

# **Limited Partnerships Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

Limited partnerships are a form of partnership involving general partners who are liable for all of the debts and liabilities of the partnership, and limited partners, who are only liable to the extent of their contribution to the partnership. Limited partnerships are an internationally preferred structure for investing in venture capital.

Venture capital provides a valuable source of funding for new companies and early stage expansion capital. The Government's Growth and Innovation Framework, launched in 2002, identified promoting foreign venture capital as an element for achieving sustainable economic growth through effective innovation. Practical experience in New Zealand and Australia strongly indicates that the absence of an internationally recognised legal and tax structure is an impediment to foreign venture capital investment.

Currently, New Zealand has a form of limited partnership called the special partnership, under Part 2 of the Partnership Act 1908. However, because the legislation is outdated, it does not have all of the features preferred by foreign venture capital investors and the local venture capital industry has been unable to utilise the special partnership.

In a highly competitive international venture capital market, New Zealand is disadvantaged by size and distance. This makes it particularly important that New Zealand adopt a limited partnership structure that is consistent with international norms and that provides the form of legal and tax structure that is recognised and accepted by investors.

International norms and best practice suggest that limited partnerships should have the following key features:

- flow through tax status, meaning that the partnership itself is not taxed, but that each partner is taxed individually;
- limited partners' liability is limited to the amount of their contribution to the partnership;
- limited partners should be able to undertake certain activities (safe harbours) that allow them to have a say in how the partnership is run, without being deemed to participate in the management of the partnership and consequently losing their limited liability;
- a limited partnership should be a separate legal entity.

In addition, as limited partnerships are commonly used to invest across several different jurisdictions, it is important that other governments recognise New Zealand limited partnerships and therefore know how to tax them, so that they can be used in jurisdictions other than New Zealand. It is particularly important that New Zealand limited partnerships be recognised in other jurisdictions as entities that are eligible for flow through tax status.

The Bill establishes a new regulatory and tax regime in New Zealand for limited partnerships and comprises a number of parts.

*Part 1* contains preliminary provisions.

*Parts 2 to 4* of the Bill repeal the special partnership provisions of the Partnership Act 1908 and establish a modern regulatory regime for limited partnerships that provides a flexible and internationally recognised business structure, and aims to facilitate the growth of the venture capital industry in New Zealand.

*Part 5* of the Bill amends the Income Tax Act 2004 to ensure that income and expenses can flow through to partners in a limited partnership, in the same way that other partnerships are treated. In the absence of these new rules, a limited partnership would be characterised as a company for income tax purposes, and income and expenses would not flow through to partners.

*Parts 5 and 6* of the Bill also amend the Income Tax Act 2004 and the Tax Administration Act 1994 to clarify and modernise the tax treatment of partnerships and limited partnerships generally.

## **Parts 2 to 4**

### **Limited partnerships**

The new regulatory regime for limited partnerships has the following key features:

- a limited partnership can be formed for any business purpose (except for insurance and banking) and will be formed upon registration with the Companies Office:
- a limited partnership will have separate legal personality:
- any legal person may be a general or limited partner:
- a limited partnership must have at least 1 general and 1 limited partner:
- the general partner will be liable for the debts and liabilities of the limited partnership:
- the limited partner is not responsible for the liabilities of the partnership. Limited partners are only liable to the extent of their contribution to the partnership, so long as the limited partner does not engage in the management of the limited partnership:
- safe harbours or activities will be prescribed in regulations made under the Bill, so that limited partners are able to participate in strategic activities without this affecting their liability under legislation:
- a limited partnership may be dissolved in a variety of circumstances:
- while focused on encouraging venture capital investment, the limited partnerships structure is not exclusively designed for that purpose, and may be used by the corporate community as an alternative to a company or other legal form.

## **Part 5**

### **Amendments to Income Tax Act 2004**

The reform of the general tax rules for partnerships would have the following main effects:

- allow for flow through of income and expenses based on the partnership agreement. However, to prevent streaming, income and expenditure from different sources would be allocated to the partners in the same proportion:
- deem transactions between partners and partnerships (except salary payments) to occur at market value to reduce opportunities for tax avoidance:

- require a partner to account for tax upon exit from a partnership in certain circumstances, to address revenue concerns. There are, however, several carve-outs from this requirement (including a carve-out for small businesses) where the compliance costs will outweigh the fiscal risks. Partners will not need to comply with the requirement in respect of the following:
  - trading stock, where the trading partnership has a turnover of under \$3,000,000:
  - certain types of depreciable tangible property where the historical cost of any depreciable tangible asset held by the partnership is less than \$200,000:
  - certain types of financial arrangements where the financial arrangement has been entered into as a necessary and incidental purpose of the business (eg, a loan to provide working capital for the business):
  - certain excepted financial arrangements (such as trade credits):
- where a partner accounts for tax on exit from a partnership, the partnership and the incoming partner may elect to take on a cost base in the partnership's assets and liabilities. The cost base must be equal to the amount that the exiting partner was deemed to dispose of them for, in accordance with the disposal provisions. Where the exiting partner has a tax loss this cost base inheritance is mandatory:
- where an exiting partner has performed a revenue account adjustment in respect of livestock, allow the incoming partner to deduct the amount of that adjustment on a straight-line basis over a 5-year period. This addresses concerns raised by submitters regarding compliance costs as separate tax books for livestock will not need to be maintained:
- ensure that the new entry and exit rules are elective for partnerships of 5 or fewer partners where no partner has limited liability with respect to debts of the partnership business.

## **Part 6**

### **Amendments to Tax Administration Act 1994**

Amendments are being made to clarify and simplify the record keeping and filing requirements for partnerships. The rules for record keeping are being amended to reflect current practice, and

partnerships will be required to file returns only where the partnership is a registered limited partnership or carries on a business in New Zealand.

### **Clause by clause analysis**

*Clauses 1 and 2* are standard Title and commencement clauses. It is intended that the Bill will be divided at committee stage into 3 separate Bills. *Parts 1 to 4* will become the Limited Partnerships Bill, *Part 5* an Income Tax Amendment Bill, and *Part 6* a Tax Administration Amendment Bill.

### **Part 1 Preliminary provisions**

*Clauses 3 and 4* set out the purpose of the Bill and the interpretation to be given to certain terms used in the Bill.

*Clause 5* is the usual clause providing that the Bill binds the Crown.

### **Part 2 General**

*Clauses 6 to 10* set out the nature of a limited partnership. The key elements are that it is a limited partnership registered under *clause 44*; it endures for as long as it remains registered; it must have at least 1 general partner and 1 limited partner (these terms are explained below), who must not be the same person; it must have a partnership agreement and it is a separate legal person, that is, it is a legal person in its own right, separate from the partners. In this respect a limited partnership is more akin to a company registered under the Companies Act 1993 rather than a conventional partnership which is not a separate legal person.

*Clause 11* provides that a limited partnership has full legal capacity to do any thing that a natural or legal person may do, although the partnership agreement may limit the scope or nature of its business (*clause 12*) and *clauses 13 to 14* set out various restrictions on the business of a limited partnership.

*Clauses 16 to 21* describe the partners of a limited partnership. There are 2 categories of partners: general partners and limited partners. Each has a separate function (but there is nothing to prevent a person from being both a general partner and a limited partner—see *clause 20*). Broadly, the function of the general partner is to manage the

business of the limited partnership, and the function of the limited partner is to provide money or assets to fund that business. Put simply, the general partner is the manager, the limited partner the investor. It is important that these functions do not cross over: the Bill prohibits the general partner from investing in the limited partnership (*clause 17(2)*) and the limited partner from taking part in the management of the business (*clause 18(1)*). For the limited partner who does stray into management of the business, despite the prohibition in *clause 18(1)*, the consequences are potentially serious: the limited partner risks losing that person's exemption from liability for the debts and liabilities of the limited partnership (this is discussed below). The Bill does not define what constitutes taking part in the management of the business of the limited partnership, but regulations made under the Bill will provide a "safe harbour regime" for limited partners—that is, the regulations will specify activities that do *not* constitute taking part in the management of the business (see *clause 27(3)*).

*Clauses 22 to 25* deal with the liability of general partners, and *clauses 26 and 27* with the liability of limited partners. It is important to read these clauses with *clause 100* in mind. That clause provides in essence that, for the purposes of limited partnerships, a provision in the Limited Partnerships Act 2007 will override any corresponding provision in the Partnership Act 1908.

A general partner (A) is liable, jointly and severally with the limited partnership itself and the other general partners, for the debts and liabilities of the limited partnership incurred while A is a general partner (*clause 23(1)*). Similarly, A is liable, jointly and severally with the limited partnership and the other general partners, for a wrong or omission by the limited partnership occurring while A is a general partner (*clause 24(1)*). However, there is a qualification to both types of liability: the general partner is only liable to the extent that the limited partnership itself cannot pay its debts or liabilities (*clause 25*). In other words, the liability of the general partner is residual; the assets of the limited partnership must be applied first to any debt or liability before the general partner becomes liable.

By contrast, the limited partner is not liable at all for the debts and liabilities of the limited partnership, with one exception. Leaving aside the exception just mentioned, the only risk that the limited partner runs is that the limited partner's capital contribution will be consumed in unsuccessful trading. This exemption from liability is the concomitant of the limited partner's exclusion from management

of the business of the limited partnership—no liability without responsibility is the rule. However, in one instance a limited partner may be liable as a general partner to a person who deals with the limited partnership. This liability arises if, at the material time, the limited partner took part in the management of the business, and the third party not only knew that the limited partner was doing so but also believed on reasonable grounds that the limited partner was in fact a general partner (see *clause 26(1)*). The key to the exemption of the limited partner from liability for the debts and liabilities of the limited partnership is the limited partner's isolation from the management of the business. To assist limited partners to stay within the exemption, regulations to be made under the Bill will specify activities that do not constitute taking part in the management of the business of the limited partnership (see *clause 27(3)*). The limited partner who does nothing outside those specified activities has the assurance of nil liability.

*Clauses 28 to 31* relate to the name of a limited partnership. The Bill contains standard provisions for objection by the Registrar of Companies to the name with which a limited partnership proposes to register (*clause 29*), and procedures for change of name (*clauses 30 and 31*).

*Clause 32* describes the capital contribution of a limited partner: it is the amount contributed, or agreed to be contributed, by the limited partner to the limited partnership. A limited partner's partnership interest (*clause 33*) is the limited partner's share of the net assets and other limited partnership benefits (distributions and benefits conferred by the partnership agreement).

*Clauses 34 to 40* relate to distributions to limited partners. These provisions are based on the distribution provisions contained in the Companies Act 1993 and include the requirement that before the general partners authorise a distribution, they must be satisfied on reasonable grounds that the solvency test will be met. The solvency test is similarly imported from the Companies Act 1993. A departure from the Companies Act provisions is found in *clause 39(2)*, which limits the period of liability of a limited partner to repay some or all of a distribution made, to the limited partner's knowledge, in breach of the solvency test. A limited partner in that position is liable to repay the amount in question only for 3 years after the distribution was made (*clause 39(2)(a)*); however, the partnership agreement may specify a longer period for liability to endure (*clause 39(2)(b)*).

*Clauses 41 and 42* specify the agency functions of limited partners and general partners respectively. Under section 8 of the Partnership Act 1908, each partner is an agent of the firm and the other partners for the purpose of the business of the partnership. This rule is displaced in the case of a limited partnership under the Bill. Consistent with the limited partner's exclusion from management of the business of the limited partnership, a limited partner is not an agent of the limited partnership or any other partner (*clause 41*); a general partner, on the other hand, is (*clause 42*).

*Clause 43* excludes, in the case of a limited partner, the fiduciary duties found in sections 31 (Duty to render accounts, etc), 32 (Partners to account for private profits), and 33 (Partner not to compete with firm) of the Partnership Act 1908. These obligations are inconsistent with the role of the limited partner as a passive investor.

*Clauses 44 to 74*: these are standard clauses with parallels in other statutes (the Companies Act 1993 and the Insolvency Act 2006, in particular) relating to the administration of the limited partnership regime. They relate to registration of a limited partnership (*clauses 44 to 46*), the registers of limited partnerships (*clauses 47 to 60*), the administration of limited partnerships (*clauses 61 to 70*), and the powers of inspection vested in the Registrar of Companies (*clauses 71 to 74*).

*Clauses 75 to 84* deal with the liquidation and deregistration of a limited partnership. *Clause 75* sets out a number of terminating events from any of which the liquidation of the limited partnership must follow (*clause 76*). The High Court has the power to appoint a liquidator (*clause 77*) on any of the grounds set out in *clause 78*. The liquidation provisions of the Companies Act 1993 apply with some modifications. A limited partnership ceases to exist when it is deregistered (*clause 84(1)*).

*Clause 85* gives a right of appeal to the High Court in respect of an act or decision of the Registrar of Companies under the Bill.

### **Part 3**

#### **Overseas limited partnerships**

*Part 3* of the Bill (*clauses 86 to 97*) deals with overseas limited partnerships. With modifications, these are treated in the same way as overseas companies under the Companies Act 1993, and *clauses 87 to 97* are borrowed from that Act.

