

ACT 152
INCORPORATED PRIVATE PARTNERSHIPS ACT, 1962

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ACT 152

INCORPORATED PRIVATE PARTNERSHIPS ACT, 1962(1)

AN ACT to provide for the incorporation and registration of partnerships and to declare and amend the applicable laws and to provide for related matters.

Preliminary

1. Meaning of partnership

(1) Partnership means the association of two or more individuals carrying on business jointly for the purpose of making profits.

(2) For the purposes of subsection (1), an association of members is not a partnership if it is

- (a) a company registered under the Companies Ordinance, or a statutory re-enactment of that Ordinance unless it is re-registered in accordance with section 57 and the Second Schedule;2(2)
- (b) a company, body corporate, or unincorporated association formed under any other enactment;
- (c) a body corporate formed in accordance with the law of a foreign country whether or not carrying on business in the Republic;

(d) a joint venture without a firm name for one or more specific operations.

(3) Family ownership or co-ownership of property does not of itself create a partnership whether or not the family or co-owners share the profits made by the use of that property.

(4) Subject to this section, the sharing of the net profits of a business is a prima facie evidence of a partnership, but,

(a) the remuneration of a servant or agent of a person engaged in business by a share of profits of the business does not of itself make the servant or agent a partner; and

(b) a person is not a partner for the purposes of this Act, if it is shown that that person did not participate in the carrying on of the business and was not authorised so to do.

Registration

2. Registration of partnership firms

(1) *Omitted.*3(3)

(2) A partnership consisting of more than twenty persons or of which a body corporate is a member shall not be registered under this Act.

3. Method of registration

(1) Registration under this Act shall be effected by sending or delivering to the Registrar for registration a copy of the partnership agreement and a statement in the prescribed form signed by the partners containing

(a) the firm name of the partnership,

(b) the general nature of the business,

(c) the address, which includes an electronic address, and post office box number of,

(i) the principal place of business of the partnership, and

(ii) any other places in the Republic at which the business is carried on,

(d) the names and the former residential addresses and business occupations of the partners,

(e) the date of commencement of the partnership, unless the partnership has commenced more than twelve months prior to the date of the commencement, and

(f) particulars of the charges requiring registration under section 23, or a statement that there are no charges requiring registration.

(2) Where particulars of a charge require registration under section 23, the statement shall be accompanied by the documents required by that section.

(3) The Registrar shall, on payment of the prescribed fee, register the statement, unless in the opinion of the Registrar,

(a) the partnership is not one which is registrable under this Act,

(b) any of the businesses which the partnership has been carrying on, or is to carry on, is unlawful,

- (c) the name of the firm is misleading or undesirable,
- (d) any of the partners is an infant or of unsound mind or a person who, within the preceding five years, has been charged with fraud or dishonesty, whether convicted or not, in connection with a trade or business or is an undischarged bankrupt, or
- (e) the statement is incomplete, illegible, inaccurate, irregular, or on paper insufficiently durable to be suitable for registration.

(4) For the purposes of forming an opinion in accordance with subsection (3), the Registrar

- (a) may call on a partner or former partner to supply any relevant information, and
- (b) may require the books and accounts of the partnership to be produced for inspection.

(5) Where the Registrar refuses registration on a ground specified in paragraph (a), (b) or (d) of subsection (3), a partner or person claiming to be a partner may appeal to the High Court against the decision of the Registrar in accordance with subsection (2) of section 53.

(6) The Registration of Business Names Act, 1962 (Act 151) shall not apply to a firm registered under this Act and not struck off the register under section 49, 50 or 51.

4. Issue and effect of certificate of registration

(1) On registration the Registrar shall certify under seal that the firm has been registered and is incorporated and the certificate shall state the names of the partners and that their liability is not limited.

(2) The Registrar shall insert a notice in the *Gazette* stating the issue of the certificate and the terms of the certificate.

(3) The certificate, or a copy of the certificate certified as correct and signed personally by the Registrar, or the *Gazette* containing the notice referred to in subsection (2), is conclusive evidence that the firm has been duly incorporated under this Act.

5. Registration of changes

(1) Where a change is made or has occurred in any of the particulars registered in accordance with the Act, the existing partners shall, within twenty-eight days after the change, deliver to the Registrar for registration a statement in the prescribed form signed by the partners or their agents authorised in writing, containing particulars of the change.

(2) Subsections (3), (4) and (5) of section 3 shall apply as if the statement were a statement delivered for registration under that section.

(3) Where the change is of the firm name or of the identity of the partners, the Registrar, on registration of the statement, shall issue an amended certificate of registration and shall insert a notice in the *Gazette* stating the issue of the certificate and the terms of the certificate.

6. Annual renewal of registration

(1) Once in every year the partners shall deliver to the Registrar for registration a statement in the prescribed form renewing the registration.

(2) In the case of a partnership registered

- (a) between the 1st day of January and the 30th day of June in a year, the notice shall be

delivered for registration within 28 days after the 1st day of January each year; and

- (b) between the 1st day of July and the 31st day of December in a year, the notice shall be delivered for registration within 28 days after the 1st day of July each year.

(3) Subsections (3), (4) and (5) of section 3 shall apply as if the statement were a statement delivered for registration under that section.

7. Penalties and disabilities for breach of section 2, 3, 5 or 6

(1) In the event of a default in complying with section 2, 3, 5 or 6,

- (a) a partner is liable to a fine not exceeding twenty-five penalty units for each day during which the default continues;
- (b) the rights of the firm concerned and of the partners arising out of a contract made during the time that the default continues are not enforceable by action or any other legal proceedings.

(2) For the purposes of subsection (1),

- (a) the firm may apply to the High Court for relief against the disability imposed by paragraph (b) of that subsection, and the High Court, on being satisfied that it is just and equitable to grant relief, may grant the relief generally or as respects a particular contract and on the conditions imposed by the Court;
- (b) paragraph (b) does not prejudice the rights of any other parties as against the firm or the partners, or any other person, in respect of the contract;
- (c) if an action or a proceeding is commenced by any other party against the firm or the partners to enforce the rights of that party in respect of the contract, paragraph (b) does not preclude the firm or the partners from enforcing in that action or proceeding by way of counter-claim, set-off or otherwise, those rights which the firm or the partner may have against that party in respect of that contract.

