

**Option 2:****BILL<sup>1</sup>**

**To recognise the legal status of the relationships provided for in this Act; to provide for the ascribed status of intimate partnerships and care partnerships in unregistered relationships; to provide for the equal division of partnership property when the relationship ends by means of a court order; to provide for a court to adjust each partner's share to the relationship where an order for equal division of partnership property would be repugnant to justice; to provide for a court to further adjust the division of partnership property to redress any economic disparities between the partners; to provide for the factors that a court should consider when making adjustment orders under the Act; to provide for certain safeguards to ensure that any domestic partnership agreement reached between unregistered partners is voluntary made and fair; to provide for circumstances where a court may overrule a domestic partnership agreement; to provide for legal procedures to enforce these rights and obligations and to provide for matters related thereto.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

**Definitions**

1. In this Act, unless the context otherwise indicates—

**"adjustment order"** means an order made by a court under section 13 of this Act to adjust the equal shares of partners in partnership property upon division;

**"biological father"**<sup>2</sup> does not include a male person whose relationship with the child exists merely because he was a gamete donor in artificial insemination of a person as defined in section 1 of the Human Tissue Act, 1983 (Act 65 of 1983), whereby that child was fathered, in the absence of any prior love relationship between the natural parents and who has waived all rights he may have had towards the said child;

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<sup>1</sup> Where the provisions in this Bill originate from other legislation, it is indicated in the footnotes

<sup>2</sup> Natural Fathers of Children Born Out of Wedlock Act 86 of 1997

**"care partner"** means a partner in a care partnership and includes a former care partner;

**"care partnership"** means a non-conjugal relationship provided for in section 5 of this Act and includes a former care partnership between the partners;

**"child of an intimate partnership"**<sup>3</sup> means-

- (a) any child born as a result of sexual relations between the intimate partners; or
- (b) any child of either intimate partner; or
- (c) any child adopted by one or both of the intimate partners jointly; or
- (d) any other child who was a member of the family of the intimate partners-
  - (i) at the time when the intimate partners ceased to live together; or
  - (ii) if at that time the intimate partners had not ceased to live together, at the time immediately before an application under this Act; or
  - (iii) at the date of the death of one of the intimate partners;

**"classification date"** means the date on which any property is classified as partnership property or as any other type of property in terms of this Act;

**"contribution"**<sup>4</sup> means-

- (a) the care of—
  - (i) any child of a intimate partnership;
  - (ii) any aged or infirm relative or dependant of a partner;
- (b) the management of the household and the performance of household duties;
- (c) the provision of money, including the earning of income, for the purposes of an unregistered partnership or in accordance with a domestic partnership agreement;
- (d) the acquisition or creation of partnership property or in accordance with a domestic partnership agreement, including the payment of money for those purposes;
- (e) the payment of money to maintain or increase the value of—
  - (i) the partnership property or any part of that property; or
  - (ii) the separate property of the other partner or any part of that property;

<sup>3</sup> NSW Property (Relationships) Act of 1984

<sup>4</sup> New Zealand Property (Relationships) Act of 1976

- (iii) property of either or of both the parties in terms of a domestic partnership agreement;
- (f) the performance of work or services in respect of—
  - (i) partnership property or any part of that property; or
  - (ii) separate property of the other partner or any part of that property; or
  - (iii) property of either or of both the parties in terms of a domestic partnership agreement;
- (g) the forgoing of a higher standard of living by either partner than would otherwise have been available;
- (h) the giving of assistance or support to the other partner (whether or not of a material kind), including the giving of assistance or support that—
  - (i) enables the other partner to acquire qualifications; or
  - (ii) aids the other partner in the carrying on of his or her occupation or business.

provided that there is no presumption that a contribution of a monetary nature is of greater value than a contribution of a non-monetary nature;<sup>5</sup>

"**court**" means a provincial or local division of the High Court of South Africa or a family court established under section 2 (k) of the Lower Courts Act, 1944 (Act 32 of 1944)<sup>6</sup>;