## **Part 4 Miscellaneous**

*Part 4* contains miscellaneous provisions. Of special note is *clause 98*, which effectively provides that the Bill prevails over the Partnership Act 1908 in the event of any overlap. Part 2 of the Partnership Act 1908 (which deals with special partnerships) is repealed (*clause 101*), and *clause 104* contains a transitional provision for special partnerships in existence on the commencement of the Bill.

## **Part 5 Amendments to Income Tax Act 2004**

*Clauses 106 to 121* amend the Income Tax Act 2004.

*Clause 106* inserts a *new section CB 23B*, to ensure that an entering partner has income for specified livestock acquired from an exiting partner, where the exiting partner has a loss from disposing of that livestock to the entering partner. *New section CB 23B* complements *new section HD 10*.

*Clause 107* repeals section CU 11(2), consequential to *new subpart HD* rules for partnerships.

*Clause 108* repeals section CU 19(6)(c), consequential to *new subpart HD*.

*Clause 109* inserts a *new section DO 5C*, to ensure that an entering partner has deductions for specified livestock acquired from an exiting partner, where the exiting partner has income from disposing of that livestock to the entering partner. *New section DO 5C* complements *new section HD 10*.

*Clause 110* repeals section DU 8(2), consequential to *new subpart HD* rules for partnerships.

*Clause 111* repeals section EW 58(2), consequential to *new subpart HD* rules for partnerships.

*Clause 112* repeals section EX 13, consequential to *new subpart HD* rules for partnerships.

*Clause 113* repeals section EZ 34(10), consequential to *new subpart HD* rules for partnerships.

*Clause 114* amends section GC 14D(2)(b), to correct a cross-reference, consequential to *new subpart HD* rules for partnerships.

*Clause 115* inserts *new section GD 16*, to ensure the use of arm's length consideration for intra-partnership transactions, subject to certain exclusions.

*Clause 116(1)* replaces subpart HD with a *new subpart HD*, to provide rules for joint ventures and partnerships.

*New section HD 1* provides a rule for separate calculation of net income for joint venturers, subject to an exclusion for certain airport operators. *New section HD 2* provides the basic rule for partnerships (including limited partnerships) that they are transparent, or "look-through", for tax purposes. Transparency or "look-through" is achieved by attributing every item of a partnership to the partners in accordance with the partners' share in the relevant item.

*New section HD 3* provides the basic rule for disposals of partners' interests, such interests being the aggregate share in various items provided by *new section HD 2*. The basic rule in *new section HD 3* is that when 50% or more of interests in the partnership are disposed of, then all interests are disposed of, effectively triggering the dissolution of the partnership, with the relevant tax effects of a complete dissolution following.

*New section HD 4* provides a safe harbour from the tax consequences of a change in certain partner's interests, by allowing one partner to step into the interests of another partner and adjusting deductions, thereby preserving the tax treatment from one to another. Without the safe harbour provided by *new section HD 4*, changes of partners' interests within the circle of a partnership for no consideration could trigger untoward tax effects.

*New section HD 5* provides a safe harbour from the tax consequences of a change in partner for disposals of partners' interests where the consideration for the disposal of the relevant interests does not exceed their net tax book value by more than \$50,000.

*New section HD 6* provides a safe harbour from the tax consequences of a change in partner for disposals of partners' interests comprised of certain trading stock.

*New section HD 7* provides a safe harbour from the tax consequences of a change in partner for disposals of partners' interests comprised of certain depreciable property that cost \$200,000 or less.

*New section HD 8* provides a safe harbour from the tax consequences of a change in partner for disposals of partners' interests comprised of certain financial arrangements and excepted financial arrangements.

*New section HD 9* provides a safe harbour from the tax consequences of a change in partner for disposals of partners' interests comprised of short-term agreements for the sale and purchase of property or services.

*New section HD 10* provides that an entering partner steps into the tax treatment of an exiting partner in respect of specified livestock. *New section HD 10* complements *new sections CB 23B and DO 5C*.

*New section HD 11* prevents a limited partner from taking a deduction that is greater than their "basis" in the partnership. "Basis" equates to funds at risk. There is an exception to the rule that a partner may not take a deduction that is greater than their basis in *new section HD 11(5)*, to allow deductions to be used against income arising from exiting a limited partnership.

*New section HD 12* allows the carry-forward of deductions disallowed under *new section HD 11*.

*Clause 117* replaces section HK 17, to ensure that a general partner is liable as agent for the tax liability of an absentee limited partner, in appropriate circumstances.

*Clause 118* adds *new sections HZ 3 and HZ 4*, to allow for transition into the new rules for limited partnerships. *New section HZ 3* provides for the transition of existing special partnerships into the new rules by treating the special partnership as the same partnership as the limited partnership transitioned to. Also, transitional rules for the calculation of "basis" are provided. *New section HZ 4* provides for the transition of existing overseas limited partnerships into the new rules by providing for the calculation of "basis".

*Clause 119* amends section OB 1.

*Subclause (2)* inserts a new definition of capital contribution, as part of calculating a limited partner's "basis" to limit their deductions to funds at risk.

*Subclause (3)* amends the definition of company, to ensure that partnerships (including limited partnerships) are not companies, and that certain foreign partnerships are companies.

*Subclause (4)* amends the definition of dispose, to ensure that no disposal occurs merely due to other changes in the partnership.

*Subclause (5)* inserts a new definition of entering partner, for the purposes of the new partnership rules.

*Subclause (6)* inserts a new definition of foreign corporate limited partnership, to ensure that the definition of company applies to

certain foreign entities, and that the new partnership rules do not apply to those entities.

*Subclause (7)* inserts new definitions of limited partnership and limited partnership net deduction, to ensure that limited partnerships are treated as partnerships under the new partnership rules, and to make the rules that limit deductions of limited partners work.

*Subclause (8)* inserts a new definition of listed limited partnership, to ensure that the definition of company applies to certain foreign entities, and that the new partnership rules do not apply to those entities.

*Subclause (9)* replaces the definitions of partner, partnership, partnership income, partnership loss, and partnership net income with new definitions of partner, partner's associate, partner's interests, partnership, and partnership share, to ensure that the new partnership rules apply appropriately (including limited partnerships).

*Subclause (10)* amends the definition of relative, consequential to calculating a limited partner's "basis" to limit their deductions to funds at risk.

*Subclause (11)* inserts a new definition of small partnership to give small general partnerships flexibility in applying the new partnership rules.

*Subclause (12)* amends the definition of trading stock, to cross-refer to the new partnership rules.

*Subclause (13)* amends the definition of turnover, to cross-refer to the new partnership rules.

*Subclause (14)* amends the definition of withdrawal, to cross-refer to the new partnership rules.

*Subclause (15)* provides an appropriate application date for the subclauses.

*Clause 120* amends section OD 8(2), consequential to *new subpart HD* rules for partnerships.

*Clause 121* adds a *new section OE 4(1A)*, to ensure that the relevant source rules apply appropriately in the context of partnerships (including limited partnerships).

**Part 6**  
**Amendments to Tax Administration Act 1994**

*Clauses 123 and 124* amend the Tax Administration Act 1994.

*Clause 123* amends section 22, to provide appropriate record-keeping requirements in the context of partnerships.

*Clause 124* replaces section 42, to provide appropriate return requirements in the context of joint ventures and partnerships.

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*Hon Lianne Dalziel*

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### The Parliament of New Zealand enacts as follows:

#### 1 Title

This Act is the Limited Partnerships Act **2007**.

#### 2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council. 5
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.

### Part 1

#### Preliminary provisions

#### 3 Purpose of Act 10

The purpose of Parts 1 to 4 is to repeal the special partnership provisions of the Partnership Act 1908 and to establish a modern regulatory regime for limited partnerships that—

- (a) gives the business community in New Zealand the option of a flexible and internationally recognised business structure similar to limited partnerships in use in overseas jurisdictions; and 15
- (b) facilitates the development of the venture capital industry in New Zealand.

#### 4 Interpretation 20

In this Act, unless the context requires otherwise,—

**capital contribution** has the meaning given to it in **section 32(1)**

**chief executive** means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**Court** means the High Court

**document** means—

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(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes—

(i) a label, marking, or other writing which identifies or describes a thing of which it forms part, or to which it is attached:

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(ii) a book, map, plan, graph, or drawing:

(iii) a photograph, film, or negative; and

(b) information electronically recorded or stored, and information derived from that information

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**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

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**partnership interest** has the meaning given to it in **section 33(1)**

**prescribed** means prescribed by regulations made under this Act

**public notice** means,—

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(a) in respect of public notice that must be given by the Registrar, publication in 1 issue of the *Gazette* and publication on the Companies Office website for not less than 20 working days:

(b) in respect of public notice that must be given by any other person, publication in—

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(a) at least 1 issue of the *Gazette*; and

(b) at least 1 issue of a newspaper circulating in the area in which is situated—

(i) the limited partnership's place of business; or

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(ii) if the limited partnership has more than 1 place of business, its principal place of business; or

(iii) if the limited partnership has no place of business or neither its place of business nor

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its principal place of business is known, its registered office

**Registrar** means the Registrar of Companies.

## **5 Act binds the Crown**

This Act binds the Crown.

5

## **Part 2 General**

### *Nature of limited partnership*

## **6 What is limited partnership**

- (1) A limited partnership is a limited partnership that is registered under **section 44**. 10
- (2) For registration of a limited partnership under **section 44**,—
  - (a) the limited partnership must meet the requirements set out in **section 8**; and
  - (b) an application for registration must be made in accordance with **section 45**. 15

## **7 Formation and duration of limited partnership**

A limited partnership is formed on its registration and continues in existence until it is deregistered (*see section 84*).

## **8 Requirements for limited partnership**

20

- (1) A limited partnership must have at least 1 general partner (*see section 17*) and at least 1 limited partner (*see section 18*).
- (2) If a limited partnership has only 1 general partner and only 1 limited partner, they must not be the same person.
- (3) Subject to **subsection (1)**, a limited partnership may have any number of general partners and limited partners. 25

## **9 Partnership agreement**

- (1) A limited partnership must have a written partnership agreement.
- (2) The partnership agreement is an agreement as to the affairs of the limited partnership and the conduct of its business. 30
- (3) On registration of the limited partnership, the partnership agreement has effect as a contract between the limited partnership and each partner, and between the partners themselves,

	under which the limited partnership and each of the partners (including any subsequent partners) agree to observe and perform the agreement so far as it applies to them.	
(4)	The partnership agreement has no effect to the extent that it contravenes, or is inconsistent with, this Act.	5
(5)	The partnership agreement may be amended by a written document signed by or on behalf of each of the limited partnership and the partners.	
<b>10</b>	<b>Limited partnership is separate legal person</b> A limited partnership is a separate legal person.	10
	<i>Powers of limited partnership</i>	
<b>11</b>	<b>Legal capacity</b>	
(1)	A limited partnership has full legal capacity to do any thing that a natural or legal person may do.	
(2)	Subsection (1) is subject to <b>section 13</b> .	15
<b>12</b>	<b>Partnership agreement may limit business activities</b> The partnership agreement may limit the scope or the nature of the limited partnership's business.	
	<i>Business of limited partnership</i>	
<b>13</b>	<b>Restriction on business of limited partnership</b> A limited partnership must not undertake banking or insurance business.	20
<b>14</b>	<b>Limited partnership must not list on securities market</b>	
(1)	A limited partnership must not be a party to a listing agreement for the listing of securities on a securities market.	25
(2)	In this section, <b>securities market</b> means any market, exchange, or other facility for trading securities.	
<b>15</b>	<b>Debts of limited partnership must be paid in money</b> The debts of a limited partnership must be paid in money and not in property.	30

*Partners in limited partnership***16 Who may be partner**

- (1) Any person, legal or natural, may be a partner of a limited partnership.
- (2) A partnership established under the Partnerships Act 1908 5  
may be a partner of a limited partnership.

**17 General partner**

- (1) A general partner is responsible for the management and business of the partnership.
- (2) A general partner must not make a capital contribution to the 10  
limited partnership.

**18 Limited partner**

- (1) A limited partner must not take part in the management of the business of the limited partnership.
- (2) Subject to the partnership agreement, a limited partner may, 15  
but does not have to, make a capital contribution to the limited partnership.

**19 Restriction on limited partner as party to limited partnership proceeding**

- A limited partner must not be a party to any proceeding in a 20  
court or tribunal in which the limited partnership is a party unless—
- (a) the limited partnership is suing the limited partner; or
- (b) the limited partner is suing the limited partnership; or
- (c) the proceeding is an application for an order that the 25  
limited partnership terminate.

**20 Person may be both general partner and limited partner**

A person may be both a general partner and a limited partner of the same limited partnership at the same time.

**21 Change of partner status**

- (1) A general partner may become a limited partner. 30
- (2) A limited partner may become a general partner.
- (3) The change in partner status is effective when it is entered in the register.

