



ANALYSIS

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1984, No.13

An Act to provide for International Partnerships and Limited Partnerships

(27 December 1984)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

PART I
PRELIMINARY

1. Short Title - This Act may be cited as the International Partnership Act 1984.
2. Interpretation - In this Act unless the context otherwise requires -

"Court" means the High Court of the Cook Islands;

"Foreign Company" means a foreign company under the International Companies Act 1981-82;

"Instrument" includes any deed, contract, agreement or arrangement evidenced in writing;

"International Company" means a company incorporated under the International Companies Act 1981-82;

"Minister" means the Minister of Finance;

"Monetary Board" means the Cook Islands Monetary Board established under the Cook Islands Monetary Board Act 1981;

Non-resident" means:-

- (a) an individual not domiciled in the Cook Islands; or
- (b) an individual not ordinarily resident in the Cook Islands; or
- (c) an international company; or
- (d) a foreign company; or
- (e) a trustee company; or
- (f) a subsidiary of a trustee company being either an international company or a foreign company;

"Partnership" means a partnership, joint venture, syndicate or association entered into for the purpose of carrying on a business or a single transaction with a view to a profit and evidenced by an instrument but does not include:

- (a) a joint venture of trustees where that joint venture relates only to a common fund for mixing of trustees funds;
- (b) a company;
- (c) a corporation sole;

"Partnership agreement" means an instrument by which a partnership is created, established, constituted or evidenced;

"Prescribed" means prescribed by regulations or in the absence of such regulations as may be determined by the Registrar;

"Property" includes an estate or interest in real or personal property and anything in action;

"Registered Foreign Company" means a foreign company registered under Part X of the International Companies Act 1981-82;

"Registrar" means the Registrar of Partnerships and includes a Deputy Registrar;

"Trustee company" means a trustee company under the Trustee Companies Act 1981-82.

3. Inconsistent law not to affect international or limited partnerships-
The law in force in the Cook Islands and the rules of equity and common law applicable to partnerships shall apply to international partnerships and limited partnerships except so far as they are inconsistent with the express provisions of this Act.

4. Application of this Act - Unless otherwise provided this Act shall only apply to international partnerships and limited partnerships and any instrument relating to an international partnership or limited partnership whether executed or entered into before on or after the commencement of this Act.

5. Permitted business - No international partnership or limited partnership shall:

- (a) transact any off-shore insurance business or hold itself out as transacting any off-shore insurance business as defined in section 2 of the Off-Shore Insurance Act 1981-82, unless it holds a valid off-shore insurance license granted pursuant to section 6 of that Act; or
- (b) transact any off-shore banking business or hold itself out as transacting any off-shore banking business, as defined in section 2 of the Off-Shore Banking Act 1981, unless it holds a valid off-shore banking business licence granted pursuant to section 7 of that Act.

6. Registrar of partnerships - (1) The Registrar of International and Foreign Companies appointed pursuant to Section 8 of the International Companies Act 1981-82 shall be the Registrar of Partnerships.

(2) A Deputy Registrar of International and Foreign Companies and any officer appointed pursuant to section 8 of the International Companies Act 1981-82 shall be a Deputy Registrar of Partnerships or officer as the case may be for the purposes of this Act.

(3) Anything authorised or required to be done by the Registrar under this Act may be authorised or done by a Deputy Registrar.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal and also the signature of the Registrar and of any Deputy Registrar.

7. Registers - The Registrar shall, subject to this Act and any regulations, keep such registers and records as he considers necessary and in such form as he thinks fit.

PART II

INTERNATIONAL PARTNERSHIPS

8. International partnerships - For the purposes of this Act an International Partnership means a partnership registered pursuant to section 10 of this Act.

9. Application for registration - Application for registration of a partnership as an international partnership shall be made to the Registrar in the prescribed form and accompanied by the prescribed fee.

10. Registration - (1) No partnership shall be registered as an international partnership unless the Registrar has received a certificate completed by a trustee company certifying that:

- (a) one of the partners is either:
 - (i) a registered foreign company; or
 - (ii) an international company; or
 - (iii) a trustee company;
- and

(b) each partner is a non-resident

(2) Upon receipt of a certificate referred to in subsection (1) the Registrar shall register that partnership upon the Register of International Partnerships kept for that purpose and issue a certificate of registration in the prescribed form.

