

Queensland



ANNO TRICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE

---

No. 78 of 1988

An Act to provide for the formation and registration of  
limited partnerships and for related matters

[ASSENTED TO 11TH NOVEMBER, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

## PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *Partnership (Limited Liability) Act 1988*.

**2. Commencement.** (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act shall commence on a day appointed by Proclamation.

The day so appointed is in this Act referred to as the commencement of this Act.

**3. Arrangement of Act.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-5);

PART II—FORMATION AND MAINTENANCE OF LIMITED PARTNERSHIPS (ss. 6-9);

PART III—MODIFICATION OF GENERAL LAW OF PARTNERSHIP (ss. 10-16);

PART IV—DISSOLUTION AND CESSATION OF LIMITED PARTNERSHIPS (ss. 17-20);

PART V—MISCELLANEOUS PROVISIONS (ss. 21-30).

**4. Interpretation.** (1) In this Act, unless the contrary intention appears—

“departure” means, in relation to a partner, death, dissolution of a corporate person, insolvency or retirement;

“general partner” means a partner in a partnership whose liability in connexion with the business of the firm is not limited in accordance with this Act;

“insolvency” means bankruptcy in relation to a partner who is an individual and an equivalent condition in relation to a partner who is a corporate person;

“liability” means any debt, obligation or other liability howsoever arising;

“limited partner” means a partner in a limited partnership whose liability to contribute is limited in accordance with this Act;

“limited partnership” means a partnership formed and registered in accordance with the provisions of this Act;

“register” means the register kept by the Registrar pursuant to section 8;

“Registrar” means the Registrar of Commercial Acts, Brisbane, appointed under the *Administration of Commercial Laws*

---

*Act 1962-1987* and every Deputy Registrar of Commercial Acts, Brisbane, appointed under that Act.

(2) This Act shall be read as one with the *Partnership Act 1891-1988* the provisions of which shall apply to limited partnerships subject to the provisions of this Act.

**5. Effect of this Act on application of ss. 53 to 68 of Mercantile Act.** (1) On and from the commencement of this Act—

- (a) partnerships such as are referred to in section 53 of the *Mercantile Act of 1867* as amended shall not be formed under the authority conferred by that section;
- (b) a partnership formed before the commencement of this Act under the authority conferred by section 53 of the *Mercantile Act of 1867* as amended shall not be renewed under the authority conferred by section 59 of that Act;  
and
- (c) it is not competent to the partners of a partnership formed under the authority conferred by section 53 of the *Mercantile Act of 1867* to extend the time when the partnership is to terminate while the partnership continues under the authority of that Act.

(2) If a change occurs in any of the particulars required by section 55 of the *Mercantile Act of 1867* as amended to be contained in the certificate referred to in that section notice of the change shall be given to the Registrar within seven days after the day on which the change occurs.

The Registrar shall record every change so notified to him in the record of registrations delivered to him pursuant to section 27.

(3) If notice of a change referred to in subsection (2) is not given to the Registrar in accordance with that subsection, each person who is a partner in the partnership concerned shall be taken to have failed to give the notice and to have thereby committed an offence against this Act.

## PART II—FORMATION AND MAINTENANCE OF LIMITED PARTNERSHIPS

**6. What is a limited partnership.** (1) A limited partnership is a partnership—

- (a) that exists between two or more persons of whom one or more shall be a general partner or general partners and one or more shall be a limited partner or limited partners;
- (b) that is formed in accordance with this Act;  
and
- (c) that is one whose partners are the persons shown in the register as the partners therein.

(2) A corporate person constituted or registered in Australia may be a general partner or a limited partner in a limited partnership.

**7. How formed.** (1) A limited partnership shall be formed upon registration in the office of the Registrar of a statement in the prescribed form signed by each person who is to be a partner in the partnership and payment to the Registrar of the prescribed fee.

(2) A statement referred to in subsection (1) shall contain the following particulars:—

- (a) the firm-name;
- (b) the full address in Queensland of the registered office of the firm;
- (c) the full name and address of each partner;
- (d) a statement that the partnership is to be a limited partnership;
- (e) a statement in relation to each limited partner to the effect that he is a limited partner whose liability to contribute is limited to the extent of a sum of money specified therein; and
- (f) such other particulars as are prescribed by the regulations.

(3) A reference in subsection (2) to the address of a partner means—

- (a) in the case of an individual, his principal place of residence;
- (b) in the case of a corporate person, its registered office or principal place of business.

