

DRAFT FOR CONSULTATION

Partnership Law Bill

Government Bill

Explanatory note

General policy statement

This is a Bill to re-enact, in an up-to-date and accessible form, the Partnership Act 1908 the (1908 Act).

The Bill is a revision Bill prepared under subpart 3 of Part 2 of the Legislation Act 2012.

The revision powers are set out in section 31 of the Legislation Act 2012. In summary, a revision Bill may—

- revise the whole or part of 1 or more Acts, and for that purpose may combine or divide Acts or parts of Acts:
- omit redundant and spent provisions:
- renumber and rearrange provisions from the Acts revised:
- make changes in language, format, and punctuation to achieve a clear, consistent, gender-neutral, and modern style of expression, to achieve consistency with current drafting style and format, and generally to better express the spirit and meaning of the law:
- include new or additional purpose provisions, outline or overview provisions, examples, diagrams, graphics, flowcharts, readers' notes, lists of defined terms, and other similar devices to aid accessibility and readability:
- correct typographical, punctuation, and grammatical errors and other similar errors:
- make minor amendments to clarify Parliament's intent, or reconcile inconsistencies between provisions:
- make consequential amendments to other enactments:
- include any necessary repeals, savings, and transitional provisions.

However, a revision Bill must not change the effect of the law, except as authorised by section 31(2)(i) or (j) of the Legislation Act 2012 (minor amendments to clarify Parliament's intent or reconcile inconsistencies or to update monetary amounts).

Accordingly, this Bill does not make any substantive policy changes.

A number of relatively minor inconsistencies, anomalies, discrepancies, and omissions were identified in the course of the preparation of this revision Bill.

Note

These matters have been identified in the notes to this Bill, in Schedule 2, and in the Explanatory material. Following feedback on these matters, the explanatory note will be amended to describe how these matters will be dealt with.

The Justice Committee is nominated for the purposes of Standing Order 271(3).

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to come into force 6 months after enactment.

Part 1

Purpose, overview, and other preliminary provisions

Clause 3 states that the purpose of the Bill is to re-enact the Partnership Act 1908 in an up-to-date and accessible form.

Clause 4 states that the Bill is a revision Act for the purposes of section 35 of the Legislation Act 2012. Section 35 provides that revision Acts are not intended to change the effect of the law (except to the extent expressly indicated).

Clause 5 is an overview of the Bill.

Clause 6 provides for the transitional, savings, and related provisions set out in *Schedule 1*.

Clause 7 sets out the status of an example in the Bill. An example is only illustrative of the provision to which it relates.

Clause 8 defines certain terms used in the Bill.

Clause 9 states that the Bill binds the Crown.

Part 2

Nature of partnership

Meaning of partnership and firm name

Clause 10 defines a partnership as the relationship that exists between persons who carry on a business in common with a view to profit.

Clause 11 refers to entities that are not partnerships (including companies, limited partnerships, and other bodies corporate).

Clause 12 provides that partners are collectively called a firm.

Determining whether partnership exists

Clauses 13 to 17 set out rules for determining whether a partnership exists, including providing that—

- co-ownership of property does not by itself create a partnership (*clause 14*);
- sharing gross returns does not by itself create a partnership (*clause 15*);
- receiving a share of profits is evidence that a person is a partner (*clause 16*). However, receiving certain payments does not make a person a partner in certain circumstances (*clause 17*).

Clause 18 sets out ancillary rules relating to 2 situations referred to in *clause 17*.

Part 3

Relationship of partners to third persons and to each other

Subpart 1—Relationship of partners to third persons

Clause 19 provides that each partner is an agent of the other partners for the purpose of the partnership.

Clause 20 provides for the power of each partner to bind the firm.

Clause 21 refers to where the partners agree on restrictions on a partner's power to bind the firm. If the partner breaches the agreement, the firm is not bound if the person dealing with the partner has notice of the agreement.

Clause 22 provides for partners to be bound by acts done or instruments executed on behalf of the firm.

Clause 23 provides that the firm may not be bound if a partner pledges the credit of the firm for a private purpose.

Clause 24 provides for partners to be jointly liable for the firm's debts.

Clause 25 deals with the firm's liability for a partner's wrongful acts or omissions. This applies when the partner is acting in the ordinary course of the business of the firm or with the authority of the other partners.

Clause 26 deals with the firm's liability if a partner misapplies money or property.

Clause 27 states that the liability of the partners for those wrongful acts or omissions is joint and several.

Clause 28 provides that if a partner improperly uses trust property in the partnership, the other partners are not liable (unless the other partner has notice of a breach of trust).

Clause 29 provides that a person may be liable as a partner if they represent themselves as being a partner and another person relies on the representation when giving credit to the firm.

Clause 30 provides that the continued use of a firm name after a partner's death does not make the partner's estate liable for any partnership debts incurred after that death.

Clause 31 provides for when a partner's admission or representation can be used as evidence against the firm.

Clause 32 sets out when notice to a partner operates as notice to the firm.

Clauses 33 and 34 sets out the liability of incoming and outgoing partners.

Clause 35 provides that if a person deals with a firm after a partner leaves, the person may treat all apparent members of the firm as still being partners until the person has notice of the change.

Clause 36 provides for guarantees to be revoked by the change in the composition of a firm.

Subpart 2—Relationship of partners to one another

Clause 37 allows the partners' rights and duties to be varied by consent.

Clause 38 requires partnership property to be held and applied exclusively for the partnership's purposes and in accordance with the partnership agreement.

Clause 39 concerns how partnership land is held for the purposes of the partnership.

Clause 40 provides that where persons are partners with regard to the profits made by the use of land that is not itself partnership land and those profits are used to purchase other land, the new land is also not partnership land (unless the partners agree otherwise).

Clause 41 provides that property bought with partnership money is treated as being bought for the firm.

Clause 42 provides that partnership land is treated as between the partners as personal property and not real property.

Clause 43 prevents a writ of execution from being issued against partnership property except on a judgment against the firm.

Clause 44 allows the High Court and District Court to charge a partner's interest in the partnership property and profits for their separate judgment debt. *Clause 45* allows the other partners to redeem or purchase that interest.

Clauses 46 to 54 provide for default rules about the partners' interests and duties. These rules are subject to any agreement between the partners.

In summary,—

- partners share equally in the capital and profits of the partnership and contribute equally to losses (*clause 47*):

- the firm must indemnify a partner for payments made, and personal liabilities incurred, by the partner for the firm (*clause 48*):
- interest must be paid where a partner contributes more capital than the partner agreed to provide (*clause 49*):
- every partner may take part in the management of the business (*clause 50*):
- partners are not entitled to remuneration (*clause 51*):
- new partners cannot be introduced without the consent of all the partners (*clause 52*):
- most decisions about the partnership are made by majority (*clause 53*):
- the partners have a right of access to the accounting records (*clause 54*).

Clause 55 provides that a majority of partners cannot expel a partner unless this power has been expressly given.

Clause 56 provides that a partnership without a fixed term duration can be ended by any partner giving notice.

Clause 57 provides that the partners' rights and duties generally remain the same if the partnership continues after the end of its fixed term.

Clause 58 requires a partner to give full information about the partnership to the other partners.

Clause 59 requires a partner to account to the other partners for private profits derived from transactions involving the partnership or from the use of the partnership property, name, or business connections.

Clause 60 requires a partner to account for the profits of a competing business.

Clause 61 specifies an assignee's rights when a partner's share in the partnership is assigned.

Part 4

Financial reporting, dissolution of partnership, and other miscellaneous provisions

Subpart 1—Financial reporting for large partnerships

This subpart imposes financial reporting obligations on large partnerships. A partnership is large if,—

- as at the balance date of each of the 2 preceding accounting periods, the total assets of the partnership exceed \$60 million:
- in each of the 2 preceding accounting periods, the total revenue of the partnership exceeds \$30 million.

See section 45 of the Financial Reporting Act 2013.

The subpart—

- requires accounting records to be kept (*clause 63*):
- requires financial statements to be prepared in accordance with generally accepted accounting practice (*clause 64*):
- requires the financial statements to be audited unless the partnership opts out (*clauses 65, 66, and 68*):
- imposes offences on each partner relating to breaches of these requirements. The maximum fine for a partner is \$50,000 (*clause 67*).

Clause 69 provides that the requirements do not apply if the partnership has financial reporting duties under the Financial Markets Conduct Act 2013.

Subpart 2—End of partnership

How partnership may end

Clauses 70 to 75 set out various ways in which a partnership may be dissolved, including—

- at the end of a partnership’s fixed term (*clause 70*):
- by the death or bankruptcy of a partner (*clause 71*):
- if a partner’s interest is charged for a separate debt, when the other partners agree to dissolve the partnership (*clause 72*):
- if it is unlawful for the partnership business to be carried on (*clause 73*):
- by an order of the High Court (*clauses 74 and 75*). An order may be made if a partner is permanently incapable of performing the partner’s part of the partnership agreement or a partner has wilfully or persistently breached the partnership agreement.

