

2001

CHAPTER 27

An Act to amend *The Partnership Act*

(Assented to June 28, 2001)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Partnership Amendment Act, 2001*.

R.S.S. 1978, c.P-3 amended, new Parts IV and V

2 *The Partnership Act* is amended by repealing Part III and substituting the following:

“PART IV

Limited Liability Partnerships

“**Interpretation of Part**

78 In this Part:

- (a) **‘distribution’** means, in relation to the partnership property, a transfer of money or other partnership property by a partnership to a partner or an assignee of a partner’s share in the partnership, whether as a share of profits, return of contributions to capital, repayment of advances or otherwise;
- (b) **‘eligible profession’** means a profession that is regulated by an Act;
- (c) **‘extraprovincial limited liability partnership’** means a partnership registered pursuant to section 99 as an extraprovincial limited liability partnership;
- (d) **‘governing jurisdiction’** means, in relation to a partnership, the jurisdiction whose law governs the interpretation of the partnership agreement by operation of law or through a provision in the partnership agreement or another document created by the partnership;
- (e) **‘limited liability partnership’** means a partnership registered pursuant to section 87;
- (f) **‘partnership obligation’** means any debt, obligation or liability of a partnership, other than debts, obligations or liabilities of partners as between themselves or as between themselves and the partnership;
- (g) **‘registrar’** means the Director appointed pursuant to *The Business Corporations Act* and includes any Deputy Director appointed pursuant to that Act.

“Application of Part

79 In the case of a limited liability partnership or an extraprovincial limited liability partnership, Parts I, II, II.1 and V are subject to this Part.

“Limited liability for partners

80(1) Except as expressly provided in this Part, in another Act or in an agreement, a partner in a limited liability partnership:

- (a) is not personally liable for a partnership obligation solely by reason of being a partner;
- (b) is not personally liable for an obligation under an agreement between the partnership and another person; and
- (c) is not personally liable to the partnership or another partner respecting an obligation to which clause (a) or (b) applies.

(2) Subsection (1) does not relieve a person who is a partner in a limited liability partnership from personal liability for his or her negligent or otherwise wrongful act or omission for which he or she would be personally liable if he or she were not a member in a partnership.

(3) Subsection (1) does not protect a partner’s interest in the partnership property from claims against the partnership respecting a partnership obligation.

“Partners subject to same liabilities as corporate directors

81(1) Partners in a limited liability partnership are personally liable for any partnership obligation for which they would be liable if the partnership were a corporation of which they were the directors.

(2) Where a corporation is a partner in a limited liability partnership, the directors of the corporation are jointly and severally liable for any liability imposed on the corporation pursuant to subsection (1).

“Previous obligations

82 Nothing in this Part limits the liability of partners in a limited liability partnership for any partnership obligation that:

- (a) arose before the partnership became a limited liability partnership;
or
- (b) arises out of a contract entered into before the partnership became a limited liability partnership.

“Restrictions on distribution of partnership property

83(1) A limited liability partnership shall not make a distribution of partnership property in connection with the winding up of its affairs unless all partnership obligations have been paid or satisfactory provision for their payment has been made.

(2) In circumstances other than in connection with the winding up of its affairs, a limited liability partnership shall not make a distribution of partnership property if there are reasonable grounds to believe that after the distribution:

- (a) the partnership would be unable to pay its partnership obligations as they come due; or
- (b) the value of the partnership property would be less than the partnership obligations.

(3) Subsection (1) does not prohibit a payment on account of any partnership obligation where a partner receives a prorated payment with all other creditors of the same class of the limited liability partnership.

(4) Subsections (1) and (2) do not prohibit a payment made as reasonable compensation for current services provided by a partner to the limited liability partnership, to the extent that the payment would be reasonable if paid to an employee who was not a partner as compensation for similar services.

(5) A limited liability partnership may base its determination of whether a distribution is prohibited by subsection (2):

- (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;
- (b) on a fair valuation; or
- (c) on another method that is reasonable in the circumstances.

“Recovery of prohibited distributions

84(1) A partner in a limited liability partnership who receives a distribution contrary to section 83 is liable to the partnership for the lesser of:

- (a) the value of the property received by the partner; and
- (b) the amount necessary to discharge partnership obligations that existed at the time of the distribution.

