



# Law of the People's Republic of China on Partnerships

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**ASIA BRIEFING**



**DEZAN SHIRA & ASSOCIATES**

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## Chapter I General Provisions

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### Article 1

This Law is enacted in order to standardize the behaviours of partnership enterprises, to protect the lawful rights and interests of partnership enterprises and the partners therein, to maintain the socio-economic order, and to promote the development of the socialist market economy.

### Article 2

The term "partnership enterprise" as used in this Law means a profit-making organization, which is established within the territory of China according to this Law, and all the partners in which conclude a partnership agreement, make joint capital contributions, conduct business jointly, share incomes and risks and bear unlimited joint and several liabilities for debts of the partnership enterprise.

### Article 3

A partnership agreement shall be lawfully concluded, in written form, on the basis of agreement reached by all the partners through consultation.

### Article 4

The principles of free will, equality, fairness and good faith shall be observed in concluding a partnership agreement and establishing a partnership enterprise.

### Article 5

The words "limited" and "limited liability" shall not be used in the name of a partnership enterprise.

### Article 6

In business operations, a partnership enterprise must abide by laws and administrative rules and regulations and observe professional ethics.

### Article 7

The property and lawful rights and interests of a partnership enterprise and the partners therein shall be protected by law.

## Chapter II Establishment of a Partnership Enterprise

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### Article 8

To establish a partnership enterprise, the following conditions shall be met:

- (1) having two or more partners who shall each bear unlimited liabilities according to law;
- (2) having a written partnership agreement;
- (3) having capital actually contributed by all the partners;
- (4) having a name for the partnership enterprise; and
- (5) having premises for business and the necessary conditions for joint operations.

### Article 9

A partner shall be a person who has full capacity for civil acts.

### Article 10

A person who is prohibited by laws or administrative rules and regulations to engage in profit-making activities shall not become a partner in a partnership enterprise.

## Article 11

A partner may make capital contributions in cash or in kind, or in the form of land-use right, intellectual property rights or other property rights; the contributions mentioned above shall be the lawful property or property rights of the partner.

Where an assessment is needed for a non-monetary contribution, it may be determined by all the partners through consultation, or it may be conducted by a statutory assessment institution authorized by all the partners.

Subject to agreement reached by all the partners through consultation, a partner may make capital contributions in the form of labour service, and the method of assessment shall be determined by all the partners through consultation.

## Article 12

A partner shall fulfil the obligation of capital contribution in accordance with the mode, amount and time limit for contribution as specified in the partnership agreement.

The capital actually contributed by each partner according to the partnership agreement shall be his capital contribution to the partnership enterprise.

## Article 13

In a partnership agreement, the following particulars shall be specified:

- (1) the name of the partnership enterprise and the location of its principal premises for business;
- (2) the objectives of partnership and the scope of business of the partnership enterprise;
- (3) the names and domiciles of the partners;
- (4) the mode, amount and time limit for capital contributions of the partners;
- (5) the way of distributing profits and sharing losses;

(6) the management of the affairs of the partnership enterprise;

(7) the entering into and retiring from the partnership;

(8) the dissolution and liquidation of the partnership enterprise; and

(9) the liability for breach of agreement.

The operation period of the partnership enterprise and the way of resolving disputes among the partners therein may be specified in the partnership agreement;

## Article 14

A partnership agreement shall become effective after all the partners have signed or affixed their seals to it. A partner shall enjoy rights and undertake liabilities in accordance with the partnership agreement.

Subject to agreement reached by all the partners through consultation, the partnership agreement may be amended or supplemented.

## Article 15

Where anyone applies for registration of a partnership enterprise, he shall submit to the enterprise registration authority such documents as an application for registration, the partnership agreement and identity papers of the partners.

Where examination and approval by relevant departments are needed as prescribed by laws or administrative rules and regulations, documents of approval shall be submitted at the time when application is made for registration of establishment of the enterprise.

## Article 16

The enterprise registration authority shall, within 30 days from the date of receiving the documents of application for registration, decide whether to make the registration or not. Where the conditions prescribed by this Law are satisfied, the registration shall be made and a business license issued; otherwise, the

registration shall not be made and a written reply stating the reasons shall be given.

### Article 17

The date of issuance of the business license to a partnership enterprise shall be the date of establishment of the enterprise.

Before the partnership enterprise obtains the business license, no partner therein shall engage in business activities in the name of the enterprise.

### Article 18

If a partnership enterprise wishes to set up a branch, it shall apply for registration to the enterprise registration authority in the place where the branch is to be located and shall have to obtain a business license.

