Partnership Enterprise Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of regulating the conduct of partnership enterprises, protecting the lawful rights and interests of partnership enterprises and their partners and creditors, maintaining social and economic order, and promoting the development of the socialist market economy.

Article 2 — For the purposes of this Law, “partnership enterprise” means a for-profit organization established within the territory of China in accordance with this Law by natural persons, legal persons, or other organizations through a partnership agreement, under which the partners jointly contribute capital, operate

the enterprise jointly, share profits, bear risks, and assume unlimited joint and several liability for the debts of the partnership enterprise. Specialized general partnership enterprises established in accordance with this Law shall assume liability for the debts of the partnership enterprise in accordance with the provisions of this Law. Limited partnership enterprises established in accordance with this Law shall assume liability for the debts of the partnership enterprise in accordance with the provisions of this Law.

Article 3 — Wholly state-funded enterprises, state-owned enterprises, listed companies, public welfare institutions, and social organizations shall not become general partners of a partnership enterprise.

Article 4 — The partnership agreement shall be entered into in writing by all partners through consensus in accordance with the law. The partnership agreement shall become effective upon the signatures or seals of all partners. The partners shall enjoy rights and perform obligations in accordance with the partnership agreement. An amendment or supplement to the partnership agreement shall be agreed upon by all partners through consensus, unless otherwise provided in the partnership agreement.

Article 5 — When entering into a partnership agreement or establishing a partnership enterprise, the partners shall follow the principles of voluntariness, equality, fairness, and good faith.

Article 6 — The production and business income and other income of a partnership enterprise shall be subject to tax payment by each partner separately in accordance with the relevant state tax regulations.

Article 7 — Partnership enterprises and their partners shall abide by laws and administrative regulations, observe business ethics, and bear social responsibility.

Article 8 — The lawful property and rights and interests of partnership enterprises and their partners shall be protected by law.

Article 9 — When applying for the establishment of a partnership enterprise, the applicant shall submit to the enterprise registration authority the registration application, partnership agreement, identity certificates of the partners, and other documents. Where the business scope of a partnership enterprise includes matters that are subject to approval as prescribed by laws or administrative regulations before registration, the relevant approval documents shall be submitted. Where the registration authority grants registration if the applicant meets the conditions prescribed by this Law, it shall issue a business license. The date of issuance of the business license shall be the date of establishment of the partnership enterprise.

Article 10 — Where any of the registered particulars of a partnership enterprise changes, the managing partner shall, within 15 days from the date of the change or from the date on which the grounds for the change arise, apply to the enterprise registration authority for registration of the change.

Chapter II — Establishment of Partnership Enterprises

Article 14 — The following conditions shall be satisfied for the establishment of a partnership enterprise: (1) there are two or more partners; (2) there is a written partnership agreement; (3) there is capital contributed by the partners as subscribed or as actually paid; (4) there is a name and place of business of the partnership enterprise; and (5) other conditions prescribed by laws and administrative regulations.

Article 15 — The name of a partnership enterprise shall include the words “general partnership” or “specialized general partnership” or “limited partnership.”

Article 16 — A partner may contribute capital in the form of money, in kind, intellectual property rights, land use rights, or other property rights, or by providing labor services. Where a partner contributes capital in a form other than money, the value of the capital contribution shall be appraised and determined in accordance with the provisions of law or agreed upon by all partners through negotiation.

Article 17 — The partners shall perform their capital contribution obligations in accordance with the method, amount, and time limit for capital contribution as agreed upon in the partnership agreement. Where a

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non-monetary capital contribution requires registration procedures, the registration procedures shall be completed in accordance with the law.

Article 18 — The partnership agreement shall specify the following matters: (1) the name and principal place of business of the partnership enterprise; (2) the purpose of the partnership and the business scope of the partnership enterprise; (3) the names or titles and domiciles of the partners; (4) the method, amount, and time limit for capital contribution by the partners; (5) the method for distributing profits and sharing losses; (6) the execution of partnership affairs; (7) admission and withdrawal of partners; (8) the method for dispute resolution; (9) the dissolution and liquidation of the partnership enterprise; and (10) the liability for breach of contract.

Chapter III — Property of Partnership Enterprises

Article 20 — The property of a partnership enterprise shall be composed of the capital contributions of the partners, the proceeds obtained in the name of the partnership enterprise, and other property acquired in accordance with the law.