**8. Register: proof of registration.** (1) The Registrar shall keep a register of all limited partnerships.

(2) The register shall be kept in such form and manner that it may be inspected at any office of the Registrar in the State and shall be available for inspection by any person.

(3) The Registrar shall, upon registration of a statement referred to in section 7, and may, thereafter from time to time, issue a certificate in the prescribed form as to the formation and composition at any time of the limited partnership to which the statement relates.

(4) A certificate issued under subsection (3)—

- (a) shall be conclusive evidence that the limited partnership to which it refers was formed on the date of registration referred to therein; and
- (b) shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that the partnership to which it refers consists or, as the case may be, consisted of the general partners and limited partners named therein as such.

**9. Registration of changes in limited partnership.** (1) Upon receipt by the Registrar of a notice of change, which notice complies with this

---

Act, and payment of the prescribed fee the Registrar shall record in the register in respect of the limited partnership concerned a change—

- (a) in the firm-name;
- (b) in the registered office of the firm;
- (c) consisting in the departure from or admission to the partnership of a partner;
- (d) in the name or address of a partner in the partnership;
- (e) in the liability of a partner therein by reason of his becoming a limited partner instead of a general partner or a general partner instead of a limited partner or by reason of an alteration in the amount that he is liable to contribute as a limited partner;
- (f) in any particular such as is referred to in paragraph (f) of section 7 (2).

(2) If a result of a change notified to the Registrar would be that the partnership concerned would be so constituted as not to be capable of being a limited partnership as defined in section 6, the Registrar shall not record the change in the register, notwithstanding subsection (1).

(3) A notice referred to in subsection (1) shall be signed and given—

- (a) by or on behalf of all those who are or will be partners in the partnership after the change takes effect, if the change involves the departure or admission of a partner or the alteration of the extent to which a partner is liable to contribute;
- (b) by or on behalf of all the general partners in the partnership at the time the change takes effect, in any case other than one referred to in paragraph (a).

(4) A notice under subsection (1) that relates to the admission of a limited partner to the partnership shall contain a statement to the effect that the person admitted is a limited partner whose liability to contribute is limited to the extent of a sum of money specified therein.

(5) If a change of which notice may be given under subsection (1) involves an alteration to the extent to which any partner in the partnership is liable to contribute, being a limitation arising from agreement between the partners, the change shall not take effect until notice thereof has been given under subsection (1) to the Registrar and he has recorded the change in the register.

(6) If a change of which notice may be given under subsection (1)—

- (a) involves the admission of a partner to or the departure of a partner (other than by reason of his death) from the limited partnership;

and

- (b) does not so alter the constitution of the partnership that it is incapable of being a limited partnership as defined in section 6,

and, in the case of the departure of a partner, if the business of the firm is continued by means of a partnership, on and from the day on which the change occurs until notice of the change has been given under subsection (1) to the Registrar and he has recorded the change in the register, the partnership shall not be a limited partnership and each of the partners shall be a general partner therein.

(7) If a change of which notice may be given under subsection (1)—

- (a) involves the departure of a partner from a limited partnership by reason of his death;
- (b) does not so alter the constitution of the partnership that it is incapable of being a limited partnership as defined in section 6;

and

- (c) the business of the firm is continued by means of a partnership,

then in that case—

- (d) on and from the day on which the change occurs for a period of 30 days (or such less period as may expire before the change is recorded in the register pursuant to subsection (1)) the partnership shall be a limited partnership as registered of the persons who then are partners in the firm;
- and
- (e) if at the expiration of that period the change has not been recorded in the register pursuant to subsection (1), thereafter the partnership shall not be a limited partnership and each of the partners shall be a general partner therein until the change is so recorded.

### PART III—MODIFICATION OF GENERAL LAW OF PARTNERSHIP

**10. Liability of limited partner.** (1) A limited partner in a limited partnership is liable to contribute towards the liabilities of the firm but so as not to exceed the sum shown in relation to that limited partner in the register as the extent to which that limited partner is liable to contribute or such part of that sum as remains unpaid.

(2) Subject to subsection (1) the liability of a limited partner in a limited partnership to contribute is that of a partner in a partnership that is not a limited partnership.

**11. Provisions concerning limited partner's contribution.** (1) Any contribution made by a limited partner in a limited partnership towards

the discharge of liabilities of the firm shall be in the form of money only.

Any such contribution made otherwise than in money shall not be taken to reduce the limited partner's liability under section 10 (1).

(2) Where a limited partner in a limited partnership has paid contribution, whether or not towards the discharge of liabilities of the firm, and has drawn out or received back any part of the amount of the contribution, the amount so drawn out or received shall be treated as part of the sum referred to in section 10 (1) remaining unpaid.

