

1980

c 241 Limited Partnerships Act

Ontario

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CHAPTER 241

Limited Partnerships Act

1. In this Act,

Interpre-
tation

- (a) “business” includes every trade, occupation and profession;
- (b) “extra-provincial limited partnership” means a limited partnership organized under the laws of a jurisdiction other than Ontario;
- (c) “person” includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his capacity as trustee, executor, administrator or other legal representative;
- (d) “prescribed” means prescribed in the regulations; and
- (e) “Registrar” means the Registrar of Partnerships. 1980, c. 48, s. 1.

2.—(1) A limited partnership may, subject to this Act, be formed to carry on any business that a partnership without limited partners may carry on.

Limited
partnership

(2) A limited partnership shall consist of one or more persons who are general partners and one or more persons who are limited partners. 1980, c. 48, s. 2.

Whom to
consist

3.—(1) A limited partnership is formed when a declaration is filed with the Registrar in accordance with this Act.

Formation

(2) A declaration shall be signed by all of the partners desiring to form a limited partnership and shall state,

Declaration

- (a) the firm name under which the limited partnership is to be conducted;
- (b) the general nature of the business;
- (c) the names of the partners, general and limited partners being respectively designated and for each partner,

- (i) the surname of the partner,
 - (ii) the first or other given name by which the partner is commonly known,
 - (iii) the first letters of the other given names, if any, of the partner, and
 - (iv) the residence address or address for service of the partner, including the street name and number, if any;
- (d) the value of money and other property contributed or to be contributed by each limited partner;
- (e) the principal place of business in Ontario of the limited partnership and the address, giving street name and number, if any, where the principal place of business is located;
- (f) such other information as is required by the regulations made under this Act.

Expiry of
declaration

(3) Every declaration filed under subsection (1), including a declaration filed by an extra-provincial limited partnership, expires five years after its date of filing unless the declaration is cancelled by filing a declaration of dissolution or the declaration is replaced by filing a new declaration before the expiry date.

Subsequent
filing of
new
declaration

(4) A limited partnership is not dissolved if a declaration expires, but an additional fee in a prescribed amount is payable for the subsequent filing of a new declaration.

*Partnerships
Registration
Act*
R.S.O. 1980,
c. 371

(5) Where a declaration is filed under this Act, a declaration is not required to be filed under the *Partnerships Registration Act*.

Filing and
recording

(6) The provisions of the *Partnerships Registration Act*, except sections 10 and 17, and the regulations thereunder, applying to the filing and recording of declarations under that Act apply with necessary modifications to declarations under this Act. 1980, c. 48, s. 3.

General and
limited
partners

4.—(1) A person may be a general partner and a limited partner at the same time in the same limited partnership.

Idem

(2) A person who is at the same time a general partner and a limited partner in the same limited partnership has the rights and powers and is subject to the restrictions and liabilities of a general partner except that in respect of his contribution as a limited

partner he has the same rights against the other partners as a limited partner. 1980, c. 48, s. 4.

5.—(1) The surname or a distinctive part of the corporate name of a limited partner shall not appear in the firm name of the limited partnership unless it is also the surname or a distinctive part of the corporate name of one of the general partners. Restriction in name of partnership

(2) Where the surname or a distinctive part of the corporate name of a limited partner appears in the firm name contrary to subsection (1), the limited partner is liable as a general partner to any creditor of the limited partnership who has extended credit without actual knowledge that the limited partner is not a general partner. Liability if limited partner

(3) Notwithstanding any Act, the word "Limited" may be used in the firm name but only in the expression "Limited Partnership". 1980, c. 48, s. 5. Use of term limited

6.—(1) A limited partner may contribute money and other property to the limited partnership, but not services. Contribution of limited partner

(2) A limited partner's interest in the limited partnership is personal property. 1980, c. 48, s. 6. Personal property

7. A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent to or ratification of the specific act by all the limited partners, a general partner has no authority to, Rights of general partners

- (a) do any act in contravention of the partnership agreement;
- (b) do any act which makes it impossible to carry on the ordinary business of the limited partnership;
- (c) consent to a judgment against the limited partnership;
- (d) possess limited partnership property, or assign any rights in specific partnership property, for other than a partnership purpose;
- (e) admit a person as a general partner;
- (f) admit a person as a limited partner, unless the right to do so is given in the partnership agreement; or
- (g) continue the business of the limited partnership on the death, retirement or mental incompetence of a general partner or dissolution of a corporate general partner,

unless the right to do so is given in the partnership agreement. 1980, c. 48, s. 7.