(3) A certificate of registration under the hand and seal of the Registrar shall be conclusive evidence that all the requirements of this Act in respect of registration and other matters precedent and incidental thereto have been complied with and that the international partnership referred to therein was duly registered under this Act.

11. Annual certificate of registration - (1) A certificate of registration issued pursuant to section 10(2) shall be valid and effective for one year from the date of registration specified in that certificate.

(2) Application for renewal of registration may be made upon:

- (a) Filing with the Registrar an application for renewal of registration in the prescribed form;
- (b) Payment of the prescribed fee.

(3) Subject to section 77 of this Act, no application for renewal of registration pursuant to subsection (2) of this section shall be granted where the application is filed or fee paid after the date of expiry of the last certificate of registration.

(4) Every renewal of registration shall be for a period of one year from the date of expiry of the last certificate of registration.

12. Registration of partnership agreement - Any person who is a partner may provide the Registrar with a copy of the partnership agreement or any amendment thereto which shall be certified in the manner prescribed and the Registrar shall register that copy as a true copy and file the same.

13. Registered office - (1) The registered office of an international partnership shall be the address in the Cook Islands of the registered foreign company, international company or trustee company which is a partner.

(2) The address for service of any documents upon an international partnership shall be the registered office of that partnership.

(3) Every international partnership, shall have its name displayed on the outside of its registered office in a conspicuous position in letters easily legible.

14. Proceedings by or against international partnerships - Where any proceedings are instituted by or against an international partnership it shall be sufficient to name the international company, registered foreign company or trustee company which is a partner and it shall not be necessary to join in the action any other partner.

15. Power of partner to bind the firm - Every partner is an agent of the firm and the 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 the partner is a member bind the firm and the other 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 the partner is dealing either knows that the partner has no authority or does not know or believe that person to be a partner.

16. Partners bound by acts on behalf of firm - (1) Subject to subsection (2) of this section, an act or instrument relating to the business of the firm, and 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, is 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.

17. 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 that partner is in fact specially authorised by the other partners; but this section shall not affect any personal liability incurred by an individual partner.

18. Effect of notice that firm not 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.

19. 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 a partner; and after a partner's death bankruptcy or liquidation shall remain severally liable for such debts and obligations as far as they remain unsatisfied but subject to the prior payment of that partner's separate debts.

20. Liability of the firm for wrongs - Where by the wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of 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 therefore to the same extent as the partner so acting or omitting to act.

21. Misapplication of money received for firm - In the following cases, namely, -

- (a) Where one partner acting within the scope of his or its apparent authority receives the money or property of a third person and misapplies it; or
- (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.

22. Joint and several liability - Every partner is liable jointly with his or its co-partners and also severally for every thing for which the firm, while he or it is a partner therein, becomes liable under either sections 20 or 21 of this Act.

23. 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 that-

- (a) This section shall not affect any liability incurred by any partner by reason of that partner having notice of a breach of trust; and
- (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.

24. Persons liable by "holding out" - (1) Except as provided in subsection (2) of this section every person who, by words spoken or written, or by conduct, represents himself or itself or who knowingly suffers himself or itself 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.

(2) Where after the date that a partner ceases to be a partner and the partnership business is continued in the old firm name, the continued use of that name or that partner's name as part thereof shall not of itself make that partner or the legal representative of that partner liable for any partnership debts contracted after that date.

25. 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.

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

27. Liabilities of incoming and outgoing partners - (1) A person admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before becoming a partner.

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

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between that partner 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.

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

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

30. 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 Act "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) Provided that 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.

(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 interest as are held by them in the land or estate first mentioned at the date of the purchase.

31. 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.

32. Conversion into personal estate of land held as partnership property - Where land has become partnership property it shall, unless the contrary intention appears, be treated 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 and not real estate.

33. Procedure against partnership property for partner's separate judgement debt - (1) A writ of execution shall not issue against any partnership property except on a judgement against the firm.

(2) This High Court or a Judge thereof may, on the application by summons of any judgement 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 judgement 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 coming to that partner 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 judgement creditor by the partner, or which the circumstances of the case require.

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

34. Rules as to interest and duties of partners - The interest of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, subject to any agreement (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 a 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 making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which that partner has agreed to subscribe is entitled to interest at the rate of 5 percent per annum from the date of the payment or advance:

- (d) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him or it;
- (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 partners;
- (h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners;
- (i) The partnership books 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 shall have access to and may inspect and copy any of them.