(2) Any partners in a limited liability partnership who authorize a distribution contrary to section 83 are jointly and severally liable to the partnership for any amount for which a recipient is liable pursuant to subsection (1), to the extent that the amount is not recovered from the recipient.

(3) Proceedings to enforce a liability pursuant to this section may be brought by the limited liability partnership, any partner in the partnership or any person to whom the partnership was obligated at the time of the distribution to which the liability relates.

(4) No proceedings to enforce a liability pursuant to this section shall be commenced later than two years after the date of the distribution to which the liability relates.

“Dissolution of partnership

85(1) On the dissolution of a limited liability partnership, the partnership maintains its status as a limited liability partnership while its affairs are being wound up.

(2) A limited liability partnership is deemed, for the purposes of this section and subsection 83(1), to have dissolved and to be winding up its affairs where:

- (a) the partnership ceases to carry on business; or
- (b) the partnership is dissolved pursuant to sections 34 to 37.

(3) When a limited liability partnership has dissolved and its affairs are being wound up, the court may, on the application of any interested person, make any order respecting the partnership that could be made respecting a corporation pursuant to subsection 204(8) of *The Business Corporations Act*.

“Application for registration

86(1) A partnership consisting of partners who practise in one or more eligible professions may apply to the registrar to be registered as a limited liability partnership.

(2) Subsection (1) does not apply where the governing body of any of the eligible professions in which the partners in the partnership practise has passed a rule or bylaw prohibiting persons who practise in the eligible profession from doing so in a limited liability partnership.

(3) A limited partnership shall not be registered as a limited liability partnership.

(4) An application must be in a form acceptable to the registrar and must include:

- (a) the name of the partnership;
- (b) a description of the eligible professions in which the partners practise;
- (c) the name and residential address in Saskatchewan of the partner who is designated as the representative of the partnership with respect to matters relating to the partnership;
- (d) the address of the registered office of the partnership in Saskatchewan;
- (e) the separate post office box, if any, designated as the partnership's Saskatchewan address for service by mail or a duly executed power of attorney, if any, pursuant to section 21.2 of *The Business Names Registration Act*;
- (f) a statement from a person who is authorized by the governing body of the applicable eligible profession to provide the statement certifying that the partnership and the partners meet all applicable eligibility requirements for practice as a limited liability partnership that are imposed pursuant to the Act that regulates the eligible profession;
- (g) any other information required by the regulations; and
- (h) the prescribed fee.

“Registration

87(1) If the registrar is satisfied that an applicant for registration as a limited liability partnership meets the requirements of this Act and the regulations, the registrar shall register the applicant and provide the applicant with a certificate of registration.

(2) A certificate of registration issued by the registrar is conclusive proof that the limited liability partnership named in the certificate is registered pursuant to this Act without proof of the signature or official position of the person purporting to have signed the certificate.

(3) The registration of a limited liability partnership is not adversely affected by a change in the partners in the partnership.

“Effect of registration

88 Subject to any agreement between the partners, the registration of a partnership as a limited liability partnership does not cause the dissolution of the partnership, and the limited liability partnership continues as the same partnership that existed before the registration.

“Notice to clients

89 On registration as a limited liability partnership, the partnership shall immediately send to all of its existing clients a notice that advises of the registration and explains in general terms the potential changes in liability of the partners that result from the registration and the operation of this Part.

“Registered office and address for service

90(1) A limited liability partnership shall at all times have a registered office in Saskatchewan.

(2) A limited liability partnership may designate a separate post office box within Saskatchewan as its address for service by mail.

(3) A limited liability partnership’s registered office must be the business premises of the partnership or of a person or firm that has agreed to act as the limited liability partnership’s registered office, and the partnership shall ensure that its registered office is:

- (a) accessible to the public during normal business hours; and
- (b) readily identifiable from the information provided in the registration documents or in any notice amending the registration.

“Partnership list

91 A limited liability partnership shall keep at its registered office a list of the partners in the limited liability partnership and shall immediately provide the following information without charge to any person who requests it:

- (a) a list of the partners in the limited liability partnership;
- (b) a list of the persons who were partners in the limited liability partnership on a particular date that is after the date of registration and is specified in the request.

“Notice of changes

92(1) The registration of a limited liability partnership may be amended by filing with the registrar a notice in a form acceptable to the registrar, accompanied by the prescribed fee.

