

PARTNERSHIP ACT, 2005

Arrangement of Sections

Section

PART I - PRELIMINARY

1. Short title and commencement
2. Interpretation

4

PART II - NATURE OF PARTNERSHIP

Definition of partnership

Rules for determining existence of partnership

Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency

Nature of partner's interest in partnership

PART III - RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM

Power of partner to bind the firm

Partners bound by acts on behalf of firm

Partner using credit of firm for private purposes

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

Liability of partners for debts and obligations

Liability of the firm for wrongs

Misapplication of money or property received for or in custody of the firm

Liability of partners for wrongs

Improper employment of trust property for partnership

Persons liable by "holding out"

Admissions and representations of partners

Notice to acting partner to be notice to the firm

Liabilities of incoming and outgoing partners

Revocation of continuing guarantee by change in firm

PART IV - RELATIONS OF PARTNERS TO ONE ANOTHER

21. Variation by consent of terms of partnership
22. Partnership property
23. Property bought with partnership money
24. Partnership property treated as personal or movable estate
25. Procedure against partnership property for a partner's separate judgment debt
26. Rules as to interests and duties of partner's subject to special agreement
27. Expulsion of a partner
28. Retirement from partnership at will
29. Presumption of continuance on old terms
30. Duty of partners to render accounts, etc.
31. Accountability of partners for private profits
32. Duty of partner not to compete with firm
33. Rights of assignee of share in partnership

PART V- DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES

34. Dissolution by expiration or notice
35. Dissolution by bankruptcy, death or charge
36. Dissolution by illegality
37. Dissolution by the court
38. Rights of persons dealing with firm against apparent partners of firm
39. Right of partners to notify dissolution
40. Continuing authority of partners for purposes of winding-up
41. Rights of partners as to application of partnership property
42. Apportionment of premium where partnership prematurely dissolved
43. Rights where partnership dissolved for fraud or misrepresentation
44. Rights of outgoing partner in certain cases to share profits made after dissolution
45. Retiring or deceased partner's share to be a debt
46. Rules for distribution of assets on final settlement of accounts

PART VI - LIMITED PARTNERSHIPS

47. Limited partnerships
48. Restriction on limited partnership
49. Registrar
50. Procedure for forming a limited partnership
51. Establishment of register
52. Certificate of limited partnership
53. Effect of failure to register
54. Amendment of the memorandum of partnership
55. Contribution
56. Name
57. Reservation of name
58. Liability for false statements in memorandum
59. Liability of limited partner to third parties
60. Admission of additional limited partners
61. Rights, powers and liabilities of a general partner
62. Rights of a limited partner
63. Status of person erroneously believing himself to be a limited partner
64. Loans and other business transactions with a limited partner
65. Priority of a limited partner over others
66. Compensation of a limited partner
67. Withdrawal or reduction of limited partner's contributions
68. Liabilities of limited partner to partnership
69. Assignment of limited partner's interest
70. Admission as a substituted limited partner
71. Effect of retirement, death, incapacity or bankruptcy of a general partner
72. Death of a limited partner
73. Rights of creditors of limited partners
74. Distribution of assets
75. Service of notice on partners
76. Service of process, etc. on a limited partnership
77. Books and records.
78. Registered office
79. Register or limited partnership interests
80. Penalty for contravention of sections 78 and 82
81. Fees
82. Annual licence fees
83. Limited partnership struck off liable for fees, etc.

84. Recovery of fees
85. Fees, etc. to be paid into Consolidated Fund
86. Registrar may refuse to act until fees paid
87. Location of office for registration
88. Forms of certificate and other document
89. Certificate of good standing
90. Inspection and copies of documents
91. Appointment and duties of inspector
92. Registrars power to require production of Documents
93. Privileged information
94. Provision of security of information obtained
95. Powers of general partners in the event of dissolution
96. Duties of liquidators
97. Powers of liquidators
98. Procedure on winding-up and dissolution
99. Rescission of dissolution
100. Winding-up and dissolution of limited partnership unable to pay claims, etc.
101. Winding-up where dissolution ordered by the court
102. Declaration by the court

PART VII – MISCELLANEOUS

103. Exercise of jurisdiction by Judge in Chambers
104. General penalty
105. Regulations

SCHEDULE

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Partnership Act, 2005



THE GAMBIA

NO. 4 OF 2005.

Assented to by The President,

this 21st day of July, 2005

YAHYA A. J. J. JAMMEH
President

AN ACT to declare and codify the law of partnership, the law relating to limited partnerships and for matters connected therewith.

[See section 1]

ENACTED by The President and the National Assembly.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Partnership Act, 2005 and shall come into force on such date that the Secretary of State may, by order published in the Gazette, appoint.

- Interpretation 2. In this Act, unless the context otherwise requires,
- "articles" means the articles of partnership of a limited partnership formed under this Act;
- "business" includes a trade, occupation or profession;
- "Court" means the High Court or a Judge of the High Court;
- "firm" means the group of persons who have entered into partnership with one another;
- "firm-name" means the name under which the business of a firm is carried on;
- "general partner", in relation to a limited partnership, means a partner who is not a limited partner;
- "general partnership" means a partnership that is not a limited partnership;
- "limited partnership" means a partnership formed under section 47 of this Act;
- "limited partner", in relation to a limited partnership, means a partner who does not take part in the control of the partnership business and whose liability is limited subject to the provisions of this Act;
- "memorandum" means the memorandum of partnership of a limited partnership;
- "partner", in relationship to a limited partnership, includes a limited partner and a general partner;

"partnership property" means all the property and the rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business;

"person" includes a natural person, a partnership general or limited, local or foreign, a company, trust, estate, association, custodian, nominee or any other individual or entity in its own or any representative capacity;

"register" means the register referred to in section 51;

"Registrar" means the Registrar of Limited Partnerships referred to in section 49;

"Secretary of State" means the Secretary of State responsible for the administration of this Act;

"substituted limited partner" means a person who, after becoming an assignee of part or all of the interest of a limited partner, is admitted to the limited partnership pursuant to the provisions of its articles or, if the articles are silent on the issue, is admitted with the unanimous consent of the partners.

PART II - NATURE OF PARTNERSHIP

Definition of partnership

3. (1) A partnership is the relation which subsists between persons carrying on a business in common with a view to profit.

(2) The relation between members of any company or association which is -

Cap. 95:01

- (a) registered as a company under the Companies Act; or
- (b) formed or incorporated by or in pursuance of any other Act,

is not a partnership within the meaning of this Act.

Rules for
determining
existence of
partnership

4. In determining whether a partnership does or does not exist, regard shall be had to the following rules-

- (a) all the circumstances surrounding the contract between the parties are to be considered and the true intent of the parties is to be ascertained from their agreement, words and conduct;
- (b) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by their use;
- (c) the sharing of gross returns does not of itself create a partnership, whether the persons sharing the returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived; and

- (d) the receipt by a person of a share of the profits of a business is prima facie evidence that he or she is a partner in the business, but receipt of the share, or a payment contingent on or varying with the profits of a business, does not of itself make him or her a partner in the business, and in particular-
 - (i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him or her a partner in the business or liable as a partner,
 - (ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as a partner,
 - (iii) a person being the surviving spouse or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of the receipt a partner in the business or liable as a partner,

(iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract in writing with that person, signed by or on behalf of all the parties to the contract, that the lender shall receive a rate of interest varying with the profits arising from carrying on the business, does not itself make a lender a partner with the person or persons carrying on the business or liable as a partner, and

(v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him or her of the goodwill of the business is not by reason only of the receipt a partner in the business or liable as a partner.

