

**LAWS OF THE REPUBLIC OF VANUATU
CONSOLIDATED EDITION 2006**

Commencement: 19 April 1975

**CHAPTER 92
PARTNERSHIP**

QR 3 of 1975

ARRANGEMENT OF SECTIONS

PART 1 – PARTNERSHIP

1. Definition of partnership
2. Rules for determining existence of partnership
3. Postponement of rights of person lending or selling in consideration of share of profits in cases of insolvency
4. Meaning of "firm"

Relations of partners to persons dealing with them

5. Power of partner to bind the firm
6. Partners bound by acts on behalf of firm
7. Partner using credit of firm for private purposes
8. Effect of notice that firm will not be bound by acts of partner
9. Liability of partners
10. Liability of the firm for wrongs
11. Misapplication of money or property received for or in custody of the firm
12. Liability for wrongs joint and several
13. Improper employment of trust-property for partnership purposes
14. Persons liable by "holding out"
15. Admissions and representations of partners
16. Notice to acting partner to be notice to the firm
17. Liabilities of incoming and outgoing partners
18. Revocation of continuing guarantee by change in firm

Relations of partners to one another

19. Variation by consent of terms of partnership
20. Partnership property
21. Property bought with partnership money
22. Land held as partnership property to be treated as personal property
23. Procedure against partnership property for a partner's separate judgment debt
24. Rules as to interests and duties of partners subject to special agreement
25. Expulsion of partner
26. Retirement from partnership at will
27. Where partnership for term is continued over, continuance on old terms presumed
28. Duty of partners to render accounts, etc.
29. Accountability of partners for private profits
30. Duty of partner not to compete with firm

31. Rights of assignee of share in partnership

Dissolution of partnership and its consequences

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

PART 2 – LIMITED PARTNERSHIPS

46. Interpretation
47. Definition and constitution of limited partnership
48. Registration of limited partnership required
49. Modification of general law in case of limited partnership
50. Law as to private partnerships to apply where not excluded by this Part
51. Manner and particulars of registration
52. Registration of changes in partnerships
53. Advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner
54. Registrar to file statement and issue certificate of registration
55. Register and index to be kept
56. Inspection of statements registered
57. Rules
58. Fees

PARTNERSHIP

To declare the law of partnership and to provide for the formation of limited partnership.

PART 1 – PARTNERSHIP

1. Definition of partnership

Partnership is the relation which subsists between persons carrying on a business (which expression shall include every trade, occupation or profession) in common with a view of profit, but the relationship between members of any company or association which is –

- (a) registered as a company under the Companies Act, Cap. 191 or any other Act for the time being in force relating to the registration of joint stock companies;

(b) formed or incorporated by or in pursuance of any Act of the Parliament of the Republic of Vanuatu,

is not a partnership within the meaning of this Part.

2. Rules for determining existence of partnership

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

(a) joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

(b) the sharing of gross returns 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 property from which or from the use of which the returns are derived;

(c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that he 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; and in particular –

(i) the receipt by a person of a debt or other liquidated amount by installments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;

(ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;

(iii) a person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of 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 to the effect that the lender shall receive a rate of interest varying with the profits, or shall 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:

Provided that the contract is in writing, and signed by or on behalf of all parties thereto;

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

3. Postponement of rights of person lending or selling in consideration of share of profits in cases of insolvency

In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in section 2, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than VT100 in VT100 or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

4. Meaning of "firm"

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

Relations of partners to persons dealing with them

5. Power of partner to bind the firm

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 bind the firm and his partners, unless 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.

6. Partners bound by acts on behalf of firm

An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other matter showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners:

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

7. Partner using credit of firm for private purposes

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

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

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 is binding on the firm with respect to persons having notice of the agreement.

9. Liability of partners

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 a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his separate debts.

10. Liability of the firm for wrongs

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

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

In the following cases, namely –

- (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 a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

12. Liability for wrongs joint and several

Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of sections 10 and 11.

13. Improper employment of trust-property for partnership purposes

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:

Provided as follows –

- (a) this section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust;
- (b) 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.

14. Persons liable by "holding out"

Everyone who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation 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 suffering it to be made:

Provided that, where after a partner's death the partnership business is continued in the old firm-name, the continued use of that 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 contracted after his death.