(2) Within 30 days following any changes in the information mentioned in clauses 86(4)(a) to (g), the limited liability partnership shall:

- (a) file with the registrar a notice in a form acceptable to the registrar setting out the changes and the effective date of the changes; and
- (b) ensure that the notice is accompanied by the prescribed fee.

“Periodic reports

93 A limited liability partnership shall:

- (a) file with the registrar at the times prescribed in the regulations a report containing the information required by the regulations; and
- (b) pay to the registrar any periodic fee required by the regulations.

“Cancellation of registration

94(1) The registrar may cancel the registration of a limited liability partnership:

- (a) if the limited liability partnership is in default for the period prescribed in the regulations for complying with section 93;
- (b) if the limited liability partnership files with the registrar a request in a form acceptable to the registrar that the registration be cancelled; or
- (c) if the registrar receives a notice from a person who is authorized by the governing body of the applicable eligible profession to provide the notice stating that the limited liability partnership or one or more of the partners no longer complies with clause 86(4)(f).

(2) Before cancelling a limited liability partnership’s registration pursuant to clause (1)(a), the registrar shall:

- (a) give the limited liability partnership 30 days’ notice of the intended cancellation; and
- (b) publish notice of the intended cancellation in the Gazette.

(3) The registrar shall not cancel the registration if the limited liability partnership remedies the default mentioned in subsection (2) before the expiration of the period mentioned in the notice.

(4) Cancellation of the registration of a limited liability partnership affects only a partnership’s registration as a limited liability partnership and does not dissolve the partnership.

(5) No partner or partnership shall continue to hold itself out as being a limited liability partnership after cancellation of registration.

“Name

95(1) The name of a limited liability partnership must include the phrase ‘Limited Liability Partnership’ or its abbreviation ‘LLP’ or ‘Société à Responsabilité Limitée’ or its abbreviation ‘SRL’, and where the name contains the phrase ‘Limited Liability Partnership’ or its abbreviation ‘LLP’ or ‘Société à Responsabilité Limitée’ or its abbreviation ‘SRL’, the name must end with those words or that abbreviation.

(2) The name of a limited liability partnership or an extraprovincial limited liability partnership shall not be:

(a) identical to the name of any other limited liability partnership or any extraprovincial limited liability partnership registered in Saskatchewan; or

(b) so similar to the name of any other limited liability partnership or any extraprovincial limited liability partnership registered in Saskatchewan that the only difference is with respect to the phrase or abbreviation required to be included pursuant to subsection (1).

(3) Clause (2)(b) does not apply if the written consent of the limited liability partnership or extraprovincial limited liability partnership mentioned in that clause is filed with the registrar in a form acceptable to the registrar.

(4) If a limited liability partnership or an extraprovincial limited liability partnership is registered with a name that does not comply with this section, the registrar may, by notice in writing to the partnership, direct the partnership to change its name to one that complies with this section within 60 days after the date of the notice.

“Service

96(1) A notice or document required or permitted to be sent to or served on a limited liability partnership may be:

(a) delivered to the limited liability partnership’s registered office as shown in the registrar’s records;

(b) personally served on the partner who is designated as the representative of the limited liability partnership as shown in the registrar’s records;

(c) sent by registered mail to:

(i) the limited liability partnership’s registered office as shown in the registrar’s records;

(ii) the partner who is designated as the representative of the partnership as shown in the registrar’s records; or

(iii) the separate post office box designated as its address for service by mail as shown in the registrar’s records; or

(d) delivered or sent by any other manner that may be provided for in the regulations.

(2) A notice or document sent by registered mail to a limited liability partnership in accordance with clause (1)(c) or (d) is deemed to be received or served on the earlier of:

- (a) the day the intended recipient actually receives it; and
- (b) the time and day or date set out in the regulations.

“Non-registered status

97 A partnership that has the status of a limited liability partnership pursuant to the laws of a jurisdiction outside Saskatchewan shall be treated as an ordinary partnership with respect to rights and obligations that are acquired or incurred by the partnership pursuant to Saskatchewan laws while the partnership is carrying on business in Saskatchewan before registration as an extraprovincial limited liability partnership pursuant to section 99.

