ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER P5

PARTNERSHIP ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 3/2014, in force 2 May 2014

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PARTNERSHIP ACT

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PARTNERSHIP ACT

PRELIMINARY

Interpretation

1. In this Act—

"business" includes every trade, occupation or profession;

"competent authority" means the Registrar;

"Court" means the High Court;

"firm" has the meaning assigned to it in section 6;

"firm name" has the meaning assigned to it in section 6;

" Judge" means a Judge of the Court;

"partnership" has the meaning assigned to it in section 3;

"partnership property" means all property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business.

Application of rules of equity and common law

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

PART 1

NATURE OF PARTNERSHIP

Definition of partnership

3. (1) Partnership is the relation that subsists between persons carrying on a business in common with a view to profit.

(2) Notwithstanding subsection (1), the relation between members of any company or association that is—

(a) incorporated, continued or registered as a company under the Companies Act* or any other Act for the time being in force and relating to the incorporation of companies; or

* Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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(b) formed or incorporated by or in pursuance of any other Act, letters patent or Royal Charter;

is not a partnership within the meaning of this Act.

Rules for determining existence of partnership

4. In determining whether a partnership does or does not exist, regard shall be had to the following rules—

(a) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

(b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing the returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;

(c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular—

(i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of business does not of itself make him a partner in the business or liable as such,

(ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such,

(iii) a person who is the widow or child of a deceased partner and who receives by way of annuity a portion of the profits made in the business in which the deceased person was a partner is not by reason only of such receipt a partner in the business or liable as such,

(iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract in writing with that person, signed by or on behalf of all the parties thereto, that the lender shall receive a rate of interest varying with the profits arising from carrying on the business does not itself make the lender a partner with the person or persons carrying on the business or liable as such, and

(v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency

5. In the event of any person to whom has been advanced by way of loan upon a contract mentioned in section 4, or of any buyer of a goodwill, in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than 100

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

Meaning of "firm" and "firm name"

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

PART 2

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM

Power of partner to bind firm

7. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless—

(a) the partner so acting has in fact no authority to act for the firm in the particular matter; and

(b) the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

Partners bound by acts on behalf of firm

8. An act or instrument relating to the business of the firm done or executed in the firm name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners, but nothing in this section affects any general rule of law relating to the execution of deeds or negotiable instruments.

Partner using credit of firm for private purposes

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

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

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

Liability of partners

11. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in the due

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course of administration for those debts and obligations in so far as they remain unsatisfied, but subject to the prior payment of his separate debts.

Liability of the firm for wrongs

12. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Misapplication of money or property by partner

13. Where—

(a) one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; or

(b) a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;

the firm is liable to make good the loss.

Liability for wrongs joint and several

14. Every partner is liable jointly and severally with his partners for everything for which the firm, while he is a partner therein, becomes liable under either section 12 or 13.

Improper employment of trust property for partnership purposes

15. If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein but—

(a) this section does not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

(b) nothing in this section prevents trust money from being followed and recovered from the firm if still in its possession or under its control.

Persons liable by holding out

16. Everyone who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm is liable as a partner to any one who has on the faith of any such a representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made but, where after a partner's death the partnership business is continued in the old firm's name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators or his estate liable for any partnership debts contracted after his death.

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Admission and representation of partners

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

Notice to acting partner to be notice to the firm

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

Liabilities of incoming and outgoing partners

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

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

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

Revocation of continuing guarantee by change in firm

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

PART 3

RELATIONS OF PARTNERS TO ONE ANOTHER

Variation by consent of terms of partnership

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

Partnership property

22. (1) Partnership property must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement, but the legal estate or interest in any land which belongs to the partnership shall devolve according to the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(2) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land, and purchase other land out of the profits, the land so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but

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as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase.

Property bought with partnership money

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

Procedure against partnership property for a partner's separate judgment debt

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

(2) The Court may—

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

(b) by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing) and of any other money that may be coming to him in respect of the partnership; and

(c) direct all accounts and inquiries and give all other orders and directions that might have been directed or given if the charge had been made in favour of the judgment creditor by the partner or which the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in case of a sale being directed, to purchase the interest.

Rules as to interests and duties of partners subject to special agreement

25. Subject to any agreement express or implied between the partners, the interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined by the following rules—

(a) all the partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;

(b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(i) in the ordinary and proper conduct of the business of the firm, or

(ii) in or about anything necessarily done for the preservation of the business or property of the firm;

(c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of 10% per year from the date of the payment or advance;

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(d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him;

(e) every partner may take part in the management of the partnership business;

(f) no partner shall be entitled to remuneration for acting in the partnership business;

(g) no person may be introduced as a partner without the consent of all existing partners;

(h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners;

(i) the partnership books must—

(i) contain the full name and mailing address of every partner,

(ii) be kept at the place of business of the partnership (or principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

(Act 3 /2014, s. 3)

Expulsion of partner

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

Retirement from partnership at will

27. (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving reasonable notice of his intention to do so to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing signed by the partner giving it shall be sufficient for this purpose.

