

NORTHERN TERRITORY OF AUSTRALIA

PARTNERSHIP ACT

As in force at 21 June 2006

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 21 June 2006

PARTNERSHIP ACT

An Act to consolidate the law relating to partnership

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

AFOF has the same meaning as in the *Venture Capital Act 2002* (Cth).

approved form means a form approved under section 98.

associate has the meaning in section 68.

business includes a trade, occupation or profession.

Commissioner means the Commissioner for Consumer Affairs.

corresponding law has the meaning in section 73.

external partnership means a partnership or legal entity (however described) in the nature of a partnership, formed under a law of a State, another Territory or another jurisdiction (including a foreign country), whether or not:

- (a) the liability of any of its partners for its liabilities is limited; and
- (b) it is incorporated or is otherwise a separate legal entity from its partners.

firm has the meaning in section 8.

firm name has the meaning in section 8.

general partner, for an incorporated limited partnership, means an entity that, in accordance with the partnership agreement:

- (a) is admitted as a partner in the partnership; and
- (b) is not designated as a limited partner in the partnership.

incorporated limited partnership means an incorporated limited partnership formed under Part 3.

liability includes any debt or obligation.

limited partner, for an incorporated limited partnership, means an entity that, in accordance with the partnership agreement:

- (a) is admitted as a partner in the partnership; and
- (b) is designated as a limited partner in the partnership.

partner, for an incorporated limited partnership, means a general partner or limited partner in the partnership.

partnership has the meaning in section 5.

partnership agreement, for an incorporated limited partnership, has the meaning in section 54.

partnership property has the meaning in section 24.

register means the register of incorporated limited partnerships established by section 58.

registered information has the meaning in section 57(2).

registered name, for an incorporated limited partnership, means the name of the partnership recorded in the register.

registered office, of an incorporated limited partnership, means the address of the principal office of the partnership recorded in the register.

registration means the registration of an incorporated limited partnership under Part 3.

special resolution, for an incorporated limited partnership, means a resolution passed by at least 75% of the limited partners in the partnership.

VCLP has the same meaning as in the *Venture Capital Act 2002* (Cth).

VCMP means a venture capital management partnership within the meaning of the *Income Tax Assessment Act 1936* (Cth).

4 Equity and common law

- (1) The rules of equity and common law for partnerships continue in force except to the extent to which they are inconsistent with this Act.
- (2) However, except as provided by this or another Act, those rules do not apply to an incorporated limited partnership, its partners and the relationship between the partnership and its partners.

Part 2 Partnerships generally

Division 1 Nature of partnerships

5 Partnership

- (1) A partnership is the relation between people carrying on a business in common with a view of profit, and includes an external partnership and incorporated limited partnership.
- (2) However, the relation between members of an association or incorporated body (other than an incorporated limited partnership) is not a partnership.
- (3) For this section, a reference to an association includes a reference to an association formed under a law in force in the Territory.

6 Determining existence of partnership other than incorporated limited partnership

- (1) In determining whether a partnership (other than an incorporated limited partnership) exists regard is to be had to the following rules:
 - (a) joint tenancy, tenancy in common, joint property, common property, or part ownership, does not of itself create a partnership as to anything held or owned, whether the tenants or owners do or do not share any profits made by the use of any thing held or owned;
 - (b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing the 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 a share of the profits of a business or of a payment contingent on or varying with the profits of a business does not of itself make the person a partner in the business, and in particular:
 - (i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make the person a partner in the business or liable as a partner;
 - (ii) a contract for the remuneration of an employee or agent of a person engaged in a business by a share of the profits of the business does not of itself make the employee or agent a partner in the business or liable as a partner;
 - (iii) a person being a spouse, de facto partner or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner does not of itself make the person a partner in the business or liable as a partner;
 - (iv) the advance of money by way of loan to a person engaged, or about to engage, in a business on a contract with the person that the lender will receive a rate of interest varying with the profits or will receive a share of the profits arising from carrying on the business does not of itself make the lender a partner with the person or persons carrying on the business or liable as a partner;
 - (v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by that person of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.
- (2) A contract referred to in subsection (1)(c)(iv) must be in writing and signed by or on behalf of all the parties for that subparagraph to apply.

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

Where:

- (a) a person to whom money has been advanced by way of loan on a contract referred in section 6; or
- (b) a buyer of goodwill in consideration of a share of the profits of a business,

becomes bankrupt, enters into an arrangement to pay his or her creditors less than 100 cents in the dollar or dies insolvent:

- (c) the lender of the loan is not entitled to recover anything in respect of the loan; and
- (d) 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 other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

8 Firm and firm name

- (1) The partners in a partnership other than an incorporated limited partnership are collectively called a firm and its firm name is:
 - (a) for an external partnership – the name under which its business is carried on under the law of the place where it is formed; or
 - (b) otherwise – the name under which its business is carried on in the Territory.
- (2) An incorporated limited partnership is a firm and its firm name is its registered name.

Division 2 Relationship of partners to persons dealing with them

9 Partner's power to bind firm

- (1) A partner in a firm other than an incorporated limited partnership is, for the firm's business, an agent of the firm and of the firm's other partners.

- (2) An act of the partner in carrying on in the usual way business of the kind carried on by the firm binds the firm and all its partners, unless:
 - (a) the partner had no authority to act in the matter; and
 - (b) the person with whom the partner is dealing:
 - (i) knew the partner did not have that authority; or
 - (ii) did not know or believe the partner was a partner in the firm.
- (3) A general partner in an incorporated limited partnership is, for the firm's business, an agent of the firm and of the firm's other general partners.
- (4) An act of the general partner in carrying on in the usual way business of the kind carried on by the partnership binds the partnership and all its other general partners, unless:
 - (a) the general partner had no authority to act in the matter; and
 - (b) the person with whom the general partner is dealing:
 - (i) knew the general partner did not have that authority; or
 - (ii) did not know or believe the general partner was a general partner in the partnership.

10 Partner acting for firm

- (1) An act of a person relating to the business of a firm other than an incorporated limited partnership binds the firm and all its partners if the person is authorised by the firm to carry out the act:
 - (a) in the firm name; or
 - (b) in any other way showing an intention to bind the firm.
- (2) Subject to section 13(4), an act of a person relating to the business of an incorporated limited partnership binds the partnership and all its general partners if the person is authorised by the partnership to carry out the act:
 - (a) in the partnership's firm name; or
 - (b) in any other way showing an intention to bind the partnership.

- (3) To avoid doubt:
 - (a) a reference to a person authorised by a firm to carry out an act includes a reference to a partner in the firm so authorised; and
 - (b) this section does not affect any rule of law about the execution of deeds or negotiable instruments.

11 Partner using firm's credit

- (1) The use of the credit of a firm other than an incorporated limited partnership by one of its partners for a purpose not apparently related to its ordinary business does not bind it unless the partner is specially authorised by the other partners to do so.
- (2) The use of an incorporated limited partnership's credit by one of its general partners for a purpose not apparently related to its ordinary business does not bind it unless the general partner is specially authorised by it to do so.
- (3) To avoid doubt, this section does not affect any personal liability of a partner in a partnership.

12 Effect of notice of agreement that firm not bound

If an act contravenes an agreement restricting the power of a partner to bind a firm, the act does not bind the firm in relation to a person who has notice of the agreement.

13 Liability of partner

- (1) Each partner in a firm other than an incorporated limited partnership is liable jointly with the other partners for liabilities incurred by the firm while the partner is that partner.
- (2) Each general partner in an incorporated limited partnership is liable jointly with the partnership for liabilities incurred by the partnership while the general partner is that general partner.
- (3) The estate of the partner referred to in subsection (1), or of the general partner referred to in subsection (2), is liable severally for the liabilities referred to in that subsection:
 - (a) to the extent to which the liabilities remain unsatisfied; and
 - (b) only after the separate liabilities of that partner or general partner have been satisfied.