5. (1) Where a person to whom money has been advanced by way of loan on a contract as is mentioned in section 4(d)(iv), if adjudged bankrupt, enters into an arrangement to pay his or her creditors less than one hundred dalasis or dies insolvent, the lender shall not be entitled to recover anything in respect of the loan until the claims of the borrower's other creditors for valuable consideration in money or money's worth have been satisfied.

Postpone-
ment of rights
of person
lending or
selling in con-
sideration of
share of pro-
fits in case
of insolvency

(2) Where a person who, in consideration of a share of the profits of a business, has bought of its good-will, is adjudged bankrupt, enters into an arrangement to pay his or her creditors less than one hundred dalasis or dies insolvent, the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for until the claims of the buyer's other creditors for valuable consideration in money or money's worth are satisfied.

(3) Nothing in this section shall operate so as to prevent a secured creditor from retaining or realising his or her security.

6. A partner's interest in a partnership within the meaning of this Act is personal property situate in The Gambia.

Nature of
partner's
interest
in partnership

PART III - RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM

Power of
partner to
bind the firm

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

(2) An act done by a partner apparently connected with the ordinary course of business of the firm is binding on the firm and all the partners unless-

(a) the partner so acting has in fact no authority to act for the firm in the particular matter, and

(b) the person with whom he or she is dealing either knows that he or she has no authority or does not know or believe him or her to be a partner.

Partners bound by acts on behalf of firm

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

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

Partner using credit of firm for private purposes

9. (1) Where one partner pledges the credit of the firm for a purpose apparently not connected with the ordinary course of business of the firm, the firm is not bound, unless he or she is in fact specially authorised by the other partners.

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

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

10. If the partners have agreed that a restriction be placed on the power of any one or more of them to bind the firm, an act done in contravention of the agreement is not binding on the firm with respect to persons who have notice of the agreement.

Liability of partners for debts and obligations

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

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

Liability of the firms for wrongs

12. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his or her co-partners, loss or injury is caused to any person who is not a partner in the firm, or any penalty is incurred, the firm is liable for the loss or injury to the same extent as the partner so acting or omitting to act.

Misapplication of money or property received for or in custody of the firm

13. A firm is liable to make good any loss which occurs, where-

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

Liability of partners for wrongs

14. A partner is liable jointly and severally with his or her co-partners for everything for which the firm while he or she is a partner becomes liable under either section 12 or 13.

Improper employment of trust property for partnership

15. (1) Subject to subsections (2) and (3), if a partner, who is a trustee of a trust which is not a part of the business of the firm of which he or she is a partner, improperly employs the trust property in the business or on the account of the partnership, he or she, and no other partner, is liable for the trust property to the person beneficially interested in the property.

(2) This section does not affect any liability incurred by a partner by reason of his or her having notice of a breach of trust.

(3) Nothing in this section prevents trust money from being traced and recovered from the firm if it is still in its possession or under its control.

Persons liable by "holding out"

16. (1) A person who -

- (a) by words spoken or written, or by conduct, represents himself or herself, or
- (b) knowingly suffers himself or herself to be represented,

as a partner in a particular firm is liable as a partner to a person who has, on the faith of the representation, given credit to the firm, whether the representation has or has not been made or communicated to the person who gave the credit by or with the knowledge of the partner who make the representation or who caused it to be made.

(2) Notwithstanding subsection (1), where, after a partner's death the partnership business is continued in the same name, the continued use of that name or of the deceased partner's name as part of the firm name shall not of itself make his or her executors or the administrators liable for any partnership debts contracted after his or her death.

Admissions and representations of partners

17. An admission or representation made by a partner concerning the firm's affairs, and in the ordinary course of its business, is admissible as evidence in any case against the firm.

Notice to acting partner to be notice to the firm

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

Liabilities of incoming and outgoing partners

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

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

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself or herself and the other partners of the firm as newly constituted and the creditors, and the agreement may be express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guarantee by change in firm

20. A continuing guarantee given to a firm or a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by a change in the constitution of the firm to which, or of the firm in respect of the transaction of which, the grantee was given.

PART IV - RELATIONS OF PARTNERS TO ONE ANOTHER

Variation by consent of terms of partnership

21. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and the consent may be expressed or inferred from a course of dealing.

Partnership
property

22. (1) Subject to subsections (2) and (3), partnership property shall be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) The legal estate or interest in any land which belongs to the partnership shall devolve according to the general rules of law applicable to the devolution, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

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

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

24. Where land or an estate or interest in the land or estate has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and as between the heirs of a deceased partner and his or her executors or administrators, as personal or movable and not real estate.

Property
bought with
partnership
moneyPartnership
property tre-
ated as per-
sonal or
movable
estateProcedure
against part-
nership
property
for a partner's
separate
judgement
debt

25 (1) A writ of execution shall not issue against partnership property except on a judgment against the firm.

(2) A Court may, on the application by summons of any judgment creditor of a partner, make an Order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest on it and may, by the same or a subsequent order -

(a) appoint a receiver of that partner's share of profits (whether already declared or accruing) and of any other money which may be coming to him or her in respect of the partnership; and

(b) direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners may, at any time, redeem the interest charged, or in the case of sale being directed, to purchase the property.

26. The interest of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement expressed or implied between the partners, by the following rules-

(a) all the partners are entitled to share equally the capital and profits of the business and shall contribute equally towards the losses whether of capital or otherwise sustained by the firm;

Rules as to
interests and
duties of part-
ners subject
to special
agreement.

- (b) the firm shall indemnify every partner in respect of payments made and personal liabilities incurred by him or her-
 - (i) in the ordinary and proper conduct of the business of the firm, and
 - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he or she has agreed to subscribe is entitled to interest at the rate of ten per cent per annum from the date of the payment or advance;
- (d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him or her;
- (e) a partner may take part in the management of the partnership business;
- (f) a partner is not entitled to remuneration for acting in the partnership business;
- (g) a person shall not be introduced as a partner without the consent of all existing partners;
- (h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change shall be made in the nature of the partnership business without the consent of all existing partners; and

- (i) the books of the firm shall be kept at the place of business of the partnership, or the principal place of business, if there is more than one, and a partner shall have access to and inspect and copy any of them.
27. A partner shall not be expelled unless a power to do so has been conferred by express agreement between the partners.
28. (1) Where no fixed term has been agreed on for the duration of a partnership, a partner may determine the partnership at any time on giving notice of his or her intention so to do to all the other partners.
- (2) Where the partnership was originally constituted by deed or other instrument in writing, a notice in writing, signed by the partner giving the notice, is sufficient for the purpose of determining the partnership.
29. (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.
- (2) A continuance of the business of the firm without any settlement or liquidation of the partnership affairs, by the partners or such of them as habitually acted in the partnership during the term, is presumed to be a continuance of the partnership.
30. The partners are bound to render to any partner, his or her agent or representative, true accounts and full information of all things affecting the partnership.

Expulsion of partner

Retirement from partnership at will

Presumption of continuance on old terms

Duty of partners to render accounts, etc.

Accounts-
bility of part-
ners for pri-
vate profits

31. (1) A partner shall account to the firm for any benefit derived by him or her without the consent of the other partners-

- (a) from any transaction concerning the partnership; or
- (b) from any use by him or her of the partnership property, name or business connection.

(2) This section applies also to a transaction undertaken by any surviving partner or by the administrators of a deceased partner after a partnership has been dissolved by the death of the partner and before its affairs have been completely wound up.

32. 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.

33. (1) An assignment by any partner of his or her share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership to-

- (a) interfere in the management or administration of the partnership business or affairs;
- (b) require any accounts of the partnership transactions; or
- (c) inspect the partnership books.

