

Western Australia

THE LIMITED PARTNERSHIPS ACT 1909

Limited Partnerships (Winding-up) Rules 1909

These rules were repealed because of the repeal of the power to make the rules in s. 6(4) of the *Limited Partnerships Act 1909* (see s. 2(1) and 33 of the *Corporations (Consequential Amendments) Act (No. 2) 2003*) as at 15 Jul 2001.

Limited Partnerships (Winding-up) Rules 1909

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Limited Partnerships (Winding-up) Rules 1909

Crown Law Department,
Perth, 21st April, 1909.

HIS Excellency the Governor in Executive Council has been pleased to make the following Rules under Section 6(4) of the *Limited Partnerships Act 1909*.

H. G. HAMPTON,
Under Secretary for Law.

The provisions of the *Companies Act 1893*, so far as they relate to the winding-up of Companies by the Court and the provisions of the Rules made thereunder (including the provisions as to fees) are hereinafter called “the applied provisions,” and shall apply to the winding-up by the Court of Limited Partnerships formed in the manner and subject to the conditions by the *Limited Partnerships Act 1909* provided, subject to the modifications following, that is to say: —

PRELIMINARY

1. Interpretation

The following expressions shall, unless the context or subject matter otherwise requires, be substituted in the applied provisions and in the forms prescribed by the said Rules for the expressions hereinafter particularly mentioned, that is to say: —

“**Limited Partnership**” for “Company.”

“**General Partner**” for “Director” and for “Secretary.”

“**Manager, Clerk, or Servant**” for “Officer.”

“**Partner**” for “Member” or “Shareholder.”

“**Principal place of business as registered**” for “registered office.”

“**The Companies Act as applied by the *Limited Partnerships Act 1909***,” for “the *Companies Act 1893*.”

“**The Act as applied by the *Limited Partnerships Act 1909***,” for “the Act.”

2. Meaning of “the Court”

In these Rules and in the applied provisions unless the context or subject matter otherwise requires, the expression “**the Court**” shall mean the Supreme Court or a Judge thereof.

3. Companies Act sections 101 and 102 replaced by these rules

For the purposes of the application term “contributory,” as interpreted by section three of the *Companies Act 1893*, the provisions of these Rules with regard to the liability of partners and others as contributories shall be substituted for the provisions of Sections 101 and 102 of the *Companies Act 1893*.

4. Liability of partners on winding up

In the event of a limited partnership being wound up by the Court every present and past partner, general or limited, shall be liable to contribute to the assets of the limited partnership to an amount sufficient for repayment of the debts and liabilities of the limited partnership, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say: —

- (1) No present or past limited partner shall be liable to contribute as such to the assets of the limited partnership to any greater amount than the amount of any part of his

contribution as such limited partner which he may have drawn out or received back since he became or whilst he remained a limited partner, except in the case of a present limited partner who is a past general partner and in the case of a past limited partner who has become a present general partner.

- (2) No past general partner shall be liable to contribute as such to the assets of the limited partnership except in respect of partnership debts and obligations incurred whilst he continued to be a general partner: but every past general partner who has become a limited partner shall in addition to any amount which he may be liable to contribute in respect to partnership debts and obligations incurred whilst he continued to be a general partner be liable to contribute to the assets of the limited partnership to an amount equal to the amount of any part of his contribution as such limited partner which he may have drawn out or received back since he became or whilst he remained a limited partner.
- (3) No past partner, general or limited, shall be liable to contribute as such to the assets of the limited partnership unless it appears to the Court that the existing partners are unable to satisfy the contributions required to be made by them in pursuance of this Rule.
- (4) No sum due to any partner, general or limited, in his character of a partner, by way of capital, dividends, profits, or otherwise shall be deemed to be a debt of the limited partnership payable to such partner in a case of competition between himself and any other creditor not being a partner; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves.

5. Liability of contributories

The provisions of Section 192 of the *Companies Act 1893*, shall not apply, but in the event of a limited partnership being wound up by the Court every person shall be deemed a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the limited partnership, or to pay or contribute to the payment of any sum for the adjustment of the rights of the contributories among themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the limited partnership, and every such contributory shall be liable to contribute to the assets of the limited partnership in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; but in the event of the death or bankruptcy of any contributory the provisions of Sections 104 and 105 of the *Companies Act 1893* shall apply subject to the modifications provided by these Rules.

[Rule 5 amended in Gazette 30 Jun 2003 p. 2611.]

6. Death of insolvent contributory

In the event of any contributory dying in insolvent circumstances and of an Order being made for the administration of his estate either before or after he has been placed on the list of contributories, the trustee of his estate shall be deemed to represent the deceased for all purposes of the winding-up of the limited partnership and shall be deemed to be a contributory accordingly, and may be called upon to admit of proof against the estate of the deceased or otherwise to allow to be paid out of his assets in due course of law any moneys due from the deceased in respect of his liability to contribute to the assets of the limited partnership being wound up.

