



Limited Partnerships Act 2008

Public Act 2008 No 1
Date of assent 13 March 2008
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Limited Partnerships Act 2008.

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

Part 1

Preliminary provisions

3 Purpose of Act

The purpose of this Act 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
- (b) facilitates the development of the venture capital industry in New Zealand.

4 Interpretation

In this Act, unless the context requires otherwise,—

capital contribution has the meaning given to it in section 37(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

Deputy Registrar means a Deputy Registrar of Companies holding office under the Companies Act 1993

document means—

- (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:
- (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

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

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 partnership; and
- (b) 1 or more limited partners who have only limited liability for the debts and liabilities of the partnership

partner means a general partner or a limited partner

partnership interest has the meaning given to it in section 38(1)

prescribed means prescribed by regulations made under this Act

public notice means,—

- (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—
 - (i) at least 1 issue of the *Gazette*; and
 - (ii) at least 1 issue of a newspaper circulating in the area in New Zealand in which is situated—
 - (A) the limited partnership's or overseas limited partnership's place of business; or
 - (B) if the limited partnership or overseas limited partnership has more than 1 place

of business, its principal place of business;
or

- (C) in the case of a limited partnership that has no place of business or neither its place of business nor its principal place of business is known, its registered office

Registrar means the Registrar of Companies

resolution of the limited partnership means, unless the partnership agreement provides otherwise, a resolution passed or signed by partners having contributed at least 75% of the capital contributions of all the partners.

5 Act binds the Crown

This Act binds the Crown.

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 51.
- (2) For registration of a limited partnership under section 51,—
- (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 52.

7 Formation and duration of limited partnership

A limited partnership is formed only on its registration and continues in existence until it is deregistered (*see* section 97).

8 Requirements for limited partnership

- (1) A limited partnership must have at least 1 general partner (*see* section 19) and at least 1 limited partner (*see* section 20).
- (2) A person may not be both a general partner and a limited partner of the same limited partnership at the same time.

- (3) Subject to subsection (1), a limited partnership may have any number of general partners and limited partners.

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.
- (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) The partnership agreement may be amended—
- (a) by a written document signed by or on behalf of each of the limited partnership and the partners; or
 - (b) in accordance with the procedure specified in the partnership agreement, if any.

10 Contents of partnership agreement

Without limiting what may be contained in a partnership agreement, a partnership agreement must provide for the following matters:

- (a) whether there is any restriction on the ability of a partner to assign or otherwise dispose of that person's partnership interest, and the nature of that restriction:
- (b) whether there is any restriction on the business or other activities that the limited partnership may undertake, and the nature of that restriction:
- (c) the entitlement of partners to distributions:
- (d) whether a general partner may compete with the limited partnership and in what circumstances:
- (e) when a meeting of partners must be held, and the procedure for conducting a meeting of partners:

- (f) whether the financial statements of the limited partnership must be audited:
- (g) how a partner may leave the limited partnership, including whether a partner may be expelled from the limited partnership, and how a new partner may be admitted to the limited partnership:
- (h) when and how the limited partnership terminates:
- (i) whether the limited partnership has a conflict of interest policy, and the nature of that policy.

11 Limited partnership is separate legal person

A limited partnership is a separate legal person.

Powers of limited partnership

12 Capacity and powers

Subject to this Act, any other enactment, and the general law, a limited partnership has, both within and outside New Zealand,—

- (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers, and privileges.

Compare: 1993 No 105 s 16(1)

13 Partnership agreement may restrict capacity and powers

The partnership agreement of a limited partnership may contain a provision relating to the capacity, rights, powers, or privileges of the limited partnership only if the provision restricts the capacity of the limited partnership or those rights, powers, and privileges.

Compare: 1993 No 105 s 16(2)

14 Validity of actions

No act of a limited partnership and no transfer of property to or by a limited partnership is invalid merely because the limited partnership did not have the capacity, the right, or the power to do the act or to transfer or take a transfer of the property.

Compare: 1993 No 105 s 17(1)

- 15 Dealings between limited partnership and other persons**
- (1) Subject to subsection (2), a limited partnership, or a guarantor of an obligation of a limited partnership, may not assert against a person dealing with the limited partnership or with a person who has acquired property, rights, or interests from the limited partnership that—
- (a) this Act or the partnership agreement of the limited partnership has not been complied with;
 - (b) a person whose name appears as a general partner of the limited partnership in the register of limited partnerships under section 54—
 - (i) is not a general partner of the limited partnership; or
 - (ii) has not been duly appointed; or
 - (iii) does not have authority to exercise a power that a general partner of a limited partnership carrying on business of the kind carried on by the limited partnership customarily has authority to exercise:
 - (c) a person held out by the limited partnership as a general partner, employee, or agent of the limited partnership—
 - (i) has not been duly appointed; or
 - (ii) does not have authority to exercise a power that a general partner, employee, or agent of a limited partnership carrying on business of the kind carried on by the limited partnership customarily has authority to exercise:
 - (d) a person held out by the limited partnership as a general partner, employee, or agent of the limited partnership with authority to exercise a power that a general partner, employee, or agent of a limited partnership carrying on business of the kind carried on by the limited partnership does not customarily have authority to exercise, does not have authority to exercise that power:
 - (e) a document issued on behalf of a limited partnership by a general partner, employee, or agent of the limited partnership with actual or usual authority to issue the document is not valid or not genuine.
- (2) A person dealing with the limited partnership or a person who has acquired property, rights, or interests from the limited part-

nership may not rely on any of subsection (1)(a) to (e) if that person has, or ought to have, by virtue of his or her position with, or relationship to, the limited partnership, knowledge of the relevant matter referred to in the paragraph in question.