(3) Where there is an error or omission in a statement or a notice delivered to the Registrar in accordance with sections 3, 5 or 6 a partner in the firm concerned is liable to a fine not exceeding two hundred and fifty penalty units.

8. Maintenance of register

The Registrar shall maintain a register and an index of the firms registered under this Act, and of the statements and notices relating to each firm so registered.

9. No constructive notice of registered documents

Except as provided by section 33, a person does not have knowledge of any particulars by reason only that the particulars are stated or referred to in a statement or notice registered in accordance with this Act.

Nature of the Firm

10. Corporate personality of the firm

(1) From the date of registration mentioned in the certificate of registration issued in accordance with section 4, the firm is a body corporate under the firm name, distinct from the partners of whom it is composed, and capable of exercising the powers of a natural person of full capacity in so far as those

powers can be exercised by a body corporate.

(2) Despite a change in the constitution of the partnership, the firm shall continue to exist as a corporate body until dissolved in accordance with section 49, 50 or 51.

(3) Although the firm is a body corporate, each partner in the firm is liable, without limitation, for the debts and obligations of the firm in the manner referred to in section 14, but is entitled to an indemnity from the firm and to contribution from the co-partners in accordance with the rights of that partner under the partnership agreement.

Publicity

11. Publication of firm name and partners' names

(1) A firm shall

- (a) carry on business only under the registered firm name, and shall paint or affix, and keep painted or affixed, the registered firm name on the outside of the office or place in which its business is carried on, in a conspicuous position in letters easily legible;
- (b) accurately mention in legible characters at the head of the trade circulars and business letters of the firm, the registered firm name and the present forenames or the initials of the firm name and the former forenames or surnames of the partners in the firm;
- (c) keep exhibited in a conspicuous position at the principal place of business of the firm, the firm's latest certificate of registration issued under section 5 or 6.

(2) Where there is a default in complying with this section the firm is liable to a fine not exceeding two hundred and fifty penalty units.

Relations of Firm and Partners to Persons Dealing with Them

12. Power of partners to bind the firm

(1) A partner is an agent of the firm for the purposes of the business of the firm.

(2) The acts of a partner binds the firm if,

- (a) the acts were authorised, expressly or impliedly, by the other partners or were subsequently ratified by them;
- (b) the acts were done for carrying on in the usual way business of the kind carried on by the firm, unless the partner so acting does not in fact have the authority to act for the firm in the particular matter and the person with whom that partner is dealing knows that the partner does not have the authority.

(3) Where the acts of a partner are for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless the partner is in fact authorised by the other partners or the act is subsequently ratified by them.

(4) Where it has been agreed between the partners that a restriction shall be placed on the power of any one or more of the them to bind the firm, an act done in contravention of the agreement is not binding on the firm with respect to persons having notice of the agreement.

(5) An agreement purporting to limit the extent of the liability of the firm or of the partners in respect

of an act binding the firm is not effective except as between the actual parties to the agreement.

13. Acts on behalf of the firm

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

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

14. Nature of liability of firm and partners

A partner in a firm is jointly and severally liable with the firm and the other partners for the debts and obligations of the firm incurred while that partner remains a partner.

15. Liabilities of incoming and outgoing partners

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

(2) A partner who retires from a firm shall not cease to be liable for the debts or obligations of the firm incurred before the retirement.

(3) A retiring partner may be discharged from an existing liability by an agreement to that effect between the retiring partner and the firm and the creditor, and this agreement may be expressed or inferred as a fact from the course of dealing between the creditor and the firm as newly constituted.

(4) Where a person deals with a firm after the retirement of a partner whom that person knew to be a partner in the firm, that person is entitled to treat the retired partner as still being a partner until that person has notice of the retirement and the retired partner is liable accordingly.

(5) A person who had dealings with the firm prior to the retirement shall not be deemed to have notice of the retirement, unless that person has actual knowledge of the retirement.

(6) An advertisement in a daily newspaper circulating in the district in which is situated the principal place of business of the firm is notice to persons who have not had dealings with the firm prior to the retirement.

(7) The estate of a partner who dies or has an insolvency order made against that partner under the Insolvency Act, 1962 (Act 153) or, subject as provided by subsections (4) and (5) of this section, a partner who retires, is not liable for the debts or obligations of the firm contracted or incurred after the date of the death, insolvency order, or retirement respectively.

16. Persons liable by holding-out

(1) A person who by words spoken or written or by conduct personally represents, or who knowingly allows that person to be represented, as a partner in a particular firm is liable as a partner to any other person who has, on the faith of that representation, allowed the firm to incur debts or obligations to that person whether the representation has or has not been made or communicated to that other person by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2) Where after the partner's death or retirement the firm continues to do business in the same firm name, the continued use of that name or of the former partner's name as part of the name, shall not of itself make the deceased partner or the estate of that deceased partner liable for the debts or obligations of

the firm contracted or incurred after the death or retirement.

17. Revocation of continuing guarantees

(1) A continuing guarantee given to a third person in respect of the transactions of a firm shall, in the absence of an agreement to the contrary, be revoked as to future transactions by a change in the partners who are members of the firm.

(2) A continuing guarantee given to a firm in respect of the transactions of a third person shall not, in the absence of an agreement to the contrary, be revoked as to future transactions by a change in the partners who are members of the firm.

18. Procedure for a partner's separate judgment debt

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

(2) Where judgment is recovered against a partner, the High Court

- (a) may, on the application of the judgment creditor, make an order charging the partner's interest in the firm with payment of the amount of the judgment debt and interest on the judgment debt, and
- (b) 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 that may be coming to that partner in respect of the partnership, and
- (c) may direct the accounts and inquiries, and give any other orders and directions which might have been given or directed 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 partners may at any time redeem the interest charged or, in the case of a sale being directed, may purchase the same.

Mortgages and Charges

19. Power to grant floating charges

(1) A firm may grant a floating charge over the whole or a specified part of its undertaking and assets.