Dissolving a partnership

Clause 76 allows any partner to give public notice when a partnership is dissolved or a partner leaves the firm.

Clause 77 gives authority to the partners to wind up the affairs of a partnership that is dissolved.

Clause 78 sets out how the partnership property is to be applied when the partnership is dissolved.

Clause 79 allows the court to order a premium to be repaid if a partnership is dissolved before the end of a fixed term.

Clause 80 gives certain rights to a partner who is entitled to rescind a partnership because of the fraud or a misrepresentation of another partner. For example, the partner is entitled to be indemnified by the guilty party for all the debts and liabilities of the firm.

Clauses 81 to 83 set out the rights of the estate of a deceased partner or of an outgoing partner when the partnership is carried on without a final settlement of accounts.

Clauses 84 to 86 provide for the final settling of accounts when the partnership is dissolved.

Subpart 3—Repeal and consequential amendments

This subpart repeals the Partnership Act 1908 and provides for consequential amendments.

Hon David Parker

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Partnership Law Act **2018**.

Note

This draft refers to a textbook “Principles of the Law of Partnership” 6th ed Webb and Molloy. This is referred to as “Webb”.

2 Commencement

This Act comes into force immediately after the expiry of the 6-month period that starts on the date of Royal assent.

Note

This clause reflects the approach in the first revision Bill: the Contract and Commercial Law Bill. Feedback on the 6-month period is welcome.

Part 1

Purpose, overview, and other preliminary provisions

3 Purpose of this Act

The purpose of this Act is to re-enact the Partnership Act 1908 in an up-to-date and accessible form.

4 Revision Act

- (1) This is a revision Act for the purposes of section 35 of the Legislation Act 2012 (which provides that revision Acts are not intended to change the effect of the law, except as expressly provided).
- (2) **Schedule 2** expressly provides for the minor amendments that have been made under section 31(2)(i) of the Legislation Act 2012.
- (3) **Schedule 3** sets out where the corresponding provisions of the Partnership Act 1908 can be found in this Act on its commencement. The schedule is to assist readers. It must not be interpreted as a definitive or ongoing guide to how the provisions correspond.

5 Overview

- (1) In this Act,—
 - (a) this Part contains the purpose and overview of this Act;
 - (b) **Part 2** provides for the nature of partnership, including rules for determining whether a partnership exists;
 - (c) **subpart 1 of Part 3** provides for the relationship between partners and third persons, including—
 - (i) the power of partners to bind the partnership; and
 - (ii) the liability of partners for the debts and obligations of the partnership; and
 - (iii) the liability of the partnership for a partner's wrongful acts or omissions; and
 - (iv) the liability of persons who represent themselves as partners; and
 - (v) the liability of incoming and outgoing partners; and
 - (vi) the rights of third persons against persons who appear to be partners;
 - (d) **subpart 2 of Part 3** provides for the relationship of partners to each other, including—
 - (i) the variation of rights and duties by consent; and
 - (ii) how partnership property must be held and applied; and
 - (iii) the interests, rights, and duties of partners in relation to partnership property; and

- (iv) the payment of a partner's separate debts out of partnership property; and
 - (v) the right of every partner to take part in the management of the partnership business; and
 - (vi) the duty of partners to provide accounts and full information about the partnership; and
 - (vii) the duty of partners to account for private profits or the profits of a competing business:
- (e) **Part 4** provides for financial reporting and the end of a partnership.
- (2) This section is only a guide to the general scheme and effect of this Act.

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

7 Status of examples

- (1) An example used in this Act is only illustrative of the provision to which it relates. It does not limit that provision.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

8 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- business** includes every trade, occupation, or profession
- court** includes every court and Judge that has jurisdiction
- firm** and **firm name** have the meanings set out in **section 12**
- partnership** has the meaning set out in **sections 10 and 11**
- partnership property** has the meaning set out in **section 38(2)**
- personal representative** means an executor, an administrator, or a trustee of the estate of an individual who has died.

Note

See note to clause 42.

- (2) In this Act, unless the context otherwise requires, a partner (A) **leaves** a firm if A—
- (a) retires from the firm (whether voluntarily or under a duty to retire imposed under the partnership agreement); or

(b) is expelled from the partnership (*see* **section 55**).

Note

Various provisions of the 1908 Act refer to “retirement”, which probably includes partners who have been expelled or “compulsorily retired” under the terms of the partnership agreement. See notes to clause 34.

The defined term in subclause (2) is used in clauses 34 and 35 to clarify this point.

Compare: 1908 No 139 s 2

9 Act binds the Crown

This Act binds the Crown.

Note

See the Explanatory material and request for submissions.

Part 2

Nature of partnership

Meaning of partnership and firm name

10 Definition of partnership

Partnership is the relationship that exists between persons carrying on a business in common with a view to profit.

Compare: 1908 No 139 s 4(1)

11 Relationships that are not partnerships

- (1) The relationship between the shareholders or members of any of the following is not a partnership within the meaning of this Act:
- (a) a company registered under the Companies Act 1993;
 - (b) a limited partnership that is registered under the Limited Partnerships Act 2008;
 - (c) an association registered as a body corporate under any Act;
 - (d) a body corporate or other association formed or incorporated by or under any Act, letters patent, or Royal Charter.

Note

Section 4(2) of the 1908 Act refers to “any company or association registered as a company under the Companies Act 1993 or any other Act of the Parliament of New Zealand for the time being in force and relating to the registration of joint-stock, trading, or mining companies, or formed or incorporated by or in pursuance of

any other Act of the Parliament of New Zealand or letters patent, or Royal Charter”.

This clause—

- omits obsolete references to “joint-stock, trading, or mining companies”
- for clarity, expressly refers to limited partnerships
- refers to a “body corporate” in paragraph (c) rather than a “company”.

Feedback is welcome on whether any of these changes go beyond “minor amendments to clarify Parliament’s intent” as referred to in s 31(2)(i) of the Legislation Act.

- (2) **Section 10** is subject to this section.

Compare: 1908 No 139 s 4(2)

12 Meaning of firm and firm name

In this Act,—

- (a) persons who have entered into partnership with one another are collectively called a **firm**; and
- (b) the name under which their business is carried on is the **firm name**.

Compare: 1908 No 139 s 7

Determining whether partnership exists

13 Determining whether partnership exists

In determining whether a partnership exists, regard must be had to **sections 14 to 17**.

Compare: 1908 No 139 s 5

14 Co-ownership of property

- (1) If 2 or more persons own or hold property as joint tenants, tenants in common, or joint or part owners, the ownership or holding of the property does not by itself create a partnership in relation to the property.
- (2) This section applies whether or not the tenants or owners share any profits made by the use of the property.

Compare: 1908 No 139 s 5(a)

15 Sharing gross returns

- (1) Sharing gross returns does not by itself create a partnership.

- (2) This section applies whether or not the persons sharing the returns have a joint or common right or interest in a property from which, or from the use of which, the returns are derived.

Compare: 1908 No 139 s 5(b)

16 Effect of receiving share of profits

- (1) If a person receives a share of the profits of a business it is presumed, in the absence of evidence to the contrary, that the person is a partner in the business.

Note

Section 5(1)(c) of the 1908 Act notes that “the receipt by a person of a share of the profits of a business is prima facie evidence that he or she is a partner in the business...”

Para 16 of the Laws of New Zealand (Partnership and Joint Ventures) notes that if a person receives a share of the profits there is prima facie evidence that he or she is a partner. Para 16 notes that “If the matter stops there it is evidence on which the Court must act, but the receipt of such a share... does not of itself make that person a partner in the business”. Para 17 goes on to refer to a presumption: “If losses as well as profits are shared, the presumption of partnership is stronger. ... However, the fact that losses are shared is not conclusive as to the existence of a partnership.” See also *Davis v Davis* [1894] 1 Ch 393.

It would be preferable to use a plain English alternative to “prima facie” if possible. In some cases, the exact meaning of “prima facie” can be unclear. The term has been replaced in this draft in order to “express better the spirit and meaning of the law” under s 31(2)(e) of the Legislation Act. Feedback on the wording of the replacement is welcome.

Other alternatives that have been considered include (a) “presumptive evidence” ; (b) “... sufficient evidence, unless the contrary is shown, ...” ; (c) “... sufficient evidence, in the absence of evidence to the contrary, ...” (d) “.... presumed, unless the contrary is proved, ...”

- (2) However, neither of the following by itself makes a person a partner in a business:
- (a) the receipt by the person of a share of the profits of the business:
 - (b) the receipt by the person of a payment that is contingent on, or varies with, the profits of the business.

- (3) *See*, in particular, **section 17**.

Compare: 1908 No 139 s 5(c)

17 Where receiving profits or payments does not make person partner or liable as partner

(1) None of the following by itself makes a person (**A**) a partner in a business or liable as a partner:

- (a) A's receipt of a payment of a debt or any other liquidated amount, by instalments or otherwise, out of the accruing profits of the business:
- (b) A is an employee or agent of a person who is engaged in the business and A has a contract for remuneration by a share of the profits of the business:

Note

“servant” has been replaced with “employee”.