Liability of
limited
partner

8. Subject to this Act, a limited partner is not liable for the obligations of the limited partnership except in respect of the value of money and other property he contributes or agrees to contribute to the limited partnership, as stated in the declaration. 1980, c. 48, s. 8.

Rights of
limited
partner

- 9.** A limited partner has the same right as a general partner,
- (a) to inspect and make copies of or take extracts from the limited partnership books at all times;
 - (b) to be given, on demand, true and full information concerning all matters affecting the limited partnership, and to be given a complete and formal account of the partnership affairs; and
 - (c) to obtain dissolution of the limited partnership by court order. 1980, c. 48, s. 9.

Share of
profits

- 10.—(1)** A limited partner has, subject to this Act, the right,
- (a) to a share of the profits or other compensation by way of income; and
 - (b) to have his contribution to the limited partnership returned.

When profit
may not be
paid

(2) No payment of a share of the profits or other compensation by way of income shall be made to a limited partner from the assets of the limited partnership or of a general partner if the payment would reduce the assets of the limited partnership to an amount insufficient to discharge the liabilities of the limited partnership to persons who are not general or limited partners. 1980, c. 48, s. 10.

Business
dealings
by limited
partner with
partnership

11.—(1) A limited partner may loan money to and transact other business with the limited partnership and, unless he is also a general partner, may receive on account of resulting claims against the limited partnership with general creditors a prorated share of the assets, but no limited partner shall, in respect of any such claim,

- (a) receive or hold as collateral security any of the limited partnership property; or
- (b) receive from a general partner or the limited partnership any payment, conveyance or release from liability if at

the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons who are not general or limited partners.

(2) A limited partner may from time to time,

Rights of limited partner

(a) examine into the state and progress of the limited partnership business and may advise as to its management;

(b) act as a contractor for or an agent or employee of the limited partnership or of a general partner; or

(c) act as a surety for the limited partnership. 1980, c. 48, s. 11.

12.—(1) A limited partner is not liable as a general partner unless, in addition to exercising his rights and powers as a limited partner, he takes part in the control of the business.

Limited partner in control of business

(2) For the purposes of subsection (1), a limited partner shall not be presumed to be taking part in the control of the business by reason only that the limited partner exercises rights and powers in addition to the rights and powers conferred upon the limited partner by this Act. 1980, c. 48, s. 12.

Additional rights and powers

13.—(1) Subject to subsection (2), limited partners, in relation to one another, share in the limited partnership assets,

Limited partners' rights as between themselves

(a) for the return of contributions; and

(b) for profits or other compensation by way of income on account of their contributions,

in proportion to the respective amounts of money and other property actually contributed by the limited partners to the limited partnership.

(2) Where there are several limited partners, the partners may agree that one or more of the limited partners is to have priority over other limited partners,

Priority agreement

(a) as to the return of contributions;

(b) as to profits or other compensation by way of income; or

(c) as to any other matter,

but the terms of this agreement shall be set out in the partnership agreement.

Idem

(3) Where the partnership agreement does not contain an agreement referred to in subsection (2), the shares of the limited partners in the partnership assets shall be determined in accordance with subsection (1). 1980, c. 48, s. 13.

Return of limited partner's contribution

14.—(1) A limited partner has the right to demand and receive the return of his contribution,

- (a) upon the dissolution of the limited partnership;
- (b) when the time specified in the partnership agreement for the return of the contribution occurs;
- (c) after he has given six months notice in writing to all other partners, if no time is specified in the partnership agreement for the return of the contribution or for the dissolution of the limited partnership; or
- (d) when all the partners consent to the return of the contribution.

Idem

(2) Notwithstanding subsection (1), a limited partner is not entitled to receive any part of his contribution out of the limited partnership assets or from a general partner until,

- (a) all liabilities of the limited partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains sufficient limited partnership assets to pay them; and
- (b) the partnership agreement is terminated or so amended, if necessary, to set forth the withdrawal or reduction of the contribution.

Idem

(3) A limited partner has, irrespective of the nature of his contribution, only the right to demand and receive money in return therefor, unless,

- (a) the partnership agreement provides otherwise; or
- (b) all the partners consent to some other manner of returning the contribution.

Dissolution

(4) A limited partner is entitled to have the limited partnership dissolved and its affairs wound up where,

- (a) the limited partner is entitled to the return of his contribution but, upon demand, the contribution is not returned to him; or

- (b) the other liabilities of the limited partnership have not been paid or the limited partnership assets are insufficient for their payment as required by clause (2) (a) and the limited partner seeking dissolution would otherwise be entitled to the return of his contribution. 1980, c. 48, s. 14.