- (4) However, the general partner or the general partner's estate is only liable for the liabilities:
 - (a) to the extent to which the partnership cannot satisfy the liabilities; or
 - (b) to a greater extent provided by the partnership agreement.

14 Liability for loss, injury or penalty

- (1) A firm other than an incorporated limited partnership is liable to the same extent as a partner in the firm for any loss, injury or penalty caused by an act (including omission) of the partner if:
 - (a) the act occurred while the partner was acting in the ordinary course of the firm's business or with the authority of the other partners; and
 - (b) for a loss or injury – the loss or injury is not suffered by a partner in the firm.
- (2) An incorporated limited partnership is liable to the same extent as a general partner in the partnership for any loss, injury or penalty caused by an act (including omission) of the general partner if:
 - (a) the act occurred while the partner was acting in the ordinary course of the partnership's business or with the partnership's authority; and
 - (b) for a loss or injury – the loss or injury is not suffered by a partner in the partnership.
- (3) For subsections (1) and (2), an act of a partner as a director must not be taken to have occurred in the ordinary course of the firm's business or with the firm's authority only because of one or more of the following:
 - (a) the partner obtained the firm's agreement or authority to be appointed or to act as the director;
 - (b) the remuneration the partner receives as the director forms part of the firm's income;
 - (c) another partner in the firm is a director.

(4) In this section:

director means:

- (a) a director of a corporation within the meaning of the Corporations Act 2001; or
- (b) a member of a body established by a law of the Territory.

15 Liability for misapplication of property

(1) A firm other than an incorporated limited partnership is liable for any loss arising from the misapplication of a third party's property if:

- (a) the property was received and misapplied by a partner in the firm acting within the scope of the partner's apparent authority; or
- (b) the property:
 - (i) was received by the firm in the course of the firm's business; and
 - (ii) was misapplied by one or more partners in the firm while it was in the firm's custody.

(2) An incorporated limited partnership is liable for any loss arising from the misapplication of a third party's property if:

- (a) the property was received and misapplied by a general partner in the partnership acting within the scope of that partner's apparent authority; or
- (b) the property:
 - (i) was received by the partnership in the course of the partnership's business; and
 - (ii) was misapplied by one or more general partners in the partnership while it was in the partnership's custody.

(3) In this section:

third party's property, in relation to a firm, means money or other property belonging to someone other than the firm or a partner in the firm.

16 Joint and several liabilities for wrongs

- (1) Each partner in a firm other than an incorporated limited partnership is jointly and severally liable for a liability referred to in section 14(1) or 15(1) incurred by the firm while the partner is that partner.
- (2) Each general partner in an incorporated limited partnership is jointly and severally liable for a liability referred to in section 14(2) or 15(2) incurred by the partnership while the general partner is that general partner.
- (3) However, the general partner is only liable:
 - (a) to the extent to which the partnership cannot satisfy the liability; or
 - (b) to a greater extent provided by the partnership agreement.

17 Misuse of trust property

- (1) A partner in a firm other than an incorporated limited partnership is not liable for the misuse of any trust property for the firm by a trustee of the trust who is another partner in the firm.
- (2) An incorporated limited partnership or general partner in the partnership is not liable for the misuse of any trust property for the partnership by a trustee of the trust who is another general partner in the partnership.
- (3) Subsection (1) or (2) does not:
 - (a) affect any liability of a partner in the firm incurred because the partner knew about a breach of the trust; and
 - (b) prevent the tracing and recovery of the trust property from the firm.

18 Representation as partner

- (1) A person is liable as a partner in a firm other than an incorporated limited partnership to a creditor of the firm who provided the credit because of a representation that the person is that partner.
- (2) A person is liable as a general partner in an incorporated limited partnership to a creditor of the partnership who provided the credit because of a representation that the person is that general partner.

- (3) Subsection (1) or (2) has effect:
 - (a) whether or not the representation was made by the person or with the person's permission or knowledge; and
 - (b) whether the representation was made orally, in writing or by conduct.
- (4) The estate of a partner in a firm is not liable for any debt incurred by the firm after the partner's death only because, after the death:
 - (a) the same firm name continues to be used; or
 - (b) the partner's name continues to be used in the firm name.

19 Representations about firm's affairs

- (1) A representation about a firm's affairs is evidence against the firm if the representation is made in the ordinary course of the firm's business by:
 - (a) if the firm is not an incorporated limited partnership – a partner in the firm; or
 - (b) otherwise – a general partner in the firm.
- (2) For this section, a representation includes an admission, and may be made orally, in writing or by conduct.

20 Notice to acting partner is notice to firm

- (1) Notice to a partner in a firm other than an incorporated limited partnership about the firm's affairs is taken to be notice to the firm if:
 - (a) the partner ordinarily acts in the firm's business; and
 - (b) the notice does not relate to a fraud on the firm committed by or with the consent of the partner.
- (2) Notice to a general partner in an incorporated limited partnership about the partnership's affairs is taken to be notice to the partnership if:
 - (a) the general partner ordinarily acts in the partnership's business; and
 - (b) the notice does not relate to a fraud on the partnership committed by or with the consent of the general partner.

21 Liabilities of incoming and outgoing partners

- (1) An entity does not, only because of the entity's admission as a partner in a firm other than an incorporated limited partnership, become liable for a liability incurred by the firm before the admission.
- (2) An entity does not, only because of the entity's retirement as a partner in the firm, cease to be liable for a liability incurred by the firm before the retirement.
- (3) An entity does not, only because of the entity's admission as a general partner in an incorporated limited partnership, become liable for a liability incurred by the partnership before the admission.
- (4) An entity does not, only because of the entity's retirement as a general partner in the partnership, cease to be liable for a liability incurred by the partnership before the retirement.
- (5) A retiring partner in a firm may be discharged from any existing liabilities of the firm by an agreement between:
 - (a) the partner; and
 - (b) the firm's creditors; and
 - (c) if the firm is not an incorporated limited partnership - the partners in the firm as newly constituted; and
 - (d) if the firm is an incorporated limited partnership - the partnership.
- (6) The agreement may be expressed or inferred from the conduct of anyone referred to in subsection (5).

22 Revocation of continuing guarantee

- (1) A continuing guarantee given to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by a change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee was given.
- (2) This section does not apply to an incorporated limited partnership.

Division 3 Relationship between partners

23 Variation by consent of terms of partnership

- (1) The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners.
- (2) Consent under subsection (1) may be express or inferred from a course of dealings.

24 Partnership property

- (1) The partnership property of a firm consists of property and any rights and interests in property that were originally brought into, or are subsequently acquired for, the firm.
- (2) The partners of a firm other than an incorporated limited partnership must, in accordance with the partnership agreement, hold and apply the partnership property exclusively for the firm.
- (3) However, any partnership property of the firm that is an interest in land must devolve:
 - (a) according to its nature and tenure and the general rule of law; and
 - (b) in trust so far as necessary for persons beneficially interested in the land.
- (4) If:
 - (a) the co-owners of an interest in land (the **first interest**) are partners in the firm in relation to profits made by the use of the first interest; and
 - (b) the first interest is not partnership property for the firm; and
 - (c) the co-owners use the profits to purchase another interest in land (the **second interest**) to be used in a similar manner,then, subject to any agreement to the contrary, the co-owners must, from the date of the purchase, hold the second interest in the same manner as the first property is held.
- (5) An incorporated limited partnership must hold and apply the partnership property of the partnership exclusively for the partnership.

- (6) A partner in the partnership does not have any legal or beneficial interest in the property only because the partner is the partner.
- (7) For this section, an interest in land includes an estate in land.

25 Property bought with partnership money

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

26 Personal estate held as partnership property

- (1) Unless the contrary intention appears, land or an interest in land that is partnership property is to be treated, as between the partners (including the representatives of a deceased partner), as personal estate.
- (2) This section does not apply to an incorporated limited partnership.