35. Expulsion of partner - A majority of the partners cannot expel any partner unless a power to do so has been conferred by express agreement between the partners.

36. 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 so to do to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed or executed by the partner giving it, shall be sufficient for this purpose.

37. Conditions of partnership where term continued over - (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any expressed 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.

38. Duty to render accounts - Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or that partners legal representative.

39. Partners to account for private profits - (1) Every partner must account to the firm for any benefit derived by that partner without the consent of the other partners from any transaction concerning the partnership, or from any by that partner of the partnership property, including the firm name.

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

40. Rights of assignee of share of partnership - (1) A share or part thereof of a partner in a partnership notwithstanding any rule of law to the contrary shall be deemed to be an equitable chose in action which subject to the partnership agreement shall be capable of assignment.

(2) An assignment of a partner share or part thereof shall be in writing and for valuable consideration and the assignor shall give notice in writing of that assignment to the other partners of the partnership.

(3) Assignment of a partner's share in the partnership or part thereof either absolute or by way of mortgage, 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 account 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 obliges the assignee to indemnify the assigning partner for losses of the partnership in respect of the share or part share assigned which the assigning partner would otherwise be obliged to meet but for the assignment and the assignee must accept the account of profits or losses agreed to by the partners.

(4) 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 or itself and the other partners, and, for the purpose of ascertaining the share, to an account as from the date of the dissolution.

41. Dissolution by expiration of notice - (1) Subject to any agreement between the parties, 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 underfined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

(2) 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.

42. Dissolution by death, bankruptcy, or charge - (1) Every partnership is dissolved as regards all the partners:

- (a) by the death bankruptcy or liquidation of any one of the partners; or
- (b) where the parties enter into partnership with another person for the purpose of carrying on the partnership business.

(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 Act for his separate debt.

43. 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.

44. Dissolution by the Court - On application by a partner the Court may declare a dissolution of the partnership in any of the following cases:

- (a) Where a partner is shown to the satisfaction of the Court to be of unsound mind;
- (b) Where a partner, other than the partner suing, becomes in any other way permanently incapable of performing his or its part of the partnership contract;
- (c) Where 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 prejudicially affect the carrying on of the business;
- (d) Where a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself or itself 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 that partner;
- (e) Where the business of the partnership can only be carried on at a loss;
- (f) Where circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

45. Rights of persons dealing with firm against apparent members - (1) Where a person deals with a firm after a change in its constitution, that person is entitled to treat all apparent members of the old firm as still being members of the firm until the receipt of notice of the change, which notice shall be given by way of advertisement in a newspaper published and circulated generally in the Cook Islands.

(2) Subject to subsection (1) of this section no former partner of a partnership shall be liable for any debt contracted after the date of dissolution of that partnership.

46. 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 or goes into liquidation; but this provision does not affect the liability of any person who has after the bankruptcy or liquidation represented himself or, knowingly suffered himself to be represented, as a partner of the bankrupt or partner in liquidation.

47. Rights of partnership 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 of the firm; and for that purpose any partner or the representatives of that partner may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm.

48. 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 or it for the purchase of a share in the partnership and for any capital contributed by him or it; and
- (b) To stand in the place of the creditors of the firm for any payments made by him or it in respect of the partnership liabilities; and
- (c) To be indemnified, by the person guilty of the fraud or making the representation, against all the debts and liabilities of the firm.

49. Right of outgoing partner to share profits made after dissolution -

(1) Where any member of a firm dies or otherwise ceases 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 representative, to such share of the profits made since the dissolution as the court may find to be attributable to the use of his or its share of the partnership assets.

(2) Where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a former partner, and that option is duly exercised, that former partner or its liquidator, 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 that partner shall be liable to account under the foregoing provisions of this section.

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

51. 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.

PART III

LIMITED PARTNERSHIPS

52. Part II not to affect limited partnerships - Part II of this Act shall not affect limited partnerships except in so far as the general law relating to partners is declared by the succeeding provisions hereof to be applicable to limited partnerships.

53. Limited partnerships - For the purposes of this Act, a limited partnership means a partnership registered pursuant to section 55 of this Act.

54. Application for registration - (1) Application for registration of a partnership as a limited partnership shall be made by a partner who on registration will be a general partner.

(2) Every application shall be made to the registrar in the prescribed form and accompanied by the prescribed fee.

