

LIMITED LIABILITY PARTNERSHIP

Report of the Working Party on Limited Liability Partnership (the "Working Party")
of the Law Society

TERMS OF REFERENCE OF THE WORKING PARTY:

- (1) to consider the desirability and feasibility of permitting Hong Kong solicitors to practise as limited liability partnerships;
- (2) to consider the relevance of the Limited Partnerships Ordinance (Cap 37 of the Laws of Hong Kong) to the mode of operation of solicitors' practice in Hong Kong;
- (3) if appropriate, to formulate in draft for approval of the Council, new rules and/or amendments to existing legislation to provide a framework for the operation of limited liability partnerships.

1. INTRODUCTION

- 1.1 A limited liability partnership offers an attractive form of business organisation for businesses that thrive as partnerships but which are concerned about the risk of partners having unlimited liability for the consequences of another partner's negligence.
- 1.2 This report considers the case for legislation that would allow Hong Kong solicitors and others to practise through LLPs. The report examines the issues relevant to the formulation of legislation and appraises different models of LLP. We believe that the case for LLPs is met and suggest the legislation that we consider appropriate for Hong Kong.

2. WHY HONG KONG SHOULD CONSIDER LLPS

2.1 Partnerships: a successful business model

The partnership has offered professional firms a mode of practice uniquely suited to the requirements of clients and the partners.

2.2 LLPs can perpetuate partnership culture

LLPs allow different forms of partnership models to exist without affecting other forms of partnership models. The expression partnership culture lauds the benefits of a successful partnership:

- the trust that comes from partners' duty of good faith towards each other
- willingness to share clients and resources
- common investment in developing the firm's business and its people
- sharing financial rewards.

Clients benefit from the bonds that come from a firm with strong partnership culture. LLPs can perpetuate partnership culture.

2.3 Consumer interests

One should not advocate the abrogation of partners' joint and several liability without thorough consideration of whether this is in the interests of consumers. We consider consumer protection in paragraph 5.

Numerous other jurisdictions have adopted legislation that allows LLPs, notably most states of the United States of America, Great Britain and Germany.

The LLPs in these jurisdictions take widely different forms. The common denominator of LLP legislation is that a lawyer who practises as a partner in an LLP is not personally liable for the consequences of the negligence of a fellow partner although he remains fully liable for his own negligence. As some other jurisdictions have already adopted this common denominator, Hong Kong is not unique in adopting it. Later we consider the extent to which it is reasonable and consistent with consumers' interests for the Hong Kong LLP to confer a broader shield against liability. We also offer views on whether it is reasonable and consistent with consumer interests for any business - professional or non-professional - to be able to operate through a Hong Kong LLP.

2.4 Competitive threat

For more than a decade Hong Kong law firms produced in excess of HK\$6 billion of GDP per annum (Annex 1). It is in Hong Kong's economic interests to keep professional partnerships on-shore and, if consumers' interests are adequately protected, facilitate their practice through LLPs. Professionals who can practise free of personal liability for the negligence of their partners are more likely to invest in the development and expansion of their businesses.

The Jersey LLP provides a cautionary tale. In the 1990s British accountants lobbied hard for LLPs, alarmed at their increasing exposure to negligence claims against auditors. The British government was slow to respond so the accountants offered Jersey the proposition that they might move their headquarters to Jersey if Jersey enacted LLP legislation. Jersey duly did so in 1996, seeing the LLP as a way of attracting offshore professionals to the island and enhancing its reputation as a financial centre¹.

Jersey's initiative prompted the British government to act. In its deliberations on the LLP bill, the House of Commons Select Committee on Trade and Industry commented on the presence of LLP legislation in other jurisdictions: "By mid-1996, it was plain that the option of registration as a Jersey LLP was being seriously considered by a number of the very large professional partnerships. It was this prospect, combined with the perceived possibility that a successful mega-claim could in due course precipitate the failure of a major firm, that led to the November 1996 decision ... to bring forward LLP legislation in the UK. Whether Parliament and Ministers like it or not, what is in no doubt is the real possibility of British firms registering offshore; if Jersey statute proves unattractive there may well be other offshore options on offer"². In 2000, Parliament enacted the Limited Liability Partnerships Act (LLPA 2000).

¹ The UK Inland Revenue frustrated the accountants' plans. The Jersey LLP, like the UK LLP, has legal personality. The Jersey legislation, like the UK legislation, provides that the LLP will nonetheless be treated as a partnership for tax purposes. It remains open to foreign tax authorities to treat an LLP with legal personality as a company for tax purposes, with the adverse consequence of double taxation. The UK Inland Revenue's determination that it would treat the Jersey LLP like a company ended the accountants' thoughts of relocating their headquarters. The Big 4 accountants now operate their UK businesses through English LLPs.

² As reported in Geoffrey Morse, Paul Davies, Ian F. Fletcher, David Milman, Richard Morris, David A Bennett Palmer's Limited Liability Partnership Law (London Sweet & Maxwell 2002) at 7.

The Singapore government proposes to legislate to allow LLPs, which may not be unconnected with its plan to make Singapore a tax haven for international law firms. See Annex 2. Malaysia is considering the adoption of LLP legislation.

It is important that Hong Kong react to these competitive threats. If Hong Kong-based international firms move their transactional practices to other financial centres in Asia, Hong Kong will cease to be the region's leading provider of legal services.

2.5 Demand

The Enron collapse and the ensuing Arthur Andersen debacle have made partners more conscious of their business risks. The world has grown more litigious. Professional people are no longer content to be personally liable for claims against their firms that emanate from others' negligence. Hong Kong should modernise its law to allow LLPs.

3. WHY HONG KONG SOLICITORS NEED LLPs IN ADDITION TO SOLICITOR CORPORATIONS

3.1 General

It is true that solicitor corporations offer limitation on professionals' liability. However, the Solicitor Corporations Rules do not offer the right solution for Hong Kong law firms.

In England, law firms and audit firms were able to operate through limited companies before the LLPA 2000: law firms from 1988 and audit firms from 1991. However, few did so. It was generally agreed that the disadvantages of practising through a company outweighed the goal of limited liability. Not many Hong Kong audit firms have chosen to incorporate

As professional partnerships are owner-managed businesses, the partnership structure has - but for the liability exposure - been ideal for them. The partnership has no legal personality of its own: it is the relationship that subsists between the owner-managers who carry on the business with a view to profit. The corporate structure, by contrast, is ideal for investors who do not run the business. The company has a legal personality of its own, with rights and obligations distinct from those of its investors (whether they are shareholders or creditors) and its directors.

These fundamental differences are at the root of the disadvantages of a corporation for professional firms.

3.2 Legislative burden on companies

The relationship between a company and other parties is regulated by extensive legislation intended to uphold the appropriate balance between their interests. By contrast, the law on partnerships is simple and allows partners a great deal of flexibility. The legislative burden of incorporation would be unattractive to professional partnerships.

3.3 Companies' financial reporting obligations

A company is a vehicle designed for an infinite number of shareholders³ who are free to sell their investment to others and are not expected to be intimate with the company's business. A company is also able to undertake liability without recourse to its shareholders. It follows that its shareholders and the public have statutory rights to certain information about the company, notably its accounts. Many professional partnerships would find the loss of privacy too high a price to pay for limiting their liability.

³ Section 29 of the Companies Ordinance provides that a company must be "public" if it has more than 50 shareholders.

3.4 Companies do not engender a partnership culture

While a company has extensive obligations to other parties, the shareholders' common interest in the company does not impose fiduciary duties among them nor require them to act in good faith towards each other⁴. Professional firms, whatever their size, value the ethos that is reinforced by partners' mutual duty of good faith. Partners who share knowledge, collaborate on client work and pool their resulting profits feel that clients benefit from the partnership ethos. Professional partnerships would be deterred from incorporating for fear that they would lose the partnership culture inherent in partners' mutual duty of good faith.

Because of this partnership culture, it is important for a professional firm to be able to remove a partner with unsatisfactory performance from the legal firm. However, in case of a corporation, it is more difficult to remove a shareholder and director without his agreement.

Partners want to be "partners", not directors or employees, both in the sense of how they define their relationship with each other and so as to encourage a relationship of trust with their clients.

It has been argued that practising through a company offers protection to all lawyers, even the negligent lawyer. The English case law in this area⁵ shows that a director of a company can be personally liable to a third party if he or she "assumes responsibility" towards the third party and the third party relied on the director's assumption of liability and was reasonable in doing so. The House of Lords said that these principles applied to determine the personal liability in tort of any agent acting on behalf of a principal with a separate legal identity, so they do not only apply to directors⁶. It may be that if these principles applied in Hong Kong, a lawyer practising as a partner of an LLP without separate legal identity might be more readily found to have assumed personal responsibility towards a client than a lawyer practising as a director or employee of a company⁷.

We suggest that such a conclusion would not cause a law firm to prefer a corporate structure to conversion to an LLP. Lawyers are accustomed to taking personal responsibility for their advice. The personal touch is an important element of the relationship of trust that they seek to establish with their clients. Lawyers are attracted to LLPs to shield them from liability for the negligence of their partners, not from the consequences of their own negligence.

3.5 Company: no continuity

The "conversion" of a law firm to a corporate structure requires a transfer of its assets and liabilities to a new company, typically newly incorporated by the partners. The transfer requires the assignment of leases, the negotiation of new bank facilities, the novation of other contracts and a time-consuming process. The new company would need a memorandum and articles of association instead of a partnership agreement. Partners would generally want the company's constitution to reflect the partnership agreement but because the company is a fundamentally different vehicle, a match will be impossible. The transfer would typically require partners to transfer their capital and current accounts to the company and be followed by the dissolution of the law firm.

⁴ Subject to common law concerning the behaviour of a majority of shareholders.

⁵ *Williams v. Natural Life Health Foods Ltd.* [1998] 1 WLR 280.

⁶ The *Williams* case was cited in and applied by Deputy High Court Judge Muttrie in *Yazhou Travel Investment Co. Ltd v. David Geoffrey Allan Bateson and Others* [2004] HKCU LEXIS 60; [2004] 103 HKCU 1.

⁷ The discussion paper of the Standing Committee on Company Law Reform (document 174-1) suggests that a Hong Kong company offers total protection to a negligent lawyer: this is doubted.

By contrast, it would be a straightforward matter for a law firm to "convert" into the model of LLP that we recommend. Conversion would be effected by agreement among the partners. The law firm would preserve its continuity in every respect.

3.6 **Company: extra taxation**

It makes little difference to the tax treatment of domestic professional firms with no outside participation and which operate exclusively in Hong Kong if they practise through a company rather than an LLP. There is, however, a slightly higher rate of corporation tax than the corresponding income tax rate.

If the company has shareholders (formally partners) resident outside Hong Kong this will generally be disadvantageous. Those partners will be subject to their own country's income tax liability on any undistributed profits, as well as suffering the economic cost of the Hong Kong profits tax paid by the company. They will be effectively subject to double taxation on the company's income⁸. The partnership's "conversion" into a company could trigger capital gains tax on the transfer of the foreign partners' interests in the partnership into shares in the company. The company could be liable to foreign corporation tax on its branch profits. Only Hong Kong resident partners, on becoming shareholders, would be largely unaffected: there is no Hong Kong capital gains tax charge, and any dividend they receive from a company paying Hong Kong profits tax is not chargeable to Hong Kong tax in the hands of the shareholders.

3.7 **LLP v. company: conclusion**

Solicitor corporations have a number of features which will lead law firms to eschew them as, in the UK, law firms eschewed limited companies. Solicitor corporations are therefore unlikely to assuage lawyers' interest in LLPs. Lawyers will seek a model of LLP that preserves the simplicity, flexibility and privacy of partnerships and with which professional firms, their clients and their creditors are familiar.

4. **MODELS OF LLP**

4.1 **Criteria for the perfect LLP**

4.1.1 From a partner's point of view, the perfect LLP is one which:

- protects him from personal liability for the acts and omissions of other partners everywhere the firm operates
- is familiar, in the sense that the firm's partnership culture flourishes and the firm's legal structure, management structure and partnership agreement are not significantly disturbed
- preserves the privacy of a partnership
- is treated like a partnership for tax purposes everywhere the firm operates, with no tax costs on conversion
- makes conversion easy, not requiring the transfer of the partnership's business (and therefore its contracts) to a new entity.

Applying these criteria, there is no such thing as the perfect LLP.

⁸ This is not just an "international law firm" issue: many Hong Kong firms have branches in the PRC, Bangkok, etc.

4.1.2 From a law-maker's perspective, the ideal LLP is one which:

- without jeopardising consumer interests, enables businesses that are important to the economic life of the jurisdiction to practise through an on-shore vehicle that meets their needs; and
- is simple to legislate for.

4.1.3 Most law-makers have chosen a partnership model of LLP. We too advocate the partnership model of LLP for reasons stated later.

4.2 Partnership model of LLP

The partnership model of LLP is one which grafts on to existing partnership law. Partnership law in common law jurisdictions is generally codified on legislation based on the English Partnership Act 1890. Legislation that creates a partnership model of LLP does so by amending the existing partnership legislation. The amending legislation covers:

- who may form an LLP
- how to form an LLP
- the requirement for public registration of an LLP
- the scope of a partner's liability shield.

The legislation may but need not include:

- the domestic legitimacy and registration of foreign LLPs
- the requirement that the LLP buy a certain level of insurance.

The relevant legislation can be concise (as in Ontario) or, despite the straightforwardness of the matters covered, wordy (as in New York).

LLP legislation in the United States and Canada is based on the partnership model⁹. Some of New York's major law firms have been slow to convert but most of them are now LLPs. Most of Ontario's law firms have become LLPs, including all the large firms.

4.3 Corporate model of LLP

The corporate model of LLP is one which is grafted on to legislation on companies.

The English LLP is a body corporate established by the LLPA 2000. With only 25 pages the LLPA 2000 is easily read. This is because it relies on extensive statutory instruments. Most of the regulations are in Statutory Instrument 2001 No. 1090: the Limited Liability Partnership Regulations 2001 (LLPR 2001) <http://www.legislation.hmso.gov.uk/si/si2001/2011090.htm>. These regulations run to 118 pages.

The LLPR 2001 applies provisions of the Companies Act 1985, the Company Directors Disqualification Act 1986, the Insolvency Act 1986, and the Financial Services and Markets

⁹ The Jersey LLP, which has legal personality, derives from discrete legislation, the Limited Liability Partnerships (Jersey Law) 1997. Jersey does not have legislation equivalent to the Partnerships Act 1890. The Jersey legislation draws on the customary law concerning *contrats de sociétés*. For this reason, we do not regard it as a helpful model for Hong Kong. Nor do we believe that civil law countries' LLPs, such as the German LLP, provide a helpful model.

Act 2000 to LLPs with modifications specified in schedules. The regulations also make detailed amendments to 187 statutes so that they apply to LLPs, from the Bills of Sale Act (1877) Amendment Act 1882 to the Contracts (Rights of Third Parties) Act 1999.

The effect of the regulations' application of this legislation to LLPs cannot be understood without cross-reference to the legislation itself. Tolley's has published a book which, in 600 pages, shows how the Companies Act 1985, the Company Directors Disqualification Act 1986 and the Insolvency Act 1986 apply to LLPs¹⁰.

Additionally, the regulations apply to LLPs 24 statutory instruments made under the Companies Act 1985, the Insolvency Act 1986 and other legislation.

Other statutory instruments have been published since the LLPR 2001¹¹.

Subsequent regulations on LLPs will arise on any amendment to the Companies Act 1985 and the Insolvency Act 1986 framework on which they depend.

The regulations are incomplete. There will, for instance, be further regulations on overseas LLPs.

No other common law jurisdiction has adopted the corporate model of LLP.

Only about 90, mostly smaller, UK law firms have become LLPs¹². The other UK law firms have been deterred from conversion by the extensive requirements of the legislation as well as the features that make the English LLP so different from a partnership.

4.4 Legal personality?

4.4.1 A corporate model of LLP has legal personality. It does not follow that a partnership model of LLP does not have legal personality. Some partnership models of LLP have aspects of legal personality.

4.4.2 The question of whether an LLP has legal personality may not matter domestically where there will be law about how to sue a partnership, who is liable for the firm's negligence and who pays tax on partnership profits. However the question of whether an LLP has legal personality can be important to a court or tax authority from another jurisdiction. For example:

- a foreign court considering whether a claim against a New York LLP under the foreign law is properly made against the LLP or its partners might disregard the New York law limitation on the partners' liability if it concludes that the New York LLP is not an entity
- a foreign tax authority considering how to characterise the profits of a branch within its jurisdiction might treat them like company profits potentially giving rise to double tax (a risk for an English LLP because it is a body corporate).