- (3) Subsection (1) of this section applies even though a person of the kind referred to in subsection (1)(b) to (e) acts fraudulently or forges a document that appears to have been signed on behalf of the limited partnership, unless the person dealing with the limited partnership or with a person who has acquired property, rights, or interests from the limited partnership has actual knowledge of the fraud or forgery.
- (4) Nothing in this section applies in relation to the acts of a limited partner.

Compare: 1993 No 105 s 18

16 No constructive notice

A person is not affected by, or deemed to have notice or knowledge of the contents of, the partnership agreement or any other document relating to a limited partnership merely because it may be available for inspection at an office of the limited partnership.

Compare: 1993 No 105 s 19

17 Method of contracting

- (1) A contract or other enforceable obligation may be entered into by a limited partnership as follows:
- (a) an obligation that, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the limited partnership in writing signed under the name of the limited partnership by—
- (i) a general partner; or
- (ii) if the partnership agreement of the limited partnership so provides, any person or class of persons whose signature or signatures must be witnessed:
- (b) an obligation that, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the limited partnership in writing by

a person acting under the limited partnership's express or implied authority:

- (c) an obligation that, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the limited partnership in writing or orally by a person acting under the limited partnership's express or implied authority.
- (2) Subsection (1) applies to a contract or other obligation—
- (a) whether or not that contract or obligation was entered into in New Zealand; and
 - (b) whether or not the law governing the contract or obligation is the law of New Zealand.

Compare: 1993 No 105 s 180

Partners in limited partnership

18 Who may be partner

- (1) Any person may be a partner of a limited partnership.
- (2) A partnership governed by the Partnership Act 1908 or an overseas limited partnership may be a partner of a limited partnership.

19 General partner

- (1) A general partner is responsible for the management of the limited partnership.
- (2) Subject to the partnership agreement, a general partner may, but does not have to, make a capital contribution to the limited partnership.

20 Limited partner

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

21 When person becomes general partner

A person becomes a general partner of a limited partnership when that person's name is entered in the register of limited partnerships as a general partner of the limited partnership.

22 When person becomes limited partner

A person becomes a limited partner of a limited partnership when that person's name is entered in the register of limited partnerships as a limited partner of the limited partnership.

23 Restriction on limited partner as party to limited partnership proceeding

Subject to section 30, a limited partner must not be a party in that capacity to any proceeding in a 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 that the limited partnership be terminated; or
- (d) the proceeding is an application or proceeding brought under section 82.

24 Change of partner status

- (1) A general partner may become a limited partner.
- (2) A limited partner may become a general partner.
- (3) This section is subject to section 8(1) and (2).

*Liability of general partners***25 Debts and liabilities of limited partnership include overseas-connected debts and liabilities**

In sections 26 to 31, 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.

26 Joint and several liability of general partner for debts and liabilities

- (1) Each general partner is jointly and severally liable with the limited partnership and the other general partners for the unpaid debts and liabilities of the limited partnership incurred while that person is a general partner.
- (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 the unpaid debts and liabilities of the limited partnership incurred while that person was a general partner, subject to prior payment of the general partner's separate debts.
- (3) This section is subject to section 28.

27 Joint and several liability of general partner for omission or wrong

- (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.
- (2) This section is subject to section 28.

28 Limitations on general partner's liability

Despite sections 26 and 27 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.

29 Obligation imposed on general partner under this Act

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.

*Liability of limited partners***30 Liability of limited partner who takes part in management of limited partnership**

- (1) A limited partner (**A**) is liable, to the same extent as a general partner, to a person (**B**) who deals with the limited partnership if, at the time that the debt or liability of the limited partnership to B was incurred, all of the following applied:
 - (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
 - (c) B believed on reasonable grounds that A was a general partner.
- (2) Sections 23 and 28 do not apply in a case where subsection (1) applies.
- (3) A limited partner is not liable to a person who deals with a limited partnership for breach of section 20(1) except to the extent provided by this section.

31 Liability of limited partner who does not take part in management of limited partnership

- (1) A limited partner who does not take part in the management 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—
 - (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 partner; or
 - (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.
- (3) None of the activities listed in the Schedule constitutes taking part in the management of the limited partnership.

Name of limited partnership or overseas limited partnership

32 Name of limited partnership must include words limited partnership

- (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) A person that is not a limited partnership must not use the words “limited partnership” or the abbreviation “LP” or “L.P.” in a way that suggests to a reasonable person that that person, or the business carried on by that person, is a limited partnership.
- (3) A limited partnership must ensure that its name is clearly stated in—
 - (a) every written communication sent by, or on behalf of, the limited partnership; and
 - (b) every document issued or signed by, or on behalf of, the limited partnership that evidences or creates a legal obligation of the limited partnership.
- (4) For the purposes of subsection (3) and section 33, a limited partnership may use a generally recognised abbreviation of a word or words in its name if it is not misleading to do so.
- (5) If, within the period of 12 months immediately preceding the giving by a limited partnership of any public notice, the name of the limited partnership was changed, the limited partnership must ensure that the notice states—
 - (a) that the name of the limited partnership was changed in that period; and
 - (b) the former name or names of the limited partnership.
- (6) If a limited partnership fails to comply with subsection (3) or (5),—
 - (a) the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$5,000; and
 - (b) every general partner of the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

- (7) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

33 Liability if name of limited partnership incorrectly stated

- (1) This section applies if—
- (a) a document that evidences or creates a legal obligation of a limited partnership is issued or signed by or on behalf of the limited partnership; and
 - (b) the name of the limited partnership is incorrectly stated in the document.
- (2) In a case to which this section applies, every person who issued or signed the document is liable to the same extent as the limited partnership if the limited partnership fails to discharge the obligation unless—
- (a) the person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the limited partnership; or
 - (b) the Court is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.