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

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

28 Rules about interests and duties of partners

- (1) The interest of a partner in partnership property and a partner's rights and duties in relation to the partnership are to be determined, subject to an express or implied agreement between the partners, by the following rules:
- (a) all partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;
 - (b) the firm must indemnify a partner in respect of 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 firm;
 - (c) a partner who makes an actual payment or advance for the purpose of the partnership beyond the amount of capital that the partner has agreed to subscribe is entitled to interest at the rate of 7% per annum from the date of the payment or advance;
 - (d) a partner is not entitled, before profits are ascertained, to interest on the capital subscribed by the partner;
 - (e) a partner may take part in the management of the partnership business;
 - (f) a partner is not entitled to remuneration for acting in the partnership business;
 - (g) a person may not be introduced as a partner without the consent of all existing partners;
 - (h) a difference arising as to an ordinary matter 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;
 - (j) 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 a partner may, when he or she thinks fit, have access to, inspect and copy the partnership books.
- (2) This section does not apply to an incorporated limited partnership.

29 Expulsion of partner

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

30 Retirement from partnership

- (1) Where a fixed term is not agreed on for the duration of a partnership, a partner may determine the partnership at any time by giving notice of his or her intention to do so to the other partners.
- (2) Where a partnership was originally constituted by deed, a notice in writing, signed by the partner giving it, is notice for the purposes of subsection (1).
- (3) This section does not apply to an incorporated limited partnership.

31 Continuance of partnership on old terms

- (1) Where a partnership entered into for a fixed term is continued after the term expires, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.
- (2) A continuance of the business by the partners or those partners as habitually acted as partners during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.
- (3) This section does not apply to an incorporated limited partnership.

32 Duty of partner to give information

- (1) A partner in a firm other than an incorporated limited partnership must give accurate and complete information about the firm to each of the other partners in the firm.
- (2) Subject to the partnership agreement, an incorporated limited partnership must give accurate and complete information about the partnership to each partner in the partnership.

33 Accountability of partners for private profits

- (1) A partner must account to the firm for a benefit derived by the partner, without the consent of the other partners, from:
 - (a) a transaction concerning the partnership; or

- (b) a use by the partner of the partnership property, name or business connection.
- (2) This section applies to transactions undertaken after a partnership is dissolved by the death of a partner and before the affairs of the partnership are completely wound up either by a surviving partner or by the representatives of the deceased partner.
- (3) This section does not apply to an incorporated limited partnership.

34 Duty of partner not to compete with firm

- (1) If a partner, without the consent of the other partners, carries on a business of the same nature as and competing with that of the firm, the partner must account for and pay over to the firm all profits made by the partner in the business.
- (2) This section does not apply to an incorporated limited partnership.

35 Rights of assignee of share in partnership

- (1) An assignment by a 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, while the partnership continues:
 - (a) to interfere in the management or administration of the partnership business or affairs;
 - (b) to require any accounts of the partnership transactions; or
 - (c) to inspect the partnership books.
- (2) An assignee:
 - (a) is entitled to receive the share of profits to which the assigning partner would otherwise be entitled; and
 - (b) must accept the account of profits agreed to by the partners.
- (3) In the case of a dissolution of a partnership, whether as respects all the partners or an assigning partner, the assignee is entitled:
 - (a) to receive the share of the partnership assets to which the assigning partner is entitled as between the partner and the other partners; and
 - (b) for the purpose of ascertaining that share, to an account as from the date of the dissolution.
- (4) This section does not apply to an incorporated limited partnership.

Division 4 Dissolution of partnership

35A Application

This Division does not apply to an incorporated limited partnership.

36 Dissolution by expiration or notice

- (1) Subject to an agreement between the partners, a partnership is dissolved:
 - (a) if entered into for a fixed term, by the expiration of the term;
 - (b) if entered into for a single venture or undertaking, by the termination of the venture or undertaking; or
 - (c) if entered into for an undefined time, by a partner giving notice to the other partner or partners of his or her intention to dissolve the partnership.
- (2) In subsection (1)(c), the partnership is dissolved from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, from the date notice is given.

37 Dissolution by death, bankruptcy or charge

- (1) Subject to an agreement between the partners, a partnership is dissolved as regards all the partners by the death or bankruptcy of a partner.
- (2) A partnership may, at the option of the other partners, be dissolved if a partner permits his or her share of the partnership property to be charged under this Act for his or her separate debt.

38 Dissolution by illegality of partnership

A partnership is dissolved on an event happening that 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.

39 Dissolution by Court

- (1) A partner may apply to the Supreme Court for an order dissolving the partnership in the following cases:
 - (a) when a partner is found to be mentally ill;
 - (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his or her part of the partnership contract;

- (c) when a partner, other than the partner suing, is guilty of conduct that 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) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement or conducts himself or herself 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 the partner;
 - (e) when the business of the partnership can only be carried on at a loss;
 - (f) whenever circumstances arise that, in the opinion of the Court, make it just and equitable that the partnership be dissolved.
- (2) An application for an order under subsection (1)(a) may be made on behalf of the partner by his or her guardian or administrator, if appointed under the *Adult Guardianship Act*, or a person having title to intervene as by any other partner.

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

- (1) Where a person deals with a firm after a change in its constitution, the person is entitled to treat all apparent members of the old firm as still being members until the person has notice of the change.
- (2) For the purposes of subsection (1), an advertisement in the *Gazette* and in a newspaper circulating in the area in which a firm carries on business, as to a firm whose principal place of business is in the Territory, is notice to a person who has not had dealings with the firm before the date of the dissolution or change advertised.
- (3) The estate of a partner who dies or becomes bankrupt is not liable for partnership debts contracted after the date of the partner's death or bankruptcy.
- (4) The estate of a partner who has retired and who was not known to a person dealing with the firm to be a partner is not liable for partnership debts contracted after the date of the partner's retirement.

41 Right of partners to notify dissolution

- (1) On the dissolution of a partnership or the retirement of a partner, a partner must notify the dissolution or retirement:
 - (a) in the *Gazette*; and
 - (b) in a newspaper circulating in the area in which the firm carries on business.
- (2) The partner may require the other partner or partners to agree, for the purpose of subsection (1), in all necessary or proper acts (if any) that cannot be done without his or her or their agreement.

42 Continuing authority of partners for purposes of winding up

- (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 notwithstanding the dissolution so far as is necessary to wind up the affairs of the partnership and to complete transactions begun but not finished at the time of the dissolution, but not otherwise.
- (2) A firm is in no case bound by the acts of a partner who has become bankrupt but this subsection does not affect the liability of a person who has after the bankruptcy represented himself or herself or knowingly permitted himself or herself to be represented as a partner of the bankrupt.

43 Rights of partners as to application of partnership property

- (1) On the dissolution of a partnership, a partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners:
 - (a) to have the property of the partnership applied in payment of the debts and liabilities of the firm; and
 - (b) to have the surplus assets applied in payment of what may be due to the partners respectively after deducting what is due from them as partners to the firm.
- (2) For the purpose of subsection (1), a partner or his or her representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.

44 Appportionment 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 the term, otherwise than by the death of a partner, the Supreme Court may order the repayment of the premium or of a part of it as it thinks just, having regard to the terms of the partnership contract and to the length of time the partnership has continued, unless:

- (a) the dissolution is, in the opinion of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement that does not contain a provision for a return of any part of the premium.

45 Rights where partnership dissolved for fraud or misrepresentation

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

46 Share of profits made after dissolution

- (1) Where a partner dies or otherwise ceases to be a partner and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his or her estate, then, in the absence of an agreement to the contrary, the outgoing partner or his or her estate is entitled, at his or her option or the option of his or her representatives:

- (a) to the 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
 - (b) to interest at the rate of 7% per annum on the amount of his or her share of the partnership assets.
- (2) Subsection (1) does not apply 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 the option is duly exercised except where a partner assuming to act in exercise of the option does not, in all material respects, comply with the terms of the partnership agreement.