¹⁰ Tolley's Limited Liability Partnerships, The New Legislation by Douglas Armour, published by Tolley in 2001

¹¹ An uncontroversial fees order, SI2002 No. 503, and an order to apply to LLPs some 2002 company legislation allowing members of an LLP to apply to the Secretary of State for their residential address to be removed from the public register. The Secretary of State will only grant the application if satisfied that residents would otherwise be subject to violence or intimidation <http://www.hmso.gov.uk/si/si2002/20020913.htm>

¹² Limited Liability: A Question of Protection by Bob Sherwood in the Financial Times, 26 April 2004.

- 4.4.3 We considered whether, if Hong Kong were to adopt a partnership-style LLP, there was a case for providing that the Hong Kong LLP have legal personality.

This might have the advantage of persuading a court considering a foreign law claim against the LLP that the LLP, having legal personality, is contractually responsible for the claim to the exclusion of its partners.

It might have the disadvantage that the LLP, having legal personality, would be taxed on its profits (like a company) as well as its partners (like shareholders). The Hong Kong legislature could provide that domestically the LLP is treated like a partnership for tax purposes (i.e. the partnership is taxed through its partners, so that the partners' income is taxed only once) but such legislation might be disregarded by a tax authority in a foreign jurisdiction where the LLP has a branch. In that case the LLP and its partners could be subject to all the tax disadvantages of a corporate structure as were mentioned in paragraph 3.6.

A further disadvantage of conferring legal personality on an LLP is that the legislation for LLPs would be much more complicated.

- 4.4.4 In coming to our conclusions we drew on the recently published report of the English and Scottish Law Commissions on the law on general partnerships¹³. The extensive report - it runs to 500 pages - included a bill comprehensively to replace the English Partnership Act 1890 and the Limited Partnership Act 1907. It should be noted that the report did not deal with the English LLP which, by virtue of the LLPA 2000, has legal personality.

One of the Law Commissions' most far-reaching proposals was that the English partnership have legal personality, as the Scottish partnership does. The Law Commissions thought this proposal would helpfully modernise partnership law. For example a partnership's legal personality would give legislators the chance to assert a partnership's continuity of existence on a change of partner¹⁴. Such a change would also enable a partnership to hold property and enter contracts.

The Law Commissions took the view that a partnership's legal personality was incompatible with each partner being the agent of each other, so their bill makes each partner an agent of the firm instead¹⁵. They said that a partnership's legal personality was consistent, however,

¹³ Law Com No. 283 and Scot Law Com No. 192

¹⁴ There is some doubt about the continuity of a Scottish partnership on a change of partner, despite it having legal personality. In England, partnership, seen as a relationship between individuals or as a contract between individuals, ceases when the identity of the partners changes. The same is true in Hong Kong. Even an agreement in advance that partners will continue to practise in partnership on the retirement of one of their number does not prevent the partnership which practises the day after retirement from being a different partnership from that in business on the previous day: *Hadlee v. Commissioners of Inland Revenue* [1989] 2 NZLR 447, 455 per Eichelbaum J.

¹⁵ The UK Inland Revenue suggested that the partners' mutual agency was the justification for taxing partners on their partnership income and to the exclusion of taxing the partnership. The Law Commissions therefore accepted the UK Inland Revenue's offer to support the introduction of tax legislation to provide that a general partnership with legal personality be treated for tax purposes in the same way as English and Scottish partnerships are currently treated. The LLPA 2000 similarly provides that an English LLP, despite being a body corporate, is treated for tax purposes like an English general partnership. The Law Commissions' report indirectly recognised that such legislation could not determine a foreign tax authority's treatment of an English partnership with legal personality. As mentioned, one of the problems with the English LLP is that foreign tax authorities may tax it as if it were a company.

with partners continuing to have joint and several liability for the partnership's debts and obligations, as they do in Scotland.

4.4.5 While it was tempting to suggest that the Hong Kong LLP have legal personality to help partners defend claims under foreign law, we concluded not to make such a recommendation for the following reasons.

- The Hong Kong legislature might want to consider such a proposal only in the context of a review of the law on general partnerships enshrined in the Partnership Ordinance.
- The Hong Kong legislature would note that the changes to the Partnership Act 1890 that the Law Commissions recommend are far-reaching (not least because of the proposal that the general partnership have legal personality) and may never be enacted.
- Amendments to the Partnership Ordinance to provide for an LLP with legal personality would be much more complicated.
- A Hong Kong LLP that might be taxed like a company on its foreign profits would be unattractive to Hong Kong businesses with significant branches outside the jurisdiction.

4.5 Partnership model v. corporate model

We recommend a partnership model of LLP for Hong Kong. Here we draw our reasoning together by measuring each of the partnership model and the corporate model against our criteria for the perfect LLP.

4.5.1 *First criterion: protection of partners from personal liability for the acts and omissions of other partners.*

Hong Kong law

A Hong Kong LLP based on the partnership model and without legal personality would, through an amendment to the Partnership Ordinance, shield a partner from personal liability for the consequences of another partner's negligence. A Hong Kong LLP based on the corporate model would mean that the LLP, as a legal person, was contractually responsible for its negligence to the exclusion of the partners. The law might leave the claimant able to establish that the negligent partner is liable for his negligence in tort¹⁶.

Under Hong Kong law, the non-negligent partner would be free of personal liability whether or not the LLP follows the partnership or corporate model. This might not be so if the law governing the LLP's breach of contract is foreign.

Foreign law

If an LLP faces a claim under foreign law, the liability of the LLP and its partners will be determined by reference to the foreign law's doctrines on conflicts and these vary from jurisdiction to jurisdiction. In some jurisdictions the court will never have considered the liability of an LLP established elsewhere. Accordingly there may be uncertainty about the doctrine that the court would apply to a Hong Kong LLP sued under foreign law.

- Some jurisdictions that have adopted the partnership model of LLP - New York and Ontario for example - provide in their statutes that under certain conditions, the

¹⁶ See paragraph 3.4 for a discussion of the relevant law.

local court will apply the law of the jurisdiction in which the LLP was established to determine whether one of its partners should be liable to the claimant.

- Some jurisdictions will take the same approach on the basis of their own doctrines on conflicts of law, rather than because of statutory provision on foreign LLPs.
- Some jurisdictions will determine the question by assimilating the Hong Kong LLP to a local entity.
- Other jurisdictions, as mentioned in paragraph 4.4, might disregard Hong Kong law's limitation on partners' liability if the court determines that the Hong Kong LLP is not an entity under Hong Kong law. In that case the foreign law governing the LLP's contract with the client would attach responsibility for the breach to all the partners, whether they were negligent or not.

Overall, the corporate model of LLP is a surer shield for non-negligent Hong Kong partners facing claims under foreign law.

There remains a question, though, of whether the Hong Kong court would enforce a foreign court's judgment that the non-negligent partners are liable for the Hong Kong LLP's breach of contract.

4.5.2 *Second criterion: familiarity*

Our second criterion for the perfect LLP was whether it would allow the partnership culture to flourish; and would the LLP be a familiar form of business, in the sense that conversion would not significantly disturb the firm's legal structure, management structure or partnership agreement? Partnerships are a successful business model. It is better for Hong Kong if the chosen model of LLP preserves the ingredients of their success.

The corporate model of LLP is very different from a Hong Kong general partnership, not least because the Hong Kong LLP would be a new legal person defined by legislation based on company legislation. We have argued that companies, subject to sophisticated legislation, are ideal for investors who do not run the business in question. Company legislation would appear unduly demanding and complicated for an owner-managed partnership. Bob Sherwood, writing about the English LLP in the Financial Times recently, said: "Many solicitors have been wary that becoming a corporate-style LLP as the legislation demands, would mean a fundamental shift in the ethos of partnership that is central to law firms. Martin Ellis, director of Alexander Forbes, the professional indemnity insurer, believes many law firms are afraid the switch would damage the "family approach" of law firms where all partners are "in it together". Senior managers at law firms may also be wary that they will inherit a fiduciary duty similar to that of a corporate executive"¹⁷.

The corporate model of LLP creates a legal person with rights and obligations of its own in relation to third parties and partners. Partners would become agents of the LLP and not of each other, undermining the collegiality that flows from the partners' mutual fiduciary duties. The partnership agreement would have to accommodate the existence of the LLP and acknowledge the new legal relationships that it establishes.

The partnership model of LLP preserves the existing partnership and partner relationships and requires no changes to the firm's operation.

¹⁷ Limited Liability: A Question of Protection, Financial Times of 26 April 2004

4.5.3 *Third criterion: privacy*

Partnerships value the fact that they can keep the firm's affairs confidential. Law-makers would want to ensure that consumers know what they are dealing with by at least requiring the LLP to demonstrate to third parties that the partners' liability is limited. Law-makers will tend to have different requirements for a partnership model of LLP compared with a corporate model.

Laws constituting partnership models of LLP require the LLP to demonstrate that partners' liability is limited by using the suffix "limited liability partnership" or "LLP" with the firm name and through some form of registration.

The corporate model of LLP is subject to the same requirements but also to onerous filing obligations based on the law of companies. Commentators have suggested that one of the reasons UK firms have been slow to take up limited liability is because the legislation on the UK LLP - a body corporate - requires the LLP and its partners to file the partners' names and addresses and annual accounts, including the total remuneration paid to the partners and the remuneration of the highest paid partner.

4.5.4 *Fourth criterion: tax treatment*

Partners will want the LLP to be treated like a partnership for tax purposes.

The partnership model of LLP should not change partners' tax treatment.

The corporate model of Hong Kong LLP would create an entity which, but for specific legislation, would prima facie be taxable in its own right with partners being liable to tax on their profits as well. We assume that the Hong Kong legislature would follow the precedent set by the UK and say that notwithstanding the LLP's structure as a body corporate, its partners are to be taxed as if the body corporate were a partnership. This would mean the corporate model of Hong Kong LLP would not change partners' Hong Kong tax treatment.

The tax treatment of an LLP in a foreign jurisdiction depends upon the rules in that foreign jurisdiction, but foreign tax authorities are more likely to treat an LLP which is a body corporate as a company in contrast to a partnership model, with all the possible adverse consequences for partners resident outside Hong Kong as were discussed in paragraph 3.6:

- double tax
- capital gains tax on conversion
- foreign corporation tax on branch profits.

The corporate model of LLP is therefore unlikely to be attractive to partnerships with operations outside Hong Kong.

4.5.5 *Fifth criterion: easy conversion*

The partnership model of LLP perpetuates the partnership. The partnership achieves limited liability simply by agreement amongst the partners or registering as an LLP. The regulators of law firms would typically require the firm to tell clients that the firm has become an LLP. Conversion is therefore straightforward.

If the LLP is a body corporate, conversion requires partners to establish the new LLP, transfer the partnership business, assets and liabilities to the new LLP and wind up the operations conducted through the former partnership. The process will be time consuming

and require a careful examination of the firm's contracts to see whether they may be assigned and whether novation should be sought.

4.5.6 *Sixth criterion: simple legislation*

It is in the public interest that the LLP legislation be as simple as is consistent with public interest.

In paragraphs 4.2 and 4.3 we describe the legislation that creates partnership and corporate models of LLP, using the English LLP as our example of the latter. The partnership model of LLP is simple to legislate for; the corporate model of LLP requires complex legislation.

Also, it is simpler to adopt a LLP model as compared to a limited liability corporate model.

4.5.7 *Seventh criterion: preservation of consumer interests*

Law-makers will want to create a form of LLP that, without jeopardising consumer interests, enables businesses that are important to the economic life of Hong Kong to practise in a Hong Kong-based vehicle that meets their needs.

If the legislators are satisfied that consumer interests are appropriately addressed by either model of LLP, they are likely to sponsor a model that enjoys the most support from partnerships that would like to limit the liability of non-negligent partners.

We consider that, balancing the judgments on the criteria for a perfect LLP, partnerships will be more likely to support the partnership model than the corporate model.

All criteria

Judged by these criteria, the partnership model of LLP is the better model for Hong Kong. It prevails over the corporate model in all but one (i.e. the first) of the seven criteria.

4.6 **Full or partial liability shield?**

The earlier statutes creating common law partnership models of LLP in the US generally only protect partners from liability for claims arising from other partners' negligence or other malpractice. All partners remain jointly and severally liable for other partnership debts, obligations and liabilities. The Ontario LLP follows this model.

More recent common law partnership models of US LLP protect partners from all personal liability, subject to the proviso that a partner is responsible for his or her own negligence or other malpractice or that of a person under his or her direct supervision and control. The New York LLP follows this model.

The corporate model of LLP offers a full liability shield but may leave a partner exposed to personal liability for his own negligence.

We suggest that the justification of a full or partial liability shield be tested by reference to whether consumers retain adequate remedies against the firm.

4.7 **Different models of LLP**

We conclude this analysis of different models of LLP with a reference to Annex 3. Annex 3 summarises the differences among two forms of partnership model - Ontario and New York - and the English corporate model, indicating with a plus and minus sign the pros and cons of each. Later we discuss fine-tuning a partnership model of LLP for Hong Kong by reference to New York and Ontario legislation.

5. CONSUMER INTERESTS

5.1 Balancing the interests

Those who want to undertake business with joint and several liability for the acts and omissions of their partners cannot be allowed to limit their liability unless the interests of those with whom they do business are adequately protected.

Hitherto Hong Kong has required certain professionals to carry on business with unlimited liability.

New rules allowing solicitors to practise through solicitor corporations suggest that Hong Kong has satisfied itself that a limitation on liability of solicitors is consistent with consumer interests.

In this section, we state why we believe allowing professionals to practise through LLPs can give adequate protection to the interests of those with whom they do business. We then touch on whether non-professionals should be allowed to practise through LLPs.

5.2 Motivation

Professional people will be no less motivated to meet the standards their clients require of them if they practise through an LLP. A partner's negligence could result in the ruin of the firm and all partners losing their capital and goodwill in the firm. The negligent partner could be bankrupted by a personal suit and therefore unable to practise.

A partnership model of LLP would leave the negligent partner with contractual and tortious liability for his own negligence. Not only does it protect the clients but the innocent partners. A corporate model would protect the negligent partner from contractual liability but leave him exposed to a claim in tort.

5.3 Insurance and capital

A firm will therefore be no less motivated to sustain its business as a going concern and buy appropriate levels of insurance if it becomes an LLP.

Professional regulators may set their own requirements for a firm's professional indemnity insurance and there is no reason why such requirements should be any different for an LLP.

- Some of the earlier LLP statutes enacted in the United States required an LLP to have insurance or an escrow account to cover liabilities as to which partners do not have personal responsibility. More recent US LLP statutes typically do not mandate insurance, but instead leave insurance issues to the statutes governing the relevant practitioners¹⁸.
- The Ontario legislation on LLPs says the professional body governing the relevant LLP must establish minimum insurance requirements. The Law Society of Upper Canada does not require a lawyer practising through an LLP to have more than the CAN\$1million cover that is the minimum for all lawyers.
- Jersey requires that its LLPs maintain £5million in escrow to meet debts arising on its dissolution.
- The English LLPA does not require an LLP to buy insurance, leaving such matters to those who regulate the partners of the LLP.

¹⁸ Limited Liability Partnerships and Limited Liability Limited Partnerships by J. William Callison Esq.

Caron Wishart of the Lawyers' Professional Indemnity Company in Ontario confirms that the company's claims portfolio has not changed since the introduction of LLPs, nor have LLPs had an impact on the types or size of claims.

It seems unnecessary for Hong Kong legislation on LLPs to require a certain level of asset backing, either through specifying levels of insurance cover or capital contributions from partners. Those who deal with an LLP - or a partnership - are at liberty to make enquiries about the adequacy of the firm's assets and, if they are not satisfied, to deal with competitors or require greater protection. An LLP could respond by buying more insurance or agreeing that partners will be personally responsible for a particular transaction, for example by guaranteeing the firm's bank borrowings.

5.4 Professional regulation

Professional regulators would retain responsibility for setting standards of conduct, investigating allegations of misconduct and applying penalties for breach of their rules.

