

Special Partnerships Act 1858

Public Act 1858 No 13
Date of assent 26 June 1858

Contents

	Page
Title	2
Preamble.	
I Special Partnerships may be formed, except for Banking and Insurance.	2
II General and special Partners, and their liabilities.	2
III Certificates to be signed by the Partners, specifying names, capital, &c.	2
IV Style of Partnership.	2
V Certificates to be acknowledge and recorded. If false, all to be liable as general Partners.	3
VI Copy of Certificate to be published.	3
VII Duration of Partnerships prescribed.	3
VIII Certificate to be signed on renewal.	3
IX Capital Stock not to be withdrawn, &c.	3
X Suits to be by and against general Partners.	4
XI Dissolution how effected.	4
XII Cases not specially provided for.	4
XIII Accounting.	4
XIV Frauds by Partners.	4
XV Books of account to be kept, and to be open to inspection.	4
XVI As to liability of special Partners if books be not kept, or be incorrectly kept.	5
XVII Acts of Provincial Councils on same subject repealed, except as to Partnerships already formed.	5
XVIII Short Title.	5

An Act to authorise the Formation of Special Partnerships.**Preamble.**

Whereas, it is expedient to encourage the formation of Partnerships for the promotion of Agricultural, Mining, Mercantile, Manufacturing, and other undertakings, and the object thereof would be promoted by enabling persons to employ their Capital as Partners in certain cases without liability to the debts of the Partnerships beyond the amount contributed by them.

Be it therefore enacted by the General Assembly of New Zealand, in Parliament assembled, and by the authority of the same, as follows:

I Special Partnerships may be formed, except for Banking and Insurance.

After the passing of this Act, special Partnerships may be formed for the transaction of Agricultural, Mining, Mercantile, Mechanical, Manufacturing, or other business, by any number of persons, upon the terms and subject to the conditions and liabilities hereinafter prescribed: Provided that nothing herein contained shall authorize any such Partnership for the purpose either of Banking or Insurance.

II General and special Partners, and their liabilities.

Every such Partnership may consist of general Partners, who shall be jointly and severally responsible as general Partners are now by law, and of Persons, to be called special Partners, who shall contribute to the common stock specific sums in money as capital, beyond which they shall not be responsible for any debt of the Partnership, except in cases hereinafter provided for.

III Certificates to be signed by the Partners, specifying names, capital, &c.

All the persons forming any such Partnership shall, before commencing business, sign a Certificate containing the style of the firm under which the Partnership is to be conducted, the names and places of residence of all the Partners, distinguishing the general from the special Partners, the amount of capital which each special Partner contributes, and also, if any, the amount contributed by the general Partners to the common stock, the general nature of the business to be transacted, the principal place at which it is to be transacted, the time when such Partnership is to commence, and when it is to terminate.

IV Style of Partnership.

Such style or Firm shall contain the names of general Partners only, or the name of one such Partner with (in either case) the addition of the words "and Company," and the general Partners only shall transact the business of the Partnership, and if in the carrying on of such business, or in any contract connected therewith, the name of any special Partner shall be used with his consent or privity, or if he shall personally make any contract respecting the concerns of the Partnership, every such special Partner shall be deemed to be

a general Partner with respect to the contract or matter in which his name has been so used, or as to which he shall have so contracted.

V Certificates to be acknowledge and recorded. If false, all to be liable as general Partners.

No such Partnership shall be deemed formed until such Certificate as aforesaid shall have been acknowledged by each Partner before some Justice of the Peace, and registered in the office of the Supreme Court, in a book to be kept for that purpose, open to public inspection; and if any false statement shall be made in any such Certificate, all the persons interested in the Partnership shall be liable for all the engagements thereof as general Partners: Provided that no clerical error, or matter not of substance, shall be deemed false within the meaning of this section, unless some person may have been prejudiced thereby, in which case the special Partners shall be liable to the person so prejudiced.

VI Copy of Certificate to be published.

A copy of such Certificate shall be published, once at least, in the "New Zealand Government Gazette," and twice in some newspaper published at the intended principal place of business of the Partnership, or at the nearest place where a newspaper is published to such place of business, and in case such publication be not so made, the Partnership shall be deemed general.

