



**Tuvalu**

# **PARTNERSHIP ACT**

**2008 Revised Edition**

**CAP. 40.36**





Tuvalu

## PARTNERSHIP ACT

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Tuvalu

## PARTNERSHIP ACT

### AN ACT TO DECLARE THE LAW OF PARTNERSHIP<sup>1</sup>

Commencement [1st December 1992]<sup>2</sup>

## PART I - PRELIMINARY

### 1 Short title

This Act may be cited as the Partnership Act.

### 2 Definitions of “business” and “court”

In this Act, unless the contrary intention appears —

- (a) the expression “**business**” includes every trade, occupation or profession;
- (b) the expression “**court**” includes every court and judge having jurisdiction in the case.

### 3 Saving of law and equity

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

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## PART II - NATURE OF PARTNERSHIP

### 4 Definition of partnership

- (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
- (2) The relation between members of any company or association which is —
  - (a) a company registered under the Companies and Business Registration Act<sup>3</sup> or the Companies Act<sup>4</sup>;
  - (b) formed or incorporated by or in pursuance of any Act,is not a partnership within the meaning of this Act.
- (3) Nothing in this Act shall affect the provisions of the Companies and Business Registration Act in its application to partnerships.

### 5 Rules for determining existence of partnership

- (1) In determining whether a partnership does or does not exist, regard shall be had to the provisions of this section.
- (2) Joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.
- (3) The sharing of gross returns does not of itself create a partnership, whether the sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.
- (4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him partner in the business, and in particular —
  - (a) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
  - (b) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in business or liable as such;
  - (c) a person being the widow, widower or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;

- (d) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing and signed by or on behalf of all the parties thereto;
- (e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

## **6 Postponement of rights of lender**

In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in section 5, or of any buyer of a goodwill in consideration of a share of the profits of the business, —

- (a) being adjudged a bankrupt;
- (b) entering into an arrangement to pay his creditors less than 100 cents in the dollar; or
- (c) dying in insolvent circumstances,

the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

## **7 Meaning of firm**

Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

# **PART III - RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM**

## **8 Power of partner to bind firm**

- (1) Every partner is an agent of the firm and of his other partners for the purpose of the business of the partnership.

- (2) The acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless —
  - (a) the partner so acting has in fact no authority to act for the firm in the particular matter; and
  - (b) the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

## **9 Partners bound by acts on behalf of the firm**

- (1) An act or instrument relating to the business of the firm done or executed in the firm's name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.
- (2) This section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

## **10 Partner using credit for private purposes**

- (1) Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the other partners.
- (2) This section does affect any personal liability incurred by an individual partner.

## **11 Notice that firm not bound by partner**

If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

## **12 Liability of partners**

Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied but subject to the prior payment of his separate debts.

**13 Liability of firm for wrongs**

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners —

- (a) loss or injury is caused to any person not being a partner in the firm;
- (b) any penalty is incurred,

the firm is liable therefore to the same extent as the partner so acting or omitting to act.

**14 Misapplication of property in custody of firm**

In the following cases —

- (a) where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and
- (b) where a firm in the course of its business receives money or property of a third person, and the money or property so received is applied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

**15 Liability for wrongs**

Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under section 13 or 14.

**16 Improper employment of trust property**

- (1) If a partner, being a trustee, improperly employs trust-property in the business or on the account of the partnership, no other partner is liable for the trust-property to the persons beneficially interested therein.
- (2) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust.
- (3) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

**17 Liability for holding out**

- (1) Subject to subsection (2), any person who —
  - (a) by words spoken or written or by conduct represents himself; or
  - (b) knowingly suffers himself to be represented,

as a partner in a particular firm, is liable as a partner to any person who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

- (2) Where after a partner's death the partnership business is continued in the old firm's name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators estate or effects liable for any partnership debts contracted after his death.

## **18 Representations of partners**

An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

## **19 Notice to acting partner**

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

## **20 Liabilities of incoming and outgoing partners**

- (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.
- (2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.
- (3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

## **21 Revocation of continuing guarantee**

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

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## PART IV - RELATIONS OF PARTNERS TO ONE ANOTHER

### 22 Variation of terms of partnership

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

### 23 Partnership property

- (1) Subject to subsection (2), all property and rights and interests in property —
- (a) originally brought into the partnership stock; or
  - (b) acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business,

are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

- (2) The estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules or law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.
- (3) Where co-owners of an estate or interest in any land, not being itself partnership property —
- (a) are partners as to profits made by the use of that land or estate; and
  - (b) purchase other land or estate out of the profits to be used in like manner,

the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners but as co-owners for the same respective estates and interests as are held by them in the land or estate first-mentioned at the date of the purchase.

### 24 Property bought with partnership money

Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

### 25 Land held as partnership property

Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner) and also as between the heirs of

a deceased partner and his executors or administrators, as personal or moveable and not real or heritable estate.

## 26 Judgment debts against partners

- (1) A writ of execution shall not be issued against any partnership property except on a judgment against the firm.
- (2) The High Court may —
  - (a) on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment that an interest thereon;  
and may —
  - (b) by the same or a subsequent order —
    - (i) appoint a receiver of that partner's share of profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership; and
    - (ii) direct all accounts and inquiries, and give all other orders and directions, which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.
- (3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in case of a sale being directed, to purchase the same.

