

**VIRGIN ISLANDS**

**LIMITED PARTNERSHIP ACT, 2017**

**ARRANGEMENT OF SECTIONS**

*Section*

**PART I**

**PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Act binds the Crown.

**PART II**

**FORMATION OF LIMITED PARTNERSHIPS**

*Nature of Limited Partnership*

4. Limited partnerships.
5. Legal personality and capacity.
6. Constitution of limited partnership.
7. Limited partnership agreement.

*Registration of Limited Partnership*

8. Application for registration of limited partnership.
9. Registration of limited partnership.
10. Change in registered particulars.

*Name of Limited Partnership*

11. Name to denote limited partnership.
12. Reservation of name.
13. Restriction on names.
14. Foreign character names.
15. Change of registered name or registered foreign character name.
16. Registrar may direct change of registered name.
17. Effect of change of registered name.

### **PART III**

#### **REGISTERED OFFICE AND REGISTERED AGENT**

18. Registered office.
19. Registered agent.
20. Registered agent acting on instructions of general partners.
21. Change of registered office or registered agent.
22. Change of registered office where registered agent changes address.
23. Resignation of registered agent.
24. Registered agent ceasing to be eligible to act.

### **PART IV**

#### **PARTNERS AND LIMITED PARTNERSHIPS**

25. General provisions concerning partners.
26. Admission of partners to partnership.

##### *General Partners*

27. General partner.
28. Liability of general partners.
29. General partners, responsibilities and powers, etc.
30. Duties of general partner.
31. General partner an agent of limited partnership with power to bind.

##### *Limited Partners*

32. Limited partners.
33. Liability of limited partner.
34. Limited partner not agent of limited partnership.
35. Liability of limited partner taking part in management of partnership.
36. Return of limited partner's contributions.
37. Limitation of liability under section 36.

##### *Transactions Between Partner and Limited Partnership*

38. Partners' dealing with limited partnership.
39. Indemnity of partners.
40. Failure to perform.

##### *Partnership Interests*

41. Partnership interest.

42. Transfer, assignment etc. of partnership interest.
43. Admission of transferee as partner.
44. Grant of a security interest over a partnership interest.
45. Provisions relating to transfer, assignment and security interests.

#### *Limited Partnership*

46. Partnership assets.
47. Vesting of assets and rights.
48. Assignment of uncalled capital.
49. Institution of legal proceedings.
50. Enforcement of judgments.
51. Execution of instruments.
52. Service of documents.

#### *Books and Records*

53. Registers of general and limited partners.
54. Financial records and underlying documentation.
55. Inspection of books and records.

### **PART V**

#### **REGISTRATION OF CHARGES**

56. Interpretation for this Part.
57. Governing law of charge over assets of a limited partnership.
58. Limited partnership to keep register of charges.
59. Registration of charges.
60. Variation of registered charge.
61. Satisfaction or release of charge.
62. Filing of application under section 59 or 60.
63. Priority of relevant charges.
64. Priority of other charges.
65. Exceptions to sections 63 and 64.

### **PART VI**

#### **CONTINUATION**

66. Foreign limited partnership may continue under this Act.
67. Application to continue under this Act.
68. Continuation.
69. Effect of continuation.
70. Continuation under foreign law.

## **PART VII**

### **MERGER, CONSOLIDATION AND ARRANGEMENTS**

71. Interpretation for this Part.
72. Merger and consolidation of limited partnerships.
73. Plan of merger or consolidation.
74. Application to register merger or consolidation.
75. Registration of surviving or consolidated limited partnership.
76. Effect of merger or consolidation.
77. Merger or consolidation with foreign limited partnership.
78. Registration and effect of merger or consolidation with foreign limited partnership.
79. Redemption of minority partnership interests.
80. Right of limited partner to dissent.
81. Procedure following resolution.
82. Arrangements.
83. Approval of plan of arrangement by Court.
84. Arrangement where limited partnership in liquidation under Part VII.
85. Schemes of arrangement.

## **PART VIII**

### **TERMINATION, WINDING UP AND DE-REGISTRATION**

#### *Termination and Winding up*

86. Termination of limited partnership.
87. Solvent and insolvent limited partnerships and solvency resolutions.
88. Procedure following termination of solvent limited partnership.
89. Winding up of affairs of limited partnership.
90. Distribution of assets of limited partnership.
91. Preparation of final account.

#### *Insolvent Limited Partnerships*

92. Insolvent limited partnership.
93. Court may appoint liquidator.
94. Application of Insolvency Act, 2003.

#### *Striking off and De-registration*

95. Registrar may strike limited partnership off Register.
96. Appeal.
97. Effect of striking off.
98. De-registration of limited partnership struck from the Register.

99. Restoration of limited partnership to Register.
100. Declaration by Court that de-registration void.
101. Application to restore de-registered limited partnership to Register.
102. Court's powers on hearing.
103. Effect of restoration.
104. Appointment of Official Receiver as liquidator.
105. Assets of de-registered limited partnership.
106. Disclaimer.

## **PART IX**

### **ADMINISTRATION AND GENERAL**

107. Registrar of Limited Partnerships.
108. Registers.
109. Filing of documents.
110. Inspection of Registers and documents filed.
111. Constructive notice.
112. Certificate of good standing.
113. Issue of miscellaneous certificates.
114. Form of certificate.
115. Fees and penalties to be paid to Registrar.
116. Recovery of penalties, etc.
117. Regulations.
118. Approval of forms by the Commission.
119. Declaration by Court.
120. Exemptions from tax.
121. Rules of common law and equity apply.
122. Transitional provisions.

### **SCHEDULE**

**I Assent**  
**(Sgd.) Augustus J. U. Jaspert,**  
**Governor.**  
**10th January, 2018**

**VIRGIN ISLANDS**

**No. 24 of 2017**

An Act to establish a new regime for the formation, regulation, termination and de-registration of limited partnerships and for incidental and connected matters.

[Gazetted 6<sup>th</sup> February, 2018]

**PART I**

**PRELIMINARY**

ENACTED by the Legislature of the Virgin Islands as follows:

- 1. (1) This Act may be cited as the Limited Partnership Act, 2017. Short title and commencement.  
 (2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.
- 2. In this Act, unless the context otherwise requires, Interpretation.
  - “approved form” means a form approved by the Commission under section 119;
  - “BVI company” has the same meaning as “company” in the BVI Business Companies Act, 2004; No. 16 of 2004
  - “Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001; No. 12 of 2001

“commitment” means any assets or services that a partner agrees to contribute to the capital of the limited partnership, in the capacity of partner, but does not include any moneys agreed to be lent by the partner to the limited partnership;

“contribution” means any assets or services that a partner contributes to the capital of the limited partnership, in the capacity of partner, but does not include any moneys lent by the partner to the limited partnership;

“Court” means the High Court;

“document” means a document in any form and includes

- (a) any writing or printing on any material;
- (b) information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;
- (c) books or drawings; and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting paragraphs (a) to (d), includes any court application or order, any other legal process and any notice;

“existing limited partnership” means a limited partnership formed under Part VI of the Partnership Act, 1996, but excludes a limited partnership re-registered under this Act in accordance with the Schedule;

No. 5 of 1996

“file”, in relation to a document, means to file the document with the Registrar;

“foreign limited partnership” means a partnership formed or established under the law of a jurisdiction other than the Virgin Islands with

- (a) one or more partners who are liable for all the debts and liabilities of the partnership; and
- (b) one or more partners whose liability for the debts and liabilities of the partnership is limited;

“general partner” means a person who is admitted to a limited partnership

- (a) as a general partner in accordance with the limited partnership agreement or this Act;

- (b) as a transferee of a general partnership interest, or part of a general partnership interest, under section 43 (1); or
- (c) as a general partner of a surviving or resulting limited partnership in accordance with Part VII;

“general partnership interest” means the partnership interest of a general partner in that capacity;

“Insolvency Act liquidator” means a liquidator appointed under the Insolvency Act, 2003;

No. 5 of 2003

“Internet site”, in relation to the Commission, means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission;

“liability” includes an obligation;

“limited partner” means a person who is admitted to a limited partnership

- (a) as a limited partner in accordance with the limited partnership agreement;
- (b) as a transferee of a limited partnership interest, or part of a limited partnership interest, under section 43(2); or
- (c) as a limited partner of a surviving or resulting limited partnership in accordance with Part VII;

“limited partnership” means

- (a) a limited partnership registered under section 9;
- (b) an existing limited partnership re-registered under this Act in accordance with the Schedule;
- (c) a partnership continued as a limited partnership in the Virgin Islands under section 68;
- (d) a consolidated limited partnership within the meaning of section 71; or
- (e) a limited partnership registered under section 78 on the consolidation of one or more limited partnerships with one or more foreign limited partnerships;

Schedule

“limited partnership agreement” means the agreement referred to in section 7;



- “limited partnership interest” means the partnership interest of a limited partner in that capacity;
- “model agreement” means the model limited partnership agreement prescribed by the Regulations;
- “Official Receiver” means the Official Receiver appointed under section 488 of the Insolvency Act; No. 5 of 2003
- “partner” means a general partner or a limited partner;
- “partnership interest” has the meaning specified in section 41;
- “prescribed” means prescribed by Regulations made under this Act;
- “register” in relation to act done by the Registrar, means to register in any register maintained by the Registrar under this Act or the Regulations;
- “registered agent”, in relation to a limited partnership, has the meaning specified in section 19(3);
- “registered foreign character name”, in relation to a limited partnership, means the foreign character name with which the limited partnership is registered under section 9;
- “registered number”, in relation to a limited partnership, means the unique number allocated to the limited partnership under section 9(1)(c), 68(1)(c) or 75(1)(c) or paragraph 5(1)(c) of the Schedule; Schedule
- “registered office”, in relation to a limited partnership, means the place specified in the Register of Limited Partnerships as the registered office of the limited partnership;
- “Register of Approved Registered Agents” means the Register of Approved Registered Agents maintained under section 95 of the BVI Business Companies Act, 2004; No. 16 of 2004
- “register of general partners” means the register of general partners maintained under section 53(1)(a);
- “register of limited partners” means the register of limited partners maintained under section 53(1)(b);
- “Register of Limited Partnerships” means the register maintained by the Registrar in accordance with section 108(1)(a);
- “Register of Registered Charges” means the register maintained by the Registrar in accordance with section 108(1)(b);
- “Registrar” means the Registrar of Limited Partnerships referred to in section 107; and

3. This Act binds the Crown.

Act binds the  
Crown.

## PART II

### FORMATION OF LIMITED PARTNERSHIPS

#### *Nature of Limited Partnership*

4. (1) A limited partnership may be formed for the purpose of carrying on any lawful business or activity, whether or not for profit, in the Virgin Islands or elsewhere. Limited partnerships.

(2) A limited partnership

- (a) is formed on the date of its registration under section 9; and
- (b) continues in existence until it is de-registered under Part VIII.

(3) Subsection (2)(a) does not apply to

- (a) a foreign partnership continued as a limited partnership under section 68;
- (b) an existing limited partnership re-registered under this Act in accordance with the Schedule; or
- (c) a consolidated limited partnership within the meaning of section 71; or
- (d) a limited partnership registered under section 78 on the consolidation of one or more limited partnerships with one or more foreign limited partnerships.

5. (1) A limited partnership has legal personality unless, on the election of the general partners under section 8(2)(b), it is registered without legal personality. Legal personality and capacity.

(2) A limited partnership that has legal personality is not a body corporate.

(3) Subject to this Act, any other enactment and the limited partnership agreement, a limited partnership that has legal personality has

- (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.

(4) The act of a limited partnership that has legal personality and the transfer of an asset to or by a limited partnership that has legal personality shall not be invalid

merely because the limited partnership did not have the capacity, right or power to do the act or to transfer or take a transfer of the asset.

6. (1) A limited partnership shall have at least one general partner and at least one limited partner, each of whom have consented in writing to be a general or limited partner, as the case may be. Constitution of limited partnership.

(2) A person may be both a general partner and a limited partner of the same limited partnership, but a person cannot be counted as both a general partner and a limited partner for the purposes of subsection (1).

(3) The registered agent may be a limited partner of the limited partnership.

(4) If at any time a limited partnership does not have a general partner, the limited partners may, within ninety days from the date that the limited partnership ceased to have a general partner, or such shorter period as may be specified in the limited partnership agreement, admit a person as a general partner of the limited partnership.

7. (1) Subject to subsection (2), a limited partnership shall have a written limited partnership agreement that Limited partnership agreement.

(a) shall provide for the rights and obligations of the partners between themselves; and

(b) may provide for the affairs of the limited partnership and the conduct of its business and activities.

(2) The model agreement is deemed to be adopted as the written limited partnership agreement of a limited partnership, except as excluded or modified by, or inconsistent with, the signed limited partnership agreement.

(3) On the registration of a limited partnership, the limited partnership agreement, including all amendments made in accordance with subsection (5), is binding as between

(a) each partner, including any subsequent partners, and their assigns; and

(b) in the case of a limited partnership with legal personality, the limited partnership and each partner, including any subsequent partners, and their assigns.

(4) The limited partnership agreement has no effect to the extent that it contravenes or is inconsistent with this Act or any Regulations made there under.

(5) The limited partnership agreement may be amended

(a) without limiting any other formalities required by law, and subject to the limited partnership agreement, by written agreement signed by or on behalf of each partner; or

- (b) in accordance with the procedure specified in the limited partnership agreement.

*Registration of Limited Partnership*

**8.** (1) An application for the registration of a limited partnership may only be filed by the proposed registered agent. Application for registration of limited partnership.

(2) An application to register a limited partnership shall be made to the Registrar by filing

- (a) a statement signed by or on behalf of each general partner specifying
  - (i) the name of the limited partnership and its foreign character name, if any;
  - (ii) the address of the registered office on registration;
  - (iii) the name and address of the person who will be the registered agent of the limited partnership on registration;
  - (iv) the name and address of each general partner;
  - (v) the term for which the limited partnership is entered into or, if for unlimited duration, a statement to that effect; and
  - (vi) such other particulars as may be prescribed;
- (b) if the general partners of a limited partnership wish to elect that the limited partnership shall not have legal personality, a declaration signed by or on behalf of each general partner stating that the limited partnership shall not have legal personality;
- (c) a document signed by the proposed registered agent signifying his or her consent to act as registered agent; and
- (d) such other documents as may be prescribed.

(3) An election made under this section that a limited partnership shall not have legal personality is irrevocable and a failure to make such an election is final.

(4) For the purposes of this section, “proposed registered agent” means the person proposed as the registered agent in the statement filed under subsection (2).

**9.** (1) Where the Registrar is satisfied that an application for the registration of a limited partnership complies with this Act and the Regulations, the Registrar shall Registration of limited partnership.

- (a) register the documents filed and register the limited partnership in the Register of Limited Partnerships;
- (b) record in the Register of Limited Partnerships

- (i) the address specified in the application in accordance with section 8(2)(a)(ii), as the registered office of the limited partnership;
  - (ii) the person specified in the application in accordance with section 8(2)(a)(iii), as the registered agent of the limited partnership; and
  - (iii) the name and address of each general partner specified in the application in accordance with section 8(2)(a)(iv);
- (c) allot a unique number to the limited partnership; and
  - (d) issue a certificate of registration, which shall state whether or not the limited partnership has legal personality.

(2) A certificate of registration issued under subsection (1) is conclusive evidence that

- (a) the requirements of this Act as to registration have been complied with; and
- (b) the limited partnership is formed on the date specified in the certificate.

(3) Each person specified as a general partner in the statement filed under section 8(2)(a) is considered to become a general partner on the registration of the limited partnership.

**10.** (1) The general partners of a limited partnership shall ensure that a notice of change in registered particulars, signed by one or more general partners, is filed if, during the continuance of a limited partnership, there is a change in

Change in registered particulars.

- (a) any information registered in relation to a general partner;
- (b) any particular referred to in section 8(2)(a)(vi); or
- (c) any information contained in a document referred to in section 8(2)(d).

