

## PARTNERSHIP APPLICATION ACT 1994

1994/180 – 28 March 1994

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### PART 1 PRELIMINARY

- 1 Short title**  
This is the Partnership Application Act 1994.
- 2 Interpretation**  
 “Deputy Registrar” means a deputy registrar of limited liability partnerships appointed under section 11;  
 “Minister” means the Minister of Justice;  
 “Registrar” means a registrar of limited liability partnerships appointed under section 11.

### PART 2 GENERAL AND SPECIAL PARTNERSHIPS

- 3 Partnership Act**  
 (1) [Spent]  
 (2) References in the Partnership Act 1908 to the High Court are to the High Court of Niue with respect to a partnership formed in Niue, unless the partners of that partnership unanimously agree that such references are to the High Court of New Zealand.

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## 5 **Formation**

A partnership shall be formed in Niue when the deed or written agreement of partnership constituting that partnership is executed or signed in Niue by all the partners of it or by their duly appointed attorneys.

## 6 **Special partnerships**

(1) Any partner of a special partnership formed in Niue under Part 2 of the Partnership Act 1908 who would be a general partner solely by virtue of the operation of section 53 of the Partnership Act 1908 shall be deemed to be a special partner notwithstanding that section if the making of any contract by that partner respecting the concerns of the partnership, or the use or consensual use of that partner's name in relation to the carrying on of the business of the partnership or any contract connected with it, is directly related to a business principally carried on outside Niue.

(2) Section 57 of the Partnership Act 1908 shall not apply to limit the duration of any special partnership formed in Niue under Part 2 of the Partnership Act 1908 to any period.

## 7 **Penalties**

Any person who –

- (a) Does anything which is forbidden by or under this Act; or
- (b) Omits to do something required or directed by or under this Act; or
- (c) Contravenes or fails to comply with this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding one year or to both.

## 8 **Regulations**

Cabinet may make Regulations prescribing all matters and things required or authorised by this Act to be prescribed or which are necessary for carrying out or giving effect to this Act including the prescribing of penalties for breaches of such Regulations not exceeding a fine of 100 penalty units.

## 9 **Partnership interests**

(1) A partnership ("the first partnership") may be a partner in another partnership ("the second partnership") in which case the members of the first partnership shall become individual members of the second partnership, excepting that for the purposes of determining the rights of the partners of the second partnership inter se and for the purposes of Part III they shall be deemed to be one person. Nothing in this subsection applies to, or prevents, a partner in a partnership creating a sub-partnership in equity of his legal interest as regards either his capital or income or both.

(2) A person may assign in equity any legal or equitable interest in partnership capital or income, or both, providing the assignment is in writing and is unconditional.

(3) Subsection (2) shall apply both to present property, being a present right to receive future income and to future property, being the income to be received in the future.

**10 Passive income**

(1) Persons who are jointly in receipt of passive income from any investment and who carry on no business in respect of that investment other than the raising of capital in relation to it, the taking of accounts in respect of it, and the contracting for maintenance for it are deemed not to be partners by virtue of such joint receipt.

(2) Passive income from any investment shall for the purposes of this section include any income derived from any interest as a beneficiary under a trust, and any income derived from the holding of any income-producing property, providing always that the expenditure referred to in subsection (1) does not in any 3 year period exceed 15 per cent of the total income derived from that interest or property in that period before taking into account capital costs (and interest on it) with respect to it.

(3) Income-producing property shall for the purposes of this section include any intellectual property rights or now-how which generate income, providing that any services supplied in relation to or in conjunction with the income thereby generated does not in any 3 year period exceed 15 per cent in value of the total income derived from that interest or property in that period.

(4) This section shall not apply to any persons who are jointly in receipt of passive income from any investment and who enter into any deed or written Agreement of Partnership with each other, whose status shall thereafter be determined under the general law.