47 Retiring or deceased partner's share to be debt

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

48 Rule for distribution of assets on final settlement of accounts

In settling accounts between the partners, after a dissolution of partnership, the following rules are, subject to any agreement, to be observed:

- (a) losses, including losses and deficiencies of capital, are to 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, are to be applied in the following manner and order:
 - (i) in paying the debts and liabilities of the firm to persons who are not partners;
 - (ii) in paying to a partner, rateably, what is due from the firm to the partner for advances as distinguished from capital;
 - (iii) in paying to a partner, rateably, what is due from the firm to the partner in respect of capital;
 - (iv) the residue, if any, is to be divided among the partners in the proportion in which profits are divisible.

Part 3 Incorporated limited partnerships

Division 1 Preliminary matters

49 Object

The object of this Part is to facilitate the making of venture capital investments in the Northern Territory.

50 Application

If this Part is inconsistent with a provision of Part 1 or 2 in its application to an incorporated limited partnership:

- (a) this Part prevails; and
- (b) the provision does not, to the extent of the inconsistency, apply to the partnership.

Division 2 Formation of incorporated limited partnerships

51 Formation

An incorporated limited partnership is formed on its registration.

52 Nature of incorporated limited partnership

- (1) An incorporated limited partnership:
 - (a) is a corporation with perpetual succession and legal personality separate from its partners; and
 - (b) may have a common seal; and
 - (c) may sue and be sued in its firm name.
- (2) The common seal must be kept as the partnership directs and may only be used as authorised by the partnership.

53 Requirements about partners

- (1) An incorporated limited partnership must have:
 - (a) at least one general partner but not more than 20 general partners; and
 - (b) at least one limited partner.

- (2) Any of the following may be a general partner or limited partner:
 - (a) a natural person;
 - (b) a partnership;
 - (c) an incorporated body.
- (3) For subsection (1)(a), if a general partner is a partnership, the number of partners in that partnership that do not have limited liability as partners under the law of the place where it is formed must be counted as general partners.
- (4) To avoid doubt:
 - (a) the number of partners in a partnership referred to in subsection (3) may be worked out in accordance with one or more applications of that subsection; and
 - (b) an entity must be counted only once for subsection (3) if it is a partner in more than one partnership; and
 - (c) if a partner in a partnership is counted, the partnership itself must not be counted.

54 Partnership agreement

- (1) There must be a written agreement between the partners in an incorporated limited partnership (the **partnership agreement**) that sets out the interests, rights and obligations of the partners.
- (2) On the partnership's registration, the partnership agreement has effect as a contract between the partnership and the partners.

55 Who may apply for registration

- (1) Either of the following may apply for the registration of an incorporated limited partnership:
 - (a) the partnership proposed to be registered;
 - (b) the proposed partners in the proposed incorporated limited partnership.
- (2) The application may only be made in any of the following circumstances:
 - (a) the partnership referred to in subsection (1)(a) is a VCLP, AFOF or VCMP;

- (b) a general partner in the partnership referred to in subsection (1)(a) intends to apply for the registration of the partnership under the *Venture Capital Act 2002* (Cth) as a VCLP or AFOF;
- (c) a proposed general partner in the proposed partnership referred to in subsection (1)(b) intends to apply for the registration of the partnership under the *Venture Capital Act 2002* (Cth) as a VCLP or AFOF;
- (d) the partners in the partnership referred to in subsection (1)(a) intend to meet the requirements in section 94D(3) of the *Income Tax Assessment Act 1936* (Cth) for the partnership's recognition as a VCMP;
- (e) the proposed partners in the proposed partnership referred to in subsection (1)(b) intend to meet the requirements in section 94D(3) of the *Income Tax Assessment Act 1936* (Cth) for the partnership's recognition as a VCMP;
- (f) any other circumstance prescribed by the Regulations.

56 Application for registration

- (1) An application for the registration must be made to the Commissioner in the approved form.
- (2) The applicant must give the Commissioner any additional information required by the Commissioner.
- (3) Without limiting subsection (1), the approved form must require the following to be included in the application:
 - (a) for an application by a partnership referred to in section 55(1)(a):
 - (i) the signature of each partner in the partnership or a person authorised to make the application on behalf of the partnership and its partners; and
 - (ii) the partnership's firm name; and
 - (iii) the full address of the proposed principal office in the Territory of the partnership;
 - (b) for an application by the proposed partners in a proposed partnership referred to in section 55(1)(b):
 - (i) the signature of each proposed partner; and

- (ii) the proposed firm name of the proposed partnership;
and
 - (iii) the full address of the proposed principal office in the Territory of the proposed partnership;
- (c) the following particulars about the name of each partner or proposed partner (as the case may be):
 - (i) the full name of the partner or proposed partner;
 - (ii) if the partner or proposed partner is a partnership – its firm name or the full name of each of its partners;
- (d) the following particulars about the address of each partner or proposed partner (as the case may be):
 - (i) for a natural person – the person's home address;
 - (ii) for a corporation – the corporation's registered office or principal place of business;
 - (iii) for a partnership – the partnership's registered office or principal place of business;
- (e) a statement as to whether each partner or proposed partner (as the case may be) is, or is proposed to be, a general partner or limited partner;
- (f) a statement as to whether each partner or proposed partner (as the case may be) is a partnership;
- (g) for an application in the circumstance covered by section 55(2)(a) – a copy of a document evidencing the status of the partnership as a VCLP, AFOF or VCMP;
- (h) for an application in the circumstance covered by section 55(2)(b), (c), (d) or (e) – a statement of the intention referred to in that section;
- (i) for an application in the circumstance covered by section 55(2)(f) – a statement setting out the circumstance.

57 Registration

- (1) The Commissioner must register a partnership or proposed partnership as an incorporated limited partnership if an application for the registration is made under section 56.

- (2) The registration is made when the Commissioner records the information in the application (the **registered information**) in the register.
- (3) However, the Commissioner may record a firm name only if the Registrar of Business Names considers the firm name would be eligible for registration as a business name under the *Business Names Act*.

58 Register

- (1) The Commissioner must establish and maintain a register of incorporated limited partnerships.
- (2) The Commissioner may correct errors and omissions in the register.
- (3) The register must be available for public inspection at reasonable times.

59 Changes of registered information

- (1) Within 7 days after a change has occurred to a matter in the registered information of an incorporated limited partnership, a statement setting out the change and signed by all the general partners in the partnership, or a general partner authorised by those partners, must be given to the Commissioner.
- (2) The statement must:
 - (a) be in the approved form; and
 - (b) contain the information prescribed by the Regulations.
- (3) The Commissioner must, on the basis of the statement, change the registered information if the statement is given under this section.
- (4) Each general partner in the partnership commits an offence if subsection (1) is contravened.

Penalty: If the offender is a natural person – 20 penalty units.

 If the offender is a body corporate – 100 penalty units.

- (5) It is a defence to a prosecution for the offence if the general partner proves that:
 - (a) the general partner did not know about the contravention; and
 - (b) reasonable precautions and appropriate diligence had been exercised to avoid the contravention.

60 Certificate of registration

- (1) The Commissioner may, on the application of a person, give the applicant a certificate of registration of an incorporated limited partnership.
- (2) The Commissioner must give the general partners in an incorporated limited partnership a certificate of registration each time when:
 - (a) the partnership is registered; or
 - (b) a correction in the register is made in relation to the partnership; or
 - (c) the registered information of the partnership is otherwise changed.
- (3) A certificate of registration of an incorporated limited partnership:
 - (a) is a certificate about the partnership's registration and its registered information as at the time when the certificate is given; and
 - (b) must be in the approved form.
- (4) A matter stated in a certificate of registration is evidence about that matter.

61 Registration under *Business Names Act* not required

An incorporated limited partnership need not register its firm name under the *Business Names Act*.

62 Preparatory acts do not create partnership

Anything done for an application by the proposed partners referred to in section 55(1)(b) does not of itself create a partnership between them.