Article 21 — Before liquidation of the partnership enterprise, no partner may request the division of the property of the partnership enterprise, unless otherwise provided in this Law. Where a partner transfers all or part of his share of the property in the partnership enterprise to a person other than the partners before the liquidation of the partnership enterprise, the consent of the other partners shall be obtained, unless otherwise provided in the partnership agreement.

Article 22 — Where a partner transfers all or part of his share of the property in the partnership enterprise to another partner, he shall notify the other partners. Where a partner transfers all or part of his share of the property in the partnership enterprise to a person other than the partners, he shall obtain the unanimous consent of the other partners, unless otherwise provided in the partnership agreement. Where a partner transfers his share of the property in the partnership enterprise, the other partners shall have a preemptive right to purchase such share under equal conditions, unless otherwise provided in the partnership agreement.

Article 23 — Where a person other than the partners accepts the share of the property in the partnership enterprise of a partner in accordance with the law, he shall become a partner of the partnership enterprise upon the amendment of the partnership agreement and shall enjoy rights and perform obligations in accordance with this Law and the partnership agreement as amended.

Article 24 — A partner may use his share of the property in the partnership enterprise to pay off his personal debts. Where a creditor files a petition with a people’s court for compulsory enforcement of the partner’s share of the property in the partnership enterprise, the people’s court shall notify all partners of the petition, and the other partners shall have a preemptive right to purchase such share; where the other partners do not purchase the share and do not agree to the transfer of the share to another person, they shall handle the withdrawal of the partner, or handle the reduction of the partner’s corresponding share of the property in the partnership enterprise, for the partner in accordance with the provisions of Article 51 of this Law.

Chapter IV — Execution of Partnership Affairs

Article 26 — The partners shall have equal rights to execute the partnership affairs. In accordance with the partnership agreement or the decision of all partners, one or more partners may be entrusted to execute the partnership affairs on behalf of the partnership enterprise. The other partners shall no longer execute the partnership affairs. Where two or more partners are entrusted to execute the partnership affairs, the method for making decisions on the matters in the execution of the partnership affairs shall be agreed upon in the partnership agreement.

Article 27 — Where one or more partners are entrusted to execute the partnership affairs in accordance with the provisions of the second paragraph of Article 26 of this Law, the other partners shall no longer execute the partnership affairs. Partners who do not execute the partnership affairs shall have the right to supervise the partners who execute the partnership affairs.

Article 28 — The partners who execute the partnership affairs shall periodically report to the other partners on the status of the execution of the partnership affairs and the business operations and financial condition of the partnership enterprise. The proceeds obtained from the execution of the partnership affairs shall belong to the partnership enterprise, and the losses and civil liability incurred shall be borne by the partnership enterprise. For the purposes of understanding the business operations and financial condition of the partnership enterprise, a partner shall have the right to consult the accounting books and financial reports of the partnership enterprise and other financial materials.

Article 29 — Where partners execute the partnership affairs separately, the managing partners may raise objections to the matters executed by other partners; if an objection is raised, the execution of the matter shall be suspended. If a dispute arises, a decision shall be made in accordance with the method for decision-making agreed upon in the partnership agreement or by a majority vote of all partners. Where the partners who have been entrusted to execute the partnership affairs fail to execute the partnership affairs in accordance with the partnership agreement or the decision of all partners, the other partners may decide to revoke the entrustment. Where a partner who is not entrusted to execute the partnership affairs causes losses to the partnership enterprise by improperly interfering with the execution of the partnership affairs, he shall bear the compensation liability in accordance with the law.

Article 30 — When making a decision on a matter relating to the partnership enterprise, a resolution shall be made in accordance with the method for decision-making agreed upon in the partnership agreement; where the partnership agreement does not provide for or clearly provide for such method, the method of one vote per partner and the adoption of the resolution by a majority vote of all partners shall apply, unless otherwise provided in this Law. This Law provides otherwise for the method of resolving matters relating to the partnership enterprise.

Article 31 — The following matters of a partnership enterprise shall be subject to the unanimous consent of all partners, unless otherwise provided in the partnership agreement: (1) change of the name of the partnership enterprise; (2) change of the business scope and principal place of business of the partnership enterprise; (3) disposal of the immovable property of the partnership enterprise; (4) transfer or disposal of the intellectual property rights or other property rights of the partnership enterprise; (5) provision of security for another person in the name of the partnership enterprise; and (6) appointment of a person other than the partners as a manager of the partnership enterprise.