**PART 3****LIMITED LIABILITY PARTNERSHIPS****11 Appointment of Registrar**

(1) There shall be appointed by the Niue Public Service Commission on the advice of Cabinet –

- (a) A Registrar of limited liability partnerships to carry out the duties and functions vested in him by or under this Act;
- (b) Such Deputy Registrars of limited liability partnerships and other officers as are required for the purposes of this Act.

(2) Anything by this Act appointed or authorised or required to be done by the Registrar may be done by any such Deputy Registrar and shall be as valid and effectual as if done by the Registrar, and the term Registrar shall for the remainder of this Act be deemed to include any Deputy Registrar.

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

(4) For the purposes of ascertaining whether a limited liability partnership is complying with this Part the Registrar or any person authorised by him may inspect any book, minute book, register or record kept by the limited liability partnership.

(5) Any person appointed under subsection (1) who except for the purposes of this Act or except in the course of criminal proceedings makes a record of, divulges or communicates to any other person any information which he possesses or has acquired –

- (a) By reason of his carrying out the duties and functions of his office;  
or
- (b) By reason of access forwarded or obtained by him to any document or register kept by the Registrar or book, minute book, register or record kept by any limited liability partnership,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 50 penalty units or to a term of imprisonment not exceeding 2 years in respect of each such offence.

## **12 Application for registration**

(1) Any partnership formed in Niue that is not a special partnership formed of the Partnership Act 1908 under Part 2 may apply to the Registrar for registration as a limited liability partnership.

(2) Any application of the kind referred to in subsection (1) shall be on a form prescribed by the Minister and shall be accompanied by the prescribed fee.

(3) Every such application shall be signed by all the partners to the partnership, and every such application shall specify a partner of the partnership or a duly appointed attorney thereof such that the registered office of the partnership shall be the address in Niue of that partner or duly appointed attorney.

(4) Every such application shall contain a several guarantee from the partners in prescribed form to all creditors of the partnership limited to such sum as the partners shall nominate, being not less than \$250 in it per partner.

(5) A deed or written Agreement of Partnership shall accompany every such application and shall be stamped by the Registrar with a registration number when the application is accepted in proper form and the prescribed fee is paid.

(6) Upon stamping of the deed or written Agreement of Partnership under subsection (5) the Registrar shall return the deed or written Agreement of Partnership to the registered office of the partnership and shall register that partnership upon a Register of limited liability partnerships kept for that purpose and issue a certificate of registration in the prescribed form.

(7) A limited liability partnership is deemed to be registered under this section from the date upon which the deed or written Agreement of Partnership is stamped under subsection (5), and the date of registration specified in the certificate of registration issued under subsection (6) shall be that date.

(8) A partnership shall not be deemed to be formed as a limited liability partnership until it is registered under this section or with section 13.

## **13 Annual certificates of registration**

(1) A certificate of registration issued under section 12(6) shall be valid and effective for one year from the date of registration specified in that certificate.

(2) Application for renewal of registration may be made upon filing with the Registrar an application for renewal of registration on a form prescribed by the Minister and payment of the prescribed fee.

(3) No application for renewal of registration under subsection (2) shall be granted where the application is filed or fee paid after the date of expiry of the last certificate of registration.

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

## **14 Address for service**

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

## **15 Display name**

Every limited liability partnership shall have its name displayed on the outside of its registered office in a conspicuous position in letters easily legible.

**16 Liability for debts**

- (1) (a) Subject to subsection (2), in determining the extent of any liability for the debts of a limited liability partnership the partners of a limited liability partnership shall each be severally liable for the debts of the partnership only to the extent of the amount nominated by each of them in the guarantee lodged with the application referred to in section 12 (4).
- (b) Nothing in this subsection shall apply to prevent any security given in respect of any property being enforced, nor any personal guarantee given by any partner being sued upon.
- (2) Subsection (1) shall not apply –
  - (a) To any debt arising from a transaction entered into by a limited liability partnership with a person or persons resident in Niue unless the fact that the partnership is registered as a limited liability partnership is acknowledged in writing by the other person or persons prior to the parties to the transaction being bound to it;
  - (b) To any debt existing at the date of first registration of the limited liability partnership under section 12.