*Liability of general partners*

<b>22</b>	<b>Debts and liabilities of limited partnership include overseas-connected debts and liabilities</b>	
	In <b>sections 23 to 27</b> , the debts and liabilities of the limited partnership include any debt or liability of the limited partnership incurred in connection with the business of the limited partnership conducted overseas.	5
<b>23</b>	<b>Joint liability of general partner for debts and liabilities</b>	
(1)	Each general partner is jointly and severally liable with the limited partnership and the other general partners for the debts and liabilities of the limited partnership incurred while that person is a general partner.	10
(2)	This section is subject to <b>section 25</b> .	
<b>24</b>	<b>Joint and several liability of general partner for omission or wrong</b>	
(1)	Each general partner is jointly and severally liable with the limited partnership and the other general partners for a wrong or omission by the limited partnership occurring while that person is a general partner.	15
(2)	If a general partner is an individual, after death his or her estate is also severally liable in a due course of administration for those debts and liabilities of the limited partnership that are unpaid, subject to prior payment of the general partner's separate debts.	20
(3)	This section is subject to <b>section 25</b> .	25
<b>25</b>	<b>Limitations on general partner's liability</b>	
	Despite <b>sections 23 and 24</b> and unless the partnership agreement provides otherwise, a general partner is only liable for any debts or liabilities of the limited partnership to the extent that the limited partnership cannot pay those debts or liabilities.	30

*Liability of limited partners*

<b>26</b>	<b>Liability of limited partner who takes part in management of business of limited partnership</b>	
(1)	A limited partner (A) is liable as a general partner to a person (B) who deals with the limited partnership if, at the time that	35

- the debt or liability of the limited partnership to B was incurred,—
- (a) A took part in the management of the limited partnership; and
  - (b) B knew that A took part in the management of the limited partnership; and 5
  - (c) B believed on reasonable grounds that A was a general partner.
- (2) **Section 19** does not apply in a case where **subsection (1)** applies.
- 27 Liability of limited partner who does not take part in management of business of limited partnership** 10
- (1) A limited partner who does not take part in the management of the business of the limited partnership is not liable for the debts and liabilities of the limited partnership.
  - (2) The limitation on the liability of a limited partner in **subsection (1)** extends to any liability incurred— 15
    - (a) in connection with the conduct of the limited partnership’s business overseas; or
    - (b) as a result of an act or omission overseas of—
      - (i) a general partner or limited partner; or 20
      - (ii) the limited partnership; or
      - (iii) any officer, employee, agent, or representative of a general partner; or
      - (iv) any officer, employee, agent, or representative of the limited partnership. 25
  - (3) None of the activities prescribed by regulations made under this Act constitutes taking part in the management of the business of the limited partnership.
- Name of limited partnership*
- 28 Name of limited partnership must include words limited partnership** 30
- (1) The name of a limited partnership must include the words “limited partnership” or the abbreviation “LP” or “L.P.” at the end of the name.
  - (2) The name of the limited partnership must be clearly and conspicuously written on any document issued by or on behalf of a limited partnership. 35

- (3) In **subsection (2), document** does not include an informal communication.
- (4) If a limited partnership fails to comply with **subsection (2),—**
  - (a) the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$5,000; and 5
  - (b) every general partner of the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
  
- 29 Registrar may object to name** 10
- (1) The Registrar may object to the name with which a limited partnership proposes to register and may refuse to register the partnership with that name.
- (2) The Registrar must not register a limited partnership with a name— 15
  - (a) the use of which would contravene an enactment; or
  - (b) that is identical to, or almost identical to, the name of a company registered under the Companies Act 1993 or another limited partnership or an overseas limited partnership registered under this Act; or 20
  - (c) that, in the Registrar’s opinion, is offensive.
  
- 30 Change of name**
- (1) A limited partnership may apply to the Registrar to change its name.
- (2) The application must be in the prescribed form. 25
- (3) The Registrar may change the name of a limited partnership by amending the register.
- (4) A change of name of a limited partnership—
  - (a) takes effect from the date of amendment of the register; and 30
  - (b) does not affect rights or liabilities of the limited partnership; and
  - (c) does not affect legal proceedings by or against the limited partnership, and legal proceedings begun or continued against the limited partnership under its former name may be begun or continued against it under its new name. 35

**31 Registrar may change name**

- (1) If the Registrar believes on reasonable grounds that a limited partnership has been registered with a name with which it ought not to have been registered, the Registrar may direct the limited partnership to apply to change its name within the time specified to a name that complies with this Act. 5
- (2) A direction by the Registrar under **subsection (1)** must—
- (a) be in writing; and
  - (b) specify a date for the application for a change of name that is not less than 20 working days after the date on which the direction was served on the limited partnership. 10
- (3) If the limited partnership does not, within the time specified in the direction, apply to change its name to a name that complies with this Act, the Register may change its name by amending the register. 15

*Capital contribution and partnership interest***32 Capital contribution**

- (1) The capital contribution of a limited partner is the share of the assets contributed, or agreed to be contributed, by a limited partner to the limited partnership or assigned to a limited partner under **section 33**. 20
- (2) The capital contribution of a limited partner may be made in the form of property and need not be paid in money.
- (3) A loan by a limited partner to the limited partnership is not a capital contribution. 25

**33 Partnership interest**

- (1) The partnership interest of a limited partner is the limited partner's—
- (a) share of the net assets of the limited partnership; and 30
  - (b) right to receive distributions; and
  - (c) any other benefit conferred by the limited partnership agreement.
- (2) A limited partner may assign all or part of that person's partnership interest to— 35
- (a) another limited partner of the same limited partnership;
  - (b) any other person if all the general partners agree.

- (3) However, the partnership agreement may vary, restrict, or exclude a limited partner’s right to assign that person’s partnership interest.

*Distributions to limited partners*

<b>34</b>	<b>Meaning of distribution</b> In this Act, unless the context otherwise requires, <b>distribution</b> —	5
	(a) means—	
	(i) the direct or indirect transfer of money or property of the limited partnership to or for the benefit of a limited partner; or	10
	(ii) the incurring of a debt to or for the benefit of a limited partner; and	
	(b) includes a discount to a limited partner on goods and services provided by the limited partnership.	15
<b>35</b>	<b>Distribution must be authorised</b> A distribution must be authorised in writing by each general partner.	
<b>36</b>	<b>Distribution must not be authorised unless limited partnership solvent</b>	20
	(1) A general partner must not authorise a distribution unless that person is satisfied on reasonable grounds that, immediately after the distribution is made, the limited partnership will be solvent.	
	(2) A general partner is deemed to have breached <b>subsection (1)</b> , if, before the distribution is made, the general partner ceases to be satisfied on reasonable grounds that, immediately after the distribution is made, the limited partnership will be solvent.	25
	(3) Each general partner who authorises a distribution must sign a certificate stating that, in that person’s opinion, the limited partnership will, immediately after the distribution, be solvent and the grounds for that opinion.	30
	(4) A general partner who fails to comply with <b>subsection (3)</b> commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.	35

- 37 Solvency test**
- (1) A limited partnership is solvent for the purposes of the payment of a distribution if—
- (a) the limited partnership is able to pay its debts as they become due in the normal course of business; and 5
  - (b) the value of the limited partnership's assets is greater than its liabilities, including its contingent liabilities.
- (2) In determining whether the value of the limited partnership's assets is greater than its liabilities, a general partner—
- (a) must have regard to all circumstances that the general partner knows or ought to know affect, or may affect, the value of the limited partnership's assets and the value of its liabilities, including its contingent liabilities; and 10
  - (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances. 15
- (3) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of—
- (a) the likelihood of the contingency occurring; and
  - (b) any claim that the limited partnership is entitled to make and can reasonably expect to be met to reduce or extinguish a contingent liability. 20
- Compare: 1993 No 105 s 4
- 38 Liability of general partner to repay unauthorised distribution** 25
- A general partner who breaches **section 36(1)** must repay so much of the distribution as is not able to be recovered from the limited partner to whom the distribution is made.
- 39 Liability of limited partner to repay distribution**
- (1) A limited partner (**A**) to whom a distribution has been made at a time when the limited partnership did not, immediately after the distribution, satisfy the solvency test in **section 37** must repay the distribution if A knew that, immediately after the distribution was made, the limited partnership would not satisfy the solvency test in **section 37**. 30
- (2) A's liability under **subsection (1)** ceases after the longer of—
- (a) 3 years after the distribution is made; or
  - (b) the period specified (if any) in the partnership agreement. 35

- 40 Defence of partial solvency**
- (1) This section applies if, in an action brought against a general partner under **section 38** or a limited partner under **section 39**, the Court is satisfied that the limited partnership could, by making a distribution of a lesser amount, have satisfied the solvency test. 5
- (2) The Court may permit the limited partner to retain, or relieve the general partner from liability in respect of, an amount equal to the value of any distribution that could properly have been made. 10

*Agency*

- 41 Limited partner not agent of limited partnership, general partner, or limited partner**  
A limited partner is not the agent of the limited partnership or of any general partner or of any other limited partner, and has no authority to bind any of them. 15
- 42 General partner is agent of limited partnership, other general partners, and limited partners**  
A general partner is the agent of the limited partnership, each other general partner, and each limited partner for the purposes of the business of the limited partnership. 20

*Fiduciary obligations*

- 43 Exclusion of fiduciary obligations under Partnership Act 1908**  
Sections 31 to 33 of the Partnership Act 1908 do not apply to a limited partner. 25

*Registration*

- 44 Registration by entry in register**
- (1) As soon as is reasonably practicable after receiving a properly completed application for registration of a limited partnership, the Registrar must register the limited partnership by entering its name in the register of limited partnerships maintained under **section 47(1)(a)**. 30
- (2) This section is subject to **section 29**.

**45 Application for registration**

- (1) An application to the Registrar for registration of a limited partnership must—
- (a) be made in the prescribed form (if any); and
  - (b) contain the prescribed information; and 5
  - (c) be accompanied by the consent in writing of each proposed general partner to registration; and
  - (d) be accompanied by a list of the names and addresses of the proposed limited partners; and
  - (e) be accompanied by the prescribed fee (if any). 10
- (2) For the purposes of **subsection (1)(c)**, the consent of a person may be given by that person's agent authorised to do so in writing.

**46 Certificate of registration**

As soon as possible after registering a limited partnership, the Registrar must issue a certificate of registration to the limited partnership. 15

*Registers of limited partnerships***47 Registers**

- (1) The Registrar must establish and maintain registers of— 20
- (a) limited partnerships; and
  - (b) overseas limited partnerships.
- (2) The registers may be kept in any manner that the Registrar thinks fit, including, either wholly or partly, by means of a device or facility— 25
- (a) that records or stores information electronically or by other means; and
  - (b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.
- (3) The registers are prima facie evidence of any matters required or authorised by or under this Act to be entered in them. 30

**48 Public access to registers**

- (1) The registers must be available for access and searching by members of the public at all times unless suspended under **subsection (2)**. 35
- (2) The Registrar may refuse access to a register or suspend its operation, in whole or in part,—

- (a) if the Registrar considers that it is not practical to provide access to the register; or
  - (b) for any other reason that is prescribed by regulations made under this Act.
- 49 Certified copy of information on registers** 5
- (1) Subject to **section 50(2)**, the Registrar must provide a copy, or a certified copy, of any information on a register to any person who applies for it and pays the prescribed fee (if any).
  - (2) A certified copy of information on a register signed by the Registrar is conclusive evidence for all purposes that the information in the certified copy has been duly entered in the register. 10
- 50 Contents of registers**
- (1) The register of limited partnerships must contain, in respect of each limited partnership, the following information: 15
    - (a) its name:
    - (b) its registration number:
    - (c) the address of its registered office:
    - (d) the name and address of each general partner:
    - (e) the name and address of each limited partner: 20
    - (f) its address for service:
    - (g) any other prescribed information.
  - (2) The information in **subsection (1)(e)** must not be available to a member of the public and must not be able to be searched under **section 58** except by the Registrar. 25
  - (3) The register of overseas limited partnerships must contain, in respect of each overseas limited partnership, the following information:
    - (a) the name of the overseas limited partnership:
    - (b) its registration number: 30
    - (c) the name and address of each general partner:
    - (d) the overseas address of its registered office:
    - (e) the address of its principal place of business overseas:
    - (f) the name and address of its agent for service in New Zealand: 35
    - (g) any other prescribed information.