Division 3 Powers and liabilities of partnership

63 Powers of partnership

- (1) An incorporated limited partnership has:
 - (a) the legal capacity and powers of a natural person; and
 - (b) the powers of a corporation.

- (2) Without limiting subsection (1), the partnership has the powers to:
- (a) create, confer, vary or cancel interests in the partnership; and
 - (b) carry on its business; and
 - (c) enter into contracts or otherwise acquire rights or liabilities; and
 - (d) acquire, hold or dispose of property; and
 - (e) appoint agents and attorneys, and act as an agent for other people; and
 - (f) form, and participate in the formation of, corporations; and
 - (g) participate in partnerships, trusts, joint ventures, other associations and other arrangements for the sharing of profits; and
 - (h) do anything else it is authorised to do under this Part or the partnership agreement.
- (3) The partnership agreement may limit the partnership's powers.

64 Relationship between partners

- (1) Subject to sections 66 and 67, this section has effect in relation to an incorporated limited partnership.
- (2) None of the following is an agent of a limited partner in the partnership:
- (a) the partnership or a general partner in the partnership;
 - (b) an officer, employee, agent or representative of the partnership or a general partner in the partnership.
- (3) An act of a person referred to in subsection (2)(a) or (b) does not bind a limited partner in the partnership.
- (4) A limited partner in the partnership is not an agent of, or a fiduciary for, the partnership or another partner in the partnership.
- (5) An act of a limited partner in the partnership does not bind the partnership or another partner in the partnership.

- (6) To avoid doubt, subsections (2) to (5) do not prevent or limit an agreement between a partner (the **first entity**) and another partner or the partnership (the **second entity**) under which:
 - (a) the first entity binds the second entity by acting as its agent; or
 - (b) the partnership binds the first entity by acting as a partner's agent.
- (7) Any consent or authority that may be given by one or more partners in a partnership under this Act may be given by a general partner in the partnership.
- (8) The operation of subsection (7) may be varied by an agreement in the partnership.
- (9) A limited partner, as that limited partner, may not be a party to any proceeding commenced in a court or tribunal by or against the partnership except for any proceeding:
 - (a) commenced by the partnership against the limited partner; or
 - (b) commenced by the limited partner against the partnership.
- (10) For this section, a reference to a general partner that is a partnership includes a reference to each partner in that partnership.

65 Liability of limited partners

- (1) Subject to sections 66 and 67, a limited partner in an incorporated limited partnership is not liable for the partnership's liabilities or the liabilities of a general partner in the partnership.
- (2) However, this section does not prevent the satisfaction of a liability of the partnership or general partner by:
 - (a) a contribution of the limited partner; or
 - (b) the enforcement of an obligation of the limited partner to make such a contribution.

66 Limited partners not to take part in management

- (1) A limited partner in an incorporated limited partnership must not take part in managing the partnership's business.
- (2) However, to the extent to which the partner is authorised by the partnership agreement to do so, the partner may:
 - (a) access, inspect or copy the partnership's books or records;
and

- (b) examine the state or prospects of the partnership's business; and
 - (c) advise, or consult with, any partners in the partnership in relation to the state or prospects of the partnership's business.
- (3) In addition, the limited partner is liable as a general partner in the partnership for any loss or injury caused by the partner to a person other than a partner in the partnership if:
 - (a) the loss or injury is a direct result of a wrongful act (including omission) of the limited partner in taking part in managing the partnership's business; and
 - (b) at the time of the act the person has reasonable grounds to believe that the limited partner was a general partner in the partnership.
- (4) The operation of this section must not be varied by the partnership agreement or any other agreement between the partners.
- (5) For this section, a reference to the limited partner includes a reference to a person acting for the limited partner.

67 Circumstances in which limited partner not regarded as taking part in management

- (1) For section 66, the limited partner must not be regarded as taking part in managing the partnership's business only because one or more of subsections (2) to (12) apply.
- (2) This subsection applies if the partner is employed or engaged by"
 - (a) the partnership; or
 - (b) a general partner in the partnership; or
 - (c) an associate of a general partner in the partnership.
- (3) This subsection applies if the partner:
 - (a) gives advice to or for any of the following entities:
 - (i) the partnership;
 - (ii) a general partner in the partnership;
 - (iii) an associate of a general partner in the partnership; and

- (b) the advice is given in the proper performance of functions arising:
 - (i) from the engagement of the partner in a professional capacity; or
 - (ii) from business dealings between the partner and an entity referred to in paragraph (a).
- (4) This subsection applies if the partner gives a guarantee or indemnity in relation to a liability of:
 - (a) the partnership; or
 - (b) a general partner in the partnership; or
 - (c) an associate of a general partner in the partnership.
- (5) This subsection applies if the partner takes any action, or participates in any action taken by other limited partners, for the purposes of:
 - (a) enforcing the limited partner's rights as the limited partner; or
 - (b) safeguarding the limited partner's interests as the limited partner.
- (6) This subsection applies if the partner exercises a power under the partnership agreement for:
 - (a) a meeting of the partnership; or
 - (b) a resolution of some or all of the partners in the partnership.
- (7) This subsection applies if the partner exercises a power referred to in section 66(2)(a), (b) or (c) under that section.
- (8) This subsection applies if the partner:
 - (a) advises or consults with an associate of the partnership; or
 - (b) is, or acts as, an officer, director, security holder, partner, agent or representative of an associate of the partnership; or
 - (c) is, or acts as, a person employed or engaged by an associate of the partnership; or
 - (d) is, or acts as, a lender to, or fiduciary for, an associate of the partnership.

- (9) This subsection applies if the partner, as authorised by the partnership agreement:
- (a) participates in, or has or exercises a right in relation to, the appointment, removal or nomination of a person as a member of a committee; and
 - (b) the committee has functions that relate to one or more of the following proposals from a general partner in the partnership:
 - (i) a proposal involving a material change in the nature of the partnership's business (including a change in any investment guidelines, policies or conditions relating to the business);
 - (ii) a proposal for the adoption of a method for valuing some or all of the partnership's assets (including any changes to the existing method);
 - (iii) a proposal for an extension or reduction in the period in which, under the partnership agreement, an investment can be made by the partnership;
 - (iv) a proposal for an approval or disapproval of an investment that the partnership does not otherwise have a right to make;
 - (v) a proposal for an actual or potential transaction or anything else involving an actual or potential conflict of interest;
 - (vi) a proposal relating to an actual or potential transaction, contract, arrangement or understanding between one or more partners in the partnership (or any of their associates) and the partnership or a general partner in the partnership (or any of their associates);
 - (vii) a proposal for the delegation, waiver, release or variation of an authority, right, duty or obligation of the general partner;
 - (viii) a proposal for the appointment, or approval under the partnership agreement, of anyone as a senior executive of the general partner or an associate of the general partner.

- (10) This subsection applies if the partner:
- (a) nominates, selects, investigates, evaluates or negotiates with anyone in relation to the removal or replacement of a general partner in the partnership; or
 - (b) participates in the work of a committee that relates to the nomination, selection, appointment, change in control or ownership, suspension, replacement or removal of:
 - (i) a general partner in the partnership; or
 - (ii) an associate of a general partner in the partnership.
- (11) This subsection applies if the partner takes, or participates in, an action for the registration, or maintaining the registration, of the partnership or a general partner in the partnership as a VCLP or AFOF.
- (12) This subsection applies if:
- (a) the partnership is a VCMP; and
 - (b) the partner takes any action for the partnership in the capacity of a partner, or an associate of a partner, in the VCMP.
- (13) This section does not imply that the limited partner must be regarded as taking part in managing the partnership's business if:
- (a) the partner does anything in relation to the conduct of that business; and
 - (b) none of subsections (2) to (12) applies.
- (14) The operation of this section must not be varied:
- (a) by the partnership agreement; or
 - (b) with the consent of the partners in the partnership (whether or not given under the partnership agreement).
- (15) For this section, a reference to the limited partner includes a reference to a person acting for the limited partner.