(2) The general partners shall ensure that a notice of change of registered particulars under subsection (1) is filed within fourteen days of the change to which it relates.

(3) If a notice of change of registered particulars is not filed in accordance with this section, the partnership and each general partner commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

*Name of Limited Partnership*

**11.** (1) The name of a limited partnership shall end with

Name to denote limited partnership.

- (a) the words “Limited Partnership”; or
- (b) the abbreviation “L.P.” or “LP”.

(2) The name of a limited partnership may include the name of any partner.

(3) A person that is not a limited partnership shall not use the words “limited partnership” or the abbreviations “L.P.” or “LP” in such a way that suggests to a reasonable person that the person, or the business carried on by the person, is a limited partnership.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

**12.** (1) The Registrar may, upon a request made by a registered agent, reserve for ninety days a name for future adoption by a limited partnership under this Act. Reservation of name.

(2) The Registrar may refuse to reserve a name if the Registrar is not satisfied that the name is one under which a limited partnership could be registered under this Act.

**13.** (1) The Registrar shall not register a limited partnership under a name Restriction on names.

(a) the use of which would contravene another enactment or the Regulations;

(b) that

(i) is identical to the registered name of another limited partnership, an existing limited partnership or a BVI company; or

(ii) is so similar to the registered name of a limited partnership, an existing limited partnership or a BVI company that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;

(c) that contains a restricted word, phrase or abbreviation, unless the Commission has given its prior written consent to the use of the word, phrase or abbreviation; or

(d) that, in the opinion of the Registrar, is offensive, objectionable or contrary to public policy or to the public interest.

(2) Notwithstanding subsection (1)(b)(ii), the Registrar may register a limited partnership under a name that is similar to the name of an existing limited partnership or a BVI company with the written consent of the existing limited partnership or BVI company.

(3) For the purposes of subsection (1)(c), the Commission may, by notice published in the *Gazette*, specify words, phrases or abbreviations as restricted words, phrases or abbreviations.

**14.** (1) The Registrar may, on an application made in accordance with the Regulations, register a limited partnership with a foreign character name in addition to its registered name. Foreign character names.

(2) The Regulations may provide for

(a) forms of, and requirements relating to, foreign character names;

- (b) the approval and registration of foreign character names;
- (c) the use of registered foreign character names; and
- (d) the de-registration of registered foreign character names by the Registrar for cause or on application.

**15.** (1) Subject to the limited partnership agreement, a limited partnership may apply to the Registrar to change its registered name or its registered foreign character name. Change of registered name or registered foreign character name.

(2) Where the Registrar is satisfied that the proposed new name or new foreign character name is a name by which the limited partnership could be registered under this Part, the Registrar shall

- (a) register the change of name or foreign character name; and
- (b) issue a certificate of change of registered name or of change of foreign character name to the limited partnership.

**16.** (1) Where the Registrar considers, on reasonable grounds, that the registered name of a limited partnership does not comply with this Part, the Registrar may, by written notice, direct the limited partnership to apply to change its registered name on or before a date specified in the notice, being a date not less than twenty one days after the date of the notice. Registrar may direct change of registered name.

(2) If the limited partnership fails to file an application to change its name to a name acceptable to the Registrar within the period specified in the notice, the Registrar may register a new name for the limited partnership, being a name under which the limited partnership could be registered under this Part.

(3) If the Registrar registers a new name for a limited partnership under subsection (2), the Registrar shall

- (a) issue a certificate of change of registered name to the limited partnership; and
- (b) advertise the change of registered name in the *Gazette*.

**17.** (1) A change of the registered name or the registered foreign character name of a limited partnership Effect of change of registered name.

- (a) takes effect from the date the certificate of change of name is issued by the Registrar; and
- (b) does not affect any rights or liabilities of the limited partnership, or any legal proceedings by or against the limited partnership in its name.

(2) Any legal proceedings commenced, or that could have been commenced, by or against a limited partnership under its former registered name may be continued or commenced by or against the limited partnership under its new name.

### PART III

#### REGISTERED OFFICE AND REGISTERED AGENT

**18.** (1) A limited partnership shall, at all times, have a registered office in the Virgin Islands. Registered office.

(2) The registered office of a limited partnership

- (a) shall be a physical address in the Virgin Islands; and
- (b) if the registered office of the limited partnership is at the office of its registered agent, that fact shall be stated in the description of the address in the application filed under section 8(2) or the notice of change of registered office filed under section 22.

**19.** (1) A limited partnership shall at all times have a registered agent. Registered agent.

(2) A limited partnership shall not appoint a person as its registered agent unless the person

- (a) has consented to act as registered agent; and
- (b) is qualified to act as registered agent under subsection (4).

(3) Unless the last registered agent of the limited partnership has resigned in accordance with section 23 or ceased to be the registered agent of the limited partnership in accordance with section 24, the registered agent of a limited partnership is

- (a) the person specified as the first registered agent of the limited partnership in the application filed under section 8(2); or
- (b) if one or more notices of change of registered agent have been filed under section 21, the person specified as the registered agent of the limited partnership in the last such notice to be registered by the Registrar.

(4) No person shall be, or agree to be, the registered agent of a limited partnership unless that person

- (a) holds a licence under the Company Management Act, 1990; or No. 8 of 1990
- (b) holds a licence under the Banks and Trust Companies Act, 1990 that authorises it to provide registered agent services. No. 9 of 1990

(5) Subject to section 24(8), a person who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

(6) If a limited partnership contravenes subsection (1) or (2), the partnership and each general partner commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.



**20.** Subject to the limited partnership agreement, a registered agent shall

Registered agent acting on instructions of general partners.

- (a) act on the instructions of the general partners if those instructions are contained in a resolution passed by the general partners and a copy of the resolution is made available to the registered agent; and
- (b) recognise and accept the admission of a person as a general partner or the cessation of a general partner.

**21.** (1) A limited partnership may change the location of its registered office or its registered agent, despite any provision to the contrary in the limited partnership agreement.

Change of registered office or registered agent.

(2) A limited partnership that wishes to change its registered office or registered agent shall file a notice of change of registered office or registered agent which, in the case of a change of registered agent, shall be endorsed by the new registered agent with his or her agreement to act as registered agent.

(3) A notice of change of registered office or registered agent may be filed only by

- (a) the registered agent of the limited partnership; or
- (b) a legal practitioner in the Virgin Islands acting on behalf of the limited partnership for the purposes of filing the notice.

(4) The specific circumstances in which a legal practitioner is not entitled to file a notice of change of registered office or registered agent on behalf of a limited partnership may be prescribed by Regulations.

(5) Where a legal practitioner files a notice of change of registered office or registered agent under subsection (3), the legal practitioner may pay a fee (including any outstanding fee the limited partnership may be liable to) in relation to the filing of the notice.

(6) The filing by a legal practitioner of a notice of change of registered office or registered agent does not absolve a limited partnership from any liability it has to its registered agent.

(7) For the purposes of subsection (3)(a), in the case of a notice of change of registered agent, "registered agent" means the existing registered agent.

(8) A change of registered office or registered agent takes effect on the registration by the Registrar of the notice filed under subsection (2).

(9) As soon as reasonably practicable after registering a notice of change of registered agent, the Registrar shall send a copy of the notice endorsed by the Registrar with the time and date of registration

- (a) to the new registered agent of the limited partnership; and
- (b) where the notice was filed by a legal practitioner, to the former registered agent.

**22.** (1) This section applies in relation to a limited partnership where

Change of registered office where registered agent changes address.

- (a) the registered office of the limited partnership is located at the principal office of its registered agent in the Virgin Islands; and
- (b) the registered agent of the limited partnership changes the location of its principal office within the Virgin Islands.

(2) Where this section applies to a limited partnership, its registered agent may change the registered office of the limited partnership to the changed location of its principal office in the Virgin Islands by filing a notice in the approved form with the Registrar

- (a) stating that
  - (i) the registered agent has moved the location of his or her principal office in the Virgin Islands; and
  - (ii) the limited partnership intends its registered office to continue to be the principal office of the registered agent; and
- (b) specifying the new address of its principal office in the Virgin Islands.

(3) A change of registered office under this section takes effect on the registration by the Registrar of the notice filed under subsection (2).

(4) A person who acts as the registered agent for more than one limited partnership may file a single notice which combines one or more notices specified in subsection (2).

**23.** (1) A person may resign as the registered agent of a limited partnership by

Resignation of registered agent.

- (a) giving not less than ninety days written notice of his or her intention to resign as registered agent of the limited partnership on the date specified in the notice to a person specified in subsection (2);
- (b) indicating in writing on the written notice that the Register of Approved Registered Agents in the Virgin Islands with their names and addresses may be found on the Commission's Internet site; and
- (c) filing a copy of the written notice.

(2) A notice under subsection (1) shall be sent to a general partner of the limited partnership at the partner's last known address or, if the registered agent is not aware of the identity of any general partner, to the person from whom the registered agent last received instructions concerning the limited partnership.

(3) If a limited partnership does not change its registered agent in accordance with section 22 on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the limited partnership's registered agent.

(4) Unless the limited partnership has previously changed its registered agent, the resignation of a registered agent is effective the day after the notice of resignation is registered by the Registrar.

(5) A registered agent wishing to rescind a notice of intention to resign (the “resignation notice”) shall

- (a) give at least fourteen days written notice of intention to rescind the resignation notice on the date specified in the notice to the person to whom the registered agent sent the resignation notice; and
- (b) file the notice (the “rescission notice”).

(6) A rescission notice may not be filed

- (a) if the limited partnership has, by the time of filing, changed its registered agent; or
- (b) fourteen days or less prior to the date specified in subsection (2).

(7) The rescission notice takes effect on the date specified in the rescission notice unless the limited partnership has changed its registered agent before that date.

**24.** (1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if

Registered agent  
ceasing to be  
eligible to act.  
No. 8 of 1990  
No. 9 of 1990

- (a) the person ceases to hold a licence under the Company Management Act 1990 or the Banks and Trust Companies Act 1990; or
- (b) the Commission withdraws its approval for the person to provide registered agent services.

(2) Where a person ceases to be eligible to act as a registered agent, that person shall, with respect to each limited partnership of which the person was (immediately before ceasing to be eligible to act) the registered agent, send to the person specified in subsection (3) a written notice

- (a) advising the limited partnership that he or she is no longer eligible to be its registered agent;
- (b) advising the limited partnership that it must appoint a new registered agent within 90 days of the date of the notice;
- (c) specifying that, on the expiration of the period specified in paragraph (b), he or she will cease to be the registered agent of the limited partnership, if the limited partnership had not previously changed its registered agent; and
- (d) advising the limited partnership that the Register of Approved Registered Agents in the Virgin Islands, with their names and addresses, may be found on the Commission’s Internet site.

(3) A notice under subsection (2) shall be sent to a general partner of the limited partnership at the general partner's last known address or, if the registered agent is not aware of the identity of any general partner of the limited partnership, to the person from whom the registered agent last received instructions concerning the limited partnership.

(4) A limited partnership which is sent a notice under subsection (2) through a general partner or other person specified in subsection (3) shall, within ninety days of the date of the notice, change its registered agent in accordance with section 22.

(5) A person who has ceased to be eligible to act as a registered agent ceases to be the registered agent of each limited partnership to which it has sent a notice under subsection (2), through a general partner or other person specified in subsection (3), on the earlier of

- (a) the date that the limited partnership changes its registered agent in accordance with subsection (4); or
- (b) the first day following the expiry of the notice period specified in subsection (4).

(6) A registered agent who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(7) Where a limited partnership contravenes subsection (4), the partnership and each general partner commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(8) A person does not commit an offence under section 19 (5) by reason only of the fact that

- (a) the person ceases to be eligible to act as a registered agent; and
- (b) after ceasing to be eligible to act, the person continues to be the registered agent of a limited partnership during the period from the date the person ceases to be eligible to act to the date that the limited partnership appoints a new registered agent.

## **PART IV**

### **PARTNERS AND LIMITED PARTNERSHIPS**

**25.** (1) Subject to subsection (2), any person, including a body corporate and a partnership, may be admitted to the limited partnership as a general or limited partner in accordance with the limited partnership agreement.

General provisions concerning partners.

(2) The following persons are disqualified from being a general partner of a limited partnership

- (a) an individual who is under eighteen years of age;

- (b) a person who is a disqualified person within the meaning of section 260(4) of the Insolvency Act, 2003; No. 5 of 2003
- (c) a person who is a restricted person within the meaning of section 409 of the Insolvency Act;
- (e) an undischarged bankrupt; and
- (f) a person who is disqualified by the limited partnership agreement from being a general partner.

**26.** (1) Subject to the limited partnership agreement, a person may be admitted as a partner of a limited partnership Admission of partners to partnership.

- (a) by executing the limited partnership agreement or a counterpart, or any supplement to the limited partnership agreement;
- (b) by acceding to the limited partnership agreement in accordance with its terms; or
- (c) in accordance with this Act.

(2) Subject to the limited partnership agreement, the consent of the limited partners is not required for the admission of a person as a partner of the limited partnership.

(3) If the requirements or conditions for admission specified in the limited partnership agreement have been complied with or, subject to the limited partnership agreement, waived, a person, however admitted,

- (a) is deemed to have adhered to and agreed to be bound by the terms and conditions of the limited partnership agreement; and
- (b) has the rights and is subject to the obligations contained in the limited partnership agreement and this Act as if the person and all existing partners had together duly executed the limited partnership agreement,

without the requirement for any amendment to the limited partnership agreement or further actions or formalities.

#### *General Partners*

**27.** (1) Subject to the limited partnership agreement, a general partner may, but is not required to, make a contribution to the capital of the limited partnership. General partner.

(2) A notice of change of general partner shall be filed if a person becomes or ceases to be a general partner within 14 days of the date of the person becoming or ceasing to become a general partner.

(3) The admission of a general partner to a limited partnership is effective at the time that the person agrees to become a general partner in accordance with the limited partnership agreement or, where appropriate, this Act.

(4) A person ceases to be a general partner when the person's name is deleted from the register of general partners.

(5) Notwithstanding subsection (4), a person who has ceased to be a general partner remains liable as a general partner until the registration of the notice of change of general partner, notifying that the person has ceased to be a general partner.

(6) Where a limited partnership fails or refuses to file a notice of change of general partner under subsection (2), a partner, or any assignee of a partnership interest who is or may be affected by the failure or refusal, may apply to the Court for an order directing such person as the Court considers appropriate to file the notice on behalf of the limited partnership.

**28.** (1) Subject to subsection (2), each general partner is jointly and severally liable for the unpaid debts and liabilities of the limited partnership incurred while that person is a general partner. Liability of general partners.

(2) Unless the limited partnership agreement provides otherwise, a general partner is liable for any debts or liabilities of the limited partnership only to the extent that the limited partnership cannot pay those debts or liabilities.

**29.** (1) A general partner has the rights and powers, and is subject to the restrictions and obligations of, a partner in a partnership which is not a limited partnership. General partners, responsibilities and powers, etc.

(2) Without limiting subsection (1) and subject to subsection (4), the general partners are responsible for the management of the limited partnership.

(3) Where this Act requires something to be done by the general partners, each general partner is responsible for ensuring that it is done.

(4) Where a limited partnership has more than one general partner, the limited partnership agreement may specify that one or more general partners are entitled to exercise a power, an authority or a consent given to the general partners by this Act, in exclusion of any other general partner.

**30.** A general partner shall act Duties of general partner.

- (a) at all times in good faith; and
- (b) subject to any express provisions to the contrary in the limited partnership agreement, in the interests of the limited partnership.

**31.** (1) A general partner is the agent of the limited partnership for the purposes of the business and activities of the limited partnership. General partner an agent of limited partnership with power to bind.

(2) An act of a general partner done for the purposes of carrying on in the usual way the business or activities of the kind carried on by the limited partnership shall bind the limited partnership and the partners of the limited partnership, unless

- (a) the general partner so acting has in fact no authority to act for the limited partnership in the particular matter; and

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

(3) Without limiting subsections (1) and (2), any debt or liability incurred by a general partner in the conduct of the business and activities of a limited partnership is a debt or liability of the limited partnership.