- 51 Registrar must update register**  
The Registrar must update the information contained in a register as soon as practicable after notification that the information has changed.
- 52 General partners must notify Registrar of any change in details in register** 5
- (1) The general partners must notify the Registrar in the prescribed form of any change in any of the details entered in a register in relation to the limited partnership.
- (2) The change must be notified within 10 working days. 10
- (3) If the general partners fail to comply with this section, each general partner commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- 53 General partners must send written consent of new general partner to Registrar** 15
- (1) The general partners must send to the Registrar the written consent of a new general partner to becoming a general partner of the limited partnership.
- (2) The change must be notified within 10 working days of the new general partner becoming a general partner of the limited partnership. 20
- (3) The consent must be in the prescribed form.
- (4) If the general partners fail to comply with this section, each general partner commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 25
- 54 When Registrar must deregister limited partnership**  
On notification of completion of liquidation of a limited partnership, the Registrar must deregister it.
- 55 Rectification or correction of register**
- (1) The Registrar may,— 30
- (a) on the application of any person, rectify a register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, that register; or
- (b) if it appears to the Registrar that any particulars have been incorrectly entered in a register due to a clerical error by the Registrar, correct those particulars. 35

- (2) Before the Registrar rectifies a register under **subsection (1)(a)**, the Registrar must—
- (a) give written notice to the limited partnership that an application has been made to rectify the register in relation to that limited partnership (including details of that application); and 5
  - (b) give public notice setting out—
    - (i) the name of the applicant; and
    - (ii) the name of the limited partnership; and
    - (iii) the reasons for and details of the changes sought to be made to the register; and 10
    - (iv) the date by which a written objection to the proposed rectification must be delivered to the Registrar, being a date not less than 20 working days after the date of the notice. 15
- (3) Any person may deliver to the Registrar, not later than the date specified in accordance with **subsection (2)(b)(iv)**, a written objection to a proposed rectification of the register, and the Registrar must give a copy of the objection to the applicant. 20
- (4) The Registrar must not rectify the register if the Registrar receives a written objection to the proposed rectification by the date specified unless the Registrar is satisfied that the objection has been withdrawn. 20

Compare: 1993 No 105 s 360A

**56 Powers of Court** 25

- (1) If an objection to a proposed rectification is received by the Registrar under **section 55(3)**, the applicant for the rectification of the register may apply to the Court for an order for rectification.
- (2) If an application for an order is made under **subsection (1)**,— 30
- (a) the applicant must, as soon as practicable, serve notice of the application on the Registrar; and
  - (b) the Registrar may appear and be heard in relation to the application.
- (3) On an application for an order under **subsection (1)**, the Court may, if it is satisfied that any information has been wrongly entered in, or omitted from, the register, make an order that the register be rectified. 35

Compare: 1993 No 105 s 360B

- 57 Registrar may note inactivity on register**  
The Registrar may insert a note of inactivity against the entry on a register for a limited partnership if the Registrar believes on reasonable grounds that the limited partnership is inactive.
- 58 Searches of register** 5
- (1) A person may search a register in accordance with this Act or regulations made under this Act.
- (2) A register may be searched only by reference to the following criteria:
- (a) the name of a limited partnership: 10
  - (b) its registration number:
  - (c) the name of a limited partnership and the address of its registered office or its address for service:
  - (d) the address of its registered office:
  - (e) its address for service: 15
  - (f) the name of a general partner:
  - (g) the name of a limited partner:
  - (h) the name and address of a general partner:
  - (i) the name and address of a limited partner:
  - (j) any other prescribed criteria. 20
- 59 Search purposes**
- A register may be searched—
- (a) by any individual, or a person with the consent of the individual, for the purpose of searching for information about that individual: 25
  - (b) by any person for the purpose of determining whether a business organisation is a limited partnership:
  - (c) by any person for determining the address of a limited partnership’s place of business:
  - (d) by any person for the purpose of facilitating any of the functions or powers of the Registrar, courts, or any other person under this Act or any other enactment. 30
- 60 When search breaches information privacy principle**
- A person who searches a register for personal information for a purpose that is not a purpose set out in **section 59** must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act. 35

*Administration***61 Registered office**

- (1) A limited partnership must always have a registered office in New Zealand.
- (2) Subject to **section 62**, the registered office of a limited partnership at a particular time is the place that is described as its registered office in the New Zealand register at that time. 5
- (3) The description of the registered office must—
- (a) state the address of the registered office; and
- (b) if the registered office is at the offices of any firm of chartered accountants or lawyers, or at the offices of any other person, state— 10
- (i) that the registered office of the limited partnership is at the offices of that firm or person; and
- (ii) particulars of the location in any building of those offices; or 15
- (c) if the registered office is not at the offices of a firm or person referred to in **paragraph (b)** but is located in a building occupied by persons other than the limited partnership, state particulars of its location in the building. 20

Compare: 1993 No 105 s 186

**62 Change of registered office**

- (1) Subject to the partnership agreement and to **subsection (3)**, the general partners of a limited partnership may change the registered office of the limited partnership at any time. 25
- (2) Notice in the prescribed form of the change must be given to the Registrar for registration.
- (3) The change in the registered office takes effect on a date stated in the notice not being a date that is earlier than 5 working days after the notice is registered. 30

Compare: 1993 No 105 s 187

**63 Requirement to change registered office**

- (1) Subject to this section, a limited partnership must change its registered office if it is required to do so by the Registrar. 35
- (2) The Registrar may require a limited partnership to change its registered office by notice in writing delivered or sent to the limited partnership at its registered office.

- (3) The notice must—
- (a) state that the limited partnership is required to change its registered office by a date stated in the notice, not being a date that is earlier than 20 working days after the date of the notice; and 5
  - (b) state the reasons for requiring the change; and
  - (c) state that the limited partnership has the right to appeal to the Court under **section 85**; and
  - (d) be dated and signed by the Registrar.
- (4) A copy of the notice must also be sent to each general partner. 10
- (5) The limited partnership must change its registered office—
- (a) by the date stated in the notice; or
  - (b) if it appeals to the Court and the appeal is dismissed, within 5 working days after the decision of the Court.
- (6) If a limited partnership fails to comply with this section, every general partner of the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$5,000. 15

Compare: 1993 No 105 s 188

- 64 Address for service** 20
- (1) A limited partnership must have an address for service in New Zealand.
- (2) The address for service may be the limited partnership's registered office or another place, but it must not be at a postal centre or document exchange. 25
- (3) A limited partnership's address for service at any particular time is the address that is described as its address for service in the register at that time.
- (4) The description of the address for service must state that it is at the registered office of the limited partnership or, if it is at another place, must— 30
- (a) state the address of that place; and
  - (b) if the address for service is at the offices of any firm of chartered accountants or lawyers, or the offices of any other person, state— 35
    - (i) that the address for service of the limited partnership is at the offices of that firm or person; and
    - (ii) particulars of the location in any building of those offices; or

- (c) if the address for service is not at the offices of a firm or person referred to in **paragraph (b)** but is located in a building occupied by persons other than the limited partnership, state particulars of its location in the building. 5
- 65 Change of address for service**
- (1) Subject to the partnership agreement and to **subsection (3)**, the general partners of a limited partnership may change the address for service of the limited partnership at any time.
- (2) Notice in the prescribed form of the change must be given to the Registrar for registration. 10
- (3) A change of address for service takes effect on a date stated in the notice, not being a date that is earlier than 5 working days after the notice is registered.
- 66 Rectification or correction of address for service** 15
- (1) This section applies if the address for service of a limited partnership is rectified or corrected under **section 55 or 56**.
- (2) The rectification or correction takes effect at the time that the rectification or correction is made to the register.
- 67 Service of documents** 20
- Any document may be served on a limited partnership by sending or delivering the document to its address for service.
- 68 Records of limited partnership**
- (1) A limited partnership must keep the following records at its registered office: 25
- (a) the partnership agreement and all amendments to it:
- (b) minutes of all meetings and resolutions of the general partners within the last 7 years:
- (c) a list of the names and last known business, residential, or mailing addresses of each current partner and of each person who has ceased to be a partner within the last 7 years: 30
- (d) the capital accounts of each current and former limited partner for—
- (i) the last 7 completed accounting periods of the limited partnership; or 35

- (ii) if 7 completed accounting periods have not elapsed since the limited partnership was first registered, the completed accounting periods since registration:
- (e) accounting records that— 5
- (i) correctly record and explain the limited partnership's transactions; and
- (ii) at any time enable the financial position of the limited partnership to be determined with reasonable accuracy. 10
- (2) The references in **subsection (1)(b) and (c)** to 7 years and the references in **subsection (1)(d)** to 7 completed accounting periods include any lesser period that the Registrar may approve by notice in writing to the limited partnership.
- (3) The documents in **subsection (1)** must, subject to the partnership agreement, be available for inspection by any partner during ordinary business hours. 15
- (4) If the limited partnership fails to comply with the requirements of this section,—
- (a) the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000; and 20
- (b) each general partner commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- 69 Annual return** 25
- (1) The general partners of a limited partnership must ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the limited partnership for the purpose, an annual return in the prescribed form or in a form the use of which by the limited partnership has been approved by the Registrar pursuant to **subsection (9)**, or as near to it as circumstances allow. 30
- (2) The annual return of a limited partnership must state the following information:
- (a) its name: 35
- (b) its registered number:
- (c) the address of its registered office:
- (d) its address for service:
- (e) the names and addresses of the general partners:

- (f) the names and addresses of general partners who have ceased to be general partners since the last annual return:
- (g) the names and addresses of the limited partners:
- (h) the names and addresses of limited partners who have ceased to be limited partners since the last annual return. 5
- (3) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar and the information required to be contained in it must be compiled as at that date. 10
- (4) The annual return must be signed by a general partner of the limited partnership or by a lawyer or chartered accountant authorised for that purpose.
- (5) On registration of a limited partnership under this Act, the Registrar must allocate a month to the limited partnership for the purposes of this section. 15
- (6) The Registrar may, by written notice to a limited partnership, alter the month allocated to the limited partnership under **subsection (5)**. 20
- (7) Notwithstanding **subsection (1)**, a limited partnership need not make an annual return in the calendar year of its registration.
- (8) For the purposes of this section, **prescribed** means prescribed by regulations made under this Act or by the Registrar by notice in the *Gazette*. 25
- (9) The Registrar may, on the application of any person, approve the use, by a limited partnership or limited partnerships as the Registrar may specify, of a form of annual return different from that prescribed, and may at any time revoke, in whole or in part, that approval. 30
- (10) An annual return in a form approved under **subsection (9)** must contain all the prescribed information.
- (11) If the general partners of a limited partnership fail to comply with **subsection (1) or (2)**, every general partner of the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 35

Compare: 1993 No 105 s 214

- 70 Registrar may alter register to conform with address contained in annual return**
- (1) This section applies if the annual return contains 1 or more of the following addresses that are different from the corresponding address or addresses entered on the register: 5
- (a) an address of the registered office of the limited partnership; or
  - (b) an address for service of the limited partnership; or
  - (c) a postal address of the limited partnership.
- (2) If this section applies, the Registrar may alter the address or addresses on the register to conform with the address or addresses contained in the annual return. 10

Compare: 1993 No 105 s 214A

*Registrar's powers of inspection*

- 71 Registrar's powers of inspection** 15
- (1) The Registrar or a person authorised by the Registrar may take any of the steps listed in **subsection (2)** for the purpose of—
- (a) ascertaining whether a limited partnership or a general partner of a limited partnership is complying, or has complied, with this Act; or 20
  - (b) ascertaining whether the Registrar should exercise any of his or her rights or powers under this Act.
- (2) The steps referred to in **subsection (1)** are the following:
- (a) requiring a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control: 25
  - (b) inspecting and taking copies of relevant documents:
  - (c) taking possession of relevant documents and retaining them for a reasonable time, for the purpose of taking copies. 30
- (3) Nothing in this section limits or affects the Tax Administration Act 1994 or the Statistics Act 1975.
- (4) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power conferred by **subsection (1)**. 35
- (5) Any person who fails to comply with a requirement under **subsection (2)** or acts in contravention of **subsection (4)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

- (6) In this section, **relevant document**, in relation to a limited partnership, means a document that contains information relating to—
- (a) the limited partnership; or
  - (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the limited partnership. 5

Compare: 1993 No 105 s 365

**72 Disclosure of information and reports**

- (1) A person authorised by the Registrar for the purpose of **section 71** who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must, if directed to do so by the Registrar, give the document, information, or report to— 10
- (a) the Minister; or
  - (b) the chief executive; or
  - (c) any person authorised by the Registrar to receive the document, information, or report for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or 15
  - (d) a liquidator for the purposes of the liquidation of a limited partnership. 20
- (2) A person authorised by the Registrar for the purposes of **section 71** who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must give the document, information, or report to the Registrar, a Deputy Registrar, a District Registrar, or an Assistant Registrar when directed to do so by any person holding any of those offices. 25
- (3) A person authorised by the Registrar for the purposes of **section 71** who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must not disclose that document, information, or report except— 30
- (a) in accordance with **subsection (1) or (2)**; or
  - (b) subject to the approval of the Registrar, with the consent of the person to whom it relates; or 35

- (c) subject to the approval of the Registrar, for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or
- (d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or 5
- (e) subject to the approval of the Registrar, to a liquidator for the purposes of the liquidation of a limited partnership.
- (4) A person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 10
- Compare: 1993 No 105 s 366
- 73 Inspector's report admissible in liquidation proceedings** 15
- Notwithstanding any other Act or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under **section 71** is admissible in evidence at the hearing of an application to the Court to appoint a liquidator of a limited partnership.
- Compare: 1993 No 105 s 369 20
- 74 Exercise of powers under section 71 not affected by appeal**
- (1) Subject to **subsection (2)**, but notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under **section 71**, until a decision on the appeal or application is given,— 25
- (a) the Registrar, or that person, may continue to exercise the powers under that section as if no such appeal or application had been made; and 30
- (b) no person is excused from fulfilling an obligation under that section by reason of that appeal or application.
- (2) If the appeal or application is allowed or granted, as the case may be,—
- (a) the Registrar must ensure that, as soon as is reasonably practicable after the decision of the Court is given, any copy of a document taken or retained by the Registrar, or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and 35

- (b) no information acquired under that section in relation to that act or decision is admissible in evidence in any proceedings unless the court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly. 5

Compare: 1993 No 105 s 371

*Terminating events, liquidation, and deregistration*

**75 Terminating event**

A terminating event is 1 of the following:

- (a) an event or the expiry of a period of time when, under the partnership agreement, the limited partnership terminates: 10
- (b) subject to anything that the partnership agreement says, a resolution of the limited partnership that the limited partnership terminate: 15
- (c) there has been no limited partner of the limited partnership for 10 working days or more:
- (d) the partnership agreement has lapsed for 10 working days or more.