68 Associates

- (1) An associate of a general partner includes any of the following:
- (a) anyone who has an interest in the general partner;

- (b) anyone to whom the general partner has delegated a power or function in relation to a partnership in which the general partner is a general partner;
 - (c) if the general partner or a person covered by paragraph (a) or (b) is a corporation – a related body corporate of the corporation;
 - (d) a director, officer, employee, agent, representative or security holder of the general partner or of a person covered by paragraph (a), (b) or (c).
- (2) An associate of a limited partner includes any of the following:
- (a) anyone who has an interest in the limited partner;
 - (b) if the limited partner or a person covered by paragraph (a) is a corporation – a related body corporate of that corporation;
 - (c) a director, officer, employee, agent, representative or security holder of the limited partner or a person covered by paragraph (a), or (b).
- (3) An associate of an incorporated limited partnership includes:
- (a) an entity in which the partnership has an interest; and
 - (b) a related body corporate of that entity.
- (4) In this section:

interest, in a partner or partnership, includes an interest as a security holder, trustee, responsible entity, manager, custodian, subcustodian, nominee, administrator, executor or legal personal representative.

partner, includes, if that partner is another partnership, a partner in that other partnership.

related body corporate has the same meaning as in section 9 of the Corporations Act 2001.

securities has the same meaning as in section 92(3) of the Corporations Act 2001.

security holder, in relation to a body, includes a holder of securities in or of the body.

69 Difference between partners

- (1) A difference arising from an ordinary matter that is connected with an incorporated limited partnership's business must be decided by a majority of the general partners in the partnership.
- (2) The operation of subsection (1) may be varied with the consent of all the partners in the partnership.

70 Change in partners

- (1) A limited partner (the **transferor**) in an incorporated limited partnership may transfer all or part of that partner's interest in the partnership to an entity (the **transferee**) with:
 - (a) the consent of the general partners in the partnership; and
 - (b) the agreement of the transferee.
- (2) If all the interest is transferred, the transferee replaces the transferor as a limited partner in the partnership.
- (3) If part of the interest is transferred and that interest is or includes any of the transferor's legal interest in the partnership, the transferee becomes a limited partner in the partnership in relation to so much of that legal interest as is transferred.
- (4) An entity may be admitted as a partner in the partnership without the consent of any limited partner in the partnership.
- (5) The operation of this section may be varied with the consent of all of the partners in the partnership.

71 Change in status of partners

- (1) A general partner in an incorporated limited partnership that becomes a limited partner in the partnership is liable for any liability incurred by the partnership before the partner becomes the limited partner:
 - (a) to the extent to which the partnership cannot satisfy the liability; or
 - (b) to a greater extent provided by the partnership agreement.
- (2) A limited partner in the partnership that becomes a general partner in the partnership is not liable for any liability of the partnership:
 - (a) that was incurred before the partner becomes the general partner; and

- (b) for which the partner was not liable while being a limited partner.

72 Liability arising outside Territory

- (1) A limited partner in an incorporated limited partnership may only be liable for a liability incurred by the partnership for an act that occurred outside the Territory if the partner would be liable under this Act for such a liability had the act occurred in the Territory.
- (2) For subsection (1), a reference to an act includes a reference to:
 - (a) the conduct of the partnership's business; or
 - (b) an act (including omission) of:
 - (i) the partnership; or
 - (ii) a general partner or limited partner in the partnership; or
 - (iii) an officer, employee or agent of the partnership or a general partner in the partnership.

73 Corresponding laws

- (1) The Regulations may prescribe a law of a State, another Territory or another jurisdiction (including a foreign country) that provides for the limitation of a partner in a partnership to be a corresponding law.
- (2) In addition, any other law of a State, another Territory or another jurisdiction (including a foreign country) that substantially corresponds to the provisions in this Act that relate to incorporated limited partnerships is a corresponding law.

74 Partnership formed under corresponding laws

- (1) A partner in a partnership formed under a corresponding law may only be liable for a liability incurred by the partnership for an act that occurred in the Territory if the partner would be liable under that law had the act occurred in the place where the partnership was formed.
- (2) For subsection (1), a reference to an act includes a reference to:
 - (a) the conduct of the partnership's business; or
 - (b) an act (including omission) of:
 - (i) the partnership; or

- (ii) a partner in the partnership; or
- (iii) an officer, employee or agent of the partnership or a partner in the partnership.

75 Effect of sections 72 and 74

(1) To avoid doubt, sections 72 and 74 do not imply that a limited partner in an incorporated limited partnership:

- (a) has any liability; or
- (b) would, apart from those sections, have any liability,

for an act occurred outside the Territory that the limited partner would not have if the act had occurred in the Territory.

(2) In subsection (1):

act has the same meaning as in section 72 or 74 (as the case requires).

Division 4 Winding up

76 Assets

For this Division, a reference to the assets of an incorporated limited partnership that is being wound up is a reference to its remaining assets after the satisfaction of all its liabilities and the costs for the winding up.

77 Voluntary winding up

(1) An incorporated limited partnership may be wound up voluntarily:

- (a) if the partnership agreement sets out the terms on which it may be wound up voluntarily – in accordance with the agreement; or
- (b) otherwise – subject to the agreement, by a special resolution of the limited partners in the partnership.

(2) On the voluntary winding up of the partnership, its assets:

- (a) must be dealt with in accordance with the partnership agreement if the agreement sets out how they are to be dealt with on a voluntary winding up; or

- (b) otherwise – must be distributed among the partners in shares proportionate to their respective contribution of capital or property to the partnership.
- (3) A person aggrieved by the operation of subsection (2) may apply to the Supreme Court for an order for the disposal or distribution of the assets.
- (4) On the application, the Supreme Court may make any order the Court considers appropriate for the disposal or distribution of the assets.

78 Winding up on certificate

- (1) The Commissioner may, by notice given to an incorporated limited partnership, require it to show cause why it should not be wound up.
- (2) The Commissioner may do so if the Commissioner considers:
 - (a) the partnership has stopped carrying on business; or
 - (b) none of the partners in the partnership is a limited partner; or
 - (c) the partnership exists for an illegal purpose; or
 - (d) the partnership's registration was obtained by a mistake or fraud; or
 - (e) the partnership:
 - (i) is registered on the basis that it is, or intended to be, a VCLP, AFOF or VCMP; and
 - (ii) has stopped being, or has not within 2 years after its registration, become a VCLP, AFOF or VCMP.
- (3) The Commissioner may issue a certificate for the winding up 28 days after giving the notice or at a later time.
- (4) The Commissioner may issue the certificate only if the Commissioner is satisfied the partnership:
 - (a) should be wound up at that time; and
 - (b) has not shown cause why it should not be wound up.

- (5) The Commissioner must:
 - (a) as soon as possible after issuing the certificate:
 - (i) publish a notice of the certificate in the *Gazette*; and
 - (ii) give a notice of the certificate to the partnership; and
 - (b) as soon as possible after giving the notice referred to in paragraph (a)(ii), record in the register that the notice has been given.
- (6) The Commissioner must give a notice under subsection (1) or (5)(a)(ii) by:
 - (a) serving it on the partnership at its registered office; or
 - (b) if serving it at the registered office is not reasonably practicable – publishing it in a newspaper circulating generally in the Territory.

79 Review of certificate

- (1) A person whose interests are affected by a decision to issue the certificate may apply to the Supreme Court, within 28 days after the notice referred to in section 78(5)(a)(ii) is given, for a review of the decision.
- (2) The operation of the certificate is suspended until the application is withdrawn or the review is decided.
- (3) In deciding the application, the Supreme Court may:
 - (a) confirm the decision; or
 - (b) set aside the decision and cancel the certificate.
- (4) This section does not prevent the Commissioner cancelling the certificate at any time after the application for the review is made.

80 Procedure for winding up on certificate

- (1) The Commissioner must appoint a person (including a general partner in the partnership or a person who is not a registered liquidator for the Corporations Act 2001) to be the liquidator for the winding up.