34 Registrar may object to name

The Registrar must not register a limited partnership or an overseas limited partnership with a name—

- (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
- (c) that, in the Registrar's opinion, is offensive.

35 Change of name

- (1) A limited partnership or an overseas limited partnership may apply to the Registrar to change its name.
- (2) The application must be in the prescribed form.

- (3) The Registrar may change the name of a limited partnership or an overseas limited partnership by amending the register.
- (4) A change of name of a limited partnership or an overseas limited partnership—
 - (a) takes effect from the date of amendment of the register; and
 - (b) does not affect rights or liabilities of the limited partnership or overseas limited partnership; and
 - (c) does not affect legal proceedings by or against the limited partnership or overseas limited partnership, and legal proceedings begun or continued against the limited partnership or overseas limited partnership under its former name may be begun or continued against it under its new name.

36 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.
- (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.
- (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 Registrar may change its name by amending the register.
- (4) If the Registrar registers a new name under subsection (3) for a limited partnership, the Registrar must issue a certificate of registration for the limited partnership recording the new name of the limited partnership, and section 35(4) applies in relation to the new name as if the name of the limited partnership had been changed under that section.

*Capital contribution and partnership interest***37 Capital contribution**

- (1) The capital contribution of a partner is the share of the assets contributed, or agreed to be contributed, by a partner to the limited partnership or assigned to a partner under section 38(2).
- (2) The capital contribution of a partner may take any form and may be cash, promissory notes, contracts for future services, or real or personal property, and may be made on terms (if any) as provided by the partnership agreement from time to time.
- (3) A loan by a partner to the limited partnership is not a capital contribution.

38 Partnership interest

- (1) The partnership interest of a partner—
 - (a) is the partner's—
 - (i) share of the assets of the limited partnership; and
 - (ii) right to receive distributions from the limited partnership; and
 - (iii) right to any other benefit conferred by the partnership agreement; and
 - (b) includes any liability or other burden of the partner in relation to the limited partnership.
- (2) A partner may assign or otherwise dispose of all or part of that person's partnership interest to—
 - (a) another partner of the same limited partnership;
 - (b) any other person if approved by a resolution of the limited partnership.
- (3) However, the partnership agreement may extend, vary, restrict, or exclude a partner's right to assign that person's partnership interest.

*Distributions to partners***39 Meaning of distribution**

In this Act, unless the context otherwise requires, **distribution**—

- (a) means—

- (i) the direct or indirect transfer of money or property of the limited partnership to or for the benefit of a partner; or
 - (ii) the incurring of a debt to or for the benefit of a partner; and
- (b) includes a discount to a partner on goods and services provided by the limited partnership.

40 Distribution must be authorised

A distribution must be authorised in writing by each general partner.

41 Distribution must not be authorised unless limited partnership solvent

- (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 subsection (1) 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.
- (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.
- (4) A general partner who fails to comply with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

42 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
 - (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
 - (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.
- (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.

Compare: 1993 No 105 s 4

43 Liability of general partner to repay unauthorised distribution

A general partner who breaches section 41(1) must repay so much of the distribution as is not able to be recovered from the partner to whom the distribution is made.

44 Liability of partner to repay distribution

- (1) A 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 42 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 42.
- (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.

45 Defence of partial solvency

- (1) This section applies if, in an action brought against a general partner under section 43 or a partner under section 44, the Court is satisfied that the limited partnership could, by making

a distribution of a lesser amount, have satisfied the solvency test.

- (2) The Court may permit the 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.

Agency

46 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.

47 General partner is agent of limited partnership

A general partner is the agent of the limited partnership for the purposes of the business of the limited partnership.

48 Notice to general partner is notice to limited partnership

Notice to any general partner of any matter relating to the affairs of the limited partnership operates as notice to the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of that general partner.

Compare: 1908 No 139 s 19

Fiduciary obligations

49 General partner's fiduciary obligations

- (1) A general partner must—
- (a) render true accounts and full information of all things affecting the limited partnership to the limited partnership, to any partner, or to the legal representative of any of them; and
 - (b) account to the limited partnership for any profit derived by the general partner without the consent of the limited partnership from—
 - (i) any transaction concerning the limited partnership; or

- (ii) the use by the general partner of the name or of any property or business connection of the limited partnership; and
- (c) account for and pay to the limited partnership any profit made by the general partner in a business if—
 - (i) the business is of the same nature, and competes with, the business of the limited partnership; and
 - (ii) the business is carried on by the general partner without the consent of the limited partnership.
- (2) The fiduciary obligations described in subsection (1) may be varied or excluded by the partnership agreement.

Compare: 1908 No 139 ss 32, 33, 34

50 Fiduciary obligations of limited partner excluded

Subject to the partnership agreement, a limited partner does not owe the limited partnership or any partner a fiduciary obligation in that person's capacity as a limited partner.

Registration

51 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 54(1)(a).
- (2) This section is subject to section 34.