(2) A floating charge is an equitable charge on the whole or a specified part of the firm's undertaking and assets both present and future, but the charge does not preclude the firm from dealing with those assets until,

- (a) the security becomes enforceable in accordance with the provisions of the charge and the chargee, pursuant to a power in that behalf in the instrument of charge, appoints a receiver or manager or enters into possession of those assets, or
- (b) the High Court appoints a receiver or manager of those assets on the application of the chargee, or
- (c) the firm goes into liquidation.

(3) On the happening of an event as is specified in the subsection (2), the charge shall crystallise and become a fixed equitable charge on any of the firm's assets that are subject to the charge; and if a receiver

or manager is withdrawn with the consent of the chargee or the chargee withdraws from possession before the charge has been fully discharged, the charge shall cease to be a fixed charge and shall become a floating charge.

(4) A fixed charge on a property has priority over a floating charge affecting that property, unless the terms on which the floating charge was granted prohibited the firm from granting a later charge having priority over the floating charge, and the person in whose favour the fixed charge was granted had actual notice of that prohibition at the time when the charge was granted to that person.

(5) After a floating charge has been granted over a part of the undertaking and assets of a firm, a payment or return shall not be made to a partner by the firm out of the assets subject to the charge, except to the extent agreed by the chargee, and if that payment or return is made without that agreement the security of the charge shall become immediately enforceable.

20. Registration of particulars of charges

(1) A charge, other than those specified in subsection (3), created after the date of registration of the firm pursuant to section 3 by a firm, or by a partner in the firm to secure a debt or an obligation of the firm, is void so far as a security on the property of the firm or a partner in the firm is conferred, unless the prescribed particulars together with the original or a certified copy of the instrument, by which the charge is created or is evidenced, are delivered in the prescribed form to the Registrar for registration within twenty-eight days after its creation.

(2) This section does not prejudice a contract or an obligation for repayment of the money secured and when a charge becomes void under this section the money secured shall immediately become payable despite a provision to the contrary in a contract.

(3) This section does not apply to a pledge of, or possessory lien on, goods, or to a charge by way of pledge, letter of hypothecation or trust receipt, of bills of lading, dock warrants or any other documents of title to goods, or of bills of exchange, promissory notes or any other negotiable securities for money.

(4) The particulars requiring delivery for registration under this section are,

- (a) the date of creation of the charge,
- (b) the nature of the charge,
- (c) the amount of money secured by the charge, or the maximum sum of money deemed to be secured in accordance with section 21,
- (d) short particulars of the property charged,
- (e) the grantor of the charge,
- (f) the persons entitled to the charge, and
- (g) in the case of a floating charge, the nature of a restriction on the power of the firm to grant further charges ranking in priority to, or simultaneously and equally with, the charge created.

(5) For the purposes of this section, a certified copy is a copy which has endorsed on it a certificate to the effect that it is a true and complete copy of the original, signed by a person interested in the certified copy otherwise than on behalf of the firm or the partners; and where the original is in a language other than English, the copy shall contain an English translation similarly certified to the effect that it is an accurate translation of the original.

(6) This section does not affect the provisions of any other enactment relating to the registration of charges.

21. Charges to secure fluctuating amounts

(1) Where a charge, particulars of which require registration under section 20, is expressed to secure sums of money due or to become due or any other uncertain or fluctuating amount, the particulars required under paragraph (c) of subsection (4) of section 20 shall state the maximum sum of money deemed to be secured by the charge, being the maximum sum of money covered by the stamp duty paid on that sum or amount, and the charge shall be void, so far as a security on the firm's or a partner's property is thereby conferred, as respects an excess over the stated maximum.

(2) For the purposes of subsection (1), if

- (a) additional stamp duty is subsequently paid on the charge, and
- (b) at any time after the payment prior to the commencement of the winding-up of the firm, amended particulars of the charge stating the increased maximum sum of money deemed to be secured thereby, together with the original instrument by which the charge was created or evidenced, are delivered to the Registrar for registration,

then, as from the date of the delivery, the charge, if otherwise valid, is effective to the extent of the increased maximum sum of money except as regards a person who, prior to the date of the delivery, has acquired proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

22. Charges on property acquired

(1) Where a firm acquires a property which is subject to a charge of a kind that particulars of it would, if it had been created by the firm after the acquisition of the property, have been required to be registered under section 20, the firm shall deliver particulars of the charge together with the document by which the charge was created or evidenced or a copy of the document certified as provided in subsection (5) of section 20 to the Registrar for registration within twenty-eight days after the date on which the acquisition is completed.

(2) The particulars requiring registration under subsection (1) are those specified in subsection (4) of section 20 with the addition of the date of the acquisition of the property by the firm.

(3) Failure to comply with this section does not affect the validity of the charge.

23. Existing charges

(1) Where, at the date of first registration of the firm in accordance with section 3, the firm or any of the partners in the firm has property on which there is a charge particulars of which would require registration if it had been created after the date of registration of the firm, the firm shall deliver particulars of the charge as required by section 20, together with the document by which the charge was created or a copy of the document certified as required by that section, to the Registrar for registration in accordance with section 3.

(2) Failure to comply with subsection (1) does not affect the validity of the charge.

24. Duty to send particulars for registration

(1) The firm shall send to the Registrar for registration the particulars required to be sent under sections 20 to 23, but registration may be effected on the application of a person interested in the registration.

(2) Where a firm defaults in sending to the Registrar the particulars requiring registration then, unless

the particulars have been delivered for registration by any other person, the firm is liable to a fine not exceeding two hundred and fifty penalty units.

25. Register of particulars of charges

(1) The Registrar shall keep, with respect to each firm, a register of the particulars duly delivered pursuant to sections 20 to 23 and shall enter the particulars in the register.

(2) The Registrar shall give a certificate signed personally by the Registrar, of the registration of particulars of a charge registered in pursuance of sections 20 to 23 and the certificate is conclusive evidence, except in favour of the firm or of any other person who has delivered false or incomplete particulars or an incorrect copy of a document, that the requirements of sections 20 to 23 have been complied with.

(3) In the case of a charge of the type referred to in section 21 the certificate shall state the maximum sum of money deemed to be secured by the charge.

