

Chapter 148.
Partnership Act 1951.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 148.

Partnership Act 1951.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Partnership Act 1951,

Being an Act to declare the law of partnership.

PART I. – PRELIMINARY.

1. INTERPRETATION.

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

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

“**court**” means a court or Judge having jurisdiction in the case;

“**partnership property**” means, subject to Section 21, all property, and all rights and interests in property, originally brought into the partnership stock or acquired on account of the firm or for the purposes of, and in the course of, the partnership business.

(2) Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm, and the name under which their business is carried on is called the firm-name.

2. SAVING OF RULES OF THE UNDERLYING LAW.

The rules of the underlying law applicable to partnership continue in force except so far as they are inconsistent with the express provisions of this Act.

PART II. – NATURE OF PARTNERSHIP.

3. DEFINITION OF PARTNERSHIP.

(1) Subject to Subsection (2), partnership is the relationship that subsists between persons carrying on a business in common with a view to profit.

(2) The relation between members of a company or association that is—

- (a) registered as a company under any Act for the time being in force and relating to the registration of joint stock companies; or
- (b) formed or incorporated by or under any other Act, letters patent or Royal Charter,

is not a partnership within the meaning of this Act.

4. RULES FOR DETERMINING EXISTENCE OF PARTNERSHIP.

In determining whether a partnership exists, regard shall be had to the following rules:—

- (a) joint tenancy, tenancy in common, joint property, common property or part-ownership does not of itself create a partnership as to anything held or owned jointly or in common, whether or not the tenants or owners share profits;
- (b) the sharing of gross returns does not of itself create a partnership, whether or not the persons sharing the returns have a joint or common right or interest in any property from which, or from the use of which, the returns are derived;
- (c) the receipt by a person of a share of the profits of a business is *prima facie* evidence only that he is a partner in the business, and the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him 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 a partner in the business or liable as such; or
 - (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 such; or
 - (iii) a person who is the widow or child of a deceased partner, and who receives 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 such; or

- (iv) the advance of money by way of loan to a person engaged or about to engage in any business on a written contract, signed by or on behalf of all the parties, that the lender will receive a rate of interest varying with the profits, or will receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person carrying on the business or liable as such; or
- (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 of the goodwill of the business is not by reason only of the receipt a partner in the business or liable as such.

5. POSTPONEMENT OF RIGHTS OF CERTAIN PERSONS IN CASE OF INSOLVENCY.

In the event of a person to whom money has been advanced in the circumstances referred to in Section 4(c)(iv), or a buyer of goodwill in consideration of a share of the profits of the business—

- (a) being adjudicated insolvent; or
- (b) entering into an arrangement to pay his creditors less than 100t in the kina; or
- (c) dying in insolvent circumstances,

the lender is not entitled to recover anything in respect of his loan, and the seller of the goodwill is not entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

PART III. – RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM.

6. POWER OF PARTNER TO BIND THE FIRM.

Each partner is an agent of the firm and of his other partners for the purpose of the business of the partnership, and the act of any partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member binds the firm and his 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 is dealing knows that he has no authority or does not know, or does not believe, him to be a partner.

7. PARTNERS BOUND BY ACTS ON BEHALF OF FIRM.

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

(2) Subsection (1) does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

8. PARTNER USING CREDIT OF FIRM FOR PRIVATE PURPOSES.

Where a partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless he is in fact specially authorized by the other partners, but this section does not affect any personal liability incurred by a partner.

9. NOTICE OF RESTRICTION ON LIABILITY OF FIRM.

Where it is agreed between the partners that the power of any one or more of them to bind the firm is restricted, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

10. LIABILITY OF PARTNERS.

Each partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is, subject to the prior payment of his separate debts, liable in due course of administration for any of the debts and obligations that remain unsatisfied.

11. LIABILITY OF THE FIRM FOR WRONGS.

Where, by any wrongful act of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused

to a person who is not a partner in the firm, or a penalty is incurred, the firm is liable to the same extent as the partner.

12. MISAPPLICATION OF PROPERTY IN CUSTODY OF THE FIRM.

Where—

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

the firm is liable to make good the loss.

13. LIABILITY UNDER SECTIONS 11 AND 12.

Each partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner becomes liable under Section 11 or 12.

14. IMPROPER EMPLOYMENT OF TRUST PROPERTY FOR PARTNERSHIP PURPOSES.

(1) Subject to Subsections (2) and (3), if a partner who is a trustee improperly uses trust property in the business or on the account of the partnership, no other partner is liable for the property to the persons beneficially interested in it.

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

(3) This section does not prevent trust money from being followed and recovered from the firm if it is still in its possession or under its control.

15. HOLDING OUT.

(1) Subject to Subsection (2), a person who, by word or conduct, represents himself, or who knowingly permits himself to be represented, as a partner in a firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether or not the representation was made or communicated to the person giving credit by or with the knowledge of the apparent partner making the representation or permitting it to be made.