**76 Liquidation must follow terminating event** 20

- (1) In the case of a terminating event under **section 75(a) or (b)**, the limited partnership may appoint a liquidator to the limited partnership.
- (2) The general partner or general partners must apply as soon as is reasonably practicable to the Court for the appointment of a liquidator to the limited partnership if— 25
  - (a) a terminating event under **section 75(a) or (b)** has occurred, and the limited partnership has not appointed a liquidator within 5 working days of the terminating event; or
  - (b) a terminating event under **section 75(c) or (d)** has occurred. 30

**77 Court may appoint liquidator**

- (1) On the application of a person listed in **subsection (2)**, the Court may appoint a liquidator to the limited partnership who may be a named person or the Official Assignee for a named district. 35
- (2) Any of the following persons may apply:
  - (a) a general partner:

- (b) a limited partner:
- (c) a creditor:
- (d) the Registrar.

## **78 Grounds for Court appointment of liquidator**

- |     |                                                                                                                                                                             |    |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) | The Court may appoint a liquidator to a limited partnership under <b>section 76(1)</b> on any of the following grounds:                                                     | 5  |
|     | (a) there has been no general partner of the limited partnership for 10 working days or more:                                                                               |    |
|     | (b) a terminating event under <b>section 75</b> has occurred, and a liquidator has not been appointed:                                                                      | 10 |
|     | (c) the sole general partner is adjudicated bankrupt:                                                                                                                       |    |
|     | (d) the sole general partner is incapacitated:                                                                                                                              |    |
|     | (e) any partner is unable to perform that person's obligations under this Act or the partnership agreement:                                                                 |    |
|     | (f) the conduct of any partner has prejudiced, or is likely to prejudicially affect, the business of the limited partnership or the carrying on of that business:           | 15 |
|     | (g) material breach by any partner of the partnership agreement:                                                                                                            |    |
|     | (h) conduct by any partner that, in the Court's opinion, makes it reasonably impracticable for the other partners to carry on the business in partnership with that person: | 20 |
|     | (i) the business of the limited partnership can only be carried on at a loss:                                                                                               |    |
|     | (j) the limited partnership is unable to pay its debts:                                                                                                                     | 25 |
|     | (k) in the opinion of the Court it is just and equitable that the limited partnership terminate.                                                                            |    |
| (2) | In <b>subsection (1)(d)</b> , a general partner is incapacitated if he or she is a person—                                                                                  |    |
|     | (a) who is subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or                                               | 30 |
|     | (b) who is subject to an order under section 10(1)(i) or 31 of the Protection of Personal and Property Rights Act 1988; or                                                  | 35 |
|     | (c) whose property is managed by a trustee corporation under section 32 or 33 of the Protection of Personal and Property Rights Act 1988.                                   |    |

**79 Meaning of inability to pay debts**

For the purposes of **section 78(1)(j)**, a limited partnership is unable to pay its debts—

- (a) if—
  - (i) a creditor who is owed an amount exceeding \$100 by the limited partnership has served on the limited partnership a demand for payment of that amount; and 5
  - (ii) the limited partnership has for 3 weeks after the demand was served on it failed to pay the amount due or secure the payment of it or compound for it to the satisfaction of the creditor; or 10
- (b) if—
  - (i) an action or proceeding has been commenced against a partner of the limited partnership for the payment of an amount owing by the limited partnership or that partner in his or her capacity as a partner; and 15
  - (ii) notice in writing of the action or proceeding has been served on the limited partnership; and 20
  - (iii) the limited partnership has not, within 10 days after the notice was served on it, paid or secured the debt, or compounded for it or had the action or proceeding stayed or indemnified the partner for the amount of any judgment that may be entered against him or her and any costs, damages, and expenses that may be incurred by him or her in the action or proceeding; or 25
- (c) if execution or other process issued on a judgment, decree, or order obtained in a court in favour of a creditor against the limited partnership, or a partner of the limited partnership in his or her capacity as a partner, or a person authorised to be sued on behalf of the limited partnership, is returned unsatisfied; or 30
- (d) if it is proved to the satisfaction of the Court that the limited partnership is unable to pay its debts, and in determining whether a limited partnership is unable to pay its debts, the Court must take into account the contingent and prospective liabilities of the limited partnership. 35  
40

Compare: 1908 No 89 s 17C

- 80 Application of Companies Act 1993**  
 Part 16 of the Companies Act 1993 (except sections 241(1) to (4), 268, and 313(4)) applies, with such modifications as may be necessary, in relation to the liquidation of a limited partnership and as if references to— 5
- (a) a company registered under that Act were references to a limited partnership;
  - (b) a director were references to a general partner;
  - (c) shareholders or persons entitled to surplus assets under the constitution of a company and the Companies Act 1993 were references to limited partners. 10
- Compare: 1908 No 89 s 17B
- 81 Power of liquidator to enforce liabilities**
- (1) This section applies to any person who is liable to pay or contribute to the payment of— 15
    - (a) any debt or liability of the limited partnership; or
    - (b) any sum for the adjustment of the rights of partners of the limited partnership among themselves; or
    - (c) the costs and expenses of the liquidation.
  - (2) The liquidator may, by notice in writing, require a person to whom this section applies to pay or contribute the amount due from that person, and that person is liable to pay or contribute accordingly. 20
- Compare: 1908 No 89 s 17D
- 82 Actions stayed on liquidation** 25
- Where the Court appoints a liquidator of a limited partnership, an action or proceeding must not be commenced or continued against any person referred to in **section 81** in respect of any debt of the limited partnership, except with the leave of the Court, and subject to such terms as the Court may impose. 30
- Compare: 1908 No 89 s 17E
- 83 Distribution of surplus assets on liquidation**
- Notwithstanding anything in the Companies Act 1993, the surplus assets of the limited partnership (if any) after all of the limited partnership's debts and liabilities have been paid must be divided— 35
- (a) in accordance with the partnership agreement; or

- (b) if the partnership agreement does not specify how surplus assets on liquidation must be distributed, among the limited partners in proportion to the capital contribution of each of them.

**84 Deregistration** 5

- (1) A limited partnership ceases to exist when it is deregistered.
- (2) A limited partnership is deregistered when the Registrar removes its name from the register.

*Registrar*

**85 Appeals from Registrar’s decisions** 10

- (1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the Court within 15 working days after the date of notification of the act or decision, or within the further time that the Court allows.

(2) On appeal, the Court may— 15

- (a) confirm, modify, or reverse the Registrar’s act or decision or any part of it;
- (b) exercise any of the powers that could have been exercised by the Registrar in relation to the matter to which the appeal relates. 20

**Part 3**

**Overseas limited partnerships**

**86 Definition of overseas limited partnership** 25

In this Act, unless the context otherwise requires, **overseas limited partnership** means a partnership formed or incorporated outside New Zealand with—

- (a) 1 or more general partners who are liable for all of the debts and liabilities of the overseas limited partnership; and
- (b) 1 or more limited partners who have only limited liability for the debts and liabilities of the overseas limited partnership. 30

**87 Overseas limited partnership must register** 35

- (1) An overseas limited partnership that, on or after the commencement of this Act, commences to carry on business in New Zealand must apply for registration under this Part in

- accordance with **section 90** within 10 working days of commencing to carry on business.
- (2) An overseas limited partnership that, immediately before the commencement of this Act, was carrying on business in New Zealand and, on the commencement of this Act, continues to carry on business in New Zealand must apply for registration under this Part in accordance with **section 90** within 10 working days of the commencement of this Act. 5
- (3) An overseas limited partnership that changes its name must send or deliver to the Registrar a notice in the prescribed form of the change of name accompanied by the notice reserving the name within 10 working days of the change of name. 10
- (4) If an overseas limited partnership fails to comply with this section,—
- (a) the overseas limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000; and 15
- (b) every general partner of the overseas limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 20

Compare: 1993 No 105 s 334

## **88 Meaning of carrying on business**

For the purposes of this Part,—

- (a) a reference to an overseas limited partnership carrying on business in New Zealand includes a reference to the overseas limited partnership administering, managing, or dealing with property in New Zealand as an agent, personal representative, or trustee, and whether through its employees or an agent or in any other manner: 25
- (b) an overseas limited partnership does not carry on business in New Zealand merely because in New Zealand it— 30
- (i) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or
- (ii) holds meetings of its partners or carries on other activities concerning its internal affairs; or 35
- (iii) maintains a bank account; or
- (iv) effects a sale of property through an independent contractor; or

<ul style="list-style-type: none"> <li>(v) solicits or procures an order that becomes a binding contract only if the order is accepted outside New Zealand; or</li> <li>(vi) creates evidence of a debt or creates a charge on property; or</li> <li>(vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or</li> <li>(viii) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or</li> <li>(ix) invests its funds or holds property; or</li> <li>(x) is a partner in a New Zealand limited partnership.</li> </ul>	<p>5</p> <p>10</p> <p>15</p>
<p>Compare: 1993 No 105 s 332.</p>	
<p><b>89 Validity of transactions not affected</b></p> <p>A failure by an overseas limited partnership to comply with <b>section 87</b> does not affect the validity or enforceability of any transaction entered into by the overseas limited partnership.</p>	
<p>Compare: 1993 No 105 s 335</p> <p style="text-align: right;">20</p>	
<p><b>90 Application for registration</b></p>	
<ul style="list-style-type: none"> <li>(1) An application for registration of an overseas limited partnership may be made by delivering to the Registrar an application that complies with <b>subsection (2)</b>.</li> <li>(2) The application must— <ul style="list-style-type: none"> <li>(a) be in the prescribed form (if any); and</li> <li>(b) contain the prescribed information; and</li> <li>(c) be signed by or on behalf of the overseas limited partnership; and</li> <li>(d) state the full name and address of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand of documents on behalf of the overseas limited partnership; and</li> <li>(e) be accompanied by the prescribed fee (if any).</li> </ul> </li> </ul>	<p>25</p> <p>30</p> <p>35</p>
<p>Compare: 1993 No 105 s 336</p>	
<p><b>91 Registration of overseas limited partnership</b></p>	
<ul style="list-style-type: none"> <li>(1) As soon as is reasonably practicable after receiving a properly completed application for registration of an overseas limited</li> </ul>	

partnership, the Registrar must register the overseas limited partnership by entering its name in the register of overseas limited partnerships maintained under **section 47(1)(b)**.

- (2) Where the Registrar receives a notice of a change of name of an overseas limited partnership in accordance with **section 87(3)**, the Registrar must register the change of name on the register of overseas limited partnerships. 5

Compare: 1993 No 105 s 337(1), (3).

## **92 Use of name by overseas limited partnership**

- (1) Every overseas limited partnership that carries on business in New Zealand must ensure that its full name, and the name of the country where it was formed or incorporated, are clearly stated in— 10

- (a) written communications sent by, or on behalf of, the overseas limited partnership; and 15
- (b) documents issued or signed by, or on behalf of, the overseas limited partnership that evidence or create a legal obligation of the overseas limited partnership.

- (2) For the purposes of **subsection (1)**, a generally recognised abbreviation of a word or words may be used in the name of an overseas limited partnership if it is not misleading to do so. 20

Compare: 1993 No 105 s 338.