*Limited Partners*

**32.** (1) Subject to the limited partnership agreement, a limited partner may, but is not required to, make a contribution to the capital of the limited partnership. Limited partners.

(2) A limited partner shall not, in the capacity of limited partner

- (a) take part in the management of the limited partnership; or
- (b) transact the business of, sign or execute documents for or otherwise bind the limited partnership.

(3) Subject to any express provision to the contrary in the limited partnership agreement, a limited partner of a limited partnership does not, in the capacity of limited partner, owe any fiduciary duty in exercising any of its rights or authorities or otherwise in performing any of its obligations under the limited partnership agreement to the limited partnership or any other partner.

**33.** (1) Subject to section 35 and 36, a limited partner is not liable for the debts and liabilities of the limited partnership beyond the amount of the limited partner's contribution or unpaid commitment to the limited partnership. Liability of limited partner.

(2) A limited partner shall not cease to have the benefit of limited liability by reason only that the limited partnership does not have a general partner.

**34.** Subject to the limited partnership agreement, 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. Limited partner not agent of limited partnership.

**35.** (1) A limited partner who takes part in the management of the limited partnership is liable, to the same extent as a general partner, to a person who deals with the limited partnership if, at the time the liability of the limited partnership was incurred, the person to whom the liability was incurred Liability of limited partner taking part in management of partnership.

- (a) knew that the limited partner took part in the management of the limited partnership; and
- (b) reasonably believed, based on the limited partner's conduct, that the limited partner was a general partner.

(2) The following activities do not constitute taking part in the management of the limited partnership business for the purposes of subsection (1)

- (a) holding an office or interest in, acting as a consultant, contractor or agent for, being an employee of or transacting business with a general

partner of the limited partnership;

- (b) acting as a director of or being a shareholder in or a member of a general partner of the limited partnership that is a body corporate;
- (c) being a partner of a partnership that is a general partner of the limited partnership;
- (d) consulting with or advising a general partner about the business or activities of the limited partnership, including doing so as a member of an investment or advisory committee of the limited partnership;
- (e) consenting or withholding consent, in accordance with the limited partnership agreement, to any action proposed with respect to the business and activities of the limited partnership;
- (f) taking part in any decision concerning the amendment or replacement of the limited partnership agreement;
- (g) investigating, reviewing and approving or being advised as to the accounts or business affairs of the limited partnership;
- (h) acting as surety or guarantor for the limited partnership either generally or in respect of a specific obligation or obligations;
- (i) calling, requesting, attending or participating in any meeting of the partners;
- (j) taking any action that results in the termination, winding up or de-registration of the limited partnership;
- (k) bringing, pursuing, settling or otherwise terminating a derivative action on behalf of the limited partnership in accordance with this Act;
- (l) appointing a person to serve on any board or committee of the limited partnership, a general partner or a limited partner or removing a person from such a board or committee;
- (m) serving on a board or committee of the limited partnership, a general partner, the limited partners or the partners or appointing, electing or otherwise participating in the choice of a representative or any other person to serve on such a board or committee, or by acting as a member of any such board or committee either directly or by or through any representative or other person;
- (n) giving advice or consenting, or refusing to consent, to any action proposed by the general partners on behalf of the limited partnership and exercising any power or authority or performing any obligation as a member of a board or committee referred to in paragraph (m) in accordance with the limited partnership agreement;
- (o) acting as a director or other officer, consulting with or advising, or being a shareholder, partner, member, manager, trustee, agent or



employee of, or by being a fiduciary or contractor for

- (i) a person in which the limited partnership has an interest; or
  - (ii) a person providing management, consultation, custody or other services or other products for, to or on behalf of, or otherwise having a business or other relationship with, the limited partnership or a general partner of the limited partnership;
- (p) taking part in a decision concerning
- (i) the termination, winding up or de-registration of the limited partnership;
  - (ii) the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset by or of the limited partnership;
  - (iii) whether to approve or veto investments proposed to be made by the limited partnership, as a member of an investment or advisory committee of the limited partnership;
  - (iv) the incurrence or renewal of indebtedness by the limited partnership;
  - (v) a change in the nature of the business of the limited partnership;
  - (vi) the disposal of the business of the limited partnership or the acquisition of another business;
  - (vii) the admission, removal or withdrawal of a general or limited partner;
  - (viii) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners;
  - (ix) a change in the senior employees of a general partner or of the limited partnership; or
  - (x) a change of contractors engaged by a general partner or a limited partner;
- (q) discussing the strategic direction or financial prospects of the business of the limited partnership;
- (r) enforcing rights under the limited partnership agreement, except rights to carry out management functions;
- (s) exercising any right conferred by this Act; or
- (t) such other activities as may be prescribed.

(3) Subsection (2) is not to be taken as implying that the possession or exercise of any other power by a limited partner will necessarily constitute the taking part by that limited partner in the management of the limited partnership.

**36.** (1) A limited partner shall not, on termination or otherwise,

Return of limited partner's contributions.

- (a) receive any payment from the assets of the limited partnership representing a return of any part of his or her contribution to the partnership; or
- (b) be released from any outstanding obligation in respect of his or her commitment;

unless, at the time of and immediately following the making of the payment or the release was effected, the limited partnership is solvent.

(2) Subject to section 37, a limited partner who receives a payment or is released from an outstanding obligation in breach of subsection (1), is liable to the limited partnership for the amount of the payment or the due performance of the released obligation if the limited partner knew that, immediately following the making of the payment or the release, the limited partnership was not solvent.

(3) For the purposes of this section, a limited partnership is solvent if

- (a) the value of its assets exceeds its debts and liabilities; and
- (b) it is able to pay its debts and satisfy its liabilities as they fall due for payment, out of the assets of the partnership.

(4) Any liabilities to partners on account of their partnership interest shall be excluded in determining whether a limited partnership is solvent under subsection (3).

**37.** (1) A limited partner is liable under section 36(2) only to the extent that the repayment or performance of the released obligation is necessary to discharge a debt or liability of the limited partnership incurred during the period that the contribution or commitment represented an asset of the limited partnership.

Limitation of liability under section 37.

(2) The liability of a limited partner under section 36(2) ceases after a period of six months commencing on the date that

- (a) the payment was made to the limited partner; or
- (b) the limited partner was released from the outstanding obligation.

(3) A limited partner has no liability in respect of a payment received or an obligation released, in the circumstances specified in section 36(1)(a) or (b) except

- (a) as provided in section 36(2);
- (b) as provided in the limited partnership agreement; or
- (c) in the case of fraud committed by or with the consent of the limited

partner.

*Transactions Between Partner and Limited Partnership*

**38.** (1) Subject to the limited partnership agreement and to the duty imposed on a general partner by section 30, a partner may lend money to, borrow money from, act as a surety or guarantor for, provide security for and transact other business with the limited partnership. Partners' dealing with limited partnership.

(2) A partner of a limited partnership who transacts with the limited partnership in accordance with subsection (1) has the same rights and obligations with respect thereto as a person who is not a partner.

**39.** (1) Subject to subsection (2) and the limited partnership agreement, a limited partnership may indemnify a partner against any or all judgments, claims and demands made against the partner in that capacity. Indemnity of partners.

(2) An indemnity under subsection (1) shall not extend to judgments, claims or demands arising out of the fraud or gross negligence of a partner.

**40.** (1) If a limited partnership agreement provides that where a partner fails to perform any of its obligations under the limited partnership agreement, or otherwise breaches the provisions of the limited partnership agreement, that partner may be subject to or suffer remedies for, or consequences of, the failure or breach specified in the limited partnership agreement or otherwise applicable under any law, then those remedies or consequences shall not be unenforceable solely on the basis that they are penal in nature. Failure to perform.

(2) The remedies or consequences under subsection (1) may include but are not limited to any one or more of the following

- (a) reducing, eliminating or forfeiting the defaulting partner's partnership interest in the limited partnership or any rights of the defaulting partner under the limited partnership agreement;
- (b) subordinating the defaulting partner's partnership interest to the interests of non-defaulting partners;
- (c) effecting a forced transfer or forfeiture of the defaulting partner's partnership interest;
- (d) arranging for the lending by other partners or other persons to the defaulting partner of the amount necessary to meet the defaulting partner's commitment;
- (e) providing for the fixing of the value of the defaulting partner's partnership interest by appraisal or by formula and the redemption or transfer of the defaulting partner's partnership interest at that value; or
- (f) exercising any other remedy or consequence specified in the limited partnership agreement or available under any applicable laws.

(3) Subject to the general partner's duty under section 30 a general partner shall not be liable for a decision to impose or for imposing any remedies or consequences upon any partner, or for a decision not to do so and references in this subsection to a partnership interest shall for the avoidance of doubt also be construed as including any part of a partnership interest.

*Partnership Interests*

- 41.** (1) The partnership interest of a partner Partnership interest.
- (a) is the partner's
    - (i) share of the assets of the limited partnership, if any;
    - (ii) right to receive distributions from the limited partnership, if any;
    - (iii) right to vote, if any;
    - (iv) right to any other benefit conferred by the limited partnership agreement; and
  - (b) includes any liability of the partner in relation to the limited partnership.
- (2) A partnership interest is personal property situate in the Virgin Islands.
- 42.** (1) Subject to subsection (2) Transfer, assignment etc. of partnership interest.
- (a) a limited partner shall not assign, transfer, grant a security interest over or otherwise dispose of all or any part of the partner's partnership interest to another person except with the prior or simultaneous written consent of the general partners; and
  - (b) a general partner may assign, transfer, grant a security interest over or otherwise dispose of all or any part of the partner's partnership interest to another person with the prior or simultaneous written consent of any general partner.
- (2) The limited partnership agreement may modify or exclude subsection (1).
- 43.** (1) Subject to the limited partnership agreement, the transferee of the whole or any part of a general partnership interest (referred to in this subsection as the "incoming general partner") shall be admitted as a general partner in place of, to the exclusion of or in addition to, as the case may be, the transferor in respect of the general partnership interest or part transferred, but Admission of transferee as partner.
- (a) the incoming general partner shall not be liable for any liability of the limited partnership incurred before the date of his or her admission unless the transferor and the incoming general partner agree otherwise in writing; and
  - (b) the transferor remains liable for any liability of the limited partnership incurred before he or she ceased to be a general partner unless the

transferor, the incoming general partner and the person to whom the liability is owed agree otherwise in writing.

(2) Subject to the limited partnership agreement, the transferee of the whole or any part of a limited partnership interest (referred to in this subsection as the “incoming limited partner”) shall be admitted as a limited partner, wholly or partly, as the case may be, in place of and to the exclusion of the transferor in respect of the limited partnership interest or part transferred.

(3) Unless otherwise agreed in writing by the transferor, the incoming limited partner and the general partner, the incoming limited partner under subsection (2) shall not assume any liability of the transferor under section 35 or section 36 and no transfer shall relieve the transferor of any liability under those sections.

**44.** (1) Subject to the limited partnership agreement, written notice of the grant of a security interest over the whole or any part of a limited partnership interest shall be given by the grantor or the grantee to the limited partnership.

Grant of a security interest over a partnership interest.

(2) A notice under subsection (1) shall specify the agreement under which the security interest is granted including

- (a) the date of, and the parties to, the agreement;
- (b) the identity of the grantor and grantee of the security interest; and
- (c) the partnership interest or part of the partnership interest that is subject to the security interest.

(3) Where a notice does not comply with subsection (2), it is deemed not to have been validly given.

**45.** (1) Nothing in sections 42 to 45 shall prevent a partner from assigning or otherwise disposing of, whether absolutely or by way of security in any manner permitted by law, any right, debt or other *chose in action* arising under a limited partnership agreement.

Provisions relating to transfer, assignment and security interests.

(2) No assignment or other disposition under subsection (1) may, subject to the limited partnership agreement, be made without the consent of the general partners or, in the case of an assignment or disposition by a general partner, the consent of any other general partner given prior to, or simultaneously with, the assignment or disposition.

(3) A notice of an assignment or other disposition referred to in subsection (1) that may be required or permitted to be given to any one or more of the other general partners of a limited partnership shall despite any other rule of law or equity, be deemed to have been so given if given to the limited partnership.

#### *Limited Partnership*

**46.** (1) For the purposes of this Act, a right to make and receive the proceeds of capital calls is deemed to be an asset of a limited partnership which can be dealt with in the same way as any other asset of the limited partnership.

Partnership assets.

(2) Any asset of a limited partnership with legal personality which is transferred to, vested in or held on behalf of any general partner is held by the general partner as agent of the limited partnership.

- (3) Any asset of a limited partnership without legal personality which is
  - (a) transferred to, vested in or held on behalf of any general partner; or
  - (b) transferred to or vested in the name of the limited partnership;

shall be held or deemed to be held by the general partners jointly, on trust as an asset of the limited partnership in accordance with the terms of the limited partnership agreement.

**47.** (1) On the admission or substitution of a general partner or general partners of a limited partnership without legal personality in accordance with the terms of the limited partnership agreement and this Act (referred to in this section as the “incoming general partner”), the rights and assets of the limited partnership held or deemed to be held by the general partner or general partners (referred to in this section as the “existing general partners”), vests without the requirement for further formalities in the incoming general partner and any continuing existing general partners and is held by it or them in accordance with the limited partnership agreement and this Act.

Vesting of assets and rights.

(2) In the case of a limited partnership with legal personality, subsection (1) applies to assets held or deemed to be held by the existing general partners in accordance with section 46(2).

(3) On the withdrawal of a general partner of a limited partnership without legal personality in accordance with the terms of the limited partnership agreement and this Act

- (a) all rights or assets of every description of the limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof, vest without the requirement for further actions or formalities in the remaining general partner or general partners and are held by it or them in accordance with the limited partnership agreement and this Act; and
- (b) the remaining general partner or general partners are liable for, and the assets of the limited partnership held by them in accordance with this Act are subject to, all mortgages, charges or security interests and all contracts, claims, debts and liabilities of the limited partnership.

(4) Subsection (3) applies in the case of a limited partnership with legal personality, except that

- (a) paragraph (a) applies only to any asset held or deemed to be held by the withdrawing general partner in accordance with section 46(2); and
- (b) the rights and assets held or deemed to be held by the withdrawing partner vests in the limited partnership or, if so provided by the limited partnership agreement, in the remaining general partner or general partners.

**48.** (1) Subject to subsection (2), a written instrument executed by a limited partnership assigning (other than by way of charge only) any outstanding obligation

Assignment of uncalled capital.

of a partner in respect of the partner's commitment of which written notice has been given to the partner is, subject to any equities having priority over the right of the assignee, effective in law to pass and transfer, from the date of the notice

- (a) the legal right to the outstanding obligation;
- (b) all legal and other remedies for the outstanding obligation; and
- (c) the power to give a good discharge for the outstanding obligation without the concurrence of the assignor.

(2) Where the partner whose outstanding obligation is being assigned has notice

- (a) that the assignment is disputed by the limited partnership or any person claiming under the partner; or
- (b) of any other opposing or conflicting claims to the outstanding obligation assigned,

the partner may require the persons making claim to the outstanding obligation to commence interpleader proceedings.

**49.** (1) Subject to this section

Institution of legal proceedings.

- (a) legal proceedings by against or in relation to a limited partnership may only be instituted by or against
  - (i) in the case of a limited partnership that has legal personality, the limited partnership; and
  - (ii) in the case of a limited partnership without legal personality, any one or more of the general partners; and
- (b) a limited partner shall not be a party to or named in the proceedings.

(2) A person who institutes legal proceedings against a limited partnership with legal personality may join one or more general partners in the proceedings.

(3) For the purposes of subsection (1), legal proceedings include the enforcement of a judgment by or against the limited partnership.

(4) Subsection (1) does not limit the right of a person to institute proceedings against a limited partner or join a limited partner in proceedings

- (a) if the limited partner may be liable under section 35(1);
- (b) to enforce the return of the limited partner's contribution under section 36; or
- (c) to require payment by the limited partner of an outstanding obligation in accordance with section 36.

