

B 5146

**L.N. 478 of 2014**

**COMPANIES ACT  
(CAP. 386)**

**Companies Act (Substitution of the Tenth Schedule)  
Regulations, 2014**

IN exercise of the powers conferred by article 425(1) of the Companies Act, the Minister for Finance has made the following regulations:-

Citation and  
commencement.

Cap. 386.

**1.** (1) The title of these regulations is the Companies Act (Substitution of the Tenth Schedule) Regulations, 2014 and these regulations shall be read and construed as one with the Tenth Schedule to the Companies Act, hereinafter referred to as "the Tenth Schedule".

(2) The provisions of paragraphs 23(7) and 30(26) of the Tenth Schedule, as substituted hereunder, shall enter into force on such date as the Minister for Finance may by notice in the Gazette establish.

Amends the  
Tenth Schedule  
of the  
Companies Act.

**2.** The Tenth Schedule of the Companies Act shall be substituted by the schedule to these regulations.

## SCHEDULE

(Regulation 2)

## "TENTH SCHEDULE

(Article 66A)

Partnerships *en commandite* or Limited PartnershipsPART I - REGULATIONS FOR PARTNERSHIPS *EN COMMANDITE*  
OR LIMITED PARTNERSHIPS

Interpretation.

1. (1) In this Schedule, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them -

"the Act" means the Companies Act;

"base currency" means the currency in which a class of shares of a Share Capital Limited Partnership is denominated;

"competent authority" means the competent authority within the meaning of and appointed for the purposes of the Investment Services Act;

"currency" means, in addition to the euro, any convertible currency in terms of article 186 of this Act;

"fractional share" means a fraction of a whole share in any class of shares issued by a Share Capital Limited Partnership;

"insolvent" and cognate expressions, in respect of the Limited Partnership, shall be construed in accordance with paragraph 25(6);

"Limited Partnership" means a partnership *en commandite* or limited partnership falling within the scope of application of this Schedule as per paragraph 2 below and, unless otherwise expressly stated or the context otherwise requires, it includes both a Share Capital Limited Partnership and a Non-Share Capital Limited Partnership;

"Multi-Class Limited Partnership" means a Share Capital Limited Partnership within the terms of paragraph 36;

"Multi-Fund Limited Partnership" means a Limited Partnership within the terms of paragraph 37;

"Non-Share Capital Limited Partnership" means a Limited Partnership the capital of which is not divided into shares;

B 5148

"Partnership Deed" means the agreement/s in writing of the partners as to the affairs of the Limited Partnership and the conduct of its business, as the same may be amended from time to time as provided in paragraph 10;

"Partnership Registration Document" means the document delivered to the Registrar for registration as referred to in paragraph 7(3);

"partnership interest" or "interest of a partner in the Limited Partnership" and cognate expressions, means the totality of the rights, duties and obligations of a partner in a Limited Partnership, including a partner's capital contribution, the right to share in the profits and losses of the Limited Partnership and the right to receive distributions of assets of the Limited Partnership;

"Share Capital Limited Partnership" means a Limited Partnership the capital of which is divided into shares;

"solvent" and cognate expressions, in respect of the Limited Partnership, shall be construed in accordance with paragraph 25(6);

"sub-fund" means the distinct class or classes of shares constituting that sub-fund in a Multi-Fund Limited Partnership to which are allocated assets and liabilities distinct from other assets and liabilities allocated to other sub-funds in the same Multi-Fund Limited Partnership;

"Variable Capital Limited Partnership" means a Share Capital Limited Partnership with variable share capital within the meaning of paragraph 35.

(2) Unless otherwise defined herein or the context otherwise requires, words and expressions used in this Schedule shall have the same meaning as is assigned to them in article 2(1) of the Act.

(3) Furthermore, the provisions of article 2(2) of the Act, with the exception of paragraph (d) thereof, and the provisions of article 2(3) and article 3 of the Act shall, to the extent they are stated to be applicable to a partnership *en commandite* or limited partnership or to commercial partnerships in general, apply to a Limited Partnership within the meaning of this Schedule.

Scope of application.

2. (1) The provisions of this Schedule shall apply only to partnerships *en commandite* or limited partnerships within the meaning of article 66A(1) of this Act, and in particular it shall apply to -

(a) a partnership *en commandite* or limited partnership the capital of which may or may not be divided into shares, which in the Partnership Deed expressly limits its object to the collective investment of its funds in securities and in other movable and immovable property, or in any of them, with the aim of giving the partners the benefit of the results of the

management of its funds, and to matters ancillary or incidental thereto, and which qualifies as a collective investment scheme and is duly licensed, recognised, exempted or otherwise regulated in terms of the Investment Services Act:

Provided that the term "unit" as defined in article 2(1) of the Investment Services Act shall, for the purposes of this Schedule, be interpreted broadly to encompass all forms of partnership interest, and shall not be limited to interests in partnerships *en commandite* or limited partnerships that are structured as unitised funds;

(b) a partnership *en commandite* or limited partnership, the capital of which may or may not be divided into shares, which in the Partnership Deed expressly limits its objects to any other purpose as may be prescribed in this Schedule or as the Minister may from time to time prescribe by regulations.

(2) Notwithstanding what is provided in sub-paragraph (1) above, one or more particular provisions of this Schedule may be expressly stated by this Schedule or by regulations made by the Minister not to apply to one or more categories of Limited Partnerships set out in sub-paragraph (1)(a) or (b) above, and in such case the said provisions shall not apply to such category or categories of Limited Partnerships.

Application of Part II of the Act.

3. (1) The provisions of Part II of the Act shall, to the extent applicable to a partnership *en commandite* or limited partnership, also apply to a Limited Partnership under this Schedule, save as otherwise provided below -

(a) the provisions of article 4(2) thereof shall be read and construed and shall apply as if the reference therein to "one or more acts of trade" were, in respect of such Limited Partnership, a reference to "the objects specified in the deed of partnership in terms of and as permitted by article 66A, the Tenth Schedule and, or regulations issued by the Minister from time to time"; and

(b) the provisions of article 6(4) shall not apply to such Limited Partnership.

Formation of Limited Partnership.

4. (1) A Limited Partnership may be formed by two or more partners, at least one of which shall be a general partner and at least one of which shall be a limited partner, shall have a separate legal personality, shall operate under a partnership name, shall have a capital which may or may not be divided into shares, and shall additionally be constituted and be registered as provided in this Schedule.

(2) A Limited Partnership shall have a legal personality separate and

B 5150

distinct from that of its partners, and shall accordingly be the subject of rights and obligations, be capable of owning and holding property under any title at law and of suing and being sued, in its own name, and such legal personality shall continue until such time as the name of the Limited Partnership shall be struck off the register, whereupon the Limited Partnership shall cease to exist.

Constitution of Limited Partnership.

5. (1) A Limited Partnership shall consist of:

(a) one or more general partners who -

(i) are admitted to the Limited Partnership as general partners in accordance with the Partnership Deed;

(ii) shall be jointly and severally liable for all debts of the Limited Partnership without limitation, provided that no action shall lie against any of the general partners unless the property of the partnership has first been discussed; and

(iii) each of whom shall satisfy such eligibility and other criteria and requirements as are applicable to it, if any, in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act and, or in terms of the Partnership Deed; and

(b) one or more limited partners who -

(i) are admitted to the Limited Partnership as limited partners in accordance with the Partnership Deed;

(ii) upon entering the Limited Partnership, contribute, or agree to contribute to the capital thereof a specified sum;

(iii) subject to paragraphs 6(5), 15(2), 16(1) and 25(2), shall not be liable for any debts of the Limited Partnership beyond the amount so contributed or agreed to be contributed and not yet paid; and

(iv) satisfy such eligibility and other criteria and requirements as are respectively applicable to them, if any, in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act and, or in terms of the Partnership Deed.

(2) Any person (including, without limitation, a limited liability company) may be a partner (whether general or limited) in a Limited Partnership.

(3) The contribution of a limited partner may be satisfied by the provision

of cash or other property capable of economic assessment but may not consist of future services or undertakings to perform work or supply services; and where property other than cash is so provided, the value of the property shall be deemed to be its fair market value at the time of its transfer to the Limited Partnership.

(4) An agreement to pay a share of the profits of a Limited Partnership to a person in total or partial remuneration for his services shall not, of itself, make him a partner.

Partnership name.

6. (1) Subject to the provisions of sub-paragraphs (3) and (4), a Limited Partnership may be designated by any name, but such name shall end with the words "Limited Partnership" or its abbreviation "LP" or "L.P."

(2) No person carrying on any business in Malta, other than a Limited Partnership registered under this Schedule or a partner therein, shall in any way or manner describe itself or himself or so hold itself or himself out or reasonably be understood to indicate, or use any name which indicates or may reasonably be understood to indicate that it or he is, or is carrying on business as, a Limited Partnership registered under this Schedule or, as the case may be, a partner therein. Without prejudice to the aforesaid, an undertaking which is validly registered under the laws of a country other than Malta with a name which includes "Limited Partnership" or its abbreviation "LP" or "L.P.", or a partner therein, who lawfully carries on business in Malta, shall not be deemed to be in breach of this sub-paragraph (2) simply by reason of the fact that it uses and carries on such business under the name by which such undertaking is so validly registered in its country of registration or, as the case may be, describes himself as a partner in such undertaking with such name.

(3) A Limited Partnership shall not be registered by a name which -

(a) is the same as the name of another commercial partnership or so nearly similar as in the opinion of the Registrar it could create confusion; or

(b) is in the opinion of the Registrar offensive or otherwise undesirable; or

(c) has been reserved for registration for another commercial partnership by notice in writing to the Registrar given not more than three months before the date of the second request:

Provided that the Registrar shall notify any refusal under this sub-paragraph without delay to the person requesting the registration.

Provided further that in applying sub-paragraph (3)(b), the Registrar shall have regard to the business or proposed business of the Limited Partnership and to the protection of the names of individuals who are not connected in any way

B 5152

with the Limited Partnership.

(4) The name of a limited partner or a distinctive part thereof may not form part of the name of the Limited Partnership.

(5) A limited partner who knowingly allows his name or a distinctive part thereof to be used in the name of a Limited Partnership shall be liable as a general partner to any person who extends credit to the Limited Partnership without knowledge that the limited partner is not a general partner.

(6) A person who contravenes the provisions of sub-paragraph (2) shall be liable to a penalty.

(7) Any person who makes use of a name falsely implying the existence of a Limited Partnership shall be liable to a penalty.

#### Partnership Deed and Partnership Registration Document.

7. (1) A Limited Partnership shall not be validly constituted unless a Partnership Deed is entered into and signed as provided in this Schedule and unless a Partnership Registration Document is duly delivered to the Registrar and a certificate of registration is issued by the Registrar under this Schedule in respect thereof.

(2) The Partnership Deed shall be in writing and shall be signed by at least the first general partner and the first limited partner.

(3) A Partnership Registration Document signed by the first general partner or (if more than one) by the first general partners shall be delivered to the Registrar for registration, which shall state the following matters, as provided in the Partnership Deed, and for the avoidance of doubt the matters indicated in sub-paragraph (3)(a) to (g) below shall also be expressly stated in the Partnership Deed:

(a) the name and residence of the general partner or (if more than one) of each of the general partners;

(b) the name of the Limited Partnership;

(c) the registered office in Malta of the Limited Partnership;

(d) the objects of the Limited Partnership;

(e) whether the capital of the Limited Partnership is or is not divided into shares, and

(i) in the case of a Share Capital Limited Partnership with fixed share capital, a statement of the fact that the Limited Partnership

has a fixed share capital, the nominal (authorized) share capital of the Limited Partnership, and where applicable an indication that the capital is or is capable of being divided into different classes of shares;

(ii) in the case of a Variable Capital Limited Partnership, a statement of the fact that the Limited Partnership has a variable share capital, and where applicable an indication that the capital is or is capable of being divided into different classes of shares, and the matters indicated in paragraph 35(2) and, or where applicable paragraph 38(4);

(iii) in the case of a Multi-Class Limited Partnership, a statement that the different classes of shares into which the capital is or is capable of being divided shall not constitute distinct sub-funds of the Limited Partnership; and

(iv) in the case of a Multi-Fund Limited Partnership, a statement that the different classes or groups of classes of shares into which the capital is or is capable of being divided shall constitute distinct sub-funds of the Limited Partnership as may be provided for in the Partnership Deed, without prejudice to the proviso to paragraph 37(1);

(f) where applicable, in the case of a Multi-Fund Limited Partnership, the election referred to in paragraph 38(1);

(g) the period, if any, fixed for the duration of the Limited Partnership, and where no such period is fixed, a statement to that effect; and

(h) a declaration that the Partnership Deed has been entered into and signed as provided in this Schedule.