52 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
 - (c) be accompanied by the consent in writing of each proposed general partner to registration; and
 - (d) state the date of birth of each proposed general partner (where applicable); and

- (e) contain a list of the names, dates of birth (where applicable), and addresses of the proposed limited partners; and
 - (f) be accompanied by a certificate by the applicant that the proposed partners of the limited partnership have entered into a partnership agreement that complies with section 10; and
 - (g) be accompanied by the prescribed fee (if any).
- (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.

53 Certificate of registration

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

Registers of limited partnerships

54 Registers

- (1) The Registrar must establish and maintain registers of—
- (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—
- (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.

55 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).
- (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.
- (3) Nothing in subsection (2) or section 103 precludes any person from exercising a right under the Ombudsmen Act 1975 or the Official Information Act 1982 in relation to a request for official information, but any such right is subject to sections 57(2) and 115.

56 Certified copy of information on registers

- (1) Subject to section 57(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.

57 Contents of registers

- (1) The register of limited partnerships must contain, in respect of each limited partnership, the following information:
- (a) its name;
 - (b) the date of its registration;
 - (c) its registration number;
 - (d) the address of its registered office;
 - (e) the name and address of each general partner;
 - (f) the date of birth of each general partner (where applicable);
 - (g) the name, date of birth (where applicable), and address of each limited partner;
 - (h) its address for service;
 - (i) any other prescribed information.
- (2) The information in subsection (1)(f) and (g) must not be able to be searched under section 64 except by the Registrar.
- (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:
- (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 in New Zealand:
- (f) the name and address of its agent for service in New Zealand:
- (g) any other prescribed information.

58 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.

59 General partners must notify Registrar of any change in limited partnership details

- (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.
- (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.

60 General partners must send written consent of new general partner to Registrar

- (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.
- (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.

61 Rectification or correction of register

- (1) The Registrar may,—
- (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, correct those particulars.
- (2) Before the Registrar rectifies a register under subsection (1)(a), the Registrar must—
- (a) give written notice to the limited partnership or overseas limited partnership that an application has been made to rectify the register in relation to that limited partnership or overseas limited partnership (including details of that application); and
 - (b) give public notice setting out—
 - (i) the name of the applicant; and
 - (ii) the name of the limited partnership or overseas limited partnership; and
 - (iii) the reasons for and details of the changes sought to be made to the register; and
 - (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.
- (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.
- (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.

Compare: 1993 No 105 s 360A

62 Powers of Court

- (1) If an objection to a proposed rectification is received by the Registrar under section 61(3), the applicant for the rectifica-

tion 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),—
 - (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.

Compare: 1993 No 105 s 360B

63 Registrar may note inactivity on register

The Registrar may insert a note of inactivity against the entry on a register for a limited partnership or an overseas limited partnership if the Registrar believes on reasonable grounds that the limited partnership or overseas limited partnership is inactive.

64 Searches of register

- (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 or an overseas limited partnership;
 - (b) its registration number;
 - (c) the name of a limited partnership or an overseas 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;
 - (f) the name of a general partner;
 - (g) the name and address of a general partner;
 - (h) the name and address of the person authorised to accept service in New Zealand on behalf of the overseas limited partnership;
 - (i) any other prescribed criteria.

- (3) In addition to the criteria in subsection (2), the Registrar may search on the following criteria:
- (a) the name of a limited partner; or
 - (b) the name and address of a limited partner; or
 - (c) the name and date of birth of a limited partner; or
 - (d) the name and date of birth of a general partner.

65 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;
- (b) by any person for the purpose of determining whether a business organisation is a limited partnership or an overseas limited partnership;
- (c) by any person for determining the address of a limited partnership's or an overseas limited partnership's place of business;
- (d) by any person for the purpose of determining whether a person is a general partner of a limited partnership or an overseas limited partnership;
- (e) 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.

66 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 65 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.

Administration

67 Registered office

- (1) A limited partnership must always have a registered office in New Zealand.

- (2) Subject to section 68, 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.
- (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—
 - (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
 - (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.

Compare: 1993 No 105 s 186

68 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.
- (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.

Compare: 1993 No 105 s 187

69 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.
- (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
 - (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 103; and
 - (d) be dated and signed by the Registrar.
- (4) A copy of the notice must also be sent to each general partner.
- (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.

Compare: 1993 No 105 s 188

70 Address for service

- (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.
- (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—
- (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—
 - (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.

71 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.
- (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.

72 Rectification or correction of address for service

- (1) This section applies if the address for service of a limited partnership is rectified or corrected under section 61 or 62.
- (2) The rectification or correction takes effect at the time that the rectification or correction is made to the register.

73 Service of documents

- Any document may be served on a limited partnership by—
- (a) delivery of the document to its address for service; or
 - (b) delivery of the document to a person named as a general partner of the limited partnership in the register of limited partnerships.