55. Registration - (1) No partnership shall be registered as a limited partnership unless the Registrar has received a certificate completed by a trustee company certifying that:

- (a) One of the general partners is either:
 - (i) a registered foreign company; or
 - (ii) an international company; or
 - (iii) a trustee company;
 and

(b) upon registration the limited partnership will consist of one or more general partners and one or more limited partners; and

(c) each partner is a non-resident; and

(d) the partnership is entered into for a period of not more than 51 years.

(2) Upon receipt of a certificate referred to in subsection (1) the Registrar shall register that partnership upon the Register of Limited Partnerships kept for that purpose and issue a certificate of registration in the prescribed form.

(3) A certificate of registration under the hand and seal of the Registrar shall be conclusive evidence that all the requirements of this Act in respect of registration and other matters precedent and incidental thereto have been complied with and that the limited partnership referred to therein was duly registered under this Act.

56. Annual certificates of registration - (1) A certificate of registration issued pursuant to section 55 (2) shall be valid and effective for one year from the date of registration specified in that certificate.

(2) Application for renewal of registration may be made upon:

- (a) Filing with the Registrar an application for renewal of registration in the prescribed form;
- (b) Payment of the prescribed fee.

(3) Subject to section 77 of this Act, no application for renewal of registration pursuant to subsection (2) of this section shall be granted where the application is filed or fee paid after the date of expiry of the last certificate of registration.

(4) Every renewal of registration shall be for a period of one year from the date of expiry of the last certificate of registration.

57. Registration of partnership agreement - Any person who is a partner may provide the Registrar with a copy of the partnership agreement or any amendment thereto which shall be certified in the manner prescribed and the Registrar shall register that copy as a true copy and file the same.

58. Certificates to be signed by general partners - (1) After registration of a limited partnership and before commencement of business and immediately after the particulars required by this subsection are changed a general partner of that limited partnership shall complete a certificate containing the following particulars, namely:

- (a) The style of the firm under which the partnership is to be conducted;
- (b) The names and addresses of all the partners distinguishing the general from the limited partners;
- (c) The amount of capital which each limited partner is to contribute (in this Act referred to as the certified sum) and also (if any) the amount contributed by the general partners to the common stock;
- (d) The general nature of the business to be transacted;
- (e) The principal or only place in which it is to be transacted; and
- (f) The time when such partnership is to commence and when it is to terminate;

(2) A certificate signed in accordance with this section may be filed with the Registrar who shall register the same.

59. Partners to be liable as general partners for false statements in certificate - If any false statement is made in a certificate referred to in section 58 all the persons interested in the limited partnership shall be liable for all the engagements thereof as general partners: Provided that no clerical error or matter not of substance shall be deemed false within the meaning of this section unless some person is prejudiced thereby, in which case the limited partners shall be liable to the person so prejudiced.

60. Registered office - (1) the registered office of a limited partnership shall be the address in the Cook Islands of the general partner that is either a registered foreign company, international company or trustee company.

(2) The address for service of any documents upon a limited partnership shall be the registered office of that partnership.

61. When limited partner deemed liable - If in carrying on the business of a limited partnership or in any contract connected therewith:

- (a) the name of a limited partner is used with that partners consent or privity that partner shall be deemed to be a general partner with respect to the contract or matter in which that that partners name was so used; or
- (b) a limited partner makes any contact respecting the concerns of the partnership without express authority of the general partners that limited partner shall be personally liable for that contract.

62. General and limited partners and their liabilities - (1) Generally partners, shall be jointly and severally responsible as general partners are now by law, and limited partners, shall be liable to contribute in money or moneys worth to the common stock, as capital, the beyond which they shall not be responsible for any debt of the partnership except in cases herein provided for.

(2) Where there is a dispute as to the worth of a limited partners contribution being less than the certified sum that dispute shall be determined by the Court or on application by the parties by an arbitrator who shall be appointed by the Court on such terms and conditions as it thinks fit.

63. Capital stock not to be withdrawn - During the continuance of any limited partnership no part of a certified sum shall be withdrawn, nor shall any division of interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate required by section 58 of this Act.

64. When limited partners liable to refund capital withdrawn - (1) If any part of such capital is withdrawn, or any such division is made, so that at any time during the continuance or at the termination of the limited partnership the assets are insufficient to pay the partnership debts, the limited partners shall be severally liable to refund every sum received by them respectively in diminution of such capital or by way of such interest or profit.

