

ABILL

ENTITLED

AN ACT to Provide for the formation and operation of general partnerships and for connected purposes.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

1. This Act may be cited as the Partnership (General) Act, 2016, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title and commencement.

2.—(1) In this Act, unless the context otherwise requires—

Interpretation.

“bankrupt” has the meaning assigned to it under the *Insolvency Act*;

- “body corporate” means a body of persons established, or for the establishment of which provision is made, by an enactment and includes a company;
- “business” includes every trade, occupation or profession;
- “company” means a company incorporated or registered pursuant to the *Companies Act* or any body or association incorporated or registered under any enactment, which is prescribed by the Minister, by order, to be a company;
- “competing business” means a business carried on by a partner of a firm, without the agreement of all the other partners of the firm, which competes with and is of the same nature as the partnership business;
- “Court” means the Supreme Court of Judicature of Jamaica and in relation to Part III, shall have the meaning assigned to it under section 52(1);
- “date of bankruptcy” has the meaning assigned to it in the *Insolvency Act*;
- “domestic partnership” or “partnership”, in the absence of express provision to the contrary, means a general partnership governed, or formed and governed, under this Act;
- “foreign limited liability partnership” or “foreign LLP” means a partnership that—
- (a) is formed under the laws of a jurisdiction other than Jamaica; and
 - (b) has the status of a limited liability partnership under those laws;
- “foreign partnership” means a partnership formed under the laws of a jurisdiction other than Jamaica, and “foreign” in relation to any partnership shall be construed accordingly;
- “general partner” means a partner in a partnership who is liable, (whether on his own or jointly or severally with other partners)

for all obligations of the partnership, whether the partnership is a general partnership or a limited partnership;

“general partnership” means—

- (a) a partnership governed by Part II or formed under Part III;
- (b) a partnership governed by Part II that has converted to a partnership under Part III;
- (c) a limited liability partnership governed by Part V;

“limited liability partnership” or “LLP” means—

- (a) a partnership formed under Part III; or
- (b) a partnership governed by Part II which has converted to a partnership under Part III,

which has filed with the Registrar a statement of qualification under section 104, the effect of which is to limit the partners’ liability for the debts and other liabilities incurred by the partnership to, in the case of each partner, the total amount of the capital contribution, if any, made by that partner;

“limited partner” means a partner in a limited partnership who is not a general partner;

“limited partnership” means a limited partnership governed, or formed and governed, under the provisions of the *Partnership (Limited) Act*, or created under the comparable law of another jurisdiction;

“limited partnership agreement” means an agreement as to the affairs of a limited partnership and the conduct of its business;

“partner” means a person who is a party to a partnership agreement;

“partnership” means a relationship which subsists between persons carrying on a business in common with a view of profit and

in relation to Part II shall be construed in accordance with section 8(3) and in relation to Part III shall be construed in accordance with section 52(2);

“partnership agreement” means the agreement among the partners concerning their partnership, including amendments to the agreement, and shall be construed in accordance with, section 5;

“partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;

“partnership interest” or “partner’s interest in the partnership” means all of a partner’s interest in the partnership, including the partner’s transferable interest and all management and other rights;

“partnership matters” means matters affecting the partnership of which the partners would reasonably expect to be kept informed;

“person” includes —

- (a) a partnership governed by Part III of the *Partnership (Limited) Act*;
- (b) a partnership governed or formed and governed under Part III;

“record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

“Register” means the Register of Partnerships with separate legal personality formed under Part III and required by section 55(1) to be kept by the Registrar;

“Registrar” means the Registrar of Companies;

“transfer” includes an assignment, a conveyance, sale, lease, mortgage or security interest, an encumbrance, including a gift and a transfer by operation of law;

“transferable interest” means the right as initially owed by a person in the person’s capacity as partner, to receive distribution from a limited partnership whether or not the person remains or continues to own any part of the right and applies to any fraction of the interest, by whomever owned.

(2) References in this Act to a partnership formed under Part III shall include a partnership that has converted under Part IV, whether or not it has filed a statement of qualification under Part V.

3. The rules of common law and of equity applicable to partnership shall continue in force and apply to partnerships governed by or formed under this Act, except so far as they are inconsistent with the provisions of this Act.

Savings for partnership rules of common law and equity.

4.—(1) A partnership under this Act may be formed either—

Formation of partnerships and conversion of form.

(a) without separate legal personality, and accordingly governed by Part II; or

(b) with separate legal personality, under Part III,

and shall, in either case and subject to section 94, without limiting the application of the other provisions of this Act, be governed by all the provisions contained in the respective Part under which it was formed or deemed to have been formed.

(2) A partnership existing in Jamaica at the date of coming into operation of this Act shall be deemed to have been formed under Part II and shall continue to operate without separate legal personality and otherwise in accordance with the provisions of Part II, unless in accordance with Part IV, it converts to a partnership with separate legal personality governed by Part III.

(3) Where a partnership that was formed or was deemed to have been formed under Part II converts to a partnership governed by Part III, the conversion shall be irreversible.

(4) A partnership formed with separate legal personality under Part III may not convert to a partnership without separate legal personality.

The partnership agreement.

5.—(1) A written partnership agreement may be varied in accordance with its terms, but an unwritten partnership agreement may only be varied if all of the partners agree to the variation.

(2) A partnership agreement shall govern the operation and functioning of the partnership to which it relates, except to the extent that any provision of the partnership agreement is inconsistent with any provision of this Act.

(3) Where a provision of a partnership agreement is inconsistent with any provision of this Act, the provision of this Act shall prevail.

Meaning of “firm”.

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

Knowledge and notice.

7.—(1) For the purposes of this Act—

- (a) a person knows a fact if the person has actual knowledge of it;
- (b) a person has notice of a fact if the person—
 - (i) knows of it;
 - (ii) has received a notification of it; or
 - (iii) has, from all of the facts known to the person at the time in question, reason to know it exists;
- (c) a person is deemed to have duly delivered a notification of a fact to another person if the person takes reasonable steps to inform the other person thereof, whether or not the other person learns of the fact;
- (d) a person receives a notification of a fact when the notification—
 - (i) comes to the person’s attention; or
 - (ii) is delivered at the person’s place of business or at any other place held out by the person as a place for receiving service;

- (e) a body corporate has notice, or receives a notification, of a fact for the purposes of a particular transaction when a person conducting the transaction on behalf of the body corporate knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the person's attention if the person had exercised reasonable diligence;
- (f) a partner's knowledge, notice or receipt of a notification, of a fact relating to the partnership is effective immediately as knowledge by notice to, or receipt of a notification by, the partnership except in the case of a fraud on the partnership committed by or with the consent of that partner.

PART II—*Partnerships without Separate Legal Personality*

8.—(1) A partnership that—

- (a) is not an entity distinct from its partners; and
- (b) does not have perpetual succession,

Partnership
under this
Part.

shall be governed by the provisions of this Act.

(2) A partnership referred to in subsection (1) shall be governed by—

- (a) the provisions of this Part; and
- (b) the provisions of any other enactment that apply to partnerships and which do not expressly exclude their application to partnerships governed by this Part.

(3) Except where otherwise specifically provided, all references in this Part to a partnership shall be construed as references to a partnership governed by this Part.

9.—(1) A partnership that is governed by this Part is formed at the point of commencement of the carrying on of a business in common with a view of profit by the partners.

When
partnership
governed by
this Part.

(2) A partnership governed by this Part is not required to—

- (a) undergo any form of registration or comply with formalities under this Act; or

- (b) have a written partnership agreement, in order to be recognised as a partnership by law.

(3) Nothing in this Part shall be construed as excluding the application of section 3 of the *Registration of Business Names Act* to any partnership governed by this Part.

Rules for determining the existence of partnership governed by this Part.

10. In determining whether a partnership governed by this Part does or does not exist, regard shall be had to the following rules and the provisions of section 11—

- (a) all the circumstances are to be considered and the true intent of the parties is to be ascertained from any agreement, words and conduct of the parties;
- (b) without limiting the generality of paragraph (a), 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 those tenants or owners do or do not share any profits made by the business or use of the property concerned;
- (c) the sharing of gross returns of a business or from property does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any business or property from which or from the use of which the returns are derived.

Determination as to whether a person is a partner in a partnership, governed by this Part.