(2) Where after the death of a partner the partnership business is continued in the old firm-name, the continued use of the name, or of the deceased partner's name, as part of the firm-name does not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death.

16. ADMISSIONS AND REPRESENTATIONS OF PARTNERS.

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

17. NOTICE TO PARTNER.

Notice of any matter relating to partnership affairs given to a partner who habitually acts in the partnership business 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.

18. LIABILITY OF INCOMING AND OUTGOING PARTNERS.

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

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

(3) A retiring partner may be discharged from existing liabilities by agreement between himself and the members of the firm as newly constituted and the creditors, and such an agreement may be express or may be inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

19. REVOCATION OF CONTINUING GUARANTEE, ETC., BY CHANGE IN FIRM.

A continuing guarantee or cautionary obligation given to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm.

PART IV. – RELATIONS OF PARTNERS TO ONE ANOTHER.

20. VARIATIONS BY CONSENT OF TERMS OF PARTNERSHIP.

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 such a consent may be express or may be inferred from a course of dealing.

21. PARTNERSHIP PROPERTY.

(1) 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 that belongs to the partnership devolves according to its nature and tenure and the general rules of law applicable to such land, 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 that is not partnership property—

(a) are partners as to profits made by the use of the land; and

(b) purchase out of the profits other land to be used in like manner,

the land so purchased belongs to them, in the absence of agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as were held by them in the original land at the date of the purchase.

22. PROPERTY BOUGHT WITH PARTNERSHIP MONEY.

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

23. CONVERSION INTO PERSONAL ESTATE OF LAND HELD AS PARTNERSHIP PROPERTY.

Where land has become partnership property, it shall, unless the contrary intention appears, be treated—

(a) as between the partners (including the representatives of a deceased partner); and

(b) as between the representatives of a deceased partner,

as personal and not real estate.

24. PROCEDURE AGAINST PARTNERSHIP PROPERTY FOR A PARTNER'S SEPARATE JUDGEMENT DEBT. .

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

- (2) On the application of a judgement creditor of a partner, a court may—
- (a) make an order charging the partner's interest in the partnership property and profits with payment of the amount of the judgement debt and interest; and
 - (b) by the same or a subsequent order appoint a receiver of his share of profits (whether already declared or accruing), and of any other money that may be coming to him in respect of the partnership; and
 - (c) direct all accounts and inquiries, and give all other orders and directions, that might have been directed or given if the charge had been made by the partner in favour of the judgement creditor, or that the circumstances of the case require.

(3) The other partner or partners may at any time redeem the interest charged, or if a sale is directed purchase the interest.

25. RULES AS TO INTERESTS AND DUTIES OF PARTNERS.

The interests of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, subject to any express or implied agreement between the partners, by the following rules:—

- (a) all the partners are entitled to share equally in the capital and profits of the business, and shall contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;
- (b) the firm shall indemnify every partner in respect of payments made and personal liabilities incurred by him—
 - (i) in the ordinary and proper conduct of the business of the firm; or
 - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner who makes, for the purpose of the partnership, any actual payment or advance beyond the amount of capital that he has agreed to subscribe is entitled to interest at the rate of 6% 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;
- (e) every partner may take part in the management of the partnership business;
- (f) no partner is entitled to remuneration for acting in the partnership business;
- (g) no person shall 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 may be made in the nature of the partnership business without the consent of all existing partners;

- (i) the partnership books shall be kept at the place of business of the partnership (or at the principal place of business, if there is more than one), and every partner may when he thinks fit, have access to, and may inspect and copy any of them.

26. EXPULSION OF PARTNER.

A majority of the partners have no power to expel a partner unless a power to do so has been conferred by express agreement between the partners.

27. RETIREMENT FROM PARTNERSHIP AT WILL.

(1) Where no fixed term has been agreed on for the duration of the partnership, any partner may determine the partnership on giving notice of his intention to do so to all the other partners.

(2) Where the partnership was originally constituted by deed, a written notice signed by the partner giving it, is sufficient notice for the purposes of Subsection (1).

28. PRESUMPTION OF CONTINUANCE ON OLD TERMS.

(1) Where a partnership entered into for a fixed term is continued after the term has expired, without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted in it during the term, without any settlement or liquidation of the partnership affairs, shall be presumed to be a continuance of the partnership.

29. DUTY OF PARTNERS TO RENDER ACCOUNTS, ETC.

Partners are bound to give true accounts and full information of all things affecting the partnership to any partner or the legal representatives of a partner.

30. PARTNERS ACCOUNTABLE FOR PRIVATE PROFITS.

(1) Each partner shall account to the firm for any benefit derived by him, without the consent of the other partners, from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection.

(2) Subsection (1) applies to transactions undertaken, by a surviving partner or by the representatives of the deceased partner, after a partnership has been dissolved by the death of a partner, and before the affairs of the partnership have been completely wound up.