- (c) A is a relative of a deceased partner and receives by way of an annuity a share of the profits of the business in which the deceased person was a partner:

Note

Section 5(c)(iii) of the 1908 Act refers to “a portion of the profits made in the business” while other provisions refer to “a share of the profits of the business”. The wording has been aligned for consistency.

- (d) A is a lender who advances money in the circumstances specified in **subsection (3)**:
 - (e) A receives a share of the profits of the business by way of an annuity or otherwise in consideration of the sale by A of the goodwill of the business.
- (2) In **subsection (1)(c)**, **relative**, in relation to a deceased partner, means the widow, widower, surviving civil union partner, surviving de facto partner, or child of the deceased partner.
- (3) For the purposes of **subsection (1)(d)**, the circumstances are—
- (a) the money will be advanced as a loan under a contract to a person who is engaged or about to engage in the business; and
 - (b) under the contract, A will receive—
 - (i) a share of the profits arising from carrying on the business; or
 - (ii) a rate of interest that varies with those profits.
- (4) For the purposes of **subsection (1)(d)**, the contract referred to in **subsection (3)** must be in writing and signed by or on behalf of all the parties to the contract.

Note

Subclause (4) is the proviso to s 5(c)(iv). Webb at para 1.14 suggests that the correct interpretation of the proviso is obscure.

Modern Acts no longer have provisos like this.

Para 21 of the Laws of New Zealand (Partnership and Joint Ventures) notes that there is some authority that if there is no written agreement, the lender must be regarded as a partner: Re Fort, ex parte Schofield [1897] 2 QB 495 (CA). However, para 21 suggests that this is not authoritatively settled and the question may depend on the parties' real intention.

Feedback is welcome on whether subclause (4) properly preserves the legal effect.

Compare: 1908 No 139 s 5(c)

18 What happens if borrower or buyer is insolvent

(1) This section applies if a borrower under a contract referred to in **section 17(3)**, or a buyer of goodwill in consideration of a share of the profits of a business,—

(a) is adjudged bankrupt [or has been put into liquidation]; or

Note

Section 6 of the 1908 Act does not expressly apply to the liquidation of a body corporate.

Webb at para 2.30 notes that a company can enter into partnership. In this case, feedback is welcome on whether the clause should cover a liquidation and, if so, whether this is a minor amendment to clarify Parliament's intent.

(b) enters into an arrangement to pay the borrower's or buyer's creditors less than the full amount that is owed to those creditors; or

(c) dies in insolvent circumstances.

(2) The lender under the contract referred to in **section 17(3)** is not entitled to recover anything in respect of the loan until the claims of the borrower's other creditors have been satisfied.

(3) The seller of the goodwill is not entitled to recover anything in respect of the share of profits contracted for until the claims of the buyer's other creditors have been satisfied.

(4) In this section, **creditors** means creditors for valuable consideration in money or money's worth.

Note

Webb (and other writers) suggest that section 6 does not prejudice a collateral security. Should it be clarified, as a minor amendment, that this clause does not limit any security interest?

Compare: 1908 No 139 s 6

Part 3

Relationship of partners to third persons and to each other

Subpart 1—Relationship of partners to third persons

19 Partner is agent of firm and other partners

Every partner (A) is an agent of the firm and A's other partners for the purpose of the business of the partnership.

Compare: 1908 No 139 s 8

20 Power of partner to bind firm

- (1) An act of a partner (A) binds the firm and A's partners if the act is done for carrying on in the usual way business of the kind carried on by the firm.
- (2) However, this section does not apply if—
 - (a) A has no authority to act for the firm in the particular matter; and
 - (b) the person with whom A is dealing—
 - (i) knows that A has no authority; or
 - (ii) does not know or believe A to be a partner.

Compare: 1908 No 139 s 8

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

- (1) This section applies if—
 - (a) the partners agree that the power of 1 or more of them to bind the firm is restricted; and
 - (b) an act contravenes the agreement.
- (2) The act is not binding on the firm with respect to any person who has notice of the agreement.

Compare: 1908 No 139 s 11

22 Partners bound by acts done or instruments executed on behalf of firm

- (1) An act or instrument relating to the business of the firm is binding on the firm and all the partners if it is done or executed—
 - (a) in the firm's name or in any other manner that shows an intention to bind the firm; and
 - (b) by a person who is authorised to do the act or execute the instrument (whether or not the person is a partner).
- (2) However, this section does not affect any general rule of law about the execution of deeds or negotiable instruments.

Compare: 1908 No 139 s 9

23 Partner using credit of firm for private purposes

- (1) This section applies if a partner (**A**) pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business.
- (2) The firm is not bound unless A is specially authorised by the other partners.
- (3) This section does not affect any personal liability incurred by a particular partner.

Compare: 1908 No 139 s 10

24 Liability of partners for firm's debts and obligations

- (1) Every partner (**A**) is liable jointly with the other partners for all debts and obligations of the firm incurred while A is a partner.
- (2) After A's death, A's estate is also severally liable in a due course of administration for those debts and obligations to the extent that they remain unsatisfied.
- (3) However, **subsection (2)** is subject to the prior payment of A's separate debts.

Compare: 1908 No 139 s 12

25 Liability of firm for partner's wrongful acts or omissions

- (1) This section applies if—
 - (a) a partner (**A**) wrongfully acts or omits to do an act while acting—
 - (i) in the ordinary course of the business of the firm; or
 - (ii) with the authority of A's co-partners; and
 - (b) the wrongful act or omission—
 - (i) causes loss or injury to any person (other than a partner in the firm); or
 - (ii) results in a penalty being incurred.
- (2) The firm is liable for the loss, injury, or penalty to the same extent as A.

Compare: 1908 No 139 s 13

26 Misapplication of money or property received for or in custody of firm

A firm is liable to make good a loss if—

- (a) a partner—
 - (i) receives the money or property of a third person while acting within the scope of the partner's apparent authority; and
 - (ii) misapplies the money or property; or

Note

Consideration has been given to whether the reference to "within the scope of his or her apparent authority" relates only to *receiving* the money or property or whether it also extends to *misapplying* the money or property. The above

structure clarifies that the words only relate to receiving the money or property.

- (b) the firm, in the course of its business, receives the money or property of a third person and the money or property is misapplied by 1 or more of the partners while it is in the custody of the firm.

Compare: 1908 No 139 s 14

27 Liability for wrongs is joint and several

Each partner (A) is liable jointly with A's co-partners and also severally for everything for which the firm, while A is a partner, becomes liable under **section 25 or 26**.

Compare: 1908 No 139 s 15

28 Improper use of trust property for partnership purposes

- (1) If a partner who is a trustee improperly uses trust property in the partnership business or for the partnership, no other partner is liable for the trust property to the beneficiaries.

Note

The words “on account of” have been replaced with “for”.

The words “persons beneficially interested therein” have been replaced with “beneficiaries”.

- (2) However, this section does not—
 - (a) affect any liability incurred by a partner because the partner has notice of a breach of trust; or
 - (b) prevent trust property from being followed and recovered from the firm if it is still in the firm's possession or under its control.

Note

Section 16(b) of the 1908 Act only refers to “trust money” while the rest of the section refers to “trust property”. Paragraph (b) has been amended to refer to trust property on the basis that this is a minor amendment to clarify Parliament's intent.

Compare: 1908 No 139 s 16

29 Persons liable if they represent themselves as partner

- (1) This section applies to a person (A) who—
 - (a) represents themselves as a partner in a firm (whether the representation is made orally, in writing, or by the person's conduct); or

- (b) knowingly allows themselves to be represented as a partner in a firm.

Note

The word “suffers” has been replaced with the plainer “allows”.

- (2) A is liable as a partner to any person (B) who has, in reliance on the representation, given credit to the firm.

Note

The words “on the faith of” have been replaced with the more commonly used “in reliance on”. Feedback is welcome about whether this has the same meaning.

- (3) This section applies whether or not the representation has been made or communicated to B by A or with A’s knowledge.
- (4) This section is subject to **section 30**.

Compare: 1908 No 139 s 17(1)

30 Continued use of firm name when partner dies

- (1) This section applies if, after the death of a partner (A), the partnership business is continued in the old firm name.
- (2) The continued use of the old firm name, or of A’s name as part of that firm name, does not by itself make A’s estate liable for any partnership debts that are contracted after A’s death.

Note

The 1908 Act makes a number of apparently inconsistent references to estates:

- **sections 12 and 45 refer to “his or her estate”**
- **section 17 refers to “his or her executors’ or administrators’ estate or effects”**
- **section 39(3) refers to the “estate of a partner who dies...”**

In section 17 there is a question as to whether it is correct to refer to the executors’ or administrators’ estate (as opposed to the deceased partner’s estate).