Professional regulators are likely to have to adapt their rules to accommodate LLPs. The Law Society of England and Wales has made detailed rules for this purpose, drawing from its rules for incorporated practice. The new rules are therefore somewhat complicated but do not change the substance of the regulations governing solicitors in general partnership. The Law Society of Upper Canada has made simple changes to its by-laws to accommodate Ontario's partnership model of LLPs. These are shown in Annex 4.

5.5 Disclosure

Those who deal with the LLP will know that partners' liability is limited because of the LLP suffix to the firm's name.

Good business practice would lead a firm to publicise its conversion among those with whom it does business. Professional regulators may require that the firm inform its clients of its conversion¹⁹.

5.6 Pre-conversion liability

A firm's conversion to an LLP will not affect partners' responsibility for the acts and omissions of the firm and its partners before conversion.

5.7 Liquidation

A Hong Kong partnership model of LLP would be dissolved under the Partnership Ordinance (as appropriately amended). The current legislation gives third parties priority over partners' claims to the firm's assets. Partners may therefore have to forfeit their undistributed profits and capital if the firm's assets are insufficient to pay the firm's creditors²⁰.

The UK's corporate model of LLP enables partners to claim amounts that the firm owes them alongside third parties' claims to be paid. The UK LLP is not subject to rules on maintenance of capital of the kind that applies to a company but partners can be subject to rules which allow the liquidator to claw back property, including partnership profits, which a partner has withdrawn from the LLP in the two years before an insolvent liquidation. These powers are additional to those that arise from UK company legislation relating to "wrongful trading", which are absent from Hong Kong company legislation.

¹⁹ As in Ontario. See Annex 4 for the Law Society of Upper Canada's sample disclosure letter.

²⁰ Section 46 of the Partnership Ordinance

5.8 **Negotiated protection**

Banks, landlords and other suppliers of an LLP are free to insist that partners concede individual liability to them by contract.

The extent to which suppliers do so will depend on the model of LLP. Some partnership models of LLP only shield partners from liability for the negligence of other partners, so partners would remain jointly and severally liable to their suppliers.

Suppliers to LLPs which confer a broader shield may seek recourse against individual partners in the form of guarantees of specific obligations.

The legislation on New York LLPs allows partners by at least a majority to agree that their liability shield will not apply to a specific obligation.

5.9 **Conclusions: professional LLPs**

Anecdotal evidence from law firms that have become LLPs suggest that their standards remain as high, clients have not objected and the firms remain robust. For the reasons set out above, we suggest that allowing professional LLPs in Hong Kong - either partnership model or the corporate model - is not inconsistent with consumer interests.

5.10 **Should LLPs be for professionals only?**

Some states only allow professionals to practise through LLPs. The United States are divided on the issue with more recent LLP statutes tending to allow any business to practise through an LLP.

Canadian LLPs are only available to professionals.

The UK LLP is available to any trade, profession or occupation. We suggest that if Hong Kong agrees to adopt LLPs, there is no reason why this should only be available to professionals but this is a public policy matter for government. The LLP could offer a useful model of practice for all businesses and entrepreneurs. In the UK the great majority of the 5,000 LLPs registered are for trading activities such as marketing, joint ventures, property development and agricultural cooperatives, rather than for professional partnerships²¹.

We see no reason to reserve the LLP to professionals. The public is accustomed to dealing with businesses with limited liability. Hong Kong law would give customers of non-professional LLPs remedies against the LLP in contract and against a partner culpable of negligence or otherwise. Regulators and trade associations might require and enforce special standards of conduct through, for example, industry regulation of an LLP that is an insurance broker or trade regulation of an LLP that fits gas appliances.

6. **A NEW LLP FOR HONG KONG: THE ONTARIO CUM NEW YORK MODEL**

We believe that the model of LLP that would best suit Hong Kong would be the Ontario model with the full liability shield conferred by the New York model. We call this the Ontario cum New York model.

The Ontario cum New York model would fulfil our criteria in the following ways.

²¹ Per Legal Week, 11 December 2003.

6.1 **First criterion: protection of partners from personal liability for the acts and omissions of other partners**

The Ontario cum New York model would protect partners from all personal liability, subject to the proviso that a partner is responsible for his or her own negligence.

Some US jurisdictions, including New York, add a proviso that a partner is responsible for the negligence or other malpractice of the person under his or her direct supervision and control. The statutes do not define "direct supervision and control" and the expression creates uncertainty²². We do not believe this second proviso is necessary. Common law would generally attach fault to a partner with ostensible responsibility for negligent advice whether the partner actually gave the negligent advice or not, subject to the usual conditions that establish whether the partner is liable in tort.

The "cum New York" feature of the model we propose is that, subject to the proviso that a partner is responsible for his or her own negligence, partners are protected from all personal liability. This contrasts with the Ontario model, which only protects partners from the consequences of other partners' negligence.

The imperfection of the partnership model is that partners might be vulnerable to claims against their assets under non-Hong Kong law, as described in paragraph 4.5.1. In paragraph 4.4 we discussed whether we should propose a Hong Kong partnership model of LLP that would have legal personality in order to help partners resist such claims. We concluded that we should resist this temptation for the reasons set out in paragraph 4.4.5. The vulnerability of a Hong Kong partner's assets in these circumstances depends on whether the Hong Kong court would enforce the foreign court's judgment that he or she is liable in damages. We believe that, for most Hong Kong law firms, this shortcoming is worth living with.

- It is not a concern for law firms that advise only under Hong Kong law and the law of jurisdictions which would respect Hong Kong law's limitation on partners' liability.
- While the corporate model of LLP should provide a surer shield against claims under non-Hong Kong law, its disadvantages outweigh this advantage. As judged by the remaining criteria, the Ontario cum New York model is superior.

6.2 **Second criterion: familiarity**

The Ontario Partnerships Act is a close descendent of the English Partnership Act 1890 and therefore closely resembles the Partnership Ordinance.

An LLP based on the Ontario cum New York model would offer a familiar entity that would allow the partnership culture to flourish and need not significantly disturb the firm's legal structure, management structure or partnership agreement.

A converting firm would want to review its partnership agreement and, in the light of the partners' limited liability, amend provisions relating to:

- partners' liability for losses: it should follow from the LLP status that partners do not expect their liability to exceed their share of partnership assets, including capital
- a negligent partner's right to indemnity
- the obligation of other partners to contribute if a partner has a right to indemnity.

²² As discussed, for example, in *Limited Liability Partnerships & Limited Liability Limited Partnership* by J. William Callison.

6.3 **Third criterion: privacy**

The Ontario cum New York LLP would have to register under the Business Registration Ordinance. The firm would be able to keep its affairs confidential.

6.4 **Fourth criterion: tax treatment**

The Ontario cum New York model of LLP should be treated like a partnership for tax purposes wherever the firm operates.

6.5 **Fifth criterion: straightforward conversion**

The Ontario cum New York model of LLP would achieve conversion by agreement among the partners.

6.6 **Sixth criterion: simple legislation**

The legislation for the Ontario cum New York model of LLP would require simple amendments to the Partnership Ordinance²³. We suggest the amendments in Annex 5. The Law society might wish to make minor amendments to the rules of the Law Society²⁴.

6.7 **Seventh criterion: preservation of consumer interests**

We suggest that the framework within which the Ontario cum New York model of LLP would operate in Hong Kong appropriately addresses consumer interests.

7. **CONCLUSIONS**

We conclude that it is in Hong Kong's interests to change the Partnership Ordinance to allow a new form of practice: the limited liability partnership.

We believe that the LLP should be available to all but leave government to judge whether only professionals should be able to practise through LLPs.

Having surveyed different legislative frameworks for the Hong Kong LLP, we recommend a framework which requires few changes to the existing law and leaves professional regulators able to set their own standards of conduct.

Members of the Working Party on Limited Liability Partnership:

Denis Brock (Chairman)

David Hirsch

Andrew Jeffries

Allan Leung

Joseph Li

Janice Chan (Secretary) (Assistant Director, Regulation and Guidance)

This paper is not legal advice. It may therefore not be construed as legal advice of any member of the working party or of the firms they come from.

²³ The changes would be much less extensive than those required to allow solicitor corporations because the latter have to accommodate practice through a new type of entity with its own legal personality (as would those relating to a corporate model LLP).

²⁴ E.g. confirm that solicitors may practise through LLPs and to cover notification of LLP status to clients.



LIMITED LIABILITY PARTNERSHIP

Report of the Working Party on Limited Liability Partnership

List of Annexes

1. Contribution to Hong Kong's GDP by Solicitors' Firms and Barristers Chambers
2. Singapore's plans to attract international professional services firms
3. Comparison of Ontario, New York and English LLPs
4. Law Society of Upper Canada: by-law for Ontario LLPs
5. Limited Liability Partnerships Ordinance (Draft) for Hong Kong
6. Ontario cum New York model: additional questions for legislature
7. Partnerships Act, R.S.O. 1990 (Ontario) (marked up with amended provisions on LLP)
8. Bill 6 1998 (Ontario)
9. Section 26, Article 3, New York State Consolidated Laws on Partnership
10. Article 8-B, Registered Limited Liability Partnerships, New York State Consolidated Laws on Partnership
11. Section 12, Partnership Act, Alberta
12. Partnership Ordinance in Hong Kong (Cap. 38)
13. Limited Partnerships Ordinance (Cap. 37)

**Value added contribution by establishments* engaged
in the provision of legal services in Hong Kong**

	<u>Value added</u> (HK\$ Mn)	<u>% change</u> <u>over a year earlier</u>	<u>% contribution</u> <u>to GDP</u>
1990	4,754	4.3	0.8
1991	5,887	23.8	0.9
1992	5,914	0.5	0.8
1993	6,301	6.5	0.7
1994	8,361	32.7	0.9
1995	6,507	-22.2	0.6
1996	8,015	23.2	0.7
1997	9,583	19.6	0.8
1998	7,286	-24.0	0.6
1999	6,446	-11.5	0.5
2000	6,978	8.3	0.6
2001	6,597	-5.5	0.5
2002	6,522	-1.1	0.5

Notes : (*) Establishments include solicitors and barristers firms in Hong Kong.

Source : GDP by economic activity





BACK TO: [Home](#) | [In the News](#) | [Media Releases](#) | [2004](#)

Annex 2

In the News

Launch of Expansion Incentive for Partnership tax incentive scheme and refinements to Regional Headquarters Award to boost Singapore's attractiveness as a regional business location

DATE 31 Mar 2004

Seven new International Headquarters Award recipients from manufacturing to emerging sectors such as food services and non-profit sectors attest to vibrancy of HQ environment in Singapore

Questions about EDB?
Email or call us at
(65) 6336 2286

Related links
[Headquarters Service](#)

1. Seven companies from a variety of sectors were presented with the International Headquarters (IHQ) award by the Singapore Economic Development Board (EDB) today. Minister of State for Trade & Industry and National Development, Dr Vivian Balakrishnan presented the IHQ award at a combined HQ ceremony to the recipients. The seven companies were BreadTalk Pte Ltd, Cuno Filtration Asia Pte Ltd, Emerson Process Management Asia Pacific Pte Ltd, Helen Keller International Asia Pacific, Informatics Holdings Ltd, Integra Holdings Private Limited and Mercury Marine Singapore Pte Ltd (see Annex B for company details). Together, these companies will generate an additional total business spending of \$140 million annually and employ some 1,200 skilled and professional workers when their business projects are fully implemented.
2. A strong base of professional services companies is also needed to complement the business activities of a vibrant and growing community of HQs. As part of EDB's concerted efforts to develop this industry, a new Expansion Incentive for Partnerships (EIP) programme for audit, accounting and law firms has been launched. This programme allows such firms, typically constituted as partnerships, to enjoy a 50% tax exemption on the qualifying overseas income above a pre-determined base. Previously, tax incentives were only available to manufacturing and services corporations. The EIP programme aims to encourage audit, accounting and law firms to use Singapore as their central business hub to develop their business and proficiencies locally and service the regional market from here.
3. EDB remains committed to developing Singapore as the foremost global business location and has put in place new measures for this. In the recent Budget 2004, it was announced that the Regional Headquarters (RHQ) award programme given out to smaller niche companies will be enhanced. The maximum duration of the RHQ scheme will be extended from a period of 3 to 5 years, allowing companies to enjoy a preferential tax rate of 15% for a longer period. The RHQ award criteria have also been broadened to allow all companies operating in Singapore to be eligible. These changes, together with the IHQ award programme, which is a customised incentive package for companies with substantial level of headquarters activities in Singapore, will allow EDB to cater to the business needs of a wider spectrum of HQs, big and small, local and foreign, from across industries.
4. In highlighting these new initiatives, Dr Vivian Balakrishnan said, "The new EIP Programme and the enhancements to the RHQ programme will strengthen Singapore's position as an international hub for HQ activities. These programmes, together with our excellent global connectivity, strong IP protection, legal and financial infrastructure will enhance our ability to better engage and service the more than 7,000 international companies that are based here. Singapore is the ideal location for companies to base their nerve centres in order to tap into the region's resources and to interact with other international and local businesses."
5. The diverse nature of these new HQ investments, from traditional areas of manufacturing excellence to new emerging areas such as food and non-profit sectors affirms Singapore's universal appeal as an attractive HQ location across industries. These seven companies join a growing base of companies who have located their global and regional HQs in Singapore and have made Singapore their decision-making centre to manage their businesses in the Asia-Pacific region and beyond. To date, there are over 4,000 multinational corporations with HQ operations in Singapore. Of these, EDB has granted 280 headquarters awards since the programme's inception in 1986.

-- END --

For media enquiries, pls call Ms Sharon Ang, Marketing Communications at Tel: 6832 6087 (DID) 9005 4818 (HP) or email: sharon_ang@edb.gov.sg

[Annex A - Quotes from Award Recipients](#)

[Annex B - Company Profiles of Award Recipients](#)

www.edb.com/edbcorp/sg/en/uk/index/in_the_news/press-releases/2004/launch-of-expansion-hq.html

Handwritten scribble

Handwritten mark

Handwritten scribble

Handwritten mark

Comparison of Ontario LLP, New York LLP and English LLP

	Ontario LLP	Pro + Con -	New York LLP	Pro + Con -	English LLP	Pro + Con -
Legal personality	No		No, but some aspects of personality		Yes	
Tax	Generally treated like a partnership for tax purposes	+	Generally treated like a partnership for tax purposes	+	Might be taxed like a company outside UK (extra tax)	-
Legislation	Based on partnership law	+	Based on partnership law	+	Based on company legislation (complex)	-
Conversion process	Agreement among partners	+	Registration as LLP (continuity)	+	Partners transfer business to newly incorporated LLP (transfer of assets and liabilities: time-consuming process; taxable transfer outside UK?)	-
Publicity requirements	Registration under Business Names Act 1998 No requirement for personal details or accounts Firm must show it is LLP, not partnership	+	Registration renewable every five years No requirement for personal details or accounts Firm must show it is LLP, not partnership	+	File names and addresses of partners, annual accounts and information about partners' remuneration Firm must show it is LLP, not partnership	-
Liability shield	Narrow and may not be recognised outside jurisdiction Partners only shielded from liability for others' malpractice	-	Broad but may not be recognised outside jurisdiction Negligent partner is responsible for own malpractice Partners can elect to waive liability shield	-	Broad Negligent partner may be liable in tort	+

10/1/05

Comparison of Ontario LLP, New York LLP and English LLP

Use	For authorised professionals only		For authorised professionals only		For any trade, profession or occupation	
-----	-----------------------------------	--	-----------------------------------	--	---	--

http://www.lsuc.on.ca/services/services_liability_en.jsp

Practising in Ontario

Limited Liability Partnerships

The Governance Scheme

Amendments to the *Partnerships Act* in force in July 1998 permit professions to practice in the form of limited liability partnerships. Unlike a general partnership, where the partners are liable for debts and liabilities arising from the negligent acts of all partners, the partners in a limited liability partnership are not personally liable for the negligent acts of another partner or an employee who is directly supervised by another partner. However, the partnership assets continue to be at risk for the negligence of the partners and employees.

The *Partnerships Act* establishes the following requirements for professions wishing to practice as LLPs:

- * the act governing the profession must expressly permit practice as an LLP;
- * the partnership must register its firm name under the *Business Names Act*; and
- * the professional governing body must establish minimum liability insurance requirements for the LLP.

The *Partnerships Statute Law Amendment Act, 1998* (Bill 6) which amends the *Partnerships Act* respecting LLPs may be found at The Legislative Assembly of Ontario website at www.ontle.on.ca.