Article 32 — A partner shall not, by himself or in cooperation with another person, engage in business in competition with the partnership enterprise. No partner shall enter into a transaction with the partnership enterprise, unless otherwise provided in the partnership agreement or otherwise agreed upon by all partners. No partner shall engage in any act that harms the interests of the partnership enterprise.

Article 33 — The method for distributing profits and sharing losses of a partnership enterprise shall be agreed upon in the partnership agreement; where the partnership agreement does not provide for or clearly provides for such method, the distribution and sharing shall be made by the partners through negotiation; if the negotiation fails, the partners shall distribute and share in proportion to the capital contributions actually paid by them; where the proportion of capital contributions cannot be determined, they shall distribute and share equally. The partnership agreement shall not provide that all profits be distributed to some of the partners or that all losses be borne by some of the partners.

Article 34 — A partner may increase or reduce his capital contribution to the partnership enterprise in accordance with the partnership agreement or the decision of all partners.

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Article 35 — Where a manager is appointed, he shall perform his duties within the scope of authorization of the partnership enterprise. Where the manager appointed causes losses to the partnership enterprise through his act beyond the scope of authorization, or by intentional act or gross negligence, he shall bear the compensation liability in accordance with the law.

Chapter V — Relations with Third Parties

Article 37 — Restrictions imposed by a partnership enterprise on the powers of a partner to execute partnership affairs and represent the partnership enterprise shall not be asserted against a bona fide third party.

Article 38 — A partnership enterprise shall first pay off its debts with all of its property.

Article 39 — Where the property of a partnership enterprise is insufficient to pay off its debts when due, the partners shall assume unlimited joint and several liability.

Article 40 — Where a partner pays off the debts of the partnership enterprise in excess of his share of the losses, he shall have the right to seek recovery from the other partners.

Article 41 — Where a partner has a personal debt, the relevant creditor shall not set off the debt against his creditor's right with the partnership enterprise. Nor shall the creditor exercise the partner's rights in the partnership enterprise by subrogation, unless the partner has the right to claim for distribution of profits from the partnership enterprise.

Article 42 — Where a partner's personal property is insufficient to pay off his personal debts, the creditor may apply to a people's court for compulsory enforcement of the partner's share of the property in the partnership enterprise for payment. When the people's court compulsorily enforces the partner's share of the property, it shall notify all partners, and the other partners shall have a preemptive right to purchase such share; where the other partners do not purchase the share and do not agree to the transfer of the share to another person, they shall handle the withdrawal of the partner for the partner in accordance with the provisions of Article 51 of this Law.

Chapter VI — Admission and Withdrawal of Partners

Article 43 — Where a new partner is to be admitted to the partnership, the unanimous consent of all partners shall be obtained, unless otherwise provided in the partnership agreement, and a written admission agreement shall be concluded in accordance with the law. When concluding the admission agreement, the original partners shall truthfully inform the new partner of the business operations and financial condition of the original partnership enterprise.

Article 44 — A new partner who has been admitted to the partnership shall have the same rights and assume the same obligations as the original partners. Where the admission agreement provides otherwise, such agreement shall prevail. A new partner shall bear joint and several liability with the original partners for the debts of the partnership enterprise incurred before his admission.

Article 45 — Where the partnership agreement provides for the term of the partnership, a partner may withdraw from the partnership under any of the following circumstances during the existence of the partnership enterprise: (1) the grounds for withdrawal as agreed upon in the partnership agreement have arisen; (2) the unanimous consent of all partners has been obtained; (3) an event has occurred that makes it difficult for the partner to continue to participate in the partnership enterprise; or (4) other partners have seriously violated the obligations agreed upon in the partnership agreement.

Article 46 — Where the partnership agreement does not provide for the term of the partnership, a partner may withdraw from the partnership without adversely affecting the execution of the partnership affairs, provided that he notifies the other partners 30 days in advance.

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Article 47 — Where a partner withdraws from the partnership in violation of the provisions of Articles 45 and 46 of this Law, he shall compensate the partnership enterprise for the losses caused.

Article 48 — Where a partner falls under any of the following circumstances, he shall of course withdraw from the partnership: (1) a natural person partner has died or been declared dead in accordance with the law; (2) a partner has lost the solvency required by law; (3) a legal person partner or other organization partner has had its business license revoked, been ordered to close down, been deregistered, or been declared bankrupt; (4) the partner has been legally disqualified from a qualification that must be held for the operation of the partnership enterprise; or (5) all of the partner's share of the property in the partnership enterprise has been compulsorily enforced by a people's court. On the date on which the actual grounds for withdrawal arise, the partner shall of course withdraw from the partnership.