Duty of partner not to compete with firm

Rights of assignee of share in partnership

(2) An assignee is entitled-

- (a) to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee shall accept the account of profits agreed to by the partners; and
- (b) in the case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, to receive the share of the partnership assets to which the assigning partner is entitled as between himself or herself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

PART V - DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES

Dissolution by expiration or notice

34. Subject to any agreement between the partners and this section, a partnership is dissolved where it is entered into for-

- (a) a fixed term, by the expiration of the term;
- (b) a single adventure or undertaking, by the termination of that adventure or undertaking; or
- (c) an undefined time, by any partner giving notice to the other partner or partners of his or her intention to dissolve the partnership, in which case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the notice.

Dissolution by
bankruptcy,
death or
charge

35. (1) Notwithstanding the provisions of section 21, a partnership is dissolved as regards all the partners by the death or bankruptcy of any partner unless all of the remaining partners give, within ninety days after the event giving rise to the dissolution, to continue the partnership.

(2) A partnership may, at the option of the other partners, be dissolved if any partner causes his or her share of the partnership property to be charged under this Act for his or her separate debt.

Dissolution by
illegality

36. A partnership is in every case dissolved by the happening of any event, which makes it unlawful for the business of the firm to be carried on or for members of the firm to carry it on in partnership.

Dissolution by
the Court

37. The Court may, on application by a partner, decree a dissolution of the partnership if-

- (a) a partner is shown to the satisfaction of the Court to be permanently of unsound mind in an application made on behalf of that partner by his or her committee or next friend or person having title to intervene or any other partner;
- (b) a partner, other than the partner suing, becomes in any way permanently incapable of performing his or her part of the partnership contract;
- (c) a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated prejudicially to affect the carrying on of the business;

Rights of
persons
dealing
with firm
against
apparent
partners of
firms

- (d) a partner, other than the partner suing wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself or herself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him or her;
- (e) the business of the partnership can only be carried on at a loss; or
- (f) in any case, circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

38. (1) Where a person deals with a firm after a change in its constitution, the person is entitled to treat all apparent partners of the old firm as still partners of the firm until he or she has notice of the change.

(2) An advertisement in the Gazette shall be sufficient notice as to persons who had dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement.

Right of
partners
to notify
dissolution

39. On the dissolution of a partnership or retirement of a partner, any partner may notify the public of dissolution, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or her or their concurrence.

Continuing authority of partners for purposes of winding-up

40. (1) Subject to subsection (2), after the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue, notwithstanding the dissolution, so far as may be necessary to-

- (a) wind up the affairs of the partnership;
- (b) complete transactions begun but unfinished at the time of the dissolution,

but not otherwise.

(2) The firm is not in any case bound by the acts of a partner who has become bankrupt, but this exception does not affect the liability of a person who has, after the bankruptcy, represented himself or herself or knowingly caused himself or herself to be represented as a partner of the firm.

Right of partners as to application of partnership property

41. (1) Subject to subsection (3), on the dissolution of a partnership, a partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have-

- (a) the partnership property applied in payment of the debts and liabilities of the firm; and
- (b) the surplus assets after payment under paragraph (a), applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm.

(2) For the purposes of subsection (1), a partner or his or her executor or administrator may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.

(3) Where the dissolution of a partnership is caused by a wrongful act of a partner in contravention of the partnership agreement, the partner is entitled only to the value of his or her interest in the partnership at the dissolution less any damages payable by him or her to the other partners for his or her breach of the partnership agreement.

Apportionment of premium where partnership prematurely dissolved

42. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term, otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part of the premium as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless-

- (a) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Right where partnership dissolved for fraud or misrepresentation

43. Where a partnership agreement is rescinded on the grounds of fraud or misrepresentation of a partner, the partner entitled to rescind is, without prejudice to any other right, entitled to-

- (a) a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him or her for the purchase of a share in the partnership and for any capital contributed by him or her;

- (b) stand in the place of the creditors of the firm for any payments made by him or her in respect of the partnership liabilities; and
- (c) be indemnified by the partner guilty of the fraud or making the representation against all the debts and liabilities of the firm.

Right of outgoing partner in certain cases to share profits made after dissolution

44. (1) Where a partner has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his or her estate, then, in the absence of any agreement to the contrary, the outgoing partner or his or her estate, is entitled-

- (a) at his or her option, or at the option of his or her executors or administrators to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his or her share of the partnership assets; or
- (b) to interest at such rate as may be determined by the Court.

(2) Notwithstanding the provisions of subsection (1), where by the partnership agreement an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing

partner, and that option is duly exercised, the estate of the deceased partner or the outgoing partner or his or her estate, as the case may be, is not entitled to any further share of profits.

(3) If a partner assuming to act in exercise of the option under subsection (2) does not in all material respects comply with the terms of the agreement, he or she is liable to account under the foregoing provisions of subsection (1).

Retiring or deceased partner's share to be a debt.

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

Rule for distribution of assets on final settlement of accounts

46. In settling accounts between the partners after a dissolution of a partnership, the following rules shall, subject to any agreement, be observed-

- (a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits; and
- (b) the assets of the firm, including the sum, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order -
 - (i) in paying the debts and liabilities of the firm to persons who are not partners,

- (ii) in paying to each partner rateably what is due from the firm to him or her for advances as distinguished from capital,
- (iii) in paying to each partner rateably what is due from the firm to him or her in respect of capital, and
- (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

PART VI - LIMITED PARTNERSHIPS

Limited partnerships

47. (1) A limited partnership is a partnership formed by two or more persons under this Part which has one or more general partners and one or more limited partners.

(2) A body corporate, with or without limited liability, or a partnership may be a general partner or a limited partner of a limited partnership.

(3) Subject to this Part, the provisions of sections 1 to 46 apply to a limited partnership.

(4) Subject to the conditions, limitations, restrictions and liabilities in its memorandum and articles and section 48, a limited partnership may be established under this Act for any object or purpose not prohibited under this Act or any law for the time being in force in The Gambia.

48. A limited partnership shall not carry on-

- (a) a banking business;
- (b) a trust business; or

Restrictions on limited partnership

- (c) the business of insurance, reinsurance, insurance agent, insurance adjuster or insurance broker.

Registrar

Cap. 95:01

49. The Registrar of Companies appointed under the Companies Act shall be the Registrar of Limited Partnerships.

Procedure for forming a limited partnership

50. (1) Two or more persons desiring to form a Limited Partnership shall cause a memorandum to be submitted to the Registrar.

(2) The memorandum shall include-

- (a) the name of the firm;
- (b) the objects and purposes for which the partnership is established;
- (c) the address of the registered office of the partnership in The Gambia;
- (d) the full name of each of the general partners and their respective addresses;
- (e) the term, if any, for which the partnership is to exist;
- (f) a statement that the partnership is limited;
- (g) a statement that every partner not named as general partner in the memorandum is a limited partner; and
- (h) the sum contributed by each limited partner, and whether paid in cash or otherwise.

(3) The memorandum shall be subscribed by the partners named in the memorandum in the presence of another person who shall sign his or her name as a witness.

Establishment
of register

51. (1) The Registrar shall establish and maintain in such form as he or she shall determine, a register of limited partnerships in which shall be registered each memorandum submitted pursuant to sections 50 and 56 and all certificates and advertisements required by this Act.

(2) The register shall be open, during office hours, to the inspection of all persons desiring to view the register.

(3) A certificate of the Registrar certifying that anything required by this Act to be registered by him or her has been so registered shall be received in all courts and in all proceedings whatsoever as evidence of the matter to which the certificate relates.

Certificate of
limited
partnership

52. (1) On the payment of the prescribed fee, the Registrar shall-

(a) register each memorandum submitted pursuant to section 50; and

(b) issue a certificate of limited partnership under his or her hand and seal certifying that the partnership is formed in The Gambia.

(2) On the issue by the Registrar of a certificate of limited partnership, the partnership is, from the date shown on the certificate of limited partnership, a limited partnership under the name contained in the memorandum.