74 Records of limited partnership

- (1) A limited partnership must keep the following records at its registered office:
 - (a) the partnership agreement and all amendments to it;
 - (b) minutes of all meetings and resolutions of the 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:
 - (d) the capital accounts of each current and former partner for—
 - (i) the last 7 completed accounting periods of the limited partnership; or
 - (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—
 - (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:
 - (f) the limited partnership's financial statements prepared in accordance with section 75 for—
 - (i) the last 7 completed accounting periods of the limited partnership; or
 - (ii) if 7 completed accounting periods have not elapsed since the limited partnership was first registered, the completed accounting periods since registration.
- (2) The references in subsection (1)(b) and (c) to 7 years and the references in subsection (1)(d) and (f) 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.
- (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

- (b) each general partner commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

75 Obligation to prepare financial statements

- (1) The general partners of a limited partnership must ensure that, within 5 months after the balance date of the limited partnership, financial statements are—
 - (a) completed in relation to the limited partnership and that balance date; and
 - (b) dated and signed on behalf of the general partners by 2 general partners of the limited partnership, or, if the limited partnership has only 1 general partner, by that general partner.
- (2) In subsection (1), **financial statements** has the same meaning as in section 8(1) of the Financial Reporting Act 1993.
- (3) For the purposes of this section, sections 7(1) to (6) and 8(1) of the Financial Reporting Act 1993 apply as if a reference to—
 - (a) an entity or a reporting entity were a reference to a limited partnership;
 - (b) the directors were a reference to the general partners.
- (4) Where financial statements in relation to a limited partnership are not completed and signed within the time specified in subsection (1), every general partner of the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (5) It is a defence to a general partner of a limited partnership charged with an offence under subsection (4) if the general partner proves that—
 - (a) the general partners of the limited partnership took all reasonable and proper steps to ensure that financial statements in relation to the limited partnership were completed and signed within the time specified in subsection (1); or
 - (b) the general partner took all reasonable and proper steps to ensure that financial statements in relation to the limited partnership were completed and signed within the time specified in subsection (1); or
 - (c) in the circumstances the general partner could not reasonably have been expected to take steps to ensure that

financial statements in relation to the limited partnership were completed and signed within the time specified in subsection (1).

- (6) Notwithstanding anything to the contrary in the Summary Proceedings Act 1957, an information for an offence under subsection (4) may be laid at any time within 3 years after the date of the offence.

76 Annual return

- (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.
- (2) The annual return of a limited partnership must state the following information:
- (a) its name:
 - (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:
 - (i) any other prescribed information.
- (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.
- (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.

- (6) The Registrar may, by written notice to a limited partnership, alter the month allocated to the limited partnership under subsection (5).
- (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*.
- (9) 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.

Compare: 1993 No 105 s 214

77 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:
 - (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; or
 - (d) an address of a partner 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.

Compare: 1993 No 105 s 214A

Registrar's powers of inspection

78 Registrar's powers of inspection

- (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
 - (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:
 - (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.
- (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).
- (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.

Compare: 1993 No 105 s 365

79 Disclosure of information and reports

- (1) A person authorised by the Registrar for the purpose of section 78 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—
 - (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

- (d) a liquidator for the purposes of the liquidation of a limited partnership.
- (2) A person authorised by the Registrar for the purposes of section 78 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 or a Deputy Registrar when directed to do so by any person holding either of those offices.
- (3) A person authorised by the Registrar for the purposes of section 78 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—
 - (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
 - (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
 - (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.

Compare: 1993 No 105 s 366

80 Inspector's report admissible in liquidation proceedings

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 78 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

81 Exercise of powers under section 78 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 78, until a decision on the appeal or application is given,—
- (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
 - (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
 - (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.

Compare: 1993 No 105 s 371

*Derivative actions***82 Derivative actions**

- (1) Subject to subsection (3), the Court may, on the application of a partner of a limited partnership, grant leave to that partner to—
- (a) bring proceedings in the name and on behalf of the limited partnership; or
 - (b) intervene in proceedings to which the limited partnership is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the limited partnership, as the case may be.
- (2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court must have regard to—

- (a) the likelihood of the proceedings succeeding;
 - (b) the costs of the proceedings in relation to the relief likely to be obtained;
 - (c) any action already taken by the limited partnership to obtain relief;
 - (d) the interests of the limited partnership in the proceedings being commenced, continued, defended, or discontinued, as the case may be.
- (3) Leave to bring proceedings or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that either—
- (a) the limited partnership does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
 - (b) it is in the interests of the limited partnership that the conduct of the proceedings should not be left to the general partners or to the determination of the partners as a whole.
- (4) Notice of the application must be served on the limited partnership.
- (5) The limited partnership—
- (a) may appear and be heard; and
 - (b) must inform the Court whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.
- (6) Except as provided in this section, a limited partner is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a limited partnership.

Compare: 1993 No 105 s 165

83 Costs of derivative action to be met by limited partnership

The Court must, on the application of the partner to whom leave was granted under section 82 to bring or intervene in the proceedings, order that the whole or part of the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved under section 85, must be met by the limited

partnership unless the Court considers that it would be unjust or inequitable for the limited partnership to bear those costs.

Compare: 1993 No 105 s 166

84 Powers of Court where leave granted

The Court may, at any time, make any order it thinks fit in relation to proceedings brought by a partner or in which a partner intervenes, as the case may be, with leave of the Court under section 82, and without limiting the generality of this section, may—

- (a) make an order authorising the partner or any other person to control the conduct of the proceedings:
- (b) give directions for the conduct of the proceedings:
- (c) make an order requiring the limited partnership or the general partners to provide information or assistance in relation to the proceedings:
- (d) make an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or part, to former and present partners of the limited partnership instead of to the limited partnership.

Compare: 1993 No 105 s 167

85 Compromise, settlement or withdrawal of derivative action

No proceedings brought by a partner or in which a partner intervenes, as the case may be, with leave of the Court under section 82, may be settled or compromised or discontinued without the approval of the Court.

