liquidation of the partnership's affairs. 30
- Compare: 1908 No 139 s 30
- 69 Partnership dissolved by death or bankruptcy**
- (1) A partnership is dissolved with respect to all the partners by the death or bankruptcy of any partner.
- (2) This section is subject to any agreement between the partners. 35
- Compare: 1908 No 139 s 36(1)

- 70 Partnership may be dissolved if partner's interest in property is charged**
- (1) If a partner allows their interest in the partnership property to be charged under this Act for the partner's separate debt (*see section 42*), the other partners may dissolve the partnership.
- (2) The decision of the other partners to dissolve the partnership must be unanimous. 5  
Compare: 1908 No 139 s 36(2)
- 71 Partnership dissolved if unlawful**
- A partnership is dissolved if an event occurs that makes it unlawful for—
- (a) the partnership business to be carried on; or 10  
(b) the partners to carry on the business in partnership.
- Compare: 1908 No 139 s 37
- 72 Court may dissolve partnership**
- The court may, on an application under **section 73**, declare a partnership to be dissolved if— 15
- (a) a partner is a mentally impaired person who, in the opinion of the court, permanently lacks wholly or partly the competence to manage their own affairs; or
- (b) a partner is in any other way permanently incapable of performing the partner's part of the partnership agreement; or 20
- (c) a partner is guilty of conduct that, in the opinion of the court after having regard to the nature of the business, is calculated to prejudicially affect the carrying on of the business; or
- (d) a partner— 25
- (i) wilfully or persistently breaches the partnership agreement; or
- (ii) otherwise acts in matters relating to the partnership business in such a manner that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with the partner; or
- (e) the partnership business can be carried on only at a loss; or 30
- (f) circumstances have arisen that, in the opinion of the court, make it just and equitable to dissolve the partnership.
- Compare: 1908 No 139 s 38
- 73 Application to court**
- (1) An application, in the case of **section 72(a)**,— 35
- (a) may be made by any partner; or
- (b) may be made on behalf of the partner referred to in that paragraph by—

- (i) the partner's manager appointed under the Protection of Personal and Property Rights Act 1988; or
  - (ii) the partner's next friend; or
  - (iii) a person who is entitled to intervene.
- (2) An application, in the case of **paragraph (b), (c), or (d)** of **section 72**, may be made by any partner other than the partner referred to in that paragraph. 5
- (3) An application, in the case of **section 72(e) or (f)**, may be made by any partner.
- Compare: 1908 No 139 s 38

### *Dissolving a partnership* 10

#### 74 **Right to notify dissolution**

When a partnership is dissolved or when a partner leaves the firm, any partner may—

- (a) publicly notify that fact; and
- (b) for the purpose of that notification, require the other partners to consent to, or otherwise co-operate in the performance of, all necessary or proper acts (if any) that cannot be done without the other partners' consent or co-operation. 15

Compare: 1908 No 139 s 40

#### 75 **Continuing authority of partners for purposes of winding up and completing transactions** 20

- (1) This section applies after a partnership is dissolved.
- (2) The authority of each partner to bind the firm, and the other rights and obligations of the partners, continue (despite the dissolution) to the extent that is necessary— 25
  - (a) to wind up the affairs of the partnership; and
  - (b) to complete transactions begun before, but unfinished at, the time that the partnership is dissolved.
- (3) The authority and the rights and obligations do not otherwise continue.
- (4) Despite **subsection (2)**, the firm is not bound by the acts of a partner who is bankrupt. 30
- (5) **Subsection (4)** does not affect the liability of a person who has, after a partner becomes bankrupt,—
  - (a) represented themselves as a partner of the bankrupt; or
  - (b) knowingly allowed themselves to be represented as a partner of the bankrupt. 35

Compare: 1908 No 139 s 41

**76 Application of partnership property**

- (1) When a partnership is dissolved, every partner is entitled as against the other partners, and all persons who claim through them in respect of their interests as partners, to have—
- (a) the partnership property applied in payment of the debts and liabilities of the firm; and 5
  - (b) the surplus assets (after the payment of those debts and liabilities) applied in payment of what may be due to each of the partners (after deducting what may be due from them as partners).
- (2) For the purpose of this section, a partner or the partner's representatives may, on the dissolution of the partnership, apply to the court to wind up the business and affairs of the partnership. 10