The *Law Society Act* permits lawyers to practice as limited liability partnerships. The registration of the business name of the firm as "LLP" is a requirement of the *Partnerships Act*. The final requirement of the minimum level of insurance for LLPs is in By-Law 26. By-Law 26 also requires lawyers to disclose to the clients of the LLP the nature of the limitation on the liability of the partners. The text of By-law 26 appears below, with relevant commentary.

BY-LAW 26

LIMITED LIABILITY PARTNERSHIPS

PROFESSIONAL LIABILITY INSURANCE

Insurance requirements

1. A limited liability partnership shall maintain professional liability insurance coverage for each partner in accordance with By-Law 16.

This section of the by-law establishes the minimum insurance required by a law firm practising as an LLP to be the coverage now maintained individually by each member who is a partner of the firm. This is currently in the amount of \$1,000,000 per member. Accordingly, the requirements in s. 44.2(b) of the *Partnerships Act* would be met by requiring the LLP to maintain the coverage that members who are partners maintain pursuant to By-Law 16 on Professional Liability Levies. Section 1 of the by-law focuses on the fact that the partners are essentially the partnership and that it is the partnership's obligation, in the language of the *Partnerships Act*, to ensure that the insurance at the member level is maintained for each partner to satisfy the requirement. The reference to By-Law 16, which requires all members practising law to pay the insurance levy for professional liability coverage, effectively links the scheme to the level of insurance currently carried by members individually. This provision, notwithstanding that for LLPs it is the partnership that is required to maintain the coverage for the partners, in no way operates to derogate from the obligation of members individually to comply with the requirements of By-Law 16 to pay the insurance levy.

DISCLOSURE

Partnership continued as limited liability partnership

2. (1) When a partnership is continued as a limited liability partnership, as soon as is reasonably practical after the continuance of the partnership as a limited liability partnership, the limited liability partnership shall disclose to each person who was a client immediately before the continuance and who remains a client after the continuance the liability of the partners of the limited liability partnership under the *Partnerships Act*.

(2) A limited liability partnership satisfies the disclosure requirement under subsection (1) if it publishes in a local newspaper notice of the matters set out in subsection (1).

(3) In subsection (2), "local newspaper" means any newspaper distributed in the area in which the limited liability partnership carries on business.

While disclosure of the fact that a firm is an LLP and the effect of the limitation of partners' liability is not a legislative requirement that must be enacted by a profession, the Law Society believes it is appropriate as a matter of professional responsibility that at a minimum, clients be told of the nature of the limited liability of the partners resulting from the new practice structure. Although public notice is effectively accomplished through the registration as an LLP under the *Business Names Act*, clients, within the general public, maintain unique relationships with law firms. Accordingly the by-law obliges lawyers to make the appropriate disclosure to clients at the time a firm continues as a LLP.

If a written form of notice to clients is to be sent, law firms are encouraged to design their own communications respecting the disclosure requirement and customize them as they see fit for their particular clients. To the extent that lawyers may find it useful, a sample letter, appearing below, may be considered an example of a communication on disclosure.

Sample Disclosure Letter for LLPs

Dear Client:

Effective (date), the firm of — has become a limited liability partnership, as permitted by amendments to the *Partnerships Act* and the *Law Society Act*. The firm is now known as — LLP.

As the name suggests, the partnership carries on the practice of law with a degree of limited liability. The partners in a limited liability partnership are not personally liable for the negligent acts of another partner or an employee who is directly supervised by another partner. Each partner is personally liable for his or her own actions and for the actions of those he or she directly supervises and controls. The partnership continues to be liable for the negligence of its partners, associates and employees, and accordingly there is no reduction or limitation on the liability of the partnership. All of the firm's assets remain at risk.

Liability insurance protection for the members of the partnership continues, and minimum insurance requirements, as required by the *Partnerships Act*, have been established for LLPs by the Law Society. The Law Society has determined that the liability insurance coverage for an LLP is that maintained individually by the partners.

The limitation on liability is the only change to the partnership resulting from the legislative amendments and this change will not affect our firm's relationship with you as a client. We would be happy to answer any questions you have about our limited liability partnership.

Firms may also choose to publish a notice in a local newspaper as provided in subsection 2(2) of the by-law. Such notices should be complete and clear enough for clients to understand the nature of the limitation on the liability of the firm.

Taxation Issues

Law firms should consult with their tax advisors with respect to any tax consequences that may flow from continuance of a general partnership as an LLP, or any other matters that may impact on the firm because of the new practice structure.

Limited Liability Partnerships Ordinance (Draft)

LIMITED LIABILITY PARTNERSHIPS

To establish limited liability partnerships.

[]

1. Short title

This Ordinance may be cited as the Limited Liability Partnerships Ordinance.

2. Interpretation

- (1) “foreign limited liability partnership” means a limited liability partnership formed under the laws of another jurisdiction.¹
- (2) “limited liability partnership” means a partnership, other than a limited partnership, that is formed or continued as a limited liability partnership under section 8 or 9.²

3. Application

This Ordinance shall apply to partnerships carrying on business in Hong Kong.³

4. Constitution of limited liability partnerships

Limited liability partnerships may be formed in the manner and subject to the conditions by this Ordinance provided.⁴

¹ See article “Limited Liability Partnerships & Limited Liability Limited Partnerships”, J. William Callison, p.3 II(e)

² Bill 6, para.1

³ s2, Limited Partnerships Ordinance, Hong Kong

⁴ s3(1), Limited Partnerships Ordinance

5. Law as to private partnership to apply

Subject to the provisions of this Ordinance, the Partnership Ordinance (Cap. 38), and rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the Partnership Ordinance, shall apply to limited liability partnerships that are not foreign limited liability partnerships.^{5 6}

6. Liability of partners

- (1) Subject to subsection (2), a partner in a limited liability partnership is not liable, by means of indemnification, contribution, assessment or otherwise, for debts, obligations and liabilities of the partnership or any partner,⁷ whether arising in tort, contract or otherwise, which are incurred, created or assumed by the partnership or any partner while the partnership is a limited liability partnership solely by reason of being a partner or acting (or omitting to act) in that capacity or rendering professional services or otherwise participating in the conduct of other business or activities of the limited liability partnership.⁸
- (2) Subsection (1) does not affect the liability of a partner in a limited liability partnership for the partner's own negligence⁹ or any wrongful act or misconduct committed by him or her while rendering professional services on behalf of the limited liability partnership.¹⁰
- (3) A partner in a limited liability partnership is not a proper party to a proceeding by or against the limited liability partnership for the purpose of recovering damages or enforcing obligations¹¹ arising out of debts, obligations or liabilities for which, because of subsection (1), he is not liable.
- (4) The protection from liability given to a partner by subsection (1) shall not be construed as offering any protection from claims against the partner's interest in the partnership property¹².
- (5) This section does not apply to a foreign limited liability partnership.

⁵ s.6, Limited Partnerships Ordinance;

⁶ s.45, Partnerships Act, RSO 1990, Ontario

⁷ Bill 6, para 2(2)

⁸ s26(b), Article 3 of New York State Consolidated Laws on Partnership

⁹ Bill 6, para 2(2)

¹⁰ s26(c)(i), Article 3 of New York State Consolidated Laws on Partnership

¹¹ Bill 6, para 2(2)

¹² s.12, Partnership Act, Alberta

7. Rules as to interests and duties of partners¹³

- (1) Subject to any agreement, express or implied, between the partners, a partner in a limited liability partnership shall not be liable to pay or contribute toward losses arising from a liability for which the partner is not liable under section 6; and
- (2) a partner in a limited liability partnership is not required to indemnify the firm or other partners in respect of debts or obligations of the partnership for which a partner is not liable under section 6.

8. Formation of Limited Liability Partnerships

A limited liability partnership that is not a foreign limited liability partnership is formed when two or more persons enter into a written agreement that,

- (a) designates the partnership as a limited liability partnership; and
- (b) states that this Ordinance governs the agreement.¹⁴

9. Continuance of Limited Liability Partnerships

A partnership that is not a foreign limited liability partnership, may be continued as a limited liability partnership if all of the partners,

- (a) enter into an agreement that continues the partnership as a limited liability partnership and states that this Ordinance governs the agreement; or
- (b) if there is an existing agreement between the partners that forms the partnership, amend the agreement to designate the partnership as a limited liability partnership and to state that this Ordinance governs the agreement.¹⁵

10. Effect of continuance

Upon the continuance of a partnership as a limited liability partnership under section 9,

¹³ Bill 6, para 4; s24(1) and (2.1) of Partnerships Act, R.S.O. 1990

¹⁴ Bill 6, para.6 , 44.1(1)

¹⁵ Bill 6, para.6 , 44.1(2)

Limited Liability Partnerships Ordinance (Draft)

- (a) the limited liability partnership possesses all the property, rights and privileges and is subject to all liabilities, including civil and criminal and all contracts, disabilities and debts of the partnership which were in existence immediately before the continuance; and
- (b) all persons who were partners immediately before the continuance remain liable for all debts, obligations and liabilities of the partnership that arose before the continuance.¹⁶

11. Registration of business name

No limited liability partnership formed or continued by an agreement governed by this Ordinance shall carry on business unless it has registered its firm name in accordance with the Business Registration Ordinance (Cap 310).

12. Name of limited liability partnerships

The name of a limited liability partnership mentioned in section 11 shall contain the words "limited liability partnership" or the abbreviations "LLP" or "L.L.P." as the last words or letters of its name.¹⁷

13. Foreign limited liability partnerships

- (1) No foreign limited liability partnership shall carry on business in Hong Kong unless it has registered in accordance with the Business Registration Ordinance.
- (2) To amend or cancel a registration of its firm name, a foreign limited liability partnership shall register an amendment or cancellation of a registration in accordance with the Business Registration Ordinance.
- (3) The laws of the jurisdiction under which a foreign limited liability partnership is formed shall govern,
 - (a) its organisation and internal affairs; and
 - (b) the liability of its partners for debts, obligations and liabilities of or chargeable to the partnership or any of its partners.

¹⁶ Bill 6, para 6, 44.1 (3)

¹⁷ Bill 6, para 6, 44.3 (3)

Limited Liability Partnerships Ordinance (Draft)

- (4) Subsection (3)(b) shall not limit the liability of a partner in a foreign limited liability partnership for tort under the law of Hong Kong.
- (5) Every foreign limited liability partnership shall,
 - (a) conspicuously exhibit on every place where it carries on business in Hong Kong the name of the foreign limited liability partnership and the country or territory in which it is formed; and
 - (b) cause the name of the foreign limited liability partnership and the country or territory in which it is formed to be stated in legible letters in all bill-heads and letter paper, and in all notices and other official publications of the foreign limited liability partnership.
- (6) A person may serve a notice or document on a foreign limited liability partnership at its Hong Kong place of business, if any, or its address required to be maintained under the laws of the jurisdiction of formation or its principal office address.
- (7) The name of a foreign limited liability partnership shall contain the words “limited liability partnership” or the abbreviations “LLP” or “L.L.P.” as the last words or letters of its name.



LIMITED LIABILITY PARTNERSHIP

Report of the Working Party on Limited Liability Partnership

ONTARIO CUM NEW YORK MODEL: ADDITIONAL QUESTIONS FOR LEGISLATURE

In the previous annex we have proposed simple legislation for a Hong Kong LLP, believing its simplicity is one of its virtues.

In our paper we mention features of partnership models of LLP which, while not essential, might attract the legislature. This annex summaries alternative options.

1. The LLP legislation might allow majority of partners to agree that all or specified partners are liable for all or specified debts of the partnership, as in section 26(d) of the New York State Consolidated Laws on Partnership.

This provision could give the LLP valuable flexibility insofar as majority of partners could waive partners' protection from liability.

New York law requires the LLP's registration to state whether all or specified partners are liable as authorised section 26(d).

2. Our legislation follows the Ontario model insofar as it provides that:

- a foreign LLP must register under the Business Registration Ordinance before it can carry on business in Hong Kong
- the law of the foreign LLP governs its organization and internal affairs and the liability of its partners for debts, obligations and liabilities of the firm and its partners.

We thought Hong Kong would want foreign LLPs to register, and the recognition of their law is a *quid pro quo*. The legislature my wish to consider whether to reply on the Hong Kong doctrine of conflict of law rather than recognise the foreign law of the LLP. As there is uncertainty about the applicable doctrine, we thought that the clear recognition of the foreign law was helpful.

3. In the light of our conclusion in paragraph 5.10, we have departed from the precedent of Ontario and New York law by not limiting the Hong Kong LLP to professional practice.
4. We have disregarded the Ontario Partnerships Act by not requiring that the Hong Kong LLP have minimum levels of insurance cover. This is consistent with our conclusions that regulators or market forces will ensure the LLP is appropriately insured.



Partnerships Act

R.S.O. 1990, CHAPTER P.5

Notice of Currency: * This document is up to date

* This notice is usually current to within two business days of accessing this document. For more current amendment information, see the Table of Public Statutes (Legislative History).

Amended by: 1998, c. 2, ss. 1-8; 1999, c. 6, s. 52.

Skip Table of Contents

CONTENTS

1. Definitions

Nature of Partnership

2. Partnership
3. Rules for determining existence of partnership
4. Insolvency
5. Meaning of "firm"

Relation of Partners to Persons Dealing with Them

6. Power of partner to bind firm
7. Partners bound by acts on behalf of firm
8. Partner using credit of firm for private purposes
9. Effect of notice that firm not bound by act of partner
10. Liability of partners
11. Liability of firm for wrongs
12. Misapplication of money or property received for or in custody of the firm
13. Liability for wrongs joint and several
14. Improper employment of trust property for partnership purposes
15. Persons liable by "holding out"
16. Admission and representations of partners
17. Notice to acting partner to be notice to the firm
18. Liability commences with admission to firm
19. Revocation of continuing guaranty by change in firm

Relation of Partners to One Another

20. Variation by consent of terms of partnership
21. Partnership property
22. Property bought with partnership money
23. Conversion of land bought with partnership money into personalty
24. Rules as to interests and duties of partners
25. Expulsion of partner
26. Retirement from partnership at will

27. Presumption of continuance after expiry of term
28. Duty as to rendering accounts
29. Accountability for private profits
30. Duty of partner not to compete with firm
31. Rights of assignee of share in partnership

Dissolution of Partnership

32. Dissolution by expiry of term or notice
33. Dissolution by death or insolvency of partner
34. By illegality of business
35. By the court
36. Rights of persons dealing with firm against apparent members
37. Right to give notice of dissolution
38. Continuing authority of partners for purposes of winding up
39. Rights of partners as to application of partnership property
40. Apportionment of premium on premature dissolution
41. Rights where partnership dissolved for fraud or misrepresentations
42. Right of outgoing partner as to share in profits after dissolution
43. Retiring or deceased partner's share to be a debt
44. Rules for distribution of assets on final settlement of accounts

Limited Liability Partnerships

- 44.1 Formation
- 44.2 Limitation on business activity
- 44.3 Business name
- 44.4 Extra-provincial limited liability partnerships

General

45. Saving as to rules of equity and common law
46. Construction

Definitions

1.(1) In this Act,

“business” includes every trade, occupation and profession; (“entreprise”)

“court” includes every court and judge having jurisdiction in the case; (“tribunal”)

“extra-provincial limited liability partnership” means a limited liability partnership formed under the laws of another jurisdiction but does not include an extra-provincial limited partnership within the meaning of the Limited Partnerships Act; (“Societe a responsabilite limitee extraprovinciale”)

“limited liability partnership” means a partnership, other than a limited partnership, that is formed or continued as a limited liability partnership under 44.1 or that is an extra-provincial limited liability partnership. (“societe a responsabilite limitee”) R.S.O. 1990, c.P.5, s.1(1), 1998, c.2, s.1

Idem

(2) A person is deemed to be “insolvent” within the meaning of this Act if the person is adjudged a bankrupt under the Bankruptcy Act (Canada) or if the person makes an assignment for the general benefit of his or her creditors, and “insolvency” has a meaning corresponding with “insolvent”. R.S.O. 1990, c. P.5, s.1(2).

Nature of Partnership

Partnership

2. Partnership is the relation that subsists between persons carrying on a business in common with a view to profit, but the relation between the members of a company or association that is incorporated by or under the authority of any special or general Act in force in Ontario or elsewhere, or registered as a corporation under any such Act, is not a partnership within the meaning of this Act. R.S.O. 1990, c. P.5, s.2.

Rules for determining existence of partnership

3. In determining whether a partnership does or does not exist, regard shall be had to the following rules:

1. Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

2. The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

Partnerships Act , R.S.O. 1990, c.

