

TASMANIA

PARTNERSHIP AMENDMENT BILL 2009

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PARTNERSHIP AMENDMENT BILL 2009

*(Brought in by the Minister for Justice, the Honourable
Larissa Tahireh Giddings)*

A BILL FOR

**An Act to amend the *Partnership Act 1891* and to repeal the
*Limited Partnerships Act 1908***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Partnership
Amendment Act 2009*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

3. Principal Act

In this Act, the *Partnership Act 1891** is referred
to as the Principal Act.

*No. 3 of 1891

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4. Part 1: Heading inserted

The Principal Act is amended by inserting the following heading before section 1:

PART 1 – PRELIMINARY

5. Section 4 substituted

Section 4 of the Principal Act is repealed and the following section is substituted:

4. Interpretation

(1) In this Act, unless the contrary intention appears –

“**business**” includes every trade, occupation or profession;

“**Court**” means the Supreme Court, or a judge sitting in chambers or otherwise;

“**Director**” means the Director of Consumer Affairs and Fair Trading holding office under section 9 of the *Consumer Affairs Act 1988* and includes any person holding that office in an acting capacity;

“**external partnership**” means a partnership (or legal entity, however described, in the nature of a partnership) formed in accordance with a law of another

State, a Territory or another country or jurisdiction, whether or not under that law the liability of any partner for the liabilities of the partnership (or entity) is limited and whether or not under that law the partnership (or entity) is incorporated or is otherwise a separate legal entity;

“firm” means a group of persons who have entered into partnership with one another;

“firm-name” means –

- (a) in the case of a partnership, the name under which the business of the partnership is carried on; and
- (b) in the case of an external partnership, the name under which, in accordance with the law of the place in which it is formed, the partnership carries on the business of the partnership; and
- (c) in the case of a limited partnership or an incorporated limited partnership, the name of

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the partnership recorded
in the Register;

“general partner” means –

- (a) in the case of a limited partnership, a partner in the limited partnership who is not a limited partner; and
- (b) in the case of an incorporated limited partnership, a person or partnership (including an external partnership) who is admitted as a partner in the incorporated limited partnership in accordance with the partnership agreement and who is not a limited partner;

“incorporated limited partnership”
means an incorporated limited partnership registered in accordance with section 60;

“liability” includes any debt, obligation or other liability of any kind, wherever and however incurred;

“limited partner” means –

- (a) in the case of a limited partnership, a partner in

the limited partnership
whose liability for the
liabilities of the
partnership is limited in
accordance with Part 3;
and

- (b) in the case of an
incorporated limited
partnership, a person or
partnership (including an
external partnership)
admitted and designated
as a limited partner in the
incorporated limited
partnership in accordance
with the partnership
agreement;

“limited partnership” means a
partnership registered in
accordance with section 60;

“partner” in a limited partnership or
an incorporated limited
partnership means a general
partner or a limited partner;

“partnership” means a partnership
within the meaning of section 6;

“Register” means the Register of
Limited Partnerships and
Incorporated Limited
Partnerships kept under this Act;

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“registered particulars” means particulars recorded in the Register under section 60(6);

“spouse” includes the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the *Relationships Act 2003*.

- (2) In this Act, a reference, in relation to an incorporated limited partnership, to the partnership or the firm is a reference to the incorporated limited partnership as a separate legal entity and not to the partners in that partnership.

6. Part 2: Heading inserted

The Principal Act is amended by inserting the following heading after section 5:

PART 2 – PARTNERSHIPS GENERALLY

7. Part 2, Division 1: Heading inserted

Part 2 of the Principal Act is amended by inserting the following heading after section 5:

Division 1 – Nature of partnership

8. Section 6 amended (Definition of partnership)

Section 6 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) Partnership includes an incorporated limited partnership.

9. Section 7 amended (Rules for determining existence of partnership)

Section 7 of the Principal Act is amended by inserting “, other than an incorporated limited partnership,” after “whether a partnership”.

10. Part 2, Division 2: Heading inserted

Part 2 of the Principal Act is amended by inserting the following heading after section 9:

Division 2 – Relationships of partners to persons dealing with them

11. Sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 substituted

Sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the Principal Act are repealed and the following sections are substituted:

10. Power of partner to bind partnership

- (1) Every partner in a partnership, other than a limited partnership or an incorporated limited partnership, is an agent of the partnership and of the other partners for the purpose of the business of the partnership.
- (2) Any act of a partner in a partnership, other than a limited partnership or an incorporated limited partnership, done for carrying on in the usual way business of the kind carried on by the partnership binds the partnership and the other partners, unless –
 - (a) the partner so acting has in fact no authority to act for the partnership in the particular matter; and
 - (b) the person with whom he or she is dealing either –
 - (i) knows that the partner has no such authority; or
 - (ii) does not know or believe the partner to be a partner.
- (3) Every general partner in a limited partnership or an incorporated limited partnership is an agent of the partnership and of the other general partners for the purpose of the business of the partnership.

- (4) Any act of a general partner in a limited partnership or an incorporated limited partnership, done for carrying on in the usual way business of the kind carried on by the limited partnership, binds the partnership and the other general partners, unless –
 - (a) the general partner so acting has in fact no authority to act for the partnership in the particular matter; and
 - (b) the person with whom the general partner is dealing either –
 - (i) knows that the general partner has no authority; or
 - (ii) does not know or believe the general partner to be a general partner.

11. Partners bound by acts on behalf of firm or partnership

- (1) An act or instrument relating to the business of a firm, other than an incorporated limited partnership and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person authorised to bind the firm, whether a partner or not, is binding on the firm and all the partners.

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- (2) An act or instrument relating to the business of an incorporated limited partnership, and done or executed in the name of the partnership, or in any other manner showing an intention to bind the firm, by any person authorised to bind the firm, whether a general partner or not, is (subject to section 14(3)) binding on the partnership and all the general partners.
- (3) This section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

12. Partner using credit of firm or partnership for purpose not connected with business

- (1) Where a partner pledges the credit of a firm, other than an incorporated limited partnership, 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 authorised to do so by the other partners.
- (2) Where a general partner pledges the credit of an incorporated limited partnership for a purpose apparently not connected with the partnership's ordinary course of business, the partnership is not bound unless the general partner is in fact specially authorised to do so by the partnership.

- (3) This section does not affect any personal liability incurred by an individual partner or general partner.

13. Effect of notice that firm or partnership not bound by acts of partner

- (1) If it has been agreed between the partners of a firm, other than an incorporated limited partnership, that any restriction be placed on the power of any one or more of them to bind the firm, no act done in contravention of that agreement is binding on the firm in respect of any persons having notice of the agreement.
- (2) If it has been agreed between the partners of an incorporated limited partnership that any restriction be placed on the power of any one or more of them to bind the partnership, no act done in contravention of that agreement is binding on the partnership in respect of any persons having notice of the agreement.

14. Liability of partners

- (1) Every partner in a firm, other than an incorporated limited partnership, is liable jointly with the other partners for all debts and obligations of the firm incurred while he or she is a partner and, after his or her death, his or her estate is also severally liable in a due course of administration for such debts and

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obligations, so far as they remain unsatisfied, but subject to the prior payment of any separate debts.

- (2) Every general partner in an incorporated limited partnership is liable jointly with the other partners for all debts and obligations of the partnership incurred while he or she is a partner and, after his or her death, his or her estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of any separate debts.
- (3) Despite subsection (2), a general partner in an incorporated limited partnership is only liable for any debts or obligations of the incorporated limited partnership –
 - (a) to the extent that the incorporated limited partnership is unable to satisfy those debts and obligations; or
 - (b) where any greater extent is provided by the partnership agreement, to that greater extent.

15. Liability for wrongs of partners

- (1) Subject to subsection (2), where, by any wrongful act or omission of any partner acting in the ordinary course of the business of a firm, other than an incorporated limited partnership, or with

the authority of his or her co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable for that loss, injury or penalty to the same extent as the partner so acting or omitting to act.

- (2) For the purposes of subsection (1), a partner in a firm who commits a wrongful act or omission as a director of a body corporate, within the meaning of the Corporations Act, is not to be taken to be acting in the ordinary course of the business of the firm or with the authority of the partner's co-partners only because of any one or more of the following:
- (a) the partner obtained the agreement or authority of the partner's co-partners, or some of them, to be appointed or to act as a director of the body corporate;
 - (b) remuneration that the partner receives for acting as a director of the body corporate forms part of the income of the firm;
 - (c) any co-partner is also a director of that or any other body corporate.
- (3) Subject to subsection (4), where by any wrongful act or omission of any general partner in an incorporated limited partnership acting in the ordinary course

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of the business of the incorporated limited partnership, or with its authority, loss or injury is caused to any person not being a partner in the incorporated limited partnership, or any penalty is incurred, the incorporated limited partnership is liable in respect of that loss, injury or penalty to the same extent as the general partner so acting or omitting to act.