(4) The original or certified copy of the charge delivered with the particulars shall not be registered or retained by the Registrar.

26. Entry of satisfaction on discharge

The Registrar shall, on an application made in the prescribed form and on satisfactory evidence being given with respect to a charge of which particulars have been registered,

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or

(b) that the whole or a part of the property has been released from the charge,

enter on the register a memorandum of satisfaction in whole or in part of the fact that the whole or a part of the property has been released from the charge.

27. Rectification of register of particulars of charges

(1) Where the High Court is satisfied

(a) that the omission to register particulars of a charge within the time required by this Act, or

(b) that the omission or misstatement of the particulars with respect to the charge was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors of the firm, or

(c) that on any other grounds it is just and equitable to grant relief,

may, on the application of the firm or a person interested, and on the terms which to the Court are just and expedient, order that the time for registration shall be extended, or that the omission or misstatement shall be corrected.

(2) Where the High Court grants an extension of time for registration, the charge shall not, unless the Court otherwise orders, adversely affect a person who, prior to the date of actual registration of the particulars of the charge, has acquired a proprietary right in, or a fixed or floating charge on, the property subject to the charge, and shall be ineffective against the Official Trustee and a creditor of the firm if the winding-up of the firm commences before the date of actual registration.

28. Registration of enforcement of security

(1) A person who obtains an order for the appointment of a receiver of a property subject to a charge particulars of which require to be delivered for registration pursuant to sections 20 to 23, or appoints a receiver or enters into possession of the property under the powers contained in the charge, shall give notice of the fact in the prescribed form, within ten days from the date of the order of appointment or entry into possession, to the Registrar who shall enter the fact in the register of the particulars of charges relating to the firm.

(2) Where there is a default in giving the notice required under subsection (1), the receiver, the person entering into possession, the firm, or a partner of the firm who is in default is liable to a fine not exceeding twenty-five penalty units for each day during which the default continues.

(3) A person appointed receiver of the property of the firm who ceases to act as a receiver or a person who having entered into possession goes out of possession, shall, within ten days of so ceasing to act or to remain in possession, give notice to that effect in the prescribed form to the Registrar who shall enter the notice in the register of particulars of charges.

(4) A person who defaults in complying with the requirements of subsection (3) is liable to a fine not exceeding twenty-five penalty units for each day during which the default continues.

(5) The Registrar shall publish a copy of a notice given under this section in the *Gazette*.

29. Registration constituting notice

The registration of the particulars on the register of particulars of charges constitute actual notice of the particulars, but not of the contents of a document referred to in the particulars or delivered with the particulars to all persons and for all purposes as from the date of registration.

Accounts

30. Keeping of accounts

(1) A firm shall keep proper accounts with respect to its financial position and changes in that position and with respect to the control of, and accounting for, the property acquired whether for resale or for use in the firm's business and in particular with respect to,

- (a) the sums of money received and expended by or on behalf of the firm and the matters in respect of which the receipt and expenditure takes place;
- (b) the sales and purchases by the firm of property, goods and services;
- (c) the assets and liabilities of the firm and the interests of the partners in those liabilities and interests.

(2) A firm shall, at intervals of not more than fifteen months, prepare

- (a) a profit and loss account giving a true and fair view of the profit or loss of the firm for the period to which it relates, and
- (b) a balance sheet giving a true and fair view of the assets and liabilities and state of affairs of the firm and of the value of the interest of each of the partners in the firm as at the end of the period to which the profit and loss account relates.

(3) The Registrar may, by order published in the *Gazette*, prescribe the form of, or minimum information to be given in, accounts and balance sheets to be kept and prepared in accordance with this section, and may require accounts and balance sheets to be audited and may prescribe the qualifications of

auditors.

(4) Where there is a default in maintaining or preparing the accounts and balance sheet required by this section each partner is liable to a fine not exceeding five hundred penalty units.

31. Partners' access to accounts

Despite an agreement to the contrary,

- (a) a partner in the firm has a right of access to the firm's accounts and may inspect and copy any of them, and
- (b) a partner or former partner, and the personal representative of a deceased partner shall be supplied with a copy of the profit and loss account and balance sheet prepared in accordance with section 30 and relating to a period during which that person was a partner in the firm.

Relation of Partners to One Another

32. Fiduciary relationship of partners

- (1) Partners stand in a fiduciary relationship towards the firm and their co-partners.
- (2) Without prejudice to the generality of subsection (1),
 - (a) a partner is bound to render to every other partner full information of the things which affect the firm;
 - (b) a partner shall account to the firm for a benefit derived by that partner without the consent of the other partners from a transaction concerning the firm or from a use by that partner of the firm's property, name or business connection;
 - (c) if a partner, without the consent of the other partners, directly or indirectly carries on a business of the same nature as, and competing with, that of the firm, that partner shall account for, and pay over to the firm, the profits made by that partner in that business.

33. Rules applying in absence of contrary agreement

(1) Subject to this Act the mutual rights and duties of the partners whether ascertained by agreement or by this section may be varied by the consent of the other partners, which consent may be either express or inferred from a course of dealing.

- (2) Subject to an agreement, express or implied,
 - (a) the partners are entitled to share equally in the capital and profits of the firm and shall contribute equally towards the losses sustained by the firm;
 - (b) the firm shall indemnify a partner in respect of the payments made and personal liabilities incurred by that 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 firm, an actual payment or an advance beyond the amount of capital which that partner has agreed to subscribe is entitled to interest at the rate of five percent per annum from the date of payment or advance;

- (d) although the partnership agreement provides for payment of interest on the capital subscribed by a partner, a partner is not entitled to payment of interest before the ascertainment of the profits of the firm;
- (e) a partner may take part in the management of the business of the firm;
- (f) a partner is not entitled to remuneration for acting in the firm's business;
- (g) a person shall not be introduced as a partner without the consent of that person and the consent of the existing partners;
- (h) a difference arising as to ordinary matters connected with the firm's business may be decided by a majority of the partners, but a change shall not be made in the nature of the firm's business without the consent of the existing partners;
- (i) the partnership books and accounts shall be kept at the place of business of the firm or the principal place of business if there is more than one.