15. Admissions and representations of partners

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

16. Notice to acting partner to be notice to the firm

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

17. Liabilities of incoming and outgoing partners

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

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

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

18. Revocation of continuing guarantee by change in firm

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

Relations of partners to one another

19. Variation by consent of terms of partnership

The mutual rights and duties of partners, whether ascertained by agreement or defined by this Part, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing.

20. Partnership property

(1) All property and rights and interest in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Part partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) The legal estate or interests 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.

(3) 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 or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate 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 or estate first mentioned at the date of the purchase.

21. Property bought with partnership money

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

22. Land held as partnership property to be treated as personal property

Where land 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 movable property.

23. Procedure against partnership property for a partner's separate judgment debt

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

(2) The court may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may 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 him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

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

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 express or implied between the

partners, by the following rules –

- (a) all the partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses whether of capital or otherwise sustained by the firm;
- (b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him –
 - (i) in the ordinary and proper conduct of the business of the firm;
 - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of 10 per cent per annum from the date of the payment or advance;
- (d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him;
- (e) every partner may take part in the management of the partnership business;
- (f) no partner shall be entitled to remuneration for acting in the partnership business;
- (g) no person may be introduced as a partner without the consent of all existing parties;
- (h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners;
- (i) the partnership books 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.

25. Expulsion of partner

No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

26. Retirement from partnership at will

- (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.
- (2) Where the partnership has originally been constituted by deed, a notice in writing signed by the partner giving it shall be sufficient for this purpose.

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

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

28. Duty of partners to render accounts, etc.

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

29. Accountability of partners for private profits

- (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connection.
- (2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

30. Duty of partner not to compete with firm

If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

31. Rights of assignee of share in partnership

- (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.
- (2) 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 and its consequences

32. Dissolution by expiration or notice

Subject to any agreement between the partners, a partnership is dissolved –

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

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

33. Dissolution by bankruptcy, death or charge

- (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 suffers his share of the partnership property to be charged under this Part for his separate debt.

34. Dissolution by illegality of partnership

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 members of the firm to carry it on in partnership.

35. Dissolution by the court

On application by a partner the court may decree a dissolution of the partnership in any of the following cases –

- (a) when a partner is shown to the satisfaction of the court to be of permanently unsound mind;
- (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;
- (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to affect prejudicially the carrying on of the business;
- (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or 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 business of the partnership can only be carried on at a loss;

(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.

36. Rights of persons dealing with firm against apparent members of firm

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

(2) An advertisement in the Gazette shall be notice to persons who had no dealings with the firm before the date of dissolution or change so advertised.

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

37. Rights of partners to notify dissolution

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

38. Continuing authority of partners for purposes of winding-up

After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

39. Rights of partners as to application of partnership property

On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interest 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 representative may on the termination of the partnership apply to the court to wind up the business and affairs of the firm.

40. Apportionment of premium where partnership prematurely dissolved

Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of 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 contract and to the length of time during which the partnership was continued; unless –

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

41. Rights where partnership dissolved for fraud or misrepresentation

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled –

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

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

Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his 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 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 to interest at the rate of 10 per cent per annum on the amount of his share of the partnership assets:

Provided that, where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

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

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 is a debt accruing at the date of the dissolution or death.

44. Rules for distribution of assets on final settlement of accounts

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

- (a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the 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;
 - (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

45. Savings for rules of equity and common law

The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Part.

PART 2 – LIMITED PARTNERSHIPS

46. Interpretation

In this Part, unless the context otherwise requires –

"general partner" means any partner who is not a limited partner as defined in this Part;

"registrar" means the registrar of companies as defined in the Companies Act, Cap. 191.

47. Definition and constitution of limited partnership

(1) Limited partnerships may be formed in the manner and subject to the conditions provided by this Part.

(2) A limited partnership shall not consist of more than twenty persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed.

(3) A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of this contribution, and if he does so draw out or receive back any such part, shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.

(4) A body corporate may be a limited partner.

48. Registration of limited partnership required

Every limited partnership must be registered as such in accordance with the provisions of this Part before it commences any business or undertaking and in default of such registration it shall be deemed to be a general partnership, and every limited partner shall be deemed to be a general partner.