11. In determining whether a person is a partner in a partnership governed by this Part, regard shall be had to the following rules—

- (a) the receipt by any person of a share of the profits of a business is *prima facie* evidence that the person is a partner in the business, but the receipt of 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;
- (b) without limiting the generality of paragraph (a)—
 - (i) the advance of funds by a person to a business to be repaid from, or the payment of any liquidated amount to a person in instalments or otherwise

out of the accruing profits of the business does not of itself make the person a partner in the business or liable as such;

- (ii) a contract for the remuneration of an employee or agent of a person engaged in a business by a share of the profits of the business does not of itself make the employee or agent a partner in the business or liable as such;
- (iii) a person being the surviving spouse or child or other dependant 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 such receipt, a partner in the business or liable as such;
- (iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that provides for the lender to receive a rate of interest varying with the profits, or to receive a share of the profits arising from carrying on the business does not of itself make the lender a partner with the person or persons carrying on the business or liable as such;
- (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 of such receipt a partner in the business or liable as such.

Relations of Partners to Persons Dealing with them

12.—(1) Subject to subsection (2), every partner is an agent of the firm and his other partners for the purpose of the business of the partnership, and the acts of every 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. Acts of partners to bind the firm.

(2) Subsection (1) shall not apply where the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

Partners bound by acts on behalf of the firm.

13.—(1) Subject to subsection (2), an act or instrument relating to the business of the firm done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, shall be binding on the firm and all the partners.

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

Partner using credit of firm for purposes not connected with the firm.

14. Where a partner pledges credit of the firm for a purpose that apparently is not connected with the firm's ordinary course of business, the firm shall not be bound unless the partner is in fact specially authorised by the other partners; but this section shall not affect any personal liability incurred by an individual partner.

Firm not bound by acts of partner where agreement is made between parties and notice is given.

15. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement shall be binding on the firm with respect to persons having notice of the agreement.

Liability of partners.

16.—(1) Subject to subsection (2), every 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 also severally liable in due course of administration for such debts and obligations.

(2) Subsection (1) applies—

- (a) so far as the debts and obligations remain unsatisfied; but
- (b) subject to the prior payment of the partner's separate debts.

Liability of the firm for wrongs.

17. 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 the other partners of the firm, loss or injury is caused to any person not

being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

18. A firm is liable to make good a loss, in each of the following cases—

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

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

19. Every partner is liable jointly with his partners and also severally, for everything for which the firm while he is a partner therein becomes liable under section 17 or 18.

Liability for wrongs joint and several.

20.—(1) Subject to subsections (2) and (3), if a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein.

Improper employment of trust property for partnership purposes.

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

(3) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

21.—(1) Subject to subsection (2), every person who by words spoken or written or by conduct represents himself, or who knowingly allows himself to be represented, as a partner in a particular firm, is liable as a partner to anyone specified in subsection (2).

Persons liable by "holding out".

(2) Subsection (1) refers to anyone who has on the faith of any representation referred to in subsection (1) given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or allowing the representation to be made.

(3) Where, after a partner's death, the partnership business is continued in the firm name that was used prior to the death of the partner, the continued use of that firm name or of the deceased partner's name as part thereof shall not, of itself, make his executors or administrators, estate or effects, liable for any partnership debts or other liabilities contracted or incurred after his death.

Admissions and representations of partners.

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

Liabilities of incoming and outgoing partners.

23.—(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm or any other person to whom the firm is liable for any debt or other liability of the firm for anything done before he became a partner.

(2) A partner who retires or otherwise ceases to be a partner of a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement or other cessation and nothing in this subsection shall limit the effect of section 16, where the cessation is due to the death of the partner.

(3) A partner referred to in subsection (2), may be discharged from such debts or obligations referred to in that subsection, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guarantee by change of firm.

24. A continuing guarantee given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change of one or more of the partners of the firm to which, or of the firm in respect of the transactions of which, the guarantee or obligation with given.

Relations of Partners to one another

Variation by consent of the terms of partnership.

25. 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 consent may be either expressed or inferred from a course of dealing.

26.—(1) Except with the agreement of all the partners of the firm, a partner is not entitled and shall not be required to—

Making and variation of capital contribution.

(a) contribute capital to the partnership; or

(b) vary the amount of his capital contribution to the partnership.

(2) If a partner contributes capital to the partnership, he is not entitled to interest thereon unless agreed between the partners.

27.—(1) Subject to subsection (3), the property specified in subsection (2), in this Part called “partnership property”, shall be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

Partnership property.

(2) Subsection (1) refers to all property and rights and interests in property originally brought into the partnership or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business.

(3) Notwithstanding subsection (1), the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(4) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land, and purchase other estate or interest in the land out of the profits that are to be used in like manner, the estate or interest in the land so purchased 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.

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

Property bought with partnership money.

Conversion into personal estate of land held as partnership property.

29. Where land or any heritable interest therein 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 also as between the heirs of a deceased partner and his executors or administrators, as personal or moveable and not real or heritable estate.

Procedure against partnership property for a judgment debt against a partner.

30.—(1) After the commencement of this Act, a writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2) Subject to the provisions of the *Security Interests in Personal Property Act*, the Court may—

- (a) on application 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 thereon;
- (b) by the same or a subsequent order 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 the partner in respect of the partnership; and
- (c) 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) For the purposes of subsection (2), the other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

Rules as to interests and duties of partners subject to special agreement.

31. The interests 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, namely—

- (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 the partner—
 - (i) in the ordinary and proper conduct of the business of the firm; or
 - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him;
- (d) every partner may take part in the management of the partnership business;
- (e) no partner shall be entitled to remuneration for acting in the partnership business;
- (f) no person may be introduced as a partner without the consent of all existing partners;
- (g) 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; and
- (h) the partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

32. No majority of the partners in a firm shall expel any partner in the firm unless a power to do so has been conferred by express agreement between the partners. Expulsion of partners.

33.—(1) Where no fixed term has been agreed for the duration of the partnership, it is deemed to be a partnership at will and any partner Determination of partnership at will.

may determine the partnership at any time by giving notice of his intention so to do to all the other partners.

(2) Where the partnership has originally been constituted by a written partnership agreement, a notice in writing, signed by the partner giving it, shall be required for this purpose.

Where partnership for term is continued over, continuance on old terms presumed.

34.—(1) Where a partnership entered into for a fixed term or for a particular undertaking is continued after the term has expired or the undertaking is completed or terminated, and without any express new agreement, the rights and duties of the partners remain the same at completion or termination of the undertaking as they were at the expiration of the term or so far as is consistent with the characteristics of a partnership at will.

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

Duty of partners to render accounts, etc.

35.—(1) Each partner shall be entitled to receive from the partnership—

- (a) true accounts of the business of the partnership; and
- (b) on request, full information of all other things affecting the partnership.

(2) A partner may direct that the accounts and other information referred to in subsection (1) be supplied by the partners to his legal representative.

Accountability of partners for private profits.

36.—(1) Every 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, firm name or business connection.

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

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

Duty of partner not to compete with the firm.

38.—(1) Subject to subsection (2), an assignment by any partner of his share in the partnership, either absolutely or by way of mortgage or redeemable charge, shall not, as against the other partners, entitle the assignee, during the continuance of the partnership, to—

Rights of assignee of share in partnership.

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

(2) An assignment referred to in subsection (1) entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee is required to accept the account of profits agreed to by the partners.

(3) In 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 the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Dissolution of Partnership

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

Dissolution by expiration or notice.

- (a) if entered into for a fixed term, by the expiration of that term;
- (b) if entered into for a particular undertaking, by the completion or termination of that undertaking;
- (c) if entered into for an undefined time or in accordance with section 34, continues after the fixed term has expired without any express new agreement, by any partner giving notice to the other or others of his intention to dissolve the partnership.

(2) In the case of subsection 1(c), the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, being a date after the date of receipt of the notice or, if no date is so mentioned, as from the date of the receipt of the notice.

Dissolution by
bankruptcy,
death or
charge.

40.—(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

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

Dissolution
by illegality
of partner-
ship.

41. 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 the partners to carry it on in partnership.

Dissolution
by the Court.

42.—(1) On application by a partner, the Court may order a dissolution of the partnership in any one or more of the following cases, namely—

- (a) when a partner is shown, to the satisfaction of the Court on an application made pursuant to section 29 of the *Mental Health Act* to be suffering from a mental disorder within the meaning of that Act;
- (b) when a partner, other than the partner applying becomes in any other way permanently incapable of performing his part of the partnership agreement;
- (c) when a partner, other than the partner applying has engaged in such conduct as, in the opinion of the Court, regard being had to the nature of the partnership business, is calculated to prejudicially affect the carrying on of the business;
- (d) when a partner, 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;

- (e) when the partnership is likely to incur losses on a sustained basis thus making it unreasonable to require the partner to continue the partnership;
- (f) whenever, in any case, circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

(2) In the case of an application for dissolution being made under paragraph (c) or (d) of subsection (1), the Court may refuse to make the order if it is satisfied that the partner making the application is responsible for the conduct or breach therein and the other partners do not wish the partnership to be dissolved.