**17 Power of partner to bind the partnership**

Every partner of a limited liability partnership is an agent of the limited liability partnership and the other partners in it for the purposes of the business of the limited liability partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the limited liability partnership shall, subject to section 16, bind the limited liability partnership and the other partners in it, unless the partner so acting has in fact no authority to act for the limited liability partnership in the particular matter, and the person with whom the partner is dealing either knows that the partner has no authority or does not know or believe that person to be a partner.

**18 Jurisdiction**

Every limited liability partnership shall be subject to the exclusive jurisdiction of the High Court of Niue unless the partners otherwise provide at the time of entering into binding legal relations, with third parties or with each other, with respect to such legal relations.

**19 No separate legal entity**

Nothing in this Part shall be taken to alter the laws of partnership applying to partnerships generally so as to constitute any limited liability partnership a legal entity separate from its members, and for the avoidance of doubt a limited liability partnership cannot sue or be sued in its own name.

**20 Assignment**

Unless otherwise agreed in writing by all the partners of a limited liability partnership a partner in that partnership will not by assigning all his interest in that partnership to another person thereby dissolve that partnership and that partnership shall upon such an assignment occurring be deemed to have always consisted of its present partners excepting that –

- (a) Any person to whom a partnership interest has been assigned shall be liable under the guarantee given under section 12 (4) by the assignor (or his predecessor in title (being the person who signed the guarantee)) and the assignor shall be released from the same;

- (b) The proviso to section 16 (1) shall continue to apply to both the assignor and the assignee;
- (c) For the purposes of any action between the partners inter se only those partners who were partners at the time the relevant cause of action arose shall be parties to any such action.

## **21 Secrecy**

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

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

(3) Notwithstanding subsection (1), an offence shall not be committed where information is divulged or made available to the extent reasonably required in the circumstances to any foreign government or any court or tribunal of any country including Niue but only if and to the extent that the High Court of Niue so directs, having been satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale, or the laundering of the proceeds of sale, of any prohibited narcotic substances, or the laundering of the proceeds gained from any other serious criminal activity, whether that sale or laundering or other serious criminal activity occurred in Niue or elsewhere.

(4) Nothing in this section shall prevent the High Court of Niue from requiring any person to produce documents or to give evidence in any proceedings of any facts relevant in such proceedings in a court in Niue.

## **22 Translations**

(1) Every document filed with the Registrar under this Part and not in the English language shall be accompanied by a certified translation.

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

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

## **23 No action to lie against certain persons**

Notwithstanding section 21 no action shall lie against the Government of Niue, any statutory body or authority or a public or judicial officer in respect of the performance of its or his functions or duties under this Part.

## **24 Power of exemption**

(1) Cabinet may, on the advice of the Minister, on its own motion or under an application in writing lodged with the Registrar by a limited liability partnership or a partnership which would be a limited liability partnership if it were registered, exempt that limited liability partnership or partnership from all or any of the provisions of this Act and any Regulations made under this Act and may impose such terms and conditions as it thinks fit as a condition under which that exemption is granted.

(2) Any exemption granted under subsection (1) may be revoked or varied by Cabinet, on the advice of the Minister, at any time.

(3) In dealing with an application under this section Cabinet shall not be required to act judicially and its decision shall in all cases be final.

(4) Any exemption or condition imposed under subsection (1) shall take effect as from a date to be decided by the Cabinet in its discretion.

**25 Prohibitions by the Minister**

(1) Cabinet shall, on the advice of the Minister, have an absolute right and without assigning reasons to make an order –

(a) Prohibiting the registration of any partnership as a limited liability partnership; or

(b) Directing any limited liability partnership to cease carrying on its business or part of its business immediately or within such time as may be specified in the order.

(2) Any order made under this section may be revoked or varied by the Cabinet, on the advice of the Minister.

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