Article 49 — A partner may be expelled from the partnership by a resolution of the other partners through unanimous consent under any of the following circumstances: (1) failing to perform his capital contribution obligations; (2) causing losses to the partnership enterprise through intentional act or gross negligence; (3) engaging in improper conduct in the execution of the partnership affairs; or (4) other grounds for expulsion as agreed upon in the partnership agreement. The resolution on the expulsion of a partner shall be notified to the expelled partner in writing. The expulsion shall take effect on the date of receipt of the notice of expulsion, and the expelled partner shall withdraw from the partnership. Where the expelled partner has objections to the resolution on expulsion, he may file a lawsuit with a people's court within 30 days from the date of receipt of the notice of expulsion.

Article 50 — Where a partner has died or been declared dead in accordance with the law, the successor who has the right to inherit the partner's share of the property in the partnership enterprise shall acquire the status of a partner of the partnership enterprise in accordance with the partnership agreement or with the unanimous consent of all partners, from the date of the commencement of the succession. Under any of the following circumstances, the partnership enterprise shall return the share of the property in the partnership enterprise to the successor of the partner: (1) the successor is unwilling to become a partner; (2) the successor has not obtained the qualifications required by law or the partnership agreement that the partner must have; or (3) other circumstances in which the successor cannot become a partner as provided in the partnership agreement. Where the successor of a partner is a person without capacity for civil conduct or with limited capacity for civil conduct, he may become a limited partner upon the unanimous consent of all partners. Where the partnership agreement does not provide otherwise or the partners do not unanimously agree, the ordinary partnership enterprise shall be converted into a limited partnership enterprise in accordance with the law.

Article 51 — When a partner withdraws from the partnership, the other partners shall settle accounts with the withdrawing partner in accordance with the financial condition of the partnership enterprise at the time of withdrawal and return the withdrawing partner's share of the property. The method for returning the withdrawing partner's share of the property shall be agreed upon in the partnership agreement or decided by all partners, and may be made by returning the money or in kind. The withdrawing partner shall bear joint and several liability with the other partners for the debts incurred by the partnership enterprise before his withdrawal in accordance with Article 53 of this Law. Where the property of the partnership enterprise is less than the debts of the partnership enterprise when the partner withdraws from the partnership, the withdrawing partner shall share the losses in accordance with the provisions of Article 33 of this Law.

Article 52 — Where the admission or withdrawal of a partner causes a change in the registration of the partnership enterprise, the partnership enterprise shall apply to the enterprise registration authority for registration of the change within 15 days from the date of the admission or withdrawal.

Article 53 — A withdrawing partner shall bear joint and several liability with the other partners for the debts of the partnership enterprise incurred before his withdrawal. Where a partner withdraws from the partnership, and the creditor of the partnership enterprise claims that the withdrawing partner shall bear joint and several

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liability for the debts of the partnership enterprise incurred before his withdrawal, the period of limitation of actions shall be governed by the provisions of Article 188 of the Civil Code.

Chapter VII — Dissolution and Liquidation

Article 56 — A partnership enterprise shall be dissolved under any of the following circumstances: (1) the term of the partnership as agreed upon in the partnership agreement has expired, and the partners have decided not to continue the partnership; (2) the grounds for dissolution as agreed upon in the partnership agreement have arisen; (3) all partners have decided to dissolve the partnership enterprise; (4) the number of partners has not reached the statutory requirement for 30 days; (5) the purpose of the partnership as agreed upon in the partnership agreement has been achieved or cannot be achieved; (6) the business license has been revoked, the partnership enterprise has been ordered to close down, or has been deregistered in accordance with the law; or (7) other reasons prescribed by laws or administrative regulations.

Article 57 — A partnership enterprise shall be liquidated upon dissolution. The liquidation shall be conducted by all partners, and a third party may be appointed as the liquidator upon the consent of a majority of all partners. Where the liquidation is not conducted within 15 days from the date of the occurrence of the grounds for dissolution, the partners or interested parties may apply to a people’s court for the appointment of a liquidator.