(3) A certificate of limited partnership of a limited partnership formed under this Act issued by the Registrar is *prima facie* evidence of compliance with all requirements of this Act with respect to the formation of a limited partnership.

Effect of
failure to
register

53. A partnership not formed and registered as a limited partnership in accordance with sections 50 and 52 is deemed to be a general partnership and every partner is deemed to be a general partner.

Amendment
of the memo-
randum of
partnership

54. (1) A memorandum may be amended as the partners deem fit.

(2) Where a change is made or a change occurs in or with respect to any of the details set out in the memorandum registered with the Registrar, the limited partnership shall cause a supplementary memorandum to be submitted to the Registrar.

(3) The supplementary memorandum referred to in subsection (2) shall be subscribed by the partners named in it in the presence of another person who shall sign his or her name as a witness.

(4) The Registrar shall, on payment of the prescribed fee, register in the register each supplementary memorandum submitted pursuant to this section and shall issue a certificate of amendment which shall set out the particulars of the amendment.

Contribution

55. The contribution of a limited partner may be cash, property or services.

Name

56. (1) The name of each limited partnership formed under this Act shall have at its end the words "Limited Partnership" or the abbreviation "L.P."

(2) The name of a limited partner shall not appear in the name of a limited partnership, unless, prior to the time when the limited partner became a limited partner, the business had been carried on under a name in which the name of the limited partner appeared.

(3) A limited partner whose name appears in the name of a limited partnership contrary to the provisions of subsection (2) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he or she is not a general partner.

(4) A limited partnership shall not be formed under this Act under a name that-

(a) is identical with that under which a limited partnership in existence under this Act is formed or a company registered under the Companies Act or Business Registration Act or so nearly resembles the name as to be calculated to deceive, except where the partnership or company in existence gives its consent; or

(b) contains the words "Insurance", "Bank", "The Gambia", "Chamber of Commerce", "Co-operative", "Guarantee", "Government", "Municipal", "State", "Trust", "Trustee" or a word or abbreviation conveying a similar meaning, or any other word or abbreviation that, in the opinion of the Registrar, suggests or is calculated to suggest that the Partnership enjoys the patronage of the State or Local Government.

(5) A limited partnership may amend its memorandum to change its name.

(6) If a limited partnership formed under a name that-

(a) is identical with a name under which a limited partnership in existence under this Act is formed or under which a company or business in existence was registered under the Companies Act under the Business Registration Act, as the case may be; or

(b) so nearly resembles the name as to be calculated to deceive,

the Registrar may, without the consent of the limited partnership in existence, give notice to the last registered limited partnership to change its name.

(7) If a limited partnership given notice under subsection (6) fails to change its name within sixty days from the date of notice, the Registrar shall amend the memorandum to change the name to such name as the Registrar deems appropriate, and the Registrar shall publish notice of the change in the *Gazette*.

(8) Subject to subsections (4), (6) and (7), where a limited partnership changes its name, the Registrar shall enter the new name on the register and, on payment of the prescribed fee, shall issue a certificate of amendment which shall set out the particulars of the amendment.

(9) A change of name does not affect any right or obligation of a limited partnership, or render defective any legal proceedings by or against a limited partnership, and all legal proceedings that have been commenced against a limited partnership in its former name may be continued against it in its new name.

Reservation
of name

57. (1) Subject to subsection 56, the Registrar may on the application of a person and on payment of the prescribed fee, reserve for a period of ninety days a name for future adoption by a limited partnership under this Act.

(2) An applicant who has reserved a name under subsection (1), the same applicant may, on payment of the prescribed fee, again reserve the same name for successive ninety days periods.

(3) The right to the exclusive use of a reserved name may be transferred to a person by paying the prescribed fee and by filing with the Registrar a notice of the transfer executed by the applicant for whom the name was reserved specifying the name to be transferred and the name and address of the transferee.

Liability for
false state-
ments in
memorandum

58. If a memorandum contains a false statement, a person who suffers loss by reliance on the statement may hold liable the general partners and the registered agent who made the statement and who knew or should have known the statement to be false-

(a) at the time the registered agent signed the memorandum; or

(b) after the memorandum was signed, but within a sufficient time before the statement was relied on to allow the filing of a supplementary memorandum with the necessary changes.

Liability of
limited
partner to
third parties

59. (1) A limited partner is not liable for the obligations of a limited partnership unless in addition to the exercise of his or her rights and powers as limited partner, he or she participates in the control of the partnership business.

(2) If a limited partner participates in the control of partnership business, he or she is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(3) A limited partner is not deemed to participate in the control of the partnership business within the meaning of subsection (1) or (2) by virtue of his or her possessing or, regardless of whether or not the limited partner has the rights or powers, or exercising or attempting to exercise one or more of the following rights or powers having or, regardless of whether or not the limited partner has the right or powers, acting or attempting to act in one or more of the following capacities-

(a) to be-

- (i) an independent contractor for or to transact business with, including being a contractor for, or an agent or employee of, the limited partnership or a general partner,
- (ii) a limited partner of a partnership that is a general partner, of the limited partnership,
- (iii) a trustee, administrator, executor, custodian or other fiduciary or beneficiary of an estate or trust which is a general partner,
- (iv) a trustee, officer, advisor, stockholder or beneficiary of a business trust which is a general partner,

- 36
- (v) a member, manager, agent or employee of a limited liability company which is a general partner,
 - (b) to consult with or advise a general partner with respect to any matter, including the business of the limited partnership;
 - (c) to act as surety, guarantor or endorser for the limited partnership or a general partner;
 - (d) to guarantee or assume one or more obligations of the limited partnership or a general partner;
 - (e) to borrow money from the limited partnership or a general partner;
 - (f) to lend money to the limited partnership or a general partner, or
 - (g) to provide collateral for the limited partnership or a general partner;
 - (h) to call, request, or attend or participate at a meeting of the partners or the limited partners;
 - (i) to wind up a limited partnership pursuant to this Act;
 - (j) to take any action required or permitted by law to bring, pursue or settle or otherwise terminate a derivative action in the right of the limited partnership;

- (k) to serve on a committee of the limited partnership or the limited partners or to appoint, elect or otherwise participate in the choice of a representative or another person to serve on any such committee, and to act as a member of any such committee directly or by or through any such representative or other person;
- (l) to act or cause the taking or refraining from the taking of any action, including by proposing, approving, consenting or disapproving by voting or otherwise, with respect to one or more of the following matters-
 - (i) the dissolution and winding up of the limited partnership or an election to continue the limited partner or an election to continue the business of the limited partnership,
 - (ii) the sale, exchange, lease, mortgage, assignment, pledge or other transfer of, or granting of a security interest in, any asset or assets of the limited partnership,
 - (iii) the incurrence, renewal, refinancing or payment or other discharge of indebtedness by the limited partnership,
 - (iv) a change in the nature of the business,
 - (v) the admission, removal or retention of a general partner,

- (vi) the admission, removal or retention of a limited partner,
 - (vii) a transaction or other matter involving an actual or potential conflict of interest,
 - (viii) an amendment to the memorandum of a partnership,
 - (ix) the merger or consolidation of a limited partnership;
 - (x) the making of or calling for or the making of other determinations in connection with contributions,
 - (xi) the indemnification of any partner or other persons,
 - (xii) such other matters as are stated in the memorandum or in any written agreement;
- (m) to serve on the board of directors or a committee of, to consult with or advise, to be an officer, a director, shareholder, partner, other than a general partner of a general or the limited partnership, member, manager, trustee, agent or employee of, or to be a fiduciary or contractor for, any person-
- (i) in which the limited partnership has an interest,

- (ii) providing management, consulting, advisory, custody or other services or products for, to or on behalf of, or otherwise having business or other relationship with, the limited partnership or a general partner of the limited partnership;
- (n) any right or power granted or permitted to limited partners under this Act and not specially mentioned in this subsection.