Compare: 1993 No 105 s 168

Terminating events, liquidation, and deregistration

86 Terminating event

- (1) 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:

- (b) subject to anything that the partnership agreement says, a resolution of the limited partnership that the limited partnership terminate:
 - (c) there has been no general partner of the limited partnership for 10 working days or more:
 - (d) there has been no limited partner of the limited partnership for 10 working days or more:
 - (e) the partnership agreement has lapsed for 10 working days or more.
- (2) A general partner or, if there is no general partner, a limited partner, may apply to the Court for an order extending the period of 10 working days referred to in subsection (1)(c) to (e).
- (3) The Court may extend the period even though the period has expired.

87 Continuing authority of general partners continues after terminating event

- (1) After a terminating event has occurred, the authority of each general partner to bind the limited partnership, and the other rights and obligations of the partners, continue (notwithstanding the terminating event) so far as may be necessary to wind up the affairs of the limited partnership and to complete any transactions begun but unfinished at the time of the terminating event.
- (2) The authority of each general partner to bind the limited partnership and the other rights and obligations of the partners do not continue after a terminating event except as provided by subsection (1).

88 Liquidation following terminating event

- (1) The limited partnership may, by a resolution of the limited partnership, appoint a liquidator to the limited partnership if a terminating event has occurred under section 86.
- (2) Nothing in subsection (1) affects the right of a person to apply for deregistration under section 98.

89 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.
- (2) Any of the following persons may apply:
 - (a) a general partner:
 - (b) a limited partner:
 - (c) a creditor:
 - (d) the Registrar.

90 Grounds for Court appointment of liquidator

- (1) The Court may appoint a liquidator to a limited partnership under section 89(1) on any of the following grounds:
 - (a) a terminating event under section 86 has occurred, and a liquidator has not been appointed:
 - (b) the sole general partner is adjudicated bankrupt or placed in liquidation:
 - (c) the sole general partner is incapacitated:
 - (d) any partner is unable to perform that person's obligations under this Act or the partnership agreement:
 - (e) 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:
 - (f) material breach by any partner of the partnership agreement:
 - (g) 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:
 - (h) the limited partnership is unable to pay its debts:
 - (i) in the opinion of the Court it is just and equitable that the limited partnership terminate.
- (2) In subsection (1)(c), 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

- (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
- (c) whose property is managed by a trustee corporation under section 32 or 33 of the Protection of Personal and Property Rights Act 1988.

91 Meaning of inability to pay debts

For the purposes of section 90(1)(h), 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
 - (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
- (b) if—
 - (i) an action or proceeding has been commenced against a general partner of the limited partnership for the payment of an amount owing by the limited partnership or that general partner in his or her capacity as a general partner; and
 - (ii) notice in writing of the action or proceeding has been served on the limited partnership; and
 - (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 general 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
- (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 general partner of the limited partnership in his or her capacity as a gen-

- eral partner, or a person authorised to be sued on behalf of the limited partnership, is returned unsatisfied; or
- (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.

Compare: 1908 No 89 s 17C

92 Application of Companies Act 1993

Part 16 of the Companies Act 1993 (except sections 241(1) to (4), 268, 287, 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—

- (a) a company registered under that Act were references to a limited partnership;
- (b) the board were references to the general partners;
- (c) a director were references to a general partner;
- (d) shareholders or persons entitled to surplus assets under the constitution of a company and the Companies Act 1993 were references to partners;
- (e) the constitution of a company were references to the partnership agreement of a limited partnership.

Compare: 1908 No 89 s 17B

93 Power of liquidator to enforce liabilities

- (1) This section applies to any person who is liable to pay or contribute to the payment of—
- (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.

Compare: 1908 No 89 s 17D

94 Actions stayed on liquidation

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 93 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.

Compare: 1908 No 89 s 17E

95 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—

- (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 partners in proportion to the capital contribution of each of them.

96 When Registrar must deregister limited partnership

On notification of the completion of the liquidation of a limited partnership, the Registrar must deregister it.

97 Deregistration

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

98 Deregistration on application of partners

- (1) The Registrar must deregister a limited partnership if there is sent or delivered to the Registrar a request in the prescribed form that—
 - (a) is made on 1 of the grounds set out in subsection (2); and
 - (b) complies with subsection (3).
- (2) The grounds on which a request under this section may be made are—

- (a) that the limited partnership has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with the partnership agreement and this Act; or
 - (b) that the limited partnership has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 89 for an order appointing a liquidator to the limited partnership.
- (3) The request must be made by—
- (a) a limited partner authorised to make the request by a resolution of the limited partnership; or
 - (b) the general partners; or
 - (c) any other person, if the partnership agreement so requires or permits.
- (4) A request that a limited partnership be deregistered under this section must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the limited partnership being deregistered.
- (5) Sections 318(5), 320 (except subsection (2)), and 321 to 323 of the Companies Act 1993 apply, with such modifications as may be necessary, to the deregistration of a limited partnership under this section as if references to—
- (a) a company were references to a limited partnership;
 - (b) a director were references to a general partner;
 - (c) a shareholder were references to a partner;
 - (d) the constitution were references to the partnership agreement;
 - (e) a board were references to the general partners.

99 Other provisions of Companies Act 1993 apply to deregistration of limited partnership

Sections 324 to 326 of the Companies Act 1993 apply, with such modifications as may be necessary, when a limited partnership has been deregistered under this Act as if references to—

- (a) a company were references to a limited partnership;
- (b) a director were references to a general partner;

- (c) a shareholder were references to a partner.