3. The receipt by a person of a share of the profits of a business is proof, in the absence of evidence to the contrary, that the person is a partner in the business, but the receipt of such a share or payment, contingent on or varying with the profits or a business, does not of itself make him or her a partner in the business, and in particular,

(a) the receipt by a person of a debt or other liquidated amount by installments or otherwise out of the accruing profits of a business does not of itself make him or her a partner in the business or liable as such;

(b) a contract for the remuneration of a servant or agent or a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;

(c) a person who,

(i) was married to a deceased partner immediately before the deceased partner died,

(ii) was living with a deceased partner of the opposite sex or the same sex in a conjugal relationship outside marriage immediately before the deceased partner died, or

(iii) is a child of a deceased partner,

and who receives by way of annuity a portion of the profits made in the business in which the deceased partner was a partner is not by reason only of such receipt a partner in the business or liable as such;

(d) the advance of money by way of loan to a person engaged or about to engage in a business on a contract with that person that the lender is to receive a rate of interest varying with the profits, or is to receive a share of the profits arising from carrying on the business, does not itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing and signed by or on behalf of all parties thereto;

(e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him or her of the goodwill of the business, is not by reason only of such receipt a partner in the business or liable as such. R.S.O. 1990, c. P.5, s.3; 1999, c.6, s.52.

Insolvency

4. In the event of a person to whom money has been advanced by way of loan upon such a contract as is mentioned in Rule 3, or of a buyer of the goodwill in consideration of a share of the profits of the business, becoming insolvent or entering into an arrangement to pay his or her creditors less than 100 cents on the dollar or dying in insolvent circumstances, the lender of the loan is not entitled to recover anything in respect of the loan, and the seller of the goodwill is not entitled to recover anything in respect of the share of profits contracted for,

until the claims of the other creditors of the borrower or buyer, for valuable consideration in money or money's worth, are satisfied. R.S.O.1990, c. P.5, s.4.

Meaning of “firm”

5. Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm, and the name under which their business is carried on is called the firm name. R.S.O.1990, c. P.5, s.5.

Relation of Partners to Persons Dealing with Them

Power of partner to bind firm

6. Every partner is an agent of the firm and of the other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he or she is a member, bind the firm and the other partners unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom the partner is dealing either knows that the partner has no authority, or does not know or believe him or her to be a partner. R.S.O.1990, c. P.5, s.6.

Partners bound by acts on behalf of firm

7. An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm by a person thereto authorized, whether a partner or not, is binding on the firm and all the partners, but this section does not affect any general rule of law relating to the execution of deeds or negotiable instruments. R.S.O.1990, c. P.5, s.7.

Partner using credit of firm for private purposes

8. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he or she is in fact specially authorized by the other partners, but this section does not affect any personal liability incurred by an individual partner. R.S.O.1990, c. P.5, s.8.

Effect of notice that firm not bound by act of partner

9. If it is agreed between the partners to restrict the power of any one or more of them to bind the firm, no act done in contravention to the agreement is binding on the firm with respect to persons having notice of the agreement. R.S.O.1990, c. P.5, s.9.

Liability of partners

10.(1) **Except as provided in subsection (2)**, every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while the person is a partner, and after the partner's death the partner's estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject to the prior payment of his or her separate debts. R.S.O.1990, c. P.5, s.10; 1998, c.2, s.2(1).

Limited liability partnerships

(2) Subject to subsection (3), a partner in a limited liability partnership is not liable, by means of indemnification, contribution, assessment or otherwise, for debts, obligations and liabilities of the partnership or any partner arising from negligent acts or omissions that another partner or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership. 1998, c.2, s.2(2).

Liability of negligent partner

(3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the partner's own negligence or the negligence of a person under the partner's direct supervision or control. 1998, c.2, s.2(2).

Partner not proper party to action

(4) A partner in a limited liability partnership is not a proper party to a proceeding by or against the limited liability partnership for the purpose of recovering damages or enforcing obligations arising out of the negligent acts or omissions described in subsection (2). 1998, c.2, s.2(2).

Extra-provincial limited liability partnerships

(5) This section does not apply to extra-provincial limited liability partnership. 1998, c.2, s.2(2).

Liability of firm for wrongs

11. Where by any wrongful act or omission of a partner acting in the ordinary course of the business of the firm, or with the authority of the co-partners, loss or injury is caused to a person not being a partner of the firm, or any penalty is incurred, the firm is liable therefore to the same extent as the partner so acting or omitting to act. R.S.O.1990, c. P.5, s.11.

Misapplication of money or property received for or in custody of the firm

12. In the following cases, namely,

- (a) where one partner, acting within the scope of the partner's apparent authority, receives the money or property of a third person and misapplies it; and
- (b) where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss. R.S.O.1990, c. P.5, s.12.

Liability for wrongs joint and several

13. **Except as provided in subsection 10(2)**, every partner is liable jointly with the co-partners and also severally for everything for which the firm, while the person is a partner therein, becomes liable under section 11 or 12. R.S.O.1990, c. P.5, s.13; 1998, c.2, s.3.

Improper employment of trust property for partnership purposes

14. If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein, but,

(a) this section does not affect any liability incurred by any partner by reason of the partner having notice of a breach of trust; and

(b) nothing in this section prevents trust money from being followed and recovered from the firm if still in its possession or under its control. R.S.O.1990, c. P.5, s.14.

Persons liable by “holding out”

15. (1) Every person, who by words spoken or written or by conduct represents himself or herself or who knowingly suffers himself or herself to be represented as a partner in a particular firm, is liable as a partner to any person who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the persons so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made. R.S.O.1990, c. P.5, s.15(1).

Continuing business after death of partner

(2) Where after a partner’s death the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner’s name as part thereof does not of itself make his or her executor’s or administrator’s estate or effects liable for any partnership debts contracted after his or her death. R.S.O. 1990, c. P.5, s.15(2).

Admissions and representations of partners

16. An admission or representation made by a partner concerning the partnership affairs and in the ordinary course of its business is evidence against the firm. R.S.O.1990, c. P.5, s.16.

Notice to acting partner to be notice to the firm

17. Notice to a partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. R.S.O.1990, c. P.5, s.17.

Liability commences with admission to firm

18. (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before the person became a partner. R.S.O.1990, c. P.5, s.18(1).

Liability for debts, etc., incurred before retirement

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before the partner's retirement. R.S.O.1990, c. P.5, s.18(2).

Agreement discharging retiring partner

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between the partner and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. R.S.O.1990, c. P.5, s.18(3).

Revocation of continuing guaranty by change in firm

19. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transaction of which, the guaranty or obligation was given. R.S.O.1990, c. P.5, s.19.

Relation of Partners to One Another

Variation by consent of terms of partnership

20. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing. R.S.O.1990, c. P.5, s.20.

Partnership property

21. (1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act "partnership

property”, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement. R.S.O.1990, c. P.5, s.21(1).

Devolution of land

(2) The legal estate or interest in land that belongs to a partnership devolves according to the nature and tenure thereof and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section. R.S.O.1990, c. P.5, s.21(2).

Co-owners of land

(3) Where co-owners of an estate or interest in land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of purchase. R.S.O.1990, c. P.5, s.21(3).

Property bought with partnership money

22. Unless the contrary intention appears, property bought with money belonging to the firm shall be deemed to have been bought on the account of the firm. R.S.O.1990, c. P.5, s.22.

Conversion of land bought with partnership money into personalty

23. Where land or any heritable interest therein becomes partnership property, unless the contrary intention appears, it is to be treated as between the partners, including the representatives of a deceased partner, and also as between the heirs of a deceased partner and his or her executors or administrators as personal or movable and not real or heritable estate. R.S.O.1990, c. P.5, s.23.

Rules as to interests and duties of partners

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

1. All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm, but a partner shall not be liable to contribute toward losses arising from a liability for which the partner is not liable under subsection 10(2).

2. The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him or her,

(a) in the ordinary and proper conduct of the business of the firm; or

Partnerships Act , R.S.O. 1990, c.

(b) in or about anything necessarily done for the preservation of the business or property of the firm.

2.1 A partner is not required to indemnify the firm or other partners in respect of debts or obligations of the partnership for which a partner is not liable under subsection 10(2).

3. A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital that he or she has agreed to subscribe is entitled to interest at the rate of 5 per cent per annum from the date of the payment or advance.
4. a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by the partner.
5. Every partner may take part in the management of the partnership business.
6. No partner is entitled to remuneration for acting in the partnership business.
7. No person may be introduced as a partner without the consent of all existing partners.
8. Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.
9. The partnership books are to be kept at the place of business of the partnership, or the principal place, if there is more than one, and every partner may, when he or she thinks fit, have access to and inspect and copy any of them. R.S.O.1990, c. P.5, s. 24; 1998, c.2, s.4.

Expulsion of partner

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners. R.S.O.1990, c. P.5, s.25.

Retirement from partnership at will

26. (1) Where no fixed term is agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his or her intention to do so to all the other partners. R.S.O.1990, c. P.5, s.26(1).

Notice of retirement

(2) Where the partnership was originally constituted by deed, a notice in writing, signed by the partner giving it, is sufficient for that purpose. R.S.O.1990, c. P.5, s.26(2).

Presumption of continuance after expiry of term

27. (1) Where a partnership entered into for a fixed term is continued after the term has expired and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will. R.S.O.1990, c. P.5, s.27(1).

Arises from continuance of business

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs shall be presumed to be a continuance of the partnership. R.S.O.1990, c. P.5, s.27(2).

Duty as to rendering accounts

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or the partner's legal representatives. R.S.O.1990, c. P.5, s.28.

Accountability for private profits

29. (1) Every partner must account to the firm for any benefit derived by the partner without the consent of the other partners from any transaction concerning the partnership or from any use by the partner of the partnership property, name or business connection. R.S.O.1990, c. P.5, s.29(1).

Extends to survivors and representatives of deceased

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner and before its affairs have been completely wound up, either by a surviving partner or by the representatives of the deceased partner. R.S.O.1990, c. P.5, s.29(2).

Duty of partner not to compete with firm

30. If a partner, without the consent of the other partners, carries on a business of the same nature as and competing with that of the firm, the partner must account for and pay over to the firm all profits made by the partner in that business. R.S.O.1990, c. P.5, s.30.

Rights of assignee of share in partnership

31. (1) An assignment by a partner of the partner's share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners. R.S.O.1990, c. P.5, s.31(1).

On dissolution

(2) In the case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between the assigning partner and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution. R.S.O.1990, c. P.5, s.31(2).

Dissolution of Partnership

Dissolution by expiry of term or notice

32. Subject to any agreement between the partners, a partnership is dissolved,

(a) if entered into for a fixed term, by the expiration of that term;

(b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or

(c) if entered into for an undefined time, by a partner giving notice to the other or others of his or her intention to dissolve the partnership, in which case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice. R.S.O.1990, c. P.5, s.32.

Dissolution by death or insolvency of partner

33. (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or insolvency of a partner. R.S.O.1990, c. P.5, s.33(1).

Where partner's share charged for separate debt

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers that partner's share of the partnership property to be charged under this Act for that partner's separate debt. R.S.O. 1990, c. P.5, s.33(2).

By illegality of business

34. A partnership is in every case dissolved by the happening of any event that makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership. R.S.O.1990, c. P.5, s.34.

By the court

35. On application by a partner, the court may order a dissolution of the partnership,

(a) when a partner is found mentally incompetent by inquisition or is shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his or her committee or litigation guardian or person having title to intervene as by any other partner;

(b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing the partner's part of the partnership contract;

(c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;

(d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself or herself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with the partner;

(e) when the business of the partnership can only be carried on at a loss; or

(f) when in any case circumstances have arisen that in the opinion of the court render it just and equitable that the partnership be dissolved. R.S.O.1990, c. P.5, s.35.

Rights of persons dealing with firm against apparent members

36. (1) Where a person deals with a firm after a change in its constitution, the person is entitled to treat all apparent members of the old firm as still being members of the firm until the person has notice of the change. R.S.O.1990, c. P.5, s.36(1).

Notice

(2) An advertisement in The Ontario Gazette shall be notice as to persons who had not dealings with the firm before the dissolution or change so advertised. R.S.O.1990, c. P.5, s.36(2).

Estate of dead of insolvent partner, how far liable

(3) The estate of a partner who dies, or who becomes insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, insolvency, or retirement. R.S.O.1990, c. P.5, S.36(3).

Right to give notice of dissolution

37. On the dissolution of a partnership or retirement of a partner, any partner may publicly give notice of the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, that cannot be done without his, her or their concurrence. R.S.O.1990, c. P.5, s.37.

Continuing authority of partners for purposes of winding up

38. After the dissolution of a partnership, the authority of each partner to bind the firm and the other rights and obligations of the partners continue despite the dissolution so far as is necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise; provided that the firm is in no case bound by the acts of a partner who has become insolvent; but this proviso does not affect the liability of a person who has, after the insolvency, represented himself or herself or knowingly suffered himself or herself to be represented as a partner of the insolvent. R.S.O.1990, c. P.5, s.38.

Rights of partners as to application of partnership property

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or the partner's representative may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm. R.S.O.1990, c. P.5, s.39.

Apportionment of premium on premature dissolution

40. Where one partner paid a premium to another on entering into a partnership for a fixed term and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless,

(a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or

(b) the partnership has been dissolved by an agreement containing no provision for a return of a part of the premium. R.S.O.1990, c. P.5, s.40.

Rights where partnership dissolved for fraud or misrepresentations

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

(a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by the party for the purchase of a share in the partnership and for any capital contributed by him or her; and

(b) to stand in the place of the creditors of the firm for any payments made by the party in respect of the partnership liabilities; and

(c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm. R.S.O.1990, c. P.5, s.41.

Right of outgoing partner as to share in profits after dissolution

42. (1) Where any member of a firm dies or otherwise ceases to be a partner and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his or her estate, then, in the absence of an agreement to the contrary, the outgoing partner or his or her estate is entitled, at the option of the outgoing partner or his or her representatives, to such share of the profits made since the dissolution as the court finds to be attributable to the use of the outgoing partner's share of the partnership assets, or to interest at the rate of 5 per cent per annum on the amount of his or her share of the partnership assets. R.S.O.1990, c. P.5, s.42(1).

Proviso as to option of remaining partners to purchase share

(2) Where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his or her estate, as the case may be, is not entitled to any further or other share of profits, but if any partner, assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, he or she is liable to account under the foregoing provisions of this section. R.S.O.1990, c. P.5, s.42(2).

Retiring or deceased partner's share to be a debt

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death. R.S.O.1990, c. P.5, s.43.

Rules for distribution of assets on final settlement of accounts

44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

1. Losses, including losses and deficiencies of capital, are to be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits, but a partner is not required to pay any loss arising from a liability for which the partner is not liable under subsection 10(2).

2. the assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, are to be applied in the following manner and order,

(a) in paying the debts and liabilities of the firm to persons who are not partners therein;

(b) in paying to each partner rateably what is due from the firm to him or her for advances as distinguished from capital;

(c) in paying to each partner rateably what is due from the firm to him or her in respect of capital.

(3) After making the payments required by paragraph 2, the ultimate residue, if any, is to be divided among the partners in the proportion in which profits are divisible. R.S.O.1990, c. P.5, s.44; 1998, c.2, s.5.

Limited Liability Partnerships

Formation

44.1 (1) A limited liability partnership that is not an extra-provincial limited liability partnership is formed when two or more persons enter into a written agreement that,

(a) designates the partnership as a limited liability partnership; and

(b) states that this Act governs the agreement. 1998, c.2, s.6.

Continuance

(2) A partnership may be continued as a limited liability partnership that is not an extra-provincial limited liability partnership if all of the partners,

(a) enter into an agreement that continues the partnership as a limited liability partnership and states that this Act governs the agreement; or

(b) if there is an existing agreement between the partners that forms the partnership, amend the agreement to designate the partnership as a limited liability partnership and to state that this Act governs the agreement. 1998, c.2, s.6.

Effect of continuance

(3) Upon the continuance of a partnership as a limited liability partnership under subsection (2).

(a) the limited liability partnership possesses all the property, rights, privileges and franchises and is subject to all liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of the partnership which were in existence immediately before the continuance; and

(b) all persons who were partners immediately before the continuance remain liable for all debts, obligations and liabilities of the partnership or all partners with respect to the other partners that arose before the continuance. 1998, c.2, s.6.