(4) The list of powers and capacities set out in subsection (3) shall not be construed as exclusive or as indicating that any other powers possessed or exercised or any other capacities held or acted in by a limited partner shall be sufficient to cause the limited partner to be deemed to take part in the control of the partnership business within the meaning of subsection (1) and (2).

(5) A limited partner shall not be deemed to participate in the control of the partnership business within the meaning of subsection (1) by-

- (a) his or her possessing any one or more of the rights or powers set out in subsection (3) regardless of the nature, extent, scope, or frequency of his or her possessions of the rights or powers;
- (b) his or her exercising or attempting to exercise one or more of the rights or powers set out in subsection (2) regardless of whether he or she possesses the rights or powers; or

(c) his or her holding or acting or attempting to act in one or more of the capacities set forth in subsection (2) regardless of whether he or she has the right or power to hold or act in those capacities.

(6) The rights and powers of limited partners may be created only by the memorandum, a partnership agreement, any other agreement in writing, or under the provisions of the other sections of this Act.

Admission of additional limited partners

60. After the formation of a limited partnership, additional limited partners may be admitted on making an amendment to the memorandum.

Rights, powers and liabilities of a general partner

61. A general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that, without the written consent or ratification of the specific act by all the limited partners, a general partner or all the general partners have no authority to do any one of the following-

- (a) do an act in contravention of the memorandum;
- (b) do any act which would make it impossible to carry on the ordinary business of the partnership;
- (c) enter a judgment against the partnership;
- (d) possess partnership property, or assign their rights in specific partnership property, for other purpose than a partnership purposes;

(e) admit a person as a general partner, unless the right so to do is given in the memorandum or partnership agreement;

(f) admit a person as a limited partner, unless the right so to do is given in the memorandum or partnership agreement;

(g) continue the business with partnership property on the death, retirement, bankruptcy or incapacity of a general partner, unless the right so to do is given in the memorandum or partnership agreement.

Rights of a limited partner

62. (1) A limited partner has the same rights as a general partner to-

- (a) inspect at all times and to copy any of the partnership books;
- (b) receive on demand-
 - (i) true and full information of all things affecting the partnership, and
 - (ii) a formal account of partnership affairs whenever circumstances render it just and reasonable; and

(c) subject to any limitation set out in the partnership agreement or memorandum, apply to the court for an order that the partnership be dissolved and wound up.

(2) A limited partner has the right to receive a share of the profits or other compensation by way of income, and to the return of his or her contribution as provided in sections 67 and 74.

Status of person erroneously believing himself to be a limited partner

63. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he or she has become a limited partner in a limited partnership is not, by reason of his or her exercise of the rights of a limited partner-

- (a) a general partner with the person in the partnership carrying on the business; or
- (b) bound by the obligations of the person or partnership,

if, on ascertaining the mistake, he or she promptly renounces his or her interest in the profits of the business or other compensation by way of income.

Loans and other business transactions with a limited partner

64. (1) A limited partner may lend money to and transact other business with the partnership, and, receive, on account of resulting claims against the partnership with general creditors, a *pro rata* share of the assets.

(2) A limited partner shall not, in respect to a claim-

- (a) receive or hold, as collateral or security, a partnership property; or
- (b) receive, from a general partner or the partnership, any payment, conveyance or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general partners or limited partners.

(3) The receiving of collateral, security, payment, conveyance or release in violation of subsection (2) is a fraud on the creditors of the partnership.

Priority of a limited partner over others

65. (1) Where there are several limited partners, the partners may agree that one or more of the limited partners shall have a priority over other limited partners as to-

- (a) the return of their contributions;
- (b) their compensation by way of income; or
- (c) any other matter.

(2) An agreement made under subsection (1) shall be stated in the partnership agreement, and, in the absence of a statement, all the limited partners shall stand on equal footing in proportion to their respective contributions actually made to the partnership.

Compensation of a limited partner

66. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated in the articles, provided that after the payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all the liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

Withdrawal or reduction of limited partners' contributions

67. (1) A limited partner shall not receive from a general partner or out of partnership property any part of his or her contribution until-

- (a) all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains partnership property sufficient to pay them; and

(b) the consent of all partners is given, unless the return of the contribution may be rightfully demanded under subsection (2);

(2) Subject to the provisions of subsection (1), a limited partner may rightfully demand the return of his or her contribution-

(a) on dissolution of the partnership, unless its business is continued pursuant to the exercise by other partners of a right or power set out in the partnership agreement;

(b) when the time specified in the partnership agreement for its return has come or the events set out in the articles on the happening of which its return shall be made has occurred; or

(c) after he or she has given six months' notice in writing to all other partners, if no time is specified in the partnership agreement for the return of the contribution or for the dissolution of the partnership and no events are set out on the happening of which the return of the contribution shall occur.

(3) In the absence of a statement in the partnership agreement to the contrary or the consent of all partners, a limited partner, irrespective of the nature of his or her contribution, has only the right to demand and receive cash in return for his or her contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when-

(a) he or she rightfully but unsuccessfully demands the return of his or her contribution;

(b) the other liabilities of the partnership have not been paid; or

(c) the partnership property is insufficient for the payment of liabilities as required by subsection (1)(a) and the limited partner would otherwise be entitled to the return of his or her contribution.

Liabilities of a limited partner to partnership

68. (1) A limited partner is liable to the partnership for-

(a) the difference between his or her contribution as actually made and that stated in the memorandum as having been made; and

(b) any unpaid contribution which he or she agreed in the articles to make in the future at the time and on the conditions stated in the articles.

(2) A limited partner holds as trustee for the partnership-

(a) specific property stated in the memorandum as contributed by him or her but which was not contributed or which has been wrongfully returned; and

(b) money or other property wrongfully paid or conveyed to him or her on account of his or her contribution.

(3) The liabilities of a limited partner as set out in this section shall not be waived or compromised except by the consent of all partners, but a waiver or compromise shall not affect the amendment of the memorandum to enforce the liabilities.

(4) A limited partner who receives any part of his or her contribution in violation of section 68 (1) and who knew at the time of the receipt that the withdrawal or reduction of this contribution violated of section 68 (1), shall be liable to the limited partnership for the amount of the withdrawal or reduction.

(5) Notwithstanding subsection (4), a limited partner who receives any part of his or her contribution in violation of section 68 (1) and who did not know at the time of the receipt that the withdrawal or reduction violated section 68 (1) shall not be liable for the amount of the contribution.

(6) Subject to subsection (7), subsection (4) does not affect any obligation or liability of a limited partner under a partnership agreement or other applicable law for the amount of the withdrawal or deduction received.

(7) Unless otherwise agreed, a limited partner who receives any part of his or her contribution from a limited partnership has no liability under this Act or other applicable law for the amount received after the expiration of three years from the date of receipt.

69. (1) Unless otherwise provided in the memorandum or partnership agreement, a limited partner's interest is assignable

(2) The successor in interest of a limited partner who has died has all the rights of an assignee of that limited partner's interest until the successor in interest is admitted as a substituted limited partner.

70. (1) An assignee of a limited partner's interest has the right to become a substituted limited partner if-

- (a) all the partners, except the assignor, give their consent;
- (b) the assignor, being empowered by the partnership agreement, gives the assignee that right; or
- (c) the partnership agreement allows the admission of the assignee on the prior approval of one or more partners other than the assignor, and the approval is obtained.