“Extraprovincial limited liability partnership

98(1) A partnership may apply to the registrar to be registered as an extraprovincial limited liability partnership if the partnership:

- (a) has the status equivalent to a limited liability partnership pursuant to the laws of a jurisdiction outside Saskatchewan; and
- (b) consists of partners that carry on practice, whether through a professional corporation or not, in one or more professions that are eligible professions in Saskatchewan.

(2) Subsection (1) does not apply where the governing body of any of the eligible professions in which the partners in the partnership practise has passed a rule or bylaw prohibiting persons who practise in the eligible profession from doing so in a limited liability partnership.

(3) An application must be in a form acceptable to the registrar and must include:

- (a) the name of the partnership;
- (b) a description of the eligible professions in which the partners practise;
- (c) the name and residential address in Saskatchewan of the partner who is designated as the representative of the partnership with respect to matters relating to the partnership;
- (d) the name of the governing jurisdiction of the partnership;
- (e) the address of the registered office of the partnership in Saskatchewan;
- (f) the separate post office box, if any, designated as the partnership's Saskatchewan address for service by mail or a duly executed power of attorney, if any, pursuant to section 21.2 of *The Business Names Registration Act*;

- (g) evidence satisfactory to the registrar of the partnership's status as a limited liability partnership pursuant to the laws of the governing jurisdiction;
- (h) a statement with respect to each eligible profession in which the Saskatchewan partners practise from a person who is authorized by the governing body of the applicable eligible profession in Saskatchewan to provide the statement certifying that the partnership and the Saskatchewan partners meet all applicable eligibility requirements for practice as an extraprovincial limited liability partnership that are imposed pursuant to the Act that regulates the eligible profession;
- (i) any other information required by the regulations, and
- (j) the prescribed fee.

“Registration

99(1) If the registrar is satisfied that an applicant for registration as an extraprovincial limited liability partnership meets the requirements of this Act and the regulations, the registrar shall register the applicant and provide the applicant with a certificate of registration.

(2) A certificate of registration issued by the registrar is conclusive proof that the extraprovincial limited liability partnership named in the certificate is registered pursuant to this Act without proof of the signature or official position of the person purporting to have signed the certificate.

(3) The registration of an extraprovincial limited liability partnership is not adversely affected by a change in the partners in the partnership.

“Notice to clients

100(1) On registration as an extraprovincial limited liability partnership, the partnership shall immediately send to all of its existing clients of its Saskatchewan practice a notice that advises of the registration and explains in general terms the potential changes in liability of the partners that result from the registration and the operation of this Part.

(2) Where an extraprovincial limited liability partnership has sent a notice similar to the notice mentioned in subsection (1) to all of its existing clients as a result of being registered as a limited liability partnership or an extraprovincial limited liability partnership in another jurisdiction, the notice pursuant to subsection (1) is required to be sent only to the clients of the partnership in Saskatchewan.

“Registered office and address for service

101(1) An extraprovincial limited liability partnership shall at all times have a registered office in Saskatchewan.

(2) An extraprovincial limited liability partnership may designate a separate post office box within Saskatchewan as its address for service by mail or may file with the registrar a duly executed power of attorney pursuant to section 21.2 of *The Business Names Registration Act*.

(3) An extraprovincial limited liability partnership's registered office must be the business premises of the partnership or of a person or firm that has agreed to act as the limited liability partnership's registered office, and the partnership shall ensure that its registered office is:

- (a) accessible to the public during normal business hours; and
- (b) readily identifiable from the information provided in the registration documents or in any notice amending the registration.

“Partnership list

102 An extraprovincial limited liability partnership shall keep at its registered office a list of the Saskatchewan partners in the partnership and shall immediately provide without charge the following information to any person who requests it:

- (a) a list of the Saskatchewan partners in the partnership;
- (b) a list of the persons who were Saskatchewan partners in the partnership on a particular date that is after the date of registration and is specified in the request.

“Name

103 The name of an extraprovincial limited liability partnership must contain the words and abbreviations required pursuant to the laws of its governing jurisdiction and must comply with subsection 95(2).

“Service

104(1) A notice or document required or permitted to be sent to or served on an extraprovincial limited liability partnership may be:

- (a) delivered to the extraprovincial limited liability partnership's registered office as shown in the registrar's records;
- (b) personally served on the partner who is designated as the representative of the extraprovincial limited liability partnership as shown in the registrar's records;
- (c) sent by registered mail to:
 - (i) the extraprovincial limited liability partnership's registered office as shown in the registrar's records;
 - (ii) the partner who is designated as the representative of the partnership as shown in the registrar's records; or
 - (iii) the separate post office box designated as its address for service by mail, as shown in the registrar's records; or
- (d) delivered or sent by any other manner that may be provided for in the regulations.

