

NORTHERN TERRITORY OF AUSTRALIA

PARTNERSHIP ACT 1997

No. 26 of 1997

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NORTHERN TERRITORY OF AUSTRALIA

No. 26 of 1997

AN ACT

to consolidate the law relating to partnership

[Assented to 2 June 1997]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Partnership Act 1997*.

2. COMMENCEMENT

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

3. DEFINITION

In this Act, unless the contrary intention appears, "business" includes a trade, occupation or profession.

4. RULES OF EQUITY AND COMMON LAW CONTINUE TO APPLY

The rules of equity and of common law that apply to partnership continue in force except to the extent to which they are inconsistent with this Act.

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PART 2 - PARTNERSHIPS GENERALLY

Division 1 - Nature of Partnerships

5. DEFINITION OF PARTNERSHIP

(1) Partnership is the relation that exists between persons carrying on a business in common with a view of profit.

(2) The relation between members of a corporation or association that is -

- (a) incorporated under the Corporations Law; or
- (b) formed or incorporated by or under an Act or letters patent or Royal Charter,

is not a partnership.

6. RULES FOR DETERMINING EXISTENCE OF PARTNERSHIP

(1) In determining whether a 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;

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- (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 the spouse 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,

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- (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. MEANING OF FIRM

For the purposes of this Act -

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

Division 2 - Relationship of Partners to Persons Dealing with Them

9. POWER OF PARTNER TO BIND FIRM

(1) A partner is an agent of the firm and the other partners for the purpose of the business of the partnership.

(2) The act of a partner done for carrying on, in the usual way, business of the kind carried on by the firm binds the firm and the other partners unless -

- (a) the partner had in fact no authority to act for the firm in the particular matter; and
- (b) the person with whom the partner dealt either knew that the partner had no authority or did not know, or believe, the partner was a partner of the firm.

10. PARTNERS BOUND BY ACTS ON BEHALF OF FIRM

(1) An act or instrument relating to the business of a firm -

- (a) done or executed in the firm-name; or
- (b) in a manner showing an intention to bind the firm,

by a person authorized by the firm, whether a partner or not, is binding on the firm and all the partners.

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(2) This section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

11. PARTNER USING CREDIT OF FIRM FOR PRIVATE PURPOSES

(1) Where a partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless the partner is in fact specially authorized by the other partners.

(2) This section does not affect any personal liability incurred by an individual partner.

12. EFFECT OF NOTICE THAT FIRM WILL NOT BE BOUND BY ACTS OF PARTNER

If the partners agree to restrict the power of one or more of the partners to bind the firm, an act done in contravention of the agreement is not binding on the firm with respect to a person who has notice of the agreement.

13. LIABILITY OF PARTNERS

(1) A partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he or she is a partner.

(2) After the death of a partner in a firm, his or her estate is also severally liable, in a due course of administration, for the debts and obligations of the firm incurred while he or she was a partner, so far as they remain unsatisfied, but subject to the payment of his or her separate debts.

14. LIABILITY OF FIRM FOR WRONGS

(1) Where a person who is not a partner in a firm suffers loss or injury, or incurs a penalty, by the wrongful act or omission of a partner acting -

(a) in the ordinary course of the business of the firm; or

(b) with the authority of his or her co-partners,

the firm is liable to the same extent as the partner.

(2) For the purposes of subsection (1), a partner who commits a wrongful act or omission as a director of a body corporate, within the meaning of the Corporations

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Law, is not to be taken to be acting in the ordinary course of the business of the firm or with the authority of his or her co-partners only because -

- (a) the partner obtained the agreement or authority of his or her co-partners, or some of them, to be appointed or to act as a director;
- (b) the remuneration that the partner receives for acting as a director of the body corporate forms part of the income of the firm; or
- (c) a co-partner is also a director of the body corporate or another body corporate.

15. MISAPPLICATION OF MONEY OR PROPERTY

Where -

- (a) a partner, acting within the scope of his or her apparent authority, receives money or property of a third person and misapplies it; or
- (b) a firm, in the course of its business, receives money or property of a third person and it is misapplied by a partner while it is in the custody of the firm,

the firm is liable to make good the loss.

16. LIABILITY FOR WRONGS JOINT AND SEVERAL

A partner is liable -

- (a) jointly with his or her co-partners, and
- (b) severally,

for everything for which the firm, while he or she is a partner, becomes liable under section 14 or 15.

17. IMPROPER EMPLOYMENT OF TRUST PROPERTY FOR PARTNERSHIP PURPOSES

(1) If a partner who is a trustee improperly uses trust property in the business or on the account of the partnership, another partner is not liable for the trust property to a person who has a beneficial interest in the property.

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- (2) This section does not
 - (a) affect the liability of a partner incurred by reason of his or her having notice of a breach of trust; or
 - (b) prevent trust-money from being followed and recovered from a firm where the trust-money is still in the possession or under the control of the firm.

18. PERSONS LIABLE BY "HOLDING OUT"

(1) A person who, whether orally, in writing or by conduct, represents himself or herself, or knowingly permits himself or herself to be represented, as a partner in a firm is liable as a partner to a person who, on the faith of the representation, gives credit to the firm.

(2) Subsection (1) applies whether the representation was or was not made or communicated to the person giving the credit by or with the knowledge of the person making the representation or permitting it to be made.

(3) Where, after the death of a partner, the partnership business continues in the old firm-name, the use of that name or of the partner's name as part of the firm-name does not of itself make the partner's executors or administrators' estate or effects liable for a partnership debt contracted after the partner's death.

19. ADMISSIONS AND REPRESENTATIONS OF PARTNERS

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

20. NOTICE TO ACTING PARTNER IS NOTICE TO FIRM

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

21. LIABILITIES OF INCOMING AND OUTGOING PARTNERS

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

(2) A partner who retires from a firm does not cease to be liable for partnership debts or obligations incurred before his or her retirement.

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(3) A partner who retires from a firm may be discharged from an existing liability by an agreement between the partner and the members of the firm, as newly constituted, and the creditors of the firm.

(4) An agreement referred to in subsection (3) may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

22. REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM

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.

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) All property, and rights and interests in property, originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business is, for the purposes of this Act, partnership property.

(2) Partnership property must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(3) The legal estate or interest in land that belongs to a partnership devolves according to the nature and tenure of the estate or interest, and the general rules of law applicable to the estate or interest, but in trust so far as necessary for the persons beneficially interested in the land under this section.

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(4) Where co-owners of an estate or interest in land, that is not partnership property, are partners as to profits made by the use of the land or estate purchase land or estate out of the profits to be used in a like manner, the land or estate belongs to them, in the absence of an agreement to the contrary, not as partners but as co-owners for the same respective estates and interests as are held by them in the land or estate first-mentioned at the date of the purchase.

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

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.

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.

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28. RULES, &c., OF PARTNERS WHEN NOT SUBJECT TO SPECIAL AGREEMENT

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;

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- (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.

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 AT WILL

(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).

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.

32. DUTY OF PARTNERS TO RENDER ACCOUNTS, &c.

A partner must render true accounts and full information of all things affecting the partnership to another partner or his or her legal representative.

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.

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(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.

34. DUTY OF PARTNER NOT TO COMPETE WITH FIRM

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.

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.

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Division 4 - Dissolution of 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;

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- (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.

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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.

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44. APPORTIONMENT OF PREMIUM WHERE PARTNERSHIP PREMATURELY DISSOLVED

Where one partner has paid a premium to another on entering into a partnership for a fixed term and the partnership is dissolved before the expiration of 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,

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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;

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- (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 4 - MISCELLANEOUS

49. 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.

50. 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.