(2) An assignee becomes a substituted limited partner on the execution of the necessary amendment to the memorandum and partnership agreement reflecting the admission or such later date as is set out in the amendment, provided that where the assignor's identity is set out in the memorandum the admission shall not become effective until the memorandum is amended in accordance with section 56.

(3) A substituted limited partner has all rights and powers which were possessed by the assignor and, subject to subsection (4), is subject to all the restrictions and liabilities to which the assignor was subject, regardless of whether-

- (a) the substituted limited partner had knowledge of those restrictions and liabilities at the time he or she became a substituted limited partner; and
- (b) those restriction and liabilities were ascertainable from the partnership agreement.

Assignment
of limited
partner's
interest.

Admission as
a substituted
limited
partner

(4) The substitution of an assignee as a limited partner does not release the assignor from the liabilities to the partnership under section 68.

(5) An assignee who does not become a substituted limited partner has no right to-

(a) require any information or account of the partnership transactions; or

(b) inspect the partnership books,

but is only entitled to receive the share of the profits, or other compensation by way of income, or the return of contribution to which the assignor would otherwise be entitled.

Effect of retirement, death, incapacity or bankruptcy of a general partner

71. The retirement, death, incapacity, or bankruptcy or insolvency of a general partner dissolves the partnership, unless the business is continued by the remaining general partners-

(a) under a right to do so stated in the partnership agreement; or

(b) with the consent of all the partners.

Death of a limited partner

72. (1) On the death of a limited partner, his or her executor or administrator has -

(a) all the rights of a limited partner for the purpose of settling his or her estate; and

(b) such power as the deceased had to constitute his or her assignee a substituted limited partner.

(2) The estate of a deceased limited partner is liable for all his or her liabilities as a limited partner.

Rights of creditors of a limited partner

73. (1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may-

(a) charge the partnership interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt;

(b) appoint a receiver of the limited partner's interest in the partnership; and

(c) make all other orders, directions and inquiries which the circumstances of the case may require.

(2) The interest to be charged pursuant to subsection (1)(a) may be redeemed with the separate property of any general partner but shall not be redeemed with partnership property.

(3) The remedies conferred by subsection (1) are not exclusive of others which may exist.

Distribution of assets

74. (1) In settling accounts after dissolution, the liabilities of the partnership shall be paid in the following order-

(a) those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions and to general partners; and

(b) except as otherwise provided in the partnership agreement, those to -

(i) limited partners in respect of their share of the profits and other compensation by way of income or their contributions,

- (ii) limited partners in respect of the capital of their contributions,
- (iii) general partners other than for capital and profits,
- (iv) general partners in respect of profits; and
- (v) general partners in respect of capital.

(2) Subject to any provision in the partnership agreement, limited partners share in the partnership assets in respect of their claims for capital, and in respect of their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the amounts of the claims.

Service of notice on partners

75. Any notice, information or written statement required under this Act to be given by a limited partnership formed under this Act to partners shall be served-

- (a) in the manner prescribed in the partnership agreement; and
- (b) in the absence of a provision in the partnership agreement, by personal service or by mail addressed to each partner at the address shown in the memorandum.

Service of process, etc. on a limited partnership

76. (1) Any summons, notice, order, document, process, information or written statement to be served on a limited partnership may be served by leaving it, or by sending it by registered mail addressed to the limited partnership, at its registered office.

(2) Service of any summons, notice, order, document, process, information or written statement on a limited partnership may be proved by showing that the summons, notice, order, document, process, information or written statement was-

- (a) mailed in such time as to admit its being delivered in the normal course of delivery, within the period prescribed for service; and
- (b) correctly addressed and the postage was prepaid.

Books and records

77. A limited partnership formed under this Act shall keep such account and records as the partners consider necessary or desirable in order to reflect the financial position of the limited partnership.

Registered office

78. A limited partnership shall at all times have a registered office in The Gambia, which shall be maintained by the limited partnership or its registered agent.

Register or limited partnership interests

79. (1) Notwithstanding section 77, the general partners of a limited partnership shall maintain or cause to be maintained, at the registered office of the limited partnership, a register in which shall be recorded the name and address, amount and dates of contributions of each partner and the amount and date of any payment representing a return of any partner's contribution.

(2) The register referred to in subsection (1) shall-

- (a) be updated within twenty-one working days of any change in the particulars required to be entered in it; and

Fees, etc. to be paid in to Consolidated Fund 85. All fees, licence fees and penalties paid to the Registrar under this Act shall be paid by the Registrar into the Consolidated Fund.

Registrar may refuse to act until fees paid 86. The Registrar may refuse to take any action required of him or her under this Act for which a fee is prescribed until all requisite fees have been paid.

Location of office for registration 87. The Secretary of State may, by Order in the Gazette, prescribe the office of registration for limited partnerships.

Form of certificate and other documents 88. A certificate or any other document required to be issued by the Registrar under this Act shall be in such form as the Secretary of State may approve.

Certificate of good standing 89. (1) The Registrar shall, on request by a person, and payment of the prescribed fee, issue a certificate of good standing under his or her hand and seal certifying that a limited partnership is of good standing if the Registrar is satisfied that-

- (a) the name of the limited partnership is on the register; and
- (b) the limited partnership has paid all fees, licence fees and penalties due and payable.

(2) The Registrar shall state on the certificate of good standing issued under subsection (1) whether any proceedings to strike the name of the limited partnership off the register have been instituted.

(3) The certificate of good standing is *prima facie* evidence of the matters contained in it.

(b) constitute *prima facie* evidence of the matters which by subsection(1) are directed to be entered in it.

Penalty for contravention of sections 78. and 82

80. A general partner who wilfully contravenes section 79 or 82 commits an offence and is liable on summary conviction to a penalty of ten thousand dalasis.

Fees

81. There shall be paid to the Registrar such fees as the Secretary of State, in consultation with the Registrar, may by an Order published in the Gazette, specify, in accordance with the categories set out in Part I of the Schedule to this Act.

Schedule

Annual licence fees

82. (1) A limited partnership which has its name on the register on the 31st December in a year shall, before 1st April of the following year, pay to the Registrar such annual licence fee as the Secretary of State, in consultation with the Registrar may, by an Order published in the Gazette, specify.

Schedule

(2) In default of payment of the fee, a limited partnership is liable to the penalties prescribed in Part II of the Schedule to this Act.

Limited partnership struck off liable for fees, etc.

83. A limited partnership continues to be liable for all fees, licence fees and penalties payable under this Act, notwithstanding that the name of the limited partnership has been struck off the register and all those fees, licence fees and penalties have priority to all other claims against the assets of the limited partnership.

Recovery of fees

84. A fee payable under this Act which remains unpaid for thirty days following the date on which demand for payment is made by the Registrar is recoverable before a Magistrate in civil proceedings by the Registrar as a debt due.

90. (1) A person may, on payment of the prescribed fee-

- (a) inspect the documents kept by the Registrar pursuant to this Act; and
- (b) require the Registrar to issue-
 - (i) a certified copy of the certificate of limited partnership of a limited partnership, or
 - (ii) a certified copy of or extract from any document filed with the Registrar pursuant to this Act.

(2) A certificate of limited partnership or extract from any document filed with the Registrar pursuant to this Act, if certified as a true copy under the hand and official seal of the Registrar shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be receivable in evidence in proof of the matters which it states.

91. (1) The Registrar may, on application of a limited partnership or the partners together holding not less than one quarter interest in the partnership and with the approval of the Secretary of State, appoint one or more inspectors to investigate the affairs of a limited partnership and to report on it in such manner as the Registrar may direct.

(2) The application referred to in subsection (1) shall be accompanied with the prescribed fee and supported by such evidence as the Registrar may require for the purpose of showing that the applicant has good reason for requiring the investigation.

(3) The expenses of and incidental to an investigation shall be defrayed by the limited partnership, unless the Registrar otherwise directs.