VII Duration of Partnerships prescribed.

No Partnership under this Act shall be entered into for a longer period than seven years, but such Partnership may be renewed at the end of that period, or at the termination of any shorter period for which a Partnership may be formed.

VIII Certificate to be signed on renewal.

Upon every renewal, or continuation beyond the time originally agreed upon for its duration of a special Partnership, a Certificate thereof shall be signed, acknowledged, registered, and published, in like manner as the original Certificate, and every Partnership which shall be renewed, or continued, otherwise than in conformity with the provisions of this section shall be deemed general.

IX Capital Stock not to be withdrawn, &c.

During the continuance of any Partnership under the provisions of this Act no part of the certified Capital thereof shall be withdrawn, nor shall any division of interest or profit be made so as to reduce such Capital below the aggregate amount stated in the Certificate, and if any part of such Capital shall be so withdrawn, or any such division be made, so that at any time during the continuance, or at the termination of the Partnership, the assets shall not be sufficient to pay the Partnership debts, the special Partners shall be severally liable to refund every sum by them respectively received in diminution of such Capital, or by way of such interest or profit; and all such sums may be

recovered as money had and received by them respectively, to the use of the general Partners, and may, in the case of any Judgment having been obtained against the general Partners, be recovered by the Plaintiff against the special Partners, or either of them, by process of execution to be issued under such Judgment by leave of the Supreme Court.

X Suits to be by and against general Partners.

All suits respecting the business of any Partnership established under this Act shall be prosecuted by and against the general Partners only, except in the cases in which it is provided by this Act that special Partners shall or may be deemed general Partners, in which cases every special Partner who shall become liable as a general Partner may be joined or not in the suit as a defendant, at the discretion of the party suing.

XI Dissolution how effected.

No dissolution of a limited Partnership shall take place, except by operation of law, before the time specified in the Certificate, unless a notice of such dissolution shall be signed, acknowledged, registered, and published, in like manner as the original Certificate.

XII Cases not specially provided for.

In all cases not hereinbefore otherwise provided for, all the members of a limited Partnership shall be subject to the liabilities and entitled to the rights of general Partners.

XIII Accounting.

The general Partners shall be liable to account to each other, and to the special Partners, for their management of the Partnership concerns as other Partners are by law.

XIV Frauds by Partners.

Every Partner who shall be guilty of any fraud in the affairs of the Partnership shall be liable civilly to the party injured, to the extent of his damage, and shall also be liable to an indictment for a misdemeanour, punishable by fine or imprisonment, or both, at the discretion of the Court by which he shall be tried.

XV Books of account to be kept, and to be open to inspection.

If the general Partners shall not at all times cause regular Books of account to be kept, or shall not have the same open at all reasonable times to the inspection of the special Partners, such special Partners shall, in default therein, be entitled to have the Partnership dissolved, and the accounts thereof taken by the Supreme Court.

XVI As to liability of special Partners if books be not kept, or be incorrectly kept.

If the books of any special Partnership shall, with the knowledge or privity of the special Partners, or any of them, be kept incorrectly, or contain any false or deceptive entries, whereby the ascertainment of the matters mentioned in the first part of the ninth Section of this Act shall or may be affected, the certified Capital of such special Partners, or such one or more of them having such knowledge or privity shall, as against creditors, be deemed to have been withdrawn, and they or he, shall be liable accordingly under the provisions of the said ninth Section.

XVII Acts of Provincial Councils on same subject repealed, except as to Partnerships already formed.

The following Acts are hereby repealed, namely:

1. An Act passed by the local Legislature of the Province of Auckland, Session 2, No. 2, intituled "An Act to legalise Partnership with limited liability."
2. An Act passed by the local Legislature of the Province of Wellington, Session 1, No. 10, intituled "An Act to authorise the formation of Partnerships consisting of members some having general, and others special liability."

Provided always that nothing herein contained shall affect any Partnership already formed under either of the Acts hereby repealed, but the said Acts, so far as regards such Partnership, but not as respects any renewal thereof, shall be deemed to be unrepealed, and shall respectively apply to the same as though this Act had not been passed.

XVIII Short Title.

The Short Title of this Act shall be "Special Partnerships Act, 1858."