- (4) For the purposes of subsection (3), a general partner in an incorporated limited partnership who commits a wrongful act or omission as a director of a body corporate, within the meaning of the Corporations Act, is not to be taken to be acting in the ordinary course of business of the incorporated limited partnership or with its authority only because of any one or more of the following:
- (a) the general partner obtained the agreement or authority of the incorporated limited partnership to be appointed or to act as a director of the body corporate;
 - (b) remuneration that the general partner receives for acting as a director of the body corporate forms part of the income of the incorporated limited partnership;
 - (c) any other general partner in the incorporated limited partnership

is also a director of that or any other body corporate.

16. Misapplication of money or property received for or in custody of firm

(1) In respect of a firm that is not an incorporated limited partnership, where –

(a) one partner acting within the scope of his or her apparent authority receives the 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 the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm –

the firm is liable to make good the loss.

(2) In respect of an incorporated limited partnership, where –

(a) a general partner acting within the scope of his or her apparent authority receives the money or property of a third person and misapplies it; or

(b) an incorporated limited partnership, in the course of its business receives money or

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property of a third person and the money or property so received is misapplied by one or more of the general partners while it is in the custody of the firm –

the incorporated limited partnership is liable to make good the loss.

17. Liability for wrongs, joint and several

- (1) Every partner in a firm, other than an incorporated limited partnership, is liable jointly with his or her co-partners, and also severally, for everything for which the firm becomes liable under either section 15 or 16 while he or she is a partner of the firm.
- (2) Every general partner in an incorporated limited partnership is liable jointly with the other general partners, and also severally, for everything for which the partnership becomes liable under either section 15 or 16 while he or she is a general partner in the partnership.
- (3) Despite subsection (2), a general partner in an incorporated limited partnership is only liable –
 - (a) to the extent that the incorporated limited partnership is unable to satisfy the liability; or
 - (b) to any greater extent provided by the partnership agreement.

18. Improper employment of trust property for partnership purposes

- (1) If a partner in a firm, other than an incorporated limited partnership, who is a trustee improperly employs trust property in the business or on account of the firm, no other partner is liable for the trust property to the persons beneficially interested in that property.
- (2) If a general partner in an incorporated limited partnership who is a trustee improperly employs trust property in the business or on account of the partnership, neither the partnership nor any other general partner is liable for the trust property to the persons beneficially interested in that property.
- (3) This section does not affect any liability incurred by any partner or general partner by reason of his or her having notice of a breach of trust.
- (4) This section does not prevent the recovery of trust money that is still in the possession or under the control of the firm.

19. Persons liable by holding out

- (1) A person who represents himself or herself, or who knowingly allows himself or herself to be represented, as a partner in a firm other than a limited partnership or an incorporated limited partnership is

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liable as a partner to any person who, on the faith of any such representation, gives credit to the firm, whether or not the representation has been made or communicated to that person by or with the knowledge of the person represented as a partner.

- (2) A person who represents himself or herself, or who knowingly allows himself or herself to be represented, as a partner in a limited partnership or an incorporated limited partnership is liable as a general partner to any person who, on the faith of any such representation, gives credit to the partnership, whether or not the representation has been made or communicated to that person by or with the knowledge of the person represented as a partner.
- (3) Where, after a partner's death, the partnership business is continued in the same firm-name, the continued use of that name or of the deceased partner's name as part of that name does not of itself make his or her executors, administrators, estate or effects liable for any partnership debts contracted after his or her death.

20. Admissions and representations of partners

- (1) An admission or representation made by any partner in a firm, other than a limited partnership or an incorporated limited

partnership, concerning the firm's affairs, and in the ordinary course of its business, is evidence against the firm.

- (2) An admission or representation made by any general partner in a limited partnership or an incorporated limited partnership, concerning the partnership's affairs, and in the ordinary course of its business, is evidence against the partnership.

21. Notice to partner to be notice to firm

- (1) Notice of any matter relating to partnership affairs given to any partner in a firm who usually acts in the partnership business, other than a partner in a limited partnership or an incorporated limited partnership, operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.
- (2) Notice of any matter relating to partnership affairs given to a general partner in a limited partnership or an incorporated limited partnership, who usually acts in the partnership business, operates as notice to the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

22. Liabilities of incoming and outgoing partners

- (1) A person who is admitted as a partner into an existing firm, other than a limited partnership or incorporated limited partnership, does not, by that admission alone, become liable for anything done before the person became a partner.
- (2) A person who is admitted as a general partner into an existing limited partnership or incorporated limited partnership does not, by that admission alone, become liable for anything done before the person became a general partner.
- (3) A partner who retires from a firm, other than a limited partnership or incorporated limited partnership, does not, by that retirement alone, cease to be liable for partnership debts and obligations incurred before the partner's retirement.
- (4) A partner who retires from a limited partnership or incorporated limited partnership does not, by that retirement alone, cease to be liable for liabilities of the firm incurred before the partner's retirement.
- (5) A retiring partner in a firm, other than a limited partnership or incorporated limited partnership, may be discharged from any existing liabilities by an

agreement to that effect between the partner and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

- (6) A retiring partner in a limited partnership or incorporated limited partnership may be discharged from any existing liabilities by an agreement to that effect between the partner and the firm and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm.

23. Revocation of continuing guarantee by change in firm

- (1) A continuing guarantee given either 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 any 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, or in respect of, an incorporated limited partnership.

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12. Part 2, Division 3: Heading inserted

Part 2 of the Principal Act is amended by inserting the following heading after section 23:

Division 3 – Relationship between partners

13. Section 25 amended (Partnership property)

Section 25 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) This section does not apply to, or in relation to, an incorporated limited partnership.

14. Section 25A inserted

After section 25 of the Principal Act, the following section is inserted in Division 3:

25A. Partnership property of incorporated limited partnership

- (1) All property, and rights and interests in property, acquired, whether by purchase or otherwise, on account of an incorporated limited partnership, or for the purposes and in the course of the business of the partnership, are called in this Act partnership property, and must be applied by the partnership exclusively for the purposes of the partnership.

- (2) No partner in an incorporated limited partnership, by virtue only of being a partner in the partnership, has any legal or beneficial interest in its partnership property.

15. Section 27 substituted

Section 27 of the Principal Act is repealed and the following section is substituted:

27. Conversion into personal estate of land held as partnership property

- (1) Where land or any heritable interest in land has become partnership property, it is to be, unless the contrary intention appears, treated as between the partners (including the representatives of a deceased partner) as personal or movable, and not real or heritable, estate.
- (2) This section does not apply to or in respect of an incorporated limited partnership.

16. Section 28 amended (Procedure against partnership property for partner's separate judgment debt)

Section 28 of the Principal Act is amended by inserting after subsection (3) the following subsection:

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- (4) Subsections (2) and (3) do not apply to or in respect of an incorporated limited partnership.

17. Section 29 amended (Rules as to interests and duties of partners subject to special agreement)

Section 29 of the Principal Act is amended as follows:

- (a) by omitting “The interest” and substituting “(1) The interest”;
- (b) by inserting the following subsection:
 - (2) This section does not apply to or in respect of an incorporated limited partnership.

18. Section 31 amended (Retirement from partnership at will)

Section 31 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) This section does not apply to or in respect of a limited partnership or an incorporated limited partnership.

19. Section 32 amended (Where partnership for term is continued over, continuance on old terms presumed)

Section 32 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) This section does not apply to or in respect of an incorporated limited partnership.

20. Section 33 substituted

Section 33 of the Principal Act is repealed and the following section is substituted:

33. Duty of partners to render accounts, &c.

- (1) Partners in a firm other than an incorporated limited partnership are bound to render true accounts and full information of all things affecting the partnership to any partner or his or her legal representatives.
- (2) An incorporated limited partnership is, subject to the partnership agreement, bound to render true accounts and full information in respect of all things affecting the partnership to any partner or his or her legal representatives.

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21. Section 34 amended (Accountability of partners for private profits)

Section 34 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) This section does not apply to or in respect of an incorporated limited partnership.

22. Section 35 substituted

Section 35 of the Principal Act is repealed and the following section is substituted:

35. Duty of partner not to compete with firm

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

23. Section 36 amended (Rights of assignee of share in partnership)

Section 36 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) This section does not apply to or in respect of an incorporated limited partnership.