(4) A partner of a limited partnership shall produce to an inspector such books or documents as the inspector may require for the purposes of his or her investigation.

(5) A partner of a limited partnership who, in the course of an investigation of the affairs of the limited partnership-

- (a) refuses to produce a book or document required by the inspector to be produced; and
- (b) refuses to answer a question relating to the affairs of the limited partnership,

commits an offence and is liable on summary conviction to a fine of ten thousand dalasis.

(6) An inspector may take evidence on oath in investigating the affairs of a limited partnership and for that purpose may administer an oath.

(7) An investigation under this section shall be held in private unless the limited partnership requests that it be held in public.

(8) An inspector investigating the affairs of a limited partnership may, from time to time, report to the Registrar and shall, on completion of the investigation submit a written report to the Registrar.

(9) The Registrar shall forward a copy of the report to the Secretary of State and may also, if he or she thinks fit-

- (a) forward a copy to the registered office of the limited partnership;
 - (b) on request and payment of the prescribed fee, furnish a copy to-
 - (i) any partner of the limited partnership,
 - (ii) any person whose conduct is referred to in the report,
 - (iii) any other person whose financial interest appears to the Registrar to be affected by the matters dealt with in the report;
 - (c) cause the report to be printed and published.
- (10) If the Registrar, after examining a report considers that a limited partnership, a partner, the registered agent or any officer, agent or employee of the limited partnership-
- (a) has knowingly and wilfully done anything in contravention of this Act, the Registrar may petition the Court for the dissolution of the limited partnership; or
 - (b) is carrying on its affairs in a manner that is detrimental to its creditors or public interest, the Registrar may require the limited partnership to take such measures as he or she considers necessary in relation to its affairs.
- (11) A copy of the petition referred to in subsection (10) shall be served on the limited partnership at least seven clear days before the day set by the Court for the hearing of the petition.

(12) If the Court, on the hearing of the petition referred to in subsection (10), is satisfied that the limited partnership, or any officer, agent or employee of the limited partnership has done anything in contravention of the provisions of this Act, the Court may-

- (a) make an order for the dissolution of the limited partnership;
- (b) impose a fine not exceeding five thousand dalasis-
 - (i) on the limited partnership, and
 - (ii) on any partner, officer, agent or employee of the limited partnership who knowingly and wilfully authorized or permitted the contravention; or
- (c) make an order under paragraph (a) and impose a fine under paragraph (b).

Registrars
power to
require pro-
duction of
docu-
ments

92. (1) The Registrar may, at any time, if he or she thinks there is good reason to do so, direct a limited partnership, a partner or the registered agent of a limited partnership to produce, at the time and place as may be specified in the directions, any book or document of the limited partnership.

(2) The Registrar or the officer specified in the directions referred to in subsection (1) may take copies of any book and document produced and require any past or present partner, officer or agent of a limited partnership to provide an explanation of any of them or make a statement in relation to any of them.

(3) A partner, officer or agent of a limited partnership who refuses to produce a book or document as required under subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dalasis.

(4) A past or present partner, officer or agent of a limited partnership who refuses to provide an explanation or make a statement as required by subsection (2) commits an offence and is liable on summary conviction to a fine of ten thousand dalasis.

(5) If the requirement to produce a book or document is not complied with, a Magistrate may, if satisfied on information on oath laid under the authority of the Registrar that there is reasonable grounds for suspecting that there is any book or document or which production has been required under subsection (1), issue a warrant authorising any member of Police Force, together with any other person named in the warrant to –

- (a) enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) search the premises and take possession of any books or papers appearing to be the books or papers, the production of which have been required under subsection (1); and
- (c) take any other steps which may appear necessary for preserving them or preventing interference with them.

(6) A warrant issued under subsection (5) continues in force until the end of thirty days after the date on which it is issued.

(7) A person who-

- (a) obstructs the exercise of a right of entry or search conferred by a warrant issued under this section; or
- (b) obstructs the exercise of a right conferred by a warrant issued under this section to take possession of a book or document,

commits an offence and is liable on summary conviction to a fine of ten thousand dalasis.

(8) A book or document of which possession is taken under this section may be retained for a period not exceeding sixty days unless, within that period, criminal proceedings, to which the books or papers are relevant, are commenced in which case, they may be retained until the conclusion of those proceedings.

Privileged
information

93. Nothing in sections 91 and 92-

- (a) compels the production by any person of a book or document which he or she would, in an action in Court, be entitled to refuse to produce on grounds of legal professional privilege;
- (b) authorizes the taking of possession of a book or document which is in the person's possession; or

- (c) requires the disclosure by a person to the Registrar or to an inspector appointed by the Registrar of information which in an action in a Court that person would be entitled to refuse to disclose on grounds of legal professional privilege except, if he or she is a lawyer, the name and address of his or her client.

Provision of security of information obtained

94. (1) Subject to subsections (2) and (3), any information or document which has been obtained under section 90 and which relates to any person shall not, without the prior consent in writing of that person, be published or disclosed unless the publication or disclosure is required-

- (a) with a view to the institution of, or otherwise for the purpose of criminal proceedings;
- (b) for the purpose of the examination of any person by an inspector appointed under section 91 in the course of his or her investigation;
- (c) for the purpose of proceedings under section 92 (3), (4) and (7);
- (d) for the purpose of enabling or assisting an official receiver to discharge his or her functions under enactments relating to insolvency or for the purpose of enabling or assisting a body which is for the time being a recognized professional body for the purpose of any insolvency enactment to discharge its functions as receiver; or
- (e) with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the exercise by a lawyer, auditor, accountant, valuer or actuary of his or her professional duties.

(2) Any information, book or document obtained under section 92 may, without the consent of the person to whom it relates, be published or disclosed to-

- (a) the Registrar;
- (b) an inspector appointed by the Registrar under section 93;
- (c) the Commissioner of Insurance;
- (e) any authority designated for the purpose under subsection (3).

(3) The Secretary of State may, by order published in the *Gazette* designate any public or other authority to be an authority to which information obtained under section 92 may be published or disclosed subject to such conditions and restriction as he or she may deem appropriate.

(4) The Secretary of State may, if he or she thinks fit, disclose any information obtained under sections 91 and 92 to the persons listed in subsection (2)(b) to (e) circumstances in which or for any purpose for which the preceding subsections of this section do not preclude disclosure.

Powers of general partners in the event of dissolution

95. Subject to sections 35 (1) and 101, the general partners may, on the dissolution of a limited partnership under this Act -

- (a) authorise a liquidator, who shall not be a body corporate, to carry on the business of the limited partnership if the liquidator determines that to do so would be necessary or in the best interests of the limited partnership or its creditors; and

(b) determine to rescind the articles of dissolution as permitted under section 99.

Duties of liquidators

96. A liquidator shall, on his or her appointment by a limited partnership and on the commencement of a winding-up, proceed to-

- (a) identify all assets of the limited partnership;
- (b) identify all creditors of and claimants against the limited partnership;
- (c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the limited partnership;
- (d) distribute any surplus assets of the limited partnership to the partners in accordance with the actions and transactions of the liquidator;
- (e) prepare or cause to be prepared a statement of account in respect of the actions and transaction of the liquidator; and
- (f) send a copy of the statement of accounts to all partners if so required by the plan of dissolution required by section 98.