43.—(1) Where a person deals with a firm after a change in the partners constituting the partnership, the person is entitled to treat all partners in the firm as constituted before the change as still being partners of the firm until he has notice of the change.

Rights of persons dealing with firm against apparent partners.

(2) An advertisement of the dissolution of the firm or a change in the partners thereof which is published in the *Gazette* and any daily newspaper circulated in Jamaica, shall be notice thereof to persons who are not engaged in any current or pending business of the firm as at the date of the dissolution or change so advertised.

44. On the dissolution of a partnership or on a person ceasing to be a partner of a firm, any partner may publicly notify the same, and may require the other partner or partners to perform or join in carrying out all necessary and proper acts, if any, which cannot be done without his or their concurrence, arising from the dissolution or cessation.

Right of partners to notify dissolution.

45.—(1) Subject to subsection (2), after 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 wind up the affairs of the partnership and to complete transactions which have commenced but remained unfinished at the time of dissolution, but not otherwise.

Continuing authority of partners for purposes of winding up.

(2) Notwithstanding subsection (1), the firm is in no case bound by the acts of a partner who has become a bankrupt.

(3) The provisions of subsection (2) shall not affect the liability of any person who has after the date of bankruptcy represented himself or knowingly allowed himself to be represented as a partner of the bankrupt.

Rights of partners as to application of partnership property.

46. On dissolution of a partnership every partner is entitled, as against the other partners of the firm and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment 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; and for that purpose any partner or his representatives may, on the dissolution of the partnership, apply to the Court to wind up the business and the affairs of the firm.

Apportionment of premium where partnership prematurely dissolved.

47. 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 thereof as it thinks just, having regard to the terms of the partnership agreement 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 primarily due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing a provision which allows for all or part of the premium to be retained.

Rights where partnership dissolved for fraud or misrepresentation.

48. Where a partnership agreement is rescinded on the ground of the fraud or misrepresentation of the partners, each of the other partners who is 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 that other partner for the purchase of a

share in the partnership and for any capital contributed by that partner;

- (b) stand in the place of the creditors of the firm for any payments made by that other partner in respect of the partnership liabilities; and
- (c) to be indemnified by the person who has committed the fraud or made the representation against all the debts and liabilities of the firm.

49.—(1) Subject to subsection (2), where any partner of a firm has ceased to be a partner, whether by death or otherwise, 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 estate, then, 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—

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

- (a) such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets; or
- (b) interest on the amount of his share of the partnership assets, at the rate of statutory interest that is paid on a judgement debt, as may be prescribed by the Judicature (Supreme Court) (Rate of Interest on Judgment Debts) Order.

(2) Where, by the partnership agreement, an option is given to the surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the outgoing partner or his estate, as the case may be, shall not be entitled to any further or other share of profits; but if any partner in exercising the option does not in all material respects comply with the terms thereof, he is liable to account under subsection (1).

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

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

Rules for
distribution
of assets on
final
settlement of
accounts.

51. In settling accounts between the partners after dissolution of partnership, the following rules shall, subject to any agreement to the contrary, 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;
- (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 and order—
 - (i) in paying the debts and liabilities of the firm to persons who are not partners therein;
 - (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
 - (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

PART III—Partnerships with Separate Legal Personality

Interpretation
for Part and
application.

52.—(1) In this Part—

“court” means a court of competent jurisdiction whether the court is in Jamaica or outside of Jamaica;

“dissociation” means a partner’s disengagement or exit from the partnership in the capacity of a partner, whether voluntarily or otherwise, which does not by itself lead to the dissolution of the partnership or the winding up of the business of the partnership;

“distribution” means a transfer of money or other property from a partnership to a partner’s capacity as a partner or to the partner’s transferee;

“statement” means, as the context may require, a statement of—

- (a) partnership authority under section 59;
- (b) denial under section 61;
- (c) dissociation under section 86;
- (d) dissolution under section 92;
- (e) merger under section 102;
- (f) qualification under section 103;
- (g) foreign qualification under section 107,

or an amendment or cancellation of any of the foregoing;

“transfer” includes an assignment, a conveyance, a sale, lease, mortgage or security interest, an encumbrance, including a gift, and a transfer by operation of law.

(2) Except where otherwise specifically indicated, all references in this Part to a “general partnership” or “partnership” shall be construed as references to a partnership formed under this Part.

(3) Sections 18 and 19 shall apply to partnership governed by this Part.

53.—(1) A partnership formed under this Part—

Partnership
as entity.

- (a) shall have legal personality distinct from its partners;
- (b) has perpetual succession;
- (c) has the power to enter into contracts;
- (d) has the right to acquire and hold any real or personal property in the firm name for purposes for which the firm is constituted and to dispose of or charge such property; and
- (e) shall be governed solely by—
 - (i) the provisions of this Part;
 - (ii) the other provisions of this Act, except Part II; and

- (iii) the provisions of any other enactment that apply to partnerships and which do not expressly exclude their application to partnerships formed under this Part.

(2) A partnership formed under this Part has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the partnership by a breach of the partnership agreement or violation of a duty to the partnership.

Formation of
partnership.

54.—(1) Any two or more persons who—

- (a) desire to carry on a business in common with a view of profit; and
- (b) desire to do so through a partnership with separate legal personality,

may apply to have a partnership formed under this Part by following the procedure set out in subsection (2).

(2) Persons desirous of having a partnership formed under this Part shall—

- (a) make an application to the Registrar in such form as may be prescribed; and
- (b) pay to the Registrar such fee as may be prescribed.

(3) A partnership shall, on making an application under subsection (2)(a) file with the Registrar a statement of partnership authority, which—

- (a) shall include—
 - (i) the name of the partnership;
 - (ii) the principal place of business of the partnership and of one office in Jamaica, if there is one; and

- (iii) the names and addresses of all the partners or of an agent appointed and maintained by the partnership for the purposes of section 56(1); and
- (b) may state the authority, or limitation on the authority of some or all of the partners to enter into other transactions on behalf of the partnership; and
- (c) may state any other matter.

(4) Applicants under this section are not required to register under the *Registration of Business Names Act*, unless the proposed partnership meets the criteria set out in section 3 of that Act.

(5) Where persons described in subsection (1) fail to comply with paragraph (a) or (b) of subsection (2), any business carried on by them in common and in fulfilment of the purpose set out in subsection (1) shall be regarded in law as a partnership governed by Part II, and the exemption from the requirement of registration under the *Registration of Business Names Act* shall not apply to such a partnership.

Duties of Registrar to register under this Part.

55.—(1) The Registrar shall keep whether electronically or otherwise, a register of partnerships formed under this Part, and shall make the Register, upon payment of the prescribed fee, available for inspection by members of the public at all reasonable times during normal business hours.

(2) Upon receipt by the Registrar of an application and the prescribed fee under section 54(2)(a) and (b) the Registrar shall, upon being reasonably satisfied that the application has been—

- (a) duly completed; and
- (b) signed by each of the applicants, or on their behalf by persons with authority to bind them, as the case may be,

enter in the Register the name of the partnership.

(3) Upon entering the name of a partnership in the Register under subsection (2), the Registrar shall issue a certificate of

registration of the partnership as a partnership entity, in the prescribed form.

(4) The Registrar shall ensure that a partnership registered under this section is registered with the words "Partnership Entity" or either of the abbreviations "P.E." or "PE" at the end of its name.

Effect of
statement of
partnership
authority.

56.—(1) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(2) If a filed statement of partnership authority is executed pursuant to subsections (1) and (2) of section 59 and states the name of the partnership but does not contain all of the other information required to a person not a partner as provided in subsection (4) the statement nevertheless operates with respect to a person not a partner as provided in subsections (3) and (4).

(3) Except as otherwise provided in subsection (5), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows—

- (a) a grant of authority contained in a filed statement of partnership authority is conclusive in favour of a person who gives value without knowledge to the contrary so long as to the extent that a limitation on that authority is not then contained in another filed statement;
- (b) a filed cancellation of a limitation on authority receives the previous grant of authority.

(4) Except as otherwise provided in subsection (5), and sections 86 and 92(3), a person who is not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a statement of partnership authority filed with the Registrar.

(5) Unless earlier cancelled, a filed statement of partnership authority shall be cancelled by operation of law five years after the

date on which the statement, or the most recent amendment, was filed with the Registrar.