## Chapter III Property of a Partnership Enterprise

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### Article 19

During the period of existence of a partnership enterprise, the capital contributions of all the partners and all the incomes obtained in the name of the enterprise are the property of the partnership enterprise.

The property of a partnership enterprise shall be jointly managed and used by all the partners therein in accordance with this Law.

### Article 20

Prior to liquidation of a partnership enterprise, no partner may request to divide the property of the partnership enterprise, unless otherwise provided for in this Law.

If, prior to liquidation of a partnership enterprise, a partner privately transfers or disposes of the property of the partnership enterprise, the enterprise shall not set it up against an ignorant bona fide third party.

### Article 21

If, during the period of existence of a partnership enterprise, a partner wishes to assign all or part of his shares of the enterprise property to anyone other than the partners therein, he shall have to obtain consent of all the other partners.

If a partner wishes to assign all or part of his shares of the enterprise property to another partner, he shall notify the rest of the partners.

### Article 22

Where a partner lawfully assigns his shares of the enterprise property, the other partners shall, under the same conditions, enjoy priority in obtaining the assignment.

### Article 23

Where, with consent of all the partners, anyone other than the partners lawfully obtain the assigned shares of property of the partnership enterprise, he shall, upon amendment of the partnership agreement, become a partner in the partnership enterprise, and enjoy the rights and undertake the liabilities in accordance with the amended partnership agreement.

### Article 24

Where a partner wishes to put his shares of property in a partnership enterprise to pledge, he shall have to obtain consent of all the other partners.

Where a partner, without consent of all the other partners, puts his shares of property in a partnership enterprise to pledge, the pledge shall be invalid, or his act shall be regarded as retirement from the partnership; if his act causes any losses to any other partner, he shall be liable for compensation according to law.

## Chapter IV

# Management of the Affairs of a Partnership Enterprise

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### Article 25

All partners shall enjoy equal right in the management of the affairs of a partnership enterprise. Such affairs may be managed jointly by all the partners or by one or more partners authorized upon the partnership agreement reached or decision made by all the partners.

The partners who manage the affairs of a partnership enterprise shall represent the enterprise in its relations with people outside the enterprise.

### Article 26

Once one or more partners are authorized to manage the affairs of a partnership enterprise as provided for in the preceding paragraph, the other partners shall stop managing the affairs of the enterprise.

The partners not participating in the management of the affairs of the enterprise shall have the right to supervise the partners who manage the affairs and to inspect their management.

### Article 27

Where one or more partners manage the affairs of a partnership enterprise, he or they shall, as agreed, report the state of management and business operations and the financial status to the partners not participating in the management, the income derived from the management of the affairs of the partnership enterprise shall belong to all the partners, and the losses or civil liabilities incurred shall be borne by all the partners.

### Article 28

Partners shall have the right to check the accounting books in order to become acquainted with the state of business

operations and the financial status of the partnership enterprise.

When the partners wish to adopt a resolution, according to law or the partnership agreement, on matters relating to the enterprise, the method that one person has one vote may be used, if so decided by all the partners, unless otherwise provided for in this Law or stipulated in the partnership agreement.

### Article 29

Where, as stipulated by the partnership agreement or decided by all the partners, the partners share the management of the affairs of the partnership enterprise, any partners may raise objections to the management done by others. In that event, the management of the affairs in question shall be suspended. If any dispute arises, the matter may be decided by all the partners.

Where a partner authorized to manage the affairs of a partnership enterprise fails to do it according to the partnership agreement reached or decision made by all the partners, the other partners may decide to cancel the authorization.

### Article 30

No partner may, by himself or through cooperation with another, engage in business in competition with the partnership enterprise in which he is a partner.

No partner may conduct business transactions with the partnership enterprise in which he is a partner, unless otherwise provided for in the partnership agreement or all the partners so consent.

No partner may engage in any activities that harm the interests of the partnership enterprise in which he is a partner.

### Article 31

The following matters relating to a partnership enterprise shall be subject to consent of all the partners:

- (1) disposal of the immovables of the partnership enterprise;
- (2) alteration of the name of the partnership enterprise;
- (3) assignment or disposal of the intellectual property rights or other property rights of the partnership enterprise;
- (4) application for modification of registration to the enterprise registration authority;
- (5) provision of guaranty for another in the name of the partnership enterprise;
- (6) appointment of persons other than the partners as managers of the partnership enterprise; and
- (7) other related matters as specified in the partnership agreement.

#### Article 32

The profits and losses of a partnership enterprise shall be distributed among and born by the partners according to the proportions specified in the partnership agreement; in the absence of such proportions, the profits or losses shall be equally shared by all the partners.