Limitation on business activity

44.2 A limited liability partnership may carry on business in Ontario only for the purpose of practising a profession governed by an Act and only if:

(a) that Act expressly permits limited liability partnership to practise profession;

(b) the governing body of the profession requires the partnership to maintain a minimum amount of liability insurance; and

(c) the partnership complies with section 44.3 if it is not an extra-provincial limited liability partnership or section 44.4 if it is an extra-provincial limited liability partnership. 1998, c.2, s.6.

Business name

44.3 (1) No limited liability partnership formed or continued by an agreement governed by this Act shall carry on business unless it has registered its firm name under the Business Names Act. 1998, c.2, s.6.

Amendments, cancellations and renewals

(2) To amend, renew or cancel a registration of its firm name, a limited liability partnership mentioned in subsection (1) shall register an amendment, renewal or cancellation of a registration in accordance with the requirements of the Business Names Act. 1998, c.2, s.6.

Name

(3) The name of a limited liability partnership mentioned in subsection (1) shall contain the words "limited liability partnership" or "societe a responsabilite limitee" or the abbreviations "LLP", "L.L.P." or "s.r.l." as the last words or letters of its name. 1998, c.2, s.6.

Use of registered name only

(4) No limited liability partnership mentioned in subsection (1) shall carry on business under a name other than its registered firm name. 1998, c.2, s.6.

Right to carry on business outside of Ontario

(5) Nothing in this Act prevents a limited liability partnership mentioned in subsection (1) from carrying on its business and exercising its powers in any province or territory of Canada or any other country. 1998, c.2, s.6.

Extra-provincial limited liability partnerships

44.4 (1) No extra-provincial limited liability partnership shall carry on business in Ontario unless it has registered its name under the Business Names Act. 1998, c.2, s.7.

Amendments, cancellations and renewals

(2) To amend, renew or cancel a registration of its firm name, an extra-provincial limited liability partnership shall register an amendment, renewal or cancellation of a registration in accordance with the requirements of the Business Names Act. 1998, c.2, s.7.

Use of registered name only

(3) No extra-provincial limited liability partnership shall carry on business under a name other than its registered firm name. 1998, c.2, s.7.

Laws of other jurisdiction

(4) The laws of the jurisdiction under which an extra-provincial limited liability partnership is formed shall govern:

(a) its organisation and internal affairs; and

(b) the liability of its partners for debts, obligations and liabilities of or chargeable to the partnership or any of its partners. 1998, c.2, s.7.

Service

(5) A person may serve a notice or document on an extra-provincial limited liability partnership at its Ontario place of business, if any, or its address required to be maintained under the laws of the jurisdiction of formation or its principal office address. 1998, c.2, s.7.

General

Saving as to rules of equity and common law

45. The rules of equity and of common law applicable to partnership continue in force, except so far as they are inconsistent with the express provisions of this Act. R.S.O.1990, c.P.5, s.45.

Construction

46. This Act is to be read and construed as subject to the Limited Partnerships Act and the Business Names Act. R.S.O.1990, c. P.5, s.46.

Bill 6 1998

An Act to amend the law with respect to Partnerships

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PARTNERSHIPS ACT

1. Subsection 1(1) of the Partnerships Act is amended by adding the following definitions:

““extra-provincial limited liability partnership” means a limited liability partnership formed under the laws of another jurisdiction but does not include an extra-provincial limited partnership within the meaning of the Limited Partnerships Act; (“Societe a responsabilitate limitee extraprovinciale”)

“limited liability partnership” means a partnership, other than a limited partnership, that is formed or continued as a limited liability partnership under 44.1 or that is an extra-provincial limited liability partnership. (“societe a responsabilitate limitee”)

2. (1) Section 10 of the Act is amended by adding at the beginning “Except as provided in subsection (2)”.

(2) Section 10 of the Act is amended by adding the following subsections:

“Limited liability partnerships

(2) Subject to subsection (3), a partner in a limited liability partnership is not liable, by means of indemnification, contribution, assessment or otherwise, for debts, obligations and liabilities of the partnership or any partner arising from negligent acts or omissions that another partner or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership.

Liability of negligent partner

(3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the partner’s own negligence or the negligence of a person under the partner’s direct supervision or control.

Partner not proper party to action

(4) A partner in a limited liability partnership is not a proper party to a proceeding by or against the limited liability partnership for the purpose of recovering damages or enforcing obligations arising out of the negligent acts or omissions described in subsection (2).

Extra-provincial limited liability partnerships

(5) This section does not apply to extra-provincial limited liability partnership."

3. Section 13 of the Act is amended by adding at the beginning "Except as provided in subsection 10(2)".

4. (1) Paragraph 1 of section 24 of the Act is repealed and the following substituted:

"1. All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm, but a partner shall not be liable to contribute toward losses arising from a liability for which the partner is not liable under subsection 10(2)."

(2) Section 24 of the Act is amended by adding the following paragraph:

"2.1 A partner is not required to indemnify the firm or other partners in respect of debts or obligations of the partnership for which a partner is not liable under subsection 10(2)."

5. Paragraph 1 of section 44 of the Act is repealed and the following substituted:

"1. Losses, including losses and deficiencies of capital, are to be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits, but a partner is not required to pay any loss arising from a liability for which the partner is not liable under subsection 10(2)."

6. The Act is amended by adding the following sections:

"Limited Liability Partnerships

Formation

44.1 (1) A limited liability partnership that is not an extra-provincial limited liability partnership is formed when two or more persons enter into a written agreement that,

(a) designates the partnership as a limited liability partnership; and

(b) states that this Act governs the agreement.

Continuance

(2) A partnership may be continued as a limited liability partnership that is not an extra-provincial limited liability partnership if all of the partners,

(a) enter into an agreement that continues the partnership as a limited liability partnership and states that this Act governs the agreement; or

(b) if there is an existing agreement between the partners that forms the partnership, amend the agreement to designate the partnership as a limited liability partnership and to state that this Act governs the agreement.

Effect of continuance

(3) Upon the continuance of a partnership as a limited liability partnership under subsection (2),

(a) the limited liability partnership possesses all the property, rights, privileges and franchises and is subject to all liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of the partnership which were in existence immediately before the continuance; and

(b) all persons who were partners immediately before the continuance remain liable for all debts, obligations and liabilities of the partnership or all partners with respect to the other partners that arose before the continuance.

Limitation on business activity

44.2 A limited liability partnership may carry on business in Ontario only for the purpose of practising a profession governed by an Act and only if,

(a) that Act expressly permits limited liability partnership to practise profession;

(b) the governing body of the profession requires the partnership to maintain a minimum amount of liability insurance; and

(c) the partnership complies with section 44.3 if it is not an extra-provincial limited liability partnership or section 44.4 if it is an extra-provincial limited liability partnership.

Business name

44.3 (1) No limited liability partnership formed or continued by an agreement governed by this Act shall carry on business unless it has registered its firm name under the Business Names Act.

Amendments, cancellations and renewals

(2) To amend, renew or cancel a registration of its firm name, a limited liability partnership mentioned in subsection (1) shall register an amendment, renewal or cancellation of a registration in accordance with the requirements of the Business Names Act.

Name

(3) The name of a limited liability partnership mentioned in subsection (1) shall contain the words "limited Liability partnership" or "societe a responsabilite limitee" or the abbreviations "LLP", "L.L.P." or "s.r.l." as the last words or letters of its name.

Use of registered name only

(4) No limited liability partnership mentioned in subsection (1) shall carry on business under a name other than its registered firm name.

Right to carry on business outside of Ontario

(5) Nothing in this Act prevents a limited liability partnership mentioned in subsection (1) from carrying on its business and exercising its powers in any province or territory of Canada or any other country."

7. The Act is amended by adding the following section:

"Extra-provincial limited liability partnerships

44.4 (1) No extra-provincial limited liability partnership shall carry on business in Ontario unless it has registered its name under the Business Names Act.

Amendments, cancellations and renewals

(2) To amend, renew or cancel a registration of its firm name, an extra-provincial limited liability partnership shall register an amendment, renewal or cancellation of a registration in accordance with the requirements of the Business Names Act.

Use of registered name only

(3) No extra-provincial limited liability partnership shall carry on business under a name other than its registered firm name.

Laws of other jurisdiction

(4) The laws of the jurisdiction under which an extra-provincial limited liability partnership is formed shall govern,

(a) its organisation and internal affairs; and

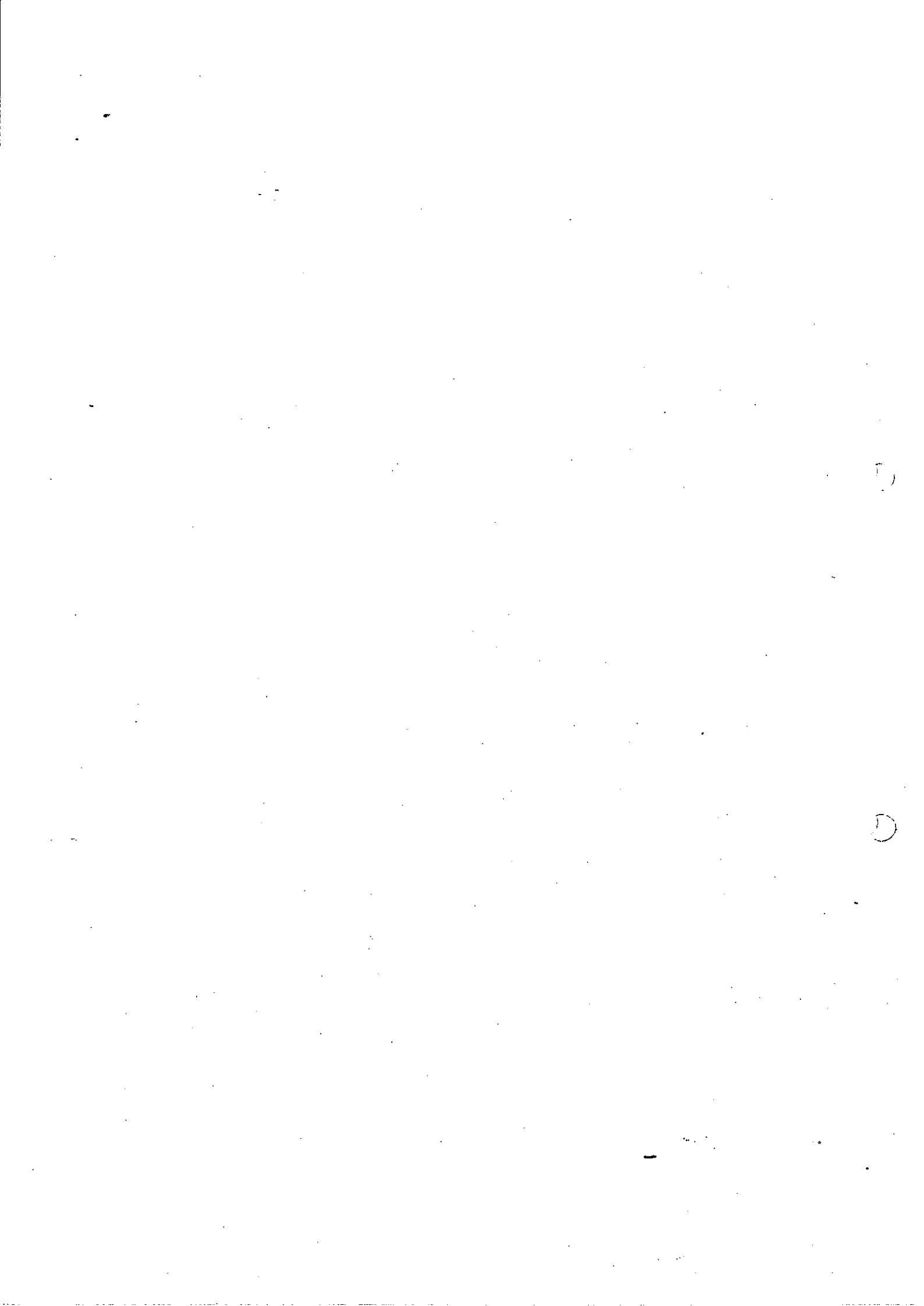
(b) the liability of its partners for debts, obligations and liabilities of or chargeable to the partnership or any of its partners.

Service

(5) A person may serve a notice or document on an extra-provincial limited liability partnership at its Ontario place of business, if any, or its address required to be maintained under the laws of the jurisdiction of formation or its principal office address.”

8. The Act is amended by adding the following heading immediately before section 45:

“General”



Annex 9

 New York State Assembly Logo

Wednesday, May 26, 2004

New York State Consolidated Laws

[Back](#) | [New York State Laws](#) | [Assembly Home](#)

Partnership

ARTICLE 3.

RELATIONS OF PARTNERS TO PERSONS DEALING
WITH THE PARTNERSHIP.

- Section 20. Partner agent of partnership as to partnership business.
21. Conveyance of real property of the partnership.
 22. Partnership bound by admission of partner.
 23. Partnership charged with knowledge of or notice to partner.
 24. Partnership bound by partner's wrongful act.
 25. Partnership bound by partner's breach of trust.
 - ✓ 26. Nature of partner's liability.
 27. Partner by estoppel.
 28. Liability of incoming partner.

S 20. Partner agent of partnership as to partnership business. 1. Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

2. An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

3. Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

- (a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership.
- (b) Dispose of the good-will of the business.
- (c) Do any other act which would make it impossible to carry on the ordinary business of the partnership.
- (d) Confess a judgment.
- (e) Submit a partnership claim or liability to arbitration or reference.

4. No act of a partner in contravention of a restriction on his authority shall bind the partnership to persons having knowledge of the restriction.

S 21. Conveyance of real property of the partnership. 1. Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of subdivision one of section twenty, or unless such property has been conveyed by the grantee or a

person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

2. Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subdivision one of section twenty.

3. Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of subdivision one of section twenty, unless the purchaser or his assignee is a holder for value, without knowledge.

4. Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subdivision one of section twenty.

5. Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

S 22. Partnership bound by admission of partner. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

S 23. Partnership charged with knowledge of or notice to partner. Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

S 24. Partnership bound by partner's wrongful act. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership, or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

S 25. Partnership bound by partner's breach of trust. The partnership is bound to make good the loss:

1. Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

2. Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

S 26. Nature of partner's liability. (a) Except as provided in subdivision (b) of this section, all partners are liable:

1. Jointly and severally for everything chargeable to the partnership under sections twenty-four and twenty-five.

2. Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

(b) Except as provided by subdivisions (c) and (d) of this section, no partner of a partnership which is a registered limited liability partnership is liable or accountable, directly or indirectly (including by way of indemnification, contribution or otherwise), for any debts, obligations or liabilities of, or chargeable to, the registered limited liability partnership or each other, whether arising in tort, contract or otherwise, which are incurred, created or assumed by such partnership while such partnership is a registered limited liability partnership, solely by reason of being such a partner or acting (or omitting to act) in such capacity or rendering professional services or otherwise participating (as an employee, consultant, contractor or otherwise) in the conduct of the other business or activities of the registered limited liability partnership.

(c) Notwithstanding the provisions of subdivision (b) of this section, (i) each partner, employee or agent of a partnership which is a registered limited liability partnership shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services on behalf of such registered limited liability partnership and (ii) each shareholder, director, officer, member, manager, partner, employee and agent of a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership that is a partner, employee or agent of a partnership which is a registered limited liability partnership shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services in his or her capacity as a partner, employee or agent of such registered limited liability partnership. The relationship of a professional to a registered limited liability partnership with which such professional is associated, whether as a partner, employee or agent, shall not modify or diminish the jurisdiction over such professional of the licensing authority and in the case of an attorney and counsellor-at-law or a professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership, foreign professional service corporation or professional partnership, engaged in the practice of law, the other courts of this state.

(d) Notwithstanding the provisions of subdivision (b) of this section, all or specified partners of a partnership which is a registered limited liability partnership may be liable in their capacity as partners for all or specified debts, obligations or liabilities of a registered limited liability partnership to the extent at least a majority of the partners shall have agreed unless otherwise provided in any agreement between the partners. Any such agreement may be modified or revoked to the extent at least a majority of the partners shall have agreed, unless otherwise provided in any agreement between the partners; provided, however, that (i) any such modification or revocation shall not affect the liability of a partner for any debts, obligations or liabilities of a registered limited liability partnership incurred, created or assumed by such registered limited liability partnership prior to such modification or revocation and (ii) a partner shall be liable for debts,

obligations and liabilities of the registered limited liability partnership incurred, created or assumed after such modification or revocation only in accordance with this article and, if such agreement is further modified, such agreement as so further modified but only to the extent not inconsistent with subdivision (c) of this section. Nothing in this section shall in any way affect or impair the ability of a partner to act as a guarantor or surety for, provide collateral for or otherwise be liable for, the debts, obligations or liabilities of a registered limited liability partnership.