(3) Subject to an express agreement, where a partner ceases to be a partner in the firm subsections (3), (4) and (5) of section 39 shall apply.

34. Presumed continuance of terms of partnership agreement

Where a partnership is expressed to be for a fixed term, and, after the expiration of that term, the partners or any of them expressly or impliedly agree to remain partners in the firm, the rights and duties of those partners, in the absence of an agreement to the contrary, shall 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.

35. Nature of interests of partners

The interests of the partners in the firm constitute a personal estate and are not in the nature of real or immovable property.

36. Rights of assignee of partner's interest in firm

(1) An assignment by a partner of the interest of that partner in the firm, either absolute or by way of a charge, shall not, as against the other partners, entitle the assignee to interfere in the management or administration of the firm or to require the accounts of the firm's 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 shall accept the account of profits agreed to by the partners.

(2) In the event of the assigning partner ceasing to be a partner in the firm the assignee is entitled to receive the amount which the assigning partner or the estate of the assigning partner would be entitled to receive personally as against the other partners and, for the purpose of ascertaining that amount, to an account as from the date of ceasing to be a partner.

Withdrawal from Firm and Consequences of Withdrawal

37. Cessation of membership of firm

- (1) A partner ceases to be a partner in the firm in the event of
 - (a) the death of the partner,

- (b) the partner becoming an alien enemy during a time of war,
- (c) an insolvency order being made against the partner under the Insolvency Act, 1962 (Act 153).

(2) If the other partners so elect in writing, a partner shall cease to be a partner in the firm if that partner suffers the interest of that partner in the partnership to be charged under section 20 for a separate debt.

(3) A partnership agreement may validly provide that on the occurrence of any of the events in the agreement a partner shall cease to be a partner automatically or at the option of the other partners.

(4) On application by a partner, the High Court may order that a partner shall cease to be a partner in the firm

- (a) when the partner is shown to the satisfaction of the Court to have become permanently of unsound mind;
- (b) when the partner is shown to the satisfaction of the Court to have become in any other way permanently incapable of performing the requisite part of the partnership agreement;
- (c) when the partner is found guilty of a conduct that, in the opinion of the Court, considering the nature of the firm's business, is calculated prejudicially to affect the carrying on of the business;
- (d) when the partner wilfully or persistently commits a breach of the partnership agreement, or the conduct of the partner in matters relating to the firm's business is not reasonably practicable for the other partners to carry on the business in partnership with that partner; or
- (e) where circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partner should cease to be a partner in the firm.

(5) An application to the High Court on a ground specified in paragraph (a), (b) or (e) of subsection (4) may be made by any other partner.

(6) An application on a ground specified in paragraph (c) or (d) of subsection (4) may not be made by the partner whose conduct is alleged to justify the making of an order for that person to cease to be a partner.

(7) Subject to an agreement between the partners, if the partnership is for an undefined term or has become a partnership at will in accordance with section 34, a partner may retire from the firm by giving notice in writing to the other partners of the intention to retire, and on that notice the partner shall cease to be a partner in the firm as from the date mentioned in the notice as the date of the retirement or, if a date is not mentioned, as from the date of the communication of the notice.

(8) A partnership agreement may validly provide that a partner may retire from the partnership in the manner specified in the agreement and on retirement in accordance with that manner the partner shall cease to be a member of the firm.

(9) On ceasing to be partner, that partner or any other partner may publicly notify the cessation, and may require the other partner or partners to concur for that purpose in the necessary or proper acts, which cannot be done without their concurrence or the concurrency of that partner.

38. Withdrawal of a partner not to affect the others

The fact that a partner ceases to be a partner in the firm shall not affect the existence of the firm or the

material rights and duties of the other partners.

39. Action by continuing partners

(1) Where a partner has ceased to be a partner in the firm, and there is only one surviving or continuing partner of the firm, the surviving or continuing partner shall, within six months of the cessation,

- (a) admit any other person or persons into partnership in the firm, or
- (b) commence to wind up the firm in accordance with section 45 or 46.

(2) Subject to an express agreement relating to the passing or acquisition of the interest in the firm of a partner who ceases to be a partner and the admission of a new partner in the place of the partner who has ceased to be partner, subsections (3), (4) and (5) of this section shall apply when a partner ceases to be a partner and whether there is one or more than one, surviving or continuing partner of the firm.

(3) Within six months of a partner having ceased to be a partner in the firm, the surviving or continuing partners shall

- (a) admit into partnership in the firm the person, as successor, who has acquired or agreed to acquire or succeeded to the interest in the firm of the former partner, or
- (b) purchase the interest in the firm of the former partner at a price to be determined in default of agreement by a single arbitrator appointed by the parties or, if they cannot agree on an appointment, nominated by the president of the Association of Accountants in the Republic, or
- (c) commence to wind up the firm in accordance with section 45 or 46.

(4) Where the successor is admitted into partnership in the firm in accordance with paragraph (a) of subsection (3), the successor becomes a partner in the firm in the place of the former partner as from the date when the former partner ceased to be a partner.

(5) Where the surviving or continuing partners elect to purchase the interest of the former partner or to wind up the firm, the amount of money payable to the former partner, or the successor, in respect of the interest becomes, as between the successor and the firm, in the absence of agreement to the contrary, a debt due from the firm as at the date of the former partner ceasing to be a partner and shall carry interest at the rate of five percent a year.

40. Apportionment of premium

Where one partner has paid a premium to another on entering into a partnership agreement for a fixed term, and the firm is wound up or the partner paying the premium ceases to be a partner of the partner to whom the premium was paid, the High Court may order the return of the premium, or a part of the premium which it thinks just, considering the terms of the partnership agreement, to the length of time during which the partnership has continued and to the circumstances of the case, unless,

- (a) the winding-up of the firm or the cessation of the partnership is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or
- (b) the firm is wound up or the partnership ceases as a result of an agreement which did not contain a provision for a return of a part of the premium.

41. Rights under agreement rescinded for misrepresentation

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

- (a) to a lien on the firm's assets, after satisfying the firm's liabilities, for a sum of money paid by the partner for the purchase of the interest in the firm of, and for a capital contributed by, that partner,
- (b) to stand in the place of the creditors of the firm for the payments made by that partner in respect of the firm's liabilities, and
- (c) to be indemnified by the person guilty of the fraud or making the representation against the liabilities of the firm.