A partnership agreement may not stipulate that all the profits are distributed among part of the partners or all the losses are born by part of the partners.

#### Article 33

During the period of existence of a partnership enterprise, a partner may, in conformity with the partnership agreement or decision by all the partners, increase his capital contributions to the enterprise for the purpose of expanding the scope of business or making up for the losses.

#### Article 34

Specific plans for distribution of profits or bearing of losses annually or for a fixed period of time shall be decided by all the partners through consultation or by the method stipulated in the partnership agreement.

#### Article 35

The managers appointed by a partnership enterprise shall fulfil their duties within the scope of power authorized by the enterprise.

Where a manager appointed by a partnership enterprise causes losses by engaging in business activities beyond the scope of power authorized by the enterprise, or by intentional action or through gross negligence, he shall be liable for compensation according to law.

#### Article 36

A partnership enterprise shall establish financial and accounting systems for the enterprise in accordance with the provisions of laws and administrative rules and regulations.

#### Article 37

A partnership enterprise shall fulfil its obligation to pay taxes in accordance with law.

## Chapter V Relationship of a Partnership Enterprise to a Third Party

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#### Article 38

A partnership enterprise may not use restrictions, which it places on the right of the partners to manage the affairs of the enterprise and to represent the enterprise in its relations with people outside the enterprise, against an ignorant bona fide third party.

#### Article 39

A partnership enterprise shall first pay off its debts with all of its property. If its property is not sufficient to cover the debts due, each partner shall bear unlimited joint and several liability for paying off the debts.

#### Article 40

Where the property of a partnership enterprise is used to clear off its debts, the difference shall be made up by the partners with their

property other than their capital contributions to the enterprise on the basis of the proportions specified in the first paragraph of Article 32 of this Law.

If the amount of debts paid off by a partner, due to his joint and several liability, exceeds the amount he should bear, he shall have the right to claim recovery from the other partners.

#### Article 41

The creditor of a partner in a partnership enterprise may not offset his debts toward the enterprise with his claim against the partner.

#### Article 42

Where a partner is personally in debt, his creditor may not exercise by subrogation the right enjoyed by the partner in the partnership enterprise.

#### Article 43

Where a partner's personal property is not sufficient to pay off his personal debts, he may only use the proceeds distributed to him by the partnership enterprise to clear off his debts; the creditor, on his part, may, according to law, apply to a People's Court for execution of the partner's share of property in the partnership enterprise for the purpose.

Other partners shall enjoy priority in obtaining assignment of the partner's share of property.

## Chapter VI Entering into and Retiring from a Partnership

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#### Article 44

Where a person enters into an existing partnership, he shall have to obtain consent of all the partners and a written agreement for entering into the partnership shall be concluded according to law.

When concluding the agreement for entering into the partnership, the existing partners shall make known to the new partner of the state of

business operations and the financial status of the partnership enterprise.

#### Article 45

The new partner shall enjoy the same right and bear the same liability as the old partners, unless otherwise provided for in the agreement for entering into the partnership.

The new partner shall be jointly and severally liable for the debts incurred by the partnership enterprise before he entered into the partnership.

#### Article 46

Where the period of operation of a partnership enterprise is specified in a partnership agreement, a partner may retire from the partnership under any of the following situations:

- (1) The cause for retiring stipulated in the partnership agreement arises;
- (2) The partner has obtained consent of all the partners for retirement;
- (3) The situation in which the partner finds it difficult to remain in the partnership enterprise arises; or
- (4) Other partners seriously violate the partnership agreement in terms of their obligations.

#### Article 47

Where the period of operation of a partnership enterprise is not specified in a partnership agreement, a partner may retire from the partnership provided that his retirement will not adversely affect the management of the enterprise's affairs, however, he shall notify the other partners 30 days in advance.

#### Article 48

If a partner retires from the partnership against the provisions of the preceding two Articles, he shall compensate the losses thus caused to the other partners.

## Article 49

A partner shall, under any of the following situations, naturally retire from the partnership:

- (1) He is deceased or is legally declared dead;
- (2) He is legally declared a person with no capacity for civil acts;
- (3) He becomes unable to clear off his debts; or
- (4) His total share of property in the partnership enterprise is executed by a People's Court.

The retirement provided in the preceding paragraph takes effect on the day the situation actually arises.

## Article 50

A partner may, under any of the following conditions, be expelled by a resolution unanimously adopted by the other partners:

- (1) He fails to fulfil his obligations to make capital contributions;
- (2) He causes losses to the partnership enterprise intentionally or through gross negligence;
- (3) He resorts to irregular practices in managing the affairs of the partnership enterprise; or
- (4) Other conditions stipulated in the partnership agreement arise.