The Partnership Deed may (optionally) also provide for any of the following matters, in which case such matters shall also be stated in the Partnership Registration Document to be delivered to the Registrar for registration:

(i) it may specify whether the administration and representation of the Limited Partnership is to be exercised by the general partners jointly or severally, and unless so specified, such administration and representation shall be exercised severally as provided in paragraph 11(1); and, or

(ii) it may expressly provide for the extension of the period, if any, fixed for the duration of the Limited Partnership.

(4) Upon receipt of the Partnership Registration Document, the Registrar, upon being satisfied that it complies with the requirements of this Schedule, shall register it.

(5) To the extent so provided in the Partnership Deed, the Partnership Deed



B 5154

shall be binding upon the partners and their assigns and upon subsequent partners in the same manner as if those persons had themselves executed the same.

Duty of Registrar and effects of registration.

8. (1) On the registration of the Partnership Registration Document and the payment of the fees prescribed under article 66A(3)(d) of this Act, the Registrar shall certify under his hand that the Limited Partnership is registered and the Limited Partnership shall come into existence and shall be authorised to commence business under its name as from the date of the certificate.

(2) A certificate of registration given in respect of a Limited Partnership is conclusive evidence that the requirements of this Schedule in respect of registration have been complied with and that the Limited Partnership has come into existence and is duly registered under this Act.

(3) The registration of a Limited Partnership by the Registrar under this paragraph 8 shall be without prejudice to any other licence or other authorisation as may be required in respect of the activities to be carried on by the Limited Partnership under any other law.

Where certificate of registration is not issued.

9. (1) All persons carrying on business under a name falsely implying the existence of a Limited Partnership or carrying on business or entering into agreements in the name of or on behalf of a Limited Partnership in respect of which a certificate of registration has not been issued under this Schedule, shall, unless otherwise agreed, be personally and jointly and severally liable for their dealings with third parties so entered into by them.

(2) Failing agreement to the contrary, the persons referred to in subparagraph (1) shall have, as against one another and in respect of the assets and liabilities arising out of the business carried on as provided in the said subparagraph (1), the rights and obligations of joint owners.

Changes in Partnership Deed and notification of changes.

10. (1) Unless otherwise provided in the Partnership Deed, any alteration or addition to the Partnership Deed may only be made with the unanimous consent of the partners, provided that, unless otherwise provided in the Partnership Deed, an alteration consisting in a change of the registered office in Malta of the Limited Partnership, shall require only the consent of the general partners vested with the administration or representation of the Limited Partnership.

(2) The Limited Partnership shall deliver to the Registrar for registration a return of any change in any of the matters contained in the Partnership Registration Document set out in paragraph 7(3) within fourteen days from the happening thereof, specifying the date of the change and details of the change.

(3) Where the change in the Partnership Deed consists of the replacement of a general partner by a new general partner or the appointment of any additional general partner, the return to be delivered to the Registrar under sub-paragraph (2) shall specify the name and residence of the new general partner.

(4) Any alteration or addition to the Partnership Deed in respect of any of the matters set out in paragraph 7(3) shall not take effect with respect to third parties, unless and until it is registered as provided in sub-paragraph (2).

(5) Where the extension of the period, if any, fixed for the duration of a Limited Partnership is expressly provided for in the Partnership Deed and stated in the Partnership Registration Document, the Limited Partnership shall, notwithstanding that provision in the Partnership Deed, deliver a notice of extension of the period of duration to the Registrar for registration, and any such extension, whether expressly provided for in the Partnership Deed or otherwise, shall not take effect unless and until the said notice is delivered to the Registrar and is registered by him, and unless such delivery takes place at least fifteen days before the date so fixed.

(6) If default is made in complying with the provisions of sub-paragraph (2) or sub-paragraph (5), every general partner who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(7) Where a Limited Partnership changes its name under the provisions of sub-paragraph (2), the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case:

Provided that the provisions of paragraph 6 shall apply to the registration of such new name.

#### Administration and representation.

11. (1) The administration and representation of a Limited Partnership shall vest in the general partners, and unless the Partnership Deed and the Partnership Registration Document otherwise provide, such administration and representation shall vest in each of the general partners severally:

Provided that, without prejudice to sub-paragraphs (3) to (6) of paragraph 12, the Partnership Deed may contain provisions relating to the manner in which the representation of the Limited Partnership is to be exercised by the general partners, including restrictions on the powers of representation of any general partner, and the Partnership Deed may also provide that the limited partners shall have the right to participate in decisions relating to the vesting or removal of powers of administration and representation of the Limited Partnership in or from the general partners:

B 5156

Provided further that, without prejudice to the joint or several powers of administration and representation of the general partners as provided above in sub-paragraph (1), the said general partners vested with the administration and representation of the Limited Partnership may by power of attorney authorise any one of the general partners or any other person, including a limited partner, to represent the Limited Partnership in any particular case or cases and, or for any particular purpose or purposes.

(2) Legal proceedings by or against a Limited Partnership (including proceedings to enforce a foreign judgment or arbitral award by or against the Limited Partnership) may only be instituted by or against, and generally the judicial representation of the Limited Partnership shall vest in, the general partners vested with the administration and representation of the Limited Partnership; and, subject to the provisions of sub-paragraphs (3) and (4), no limited partner shall be a party to or named in such proceedings or exercise such judicial representation; in all cases without prejudice to the provisos to sub-paragraph (1).

(3) The provisions of sub-paragraph (2) are without prejudice to the right of any person to join or otherwise institute proceedings against a limited partner -

(a) who is liable for any debt of the Limited Partnership pursuant to paragraphs 6(5), 15(2) or 16(1); or

(b) to obtain payment of his contribution or repayment of any amount pursuant to paragraph 25(2).

(4) A limited partner may, with leave of the court applied by means of an application, institute proceedings on behalf of a Limited Partnership if -

(a) the general partners have, without good cause, failed or refused to do so; and

(b) the failure or refusal is oppressive to the limited partner or is prejudicial to his interests as a limited partner.

How Limited Partnership may be bound.

12. (1) A Limited Partnership may not be bound in favour of third parties except by a partner acting under the name of the Limited Partnership and having the representation of the Limited Partnership either by virtue of the Partnership Deed and as stated in the Partnership Registration Document or by operation of law, including by virtue of a power of attorney as referred to in the second proviso to sub-paragraph (1) of paragraph 11.

(2) Where any such partner has acted as aforesaid, the Limited Partnership shall be bound even though it derives no benefit.

(3) Notwithstanding anything contained in the Partnership Deed relating to

the manner in which the representation of the Limited Partnership is to be exercised, anything done by the partners vested with the administration and representation of a Limited Partnership which exceeds the limits of their authority or by any partner vested with such administration and representation which is beyond his powers, shall be binding on the Limited Partnership unless that act exceeds the powers granted to the partners vested with the administration and representation or to such partner so vested, as the case may be, by virtue of this Schedule.

(4) Any limitation on the powers of the partners vested with the administration and representation of a Limited Partnership or of any such partner shall not be relied on as against third parties independently of whether that limitation, published or not, arises from the Partnership Deed or from a decision of the partners.

(5) Where an act of the Limited Partnership falls outside the Limited Partnership's objects, the Limited Partnership shall not be bound if it proves that, when the act was done, the third party knew that it was outside the Limited Partnership's objects or the third party could not in view of the circumstances have been unaware thereof:

Provided that the publication of the Partnership Registration Document and of any subsequent changes to the matters stated therein shall not in itself be sufficient to prove that the third party knew, or could not have been unaware, that the act was outside the Limited Partnership's objects.

(6) Notwithstanding the provisions of this Schedule or of the Partnership Deed relating to the formalities of the appointment of a partner vested with the administration and representation of a Limited Partnership and to his qualification, any irregularity concerning the appointment of such a partner raised after the completion of the publication of his appointment shall not be relied upon by the Limited Partnership as against third parties unless the Limited Partnership proves that such parties were aware of the irregularity at the relevant time. Third parties who were not aware of such irregularities at the relevant time may rely on that irregularity as against the Limited Partnership.

Acts required to be done by the Limited Partnership.

13. Any return, notice or other communication to the Registrar required to be delivered or made by a Limited Partnership under any provision of this Schedule shall be deemed to be required to be done by the partners vested with the administration and representation of the Limited Partnership, and where and for so long as there are no general partners in the Limited Partnership capable or willing to act within the prescribed time for delivery or making of such return, notice or other communication, the same may also be delivered or made by any limited partner.

B 5158

## General Partners.

14. (1) Unless otherwise provided in the Partnership Deed, a general partner of a Limited Partnership (hereinafter in this paragraph 14 referred to as the "Relevant Limited Partnership") shall not, without the express consent of the other partners or as otherwise expressly provided in the Partnership Deed:

(a) carry on business on his own account or on account of others in competition with the Relevant Limited Partnership;

(b) be a partner with unlimited liability in another commercial partnership or a director in a company which is in competition with the Relevant Limited Partnership;

(c) deal in any manner with any property of the Relevant Limited Partnership or with rights of the Relevant Limited Partnership in any such property, for any purpose other than a purpose of the Relevant Limited Partnership; or

(d) admit a person as a partner in the Relevant Limited Partnership otherwise than in accordance with the Partnership Deed.

(2) If a partner acts in contravention of the provisions of sub-paragraph (1)(a), (b) or (c), the Relevant Limited Partnership may, at its option, either take action for damages and interest against the offending partner or demand payment of any profit made by him in violation of the relevant prohibition.

(3) The provisions of this paragraph 14 shall be without prejudice to any other remedy which a Limited Partnership may have against a general partner for breach of duty.

(4) The provisions of this paragraph 14 or any other provisions of this Schedule shall also be without prejudice to any other duties, fiduciary or otherwise, which may be incumbent upon a general partner or to which a general partner may be subject by virtue of the Partnership Deed or by virtue of any laws, regulations, rules of the competent authority or any condition of any licence or other authorisation, which may be applicable to such general partner.

(5) Save as otherwise expressly provided in this Schedule or in the Partnership Deed, decisions of the general partners related to the business of the Limited Partnership shall be taken by a simple majority of the general partners entitled to participate in the decision.

## Limited partners.

15. (1) A limited partner shall not perform any act of administration nor transact business on behalf of the Limited Partnership, and shall not transact the business of, sign or execute documents for or otherwise bind the Limited

Partnership, except by virtue of a power of attorney given for specified acts or transactions or otherwise as provided and in the circumstances contemplated in sub-paragraph (2) of paragraph 28.

(2) A limited partner who acts or purports to act in contravention of the provisions of sub-paragraph (1), shall be liable as if he were a general partner in respect of all debts incurred as a result of his so acting.

(3) A limited partner shall not be deemed to have acted in contravention of the provisions of sub-paragraph (1) by reason only of any one or more of the following circumstances:

(a) he is an employee, agent or contractor of the Limited Partnership or of a general partner thereof;

(b) he acts as an officer, employee or shareholder of a corporate general partner of the Limited Partnership, or acts as a partner of a general partner of the Limited Partnership;

(c) he consults with and advises a general partner of the Limited Partnership as to the business of the Limited Partnership;

(d) he investigates, reviews, approves or is advised as to the accounts or affairs of the Limited Partnership;

(e) he exercises any right or power conferred on limited partners by this Schedule or any right or power conferred on limited partners by the Partnership Deed;

(f) he approves or disapproves an amendment to the Partnership Deed;

(g) he participates in or requests the appointment or removal of an auditor of the Limited Partnership;

(h) he calls, convenes, requests, attends or participates in, or votes as a limited partner in, any meeting of the partners;

(i) he participates in the appointment or removal of any person to serve or serving on any board or committee of the Limited Partnership or of a general partner thereof;

(j) without prejudice to the generality of sub-paragraph (i), he appoints or removes a representative to any advisory committee of the Limited Partnership and, or undertakes such representative's actions in that capacity;

(k) he acts as surety or guarantor of, or provides security for the

B 5160

obligations undertaken by, the Limited Partnership;

(l) he lends money to, borrows money from or enters into transactions with the Limited Partnership;

(m) he approves or vetoes a type of investment or particular investment to be made by the Limited Partnership;

(n) he exercises a right to opt into or out of any investment to be made by the Limited Partnership;

(o) he approves or vetoes any valuation of the Limited Partnership's investments;

(p) he approves or vetoes any conflict of interest relating to the Limited Partnership or its business or any partner in the Limited Partnership.