24. Part 2, Division 4: Heading inserted

Part 2 of the Principal Act is amended by inserting the following heading after section 36:

Division 4 – Dissolution of partnership

25. Section 36A inserted

After section 36 of the Principal Act, the following section is inserted in Division 4:

36A. Application of Division

This Division does not apply to or in respect of an incorporated limited partnership.

26. Section 41 amended (Rights of persons dealing with firm against apparent members of firm)

Section 41(2) of the Principal Act is amended by omitting “not”.

27. Part 3 and Schedule 1 inserted

After section 49 of the Principal Act, the following is inserted:

**PART 3 – LIMITED PARTNERSHIPS AND
INCORPORATED LIMITED PARTNERSHIPS**
Division 1 – Preliminary

50. Application of other provisions of this Act

- (1) Parts 1 and 2 apply to limited partnerships and incorporated limited partnerships, except as provided by those Parts or this Part.
- (2) If a provision made by or under this Part relating to limited partnerships or incorporated limited partnerships is inconsistent with a provision made by or under any other Part that applies to limited partnerships or incorporated limited partnerships, respectively, the provision made by or under this Part prevails and the other provision is (to the extent of the inconsistency) of no force or effect in relation to limited partnerships or incorporated limited partnerships.

***Division 2 – Nature and formation of limited partnership
and incorporated limited partnership***

51. Limited partnership or incorporated limited partnership is formed on registration

- (1) A limited partnership is formed by and on registration of the partnership under this Part as a limited partnership.
- (2) An incorporated limited partnership is formed by and on registration of the partnership under this Part as an incorporated limited partnership.

52. Composition of limited partnership or incorporated limited partnership

- (1) A limited partnership or incorporated limited partnership must have –
 - (a) at least one general partner; and
 - (b) at least one limited partner.
- (2) A corporation may be a general partner or a limited partner in a limited partnership or incorporated limited partnership.
- (3) A partnership (including an external partnership) may be a general partner or a limited partner in a limited partnership or incorporated limited partnership.

53. Size of limited partnership or incorporated limited partnership

- (1) A limited partnership or incorporated limited partnership may have any number of limited partners.
- (2) An incorporated limited partnership must not have more than 20 general partners.
- (3) A limited partnership –
 - (a) must not have more than 20 general partners; or
 - (b) if the partnership is of a particular kind in respect of which a higher number of partners applies in accordance with section 115 (2) of the Corporations Act (and the partnership consists only of those general partners) – must not have more general partners than that higher number.
- (4) For the purposes of this section –
 - (a) if a general partner is a partnership or external partnership and no partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership, the number of partners in that partnership is to be counted; and

- (b) if a general partner is a partnership or external partnership and any partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership, the number of partners in that partnership whose liability is not so limited is to be counted but no account is to be taken of the number of partners in that partnership whose liability is so limited.

54. Incorporated limited partnership is separate legal entity

- (1) An incorporated limited partnership –
 - (a) is a body corporate with legal personality separate from that of the partners in it and with perpetual succession; and
 - (b) may have a common seal; and
 - (c) may sue and be sued in its firm-name.
- (2) The common seal of an incorporated limited partnership must be kept in such custody as the partnership directs and must not be used except as authorised by it.

55. Powers of incorporated limited partnership

- (1) An incorporated limited partnership has the legal capacity and powers of an individual and also all the powers of a body corporate including (for example) the power, whether within or outside Tasmania or outside Australia –
 - (a) to carry on the business of the partnership; or
 - (b) to enter into contracts or otherwise acquire rights or liabilities; or
 - (c) to create, confer, vary or cancel interests in the partnership; or
 - (d) to acquire, hold and dispose of real or personal property or an interest (whether beneficial or legal) in real or personal property; or
 - (e) to appoint agents and attorneys, and act as agent for other persons; or
 - (f) to form, and participate in the formation of, companies or incorporated limited partnerships; or
 - (g) to participate in partnerships, trusts, joint ventures or other associations and other

arrangements for the sharing of profits; or

(h) to do such other things as it is authorised to do by or under this Act.

(2) The powers of an incorporated limited partnership may be limited by the partnership agreement.

56. Partnership agreement

(1) There must at all times be a written partnership agreement between the partners in an incorporated limited partnership.

(2) The interests of the partners in an incorporated limited partnership and their rights and duties in relation to the partnership are, subject to this Act, to be determined in accordance with the agreement.

(3) A partnership agreement also has effect as a contract between the incorporated limited partnership and each partner under which the partnership and each of the partners agree to observe and perform the agreement so far as it applies to them.

57. Relationship of partners in incorporated limited partnership to others and between themselves

- (1) Except as otherwise provided by the partnership agreement or agreed between the partners in an incorporated limited partnership –
 - (a) a general partner, the partnership or an officer, employee, agent or representative of a general partner or of the partnership is not an agent of a limited partner and the acts of a general partner or of the partnership or of such an officer, employee, agent or representative do not bind a limited partner; and
 - (b) a limited partner is not an agent of, nor fiduciary for, a general partner or of another limited partner or of or for the partnership and the acts of a limited partner do not bind a general partner, another limited partner or the partnership itself.
- (2) A reference in subsection (1) to a general partner includes, if the general partner is a partnership or an external partnership, a reference to a partner in that partnership.
- (3) Nothing in subsection (1) prevents the making of, or limits or restricts, an agreement between a partner (the “**first**

person”) and either another partner or the incorporated limited partnership (the “**second person**”) under which –

- (a) the first person acts as an agent of the second person and, by so acting, binds the second person; or
 - (b) the second person acts as an agent of the first person and, by so acting, binds the first person.
- (4) Any consent or authority that under this Act is required or permitted to be given by a partner or two or more partners or all the partners may, in the case of an incorporated limited partnership and without limiting any other way in which it might be given, be given by that partner or those partners by or under the partnership agreement either in relation to all cases, or in relation to all cases subject to specified exceptions, or in relation to any specified case or class of cases.
- (5) Any consent or authority that under this Act is required or permitted to be given by an incorporated limited partnership may, without limiting any other way in which it might be given, be given by a general partner or two or more general partners acting in accordance with the partnership agreement.

- (6) A limited partner, in the capacity of limited partner, is not a proper party to any proceeding commenced in a court or tribunal by or against the incorporated limited partnership, other than a proceeding commenced by the incorporated limited partnership against the limited partner or by the limited partner against the incorporated limited partnership.

***Division 3 – Registration of limited partnerships and
incorporated limited partnerships***

58. Who may apply for registration?

- (1) An application for registration as a limited partnership may be made by –
- (a) a partnership; or
 - (b) any persons or partnerships (or both) proposing to be partners in the limited partnership.
- (2) An application for registration as an incorporated limited partnership may be made, in the circumstances described in subsection (3), by –
- (a) a partnership (including an external partnership); or
 - (b) any persons or partnerships (including external partnerships), or both, proposing to be partners

in the proposed incorporated
limited partnership.

(3) The circumstances are –

- (a) that the partnership is registered under Part 2 of the *Venture Capital Act 2002* of the Commonwealth, or a general partner in the partnership or a proposed general partner in the proposed incorporated limited partnership intends to apply for registration of the incorporated limited partnership or proposed partnership under that Part, as –
 - (i) a VCLP within the meaning of that Act; or
 - (ii) an AFOF within the meaning of that Act; or
 - (iii) an ESVCLP within the meaning of that Act; or
- (b) that the partnership is a venture capital management partnership within the meaning of section 94D (3) of the *Income Tax Assessment Act 1936* of the Commonwealth, or the partners in the partnership or the proposed partners in the proposed incorporated limited partnership intend that the partnership or proposed incorporated limited

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partnership will meet the requirements set out in that section for recognition as a venture capital management partnership; or

- (c) such other circumstances as are prescribed.

59. Application for registration

- (1) An application for registration of a limited partnership or incorporated limited partnership is to be made by lodging with the Director in accordance with this Part a statement signed –

- (a) if the application is made by a partnership (including an external partnership), either by each partner in the partnership or by a person given authority to make such an application on behalf of the partnership and the partners in it; or
 - (b) in any other case, by each proposed partner.