57. Except where section 104 applies, to a partnership formed under this Part, a partnership shall at all times use the words "Partnership Entity" or either of the abbreviations "P.E." or "PE" at the end of its name in all signs, letterheads and other written records containing its name.

Duty of partnership to use required words or abbreviation at the end of name.

58.—(1) Relations among the partners and between the partners and the partnership shall be governed by a written partnership agreement.

Effect of partnership agreement: non-waivable provisions.

(2) Subject to subsection (3), to the extent that the partnership agreement does not otherwise provide, this Part governs relations between the partners and the partnership.

(3) Notwithstanding subsection (2), the partnership agreement shall not—

- (a) vary the rights and duties under section 59 except to eliminate the duty to provide copies of statements to all of the partners;
- (b) unreasonably restrict the rights of access to books and records under section 69(2);
- (c) eliminate the duty of loyalty under section 70(2) or 82(2)(c);
- (d) unreasonably reduce the duty of care under section 70(3) or 82(2)(c);
- (e) eliminate the obligation of good faith and fair dealing under section 70(4);
- (f) vary the power to dissociate as a partner under section 79(1) except to require the notice under section 80(a)(1)(a) to be in writing;
- (g) vary or exclude the right to seek expulsion by way of judicial determination as specified in section 80(1)(e);
- (h) vary the requirement to wind up the partnership business specified in paragraphs (d), (e) or (f) of section 88(1);

- (i) vary the provisions of this Act applicable to a LLP; or
 - (j) restrict rights of third parties under this Part.
- (4) Notwithstanding—
- (a) paragraph (c) of subsection (3)—
 - (i) the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, so long as they are not manifestly unreasonable;
 - (ii) all of the partners or a number or percentage specified in the partnership agreement may authorise or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty; and
 - (b) paragraph (e) of subsection (3), a partnership agreement may prescribe the standards by which the performance of the obligation of good faith is to be measured; however, the standards are not to be manifestly unreasonable.

Execution,
filing and
recording of
statements.

59.—(1) A statement filed by a partnership shall be executed by at least two partners, and other statements shall be executed by a partner or other person authorised by this Part.

(2) An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under the *Voluntary Declarations Act* that the contents of the statement are accurate.

(3) A person who is authorized by this Part to file a statement and files any such statement, may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(4) Subject to subsection (5), a person who files a statement pursuant to this section shall promptly send a copy of the statement to

every non-filing partner and to any other person named as a partner in the statement.

(5) Notwithstanding subsection (4), failure to send a copy of a statement to a partner or other person shall not limit the effectiveness of the statement as to a person who is not a partner.

60. A partnership shall file with the Registrar a statement of partnership authority, which— Statement of partnership authority

- (a) shall include—
 - (i) the name of the partnership;
 - (ii) the street address of its principal office and of one office in Jamaica, if there is one;
 - (iii) the names and mailing address of all of the partners or an agent appointed and maintained by the partnership for the purpose of subsection 21;
- (b) may state the authority or limitation on the authority of some or all of the partners to enter into other transactions on behalf of the partnership;
- (c) may state any one matter: however; where the statement relates to a grant of authority to transfer real property held in the name of the partnership a copy of the statement shall be filed with the Registrar.

61.—(1) A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to section 56(1) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. Statement of denial.

(2) A statement of denial is a limitation on authority as provided in subsections (3) and (4) of section 56.

62. Subject to the effect of a statement of partnership authority under section 56— Partner agent of partnership.

- (a) each partner is an agent of the partnership for the purposes of its business;

- (b) an act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received notification that the partner lacked authority; and
- (c) an act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorised by the other partners.

Liability of partnership for loss or injury.

63.—(1) A partnership shall be liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or admission, or other actionable conduct, of a partner acting in the ordinary course of business of the firm or with the authority of the partnership.

(2) If, in the course of the firm's business or while acting with the authority of the firm, a partner received or causes the firm to receive money or property of a person who is not a partner and the money or property is supplied by a partner, the firm shall be liable for the loss.

Partner's liability.

64.—(1) Except as otherwise provided in subsection (2), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

Actions by and against partnership and partners.

65.—(1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and, in so far as it is not inconsistent with section 64, any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner, and a judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 64 and—

- (a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
- (b) the Court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that—
 - (i) the partnership assets subject to execution are clearly insufficient to satisfy the judgment;
 - (ii) exhaustion of partnership assets is excessively burdensome; or
 - (iii) the grant of permission is an appropriate exercise of the Court's equitable powers;
- (c) the partner has agreed that the creditor need not exhaust partnership assets;
- (d) the partnership is a bankrupt; or
- (e) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 66.

Liability of
purported
partner.

66.—(1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership with one or more persons who are not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership.

(2) If the representation referred to in subsection (1), either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant.

(3) In any of the circumstances set out in subsections (1) and (2)—

- (a) if partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner; or
- (b) if no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(4) If a person referred to in subsection (1) and (2), either alone or with one or more persons that are not partners, is represented to be a partner in an existing partnership, the purported partner is to be treated as an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation.

(5) In the circumstances set out in subsection (4)—

- (a) if all of the partners of the existing partnership consent to the representation, an act or obligation of the partnership results; or

- (b) if fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(6) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(7) A person does not continue to be liable as a partner merely because of a failure, whether or not of that person, to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(8) Except as otherwise provided in subsection (1), (2), (3), (4) or (5), persons who are not partners as to each other are not liable as partners to other persons.

67.—(1) Unless otherwise agreed among the partners—

Partner's
rights and
duties.

- (a) each partner is deemed to have an account that is—
- (i) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
 - (ii) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.
- (b) each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits;
- (c) a partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property;

- (d) a partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute;
- (e) a payment or advance made by a partner which gives rise to a partnership obligation under paragraph (c) or (d) constitutes a loan to the partnership;
- (f) each partner has equal rights in the management and conduct of the partnership business;
- (g) a partner may use or possess partnership property only on behalf of the partnership;
- (h) a partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership;
- (i) a person may become a partner only with the consent of all of the partners;
- (j) a difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners, and an act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all the partners;

(2) This section does not affect the obligations of a partnership to other persons under section 62.

Distributions
in kind.

68. A partner has no right to receive, and may not be required to accept, a distribution in kind.

Partner's
rights and
duties with
respect to
information.

69.—(1) A partnership shall keep books and records of its affairs, and these books and records shall be kept at its principal place of business.

(2) A partnership shall, during ordinary business hours and at such reasonable cost as may be determined by the partnership, provide partners and their agents and attorneys the opportunity to

access, inspect or copy its books and records, and shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners.

(3) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability—

- (a) without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this Part; and
- (b) on demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

70.—(1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set out in subsections (2) and (3).

General standards of partner's conduct.

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following—

- (a) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
- (b) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
- (c) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(3) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is

limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or knowing violation of law.

(4) A partner shall discharge the duties to the partnership and the other partners under this Part or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under this Part or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Actions by
partnership
and partners.

71.—(1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to—

- (a) enforce the suing partner's rights under the partnership agreement;
- (b) enforce the suing partner's rights under this Part, including—
 - (i) the partner's rights under section 67, 69 or 70;
 - (ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 83 or enforce any other right under sections 80 to 82, or sections 83 to 87; or

- (iii) the partner's right to compel a dissolution and winding up of the partnership business under section 88 or enforce any other right under sections 88 to 94; or
- (c) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership.

72.—(1) The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions.

Partner's transferable interest in partnership.

(2) The transferable interest of a partner referred to in subsection (1) shall be treated as personal property.

73.—(1) Subject to subsection (2), a partner may transfer, in whole or in part, his transferable interest in the partnership.

Transfer of partner's transferable interest.

(2) A transfer under subsection (1) shall not—

- (a) by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
- (b) as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to—
 - (i) participate in the management or conduct of the partnership business;
 - (ii) require access to information concerning partnership transactions; or
 - (iii) inspect or copy the partnership books or records.

(3) A transferee of a partner's transferable interest in the partnership has a right to—

- (a) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- (b) receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(c) seek under section 88(1)(f) a judicial determination that it is equitable to wind up the partnership business.

(4) In a dissolution and winding up, a transferee shall be entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(5) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(6) A partnership need not give effect to a transferee's right under this section until it has notice of the transfer.

(7) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Partner's
transferable
interest
subject to
charging
order.

74.—(1) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment, and such court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership, of which the court referred to in subsection (1) may order a writ of execution or an equivalent enforcement process subject to the charging order at any time.

(3) The purchaser at—

- (a) a sale resulting from the execution or other enforcement of a charging order pursuant to subsection (2); or
- (b) a sale by a receiver appointed under subsection (1), has the rights of a transferee.