(4) The provisions of the immediately preceding sub-paragraph shall not be construed as meaning that, if a limited partner exercises any other right, power or function, he has necessarily, by reason of that fact alone, acted in contravention of the provisions of sub-paragraph (1).

(5) A limited partner may, subject to the provisions of the Partnership Deed and as and to the extent provided therein, but without prejudice to any rights granted to him by virtue of this Schedule -

(a) inspect the books of the Limited Partnership;

(b) with such assistance as may reasonably be required of the general partners, examine and inquire into the state and prospects of the business of the Limited Partnership, and advise the partners thereon;

(c) request and obtain true and full information of all things affecting the Limited Partnership; and

(d) request and obtain a formal account of the affairs of the Limited Partnership whenever circumstances render it just and reasonable.

Person holding himself out to be a general partner.

16. (1) A person, including a limited partner, who holds himself out as being a general partner shall be held liable unlimitedly and jointly and severally with the general partners for all the obligations contracted by the Limited Partnership while he so holds himself out.

(2) Without prejudice to sub-paragraph (5) of paragraph 6, the inclusion in the name of a Limited Partnership of the name of a person who is not a general partner shall be taken into account by the court in determining whether such person

is holding himself out as being a general partner.

When limited partner ceases to be a partner.

17. (1) A person shall cease to be limited partner of a Limited Partnership:

(a) upon the valid and absolute assignment of the whole of his interest in the Limited Partnership; or

(b) at such time and, or upon the occurrence of such event as may be so specified in the Partnership Deed.

Such cessation shall be evidenced by means of an entry to that effect in the register of partners.

(2) The fact that a person has ceased to be a limited partner shall not relieve him of any liability arising under paragraphs 6(5), 15(2), 16(1) and 25(2).

(3) The fact only that a person ceases to be a limited partner shall not constitute a change or amendment to the Partnership Deed.

(4) Unless the Partnership Deed otherwise provides and subject to the provisions thereof and to the provisions of paragraph 19 of this Schedule, in the event of death or dissolution or other cessation of existence of a limited partner, the Limited Partnership shall continue with the heirs or other relevant successors in title to the respective interests of such limited partner in the Limited Partnership.

(5) When a person ceases to be a limited partner in a Limited Partnership in the cases referred to in sub-paragraph (1)(b), such person shall have such rights as to liquidation of his interests in the Limited Partnership and other rights to assets of the Limited Partnership, and at such time or times, and shall be subject to such obligations, as may be provided for in the Partnership Deed.

When general partner ceases to be a partner.

18. (1) A person shall, subject to the provisions of the Partnership Deed, cease to be a general partner of a Limited Partnership, upon the occurrence of any of the following events:

(a) his resignation, retirement, removal or expulsion in accordance with the requirements, if any, of the Partnership Deed;

(b) in the case of a natural person his bankruptcy, death or legal incapacity or interdiction; or

(c) in the case of a general partner which is a body corporate, the dissolution thereof.



B 5162

Such cessation shall be evidenced by means of an entry to that effect in the register of partners.

(2) In the cases referred in sub-paragraphs (1)(b) and (c), the curator or other person having similar functions with respect to the estate of the bankrupt general partner, the heirs or other relevant successors to the estate of the deceased general partner, the guardian, tutor or other person having similar functions with respect to the estate of the incapacitated or interdicted general partner, or the liquidator, directors, general partners or equivalent body or persons charged with the responsibility of the administration of the affairs of the dissolved general partner after its dissolution, as the case may be, shall have a duty to inform the Limited Partnership of the respective event mentioned in such sub-paragraphs (1)(b) and (c) as soon as possible and in no case later than ten days following the happening thereof.

(3) In the event of the cessation of a person as a general partner of a Limited Partnership, howsoever such cessation has occurred, it shall be the duty of the Limited Partnership to deliver to the Registrar for registration a notice of such fact within fourteen days of such cessation or from the date that the Limited Partnership became aware thereof, whichever is the later, and in default the Limited Partnership and every general partner shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(4) In the cases referred in sub-paragraph (1)(a), it shall also be the duty of the person ceasing to be a general partner to deliver to the Registrar for registration a notice of such cessation within fourteen days of such cessation, and in default the said person who ceased to be a general partner shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

(5) The Registrar shall cause such notice as referred to in sub-paragraph (3) or (4) to be registered.

(6) A general partner shall not be relieved of any obligation under this Schedule until such time as the notice of cessation is registered by the Registrar. Nothing in the foregoing shall affect the continued liability of a general partner in terms of law for his obligations arising whilst he was a general partner and until the registration of the notice of cessation as aforesaid.

Admission of additional limited partners.

19. (1) Subject to the provisions of the Partnership Deed, a Limited Partnership shall allow any number of partners to become limited partners in the Limited Partnership. A person shall not be admitted as a limited partner in a Limited Partnership except -

(a) in accordance with the provisions of the Partnership Deed and subject to any prior approval by the Limited Partnership required for such

admission in terms of the Partnership Deed and, or pursuant to paragraph 5(1)(b)(iv) above;

(b) by the execution of an agreement in writing with the Limited Partnership and, or with such other partners as required by the Partnership Deed.

Such admission shall be evidenced by the entry of the particulars of the new limited partners in the register of partners.

Assignment of interest of limited partner.

20. (1) Subject to the provisions of the Partnership Deed -

(a) the interest of a limited partner is assignable in whole or in part;

(b) an assignment by a limited partner of his interest in the Limited Partnership or any part thereof:

(i) shall not dissolve the Limited Partnership;

(ii) shall not be valid unless made in writing and in accordance with other requirements, if any, of the Partnership Deed and this Schedule, including (without limitation) any prior approval by the Limited Partnership required for such assignment in terms of the Partnership Deed and paragraph 5(1)(b)(iv) above;

(iii) shall not, unless and until the assignee is admitted to the Limited Partnership as a limited partner in accordance with the provisions of paragraph 19, entitle the assignee to become or to exercise any right or power of a limited partner;

(iv) shall, upon the assignee being admitted to the Limited Partnership as a limited partner in accordance with the provisions of paragraph 19, entitle the assignee to the rights and powers and, subject to item (v), render him subject to the restrictions and obligations (including any obligation to make contributions to the capital of the Limited Partnership) to which the assignor was entitled or subject in respect of the interest assigned immediately before the assignment, and simultaneously the assignor shall no longer be entitled to exercise those rights and powers and, shall be discharged from those restrictions and obligations;

(v) shall not relieve the assignor of any liability arising under paragraphs 6(5), 15(2), 16(1) or 25(2).

(c) a limited partner, upon the valid and absolute assignment of the whole of his interest in the Limited Partnership and the admission of the

B 5164

assignee as a limited partner in accordance with the provisions of paragraph 19, shall cease to be a limited partner and to be entitled to exercise any right or power of a limited partner.

(2) The agreement or instrument of assignment in writing referred to in sub-paragraph (1)(b)(ii) or an authentic copy thereof shall be delivered by the assignor or the assignee to the Limited Partnership simultaneously with or as soon as possible after the execution thereof, unless the Limited Partnership is also party to it.

(3) The admission of the assignee as a limited partner and the assignment of an interest in the Limited Partnership between an assignee and an assignor shall be effective on the date when the requirements and conditions for the admission of the assignee as a limited partner referred to in paragraph 19 and the requirements of sub-paragraph (1)(b)(ii) and (2) of this paragraph 20 have been satisfied or, if later, the date agreed to between the assignor and the assignee in the agreement or instrument of assignment, and in such latter case the assignee shall be admitted to the Limited Partnership with effect from such later date.

Indemnification by the Limited Partnership.

21. (1) Subject to the provisions of the Partnership Deed and of sub-paragraph (2), a Limited Partnership may indemnify any partner from and against all or any claims, demands, debts and other liabilities whatsoever, and may also purchase and maintain for any partner insurance against any such liability as aforesaid.

(2) The Limited Partnership may not however indemnify any general partner against any liability which by virtue of any rule of law would attach to him in respect of negligence, default or breach of duty or otherwise of which he may be guilty in relation to the Limited Partnership:

Provided that a Limited Partnership may indemnify any such general partner against any liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted:

Provided further that nothing in this sub-paragraph (2) shall be construed as preventing or restricting a Limited Partnership from purchasing and maintaining for any general partner insurance against any such liability as is referred to above in this sub-paragraph (2), or as preventing or restricting any such general partner from personally purchasing and maintaining any such insurance.

Records.

22. (1) A Limited Partnership shall maintain the following or a copy thereof at the registered office:

(a) the Partnership Deed and every amendment thereof;

(b) a register of partners showing their full names and addresses together with an indication of who is a general and who is a limited partner;

(c) in the case of a Non-Share Capital Limited Partnership, the capital account of each limited partner showing whichever of the following is applicable in relation to such limited partner -

(i) the amounts and dates of his contributions;

(ii) the amounts agreed to be contributed and the times at which or events upon which the contributions are to be made;

(iii) the amounts and dates of any payments representing a return of his contributions or any part thereof;

(iv) where an agreement or obligation to make a contribution is released in whole or in part, the amount and the date of such release;

(d) in the case of a Share Capital Limited Partnership, the capital account of each limited partner showing whichever of the following is applicable in relation to such limited partner -

(i) the number and class or classes (where applicable) of shares, including fractions (where applicable), subscribed by such limited partner and the dates of subscription;

(ii) the amount paid by such limited partner in respect of each share;

(iii) where applicable, the amounts agreed to be contributed by way of subscription of further shares or by way of payment of the unpaid part on shares already subscribed, and the times at which or events upon which the contributions are to be made;

(iv) where applicable, the number and class or classes (where applicable) of shares, including fractions (where applicable), of such limited partner which have been redeemed or repurchased by the Limited Partnership or otherwise reduced, and the dates of such redemption, repurchase or reduction;

(v) where an agreement or obligation to pay amounts agreed to be contributed by way of subscription of further shares or by way of payment of the unpaid part on shares already subscribed is released in whole or in part, the amount and the date of such release;

(e) any report on any non-cash contribution as referred to in paragraph 41;

B 5166

(f) a register of debentures (where the Limited Partnership has issued any debentures) showing the full names and addresses of the registered holders of such debentures and particulars of the debentures held by them respectively;

(g) its accounting records;

(h) the minutes of all meetings of the general partners;

(i) all documents from time to time filed with the Registrar.

(2) All documents or copies of documents required by sub-paragraph (1) to be kept at the registered office shall, subject to the provisions of the Partnership Deed, be available for inspection by any partner, and in the case of the register of debentures also by any person, during normal business hours.

(3) The documents mentioned in sub-paragraph (1)(b), (c) and (d) shall constitute *prima facie* evidence of the matters specified therein.

(4) Notwithstanding the foregoing provisions of this paragraph the documents described in sub-paragraph (1) may, provided that the Partnership Deed so permits, instead of being maintained at the registered office, be maintained at such other place as the general partners consider appropriate, where they shall, subject to the provisions of the Partnership Deed, be available for inspection by any partner (and in the case of the register of debentures also by any person) during normal business hours.

(5) In the event that such other place as is mentioned in sub-paragraph (4) is outside Malta, copies of accounts and of returns in respect of the business dealt with in them and copies of minutes of meetings of general partners shall be sent to, and kept at, a place in Malta, where they shall, subject to the provisions of the Partnership Deed, be available for inspection by any partner (and in the case of the register of debentures also by any holder of debentures) during normal business hours.

(6) The copies of accounts and returns mentioned in sub-paragraph (5) which are to be sent to and kept in Malta shall be such as to disclose with reasonable accuracy the financial position of the business of the Limited Partnership at intervals not exceeding six months.