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<sup>5</sup> Alternative definition for contribution based on the New South Wales ("NSW") Property (Relationship) Act of 1984:

"contribution" means

- (a) the financial and non-financial contributions made directly or indirectly by or on behalf of
  - (i) partners to the acquisition, conservation or improvement of any partnership property or separate property of either of the partners or to the financial resources of either or both of them, or
  - (ii) the parties in terms of a cohabitation agreement, and
- (b) the contributions, including any contributions made in the capacity of homemaker or parent, made by either of the partners to the welfare of the partner or to the welfare of the family constituted by them and a child of the intimate partnership;

There is no presumption that a contribution referred to in (a) is of greater value than a contribution referred to in (b)

<sup>6</sup> Section 2 of the Magistrates' Courts Act, 1944 (Act 32 of 1944) has been substituted by section 2 of the Magistrates' Courts Amendment Act, 1993 (Act No. 120 of 1993) to be cited as the Lower Courts Act, 1944 – Section 2(k) provides for family courts to be instituted by the Minister of Justice. This section will be put into operation by proclamation.

**"division"** means the division of the partnership property at any time in accordance with the provisions of this Act;

**"division order"** means an order made by a court under section 12 of this Act for partners to share equally in partnership property upon division;

**"domestic partnership agreement"** means a written agreement regulating financial matters of parties during cohabitation or thereafter;

**"duty of support"** means the responsibility of each registered partner to provide for the other partner's basic living expenses while the registered partnership exists;

**"family"** includes partners in an unregistered partnership and their dependants;

**"family home"**<sup>7</sup> means the dwelling that either or both of the partners habitually or from time to time use as the only or principal family residence, together with any land, buildings, or improvements attached to that dwelling and used wholly or principally for the purposes of the common household;

**"financial matters"** in relation to parties to a domestic partnership agreement, means matters with respect to any one or more of the following:

- (a) the property of the parties or of either of them,
- (b) the financial resources of the parties or of either of them.

**"financial resources"**<sup>8</sup> in relation to either or both of the partners includes:

- (a) a prospective claim or entitlement in respect of a scheme, fund or arrangement under which pension, retirement or similar benefits are provided;
- (b) property which, pursuant to the provisions of a discretionary trust, may become vested in or used or applied in or towards the purposes of the partners or either of them;
- (c) property, the alienation or disposal of which is wholly or partly under the control of the partners or of either of them and which is lawfully capable of

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<sup>7</sup> New Zealand Property (Relationships) Act of 1976.

<sup>8</sup> NSW Property (Relationships) Act of 1984.

being used or applied by or on behalf of the partners or by either of them in or towards their or his or her own purposes, and

- (d) any other benefit with a value;

**"further adjustment order"** means an order made by a court under section 14 of this Act for the further adjustment of the shares of partners in partnership property upon division;

**"household goods"**<sup>9</sup> means corporeal goods intended for use of the joint household that either or both of the partners own and includes—

- (a) movable goods of the following kind;
- (i) household furniture;
  - (ii) household appliances, effects, or equipment;
  - (iii) household articles for family use or amenity or household ornaments, including tools, garden effects and equipment;
  - (iv) motor vehicles, caravans, trailers, or boats, used wholly or principally, in each case, for family purposes;
  - (v) accessories of goods to which subparagraph (iv) applies;
  - (vi) household pets; and
- (b) any of the goods mentioned in paragraph (a) that are in the possession of either or both under a credit agreement or conditional sale agreement or an agreement for lease or hire; but
- (c) does not include—
- (i) movable goods used wholly or principally for business purposes;
  - (ii) money or securities for money;
  - (iii) heirlooms;

**"household expenses"** means expenses incurred that are reasonably necessary to maintain the common household;

**"intimate partner"** means a partner in an intimate partnership and includes a former intimate partner;

**"intimate partnership"** means a relationship provided for in section 4 of this Act and includes a former intimate partnership;

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<sup>9</sup> New Zealand Property (Relationships) Act of 1976.