Where partnership for term is continued after expiry

28. (1) Where a partnership entered into a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs is presumed to be a continuance of the partnership until the contrary is shown.

Maintenance of proper accounting records

29. (1) Partners must keep proper accounting records including: accounts, books, deeds, contracts, vouchers and receipts, for—

(a) all sums of money received and expended by the partnership and the matters for which the receipt and expenditure takes place;

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(b) all sales and purchases of goods and services and other related transactions for the partnership; and

(c) the assets and liabilities of the partnership.

(2) The accounting records must be sufficient to explain all monetary transactions by the partnership and must—

(a) contain sufficient details to enable a transaction to be understood;

(b) disclose with reasonable accuracy the financial position of the partnership at any time; and

(c) be in a format that allows financial statements to be prepared and audited.

(Act 3/2014, s. 4)

Period for which accounting records must be maintained

30. The period for which accounting records under section 29 must be maintained is 6 years beginning on the date—

(a) on which all activities taking place in the course of the transaction in question were completed; or

(b) of the ending of the business relationship for whose formation the record was compiled.

(Act 3/2014, s. 4)

Offences and Penalties

31. If the partners of the firm breach sections 29 or 30, then the partners of the firm commit an offence and are liable on summary conviction to a penalty of $5,000.

(Act 3/2014, s. 4)

Accountability of partners for private profits

32. (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection.

(2) This section applies also to transactions undertaken by any surviving partner or by the executors after a partnership has been dissolved by the death of a partner and before the affairs thereof have been completely wound up.

Duty of partners not to compete with firm

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

Rights of assignee of share in partnership

34. (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the

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continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

PART 4

DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES

Dissolution by expiration of notice

35. (1) Subject to any agreement between the partners, a partnership is dissolved—

(a) if entered into for a fixed term, by the expiration of that term;

(b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or

(c) if entered into for an undefined time, by any partner giving reasonable notice to the other or others of his intention to dissolve the partnership.

(2) In the case of a partnership referred to in paragraph (1)(c) the partnership is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by bankruptcy, death or charge

36. (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy, including a foreign bankruptcy, of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

Dissolution by illegality of partnership

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

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Dissolution by the Court

38. On application by a partner, the Court may decree a dissolution of the partnership in any of the following cases—

(a) when a partner, other than the partner suing, becomes in any way permanently incapable of performing his part of the partnership contract;

(b) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court having regard to the nature of the business, is calculated to affect the carrying on of the business prejudicially;

(c) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;

(d) when the business of the partnership can only be carried on at a loss;

(e) whenever in any case circumstances have arisen that, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

Rights against apparent members of firm

39. (1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2) An advertisement in the *Gazette* shall be notice as to persons who had no dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement.

Right of partners to notify dissolution

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

Continuing authority of partners for purposes of winding up

41. (1) Subject to subsection (2), after the dissolution of a partnership, the authority of each partner to bind the firm continues and the other rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

(2) The firm is in no case bound by the acts of a partner who has become bankrupt but this subsection does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

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Rights of partners as to application of partnership property

42. On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his executors or administrators may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

Apportionment of premium where partnership prematurely dissolved

43. Where one partner has paid a premium to another on entering into a partnership for a fixed term and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless—

(a) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; or

(b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Rights where partnership dissolved for fraud or misrepresentation

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

(a) to a lien on, or right of retention of, the surplus of the partnership assets after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him;

(b) to stand in place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and

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

Right of outgoing partner to share profit after dissolution

45. (1) Subject to subsection (2), where—

(a) any member of a firm has died or otherwise ceased to be a partner; and

(b) the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate;

then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his executors or administrators to such share of the profits made since the dissolution, as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the prevailing rate on the amount of his share of the partnership assets.

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(2) Where, by the partnership contract, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and that option is duly exercised, the estate of the deceased partner or the outgoing partner or his estate, as the case may be, is not entitled to any further share of profits, but if the partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under this section.

Retiring or deceased partner's share to be a debt

46. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner, or the executors or administrators of a deceased partner, in respect of the outgoing or deceased partner's share is a debt accruing at the date respectively of the dissolution or death.

Distribution of assets on final settlement of accounts

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

(a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;

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

(i) in paying the debts and liabilities of the firm to persons who are not partners in it,

(ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital,

(iii) in paying to each partner rateably what is due from the firm to him in respect of capital,

(iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

PART 5

CITATION

Citation

48. This Act may be cited as the Partnership Act, Revised Statutes of Anguilla, Chapter P5.

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