(2) A notice or document sent by registered mail to an extraprovincial limited liability partnership in accordance with clause (1)(c) or (d) is deemed to be received or served on the earlier of:

- (a) the day the intended recipient actually receives it; and
- (b) the time and day or date set out in the regulations.

“Notice of changes

105(1) The registration of an extraprovincial limited liability partnership may be amended by filing with the registrar a notice in a form acceptable to the registrar, accompanied by the prescribed fee.

(2) Within 30 days following any changes in the information mentioned in clauses 98(3)(a) to (i), the extraprovincial limited liability partnership shall:

- (a) file with the registrar a notice in a form acceptable to the registrar setting out the changes and the effective date of the changes; and
- (b) ensure that the notice is accompanied by the prescribed fee.

“Periodic reports

106 An extraprovincial limited liability partnership shall:

- (a) file with the registrar at the times prescribed in the regulations a report containing the information required by the regulations; and
- (b) pay to the registrar any periodic fee required by the regulations.

“Cancellation of registration

107(1) The registrar may cancel the registration of an extraprovincial limited liability partnership:

- (a) if the extraprovincial limited liability partnership is in default for the period prescribed in the regulations for complying with section 106;
- (b) if the extraprovincial limited liability partnership files with the registrar a request in a form acceptable to the registrar that the registration be cancelled;
- (c) if the registrar receives a notice from a person who is authorized by the governing body of the applicable eligible profession in Saskatchewan to provide the notice stating that the extraprovincial limited liability partnership or one or more of the partners no longer complies with clause 98(3)(h); or
- (d) if the registrar receives a notice from the regulatory official or body in the extraprovincial limited liability partnership’s governing jurisdiction stating that the extraprovincial limited liability partnership no longer has the status of a limited liability partnership in that jurisdiction.

(2) Before cancelling an extraprovincial limited liability partnership’s registration pursuant to clause (1)(a), the registrar shall:

- (a) give the extraprovincial limited liability partnership 30 days’ notice of the intended cancellation; and
- (b) publish notice of the intended cancellation in the Gazette.

(3) The registrar shall not cancel the registration if the extraprovincial limited liability partnership remedies the default mentioned in subsection (2) before the expiration of the period mentioned in the notice.

(4) No partner or partnership shall continue to hold itself out as being an extraprovincial limited liability partnership after cancellation of registration.

“Law of governing jurisdiction applies

108(1) Except as expressly provided in another Act, the law of the governing jurisdiction of an extraprovincial limited liability partnership applies:

- (a) to the organization and internal affairs of the limited liability partnership; and
- (b) to the liability of the partners of the limited liability partnership for debts, obligations and liabilities of or chargeable to the partnership.

(2) Notwithstanding subsection (1), a Saskatchewan partner of an extraprovincial limited liability partnership does not have any greater protection against individual liability with respect to his or her practice in Saskatchewan than a partner in a limited liability partnership would have pursuant to this Part.

“Offence

109 Every person that carries on business as a limited liability partnership or an extraprovincial limited liability partnership without being registered pursuant to this Act is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000.

“Regulations

110 For the purposes of this Part, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Part but not defined in this Part;
- (b) respecting applications for registration of limited liability partnerships and extraprovincial limited liability partnerships;
- (c) respecting the imposition of terms on the registration of a limited liability partnership or an extraprovincial limited liability partnership, including authorizing the registrar to impose terms;
- (d) governing name requirements for limited liability partnerships and extraprovincial limited liability partnerships;
- (e) governing reports for the purposes of sections 93 and 106;
- (f) prescribing any other matter or thing that is required or authorized by this Part to be prescribed in the regulations;
- (g) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Part.

**“PART V
General**

“Rules of common law and equity

111 The rules of common law and equity applicable to partnerships continue in force except to the extent that they are inconsistent with the express provisions of this Act.

“Fees

112 The Lieutenant Governor in Council may make regulations prescribing fees for services received pursuant to this Act”.

Coming into force

3 This Act comes into force on proclamation.

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