The partner to be expelled shall be notified in writing of the resolution on expulsion. The expulsion takes effect on the day the person in question receives the notification and he retires from the partnership thereupon.

If the person expelled has objections to the resolution on expulsion, he may bring a lawsuit in a People's Court within 30 days from receipt of the notification for expulsion.

## Article 51

Where a partner is deceased or is legally declared dead, the successor enjoying the lawful right to inheritance of the partner's share of property in the partnership enterprise shall, in accordance with the partnership agreement or with consent of all the partners, acquire the status of a partner in the said enterprise from the day succession commences.

If the lawful successor is not willing to become a partner in the partnership enterprise, the enterprise shall return to him the share of property lawfully inherited by him.

If the lawful successor is a minor, his right may, with consent of all the other partners, be exercised on his behalf by his guardian before he comes of age.

## Article 52

Where a partner retires from a partnership, the other partners shall settle accounts with him in light of the property status of the partnership enterprise at the time of retiring and return his share of property to him.

If there are affairs of the partnership enterprise still outstanding at the time of retiring, the accounts shall be settled afterwards.

## Article 53

The method for return of the retiring partner's share of property in the partnership enterprise shall be specified in the partnership agreement or determined by all the partners. It may be returned in cash or in kind.

## Article 54

The retiring partner shall, together with the other partners, bear joint and several liabilities for the debts incurred by the partnership enterprise before he retires from the partnership.

## Article 55

Where the property of a partnership enterprise is less than its debts at the time when a partner



retires, the retiring partner shall share the losses in accordance with the provisions of the first paragraph of Article 32 of this Law.

### Article 56

Where the particulars in the registration of a partnership enterprise are changed because of matters such as retiring from or entering into the partnership, or amendment made to the partnership agreement, or re-registration is needed, relevant registration procedures shall be completed with the enterprise registration authority within 15 days after a decision on the alteration is made or a cause for the alteration arises.

## Chapter VII Dissolution and Liquidation of a Partnership Enterprise

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### Article 57

A partnership enterprise shall be dissolved in one of the following situations:

- (1) When the period of operation specified in the partnership agreement expires, the partners are unwilling to continue the operation;
- (2) The cause for dissolution specified in the partnership agreement arises;
- (3) All the partners decide to dissolve;
- (4) The number of partners does not meet the statutory requirement;
- (5) The objectives of partnership specified in the partnership agreement have been achieved or it is impossible to achieve them;
- (6) Its business license is revoked in accordance with law; or
- (7) Other reasons for dissolution of the partnership enterprise provided by law or administrative rules and regulations arise.

### Article 58

Liquidation shall be carried out after a partnership enterprise is dissolved and the creditors shall be informed and notified publicly.

### Article 59

Where a partnership enterprise dissolves, all of the partners shall serve as liquidators; if it is impossible for them to do so, they may, within 15 days after dissolution of the partnership enterprise, appoint one or more partners to act as liquidators or entrust a third person with the liquidation.

If no liquidators are appointed within 15 days, the partners or other interested parties may apply to a People's Court for designation of liquidators.

### Article 60

During liquidation, a liquidator shall manage the following affairs:

- (1) checking up on the property of the partnership enterprise and prepare a statement of assets and liabilities and an inventory of the property separately;
- (2) dealing with the outstanding affairs of the partnership enterprise which are relevant to liquidation;
- (3) paying off the taxes owed by the enterprise;
- (4) clearing up claims and debts;
- (5) disposing of residual property of the partnership enterprise after paying off the debts; and
- (6) participating in civil proceedings on behalf of the partnership enterprise.

### Article 61

After payment of liquidation expenses with the property of the partnership enterprise, repayment shall be made in the following order:

- (1) wages and labour insurance premiums owed by the partnership enterprise to its employees;
- (2) taxes owed by the partnership enterprise;
- (3) debts of the partnership enterprise; and
- (4) return of the partners' capital contributions.

Where there is still residual property after repayment is made with the property of the partnership enterprise in accordance with the order mentioned above, it shall be distributed according to the proportions provided for in the first paragraph of Article 32 of this Law.

#### Article 62

Where all of the property of a partnership enterprise is insufficient to pay off its debts during liquidation, the matter shall be dealt with in accordance with the provisions of Articles 39 and 40 of this Law.

#### Article 63

After a partnership enterprise is dissolved, the former partners shall still be jointly and severally liable for the debts of the partnership enterprise incurred during the period of its existence, however, such liability lapses if the creditor does not make a claim against the debtor within five years.