- (2) The liquidator:
 - (a) must, within 10 days after the appointment, publish a notice of the appointment in a newspaper circulating generally in the Territory; and
 - (b) must give the prescribed security for the winding up; and
 - (c) is entitled to receive fees set by the Commissioner.
- (3) The winding up must begin within:
 - (a) 28 days after the notice referred to in section 78(5)(a)(ii) is given; or
 - (b) if the Supreme Court confirms the decision to issue the certificate under section 79 – 28 days after the confirmation.
- (4) The winding up must be completed by the day:
 - (a) stated in a notice given by the Commissioner to the partnership; and
 - (b) at least 60 days after the giving of the notice.
- (5) The reasonable costs of the winding up are payable out of the partnership property.

81 Distribution of assets

- (1) On the winding up of the partnership, its assets:
 - (a) must be dealt with in accordance with the partnership agreement if the agreement sets out how they are to be dealt with on its winding up on a certificate by the Commissioner; or
 - (b) otherwise – must be distributed among the partners in shares proportionate to their respective contribution of capital or property to the partnership.
- (2) A person aggrieved by the operation of subsection (1) may apply to the Supreme Court for an order for the disposal or distribution of the assets.
- (3) On the application, the Supreme Court may make any order the Court considers appropriate for the disposal or distribution of the assets.

82 Application of Corporations Act 2001

- (1) The winding up of an incorporated limited partnership is declared to be an excluded matter for section 5F of the Corporations Act 2001 in relation to Part 5.7 of that Act.
- (2) Part 5.7 of the Corporations Act 2001 applies to the partnership as if it were a Part 5.7 body within the meaning of section 9 of that Act, except:
 - (a) the words ***or in the public interest*** are taken to be inserted in section 583(c)(ii) of that Act after ***just and equitable***; and
 - (b) section 583(d) of that Act is taken to be omitted; and
 - (c) with any other necessary changes; and
 - (d) with any other changes prescribed by the Regulations.
- (3) The Australian Securities and Investments Commission:
 - (a) may perform a function or exercise a power under Part 5.7 of the Corporations Act 2001 as applied by subsection (2) in accordance with an agreement or arrangement referred to in section 11(8) or (9A)(b) of the *Australian Securities and Investments Commission Act 2001* (Cth); and
 - (b) is authorised to perform that function or exercise that power under section 11 of that Act.
- (4) Unless a function or power under Part 5.7 as applied by subsection (2) is conferred on the Australian Securities and Investments Commission as referred to in subsection (3), that Part applies as if a reference in that Part to that Commission were a reference to the Commissioner.

83 Obligation to inform Commissioner

- (1) An incorporated limited partnership must give the Commissioner a notice of the beginning of its winding up within 7 days after:
 - (a) if a special resolution referred to in section 77(1)(b) is passed – the day on which it is passed; or
 - (b) otherwise – the day on which the winding up begins.
- (2) The partnership must give the Commissioner a written notice stating the day of the completion of the winding up within 7 days after that day.

(3) The Commissioner must, as soon as practicable after receiving a notice under subsection (1) or (2), record the receipt of the notice in the register.

(4) Each general partner in the partnership commits an offence if subsection (1) or (2) is contravened.

Penalty: If the offender is a natural person – 20 penalty units.

 If the offender is a body corporate – 100 penalty units.

(5) It is a defence to a prosecution for the offence if the general partner proves that:

(a) the general partner did not know about the contravention; and

(b) reasonable precautions and appropriate diligence had been exercised to avoid the contravention.

84 Cancellation of registration

(1) The Commissioner must, by notice in the *Gazette*, cancel an incorporated limited partnership's registration after it is wound up.

(2) The partnership ceases to exist on the cancellation.

(3) The Commissioner must record the cancellation in the register.

Division 5 Other matters

85 Seal and execution of documents

(1) A court, judge or person acting judicially must:

(a) take judicial notice of the seal of an incorporated limited partnership; and

(b) presume it was properly affixed.

(2) Despite any other law of the Territory, the partnership may execute a document (including a deed) by the seal or the signature of a general partner acting for the partnership.

(3) Subsection (2) does not limit the ways in which the partnership may execute a document.

86 Entitlement to make assumptions

(1) A person may make the assumptions in section 87 in relation to:

(a) any dealings with an incorporated limited partnership; and

- (b) any dealings with an entity that has, or purports to have, directly or indirectly acquired property from the partnership.
- (2) If the person makes the assumption, the partnership or entity may not assert that the assumption is incorrect in a proceeding relating to the dealings.
- (3) The assumption may be made even if a partner in the partnership, or a representative of the partner, acts fraudulently in relation to the dealings.
- (4) However, the person may not make the assumption if, at the time of the dealings, the person knew or suspected that the assumption was incorrect.

87 Assumptions

- (1) This section has effect for the dealings referred to in section 86(1).
- (2) The partnership agreement may be assumed to have been complied with in relation to the dealings.
- (3) If a person appears to be a general partner in the partnership on the basis of information provided by the person that is registered information, the person may be assumed:
 - (a) to be a general partner in the partnership; and
 - (b) to have the authority to exercise the powers and perform the functions conferred on a general partner.
- (4) If a person is held out by the partnership to be a general partner in, or an agent of, the partnership, the person may be assumed:
 - (a) to be a general partner in, or an agent of, the partnership (as the case may be); and
 - (b) to have the authority to exercise the powers and perform the functions usually conferred on the general partner or agent.
- (5) The general partners in, or agents of, the partnership may be assumed to be properly exercising their powers and performing their functions.
- (6) A document may be assumed to have been properly executed by the partnership if its execution appears to have complied with section 85.

- (7) If a general partner in, or an agent of, the partnership has the authority to issue a document or a certified copy of a document for the partnership, the general partner or agent may be assumed to have the authority to warrant that it is genuine or a true copy (as the case may be).

88 Identification of partnership

- (1) A document issued by or for an incorporated limited partnership for its business must contain in legible letters its registered name, ending with ***An Incorporated Limited Partnership, L.P. or LP.***
- (2) A general partner in the partnership commits an offence for a document issued by or for the partnership that contravenes subsection (1) if, when the document is issued, the person knows about the contravention.

Penalty: If the offender is a natural person – 100 penalty units.
 If the offender is a body corporate – 500 penalty units.

- (3) A person commits an offence if the person issues or authorises the issue of a document that contravenes subsection (1).

Penalty: If the offender is a natural person – 20 penalty units.
 If the offender is a body corporate – 100 penalty units.

89 Registered office

- (1) An incorporated limited partnership must keep an office at its registered office for the receipt of communications addressed to it.
- (2) Each general partner in the partnership commits an offence if the partnership contravenes subsection (1).

Penalty: If the offender is a natural person – 20 penalty units.
 If the offender is a body corporate – 100 penalty units.

- (3) It is a defence to a prosecution for the offence if the general partner proves that:
- (a) the general partner did not know about the contravention; and
- (b) reasonable precautions and appropriate diligence had been exercised to avoid the contravention.
- (4) The office must be open to the public during the hours prescribed by the Regulations.

90 Display of certificate of registration

- (1) An incorporated limited partnership must display its certificate of registration at all times in a conspicuous place at its registered office.
- (2) Each general partner in the partnership commits an offence if the partnership contravenes subsection (1).

Penalty: If the offender is a natural person – 20 penalty units.

 If the offender is a body corporate – 100 penalty units.

- (3) It is a defence to a prosecution for the offence if the general partner proves that:
 - (a) the general partner did not know about the contravention; and
 - (b) reasonable precautions and appropriate diligence had been exercised to avoid the contravention.

91 Obligations to notify Commissioner

- (1) An incorporated limited partnership must give the Commissioner:
 - (a) a notice in the approved form within one month after becoming a VCLP, AFOF or VCMP; and
 - (b) a notice in the approved form within 7 days after ceasing to be a VCLP, AFOF or VCMP; and
 - (c) a notice in the approved form as soon as practicable after ceasing to carry on business.
- (2) Each general partner in an incorporated limited partnership commits an offence if the partnership contravenes subsection (1)(a), (b) or (c).