## **93 Notification of changes relating to overseas limited partnership**

- (1) An overseas limited partnership that carries on business in New Zealand must ensure that, within 20 working days of the change or alteration, notice in the prescribed form is given to the Registrar of— 25

- (a) a change in the general partners, or in the names or addresses of the general partners, of the overseas limited partnership; or 30

- (b) a change in the address of the place of business or principal place of business of the overseas limited partnership; or

- (c) a change in any person or the address of any person authorised to accept service in New Zealand of documents on behalf of the overseas limited partnership. 35

- (2) If an overseas limited partnership fails to comply with **subsection (1)**,—

- (a) the overseas limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000; and
- (b) every general partner of the overseas limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 5

Compare: 1993 No 105 s 339

**94 Rectification or correction of name or address of person authorised to accept service**

- (1) This section applies if the name or address of a person resident or incorporated in New Zealand who is authorised to accept service in New Zealand of documents on behalf of an overseas limited partnership is rectified or corrected under **section 55 or 56**. 10
- (2) The rectification or correction takes effect at the time that the rectification or correction is made to the overseas limited partnerships register. 15

Compare: 1993 No 105 s 339A

**95 Annual return of overseas limited partnership**

- (1) Every overseas limited partnership that carries on business in New Zealand must ensure that the Registrar receives each year, during the month allocated to the overseas limited partnership for the purposes of this section, an annual return in the prescribed form confirming that the information on the overseas limited partnership register in respect of the overseas limited partnership referred to in the return is correct at the date of the return. 20  
25
- (2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar. 30
- (3) On registration of an overseas limited partnership under this Part, the Registrar must allocate a month to the limited partnership for the purposes of this section.
- (4) The Registrar may, by written notice to an overseas limited partnership, alter the month allocated to the overseas limited partnership under **subsection (3)**. 35

- (5) Notwithstanding **subsection (1)**, an overseas limited partnership need not make an annual return in the calendar year of its registration under this Part.
- (6) If an overseas limited partnership fails to comply with **subsection (1) or (2)**,— 5
- (a) the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000; and
- (b) every general partner of the overseas limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 10

Compare: 1993 No 105 s 340

#### **96 Overseas limited partnership ceasing to carry on business in New Zealand**

- (1) An overseas limited partnership registered under this Part that intends to cease to carry on business in New Zealand must— 15
- (a) give public notice of that intention; and
- (b) not earlier than 3 months after giving notice in accordance with **paragraph (a)**, give notice to the Registrar in the prescribed form stating the date on which it will cease to carry on business in New Zealand. 20
- (2) The Registrar must remove an overseas limited partnership from the register of overseas limited partnerships as soon as practicable after—
- (a) the date specified in the notice given in accordance with **subsection (1)(b)**; or 25
- (b) receipt of a notice given by a liquidator in accordance with section 257(1)(a)(ii)(C) of the Companies Act 1993 as modified by **section 97(3)**. 30

Compare: 1993 No 105 s 341

#### **97 Liquidation of overseas limited partnership**

- (1) Subject to **subsection (3)**, Part 16 of the Companies Act 1993 (except sections 241(1) to (4), 268, and 313(4)) applies, with such modifications as may be necessary, in relation to the liquidation of an overseas limited partnership and as if references to— 35
- (a) a company registered under that Act were references to a limited partnership:
- (b) a director were references to a general partner:

- (c) shareholders or persons entitled to surplus assets under the constitution of a company and the Companies Act 1993 were references to limited partners:
  - (d) references to removal from the New Zealand register were references to ceasing to carry on business in New Zealand. 5
- (2) An application may be made for the liquidation of an overseas limited partnership whether or not the overseas limited partnership—
- (a) is registered under this Act; or 10
  - (b) has given public notice of an intention to cease to carry on business in New Zealand in accordance with **section 96(1)(a)**; or
  - (c) has given notice to the Registrar of the date on which it will cease to carry on business in New Zealand in accordance with **section 96(1)(b)**; or 15
  - (d) has been dissolved, or otherwise ceased to exist as a limited partnership, under or by virtue of the laws of any other country.
- (3) Section 257 of the Companies Act 1993 applies to the liquidation of an overseas limited partnership, but instead of making the statement required by section 257(1)(a)(ii)(C), the liquidator must state that the limited overseas partnership has ceased to carry on business in New Zealand and is ready to be removed from the register established under **section 47(1)(b)**. 20 25
- (4) Nothing in the Companies Act 1993 as applied to overseas limited partnerships by this section excludes the right of a creditor of an overseas limited partnership to which a liquidator has been appointed—
- (a) to bring proceedings outside New Zealand against the limited partnership or its general partners in relation to a debt not claimed in the liquidation, or to the balance of a debt remaining unpaid after the completion of the liquidation; or 30
  - (b) to bring an action in New Zealand in relation to the balance of a debt remaining unpaid after the completion of the liquidation. 35

Compare: 1993 No 105 s 342(2), Schedule 9

## Part 4 Miscellaneous

- 98 Relationship with Partnership Act 1908**
- (1) In any matter for which this Act provides, this Act prevails over the Partnership Act 1908. 5
- (2) In any matter for which this Act does not provide, the Partnership Act 1908 applies—
- (a) if it is not inconsistent with this Act; or
- (b) unless the Partnership Act 1908 is excluded.
- 99 Obligation imposed on general partner under this Act** 10
- In any case where this Act requires something to be done by the general partner or (if there is more than 1) the general partners, each general partner is responsible for ensuring that it is done.
- 100 Regulations** 15
- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing what conduct does or does not amount to taking part in the management of the business of a limited partnership: 20
- (b) prescribing the form of an application for—
- (i) a change of name under **section 30**:
- (ii) registration under **section 45(1)(a)**:
- (c) prescribing reasons for refusal by the Registrar under **section 48(2)** of access to the register: 25
- (d) prescribing any further information that must be entered on the register of limited partnerships (*see section 50(1)(g)*) or the register of overseas limited partnerships (*see section 50(3)(g)*): 30
- (e) regulating the search of the register (*see section 58(1)*):
- (f) prescribing any further search criteria under **section 58(2)(j)**:
- (g) prescribing fees to be paid under this Act or regulations made under this Act, and the method of their payment: 35
- (h) prescribing the form for notice to the Registrar of—
- (i) change of registered office:
- (ii) change of address for service:
- (iii) change of details in the register:

(iv) notice of consent of a new general partner to becoming a general partner:	
(i) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.	5
(2) In <b>subsection (1)(b) and (h), prescribing the form</b> includes specifying the content, means of communication, or any other requirement of an application without necessarily specifying the use of a particular form.	
<b>101 Part 2 of Partnership Act 1908 repealed</b>	10
Part 2 of the Partnership Act 1908 is repealed.	
<b>102 Orders revoked</b>	
The following orders are revoked:	
(a) Partnerships (Architects) Order 1972 (SR 1972/81):	
(b) Partnerships (Law Practitioners) Order 1982 (SR 1982/120).	15
<b>103 Companies Act 1993 amended</b>	
(1) Section 357(1)(b) of the Companies Act 1993 is amended by inserting “and the Limited Partnerships Act <b>2007</b> ” after “Act”.	20
(2) Section 357(2) of the Companies Act 1993 is amended by inserting “and the Limited Partnerships Act <b>2007</b> ” after “Act”.	
<b>104 Transitional provision for special partnerships</b>	
Part 2 of the Partnerships Act 1908 continues to apply to a special partnership in existence on the commencement of this Act as if that Part had not been repealed, except that a special partnership must not be renewed under section 57 of that Part.	25
<b>Part 5</b>	
<b>Amendments to Income Tax Act 2004</b>	30
<b>105 Income Tax Act 2004</b>	
This Part amends the Income Tax Act 2004.	
<b>106 New section CB 23B</b>	
(1) Before section CB 24, the following is inserted:	

**“CB 23B Entering partners’ livestock income***“When this section applies*

- “(1) This section applies when **section HD 10** applies and a person is an entering partner and has a partner’s interest in specified livestock as a result of entering the partnership, and the relevant exiting partner has a net loss from the amount of consideration paid or payable by the entering partner for the livestock. 5

*“Income*

- “(2) For the income year in which the entering partner acquires the livestock, and in each of the following 4 years, the entering partner has income calculated using the following formula: 10

$$\frac{\text{loss}}{5}.$$

*“Definition of item in formula*

- “(3) In the formula, **loss** is the net loss that the exiting partner has for the amount paid or payable by the entering partner for the livestock, ignoring other transactions.” 15

“Defined in this Act: amount, entering partner, income, income year, net loss, partner, partner’s interest, specified livestock”. 20

- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008.

**107 Meaning of asset for sections CU 3 to CU 10**

- (1) Section CU 11(2) is repealed.
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 25

**108 Amount treated as repayment for purposes of section CU 17: net income**

- (1) Section CU 19(6)(c) is repealed.
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 30

**109 New section DO 5C**

- (1) After section DO 5B, the following is inserted:

**“DO 5C Entering partners’ livestock deduction**

*“When this section applies*

- “(1) This section applies when **section HD 10** applies and a person is an entering partner and has a partner’s interest in specified livestock as a result of entering the partnership, and— 5
  - “(a) the relevant exiting partner has net income from the amount of consideration paid or payable by the entering partner for the livestock; and
  - “(b) the amount paid or payable is not exempt or excluded income of the exiting partner. 10

*“Deduction*

- “(2) For the income year in which the entering partner acquires the livestock, and in each of the following 4 years, the entering partner is allowed a deduction calculated using the following formula: 15

$$\frac{\text{income}}{5}.$$

*“Definition of item in formula*

- “(3) In the formula, **income** is the net income that the exiting partner has for the amount paid or payable by the entering partner for the livestock, ignoring other transactions.” 20

“Defined in this Act: amount, deduction, entering partner, excluded income, exempt income, income year, net income, partner, partner’s interest, specified livestock”.

- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 25

**110 Meaning of asset for sections DU 1 to DU 7**

- (1) Section DU 8(2) is repealed.
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 30

**111 Financial arrangements, income, and expenditure relevant to criteria**

- (1) Section EW 58(2) is repealed.
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 35

- 112 Section EX 13 repealed**
- (1) Section EX 13 is repealed.
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008.
- 113 Cash basis holder** 5
- (1) Section EZ 34(10) is repealed.
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008.
- 114 Attribution rule: calculation**
- (1) In section GC 14D(2)(b), “section HD 1(1)(b)” is replaced by **“section HD 2”**. 10
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008.
- 115 New section GD 16**
- (1) After section GD 15, the following is added: 15
- “GD 16 Partners transacting within partnership**
- “(1) If market value amounts of consideration are not used for transactions between partners of a partnership as members of the partnership, then, for the purposes of this Act, market value amounts of consideration are substituted for the actual amounts, and the actual amounts are ignored. 20
- “(2) **Subsection (1)** does not apply to the following:
- “(a) salary or wages:
- “(b) a change in partner’s interests to which **section HD 4** applies: 25
- “(c) amounts provided in **section HD 11.**”
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008.
- 116 Subpart HD replaced**
- (1) Subpart HD is replaced by the following: 30
- “Subpart HD—Joint venturers, partners, and partnerships
- “Joint venturers

**“HD 1 Joint venturers**

*“When this section applies*

- “(1) This section applies when 2 or more people derive income jointly or have deductions jointly, and they are not partners in the same partnership. 5

*“Separate shares*

- “(2) Each person must calculate their net income for a tax year taking into account their share of the joint income and deductions.

*“Exclusion 10*

- “(3) This section does not apply to the income derived by and the deductions of an airport operator from activities that, in relation to that airport operator, are activities undertaken as an airport operator.

“Defined in this Act: airport operator, deduction, income, net income, partner, partnership, tax year” 15

***“Partners and partnerships***

*“Transparency*

**“HD 2 Partnerships are transparent**

*“Look-through in accordance with share 20*

- “(1) In this Act, unless the context requires otherwise,—
  - “(a) a partner of a partnership is treated as carrying on an activity carried on by the partnership, and having a status, intention and purpose of the partnership, and the partnership is treated as not carrying on the activity or having the status, intention, or purpose: 25
  - “(b) a partner of a partnership is treated as holding property that a partnership holds, in proportion to the partner’s partnership share, and the partnership is treated as not holding the property: 30
  - “(c) a partner of a partnership is treated as being party to an arrangement to which the partnership is a party, in proportion to the partner’s partnership share, and the partnership is treated as not being a party to the arrangement: 35
  - “(d) a partner of a partnership is treated as doing a thing and being entitled to a thing that the partnership does or is

entitled to, in proportion to the partner's partnership share, and the partnership is treated as not doing the thing or being entitled to the thing.

*"No streaming*

- "(2) The amount of income, tax credit, rebate, gain, expenditure, or loss that a partner of a partnership has, as a member of the partnership, from a particular source, or of a particular nature, is calculated by multiplying the total income, tax credit, rebate, gain, expenditure, or loss of the partners of the partnership from the particular source or of the particular nature by the partner's partnership share in the partnership's income. 5  
10

*"Expenditure or loss previously incurred*

- "(3) A partner of a partnership may be treated as incurring an expenditure or loss which the partnership incurs, despite the partner not being a partner at the time the expenditure or loss is incurred. 15

*"Excluded amounts*

- "(4) **Subsection (2)** does not apply to the following amounts:  
 "(a) supplementary dividends, to the extent to which subpart LE applies: 20  
 "(b) conduit tax relief additional dividends, to the extent to which subpart LG applies:  
 "(c) imputation credits, to the extent to which section LB 1 applies:  
 "(d) dividend withholding payment credits, to the extent to which section LB 1 applies. 25

"Defined in this Act: arrangement, conduit tax relief additional dividend, dividend withholding payment credit, imputation credit, income, partner, partnership, partnership share, rebate, supplementary dividend, tax credit"

*"Disposals* 30

**"HD 3 Disposal upon dissolution**

*"When this section applies*

- "(1) This section applies when a partner (the **dissolving partner**) disposes of some or all of their partner's interests in a partnership (the **current disposal**) and the disposal of 50% or more of all partners' interests in the partnership has occurred, 35

including the current disposal, in the year before the current disposal occurs.