**"maintenance"** means maintenance (whether periodic or otherwise) including the provision of accommodation, food, clothing, medical and dental care and other reasonable requirements, to be paid by a partner in terms of a maintenance order or in terms of an agreement under this Act;

**"maintenance order"** means an order by a court to pay maintenance (whether for periodic maintenance or otherwise) in terms of this Act or any other law;

**"Minister"** means the Cabinet member responsible for the administration of Home Affairs;

**"partner"** means a partner in an unregistered partnership;

**"partnership"** means an intimate partnership and a care partnership;

**"partnership debt"** means a debt that has been incurred, or to the extent that it has been incurred,—

- (a) by the partners jointly; or
- (b) in the course of a common enterprise of the partnership carried on by the partners, whether alone or together with another person; or
- (c) for the purpose of acquiring, improving, or maintaining partnership property, whether or not at the time the debt was incurred, the property for which it was incurred was partnership property, as long as that property later becomes partnership property; or
- (d) for the benefit of both partners in the course of managing the affairs of the common household; or
- (e) for the purpose of bringing up any child of the intimate partnership.

**"partnership property"**<sup>10</sup> means—

- (a) the family home of the partnership whenever acquired;
- (b) household goods of the partnership whenever acquired;
- (c) property owned jointly or in common in equal shares by the partners;
- (d) property owned by either partner immediately before the partnership began if

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<sup>10</sup> New Zealand Property (Relationships) Act of 1976.

- (i) the property was acquired in contemplation of the partnership; and
  - (ii) the property was intended for the common use or common benefit of both partners;
- (e) all property acquired after the partnership began for the common use or benefit of both partners if –
- (i) the property was acquired out of property owned by either of or both partners before the partnership began; or
  - (ii) the property was acquired out of the proceeds of any disposal of any property owned by either of or both partners before the partnership began;
- (f) any income and gains derived from the proceeds of and any increase in the value of any property described in paragraphs (a) to (e);

**"pension fund"**<sup>11</sup> means a pension fund as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), irrespective of whether the provisions of that Act apply to the pension fund or not;

**"periodic maintenance"** means maintenance paid or payable or to be paid, as the case may require, by means of periodic sum in terms of a court order or in terms of an agreement under this Act;

**"personal debt"** means a debt that is not a partnership debt;

**"prescribed"** means prescribed by regulations made under section 39 of this Act;

**"property"** without limiting the generality thereof, includes any right or interest (whether present, future or contingent) in or to movable or immovable, corporeal or incorporeal property, money, any debt and any cause of action;

**"regulation"** means a regulation made under section 39 of this Act;

**"share"** means the share of a partner in partnership property determined by a division, adjustment or further adjustment order, made under this Act;

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<sup>11</sup> Divorce Act of 1979.

"**separate property**" means property which does not form part of partnership property, as the case may be;

"**unregistered partnership**" includes an intimate and a care partnership and a former unregistered partnership;

"**voluntary agreement**" means a written agreement made between partners who are parties to proceedings under this Act, providing for--

- (a) the division of partnership property;
- (b) one partner to pay money to the other partner for the maintenance of—
  - (i) the other partner;
  - (ii) a child of the intimate partnership

in settlement of the application before the court.

### **Objectives of the Act**

2. The objectives of this Act are to provide for the -

- (a) recognition and regulation of the rights and obligations of persons in unregistered partnerships;
- (b) protection of the interests of persons when an unregistered partnership ends; and
- (c) final determination of the financial relationships between persons when an unregistered partnership ends.

### **Transactions to which this Act apply**

3. This Act applies to transactions between-

- (a) both or either partners;
- (b) both or either partners in respect of property;
- (c) both or either partners and other parties;
- (d) both or either partners and other parties in respect of property

as provided for in this Act.

### **Intimate partnership**

4. An intimate partnership is a relationship, other than a marriage or registered

partnership, between two adult persons who live as couple.