(5) A limited partner may, with the leave of the Court, bring an action on behalf of a limited partnership if any one or more of the general partners with authority to do so have, without cause, failed or refused to institute proceedings.

(6) If any action taken under subsection (5) is successful, in whole or in part, as a result of a judgment, compromise or settlement of any action, the court may award any limited partner bringing any action reasonable expenses, including legal fees, from any recovery in any action or from the limited partnership.

**50.** (1) A judgment shall not be enforced against the assets of a limited partnership unless the judgment has been granted against Enforcement of judgments.

- (a) the limited partnership; or
- (b) a general partner of the limited partnership, in that capacity.

(2) A creditor of a general or limited partner of a limited partnership, in a capacity other than that of general or limited partner, has no claim against the assets of the limited partnership.

**51.** (1) Notwithstanding any provision of the Registration and Records Act, all deeds and other instruments relating to Execution of instruments.  
Cap. 67.

- (a) transfers of an asset to or by a limited partnership;
- (b) transactions in respect of the partnership interests, debt obligations or other securities in or of a limited partnership; and
- (c) other transactions relating to the business of a limited partnership,

are exempt from the provisions of that Act.

(2) Subsection (3) applies to any instrument, including

- (a) a limited partnership agreement;
- (b) an agreement under which a person agrees to make a commitment or contribution to a limited partnership as a partner; and
- (c) an agreement, contract, deed, instrument under seal or other document entered into by or on behalf of
  - (i) the limited partnership; or
  - (ii) a general partner, for himself or herself in the case of the partnership agreement, or otherwise on behalf of the limited partnership.

(3) Where an instrument referred to in subsection (3) is executed in conformity with this Act or any other enactment applicable to the execution of the instrument, it is validly executed by the parties where it is executed in any manner contemplated by the parties, including, without limitation



- (a) where the complete instrument is executed; or
- (b) where any signature or execution page to the instrument is executed, whether or not the instrument is at the time in its final form, and which is attached by, or on behalf of, the relevant party to the instrument, or otherwise with the relevant party's express or implied authority to the instrument.

52. (1) A document may be served on a limited partnership by

Service of documents.

- (a) delivery of the document to the office of the registered agent of the limited partnership; or
- (b) delivery of the document to a general partner.

(2) A document in respect of a limited partnership may be served on a general partner by

- (a) delivery of the document to the general partner; or
- (b) delivery of the document to the office of the registered agent of the limited partnership.

*Books and Records*

53. (1) The general partners shall maintain

Registers of general and limited partners.

- (a) a register of general partners complying with subsection (2); and
- (b) a register of limited partners complying with subsection (3).

(2) The register of general partners shall set out

- (a) the name and address of each general partner;
- (b) the date on which a person became a general partner;
- (c) the date upon which a person ceased to be a general partner;
- (d) particulars of the general partnership interest, if any, of each general partner; and
- (e) such other information as may be prescribed.

(3) The register of limited partners shall set out

- (a) the particulars specified in subsection (2)(a), (b), (c) and (d) in respect of each limited partner; and
- (b) such other information as may be prescribed.

(4) The general partners shall ensure that the registers of general and limited partners, or copies of the registers, are kept at the office of the registered agent.

(5) Where a copy of the register of general partners or limited partners is not kept at the office of the registered agent, a record of the address at which the registers of limited partners is maintained shall be kept and the record shall be updated within fourteen days of the date of any change in the particulars therein.

(6) A general partner who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**54.** (1) A limited partnership shall

Financial records  
and underlying  
documentation.

- (a) keep at the office of its registered agent or at such other place or places, within or outside the Virgin Islands, as the general partners may determine, the financial records and underlying documentation of the limited partnership;
- (b) retain the financial records and underlying documentation for a period of at least five years from the date
  - (i) of completion of the transaction to which the financial records and underlying documentation relates; or
  - (ii) the limited partnership terminates the business relationship to which the financial records and underlying documentation relate; and
- (c) provide its registered agent without delay any financial records and underlying documentation in respect of the limited partnership that the registered agent requests pursuant to subsection (6).

(2) The financial records and underlying documentation of the limited partnership shall be in such form as

- (a) are sufficient to show and explain the transactions of the limited partnership; and
- (b) will, at any time, enable the financial position of the limited partnership to be determined with reasonable accuracy.

(3) Where the financial records and underlying documentation of a limited partnership are kept at a place or places other than at the office of the limited partnership's registered agent, the limited partnership shall provide the registered agent with a written

- (a) record of the physical address of the place at which the financial records and underlying documentation are kept; and
- (b) record of the name of the person who maintains and controls the limited partnership's financial records and underlying documentation.

(4) Where the place or places at which the financial records and underlying documentation of the limited partnership, or the name of the person who maintains and controls the limited partnership's financial records and underlying

documentation, change, the limited partnership shall, within fourteen days of the change, provide

- (a) its registered agent with the physical address of the new location of the records and underlying documentation; or
- (b) the name of the new person who maintains and controls the limited partnership's financial records and underlying documentation.

(5) The registered agent shall keep and maintain a record of the place or places outside the Virgin Islands at which the limited partnership keeps its records and underlying documentation and such record shall include

- (a) the name of the limited partnership; and
- (b) the address of the person who maintains and controls the limited partnership's records and underlying documentation.

(6) Where a limited partnership is required to provide financial records and underlying documents by the Commission or any other competent authority in the Virgin Islands acting pursuant to the exercise of a power under an enactment, the registered agent shall request from the limited partnership, the required financial records and underlying documentation in respect of the limited partnership.

(7) For the purposes of this section

- (a) "business relationship" means a continuing arrangement between a limited partnership and one or more persons with whom the limited partnership engages in business, whether on a one-off, regular or habitual basis; and
- (b) "financial records and underlying documentation" includes accounts and records (such as invoices, contracts and similar documents) in relation to
  - (i) all sums of money received and expended by the limited partnership and the matters in respect of which the receipt and expenditure takes place;
  - (ii) all sales and purchases of goods by the limited partnership; and
  - (iii) the assets and liabilities of the limited partnership.

(8) Where a limited partnership contravenes the provisions of this section, the limited partnership and each general partner commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

(9) A registered agent who contravenes subsection (5) or (6) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

**55. (1)** Subject to the limited partnership agreement, each limited partner may demand and shall receive from the general partners true and full information

Inspection of books and records.

regarding the state of the business and financial condition of the limited partnership.

(2) The register of limited partners and the record of the address at which the register of limited partners is maintained shall, subject to any express or implied term of the limited partnership agreement, be open to inspection during all usual business hours in the place where the register or record is maintained by

- (a) all partners; and
- (b) any other person with the consent of the general partners.

## PART V

### REGISTRATION OF CHARGES

**56.** (1) In this Part,

Interpretation for  
this Part.

“asset” includes a future asset;

“charge” means any form of security interest, over an asset, wherever situated, other than an interest arising by operation of law and includes a floating charge;

“effective date” means

- (a) in the case of an existing limited partnership, the date that the limited partnership is re-registered under this Act in accordance with the Schedule;
- (b) in the case of a limited partnership that is continued under this Act, the date of its continuation; or
- (c) in any other case, [date];

“liability” includes a contingent and prospective liability;

“relevant charge” means a charge created on or after the effective date.

(2) A reference in this Part to the creation of a charge includes a reference to the acquisition of an asset, wherever situated, which was, immediately before its acquisition, the subject of a charge and which remains subject to that charge after its acquisition and for this purpose, the date of creation of the charge is deemed to be the date of acquisition of the asset.

**57.** (1) Subject to the limited partnership agreement,

Governing law of  
charge over assets  
of a limited  
partnership.

- (a) a limited partnership with legal personality may, by an instrument in writing, create a charge over assets of the partnership; and
- (b) the assets of a limited partnership without legal personality may be the subject of a charge, whether or not the general partners of the limited

partnership, or any of them, are BVI companies or other types of body corporate.

(2) A charge over an asset of a limited partnership may provide that the charge is governed by the law of a jurisdiction other than the Virgin Islands.

(3) Where subsection (2) applies, the charge is binding on the limited partnership and the general partners in accordance with the governing law.

(4) Where an asset of a limited partnership is acquired subject to a charge,

(a) subsection (1) does not require the acquisition of the asset to be by instrument in writing, if the acquisition is not otherwise required to be by instrument in writing; and

(b) unless the charge agreement otherwise provides, the governing law of the charge is the law that governs the charge immediately before the acquisition by the limited partnership of the asset subject to the charge.

**58.** (1) A limited partnership shall keep a register of all relevant charges created over the assets of the limited partnership showing

Limited partnership to keep register of charges.

(a) the date of the creation of the charge or, if the charge is a charge existing on an asset acquired by the limited partnership, the date on which the asset was acquired;

(b) a short description of the liability secured by the charge;

(c) a short description of the asset charged;

(d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the chargee;

(e) the name and address of the holder of the charge; and

(f) details of any prohibition or restriction, contained in the instrument creating the charge on the power of the limited partnership to create any future charge ranking in priority to or equally with the charge.

(2) A copy of the register of charges shall be kept at the registered office of the limited partnership or at the office of its registered agent.

(3) Where a change occurs in a relevant charge or in the details of a charge required to be recorded in the register of charges, which is kept at the office of its registered agent, the limited partnership shall, within fourteen days of the change occurring, transmit details of the change to the registered agent.

(4) Where a limited partnership contravenes the provisions of this section, the partnership and each general partner commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

**59.** (1) Where a relevant charge is created over an asset of a limited partnership,

Registration of charges.

an application to the Registrar to register the charge may be made by

- (a) the limited partnership, a general partner or a legal practitioner in the Virgin Islands authorised to act on the limited partnership's behalf; or
- (b) the chargee, or a person authorised to act on the chargee's behalf.

(2) An application under subsection (1) shall be made by filing an application, specifying the particulars of the charge, in the approved form.

(3) The Registrar shall keep, with respect to each limited partnership, a Register of Registered Charges containing such information as may be prescribed.

(4) The Registrar, where satisfied that the requirements of this Part as to registration have been complied with, shall upon receipt of an application under subsection (2), forthwith

- (a) register the charge in the Register of Registered Charges kept for that limited partnership; and
- (b) issue a certificate of registration of the charge and send a copy to the limited partnership and to the chargee.

(5) The Registrar shall state in the Register of Registered Charges and on the certificate of registration the date and time on which a charge was registered.

(6) A certificate issued under subsection (4) is conclusive proof that the requirements of this Part as to registration have been complied with and that the charge referred to in the certificate was registered on the date and time stated in the certificate.

**60.** (1) Where there is a variation in the terms of a charge registered under section 60, an application for the variation to be registered may be made by

Variation of registered charge.

- (a) the limited partnership, a general partner, a legal practitioner in the Virgin Islands authorised to act on the general partner's behalf; or
- (b) the chargee, or a person authorised to act on the chargee's behalf.

(2) An application under subsection (1) shall be made by filing an application in the approved form.

(3) Upon receipt of an application complying with subsection (2), the Registrar shall forthwith

- (a) register the variation of the charge;
- (b) issue a certificate of variation; and
- (c) send a copy of the certificate of variation to the limited partnership and to the chargee.

(4) The Registrar shall state in the Register of Registered Charges and on the certificate of variation the date and time on which a variation of charge was registered.

(5) A certificate issued under subsection (3) is conclusive proof that the variation referred to in the certificate was registered on the date and time stated in the certificate.

- 61.** (1) A notice of satisfaction or release may be filed under this section where Satisfaction or  
release of charge.
- (a) all liabilities secured by the charge registered under section 59 have been paid or satisfied in full; or
  - (b) a charge registered under section 59 has ceased to affect the asset, or any of the assets, of a limited partnership.
- (2) A notice of satisfaction or release shall
- (a) state whether the charge has been paid or satisfied in full or whether the charge has ceased to affect the asset, or any of the assets, of the limited partnership; and
  - (b) if the charge has ceased to affect the asset, or any of the assets of the limited partnership, specify the asset of the limited partnership that has ceased to be affected by the charge, stating whether this is the whole of the assets of the limited partnership or some of those assets.
- (3) A notice of satisfaction or release may be filed by
- (a) a general partner of the limited partnership or a legal practitioner in the Virgin Islands authorised to act on the general partner's behalf;
  - (b) a person qualified to act as the registered agent of a limited partnership in accordance with section 89(3); or
  - (c) a legal practitioner in the Virgin Islands acting on behalf of the chargee.
- (4) Where the notice of satisfaction or release is filed by or on behalf of the limited partnership it shall be
- (a) signed by the chargee;
  - (b) signed by a legal practitioner in the Virgin Islands, or a registered agent, acting on behalf of the chargee; or
  - (c) accompanied by a statutory declaration in the approved form verifying the matters stated in the notice.
- (5) Upon receipt of a notice of satisfaction or release, the Registrar shall
- (a) register the notice of satisfaction or release;

- (b) issue a certificate of satisfaction or release; and
- (c) send a copy of the certification of satisfaction or release to the limited partnership and chargee.

(6) The Registrar shall state in the Register of Registered Charges and on the certificate issued under subsection (5) the date and time on which the notice of satisfaction or release was registered.

(7) From the date and time stated in the certificate issued under subsection (5), the charge is deemed not to be registered in respect of the assets specified in the notice of satisfaction or release.

**62.** (1) An application for the registration of a charge under section 59 or for the variation of a charge under section 60 made by the chargee, or a person authorised to act on the chargee's behalf, may only be filed by

Filing of application under section 59 or 60.

- (a) a person qualified to act as the registered agent of a limited partnership, or
- (b) a legal practitioner in the Virgin Islands, acting on behalf of the chargee or authorised person.

(2) Subject to subsection (3), an application or notice referred to in subsection (1) shall be accompanied by a written notice in the approved form stating the full name and address of a person in the Virgin Islands who is authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.

(3) Subsection (2) does not apply to a chargee if the chargee is

- (a) a limited partnership registered under this Act;
- (b) a limited partnership registered under the Partnership Act, 1996; or
- (c) an individual resident in the Virgin Islands.

No. 5 of 1996

(4) A chargee may give the Registrar written notice in the approved form of a change in the person in the Virgin Islands authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.

(5) A notice under subsection (4) may be filed only by a person specified in subsection (1)(a) or (b).

(6) The Registrar complies with the requirements of this Part in relation to the sending of documents to a chargee by sending the documents to the person in the Virgin Islands most recently notified to the Registrar as the person authorised by the chargee to accept documents on its behalf.

**63.** (1) This section and sections 64 and 65 apply to a limited partnership with legal personality, but not to a limited partnership without legal personality.

Priority of relevant charges.



(2) A relevant charge on an asset of a limited partnership with legal personality that is registered in accordance with section 59 has priority over

- (a) a relevant charge on an asset that is subsequently registered in accordance with section 59; and
- (b) a relevant charge on an asset that is not registered in accordance with section 59.

(2) Charges created on or after the effective date which are not registered shall rank among themselves in the order in which they would have ranked had this section not come into force.

**64.** Charges created over an asset of a limited partnership with legal personality prior to the effective date shall continue to rank in the order in which they would have ranked had section 63 not come into force and, where they would have taken priority over a charge created on or after the effective date, they shall continue to take such priority after the effective date.

Priority of other charges.

**65.** Notwithstanding sections 63 and 64

Exceptions to sections 63 and 64.

- (a) the order of priorities of charges is subject to
  - (i) any express consent of the holder of a charge that varies the priority of that charge in relation to one or more other charges that it would, but for the consent, have had priority over; or
  - (ii) any agreement between chargees that effects the priorities in relation to the charges held by the respective chargees; and
- (b) a registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the limited partnership to create any future charge ranking in priority to or equally with the charge.

## PART VI

### CONTINUATION

**66.** (1) Subject to subsection (2), a foreign limited partnership may continue as a limited partnership formed under this Act in accordance with this Part if the laws of the jurisdiction in which it is registered permit it to continue in another jurisdiction, including the Virgin Islands.