(e) Subdivision (b) of this section shall not affect the liability of a registered limited liability partnership out of partnership assets for partnership debts, obligations and liabilities.

(f) Neither the withdrawal or revocation of a registered limited liability partnership pursuant to subdivision (f) or (g), respectively, of section 121-1500 of this chapter nor the dissolution, winding up or termination of a registered limited liability partnership shall affect the applicability of the provisions of subdivision (b) of this section for any debt, obligation or liability incurred, created or assumed while the partnership was a registered limited liability partnership.

S 27. Partner by estoppel. 1. When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

2. When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

S 28. Liability of incoming partner. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that his liability shall be satisfied only out of partnership property.

Contact Webmaster

Thursday, May 20, 2004

New York State Consolidated Laws[Back](#) | [New York State Laws](#) | [Assembly Home](#)**Partnership**

ARTICLE 8-B

REGISTERED LIMITED LIABILITY PARTNERSHIPS

- Section 121-1500. Registered limited liability partnership.
121-1501. Name of registered limited liability partnership.
121-1502. New York registered foreign limited liability partnership.
121-1503. Transaction of business outside the state.
121-1504. Foreign related limited liability partnership.
121-1505. Service of process.
121-1506. Resignation for receipt of process.

S 121-1500. Registered limited liability partnership. (a) Notwithstanding the education law or any other provision of law, (i) a partnership without limited partners each of whose partners is a professional authorized by law to render a professional service within this state and who is or has been engaged in the practice of such profession in such partnership or a predecessor entity, or will engage in the practice of such profession in the registered limited liability partnership within thirty days of the date of the effectiveness of the registration provided for in this subdivision or a partnership without limited partners each of whose partners is a professional, at least one of whom is authorized by law to render a professional service within this state and who is or has been engaged in the practice of such profession in such partnership or a predecessor entity, or will engage in the practice of such profession in the registered limited liability partnership within thirty days of the date of the effectiveness of the registration provided for in this subdivision, (ii) a partnership without limited partners authorized by, or holding a license, certificate, registration or permit issued by the licensing authority pursuant to the education law to render a professional service within this state, which renders or intends to render professional services within this state, or (iii) a related limited liability partnership may register as a registered limited liability partnership by filing with the department of state a registration which shall set forth:

- (1) the name of the registered limited liability partnership;
- (2) the address of the principal office of the partnership without limited partners;
- (3) the profession or professions to be practiced by such partnership without limited partners and a statement that it is eligible to register as a registered limited liability partnership pursuant to subdivision (a) of this section;
- (4) a designation of the secretary of state as agent of the partnership without limited partners upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it or served upon it;

- (5) if the partnership without limited partners is to have a registered agent, its name and address in this state and a statement that the registered agent is to be the agent of the partnership without limited partners upon whom process against it may be served;
- (6) that the partnership without limited partners is filing a registration for status as a registered limited liability partnership;
- (7) if the registration of the partnership without limited partners is to be effective on a date later than the time of filing, the date, not to exceed sixty days from the date of such filing, of such proposed effectiveness;
- (8) if all or specified partners of the registered limited liability partnership are to be liable in their capacity as partners for all or specified debts, obligations or liabilities of the registered limited liability partnership as authorized pursuant to subdivision (d) of section twenty-six of this chapter, a statement that all or specified partners are so liable for such debts, obligations or liabilities in their capacity as partners of the registered limited liability partnership as authorized pursuant to subdivision (d) of section twenty-six of this chapter; and
- (9) any other matters the partnership without limited partners determines to include in the registration.

Within one hundred twenty days after the effective date of the registration, a copy of the same or a notice containing the substance thereof shall be published once in each week for six successive weeks, in two newspapers of the county in which the principal office of the registered limited liability partnership is located in this state, to be designated by the county clerk, one of which newspapers shall be a newspaper published in the city or town in which the principal office within this state is intended to be located, if a newspaper be published therein; or, if no newspaper is published therein, in the newspaper nearest thereto, and proof of such publication by the affidavit of the printer or publisher of each of such newspapers must be filed, with a fee of twenty-five dollars, with the department of state. The notice shall include: (1) the name of the registered limited liability partnership; (2) the date of filing of the registration with the secretary of state; (3) the county within this state, in which the principal office of the registered limited liability partnership is to be located; (4) a statement that the secretary of state has been designated as agent of the registered limited liability partnership upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her; (5) if the registered limited liability partnership is to have a registered agent, his or her name and address within this state and a statement that the registered agent is to be the agent of the registered limited liability partnership upon whom process against it may be served; (6) if the registered limited liability partnership is to have a specific date of dissolution in addition to the events of dissolution set forth in section sixty-two of this chapter, the latest date upon which the registered limited liability partnership is to dissolve; and (7) the character or purpose of the business of such registered limited liability partnership. Failure to cause such notice to be published or to file such proof within one hundred twenty days of the effective date of the registration shall prohibit the registered limited liability partnership from maintaining any action or special proceeding in this state unless and until such registered limited liability partnership causes such notice to be published and files such proof of publication. The failure of a registered limited liability partnership to cause such notice to be published or to file proof of publication shall not impair the validity

of any contract or act of the registered limited liability partnership or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the registered limited liability partnership from defending any action or special proceeding in this state.

(b) The registration shall be executed by one or more partners of the partnership without limited partners.

(c) The registration shall be accompanied by a fee of two hundred dollars.

(d) A partnership without limited partners is registered as a registered limited liability partnership at the time of the payment of the fee required by subdivision (c) of this section and the filing of a completed registration with the department of state or at the later date, if any, specified in such registration, not to exceed sixty days from the date of such filing. A partnership without limited partners that has been registered as a registered limited liability partnership is for all purposes the same entity that existed before the registration and continues to be a partnership without limited partners under the laws of this state. The status of a partnership without limited partners as a registered limited liability partnership shall not be affected by changes in the information stated in the registration after the filing of the registration. If a partnership without limited partners that is a registered limited liability partnership dissolves, a partnership without limited partners which is the successor to such registered limited liability partnership (i) shall not be required to file a new registration and shall be deemed to have filed the registration filed by the registered limited liability partnership pursuant to subdivision (a) of this section, as well as any withdrawal notice filed pursuant to subdivision (f) of this section, any statement or certificate of consent filed pursuant to subdivision (g) of this section or any certificate of amendment filed pursuant to subdivision (j) of this section and (ii) shall be bound by any revocation of registration pursuant to subdivision (g) of this section and any annulment thereof of the dissolved partnership without limited partners that was a registered limited liability partnership. For purposes of this section, a partnership without limited partners is a successor to a partnership without limited partners that was a registered limited liability partnership if a majority of the total interests in the current profits of such successor partnership without limited partners are held by partners of the predecessor partnership without limited partners that was a registered limited liability partnership who were partners of such predecessor partnership immediately prior to the dissolution of such predecessor partnership.

(e) If the signed registration delivered to the department of state for filing complies as to form with the requirements of law and the filing fee required by any statute of this state has been paid, the registration shall be filed and indexed by the department of state.

(f) A registration may be withdrawn by filing with the department of state a written withdrawal notice executed by one or more partners of the registered limited liability partnership, with a filing fee of sixty dollars. A withdrawal notice must include: (i) the name of the registered limited liability partnership (and if it has been changed since registration, the name under which it was registered); (ii) the date the registration was filed with the department of state pursuant to subdivision (a) of this section; (iii) the address of the registered limited liability partnership's principal office; (iv) if the withdrawal of the registered limited liability partnership is to be effective on a date later than the time of filing, the date, not to exceed sixty days from the date of such filing, of such proposed effectiveness; (v) a

statement acknowledging that the withdrawal terminates the partnership's status as a registered limited liability partnership; and (vi) any other information determined by the registered limited liability partnership. A withdrawal notice terminates the status of the partnership as a registered limited liability partnership as of the date of filing the notice or as of the later date, if any, specified in the notice, not to exceed sixty days from the date of such filing. The termination of registration shall not be affected by errors in the information stated in the withdrawal notice. If a registered limited liability partnership is dissolved, it shall within thirty days after the winding up of its affairs is completed file a withdrawal notice pursuant to this subdivision.

(g) Each registered limited liability partnership shall, within sixty days prior to the fifth anniversary of the effective date of its registration and every five years thereafter, furnish a statement to the department of state setting forth: (i) the name of the registered limited liability partnership, (ii) the address of the principal office of the registered limited liability partnership, (iii) the post office address within or without this state to which the secretary of state shall mail a copy of any process accepted against it served upon him or her, which address shall supersede any previous address on file with the department of state for this purpose, and (iv) a statement that it is eligible to register as a registered limited liability partnership pursuant to subdivision (a) of this section. The statement shall be executed by one or more partners of the registered limited liability partnership. The statement shall be accompanied by a fee of twenty dollars. If a registered limited liability partnership shall not timely file the statement required by this subdivision, the department of state may, upon sixty days' notice mailed to the address of such registered limited liability partnership as shown in the last registration or statement or certificate of amendment filed by such registered limited liability partnership, make a proclamation declaring the registration of such registered limited liability partnership to be revoked pursuant to this subdivision. The department of state shall file the original proclamation in its office and shall publish a copy thereof in the state register no later than three months following the date of such proclamation. Upon the publication of such proclamation in the manner aforesaid, the registration of each registered limited liability partnership named in such proclamation shall be deemed revoked without further legal proceedings. Any registered limited liability partnership whose registration was so revoked may file in the department of state a certificate of consent certifying that either a statement required by this subdivision has been filed or accompanies the certificate of consent and all fees imposed under this chapter on the registered limited liability partnership have been paid. The filing of such certificate of consent shall have the effect of annulling all of the proceedings theretofore taken for the revocation of the registration of such registered limited liability partnership under this subdivision and (1) the registered limited liability partnership shall thereupon have such powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published and (2) such publication shall not affect the applicability of the provisions of subdivision (b) of section twenty-six of this chapter to any debt, obligation or liability incurred, created or assumed from the date of publication of the proclamation through the date of the filing of the certificate of consent. The filing of a certificate of consent shall be accompanied by a fee of fifty dollars and if accompanied by a statement, the fee required by this subdivision. If, after the publication of such

proclamation, it shall be determined by the department of state that the name of any registered limited liability partnership was erroneously included in such proclamation, the department of state shall make appropriate entry on its records, which entry shall have the effect of annulling all of the proceedings theretofore taken for the revocation of the registration of such registered limited liability partnership under this subdivision and (A) such registered limited liability partnership shall have such powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published and (B) such publication shall not affect the applicability of the provisions of subdivision (b) of section twenty-six of this chapter to any debt, obligation or liability incurred, created or assumed from the date of publication of the proclamation through the date of the making of the entry on the records of the department of state. Whenever a registered limited liability partnership shall have filed a certificate of consent pursuant to this subdivision or if the name of a registered limited liability partnership was erroneously included in a proclamation and such proclamation was annulled, the department of state shall publish a notice thereof in the state register.

(h) The filing of a withdrawal notice by a registered limited liability partnership pursuant to subdivision (f) of this section, a revocation of registration pursuant to subdivision (g) of this section and the filing of a certificate of amendment pursuant to subdivision (j) of this section shall not affect the applicability of the provisions of subdivision (b) of section twenty-six of this chapter to any debt, obligation or liability incurred, created or assumed while the partnership was a registered limited liability partnership. After a withdrawal or revocation of registration, the partnership without limited partners shall for all purposes remain the same entity that existed during registration and continues to be a partnership without limited partners under the laws of this state.

(i) The department of state shall remove from its active records the registration of a registered limited liability partnership whose registration has been withdrawn or revoked.

(j) A registration or statement filed with the department of state under this section may be amended or corrected by filing with the department of state a certificate of amendment executed by one or more partners of the registered limited liability partnership. No later than ninety days after (i) a change in the name of the registered limited liability partnership or (ii) a partner of the registered limited liability partnership becomes aware that any statement in a registration or statement was false in any material respect when made or that an event has occurred which makes the registration or statement inaccurate in any material respect, the registered limited liability partnership shall file a certificate of amendment. The filing of a certificate of amendment shall be accompanied by a fee of sixty dollars. The certificate of amendment shall set forth: (i) the name of the limited liability partnership and, if it has been changed, the name under which it was registered and (ii) the date of filing its initial registration or statement.

(j-1) A certificate of change which changes only the post office address to which the secretary of state shall mail a copy of any process against a registered limited liability partnership served upon him or the address of the registered agent, provided such address being changed is the address of a person, partnership or corporation whose address, as agent, is the address to be changed or who has been designated as registered agent for such registered limited liability partnership shall be signed and delivered to the department of state by such agent. The

Certificate of change shall set forth: (i) the name of the registered limited liability partnership and, if it has been changed, the name under which it was originally filed with the department of state; (ii) the date of filing of its initial registration or notice statement; (iii) each change effected thereby; (iv) that a notice of the proposed change was mailed to the limited liability partnership by the party signing the certificate not less than thirty days prior to the date of delivery to the department of state and that such limited liability partnership has not objected thereto; and (v) that the party signing the certificate is the agent of such limited liability partnership to whose address the secretary of state is required to mail copies of process or the registered agent, if such be the case. A certificate signed and delivered under this subdivision shall not be deemed to effect a change of location of the office of the limited liability partnership in whose behalf such certificate is filed. The certificate of change shall be accompanied by a fee of five dollars.

(k) The filing of a certificate of amendment pursuant to subdivision (j) of this section with the department of state shall not alter the effective date of the registration being amended or corrected.

(l) Except as otherwise provided in any agreement between the partners, the decision of a partnership without limited partners to file, withdraw or amend a registration pursuant to subdivision (a), (f) or (j), respectively, of this section is an ordinary matter connected with partnership business under subdivision eight of section forty of this chapter.

(m) A registered limited liability partnership, other than a registered limited liability partnership authorized to practice law, shall be under the supervision of the regents of the university of the state of New York and be subject to disciplinary proceedings and penalties in the same manner and to the same extent as is provided with respect to individuals and their licenses, certificates and registrations in title eight of the education law relating to the applicable profession. Notwithstanding the provisions of this subdivision, a registered limited liability partnership authorized to practice medicine shall be subject to the pre-hearing procedures and hearing procedures as are provided with respect to individual physicians and their licenses in title two-A of article two of the public health law. In addition to rendering the professional service or services the partners are authorized to practice in this state, a registered limited liability partnership may carry on, or conduct or transact any other business or activities as to which a partnership without limited partners may be formed. Notwithstanding any other provision of this section, a registered limited liability partnership (i) authorized to practice law may only engage in another profession or business or activities or (ii) which is engaged in a profession or other business or activities other than law may only engage in the practice of law, to the extent not prohibited by any other law of this state or any rule adopted by the appropriate appellate division of the supreme court or the court of appeals. Any registered limited liability partnership may invest its funds in real estate, mortgages, stocks, bonds or any other types of investments.

(n) No registered limited liability partnership may render a professional service except through individuals authorized by law to render such professional service as individuals, provided, that nothing in this chapter shall authorize a registered limited liability partnership to render a professional service in this state except through individuals authorized by law to render such professional service as individuals in this state.

(o) This section shall not repeal, modify or restrict any provision of

the education law or the judiciary law or any rules or regulations adopted thereunder regulating the professions referred to in the education law or the judiciary law except to the extent in conflict herewith.

(p) A certified copy of the registration and of each certificate of amendment shall be filed by the registered limited liability partnership with the licensing authority within thirty days after the filing of such registration or amendment with the department of state.

* (q) Each partner of a registered limited liability partnership formed to provide medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in this state and each partner of a registered limited liability partnership formed to provide dental services in this state must be licensed pursuant to article 133 of the education law to practice dentistry in this state. Each partner of a registered limited liability partnership formed to provide veterinary services in this state shall be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a registered limited liability partnership formed to provide professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state.

* NB Effective until September 1, 2004

* (q) Each partner of a registered limited liability partnership formed to provide medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in this state and each partner of a registered limited liability partnership formed to provide dental services in this state must be licensed pursuant to article 133 of the education law to practice dentistry in this state. Each partner of a registered limited liability partnership formed to provide veterinary services in this state must be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a registered limited liability partnership formed to provide professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. Each partner of a registered limited liability partnership formed to provide licensed clinical social work services in this state must be licensed pursuant to article 154 of the education law to practice clinical social work in this state.