49. Modification of general law in case of limited partnership

(1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm:

Provided that a limited partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon.

If a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner.

(2) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court unless the lunatic's share cannot be otherwise ascertained and realised.

(3) In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners unless the court otherwise orders.

(4) Subject to any agreement expressed or implied between the partners –

(a) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;

(b) a limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;

(c) the other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;

(d) a person may be introduced as a partner without the consent of the existing limited partners;

- (e) a limited partner shall not be entitled to dissolve the partnership by notice.

50. Law as to private partnerships to apply where not excluded by this Part

Subject to the provisions of this Part, the provisions of Part 1 and the rules of equity and common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the said Part 1, shall apply to limited partnerships.

51. Manner and particulars of registration

The registration of a limited partnership shall be effected by delivering to the registrar a statement signed by the partners containing the following particulars –

- (a) the firm's name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) the full name of each of the partners;
- (e) the term, if any, for which the partnership is entered into, and the date of its commencement;
- (f) a statement that the partnership is limited, and the description of every limited partner as such;
- (g) the sum contributed by each limited partner, and whether paid in cash or how otherwise.

52. Registration of changes in partnerships

- (1) If during the continuance of a limited partnership any change is made or occurs in –

- (a) the firm's name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) the partners or the name of any partner;
- (e) the term or character of the partnership;
- (f) the sum contributed by any limited partner;
- (g) the liability of any partner by reason of his becoming a limited instead of a general partner or a general instead of a limited partner,

a statement, signed by the firm, specifying the nature of the change shall within 7 days be sent by post or delivered to the registrar.

(2) If default is made in compliance with the requirements of this section each of the partners shall upon conviction be liable to a fine of VT 1,000 for each day during which the default continues.

53. Advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner

Notice of any arrangement or transaction under which any person will cease to be a general partner in any firm and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall be forthwith advertised in the Gazette and until notice of the arrangement or transaction is so advertised the arrangement or transaction shall, for the purposes of this Part, be deemed to be of no effect.

54. Registrar to file statement and issue certificate of registration

On receiving any statement made in pursuance of this Part the registrar shall cause the same to be filed and shall send by post to the firm from whom such statement shall have been received a certificate of the registration thereof.

55. Register and index to be kept

The registrar shall keep at his office in proper books to be provided for the purpose a register and an index of all the limited partnerships registered as aforesaid and of all the statements registered in relation to such partnerships.

56. Inspection of statements registered

(1) Any person may inspect the statements registered as aforesaid on payment of such fee as shall be prescribed and any person may require a certificate of the registration of any limited partnership or a copy of or an extract from any registered statement to be certified by the registrar on payment of such fee as shall be prescribed.

(2) A certificate of registration or a copy of or extract from any statement registered under this Act if purporting to be duly certified to be a true copy under the hand of the registrar shall, in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence.

57. Rules

The Minister responsible for commerce may make rules for the proper and effective implementation of this Part and, without prejudice to the generality of the foregoing, concerning any of the following matters –

- (a) the duties or additional duties to be performed by the registrar for the purposes of this Part;
- (b) the forms to be used for the purposes of this Part;
- (c) generally, the conduct and regulation of registration under this Part and any matters incidental thereto.

58. Fees

- (1) There shall be paid to the registrar, upon the registration of every limited partnership and upon each anniversary of such registration, a fee of VT 10,000.
- (2) Every partner of any limited partnership with respect to which the provisions of subsection (1) have been contravened shall be liable to a fine of VT 1,000 for each day during which the default continues.
- (3) All fees paid to the registrar in pursuance of subsection (1) shall be paid to the Treasury on account of the general revenue of the Vanuatu Government.