Foreign limited partnership may continue under this Act.

(2) A foreign limited partnership may not continue as a limited partnership formed under this Act if

- (a) it is being wound up, whether or not it is in liquidation or subject to equivalent insolvency proceedings in another jurisdiction;
- (b) a receiver or manager has been appointed in relation to any of the assets of the limited partnership;

- (c) an application made to a Court in another jurisdiction for the liquidation of the limited partnership or for the limited partnership to be subject to equivalent insolvency proceedings has not been determined; or
- (d) it has been de-registered.

(3) For purposes of satisfying himself or herself that the requirements of subsection (1) have been met and none of the disqualifications mentioned in subsection (2) applies, the Registrar may rely on a certificate issued by a general partner of the foreign limited partnership attesting to the foreign limited partnership's compliance with the requirements and the non-application of the disqualifications, if the certificate is duly signed by the general partner and notarised or otherwise duly legalised.

(4) The certificate referred to in subsection (3) shall be in the approved form and shall be accompanied by an extract of the law relied upon for the purposes of subsection (1).

**67.** (1) An application by a foreign limited partnership to continue under this Act shall be made by filing

Application to continue under this Act.

- (a) a certified copy of its certificate of registration or formation, or such other document as evidences its registration or formation;
- (b) a statement complying with section 8(2)(a);
- (c) a declaration signed by or on behalf of each general partner stating that the limited partnership shall not have legal personality, where the general partners of the foreign limited partnership wish to elect that the limited partnership shall not have legal personality on its continuation;
- (d) the written consent of the proposed registered agent to act as registered agent;
- (e) evidence satisfactory to the Registrar that the application to continue has been approved by the general partners of the foreign limited partnership;
- (f) evidence satisfactory to the Registrar that the foreign limited partnership is not disqualified from continuing in the Virgin Islands under section 66(2); and
- (g) such other documents as may be prescribed.

(2) An application under subsection (1) may only be filed by the proposed registered agent.

**68.** (1) Where the Registrar is satisfied that the requirements of this Act in respect of continuation have been complied with, upon receipt of the documents specified in section 67, the Registrar shall

Continuation.

- (a) register the documents filed and register the limited partnership in the

Register of Limited Partnerships as a foreign limited partnership that has been continued into the Virgin Islands;

- (b) record in the Register of Limited Partnerships
  - (i) the address of the registered office of the limited partnership, as specified in the application; and
  - (ii) the person specified in the application as the registered agent of the limited partnership;
- (c) allot a unique number to the limited partnership; and
- (d) issue a certificate of continuation, which shall state whether or not the limited partnership has legal personality.

(2) A certificate of continuation issued by the Registrar under subsection (1) is conclusive evidence that

- (a) all the requirements of this Act as to continuation have been complied with; and
- (b) the limited partnership is continued as a limited partnership formed under this Act under the name specified in the application on the date specified in the certificate of continuation.

(3) Notwithstanding section 66 and this section, the Registrar may, if he or she is of the opinion that it would be contrary to the public interest to register the foreign limited partnership, refuse to continue the foreign limited partnership under this Part.

**69.** (1) When a foreign limited partnership is continued under this Act,

Effect of continuation.

- (a) this Act applies to the limited partnership as if it had been formed on registration under section 9 after the commencement date;
- (b) the limited partnership has legal personality unless the general partners filed an election that the limited partnership should not have legal personality under section 67(1)(c);
- (c) the continuation of the foreign limited partnership does not
  - (i) create a new legal entity;
  - (ii) affect the assets previously acquired by or on behalf of the limited partnership;
  - (iii) affect any partnership interest; or
  - (iv) affect any act or thing done prior to registration as a continued limited partnership or the rights, powers, authorities, functions or obligations of the limited partnership, any partner or any other person prior to its continuation; and

- (d) the limited partnership is no longer to be treated as a limited partnership registered or formed under the laws of a jurisdiction outside the Virgin Islands.

(2) Without limiting subsection (1),

- (a) no conviction, judgement, ruling, order, claim, debt or liability due or to become due, and no cause existing, against the limited partnership or against any partner or other person in relation to the limited partnership, shall be released or impaired by its continuation as a limited partnership under this Act; and
- (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation by or against the limited partnership or any partner or other person in relation to the limited partnership, shall be abated or discontinued by its continuation as a limited partnership under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the limited partnership or against the partner or other person.

**70.** (1) Subject to subsection (3) and the limited partnership agreement, a limited partnership for which the Registrar would issue a certificate of good standing under section 112 may continue as a limited partnership formed under the laws of a jurisdiction outside the Virgin Islands in the manner provided under those laws.

Continuation under foreign law.

(2) Where a limited partnership that wishes to continue as a limited partnership incorporated under the laws of a jurisdiction outside the Virgin Islands has a charge registered in respect of an asset of the limited partnership under section 59 which has not ceased to affect the asset, it shall, before continuing and provided that the charge does not contain a covenant prohibiting continuation of the limited partnership outside the Virgin Islands, provide a written declaration addressed to the Registrar specifying that

- (a) a notice of satisfaction or release in respect of the charge has been filed and registered under section 61;
- (b) where paragraph (a) has not been complied with, the chargee to whom the registered charge relates has been notified in writing of the intention to continue the limited partnership as a limited partnership formed under the laws of a jurisdiction outside the Virgin Islands and the chargee has given his or her consent or has not objected to the continuation; or
- (c) where paragraph (a) has not been satisfied and the chargee, after notification under paragraph (b), has not given his or her consent or objected to the continuation, the chargee's interest secured by the registered charge shall not be diminished or in any way compromised by the continuation and the charge shall operate as a liability to which subsection (9)(a) applies.

(3) A limited partnership that continues as a limited partnership formed under the laws of a jurisdiction outside the Virgin Islands does not cease to be a limited partnership incorporated under this Act, unless

- (a) the laws of the jurisdiction outside the Virgin Islands permit the continuation and the limited partnership has complied with those laws;
- (b) the registered agent of the limited partnership has filed with the Registrar the required notice of continuance under subsection (6); and
- (c) the Registrar has issued a certificate of discontinuance of the limited partnership under subsection (7).

(4) For the purposes of establishing compliance with subsection (3), the limited partnership shall file a declaration in the approved form confirming

- (a) that the laws of the jurisdiction outside the Virgin Islands permit the continuation of the limited partnership; and
- (b) the limited partnership has complied with those laws.

(5) Subject to subsections (3) and (4), where the continuation of a limited partnership under the laws of a jurisdiction outside the Virgin Islands is dependent upon the issuing of a certificate of discontinuance under subsection (7)(a), the Registrar may rely upon a provisional certificate of continuance (however described) issued in respect of that limited partnership under the laws of that jurisdiction as a basis to issue the certificate of discontinuance.

(6) The registered agent of a limited partnership that continues as a limited partnership incorporated under the laws of a jurisdiction outside the Virgin Islands may file a notice of the limited partnership's continuance in the approved form.

(7) If satisfied that the requirements of this Act in respect of the continuation of a limited partnership under the laws of a foreign jurisdiction have been complied with, the Registrar shall

- (a) issue a certificate of discontinuance of the limited partnership in the approved form;
- (b) de-register the limited partnership with effect from the date of the certificate of discontinuance; and
- (c) publish the de-registration of the limited partnership in the *Gazette*.

(8) A certificate of discontinuance issued under subsection (7) is prima facie evidence that

- (a) all the requirements of this Act in respect of the continuation of a limited partnership under the laws of a foreign jurisdiction have been complied with; and
- (b) the limited partnership was discontinued on the date specified in the certificate of discontinuance.

(9) Where a limited partnership is continued under the laws of a jurisdiction outside the Virgin Islands

- (a) the limited partnership continues to be liable for all of its claims, debts and liabilities that existed prior to its continuation as a limited partnership under the laws of the jurisdiction outside the Virgin Islands;
- (b) no conviction, judgement, ruling, order, claim, debt or liability due or to become due, and no cause existing, against the limited partnership or against any partner or other person in relation to the limited partnership, shall be released or impaired by its continuation as a limited partnership under the laws of the jurisdiction outside the Virgin Islands;
- (c) no proceedings, whether civil or criminal, pending by or against the limited partnership, or against any partner or other person in relation to the limited partnership, shall be abated or discontinued by its continuation as a limited partnership under the laws of the jurisdiction outside the Virgin Islands, but the proceedings may be enforced, prosecuted, settled or compromised by or against the limited partnership or against the partner or other person, as the case may be; and
- (d) service of process may continue to be effected on the registered agent of the limited partnership in the Virgin Islands in respect of any claim, debt or liability of the limited partnership during its existence as a limited partnership under this Act.

(10) Nothing contained in or done pursuant to subsection (3) shall operate as a bar to any legal action a chargee may be entitled to in law or equity against the limited partnership or a partner or other person.

## **PART VII**

### **MERGER, CONSOLIDATION AND ARRANGEMENTS**

**71.** In this Part,

Interpretation for  
this Part.

“consolidated limited partnership” means the new limited partnership that results from the consolidation of two or more constituent limited partnerships;

“consolidation” means the consolidating of two or more constituent limited partnerships into a new limited partnership;

“constituent limited partnership” means a limited partnership that is participating in a merger or consolidation with one or more other limited partnerships;

“merger” means the merging of two or more constituent limited partnerships into one of the constituent limited partnerships;

“surviving limited partnership” means the constituent limited partnership

into which one or more other constituent limited partnerships are merged.

**72.** (1) Two or more limited partnerships with legal personality may, subject to their limited partnership agreements, merge or consolidate in accordance with section 73.

Merger and consolidation of limited partnerships.

(2) A consolidated limited partnership has legal personality.

**73.** (1) Subject to its limited partnership agreement, each constituent limited partnership shall approve a plan of merger or consolidation through a resolution passed by

Plan of merger or consolidation.

(a) all the general partners; and

(b) limited partners who have made capital contributions exceeding fifty per cent, or such higher percentage as may be stated in the limited partnership agreement, of the total capital contributions made by all the limited partners.

(2) Some or all of the partnership interests in each constituent limited partnership may be converted into a particular asset or into mixed kinds of assets and other partnership interests.

(3) The plan of merger or consolidation shall state

(a) the name of each constituent limited partnership and the name of the surviving limited partnership or the consolidated limited partnership;

(b) the terms and conditions of the proposed merger or consolidation, including the manner and basis of cancelling, reclassifying or converting partnership interests in each constituent limited partnership into partnership interests, debt obligations or other securities in the surviving or consolidated limited partnership, or money or other assets, or a combination thereof.

(4) In the case of a proposed merger, the plan of merger shall state any amendments to the limited partnership agreement of the surviving limited partnership to be brought about by the merger and have attached to it the proposed limited partnership agreement of the surviving limited partnership.

(5) In the case of a proposed consolidation, the plan of consolidation shall have attached to it the proposed limited partnership agreement of the consolidated limited partnership.

(6) In the case of a surviving limited partnership, if the name, registered office or registered agent of the limited partnership is to change on the registration of the merger, the application shall be accompanied by the written notification of the change required under this Act.

**74.** (1) An application for the registration of a surviving or consolidated limited partnership may be made by

Application to register merger or consolidation.

- (a) the registered agent of the limited partnership that is to survive the merger; or
  - (b) the proposed registered agent of a consolidated limited partnership.
- (2) An application under subsection (1) shall be made to the Registrar by filing
- (a) a declaration signed by or on behalf of each general partner of the surviving or consolidated limited partnership confirming that a plan or merger or consolidation, as the case may be, has been approved by each constituent limited partnership in accordance with section 73;
  - (b) a statement signed by or on behalf of each general partner of the surviving or consolidated limited partnership specifying
    - (i) the name of the surviving or consolidated limited partnership and its foreign character name, if any;
    - (ii) in the case of a consolidated limited partnership, the address of the registered office on registration and the name and address of the person who will be its registered agent on registration;
    - (iii) the name and address of each general partner;
    - (iv) the term for which the surviving or consolidated limited partnership is entered into or, if for unlimited duration, a statement to that effect;
    - (v) the date on which the plan of merger or consolidation was approved by the limited partnership; and
    - (vi) such other particulars as may be prescribed;
  - (c) a document signed by the person who will be the registered agent of a consolidated limited partnership signifying his or her consent to act as registered agent; and
  - (d) such other documents as may be prescribed.

**75.** (1) If the Registrar is satisfied that the requirements of this Act in respect of merger or consolidation have been complied with and that the proposed name of the surviving or consolidated limited partnership is a name under which the limited partnership could be registered under section 9, the Registrar shall

Registration of surviving or consolidated limited partnership.

- (a) register the documents filed;
- (b) record in the Register of Limited Partnerships
  - (i) in the case of a consolidated limited partnership, the address specified in the application as the registered office of the limited partnership and the person specified in the application as the registered agent of the limited partnership; and



- (ii) the name and address of each general partner;
- (c) in the case of a consolidated limited partnership, allot a unique number to the limited partnership; and
- (d) issue a certificate of merger or consolidation and, in the case of a consolidated limited partnership, a certificate of registration which shall state that the limited partnership has legal personality.

(2) A certificate of merger or consolidation issued under subsection (1) is conclusive evidence that the requirements of this Act as to merger or consolidation have been complied with.

**76.** (1) A merger or consolidation is effective on the date of the certificate of merger or consolidation.

Effect of merger or consolidation.

- (2) As soon as a merger or consolidation becomes effective
  - (a) the surviving or the consolidated limited partnership, in so far as is consistent with the limited partnership agreement, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent limited partnerships;
  - (b) the limited partnership agreement attached to the plan of merger or consolidation become the limited partnership agreement applicable to the surviving or consolidated limited partnership;
  - (c) assets of every description, including choses in action and the business of each of the constituent limited partnerships, immediately vests in the surviving limited partnership or the consolidated limited partnership, except to the extent that the plan of merger or consolidation provides that shall vest in the general partners; and
  - (d) the surviving limited partnership or the consolidated limited partnership is liable for all claims, debts and liabilities of each of the constituent limited partnerships.
- (3) Where a merger or consolidation occurs,
  - (a) no conviction, judgement, ruling, order, claim, debt or liability due or to become due, and no cause existing, against a constituent limited partnership or against a general partner or agent of the limited partnership, shall be released or impaired by the merger or consolidation; and
  - (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent limited partnership, or against any general partner or agent of the limited partnership, shall be abated or discontinued by the merger or consolidation, but
    - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving limited partnership or

the consolidated limited partnership or against the general partners or agent of the limited partnership, as the case may be; or

- (ii) the surviving limited partnership or the consolidated limited partnership may be substituted in the proceedings for a constituent limited partnership.

(4) The Registrar shall de-register

- (a) a constituent limited partnership that is not the surviving limited partnership in a merger; or
- (b) each constituent limited partnership that participates in a consolidation.

**77.** (1) One or more limited partnerships with legal personality may, subject to their limited partnership agreements, merge or consolidate with one or more foreign limited partnerships in accordance with this section, if the merger or consolidation is permitted by the laws of the jurisdictions in which the foreign limited partnerships are formed or established.

Merger or consolidation with foreign limited partnership.

(2) A limited partnership shall comply with the provisions of this Act with respect to a merger or consolidation, as the case may be, and a foreign limited partnership shall comply with the laws of the jurisdiction in which it is formed or established.

(3) The plan of merger or consolidation prepared on behalf of a limited partnership participating in the merger or consolidation shall state whether the surviving or consolidated limited partnership will be a limited partnership registered under this Act or a foreign limited partnership.

**78.** (1) Where the surviving limited partnership or the consolidated limited partnership is to be a limited partnership registered under this Act, an application for the registration of the surviving or consolidated limited partnership shall be made to the Registrar by

Registration and effect of merger or consolidation with foreign limited partnership.

- (a) the registered agent of the limited partnership that is to survive a merger, or
- (b) the proposed registered agent of a consolidated limited partnership,

and sections 74 and 75 apply with such modifications as are appropriate.