15.—(1) A limited partner is liable to the limited partnership for the difference, if any, between the value of money or other property actually contributed by him to the limited partnership and the value of money or other property stated in the declaration as being contributed or to be contributed by him to the limited partnership. Limited partner's liability to partnership

(2) A limited partner holds as trustee for the limited partnership, Limited partner as trustee

- (a) specific property stated in the partnership agreement as contributed by him, but which has not in fact been contributed or which has been returned contrary to this Act; and

- (b) money or other property paid or conveyed to him on account of his contribution contrary to this Act.

(3) Where a limited partner has received the return of all or part of his contribution, he is nevertheless liable to the limited partnership or, where the limited partnership is dissolved, to its creditors for any amount, not in excess of the amount returned with interest, necessary to discharge the liabilities of the limited partnership to all creditors who extended credit or whose claims otherwise arose before the return of the contribution. 1980, c. 48, s. 15. Idem

16. After the formation of the limited partnership, additional limited partners may be admitted by amendment of the declaration in accordance with section 18. 1980, c. 48, s. 16. Admission of additional limited partners

17.—(1) A limited partner's interest is assignable. Interest assignable

(2) A substituted limited partner is a person admitted to all the rights and powers of a limited partner who has died or who has assigned his interest in the limited partnership. Limited partner

(3) An assignee who is not a substituted limited partner has no right, Rights of assignee

- (a) to inspect the limited partnership books;

- (b) to be given any information about matters affecting the limited partnership or to be given an account of the partnership affairs,

but is entitled only to receive the share of the profits or other compensation by way of income or the return of the contribution to which the assignor would otherwise be entitled.

Manner of becoming a substituted limited partner

- (4) An assignee may become a substituted limited partner,
- (a) if all the partners, except the assignor, consent in writing thereto; or
- (b) if the assignor, being so authorized by the partnership agreement, constitutes the assignee a substituted limited partner.

Idem

(5) An assignee, who is otherwise entitled to become a substituted limited partner, becomes a substituted limited partner when the declaration is amended in accordance with section 18.

Rights, liabilities of substituted limited partner

(6) A substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor, except any liability of which he did not have notice at the time he became a limited partner and which could not be ascertained from the partnership agreement or the declaration.

Liability of assignor

(7) The substitution of an assignee as a limited partner does not release the assignor from liability under section 15 or 27. 1980, c. 48, s. 17.

Change of firm name

18.—(1) Where the firm name of a limited partnership is to be changed, a new declaration shall be filed with the Registrar under subsection 3 (2).

Declaration of change

(2) A declaration of change shall be filed with the Registrar for every change in information, other than a change in the firm name, required to be stated in the declaration under subsection 3 (2).

Signing of declaration

(3) A declaration of change shall be signed by at least one of the general partners.

Idem

(4) A declaration of change for information required by clauses 3 (2) (c) and (d) shall also be signed by the limited partner or substituted limited partner who is the subject of the change.

Change not effective

(5) For the purposes of this Act, a change referred to in subsection (2) does not take effect until a declaration of change is filed with the Registrar.

(6) A declaration of change expires upon the expiry, replacement or cancellation of the declaration amended by the declaration of change. 1980, c. 48, s. 18. Expiry

19.—(1) No limited partnership in respect of which a new declaration or a declaration of change has not been filed as required by section 18 and no member thereof is capable of maintaining any action or other proceeding in any court in Ontario in respect of any contract or tort made or arising in connection with the business carried on by the limited partnership. Failure to file declaration of change

(2) Where a new declaration or declaration of change is filed after an action or proceeding is commenced by the limited partnership or member thereof, the action or proceeding may be continued as if the declaration had been filed in accordance with this Act prior to the institution of the action or proceeding. 1980, c. 48, s. 19. Continuation of action

20. The retirement, death or mental incompetence of a general partner or dissolution of a corporate general partner dissolves a limited partnership unless the business is continued by the remaining general partners, Dissolution of limited partnership

(a) pursuant to a right to do so contained in the partnership agreement; and

(b) with the consent of all the remaining partners. 1980, c. 48, s. 20.

21.—(1) The executor or administrator of the estate of a limited partner has, Death of limited partner

(a) all the rights and powers of a limited partner for the purpose of settling the estate of the limited partner; and

(b) whatever power the limited partner had under the partnership agreement to constitute his assignee a substituted limited partner.

