

PARTNERSHIP AMENDMENT ACT 2006



BERMUDA

2006 : 19

PARTNERSHIP AMENDMENT ACT 2006

Date of Assent: 26 June 2006

Operative Date: Notice in Gazette

ARRANGEMENT OF SECTIONS

1	Short title	6	Insertion of subsection 33(1A)
2	Insertion of sections 4A, 4B, 4C, 4D and 4E	7	Amends section 36
3	Amends section 14	8	Amends section 42
4	Amends section 17	9	Amends section 43
5	Amends section 18	10	Commencement

WHEREAS it is expedient to amend the Partnership Act 1902.

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the Partnership Amendment Act 2006.

Insertion of sections 4A, 4B, 4C, 4D and 4E

2 The Partnership Act 1902 (in this Act referred to as "the principal Act") is amended by inserting the following sections next after section 4 —

"Election to have legal personality

4A (1) A partnership shall have legal personality if the partnership so elects in accordance with the provisions of this

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section and files a declaration to that effect with the Registrar of Companies.

(2) Subject to subsection (4), where the partnership wishes to elect that a partnership shall have legal personality, it shall file with the Registrar of Companies a declaration signed by the partnership, stating that the partnership shall have legal personality.

(3) Where the partnership which wishes to make an election is a limited partnership or an exempted partnership, the declaration referred to in subsection (2) shall be specified in the certificate of limited partnership issued under the Limited Partnership Act 1883 or the certificate of exempted partnership issued under the Exempted Partnerships Act 1992, provided that if a partnership is both a limited and an exempted partnership, then the declaration is only required to be made in the certificate of exempted partnership.

(4) Where the partnership is neither a limited nor an exempted partnership, a declaration under subsection (2) shall be made within fourteen days of the partnership being formed.

(5) Where a partnership elects, in accordance with this section, that the partnership shall have legal personality, the partnership shall have legal personality and the Registrar of Companies shall enter that fact in a register to be maintained by him in respect of partnerships making such election and shall issue to the partnership a certificate of registration which shall state that the partnership has legal personality.

(6) An election made under subsection (2), that a partnership shall have legal personality shall be irrevocable; and a failure to make such an election shall be final.

Election of an existing partnership to have legal personality

4B (1) Notwithstanding section 4A, a partnership existing on the date of the coming into force of this section, shall have legal personality if, within a period of twelve months beginning on the date of the coming into force of this section, the partnership so elects, in accordance with this section.

(2) Where a partnership wishes to elect under this section that the partnership shall have legal personality, it shall, within the period specified under subsection (1), file with the Registrar of Companies a declaration, signed by the partnership, stating that the partnership shall have legal personality.

(3) Where a partnership elects, in accordance with this section, that it shall have legal personality —

(a) the partnership shall have legal personality;

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- (b) the Registrar of Companies shall enter that fact in the register referred to under section 4A(5); and
- (c) a certificate of registration shall be issued to the partnership by the Registrar of Companies stating that the partnership has legal personality.

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

Legal personality

4C A partnership that elects to have legal personality under section 4A or 4B —

- (a) shall be a legal person separate from its partners and shall have the power to own and deal with its separate property in accordance with the agreement of its partners; and
- (b) shall have unlimited capacity.

Change of partners where partnership has legal personality

4D Notwithstanding section 4, and subject to any agreement between the partners, a partnership that has legal personality is not dissolved by a change in the constitution of the partnership.

Liability for partnership debt where partnership has legal personality

4E A judgment against a partnership that has legal personality for a debt of the partnership may be enforced against an individual partner, and on payment of the judgment debt, the partner is entitled to relief, *pro rata*, from the partnership and its other partners.”.

Amends section 14

3 Section 14 of the principal Act is amended in the proviso by deleting the words “old firm-name” and substituting the words “same firm-name”.

Amends section 17

4 Section 17 of the principal Act is amended in subsection (3) by deleting the words “members of the firm as newly constituted” and substituting the words “continuing partners in the firm” and deleting the words “the firm as newly constituted” and substituting the words “the firm as constituted by the continuing partners”.

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Amends section 18

5 Section 18 of the principal Act is amended —

- (a) by renumbering section 18 as subsection 18(1); and
- (b) by inserting the following subsection next after subsection (1) —
 - “ (2) Subsection (1) does not apply to a partnership that has legal personality except in respect of any continuing guarantee or cautionary obligation given under subsection (1) before the election by the partnership that the partnership shall have legal personality was entered in the register.”.

Insertion of subsection 33(1A)

6 Section 33 of the principal Act is amended by inserting the following subsection next after subsection (1) —

- “ (1A) Notwithstanding subsection (1), where a partnership has legal personality and a partner dies, section 4D applies instead of subsection (1).”.

Amends section 36

7 Section 36 of the principal Act is amended in subsection (1) by deleting the words “the old firm” and substituting the words “the firm as it was constituted before the change”.

Amends section 42

8 Section 42 of the principal Act is amended —

- (a) by deleting the headnote and substituting the following headnote —
 - “Right of partner’s estate or outgoing partner in certain cases to share profits made after dissolution, death or ceasing to be a partner”; and
- (b) in the paragraph preceding the proviso by deleting the words “since the dissolution” and substituting the words “since the dissolution or, where the firm is a partnership that has legal personality, the date on which the partner died or otherwise ceased to be a partner,”.

Amends section 43

9 Section 43 of the principal Act is amended by deleting the words “the date of the dissolution or death” and substituting the words “the date of the dissolution or death or, where the firm is a partnership that has legal personality, the date on which the deceased partner died or the outgoing partner ceased to be a partner”.

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Commencement

10 This Act shall come into force on such day as the Minister may appoint by Notice published in the Gazette.