For consistency, this clause has been amended to just refer to the partner’s estate (rather than “his or her executors’ or administrators’ estate or effects”).

Compare: 1908 No 139 s 17(2)

31 Admissions and representations of partners

An admission or a representation made by a partner is evidence against the firm if the admission or representation—

- (a) concerns the partnership affairs; and

(b) is made in the ordinary course of the partnership business.

Compare: 1908 No 139 s 18

32 Notice to acting partner is notice to firm

- (1) Notice to a partner operates as notice to the firm if—
- (a) the partner habitually acts in the partnership business; and
 - (b) the notice is about any matter that relates to partnership affairs.
- (2) This section does not apply in the case of fraud committed against the firm by, or with the consent of, the partner.

Compare: 1908 No 139 s 19

33 Liability of incoming partner

If a person (A) becomes a partner of an existing firm, that does not make A liable to the firm's creditors for anything done before A became a partner.

Compare: 1908 No 139 s 20(1)

34 Liability of partner who leaves firm

- (1) A partner (A) who leaves a firm does not by leaving cease to be liable for partnership debts or obligations incurred before leaving.

Note

Section 20(2) and (3) of the 1908 Act refers to a “partner who retires” and “a retiring partner”. There are similar references to retirement in s 39(3) and the heading to s 46. Section 46 itself refers to an “outgoing partner”.

Webb notes (para 3.82, footnote 1) that the subsection may embrace a partner who has been compulsorily retired (eg on reaching a particular age) and one who has been expelled. Reference is made to *Gardener v Lewis* (1913) 33 NZLR 593. That case doesn't deal with s 20(2) of the 1908 Act directly but instead with whether a person ceasing to be a member of the partnership on the proper construction of a clause in the partnership agreement was still liable to contribute to the past debts.

Feedback is sought as to whether Parliament's intent should be clarified by replacing the reference to retirement with a reference to leaving the firm combined with a definition in clause 8(2).

See also clause 35(3).

- (2) A may be discharged from an existing liability by an agreement to that effect between—
- (a) A; and
 - (b) the members of the firm as newly composed; and

- (c) the creditor.

Note

Section 20 refers to “creditors” plural. The section is unclear on whether an agreement can be reached on a per creditor basis. Webb at para 3.83 refers to an agreement with “the creditor”, which gives some support that the agreement is on a per creditor basis. The above wording clarifies this point.

References to the “constitution” of a firm or the firm as “constituted” have been amended to refer to “composition” or “composed”.

- (3) The agreement may—
- (a) be an express agreement; or
- (b) be inferred as a fact from the course of dealing between the creditor and the firm as newly composed.

Compare: 1908 No 139 s 20(2), (3)

35 Rights of persons dealing with firm against apparent members of firm

- (1) If a person deals with a firm after a change in its composition, the person may treat all apparent members of the old firm as still being members of the firm until the person has notice of the change.
- (2) An advertisement in the *Gazette* of the dissolution of a partnership or of a change in its composition is notice to persons who did not have dealings with the firm before the date of the dissolution or change.

Example

On 1 January 2020, a person (**A**) retires as a partner of a firm.

The firm has had dealings with a supplier (**B**) for some years before the retirement.

After 1 January 2020, the firm starts to have dealings with another supplier (**C**).

If A is an apparent member of the firm, B or C may still treat A as being a partner (and A may, therefore, be liable for post-retirement debts) until B or C has notice of the change.

Actual notice of the retirement must be given to B. However, an advertisement in the *Gazette* is sufficient notice to C.

- (3) However,—
- (a) the estate of a partner who dies or who becomes bankrupt is not liable for partnership debts contracted after the date of the death or bankruptcy:

Note

See the note to clause 18 relating to references to bankruptcy.

- (b) a partner who leaves a firm is not liable for partnership debts contracted after the date of leaving if the person dealing with the firm did not know that the partner was a partner of the firm.

Note

A reference to the estate of a partner has been omitted from paragraph (b) on the basis that it is unnecessary.

See also the note relating to “retirement” in clause 34 (reference to retirement replaced with a reference to leaving the firm).

Example

D, E, and F are in partnership under the name “XYZ Law”. All the partners’ names appear on the firm’s letterhead.

F leaves the partnership and notice of this fact is given to various people who have had dealings with the firm. However, no notice is published in the *Gazette*.

Sometime later, goods are ordered from a new supplier (S). The order is confirmed using the old firm’s letterhead. This was without F’s authority. S did not know that F was a partner of the firm before the date of leaving.

When the goods are unpaid for, S tries to recover the debt from F.

F is careless in not ensuring that the old letterhead is destroyed. However, he does not knowingly allow himself to be represented as a partner (therefore **section 29(1)(b)** does not apply).

F may be an apparent partner because his name appears on the letterhead. However, under **subsection (3)(b)**, he is not liable because S did not know that he was a partner.

Note

The example is based on *Tower Cabinet Co Ltd v Ingram* [1949] 1 All ER 1033.

Compare: 1908 No 139 s 39

36 Continuing guarantee revoked by change in firm

- (1) The following is revoked in relation to future transactions by any change in the composition of a firm:
- (a) a continuing guarantee given to the firm:
 - (b) a continuing guarantee given to a third person in respect of the firm’s transactions.
- (2) This section does not apply if there is an agreement to the contrary.

Compare: 1908 No 139 s 21

Subpart 2—Relationship of partners to one another

37 Partners' rights and duties may be varied by consent

- (1) The mutual rights and duties of partners may be varied by the consent of all the partners.
- (2) **Subsection (1)** applies whether the mutual rights and duties result from an agreement or are defined by this Act.
- (3) The consent may either be express or be inferred from a course of dealing.
Compare: 1908 No 139 s 22

38 Partnership property

- (1) Partnership property must be held and applied by the partners—
 - (a) exclusively for the purposes of the partnership; and
 - (b) in accordance with the partnership agreement.
- (2) In this Act, **partnership property** means all property, and rights and interests in property,—
 - (a) originally brought into the partnership stock; or
 - (b) acquired (whether by purchase or otherwise)—
 - (i) for the firm; or

Note

A reference to “on account of” has been replaced with a plainer “for”.

- (ii) for the purposes, and in the course, of the partnership business.

Compare: 1908 No 139 s 23(1)

39 Partnership land

Despite **section 38**, the legal estate or interest in any land that belongs to the partnership devolves according to the nature and tenure of the estate or interest and the general rules of law that apply, but in trust (to the extent that is necessary) for the persons beneficially interested in the land under that section.

Example

A partnership has 10 partners (including A, B, and C).

Partners A, B, and C hold certain partnership land as joint tenants. If C dies, A and B (under the rights of survivorship) would, at law, hold the land as joint tenants.

However, the beneficial interest in the land must be held exclusively for the purposes of the partnership in accordance with the partnership agreement.

Compare: 1908 No 139 s 23(2)

40 Co-owners of land who purchase other land out of profits

- (1) This section applies if—

- (a) co-owners of an estate or interest in any land (the **original property**) are partners with regard to profits made by the use of the original property; and
- (b) the original property is not itself partnership property; and
- (c) those co-owners purchase another estate or interest in land (the **second property**) out of the profits to be used in the same manner.

Note

In some places s 23(3) of the 1908 Act refers to “an estate or interest in any land” and in other places to “land or estate”. Amendments have been made to consistently refer to an estate or interest in land.

Section 23(3) of the 1908 Act refers to the purchased land being used “in like manner”. This has been changed to the “same” manner, but feedback is welcome about whether this has the same legal effect.

- (2) The second property belongs to the persons referred to in **subsection (1)** as co-owners for the same estates and interests that are held by them in the original property at the date of the purchase (and, therefore, the second property does not belong to them as partners).
- (3) This section does not apply if there is an agreement to the contrary.
Compare: 1908 No 139 s 23(3)

41 Property bought with partnership money

- (1) Property bought with money belonging to the firm must be treated as having been bought for the firm.

Note

“on account of” has been replaced with a plainer “for”.

- (2) This section applies unless the contrary intention appears.
Compare: 1908 No 139 s 24

42 Partnership land treated as personal property as between partners

- (1) Land that has become partnership property must be treated as between the partners as personal property and not real property.
- (2) If a partner is deceased,—
 - (a) the reference to the partners in **subsection (1)** includes the personal representatives of the deceased partner; and

- (b) **subsection (1)** also applies as between the heirs of the deceased partner and the deceased partner's personal representatives.

Note

Section 25 of the 1908 Act refers to both a “representative” and to “executors or administrators”. The references have been aligned for consistency by referring to a personal representative (defined along the same lines as s 46 of the Limitation Act 2010).

See also clause 59.

- (3) This section applies unless the contrary intention appears.

Compare: 1908 No 139 s 25

43 Writ of execution against partnership property

A writ of execution must not be issued against any partnership property except on a judgment against the firm.