**12. Use of descriptive words in name.** (1) Every business document issued on behalf of a limited partnership in connexion with the conduct of its business shall bear in legible characters—

- (a) the firm-name shown in relation to the partnership in the register kept by the Registrar pursuant to section 8;  
and
- (b) immediately adjacent to the firm-name, the words "a limited partnership".

(2) In subsection (1) the expression "business document" means any letter, notice, publication, offer, contract, order for goods or services, invoice, bill of exchange, promissory note, cheque, negotiable instrument, endorsement, letter of credit, receipt or statement of account.

**13. Liability for contravention of s. 12.** (1) A person who issues a document to which section 12 applies that does not bear the name and words required by the section commits an offence against this Act.

(2) A partner in a limited partnership who acquiesces in the issue of a document to which section 12 applies knowing that the document does not bear the name and words required by the section shall be deemed to have issued the document.

(3) If a document to which section 12 applies issued in contravention of the section bears on its face any indication that it has been approved by or issued under the authority of any person, that person shall be deemed to have issued the document unless the contrary is proved.

**14. Recovery of loss occasioned by breach of s. 12.** If any person suffers loss by reason that a document to which section 12 applies issued on behalf of a limited partnership did not bear the name or the words required by the section, the limited partnership and every person who committed an offence defined in section 13 (1) in relation to the document are jointly and severally liable to recompense that firstmentioned person for the loss suffered, which recompense may be recovered by action in the court as for a debt due and owing.

**15. Registered office.** (1) A limited partnership shall keep in Queensland at the place shown in the register as the address of the registered office of the partnership an office to which all communications with the firm may be addressed.

(2) In the event of default in complying with subsection (1) each general partner in the limited partnership concerned commits an offence against this Act.

**16. Incidents of limited partnerships.** (1) A limited partner in a limited partnership—

- (a) shall not take part in the management of the business of the partnership;
- and
- (b) has not power to bind the firm:

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

(2) If a limited partner takes part in the management of the business of the limited partnership in breach of subsection (1) he shall be liable for all liabilities of the firm incurred while he does so as if he were a general partner.

(3) Subject to the terms of any agreement between the partners in a limited partnership—

- (a) a difference arising as to ordinary matters connected with the firm's 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 the recording of the assignment in the register kept by the Registrar pursuant to section 8 the assignee shall be a limited partner in the assignor's stead with all the rights of the assignor;
- (c) a person may be admitted as a partner in the partnership without the consent of any limited partner.

#### PART IV—DISSOLUTION AND CESSATION OF LIMITED PARTNERSHIPS

**17. Dissolution not available in certain cases.** (1) Subject to the terms of any agreement between the partners in a limited partnership—

- (a) a limited partner is not entitled to dissolve the partnership by notice;
- (b) the general partners or the other limited partners are not entitled to dissolve the partnership by reason that a limited partner has suffered his share of the partnership property to be charged for his separate debt;
- (c) the departure of a limited partner shall not dissolve the partnership.

(2) The fact that a limited partner in a limited partnership is of permanently unsound mind is not a ground for dissolution of the

partnership by the court unless the share and interest of the partner therein cannot be otherwise ascertained or realised.

(3) If, upon the departure of a limited partner from a limited partnership, the business of the firm is continued by means of a partnership, that partnership shall be treated in the manner prescribed by section 9 (6).

**18. Cessation of limited partnerships.** A partnership shall cease to be a limited partnership if the partners therein agree that they shall carry on the business of the firm otherwise than as a limited partnership.

**19. Registration of dissolution or cessation of limited partnerships.**

(1) Upon receipt by the Registrar of a notice that complies with this Act—

(a) of dissolution of a partnership registered as a limited partnership;  
or

(b) of cessation of a limited partnership pursuant to section 18, and upon payment of the prescribed fee, the Registrar shall record in the register the fact of the dissolution or cessation effective on a date specified in the register in that behalf.

(2) The date to be specified in the register pursuant to subsection (1) shall be the date shown in the notice to the Registrar as the date on which the dissolution or cessation took effect or is to take effect or, if no such date is so shown, the date on which the record is made in the register pursuant to subsection (1).

**20. Winding up by general partners.** If the affairs of a limited partnership are to be wound up by the partners therein with a view to its dissolution the winding up shall be carried out by the general partners therein unless the court otherwise orders.

#### PART V—MISCELLANEOUS PROVISIONS

**21. Legal proceedings.** (1) Legal proceedings other than proceedings in relation to an offence may be brought by or against the partners in a limited partnership in the firm-name in which the partnership is registered under this Act.