Article 58 — The liquidator shall perform the following duties during the liquidation period: (1) liquidating the property of the partnership enterprise and preparing the balance sheet and property inventory separately; (2) handling the outstanding affairs of the partnership enterprise relating to the liquidation; (3) paying the taxes owed by the partnership enterprise; (4) settling the debts of the partnership enterprise; (5) disposing of the remaining property of the partnership enterprise after the payment of the debts; and (6) participating in civil litigation or arbitration activities on behalf of the partnership enterprise.

Article 59 — During the liquidation period, the partnership enterprise shall continue to exist but shall not engage in business activities unrelated to the liquidation.

Article 60 — The remaining property of the partnership enterprise after the payment of the liquidation expenses, the wages of employees, social insurance premiums, and statutory compensation, and the taxes owed, and the settlement of the debts of the partnership enterprise shall be distributed in accordance with the provisions of Article 33 of this Law.

Article 61 — Upon completion of the liquidation, the liquidator shall prepare a liquidation report, which shall be submitted to the enterprise registration authority for the deregistration of the partnership enterprise after being signed or sealed by all partners. The partnership enterprise shall cease to exist upon deregistration.

Chapter VIII — Legal Liability

Article 63 — Where an applicant conceals the true circumstances or provides false materials when submitting the application for registration, the enterprise registration authority shall order the applicant to make a correction and may impose a fine in accordance with the relevant provisions.

Article 64 — Where a partnership enterprise uses the words “limited” or “limited liability” in its name, the enterprise registration authority shall order the partnership enterprise to make a correction and may impose a fine in accordance with the relevant provisions.

Article 65 — Where a partnership enterprise fails to apply for registration of a change in accordance with the law, the enterprise registration authority shall order the partnership enterprise to register the change within a specified period of time; if the registration is not made within the specified period, a fine may be imposed in accordance with the relevant provisions.

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Article 66 — Where a partner fails to perform his capital contribution obligations in accordance with the partnership agreement, he shall bear liability for breach of contract to the partnership enterprise and other partners.

Article 67 — Where a partner causes losses to the partnership enterprise by abusing his rights, engaging in self-dealing or business in competition with the partnership enterprise in violation of this Law or the partnership agreement, or by other acts, he shall bear the compensation liability in accordance with the law.

Article 68 — Where a partner engages in business activities in the name of the partnership enterprise without authorization, and causes losses to the partnership enterprise or other partners, he shall bear the compensation liability in accordance with the law.

Chapter IX — Supplementary Provisions

Article 69 — Where a specialized general partnership enterprise is established by a professional service organization that provides paid professional services to clients and is engaged in specialized knowledge and skills, the partners shall bear liability for the debts of the partnership enterprise in accordance with Article 57 of this Law. A specialized general partnership enterprise shall establish a professional risk fund and purchase professional liability insurance in accordance with the law.

Article 70 — A limited partnership enterprise shall be composed of general partners and limited partners. The general partners shall bear unlimited joint and several liability for the debts of the partnership enterprise, and the limited partners shall bear liability for the debts of the partnership enterprise to the extent of their capital contributions.

Article 71 — A limited partner may conduct transactions with the limited partnership enterprise; he may also, by himself or in cooperation with another person, engage in business in competition with the limited partnership enterprise; he may also pledge his share of the property in the limited partnership enterprise; unless otherwise provided in the partnership agreement. A limited partner may transfer his share of the property in the limited partnership enterprise to a person other than the partners in accordance with the partnership agreement, provided that he notifies the other partners 30 days in advance.

Article 72 — Where a limited partner's act causes a third party to have reason to believe that he is a general partner and to deal with him, the limited partner shall bear the same liability as a general partner for the debts arising from such transaction. Where a limited partner causes losses to the limited partnership enterprise or other partners by performing partnership affairs without authorization, he shall bear the compensation liability in accordance with the law.

Article 73 — Where a limited partnership enterprise has only limited partners remaining, it shall be dissolved; where a limited partnership enterprise has only general partners remaining, it shall be converted into a general partnership enterprise.

Article 74 — Specialized general partnership enterprises and limited partnership enterprises shall be governed by the provisions of this Chapter; where this Chapter has no provisions, the provisions of Chapters II through V of this Law shall apply mutatis mutandis.

Article 75 — Matters not covered by this Law shall be governed by the provisions of the Civil Code of the People's Republic of China and other relevant laws and administrative regulations.

Article 76 — This Law shall come into effect on June 1, 1997, and the revised version shall come into effect on June 1, 2007.

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