- (2) The statement must be made in the form approved by the Director and must –

- (a) contain a statement of whether the partnership is to be registered as a limited partnership or as an

incorporated limited partnership;
and

(b) in the case of an application by a partnership (including an external partnership), contain particulars of –

(i) the firm-name of the partnership; and

(ii) the full address of the office or principal office in Tasmania of the partnership (to be called the “registered office” of the proposed partnership);
and

(c) in the case of an application by persons or partnerships (including external partnerships) proposing to be the partners in the proposed partnership, contain particulars of –

(i) the proposed firm-name of the proposed partnership; and

(ii) the full address of the proposed office or principal office in Tasmania of the proposed partnership (to be called the “**registered office**” of the partnership); and

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- (d) contain particulars of the full name of each partner or proposed partner or, if the partner or proposed partner is a partnership (including an external partnership), the name of that partnership or, if that partnership does not have a name, the full name of each partner in the partnership; and
- (e) in the case of an application by a partnership, contain particulars of its registered office or principal office and, in any other case, contain particulars of the full address of each partner or proposed partner, being (in the case of an individual) his or her principal place of residence or (in the case of a corporation or partnership) its registered office or principal place of business; and
- (f) contain a statement in relation to each partner or proposed partner that is an individual as to whether that partner or proposed partner is, or is proposed to be, a general partner or a limited partner; and
- (g) contain a statement in relation to each partner or proposed partner that is a corporation or a partnership that is, or is proposed

to be, a partner a statement in relation to the corporation or partnership as to whether it is to be a general partner or a limited partner; and

- (h) contain a statement in relation to each partner or proposed partner that is a partnership to the effect that the partner or proposed partner is a partnership; and
- (i) in the case of an application for a limited partnership, contain a statement in relation to each limited partner to the effect that the partner is a limited partner whose liability to contribute is limited to the extent of the amount specified in the statement (being the amount of any capital, or the value of any property, that the limited partner has agreed to contribute to the partnership or, in the case of a limited partner that is a partnership, the aggregate amounts or values); and
- (j) in the case of an application by a partnership, or persons or partnerships proposing to be partners in a partnership, that intends to apply for registration as a VCLP, AFOF or ESVCLP under Part 2 of the *Venture Capital Act 2002* of the

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- Commonwealth, contain a statement that it or they so intend to apply; and
- (k) in the case of an application by a partnership that is registered as a VCLP, AFOF or ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth, be accompanied by a copy of a document evidencing its status as a VCLP, AFOF or ESVCLP; and
 - (l) in the case of an application by a partnership, or persons or partnerships proposing to be a partnership, that intends to meet the requirements for recognition as a venture capital management partnership set out in section 94D (3) of the *Income Tax Assessment Act 1936* of the Commonwealth, contain a statement that it or they so intend to meet those requirements; and
 - (m) in the case of an application by a partnership that is a venture capital management partnership within the meaning of section 94D (3) of the *Income Tax Assessment Act 1936* of the Commonwealth, a statement that it is such a partnership; and

- (n) contain such other particulars as are required by the regulations or by the approved form of statement; and
- (o) be accompanied by the prescribed fee.

60. Registration of limited partnership

- (1) If an application for registration of a limited partnership or incorporated limited partnership has been duly made, the Director is to register the limited partnership or incorporated limited partnership.
- (2) However, the limited partnership or incorporated limited partnership is not to be registered if the Director is of the opinion that the firm-name would not be eligible for registration as a business name under the *Business Names Act 1962*.
- (3) If the Director registers a limited partnership or an incorporated limited partnership, the firm-name of the partnership is its name as recorded in the Register.
- (4) On registration of a limited partnership as an incorporated limited partnership, the limited partnership ceases to be a limited partnership and the Director is to

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record the cancellation of its registration in the Register.

- (5) However, any liability of the firm or a partner in the limited partnership that arose before its registration as an incorporated limited partnership is to be dealt with as if it were still a limited partnership.
- (6) Registration is effected by recording in the Register the particulars in the statement lodged with the Director.

61. Acts preparatory to registration do not constitute partnership

Any act done in connection with the making of an application for registration under this Part by or on behalf of persons or partnerships (including external partnerships) proposing to be the partners in a proposed partnership does not of itself create a partnership between those persons or partnerships.

62. Changes in registered particulars

- (1) If any change occurs in relation to the registered particulars of a limited partnership or incorporated limited partnership, a statement setting out the changed particulars must be lodged with

the Director within 7 days after the change occurred.

- (2) The statement must be signed by all the general partners, or by a general partner authorised by all the general partners for the purposes of this section.
- (3) In the case of a limited partnership, if the change relates to the admission of a limited partner, or a change in the liability of a limited partner to contribute, the statement must also be signed –
 - (a) by the limited partner concerned; or
 - (b) if that limited partner is a limited partnership, by all the general partners in that limited partnership or by a general partner in that limited partnership authorised by all the general partners in that limited partnership for the purposes of this section.
- (4) The statement must –
 - (a) be made in the form approved by the Director; and
 - (b) contain the particulars required by the regulations or the approved form of statement; and

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- (c) be accompanied by the prescribed fee.
- (5) If the statement is duly lodged, the Director is to record the change in the Register, unless, in the case of a limited partnership, as a result of a change in relation to the registered particulars, the partnership is not eligible to be registered as a limited partnership.
- (6) If subsection (1) is not complied with, each general partner of the limited partnership is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

63. Register of Limited Partnerships and Incorporated Limited Partnerships

- (1) The Director is to keep a register of limited partnerships and incorporated limited partnerships registered under this Part (to be called the Register of Limited Partnerships and Incorporated Limited Partnerships).
- (2) In the Register, there is to be a division of limited partnerships and a division of incorporated limited partnerships.
- (3) The Register may be kept in such form as the Director thinks fit.

- (4) The Director must make the information recorded in the Register available for public inspection, on payment of the prescribed fee, at the office of the Director during the ordinary business hours of that office.
- (5) The Director may correct any error or omission in the Register by –
 - (a) inserting an entry; or
 - (b) amending an entry; or
 - (c) omitting an entry –if the Director decides that the correction is necessary.
- (6) The Director must not omit an entry in the Register unless satisfied that the whole of the entry was included in error.

64. Certificates of registration

- (1) The Director must, at the time of –
 - (a) registering a limited partnership or an incorporated limited partnership; or
 - (b) recording a change in its registered particulars; or
 - (c) correcting an error or omission in the Register in relation to it –

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issue to the general partners a certificate, on payment of the prescribed fee, as to its formation and its registered particulars as at that time.

- (2) The Director may, on application, issue to the applicant a certificate in relation to a limited partnership or incorporated limited partnership as to its formation and its registered particulars as at the time of the application.
- (3) A certificate under this section is to be in such form as the Director approves.
- (4) A certificate under this section –
 - (a) as to the formation of a limited partnership or incorporated limited partnership, is conclusive evidence that the partnership was formed on the date of registration referred to in the certificate; and
 - (b) as to the registered particulars as at a specified time of the partnership, is (unless the contrary is established) conclusive evidence that the partnership existed at that time; and
 - (c) as to the general partners and limited partners in a partnership as at a specified time is (unless the contrary is established) conclusive evidence of the

general partners and limited partners as at that time; and

- (d) as to any other particular of a partnership recorded in the Register as at a specified time, is (unless the contrary is established) conclusive evidence of that particular as at that time.

65. *Business Names Act 1962 not to apply*

The *Business Names Act 1962* does not apply so as to require the partners in a limited partnership or an incorporated limited partnership to register a business name if that name is the firm-name registered under this Part.

Division 4 – Limitation of liability of limited partners in limited partnership

66. Liability of limited partner limited to amount shown in Register

- (1) The liability of a limited partner to contribute to the liabilities of the limited partnership is (subject to this Part) not to exceed the amount shown in relation to the limited partner in the Register as the extent to which the limited partner is liable to contribute.
- (2) If a limited partner makes a contribution towards the liabilities of the limited

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partnership, the liability of the limited partner is reduced to such part of the amount shown in the Register as remains unpaid.

- (3) If a partnership (the “**investing partnership**”) is a limited partner in a limited partnership (the “**principal partnership**”), a partner in the investing partnership has no separate liability to contribute to the liabilities of the principal partnership, but nothing in this subsection affects any liability of the investing partnership as a limited partner to contribute to those liabilities.

67. Change in liability of limited partner

- (1) Any reduction in the liability of a limited partner caused by a reduction in the relevant amount shown in the Register in relation to the partner does not extend to any liability of the limited partnership that arose before the reduction is recorded in the Register.
- (2) Any increase in the liability of a limited partner caused by an increase in the relevant amount shown in the Register in relation to the partner extends to any liability of the limited partnership that arose before the increase is recorded in the Register.