(4) At any time before any sale referred to in subsection (3), an interest charged may be redeemed—

- (a) by the judgment debtor;
- (b) with property other than partnership property, by one or more of the other partners; or
- (c) with partnership property, by one or more of the other partners with the consent of all the partners whose interest are not so charged.

(5) This Part does not deprive a partner of a right, whether provided for by any enactment or by any applicable principle of common law or equity, of exemption in respect of the partner's interest in the partnership.

(6) Without limiting the application of the provisions of the *Security Interest in Personal Property Act*, this section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

75.—(1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

Continuation of partnership beyond definite term or particular undertaking.

(2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Partnership Property

76. Property acquired by a partnership is property of the partnership and not of the partners individually.

Partnership property.

When property is partnership property.

77.—(1) Property is partnership property if acquired in the name of—

- (a) the partnership; or
- (b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(2) Property is acquired in the name of the partnership by a transfer to—

- (a) the partnership in its name; or
- (b) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Transfer of partnership property.

78.—(1) Partnership property may be transferred as follows—

- (a) subject to the effect of a statement of partnership authority under section 56, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;
- (b) partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the

name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; or

- (c) partnership property held in the name of one or more persons, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name property is held.

(2) A partnership may recover partnership property from a transferee only if the partnership proves that execution of the instrument of initial transfer did not bind the partnership under section 62 and—

- (a) as to a subsequent transferee who gave value for property transferred under subsection (1), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or
- (b) as to a transferee who gave value for property transferred under subsection (1)(c), proves that the transferee knew or had received notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property under subsection (2) from any earlier transferee of the property.

(4) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person, then the person may execute a document in the name of the partnership to show evidence of vesting of the property in that person and may file or record the document.

Partner not co-owner of partnership property.

79. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

Partner's Dissociation

Events causing partner's dissociation.

80.—(1) A partner is dissociated from a partnership upon the occurrence of any of the following events—

- (a) the partnership's having notice of the partner's express will to withdraw as a partner on a date specified by the partner;
- (b) an event agreed to in the partnership agreement as causing the partner's dissociation;
- (c) the partner's expulsion pursuant to the partnership agreement;
- (d) the partner's expulsion by the unanimous vote of the other partners if—
 - (i) it is unlawful to carry on the partnership business with that partner;
 - (ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a Court order charging the partner's interest, which has not been sold pursuant to the charging order;
 - (iii) within ninety days after the partnership notifies a corporate partner that it will be expelled because—
 - (A) it has been dissolved in accordance with the applicable law; or
 - (B) its charter has been revoked or its right to conduct business has been suspended by the jurisdiction of its incorporation,

there is no reinstatement or other official act bringing its dissolution to an end or no

- reinstatement of its charter or its right to conduct business; or
- (iv) a partnership that is a partner has been dissolved and its business is being wound up;
- (e) the partner has been expelled by judicial determination on application by the partnership because—
- (i) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - (ii) the partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 70; or
 - (iii) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- (f) the partner—
- (i) becoming a bankrupt;
 - (ii) executing an assignment for the benefit of creditors;
 - (iii) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
 - (iv) failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

- (g) in the case of a partner who is an individual—
 - (i) the partner's death;
 - (ii) the appointment of a guardian or general conservator of the person;
 - (iii) the making of an order under section 29 of the *Mental Health Act* with respect to the partner; or
 - (iv) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
- (h) in the case of a partner who is such by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee; or
- (i) in the case of a partner who is such by virtue of being then personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative.

(2) For the purposes of paragraph (f) or (g)(ii) of subsection (1), the events specified therein shall, include an equivalent event in an applicable jurisdiction other than Jamaica, in relation to the partner.

81.—(1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 80(1)(a).

(2) A partner's dissociation is wrongful only if—

- (a) it is in breach of an express provision of the partnership agreement; or

Partner's
power to
dissociate:
wrongful
dissociation.

- (b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking—
- (i) the partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under paragraphs (f) to (i) of section 80(1), or another partner's wrongful dissociation under this subsection;
 - (ii) the partner is expelled by judicial determination under section 80(1)(e);
 - (iii) the partner is dissociated by becoming a bankrupt; or
 - (iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it wilfully dissolved or otherwise caused itself to be terminated.

(3) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation, and the liability is in addition to any other obligation of the partner to the partnership or to the other partners.

82.—(1) If a partner's dissociation results in dissolution and winding up of the partnership business, sections 88 to 94 apply; otherwise, sections 83 to 87 shall apply. Effect of partner's dissociation.

(2) Upon a partner's dissociation—

- (a) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 90;
- (b) the partner's duty of loyalty under section 70(2)(c) terminates; and

- (c) the partner's duty of loyalty under paragraphs (a) and (b) of section 70(2) and duty of care under section 70(3) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 89.

Partner's Dissociation when Business not Wound up

Purchase of
dissociated
partner's
interest.

83.—(1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 88, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2).

(2) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 94(2) if, on the date of dissociation—

- (a) the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner; and
- (b) the partnership were wound up as of that date.

(3) In any of the circumstances set out in subsection (2), interest shall be paid from the date of the dissociation to the date of payment at the rate, (if any) agreed to by the partners as provided for in the partnership agreement.

(4) Damages for wrongful dissociation under section 81(3) and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price, and interest shall be paid from the date the amount owing becomes due to the date of payment at the rate, if any, provided in the partnership agreement or such rate as may otherwise be determined by a court.

(5) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities,

whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 84.

(6) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred and twenty days after a written demand for payment, the partnership shall pay, or cause to be paid to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by the amount it estimates by way of any offsets and accrued interest under subsection (4).

(7) If a deferred payment is authorized under subsection (9), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by the amount it estimates by way of offsets and accrued interest under subsection (4), stating—

- (a) the time of payment;
- (b) the amount and type of security for payment; and
- (c) the other terms and conditions of the offer.

(8) The payment or tender required by subsection (6) or (7) shall be accompanied by the following—

- (a) a statement of partnership assets and liabilities as of the date of dissociation;
- (b) the latest available partnership balance sheet and income statement if the partnership maintains such financial statement, balance sheets and income statements;
- (c) an explanation of how the estimated amount of the payment was calculated; and
- (d) written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred and twenty days after the written notice, the dissociated partner commences an action to determine—
 - (i) the buyout price;

- (ii) any offsets under subsection (4); or
- (iii) other terms of the obligation to purchase.

(9) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking shall not be entitled to payment for any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of a court that earlier payment will not cause undue hardship to the business of the partnership, and a deferred payment shall be adequately secured and bear interest, at the rate, if any, provided in the partnership agreement.

(10) A dissociated partner may maintain an action against the partnership, pursuant to section 71(2)(b)(ii), to determine—

- (a) the buyout price of that partner's interest;
- (b) any offsets under subsection (4); or
- (c) other terms of the obligation to purchase.

(11) An action under subsection (10) shall be commenced within—

- (a) one hundred and twenty days after the partnership has tendered payment or an offer to pay; or
- (b) within one year after written demand for payment, if no payment or offer to pay is tendered,

and the court may be requested to determine the buyout price of the dissociated partner's interest, any offset due under subsection (4), and accrued interest, and may enter judgment for any additional payment or refund and the Court may be requested to determine the interest and may enter judgment.

(12) If deferred payment is authorised under subsection (9), the court shall also determine the security for payment and other terms of the obligation to purchase.

(13) A court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted in an arbitrary or vexatious manner, or not in good faith, and the finding may be based on the partnership's failure to tender payment or an offer to pay, or to comply with subsection (8).

84.—(1) For two years after a partner dissociates without thereby causing a dissolution and winding up of the partnership business, the partnership, including a surviving entity under sections 95 to 103, is bound by an act of the dissociated partner which would have bound the partnership under section 62 before dissociation, only if at the time of entering into the transaction the other party—

Dissociated partner's power to bind and liability to partnership.

- (a) reasonably believed that the dissociated partner was then a partner;
- (b) did not have notice of the partner's dissociation; and
- (c) is not deemed to have had knowledge or notice under section 86(3).

(2) A dissociated partner is liable to indemnify the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1).

85.—(1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation, and a dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2).

Dissociated partner's liability to other persons.

(2) A partner who dissociates without thereby causing a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or surviving entity under sections 95 to 103, within two years after the partner's dissociation, only if—

- (a) the partner is liable for the obligation under section 63; and

- (b) at the time of entering into the transaction the other party—
- (i) reasonably believed that the dissociated partner was then a partner;
 - (ii) did not have notice of the partner's dissociation; and
 - (iii) is deemed not to have had knowledge or notice under section 86(3).