REPUBLIC OF VANUATU

**PARTNERSHIP (AMENDMENT)
ACT NO. 26 OF 2018**

Arrangement of Sections

- 1 Amendment
- 2 Commencement

REPUBLIC OF VANUATU

Assent: 24/12/2018
Commencement: 08/01/2019

PARTNERSHIP (AMENDMENT) ACT NO. 26 OF 2018

An Act to amend the Partnership Act [CAP 92].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Partnership Act [CAP 92] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF PARTNERSHIP ACT [CAP 92]

1 References to “Companies Act, Cap. 191”

Delete all reference to “Companies Act, Cap.191” (wherever occurring), substitute “Companies Act No. 25 of 2012”

2 Part 1 (Heading)

Delete “PARTNERSHIP”, substitute

“PRELIMINARY MATTERS”

3 Section 1

Repeal the section, substitute

“1 Interpretation

In this Act, unless the contrary intention appears:

beneficial owner means a natural person who ultimately owns or ultimately controls an applicant;

Commission means the Vanuatu Financial Services Commission established under section 2 of the Vanuatu Financial Services Commission Act [CAP 229];

key person of an applicant means a beneficial owner, owner or controller of the applicant;

registrar means the registrar appointed under section 170 of the Companies Act No. 25 of 2012;”

4 After Part 1

Insert

“PART 1A PARTNERSHIP

1A Definition of Partnership

- (1) Partnership is the relation which subsists between persons carrying on a business (which expression must include every trade, occupation or profession) in common with a view of profit, but the relationship between members of any company or association which is:

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- (a) registered as a company under the Companies Act No. 25 of 2012 or any other Act for the time being in force relating to the registration of joint stock companies; or
 - (b) formed or incorporated by any Act,
- is not a partnership within the meaning of Part 1A.
- (2) A Partnership is:
- (a) a body corporate with perpetual succession; and
 - (b) to have a common seal; and
 - (c) capable of suing and being sued.

1B Administration of the Act

This Act is to be administered by the Commission.

1C Application for registration

- (1) An application to the Registrar must:
- (a) be in the prescribed form; and
 - (b) include:
 - (i) details of each key person; and
 - (ii) details as required by the Registrar of the source of funds used to pay the capital of the applicant.
- (2) The application must be accompanied by a copy of the statement or other document setting up the partnership.
- (3) In addition to subsection (1), the registrar may require an applicant to provide any further information as he or she considers necessary to enable an application for registration to be determined.

1D Registration

- (1) A partnership must be registered with the Commission.
- (2) The registrar may register a partnership if he or she is satisfied:

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- (a) that the application for the registration complies with section 1C;
and
 - (b) that the proposed by-laws of the partnership are not contrary to this Act or any other Act; and
 - (c) of the source of funds used to pay the capital of the partnership;
and
 - (d) that the key persons of the partnership are fit and proper persons.
- (3) In assessing whether or not a key person of the partnership satisfies fit and proper criteria, the registrar must take into consideration the following matters:
- (a) whether the person has been convicted of an offence or is subject to any criminal proceedings; and
 - (b) whether the person is listed on a United Nations Financial Sanctions list, or a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction; and
 - (c) any other fit and proper criteria prescribed by the Regulations.

1E Partnership to give notice of certain changes to registrar

- (1) A partnership must give the registrar written notice of a change in:
- (a) a key person of the partnership; or
 - (b) the circumstances of a key person of the partnership that may affect whether he or she meets fit and proper criteria; or
 - (c) the by-laws or policies relating to the source of funds used to pay the capital of the partnership,
- within 14 days after the change occurs.
- (2) If a partnership fails to comply with subsection (1):
- (a) the partnership commits an offence punishable upon conviction by a fine not exceeding VT 125 million; and

- (b) the registrar may by notice in writing to the partnership, cancel the registration of the partnership.
- (3) If a partnership does provide the information as required under subsection (1), and the registrar is not satisfied:
 - (a) that the key persons of the partnership are fit and proper persons having regard to the matters referred to in subsection 1C(3); or
 - (b) of the by-laws or policies relating to the source of funds used to pay the capital of the partnership,

the registrar may by notice in writing to the partnership, cancel the registration of the partnership.

- (4) Subsections 1H(2), (3) and (4) apply to the cancellation of the registration of the partnership under this section.

1F Registrar may require information and documents relating to partnership

- (1) Subject to subsection (2), the registrar may, by notice in writing to a partnership, require the partnership to provide the registrar with information or documents, or both, specified in the notice within the period set out in the notice.
- (2) The information or documents must relate to:
 - (a) the partnership's integrity, competence, financial standing or organisation; or
 - (b) the partnership's compliance with this Act or the Regulations.
- (3) If the partnership:
 - (a) refuses or fails to give the registrar the information or documents required by the registrar; or
 - (b) knowingly or recklessly gives the registrar information or documents that are false or misleading,

the partnership commits an offence punishable upon conviction by a fine not exceeding VT 75 million.