Penalty: If the offender is a natural person – 20 penalty units.

 If the offender is a body corporate – 100 penalty units.

- (3) It is a defence to a prosecution for the offence if the general partner proves that:
 - (a) the general partner did not know about the contravention; and
 - (b) reasonable precautions and appropriate diligence had been exercised to avoid the contravention.

92 Service of documents

- (1) A document concerning the business of an incorporated limited partnership may be served on the partnership if it is left at, or sent by post to, the partnership's registered office.
- (2) However, the document must be served on the partnership in accordance with a law of the Territory if that law specifies how it must be served.

93 Entry in register constitutes notice

A person dealing with an incorporated limited partnership is taken to have sufficient notice of the partnership's registered information.

94 Commissioner may require provision of information

- (1) The Commissioner may, by notice given to an incorporated limited partnership, require it to give specified information to the Commissioner for monitoring compliance with this Part.
- (2) The partnership must give the information within:
 - (a) a period specified in the notice that is at least 28 days after the date of the notice; or
 - (b) any additional period allowed by the Commissioner.
- (3) Each general partner in the partnership commits an offence if the partnership contravenes subsection (2).

Penalty: If the offender is a natural person – 100 penalty units.
 If the offender is a body corporate – 500 penalty units.

- (4) It is a defence to a prosecution for the offence if the general partner proves that:
 - (a) the general partner did not know about the contravention; and
 - (b) reasonable precautions and appropriate diligence had been exercised to avoid the contravention.
- (5) This section does not affect the Commissioner's powers and functions under the *Consumer Affairs and Fair Trading Act*.

95 Offences by partnerships

- (1) This section applies if:
 - (a) a provision in this Part provides that a general partner in an incorporated limited partnership commits an offence; and
 - (b) the general partner is a partnership (the **second partnership**).
- (2) A reference to the general partner in that provision is taken to be a reference to:
 - (a) if paragraph (b) does not apply – each partner in the second partnership; or
 - (b) if a partner in the second partnership has limited liability for the liabilities of that partnership under the law of the place where that partnership is formed – each partner in that partnership that does not have such limited liability.

96 Relationship with Corporations legislation

The Regulations may declare a matter dealt with by this Part to be an excluded matter for section 5F of the Corporations Act 2001 in relation to any of the following:

- (a) the whole of the Corporations legislation to which Part 1.1A of the Corporations Act 2001 applies;
- (b) a provision of the Corporations legislation that is specified in the Regulations;
- (c) the Corporations legislation other than a provision specified in the Regulations;
- (d) the Corporations legislation to the extent specified in the Regulations;
- (e) the Corporations legislation otherwise than to the extent specified in the Regulations.

Part 4 Administration**97 Secrecy**

- (1) This section applies to a person who is, or has been, the Commissioner or a person employed or engaged in the administration of this Act.

- (2) The person commits an offence if:
- (a) the person:
 - (i) records any information (**protected information**) obtained because of the performance of a function or exercise of a power under this Act; or
 - (ii) directly or indirectly discloses protected information to another person; and
 - (b) the recording or disclosure is not part of the performance of a function or exercise of a power under a law in force in the Territory.

Penalty: If the offender is a natural person – 100 penalty units.
 If the offender is a body corporate – 500 penalty units.

- (3) Subsection (2) does not apply if the recording or disclosure:
- (a) is made with the consent of the person from whom the information was obtained; or
 - (b) is made to a law enforcement agency (including the Police Force).
- (4) A person to whom this section applies is not required to disclose protected information or produce any document containing protected information to a court unless it is necessary to do so for a law in force in the Territory.
- (5) A reference in subsection (4) to a court includes a reference to anyone who may require the production of documents or the answering of questions.

98 Approved forms

The Commissioner may approve forms for this Act.

99 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) The Regulations may prescribe any of the following matters:
- (a) fees payable under this Act;
 - (b) the waiver or refund of any of the fees;
 - (c) the giving of information or document by an incorporated limited partnership to the Commissioner;
 - (d) the exemption of a person, matter or thing from a provision in this Act;
 - (e) a fine for an offence against the Regulations not exceeding:
 - (i) if the offender is a natural person – 100 penalty units; or
 - (ii) if the offender is a body corporate – 500 penalty units.

Part 5 Transitional matters for Partnership Act 1997

100 Repeal

The *Partnership Act 1891* (No. 506 of 1891) of South Australia, in its application to the Territory as a law of the Territory, is repealed.

101 Savings

- (1) In this section, ***repealed Act*** means the Act repealed by section 49.
- (2) Except as is expressly or by necessary implication provided in this Act, all persons, things and circumstances appointed or created under the repealed Act, or existing or continuing under the repealed Act, immediately before the commencement of this Act, continue, subject to this Act, to have the same status, operation and effect as they would have had if the repealed Act had not been repealed.
- (3) Without limiting subsection (2), the repeal of the repealed Act does not affect the status, operation or effect of an order, appointment, notice, consent, agreement, liability or right under the repealed Act.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Partnership Act 1997, (Act No. 26, 1997)***

Assent date 2 June 1997
 Commenced 1 July 1997 (*Gaz G25, 25 June 1997, p 3*)

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

Assent date 29 June 2001
 Commenced 15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth *Gaz S285, 13 July 2001*)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (*Gaz G11, 17 March 2004, p 8*)

Partnership Amendment (Venture Capital Funds) Act 2006 (Act No. 9, 2006)

Assent date 26 April 2006
 Commenced 21 June 2006 (*Gaz G25, 21 June 2006, p 3*)

3**LIST OF AMENDMENTS**

ss 3 – 4 sub No. 9, 2006, s 4
 s 5 amd No. 17, 2001, s 21
 sub No. 9, 2006, s 5
 s 6 amd No. 1, 2004, s 62; No. 9, 2006, s 6
 s 8 sub No. 9, 2006, s 7
 ss 9 – 13 sub No. 9, 2006, s 8
 s 14 amd No. 17, 2001, s 21
 sub No. 9, 2006, s 8
 ss 15 – 21 sub No. 9, 2006, s 8
 s 22 amd No. 9, 2006, s 9
 s 24 sub No. 9, 2006, s 10
 s 26 amd No. 9, 2006, s 11
 s 27 amd No. 9, 2006, s 12
 s 28 amd No. 9, 2006, s 13

ENDNOTES

s 30	amd No. 9, 2006, s 14
s 31	amd No. 9, 2006, s 15
s 32	sub No. 9, 2006, s 16
s 33	amd No. 9, 2006, s 17
s 34	amd No. 9, 2006, s 18
s 35	amd No. 9, 2006, s 19
s 35A	ins No. 9, 2006, s 20
pt 3 hdg	ins No. 9, 2006, s 21
pt 3	
div 1 hdg	ins No. 9, 2006, s 21
ss 49 – 50	ins No. 9, 2006, s 21
pt 3	
div 2 hdg	ins No. 9, 2006, s 21
ss 51 – 56	ins No. 9, 2006, s 21
s 57	ins No. 9, 2006, s 21
ss 58 – 62	ins No. 9, 2006, s 21
pt 3	
div 3 hdg	ins No. 9, 2006, s 21
ss 63 – 75	ins No. 9, 2006, s 21
pt 3	
div 4 hdg	ins No. 9, 2006, s 21
ss 76 – 84	ins No. 9, 2006, s 21
pt 3	
div 5 hdg	ins No. 9, 2006, s 21
ss 85 – 96	ins No. 9, 2006, s 21
pt 4 hdg	ins No. 9, 2006, s 21
ss 97 – 99	ins No. 9, 2006, s 21
pt 5 hdg	sub No. 9, 2006, s 22
ss 100 – 101	renum No. 9, 2006, s 23