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociating partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

Statement of dissociation.

86.—(1) A dissociated partner or the partnership may file with the Registrar a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 56(3).

(3) For the purposes of sections 84(1)(c) and 85(2)(b)(ii), a person who is not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

Continued use of partnership name.

87. Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

Winding up Partnership Business

Events causing dissolution and winding up of partnership business.

88.—(1) A partnership is dissolved, and its business shall be wound up, only upon occurrence of any of the following events—

- (a) in a partnership at will, the partnership's having received notice from a partner, other than a partner who is dissociated

under paragraphs (b) to (i) of section 80(1), of that partner's express will to withdraw as a partner, on a date or on a later date specified by the partner;

- (b) in a partnership for a definite term or particular undertaking—
 - (i) within ninety days after a partner's dissociation by death or otherwise under paragraphs (f) to (i) of section 80(1) or wrongful dissociation under section 81(2), at least half of the remaining partners express the will to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to section 81(2)(b)(i) constitutes the expression of that partner's will to wind up the partnership business;
 - (ii) all of the partners express the will to wind up the partnership business; or
 - (iii) the expiration of the term or the completion of the undertaking;
- (c) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;
- (d) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued;
- (e) on application by a partner, a judicial determination is made that—
 - (i) the economic purpose of the partnership is likely to be unreasonably frustrated;
 - (ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or
 - (iii) it is otherwise not reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

- (f) on application by a transferee of a partner's transferable interest, a judicial determination is made that it is equitable to wind up the partnership business—
 - (i) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
 - (ii) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

(2) Notwithstanding paragraph (d) of subsection (1), a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for the purposes of this section.

Partnership
continues
after
dissolution.

89.—(1) Subject to subsection (2), a partnership continues after dissolution only for the purpose of winding up its business, and the partnership is terminated when the winding up of its business is completed.

(2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership business wound up and the partnership terminated and, in that event—

- (a) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver shall be determined as if dissolution had never occurred; and
- (b) the rights of a third party accruing under section 91(a) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

90.—(1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, a court, for good cause shown, may order judicial supervision of the winding up. Right to wind up partnership business.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) The person winding up a partnership's business may—

- (a) preserve the partnership's business or property as a going concern for a reasonable time;
- (b) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
- (c) settle and close the partnership's business;
- (d) dispose of and transfer the partnership's property;
- (e) discharge the partnership's liabilities;
- (f) distribute the assets of the partnership pursuant to section 94;
- (g) settle disputes by mediation or arbitration; and (h) perform other necessary acts.
- (h) perform other necessary acts.

91. Subject to section 93, a partnership is bound by a partner's act after dissolution that— Partner's power to bind the partnership after dissolution.

- (a) is appropriate for winding up the partnership's business; or
- (b) would have bound the partnership under section 62 before dissolution, if the other party to the transaction did not have notice of the dissolution.

92.—(1) After dissolution, a partner who has not wrongfully dissociated shall file with the Registrar a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business. Statement of dissolution.

(2) A statement of dissolution cancels a filed statement of partnership authority for the purposes of section 56(3).

(3) For the purposes of sections 62 and 91, a person who is not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(4) After filing a statement of dissolution, a dissolved partnership may file a statement of partnership authority which will operate with respect to a person that is not a partner as provided in section 56(3) in any transaction, whether or not the transaction is appropriate for winding up the partnership's business.

Partner's liability to other partners after dissolution.

93.—(1) Except as otherwise provided in subsection (2) and section 64, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 94.

(2) A partner who, with knowledge of the dissolution, incurs a partnership liability under section 91(b) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

Settlement of accounts and contributions among partners.

94.—(1) Unless otherwise agreed among the partners and subject to the provisions of the *Insolvency Act*, in winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors, and any surplus shall be applied to paying in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2).

(2) Each partner shall be entitled to a settlement of all partnership accounts upon winding up of the partnership business and, in settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts.

(3) The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's

account, and a partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 64.

(4) If a partner fails to contribute the full amount required under subsection (2), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 64.

(5) A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 64.

(6) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 64.

(7) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(8) Any of the following persons may enforce a partner's obligation to contribute to the partnership, namely—

- (a) an assignee for the benefit of creditors of a partnership;
- (b) an assignee for the benefit of creditors of a partner;
- (c) a person appointed by a court to represent creditors of a partnership;
- (d) a person appointed by a court to represent creditors of a partner; or
- (e) a trustee appointed under the *Insolvency Act* in respect of the estate of a partnership or a partner.

PART IV—*Conversions and Mergers*

Conversion of partnership formed under Part II to partnership with separate legal personality.

95.—(1) For the purposes of this Part reference to “partner” shall include both a general partner and a limited partner.

(2) A partnership governed by Part II may, subject to the terms of the partnership agreement, convert to a partnership with separate legal personality under Part III, by filing with the Registrar a statement of conversion in such form as may be prescribed and on paying the prescribed fee.

(3) The terms and conditions of a conversion under subsection (2) are required to be approved by all of the partners or by a number or percentage, if any, specified for conversion in the partnership agreement.

(4) The conversion shall take effect upon filing of the statement of conversion with the Registrar in accordance with subsection (2).

(5) The partnership shall, no later than five days after the filing of a statement of conversion under subsection (2), publish a notice thereof in the prescribed form in the *Gazette* and any daily newspaper in circulation in Jamaica.

(6) Subject to subsection (7), when a conversion takes effect pursuant to this section—

- (a) all property owned by the converting partnership immediately prior to conversion shall thereupon rest absolutely and beneficially in the converted entity;
- (b) all obligations of the converting partnership shall continue as obligations of the converted entity; and
- (c) pending action or proceeding by or against the converting partnership may be continued by or against the converted entity as if the conversion had not occurred.

(7) Notwithstanding subsection (6), the partners of the converting partnership shall continue to have personal liability in respect of obligations referred to in subsection (6)(b) and any pending action or proceeding against the converting partners referred in subsection

(6)(c), subsisting immediately prior to the conversion, as if the conversion had not taken place.

(8) References in this section to property owned by or obligations of the converting partnership or a pending action or proceedings by or against the converting partnership shall be construed as references to such property obligation, actions or proceedings held or owed by the partners of the converting partnership or brought by or against them, in their capacity as partners solely and not in any other capacity.

(9) For greater certainty, the following provisions and the other provisions of the Act excluding the provisions of Part II shall apply to a partnership that converts unless this section with effect from the date of conversion—

- (a) section 4(3);
- (b) section 55(3); and
- (c) section 57.

96.—(1) A general partnership under Part III may be converted to a limited partnership under Part III of the *Partnership (Limited) Act* pursuant to this section.

Conversions of general partnership under Part III to limited partnership under Part III of the *Partnership (Limited) Act*.

(2) The terms and conditions of a conversion of a general partnership to a limited partnership shall be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After conversion is approved by the partners, the general partnership shall file with the Registrar a notice comprising a written extract of the decision approving the conversion certified under the hand of a partner, in the prescribed form, and the notice shall include—

- (a) a statement that the partnership is converted to a limited partnership from a general partnership with effect from the date of the filing or the later date specified therein;

- (b) the firm name prior to conversion; and
- (c) a statement of the number and percentage of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) Subject to subsection (5), the conversion takes effect when the notice referred to in subsection (3) is filed with the Registrar or at any later date specified in the notice.

(5) Notwithstanding the provisions of subsection (4), the conversion shall not take effect until a statement has been filed with the Registrar.

(6) Upon the conversion taking effect, the Registrar shall cancel the certificate of registration referred to in section 55(3) and issue an appropriate certificate of limited partnership under section 30 or 35, where applicable of the *Partnership (Limited) Act*.

(7) Subject to subsection (8), a general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect and, if the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect.

(8) Notwithstanding subsection (7), each limited partner's liability for all other obligations of each limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the provisions of the *Partnership (Limited) Act*.

Conversion
of limited
partnership
to general
partnership
under Part
III.

97.—(1) A limited partnership may be converted to a partnership under Part III pursuant to this section.

(2) Notwithstanding any provision to the contrary in a limited partnership agreement, a limited partnership shall not be converted to a general partnership unless all the terms and conditions of the conversion have been approved by all of the partners.

(3) After the conversion is approved by the partners, the partnership shall file with the Registrar a notice comprising a written extract of the decision approving the conversion certified under the hand of a partner and such notice shall include—

- (a) a statement that the partnership is converted to a general partnership with effect from the date of filing of such later date as may be specified therein; and
- (b) the firm's name prior to the concession.

(4) The conversion takes effect when the notice referred to in subsection (3) is filed with the Registrar or at any later date specified in the notice.