(2) Action by way of execution under or enforcement of a judgment obtained in an action against a limited partnership sued in its firm-name shall not be taken against the property or person of a limited partner in the partnership except in accordance with leave of the Supreme Court first obtained.

**22. Duty to notify Registrar of changes.** (1) In the event of—

- (a) a change in the firm-name of a limited partnership;
- (b) a change in the name or address of a partner in a limited partnership;

or

- (c) a change that renders false or misleading any particular, such as is referred to in paragraph (f) of section 7 (2), shown in the register in relation to a limited partnership,

each of the general partners in the limited partnership commits an offence against this Act, if a notice of the change is not given to the Registrar before the expiration of seven days from the occurrence of the event.

(2) In the event of—

- (a) a departure of a partner from or an admission of a partner to a limited partnership;  
 (b) dissolution of a partnership registered as a limited partnership;  
 or

(c) cessation of a limited partnership pursuant to section 18, each of the persons shown in the register as a partner in the limited partnership at the time the event occurs commits an offence against this Act, if notice of the event is not given to the Registrar before the expiration of seven days from the occurrence of the event.

(3) Subsections (1) and (2) apply subject to section 23.

**23. Protection of certain persons who notify Registrar.** (1) A person who is shown in the register as a partner in a limited partnership shall not be liable to be punished for an offence defined in section 22 if before the expiration of seven days from the occurrence of an event affecting the partnership, in respect of which event the Registrar may amend the register upon notice given to him as prescribed, he gives notice in writing of the event to the Registrar.

(2) Upon receipt of a notice such as is referred to in subsection (1) the Registrar shall record in the register that the notice has been received and the tenor thereof.

**24. Furnishing false or misleading information.** A person who furnishes under this Act to the Registrar a document that is false or misleading in a material particular, whether by way of a statement therein or omission therefrom, commits an offence against this Act.

**25. Entry in register constitutes notice.** An entry in the register of any particular concerning a limited partnership, including an entry therein of the tenor of any notice received by the Registrar—

- (a) shall be sufficient notice of the particular or tenor of the notice to all persons who thereafter deal with the firm concerned;  
 and  
 (b) shall have effect, for the purposes of section 39 (2) of the *Partnership Act 1891-1988*, as if it were an advertisement in the Gazette.

**26. Proceedings for offences.** (1) A person who commits an offence against this Act is liable to a penalty of 20 penalty units.

(2) Proceedings in relation to an offence against this Act shall be taken in a summary way under the *Justices Act 1886-1987* within one year after the commission of the offence or within six months after the offence comes to the knowledge of the complainant, whichever period is the later to expire, and shall be taken on the complaint of the Registrar or a person authorized for the purpose by the Registrar.

(3) In proceedings referred to in subsection (2)—

- (a) the authority of the complainant to make the complaint shall be presumed unless the contrary is proved;  
and
- (b) a statement in the complaint as to the time when an offence came to the complainant's knowledge shall be sufficient evidence of that fact unless the contrary is proved.

**27. Mercantile Act register.** On the commencement of this Act the Registrar of Titles shall deliver to the Registrar within the meaning of this Act the record of registrations kept by him pursuant to section 57 of the *Mercantile Act of 1867* as amended and the Registrar shall keep that record open to inspection by the public.

**28. Regulations.** The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) particulars to be specified in any statement or notice filed with the Registrar in connexion with the formation, registration or continuance of a limited partnership;
- (b) the manner in which a registered office of a limited partnership shall be kept;
- (c) forms to be used for the purposes of this Act;
- (d) fees to be paid for the purposes of this Act;
- (e) all matters required by this Act to be prescribed where no other mode of prescription is provided for;
- (f) all matters necessary or convenient to the proper administration of this Act or attaining the objects and purposes of this Act.

**29. Service.** Without prejudice to any other method of serving partners in a limited partnership, a document concerning the business of the partnership shall be duly served on such partners if it is left at or sent by post addressed to the registered office of the partnership for the time being shown in the register.

**30. Amendment of Partnership Act. s. 5. Definition of partnership.**

(1) Section 5 of *The Partnership Acts, 1891 to 1965* is amended in subsection (3) by omitting the words “the provisions of “*The Mercantile Act of 1867*” ” and substituting the words “the *Mercantile Act of 1867* as amended or the *Partnership (Limited Liability) Act 1988*”.

(2) *The Partnership Act of 1891* as subsequently amended and as amended by this section may be cited as the *Partnership Act 1891-1988*.