#### Article 64

Upon conclusion of liquidation, a liquidation report shall be prepared which shall, subject to the signing or affixing seals by all the partners, be submitted within 15 days to the enterprise registration authority for procedures of cancelling the registration of the partnership enterprise.

## Chapter VIII Legal Liability

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#### Article 65

Where an enterprise, in violation of the provisions of this Law, obtains its registration by submitting falsified documents or resorting to other fraudulent means, it shall be ordered to make rectification and may be fined not more than 5,000 yuan; if the case is serious, the registration of the enterprise shall be revoked.

#### Article 66

Whoever, in violation of the provisions of this Law, indicates the words "limited" or "limited liability" in the name of a partnership enterprise shall be ordered to make rectification within a time limit and may be punished with a fine of not more than 2,000 yuan.

#### Article 67

Whoever, in violation of the provisions of this Law, engages in business activities in the name of a partnership enterprise without obtaining a business license according to law shall be ordered to stop the business activities and may be punished with a fine of not more than 5,000 yuan.

Where a partnership enterprise fails to go through the procedures for changing its registration when the registered particulars are modified, it shall be ordered to have the modifications registered within a time limit; if it fails to do so before expiration of the time limit, it shall be punished with a fine of not more than 2,000 yuan.

#### Article 68

Where a partner, in his management of the affairs of the partnership enterprise, takes into his own possession the interests that should go to the partnership enterprise or seizes the property of the partnership enterprise by other means, he shall be ordered to return such interests and property to the partnership

enterprise; if he causes losses to the partnership enterprise or other partners, he shall be liable for compensation according to law; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

#### Article 69

Where a partner manages, without authorization, the affairs which may be managed by a partner only with the consent of all the partners as provided for in this Law or the partnership agreement and thus causes losses to the partnership enterprise or other partners, he shall be liable for compensation in accordance with law.

#### Article 70

Where a partner who does not have the power to manage the affairs of the partnership enterprise manages the affairs without authorization and thus causes losses to the enterprise or other partners, he shall be liable for compensation in accordance with law.

#### Article 71

Where a partner, in violation of the provisions of Article 30 of this Law, engages in business in competition with the partnership enterprise in which he is a partner or conducts business transactions with the partnership enterprise in which he is a partner and thus causes losses to the enterprise or other partners, he shall be liable for compensation in accordance with law.

#### Article 72

Where an employee of a partnership enterprise, by taking advantage of his post, unlawfully takes into his possession the property or things of value of the enterprise or appropriates the funds of the enterprise for personal use, he shall bear civil liability according to law; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

#### Article 73

Where a liquidator fails to submit a liquidation report to the enterprise registration authority in accordance with the provisions of this Law, or submits a liquidation report but conceals important facts or omits major information, he shall be ordered to make rectification.

#### Article 74

Where a partner who serves as a liquidator seeks unlawful earnings or seizes the property of the partnership enterprise while managing the affairs of liquidation, he shall be ordered to return such earnings or seized property to the enterprise; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Where a liquidator entrusted by the partners commits the acts mentioned in the preceding paragraph, he shall be ordered to return such earnings or seized property to the partnership enterprise and be liable for compensation in accordance with law; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

#### Article 75

Where a liquidator, in violation of the provisions of this Law, conceals or transfers the property of the partnership enterprise, or makes false records in the statement of assets and liabilities or the inventory of property, or distributes the enterprise's property before clearing off the debts, he shall be ordered to make rectification; if the interests of the creditors are harmed, he shall be liable for compensation in accordance with law; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

#### Article 76

Where a partner violates the partnership agreement, he shall bear the liability for breach of agreement in accordance with law.

Where a dispute arises among the partners over the execution of the partnership agreement, the partners may settle it through consultation or mediation. If they are unwilling

to do so or if consultation or mediation proves unsuccessful, they may submit it to an arbitration agency for arbitration in accordance with the arbitration clause contained in the partnership agreement or a written arbitration agreement concluded afterwards. If no arbitration clause is contained in the partnership agreement and no written arbitration agreement is concluded afterwards, they may bring a suit in a People's Court.

#### Article 77

Where any relevant administrative departments or their staff members, in violation of the provisions of this Law, abuse their power, engage in malpractices for selfish ends, take bribes and encroach upon the lawful rights and interests of a partnership enterprise, they shall be given administrative sanctions according to law; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

## Chapter IX Supplementary Provisions

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#### Article 78

This Law shall go into effect as of August 1, 1997.