Compare: 1908 No 139 s 42

**77 Court may order repayment of premium if partnership prematurely dissolved**

15

- (1) This section applies if—
- (a) one partner has paid a premium to another on entering into a partnership for a fixed term; and
  - (b) the partnership is dissolved before the end of that term (except if it is dissolved because of the death of a partner). 20
- (2) The court may order the repayment of the premium or of a part of the premium that it thinks just.
- (3) For the purposes of **subsection (2)**, the court must have regard to—
- (a) the terms of the partnership agreement; and
  - (b) the length of time that the partnership lasted. 25
- (4) However, **subsection (2)** does not apply if—
- (a) the dissolution of the partnership is, in the judgment of the court, entirely or mainly due to the misconduct of the partner who paid the premium; or
  - (b) the partnership is dissolved by an agreement that contains no provision for a return of any part of the premium. 30

Compare: 1908 No 139 s 43

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

- (1) If a partnership agreement is rescinded on the ground of the fraud or misrepresentation of one of the parties to the agreement, the party who is entitled to rescind (**A**) is entitled— 35
- (a) to a lien on, or right of retention of, the surplus of the partnership assets (after satisfying the partnership liabilities) for—

- (i) any sum of money paid by A for the purchase of a share in the partnership; and
- (ii) any capital contributed by A; and
- (b) to stand in the place of the creditors of the firm for any payments made by A in respect of the partnership liabilities; and 5
- (c) to be indemnified, by the person guilty of the fraud or of making the representation, against all the debts and liabilities of the firm.
- (2) The rights in **subsection (1)** are without prejudice to A's other rights.  
Compare: 1908 No 139 s 44
- 79 Right of outgoing partner or partner's estate to share profits or obtain interest** 10
- (1) This section and **section 80** apply if—
- (a) a member of a firm (A) 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 A or A's estate. 15
- (2) A or A's estate is entitled, at the option of A or A's personal representative, to—
- (a) a share of the profits that are made after the dissolution of the partnership and that the court finds to be attributable to the use of A's share of the partnership assets; or 20
- (b) interest at the rate of 5% per year on the amount of A's share of the partnership assets.
- (3) **Subsection (2)** does not apply if there is an agreement to the contrary.  
Compare: 1908 No 139 s 45(1) 25
- 80 Option to purchase share of outgoing or deceased partner**
- (1) Despite **section 79**, A or A's estate is not entitled to any further or other share of the profits if,—
- (a) under the partnership agreement, the surviving or continuing partners have an option to purchase the interest of a deceased or an outgoing partner; and 30
- (b) the surviving or continuing partners exercise that option.
- (2) However, if a partner who is purporting to exercise the option does not, in all material respects, comply with the terms of the option, the partner is liable to account under **section 79**. 35  
Compare: 1908 No 139 s 45(2)

<b>81</b>	<b>Retiring or deceased partner's share is debt</b>	
(1)	The amount due from surviving or continuing partners to an outgoing partner or the personal 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.	5
(2)	This section is subject to any agreement between the partners. Compare: 1908 No 139 s 46	
<b>82</b>	<b>Rules for distributing assets on final settlement of accounts</b>	
(1)	<b>Sections 83 and 84</b> apply in settling accounts between the partners after a partnership is dissolved.	10
(2)	This section and <b>sections 83 and 84</b> are subject to any agreement to the contrary. Compare: 1908 No 139 s 47	
<b>83</b>	<b>Losses</b>	
	Losses (including losses and deficiencies of capital) must be paid—	15
(a)	first out of profits:	
(b)	next out of capital:	
(c)	lastly, if necessary, by the partners individually in the proportion in which they are entitled to share the profits.	
	Compare: 1908 No 139 s 47(a)	20
<b>84</b>	<b>Application of assets</b>	
	The assets of the firm, including the sums (if any) contributed by the partners to make up losses or deficiencies of capital, must be applied in the following manner and order:	
(a)	in paying the debts and liabilities of the firm to persons who are not partners in the firm:	25
(b)	in paying to each partner rateably what is due from the firm to the partner for advances (as distinguished from capital):	
(c)	in paying to each partner rateably what is due from the firm to the partner in respect of capital:	30
(d)	in dividing the remainder (if any) among the partners in the proportion in which they are entitled to share the profits.	
	Compare: 1908 No 139 s 47(b)	
<b>Subpart 3—Repeal and consequential amendments</b>		
<b>85</b>	<b>Partnership Act 1908 repealed</b>	35
	The Partnership Act 1908 (1908 No 139) is repealed.	

**86 Amendments to other enactments**

The enactments specified in **Schedule 4** are amended in the manner indicated in that schedule.