## 27 Interests and duties of partners

- (1) The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by this section.
- (2) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.
- (3) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him —
  - (a) in the ordinary and proper conduct of the business of the firm; or
  - (b) in or about anything necessarily done for the preservation of the business or property of the firm.
- (4) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of 5 per cent per annum from the date of payment or advance.

- (5) A partner is not entitled, before the ascertainment of profits, to the interest on the capital subscribed by him.
- (6) Every partner may take part in the management of the partnership business.
- (7) No partner shall be entitled to remuneration for acting in the partnership business.
- (8) No person may be introduced as a partner without the consent of all existing partners.
- (9) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.
- (10) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

## **28 Expulsion of partner**

No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

## **29 Retirement from partnership**

- (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.
- (2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

## **30 Partnership for term**

- (1) Where a partnership entered into for a fixed term is continued after the term has expired and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term so far as is consistent with the incidents of a partnership at will.
- (2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

**31 Duty to render accounts**

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

**32 Accountability for private profits**

- (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connection.
- (2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

**33 Duty not to compete with firm**

A partner who, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

**34 Rights of assignee**

- (1) An assignment by any partner in his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership —
  - (a) to interfere in the management or administration of the partnership business or affairs; or
  - (b) to require any accounts of the partnership transactions; or
  - (c) to inspect the partnership books,but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.
- (2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled —
  - (a) to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners; and
  - (b) for the purpose of ascertaining that share, to an account as from the date of the dissolution.

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## **PART V - DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES**

### **35 Dissolution by expiration or notice**

- (1) Subject to any agreement between the partners, a partnership is dissolved —
  - (a) if entered into for a fixed term, by the expiration of that term;
  - (b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking;
  - (c) if entered into for an undefined time any partner giving notice to the other or others of his intention to dissolve the partnership.
- (2) In the case provided for in subsection (1)(c) the partnership is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

### **36 Dissolution by bankruptcy, death, charge**

- (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.
- (2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

### **37 Dissolution by illegality**

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

### **38 Dissolution by the court**

On application by a partner, the court may the order a dissolution of the partnership in any of the following cases —

- (a) when a partner is shown to the satisfaction of the court: to be of permanently unsound mind, in which case the application may be made as well on behalf of that partner by his next friend (including a suitable close relation of his) or person having title to intervene as by any other partner;
- (b) when a partner, other than the partner suing, becomes in any other way permanently, incapable of performing his part of the partnership contract;

- (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to affect prejudicially the carrying on of the business;
- (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (e) when the business of the partnership can only be carried on at a loss;
- (f) whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

### **39 Rights of persons dealing with firm after change**

- (1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.
- (2) An advertisement in the Gazette shall be notice as to persons who had no dealings with the firm before the date of the dissolution or change so advertised.
- (3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement respectively.

### **40 Right to notify dissolution**

On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

### **41 Continuing authority for winding up**

- (1) Subject to subsection (2), after the dissolution of a partnership the authority of each partner to bind the firm and the other rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.
- (2) The firm is in no case bound by the acts of a partner who has become bankrupt, but this subsection does not affect the liability of any person who

has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

#### **42 Application of partnership property**

On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, —

- (a) to have the property of the partnership applied in payment of the debts and liabilities of the firm; and
- (b) to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm,

and for that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind up the business and affairs of the firm.

#### **43 Premature dissolution**

Where —

- (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 expiration of that term otherwise than by the death of a partner,

the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless —

- (i) the dissolution is, in the judgement of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (ii) the partnership has been dissolved by an agreement containing a provision for a return of any part of the premium.

#### **44 Dissolution for fraud, etc.**

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

- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him; and
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and

- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

#### **45 Share of profits after dissolution**

(1) Where —

- (a) any member of a firm has died or otherwise ceased 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 and the outgoing partner or his estate,

then, in the absence of any agreement to the contrary, and subject to subsection (2), the outgoing partner or his estate is entitled at the option of himself or his representatives —

- (i) to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets; or
- (ii) to interest at the rate of 5 per cent per annum on the amount of his share of the partnership assets.

(2) Where —

- (a) by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner; and
- (b) that option is duly exercised,

the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profit but if any partner assuming to act in exercise of the option does not comply in all material respects with the terms thereof, he is liable to account under subsection (1).

#### **46 Share of retiring or deceased partner**

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the 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.

#### **47 Distribution on final settlement**

In settling accounts between the partners after a dissolution of partnership, the following settlement rules shall, subject to any agreement, be observed —

- (a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the

- partners individually in the proportion in which they were entitled to share profits;
- (b) the assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order: —
- (i) in paying the debts and liabilities of the firm to persons who are not partners therein;
  - (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
  - (iii) in paying to each partner rateably what is due from the firm to him in respect of capital;
  - (iv) the ultimate residue, if any, to be divided among the partners in the proportion in which profits are divisible.

**ENDNOTES**

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<sup>1</sup> Act 12 of 1991

<sup>2</sup> GN 9/1992

<sup>3</sup> Cap. 40.12

<sup>4</sup> Cap. 40.08