

## **THE PARTNERSHIP ACT 1892**

The Partnership Act 1892 was introduced in New South Wales in order to offer an alternative mechanism to assist in the raising of venture capital for investors as well as providing a relatively simple and inexpensive commercial vehicle for small business.

The ability to create limited partnerships within New South Wales will assist business developments and attract investment to this State.

At present three other States have limited partnerships legislation. They are Tasmania, Queensland and Western Australia. The limited partnership structure is also common in many overseas countries including the United States, the United Kingdom, Canada, New Zealand and South Africa.

Reciprocal arrangements exist under the legislation to recognise other jurisdictions' limited partnerships. Provision also exists to recognise limited partnerships formed in other countries.

### **WHY REGISTER AS A LIMITED PARTNERSHIP?**

A limited partnership offers the advantage of limited liability for investors without the imposition of company tax. Such a structure is viewed as a modified partnership and is governed by State partnerships legislation (Partnership Act 1892) and the common law.

They are also not subject to many of the formalities and complexities applicable to companies incorporated under the Corporation Law.

In a business name situation all partners are equally responsible for any debts incurred by the business. However, in a limited partnership the limit of liability for limited partners is restricted to the amount contributed by that partner, as disclosed in the Register.

Limited Liability is determined by reference to the amount shown in the Register. This should reflect the amount contributed as agreed to be contributed by the limited partner.

Limited partnerships offer an ideal mechanism for attracting risk or venture capital from private investors who are prepared to contribute capital in return for a share of the profits, so long as their liability is limited to the amount of their contribution.

### **WHO MAY REGISTER AS A LIMITED PARTNERSHIP?**

Limited partnerships in Australia have been increasingly used as vehicles for ventures requiring risk capital and entrepreneurial initiative.

They have been used in industrial and real estate development, mining projects, arts, theatrical and film undertakings and agricultural schemes. However, limited partnerships can be utilised effectively in most business ventures needing to raise capital.

### **COMPOSITION AND SIZE**

Limited partnerships will consist of one or more general partners, who manage the business and have unlimited liability, and one or more limited partners. Limited partners invest in the partnership but do not participate in its management. Their liability is limited to the extent of their contribution, as disclosed in the Register.

## **PARTNERSHIP AGREEMENT**

The terms of the relationship between the general partners and the limited partners are normally set out in a Partnership Deed.

The contribution of a limited partner may be made in the form of cash or property.

## **REGISTRATION**

Limited partnerships come into existence upon the registration of a statement containing particulars of the partnership with NSW Fair Trading. The statement does not contain the Partnership Deed.

The Register of Limited Partnerships will be open for public inspection.

Applications may be lodged at any Fair Trading Centre or by mail to:

NSW Fair Trading  
PO Box 972  
Parramatta NSW 2124.

## **DISPLAY OF NAME**

Every business document issued on behalf of the Limited Partnership is to bear the firm's name and the words "a limited partnership" so as to signify to the public the fact of limited liability. Additionally, the certificate of registration must be displayed in a conspicuous position at the registered office of the Partnership.

## **CHANGES TO THE LIMITED PARTNERSHIP**

Any change to the registered particulars of a limited partnership must be notified to NSW Fair Trading on the appropriate form.

Changes involving, for example, the admission or withdrawal of a limited partner, or an alteration to the extent of a limited partner's liability, will not take effect until the form has been registered.

Changes that must be notified include:

\* Change of partners, including any change in the limitation of liability of partners; change of addresses; and applications to change the name of the Partnership. Form LP2 should be used for these changes.

\* Dissolution of, or cessation of business by, the Partnership. Form LP6 should be used for these changes.

## **FURTHER INFORMATION**

Enquiries relating to the registration of limited partnerships are welcomed by NSW Fair Trading. Any enquiries concerning the initial registration and subsequent notification of changes should be referred to the Limited Partnership Unit on 13 32 20.

However, enquiries relating to legal and/or financial issues should be directed to your own legal and financial advisers or the Law Society.