1G Registrar may request information and documents

The registrar may request information or documents, or both, from any or all of the following:

- (a) the Financial Intelligence Unit;
- (b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;
- (c) the Sanctions Secretariat;
- (d) a law enforcement agency;
- (e) a domestic regulatory authority;
- (f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).

1H Cancellation of registration of partnership

- (1) The registrar may, in writing, cancel the registration of a partnership:
 - (a) if the registrar is satisfied that the registration was obtained by fraud or mistake; or
 - (b) if the partnership has ceased to exist; or
 - (c) if the partnership has contravened a provision of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or
 - (d) if the fit and proper criteria are not met as required under this Act or as prescribed by the rules; or
 - (e) if the registrar is not satisfied of the by-laws or policies relating to the source of funds used to pay the capital of the partnership; or
 - (f) at the request of the members of the partnership.”

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- (2) Before cancelling the registration of a partnership, the registrar must give written notice to the partnership that it proposes to cancel the registration and the reasons for the cancellation.
- (3) A partnership may within 14 days after receiving a notice under subsection (2), give the registrar written reasons why the registration of the partnership should not be cancelled.
- (4) The registrar may cancel the registration of a partnership if:
 - (a) the partnership does not give the registrar reasons under subsection (3); or
 - (b) having taking into account the partnership's reasons, the registrar is of the opinion that the partnership has failed to show good cause why the registration should not be cancelled.
- (5) If the registrar makes an order for the cancellation of the registration of a partnership under this section, he or she may make such further order as he or she thinks fit for the custody of the books and documents and the protection of the assets of the partnership until the order is cancelled."

5 Section 2

- (a) Before "In", insert "(1)";
- (b) After subsection (1), insert
- "(2) For the purposes of paragraph 2(d):

reside in Vanuatu means a person who resides in Vanuatu and carries on business from an office or other fixed place within Vanuatu."

6 Subparagraph 2(1)(c)(v)

Delete ".", substitute ";

7 At the end of paragraph 2(1)(c)

Add

- "(d) that half of the partners ordinarily reside in Vanuatu."

8 Section 46 (definition of "registrar")

Repeal the definition.

9 Section 50

Delete "Part 1" (wherever occurring), substitute "Part 1A"

10 Section 58

Repeal the section, substitute

“PART 3 MISCELLANEOUS PROVISIONS

58 Penalty Notice

- (1) The Commissioner may serve a penalty notice on a person if it appears to the Commissioner that the person has committed an offence under any provision of this Act.
- (2) A penalty notice may be served personally or by post.
- (3) The Minister may by Order prescribe penalties which a person is required to pay under this section, which must not exceed:
 - (a) VT 500,000 for an individual; or
 - (b) VT 2 million for a body corporate;within 30 days after the date on which the notice was served.
- (4) If the amount of penalty referred to in subsection (3) is paid, that person is not liable to any further proceedings for the alleged offence.
- (5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any proceeding arising out of the same occurrence.
- (6) The Commissioner may publish a penalty notice issued to a person in such manner as the Commissioner determines.
- (7) If a penalty notice has been served on a person, a prosecution in respect of the alleged offence may only be commenced if the penalty remains unpaid 30 days after the penalty was due, and the Court may take account of any unpaid penalty when imposing a penalty in respect of the offence.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

59 Fees

- (1) A partnership or a limited partnership must pay a registration fee of VT20,000 before it can be registered.
- (2) A partnership or a limited partnership who operates without being registered under this Act commits an offence and is liable on conviction to a fine not exceeding VT500,000.
- (3) The annual renewal fee for registration is VT1,000.
- (4) All fees must be paid to the registrar.

60 Annual reports

- (1) All partnerships or limited partnerships under this Act must provide an annual report to the registrar.
- (2) The registrar must within 3 months after the end of each financial year provide a report to the Commission relating to the operations of the partnership or limited partnership for that year.
- (3) To avoid doubt, the Commission may request the registrar to provide a financial report or any other report at any time.”