Compare: 1908 No 139 s 26(1)

44 Court may charge partner's interest for their separate judgment debt

- (1) The High Court or a Judge of that court may,—

- (a) on the application of a judgment creditor of a partner (**A**), make an order charging A's interest in the partnership property and profits with payment of the amount of the judgment debt and interest on that debt; and

Note

The words “by summons” in s 26 of the 1908 Act have been omitted as unnecessary. Matters of procedure can be better dealt with by the rules of court.

- (b) appoint a receiver of—

- (i) A's share of the partnership profits (whether already declared or accruing); and
- (ii) any other money that would otherwise be payable to A in respect of the partnership; and

Note

The words “that would otherwise be payable” in s 26(2) of the 1908 Act have replaced “coming”.

- (c) direct all accounts and inquiries, and give all other orders and directions,—

- (i) that might have been directed or given if A had given the charge in favour of the judgment creditor; or
- (ii) that the circumstances of the case require.

- (2) The High Court or Judge may act under **subsection (1)(b) or (c)**—

- (a) when making an order under **subsection (1)(a)**; or
 - (b) by making a subsequent order.
- (3) The District Court may make any order, or give any directions, that may be made or given by the High Court under this section if—
- (a) a judgment creditor has obtained in, or removed into, the District Court a judgment, order, or decree for the payment of a sum of money; and
 - (b) the judgment creditor applies for an order under this section.

Note

Section 26(2) refers to orders and directions. However, s 26(2A) refers only to orders. Subclause (3) has been extended to allow directions to be given if a judgment creditor applies for a charging order. Feedback is welcome on whether a minor amendment under s 31(2)(i) of the Legislation Act is justified.

Compare: 1908 No 139 s 26(2), (2A)

45 Other partners may redeem or purchase interest

If a partner's interest is charged under **section 44**, the other partner or partners may, at any time,—

- (a) redeem the interest; or
- (b) purchase the interest if the court directs a sale of the interest.

Compare: 1908 No 139 s 26(3)

Note

Section 26(3) of the 1908 Act refers to the partners being “at liberty”. This has been simplified to a reference to “may”.

46 Rules about interests and duties of partners

- (1) The rules in **sections 47 to 54** determine—
- (a) the interests of partners in the partnership property; and
 - (b) their rights and duties in relation to the partnership.
- (2) However, this section and those sections are subject to any agreement (express or implied) between the partners.

Note

Section 27 of the 1908 Act refers to “any agreement (express or implied) between the partners”. In contrast, s 20(3) refers to agreement being either express or “inferred as a fact from the course of dealing”.

Feedback is welcome on whether alignment between these provisions is desirable. In particular, whether agreement in subclause (2) above should be “inferred as a fact from the course of dealing”.

Compare: 1908 No 139 s 27

47 Partners share equally in capital and profits and contribute equally to losses

- (1) All the partners are entitled to share equally in the capital and profits of the partnership business.

Note

Some provisions refer to “partnership business”, others refer to the “business of the firm”, while others just refer to the “business”. These have been aligned.

- (2) All the partners must contribute equally towards the losses of the firm (whether the losses are of capital or otherwise).

Compare: 1908 No 139 s 27(a)

48 Firm must indemnify partner for payments made, and personal liabilities incurred, for firm

The firm must indemnify a partner for payments made, and personal liabilities incurred, by the partner—

- (a) in the ordinary and proper conduct of the partnership business; or
(b) in or relating to doing any thing that is necessary to preserve the business or property of the firm.

Compare: 1908 No 139 s 27(b)

49 Entitlement to interest

- (1) If a partner makes, for the purpose of the partnership, an actual payment or an advance that is more than the capital that the partner has agreed to provide, the partner is entitled to interest at the rate of 5% per year from the date of the payment or advance.

Note

See the note to clause 81.

- (2) A partner is not entitled, before the profits are ascertained, to interest on the capital provided by the partner.

Compare: 1908 No 139 s 27(c), (d)

Note

References to “subscribe” in s 27 of the 1908 Act have been replaced with a plainer “provide”.

50 Partner may manage business

Every partner may take part in the management of the partnership business.

Compare: 1908 No 139 s 27(e)

51 Partner not entitled to remuneration

No partner is entitled to remuneration for acting in the partnership business.

Compare: 1908 No 139 s 27(f)

52 No new partner without consent

No person may be introduced as a partner without the consent of all existing partners.

Compare: 1908 No 139 s 27(g)

53 Most decisions may be made by majority

- (1) Any difference about ordinary matters connected with the partnership business may be decided by a majority of the partners.
- (2) However, no change may be made to the nature of the partnership business without the consent of all existing partners.

Compare: 1908 No 139 s 27(h)

54 Access to [accounting] records

- (1) The partnership [accounting] records must be kept at the place of business of the partnership (or at the principal place of business if there is more than 1).
- (2) Every partner may, when the partner thinks fit, have access to, inspect, and copy any of the partnership's [accounting] records.

Note

The reference to “books” in s 27(i) of the 1908 Act is archaic. It has been replaced with a reference to records (or just accounting records). Feedback on this change is welcome.

Would it be better to replace the reference to “books” with a reference to “accounting records” rather than records generally? Webb at para 4.106 refers only to “books of account”.

Inversiones Fiera SL [2011] EWHC 1762 dealt with the question of what documents were available for inspection. However, the case relates to a limited partnership and the partnership arrangement in question was modified by agreement (although the wording was similar to the Act). The case cited Bevan v Webb [1901] 2 Ch 59 at 68, which discussed s 24(9) of the 1890 Act (identical to the 1908 Act). That case noted that the object of the provision was to enable partners to ascertain the position of the partnership business. It was then concluded in Inversiones that as a rough rule of thumb if it would be necessary to rely on the document to establish rights against third parties or between the members then it should be available for inspection.

Compare: 1908 No 139 s 27(i)

55 Expulsion of partner

A majority of the partners cannot expel a partner unless a power to do so has been given by express agreement between the partners.

Compare: 1908 No 139 s 28

56 Ending partnership at will

- (1) If the partners have not agreed on a fixed term for the duration of the partnership, any partner may end the partnership at any time by giving notice to all the other partners of the partner's intention to end the partnership.
- (2) If the partnership was originally constituted by deed, a notice in writing, signed by the partner giving the notice, is sufficient for the purpose of **subsection (1)**.

Compare: 1908 No 139 s 29

57 Partnership that continues after end of fixed term

- (1) This section applies if a partnership that was entered into for a fixed term is continued—
 - (a) after the term has ended; and
 - (b) without any new express agreement.
- (2) The rights and duties of the partners remain the same as they were at the end of the fixed term (to the extent that those rights and duties are consistent with the features of a partnership at will).
- (3) A partnership is presumed to be continued if the business is continued—
 - (a) by the partners or by those partners who habitually acted in the business during the fixed term; and
 - (b) without any settlement or liquidation of the partnership's affairs.

Compare: 1908 No 139 s 30

58 Duty of partners to provide accounts and full information on things affecting partnership

Partners must provide true accounts and full information of all things that affect the partnership to any partner or any partner's legal representatives.

Compare: 1908 No 139 s 31

59 Accountability of partners for private profits

- (1) Every partner must account to the firm for a benefit that the partner obtains, without the consent of the other partners, from—
 - (a) any transaction concerning the partnership; or
 - (b) the partner's use of the partnership property, name, or business connections.

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

Note

See clause 42.

Compare: 1908 No 139 s 32

60 Duty to account for profits of competing business

Every partner must account for[, and pay to the firm,] all profits made by the partner in a business if—

- (a) the partner carries on the business without the consent of the other partners; and
- (b) the business is of the same nature as, and competes with, the business of the firm.

Note

Section 32 of the 1908 Act requires the partner to account to the firm. In contrast, s 33 refers to the duty to account *and pay over the profits*.

Feedback on reconciling the provisions is welcome. One option is to omit the words in brackets. Are the words unnecessary because returning the profits is the essence of an account of profits?

Compare: 1908 No 139 s 33

61 Rights of assignee of share in partnership

- (1) This section applies if a partner assigns the partner's share in the partnership (either absolutely or by way of mortgage).
- (2) While the partnership continues, the assignment entitles the assignee only to receive the share of the profits to which the assigning partner would otherwise be entitled.
- (3) For the purposes of **subsection (2)**, the assignee must accept the account of profits agreed to by the partners.
- (4) The assignment does not, as against the other partners, entitle the assignee, while the partnership continues, to—
 - (a) interfere in the management or administration of the partnership business or affairs; or
 - (b) require an account of the partnership transactions; or

- (c) inspect the partnership [accounting?] records.

Note

See clause 54 about a clarification relating to references in the 1908 Act to “books”.

- (5) If the partnership is dissolved (whether with respect to all the partners or with respect to the assigning partner), the assignee is entitled to—
- (a) receive the share of the partnership assets to which the assigning partner is entitled as between the assigning partner and the other partners; and
- (b) an account as from the date on which the partnership is dissolved (for the purpose of ascertaining that share).