## Care partnership

5. (1) A care partnership is a close personal relationship, other than a marriage or a registered partnership or an intimate partnership, between two adult persons, irrespective of whether or not such persons are living together or related by family, in circumstances where either of them provides the other with domestic support and personal care.

(2) For the purposes of subsection (1), a close personal relationship is taken not to exist between two persons where one of them provides the other with domestic support and personal care:

- (a) for fee or reward; or
- (b) on behalf of another person or an organization, including a government or government agency, a body corporate or a charitable or benevolent organisation.

## Declaration of partnerships

6. (1) A person in an unregistered relationship may after the relationship ends apply to the court for an order declaring the relationship an intimate partnership or a care partnership under this Act.

(2) The court, upon determining whether two persons are in an intimate partnership, must take all the circumstances of the relationship into account, including such of the following matters as may be relevant in a particular case:

- (a) the duration of the relationship;
- (b) the nature and extent of common residence;
- (c) whether or not a sexual relationship exists;
- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the partners;
- (e) the ownership, use and acquisition of property;
- (f) the degree of mutual commitment to a shared life;
- (g) the care and support of children;
- (h) the performance of household duties;
- (i) the reputation and public aspects of the relationship;

(3) The court, upon determining whether two persons are in a care partnership, must take all the circumstances of the relationship into account, including such of the following matters as may be relevant in a particular case:

- (a) the duration of the relationship;
- (b) the nature and extent of common residence;
- (c) the degree of financial dependence or interdependence, and any arrangements for financial support, between the partners;
- (d) the degree of emotional dependence or interdependence between the partners;
- (e) the ownership, use and acquisition of property;
- (f) the reputation and public aspects of the relationship.

(4) A finding in respect of any of the matters mentioned in subsections (2) and (3), or in respect of any combination of them, shall not be regarded as essential for the existence of an intimate partnership or a care partnership, and a court, in determining whether such a partnership exists, is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

### **End of partnership**

7. An unregistered partnership ends if –

- (a) the partners in an intimate partnership cease to live as a couple;
- (b) the care relationship between the care partners ceases to exist; or
- (c) one of the partners dies.

### **Status of property**

8. A court may, in proceedings relating to the status of the partnership, declare the status of property and the rights, if any, of either partner or other party in respect of partnership property.

### **Separate property becomes partnership property**

9. If any increase in the value of separate property, or any income or gain derived from separate property, was attributable to the utilisation of partnership property, such increase in value or income or gain, as the case may be, is partnership property.

### **Property not partnership property**

- 10.** Partnership property does not include-
- (a) property that a partner acquires from a third person—
    - (i) by succession;
    - (ii) by gift; or
    - (iii) because the partner is a beneficiary under a trust established by a third person;
  - (b) the proceeds of a disposal of property contemplated in paragraph (a); or
  - (c) property acquired out of property contemplated in paragraph (a)
- unless such property, or the proceeds of any disposal of it has, with the express or implied consent of the partner who received it, been so intermingled with other partnership property that it is unreasonable or impracticable to regard that property or those proceeds as separate property.

### **Gifts between partners**

**11.** For purposes of this Act, property that one partner acquires by gift from the other partner is not partnership property unless the gift is used for the benefit of both partners.

### **Equal division**

**12.** (1) In making a decision as to the division of partnership property, the court must take into account that each of the partners is entitled to share equally in partnership property.

- (2) If the family home has been sold, each partner is entitled to share equally in the proceeds of the sale, provided that the court making the order is satisfied that-
- (a) either partner or both of them has sold the family home with the intention of applying all or part of the proceeds of the sale towards the acquisition of another home as a family home; and
  - (b) that family home has not been acquired, at the date of the application to the court; and

- (c) no more than 2 years have elapsed since the date when those proceeds were received or became payable, whichever is later.