(2) All such sums may be recovered as money had and received by them respectively to the use of the general partners; and may in the case of any judgement being obtained against the general partners, be recovered by the plaintiff against the limited partners, or any of them, by process of execution issued under such judgement by leave of the Court.

65. Suits to be by and against general partners - (1) Where section 66 paragraph (a) applies the limited partner liable as a general partner may be joined in the action as a defendant at the discretion of the party suing.

(2) Except where section 66 (a) applies all suits respecting the business of any limited partnership shall be prosecuted by or against the general partners only.

66. Voluntary dissolution - (1) A voluntary dissolution of a limited partnership shall not take place before the time specified in the certificate completed pursuant to section 58 unless a notice of dissolution in the prescribed form is signed by a general partner and certified correct by a trustee company.
- (2) Every notice of dissolution shall be filed with the registrar.
67. Dissolution by Court - On application by a partner the Court may order the dissolution of a limited partnership where circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.
68. Cases not specifically provided for - In all cases not hereinafore otherwise provided for in this Part and if not inconsistent with the provisions of this Part all the members of a limited partnership shall be subject to the liabilities and entitled to the rights of general partners.
69. Accounting - The general partners shall be liable to account to each other and to the limited partners for their management of the partnership concerns as other partners are by law.
70. Frauds by partners - Every partner guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, and shall also be liable to criminal proceedings for any offence committed.

PART IV

APPLICATION OF OTHER ACTS

71. Interpretation - In this part of this Act, unless the context otherwise requires,-

"Enactment" means any Act of the Parliament of the Cook Islands, Ordinance, Act of the Parliament of New Zealand in force in the Cook Islands and any Proclamation, Order, regulations or Rule of any Islands Council, Ordinance or By-law and includes any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom being an Act in force in the Cook Islands, and any Regulations Rule, Order, or other instrument made thereunder;

"Foreign Currency" includes notice, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, cheques, negotiable instruments, letters of credit and travellers cheques payable or expressed other than in New Zealand currency, and also includes rights and instruments of title to New Zealand money;

"Partnership" means an international partnership and a limited partnership and includes each of the partners as partners of an international partnership or limited partnership;

"Securities" includes shares, stock, bonds, debentures, debenture stock, treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title of securities but does not include bills of exchange or promissory notes.

72. Application of other Acts to partnerships - (1) Subject to subsection (2) and (3) of this section, no enactment, other than this Act, the Cook Islands Monetary Board Act 1981, the Offshore Banking Act 1981, the International Companies Act 1981-82 the Offshore Insurance Act 1981-82 and the Trustee Companies Act 1981-82 shall:

(a) impose-

- (i) any liability, duty, responsibility, obligation or restriction;
- (ii) any fee, impost, tax, levy, duty or exise; or
- (iii) any fine or penalty

on a partnership; or

(b) require-

- (i) the deposit of any moneys in any public account; or
- (ii) the filing of any accounts, returns, reports or records; or
- (iii) the licensing or registration ;

by a partnership

(2) The restrictions imposed by regulation 5(1) of the Cook Islands Exchange Control Regulations 1948 shall have no application in respect of-

- (a) the taking or sending of any foreign currency or securities out of the Cook Islands by a partner or by an officer or employee of a partnership for or on behalf of the partnership, other than -
 - (i) where the security is payable in New Zealand money and was not issued by an international company; or
 - (ii) where the security or foreign currency is owned or controlled by a natural person ordinarily resident in the Cook Islands or a domestic company;
- (b) the transfer of the interest of any person in any security by a partnership or by an officer or employee of a partnership for or on behalf of the partnership, other than-
 - (i) where the security is payable in New Zealand money and was not issued by an international company; or
 - (ii) where such person is a natural person ordinarily resident in the Cook Islands or a domestic company;
- (c) the drawing or negotiating of any bill of exchange or promissory note or the transfer of any security or the acknowledgement of any debt or the making of any payment by a partnership or by an officer or employee of a partnership for or on behalf of the partnership.
 - (i) as consideration for receiving any payment or acquiring any property elsewhere than in the Cook Islands or in New Zealand; or
 - (ii) as consideration for acquiring a right, whether actual or contingent, to receive any payment or to acquire any property elsewhere than in the Cook Islands or in New Zealand;