JURISDICTION AND PROCEDURE

7. Winding up by the Court

The provisions of Sections 107 and 191 (1), (2), and (3) of the *Companies Act 1893*, shall not apply, but the circumstances under which a limited partnership may be wound up by the Court shall be as follows, that is to say: —

- (a) Whenever the limited partnership is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs: or
- (b) Whenever the limited partnership is unable to pay its debts: or
- (c) Whenever the Court is of opinion that it is just and equitable that the limited partnership should be wound up:

and an Order to wind-up a limited partnership shall not be refused on the ground only that there are no assets.

8. Partnership unable to pay its debts

The provisions of Sections 108 and 191 (4) of the *Companies Act 1893*, shall not apply, but a limited partnership shall for the purposes of being wound up by the Court be deemed unable to pay its debts:

- (a) Whenever a creditor to whom the limited partnership is indebted at law or in equity by assignment or otherwise in a sum exceeding fifty pounds then due has served on the limited partnership a demand under his hand requiring the limited partnership to pay the sums so due, and the limited partnership has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor: or
- (b) Whenever any action, suit, or other proceeding has been instituted against any general partner for any debt or

demand due or claimed to be due from the limited partnership or from him in his character of general partner: and notice in writing of the institution of such action, suit, or other proceeding having been served upon the limited partnership the limited partnership has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against such action, suit, or other proceedings and against all costs, damages, and expenses to be incurred by him by reason of the same: or

- (c) Whenever execution or other process issued on a judgment decree or order obtained in any Court in favour of any creditor in any proceeding at law or in equity instituted by any such creditor against the limited partnership or any general partner as such, or against any person authorised to be sued as a nominal defendant on behalf of the limited partnership, is returned unsatisfied: or
- (d) Whenever it is otherwise proved to the satisfaction of the Court that the limited partnership is unable to pay its debts, and in determining whether a limited partnership is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the limited partnership.

9. Petition for winding up

Every petition for the winding-up of a limited partnership shall be presented to the Supreme Court, and that Court shall be the Court having jurisdiction to wind-up limited partnerships.

10. Disapplication of proviso to s.109 of Companies Act

The provisions contained in the proviso to Section 109 of the *Companies Act 1893*, shall not apply.

11. Form of petition

Every petition for winding-up a limited partnership shall be in the form in the Appendix to these Rules with such variations as circumstances may require, and shall be served in the manner prescribed by these Rules.

A petition for the winding-up of a limited partnership if presented in the name of the firm shall be signed by all the general partners, if there are more than one.

12. Title of proceedings for winding up

Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions be intitled as follows: —

In the Supreme Court of Western Australia,
Limited Partnerships Winding-up.
In the matter of The *Limited Partnerships Act 1909*,
and
the name of the matter to which it relates.
Numbers and dates may be denoted by figures.

13. Service of documents or partnership

Every demand for payment under Rule 8 (a) of these Rules, and every notice under Rule 8 (b) of the institution of any action, suit, or other proceeding, and every petition for the winding-up of a limited partnership unless presented in the name of the firm by all the general partners jointly, if there are more than one, shall be served upon the limited partnership at the principal place of business of the limited partnership as registered, by delivering the same to one of the general partners there or to some person having at the time of service the control or management of the partnership business there, unless the Court or a Judge shall otherwise approve or direct.

Every petition for the winding-up of a limited partnership presented in the name of the firm by all the general partners

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jointly, if there are more than one, or presented by any general partner, shall be served on each of the limited partners personally unless the Court or a Judge shall otherwise direct.

Every notice and other document requiring to be served upon the limited partnership for the service of which no special mode is prescribed may be served by post or by leaving the same at the principal place of business of the Limited Partnership as registered in an envelope addressed to the Limited Partnership in the firm name as registered.

14. Court may stay proceedings

The provisions of Sections 112 and 193 of the *Companies Act 1893*, shall not apply, but at any time after the presentation of a petition for winding-up a limited partnership and before the making of an Order for winding-up the limited partnership the Court in which proceedings are pending by or against the limited partnership may upon the application of the limited partnership or of any creditor or contributory of the limited partnership, and the Court in which proceedings are pending at any such time as aforesaid against any contributory of the limited partnership in respect of any debt of the limited partnership may upon the application of any creditor of the limited partnership either stay such proceedings or allow them to continue on such terms as may be just.

The Court may also, at any time after the presentation of such petition and before the first appointment of a liquidator, appoint provisionally a liquidator of the estate and effects of the limited partnership.

15. Reports to Official Liquidator

For the purposes of the application of Rule 8 of the Seventh Schedule to the *Companies Act 1893*, the preliminary report of the Official Liquidator to the Court shall be a report: —

- (a) As to the contributions of the partners and the estimated amount of the assets and liabilities of the limited partnership; and
- (b) If the limited partnership has failed, as to the causes of its failure; and
- (c) Whether in his opinion further inquiry is desirable as to any matter relating to the formation or failure of the limited partnership or the conduct of the business thereof.