Voluntary administration

100 Part 15A of Companies Act 1993 applies to limited partnership

Part 15A of the Companies Act 1993 applies, with all necessary modifications, to a limited partnership as if references to—

- (a) a company were references to a limited partnership:
- (b) a director were references to a general partner:
- (c) a shareholder were references to a partner:
- (d) the board were references to the general partners.

Restoration to register

101 Restoration to register of limited partnerships

Sections 328 (except section 328(3)(a)) and 329 of the Companies Act 1993 apply, with all necessary modifications, to a limited partnership as if references to—

- (a) a company were references to a limited partnership:
- (b) a director were references to a general partner:
- (c) a shareholder were references to a partner:
- (d) the New Zealand register were references to the register of limited partnerships:
- (e) the Companies Act 1993 or regulations made under that Act were references to this Act or regulations made under this Act:
- (f) section 318(1)(d) of the Companies Act 1993 were references to section 98(2) of this Act.

102 When limited partnership restored to register

- (1) A limited partnership is restored to the register of limited partnerships when the Registrar enters the name of the limited partnership in the register.
- (2) A limited partnership that is restored to the register of limited partnerships is deemed to have continued in existence as if it had not been removed from the register.

*Registrar***103 Appeals from Registrar's decisions**

- (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—
 - (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.

Part 3**Overseas limited partnerships****104 Overseas limited partnership must register**

- (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 107 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 107 within 3 months of the commencement of this Act.
- (3) An overseas limited partnership that changes its name overseas must apply under section 35 within 10 working days of the change to change the name with which it is registered in New Zealand to its overseas name.
- (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

- (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.

Compare: 1993 No 105 s 334

105 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:
- (b) an overseas limited partnership does not carry on business in New Zealand merely because in New Zealand it—
 - (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
 - (iii) maintains a bank account; or
 - (iv) effects a sale of property through an independent contractor; or
 - (v) solicits or procures an order that becomes a binding contract only if the order is accepted outside New Zealand; or
 - (vi) creates evidence of a debt or creates a charge on property; or
 - (vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or
 - (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
 - (ix) invests its funds or holds property; or
 - (x) is a partner in a New Zealand limited partnership.

Compare: 1993 No 105 s 332.

106 Validity of transactions not affected

A failure by an overseas limited partnership to comply with section 104 does not affect the validity or enforceability of any transaction entered into by the overseas limited partnership.

Compare: 1993 No 105 s 335

107 Application for registration

- (1) An application for registration of an overseas limited partnership may be made by delivering to the Registrar an application that complies with subsection (2).
- (2) The application must—
 - (a) be in the prescribed form (if any); and
 - (b) be accompanied by evidence of formation of the overseas limited partnership in its home jurisdiction; and
 - (c) state the name and address of each general partner; and
 - (d) contain any other prescribed information; and
 - (e) be signed by or on behalf of the overseas limited partnership; and
 - (f) 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
 - (g) be accompanied by the prescribed fee (if any).

Compare: 1993 No 105 s 336

108 Registration of overseas limited partnership

- (1) As soon as is reasonably practicable after receiving a properly completed application for registration of an overseas limited partnership, the Registrar must register the overseas limited partnership by entering its name in the register of overseas limited partnerships maintained under section 54(1)(b).
- (2) This section is subject to section 34.

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

109 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—

- (a) written communications sent by, or on behalf of, the overseas limited partnership; and
 - (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.
- Compare: 1993 No 105 s 338.

110 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 if there is a change in—
- (a) the general partners, or in the names or addresses of the general partners, of the overseas limited partnership; or
 - (b) the address of the place of business or principal place of business of the overseas limited partnership; or
 - (c) any person or the address of any person authorised to accept service in New Zealand of documents on behalf of the overseas limited partnership.
- (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.

Compare: 1993 No 105 s 339

111 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 61 or 62.

- (2) The rectification or correction takes effect at the time that the rectification or correction is made to the overseas limited partnerships register.

Compare: 1993 No 105 s 339A

112 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.
- (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.
- (3) On registration of an overseas limited partnership under this Part, the Registrar must allocate a month to the overseas 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).
- (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),—
- (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.

Compare: 1993 No 105 s 340

113 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—
 - (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.
- (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
 - (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 114(3).

Compare: 1993 No 105 s 341

114 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 the assets in New Zealand of an overseas limited partnership and as if references to—
 - (a) a company registered under that Act were references to an overseas 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 partners;
 - (d) references to removal from the New Zealand register were references to ceasing to carry on business in New Zealand.
- (2) An application may be made to the Court for the liquidation of an overseas limited partnership whether or not the overseas limited partnership—
 - (a) is registered under this Act; or

- (b) has given public notice of an intention to cease to carry on business in New Zealand in accordance with section 113(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 113(1)(b); or
 - (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 overseas limited partnership has ceased to carry on business in New Zealand and is ready to be removed from the register established under section 54(1)(b).
- (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 overseas 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
 - (b) to bring an action in New Zealand in relation to the balance of a debt remaining unpaid after the completion of the liquidation.
- (5) On the commencement of section 13 of the Insolvency (Cross-Border) Act 2006, the Governor-General may, by Order in Council, amend subsection (1) to omit the words “the assets in New Zealand of”.