*“Disposal*

“(2) Each partner of the partnership is treated as disposing of all of their partner’s interests in the partnership, including the current disposal, to a third party for a payment equal to the interests’ market value. 5

*“Acquisition*

“(3) Each partner of the partnership is treating as immediately re-acquiring all of their partner’s interest disposed of under **subsection (2)** from a third party for a payment equal to the interest’s market value, unless the partnership is finally dissolved by the current disposal. 10

*“Property received*

“(4) Anything received by the dissolving partner for the current disposal is treated as part of the payment for the disposal under **subsection (2)**. 15

*“Relationship with subject matter*

“(5) This section overrides **sections HD 4 to HD 10**.  
 “Defined in this Act: dispose, partner, partner’s interests, partnership” 20

**“HD 4 Disposal of partner’s interests within partnership**

*“When this section applies*

“(1) This section applies when a partner’s interest in a partnership changes (the **change**) because the partner (the **changing partner**) disposes of some or all of their partner’s interest to another partner or they acquire another partner’s interests, and— 25

“(a) no partner ceases to be a partner as a result of the arrangement relating to the change; and

“(b) no consideration is paid or payable in relation to the arrangement relating to the change. 30

*“Disposing partner: no deduction*

“(2) The changing partner who disposes of some or all of their partner’s interest to another partner is denied any deduction in relation to the interests for the income year in which the 35

disposal of the interests occurs and later income years to the extent to which the changing partner who acquires the interests is allowed a deduction because of **subsection (3)**.

*“Acquiring partner: stepping in*

- “(3) For the purposes of calculating the income tax liability of the changing partner who acquires another partner’s interests for the income year in which the disposal of the interest occurs and later income years, the changing partner who acquires the interests is treated as if they had originally acquired and held the interests, not the other partner. 5  
10

*“Relationship with subject matter*

- “(4) **Section HD 3** overrides this section.  
“Defined in this Act: deduction, dispose, excluded income, income tax liability, partner, partner’s interests, partnership”

**“HD 5 Disposal of partner’s interests** 15

*“When this section applies*

- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests (the **current interests**) in a partnership, if the amount calculated using the following formula is less than zero: 20

$$\text{disposal payment} + \text{previous payments} - \text{net adjusted tax value of partnership property} - \$50,000.$$

*“Definition of items in formula*

- “(2) In the formula,— 25
- “(a) **disposal payment** is the total amount of consideration paid or payable to the exiting partner for the interests:
- “(b) **previous payments** is the total amount of consideration paid or payable to the exiting partner for other disposals of some or all of their partner’s interests (the **other interests**) that have occurred in the year before the disposal of the current interests: 30
- “(c) **net adjusted tax value of partnership property** is the value for the purposes of this Act of the current interest and other interests at the time the relevant interest is disposed of minus the liabilities under generally accepted accounting practice at the time the relevant interest is disposed of, calculated by reference to the 35

- exiting partner’s partnership share for the relevant interest. If the relevant interest has no value for the purposes of this Act, it is treated as having a value under this Act equal to its accounting book value at the time it is disposed of. 5
- “Exiting partner: excluded payment*
- “(3) The disposal payment described in **subsection (2)(a)** is excluded income of the exiting partner.
- “Exiting partner: no deduction*
- “(4) The exiting partner is denied any deduction in relation to the current interests for the income year in which the disposal of the interests occurs and later income years to the extent to which the entering partner is allowed a deduction because of **subsection (6)**. 10
- “Entering partner: no deduction*
- “(5) An entering partner is denied any deduction for the disposal payment described in **subsection (2)(a)**. 15
- “Entering partner: stepping in*
- “(6) For the purposes of calculating the income tax liability of an entering partner for the income year in which the disposal of the interest occurs and later income years, the entering partner is treated as if they had originally acquired and held the current interests, not the exiting partner. However, this subsection does not apply to a deduction to which **section HD 12** applies to carry forward. 20  
25
- “Exclusion*
- “(7) This section does not apply if the partners of the partnership choose that it does not apply by furnishing a return of income that ignores this section.
- “Relationship with subject matter*
- “(8) **Section HD 3** overrides this section. 30
- “Defined in this Act: deduction, dispose, entering partner, excluded income, income tax liability, partner, partner’s interests, partnership, partnership share, return of income”

**“HD 6 Disposal of trading stock***“When this section applies*

- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partnership, to the extent to which those interests include trading stock that is not livestock, and the total turnover of the partners of the partnership is \$3,000,000 or less. 5

*“Exiting partner: excluded payment*

- “(2) The amount of consideration paid or payable to the exiting partner for the trading stock is excluded income of the exiting partner. 10

*“Exiting partner: no deduction*

- “(3) The exiting partner is denied any deduction in relation to the trading stock for the income year in which the disposal of the trading stock occurs and later income years, to the extent to which the entering partner is allowed a deduction because of **subsection (5)**. 15

*“Entering partner: no deduction*

- “(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the trading stock. 20

*“Entering partner: stepping in*

- “(5) For the purposes of calculating the income tax liability of an entering partner, the entering partner is treated as if they had acquired and held the trading stock, not the exiting partner. 25

*“Exclusion*

- “(6) This section does not apply if the partners of the partnership choose that it does not apply by furnishing returns of income that ignore **sections HD 5 to HD 9**, and the partnership is a small partnership. 30

*“Relationship with subject matter*

- “(7) **Section HD 3** overrides this section.  
 “Defined in this Act: deduction, dispose, entering partner, excluded income, income tax liability, partner, partner’s interests, partnership, small partnership, trading stock, turnover” 35

**“HD 7 Disposal of depreciable property**

*“When this section applies*

“(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interest in a partnership, to the extent to which those interests include an item of depreciable property that is not depreciable intangible property, and the total cost of the item when it was first acquired by the partners of the partnership is \$200,000 or less. 5

*“Exiting partner: excluded payment*

“(2) The amount of consideration paid or payable to the exiting partner for the depreciable property is excluded income of the exiting partner. 10

*“Exiting partner: no deduction*

“(3) The exiting partner is denied any deduction in relation to the depreciable property for the income year in which the disposal of the depreciable property occurs and later income years, to the extent to which the entering partner is allowed a deduction because of **subsection (5)**. 15

*“Entering partner: no deduction*

“(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the depreciable property. 20

*“Entering partner: stepping in*

“(5) For the purposes of calculating the income tax liability of an entering partner for the income year in which the disposal of the depreciable property occurs and later income years, the entering partner is treated as if they had originally acquired and held the depreciable property, not the exiting partner. 25

*“Exclusion*

“(6) This section does not apply if the partners of the partnership choose that it does not apply by furnishing returns of income that ignore **sections HD 5 to HD 9**, and the partnership is a small partnership. 30

*“Relationship with subject matter*

“(7) **Section HD 3** overrides this section.

“Defined in this Act: deduction, depreciable intangible property, depreciable property, dispose, entering partner, excluded income, income tax liability, partner, partner’s interests, partnership, small partnership”

5

**“HD 8 Disposal of financial arrangements and certain  
excepted financial arrangements**

*“When this section applies*

“(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partnership, to the extent to which those interests include a financial arrangement or an excepted financial arrangement described in section EW 5(10) (What is an excepted financial arrangement?) and,—

10

“(a) the purpose for which the financial arrangement or excepted financial arrangement was entered into was necessary and incidental to the business of the partners of the partnership; and

15

“(b) partners of the partnership do not derive income from a business of holding financial arrangements.

20

*“Exiting partner: excluded payment*

“(2) The amount of consideration paid or payable to the exiting partner for the financial arrangement or excepted financial arrangement is excluded income of the exiting partner.

*“Exiting partner: no deduction*

25

“(3) The exiting partner is denied any deduction in relation to the financial arrangement or excepted financial arrangement for the income year in which the disposal of the financial arrangement or excepted financial arrangement occurs and later income years.

30

*“Entering partner: no deduction*

“(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the financial arrangement or excepted financial arrangement.

- “Entering partner: stepping in*
- “(5) For the purposes of calculating the income tax liability of an entering partner for the income year in which the disposal of the financial arrangement or excepted financial arrangement occurs and later income years, the entering partner is treated as if they had acquired and held the financial arrangement or excepted financial arrangement, not the exiting partner. 5
- “Exclusion*
- “(6) This section does not apply if the partners of the partnership choose that it does not apply by furnishing returns of income that ignore **sections HD 5 to HD 9**, and the partnership is a small partnership. 10
- “Relationship with subject matter*
- “(7) **Section HD 3** overrides this section. 15  
 “Defined in this Act: deduction, disposal, entering partner, excepted financial arrangement, excluded income, financial arrangement, income tax liability, partner, partner’s interests, partnership, small partnership”
- “HD 9 Disposal of short-term agreements for the sale and purchase of property or services**
- “When this section applies* 20
- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partnership, to the extent to which those interests include a short-term agreement for the sale and purchase of property or services.
- “Exiting partner: excluded payment* 25
- “(2) The amount of consideration paid or payable to the exiting partner for the short-term agreement for the sale and purchase of property or services is excluded income of the exiting partner.
- “Exiting partner: no deduction* 30
- “(3) The exiting partner is denied any deduction in relation to the short-term agreement for the sale and purchase of property or services, to the extent to which the entering partner is allowed a deduction because of **subsection (5)**.

- “Entering partner: no deduction*
- “(4) The entering partner is denied any deduction for the amount of consideration paid or payable to the exiting partner for the short-term agreement for the sale and purchase of property or services. 5
- “Entering partner: stepping in*
- “(5) For the purposes of calculating the income tax liability of an entering partner for the income year in which the disposal of the short-term agreement for the sale and purchase of property or services occurs and later income years, the entering partner is treated as if they had originally acquired and held the short-term agreement for the sale and purchase of property or services, not the exiting partner. 10
- “Exclusion*
- “(6) This section does not apply if the partners of the partnership choose that it does not apply by furnishing returns of income that ignore **sections HD 5 to HD 9**, and the partnership is a small partnership. 15
- “Relationship with subject matter*
- “(7) **Section HD 3** overrides this section. 20
- “Defined in this Act: deduction, disposal, entering partner, excluded income, income tax liability, partner, partner’s interests, partnership, short-term agreement for the sale and purchase of property or services, small partnership”
- “HD 10 Disposal of specified livestock** 25
- “When this section applies*
- “(1) This section applies when a person (the **exiting partner**) disposes of some or all of their partner’s interests in a partnership, to the extent to which those interest include specified livestock. 30
- “Entering partner: stepping in*
- “(2) For the purposes of calculating the income tax liability of an entering partner for the income year in which the disposal of the specified livestock occurs and later income years, the entering partner is treated as if they had originally acquired and held the specified livestock, not the exiting partner. 35

*“Exclusion*

“(3) This section does not apply if the partners of the partnership choose that it does not apply by furnishing returns of income that ignore this section.

“Defined in this Act: disposal, entering partner, income tax liability, partner, partner’s interests, partnership, specified livestock”

5

*“Limited partnership deduction rules*

**“HD 11 Limitation on deductions by partners in limited partnerships**

*“When this section applies*

10

“(1) This section applies when the relevant partnership is a limited partnership and, but for this section, a partner is allowed, for an income year, a deduction by virtue of **section HD 2 or HD 12**.

*“No deduction*

“(2) The partner is denied a deduction for the income year to the extent to which their limited partnership net deduction for the income year is greater than the amount (the **partner’s basis**) calculated using the formula in **subsection (3)** on the last day of the income year.

15

*“Partner’s basis*

20

“(3) For the purposes of **subsection (2)**, the amount that is the partner’s basis is calculated using the following formula:

investments – distributions + income – deductions – disallowed amount.

*“Definition of items in formula*

“(4) In the formula,—

25

“(a) **investments** is the total of—

“(i) the market value of capital contributions made by the partner at the time the relevant contribution is contributed or agreed to be contributed by them:

“(ii) in the case of the assignment of capital contributions to the partner, the amount paid by the partner for the assignment of capital contributions:

30

“(iii) consideration paid by the partner to the limited partnership under financial arrangements to which the partnership is a party:

35

“(iv) the guaranteed amounts:

“(b) **distributions** is the total of—

- “(i) the market value of withdrawals to the partner from the limited partnership:
- “(ii) in the case of the assignment of capital contributions by the partner, the amount paid for the assignment of capital contributions to them: 5
- “(iii) amounts of consideration paid to the partner under financial arrangements to which the partnership is a party:
- “(c) **income** is the total of—
- “(i) income that the partner has in previous income years under **section HD 2**: 10
- “(ii) capital gain amounts under section CD 33(7)(a) (Available capital distribution amount) that the partner has in the income year and previous income years under **section HD 2**, if the partner is treated as a company for the purposes of section CD 33(7)(a): 15
- “(iii) assessable income that the partner has in previous income years from goods and services they contributed to the partnership, if the income is not accounted for under **paragraph (a)** or **this paragraph**: 20
- “(d) **deductions** is the total of—
- “(i) deductions that the partner is allowed in previous income years under **section HD 2**, excluding any deductions denied in those years under **this section**: 25
- “(ii) capital loss amounts under section CD 33(9) that the partner incurs in the income year and previous income years under **section HD 2**, if the partner is treated as a company for the purposes of section CD 33(9): 30
- “(iii) deductions that the partner is allowed in previous income year in relation to assessable income described in **paragraph (c)(iii)**, if the deduction is not accounted for under **paragraph (b)** or **this paragraph**: 35
- “(e) **disallowed amount** is the amount of investments, as defined in **subparagraph (a)**, made by the partner within 60 days of the last day of the income year, if those investments are or will be distributed or reduced within 60 days after the last day of the income year. 40

*“Exclusion*

“(5) This section does not apply to deny a partner (the **exiting partner**) a deduction that is equal to or less than the amount of net income that the exiting partner has for the amount paid or payable to the exiting partner for the disposal of their partner’s interests. 5

*“Relationship with subject matter*

“(6) This section is modified by **sections HZ 3 and HZ 4**.