Winding-up of Firm

42. Modes of winding-up

The winding-up of a firm may be

- (a) as a result of insolvency proceedings under the Insolvency Act, 1962 (Act 153) against the partners jointly;
- (b) under an order of the High Court; or
- (c) by voluntary liquidation by the partners.

43. Continuance of firm until dissolution

The firm shall, from the commencement of the winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up of the firm, but the corporate state and corporate powers of the firm shall continue until it is dissolved.

44. Winding-up as result of joint insolvency proceedings

(1) Unless the firm is being wound up under an order of the High Court under section 45, one or more of the creditors of the firm may institute insolvency proceedings under the Insolvency Act, 1962 (Act 153) against the partners jointly if the conditions specified in section 9 of that Act are complied with, and for the purposes of that section a thing done by or to a firm is done by or to the partners jointly.

(2) Where a protection order is made against the partners jointly the order shall have the effect of appointing the Official Trustee to be the liquidator of the firm and, pursuant to section 37 of the Insolvency Act, 1962 (Act 153), as from the date of the order the interests of the partners and the powers and authority of the partners in relation to the firm shall vest in the Official Trustee.

(3) A copy of the protection order shall be delivered by the Official Trustee to the Registrar for registration.

(4) Where an insolvency order is made against the partners jointly, the assets of the firm shall be administered by the Official Trustee in accordance with the Insolvency Act, 1962 (Act 153) as if they were the joint estate of the partners, but the creditors of the firm are entitled to prove for the debts that are provable under the Insolvency Act, 1962 (Act 153) against both the firm's assets and the separate estate of each partner who is liable.

45. Winding-up under the order of High Court

(1) A firm, although it is being wound up voluntarily, may be wound up under an order of the High Court on the application of,

- (a) a partner of the firm,
- (b) a former partner, or the legal representative of the former partner, who has not been paid the amount of money due in respect of the former partner's interest in the firm, or
- (c) the Registrar.

(2) An application under subsection (1) shall not be made after insolvency proceedings under the Insolvency Act, 1962 (Act 153) have been commenced by or against the partners jointly.

(3) The High Court may order the winding-up of a firm on an application being made under subsection (1) of this section if,

- (a) the firm does not commence business within a year from the registration or suspends its business for a whole year,
- (b) the firm carries on business for more than six months with fewer than two partners,
- (c) the firm is unable to pay its debts as they fall due, or
- (d) the Court is of the opinion that it is otherwise just and equitable that the firm should be wound up by the Court.

(4) Before making a winding-up order the High Court shall enquire as to the solvency of the firm; and unless the Court is satisfied that the debts and liabilities of the firm will be paid in full within a period of six months from the commencement of the winding-up, if the Court orders the winding-up of the firm, the order is, for the purposes of this Act, a protection order under the Insolvency Act, 1962 (Act 153) made against the partners jointly, and accordingly subsections (2), (3) and (4) of section 44 of this Act shall apply.

(5) Except as provided in subsection (4) the High Court shall, on making a winding-up order, appoint the Official Trustee, the Registrar or any other person it thinks fit, as liquidator to wind up the affairs of the firm.

(6) Within forty-eight hours of the drawing up of the winding-up order, a copy of the order shall be delivered by the liquidator to the Registrar for registration and the Registrar shall publish a notice of the order in the *Gazette*.

(7) Where, before the making of the winding-up order, the partners have commenced to wind up voluntarily, the winding-up shall be deemed to have commenced at the date of the commencement of the voluntary winding-up and, unless the High Court otherwise directs, the proceedings taken in the voluntary winding-up shall be deemed to have been validly taken; and in any other case the winding-up shall be deemed to commence at the date of the making of the winding-up order.

(8) From the date of the winding-up order the powers and authority of the partners in relation to the firm shall cease and shall vest in the liquidator.

46. Voluntary winding-up

(1) A firm may be wound up by way of voluntary liquidation by the partners if the partners so agree and send notification of the agreement in the prescribed form to the Registrar for registration.

(2) For the purposes of subsection (1), the winding-up commences at the date of the registration of the notification and the Registrar shall publish a notice of that date in the *Gazette*.

(3) The authority of a partner to bind the firm and the other rights and obligations of the partners shall continue, despite the winding-up, until the firm is dissolved or a protection order under the Insolvency Act, 1962 (Act 153) is made against the partners jointly, or an order is made for the winding-up of the firm under an order of the High Court, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the commencement of the winding-up, but not otherwise.

(4) If at any time a partner is of the opinion that the firm is not able to pay its debts in full within six months from the commencement of the winding-up, that partner shall give notice in the prescribed form to the Registrar who shall register the notice and publish a copy of the notice in the *Gazette*.

(5) Within twenty-one days from the expiration of six months from the commencement of the winding-up, the partners shall send to the Registrar a statement in the prescribed form, stating whether or not the debts of the firm have been paid in full, and the Registrar shall register the statement and publish a copy of the statement in the *Gazette*.

(6) Where a partner wilfully defaults in complying with subsection (4) or (5), or wilfully makes a misstatement in a statement sent under any of those subsections, the partner commits an offence and is liable on conviction to a term of imprisonment not exceeding six months.

47. Notification that firm is being wound up

Where a firm is being wound up otherwise than voluntarily by the partners, an invoice, an order, or a business letter issued by or on behalf of the firm, which is a document in or on which the name of the firm appears, shall contain a statement that the firm is being wound up and shall state the name or official title of the liquidator.

48. Application of firm's property

(1) On the winding-up of a firm every partner, and every former partner, or the legal representative, who has not been paid the amount of money due in respect of the former partner's interest in the firm, is entitled, as against the other partners in the firm and the persons claiming through them in respect of their interests as partners, to have the undertaking and assets of the firm sold.

(2) The business of the firm shall be sold as a going concern, if practicable, and the proceeds applied in payment of the debts and liabilities of the firm, and the surplus applied in payment of what may be due from them as partners to the firm.