(5) Upon the conversion taking effect the Registrar shall cancel the certificate of limited partnership and shall issue a certificate of registration referred to in section 55(3).

(6) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect and, except as otherwise provided in section 65, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

98.—(1) A general partnership or limited partnership that has been converted pursuant to section 96 or section 97 shall not be regarded in law as a separate or distinct entity from that which existed before conversion but shall instead be regarded as the same entity that existed before conversion, subject to the new characteristics brought about by the conversion.

Effect of
conversion:
entity
unchanged.

(2) When a conversion takes effect pursuant to section 97 or 98—

- (a) all property owned by the converting general partnership or limited partnership remains vested in the converted entity;

- (b) all obligations of the converting general partnership or limited partnership continue as obligations of the converted entity; and
- (c) a pending action or proceeding by or against the converting general partnership or limited partnership may be continued by or against the converted entity as if the conversion had not occurred.

Restrictions
on conver-
sion.

99.—(1) In addition to the restriction provided for in section 4(4), the following restrictions shall apply—

- (a) subject to subsection (2), a partnership governed by Part II may not, either under this Act or under any other enactment, convert to—
 - (i) a LLP; or
 - (ii) a limited partnership governed, or formed and governed, under Part III of the provisions of the *Partnership (Limited) Act*;
- (b) a partnership formed under Part III may not, either under this Act or under any other enactment, convert to a limited partnership governed by the provisions of Part II of the *Partnership (Limited) Act*.

(2) For greater clarity nothing in subsection (1)(a) precludes a partnership that has converted under section 95 (having formerly been governed by Part II) from converting to any entity referred to in subparagraph (i) or (ii) of subsection (1)(a).

Merger of
partnerships.

100.—(1) Pursuant to a plan of merger approved as provided for in subsection (3), a partnership may be merged with one or more general partnerships or limited partnerships.

- (2) The plan of merger shall be in writing and shall set out—
 - (a) the name of each partnership that is a party to the merger;
 - (b) the name of the surviving entity into which the other partnerships will merge;

- (c) whether the surviving entity is a general partnership or a limited partnership;
- (d) the terms and conditions of the merger;
- (e) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part;
- (f) the street address of the surviving entity's principal place of business;
- (g) the names of the partners of each partnership that is a party to the merger; and
- (h) as regards each partner in the surviving entity, whether that partner is a general partner or a limited partner.

(3) The plan of merger shall not take effect unless it is approved—

- (a) in the case of a general partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
- (b) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the jurisdiction in which the limited partnership is organised and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided for in the plan.

(5) The merger takes effect on the later of—

- (a) the approval of the plan of merger by all parties to the merger, as provided for in subsection (3);
- (b) the filing of all documents required by law to be filed as a condition precedent to the effectiveness of the merger; or

(c) any effective date specified in the plan of merger.

(6) Where the surviving entity is a foreign partnership it shall—

- (a) maintain at all times during the relevant period an agent for service of process in any action or proceeding against the surviving entity to enforce an obligation of a domestic partnership that is a party to the merger, such agent being a person who is resident in Jamaica; or
- (b) file with the Registrar, within fourteen days of any change of the agent a notice specifying the name and street address of the agent appointed pursuant to such change.

(7) For the purposes of subsection (6), “relevant period” means—

- (a) the period of six years commencing on the effective date of the merger;
- (b) if the surviving entity has acquired real estate in Jamaica consequent upon the merger, the period of twelve years commencing on the effective date of the merger:

However, if any action or proceeding subsists or is brought against the surviving entity by an action or proceeding referred to in subsection (6)(a), the relevant period shall be extended until the final determination of such action or proceeding.

Effect of
merger.

101.—(1) When a merger takes effect—

- (a) the separate existence of every partnership that is a party to the merger, other than the surviving entity, ceases;
- (b) all property owned by each of the merged partnerships vests in the surviving entity;
- (c) all obligations of every partnership that is a party to the merger become the obligations of the surviving entity; and
- (d) a pending action or proceeding by or against a partnership that is a party to the merger may, on application to the court

by any party to the action or proceedings, be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(2) A surviving entity that is a foreign partnership shall promptly notify the Registrar of the mailing address of its principal place of business and of any change of address.

(3) A partner of the surviving entity shall be liable for —

- (a) all obligations of a party to the merger for which the partner was personally liable before the merger;
- (b) all other obligations of the surviving entity incurred before the merger by a party to the merger, but subject to subsection (4) those obligations may be satisfied only out of property of the surviving entity; and
- (c) except as otherwise provided in section 63, all obligations of the surviving entity incurred after the merger takes effect, however, as regards a partner who is a limited partner, those obligations of the surviving entity may be satisfied only out of property of the surviving entity.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving entity, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy the party's obligations to the surviving entity, in the manner provided in section 94 or under the applicable laws of the jurisdiction in which the party was formed, as the case may be, as if that party was dissolved.

(5) Without limiting the effect of section 85 a partner of a party to a merger who does not become a partner of the surviving entity is, as of the date the merger takes effect, dissociated from that party, and the surviving entity shall cause the partner's interest in that party to be purchased under section 83 or the applicable provision of any other enactment specifically applicable to that partner's interest with respect to a merger.

Statement of
merger.

102.—(1) After a merger, the surviving entity shall file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger shall contain—

- (a) the name of each partnership that is a party to the merger;
- (b) the name of the surviving entity into which the partnerships were merged;
- (c) the street address and if different, the mailing address of the surviving entity's principal place of business, and of any office in Jamaica;
- (d) whether the surviving entity is a general partnership or a limited partnership;
- (e) where the surviving entity is a foreign partnership, the name and address of an individual who is resident in Jamaica or any other person who may lawfully transact business in Jamaica who has been appointed as an agent for service of process in any action or proceedings against the surviving entity to enforce an obligation of a domestic partnership that is a party to the merger.

(3) Where, by virtue of section 101(l)(b), any property that is registered in Jamaica in a registry established pursuant to any enactment has been vested in the surviving entity pursuant to a merger, the Registrar responsible for the maintenance of the registry, upon receiving a certified copy of the filed statement of merger duly certified by the Registrar as a true copy shall make such endorsement or other entry in the register and on or in any related certificate of the title as may be required to reflect the surviving entity's ownership of the property.

(4) The Registrar may, prior to making an endorsement under subsection (3), require evidence of the vesting to be substantiated

by a voluntary declaration made by or on behalf of the partner or any other entity in whose name the property was registered immediately before the vesting.

(5) For the purposes of subsection (3) references to a registry or a Registrar shall include a reference, respectively, to any office of record in Jamaica or a depository established and operated under records and the person responsible for keeping of the records or management of the depository.

103. The provisions of sections 100 to 102 are not exclusive, and partnerships may be merged in any other manner provided by law.

Provisions of sections 100 to 102 non-exclusive *re* conversion or merger.

PART V—*Limited Liability Partnerships*

104.—(1) Subject to subsection (11), a partnership may become a limited liability partnership pursuant to this section.

Statement of qualification as LLP.

(2) The terms and conditions on which a partnership becomes a LLP shall be approved by the vote stipulated by the partnership agreement as being necessary to amend any provision in the partnership agreement:

However, in the case of a partnership agreement that—

- (a) contains express provisions imposing obligations to contribute to the partnership; and
- (b) stipulates that, in order for such provisions to be changed, a higher majority must vote in favour of changing those provisions than the majority required to change any other provision of the partnership agreement,

the higher majority shall be required to vote in favour of the partnership to which that partnership agreement applies becoming a LLP in order for that partnership to be able to attain the status of a LLP.

(3) After the approval required by subsection (2), a partnership may become a LLP by filing a statement of qualification with the Registrar, which shall contain—

- (a) the name of the partnership and the names and addresses of the partners;
- (b) the street address of the partnership's principal place of business and, if different, the street address of an office in Jamaica, if any;
- (c) if the partnership does not have an office in Jamaica, the name and street address of the partnership's agent for service of process;
- (d) a statement that the partnership elects to become a LLP; and
- (e) where applicable, a specified date, after the date of filing, on which the limited liability status shall take effect.

(4) Where subsection (3)(c) applies, the agent of the LLP for service of process shall be an individual who is resident in Jamaica or other person that may lawfully transact business in Jamaica.

(5) The status of a partnership as a LLP is effective on the date of the filing of the amendment or cancellation with the Registrar or such later effective date specified in the statement, and referred to in subsection 3(e) and the status remains effective, regardless of changes in the partnership, until it is cancelled pursuant to section 59(3) or revoked pursuant to section 106(3).