(7) Any accounting records which a Limited Partnership is required by this paragraph to keep shall be preserved by it for a period of ten years from the date on which they are made and, if default is made in complying with this sub-paragraph, the Limited Partnership and each general partner shall be liable to a penalty.

(8) Any account, record or other document required by this Schedule to be kept by a Limited Partnership may be kept either by making entries in books or in any other manner, including without prejudice to the generality of the foregoing,

computer or other electronic forms.

(9) If any such account, record or other document is kept by making entries other than in a book -

(a) it shall be deemed for the purposes of this Schedule to be kept at a place if access to it and written copies of it can be obtained at that place; and

(b) if the matters in question are recorded in non-legible form, the recording thereof shall be capable of being reproduced in legible form.

(10) If in respect of a Limited Partnership there is a contravention of any of the provisions of sub-paragraphs (1), (2), (5) or (6), the Limited Partnership and each general partner shall be liable to a penalty and for any day during which the default continues, to a further penalty.

(11) Any duty imposed by this Schedule to allow inspection, or to furnish a copy, of documents to be kept by the Limited Partnership shall, irrespective of the medium in which such documents are maintained, be construed as a duty to allow inspection, or to furnish a copy, of such documents in legible form.

Accounts of a Limited Partnership.

23. (1) Every Limited Partnership shall maintain proper accounting records which shall be:

(a) sufficient to show and explain the Limited Partnership's transactions;

(b) such as to disclose with reasonable accuracy, at any time, the Limited Partnership's financial position at that time;

(c) such as to enable the general partners to ensure that the Limited Partnership's balance sheet and profit and loss account are prepared properly and in accordance with generally accepted accounting principles and practice and in accordance with any relevant enactment or regulations for the time being in force in Malta;

(d) such as to contain day to day entries of all sums of money received and expended by the Limited Partnership and the matters in respect of which the receipt and expenditure takes place; and

(e) such as to contain a record of the assets and liabilities of the Limited Partnership.

(2) The general partners of every Limited Partnership shall prepare for each accounting period individual accounts comprising the balance sheet as at the last day of the accounting period to which they refer, the profit and loss account for

B 5168

that period, the notes to the accounts and any other financial statements which may be required by generally accepted accounting principles and practice. These documents shall constitute a composite whole.

(3) The individual accounts of a Limited Partnership shall give a true and fair view of the Limited Partnership's assets, liabilities, financial position and profit or loss.

(4) The individual accounts of a Limited Partnership shall be drawn up in accordance with generally accepted accounting principles and practice applicable to the type of Limited Partnership in question in terms of this Schedule or of the provisions of this Act in so far as such provisions are applicable to the Limited Partnership by virtue of this Schedule, or of regulations made by the Minister under Article 66A(3)(c) or other provisions of this Act or under the Accountancy Profession Act, and shall comply with the requirements of such generally accepted accounting principles and practice and with the requirements of this Schedule, and of the applicable provisions of this Act and of applicable regulations referred to above, as to the form and content of the balance sheet and profit and loss account and as to additional information to be provided by way of notes to the accounts.

(5) Where the application of the provisions of this Schedule, and the applicable provisions of the Act or regulations referred to in sub-paragraph (4), would not be sufficient to give a true and fair view within the meaning of sub-paragraph (3), additional information shall be given.

(6) Where in exceptional cases the application of a provision of this Schedule, or of an applicable provision of the Act or of regulations referred to in sub-paragraph (4), is incompatible with the obligation for the individual accounts to give a true and fair view, that provision shall be departed from in order to give a true and fair view. Any such departure shall be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.

(7) Articles 13 to 18 and 21 of the Commercial Code shall not apply to Limited Partnerships.

(8) At the end of each accounting period of the Limited Partnership, the balance sheet and profit and loss account of the Limited Partnership together with the report of the general partners and the report of the auditors (where applicable) shall be made available to the limited partners:

(a) in the case of a Limited Partnership within the meaning of paragraph 24(2), within ten months after the end of the relevant accounting reference period, or such shorter period as may be prescribed in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act; and

(b) in the case of other Limited Partnerships, within such period as may be stipulated in the respective Partnership Deed, or such shorter period as may be prescribed in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act or in terms of regulations made by the Minister under Article 66A(3)(c) or other provisions of this Act.

Application of Chapters IX and X of Part V of this Act.

24. (1) Save for what is stated in this Schedule or in regulations made by the Minister under Article 66A(3)(c) or other provisions of this Act or under the Accountancy Profession Act, the provisions of Chapter IX and Chapter X of Part V of this Act other than article 184 shall, so far as applicable and so far as they are not inconsistent with the provisions of this Schedule or of regulations referred to above, apply to a Limited Partnership within the meaning of paragraph 24(2), with references to "company" therein being construed as a reference to a Limited Partnership within the meaning of paragraph 24(2), references to "directors" being construed as a reference to general partners, reference to "members" being construed as a reference to "partners", references to "general meeting" being construed as a reference to a meeting of the partners.

(2) A Limited Partnership referred to in sub-paragraph (1) shall be:

(a) a Limited Partnership which is a Share Capital Limited Partnership; or

(b) a Non-Share Capital Limited Partnership where:

(i) all the partners thereof with unlimited liability are limited liability companies or partnerships *en commandite* or limited partnerships with the capital divided into shares; and

(ii) where all of the direct or indirect partners of such Non-Share Capital Limited Partnership having otherwise unlimited liability in fact have limited liability by reason of those partners being:

(aa) a limited liability company (whether public or private); or

(bb) a partnerships *en commandite* or limited partnership with its capital divided into shares; or

(cc) an undertaking not governed by the laws of Malta but which has a legal form comparable to that listed in sub-paragraph (b)(ii)(aa) or (b)(ii)(cc) above.

(3) The provisions of Chapter IX of Part V of this Act, shall apply as aforesaid to a Limited Partnership within the meaning of paragraph 24(2), subject



B 5170

to the provisions of the Partnership Deed dealing with the manner, and with the rights of partners or any of them in respect, of the appointment, re-appointment, removal, replacement and fixing the remuneration of auditors of the Limited Partnership.

(4) The provisions of article 169 of the Act and of the Fifth Schedule to the Act shall apply *mutatis mutandis* to a Limited Partnership within the meaning of paragraph 24(2) which is a Variable Capital Limited Partnership as provided in paragraph 35.

(5) Save as otherwise expressly provided in this Schedule or in any enactment or in regulations made by the Minister as referred to in sub-paragraph (1), the provisions of Chapter IX and Chapter X of Part V of this Act shall not apply to a Limited Partnership which is not a Limited Partnership within the meaning of paragraph 24(2), and the manner, the rights of partners or any of them in respect of, and other matters relating to, the appointment, re-appointment, removal, replacement and fixing the remuneration of auditors of such Limited Partnership, or the preparation, form and content and approval of the accounts of such Limited Partnership and their submission to the partners or any other partners, shall be regulated by the relevant provisions of this Schedule, by regulations made from time to time by the Minister as referred to in sub-paragraph (1) for this purpose, by any other provisions of the Act (other than Chapter IX and Chapter X of Part V of the Act) or any other enactment so far as applicable and so far as they are not inconsistent with the provisions of this Schedule or of regulations referred to above or which specifically relate or apply to such Limited Partnerships, and by the provisions of the Partnership Deed.

#### Return of limited partner's contribution.

25. (1) A Limited Partnership shall not, on dissolution or otherwise, make any payment from its capital to any limited partner representing a return of any part of his contribution to the Limited Partnership unless, at the time of and immediately following the making of the payment, the Limited Partnership is solvent.

(2) Where the Limited Partnership is insolvent at the time of or immediately following the making of any such payment, or in the event of insolvency of the Limited Partnership within a period of six months immediately following the time of making such payment, the payment shall, for a period of one year from the date of its receipt by the limited partner, be repayable by him to the extent necessary to discharge any debt of the Limited Partnership incurred at a time when his contribution formed part of the assets of the Limited Partnership.

(3) Subject to the provisions of sub-paragraphs (1) and (2) and paragraph 30(11) and (12), a limited partner may demand the return of his contribution -

(a) on the dissolution of the Limited Partnership; or

- (b) at such time or upon the occurrence of such event or events as may be specified in the Partnership Deed.
- (4) A limited partner may, notwithstanding the nature of his contribution, demand and receive only money in return, unless -
- (a) the Partnership Deed provides otherwise; or
  - (b) all partners agree otherwise.
- (5) Any reference in this paragraph, however expressed, to the receipt by a partner of a payment shall include a reference to the release of any debt owed by him and forming part of the assets of the Limited Partnership (including any obligation on his part to make a contribution to the capital of the Limited Partnership, including, in case of a Share Capital Limited Partnership, by way of subscribing for further shares or paying up the unpaid part on shares already subscribed by him); and accordingly any reference in sub-paragraph (2) to the making of a repayment by a partner shall be deemed to include a reference to the due performance by him of the debt or obligation.
- (6) For the purposes of this Schedule the expression "solvent" means that the Limited Partnership is able to pay its debts (other than debts described in paragraph 31(1)(c)(ii) to (v)) in full, as they fall due, out of the assets of the Limited Partnership without recourse to the separate assets of the general partners not contributed to the Limited Partnership; and the expression "insolvent" shall be construed accordingly.
- (7) A distribution of any assets of a Limited Partnership to a limited partner shall be deemed to be a return of contribution for the purposes of the provisions of sub-paragraph (1), to the extent that the distribution reduces the value of his share in the assets of the Partnership, calculated on the basis of the value of the net assets of the Limited Partnership, below the value of the amount contributed or agreed to be contributed by him. In the case of a Share Capital Limited Partnership, there shall also be deemed to be such a return of contribution where the shares held by a limited partner are redeemed or repurchased by the Limited Partnership or are otherwise reduced or, in the case of a Share Capital Limited Partnership other than a Variable Capital Limited Partnership, where the nominal value of the shares held by a limited partner is reduced.
- (8) The provisions of this paragraph are subject to those of paragraph 31.

#### Distributions by Limited Partnership.

26. Without prejudice to paragraphs 25 and 31, no distributions of capital or profits shall be made to the partners if at the time or as a result of such distributions the Limited Partnership would be insolvent.

B 5172

## Acts in fraud of creditors

27. (1) Without prejudice to paragraphs 25 and 26, every act transferring property, whether corporeal or incorporeal, including any rights of action and any renunciation of an acquired prescription, and every obligation incurred or other act made by a Limited Partnership which is insolvent or which becomes insolvent as a result of such act or obligation, and which is made under a gratuitous title for the purpose of defrauding the creditors of the Limited Partnership, shall be null and void as regards the body of creditors, of whatever kind they may be, even though the parties interested be in good faith.

(2) Every act of the same kind and every obligation made or incurred under an onerous title can be annulled if there be fraud also on the part of the party interested.

(3) Any such act or obligation shall be deemed to be fraudulent as regards the party interested, if it is proved that such party knew of the insolvency of the Limited Partnership (whether already existing at the time of the act or obligation or resulting from such act or obligation) or of the existence of circumstances giving rise to such insolvency.

## Causes of dissolution of Limited Partnerships.

28. (1) A Limited Partnership shall be dissolved upon the occurrence of any of the following events:

(a) upon the happening of any event specified in the Partnership Deed;

(b) upon the date fixed for its duration in the Partnership Deed and stated in the Partnership Registration Document, if any, unless a return or notice of its extension is delivered to the Registrar for registration in terms of paragraph 10(2) or (5) not less than fifteen days before the date so fixed;

(c) upon the written agreement of all partners that the Limited Partnership shall be dissolved;

(d) if there is no general partner for a period of six months;

(e) if there is no limited partner for a period of six months.

(2) Where no general partner remains, the limited partners may, for the said period of six months, appoint one of their number or any other person for the performance of acts of ordinary administration and any limited partner or other person appointed pursuant to the provisions of this sub-paragraph shall not incur any liability which would otherwise be incurred under this Schedule for performing acts of ordinary administration during the said six month period.

(3) Subject to the provisions of the Partnership Deed and paragraph 28(1)(a), (d) and (e) and without prejudice to paragraph 28(1)(c), a Limited Partnership shall not be dissolved by any change in the limited partners or general partners, or by the bankruptcy, insolvency, death, retirement, removal, resignation, legal incapacity or interdiction or dissolution of any limited partner or general partner whether an individual, partnership, company or other body corporate.