31. COMPETITION BY PARTNER WITH FIRM.

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 shall account for and pay over to the firm all profits made by him in that business.

32. RIGHTS OF ASSIGNEE OF SHARE IN PARTNERSHIP.

(1) An assignment, whether absolute or by way of mortgage or redeemable charge, by any partner of his share in the partnership does not, as against the other partners, entitle the assignee, during the continuance of the partnership—

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

but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must, except in case of fraud, accept the account of profits agreed to by the partners.

(2) In the case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive—

- (a) the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners; and
- (b) 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.

33. DISSOLUTION BY EXPIRATION OR NOTICE.

(1) Subject to any agreement between the partners, a partnership is dissolved—

- (a) if entered into for a fixed term, by the expiration of the term; or
- (b) if entered into for a single adventure or undertaking, by the termination of the adventure or undertaking; or
- (c) if entered into for an undefined time, by any partner giving notice to the other of his intention to dissolve the partnership.

(2) In a case to which Subsection (1)(c) applies, the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is mentioned, as from the date of the communication of the notice.

34. DISSOLUTION BY INSOLVENCY, DEATH OR CHARGE.

(1) Subject to any agreement between the partners, a partnership is dissolved as regards all the partners by the death or insolvency of a partner.

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

35. DISSOLUTION BY ILLEGALITY.

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

36. DISSOLUTION BY THE COURT.

(1) On application in accordance with Subsection (2), a court may order a dissolution of a partnership where—

- (a) a partner is shown to the satisfaction of the court to be of permanently unsound mind; or
- (b) a partner, other than the partner applying for dissolution—
 - (i) becomes in any other way permanently incapable of performing his part of the partnership contract; or
 - (ii) has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to affect prejudicially the carrying on of the business; or
 - (iii) wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself 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

- (c) the business of the partnership can only be carried on at a loss; or
 - (d) circumstances have arisen that, in the opinion of the court, make it just and equitable that the partnership be dissolved.
- (2) Application for dissolution may be made—
- (a) on the ground set out in Subsection (1)(a), by the committee or next friend, or a person having title to intervene, on behalf of the partner who is allegedly of unsound mind, or by any other partner; or
 - (b) on any other ground set out in Subsection (1), by any partner.

37. RIGHTS OF PERSONS DEALING WITH FIRM AGAINST APPARENT MEMBERS OF FIRM.

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

(2) For the purposes of Subsection (1), an advertisement in the National Gazette is notice 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 insolvent, 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, insolvency or retirement, as the case may be.

38. RIGHTS OF PARTNERS TO NOTIFY DISSOLUTION.

On the dissolution of a partnership or the retirement of a partner, any partner may publicly notify the fact, and may require the other partners to concur for that purpose in any necessary or proper act, that cannot be done without their concurrence.

39. CONTINUING AUTHORITY OF PARTNERS FOR PURPOSES OF WINDING-UP.

(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, as far as is necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution.

(2) The firm is not bound by the acts of a partner who has become insolvent, but this subsection does not affect the liability of a person who has, after the insolvency, represented himself or knowingly suffered himself to be represented as a partner of the insolvent.

40. RIGHTS OF PARTNERS AS TO APPLICATION OF PARTNERSHIP PROPERTY.

(1) On the dissolution of a partnership, each partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners—

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

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

41. APPORTIONMENT OF PREMIUM WHERE PARTNERSHIP PREMATURELY DISSOLVED.

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

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

42. RIGHTS ON DISSOLUTION FOR FRAUD OR MISREPRESENTATION.

Where an agreement for a partnership is rescinded on the ground of the fraud or misrepresentation of one of the parties to it, the party entitled to rescind is, without prejudice to any other right, entitled—

- (a) to a lien on, or a right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him; and
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and
- (c) to be indemnified by the person guilty of the fraud or making the misrepresentation against all the debts and liabilities of the firm.

43. PROFITS MADE AFTER DISSOLUTION.

(1) Subject to Subsection (2), where—

- (a) a member of a firm dies or otherwise ceases to be a partner; and
- (b) 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 estate,

in the absence of any agreement to the contrary the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made after the dissolution as the court finds to be attributable to the use of his share of the partnership assets, or to interest at the rate of 5% per annum on the amount of his share of the partnership assets.

(2) Where by the agreement for partnership an option is given to the surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and the option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits.

(3) If a partner assuming to act in exercise of an option referred to in Subsection (2) does not in all material respects comply with the terms of the option, he is liable to account under Subsection (1).

44. LIABILITY FOR RETIRING OR DECEASED PARTNER'S SHARE.

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner, or to the representatives 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.

45. DISTRIBUTION OF ASSETS ON FINAL SETTLEMENT OF ACCOUNTS.

In settling accounts between the partners after a dissolution of 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 proportions in which they were entitled to share profits;
- (b) the assets of the firm, including the sums (if any) contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner 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 for advances as distinguished from capital;

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

Office of Legislative Counsel, PNG