**Schedule 1**  
**Transitional, savings, and related provisions**

s 6

**Part 1**  
**Provisions relating to this Act as enacted**

5

**1 Act applies to all partnerships**

This Act applies to every partnership regardless of when it was formed.

**2 References to Partnership Act 1908**

- (1) A reference in a document to the Partnership Act 1908, or to a provision of that Act, must, unless the context otherwise requires, be treated as a reference to this Act or to a provision of this Act that, with or without modification, replaces, or that corresponds to, the repealed provision. 10

- (2) In this clause, **document**—

- (a) means any instrument, register, record, notice, or other document that is made, given, passed, or executed before the commencement of this Act; but 15
- (b) does not include an enactment.

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

The rules of equity and of common law that apply to a partnership continue to apply except to the extent that they are inconsistent with the express provisions of this Act. 20

Compare: 1908 No 139 s 3

**4 Effect of repeal of Partnership Act 1908**

Nothing in this schedule limits sections 17 to 22 of the Interpretation Act 1999 (for example, the repeal of the Partnership Act 1908 by this Act does not affect the validity, invalidity, effect, or consequences of anything done or suffered, the previous operation of the Partnership Act 1908, or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity, or duty). 25

## Schedule 2

### Minor amendments to clarify Parliament’s intent or reconcile inconsistencies

s 4(2)

Provision of this Act	Provision of Partnership Act 1908	Nature of intended change
<b>Section 26</b>	Section 16(b)	The provision relating to improper use of trust property for partnership purposes is amended to consistently refer to trust property as opposed to trust money.
<b>Sections 32 and 33 (and section 7(2))</b>	Sections 20(2) and (3) and 39(3)	The provisions relating to liability of a partner who leaves a firm have been amended by replacing the references to a “partner who retires” and “a retiring partner” (and similar references) with references to leaving the firm (in combination with a definition of leaves in <b>section 7(2)</b> ).
<b>Section 42(1)(a)</b>	Section 26(2)	The provision relating to charging a partner’s interest for their separate debt is amended to omit a reference to an “application by summons”.
<b>Section 42(3)</b>	Section 26(2A)	The provision relating to the power of the District Court to charge a partner’s interest for their separate judgment debt has been extended in <b>section 42(3)</b> to allow directions to be given if a judgment creditor applies for an order or a direction.
<b>Sections 52 and 57</b>	Sections 27(i) and 34	The provisions about access to, and inspection of, the partnership “books” are amended to refer to the partnership’s records. In addition, the provision about keeping those records at the place or principal place of business of the partnership is amended to refer to the records being reasonably available at that place.
<b>Section 66</b>	Section 35	The provision about notice of dissolution is amended to refer to the date on which notice is received rather than the date of communication.
<b>Section 70(2)</b>	Section 36(2)	The provision relating to how a partnership may be dissolved if a partner’s interest in property is charged is amended in <b>section 70(2)</b> to clarify that the decision by the other partners to dissolve the partnership must be unanimous.
<b>Section 72(a)</b>	Section 38	The provision relating to how a court may dissolve a partnership has been updated to remove a reference to being found to be mentally disordered “by inquisition”. The terminology is updated to align with the wording in section 14(1)(a) of the Senior Courts Act 2016.
<b>Section 73(1)(b)(i)</b>	Section 38(a)	The provision relating to an application to a court to dissolve a partnership has been updated to refer to a manager appointed under the Protection of Personal and Property Rights Act 1988, rather than to a committee.
<b>Section 74</b>	Section 40	The provision relating to public notification of a partnership being dissolved has been updated and clarified to require the partners to consent to, and co-operate with, the notification process (rather than requiring concurrence).

Provision of this Act	Provision of Partnership Act 1908	Nature of intended change
		References to a “partner who retires” and “a retiring partner” have been updated to refer to leaving a firm (in combination with a definition of leaves in <b>section 7(2)</b> ).