### **Adjustment order**

**13.** (1) Notwithstanding the provisions of section 12, upon an application by the partners for an adjustment order under this Act, a court may make such order adjusting the interests of the parties in partnership property as it seems just and equitable having regard to-

- (a) the contributions made by or on behalf of the partners towards the acquisition, conservation or improvement of partnership property, or to the financial resources of the partners, or of either of them, and
- (b) the contributions, including any contributions made, in the capacity of homemaker or parent, by either of the partners to the welfare of the other partner or to the welfare of the family constituted by the partners and a child of the intimate partners.

### **Further Adjustment Order**

**14.** (1) Notwithstanding the provisions in sections 12 and 13, if upon the division of partnership property under this Act, the court is satisfied that, after the partnership ends, the income and living standards of a partner are likely to be, or have in fact been, significantly higher than the other partner because of the effects of the division of functions within the partnership while the partners were living together, the court may award lump sum payments or order the transfer of property in accordance with this section.

(2) In determining whether or not to make an order under this section, the court may have regard to—

- (a) the likely earning capacity of each partner;
- (b) the responsibilities of each partner for the ongoing daily care of any minor or dependent children of the intimate partnership;
- (c) any other relevant circumstances.

(3) If this section applies, the court, if it considers it just, may, for the purpose of compensating a partner—

- (a) order the other partner to pay a sum of money out of his or her share of the partnership property to such partner; and

- (b) order the other partner to transfer any other property out of his or her share of the partnership property to such partner.

### **Prerequisites for making of order under this Part**

**15.** (1) Except as provided by subsection (2), a court may not make an order under this Act unless it is satisfied that the partnership has existed for a period of not less than two years.

(2) Notwithstanding the fact that the partnership has not existed for a period of not less than two years, a court may make an order under this Act if it is satisfied that-

- (a) the partnership is an intimate partnership and the partners have a child, or
- (b) the applicant-
  - (i) has made substantial contributions for which the applicant would otherwise not be adequately compensated if the order were not made, or
  - (ii) has custody of a child of the respondent,

and that the failure to make the order would result in serious injustice to the applicant.

### **Classification date**

**16.** (1) Subject to subsection (2), the classification date on which the value of the share of a partner in an unregistered partnership is to be determined is-

- (a) the date of the application to the court if the partnership has not ended;
- (b) the date on which the partnership ended if the partnership has ended other than by death of one of the partners; or
- (c) the date of death of the deceased partner if the partnership does not end while both partners are alive.

(2) A court hearing the application may, in its discretion when it is just and equitable, decide that the classification date may be another date as determined by the court.

**Application only within two years after end of unregistered relationship**

17. (1) Except as otherwise provided by this section, an application to a court for an order under this Act, can only be made within a period of two years after the date on which the partnership ended.

(2) A court may, at any time after the expiration of the period referred to in subsection (1), grant leave to a applicant partner to apply to the court for an order under this Act, where the court is satisfied, having regard to such matters as it considers relevant, that greater hardship would be caused to that applicant partner if that leave were not granted than would be caused to the respondent partner if that leave were granted.

**Adjournment of application**

18. (1) Where, upon an application for an order by a partner in terms of this Act, the court is of the opinion-

- (a) that there is likely to be a significant change in the financial circumstances of the partners or of either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and
- (b) that an order that the court could make with respect to property of the partners, or of either of them, if the significant change in financial circumstances contemplated in par (a) occurs, is more likely to do justice between the partners than an order that the court could make immediately with respect to property of the partners or of either of them,

the court may, if so requested by either partner, adjourn the application until a time determined by the court.

(2) Where a court adjourns an application as provided by subsection (1), the court may make such temporary order as it considers appropriate with respect to the property of the partners or of either of them.

(3) A court may, when deciding whether there is likely to be a significant change in the financial circumstances of the partners, have regard to any change in the financial circumstances of a partner that may occur by reason of the vesting in the partners, or the use of, a financial resource of the partners.

**Deferment of order**

**19.** Where a court is of the opinion that a partner in respect of whose property an order is made pursuant to an application under this Act is likely to become entitled, within a short period, to property which may be applied in satisfaction of the order, the court may defer the operation of the order until such date or the occurrence of such event as is specified in the order.

