



SAMOA

PARTNERSHIP ACT 1975

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DISSOLUTION OF
PARTNERSHIP AND ITS
CONSEQUENCES**

PARTNERSHIP ACT 1975

1975

No. 8

AN ACT to amend and consolidate the law relating to partnership.

[Assent and commencement date: 11 August 1975]

**PART 1
PRELIMINARY**

1. Short title – The short title of this Act is the Partnership Act 1975.

2. Interpretation – In this Act, unless the context otherwise requires:

“business” includes a trade, occupation or profession;

“Court” includes a Court and Judge having jurisdiction in the case;

“firm” means the persons collectively who have entered into partnership with one another;

“firm name” means the name of the firm.

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

PART 2 NATURE OF PARTNERSHIP

4. Definition of partnership – (1) Partnership is the relation which subsists between persons carrying on a business in common with a view to profit.

(2) The relation between members of any company or association registered as a company under any Act in force and relating to the registration of companies, or formed or incorporated by or in pursuance of any other Act, is not a partnership within the meaning of this Act.

5. Rules for determining existence of partnership – In determining whether a partnership does or does not exist, regard shall be had to the following rules:

- (a) joint tenancy, tenancy in common, joint property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
- (b) the sharing of gross return does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
- (c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that the person is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with

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the profits of a business does not itself make the person a partner in the business.

**PART 3
RELATIONS OF PARTNERS TO PERSONS DEALING
WITH THEM**

6. Power of partner to bind the firm – (1) A partner is an agent of the firm and his or her other partners for the purpose of the business of the partnership.

(2) The acts of a partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which the partner is a member bind the firm and his or her partners, unless:

- (a) the partner so acting has in fact no authority to act for the firm in the particular matter; and
- (b) the person with whom the partner is dealing either knows that the partner has no authority or does not know or believe him or her to be a partner.

7. Partners bound by acts on behalf of firm – An act or instrument relating to the business of the firm, and done or executed in the firm name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners:

PROVIDED THAT this section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

8. Partner using credit of firm for private purposes – If one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless the partner is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

9. Effect of notice that firm will not be bound by acts of partner – If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the

agreement is binding on the firm with respect to persons having notice of the agreement.

10. Liability of partners – A partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he or she is a partner, and after his or her death the partners' estate is also severally liable in a due course of administration for such debts and obligations as far as they remain unsatisfied, but subject to the prior payment of his or her separate debts.

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

12. Misapplication of money received for firm, etc. – In the following cases:

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

13. Joint and several liability – A partner is liable jointly with his or her co-partners and also severally for everything for which the firm, while he or she is a partner therein, becomes liable under section 11 or 12.

14. Improper employment of trust property for partnership purposes – If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein:

PROVIDED THAT this section does not:

- (a) affect any liability incurred by any partner by reason of his or her having notice of a breach of trust; and
- (b) prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

15. Persons liable by “holding out” - (1) A person who:

- (a) by words spoken or written, or by conduct, represents himself or herself; or
- (b) knowingly suffers himself or herself to be represented,—

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

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

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

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

18. Liabilities of incoming and outgoing partners — (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he or she became a partner.

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

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

19. Revocation of continuing guaranty by change in firm

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

**PART 4
RELATIONS OF PARTNERS
TO ONE ANOTHER**

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

21. Partnership property – (1) All property and rights and interests in property originally brought into the partnership stock, or acquired (whether by purchase or otherwise) on account of the firm or for the purposes and in the course of the partnership business, are called in this Act “partnership property”, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land not being itself partnership property are partners as to profit made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first-mentioned at the date of the purchase.

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

23. Conversion into personal estate of land held as partnership property – Where land has become partnership property it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his or her executors or administrators, as personal and not real estate.

24. Procedure against partnership property for partner's separate judgment debt – (1) Execution shall not issue against any partnership property except on a judgment against the firm.

(2) The Supreme Court or a Judge thereof may:

- (a) on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon; and
- (b) by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money coming to him or her in respect of the partnership; and
- (c) direct all accounts and inquiries and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case require.

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

25. Rules as to interests and duties of partners – The interests of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, subject to any agreement (express or implied) between the partners, by the following rules:

- (a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;
- (b) the firm must indemnify a partner for payments made and personal liabilities incurred by the partner—
 - (i) in the ordinary and proper conduct of the business of the firm; or
 - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he or she has agreed to subscribe is entitled to interest at the rate of 5% per annum from the date of the payment or advance;
- (d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him or her;
- (e) a partner may take part in the management of the partnership business;
- (f) no partner shall be entitled to remuneration for acting in the partnership business;
- (g) no person may be introduced as a partner without the consent of all existing partners;
- (h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the

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partnership business without the consent of all existing partners;

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

26. Expulsion of partner – A majority of the partners cannot expel a partner unless a power to do so has been conferred by express agreement between the partners.