**Schedule 3**  
**Comparative table**

s 4(3)

<b>Provision of Partnership Act 1908</b>	<b>Provision of this Act</b>
2	<b>7</b>
3	<b>cl 3, Schedule 1</b>
4(1)	<b>8</b>
4(2)	<b>9</b>
5	<b>11</b>
5(a)	<b>12</b>
5(b)	<b>13</b>
5(c)	<b>14, 15</b>
6	<b>16</b>
7	<b>10</b>
8	<b>17, 18</b>
9	<b>20</b>
10	<b>21</b>
11	<b>19</b>
12	<b>22</b>
13	<b>23</b>
14	<b>24</b>
15	<b>25</b>
16	<b>26</b>
17(1)	<b>27</b>
17(2)	<b>28</b>
18	<b>29</b>
19	<b>30</b>
20(1)	<b>31</b>
20(2), (3)	<b>32</b>
21	<b>34</b>
22	<b>35</b>
23(1)	<b>36</b>
23(2)	<b>37</b>
23(3)	<b>38</b>
24	<b>39</b>
25	<b>40</b>
26(1)	<b>41</b>

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<b>Provision of Partnership Act 1908</b>	<b>Provision of this Act</b>
26(2), (2A)	<b>42</b>
26(3)	<b>43</b>
27	<b>44</b>
27(a)	<b>45</b>
27(b)	<b>46</b>
27(c), (d)	<b>47</b>
27(e)	<b>48</b>
27(f)	<b>49</b>
27(g)	<b>50</b>
27(h)	<b>51</b>
27(i)	<b>52</b>
28	<b>53</b>
29	<b>67</b>
30	<b>68</b>
31	<b>54</b>
32	<b>55</b>
33	<b>56</b>
34	<b>57</b>
34A	<b>65</b>
34B	<b>59</b>
34C	<b>60</b>
34D	<b>58</b>
34E	<b>61</b>
34F	<b>62</b>
34G	<b>63</b>
34H	<b>64</b>
35	<b>66</b>
36(1)	<b>69</b>
36(2)	<b>70</b>
37	<b>71</b>
38	<b>72, 73</b>
39	<b>33</b>
40	<b>74</b>
41	<b>75</b>
42	<b>76</b>
43	<b>77</b>

<b>Provision of Partnership Act 1908</b>	<b>Provision of this Act</b>
44	<b>78</b>
45(1)	<b>79</b>
45(2)	<b>80</b>
46	<b>81</b>
47	<b>82</b>
47(a)	<b>83</b>
47(b)	<b>84</b>

## Schedule 4

### Consequential amendments

s 86

**Construction Contracts Act 2002 (2002 No 46)**

In section 7(1)(d), replace “Partnership Act 1908” with “Partnership Law Act **2019**”. 5

**Electricity Industry Act 2010 (2010 No 116)**

In Schedule 2, clause 8(1)(c), replace “Partnership Act 1908” with “Partnership Law Act **2019**”.

**Financial Markets Conduct Act 2013 (2013 No 69)**

In section 12(1)(c), replace “Partnership Act 1908” with “Partnership Law Act **2019**”. 10

In Schedule 1, clause 4(2)(e), replace “Partnership Act 1908” with “Partnership Law Act **2019**”.

**Friendly Societies and Credit Unions Act 1982 (1982 No 118)**

In section 110(3)(b) and (4)(b), replace “Partnership Act 1908” with “Partnership Law Act **2019**”. 15

**Goods and Services Tax Act 1985 (1985 No 141)**

In section 2(1), definition of **partnership** and **partner**, replace “Partnership Act 1908” with “Partnership Law Act **2019**”.

**Income Tax Act 2007 (2007 No 97)**

20

In section GB 24(2)(e), replace “sections 36 and 38 of the Partnership Act 1908” with “**sections 69, 70, 72, and 73** of the Partnership Law Act **2019**”.

In section YA 1, definition of **partnership**, paragraph (a), replace “section 4(1) of the Partnership Act 1908” with “**section 8(1)** of the Partnership Law Act **2019**”.

In section YA 1, definition of **profit-sharing arrangement**, paragraph (d), replace “Partnership Act 1908” with “Partnership Law Act **2019**”. 25

**Limited Partnerships Act 2008 (2008 No 1)**

In section 3, delete “to repeal the special partnership provisions of the Partnership Act 1908 and”.

In section 8(4)(c), replace “Partnership Act 1908” with “Partnership Law Act **2019**”. 30

In section 18(2), replace “Partnership Act 1908” with “Partnership Law Act **2019**”.

**Motor Vehicle Sales Act 2003 (2003 No 12)**

In section 6(1), definition of **partnership**, replace “section 4 of the Partnership Act 1908” with “**sections 8 and 9** of the Partnership Law Act **2019**”.

**New Zealand Business Number Act 2016 (2016 No 16)**

In section 5, definition of **entity**, paragraph (e), replace “section 4(1) of the Partnership Act 1908” with “**section 8(1)** of the Partnership Law Act **2019**”.