**Effect of death of a partner or partners**

**20.** (1) Where, before an application under this Act is determined, either partner dies, the application may be continued by or against, the estate of the deceased partner, as the case may be.

(2) Where a court is of the opinion that-

- (a) it would have made an adjustment order in respect of partnership property if the deceased partner had not died, and
- (b) notwithstanding the death of the deceased partner, it is still appropriate to adjust the interests of the deceased partner,

the court may make an adjustment order under this Act in respect of such property as it deems just and equitable.

(3) An order referred to in subsection (2) may be enforced on behalf of, or against, the estate of the deceased partner, as the case may be.

**Order may be enforced against estate of deceased partner**

**21.** Where a partner dies after an order has been made against such partner under this Act, the order may be enforced against the estate of the deceased partner.

## Intestate succession<sup>12</sup>

**22.** A surviving party to an unregistered relationship who have acquired a declaration in terms of section 6 of this Act that the relationship was an intimate partnership, shall inherit a child share or an amount that does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Gazette under the Intestate Succession Act, 1987 (Act No. 81 of 1987), whichever is the greater, from his or her deceased intimate partner who died intestate.

## Maintenance

**23.** A partner is not liable to maintain the other partner when the partnership ends and neither partner is entitled to claim maintenance from the other, except as provided for in this Act.

## Maintenance order

**24.** (1) Upon an application by a former partner for an order to pay maintenance, a court may make such an order where the court is satisfied that-

- (a) the applicant partner is unable to support himself or herself adequately by reason of having the custody of a child of an intimate partnership with the respondent partner, being, in either case, a child who is, on the day on which the application is made, a minor child or a physically or mentally disabled child; or
- (b) the applicant partner is unable to support himself or herself adequately because that partner's earning capacity has been adversely affected by the circumstances of the partnership and, in the opinion of the court-
  - (i) an order for maintenance would increase that partner's earning capacity by enabling the applicant partner to undertake a course or program of training or education, and
  - (ii) it is, having regard to all the circumstances of the case, reasonable to make the order.

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<sup>12</sup> If this version of the unregistered partnership proposal is accepted, the final wording of the clause regarding intestate succession will be adapted in accordance with the amendments to the Intestate Succession Act, 1987 (Act No. 81 of 1987), Maintenance of Surviving Spouses Act, 1990 (Act No. 27 of 1990) and the Estate Duty Act, 1955 (Act No. 45 of 1955) following the judgment in the (at this stage) unreported case of **Daniels v Campbell NO and Others** case NO 1646/01 in the High Court of South Africa, Cape of Good Hope Provincial Division.

- (2) In determining whether to make a maintenance order under this Act and in fixing any amount to be paid pursuant to such an order, a court shall have regard to-
- (a) the income, property and financial resources of each partner and the physical and mental capacity of each partner to appropriate gainful employment;
  - (b) the financial needs and obligations of each partner;
  - (c) the responsibilities of either partner to support any other person;
  - (d) the terms of any order made or proposed to be made under this Act for the division of property; and
  - (e) any payments made, pursuant to an order of a court or otherwise, in respect of the maintenance of a child or children in the custody of the applicant.

(3) In making an order for maintenance, a court must ensure that the terms of the order will, so far as is practicable, preserve any entitlement of the applicant partner to a pension, allowance or benefit.

### **Periodic maintenance**

**25.** Where, upon an application by a former partner for a maintenance order, it appears to a court that such partner is in immediate need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment by the partner who is the respondent, pending the disposal of the application, of such periodic sum or other sums of money as the court considers reasonable.

### **Duration of maintenance order**

**26.** The duration of a periodic maintenance order must be determined by the court making that order.

### **Application by a partner in respect of whom an order has been made**

**27.** (1) Upon an application by a partner in respect of whom an order has been made under this Act for periodic maintenance, a court may-

- (a) subject to subsection (2), discharge the order;

- (b) suspend the operation of the order wholly or in part and either until further order or until a fixed time or the happening of some future event;
- (c) revive wholly or in part the operation of an order suspended under paragraph (b); or
- (d) subject to subsection (2), vary the order so as to increase or decrease any amount directed to be paid by the order or in any other manner.