#### Dissolution by the Court.

29. (1) The Court may order the dissolution of a Limited Partnership on the application of any partner or creditor or on the application of the Registrar if in its opinion:

(a) the Limited Partnership is insolvent;

(b) the business of the Limited Partnership has been suspended for an uninterrupted period of twelve months: provided, for the avoidance of doubt, that there will not be deemed to be a suspension of business for the purposes hereof by reason only of the fact that the business of the Limited Partnership is of its nature passive;

(c) the affairs of the Limited Partnership are being conducted in a manner which is oppressive to any of the limited partners or prejudicial to their interests as limited partners or is calculated to affect adversely the carrying on of the business of the Limited Partnership;

(d) the affairs of the Limited Partnership are being conducted in such manner as to defraud creditors or in an unlawful manner;

(e) there has been persistent default by the Limited Partnership or by any general partner thereof in complying with the requirements of this Schedule or any applicable regulations made under Article 66A(3) or under this Act;

(f) there are grounds of sufficient gravity to warrant the dissolution.

(2) Upon the making of an order under sub-paragraph (1) for the dissolution of the Limited Partnership or at any time thereafter, the Court may make such other orders in relation to the dissolution as it thinks fit and proper in the circumstances, including an order for the appointment of one or more liquidators to wind up the Limited Partnership's affairs and distribute its assets.

#### General provisions applicable to winding up.

30. (1) Upon the dissolution of a Limited Partnership its affairs shall, unless a liquidator has been appointed by the Court under paragraph 29(2) or under sub-paragraph (2) of this paragraph or by the partners under sub-paragraph (3) of this paragraph, be wound up by the general partners.

B 5174

(2) Upon the dissolution of a Limited Partnership or at any time thereafter, the Court may, on application of any partner (including an assignee thereof) or any creditor or the Registrar or any liquidator, make such orders in relation to the dissolution as it thinks fit and proper, including:

(a) an order for the appointment of one or more liquidators to wind up the affairs of the Limited Partnership and distribute its assets, and the fixing of his remuneration;

(b) an order for the stay of judicial proceedings pending against the Limited Partnership on such terms as the Court thinks fit.

The Court may also, on any such application, remove any liquidator from office (whether appointed by the Court or by the partners) if the court is satisfied that there exist sufficient grounds to warrant his removal.

(3) One or more liquidators may, upon the dissolution of a Limited Partnership or at any time thereafter and before the appointment thereof by the Court as provided herein, be appointed by the partners in the manner provided in the Partnership Deed or as determined by agreement between them, and his remuneration may be fixed in like manner. Where the partners fail to agree on the appointment of a liquidator, the provisions of sub-paragraphs (1) shall apply, unless and until one or more liquidators are appointed by the Court under sub-paragraph (2).

(4) A liquidator appointed by the partners (but not a liquidator appointed by the Court) may be removed by a decision of the partners in the manner provided in the Partnership Deed or as determined by agreement between them, and if as a result of such decision there are no liquidators, the provisions of sub-paragraphs (1) shall apply, unless and until one or more liquidators are appointed by the partners under sub-paragraph (3) or by the Court under sub-paragraph (2).

(5) A liquidator, howsoever appointed, shall within fourteen days after his appointment, deliver to the Registrar for registration a notice of his appointment stating his name and residence, and in default he shall be liable to a penalty, and for every day during which the default continues, to a further penalty.

(6) Where more than one liquidator is appointed, they shall act jointly and shall be jointly and severally liable for their acts, unless the Court or the partners who appointed them have otherwise provided. Unless already fixed by the Court, the remuneration of a liquidator (whether appointed by the Court or by the partners) may be fixed by agreement between the partners and the liquidator, failing which it shall be fixed by the Court on application made under sub-paragraph (2) or an application by the liquidator.

(7) On the appointment of a liquidator, whether under this paragraph or under paragraph 29, all powers of the general partners and, where applicable, any

power of ordinary administration vested in any limited partner or other person pursuant to paragraph 28(2), shall cease; and any person who purports to exercise any power of a general partner or any power of administration or representation of the Limited Partnership at a time when, pursuant to this sub-paragraph those powers have ceased, shall be liable to a penalty, without prejudice to the provisions of paragraph 15(2) or 16(1) or any other applicable consequences prescribed by this Schedule. The provisions of this sub-paragraph shall be without prejudice to the provisions of sub-paragraph (8).

(8) Where a liquidator is appointed, the partner or partners vested with the administration of the Limited Partnership shall -

(a) deliver to the liquidator all the assets and all the accounting records and other documents of the Limited Partnership and shall draw up accounts relating to their administration for the period since the preceding accounts, and for the avoidance of doubt the liquidator shall take into his custody or under his control all the property and all rights to which he has reasonable cause to believe the Limited Partnership to be entitled; and

(b) together with the liquidator, draw up a balance sheet showing the state of affairs of the Limited Partnership as at the date of the dissolution.

(9) Upon the dissolution of a Limited Partnership the Limited Partnership shall cease to carry on business except to the extent necessary for its beneficial winding up. Where a liquidator is appointed, such liquidator shall have power to perform all acts conducive and ancillary to the winding up of the affairs of the Limited Partnership, but such liquidator shall not undertake any new transaction, except to the extent necessary for its beneficial winding up. Where in relation to a Limited Partnership there is a contravention of the provisions of this sub-paragraph, each general partner or other partner responsible for the contravention or, as the case may be, the liquidator shall be liable to a penalty.

(10) Upon the dissolution of a Limited Partnership, the persons winding up the Limited Partnership's affairs, in the name of and on behalf of the Limited Partnership -

(a) may, to the extent necessary for the beneficial winding up of the Limited Partnership, prosecute, defend or settle any civil or criminal action or other legal proceedings and refer disputes or matters to arbitration;

(b) shall receive and collect all sums and debts due to the Limited Partnership;

(c) shall take every necessary step for the preservation of the rights of the Limited Partnership and for the recovery of any sums or debts due to the Limited Partnership;

B 5176

(d) shall carry on the business of the Limited Partnership so far as may be necessary for its beneficial winding up, and for this purpose they shall have the power to do all acts, and to execute, in the name and on behalf of the Limited Partnership, all deeds, receipts and other documents and to represent the Limited Partnership in all matters and to do all things as may be necessary for the winding up of the affairs of the Limited Partnership and distributing its assets, to raise any money requisite even on the security of the assets of the Limited Partnership and to appoint a mandatory to act for them (in their capacity as the persons responsible for the winding up) for particular purposes;

(e) shall dispose of the Limited Partnership's property and realise its assets;

(f) shall, in accordance with the provisions of paragraph 31 discharge the Limited Partnership's debts and distribute to the partners any remaining assets of the Limited Partnership;

(g) may make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or which may be due in damages against the Limited Partnership or whereby the Limited Partnership may be rendered liable, and to refer any such matter to arbitration;

(h) may make calls on partners for payment of unpaid contributions and calls on partners with unlimited liability for payment of sums to cover remaining liabilities of the Limited Partnership as referred to in subparagraph (12) and shall draw up a list of partners who are liable to pay such calls; and

(i) may summon meetings of partners or of creditors of the Limited Partnership for the purposes of ascertaining their wishes, or to give them an account of or otherwise update them on the process of the winding up or any matter relating thereto or for any other purpose in connection with the winding up as they may think fit:

Provided that the above shall be without prejudice to the personal liability of the partners.

(11) Upon the dissolution of a Limited Partnership no limited partner may, except in accordance with the provisions of paragraphs 25 and 31, withdraw any part of his contribution, or otherwise claim as a creditor of the Limited Partnership.

(12) The persons conducting the winding up of a Limited Partnership (whether a liquidator or the general partner or general partners pursuant to subparagraph (1)) shall not distribute any assets of the Limited Partnership among the

partners unless either the debts and liabilities of the Limited Partnership under paragraph 31(1) (a) and (b) have been paid or sufficient funds have been set aside for the payment thereof. Where the assets of the Limited Partnership are insufficient to meet its aforesaid liabilities, the persons conducting the winding up of a Limited Partnership may demand from the partners payment of the contribution, if any, due by them, irrespective of the date when it falls due, and, if necessary, they may demand from the partners with unlimited liability the sums required for the payment of the aforesaid liabilities which are not covered by the contributions so demanded as aforesaid and paid. The persons conducting the winding up of a Limited Partnership may furthermore demand from the partners payment of the contribution, if any, due by them or any part of it, irrespective of the date when it falls due, for the purpose of adjusting the rights of the partners among themselves in accordance with paragraph 31 or otherwise in accordance with the Partnership Deed.

(13) Upon dissolution of a Limited Partnership, notice of the fact shall, within a period of fourteen days from the date of dissolution, be filed by the general partners or, where applicable, by the limited partner or other person vested with the ordinary administration pursuant to paragraph 28(2), with the Registrar who shall cause a notice of that fact to be published in the Gazette or on a website maintained by the Registrar:

Provided that, where the Limited Partnership is dissolved by order of the Court, notice of the dissolution shall be given as aforesaid by the Registrar of Courts:

Provided further that, in cases of dissolution other than dissolution by order of the Court, and where there is no general partner and no limited partner or other person vested with the ordinary administration pursuant to paragraph 28(2), such notice may be given by any limited partner and, where a liquidator has been appointed (whether by the Court or by the partners) such notice shall be given by such liquidator within fourteen days after his appointment.

(14) Where the general partners or the limited partner or other person vested with the ordinary administration pursuant to paragraph 28(2) or the liquidator fail to give the notice of dissolution as required by the provisions of sub-paragraph (13), they shall be liable to a penalty, and for every day during which the default continues, to a further penalty and, in the case of general partners, they shall continue to incur liability as if they were the general partners of a Limited Partnership which had not been dissolved.

(15) The dissolution of a Limited Partnership shall be deemed to have occurred upon the earlier of the following:

(a) the date of the occurrence of the event upon which, under the provisions of this Schedule, the Limited Partnership is dissolved; or



B 5178

(b) the date of the order by the Court under paragraph 29(1) for its dissolution.

(16) All expenses properly incurred in the dissolution of a Limited Partnership, including the liquidator's remuneration, are payable from the assets of the Limited Partnership in priority to all other debts.

(17) The persons conducting the winding up shall, at the request of any of the partners, inform them as to the state and progress of the liquidation.

(18) The persons conducting the winding up of a Limited Partnership may, by application, seek the Court's directions as to any matter in relation to the winding up, and upon such application the Court may make such order as it thinks fit and proper.

(19) The persons conducting the winding up, any partner or creditor may apply to the Court to determine any question arising in the course of winding up of a Limited Partnership, or to exercise any power as respects the enforcement of calls or any other matter and the Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it so determines.

(20) Without prejudice to the generality of sub-paragraph (19):

(a) if any person is aggrieved by any act or decision of the persons conducting the winding up, that person may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of, and make such order on the matter as it thinks just;

(b) without prejudice to sub-paragraph (20)(a), if an application is made to the Court by any creditor or partner complaining on the conduct of the persons conducting the winding up, the Court shall inquire into the matter and take such action thereon as it may think expedient;

(c) the Registrar may, if he thinks fit, apply to the Court to examine the liquidator or any other person on oath concerning the winding up;

(d) the Court may at any time after the dissolution of a Limited Partnership, on the application either of the liquidator or other person conducting the winding up or any creditor or partner or the Registrar, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, for such duration and on such terms and conditions as the Court thinks fit: provided that any such stay of proceedings shall not affect the continuing validity and operation of the dissolution; and on an application as aforesaid the Court may, before making an order, require the persons conducting the

winding up to furnish to the Court a report with respect to any facts or matters which are in its opinion relevant to the application;

(e) the Court, on the application either of the liquidator or other person conducting the winding up or any creditor or partner:

(i) may require any partner liable to make any payments or calls as referred to in sub-paragraph (12) and any person who holds any money, property or accounting records and documents in his hands to which the Limited Partnership is *prima facie* entitled, to pay, deliver, convey, transfer or otherwise hand over such money, property, accounting records or documents to the persons conducting the winding up forthwith or within such time as the Court directs;

(ii) may summon before it any general partner of the Limited Partnership or any officer of such general partner or any other person known or suspected to have in his possession any property of the Limited Partnership or supposed to be indebted to the Limited Partnership, and any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the Limited Partnership, and the Court may require any such general partner, officer or person to produce any accounting records and documents in his custody relating to the Limited Partnership; and

(iii) on proof of probable cause for believing that any such person as aforesaid is about to abscond or to remove or conceal any of his property for the purpose of evading payments due by him or of avoiding examination respecting the affairs of the Limited Partnership, may make such orders as it thinks fit to secure payments by such person or the preservation and availability of information relating to the Limited Partnership, including seizure and, or the safekeeping of his accounting records, documents and movable property until such time as the Court thinks fit;

(f) the Court may, on the application either of the liquidator or other person conducting the winding up, fix a time or times within which creditors are to prove their debts or claims or are to be excluded from the benefit of any distribution made before those debts are proved, and may make such orders regarding the publication of such time or times as it thinks fit; and

(g) the Court may, with respect to all matters relating to the dissolution and winding up of a Limited Partnership and in exercising any of its powers, have regard to the wishes of the creditors or partners of the Limited Partnership, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes direct that meetings of the creditors or partners be called, held and conducted in such manner as the

B 5180

Court considers appropriate and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

A copy of every order made under this sub-paragraph (20)(d) above shall forthwith be forwarded by the Registrar of Courts to the Registrar for registration.