68. Change in status of partners

- (1) If a general partner becomes a limited partner, the limitation on liability does not extend to any liability of the limited partnership that arose before the partner became a limited partner.
- (2) If a limited partner becomes a general partner, the limitation on liability no longer extends to any liability of the limited partnership that arose before the partner became a general partner.

69. Liability for business conducted outside State

The limitation on the liability of a limited partner extends to any liability incurred in connection with the conduct of the partnership's business outside the State.

70. Liability for limited partnerships formed under corresponding laws

- (1) In this section –

“corresponding law” means –

- (a) a law of another jurisdiction that substantially corresponds to the provisions of this

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Act that relate to limited partnerships; or

- (b) a law declared by the regulations to be a corresponding law for the purposes of this section;

“recognised limited partnership”
means a partnership formed in accordance with a corresponding law.

- (2) Any limitation under a corresponding law on the liability of a limited partner in a recognised limited partnership extends to any liability incurred in connection with the conduct of the partnership’s business in this State.
- (3) This section is additional to, and does not derogate from, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership (including an external partnership).

71. Effect of sections 69 and 70

No implication is to be taken as arising from section 69 or 70 that a limited partner has any liability (or but for that section would have any liability) in connection with the conduct of a partnership’s business outside the State

that the limited partner would not have in connection with the conduct of a partnership's business within the State.

72. Contribution towards discharge of debts, &c.

- (1) Any contribution made by a limited partner towards the discharge of the debts or obligations of a limited partnership is to be in the form of money only.
- (2) If the whole or any part of such a contribution is received back by the limited partner, the liability of the limited partner is restored accordingly.

73. Limitation on liability may not be varied by partnership agreement, &c.

The provisions of this Part relating to the limitation on the liability of a limited partner may not be varied by the partnership agreement or the consent of the partners.

***Division 5 – Limitation of liability of limited partners in
incorporated limited partnership***

74. Limitation of liability of limited partners

- (1) A limited partner has no liability for the liabilities of the incorporated limited partnership or of a general partner.
- (2) Nothing in subsection (1) or section 76 or 77 prevents –
 - (a) a contribution of capital or property made by a limited partner to the incorporated limited partnership being used; or
 - (b) an obligation of a limited partner to contribute capital or property to the incorporated limited partnership being enforced by any person to whom the obligation is owed –

in satisfaction of a liability of the partnership or of a general partner.

- (3) This section is subject to section 80.

75. Change in status of partners

- (1) If a general partner becomes a limited partner, the partner remains liable for any liability of the incorporated limited partnership that arose before the partner

became a limited partner to the extent that the partnership is unable to satisfy the liability or to the greater extent provided by the partnership agreement.

- (2) If a limited partner becomes a general partner, the partner remains not liable (subject to section 68(2)) for any liability of the incorporated limited partnership that arose before the partner became a general partner.

76. Liability in respect of conduct or acts or omissions outside State

The limitation on the liability of a limited partner in an incorporated limited partnership by or under this Division extends to any liability incurred –

- (a) in connection with the conduct of the partnership's business outside the State; or
- (b) as a result of an act or omission outside the State of –
 - (i) a general partner or a limited partner in the partnership; or
 - (ii) the partnership; or
 - (iii) any officer, employee, agent or representative of a general partner in the

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partnership or the
partnership.

**77. Incorporated limited partnerships formed
under corresponding laws**

(1) In this section –

“corresponding law” means –

- (a) a law of another jurisdiction that substantially corresponds to the provisions of this Act that relate to incorporated limited partnerships; or
- (b) a law declared by the regulations to be a corresponding law for the purposes of this section;

“recognised incorporated limited partnership” means a partnership formed in accordance with a corresponding law.

(2) A partner in a recognised incorporated limited partnership is liable for a liability incurred by the partnership as a result of –

- (a) the conduct of the recognised incorporated limited partnership’s business in this State; or

- (b) the acts or omissions in this State of a partner in the recognised incorporated limited partnership or of the partnership itself or of any officer, employee, agent or representative of such a partner or of the partnership –

only in circumstances where the partner would be so liable under the corresponding law if the conduct or acts or omissions occurred in the place where the recognised incorporated limited partnership was formed.

- (3) This section is additional to, and does not derogate from, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership.

78. Effect of sections 76 and 77

No implication is to be taken as arising from section 76 or 77 that a limited partner has any liability (or but for that section would have any liability) in connection with the conduct of a partnership's business or acts or omissions outside the State that the limited partner would not have in connection with the conduct of a partnership's business or acts or omissions within the State.

***Division 6 – Other modifications of general law of
partnership***

**79. Limited partner not to take part in
management of limited partnership**

- (1) A limited partner must not take part in the management of the business of the limited partnership and does not have power to bind the limited partnership.
- (2) If a limited partner takes part in the management of the business of the limited partnership, the limited partner is liable, as if the partner were a general partner, for the liabilities of the partnership incurred while the limited partner takes part in the management of that business.
- (3) A limited partner is not to be regarded as taking part in the management of the business of the limited partnership merely because the limited partner –
 - (a) is an employee or an independent contractor of the partnership or of a general partner, or is an officer of a general partner that is a corporation; or
 - (b) gives advice to, or on behalf of, the limited partnership or a general partner in the proper exercise of functions arising from the engagement of the limited

partner in a professional capacity or arising from business dealings between the limited partner and the partnership or a general partner; or

- (c) gives a guarantee or indemnity in respect of any liability of the partnership or of a general partner; or
 - (d) participates in any action by other limited partners for the purpose of enforcing their rights or safeguarding their interests as limited partners; or
 - (e) if authorised by the partnership agreement, participates in general meetings of all the partners; or
 - (f) exercises any power conferred on the limited partner by subsection (4).
- (4) A limited partner or a person authorised by the limited partner may at any time –
- (a) have access to and inspect the books of the partnership and copy any of them; and
 - (b) examine the state and prospects of the business of the partnership and advise and consult with other partners in relation to such matters.

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- (5) The provisions of this section may not be varied by the partnership agreement or the consent of the partners.
- (6) No implication is to be taken as arising from section 80(3) that a limited partner in a limited partnership is to be regarded as taking part in the management of the business of the partnership merely because the limited partner or a person acting on behalf of the partner does any thing in connection with the conduct of that business that is not referred to in that subsection.

80. Limited partner not to take part in management of incorporated limited partnership

- (1) A limited partner in an incorporated limited partnership must not take part in the management of the business of the partnership.
- (2) If –
 - (a) as a direct result of any wrongful act or omission of a limited partner in taking part in the management of the business of an incorporated limited partnership, the limited partner causes any loss or injury to any person other than a partner in the partnership (a “**third party**”); and

- (b) at the time of the act or omission the third party had reasonable grounds to believe that the limited partner was a general partner in the partnership –

the limited partner is liable for the loss or injury to the same extent that the limited partner would have been liable if the limited partner were in fact a general partner in the partnership.

- (3) A limited partner in an incorporated limited partnership is not to be regarded as taking part in the management of the business of the partnership merely because the limited partner or a person acting on behalf of the limited partner –

- (a) is an employee of or an independent contractor engaged by the partnership, a general partner in the partnership or an associate of the general partner, or is an officer of a general partner that is a body corporate or of an associate of a general partner that is a body corporate; or

- (b) gives advice to, or on behalf of, the partnership or a general partner in the partnership or an associate of such a general partner in the proper exercise of functions arising from the

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engagement of the limited partner, or a person acting on behalf of the limited partner, in a professional capacity or arising from business dealings between the limited partner, or a person acting on behalf of the limited partner, and the partnership or a general partner or an associate of the general partner; or

- (c) gives a guarantee or indemnity in respect of any liability of the partnership or of a general partner in the partnership or an associate of the general partner; or
- (d) takes any action, or participates in any action taken by any other limited partner in the partnership, for the purpose of enforcing the rights, or safeguarding the interests, of the limited partner as a limited partner; or
- (e) if permitted by the partnership agreement –
 - (i) calls, requisitions, convenes, chairs, participates in, postpones, adjourns or makes a record of a meeting of the partners or of the limited partners or of any of them; or

- (ii) requisitions, signs or otherwise passes, approves, disapproves or amends any resolution (whether at a meeting, in writing or otherwise) of the partners or of the limited partners or of any of them, including without limitation by formulating, moving, proposing, supporting, opposing, speaking to or voting on any such resolution; or
- (f) exercises a power conferred on the limited partner by subsection (4) or has, or exercises, any right to –
 - (i) have access to and inspect the books or records of the partnership or copy any of them; or
 - (ii) examine the state or prospects of the business of the partnership or advise, or consult with, other partners in relation to such matters; or
- (g) gives advice to, or consults with, or is or acts as an officer, director, security holder, partner,