Powers of liquidators

97. (1) The liquidator, in order to perform the duties imposed on him or her under section 98, has all the powers of the general partners including, the power to-

- (a) take custody of the assets of the limited partnership and in that connection register any partnership property in the name of the liquidator or that of his or her nominees;

- (b) sell any assets of the limited partnership at public auction or by private sale without any notice;
- (c) collect the debts and assets due or belonging to the limited partnership;
- (d) borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the limited partnership and pledge or mortgage any property of the limited partnership as security for the borrowing;
- (e) negotiate, compromise and settle any claim, debt, liability or obligation of the limited partnership;
- (f) prosecute and defend, in the name of the limited partnership or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) retain lawyers, accountant and other advisers and appoint agents;
- (h) carry on the business of the limited partnership, if the liquidator has received authorisation to do so in the plan of liquidation or by the general partners as permitted under section 95, as the liquidator may determine to be necessary or to be in the best interests of the creditors or the partners;
- (i) execute any contract, agreement or other instrument in the name of the limited partnership or in the name of the liquidator and

- (j) make any distribution in money or in other property or partly in each, and if in other property, allot the property, or an undivided interest in the property, in equal or unequal proportions.

(2) Notwithstanding subsection (1)(h), a liquidator shall not, without the permission of the Court, carry on, for a period in excess of two years, the business of a limited partnership that is being wound up and dissolved under this Act.

Procedure
on winding-
up and
dissolution

98. (1) The general partners of a limited partnership, required or proposing under this Act to wind up and dissolve the limited partnership, shall approve a plan of dissolution containing a statement-

- (a) of the reason for the winding-up and dissolution;
- (b) that the limited partnership is, and will continue to be, able to discharge or pay or provide for the payment in full of all claims, debts, liabilities and obligations;
- (c) that the winding up will commence on the date when the articles of dissolution are submitted to the Registrar or on such date subsequent to that date, not exceeding thirty days, as is stated in the articles of dissolution;
- (d) of the estimated time required to wind up and dissolve the limited partnership;

- (e) as to whether the liquidator is authorized to carry on the business of the limited partnership if the liquidator determines that to do so would be necessary or in the best interest of the limited partnership or creditors;
- (f) of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and
- (g) as to whether the liquidator is required to send to all partners a statement of account prepared or caused to be prepared by the liquidator in respect of his or her actions or transactions.

(2) After approval of the plan of dissolution, the articles of dissolution containing-

- (a) the plan of dissolution; and
- (b) the manner in which the plan of dissolution was authorized.

shall be executed by the limited partnership.

(3) The general partners of a limited partnership shall submit the articles of dissolution to the Registrar who shall retain and register them.

(4) The general partners of the limited partnership shall, within thirty days immediately following the date on which the articles of dissolution are submitted to the Registrar, cause to be published, in the *Gazette*, and in at least two news papers of general circulation in The Gambia, a notice stating-

- (a) that the limited partnership is in dissolution;

- (b) the date of commencement of the dissolution; and
- (c) the names and addresses of the liquidators.

(5) A winding-up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such date subsequent to that date, not exceeding thirty days, as is stated in the articles of dissolution.

(6) A liquidator shall, on completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed in accordance with this Act.

(7) On receiving statement under subsection (6), the registrar shall-

- (a) strike the limited partnership off the register; and
- (b) issue a certificate of dissolution under his or her hand and seal certifying that the limited partnership has been dissolved.

(8) Where the Registrar issues a certificate of dissolution under his or her hand and seal certifying that the limited partnership has been dissolved-

- (a) the certificate is *prima facie* evidence of compliance with all requirements of this Act in respect of dissolution; and
- (b) the dissolution of the limited partnership is effective from the date of issue of the certificate.

(9) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (8),

the liquidator shall cause to be published, in the Gazette and in at least two newspapers of wide circulation in The Gambia, a notice that the limited partnership has been dissolved and has been struck off the register.

(10) A general partner of a limited partnership that contravenes subsection (3) or (4) commits an offence and is liable on summary conviction to a penalty of five thousand dalasis and liable to a fine of five hundred dalasis for each day or part of a day during which the contravention continues.

Rescission of
dissolution

99. (1) A limited partnership may, before submitting to the Registrar the articles of dissolution specified in section 98 (3), rescind the articles of dissolution.

(2) A copy of the notice referred to in subsection (1) shall be submitted to the Registrar who shall retain and register it in the register.

(3) The limited partnership shall, within thirty days immediately following the date on which the notice referred to in subsection (1) has been submitted to the Registrar, cause a notice stating that the limited partnership has rescinded its intention to wind up and dissolve to be published in the *Gazette*, and in at least two newspapers of wide circulation in The Gambia.

Winding-up
and dissolution of
limited partnership
unable to pay
claims, etc.

100. (1) Where, in a dissolution, other than a dissolution by the Court-

- (a) the general partners of a limited partnership have; or
- (b) the liquidator after his or her appointment, has

reason to believe that the limited partnership will not be able to pay or provide for the payment or discharge of all claims, debts, liabilities and obligations of the limited partnership in full, the general partners or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.

(2) Where notice has been given to the Registrar under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act relating to winding-up and dissolution and those provisions shall apply *mutatis mutandis* to the winding-up and dissolution of the limited partnership.

Winding-up where dissolution ordered by Court

101. Where the dissolution of a limited partnership is ordered by the Court under section 37, the Court may make such orders and give such directions for the winding-up of the limited partnership as it deems just and equitable in the circumstances.

Declaration by the Court

102. (1) A general partner of a limited partnership may, without the necessity of joining any other party, apply to the Court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the memorandum or the partnership agreement of a limited partnership.

(2) A person acting in accordance with a declaration made by the Court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his or her duties in the subject matter of the application.

PART VII - MISCELLANEOUS.

Exercise of jurisdiction by Judge in Chambers

103. A Judge may exercise in Chambers any jurisdiction that is vested in the court by this Act and in exercise of that jurisdiction, may award such costs as may be just.

General penalty

104. A person who contravenes a provision of this Act or regulations made under it commits an offence, and unless otherwise provided in the Act or regulations, is liable on summary conviction to a fine of ten thousand dalasis.

Regulations

105. The Secretary of State may make regulations-

- (a) with respect to the duties to be performed by the Registrar under this Act;
- (b) providing for the conduct and regulation of the registration of limited partnerships under this Act;
- (c) prescribing the fees to be paid in respect of matters arising under or provided for or authorized by this Act;
- (d) prescribing the forms to be used in respect of matters arising under or provided for or authorized under this Act;
- (e) with respect to the conduct, duties and responsibilities of registered agents;
- (f) providing for the restoration of a limited partnership, the name of which has been struck off the register, to the register and the fees applicable to the restoration; and
- (g) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

70

SCHEDULE (Sections 81 and 82)

PART I - CATEGORIES OF FEES

There shall be paid to the Registrar such fees as may be specified under section 81, for the following-

- (a) for registration of the memorandum of a limited partnership;
- (b) for the registration of an amendment to the memorandum of a limited partnership-
 - (i) if the registration is within thirty days immediately following the amendment of the articles,
 - (ii) if the registration is within sixty days immediately following the amendments of the articles,
 - (iii) if the registration is within ninety days immediately following the amendment of the articles, and
 - (iv) if the registration is later than ninety days following the amendment of the articles.

PART II- PENALTIES FOR DEFAULT IN PAYMENT OF ANNUAL LICENCE FEES

1. If a limited partnership fails to pay the annual licence fee under this Act by the date specified in the licence, the licence fee increases by ten per cent of that amount.

2. If a limited partnership fails to pay the amount due as an increased licence fee under paragraph 1 by 31st July, then the licence fee increases by twenty-five per cent of the licence fee specified in paragraph 1.

3. If a limited partnership fails to pay the amount due as an increased licence fee under paragraph 2 by 31st October, then the licence fee increases by fifty per cent of the licence fee specified in paragraph 1.

23rd day of June

PASSED in the National Assembly this
in the year of Our Lord Two Thousand and Five

D. C. M. Kebbeh

Acting Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.

D. C. M. Kebbeh

Acting Clerk of the National Assembly.