(21) Subject to the provisions of paragraph 31 and subject to any provision of this Schedule or any other law as to preferential debts or payments, the property of a Limited Partnership shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*. In a winding up of a Limited Partnership, all debts payable on a contingency, and all claims against the Limited Partnership, present or future, certain or contingent, ascertained or which may be due in damages, shall be admissible as proof against the Limited Partnership, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or which are due in damages but not ascertained, or which for some other reason do not bear a certain value.

(22) As soon as a Limited Partnership's affairs are fully wound up, the persons who conducted the winding up shall:

(a) prepare an account of the winding up, giving details of the conduct thereof, and the disposal of the Limited Partnership's property, and of their receipts and payments, and shall draw up a scheme of distribution and they shall cause the account to be audited by one or more auditors appointed by a decision of the partners or in default by the Court; and

(b) provide all partners with a copy of the said account and scheme of distribution together with the auditors' report thereon, which shall be served on such partners by judicial act or by registered mail with confirmation of receipt.

(23) The provisions of article 153 of the Act shall apply to an auditor appointed in terms of sub-paragraph (22)(a). Such auditor shall not be a person who has held the office of auditor of the Limited Partnership at any time during the last three years immediately preceding the date of dissolution.

(24) (a) The persons who conducted the winding up shall, after ensuring that the provisions of sub-paragraph (22)(b) have been complied with, deliver to the Registrar a copy of the said account and scheme of distribution and the auditor's report thereon: provided that such account and scheme of distribution so delivered to the Registrar need not contain the names of limited partners, and it shall be sufficient to show the total amounts distributed to such partners pursuant to the scheme of distribution.

(b) The Registrar, on receiving the account and the scheme of distribution together with the auditors' report, shall forthwith register them, and on

the expiration of three months from the publication of the notice referred to in article 401(1)(e) of the Act, the Registrar shall strike the name of the Limited Partnership off the register, whereupon the Limited Partnership's certificate of registration shall cease to be valid:

Provided that the Court may, on the application filed within the said period of three months by the liquidator or by any other person who appears to the Court to have an interest, make an order deferring the date at which the name of the Limited Partnership shall be struck off the register for such time and subject to such conditions as the Court may provide, and any partner or creditor may also, during the said period of three months, by application to the Court object to any matter relating to the winding up as shown in the winding up account, the scheme of distribution and the auditors' report, and the Court shall then make such order as it thinks fit and proper.

(25) When an order by the Court is made under the proviso to sub-paragraph (24)(b), the Registrar of Courts shall forthwith forward a copy of it to the Registrar for registration and the Registrar shall defer applying the provisions of sub-paragraph (24)(b) in accordance with the order given by the Court referred to in that sub-paragraph.

(26) Part III of the Commercial Code relating to bankruptcy shall not apply to a Limited Partnership. References in other laws other than Part III of the Commercial Code to a bankrupt shall, when the context requires, be interpreted as including references to a Limited Partnership being wound up in circumstances of insolvency under the provisions of this Schedule, and references to bankrupt shall be construed accordingly.

Distribution of assets upon dissolution.

31. (1) Upon the dissolution of a Limited Partnership, the assets shall be distributed in the following order -

(a) firstly, to creditors other than partners, to the extent otherwise permitted by law, in satisfaction of debts of the Limited Partnership, according to their priority and ranking as regulated by law;

(b) secondly to limited partners who are creditors and who are not also general partners, to the extent otherwise permitted by law, in satisfaction of debts of the Limited Partnership other than debts described in sub-paragraph (c), according to their priority and ranking as regulated by law;

(c) finally, subject to the provisions of the Partnership Deed, to partners as follows -

(i) firstly, to limited partners for the return of their contributions or, where appropriate, for the release of their obligations

B 5182

to make contributions;

(ii) secondly, to limited partners for their share of the profits on their contribution;

(iii) thirdly, to general partners other than for capital and profits;

(iv) fourthly, to general partners in respect of capital;

(v) finally, to general partners in respect of profits.

Preservation of accounting records and documents after liquidation.

32. (1) The accounting records and the documents of the Limited Partnership shall be kept by the liquidator, if any, or by the person elected for that purpose by the majority of the general partners, and shall be so kept for a period of ten years from the date at which the name of the Limited Partnership was struck off the register. The election of such person shall take place within fourteen days from the registration of the notice referred to in paragraph 30(23) and shall not be effected until such person has signified his acceptance in writing to the general partners within fourteen days from his election:

Provided that where there is no liquidator and the general partners fail to elect such person or where such person refuses to accept his election, the accounting records and documents shall be delivered to the Registrar within fourteen days of the non-acceptance or failure to elect as the case may be, and the Registrar shall keep such records for the said period of ten years.

(2) Where a person has been elected to keep the accounting records and the documents of the Limited Partnership, or where the general partners have failed to elect such a person, the general partners shall inform the Registrar accordingly within fourteen days of the date when the election becomes effective or from the failure to elect within the prescribed period, as the case may be, and in default, the general partners shall be liable to a penalty.

(3) If the liquidator or the person elected by the general partners and who has accepted to keep the accounting records and documents of the Limited Partnership fails to keep them for the period prescribed by sub-paragraph (1), he shall be liable to a penalty.

(4) If the liquidator or the person elected by the general partners to keep the accounting records and documents of the Limited Partnership dies, his heirs shall be obliged to deliver the said accounting records and documents to the Registrar within six months and the Registrar shall keep them for the remainder of the period prescribed by sub-paragraph (1), and in default such heirs shall be liable to a penalty.

Capital of Limited Partnerships and conversion of status.

33. (1) Without prejudice to the foregoing provisions of this Schedule, the capital of a Limited Partnership, may be divided into shares or may not be so divided.

(2) A Non-Share Capital Limited Partnership may change its status to a Share Capital Limited Partnership, by a decision taken in accordance with the provisions of the Partnership Deed, or, in the absence of any such provision, with the consent of all the partners, both general and limited:

Provided that where one or more limited partners, holding in the aggregate not more than one-fourth of the total contributions of the limited partners, have not given their consent the Limited Partnership may nevertheless proceed with the change of its status, but it shall be required, for the purpose of such change, to liquidate and reimburse to every such partner who has not given his consent, if he so requests, his interest in the Limited Partnership on such terms as may be agreed, or as the Court, on a demand of either the Limited Partnership or the limited partner, may deem fit to order.

(3) A Share Capital Limited Partnership may change its status to a Non-Share Capital Limited Partnership, by a decision taken in accordance with the provisions of the Partnership Deed or, in the absence of any such provision, with the consent of all the partners, both general and limited:

Provided that where one or more limited partners, holding in the aggregate not more than one-tenth of the share capital of the Limited Partnership, have not given their consent, the Limited Partnership may nevertheless proceed with the change of its status, but it shall be required, for the purpose of such change, to redeem the shares held by every such partner in the Limited Partnership who has not given his consent, if he so requests, on such terms as may be agreed, or as the Court, on a demand of either the Limited Partnership or of the limited partner, may deem fit to order.

(4) The Limited Partnership which has decided to change its status in accordance with sub-paragraph (2) or sub-paragraph (3) shall deliver to the Registrar for registration the return of the resultant change in the Partnership Deed in accordance with the provisions of paragraph 10(2).

(5) The change of status referred to in sub-paragraph (2) or in sub-paragraph (3) shall not take effect unless and until it is registered as required by sub-paragraph (4).

Application of provisions relating to shares in the Act.

34. (1) Without prejudice to the proviso to article 89 of the Act (in particular, but without limitation, the provisions of paragraph (c) of such proviso),

B 5184

the provisions of articles 89 to 96 and 99 to 102 of the Act shall apply *mutatis mutandis* to a Limited Partnership whose securities are offered to the public, with references to "public company" therein being construed as a reference to such a Limited Partnership and references to "directors" being construed as a reference to general partners, and with such other adjustments as are necessary to accommodate the fact that these provisions are being applied to a Limited Partnership as aforesaid.

(2) The provisions of article 116(1), (2) and (5) and of article 117 of the Act shall, in so far as they are not inconsistent with the foregoing provisions of this Schedule, apply *mutatis mutandis* to a Share Capital Limited Partnership, with references to "company" therein being construed as a reference to such a Limited Partnership, references to "memorandum or articles" being construed as a reference to the Partnership Deed, and references to "resolution passed at a separate meeting" being construed as a reference to a decision taken as provided in the Partnership Deed, and with such other adjustments as are necessary to accommodate the fact that these provisions are being applied to a Limited Partnership as aforesaid.

(3) The provisions of article 127(1) and (3) to (6) of the Act shall, in so far as they are not inconsistent with the foregoing provisions of this Schedule, apply *mutatis mutandis* to a Limited Partnership, with references to "company" therein being construed as a reference to the Limited Partnership, references to "memorandum of association" or "articles of association" being construed as a reference to the Partnership Deed, and references to "members" being construed as a reference to partners, and with such other adjustments as are necessary to accommodate the fact that these provisions are being applied to a Limited Partnership.

Limited Partnerships with variable share capital.

35. (1) A Partnership Deed of a Share Capital Limited Partnership within the meaning of paragraph 2 (1) (a) above may provide for the constitution of the Limited Partnership as a Limited Partnership with variable share capital and the following provisions of this paragraph shall apply thereto.

(2) In addition to the matters indicated in paragraph 7(3), the Partnership Deed of a Variable Capital Limited Partnership as well as the Partnership Registration Document to be delivered to the Registrar in terms of the said paragraph 7(3) shall state:

(a) that the share capital of the Limited Partnership shall be equal to the value for the time being of the issued share capital of the Limited Partnership;

(b) that such share capital shall be divided into a specified number of shares without assigning any nominal value thereto;

- (c) that the actual value of the paid up share capital of the Limited Partnership shall be at all times equal to the value of the assets of any kind of the Limited Partnership after the deduction of its liabilities, without prejudice to paragraph 38(4).
- (3) Without prejudice to the provisions of paragraph 6, the name of a Variable Capital Limited Partnership shall at the end, after the words "Limited Partnership" or its abbreviation "LP" or "L.P." as required by paragraph 6(1), be followed by the words "with variable share capital" or by "VC" or "V.C."
- (4) No person carrying on any business in Malta, other than a Variable Capital Limited Partnership registered under this Schedule or a partner therein, shall in any way or manner describe itself or himself or so hold itself or himself out or reasonably be understood to indicate, or use any name which indicates or may reasonably be understood to indicate that it or he is, or is carrying on business as, a Variable Capital Limited Partnership registered under this Schedule or, as the case may be, a partner therein. Without prejudice to the aforesaid, an undertaking which is validly registered under the laws of a country other than Malta with a name which includes "Limited Partnership" or its abbreviation "LP" or "L.P." followed by the words "with variable share capital" or by "VC" or "V.C.", or a partner therein, who lawfully carries on business in Malta, shall not be deemed to be in breach of this sub-paragraph (4) simply by reason of the fact that it uses and carries on such business under the name by which it is so validly registered in its country of registration or, as the case may be, describes himself as a partner in such undertaking with such name. A person who contravenes the provisions of this sub-paragraph shall be liable to a penalty.
- (5) A Variable Capital Limited Partnership shall not issue partly paid up shares.
- (6) Without prejudice to the provisions of paragraphs 25 and 35, a Variable Capital Limited Partnership may purchase or redeem its own shares, directly or indirectly out of the assets of the Limited Partnership, on such terms and in such manner as may be provided by the Partnership Deed.
- (7) Shares of a Variable Capital Limited Partnership which have been purchased or redeemed by such Limited Partnership itself shall be cancelled and the amount of the Limited Partnership's issued share capital shall be reduced by the amount of the consideration paid by the Limited Partnership for the purchase of the shares, and nothing in this Act shall require a Variable Capital Limited Partnership to create any reserve.
- (8) Any reference in any provision of this Act, which and to the extent that it applies to a Variable Capital Limited Partnership, to the nominal value of an issued or allotted share in, or of the issued or allotted share capital of, a company shall be construed, in the case of a Variable Capital Limited Partnership, as a reference to the net asset value.