(6) The status of a partnership as a LLP and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3).

(7) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a LLP.

(8) An amendment or cancellation of a statement of qualification is effective when it is filed with the Registrar or on such later effective date as may be specified in the amendment or cancellation.

(9) A cancellation or revocation of a statement of qualification does not preclude a partnership from filing with the Registrar such a statement on a subsequent occasion, and there shall be no limit on the number of times such statement may be filed after a previous such statement has been cancelled or revoked.

(10) The partnership shall, no later than five days after the filing of a statement of qualification under subsection (3), publish a notice thereof, in the prescribed form in the *Gazette* or any daily newspaper in circulation in Jamaica.

(11) This section shall not apply to a partnership governed by Part II.

105. The name of a LLP shall end with “Registered Limited Liability Partnership”, “Limited Liability Partnership” or “LLP”. Name of
LLP.

106.—(1) A LLP shall file an annual return with the Registrar which shall contain— Annual
return.

- (a) the name of the LLP and the names and addresses of the partners;
- (b) the street address of the partnership’s place of business and, if different, the street address of an office of the partnership; and
- (c) if the partnership does not have an office in Jamaica, the name and street address of the partnership’s current agent for service of process.

(2) An annual return shall be made up to March 31st and filed no later than June 30th of each year following the calendar year in which a partnership files a statement of qualification up to and including the year in which its status as a LLP is cancelled pursuant to section 59(3) or revoked pursuant to subsection (3).

(3) The Registrar may revoke the statement of qualification of a partnership that fails to file an annual return when due or pay the required filing fee, upon providing the partnership with at least sixty days' written notice of intent to revoke the statement, which notice shall be mailed to the partnership at its principal place of business set forth in the last filed statement of qualification or annual return.

(4) A notice under subsection (3) shall specify—

- (a) the annual return that has not been filed;
- (b) the fee that has not been paid; and
- (c) the effective date of the revocation,

and the revocation is not effective if the annual return is filed and the fee is paid before the effective date of the revocation.

(5) A revocation under subsection (3) only affects a partnership's status as a LLP and is not an event of dissolution of the partnership.

(6) A partnership whose statement of qualification has been revoked may apply to the Registrar for reinstatement within two years after the effective date of the revocation, and the application shall state—

- (a) the name of the partnership and the effective date of the revocation; and
- (b) that the ground for revocation either did not exist or has been corrected.

(7) Upon the receipt of an application for reinstatement pursuant to subsection (6), the Registrar shall, within thirty days thereafter, determine whether the grounds for revocation did not exist or has been corrected and if satisfied thereof, shall issue a notice of reinstatement to the partnership.

(8) A reinstatement under subsection (6) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a LLP continues as if the revocation had never occurred.

PART VI—*Foreign Limited Liability Partnerships*

107.—(1) Before transacting business in Jamaica, a foreign LLP shall file with the Registrar, a statement of foreign qualification, which shall contain—

Statement of foreign qualification as LLP.

- (a) the name of the foreign LLP and the names and addresses of the partners thereof;
- (b) evidence of its status as a foreign LLP in the form of an official document issued by the appropriate authority in the jurisdiction in which it was formed or a copy thereof certified by a notary public or any other evidence as may be acceptable to the Registrar;
- (c) the street address of the foreign LLP's principal place of business and, if different, the street address of an office of the foreign LLP in Jamaica, if any;
- (d) if there is no office of the foreign LLP in Jamaica, the name and street address of the foreign LLP's agent for service of process; and
- (e) where applicable, a specified date after the date of filing as from which the foreign LLP may transact business in Jamaica; and
- (f) such further information as may be prescribed.

(2) The agent of a foreign LLP for service of process shall be an individual who is resident in Jamaica or other person who may lawfully transact business in Jamaica.

(3) The status of a foreign LLP as being authorized to transact business is effective on the later of the filing with the Registrar of the statement of foreign qualification and a date specified in the statement, as referred to in subsection (1)(e) and the status remains effective, regardless of changes in the partnership, until it is cancelled pursuant to section 59(3) or revoked pursuant to section 106(3).

(4) An amendment or cancellation of a statement of foreign qualification is effective when it is filed with the Registrar or on such

later or effective date as may be specified in the amendment or cancellation.

(5) A foreign LLP shall file an annual return with the Registrar which shall contain—

- (a) the name of the foreign LLP and the jurisdiction under whose laws the foreign LLP is formed;
- (b) the names and addresses of the partners;
- (c) the street address of the partnership's place of business and if different the street address of an office of the partnership in Jamaica, if any; and
- (d) if the partnership does not have an office in Jamaica, the name and street address of the partnership's current agent for service of process.

Law governing foreign limited liability partnerships.

108.—(1) The law under which a foreign LLP is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(2) A filing of a statement of qualification by a foreign LLP shall not be refused by the Registrar by reason of any difference between the law under which the partnership was formed and the law of Jamaica.

(3) The filing of a statement of foreign qualification does not authorise a foreign LLP to engage in any business or exercise any power that a partnership may not engage in or exercise in Jamaica as a LLP.

Effect of failure to have statement of foreign qualification.

109.—(1) A foreign LLP transacting business in Jamaica may not initiate or defend an action or proceeding in Jamaica unless it has filed a statement of foreign qualification which remain in effect and the Registrar or Attorney General may maintain an action to restrain a foreign LLP from transacting business in Jamaica in contravention of the provisions of section 107.

(2) The failure of a foreign LLP to file and maintain a statement of foreign qualification does not impair the validity of a contract or act of the foreign LLP.

(3) A limitation on personal liability of a partner is not waived solely by transacting business in Jamaica without filing a statement of foreign qualification.

(4) For the purpose of subsection (1), the Registrar or Attorney General shall be entitled to make an application to the court for an order to serve proceedings on the foreign LLP by way of substituted service in such manner as the Registrar considers appropriate in the circumstances; and the court shall make such order as it deems just and equitable pursuant to the application.

110.—(1) Activities of a foreign LLP which do not constitute transacting business for the purposes of sections 107 and 108 include—

Activities not constituting transacting business.

- (a) initiating, maintaining or defending or settling an action or proceeding;
- (b) holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (c) maintaining bank accounts or investment or brokerage accounts;
- (d) maintaining offices or agencies for the transfer, exchange and registration of the partnership's own securities, or maintaining trustees or depositories with respect to those securities;
- (e) selling through independent contractors;
- (f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside Jamaica before they become contracts;
- (g) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (h) collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired; and
- (i) conducting an isolated transaction that is completed and is not one in the course of similar transactions.

(2) For the purposes of sections 109 to 110, the ownership in Jamaica of income producing real, property or income producing tangible personal property, other than property excluded under subsection (1), constitutes transacting business in Jamaica.

(3) This section shall not apply in determining the contracts or activities that may subject a foreign LLP to service of process, taxation or regulation under any other enactment.

PART VII—*Miscellaneous Provisions*

Regulations. **111.**—(1) The Minister may make regulations generally to give effect to the provisions of this Act.

(2) Without restricting the generality of the foregoing, the Minister may exercise his power under this section—

- (a) with respect to the duties to be performed by the Registrar under this Act; or
- (b) so as to prescribe anything required by this Act to be prescribed.

(3) Regulations made under this Act shall be subject to affirmative resolution.

(4) Notwithstanding section 29(b) of the *Interpretation Act*, regulations under this section may provide in respect of a breach of any of the provisions thereof for the imposition on summary conviction in a Resident Magistrate's Court of a fine not exceeding one million dollars or imprisonment for a term not exceeding six months.

Amendment of *Companies Act*. **112.** Section 378 of the *Companies Act* is hereby repealed.

Passed in the House of Representatives this 19th day of October, 2016.

PEARNEL CHARLES

Speaker.

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to implement the Partnership (General) Act.

This Bill makes provision for the formation of three distinct types of general partnerships—

- (a) general partnerships without separate legal personality which are governed by the provisions of Part II of the Bill;
- (b) general partnerships with separate legal personality which are governed by the provisions of Part III of the Bill; and
- (c) limited liability partnership which are governed by the provisions of Part V.

This type of partnership has separate legal personality and limits the liability of its general and limited partners.

The Bill also makes provisions for the registration of partnerships with separate legal personality, provides for the operation of partnerships and formalize the powers for foreign partnerships which seek to transmit business in Jamaica and facilitates mergers and conversions of partnerships.

ANDREW HOLNESS
Minister of Economic Growth
and Job Creation

A BILL

ENTITLED

AN ACT to Provide for the formation and
operation of general partnerships and for
connected purposes.

As passed in the Honourable House of Representatives.