(2) A court shall not make an order discharging, increasing or decreasing an amount directed to be paid by an order unless it is satisfied that, since the order was made, or last varied-

- (a) the circumstances of the partner in whose favour the order was made have so changed;
- (b) the circumstances of the partner against whom the order was made have so changed; or
- (c) the cost of living has changed to such an extent as to justify its so doing.

(3) In satisfying itself for the purposes of subsection (2)(c), a court shall have regard to any changes that have occurred during the relevant period.

(4) An order decreasing the amount of a periodic sum of money payable under an order may be expressed to be retrospective to such date as the court thinks fit.

#### **Extension of a periodic maintenance order**

**28.** (1) Where a court has made a periodic maintenance order under this Act the partner in whose favour the order is made may, at any time before the expiration of that period, apply to the court for an extension of the period for which the order applies.

(2) A court shall not make an order pursuant to an application under subsection (1) unless it is satisfied that there are circumstances which justify its so doing.

#### **Effect of subsequent marriage, registered partnership or partnership on maintenance order**

**29.** (1) An application to court for a maintenance order may not be made by a partner who, at the time at which the application is made, has entered into a registered partnership with another person or who, at that time, has married.

(2) An application to court for a maintenance order may not be made by a partner who, at the time at which the application is made, is entitled to receive maintenance in terms of a maintenance order under this Act from a partner in a previous partnership.

### **Maintenance order ceases to have effect**

**30.** (1) A maintenance order under this Act shall cease to have effect-

- (a) on the death of the partner in whose favour the order was made;
- (b) on the death of the partner against whom the order was made; or
- (c) on the marriage or registration of a registered partnership by the person in whose favour the order was made.

(2) Where, in relation to a partner in whose favour a maintenance order under this Part is made, a marriage or registration of a registered partnership with a third person takes place, that partner must, without delay, notify the partner against whom the order was made of the date of the marriage or registration of a partnership with another partner.

(3) Any money paid pursuant to a maintenance order under this Act, being money paid in respect of a period occurring after a marriage or registration with another with another partner takes place, may be recovered as a debt in a court by the partner who made the payment.

### **Court may consider domestic partnership agreement**

**31.** (1) In proceedings between parties to an unregistered partnership under this Act, a court may consider the fact that the parties have concluded a domestic partnership agreement and the terms thereof.

(2) If the court, having regard to all the circumstances, is satisfied that giving effect to a domestic partnership agreement would cause serious injustice, it may set the domestic partnership agreement aside, notwithstanding compliance with the prescribed requirements.

(3) In deciding, under subsection (2) whether giving effect to a domestic partnership agreement would cause serious injustice, the court may have regard to—

- (a) the terms of the domestic partnership agreement;
- (b) the length of time since the domestic partnership agreement was concluded;
- (c) whether the domestic partnership agreement was unfair or unreasonable in the light of all the circumstances at the time it was made;
- (d) whether the domestic partnership agreement has become unfair or unreasonable in the light of any changes in circumstances since it was made, whether or not those changes were foreseen by the parties;
- (e) the fact that the parties wished to achieve certainty as to the status, ownership, and division of property by entering into the domestic partnership agreement ;
- (f) any other matters that the court considers relevant, including the contributions of the parties to the partnership.

(4) A court is not required to give effect to the terms of any domestic partnership agreement where the court is of the opinion that-

- (a) the parties have, by their words or conduct, revoked or consented to the revocation of the domestic partnership agreement , or
- (b) the domestic partnership agreement has otherwise ceased to have effect.

(5) A court may make any order under this section notwithstanding that the domestic partnership agreement purports to exclude the jurisdiction of the court to make that order.

(6) If a domestic partnership agreement is void, voidable or is invalid or unenforceable, and the court makes no other order, the provisions of this Act have effect as if the agreement had never been made.