B 5186

## Multi-Class Limited Partnership.

36. (1) A Share Capital Limited Partnership may be constituted as a multi-class partnership where in terms of its Partnership Deed its capital is, or is capable of being, divided into different classes of shares, not constituting any distinct sub-fund.

(2) A Multi-Class Limited Partnership may from time to time create and offer or issue a new class or classes of shares, in accordance with the provisions of the Partnership Deed, and subject to any approval of the competent authority or any other requirements or conditions as may be applicable to such Limited Partnership under or in terms of the Investment Services Act or regulations issued thereunder or in terms of Investment Services Rules issued by the competent authority under and within the meaning of the Investment Services Act. Such class or classes of shares shall not constitute a distinct sub-fund or sub-funds of the Limited Partnership.

(3) Each class of shares in a Multi-Class Limited Partnership may be denominated in a different currency provided that a class of shares may be denominated only in one currency.

(4) A Multi-Class Limited Partnership may not elect for the segregation of any of its assets and liabilities.

(5) A Multi-Class Limited Partnership having its capital denominated in different currencies shall draw up its annual accounts in any one of such currencies.

(6) The provisions of sub-paragraph (5) shall *mutatis mutandis* apply to the drawing up of any other reports or financial statements which may be required under this Act or by the competent authority.

(7) For the purposes of sub-paragraphs (5) and (6), the conversion from the base currency of a class of shares into the currency in which the annual accounts of the Multi-Class Limited Partnership are to be drawn up shall be in accordance with generally accepted accounting principles.

## Multi-Fund Limited Partnership.

37. (1) A Share Capital Limited Partnership may be constituted as a multi-fund partnership where in terms of its Partnership Deed its capital is, or is capable of being, divided into different classes of shares, where one class or a group of classes of shares constitute a distinct sub-fund of the Limited Partnership, as may be provided for in the Partnership Deed:

Provided that the initial capital may or may not be organized in one or more sub-funds in terms of this paragraph.

(2) A Multi-Fund Limited Partnership may from time to time create and offer or issue a new class or classes of shares which may constitute a new sub-fund or be comprised in an existing sub-fund or sub-funds of the Limited Partnership, in accordance with the provisions of the Partnership Deed, and subject to any approval of the competent authority or any other requirements or conditions as may be applicable to such Limited Partnership under or in terms of the Investment Services Act or regulations issued thereunder or in terms of Investment Services Rules issued by the competent authority under and within the meaning of the Investment Services Act.

(3) A class or classes of shares constituting a sub-fund in a Multi-Fund Limited Partnership may be denominated in a different currency provided that a class of shares may be denominated only in one currency.

(4) A Multi-Fund Limited Partnership having its capital denominated in different currencies shall draw up its annual accounts in any one of such currencies.

(5) The general partner or general partners of a Multi-Fund Limited Partnership shall maintain proper accounting records of the assets and liabilities of each sub-fund in the base currency of any class of shares constituting that sub-fund.

(6) The provisions of sub-paragraph (4) shall *mutatis mutandis* apply to the drawing up of any other reports or financial statements which may be required under this Act or by the competent authority.

(7) For the purposes of sub-paragraphs (4) and (6), the conversion from the base currency of a class of shares into the currency in which the annual accounts of the Multi-Fund Limited Partnership are to be drawn up shall be in accordance with generally accepted accounting principles.

#### Segregation of assets and liabilities of Multi-Fund Limited Partnerships.

38. (1) A Multi-Fund Limited Partnership may in its Partnership Deed elect to have the assets and liabilities of each sub-fund comprised in that Limited Partnership treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of each other sub-fund of such Limited Partnership. Where a Multi-Fund Limited Partnership makes the election aforementioned the assets and liabilities of each sub-fund of that Multi-Fund Limited Partnership shall, for all intents and purposes of law, be deemed to constitute a patrimony separate from the assets and liabilities of each other sub-fund of such a Limited Partnership.

(2) Save for such proportion of the liabilities of a Multi-Fund Limited Partnership which by virtue of the Partnership Deed or by virtue of the terms of the offer or of the issue of the shares constituting a sub-fund are, or are to be attributable to, one or more sub-funds in the proportion established therein, the

B 5188

liabilities incurred in respect of each sub-fund shall be paid out of the assets forming part of its patrimony and the creditors in respect thereof shall have no claim or right of action against the other assets of the Limited Partnership, and the following rules shall apply:

(a) proceedings in relation to the Multi-Fund Limited Partnership shall respect the legal status of each sub-fund as a patrimony separate from the assets and liabilities of each other sub-fund of the Limited Partnership in terms of this Schedule;

(b) proceedings shall apply *mutatis mutandis* to the sub-fund as though it were a distinct legal entity and with such modifications as are necessary to accommodate the fact that the sub-fund is not a Limited Partnership; and any Proceedings in relation to one sub-fund shall not have any effect on the assets of any other sub-fund of the Limited Partnership or of the Limited Partnership itself; and

(c) where, for the avoidance of doubt, a sub-fund which comprises a separate patrimony in terms of this Schedule is being wound up, and where a liquidator of such sub-fund is appointed, the provisions of paragraph 30(7) shall apply solely with respect to such sub-fund; and accordingly all the powers of the general partners shall cease solely in respect of that sub-fund.

"Proceedings" in this sub-paragraph refers to any proceedings in terms of paragraphs 28 to 32 of this Schedule.

(3) The general partner or general partners of a Multi-Fund Limited Partnership shall hold or cause to be held such separate records, accounts, statements and other documents as may be necessary to evidence the liabilities and assets of each sub-fund as distinct and separate from the assets and liabilities of other sub-funds in the same Limited Partnership.

(4) When a Variable Capital Limited Partnership is established as a Multi-Fund Limited Partnership and elects to have the assets and liabilities of its sub-funds treated as distinct patrimonies, the Partnership Deed as well as the Partnership Registration Document to be delivered to the Registrar in terms of paragraph 7(3) shall provide that the actual value of any sub-fund shall be at all times equal to the value of the assets of any kind of the particular sub-fund after the deduction of such sub-fund's liabilities, and this in lieu of what is stated in paragraph 35(2)(c).

Non-applicability of articles 186 and 187(1) of the Act.

39. To the extent that they would otherwise (but for the provisions of this paragraph) apply, the provisions of articles 186 and 187(1) of the Act shall not apply to a Multi-Class Limited Partnership and to a Multi-Fund Limited Partnership.

Fractional Shares.

40. (1) A Share Capital Limited Partnership may, subject to the provisions of the Partnership Deed, issue fractional shares up to such number of decimal places as shall be specified in the Partnership Deed, and under such terms and conditions as may be stipulated therein.

(2) Fractional shares shall be automatically consolidated into a whole share of the same class when the fractional shares held by one partner become equal to a whole share.

Contributions other than in cash.

41. (1) Without prejudice to paragraph 5(3), the contribution of a partner in a Limited Partnership may only consist of cash or assets capable of economic assessment, and such contributions shall be paid or transferred by the partner to the Limited Partnership within such time or times as specified in the Partnership Deed, and the following provisions of this paragraph shall apply to any such contributions which are non-cash assets contributions.

(2) A report on any contribution other than in cash shall be drawn up before the transfer of the contribution to the Limited Partnership and:

(a) in the case of a Share Capital Limited Partnership, if and to the extent that the non-cash contribution is to be transferred to the Limited Partnership in consideration for the acquisition of shares therein on original subscription, such report shall be drawn up before the Limited Partnership is registered; or

(b) in the case of a Share Capital Limited Partnership, if and to the extent that the non-cash contribution is to be transferred to the Limited Partnership in consideration for the acquisition of shares on a subsequent issue, such report shall be drawn up before the relevant shares are issued; or

(c) in the case of a Share Capital Limited Partnership which is not a Variable Capital Limited Partnership, if and to the extent that the non-cash contribution is to be transferred to the Limited Partnership in consideration for the payment of any unpaid part on shares already subscribed at any previous time, such report shall be drawn up before the transfer of the contribution to the Limited Partnership,

by one or more experts who are independent of the Limited Partnership and approved as provided in the Partnership Deed (who may also be the auditors of the Limited Partnership) or, in case of a Limited Partnership within the meaning of paragraph 2(1)(a) above which is licensed by the competent authority as a collective investment scheme in terms of the Investment Services Act, by such person as provided in and in accordance with Investment Services Rules issued for

B 5190

that purpose by the competent authority from time to time.

(3) The report referred to in sub-paragraph (2) shall, in the case of a Limited Partnership within the meaning of paragraph 2(1)(a) above which is licensed by the competent authority as a collective investment scheme in terms of the Investment Services Act, shall be drawn up in such manner and shall contain such particulars as may be required by Investment Services Rules issued for that purpose by the competent authority from time to time

(4) The report referred to in sub-paragraph (2) shall, in the case of a Limited Partnership other than a Limited Partnership referred to in sub-paragraph (3), shall contain at least a description of each of the assets comprising the non-cash contribution as well as the methods of valuation which have been used and:

(a) in the case of a Share Capital Limited Partnership other than a Variable Capital Limited Partnership, shall state whether the values arrived at by the application of these methods correspond at least to the number and nominal value, and, where applicable, to the premium on the shares to be issued for such assets; or

(b) in the case of a Variable Capital Limited Partnership, shall state whether the values arrived at by the application of these methods at least correspond to the net asset value of the shares to be issued for such assets.

(5) In both cases referred to in sub-paragraphs (3) and (4), the value of the assets comprising the non-cash contribution shall be deemed to be their fair market value at the time of the transfer thereof to the Limited Partnership as provided in paragraph 5(3) and shall be valued accordingly.

(6) In all cases, the report referred to in the foregoing provisions of this paragraph or a copy thereof shall be kept amongst the records of the Limited Partnership as provided in paragraph 22 and shall be subject to the provisions of such paragraph 22.

(7) The provisions of this paragraph shall be without prejudice to the provisions of paragraph 42.

Issue of shares at a discount.

42. (1) It shall be lawful for a Share Capital Limited Partnership to make a discount to an existing partner who has committed by written agreement with the Limited Partnership to subscribe for any shares in the Limited Partnership, which discount shall be in consideration for such commitment, provided that:

(a) such discount shall apply exclusively to any outstanding commitment arising under the above-mentioned agreement;

(b) authority therefor is given by the Partnership Deed;

(c) the nature of the discount shall be disclosed in the manner required by sub-paragraph (2);

(d) in the case of a Variable Capital Limited Partnership, in no event shall the value of such shares, issued at a discount, be reduced as a result of such discount to below the net asset value at the time the partner, to whom the discount is being granted, first subscribed for the shares in terms of the aforementioned agreement; and

(e) in the case of a Share Capital Limited Partnership other than a Variable Capital Limited Partnership, in no event shall the value of such shares, issued at a discount, be reduced as a result of such discount to below the nominal value of such shares.

(2) If shares are issued at a discount which is in excess of that permitted by this paragraph, the holder thereof shall be bound to pay the Limited Partnership an amount equal to such excess, with annual interest at the rate of two percentage points over the minimum bid rate set by the European Central Bank for the main re-financing operations of the Eurosystem.

(3) The conditions specified in sub-paragraph (1) shall be clearly disclosed in the Partnership Deed, and where the shares of the Limited Partnership are offered through a prospectus or other offering document issued by the Limited Partnership, they shall at least be disclosed in such prospectus or other offering document.