(3) Subject to an agreement, in settling accounts between the partners,

- (a) losses, other than 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) deficiencies of capital shall not be made up but shall be borne by the partners in the proportion in which they were entitled to capital;
- (c) the assets of the firm shall be applied,
 - (i) firstly in paying the debts and liabilities of the firm to persons who are not partners in the firm;
 - (ii) secondly, in paying to each partner rateably what is due from the firm to that partner for advances as opposed to the agreed share of capital;

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

(4) Where, in a voluntary winding-up by the partners, the debts and liabilities of the firm are not paid in full, and an insolvency order under the Insolvency Act, 1962 (Act 153) is made against the partners jointly as a result of insolvency proceedings commenced within one year after the commencement of the voluntary winding-up, a sum of money paid in the voluntary winding-up to a creditor which would not have been paid had the debts been paid in the order prescribed by section 47 of the Insolvency Act, 1962 (Act 153) in accordance with section 54 of that Act, the creditor shall, on receipt of a notice given in that behalf by the Official Trustee, restore that sum to the Official Trustee.

49. Dissolution after winding-up

(1) Where the Registrar is satisfied that the winding-up of the affairs of the firm is complete then, unless the undertaking of the firm has been disposed of as a going concern to another partnership and the change duly registered in accordance with section 5, the Registrar shall strike the firm off the register and notify the same in the *Gazette*.

(2) The firm is then dissolved as at the date of the publication in the *Gazette*.

(3) Where property of the firm has not in fact been effectually disposed of in the winding-up, it is, for the purposes of this Act, vested,

- (a) in the case of a voluntary winding-up, in the partners, and
- (b) in any other case, in the Official Trustee on trust to pay out of that property, the outstanding debts and liabilities of the firm and subject to that for the former partners in accordance with their rights under the partnership agreement.

(4) Despite the dissolution of the firm the former partners remain jointly and severally liable to pay the debts and liabilities of the firm in so far as these have not been fully discharged in the winding-up or otherwise.

50. Dissolution of moribund firms

(1) Where the Registrar, from personal knowledge or on information supplied by a partner or creditor of a firm, has reasonable cause to believe that a firm is not carrying on business, whether by reason of the fact that the business has ceased or has been transferred to a company incorporated under the Companies Act, 1963 (Act 179) or to any other person, the Registrar may send to the last registered principal place of business of the firm a letter by registered post

- (a) enquiring whether the firm is carrying on business, and
- (b) stating that if it is not carrying on business or if a reply is not received within two months from the date of the letter, a notice will be published in the *Gazette* with a view to striking the firm off the register.

(2) Where the Registrar receives a reply from the firm to the effect that it is not carrying on business or does not within the specified time receive an answer to the letter, the Registrar may publish in the *Gazette* and send by registered post to the last registered principal place of business of the firm, a notice that at the expiration of two months from the date of that notice the firm shall, unless cause is shown to

the contrary, be struck off the register and dissolved.

(3) At the expiration of the time mentioned in the notice the Registrar may, unless cause is shown, strike the firm off the register and shall publish notice of the striking off in the *Gazette* and on that publication in the *Gazette* the firm is dissolved.

(4) For the purposes of subsection (3),

- (a) the joint and several liability of every partner in the firm for the firm's debts and obligations shall continue and may be enforced as if the firm had not been dissolved, and
- (b) this section does not affect the power of the High Court to order the winding-up of the firm.

(5) Where the Registrar is satisfied that a firm dissolved in accordance with this section is carrying on business the Registrar may restore the firm to the register and publish notice of the restoration in the *Gazette*, and the firm shall be deemed never to have been dissolved, but for the purposes of section 7 the partners shall be deemed to remain in default until the date of publication of the notice in the *Gazette*.

51. Dissolution of defaulting firms

(1) The Registrar may strike a firm off the register if satisfied

- (a) that the business of the firm is unlawful or the firm is being operated for an illegal purpose, or
- (b) that the firm has committed a breach of a provision of this Act.

(2) The Registrar shall not strike a firm off the register on the grounds specified in paragraph (b) of subsection (1) unless,

- (a) the Registrar has sent by registered post to the last registered principal place of business of the firm a letter specifying the breach and requiring it to be remedied or satisfactorily ended within the time specified in the letter and stating that if not remedied or ended the firm may be struck off the register and dissolved, and
- (b) the breach is not, within the time specified, remedied or satisfactorily ended.

(3) On striking the firm off the register the Registrar shall publish in the *Gazette* and send by registered post to the last registered principal place of business of the firm a notice that the firm has been struck off the register and dissolved, and on the publication in the *Gazette* the firm is dissolved.

(4) For the purposes of subsection (3),

- (a) the joint and several liability of every partner in the firm to pay the firm's debts and obligations shall continue and may be enforced as if the firm had not been dissolved;
- (b) this section does not affect the power of the High Court to order the winding-up of the firm.

52. Appeals to the High Court against dissolution

(1) A firm struck off the register under section 50 or 51 may appeal to the High Court against the decision of the Registrar in accordance with subsection (2) of section 53.

(2) Where the Court allows the appeal the firm shall be restored to the register, subject to compliance with the terms and conditions specified in the order, and shall be deemed never to have been dissolved and the Registrar shall publish notice of the restoration in the *Gazette* but, unless the Court otherwise orders, the partners shall, for the purposes of section 7, be deemed to remain in default until the date of publication of the notice in the *Gazette*.

Supplemental

53. Applications and appeals to the High Court

(1) The Registrar may apply to the High Court for directions in relation to a matter arising in connection with functions under this Act of the Registrar, and on that application the Court may give the appropriate directions or make the appropriate order.

(2) Where a section of this Act provides for a right of appeal to the High Court against a decision of the Registrar, written notice of the appeal shall be given by the appellant to the Registrar at least twenty-eight days prior to the hearing, and the Registrar may appear at the hearing and give evidence and call witnesses and draw the attention of the Court to the relevant matters.

(3) On an appeal the High Court may make the appropriate order confirming or rescinding or varying the decision and on the terms and conditions specified by the Court.

54. Fees

(1) In respect of the several matters set out in the first column of the First Schedule there shall be paid to the Registrar the fees specified in the second column but except as provided in the Schedule a fee is not payable on the registration of a document under this Act.