(2) Where the surviving limited partnership or the consolidated limited partnership is to be a foreign limited partnership, it shall file

- (a) an agreement that a service of process may be effected on it in the Virgin Islands in respect of proceedings for the enforcement against the surviving limited partnership or the consolidated limited partnership of
  - (i) any claim, debt or liability of a constituent limited partnership that is a limited partnership within the meaning of section 2;

- (ii) the rights of a dissenting limited partner of a constituent limited partnership that is a limited partnership within the meaning of section 2, under section 80;
  - (b) an irrevocable appointment of its registered agent as its agent to accept service of process in proceedings referred to in paragraph (a);
  - (c) an agreement that it will promptly pay to the dissenting limited partners of a constituent limited partnership that is a limited partnership within the meaning of section 2, the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting limited partners; and
  - (d) a certificate of merger or consolidation issued by the appropriate authority of the jurisdiction where it is formed or established or, if no certificate of merger or consolidation is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.
- (3) The effect of a merger or consolidation under this section
- (a) if the surviving limited partnership or the consolidated limited partnership is a limited partnership registered under this Act, is the same as in the case of a merger or consolidation under sections 72 to 75; or
  - (b) if the surviving limited partnership or the consolidated limited partnership is a foreign limited partnership, is the same as in the case of a merger or consolidation under sections 72 to 75, except in so far as the laws of the jurisdiction where it is formed or established provide otherwise.
- (4) A merger or consolidation under this section is effective
- (a) if the surviving limited partnership or the consolidated limited partnership is a limited partnership registered under this Act, on the date of the certificate of merger or consolidation; or
  - (b) if the surviving limited partnership or the consolidated limited partnership is a foreign limited partnership as provided by the laws of the jurisdiction where the limited partnership is formed or established.
- 79.** (1) Subject to the limited partnership agreement, a resolution may be passed by
- (a) all the general partners, and
  - (b) limited partners who have made capital contributions exceeding ninety per cent, or such higher percentage as may be stated in the limited partnership agreement, of the total capital contributions made by all the limited partners,
- Redemption of minority partnership interests.

resolving that the partnership interests of the limited partners who have made capital contributions of less than ten per cent, or such lower percentage as may be stated in the limited partnership agreement, of the total capital contributions made by all the limited partners shall be redeemed.

(2) On the passing of a resolution under subsection (1), the general partners shall give written notice to each limited partner whose partnership interests are to be redeemed stating the redemption price and the manner in which the redemption is to be effected and the partnership interests shall be redeemed, irrespective of whether or not the partnership interests are by their terms redeemable.

**80.** (1) Subject to the limited partnership agreement, a limited partner of a limited partnership is entitled to payment of the fair value of his or her partnership interest upon dissenting from

Right of limited partner to dissent.

- (a) a merger, if the limited partnership is a constituent limited partnership, unless the limited partnership is the surviving limited partnership and the partner continues to hold the same or a similar interest in the limited partnership;
- (b) a consolidation, if the limited partnership is a constituent limited partnership; or
- (c) the redemption of his or her partnership interest pursuant to section 79.

(2) A limited partner who dissents shall do so in respect of the whole, and not part only, of the interest that the limited partner holds in the limited partnership.

(3) A limited partner who wishes to exercise an entitlement under subsection (1) shall give written notice to the limited partnership in accordance with subsection (4) or (5).

(4) Where a meeting of partners is called to consider and vote on the resolution to approve a plan of merger or consolidation or the redemption of minority partnership interests, and the limited partner is given notice of the meeting, the limited partner shall provide the limited partnership with any written objection to the action to be voted on before the meeting or at the meeting but before the relevant vote.

(5) Where the resolution to approve a plan of merger or consolidation or the redemption of minority partnership interests is to be voted on without a meeting, and a limited partner is given notice of the resolution, the limited partner shall provide the limited partnership with any written objection to the action to be voted on before the last date for voting on the resolution.

(6) An objection under subsection (4) or (5) shall include a statement that the limited partner proposes to demand payment for his or her partnership interest if the action is taken.

**81.** (1) Within 20 days immediately following the date of a resolution to approve a plan of merger or consolidation or the redemption of minority partnership interests, a limited partnership shall give written notice of the passing of the resolution to each limited partner who

Procedure following resolution.

- (a) gave written objection to the resolution under section 80, or
- (b) was not given notice of the meeting or resolution,

except those limited partners members who voted for, or consented in writing to, the resolution.

(2) Within twenty days immediately following the date on which the notice referred to in subsection (1) is given to a limited partner, the limited partner shall, if still wishing to exercise an entitlement under section 80(1), give to the limited partnership a written notice of his or her decision to elect to dissent, stating

- (a) his or her name and address;
- (b) details of his or her partnership interest; and
- (c) a demand for payment of the fair value of his or her partnership interest.

(3) Upon giving a notice of election to dissent, the limited partner to whom the notice relates ceases to have any of the rights of a limited partner except the right to be paid the fair value of his or her partnership interest.

(4) Within seven days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within seven days immediately following the date on which the proposed action is put into effect, whichever is later, the limited partnership or, in the case of a merger or consolidation, the surviving limited partnership or the consolidated limited partnership shall make a written offer to each dissenting member to purchase his or her partnership interest at a specified price that the limited partnership determines to be their fair value.

(5) Where, within thirty days immediately following the date on which an offer under subsection (4) is made, the limited partnership making the offer and the dissenting limited partner agree upon the price to be paid for the limited partner's partnership interest, the limited partnership shall pay to the member the amount in money upon the limited partner taking such action as is necessary to relinquish the interest.

(6) Where the limited partnership and a dissenting limited partner fail, within the period of thirty days referred to in subsection (5), to agree on the price to be paid for the limited partner's partnership interest, within twenty days immediately following the date on which the period of thirty days expires, the following shall apply:

- (a) the limited partnership and the dissenting limited shall each designate an appraiser;
- (b) the two designated appraisers together shall designate an appraiser;
- (c) the three appraisers shall fix the fair value of the interest owned by the dissenting limited partner as of the close of business on the day prior to the date on which the resolution approving the action was passed,

excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the limited partnership and the dissenting limited partner for all purposes; and

- (d) the limited partnership shall pay to the limited partner the amount in money upon the limited partner taking such action as is necessary to relinquish the interest.

(7) The enforcement by a limited partner of an entitlement under section 80 excludes the enforcement by the limited partner of a right to which he or she might otherwise be entitled by virtue of holding the interest, except that section 80 does not exclude the right of the limited partner to institute proceedings to obtain relief on the ground that the action is illegal.

**82.** (1) For the purposes of this section and section 83, “arrangement” includes Arrangements.

- (a) an amendment to a limited partnership agreement;
- (b) a reorganisation of a limited partnership;
- (c) a merger or consolidation of one or more limited partnerships;
- (d) a merger or consolidation of one or more limited partnerships with one or more foreign limited partnerships, if the surviving limited partnership or the consolidated limited partnership is a limited partnership within the meaning of section 2;
- (e) a separation of two or more businesses carried on by a limited partnership;
- (f) any transfer, exchange or other disposition of any of the assets or business of a limited partnership to any person in exchange for partnership interests, debt obligations or other securities of that other person, or money or other assets, or a combination thereof;
- (g) any transfer, exchange or other disposition of partnership interests, debt obligations or other securities in a limited partnership held by the holders thereof for partnership interests, debt obligations or other securities in the limited partnership or money or other assets, or a combination thereof;
- (h) the termination and winding up of a limited partnership; or
- (i) any combination of any of the things specified in paragraphs (a) to (h).

(2) Where the general partners of a limited partnership determine that it is in the best interests of the limited partnership or the creditors or partners of the limited partnership, the general partners may, by resolution of all the general partners, approve a plan of arrangement that contains details of the proposed arrangement, even though the proposed arrangement may be authorised or permitted by any other provision of this Act or otherwise permitted.

**83.** (1) Upon approval of the plan of arrangement by the general partners, the limited partnership shall make application to the Court for approval of the proposed arrangement.

Approval of plan of arrangement by Court.

(2) On an application under subsection (1), the Court may make a final order

- (a) rejecting the plan of arrangement; or
- (b) approving the plan of arrangement, with such amendments as it may direct and on such terms and conditions as it considers fit.

(3) The Court may, in the final order, provide for such other matters as the Court considers necessary or desirable to give effect to the arrangement, including directions for filing notice of the arrangement and for giving specified persons notice of the arrangement.

(4) Without limiting subsection (3), the Court may order that a limited partner who dissents from the arrangement shall be paid the fair value of his or her partnership interest.

(5) A final order approving a plan of arrangement

- (a) shall be binding on the limited partnership and on its partners and such other persons or class of persons as may be specified in the order; and
- (b) is not subject to an appeal unless a question of law is involved, and in which case notice of appeal shall be given within the period of twenty days immediately following the date of the order.

(6) The Court may, before making a final order, make such interim order as it considers fit, including an order

- (a) requiring the limited partners and any other persons specified in the order to be given notice of the proposed arrangement;
- (b) requiring the approval of the limited partners and any other persons specified in the order to be obtained and directing the manner of obtaining the approval; or
- (c) that a hearing be conducted and that any interested person may appear and be heard at the hearing.

(7) A plan of arrangement takes effect on the date of the Order or on such later date as may be specified in the order.

**84.** The liquidator of a limited partnership appointed under Part VIII, other than an Insolvency liquidator, may approve a plan of arrangement under section 82 in which case, that section applies as if “liquidator” was substituted for “general partners” and subject to such other modifications as are appropriate.

Arrangement where limited partnership in liquidation under Part VII.

**85.** (1) Where a compromise or arrangement is proposed between a limited partnership and its creditors, or any class of them, or between the limited partnership and its partners, or any class of them, the Court may, on the application

Schemes of arrangement.

of a person specified in subsection (2), order a meeting of the creditors or class of creditors, or of the partners or class of partners, as the case may be, to be summoned in such manner as the Court directs.

- (2) An application under subsection (1) may be made by
- (a) the limited partnership;
  - (b) a creditor of the limited partnership;
  - (c) a partner of the limited partnership;
  - (d) a liquidator of the limited partnership, if the liquidator has been appointed under Part VIII; or
  - (e) an Insolvency Act liquidator, if the Insolvency Act liquidator has been appointed under Part VIII.

(3) A compromise or arrangement, if sanctioned by the Court, is binding on No. 5 of 2003

- (a) all the creditors or class of creditors, or the members or class of members, as the case may be, and also on the limited partnership; or
- (b) in the case of a limited partnership in liquidation under Part VIII or in liquidation under the Insolvency Act, 2003, on the liquidator and on every person liable to contribute to the assets of the limited partnership in the event of its liquidation,

if the compromise or arrangement is agreed by a majority in number representing, as the case may be

- (i) a majority in number representing seventy five per cent in value of the creditors or class of creditors present and voting either in person or by proxy at the meeting of creditors; or
- (ii) a majority in number representing
  - (A) all the general partners; and
  - (B) limited partners who own more than seventy five per cent of the interest in the limited partnership profits held by all the limited partners.

(4) In the case of an arrangement binding on creditors, or a class of creditors, an order of the Court made under subsection (3) has no effect until a copy of the order has been filed.

(5) In this section, “arrangement” includes a reorganisation of the limited partnership interests, whether by the consolidation or by the division of those interests, or by both of those methods.

(6) Information and explanations to be contained in, or to accompany, a notice calling a meeting under this section may be prescribed by the Regulations.



(7) Where the Court makes an order with respect to a limited partnership under this section, sections 71 to 84 do not apply to the limited partnership.

## PART VIII

### TERMINATION, WINDING UP AND DE-REGISTRATION

#### *Termination and Winding up*

- 86.** (1) A limited partnership terminates and its affairs shall be wound up Termination of limited partnership.
- (a) at a time or on the occurrence of an event specified in the limited partnership agreement as terminating the limited partnership, if any;
  - (b) subject to the limited partnership agreement, on a resolution that the limited partnership terminates, passed by
    - (i) all the general partners; and
    - (ii) limited partners who have made capital contributions exceeding fifty per cent, or such higher percentage as may be stated in the limited partnership agreement, of the total capital contributions made by all the limited partners;
  - (c) if there has been no general partner for ninety days, or for such shorter period as may be specified in the limited partnership agreement;
  - (d) if there has been no limited partner for ninety days, or for such shorter period as may be specified in the limited partnership agreement;
  - (e) on the appointment of a liquidator of the limited partnership in accordance with section 93; or
  - (f) on the limited partnership being struck off the Register of Limited Partnerships on any ground other than for the non-payment of fees or penalties under section 95(1)(c).
- (2) A person is deemed not to be a partner for the purposes of subsection (1)(c) where
- (a) the person is a BVI company and the company has been dissolved under the BVI Business Companies Act, 2004; No. 16 of 2004
  - (b) the person is a limited partnership that has terminated;
  - (c) the person is a partnership, other than a limited partnership, and an Insolvency Act, 2003 liquidator has been appointed; No. 5 of 2003
  - (d) the person is an individual and
    - (i) a trustee in bankruptcy of the individual has been appointed

under the Insolvency Act, 2003; or

(ii) a person with functions equivalent to an Insolvency Act trustee in bankruptcy has been appointed with respect to the individual in insolvency proceedings outside the Virgin Islands;

(e) the person is a body corporate incorporated, formed or established outside the Virgin Islands and a person with functions equivalent to an Insolvency Act liquidator has been appointed in insolvency proceedings outside the Virgin Islands to liquidate the body corporate and wind up its business.

(3) On the application of a partner, the Court may extend the period of ninety days specified in subsection (1)(c) or (d), or shorter period specified in the limited partnership agreement, even though the period has already expired.

(4) Subject to the limited partnership agreement

(a) a limited partnership does not terminate and is not required to terminate or wind up by any change in the limited partners; and

(b) a limited partner may not terminate a limited partnership by notice.

**87.** (1) For the purposes of this Part, a limited partnership is solvent if

Solvent and insolvent limited partnerships and solvency resolutions.

(a) the value of its assets, including assets held by the general partners on trust for the limited partnership, equals or exceeds the debts and liabilities of the limited partnership; and

(b) the limited partnership is able to pay its debts and liabilities, excluding liabilities to partners on account of their partnership interests, as they fall due for payment, out of the assets of the limited partnership, without recourse to the separate assets of the general partners not contributed to the limited partnership.

(2) A limited partnership that does not satisfy subsection (1)(a) or (b) is insolvent for the purposes of this Part.

(3) A solvency resolution is a resolution passed by the general partners of a limited partnership

(a) stating that, in their opinion, the limited partnership is solvent, within the meaning of subsection (1); and

(b) having annexed to the resolution, a statement of the assets and liabilities of the limited partnership as at a date no earlier than seven days prior to the date of the resolution.

(4) A solvency resolution is void and of no effect if, whether or not the limited partnership is solvent

(a) the Court has appointed an Insolvency Act liquidator with respect to the limited partnership;

- (b) an application has been made to the Court for the appointment of an Insolvency Act liquidator with respect to the limited partnership; or
- (c) the resolution does not comply with subsection (3).

(5) A general partner that votes in favour of a solvency resolution without having reasonable grounds for the opinion that the limited partnership is solvent, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**88.** (1) After the termination of a limited partnership, the general partners may,

Procedure following termination of solvent limited partnership.

- (a) if the limited partnership has no assets and no liabilities, apply to the Registrar to de-register the limited partnership under section 95(1)(d); or
- (b) if the general partners have passed a solvency resolution, resolve to
  - (i) wind up the affairs of the limited partnership and distribute the surplus assets of the limited partnership; or
  - (ii) appoint an eligible individual as liquidator to wind up the affairs of the limited partnership and distribute the assets of the limited partnership.

(2) Notwithstanding subsection (1)(b)(ii), a general partner may be appointed liquidator of a limited partnership, even if not an individual.

(3) The general partners may pass a resolution under section 88(1)(b), notwithstanding that there is a charge registered in respect of any assets of the limited partnership under section 59, but the general partners or the liquidator shall be bound to give effect to the rights and priority of the claims of the secured creditors of the limited partnership.