#### Pledging of securities of Limited Partnerships.

43. (1) The pledge of shares in a Share Capital Limited Partnership or of other securities in a Limited Partnership shall be subject to the provisions of this paragraph.

(2) Securities may, if the Partnership Deed so provides or if permitted under the conditions of the offer or the issue of those securities, be pledged by their holder in favour of any person as security for an obligation. The pledge of securities shall be constituted by means of an instrument in writing entered into between the pledgor and the pledgee.

(3) Notice of the pledge shall be delivered by the pledgor or the pledgee to the Limited Partnership within fourteen days of the granting of the pledge. The pledge of securities shall be recorded in the register of the holders of the respective securities.

(4) The pledge of securities shall be effective in relation to a third party only from the date of the recording of the pledge in the register of the holders of the respective securities referred to in sub-paragraph (3):

Provided that the Limited Partnership shall, upon a request in writing

B 5192

made by a third party who may show an interest therein, disclose whether a pledge of securities has been recorded in the register of the holders of the respective securities, including the name of the pledgor and the pledgee, the amount of securities pledged and the date of the recording of the pledge.

(5) Saving the provisions of sub-paragraph (4), during the existence of a pledge of securities, any transfer or other assignment of the pledged securities made by the pledgor, whether by onerous or gratuitous title, shall be null and void:

Provided that any such transfer or other assignment made with the consent of the pledgee shall be valid and the securities to be transferred or assigned shall continue to be subject to the pledge.

(6) Without prejudice to the right of the pledgee to apply for the judicial sale of the securities and notwithstanding the provisions of the Civil Code or of the Partnership Deed, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor and the Limited Partnership, the pledgee shall be entitled to -

(a) dispose of the securities which are pledged in his favour; or

(b) appropriate and acquire the securities himself; or

(c) request the Limited Partnership to purchase or redeem the pledged securities in settlement of the debt due to him or of part thereof:

Provided that the remedy of the pledgee in sub-paragraph 6(c) above shall only apply if and to the extent that the relevant securities would, in terms of the Partnership Deed or the conditions of the offer or the issue of such securities, entitle the holder thereof to request the repurchase or redemption thereof by the Limited Partnership, and such request by the pledgee shall be made in accordance with the procedure, and shall be subject to the same terms and conditions, for such repurchase or redemption as set out in the Partnership Deed or the conditions of the offer or the issue of the relevant securities:

Provided further that the exercise of any remedies of the pledgee in sub-paragraph 6(a) to (c) shall be subject to any securities holding eligibility criteria and minimum holding requirements as may be applicable in respect of the relevant securities in terms of the Investment Services Act and Investment Services Rules issued by the competent authority under and within the meaning of the said Act, in terms of the Partnership Deed and, or in terms of the conditions of the offer or the issue of such securities.

(7) For the purposes of sub-paragraph (6):

(a) in the case where the relevant pledged securities consist of shares in a Variable Capital Limited Partnership, the value of such securities shall be their current net asset value; and

(b) in the case of other pledged securities, the value of such securities:

(i) shall be such value specified, or such value arrived at by the application of such valuation method specified, in the pledge agreement between the pledgor and the pledgee; or

(ii) failing such specification in the pledge agreement as referred to in sub-paragraph (7)(b)(i), shall be such value as may be established by agreement between the pledgor and the pledgee after notice of default has been given by the pledgee to the pledgor in terms of the sub-paragraph (6); or

(iii) failing such specification in the pledge agreement as referred to in sub-paragraph (7)(b)(i) and failing agreement between the pledgor and the pledgee as referred to in sub-paragraph (7)(b)(ii), shall be the fair value of the securities obtaining on the date of the notice of default referred to in sub-paragraph (6) determined by a certified public accountant or a certified public accountant and auditor appointed by agreement between the pledgor and the pledgee at the relevant time or, failing such agreement, appointed by the Civil Court, First Hall, on the application of the pledgee:

Provided that, notwithstanding what is provided above in this sub-paragraph, when the pledgee exercises his remedy under sub-paragraph 6(c) above (where applicable), the value of the pledged securities for the purposes of such remedy shall be, and the Limited Partnership shall repurchase or redeem the relevant securities at, such value which is specified or otherwise calculated in terms of the Partnership Deed or the conditions of the offer or the issue of such securities.

(8) Where the Partnership Deed or the conditions of the offer or the issue of the pledged securities requires any holder thereof wishing to transfer such securities to offer them on a pre-emptive basis to other holders of such securities, the pledgee shall be obliged, prior to the exercise of the rights granted by this sub-paragraph (6), to offer any such securities to those other holders at the price determined in accordance with sub-paragraph (7), which offer shall be kept open for at least ten working days.

(9) In the exercise of his rights under this paragraph, the pledgee shall only dispose of, appropriate or request the repurchase or redemption of such number of securities as are needed to raise sufficient proceeds to repay the debt due. All remaining securities shall be released to the pledgor.

(10) It shall be lawful for the parties to an agreement of pledge of securities to agree on the person or persons who shall exercise all the rights belonging to the holder of securities, including voting rights and the right to receive income,



B 5194

dividends, profits, interest or any other payments due on such securities:

Provided that, should the agreement between the parties not make provision for such matters, all rights belonging to a holder of securities shall, for the duration of the pledge, be exercised by the pledgor until such time as he defaults under the agreement of pledge or until the pledgee enforces his security; and in any such case, upon giving notice by a judicial act to the pledgor and the Limited Partnership, all the rights belonging to the pledgor shall immediately become exercisable by the pledgee:

Provided further that, unless the pledgor and the pledgee have otherwise agreed in the pledge agreement and notice thereof has been given to the Limited Partnership, income, dividends, profits, interests or any other payments due on securities which are pledged shall, during such time as the pledge is registered in the register of the holders of the respective securities, be paid by the Limited Partnership to the pledgee who shall appropriate any such amounts received to the interest due on the debt secured by the pledge, and, if there is an excess, to the capital.

(11) Notice of termination of the pledge shall be delivered by the pledgee to the Limited Partnership within fourteen days of the termination of the pledge. The termination of the pledge shall be recorded in the register of the holders of the respective securities.

(12) (a) In the case of a pledge of securities in a Limited Partnership which securities are listed and traded on a Maltese regulated market and in respect of which arrangements have been made for the maintenance by such regulated market of the relevant register of the holders thereof, the provisions of subparagraphs (3) to (8) and (11) shall not apply to such listed and traded securities. The following provisions shall apply instead:

(i) the pledgor or the pledgee shall deliver within fourteen days of the granting of the pledge of a listed and traded security a notice of the pledge to the Maltese regulated market, which shall also be served with a notice of termination of the pledge by the pledgee within fourteen days of the termination of the pledge;

(ii) the Limited Partnership whose listed and traded securities have been pledged shall also be notified of the pledge and of its termination within the said periods and the Limited Partnership shall record that fact in the register of the holders of the respective securities;

(iii) such pledge of securities shall be effective in relation to a third party only from the date of delivery of the notice of the pledge to the Maltese regulated market and any transfer or other assignment made therefrom by the pledgor, whether by onerous or gratuitous title, of the pledged securities shall be null and void; and

(iv) the pledgee shall, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor, the Maltese regulated market and the Limited Partnership, have the securities sold through a person duly licensed under the Investment Services Act.

(b) In the case of a pledge of securities in a Limited Partnership which are listed and traded on a regulated market other than a Maltese regulated market, or on an equivalent market in a non-Member State or non-EEA State, the provisions of sub-paragraphs (3) to (8) and (11) shall not apply and in the event of a default under the agreement of pledge, the pledgee shall, upon notice in writing to the pledgor and the Limited Partnership have the securities sold through a person duly authorised for this purpose.

(c) References in this paragraph to the maintenance by a regulated market of the register of the holders of the respective securities shall be deemed to include a reference to the maintenance of the said register by a duly authorised central securities depository and the delivery of the notices referred to in this paragraph shall be construed accordingly.

Matters subject to Partnership Deed.

44. (1) Without prejudice to the provisions of this Schedule, matters relating to the issue and repurchase or redemption of shares by a Share Capital Limited Partnership, the manner and timing and other matters relating to payment of contributions (including payment on shares in a Share Capital Limited Partnership) by partners in a Limited Partnership, the manner and timing and other matters relating to payments (whether of profits, return of contributions or otherwise) to partners by a Limited Partnership, matters relating to meetings and decisions of partners or any of them, and in general any matters relating to the Limited Partnership, shall be regulated by and shall be made in accordance with and subject to the terms and conditions of the Partnership Deed.

(2) Without prejudice to the generality of sub-paragraph (1) and without prejudice to the provisions of paragraphs 25 and 35, a Share Capital Limited Partnership may, if and to the extent permitted by the Partnership Deed, purchase or redeem its own shares, directly or indirectly out of the assets of the Limited Partnership, on such terms and in such manner as may be provided by the Partnership Deed.

Investment Services Rules.

45. Without prejudice to the provisions of article 66A(3) of the Act, the competent authority may issue Investment Services Rules in terms of article 6(2)(b) of the Investment Services Act for the better carrying out of the provisions of this Schedule.

## Administrative penalties in respect of Limited Partnerships.

46. (1) Where any provision of this Schedule provides for the imposition of a penalty, the amount of such penalty shall be determined by reference to Part II of this Schedule, which specifies the maximum penalty that may be imposed by the Registrar under any of the provisions of this Schedule.

(2) In Part II of this Schedule, the first column indicates the paragraph and sub-paragraph of this Schedule which prescribes that a penalty shall be imposed, the second column gives a general description of the infringement, which description shall not be relied on in interpreting any provision of this Schedule, the third column prescribes the maximum penalty and the fourth column prescribes the maximum daily default penalty, if any. The penalty shall become due on the day on which the default occurs and the daily default penalty shall be due for every day during which the default continues and shall accrue from the day following that on which the default occurs.

(3) Action by the Registrar for the recovery of a penalty under this Schedule shall be prescribed by the lapse of five years from the day on which the default occurs.

(4) In relation to penalties raised under this Schedule, the provisions of article 401 of this Act shall apply *mutatis mutandis*.

## PART II - PENALTIES

Paragraph	Default	Penalty	Daily Penalty
6(6)	Person other than a Limited Partnership or a partner therein falsely indicating existence of Limited Partnership	€500	None
6(7)	Person using name falsely indicating existence of Limited Partnership	€500	None
10(6)	Failure of any general partner, vested with administration and representation, to deliver to the Registrar for registration the return of changes in the Partnership Deed, within fourteen days from the change	€500	€25
18(3) & (4)	Failure of Limited Partnership and any general partner, or failure by person who ceased to be a general partner, as applicable, to notify the Registrar of the cessation of a person as a general partner, within fourteen days as mentioned in paragraph 18(3) or paragraph 18(4), as applicable	€500	€25
22(7)	Failure by Limited Partnership and any general partner to keep any of the accounting records mentioned for a period of ten years from the date when they were made	€1,200	None
22(10)	Failure by the Limited Partnership or any general partner to maintain the documents mentioned and as provided, make them available for inspection, and failure in respect of documents which are to be sent and kept in Malta	€500	€25
39(5)	Failure by liquidator to notify the Registrar of his appointment, within fourteen days of such appointment	€500	€25

Paragraph	Default	Penalty	Daily Penalty
30(7)	Exercise by any person of the powers pertaining to the general partners or any power of administration or representation of the Limited Partnership after the appointment of the liquidator	€1,200	None
30(9)	Exercise by any person of the business of the Limited Partnership following its dissolution	€1,200	None
30(14)	Failure of the general partners, or the limited partner or other person vested with the ordinary administration or the liquidator to give notice of dissolution as required by paragraph 30(13)	€500	€25
32(2)	Failure of general partners to inform Registrar of election of a person for custody of records/documents after liquidation, within fourteen days of such election, or of failure to elect such a person, within fourteen days from the failure to elect within the prescribed period for election	€500	None
32(3)	Failure of liquidator or elected person to keep records/documents of the Limited Partnership for prescribed period	€1,200	None
32(4)	Failure of heirs of liquidator or elected person to deliver records/documents of the Limited Partnership within 6 months after death of liquidator or elected person	€500	None
35(4)	Person other than a Variable Capital Limited Partnership or a partner therein falsely indicating existence of Variable Capital Limited Partnership	€500	None

".