Compare: 1908 No 139 s 34

Part 4

Financial reporting, dissolution of partnership, and other miscellaneous provisions

Subpart 1—Financial reporting for large partnerships

62 Definitions of terms used in this subpart

- (1) In this subpart, **accounting period**, **applicable auditing and assurance standard**, and **applicable financial reporting standard** have the same meanings as in section 5(1) of the Financial Reporting Act 2013.
- (2) In this subpart,—
- balance date** has the same meaning as in section 41 of the Financial Reporting Act 2013
- financial statements** has the same meaning as in section 6 of the Financial Reporting Act 2013
- generally accepted accounting practice** has the same meaning as in section 8 of the Financial Reporting Act 2013
- large partnership** means a partnership that is large under section 45 of the Financial Reporting Act 2013
- qualified auditor** has the same meaning as in section 35 of the Financial Reporting Act 2013.

Compare: 1908 No 139 s 34D

63 Accounting records

- (1) The partners of a large partnership must ensure that, at all times, accounting records are kept that—
- (a) correctly record the transactions of the partnership; and

- (b) will enable the partnership to ensure that the financial statements of the partnership comply with generally accepted accounting practice; and
 - (c) will enable the partnership's financial statements to be readily and properly audited (if those statements are required to be audited).
- (2) The partners of a large partnership must establish and maintain a satisfactory system of control of its accounting records.
- (3) The accounting records must be kept—
 - (a) in written form in English; or
 - (b) in a form or manner in which they are easily accessible and convertible into written form in English.

Compare: 1908 No 139 s 34B

64 Financial statements must be prepared

The partners of a large partnership must ensure that, within 5 months after the balance date of the partnership, financial statements that comply with generally accepted accounting practice are—

- (a) completed for the partnership and that balance date; and
- (b) dated and signed on behalf of the partners by 2 partners.

Compare: 1908 No 139 s 34C

65 Financial statements must be audited

- (1) The partners of a large partnership must ensure that the financial statements of the partnership are audited by a qualified auditor.
- (2) This section does not apply to a partnership if the partnership opts out of this section under **section 68**.
- (3) *See* sections 37 to 39 of the Financial Reporting Act 2013 (which provide for the appointment of a partnership to be the auditor and access to information in relation to a large partnership).

Compare: 1908 No 139 s 34E

66 Audit must comply with auditing and assurance standards

- (1) An auditor must, in carrying out an audit for the purposes of **section 65**, comply with all applicable auditing and assurance standards.
- (2) The auditor's report must comply with the requirements of all applicable auditing and assurance standards.

Compare: 1908 No 139 s 34F

67 Financial reporting offences

- (1) Every partner of a partnership commits an offence and is liable on conviction to a fine not exceeding \$50,000 if—
 - (a) the partners fail to comply with **section 63**; or

- (b) the partners are required to comply with **section 64** and the financial statements of the partnership—
 - (i) are not completed and signed within the time specified in that section; or
 - (ii) fail to comply with an applicable financial reporting standard; or
 - (c) the partners fail to comply with **section 65**.
- (2) It is a defence to a partner charged with an offence under this section in respect of a requirement if the partner proves that—
- (a) the partnership took all reasonable and proper steps to ensure that the requirement would be complied with; or
 - (b) the partner took all reasonable steps to ensure that the requirement would be complied with; or
 - (c) in the circumstances, the partner could not reasonably have been expected to take steps to ensure that the requirement would be complied with.

Compare: 1908 No 139 s 34G

68 Partnerships may opt out of audit requirement

- (1) This section applies to a large partnership unless the partnership agreement expressly provides that this section does not apply.
- (2) The partnership may, within 6 months from the start of an accounting period, opt out of compliance with **section 65** (audit requirement) in relation to an accounting period.
- (3) The partnership opts out by a resolution that is passed or signed by partners who together are entitled to share in at least 95% of the capital of the firm.
- (4) If the partnership opts out in relation to an accounting period, **section 65** does not apply to the partnership in relation to that period.

Compare: 1908 No 139 s 34H

69 Duties do not apply if alternative financial reporting duties under Financial Markets Conduct Act 2013

Sections 64 to 68 do not apply to a partnership in relation to an accounting period if financial statements of the partnership are required to be prepared for that period under subpart 3 of Part 7 of the Financial Markets Conduct Act 2013.

Note

The reference in s 34A of the 1908 Act to section 55 of the Financial Reporting Act 2013 is spent for accounting periods that start after 1 December 2016 (see cl 10 of Financial Reporting Regulations 2015). The reference to s 55 has therefore been omitted.

Compare: 1908 No 139 s 34A

Subpart 2—End of partnership

How partnership may end

70 Partnership dissolved at end of term, by end of venture or undertaking, or by notice

- (1) A partnership is dissolved,—
- (a) if entered into for a fixed term, at the end of the term;
 - (b) if entered into for a single venture or undertaking, by the end of the venture or undertaking;

Note

“adventure” has been replaced by “venture”

- (c) if entered into for an undefined time, by any partner giving notice to the other partner or partners of the partner’s intention to dissolve the partnership.
- (2) **Subsection (1)** is subject to any agreement between the partners.
- (3) In the case of **subsection (1)(c)**, the partnership is dissolved from—
- (a) the date stated in the notice as the date of dissolution; or
 - (b) if no date is stated, the date on which the notice is received by the other partner or partners.

Note

Section 35 of the 1908 Act refers to the “date of the communication”. This is an unusual formulation that is considered to be a little vague. A minor amendment has been made to refer to the date of receipt.

Compare: 1908 No 139 s 35

71 Partnership dissolved by death or bankruptcy

- (1) A partnership is dissolved with respect to all the partners by the death or bankruptcy of any partner.

Note

Webb notes at para 2.30 that a company (or other body corporate) can enter into a partnership. Should this provision be extended to cover a body corporate that ceases to exist (as a minor amendment to clarify Parliament’s intent)?

- (2) This section is subject to any agreement between the partners.

Compare: 1908 No 139 s 36(1)

72 Partnership may be dissolved if partner's interest in property is charged

- (1) If a partner allows their interest in the partnership property to be charged under this Act for the partner's separate debt (*see* **section 44**), the other partners may dissolve the partnership.

Notes

Section 36(2) of the 1908 Act refers to the partner's "share". In contrast, s 26 of the 1908 Act refers to charging the partner's "interest". The wording has been aligned.

The word "suffers" has been replaced with a plainer "allows".

Section 36(2) refers to the other partners dissolving the partnership "at their option". The words "at their option" have been omitted as unnecessary.

- (2) The decision of the other partners to dissolve the partnership must be unanimous.

Note

Webb at 4.125 notes that "The subsection does not state whether all the partners have to concur in exercising this option [to dissolve the partnership], and it is considered that unanimity is required." This is clarified in subclause (2) as a minor amendment under s 31(2)(i) of the Legislation Act.

Compare: 1908 No 139 s 36(2)

73 Partnership dissolved if unlawful

A partnership is dissolved if an event occurs that makes it unlawful for—

- (a) the partnership business to be carried on; or
- (b) the partners to carry on the business in partnership.

Compare: 1908 No 139 s 37

74 Court may dissolve partnership

The court may, on an application under **section 75**, declare a partnership to be dissolved if—

- (a) a partner is—
 - (i) found to be mentally disordered; or
 - (ii) of permanently unsound mind (as shown to the court's satisfaction); or

Notes

The reference to "by inquisition" in s 38(a) of the 1908 Act has been omitted as unnecessary.

In addition, consideration has been given to updating the terminology of this paragraph. Changes would be made as

minor amendments to clarify Parliament’s intent and to achieve a “modern style of expression” (see s 31(2)(e) and (i) of the Legislation Act).

Section 17 of the Judicature Act 1908 also referred to “... mentally disordered persons, and persons of unsound mind...” This has been replaced by s 14(1)(a) of the Senior Courts Act 2016: “mentally impaired persons who, in the opinion of the court, lack wholly or partly the competence to manage their own affairs”.

Feedback is welcome on whether similar wording should be included here, possibly with an additional requirement that the lack of competence be permanent to reflect the current wording of s 38(a). This could be along the lines that “a partner is a mentally impaired person who, in the opinion of the court, [permanently] lacks wholly or partly the competence to manage their own affairs”.

- (b) a partner is in any other way permanently incapable of performing the partner’s part of the partnership agreement; or

Note

The 1908 Act sometimes refers to a “partnership agreement” (see, eg, ss 23, 34H, and 38(d)) and sometimes to a “partnership contract” (see, eg, ss 38(b), 43, 44, and 45(2)). These references have been aligned to consistently refer to a partnership agreement. (The Limited Partnerships Act also uses “partnership agreement”).

- (c) a partner is guilty of conduct that, in the opinion of the court after having regard to the nature of the business, is calculated to prejudicially affect the carrying on of the business; or
- (d) a partner—
 - (i) wilfully or persistently breaches the partnership agreement; or
 - (ii) otherwise acts in matters relating to the partnership business in such a manner that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with the partner; or
- (e) the partnership business can be carried on only at a loss; or
- (f) circumstances have arisen that, in the opinion of the court, make it just and equitable to dissolve the partnership.