(4) Where, on the termination of a limited partnership, the general partners resolve to wind up the affairs of the limited partnership, despite the termination of the limited partnership, to the extent necessary to wind up its affairs and to complete any transaction begun but uncompleted at the time of termination,

- (a) any debt or liability incurred by a general partner is considered a debt or liability of the partnership; and
- (b) the rights and obligations of the partners, continue.

(5) Subject to sections 89 and 90, the general partners or, if appointed, the liquidator, shall wind up the affairs of the limited partnership and distribute the assets of the limited partnership in accordance with the limited partnership agreement.

(6) The descriptions or categories of individuals who are eligible to be appointed, or act, as the liquidator of a limited partnership may be prescribed by the Regulations.

**89.** (1) This section applies whether the affairs of the partnership are being wound up by the general partners or by a liquidator appointed by a resolution of the general partners passed under section 88(1)(b)(ii).

Winding up of affairs of limited partnership.

(2) Upon the termination of a limited partnership, the partnership shall cease to carry on business except to the extent necessary for its beneficial winding up.

(3) The expenses properly incurred in the winding up of a limited partnership, including the remuneration of the liquidator, if appointed, are payable from the assets of the limited partnership in priority to all other debts.

(4) The general partners or the liquidator

(a) shall dispose of and realise the assets of the limited partnership;

(b) shall, in accordance with section 90,

(i) pay the debts and liabilities of the limited partnership; and

(ii) distribute any surplus assets to the partners; and

(c) may, to the extent necessary for the beneficial winding up of the limited partnership

(i) carry on the business and activities of the limited partnership; and

(ii) commence, continue, defend or settle any legal proceedings for and on behalf of the limited partnership and, in the case of a limited partnership with legal personality, in the name of the limited partnership.

(5) Subsection (4) does not affect or limit any personal liability of the general partners.

(6) The general partners or the liquidator may apply to the Court for directions on any matter concerning the winding up of a limited partnership and, on an application made under this subsection, the Court may make such order as it considers fit.

(7) A general partner or liquidator who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**90.** (1) The assets of a limited partnership that is being, or has been, wound up shall be applied in the following priority:

Distribution of assets of limited partnership.

(a) first, to creditors other than partners and former partners, in their capacity as partners, in satisfaction of partnership debts;

(b) subject to the limited partnership agreement, second, to limited partners and former limited partners who

- (i) are creditors, but not also general partners, in satisfaction of partnership debts; or
- (ii) have a claim for the return of their contributions;
- (c) third in accordance with the terms of the limited partnership agreement.

(2) Where the limited partnership agreement does not provide for the distribution of the surplus assets of the limited partnership, the assets shall be distributed to the partners in proportion to their capital contribution.

**91.** The general partners or, if appointed the liquidator, shall on the completion of the winding up of a limited partnership Preparation of final account.

- (a) prepare an account of the winding up and the disposal of the assets of the limited partnership; and
- (b) provide a copy of the account to each partner.

*Insolvent Limited Partnerships*

**92.** (1) If at any time the general partners winding up a limited partnership or, if appointed the liquidator, form the opinion that the limited partnership is insolvent, the general partner or liquidator shall forthwith send a written notice to the Official Receiver. Insolvent limited partnership.

(2) A general partner or liquidator who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars.

**93.** (1) On the application of a person specified in subsection (4), the Court may appoint the Official Receiver or an eligible insolvency practitioner to be the liquidator of a limited partnership on any of the following grounds: Court may appoint liquidator.

- (a) the limited partnership has terminated, but is not being wound up;
- (b) the limited partnership is insolvent;
- (c) the Court is of the opinion that it is just and equitable that a liquidator be appointed; or
- (d) the Court is of the opinion that it is in the public interest that a liquidator be appointed.

(2) Without limiting subsection (1), the Court may appoint a liquidator under subsection (1)(c) if, on the application of a partner, it is satisfied that the affairs of the limited partnership have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the limited partnership have been, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to the partner in that capacity.

(3) An application may be made under subsection (1) whether the limited partnership

(a) has terminated in accordance with section 86 or it has not terminated; and

(b) has legal personality or does not have legal personality.

(4) The following persons may apply for the appointment of a liquidator

(a) a partner;

(b) a creditor;

(c) the registered agent, if there is no general partner;

(d) the Official Receiver; or

(e) the Attorney General.

(5) An application for the appointment of a liquidator under subsection (1)(d) may only be made by the Official Receiver or the Attorney General.

**94.** (1) An insolvent limited partnership shall not be wound up or liquidated under this Part but may only be liquidated under the Insolvency Act, 2003 as if the limited partnership were an unlimited company and as if references to

Application of  
Insolvency Act,  
2003.

(a) a company were to a limited partnership;

No. 5 of 2003.

(b) a member with unlimited liability were to the general partners; and

(c) a member with limited liability were to a limited partner.

(2) Subject to subsection (3), where the Court appoints a liquidator on an application under section 93, the Insolvency Act applies to the liquidation of the limited partnership, with such modifications as may be necessary.

(3) On the hearing of an application under section 93(1), the Court may make such interim or other order as it considers fit.

#### *Striking off and De-registration*

**95.** (1) The Registrar may strike a limited partnership off the Register of Limited Partnerships if

Registrar may  
strike limited  
partnership off  
Register.

(a) the limited partnership

(i) does not have a registered agent; or

(ii) fails to file any return, notice or document required to be filed under this Act;

(b) the Registrar is satisfied that

- (i) the limited partnership has ceased to carry on business; or
- (ii) the limited partnership is carrying on business for which a licence, permit or authority is required under the laws of the Virgin Islands without having such licence, permit or authority; or
- (c) the limited partnership fails to pay its annual fee or any late payment penalty by the due date; or
- (d) subject to subsection (5), the limited partnership applies to be struck off the Register of Limited Partnerships.

(2) Where the Registrar is of the opinion that the limited partnership is trading or has assets or that there is some other reason why the limited partnership should not be struck off the Register of Limited Partnerships, the Registrar may, instead of striking the limited partnership from the Register, refer the limited partnership to the Commission for investigation.

(3) Before striking a limited partnership off the Register of Limited Partnerships on the grounds specified in subsection (1)(a), (b) or (c), the Registrar shall

- (a) send the limited partnership a notice stating that, unless the limited partnership shows cause to the contrary, it will be struck from the Register of Limited Partnerships on a date specified in the notice which shall be no less than thirty days after the date of the notice; and
- (b) publish a notice of intention to strike the limited partnership off the Register of Limited Partnerships in the *Gazette*.

(4) After the expiration of the time specified in the notice, unless the limited partnership has shown cause to the contrary, the Registrar may strike the limited partnership off the Register of Limited Partnerships.

(5) The Registrar shall not strike a limited partnership off the Register of Limited Partnerships under subsection (1)(d) unless satisfied that

- (a) a certificate of good standing could be issued in respect of the limited partnership;
- (b) the limited partnership has no assets or liabilities; and
- (c) the limited partnership is not carrying on business.

(6) The Registrar shall publish a notice of the striking of a limited partnership from the Register of Limited Partnerships in the *Gazette*.

(7) A limited partnership that is struck from the Register of Limited Partnerships under subsection (1)(d) is considered to be de-registered with immediate effect.

(8) The striking of a limited partnership off the Register of Limited Partnerships is effective from the date of the notice published in the *Gazette*.

(9) The striking off of a limited partnership shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice in the *Gazette* under subsection (3).

**96.** (1) Any person who is aggrieved by the striking of a limited partnership off the Register of Limited Partnerships under section 95 may, within ninety days of the date of the notice published in the *Gazette*, appeal to the Court. Appeal.

(2) Notice of an appeal to the Court under subsection (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending the determination of an appeal under subsection (1), suspend the operation of the striking off upon such terms as the Registrar considers appropriate.

**97.** (1) Where a limited partnership has been struck off the Register of Limited Partnerships, but not de-registered, the limited partnership and the partners and any liquidator or receiver of the limited partnership, may not Effect of striking off.

- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the limited partnership;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the limited partnership; or
- (c) act in any way with respect to the affairs of the limited partnership.

(2) Notwithstanding subsection (1), where a limited partnership has been struck off the Register of Limited Partnerships, the limited partnership, a general partner or any liquidator or receiver of the limited partnership may

- (a) make application for restoration of the limited partnership to the Register of Limited Partnerships;
- (b) continue to defend proceedings that were commenced against the limited partnership prior to the date of the striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the limited partnership prior to the date of striking-off.

(3) The fact that a limited partnership is struck off the Register of Limited Partnerships does not

- (a) prevent
  - (i) the limited partnership from incurring liabilities; or
  - (ii) any creditor from making a claim against the limited partnership or a general partner and pursuing the claim through to judgement or execution;



(b) affect the liability of a general partner.

(4) For the purposes of this section and section 99, “liquidator” means an Insolvency Act liquidator.

**98.** Where a limited partnership that has been struck off the Register of Limited Partnerships under section 95 remains struck off continuously for a period of seven years, it is de-registered with effect from the last day of that period.

De-registration of limited partnership struck from the Register.

**99.** (1) Where a limited partnership has been struck off the Register of Limited Partnerships, but not de-registered, the Registrar may, upon receipt of an application and upon payment of the restoration fee and all outstanding fees and penalties, restore the limited partnership to the Register and issue a certificate of restoration to the Register.

Restoration of limited partnership to Register.

(2) The Registrar shall not restore the limited partnership to the Register unless he or she is satisfied that

(a) on restoration, the limited partnership will have at least one general partner and one limited partner;

(b) if the limited partnership does not have a registered agent, a licensed person has agreed to act as registered agent of the limited partnership; and

(c) it would be fair and reasonable for the limited partnership to be restored to the Register.

(3) An application to restore a limited partnership to the Register of Limited Partnerships under subsection (1) may be made by the limited partnership, or a creditor, partner or liquidator of the limited partnership and shall be made within seven years of the date of the notice published in the *Gazette* under section 95(5).

(4) The limited partnership, or the creditor, partner or liquidator of the limited partnership may, within ninety days, appeal to the Court from a refusal of the Registrar to restore the limited partnership to the Register of Limited Partnerships and, if the Court is satisfied that it would be just for the limited partnership to be restored to the Register of Limited Partnerships, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

(5) Notice of an appeal to the Judge in chambers under subsection (4) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(6) Where the Registrar restores a limited partnership to the Register of Limited Partnerships under subsection (1) or in accordance with a direction of the Court under subsection (4), the Registrar shall issue a certificate of restoration to the Register of Limited Partnerships.

(7) Where a limited partnership is restored to the Register of Limited Partnerships under this section, the limited partnership is deemed never to have been struck off the Register of Limited Partnerships.

(8) Where a limited partnership is restored to the Register of Limited Partnerships, it shall immediately appoint a registered agent.

**100.** (1) Where a limited partnership has been de-registered, application may be made to the Court in accordance with subsection (2) to declare the de-registration of the limited partnership void and restore the limited partnership to the Register of Limited Partnerships.

Declaration by Court that de-registration void.

(2) An application under subsection (1)

- (a) may be made by the limited partnership or by a creditor, partner or liquidator of the limited partnership; and
- (b) shall be made within seven years of the date that the limited partnership was de-registered.

(3) On an application under subsection (1), the Court may declare the de-registration of the limited partnership void and restore the limited partnership to the Register of Limited Partnerships subject to such conditions as it considers just.

(4) Where a limited partnership is restored to the Register of Limited Partnerships under this section, the limited partnership is deemed never to have been de-registered or struck off the Register of Limited Partnerships.

**101.** (1) An application may be made to the Court to restore a de-registered limited partnership to the Register of Limited Partnerships by

Application to restore de-registered limited partnership to Register.

- (a) a creditor, a former partner or a former liquidator of the limited partnership; or
- (b) any person who can establish an interest in having the limited partnership restored to the Register of Limited Partnerships.

(2) An application under subsection (1) may not be made more than seven years after the date that the limited partnership was de-registered.

(3) Notice of the application shall be served on

- (a) the Registrar of Limited Partnerships, and
- (b) the Financial Secretary,

each of whom is entitled to appear and be heard on the hearing of the application.

**102.** (1) Subject to subsection (2), on an application under section 101 the Court may

Court's powers on hearing.

- (a) restore the limited partnership to the Register of Limited Partnerships subject to such conditions as it considers appropriate; and
- (b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the limited partnership and any other persons as nearly as possible in the same position as if the limited

partnership had not struck off the Register of Limited Partnerships and de-registered.

(2) Where a limited partnership is de-registered following the completion or termination of its liquidation under the Insolvency Act, 2003, the Court shall not restore the limited partnership to the Register of Limited Partnerships unless

No. 5 of 2003

- (a) the applicant nominates a person to be liquidator of the limited partnership, if it is restored to the Register of Limited Partnerships;
- (b) the person nominated as liquidator consents to act, and is eligible to act, as liquidator of the limited partnership on its restoration; and
- (c) satisfactory provision has been made or will be made for the expenses and remuneration of the liquidator, if appointed.

(3) Where the Court makes an order restoring a limited partnership to which subsection (2) applies, it shall appoint as liquidator of the limited partnership

- (a) the person nominated by the applicant; or
- (b) some other person who is eligible to act as liquidator of the limited partnership.

**103.** (1) Where the Court makes an order restoring a limited partnership to the Register of Limited Partnerships, a sealed copy of the Order shall be filed with the Registrar

Effect of restoration.

- (a) in the case of a limited partnership to which section 102(2) applies, by the person appointed to be liquidator of the limited partnership under section 102(3); and
- (b) in any other case, by the applicant for the Order.

(2) On receiving a filed copy of a sealed order under subsection (1), the Registrar shall restore the limited partnership to the Register of Limited Partnerships with effect from the date and time that the copy of the sealed order was filed and issue a certificate of restoration to the Register of Limited Partnerships.

(3) Where the limited partnership was de-registered following the completion or termination of its liquidation under the Insolvency Act, 2003

No. 5 of 2003

- (a) the limited partnership is restored as a limited partnership being wound up under this Act or in liquidation under the Insolvency Act; and
- (b) the person appointed by the Court as liquidator is constituted liquidator of the limited partnership with effect from the time that the limited partnership is restored to the Register of Limited Partnerships.

(4) A limited partnership shall be restored to the Register of Limited Partnerships with the name that it had immediately before it was de-registered.

(5) A limited partnership that is restored to the Register of Limited Partnerships shall be deemed to have continued in existence as if it had not been de-registered or struck off the Register of Limited Partnerships.

**104.** (1) Where a limited partnership has been struck off the Register of Limited Partnerships, the Registrar may apply to the Court for the appointment of the Official Receiver or an eligible insolvency practitioner as liquidator of the limited partnership.

Appointment of  
Official Receiver  
as liquidator.

(2) Where the Court makes an order under subsection (1)

- (a) the limited partnership shall be restored to the Register of Limited Partnerships; and
- (b) the liquidator shall be deemed to have been appointed under the Insolvency Act, 2003.

No. 5 of 2003

**105.** (1) This section applies to any assets of a limited partnership with legal personality that, at the date of its de-registration, is held by the limited partnership, but does not apply to any assets of such a limited partnership that is held by the general partner on trust for the limited partnership.

Assets of de-  
registered limited  
partnership.

(2) Subject to subsection (3), any assets of a de-registered limited partnership to which this section applies that has not been disposed of at the date of the limited partnership's de-registration vests in the Crown.

(3) When a limited partnership is restored to the Register of Limited Partnerships, any assets, other than money, that was vested in the Crown under subsection (2) on the de-registration of the limited partnership and that have not been disposed of must be returned to the limited partnership upon its restoration to the Register.

(4) The limited partnership is entitled to be paid out of the Consolidated Fund

- (a) any money received by the Crown under subsection (2) in respect of the limited partnership; and
- (b) if an asset, other than money, vested in the Crown under subsection (2) in respect of the limited partnership and that asset has been disposed of, an amount equal to the lesser of
  - (i) the value of any such asset at the date it vested in the Crown; and
  - (ii) the amount realized by the Crown by the disposition of that asset.