(2) The estate of a limited partner is liable for all the liabilities of the limited partner as a limited partner. 1980, c. 48, s. 21. Liability

22.—(1) A declaration of dissolution shall be filed with the Registrar when, Declaration of dissolution

(a) the limited partnership is dissolved; or

(b) all of the limited partners cease to be limited partners.

Idem

(2) The declaration of dissolution shall be signed by at least one of the general partners.

Declaration cancelled

(3) When the declaration of dissolution is filed, the declaration filed under subsection 3 (2) is cancelled. 1980, c. 48, s. 22.

Settling accounts on dissolution

23. In settling accounts after the dissolution of a limited partnership, the liabilities of the limited partnership to creditors, except to limited partners on account of their contributions and to general partners, shall be paid first, and then, unless the partnership agreement or a subsequent agreement provides otherwise, shall be paid in the following order:

1. to limited partners in respect of their share of the profits and other compensation by way of income on account of their contributions;
2. to limited partners in respect of their contributions;
3. to general partners other than for capital and profits;
4. to general partners in respect of profits;
5. to general partners in respect of capital. 1980, c. 48, s. 23.

Declaration

24.—(1) No extra-provincial limited partnership shall carry on business in Ontario unless it has filed a declaration with the Registrar that sets forth the information required by subsection 3 (2) and states the jurisdiction in which the extra-provincial limited partnership is organized.

Carry on business

(2) For the purposes of this section, an extra-provincial limited partnership carries on business in Ontario if,

- (a) it solicits business in Ontario;
- (b) its name is listed in a telephone directory for any part of Ontario;
- (c) its name is included in any advertisement in which an address in Ontario is given for the limited partnership;
- (d) it has a resident agent or representative or a warehouse, office or place of business in Ontario;
- (e) it owns real property situate in Ontario;

(f) it effects a distribution of securities in Ontario by way of a prospectus or offering memorandum in compliance with the *Securities Act* and the regulations made thereunder; or

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(g) it otherwise carries on business in Ontario.

(3) The declaration filed under subsection (1) shall be signed by all of the partners.

Signing of declaration

(4) When a declaration is filed under subsection (1), the extra-provincial limited partnership shall file with the Registrar a power of attorney in the prescribed form appointing a person resident in Ontario or a corporation having its head or registered office in Ontario to be the attorney and representative in Ontario of the extra-provincial limited partnership.

Power of attorney

(5) Where there is a change in the firm name of an extra-provincial limited partnership, a new declaration and power of attorney shall be filed with the Registrar under this section.

Change of firm name

(6) Where there is a change in the name or address of the attorney and representative in Ontario of an extra-provincial limited partnership, a new power of attorney shall be filed under this section.

Change in name and address of attorney

(7) An extra-provincial limited partnership shall file a declaration of change with the Registrar for every change in the information, other than a change in the firm name, contained in the declaration filed under subsection (1) and the declaration shall be signed in the manner described in section 18.

Declaration of change

(8) An extra-provincial limited partnership may cancel the declaration and the power of attorney by filing with the Registrar a declaration of withdrawal signed by at least one of the general partners. 1980, c. 48, s. 24.

Declaration of withdrawal

25.—(1) A limited partner of an extra-provincial limited partnership is not liable in Ontario as a general partner of the extra-provincial limited partnership by reason only that it carries on business in Ontario without filing the declaration and power of attorney required by this Act.

Liability of limited partner

(2) The laws of the jurisdiction under which an extra-provincial limited partnership is organized govern its organization and internal affairs and the limited liability of its limited partners. 1980, c. 48, s. 25.

Laws applicable to extra-provincial limited partnerships

26.—(1) No extra-provincial limited partnership in respect of which a declaration or power of attorney has not been filed as required by this Act and no member thereof is capable of main-

Failure to file declaration, power of attorney

taining any action or other proceeding in any court in Ontario in respect of any contract or tort made or arising in connection with the business carried on by the extra-provincial limited partnership.

Continuation
of action

(2) When a declaration and power of attorney are filed in accordance with this Act, an action or proceeding referred to in subsection (1) may be continued as if the declaration and power of attorney had been filed in accordance with this Act prior to the institution of the action or proceeding. 1980, c. 48, s. 26.