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

Part 4 Miscellaneous

115 Confidentiality of limited partner information

- (1) The Registrar must treat limited partner information as confidential and must not make it available to a member of the public.
- (2) The Official Information Act 1982 does not apply to limited partner information.
- (3) In this section, **limited partner information** means—
 - (a) any information relating to limited partners prescribed under section 52(1)(b); and
 - (b) the information referred to in section 52(1)(e); and
 - (c) the information referred to in section 57(1)(g); and
 - (d) any details relating to a limited partner notified under section 59(1); and
 - (e) the information referred to in section 76(2)(g) and (h).

116 Regulations

- (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 the form of an application for—
 - (i) a change of name under section 35:
 - (ii) registration under section 52(1)(a):
 - (b) prescribing reasons for refusal by the Registrar under section 55(2) of access to the registers:
 - (c) prescribing any further information that must be entered on the register of limited partnerships (*see* section 57(1)(i)) or the register of overseas limited partnerships (*see* section 57(3)(g)):
 - (d) regulating the search of the registers (*see* section 64(1)):
 - (e) prescribing any further search criteria under section 64(2)(i):
 - (f) prescribing fees to be paid under this Act or regulations made under this Act, and the method of their payment:
 - (g) 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:
 - (h) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.
- (2) In subsection (1)(a) and (g), **prescribing the form** includes specifying the content, means of communication, or any other requirement of an application without necessarily specifying the use of a particular form.

117 Part 2 of Partnership Act 1908 repealed

Part 2 of the Partnership Act 1908 is repealed.

118 Orders revoked

The following orders are revoked:

- (a) Partnerships (Architects) Order 1972 (SR 1972/81):
- (b) Partnerships (Law Practitioners) Order 1982 (SR 1982/120).

119 Companies Act 1993 amended

- (1) Section 357(1)(b) of the Companies Act 1993 is amended by inserting “and the Limited Partnerships Act 2008” after “Act”.
- (2) Section 357(2) of the Companies Act 1993 is amended by inserting “and the Limited Partnerships Act 2008” after “Act”.

120 Privacy Act 1993 amended

Schedule 2 of the Privacy Act 1993 is amended by inserting the following item in its appropriate alphabetical order:

Limited Partnerships Act 2008

Section 54

121 Other consequential amendments

- (1) The definition of **director** in section 2(1) of the Financial Reporting Act 1993 is amended by inserting “or limited partnership” after “special partnership” in each place where it appears.

- (2) The definition of **director** in section 2(1) of the Insurance Companies (Ratings and Inspections) Act 1994 is amended by inserting “or limited partnership” after “special partnership” in each place where it appears.
- (3) The definition of **director** in section 2(1) of the Securities Act 1978 is amended by inserting “or limited partnership” after “special partnership” in each place where it appears.
- (4) The definition of **director** in section 2(1) of the Securities Markets Act 1988 is amended by inserting “or limited partnership” after “special partnership” in each place where it appears.

122 Transitional provision for special partnerships

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.

Schedule
Activities that do not constitute
taking part in management of limited
partnership

s 31(3)

The following is the list of activities that do not constitute taking part in the management of a limited partnership:

- (a) taking part in a decision about the variation or replacement of the partnership agreement:
- (b) taking part in a decision about whether to approve or veto investments proposed to be made by the limited partnership—
 - (i) if the value of the investments would be more than half the value of the limited partnership's assets before the investment; or
 - (ii) as a member of an advisory committee of the limited partnership:
- (c) approving (including doing so as a member of an advisory committee of the limited partnership)—
 - (i) a change in the senior employees of a general partner or of the limited partnership; or
 - (ii) a change of contractors engaged by a general partner or the limited partnership:
- (d) approving (including doing so as a member of an advisory committee of the limited partnership) a change to the manner of operation of a general partner:
- (e) taking part in a decision about whether the general nature of the limited partnership business should change:
- (f) taking part in a decision about whether to dispose of the business of the limited partnership or to acquire another business:
- (g) taking part in a decision about whether a person should become or cease to be a partner:
- (h) taking part in a decision about whether the limited partnership should end or be terminated:
- (i) enforcing rights under the partnership agreement (unless those rights are to carry out management functions):
- (j) reviewing and approving the accounts of the limited partnership:

- (k) being engaged under a contract by the limited partnership or by a general partner of the limited partnership (unless the contract is to carry out management functions):
- (l) acting in the capacity as a director or employee of, or consultant or contractor to, or a shareholder in, a general partner that is a body corporate (including any right, to appoint or remove directors and employees, attached to shares held by a shareholder):
- (m) taking part in a decision to determine an actual or potential conflict of interest involving a partner (or partners) and the limited partnership:
- (n) discussing the strategic direction or financial prospects of the business of the limited partnership:
- (o) consulting or advising a general partner or general partners about the activities of the limited partnership or about its accounts (including doing so as a member of an advisory committee of the limited partnership):
- (p) acting as a director or employee of, or contractor to, any person in which the limited partnership has an interest:
- (q) bringing a derivative action on behalf of the limited partnership in accordance with this Act.

Legislative history

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|-----------------|---|
| 7 August 2007 | Introduction (Bill 140–1) |
| 21 August 2007 | First reading and referral to Commerce Committee |
| 4 December 2007 | Reported from Commerce Committee (Bill 140–2) |
| 5 March 2008 | Second reading |
| 6 March 2008 | Divided from Limited Partnerships Bill (Bill 140–2) by committee of the whole House as Bill 140–3 |
| 11 March 2008 | Third reading |
| 13 March 2008 | Royal assent |

This Act is administered by the Ministry of Economic Development.