(2) Where a fee is payable on the registration of a document, the document is not delivered, for the purposes of this Act, to the Registrar until the appropriate fee has been paid to the Registrar.

55. Inspection and copies of registered documents

A person may inspect the register of particulars of charges and a document registered by the Registrar on payment of the prescribed fee for each inspection of the register and documents relating to one firm, and may require a copy of, or extract from, a document registered by the Registrar on payment of the prescribed fee for each page.

56. Saving of rules of equity and common law

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

57. Conversion of existing companies into partnerships

Spent.4(4)

58. Rules

The Minister responsible for Justice may, by legislative instrument, make Rules, other than rules of court, relating to procedure under this Act.

59. Interpretation

In this Act, unless the context otherwise requires,

“**business**” includes a trade or a profession;

“**charge**” includes a mortgage, legal or equitable;

“**firm**” means a body corporate formed by registration of a partnership in accordance with this Act;
 “**partner**” includes a sole surviving or continuing member of a firm;
 “**partnership**” has the meaning assigned to it by section 1;
 “**prescribed**” means prescribed by this Act or by the Rules;
 “**prescribed form**” includes a form prescribed by the Registrar for the purposes of this Act;
 “**Registrar**” means the Registrar of Companies or until the Registrar of Companies is appointed, the Registrar-General and an assistant or deputy Registrar.

60. Commencement

Spent.5(5)

SCHEDULES

First Schedule⁶⁽⁶⁾

TABLE OF FEES TO BE PAID TO THE REGISTRAR

[Section 54]

<i>Matters in Respect of which Fees are Payable</i>	<i>Amount of Fee ¢</i>
1. For registration of a Partnership under section 3	10,000.00
2. For each annual renewal under section 6	20,000.00
3. For restoration of a firm to the register under section 50 (4)	30,000.00
4. For filing particulars of charges for registration under section 20 in respect of each charge	5,000.00
5. For filing a memorandum of satisfaction for registration under section 26	5,000.00
6. For filing a change of partnership name or composition of partnership under section 5	20,000.00

Second Schedule

RE-REGISTRATION UNDER THIS ACT OF COMPANIES REGISTERED UNDER THE COMPANIES ACT

[Section 57]

Spent.7(7)

Previous Legislation

Act 152 of 1962

N.R.C.D. 288 of 1974

Act 423 of 1980

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 20th November, 1962.

2 (Popup - Footnote)

2. The Companies Act, 1963 ([Act 179](#)) was a statutory re-enactment of the Ordinance.

3 (Popup - Footnote)

3. The Act came into force on the 1st day of January, 1963. The subsection provided that, “After the expiration of three months from the commencement of this Act, a partnership shall not carry on business unless the firm has been duly registered in accordance with [section 3](#) and not struck off the register under [section 49](#), [50](#) or [51](#).”

4 (Popup - Footnote)

4. The section provided that,

“A company, limited or unlimited, registered under the Companies Ordinance (Cap. 193), may be re-registered under this Act in the manner set forth in the [Second Schedule](#) to this Act on making application in accordance with the said Schedule within three months after the commencement.”

5 (Popup - Footnote)

5. The section provided that the Act shall come into operation on the 1st day of January, 1963.

6 (Popup - Footnote)

6. Amended by the Incorporated Private Partnership (Amendment) Act, 1980 (Act 423) and by a similar amending Act, (Act 532) of 1997.

7 (Popup - Footnote)

7. The original [Second Schedule](#) provided that,

- “1. At any time within three months after the commencement of this Act the members of a company registered under the Companies Ordinance (Cap. 193) may apply to the Registrar for re-registration of the company as an Incorporated Private Partnership under this Act.
2. The application shall be signed by all the members of the company and shall be accompanied by the following documents:
 - (a) a copy of the partnership agreement which will replace the memorandum and articles of association of the company if the company is re-registered under this Act;
 - (b) the statement referred to in [section 5](#) of this Act, together with any documents which are required under this Act;
 - (c) a statutory declaration by a legal practitioner to the effect that all the members are of full age and sound mind and that the legal practitioner has explained to them the effect of re-registration under this Act and that he is satisfied that they understand and agree. If the liability of members of the company is limited the statutory declaration shall expressly declare that the legal practitioner has explained to the members that after re-registration their liability for the existing debts and obligations of the company and for the debts and obligations of the firm will be unlimited and that they understand and agree.
3. The Registrar shall cause to be published in the *Gazette* a notice to the effect that application has been made for re-registration of the company under this Act and inviting anyone who wishes to show cause why it should not be so re-registered to make representations to him within the time specified in the notice not being less than twenty-eight days from the date of publication of such notice.
4. The Registrar, after considering any such representations, may in his absolute discretion and on payment of a fee of two pounds register the said statement referred to in subparagraph (b) of paragraph (2) hereof.
5. Thereupon all the provisions of this Act shall apply as if registration of a firm had been effected in accordance with [section 5](#) of this Act except that it shall be stated on the register and in the certificate of registration referred to in [section 6](#) of this Act that the firm was formerly registered as a company under the Companies Ordinance and shall give the name and number under which it was so registered.
6. Upon such registration, the Registrar shall strike the company off the register of companies registered under the Companies Ordinance and shall endorse on such register a notice to the effect that the

company has re-registered under this Act and give the name and number under which it is so registered.

7. The firm shall thereupon be deemed to have been duly registered and incorporated under this Act and shall cease to be a company registered and incorporated under the Companies Ordinance and the firm and the members thereof shall thenceforth be jointly and severally liable for the debts and obligations of the firm and the members thereof shall thenceforth be jointly and severally liable for the debts and obligations of the firm and for the debts and obligations of the former company as if such debts and obligations had been incurred by the firm, but subject as aforesaid re-registration in accordance with the provisions of the Schedule shall not affect any rights or obligations of the former company or render defective any legal proceedings by or against the former company, and any proceedings which might have been continued or commenced by or against it by its former name and status as a company registered under the Companies Ordinance may be continued or commenced by or against it under its new name and status as an incorporated partnership registered under this Act.”