Compare: 1908 No 139 s 38

75 Application to court

- (1) An application, in the case of **section 74(a)**,—

- (a) may be made by any partner; or
- (b) may be made on behalf of the partner referred to in that paragraph by—
 - (i) the partner’s manager appointed under the Protection of Personal and Property Rights Act 1988; or
 - (ii) the partner’s next friend; or
 - (iii) a person who is entitled to intervene.

Note

Section 38(a) refers to a committee making an application. Section 129(7) of the Mental Health Act 1969 suggests that references to a committee may be references to a manager appointed under Part 7 of that Act. Section 113 of the Protection of Personal and Property Rights Act 1988 in turn refers to references to Part 7 being treated as references to that Act.

In light of the above, a reference to a manager appointed under the PPPR Act has replaced the reference to a committee. Webb at para 5.135 supports this view.

This amendment is a minor amendment to clarify Parliament’s intent as referred to in s 31(2)(i).

Section 38(a) of the 1908 Act refers to a “person having title to intervene”. This has been reworded as “a person who is entitled to intervene”.

- (2) An application, in the case of **paragraph (b), (c), or (d) of section 74**, may be made by any partner other than the partner referred to in that paragraph.
- (3) An application, in the case of **section 74(e) or (f)**, may be made by any partner.

Compare: 1908 No 139 s 38

Dissolving a partnership

76 Right to notify dissolution

When a partnership is dissolved or when a partner leaves the firm, any partner may—

- (a) publicly notify that fact; and

Note

See note to clause 34 about replacing references to retirement to references to leaving the firm.

- (b) for the purpose of that notification, require the other partners to [consent to, or otherwise co-operate in] the performance of, all necessary or prop-

er acts (if any) that cannot be done without the other partners' consent or co-operation.

Query

Section 40 of the 1908 Act refers "to concur in the performance" and to "concurrence". These terms are rather old-fashioned and not particularly clear. They have been replaced with the words in brackets. This is considered to be a minor amendment to clarify Parliament's intent.

Compare: 1908 No 139 s 40

77 Continuing authority of partners for purposes of winding up and completing transactions

- (1) This section applies after a partnership is dissolved.
- (2) The authority of each partner to bind the firm, and the other rights and obligations of the partners, continue (despite the dissolution) to the extent that is necessary—
 - (a) to wind up the affairs of the partnership; and

Note

Section 41 of the 1908 Act refers to "the affairs of the partnership" while section 42 refers to "the business and affairs of the firm". References have been aligned to the "affairs of the partnership".

- (b) to complete transactions begun before, but unfinished at, the time that the partnership is dissolved.
- (3) The authority and the rights and obligations do not otherwise continue.
- (4) Despite **subsection (2)**, the firm is not bound by the acts of a partner who is bankrupt.

Note

Webb notes at para 2.30 that a company (or other body corporate) can enter into a partnership. Should this provision be extend to cover the liquidation of a body corporate (as a minor amendment to clarify Parliament's intent)?

- (5) **Subsection (4)** does not affect the liability of a person who has, after a partner becomes bankrupt,—
 - (a) represented themselves as a partner of the bankrupt; or
 - (b) knowingly allowed themselves to be represented as a partner of the bankrupt.

Note

A reference to “suffered” has been replaced with “allowed”.

Note

Section 41 of the 1908 Act refers to “after the bankruptcy”. This could be construed as after bankruptcy ends. To clarify Parliament’s intent, the reference has been replaced with “after a partner becomes bankrupt”.

See also the note to clause 18 relating to references to bankruptcy.

Compare: 1908 No 139 s 41

78 Application of partnership property

- (1) When a partnership is dissolved, every partner is entitled as against the other partners, and all persons who claim through them in respect of their interests as partners, to have—
 - (a) the partnership property applied in payment of the debts and liabilities of the firm; and
 - (b) the surplus assets (after the payment of those debts and liabilities) applied in payment of what may be due to each of the partners (after deducting what may be due from them as partners).
- (2) For the purpose of this section, a partner or the partner’s representatives may, on the dissolution of the partnership, apply to the court to wind up the affairs of the partnership.

Note

Section 42 refers to the “termination” of the partnership as compared to other references to the partnership being dissolved. The word “termination” has been replaced with “dissolution” for consistency. Feedback is welcome on this approach and whether the distinction should be maintained.

Compare: 1908 No 139 s 42

79 Court may order repayment of premium if partnership prematurely dissolved

- (1) This section applies if—
 - (a) one partner has paid a premium to another on entering into a partnership for a fixed term; and
 - (b) the partnership is dissolved before the end of that term (except if it is dissolved because of the death of a partner).
- (2) The court may order the repayment of the premium or of a part of the premium that it thinks just.
- (3) For the purposes of **subsection (2)**, the court must have regard to—

- (a) the terms of the partnership agreement; and
 - (b) the length of time that the partnership lasted.
- (4) However, **subsection (2)** does not apply if—
- (a) the dissolution of the partnership is, in the judgment of the court, entirely or mainly due to the misconduct of the partner who paid the premium; or

Note

The word “chiefly” has been replaced with “mainly”.

- (b) the partnership is dissolved by an agreement that contains no provision for a return of any part of the premium.

Compare: 1908 No 139 s 43

80 Rights where partnership dissolved for fraud or misrepresentation

- (1) If a partnership agreement is rescinded on the ground of the fraud or misrepresentation of one of the parties to the agreement, the party who is entitled to rescind (A) is entitled—
- (a) to a lien on, or right of retention of, the surplus of the partnership assets (after satisfying the partnership liabilities) for—
 - (i) any sum of money paid by A for the purchase of a share in the partnership; and
 - (ii) any capital contributed by A; and
 - (b) to stand in the place of the creditors of the firm for any payments made by A in respect of the partnership liabilities; and

The 1908 Act has a number of apparently inconsistent references to debts and liabilities. For example, s 44(a) and (b) of the 1908 Act refer to “partnership liabilities” while ss 42 and 44(c) refer to “debts and liabilities of the firm”. Section 12 of the 1908 Act refers to “debts and obligations of the firm”.

Feedback is welcome on whether any difference in these references is intended and whether better alignment is desirable.

- (c) to be indemnified, by the person guilty of the fraud or of making the representation, against all the debts and liabilities of the firm.
- (2) The rights in **subsection (1)** are without prejudice to A’s other rights.

Compare: 1908 No 139 s 44

Note

There is a difficult relationship between this provision and the Contractual Remedies Act 1979 (now in subpart 3 of Part 2 of the Contract and Commercial Law Act 2017). See Part 4 of the Explanatory Material (and para 5.140 of Webb).

Feedback is welcome on whether dealing with this difficulty should be addressed in this revision Bill or in a future reform Bill.

81 Right of outgoing partner or partner's estate to share profits or obtain interest

- (1) This section and **section 82** apply if—
 - (a) a member of a firm (A) dies or otherwise ceases to be a partner; and
 - (b) 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 A or A's estate.
- (2) A or A's estate is entitled, at the option of A or A's personal representative, to—
 - (a) a share of the profits that are made after the dissolution of the partnership and that the court finds to be attributable to the use of A's share of the partnership assets; or
 - (b) interest at the rate of 5% per year on the amount of A's share of the partnership assets.

Note

Legislation that refers to a rate of interest is often linked to a rate that can move up or down to reflect market rates.

Consideration was given to amending the reference to 5% to a reference to interest calculated under the Interest on Money Claims Act 2016 (or to the interest rate referred to in s 12(3) of that Act). Feedback is welcome on whether such a change would be desirable and, if so, whether it is a minor amendment under s 31(2)(i) of the Legislation Act (or a matter that is better dealt with in a future reform).

- (3) This section does not apply if there is an agreement to the contrary.
Compare: 1908 No 139 s 45(1)

82 Option to purchase share of outgoing or deceased partner

- (1) Despite **section 81**, A or A's estate is not entitled to any further or other share of the profits [or to interest under that section] if,—
 - (a) under the partnership agreement, the surviving or continuing partners have an option to purchase the interest of a deceased or an outgoing partner; and
 - (b) the surviving or continuing partners exercise that option.

Note

Section 45(2) of the 1908 Act only refers to profits (not to interest under s 45(1)). Feedback is welcome on whether it makes sense to add the words in brackets "or to interest under that section". This

would be on the basis that it is a minor amendment to clarify Parliament's intent.

- (2) However, if a partner who is purporting to exercise the option does not, in all material respects, comply with the terms of the option, the partner is liable to account under **section 81**.

Note

The word “assuming” is replaced with “purporting”.

Compare: 1908 No 139 s 45(2)

83 Retiring or deceased partner's share is debt

- (1) The amount due from surviving or continuing partners to an outgoing partner or the personal representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death.

Note

See clause 42 about references to representatives.

- (2) This section is subject to any agreement between the partners.