### **Court may make an order regarding the children of the partners**

**32.** Nothing in a domestic partnership agreement affects the power of a court to make an order with respect to the right to custody of, or maintenance of or access to or otherwise in relation to the children of the parties to the domestic partnership agreement.

### General Powers of the court

**33.** (1) Without derogating from any other power of a court under this Act or any other law, a court, in exercising its powers under this Act, may do any one or more of the following:

- (a) order the transfer of property;
- (b) order the sale of property and the distribution of the proceeds of sale in such proportions as the court deems fit;
- (c) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (d) order payment of a lump sum, whether in one amount or by instalments;
- (e) order payment of a weekly, fortnightly, monthly, yearly or other periodic sum;
- (f) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
- (g) appoint or remove trustees;
- (h) make an order or grant an injunction-
  - (i) for the protection of or otherwise relating to the property or financial resources of the partners or of either of them;
  - (ii) to aid enforcement of any other order made in respect of an application, or both; and
  - (iii) impose terms and conditions;
- (i) make an order by consent;
- (j) make an order in the absence of a partner or other party;
- (k) make any other order or grant any other injunction (whether or not of the same nature as those mentioned in the preceding paragraphs) which it regards necessary to do justice.

(2) A court may, in relation to an application under this Act-

- (a) make any order or grant any remedy or relief which it is empowered to make or grant under this Act or any other law, and
- (b) make any order or grant any remedy or relief under this Act in addition to or in conjunction with making any other order or granting any other remedy or relief which it is empowered to make or grant under this Act or any other law.

### **Execution of instruments by order of a court**

**34.** (1) Where-

- (a) an order under this Act has directed a person to execute a deed or instrument, and
- (b) the person has refused or neglected to comply with the direction or, for any other reason, a court deems it necessary to exercise the powers conferred on it under this subsection,

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person directed by the order to execute it.

(3) A court may make such order as it deems just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

### **Variation and setting aside of orders**

**35.** Where, on the application of a partner or other party in respect of whom an order has been made, a court is satisfied that-

- (a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance;
- (b) in the circumstances that have arisen since the order was made, it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out; or
- (c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order,

the court may, in its discretion, vary the order or set the order aside and, if it deems fit, make another order in accordance with this Act in substitution for the order so set aside.

**Transactions to defeat claims**

36. (1) In this Act, disposal includes a sale and a gift.

(2) On an application for an order under this Act, a court may set aside or restrain the making of an instrument or disposal by or on behalf of, or by direction or in the interest of, a person, which is made or proposed to be made to defeat an existing or anticipated order relating to the application, or which, irrespective of intention, is likely to defeat any such order.

(3) The court may order that any property dealt with by any such instrument or disposal may be taken in execution or used or applied in, or charged with, the payment of such sums payable pursuant to an order adjusting interests with respect to the property of a partner or other party or of either of them or for maintenance or costs as the court directs, or that the proceeds of a sale must be paid into court to abide its order.

(4) A registered partner or other party or a person acting in collusion with him or her may be ordered to pay the costs of the other registered partner or other party or of a *bona fide* purchaser or other person with an interest in and incidental to any such instrument or disposal and the setting aside or restraining of the instrument or disposal.

**Interests of other parties**

37. (1) In the exercise of its powers under this Act, a court must have regard to the interests of, and must make any order proper for the protection of, a *bona fide* purchaser or other person with an interest in property concerned.

(2) The rights of creditors of the partners are not affected by this Act.

**Remedies under any other Act or law**

38. Nothing in this Act derogates or affects any right of a registered partner or other party to apply for any remedy or relief under any other law.

**Regulations**

**39.** The Minister may make regulations as to any matter which by this Act is required or permitted to be prescribed or which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved or that the provisions of this Act may be effectively administered.

**Short title and commencement**

**40.** This Act is called the Unregistered Partnerships Act, 20.. (Act No. ... of 20..) and will come into operation on a date fixed by the President by proclamation in the *Gazette*.