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agent, representative, employee of, or independent contractor engaged by an associate of, the partnership; or

(h) is or acts as a lender to, or fiduciary for, an associate of the partnership; or

(i) to the extent authorised by the partnership agreement, participates on, or has or exercises any right to appoint one or more persons to, or remove one or more persons from, or to nominate one or more persons for such appointment to or removal from, a committee which considers, approves of, consents to or disapproves of any one or more of the following proposals from a general partner:

(i) a proposal involving a material change in the nature of the business of the partnership (including a change in, or departure from, any investment guidelines, policies or conditions relating to the business of the partnership);

(ii) a proposal for the adoption of a method for

valuing some or all of the assets of the partnership (including a change in, replacement of or variation from such a method);

- (iii) a proposal for an extension or reduction in the period in which, under the partnership agreement, investments (or certain types of investments) can be made by the partnership, or for any approval or disapproval of investments that the partnership does not otherwise have a right to make;
- (iv) a proposal relating to any actual or potential transaction or other matter involving any actual or potential conflict of interest;
- (v) a proposal relating to any actual or potential transaction, contract, arrangement or understanding between one or more of the partners, or their

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associates, and the general partner, the partnership or any associate of the general partner or of the partnership;

(vi) a proposal for the delegation, waiver, release or variation of an authority, right, duty or obligation of the general partner;

(vii) a proposal for the appointment or approval under the partnership agreement of any person as a senior executive of the general partner or of an associate of the general partner; or

(j) nominates, selects, investigates, evaluates or negotiates with any person in connection with the removal or replacement of a general partner, or participates on a committee which proposes, considers, approves of, consents to or disapproves of any nomination, selection, appointment, change in control or ownership, suspension, replacement or removal of a general partner or an associate of a general partner; or

- (k) takes any action, or participates in any action taken by any other limited partner, for the purpose of registering or maintaining the registration of the partnership or a general partner in the partnership under Part 2 of the *Venture Capital Act 2002* of the Commonwealth as a VCLP, AFOF or ESVCLP within the meaning of that Act.
- (4) A limited partner in an incorporated limited partnership or a person authorised by the limited partner may, if and to the extent the partner or person is so authorised by the partnership agreement as in force from time to time –
 - (a) have access to and inspect the books or records of the partnership or copy any of them; and
 - (b) examine the state or prospects of the business of the partnership and advise, or consult with, other partners in relation to such matters.
- (5) The provisions of this section may not be varied by the partnership agreement or with the consent of the partners, whether given by or under the partnership agreement or otherwise.

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- (6) No implication is to be taken as arising from subsection (3) that a limited partner in an incorporated limited partnership is to be regarded as taking part in the management of the business of the partnership merely because the limited partner or a person acting on behalf of the partner does any thing in connection with the conduct of that business that is not referred to in that subsection.
- (7) For the purposes of this section, a limited partner in an incorporated limited partnership that is a venture capital management partnership (within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth) is not to be regarded as taking part in the management of the business of the incorporated limited partnership merely because of any act the limited partner takes in respect of the incorporated limited partnership in the capacity of a partner or associate of a partner in the venture capital management partnership.
- (8) In this section –
 - (a) a reference to an associate of a general partner includes a reference to –
 - (i) if the general partner is a partnership, a partner in that partnership (a

“partner in the general partner”); and

- (ii) any person who has an interest in the general partner or in any partner in the general partner, whether as security holder, trustee, responsible entity, manager, custodian, sub-custodian, nominee, administrator, executor, legal personal representative, beneficiary or otherwise; and
- (iii) any person to whom the general partner or any partner in the general partner has delegated any power, authority, right, duty or obligation of the general partner in relation to the partnership or any other partnership in which the general partner is general partner; and
- (iv) if the general partner or a partner in the general partner or a person covered by subparagraph (ii) or (iii) is a body corporate, a related body

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corporate of that body
corporate; and

- (v) a director, officer,
employee, agent,
representative or security
holder of the general
partner or of any partner
in the general partner or
of a person covered by
subparagraph (ii), (iii) or
(iv); and
- (b) a reference to an associate of a
limited partner includes a
reference to –
 - (i) if the limited partner is a
partnership, a partner in
that partnership (“a
partner in the limited
partner”); and
 - (ii) any person who has an
interest in the limited
partner or in any partner
in the limited partner,
whether as security
holder, trustee,
responsible entity,
manager, custodian, sub-
custodian, nominee,
administrator, executor,
legal personal
representative, beneficiary
or otherwise; and

- (iii) if the limited partner or a partner in the limited partner or a person covered by subparagraph (ii) is a body corporate, a related body corporate of that body corporate; and
 - (iv) a director, officer, employee, agent, representative or security holder of the limited partner or of any partner in the limited partner or of a person covered by subparagraph (ii) or (iii); and
- (c) a reference to an associate of an incorporated limited partnership includes a reference to –
 - (i) any person or partnership in which the incorporated limited partnership has an interest, whether as security holder or otherwise; and
 - (ii) if a person or partnership covered by subparagraph (i) is a body corporate, a related body corporate of that body corporate.

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- (9) In this section, a reference to a general partner in an incorporated limited partnership includes, if the general partner is a partnership, a reference to a partner in that partnership.
- (10) In this section –
 - “related body corporate”** has the meaning given by section 9 of the Corporations Act;
 - “security holder”**, in relation to a body (whether corporate or unincorporated) includes a holder of securities (within the meaning given by section 92(3) of the Corporations Act) in or of the body.

81. Differences between partners

- (1) A difference arising as to ordinary matters connected with the business of a limited partnership or an incorporated limited partnership may be decided by a majority of the general partners.
- (2) The provisions of this section may be varied by the partnership agreement or the consent of the partners.

82. Change in partners

- (1) A limited partner in a limited partnership may, with the consent of the general partners, assign the limited partner's share in the limited partnership.
- (2) In that case the assignee is taken to be a limited partner in substitution for the assignor with all the rights and obligations of the assignor.
- (3) A limited partner in an incorporated limited partnership may, with the consent of the general partners and the agreement of the transferee, transfer the whole or a proportion of the limited partner's interest in the incorporated limited partnership.
- (4) If the whole of the limited partner's interest in the incorporated limited partnership is transferred to the one transferee, the transferee becomes a limited partner in substitution for the transferor with all the rights and obligations of the transferor.
- (5) If only a proportion of the limited partner's interest in the incorporated limited partnership is transferred to a transferee, the transferee becomes a limited partner in substitution for the transferor in respect of the transferred proportion and with all the rights and

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obligations of the transferor in respect of it.

- (6) A person may be admitted as a partner in a limited partnership or incorporated limited partnership without the need to obtain the consent of any limited partner.
- (7) The provisions of this section may be varied by the partnership agreement or the consent of the partners.

Division 7 – Dissolution and cessation of limited partnerships and incorporated limited partnerships

83. Dissolution not available in certain cases

- (1) Subject to the terms of any agreement between the partners in a limited partnership –
 - (a) a limited partner is not entitled to dissolve the partnership by notice; and
 - (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed the partner's share of the partnership property to be charged for the partner's separate liabilities; and
 - (c) the death, bankruptcy or retirement or, in the case of a corporation, the dissolution of a

limited partner does not dissolve the partnership.

- (2) The fact that a limited partner in a limited partnership or an incorporated limited partnership is declared to be suffering a mental illness and is incapable of managing the partner's affairs is not a ground for dissolution of the partnership by a Court unless the share and interest of the partner in the partnership cannot be otherwise ascertained or realised.

84. Cessation of limited partnerships

- (1) A partnership ceases to be a limited partnership if none of the partners is a limited partner or the partners agree that they will carry on the business of the partnership otherwise than as a limited partnership.
- (2) If a limited partnership ceases to be a limited partnership and the forming members of the partnership or some of them continue in association or partnership, that association or partnership is no longer taken to be formed in accordance with this Part.

85. Registration of dissolution or cessation of limited partnership

(1) If a limited partnership –

(a) is dissolved; or

(b) ceases to carry on business as a limited partnership –

the general partners who were registered immediately before the dissolution or cessation must, as soon as practicable, lodge with the Director a notice of the dissolution or cessation, specifying the date on which it took effect.

Penalty: Fine not exceeding 10 penalty units.

(2) The notice must be in the form approved by the Director.

(3) The Director is to record in the Register the fact of the dissolution or cessation and the date on which it took effect.