Effect of
false
statement
in
declaration

27. Where a declaration contains a false or misleading statement, any person suffering loss as a result of relying upon the statement may hold liable,

- (a) every partner who knew when he signed the declaration that the statement was false or misleading;
- (b) every general partner who became aware after he signed the declaration that the statement was false or misleading and failed within a reasonable time to file a declaration of change; and
- (c) every limited partner who became aware after he signed the declaration that the statement was false or misleading and failed within a reasonable time to take steps to cause a declaration of change to be filed. 1980, c. 48, s. 27.

Liability of
person
mistakenly
believing
he is a
limited
partner

28. A person who contributes to the capital of a business carried on by a person or partnership erroneously believing that he has become a limited partner in a limited partnership,

- (a) is not, by reason only of his exercising the rights of a limited partner, a general partner with the person or in the partnership carrying on the business; and
- (b) is not bound by the obligations of the person or partnership carrying on the business,

if, upon ascertaining the fact that he is not a limited partner, he promptly,

- (c) renounces his interest in the profits or other compensation by way of income from the business; or
- (d) takes steps to cause a declaration to be filed with the Registrar showing the person to be a limited partner. 1980, c. 48, s. 28.

29.—(1) A general or limited partner may give written authority to any other person to sign on his behalf any document referred to in this Act. Authority to sign

(2) A person who signs a document to be filed with the Registrar under an authority referred to in subsection (1) shall indicate in the document that he signs on behalf of a general or limited partner. Idem
1980, c. 48, s. 29.

30.—(1) Every partnership shall keep at its principal place of business in Ontario, Access to documents

(a) a copy of the partnership agreement;

(b) a copy of the declaration and a copy of each declaration of change amending the declaration;

(c) a copy of any court order made under section 31;

(d) a copy of any written authority given under subsection 29 (1); and

(e) in the case of an extra-provincial limited partnership, a copy of the power of attorney filed with the Registrar.

(2) Where an extra-provincial limited partnership does not have a principal place of business in Ontario, the documents referred to in subsection (1) shall be kept by the attorney and representative in Ontario of the extra-provincial limited partnership at the address stated in the power of attorney filed under subsection 24 (4). Where no principal place of business

(3) Any partner may inspect any of the documents referred to in subsection (1) during the normal business hours of the partnership or the partnership's attorney and representative. Right to inspect

(4) Any person who has a business relationship with the partnership may inspect any of the documents referred to in clauses (1) (b), (c), (d) and (e) during the normal business hours of the partnership or the partnership's attorney and representative. 1980, c. 48, s. 30. Idem

31.—(1) In this section, "Court" means the Supreme Court of Ontario. Interpretation

(2) Where a person who is required by this Act to sign or permit inspection of a document refuses to do so, a person who is aggrieved by the refusal may apply to the Court for an order directing the person to comply with the provisions of this Act and upon such application, the Court may make such order or any Order for compliance

other order that the Court considers appropriate in the circumstances.

Application

(3) An application may be made under subsection (2) notwithstanding the imposition of a penalty in respect of the refusal and in addition to any other rights the applicant may have at law. 1980, c. 48, s. 31.

Offences

32.—(1) Every person who,

- (a) contravenes any provision of this Act or the regulations; or
- (b) makes a statement in any document, material, evidence or information submitted or required by or for the purposes of this Act that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statement false or misleading,

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or, if such person is a corporation, to a fine of not more than \$20,000.

False statements wilful

(2) No person is guilty of an offence referred to in clause (1) (b) if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

Liability of directors and officers

(3) Where a corporation is guilty of an offence under subsection (1), every director or officer of such corporation, and where the corporation is an extra-provincial corporation, every person acting as its representative in Ontario, who authorized, permitted or acquiesced in such an offence is also guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1980, c. 48, s. 32.

Regulations

33. The Lieutenant Governor in Council may make regulations,

- (a) prescribing fees for the purposes of this Act;
- (b) respecting additional information to be included in a declaration filed under this Act;
- (c) prescribing forms and providing for their use. 1980, c. 48, s. 33.

34.—(1) A limited partnership in existence on the 30th day of ^{Transition} December, 1980 is continued under this Act and a certificate filed by such a limited partnership under *The Limited Partnerships Act*, being chapter 247 of the Revised Statutes of Ontario, 1970, shall be deemed to be a declaration filed under subsection 3 (2) of this Act, but such declaration expires on the date shown on the certificate.

(2) Notwithstanding section 24, an extra-provincial limited ^{Idem} partnership may carry on business in Ontario without filing a declaration and power of attorney for sixty days after the 31st day of December, 1980. 1980, c. 48, s. 34.