**106.** (1) In this section, "onerous property" means

Disclaimer.

- (a) an unprofitable contract; or
- (b) an asset of the limited partnership that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Minister may, by notice in writing published in the *Gazette*, disclaim the Crown's title to onerous property which vests in the Crown under section 105.

(3) A statement in a notice disclaiming onerous property under this section that the vesting of the property in the Crown first came to the notice of the Minister on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Minister, orders otherwise, the Minister is not entitled to disclaim onerous property unless the property is disclaimed

- (a) within 12 months of the date upon which the vesting of the property under section 105 came to the notice of the Minister; or
- (b) if any person interested in the property gives notice in writing to the Minister requiring him or her to decide whether he or she will or will not disclaim the property, within 3 months of the date upon which he or she received the notice, whichever occurs first.

(5) Property disclaimed by the Minister under this section shall be deemed not to have been vested in the Crown under section 105.

(6) A disclaimer under this section

- (a) operates so as to determine, with effect from immediately prior to the de-registration of the limited partnership, the rights, interests and liabilities of the limited partnership in or in respect of the property disclaimed; and
- (b) does not, except so far as is necessary to release the limited partnership from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section

- (a) shall be treated as a creditor of the limited partnership for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
- (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under subsection (7)(b), make an order under that paragraph if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

## PART IX

### ADMINISTRATION AND GENERAL

**107.** (1) There is established the office of Registrar of Limited Partnerships.

Registrar of  
Limited  
Partnerships.

(2) The Registrar of Corporate Affairs appointed under section 229(1) of the BVI Business Companies Act, 2004 shall act as, and perform the functions and exercise the powers of, Registrar of Limited Partnerships.

No. 16 of 2004

(3) Any Deputy or Assistant Registrars of Corporate Affairs appointed under section 229(1) of the BVI Business Companies Act, 2004 shall act as Deputy and Assistant Registrars of Limited Partnerships.

(4) Subject to the control of the Registrar, a Deputy Registrar and an Assistant Registrar of Limited Partnerships has and may exercise the powers, duties and functions of the Registrar and the fact that a Deputy or Assistant Registrar exercises those powers, duties and functions is conclusive evidence of his or her authority to do so.

**108.** (1) The Registrar shall maintain

Registers.

- (a) a Register of Limited Partnerships registered under this Act; and
- (b) a Register of Registered Charges registered under Part IV.

(2) The registers maintained under subsection (1) are prima facie evidence of any matters required or authorised by or under this Act to be entered in them.

(3) The registers maintained by the Registrar and the information contained in any document filed may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in a legible and usable form.

(4) The Registrar may establish systems and facilities enabling the filing of documents and the provision of information to the Registrar in electronic form and the issuance of certificates and other documents in electronic form.

(5) Regulations may provide

- (a) that specified qualifying documents, specified types or descriptions of qualifying documents, qualifying documents filed by specified persons or by specified types or descriptions of person or all qualifying documents may only be filed by electronic means; and
- (b) for specific requirements concerning

- (i) the keeping by the Registrar of the registers, and of documents filed, in electronic or any other form;
- (ii) the filing of documents in both paper and electronic form; and
- (iii) the issuance by the Registrar of certificates and other documents in electronic form.

(6) Regulations shall not be made under subsection (5)(a) in relation to a qualifying document or documents unless the Registrar has established systems and facilities that enable the specified document or documents to be filed in electronic form.

(7) The Registrar

- (a) shall retain every qualifying document filed; and
- (b) shall not retain any document filed that is not a qualifying document.

(8) For the purposes of this section, a document is a qualifying document if

- (a) the Act or the Regulations, or another enactment, require or expressly permit the document to be filed; and
- (b) the document complies with the requirements of, and is filed in accordance with, the Act, the Regulations or the other enactment that requires or permits the document to be filed.

**109.** (1) Except as otherwise provided in this Act or the Regulations, a document required or permitted by this Act to be filed by, or in relation to, a limited partnership may only be filed by the registered agent of the limited partnership.

Filing of documents.

(2) The Commission may, by notice published in the *Gazette* and on its Internet site, provide for the filing, registration and issuing of documents, or certain specified types of documents, on a non-business day.

(3) Where a registered agent or other person responsible for signing or filing a document required or permitted by this Act to be filed fails or refuses to sign or file the document, a partner, and an assignee of a partnership interest who is or may be affected by the failure or refusal, may apply to the Court for an order directing the person responsible, or such other person as the Court considers fit, to sign or file the document.

**110.** (1) Except as otherwise provided in this Act, the Regulations or any other enactment, a person may

Inspection of Registers and documents filed.

- (a) inspect the Registers maintained by the Registrar under section 108(1);
- (b) inspect any document retained by the Registrar in accordance with section 108(7); and
- (c) require a certified or uncertified copy or extract certificate of registration, restoration, merger, consolidation, arrangement,

continuation, discontinuance, de-registration or good standing of a limited partnership, or a copy or an extract of any document or any part of a document of which the Registrar has custody, to be certified by the Registrar.

(2) A certificate of registration, restoration, merger, consolidation, arrangement, continuation, discontinuance, de-registration or good standing or a certified copy or extract is prima facie evidence of the matters contained therein.

(3) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

(4) Subsection (3) applies whether the copy or extract is obtained from a document filed in paper form or is a copy of, or extract from, a document filed in electronic form or is an extract from any Register maintained by the Registrar in electronic form.

(5) An extract certified by the Registrar as containing particulars of a registered document filed in electronic form is, in the absence of proof to the contrary, conclusive evidence of the filing and registration of those particulars.

**111.** (1) A person shall not be deemed to have notice or knowledge of any document relating to a limited partnership, or of the provisions or contents of any such document, by reason only of the fact that a document

Constructive notice.

(a) is available to the public from the Registrar; or

(b) is available for inspection at the registered office of the limited partnership or at the office of its registered agent.

(2) Notwithstanding subsection (1), a person is deemed to have notice of a document filed by a limited partnership with legal personality under Part V and the provisions and contents of any such document, if the document has been registered by the Registrar.

**112.** (1) The Registrar shall, upon request by any person, issue a certificate of good standing in the approved form certifying that a limited partnership is of good standing if the Registrar is satisfied that

Certificate of good standing.

(a) the limited partnership is on the Register of Limited Partnerships; and

(b) the limited partnership has paid all fees, annual fees and penalties due and payable.

(2) The certificate of good standing issued under subsection (1) shall contain such statements as are specified in the Regulations.

**113.** The Registrar may, upon request by any person, issue a certificate confirming

Issue of miscellaneous certificates.

(a) information recorded on the Register in relation to a limited partnership; or



(b) the status of a limited partnership.

**114.** Any certificate or other document required to be issued by the Registrar under this Act shall, if a form has been approved, be in the approved form. Form of certificate.

**115.** (1) Regulations made under section 62 of the Financial Services Commission Act may provide for the fees chargeable and payable in respect of any matter contained in this Act or the Regulations. Fees and penalties to be paid to Registrar.

(2) Unless this Act or the Regulations provide otherwise, the registered agent is the only person authorised to pay a fee to the Registrar under this section, and the Registrar shall not accept a fee paid by any other person. No. 12 of 2001

(3) The Registrar may refuse to take any action required under this Act for which a fee is prescribed until all fees have been paid.

(4) A limited partnership continues to be liable for all fees and penalties payable under this Act and the Regulations, notwithstanding that the limited partnership has been struck off the Register of Limited Partnerships.

**116.** Any fee or penalty payable under this Act that remains unpaid for thirty days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Commission before a Magistrate in civil proceedings, notwithstanding the amount sought to be recovered. Recovery of penalties, etc.

**117.** (1) The Cabinet may, on the advice of the Commission, make Regulations generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act. Regulations.

(2) Without limiting subsection (1), the Regulations may specify matters that must be included or provided for in a limited partnership agreement.

(3) The Regulations may make different provision in relation to different persons, circumstances or cases.

**118.** (1) The Commission may, by publication in the prescribed manner, approve forms to be used for documents filed, issued or produced under this Act or the Regulations. Approval of forms by the Commission.

(2) Where the Commission has published an approved form with respect to a document to be filed, issued or produced under this Act or the Regulations, the document shall

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified by the approved form.

**119.** (1) A general partner of a limited partnership may, without the necessity of joining any other party, apply to the Court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the limited partnership agreement. Declaration by Court.

(2) A person acting in accordance with a declaration made by the Court as a result of an application under subsection (1) is deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his or her duties in the subject matter of the application.

**120.** (1) Notwithstanding any provision of the Income Tax Ordinance

Exemptions from tax.

- (a) a limited partnership;
- (b) all distributions, return of contributions, interest, rents, royalties, compensations and other amounts paid by a limited partnership; and
- (c) capital gains realised with respect to any partnership interest, debt obligations or other securities of a limited partnership,

Cap. 206

are exempt from all provisions of the Income Tax Ordinance.

(2) For the avoidance of doubt a limited partnership under subsection (1) shall not be exempted from the payroll tax as provided in the Payroll Taxes Act, 2004.

No. 18 of 2004

(3) No estate, inheritance, succession or gift tax is payable with respect to any partnership interests, debt obligations or other securities of a limited partnership.

(4) Subject to subsection (5), notwithstanding any provision of the Stamp Act

Cap. 212

- (a) all instruments relating to transfers of an asset to or by a limited partnership;
- (b) all instruments relating to transactions in respect of the partnership interests, debt obligations or other securities in or of a limited partnership; and
- (c) all instruments relating to other transactions relating to the business of a limited partnership,

are exempt from the payment of stamp duty.

(5) Subsection (4) does not apply to an instrument relating to

- (a) the transfer to or by a limited partnership of an interest in land situate in the Virgin Islands; or
- (b) transactions in respect of the interests, debt obligations or other securities in or of a land owning limited partnership.

(6) For the purposes of subsection (5), a limited partnership is a land owning limited partnership if it, or any limited partnership or company that it has a prescribed interest in, has an interest in any land in the Virgin Islands.

(7) Notwithstanding any provision of the Registration and Records Act, all deeds and other instruments relating to

Cap. 67

- (a) transfers of an asset to or by a limited partnership,
- (b) transactions in respect of the partnership interests, debt obligations or other securities in or of a limited partnership, and

(c) other transactions relating to the business of a limited partnership,  
are exempt from the provisions of that Act.

**121.** The rules of equity and of common law applicable to partnerships apply to a limited partnership, unless inconsistent with the provisions of this Act.

Rules of common law and equity apply.

**122.** The transitional provisions in the Schedule apply.

Transitional provisions.

## SCHEDULE

### TRANSITIONAL PROVISIONS

#### RE-REGISTRATION OF EXISTING LIMITED PARTNERSHIPS

1. An existing limited partnership, whether a local limited partnership or an international limited partnership, may be re-registered under this Act as a limited partnership in accordance with this Schedule provided that, on the date of re-registration, it complies with this Act. Existing limited partnership may be re-registered under this Act.
2. An existing limited partnership that intends to apply to the Registrar for re-registration under this Act shall have a written limited partnership agreement that complies with section 7 which, on re-registration, replaces its articles and its memorandum ceases to have effect. Limited partnership agreement.
3. (1) An existing limited partnership is re-registered as a limited partnership without legal personality unless, on the election of the general partners under paragraph 4(4)(b), it is registered with legal personality. Existing limited partnership re-registered without legal personality.
4. (1) In this Schedule “transition period” means the period of ten years after the coming into force of this Act. Application to re-register under Act.  
  
(2) An existing limited partnership may, at any time during the transition period apply to the Registrar to re-register as a limited partnership under this Act.  
  
(3) An application to re-register an existing limited partnership may only be filed by the registered agent of the existing limited partnership.  
  
(4) An application to re-register a limited partnership shall be made to the Registrar by filing
  - (a) a statement signed by or on behalf of each general partner specifying
    - (i) the name of the limited partnership and its foreign character name, if any;
    - (ii) the address of the registered office;
    - (iii) the name and address of the registered agent of the limited partnership on registration;
    - (iv) the name and address of each general partner;
    - (v) the term for which the limited partnership is entered into or, if for unlimited duration, a statement to that effect; and
    - (vi) such other particulars as may be prescribed;
  - (b) if the general partners of a limited partnership wish to elect that the limited partnership shall have legal personality, a declaration signed by or on behalf of each general partner stating that the limited partnership shall have legal personality;

- (c) a document signed by the registered agent signifying consent to act as the registered agent of the existing limited partnership on its re-registration; and
- (d) such other documents as may be prescribed.

(5) An election made under this section that a limited partnership shall have legal personality is irrevocable and a failure to make such an election is final.

5. (1) If the Registrar is satisfied that that an application for the re-registration of an existing limited partnership complies with this Act and the Regulations, subject to subparagraph (2), the Registrar shall

Re-registration  
by Registrar.

- (a) register the documents filed and re-register the existing limited partnership as a limited partnership formed under this Act;
- (b) record in the Register of Limited Partnerships
  - (i) the address specified in the application in accordance with paragraph 4(4)(a)(ii), as the registered office of the limited partnership;
  - (ii) the person specified in the application in accordance with section 4(4)(a)(iii), as the registered agent of the limited partnership; and
  - (iii) the name and address of each general partner;
- (c) allot a unique number to the limited partnership; and
- (d) issue a certificate of registration, which shall state whether or not the limited partnership has legal personality.

(2) The Registrar may refuse to re-register an existing limited partnership under this paragraph if the limited partnership is in default of any obligation under the Partnership Act, including an obligation to pay any fee or penalty due on or before the date of its re-registration.

(3) A certificate of re-registration issued under subparagraph (1) is conclusive evidence that

- (a) the requirements of this Act as to re-registration have been complied with; and
- (b) the limited partnership is re-registered on the date specified in the certificate.

(4) The unique number allotted to a limited partnership under subparagraph (1) may be the number previously allocated by the Registrar to the limited partnership as an existing limited partnership.

**6.** (1) An existing limited partnership that has not made an application to be re-registered during the transition period in accordance with paragraph 4 shall be deemed to be automatically re-registered on the day after the transition period expires.

Automatic Re-  
registration of  
existing  
Limited  
Partnerships.

(2) Where an existing limited partnership is automatically re-registered under this paragraph, the Registrar shall, as soon as is practicable, enter the name of the limited partnership on the register of limited partnerships and allot a unique number to the limited partnership.

**7.** (1) Where an existing limited partnership is automatically re-registered under paragraph 6, the Registrar shall not be required to issue a certificate of re-registration to the limited partnership unless it applies for registration and pays the appropriate fee.

Certificate of  
registration  
where an  
existing limited  
partnership is  
re-registered  
automatically.

(2) A certificate of re-registration under subparagraph (1) shall state that the existing limited partnership was automatically re-registered under this Act.

**8.** Where an existing limited partnership is automatically re-registered under paragraph 6, the Limited Partnership shall within two years after being re-registered have in place a partnership agreement in accordance with section 7 of this Act and act in compliance with the provisions of this Act.

Automatically re-  
registered  
partnership to have  
partnership  
agreement and act  
in accordance with  
the Act.

**9.** (1) An existing limited partnership that is re-registered under this Act is, from the date of its re-registration, subject to this Act as if it was a limited partnership formed under this Act.

Effect of re-  
registration.

(2) Notwithstanding subsection (1)

- (a) an existing limited partnership re-registered under this Act is, for all purposes of this Act, considered to have been formed on the date of its registration under the Partnership Act, 1996;
- (b) the Partnership Act, 1996 applies to an existing limited partnership before its re-registration under this Act; and
- (c) the re-registration of the existing limited partnership does not
  - (i) affect the assets, rights or liabilities of the limited partnership; or
  - (ii) affect the commencement or continuation of proceedings by or against the limited partnership or its partners; and
- (d) everything lawfully done by the existing limited partnership prior to its re-registration under this Act shall be of full force and effect.

No. 5 of 1996

Passed by the House of Assembly this 13<sup>th</sup> day of December, 2017.

(Sgd.) Ingrid Moses-Scatliffe,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.