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

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

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

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

29. Duty to render accounts, etc. – Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his or her legal representatives.

30. Partners to account for private profits – (1) A partner must account to the firm for any benefit derived by the partner without the consent of the other partners from any transaction concerning the partnership, or from any use by him or her of the partnership property, name, or business connection.

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

31. Partner not to compete with firm – If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, the partner must account for and pay over to the firm all profits made by him or her in that business.

32. Rights of assignee of share in partnership – (1) An assignment by a partner of his or her share in the partnership, either absolute or by way of mortgage, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business of affairs, or to require any account of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

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

PART 5 DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES

33. Dissolution by expiration or notice – (1) Subject to an agreement between the partners, a partnership is dissolved, if entered into for:

- (a) a fixed term, by the expiration of that term;
- (b) a single adventure or undertaking, by the termination of that adventure or undertaking;

(c) an undefined time, by any partner giving notice to the other or others of his or her intention to dissolve the partnership.

(2) For subsection (1)(c), the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

34. Dissolution by death, bankruptcy, or charge – (1)

Subject to any agreement between the partners, a partnership is dissolved as regards all the partners by the death or bankruptcy of a partner.

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

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

36. Dissolution by the Court – On application by a partner, the Court may dissolve the partnership in any of the following cases:

- (a) if a partner is shown to the satisfaction of the Court to be of permanently unsound mind, in which case the application may be made as well on behalf of that partner by his or her committee or next friend or person having title to intervene as by any other partner;
- (b) if a partner, other than the partner suing, becomes in any other way permanently incapable of performing his or her part of the partnership contract;
- (c) if a partner, other than the partner suing, has been guilty of such conduct as in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
- (d) if a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership

agreement, or otherwise so conducts himself or herself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him or her;

- (e) if the business of the partnership can only be carried on at a loss;
- (f) if circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

37. Rights of persons dealing with firm against apparent members – (1) If a person deals with a firm after a change in its constitution, the person is entitled to treat all apparent members of the old firm as still being members of the firm until the person has notice of the change.

(2) An advertisement in a newspaper circulating in Samoa is notice as to persons who had no dealings with the firm before the date of the dissolution or change so advertised.

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

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

39. Continuing authority of partners for purposes of winding up – After the dissolution of a partnership, the authority of a partner to bind the firm, and the other rights and obligations of the partners, continue (despite the dissolution) so far as may be necessary to wind-up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

PROVIDED THAT the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not

affect the liability of a person who has after the bankruptcy represented himself or herself, or knowingly suffered himself or herself to be represented, as a partner of the bankrupt.

40. Rights of partners as to application of partnership property – On the dissolution of a partnership, a partner is entitled as against the other partners in the firm, and all persons claiming through the partners for their interests as partners, to have:

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

and for that purpose a partner or his or her representatives may, on the termination of the partnership, apply to the Court to wind-up the business and affairs of the firm.

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

- (a) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

42. Rights where partnership dissolved for fraud or misrepresentation – If a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties to it, the party entitled to rescind is, without prejudice to any other right, entitled:

- (a) to a lien or right of retention of the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him or her for the purchase of a share in the partnership and for any capital contributed by the party entitled to rescind; and
- (b) to stand in the place of the creditors of the firm for any payments made by him or her in respect of the partnership liabilities; and
- (c) to be indemnified, by the person guilty of the fraud or making the representation, against all debts and liabilities of the firm.

43. Right of outgoing partner to share profits made after dissolution – (1) If:

- (a) a member of a firm dies or otherwise ceases to be a partner; and
- (b) the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his or her estate,–

then, in the absence of any agreement to the contrary, the outgoing partner or his or her estate is entitled, at the option of himself or herself or the outgoing partners' representative, to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his or her share of the partnership assets, or to interest at the rate of 5% per annum on the amount of his or her share of the partnership assets.

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

44. Retiring or deceased partner's share to be a debt –
Subject to any agreement between the partners, the amount due

from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death.

45. Distribution of assets on final settlement of accounts –

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

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

46. Repeal - The Partnership Act 1908 (NZ) is repealed as part of the law of Samoa.

REVISION NOTES 2008–2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “every” and “any” changed to “a/an”;
 - (ii) Present tense drafting style:
 - o “shall not” changed to “does not”;
 - o “hereby” removed;
 - (iii) Use of plain language:
 - o “in respect of” or “in case of” changed to “for”;
 - o “where” changed to “if”;
 - o “notwithstanding” changed to “despite”;
 - o “for the time being” deleted;
 - (iv) Parts numbers inserted for Part Headings;
 - (v) Symbols described in words changed to symbol;
 - (vi) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections;
 - (vii) Sections 6, 24(2) and 40 paragraphed;
 - (viii) Sections 15 and 42 paragraphed and the provisos now become subsection (2).
 - (ix) Part numbers changed to decimal

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



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*This Act is administered by
the Ministry of Justice and Courts Administration.*