- (d) the creation or transfer of a right, whether actual or contingent, to receive any payment or acquire any property elsewhere than in the Cook Islands or New Zealand, or the disposal or otherwise dealing with any money, securities, or property held or payable elsewhere than in the Cook Islands or New Zealand, by a partnership or by an officer or employee of a partnership for or on behalf of the partnership:
- (i) as consideration for receiving any payment or acquiring any property in the Cook Islands or New Zealand;
 - (ii) as consideration for acquiring a right whether actual or contingent to receive any payment or acquire any property as aforesaid; or
 - (iii) as consideration for the discharge of a debt payable in the Cook Islands or New Zealand.
- (3) A partnership which wishes to-
- (a) invest in a domestic company;
 - (b) acquire assets from a person ordinarily resident in the Cook Islands or a domestic company; or
 - (c) carry on business within the meaning of that phrase in the Development Investment Act 1977,

shall be subject to the provisions of the Development Investment Act 1977: Provided however, that nothing in this subsection shall bring into operation the provisions of the Development Investment Act 1977 in relation to a partnership where the only domestic company which the Partnership is dealing with is a trustee company.

(4) It shall be an offence against this Act for a partnership or an officer or employee of a partnership to take or send, or to cause or permit to be taken or sent, any money or securities out of the Cook Islands which are owned or controlled by a natural person ordinarily resident in the Cook Islands or a domestic company other than a trustee company.

PART V

MISCELLANEOUS

73. Resident beneficiaries - The provisions of this Act shall have no application to a partner who is domiciled in the Cook Islands or who is ordinarily resident in the Cook Islands.

74. Secrecy - (1) Except where the provisions of this Act require and subject to subsection (2) of this section, it shall be an offence for a person to divulge or communicate to any other person information relating to the establishment, constitution, business, undertaking or affairs of an international or limited partnership.

(2) All judicial proceedings other than criminal proceedings relating to international or limited partnership shall, unless ordered otherwise, be heard in camera and no details or the proceedings shall be published by any person without leave of the Court or person presiding.

75. Translations - (1) Every document filed with the Registrar and not in the English language shall be accompanied by a certified translation.

(2) A document that is not in the English language and which is not accompanied by a certified translation at the time of filing shall not be accepted for registration by the Registrar.

(3) For the purpose of this section a certified translation is a translation into the English language, certified as a correct translation, by a translator to the satisfaction of the Registrar.

76. No action to lie against certain person - Notwithstanding section 79 of this Act no action shall lie against the Government of the Cook Islands, any statutory body or authority, or a public or judicial officer in respect of the performance of its or his functions or duties under this Act.

77. Power of Exemption - (1) The Minister may on his own motion or pursuant to an application in writing lodged with the Registrar by an international or limited partnership or a partnership, if it were registered would be an international or limited partnership, exempt that international or limited partnership or partnership, from all or any of the provisions of this Act and any regulations made under this Act and may impose such terms and conditions as he thinks fit as a condition under which that exemption is granted. An exemption so granted may be revoked or varied by the Minister at any time.

(2) In dealing with an application under this section the Minister shall not be required to act judicially and his decision shall in all cases be final.

(3) Any exemption or condition imposed pursuant to subsection (1) of this section, shall take effect as from a date to be decided by the Minister in his discretion.

78. Prohibitions by Minister - (1) The Minister shall have an absolute right of his own motion or otherwise and without assigning reasons to make an order:

- (a) prohibiting the registration of any partnership as an international partnership or limited partnership; or
- (b) directing any international partnership or limited partnership to cease carrying on its business or part of its business immediately or within such time as may be specified in the order.

(2) An order made under this section may be revoked or varied by the Minister.

(3) In making an order under this section the Minister shall not be required to act judicially and such order shall be final.

79. Penalties - (1) Any person who:

- (a) does anything which is forbidden by or under this Act; or
- (b) omits to do something required or directed by or under this Act; or
- (c) contravenes or fails to comply with any provisions of this Act.

shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding \$US 10,000 or to imprisonment for a term not exceeding 1 year or to both.

80. Regulations - The Queens Representative may by Order in Executive Council make regulations prescribing all matters and things required or authorised by this Act to be prescribed or which are necessary for carrying out or giving effect to this Act including the prescribing of penalties for breaches of such regulations not exceeding a fine of \$US,2000.

This Act is administered by the Cook Islands Monetary Board