The further report or reports (if any) of the Official Liquidator shall state the manner in which the limited partnership was formed, and whether in his opinion any fraud has been committed by any person in the formation of the limited partnership or by any partner general or limited in relation to the limited partnership since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

The Court may, after consideration of any such report, direct that any person who has taken part in the formation of the limited partnership or has been a partner, general or limited, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the formation of the limited partnership, as to the conduct of the business of the limited partnership, or as to his conduct and dealings as a partner.

16. Report may extend to limited partners

Any report of the Official Liquidator may extend to the conduct of the limited, as well as of the general partners.

17. Court may rectify register

For the purpose of settling the list of contributories the Court shall have power to rectify the Register of the limited partnership in respect of: —

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- (a) the name of any of the partners whether general or limited; and
- (b) the sum contributed by any limited partner; and
- (c) the nature of the liability of any partner whether general or limited as therein registered and otherwise as may be necessary for the purpose aforesaid, upon the application of any person aggrieved or of any partner whether general or limited.

18. Inspection of court file

Every person who is or has been a partner, whether general or limited, of a limited partnership which is being wound-up shall be entitled free of charge to inspect the file of proceedings, and to take copies or extracts under Rule 42 of the Seventh Schedule of the *Companies Act 1893*, as applied by the *Limited Partnerships Act 1909*, and shall be entitled to be furnished with such copies or extracts at the rate therein mentioned.

COLLECTION AND DISTRIBUTION OF ASSETS

19. Collection and distribution of assets

In the winding-up of any limited partnership whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding-up, the same rules shall prevail and may be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt and all persons who would in any such case be entitled to prove for and receive dividends out of the assets of any such limited partnership may come in under the winding-up of such limited partnership and make any such claims against the same as they may respectively be entitled by virtue of these Rules.

20. Bankrupt contributory

Notwithstanding anything contained in the *Companies Act 1893*, the liquidator shall not, in the event of any contributory being adjudged bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, and of an Order being made for the administration of his estate, have power to prove, rank, claim, and draw a dividend for any balance against the estate of such contributory, or to take and receive dividends in respect of such balance, until the claims of the other separate creditors of such contributory for valuable consideration in money or money's worth have been satisfied.

SUPPLEMENTAL PROVISIONS

21. Application of section 133 of the *Companies Act 1893*

The provisions of Section 133 of the *Companies Act 1893*, shall apply only when the affairs of the limited partnership have been completely wound-up by the Court under an Order for winding-up not made on the ground that the limited partnership has been dissolved.

22. Application of section 166 of the *Companies Act 1893*

The provisions of Section 166 of the *Companies Act 1893*, shall apply where any limited partnership has been wound-up by the Court under an Order for winding-up made on the ground of the previous dissolution of the limited partnership as well as where the limited partnership has been wound up by the Court under an Order for winding-up made on any other ground.

23. Citation

These Rules may be cited as the *Limited Partnerships (Winding-up) Rules 1909*.

Appendix

(RULE 11)

PETITION

(Title)

To the Supreme Court of Western Australia.

The humble petition of (a) showeth as follows: —

1. The firm of (hereinafter called “the firm”) was, on the
day of , registered under the *Limited Partnerships Act 1909*
2. The principal place of business of the firm registered under the said Act is
at (b)
and was formerly at
3. The general nature of the business as registered is as follows: —
4. The full name of each of the partners as registered is as follows: —
The said and being registered as general partners and
and as limited partners.
5. The sum contributed by each of such limited partners was as follows: —
By the said £
By the said £
and the said sums were respectively paid in cash and otherwise to the
following extent: —
As to the said sum of £ the sum of £ part thereof in cash
and the balance (*in goods or as the case may be*).
As to the said sum of £ the sum of £ part thereof in cash
and the balance (*represented the value of the goodwill of the business
acquired by the said firm, or as the case may be*).
6. The firm was, on the day of , dissolved by (*mutual consent, or as the case
may be*) (or has ceased to carry on business or is carrying on business
only for the purpose of winding up its affairs):
(or is unable to pay its debts):
(or, in the circumstances, it is just and equitable that the firm should be wound
up by the Court).
Your petitioner therefore humbly prays as follows: —

- (1) That the firm may be wound up by the Court under the provisions of the *Limited Partnerships Act 1909*:
- (2) Or that such other order may be made in the premises as shall be just.

Note. — (c) It is intended to serve this petition on

- (a)

Insert full name, title, etc., of petitioner.
- (b) State the full address of the present principal place of business, as registered, so as to show the district in which it is situate, and all changes made during the continuance of the partnership.
- (c) If all the partners join in the petition this note will be unnecessary.

Notes

- ¹ This is a compilation of the *Limited Partnerships (Winding-Up) Rules 1909* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Limited Partnerships (Winding-up) Rules 1909</i>	23 Apr 1909 p. 965-70	23 Apr 1909
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 21</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)

These rules were repealed because of the repeal of the power to make the rules in s. 6(4) of the *Limited Partnerships Act 1909* (see s. 2(1) and 33 of the *Corporations (Consequential Amendments) Act (No. 2) 2003*) as at 15 Jul 2001