86. Winding-up by general partners

If the affairs of a limited partnership are to be wound up by the partners with a view to its dissolution, the winding-up is to be carried out by the general partners unless a Court otherwise orders.

87. Winding-up of incorporated limited partnerships

Incorporated limited partnerships are to be wound up in accordance with Schedule 1.

Division 8 – Miscellaneous provisions

88. Execution of documents

Without limiting the ways in which an incorporated limited partnership may execute a document (including a deed), an incorporated limited partnership may execute a document –

- (a) without using a common seal (whether it has one or not) if the document is signed by a general partner; or
- (b) as a deed if the document is expressed to be executed as a deed and is executed with the use of a common seal or in accordance with paragraph (a).

89. Entitlement to make assumptions

- (1) A person is entitled to make the assumptions in section 90 in relation to dealings with an incorporated limited partnership.

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- (2) The incorporated limited partnership is not entitled to assert in proceedings in relation to the dealings that any of the assumptions referred to in subsection (1) are incorrect.
- (3) A person is entitled to make the assumptions in section 90 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to property from an incorporated limited partnership.
- (4) The incorporated limited partnership and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions referred to in subsection (2) are incorrect.
- (5) The assumptions may be made even if a partner or agent of the incorporated limited partnership acts fraudulently, or forges a document, in connection with the dealings.
- (6) A person is not entitled to make an assumption in section 90 if, at the time of the dealings, the person knew or suspected that the assumption was incorrect.

90. Assumptions that may be made under section 89

- (1) A person may assume that the partnership agreement of the incorporated limited partnership has been complied with.
- (2) A person may assume that anyone who appears, from information provided by the incorporated limited partnership that is available to the public from the Register, to be a general partner in the incorporated limited partnership –
 - (a) is a general partner in the incorporated limited partnership; and
 - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a general partner in an incorporated limited partnership.
- (3) A person may assume that anyone who is held out by the incorporated limited partnership to be a general partner in, or an agent of, the incorporated limited partnership –
 - (a) is a general partner in the incorporated limited partnership or has been duly appointed as an agent of the incorporated limited

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partnership, as the case requires;
and

- (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of partner in, or agent of, an incorporated limited partnership.
- (4) A person may assume that the general partners in, and agents of, the incorporated limited partnership properly perform their duties to the incorporated limited partnership.
- (5) A person may assume that a document has been duly executed by the incorporated limited partnership if the document appears to have been signed in accordance with section 88.
- (6) A person may assume that a document has been duly executed by the incorporated limited partnership if the incorporated limited partnership's common seal appears to have been affixed to the document.
- (7) A person may assume that a general partner in, or agent of, the incorporated limited partnership who has authority to issue a document or certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.

91. Lodgment of certain documents with Director

- (1) An incorporated limited partnership that was incorporated on the basis that it intended to be registered as a VCLP, AFOF or ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth must, within one month after being so registered, lodge with the Director a copy of a document evidencing its status as a VCLP, AFOF or ESVCLP.
- (2) An incorporated limited partnership that was incorporated on the basis that it intended to meet the requirements for recognition as a venture capital management partnership within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth must, within one month after becoming such a venture capital management partnership, lodge with the Director a statement that it is such a partnership.
- (3) If –
 - (a) the registration of an incorporated limited partnership as a VCLP, AFOF or ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth is revoked; or

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- (b) an incorporated limited partnership ceases to be a venture capital management partnership within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth –

the incorporated limited partnership must, within 7 days after the date on which that revocation took effect or it ceased to be such a venture capital management partnership, lodge with the Director a notice of that revocation or cessation, specifying the date on which it took effect.

- (4) If an incorporated limited partnership ceases to carry on business, the incorporated limited partnership must, as soon as practicable, lodge with the Director a notice of the cessation, specifying the date on which it took effect.
- (5) A copy of a document or a notice required to be lodged with the Director under this section must be accompanied by the prescribed fee.
- (6) A notice required to be lodged with the Director under this section must be in a form approved by the Director.
- (7) If subsection (1), (2), (3) or (4) is not complied with, each general partner in

the incorporated limited partnership is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

92. Model limited partnership agreement

- (1) The regulations may prescribe a model limited partnership agreement or model limited partnership agreements.
- (2) The partnership agreement of a limited partnership may adopt any such model agreement (or any part of it) whether as in force at a particular time or as in force from time to time.

93. Identification of limited partnerships and incorporated limited partnerships

- (1) In this section –

“document” includes any letter, notice, publication, written offer, contract, order for goods or services, invoice, bill of exchange, promissory note, cheque, negotiable instrument, endorsement, letter of credit, receipt and statement of account.
- (2) Any document issued on behalf of a limited partnership in connection with

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the conduct of the partnership's business must contain in legible letters the words "A Limited Partnership" (or "L.P." or "LP" as an abbreviation) at the end of the firm-name of the partnership.

- (3) Any document issued on behalf of an incorporated limited partnership in connection with the conduct of the partnership's business must contain in legible letters the words "An Incorporated Limited Partnership" (or "I.L.P." or "ILP" as an abbreviation) at the end of the firm-name of the partnership.
- (4) A person who –
 - (a) issues or authorises the issue of a document in contravention of this section; or
 - (b) being a general partner in the limited partnership or incorporated limited partnership concerned, is aware that documents are being issued in contravention of this section –

is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units.

- (5) The certificate of registration of a limited partnership or incorporated limited partnership must be displayed at all times

in a conspicuous position at the registered office of the partnership.

- (6) If the certificate of registration is not so displayed, each general partner is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units.

94. Registered office

- (1) A limited partnership or incorporated limited partnership must keep in Tasmania (at the place shown in the Register as the address of the registered office of the firm) an office to which all communications with the partnership may be addressed.
- (2) The regulations may prescribe the hours during which the registered office is to be open and accessible to the public.
- (3) If subsection (1) is not complied with, each general partner in the limited partnership or incorporated limited partnership concerned is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

95. Service

- (1) Without affecting any other method of serving documents on the partners in a limited partnership or on an incorporated limited partnership –

- (a) a document concerning the business of a limited partnership may be duly served on partners in the partnership; or
- (b) a document concerning the business of an incorporated limited partnership may be duly served on the partnership –

if it is left at, or sent by post addressed to, the registered office of the firm for the time being shown in the Register.

- (2) This section does not apply to a document relating to proceedings before a Court.

96. Entry in Register constitutes notice

An entry in the Register of any particular fact concerning a limited partnership or an incorporated limited partnership, including an entry stating the effect of any notice received by the Director –

- (a) is sufficient notice of the fact or of the effect of the notice to all

persons who deal with the partnership; and

- (b) has effect, for the purposes of section 41(2), as if it were an advertisement in the *Gazette*.

97. Giving false or misleading information

A person who, under this Part, provides the Director with a document that the person knows is false or misleading in a material particular (whether by way of a statement in the document or by an omission from the document) is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

98. Offences by partnerships

- (1) If this Act provides that a general partner (being a partnership, whether or not an external partnership) in a limited partnership or incorporated limited partnership is guilty of an offence, the reference to the general partner is to be read as a reference –
 - (a) to each partner in the partnership (or external partnership); or

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- (b) if the partnership (or external partnership) is one in which any partner has, under the law of the place where it is formed, limited liability for the liabilities of the partnership, each partner in the partnership whose liability is not so limited.
- (2) In any proceeding against a partner for an offence against this Act brought in reliance on subsection (1), it is a defence for the partner to prove that the partner took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

99. Duty to furnish information

- (1) For the purpose of monitoring compliance with this Part or the regulations made for the purposes of this Part, the Director may by notice in writing require an incorporated limited partnership to furnish within a period specified in the notice (being a period of not less than 28 days), or within such further period as the Director may allow, such information as is specified in the notice.
- (2) An incorporated limited partnership required under subsection (1) to furnish information to the Director must within the period specified in the notice, or

within such further period as the Director has allowed, furnish such information as it is within its power to furnish and must not furnish any information that to its knowledge is false or misleading in a material particular.

- (3) If subsection (2) is not complied with, each general partner in the incorporated limited partnership is guilty of an offence.

Penalty: Fine not exceeding 60 penalty units.

100. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may be made in relation to one or more of the following:
- (a) the keeping of records by a limited partnership or incorporated limited partnership;
 - (b) information or copies of records or documents required to be provided to the Director by a limited partnership or incorporated limited partnership;

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- (c) the form in which any record required under this Act to be kept is to be kept;
 - (d) the fees required to accompany an application, statement, notice or other document lodged under this Act or the fees payable for the inspection of the Register or for the issue of certificates of information recorded in the Register.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may provide for the granting of exemptions from the operation of this Act or any provision of this Act or the regulations.
- (5) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

101. Relationship with Corporations legislation

The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to –

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

**SCHEDULE 1 – WINDING-UP OF INCORPORATED
LIMITED PARTNERSHIPS**

Section 87

1. Interpretation of Schedule

In this Schedule –

“**assets**” of an incorporated limited partnership means the assets remaining after satisfaction of the liabilities of the partnership and the costs, charges and expenses of the winding-up;

“special resolution” of the limited partners in an incorporated limited partnership means a resolution that has been passed by at least 75% of the limited partners.

2. Voluntary winding-up

- (1)** An incorporated limited partnership may be wound up voluntarily –
 - (a) if the partnership agreement sets out the terms on which the partnership may voluntarily be wound up, in accordance with the partnership agreement; or
 - (b) subject to the partnership agreement, if the limited partners so resolve by special resolution.
- (2)** On a voluntary winding-up of an incorporated limited partnership –
 - (a) if the partnership agreement sets out how the assets are to be dealt with on a voluntary winding-up, the assets must be dealt with in accordance with the partnership agreement; or
 - (b) in any other case, the assets are to be distributed among the partners in shares that are proportionate to

their respective contributions of capital or property to the partnership.

- (3) Any person aggrieved by the operation of this section in relation to the assets of an incorporated limited partnership may apply to the Court.
- (4) On an application under subclause (3), the Court may make any order relating to the disposal of the assets that it thinks fit.

3. Winding-up on Director's certificate

- (1) The Director may, by notice, require an incorporated limited partnership to show good cause why it should not be required to be wound up if the Director is of the opinion –
 - (a) that the partnership has ceased to carry on business; or
 - (b) that none of the partners is a limited partner; or
 - (c) that incorporation of the partnership has been obtained by mistake or fraud; or
 - (d) that the partnership exists for an illegal purpose.
- (2) If, on the expiration of 28 days after the notice is given under subclause (1), the

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Director is satisfied that the incorporated limited partnership should be required to be wound up, the Director may publish in the *Gazette* a certificate requiring that the incorporated limited partnership be wound up.

- (3) The Director may publish in the *Gazette* a certificate requiring an incorporated limited partnership to be wound up if the Director is satisfied (whether by a notice under section 91 or otherwise) that, having been incorporated on the basis that the partnership is or is intended to be –
- (a) registered as a VCLP, AFOF or ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth; or
 - (b) a venture capital management partnership within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth –

the partnership's registration has been revoked, or it has not within the period of 2 years after its incorporation become so registered or it has ceased to meet, or has not in the period of 2 years after its incorporation met, the requirements set out in section 94D(3) of the *Income Tax Assessment Act 1936* for recognition as

such a venture capital management partnership.

- (4) The Director must not publish a certificate under subclause (2) or (3) if satisfied that good cause has been shown why the incorporated limited partnership should not be required to be wound up.
- (5) The Director must give notice of the publication under subclause (2) or (3) of a certificate to the incorporated limited partnership as soon as practicable after the publication.
- (6) The Director must, as soon as practicable after giving a notice to an incorporated limited partnership, record the giving of the notice in the Register.
- (7) A notice under subclause (1) or (5) must be given to the incorporated limited partnership –
 - (a) by being served on the incorporated limited partnership at its registered office; or
 - (b) if service cannot reasonably be effected, by being published in a newspaper circulating generally in the State.

4. Review of certificate

- (1) A person whose interests are affected by a decision of the Director to publish a certificate under clause 3 may apply to the Court for review of the decision.
- (2) An application under subclause (1) must be made within 28 days after the certificate is published.
- (3) The effect of the publication of the certificate is suspended on the making of an application for review until the application is withdrawn or the review is determined.
- (4) In determining an application for review, the Court may –
 - (a) affirm the decision under review;
or
 - (b) set aside the decision under review and require the Director to cancel the certificate.
- (5) Nothing in this clause prevents the Director cancelling a certificate published under clause 3 at any time after an application is made under subclause (1).

5. Procedure for winding-up on certificate

- (1) If the Director has published, and has not cancelled or been required under clause 4(4)(b) to cancel, a certificate under clause 3 that an incorporated limited partnership is required to be wound up, the winding-up –

 - (a) must be commenced –

 - (i) no later than the end of 28 days after the day on which the certificate is published unless an application is made under clause 4; or
 - (ii) if an application is made under clause 4 and the Court affirms the decision to publish the certificate, no later than 28 days after the day on which the application is determined; and
 - (b) must be completed by the day specified by the Director in a notice given to the partnership, not being a day earlier than 60 days after the day on which the winding-up must be so commenced.
- (2) On the commencement of the winding-up, the Director may appoint a person to

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be the liquidator of the incorporated limited partnership.

- (3) The liquidator may be a general partner in the incorporated limited partnership, an associate of the general partner (within the meaning of section 80) or any other person and need not be a registered liquidator under the Corporations Act.
- (4) The liquidator must within 10 days of being appointed give notice of his or her appointment in the *Gazette*.
- (5) The liquidator must give such security as may be prescribed and is entitled to receive such fees as are fixed by the Director.
- (6) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the Director.
- (7) The reasonable costs of a winding-up required on a certificate of the Director under clause 3 are payable out of the property of the incorporated limited partnership.

6. Distribution of assets on winding-up required on Director's certificate

- (1) On the winding-up of an incorporated limited partnership required on a

certificate of the Director under clause 3 –

- (a) if the partnership agreement sets out how the assets are to be dealt with on such a winding-up, the assets must be dealt with in accordance with the partnership agreement; or
 - (b) in any other case, the assets are to be distributed among the partners in shares that are proportionate to their respective contributions of capital or property to the partnership.
- (2) Any person aggrieved by the operation of this section in relation to the assets of an incorporated limited partnership may apply to the Court.
- (3) On an application under subclause (2), the Court may make any order relating to the disposal of the assets that it thinks fit.

7. Application of Corporations Act to winding-up

- (1) The winding-up of an incorporated limited partnership (other than a voluntary winding-up or a winding-up required on a certificate of the Director under clause 3) is declared to be an applied Corporations legislation matter

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for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.7 (Winding-up bodies other than companies) of the Corporations Act and that Part applies as if the incorporated limited partnership were a Part 5.7 body within the meaning of the Corporations Act, subject to the following modifications:

- (a) as if the words “or in the public interest” were inserted in paragraph (c)(ii) of section 583 of the Corporations Act after the words “just and equitable”;
 - (b) as if paragraph (d) of section 583 of the Corporations Act did not form part of that section;
 - (c) any other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) that are prescribed by the regulations.
- (2) The Australian Securities and Investments Commission may perform a function conferred on it under a law applied by subsection (1) –
- (a) pursuant to an agreement or arrangement of the kind referred to in section 11(8) or (9A)(b) of the *Australian Securities and*

Investments Commission Act
2001 of the Commonwealth; and

- (b) the Commission is authorised to perform that function under section 11 of that Act.
- (3) Unless a function under a law applied by subclause (1) is conferred on the Australian Securities and Investments Commission as referred to in subclause (2), that law applies as if a reference in it to the Commission were a reference to the Director.

8. Director to be notified of winding-up

- (1) An incorporated limited partnership must lodge with the Director a notice of the commencement of the winding-up of the partnership within 7 days after –
 - (a) the passing of a special resolution referred to in clause 2(1)(b); or
 - (b) in any other case, the commencement of the winding-up.
- (2) An incorporated limited partnership must lodge with the Director a notice of the completion of the winding-up of the partnership within 7 days after that completion, specifying the date on which the winding-up was completed.

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- (3) The Director must, as soon as practicable after receiving a notice under subclause (1) or (2), record the receipt of the notice in the Register.
- (4) If subclause (1) or (2) is not complied with, each general partner of the incorporated limited partnership is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

9. Cancellation of incorporation

- (1) The Director must, by notice published in the *Gazette*, cancel the incorporation of an incorporated limited partnership as soon as practicable after the partnership is wound up.
- (2) The Director must, as soon as practicable after the publication of a notice under subclause (1), record the cancellation of the incorporation in the Register.
- (3) An incorporated limited partnership ceases to exist on the cancellation of its incorporation under this Schedule.

28. Legislation repealed

The legislation specified in Schedule 1 is repealed.

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SCHEDULE 1 – LEGISLATION REPEALED

Section 28

Limited Partnerships Act 1908 (No. 6 of 1908)