*“Some definitions*

“(7) In this section,— 10

“**capital contribution** includes a capital contribution for the purposes of the **Limited Partnerships Act 2007**

“**guaranteed amounts** means, for a partner of the relevant limited partnership, the lesser of the amounts following in **paragraphs (a) and (b)**: 15

“(a) the partner’s partnership share of the limited partnership’s debt, to the extent that the partner has given a guarantee or indemnity in relation to that debt:

“(b) the market value of property against which the guarantee or indemnity described in **paragraph (a)** may be enforced, treating the partner’s interests as having a market value of zero 20

“**limited partnership net deduction** means, for a partner of the relevant limited partnership and the income year, the amount of any net loss that would arise if the partner is treated as having no income or deductions other than those that arise by virtue of **sections HD 2 and HD 12** 25

“**partner’s associate** means, for a partner, a person who is not a partner of the relevant limited partnership, and who is—

“(a) a relative of the partner: 30

“(b) a company in the same wholly-owned group as the partner

“**withdrawal** includes a distribution for the purposes of the **Limited Partnerships Act 2007**.

“Defined in this Act: amount, capital contribution, deduction, entering partner, income, income year, net loss, partner, partner’s associate, partnership, limited partnership net deduction, withdrawal” 35

- “HD 12 Limitation on deductions by partners in limited partnerships: carry-forward**  
*“When this section applies*
- “(1) This section applies when, for an income year, a partner is denied a deduction under **section HD 11.** 5
- “Carry-forward*
- “(2) A partner is allowed a deduction, for an amount for which the partner is denied a deduction under **section HD 11**, for the income year after the one for which it is denied under **section HD 11.** 10
- “Relationship with subject matter*
- “(3) A deduction allowed under this section is subject to **section HD 11.**”
- “Defined in this Act: amount, income year, partner”.*
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 15
- 117 Partners of absentee deemed agent**
- (1) Section HK 17 is replaced by the following:
- “HK 17 Agency: general partners and partners of absentees**
- “(1) This section applies to a person who— 20
- “(a) in New Zealand carries on a business in a partnership that is not a limited partnership:
- “(b) is a general partner of a limited partnership that carries on a business in New Zealand ignoring **section HD 2.**
- “(2) If the person carries on the business with an absentee or, in the case of a general partner, is responsible for the management of the business of a limited partnership in which a limited partner is an absentee, the person is treated, for the purposes of this Act and the Tax Administration Act 1994, as the agent of the relevant absentee in relation to the absentee’s partnership share of the partnership’s income under **section HD 2.**” 25
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 30
- 118 New sections HZ 3 and HZ 4**
- (1) After section HZ 2, the following is added: 35

**“HZ 3 Special partnerships: transition into limited partnerships and limited partnerships deduction rules**

*“When this section applies*

“(1) This section applies when a special partnership under Part 2 of the Partnership Act 1908— 5

“(a) is in existence on 1 April 2008; and

“(b) is terminated and a limited partnership registered under the **Limited Partnerships Act 2007** (the **new limited partnership**) succeeds to that special partnership.

*“No disposal: same partnership* 10

“(2) No partners’ interests are disposed of merely because of the termination and succession described in **subsection (1)(b)**. The partners of the special partnership are treated as the same partners of the new limited partnership.

*“Initial basis* 15

“(3) For the purposes of applying **sections HD 11 and HD 12** (which relate to limited partnerships deduction rules) to the partners of the new limited partnership, all of the partners must choose one of the 2 following methods for calculating their partner’s basis under **section HD 11(3)**: 20

“(a) they may choose to use the market value of the amounts described in **section HD 11(3)**, as at the day the calculation is first performed, namely the last day of the first income year in which they are subject to **sections HD 11 and HD 12**; or 25

“(b) they may chose to apply **section HD 11(3)** as if the special partnership had always been a limited partnership and all relevant rules relating to limited partnerships had always existed (applying those rules with any necessary modifications). 30

*“Initial basis not less than zero*

“(4) If the application of **sections HD 11 and HD 12**, as modified by this section, calculates a partner’s basis as less than zero, then the partner’s basis is treated as being zero.

**“HZ 4 Overseas limited partnerships: transition into limited partnerships deduction rules**

*“When this section applies*

- “(1) This section applies when a limited partnership described in **paragraphs (a) and (b)** of the definition of **limited partnership** (the **overseas limited partnership**) in this Act is in existence on 1 April 2008, and a partner of that partnership (a **relevant partner**) is a member of the partnership on 1 April 2008 and is subject to **sections HD 11 and HD 12** on or after 1 April 2008. 5

*“Initial basis*

- “(2) For the purposes of applying **sections HD 11 and HD 12** (which relate to limited partnerships deduction rules) to the relevant partners of the overseas limited partnership, all relevant partners must choose one of the 2 following methods for calculating their partner’s basis under **section HD 11(3)**: 10

“(a) they may choose to use the market value of the amounts described in **section HD 11(3)**, as at the day the calculation is first performed, namely the last day of the first income year in which they are subject to **sections HD 11 and HD 12**; or 15

“(b) they may chose to apply **section HD 11(3)** as if the overseas limited partnership had always been a limited partnership and all relevant rules relating to limited partnerships had always existed (applying those rules with any necessary modifications). 20 25

*“Initial basis not less than zero*

- “(3) If the application of **sections HD 11 and HD 12**, as modified by this section, calculates a partner’s basis as less than zero, then the partner’s basis is treated as being zero.”
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 30

**119 Definitions**

- (1) This section amends section OB 1.
- (2) After the definition of **cancellation**, the following is inserted: **“capital contribution** is defined in **section HD 11(7)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section”. 35

- (3) In the definition of **company**, after paragraph (a), the following is inserted:
- “(ab) does not include a partnership:
  - “(ac) includes a foreign corporate limited partnership:
  - “(ad) includes a listed limited partnership:”.
- (4) In the definition of **dispose**, in paragraph (f), “subpart FI applies)” is replaced by “subpart FI applies):”, and the following is added:
- “(g) does not include a partner of a partnership disposing of their partnership interests only because another partner disposes of that partner’s interests, unless **section HD 3** (Disposal on dissolution) applies”.
- (5) After the definition of **employment-related loan**, the following is inserted:
- “**entering partner**—
  - “(a) means a person who acquires a partner’s interests in a partnership:
  - “(b) includes a person who is already a partner in the partnership when they acquire another partner’s interests”.
- (6) After the definition of **foreign company aggregates**, the following is inserted:
- “**foreign corporate limited partnership** means an entity or group of persons that—
  - “(a) meets the definition of overseas limited partnership in **section 86** of the **Limited Partnerships Act 2007**; and
  - “(b) is treated as a separate legal entity under the laws (other than taxation laws) of the country, territory, or jurisdiction where it is established”.
- (7) After the definition of **limited attribution company**, the following is inserted:
- “**limited partnership**—
  - “(a) means a limited partnership registered under the **Limited Partnerships Act 2007**; and
  - “(b) includes an **overseas limited partnership** as defined in **section 86** of the **Limited Partnerships Act 2007**; and
  - “(c) despite **paragraph (b)**, does not include a foreign corporate limited partnership or a listed limited partnership

- “**limited partnership net deduction** is defined in **section HD 11(7)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.
- (8) After the definition of **listed horticultural plant**, the following is inserted: 5
- “**listed limited partnership** means an entity or group of persons that—
- “**(a)** meets the definition of **overseas limited partnership** in **section 86** of the **Limited Partnerships Act 2007**; and
- “**(b)** is party to a listing agreement for the listing of securities on any market, exchange, or other facility for trading securities”. 10
- (9) The definitions of **partner**, **partnership**, **partnership income**, **partnership loss**, and **partnership net income** are replaced by the following: 15
- “**partner**, in relation to a partnership,—
- “**(a)** means a person who is a member of the partnership:
- “**(b)** includes a joint venturer or a co-owner, if they make the relevant choice:
- “**(c)** does not include a general partner of a limited partnership 20
- “**partner’s associate** is defined in **section HD 11(7)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section
- “**partner’s interests** means the relevant interests in rights and obligations and other property, status, and things that a partner has as a result of applying **section HD 2** 25
- “**partnership** means—
- “**(a)** a group of 2 or more persons who have, between themselves, the relationship described in section 4(1) of the Partnership Act 1908: 30
- “**(b)** a joint venture, if the joint venturers all choose to be treated as a partnership for the purposes of the Inland Revenue Acts:
- “**(c)** co-owners of property, other than persons who are co-owners only because they are shareholders of the same company, or settlors, trustees or beneficiaries of the same trust, if the co-owners all choose to be treated as a partnership for the purposes of this Act: 35
- “**(d)** a limited partnership 40

- “**partnership share** means the relevant share that a partner has in the rights and obligations and other property, status, and things of a partnership, expressed as a percentage”.
- (10) In the definition of **relative**, paragraph (a), “personal services),” is replaced by “personal services), **HD 11(7)** (Limitation on deductions by partners in limited partnerships),” 5
- (11) After the definition of **small-business taxpayer**, the following is inserted:  
 “**small partnership** means a partnership that is not a limited partnership and has 5 or less partners, none of whom are companies or partnerships” 10
- (12) The definition of **trading stock**, paragraph (a)(xxvi) is replaced by the following:  
 “(xxvi) **section HD 6** (Disposal of trading stock):”.
- (13) In the definition of **turnover**, “(livestock))” is replaced by “(livestock)) and **section HD 6** (Disposal of trading stock)” 15
- (14) In the definition of **withdrawal**, paragraph (c), “their employment” is replaced by “their employment:”, and the following is added:  
 “(d) is defined in **section HD 11(7)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section” 20
- (15) **Subsections (2) to (14)** apply for income years starting on and after 1 April 2008.
- 120 Further definitions of associated persons** 25
- (1) In section OD 8(2),—
- (a) in paragraph (a),—
- (i) “or interests in a partnership” is omitted:
- (ii) “a company, partnership, or trust” is replaced by “a company or a trust”: 30
- (iii) “shareholders, partners, or beneficiaries in the company, trust, or partnership” is replaced by “shareholders or beneficiaries in the company or trust”:
- (b) in paragraph (b), “or the interests in a partnership” is omitted: 35
- (c) in paragraph (c),—
- (i) “or interests in a partnership” is omitted:

- (ii) “shares or interests” is replaced in both places in which it appears by “shares”.
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008.
- 121 Classes of income treated as having source in New Zealand** 5
- (1) After section OE 4(1A), the following is added:
- “(2) **Subsection (3)** applies when—
- “(a) a partnership is a limited partnership registered under the **Limited Partnerships Act 2007**; or 10
- “(b) for a partnership, 50% or more of the partners’ interests in capital, by value, are held by New Zealand residents; or
- “(c) the centre of management of a partnership is in New Zealand ignoring **section HD 2**. 15
- “(3) A class of income has a source in New Zealand if, treating the partners of a partnership as resident in New Zealand, the class of income has a source in New Zealand under subsections (1) and (1A).
- “(4) The rules for classes of income in subsections (1) and (1A) are unaffected in the circumstance of **subsection (3)** not applying.” 20
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008 .

## Part 6

### Amendments to Tax Administration Act 1994 25

#### 122 Tax Administration Act 1994

This Part amends the Tax Administration Act 1994.

#### 123 Keeping of business records

- (1) In section 22(4)(b), “liquidated.” is replaced by “liquidated:” and the following is added: 30
- “(c) by a partner of a partnership, if the partnership retains the records that the partner would be required to retain but for this paragraph.”
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 35

- 124 Section 42 replaced**
- (1) Section 42 is replaced by the following:
- “42 Returns by joint venturers, partners and partnerships**
- “(1) This section applies when 2 or more people derive income jointly or have deductions jointly. 5
- “(2) Despite **subsection (1)**, this section does not apply to the income derived by and the deductions of an airport operator from activities that, in relation to that airport operator, are activities undertaken as an airport operator. 10
- “(3) In the case of partners,—
- “(a) if the partnership of the partner is a limited partnership registered under the **Limited Partnerships Act 2007** or is a partnership that would carry on a business in New Zealand ignoring **section HD 2** of the Income Tax Act 2004, then the partners must make a joint return of income, including the total amount of income derived by the partners as members of the partnership, the partners’ partnership share in the income, and a summary of the deductions of each partner that relate to the income: 15
- “(b) there is no joint assessment, but each partner must make a separate return of income under section 33, including the income derived by the partner as a member of the partnership, and the partner’s deductions that relate to the income. Each partner is separately assessed. 20 25
- “(4) In any other case, each person shall make a separate return taking into account that person’s share of the joint income and deductions. Each person is separately assessed.”
- (2) **Subsection (1)** applies for income years starting on and after 1 April 2008. 30