Compare: 1908 No 139 s 46

84 Rules for distributing assets on final settlement of accounts

- (1) **Sections 85 and 86** apply in settling accounts between the partners after a partnership is dissolved.
- (2) This section and **sections 85 and 86** are subject to any agreement to the contrary.

Compare: 1908 No 139 s 47

85 Losses

Losses (including losses and deficiencies of capital) must be paid—

- (a) first out of profits:
- (b) next out of capital:
- (c) lastly, if necessary, by the partners individually in the proportion in which they are entitled to share the profits.

Compare: 1908 No 139 s 47(a)

86 Application of assets

The assets of the firm, including the sums (if any) contributed by the partners to make up losses or deficiencies of capital, must be applied in the following manner and order:

- (a) in paying the debts and liabilities of the firm to persons who are not partners in the firm:

- (b) in paying to each partner rateably what is due from the firm to the partner for advances (as distinguished from capital):
- (c) in paying to each partner rateably what is due from the firm to the partner in respect of capital:
- (d) in dividing the remainder (if any) among the partners in the proportion in which they are entitled to share the profits.

Note

Section 47(a) and (b)(iv) of the 1908 Act use slightly different wording. The former refers to “... the proportion in which they were entitled to share profits”. In contrast, the latter refers to “... the proportion in which profits are divisible”. The wording has been aligned for consistency.

Compare: 1908 No 139 s 47(b)

Subpart 3—Repeal and consequential amendments**87 Partnership Act 1908 repealed**

The Partnership Act 1908 (1908 No 139) is repealed.

88 Amendments to other enactments

The enactments specified in **Schedule 4** are amended in the manner indicated in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 6

Part 1

Provisions relating to this Act as enacted

1 Act applies to all partnerships

This Act applies to every partnership regardless of when it was formed.

Note

The first revision Act (the Contract and Commercial Law Act 2017) applies to all contracts (not just those contracts entered into after the new Act comes into force). This was on the basis that the new Act did not involve a change to the effect of the law.

The same approach has been taken in this Bill.

2 References to Partnership Act 1908

- (1) A reference in a document to the Partnership Act 1908, or to a provision of that Act, must, unless the context otherwise requires, be treated as a reference to this Act or to a provision of this Act that, with or without modification, replaces, or that corresponds to, the repealed provision.
- (2) In this clause, **document**—
 - (a) means any instrument, register, record, notice, or other document that is made, given, passed, or executed before the commencement of this Act; but
 - (b) does not include an enactment.

3 Saving for rules of equity and common law

The rules of equity and of common law that apply to a partnership continue to apply except to the extent that they are inconsistent with the express provisions of this Act.

Compare: 1908 No 139 s 3

4 Changes in legal effect do not apply to existing partnerships

The changes to the effect of the law in relation to the matters identified in **Schedule 2** do not apply to a partnership formed before the commencement of this Act (and, accordingly, the effect of the law as expressed in the Partnership Act 1908 continues to apply in relation to those matters).

5 Effect of repeal of Partnership Act 1908

Nothing in this schedule limits sections 17 to 22 of the Interpretation Act 1999 (for example, the repeal of the Partnership Act 1908 by this Act does not affect the validity, invalidity, effect, or consequences of anything done or suffered, the previous operation of the Partnership Act 1908, or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity, or duty).

Schedule 2

Intended changes to effect of law

s 4(2)

Provision of this Act	Provision of Partnership Act 1908	Nature of intended change
Section 11	Section 4(2)	The provision relating to relationships that are not partnerships is amended to expressly refer to limited partnerships and to refer to bodies corporate rather than companies.
Section 18	Section 6	The provision relating to what happens if a borrower or buyer is insolvent is extended to expressly apply to the liquidation of a body corporate[, and is further amended to clarify that it does not limit any security interest].
Section 28	Section 16(b)	The provision relating to improper use of trust property for partnership purposes is amended to consistently refer to trust property as opposed to trust money.
Sections 34 and 35 (and section 8(2))	Sections 20(2) and (3) and 39(3)	The provisions relating to liability of a partner who leaves a firm have been amended by replacing the references to a “partner who retires” and “a retiring partner” (and similar references) with references to leaving the firm (in combination with a definition of leaves in section 8(2)).
Section 44(1)(a)	Section 26(2)	The provision relating to charging a partner’s interest for their separate debt is amended to omit a reference to an “application by summons”.
Section 44(3)	Section 26(2A)	The provision relating to the power of the District Court to charge a partner’s interest for their separate judgment debt has been extended in section 44(3) to allow directions to be given if a judgment creditor applies for an order.
Section 70	Section 35	The provision about notice of dissolution is amended to refer to the date on which notice is received rather than the date of communication.
Section 71	Section 36(1)	[The provision relating to a partnership being dissolved by the death or bankruptcy of any partner is extended to include a body corporate (that is a partner) that ceases to exist.]
Section 72(2)	Section 36(2)	The provision relating to how a partnership may be dissolved if a partner’s interest in property is charged is amended in section 72(2) to clarify that the decision by the other partners to dissolve the partnership must be unanimous.
Section 74(a)	Section 38	The provision relating to how a court may dissolve a partnership has been updated to remove a reference to being found to be mentally disordered “by inquisition”. [The terminology is updated to align with the wording in section 14(1)(a) of the Senior Courts Act 2016].
Section 75(1)(b)(i)	Section 38(a)	The provision relating to an application to a court to dissolve a partnership has been updated to refer to a manager appointed under the Protection of Personal

Provision of this Act	Provision of Partnership Act 1908	Nature of intended change
Section 76	Section 40	and Property Rights Act 1988, rather than to a committee. The provision relating to public notification of a partnership being dissolved has been updated and clarified to require the partners to consent to, and co-operate with, the notification process (rather than requiring concurrence). References to a “partner who retires” and “a retiring partner” have been updated to refer to leaving a firm (in combination with a definition of leaves in section 8(2)).
Section 77(4) and (5)	Section 41	[The provision relating to partners continuing to have authority to wind up and complete transactions when a partnership has been dissolved is extended in section 77(4) and (5) to cover the liquidation of a body corporate.]
Section 80	Section 44	[To come. To cover possible minor amendments to better align with subpart 3 of Part 2 of the Contract and Commercial Law Act 2017 (contractual remedies).]
Section 81(2)(b)	Section 45(1)	[To come. To cover possible minor amendments relating to the calculation of interest.]
Section 82(1)	Section 45(2)	The provision relating to surviving or continuing partners exercising an option to buy the share of a deceased or outgoing partner only refers to a share in the profits. The provision is extended to include the interest calculated under section 81(2)(b) .

Schedule 3
Comparative table

s 4(3)

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Provision of Partnership Act 1908	Provision of this Act
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Provision of Partnership Act 1908	Provision of this Act
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45(1)	81
45(2)	82
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47	84
47(a)	85
47(b)	86

Schedule 4

Consequential amendments

s 88

Construction Contracts Act 2002 (2002 No 46)

In section 7(1)(d), replace “Partnership Act 1908” with “Partnership Law Act **2018**”.

Electricity Industry Act 2010 (2010 No 116)

In Schedule 2, clause 8(1)(c), replace “Partnership Act 1908” with “Partnership Law Act **2018**”.

Financial Markets Conduct Act 2013 (2013 No 69)

In section 12(1)(c), replace “Partnership Act 1908” with “Partnership Law Act **2018**”.

In Schedule 1, clause 4(2)(e), replace “Partnership Act 1908” with “Partnership Law Act **2018**”.

Goods and Services Tax Act 1985 (1985 No 141)

In section 2(1), definition of **partnership** and **partner**, replace “Partnership Act 1908” with “Partnership Law Act **2018**”.

Income Tax Act 2007 (2007 No 97)

In section GB 24(2)(e), replace “sections 36 and 38 of the Partnership Act 1908” with “**sections 71, 72, and 74** of the Partnership Law Act **2018**”.

In section YA 1, definition of **partnership**, paragraph (a), replace “section 4(1) of the Partnership Act 1908” with “**section 10** of the Partnership Law Act **2018** (subject to **section 11** of that Act)”.

In section YA 1, definition of **profit-sharing arrangement**, paragraph (d), replace “Partnership Act 1908” with “Partnership Law Act **2018**”.

Limited Partnerships Act 2008 (2008 No 1)

In section 3, delete “to repeal the special partnership provisions of the Partnership Act 1908 and”.

In section 8(4)(c), replace “Partnership Act 1908” with “Partnership Law Act **2018**”.

In section 18(2), replace “Partnership Act 1908” with “Partnership Law Act **2018**”.

Motor Vehicle Sales Act 2003 (2003 No 12)

In section 6(1), definition of **partnership**, replace “section 4 of the Partnership Act 1908” with “**sections 10 and 11** of the Partnership Law Act **2018**”.

New Zealand Business Number Act 2016 (2016 No 16)

In section 5, definition of **entity**, paragraph (e), replace “section 4(1) of the Partnership Act 1908” with “**section 10** of the Partnership Law Act **2018**”.