* NB Effective September 1, 2004 until January 1, 2005

* (q) Each partner of a registered limited liability partnership formed to provide medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in this state and each partner of a registered limited liability partnership formed to provide dental services in this state must be licensed pursuant to article 133 of the education law to practice dentistry in this state. Each partner of a registered limited liability partnership formed to provide veterinary services in this state must be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a registered limited liability partnership formed to provide professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. Each partner of a registered limited liability partnership formed to provide licensed clinical social work

services in this state must be licensed pursuant to article 154 of the education law to practice clinical social work in this state. Each partner of a registered limited liability partnership formed to provide creative arts therapy services in this state must be licensed pursuant to article 163 of the education law to practice creative arts therapy in this state. Each partner of a registered limited liability partnership formed to provide marriage and family therapy services in this state must be licensed pursuant to article 163 of the education law to practice marriage and family therapy in this state. Each partner of a registered limited liability partnership formed to provide mental health counseling services in this state must be licensed pursuant to article 163 of the education law to practice mental health counseling in this state. Each partner of a registered limited liability partnership formed to provide psychoanalysis services in this state must be licensed pursuant to article 163 of the education law to practice psychoanalysis in this state.

* NB Effective January 1, 2005

S 121-1501. Name of registered limited liability partnership. The name of each registered limited liability partnership shall contain without abbreviation the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviations "R.L.L.P.", "RLLP", "L.L.P." or "LLP"; provided, however, the partnership may use any such words or abbreviation, without limitation, in addition to its registered name.

S 121-1502. New York registered foreign limited liability partnership. (a) In order for a foreign limited liability partnership to carry on or conduct or transact business or activities as a New York registered foreign limited liability partnership in this state, such foreign limited liability partnership shall file with the department of state a notice which shall set forth: (i) the name under which the foreign limited liability partnership intends to carry on or conduct or transact business or activities in this state; (ii) the date on which and the jurisdiction in which it registered as a limited liability partnership; (iii) the address of the principal office of the foreign limited liability partnership; (iv) the profession or professions to be practiced by such foreign limited liability partnership and a statement that it is a foreign limited liability partnership eligible to file a notice under this chapter; (v) a designation of the secretary of state as agent of the foreign limited liability partnership upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it or served upon it; (vi) if the foreign limited liability partnership is to have a registered agent, its name and address in this state and a statement that the registered agent is to be the agent of the foreign limited liability partnership upon whom process against it may be served; (vii) a statement that its registration as a limited liability partnership is effective in the jurisdiction in which it registered as a limited liability partnership at the time of the filing of such notice; (viii) a statement that the foreign limited liability partnership is filing a notice in order to obtain status as a New York registered foreign limited liability partnership; (ix) if the registration of the foreign limited liability partnership is to be effective on a date later than the time of filing, the date, not to exceed sixty days from the date of filing, of such proposed effectiveness; and (x) any other matters the foreign limited liability partnership determines to include in the notice. Such notice shall be accompanied by either (1) a copy of the last registration or renewal

registration (or similar filing), if any, filed by the foreign limited liability partnership with the jurisdiction where it registered as a limited liability partnership or (2) a certificate, issued by the jurisdiction where it registered as a limited liability partnership, substantially to the effect that such foreign limited liability partnership has filed a registration as a limited liability partnership which is effective on the date of the certificate (if such registration, renewal registration or certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto). Such notice shall also be accompanied by a fee of two hundred fifty dollars.

(b) Without excluding other activities which may not constitute the carrying on or conducting or transacting of business or activities in this state, for purposes of determining whether a foreign limited liability partnership is required to file a notice pursuant to subdivision (a) of this section, a foreign limited liability partnership shall not be considered to be carrying on or conducting or transacting business or activities in this state by reason of carrying on in this state any one or more of the following activities:

- (i) maintaining or defending any action or proceeding, whether judicial, administrative, arbitral or otherwise, or effecting settlement thereof or the settlement of claims or disputes;
- (ii) holding meetings of its partners; or
- (iii) maintaining bank accounts.

The specification in this subdivision does not establish a standard for activities which may subject a foreign limited liability partnership to service of process under this article or any other statute of this state. The filing of a notice pursuant to subdivision (a) of this section by a foreign limited liability partnership shall not by itself be deemed to be evidence that such foreign limited liability partnership is carrying on or conducting or transacting business or activities in this state.

(c) A notice shall be executed by one or more partners of the foreign limited liability partnership.

(d) If a signed notice delivered to the department of state for filing complies as to form with the requirements of law and the filing fee required by any statute of this state has been paid, the notice shall be filed and indexed by the department of state. If a foreign limited liability partnership that is a New York registered foreign limited liability partnership dissolves, a foreign limited liability partnership which is the successor to such New York registered foreign limited liability partnership (i) shall not be required to file a new notice and shall be deemed to have filed the notice filed by the New York registered foreign limited liability partnership pursuant to subdivision (a) of this section, as well as any withdrawal notice filed pursuant to subdivision (e) of this section, any statement or certificate of consent filed pursuant to subdivision (f) of this section and any notice of amendment filed pursuant to subdivision (i) of this section and (ii) shall be bound by any revocation of status pursuant to subdivision (f) of this section and any annulment thereof of the dissolved foreign limited liability partnership that was a New York registered foreign limited liability partnership. For purposes of this section, a foreign limited liability partnership is a successor to a foreign limited liability partnership that was a New York registered foreign limited liability partnership if a majority of the total interests in the current profits of such successor foreign limited liability partnership are held by partners of the predecessor foreign limited liability partnership that was a New York registered foreign limited liability partnership who were partners of such predecessor partnership

Immediately prior to the dissolution of such predecessor partnership.

(e) A notice may be withdrawn by filing with the department of state a written withdrawal notice executed by one or more partners of the New York registered foreign limited liability partnership, with a filing fee of sixty dollars. A withdrawal notice must include: (i) the name or names under which the New York registered foreign limited liability partnership carried on or conducted or transacted business or activities in this state (and if it has been changed since the filing of the notice, the name under which it filed such notice); (ii) the date a notice was filed with the department of state pursuant to subdivision (a) of this section; (iii) the address of the New York registered foreign limited liability partnership's principal office and the jurisdiction in which it is registered as a limited liability partnership; (iv) if the withdrawal of the New York registered foreign limited liability partnership is to be effective on a date later than the time of such filing, the date, not to exceed sixty days from the date of such filing, of such proposed effectiveness; (v) a statement acknowledging that the withdrawal terminates the foreign limited liability partnership's status as a New York registered foreign limited liability partnership; and (vi) any other information determined by the New York registered foreign limited liability partnership. A withdrawal notice terminates the status of the foreign limited liability partnership as a New York registered foreign limited liability partnership as of the date of filing of the notice or as of the later date, if any, specified in the notice, not to exceed sixty days from the date of such filing. The termination of status shall not be affected by errors in the information stated in the withdrawal notice. If a New York registered foreign limited liability partnership ceases to be denominated as a registered limited liability partnership or limited liability partnership under the laws of the jurisdiction governing the agreement under which such New York registered foreign limited liability partnership operates, it shall within thirty days after the occurrence of such event file a withdrawal notice pursuant to this subdivision.

(f) Each New York registered foreign limited liability partnership shall, within sixty days prior to the fifth anniversary of the effective date of its notice and every five years thereafter, furnish a statement to the department of state setting forth: (i) the name under which the New York registered foreign limited liability partnership is carrying on or conducting or transacting business or activities in this state, (ii) the address of the principal office of the New York registered foreign limited liability partnership, (iii) the post office address within or without this state to which the secretary of state shall mail a copy of any process accepted against it served upon him or her, which address shall supersede any previous address on file with the department of state for this purpose, and (iv) a statement that it is a foreign limited liability partnership. The statement shall be executed by one or more partners of the New York registered foreign limited liability partnership. The statement shall be accompanied by a fee of fifty dollars. If a New York registered foreign limited liability partnership shall not timely file the statement required by this subdivision, the department of state may, upon sixty days' notice mailed to the address of such New York registered foreign limited liability partnership as shown in the last notice or statement or certificate of amendment filed by such New York registered foreign limited liability partnership, make a proclamation declaring the status of such New York registered foreign limited liability partnership to be revoked pursuant to this subdivision. The department of state shall file the original proclamation in its office and shall publish a copy thereof in the state register no later than three months following the date of such

proclamation. Upon the publication of such proclamation in the manner aforesaid, the status of each New York registered foreign limited liability partnership named in such proclamation shall be deemed revoked without further legal proceedings. Any New York registered foreign limited liability partnership whose status was so revoked may file in the department of state a certificate of consent certifying that either a statement required by this subdivision has been filed or accompanies the certificate of consent and all fees imposed under this chapter on the New York registered foreign limited liability partnership have been paid. The filing of such certificate of consent shall have the effect of annulling all of the proceedings theretofore taken for the revocation of the status of such New York registered foreign limited liability partnership under this subdivision and (1) the New York registered foreign limited liability partnership shall thereupon have such powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published and (2) such publication shall not affect the applicability of the laws of the jurisdiction governing the agreement under which such New York registered foreign limited liability partnership is operating (including laws governing the liability of partners) to any debt, obligation or liability incurred, created or assumed from the date of publication of the proclamation through the date of the filing of the certificate of consent. The filing of a certificate of consent shall be accompanied by a fee of fifty dollars and if accompanied by a statement, the fee required by this subdivision. If, after the publication of such proclamation, it shall be determined by the department of state that the name of any New York registered foreign limited liability partnership was erroneously included in such proclamation, the department of state shall make appropriate entry on its records, which entry shall have the effect of annulling all of the proceedings theretofore taken for the revocation of the status of such New York registered foreign limited liability partnership under this subdivision and (1) such New York registered foreign limited liability partnership shall have such powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published and (2) such publication shall not affect the applicability of the laws of the jurisdiction governing the agreement under which such New York registered foreign limited liability partnership is operating (including laws governing the liability of partners) to any debt, obligation or liability incurred, created or assumed from the date of publication of the proclamation through the date of the making of the entry on the records of the department of state. Whenever a New York registered foreign limited liability partnership shall have filed a certificate of consent pursuant to this subdivision or if the name of a New York registered foreign limited liability partnership was erroneously included in a proclamation and such proclamation was annulled, the department of state shall publish a notice thereof in the state register.

Within one hundred twenty days after the effective date of the notice filed under subdivision (a) of this section, a copy of the same or a notice containing the substance thereof shall be published once in each week for six successive weeks, in two newspapers of the county within this state in which the principal office of the foreign limited liability partnership is located, to be designated by the county clerk, one of which newspapers shall be a newspaper published in the city or town in which the principal office is intended to be located, if a newspaper be published therein; or, if no newspaper is published therein, in the newspaper nearest thereto, and proof of such publication

of state a notice of amendment executed in accordance with subdivision (c) of this section. No later than ninety days after (i) a change in the name of the New York registered foreign limited liability partnership or (ii) a partner of the New York registered foreign limited liability partnership becomes aware that any statement in a notice or statement was false in any material respect when made or that an event has occurred which makes the notice or statement inaccurate in any material respect, the New York registered foreign limited liability partnership shall file a notice of amendment. The filing of a notice of amendment shall be accompanied by a fee of sixty dollars. The certificate of amendment shall set forth: (i) the name of the limited liability partnership and, if it has been changed, the name under which it originally filed a notice under this section and (ii) the date of filing its initial registration or statement.

(i-1) A certificate of change which changes only the post office address to which the secretary of state shall mail a copy of any process against a New York registered foreign limited liability partnership served upon him or the address of the registered agent, provided such address being changed is the address of a person, partnership or corporation whose address, as agent, is the address to be changed or who has been designated as registered agent of such registered foreign limited liability partnership shall be signed and delivered to the department of state by such agent. The certificate of change shall set forth: (i) the name of the New York registered foreign limited liability partnership; (ii) the date of filing of its initial registration or notice statement; (iii) each change effected thereby; (iv) that a notice of the proposed change was mailed to the limited liability partnership by the party signing the certificate not less than thirty days prior to the date of delivery to the department of state and that such limited liability partnership has not objected thereto; and (v) that the party signing the certificate is the agent of such limited liability partnership to whose address the secretary of state is required to mail copies of process or the registered agent, if such be the case. A certificate signed and delivered under this subdivision shall not be deemed to effect a change of location of the office of the limited liability partnership in whose behalf such certificate is filed. The certificate of change shall be accompanied by a fee of five dollars.

(j) The filing of a notice of amendment pursuant to subdivision (i) of this section with the department of state shall not alter the effective date of the notice being amended or corrected.

(k) Each foreign limited liability partnership carrying on or conducting or transacting business or activities in this state shall use a name which contains without abbreviation the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviations "R.L.L.P.", "RLLP", "P.L.L.", "PLL", "L.L.P." or "LLP"; provided, however, the partnership may use any such words or abbreviation, without limitation, in addition to its registered name.

(l) Subject to the constitution of this state, the laws of the jurisdiction that govern a foreign limited liability partnership shall determine its internal affairs and the liability of partners for debts, obligations and liabilities of, or chargeable to, the foreign limited liability partnership; provided that (i) each partner, employee or agent of a foreign limited liability partnership who performs professional services in this state on behalf of such foreign limited liability partnership shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering such professional services in this state and shall bear professional responsibility for compliance by such foreign limited

liability partnership with all laws, rules and regulations governing the practice of a profession in this state and (ii) each shareholder, director, officer, member, manager, partner, employee or agent of a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership that is a partner, employee or agent of a foreign limited liability partnership who performs professional services in this state on behalf of such foreign limited liability partnership shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services in this state in his or her capacity as a partner, employee or agent of such foreign limited liability partnership and shall bear professional responsibility for compliance by such foreign limited liability partnership with all laws, rules and regulations governing the practice of a profession in this state. The relationship of a professional to a foreign limited liability partnership with which such professional is associated, whether as a partner, employee or agent, shall not modify or diminish the jurisdiction over such professional of the licensing authority and, in the case of an attorney and counsellor-at-law or a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership engaged in the practice of law, the courts of this state. A limited partnership formed under the laws of any jurisdiction, other than this state, which is denominated as a registered limited liability partnership or limited liability partnership under such laws shall be recognized in this state as a foreign limited partnership but not as a foreign limited liability partnership or a New York registered foreign limited liability partnership. Except to the extent provided in article eight of the limited liability company law, a partnership without limited partners operating under an agreement governed by the laws of any jurisdiction, other than this state, which is denominated as a registered limited liability partnership or a limited liability partnership under such laws, but is not a foreign limited liability partnership, shall be recognized in this state as a foreign partnership without limited partners, but not as a foreign limited liability partnership or a New York registered foreign limited liability partnership.

(m) A foreign limited liability partnership carrying on or conducting or transacting business or activities in this state without having filed a notice pursuant to subdivision (a) of this section may not maintain any action, suit or special proceeding in any court of this state unless and until such foreign limited liability partnership shall have filed such notice and paid all fees that it would have been required to pay had it filed a notice pursuant to subdivision (a) of this section before carrying on or conducting or transacting business or activities as a New York registered foreign limited liability partnership in this state and shall have filed proof of publication pursuant to subdivision (f) of this section. The failure of a foreign limited liability partnership that is carrying on or conducting or transacting business or activities in this state to comply with the provisions of this section does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any action or special proceeding in any court of this state.

(n) A foreign limited liability partnership, other than a foreign limited liability partnership authorized to practice law, shall be under the supervision of the regents of the university of the state of New York and be subject to disciplinary proceedings and penalties in the same manner and to the same extent as is provided with respect to individuals and their licenses, certificates and registrations in title eight of the education law relating to the applicable profession. Notwithstanding the provisions of this subdivision, a foreign limited liability partnership authorized to practice medicine shall be subject to the pre-hearing procedures and hearing procedures as are provided with respect to individual physicians and their licenses in title two-A of article two of the public health law. No foreign limited liability partnership shall engage in any profession or carry on, or conduct or transact any other business or activities in this state other than the rendering of the professional services or the carrying on, or conducting or transacting of any other business or activities for which it is formed and is authorized to do business in this state; provided that such foreign limited liability partnership may invest its funds in real estate, mortgages, stocks, bonds or any other type of investments; provided, further, that a foreign limited liability partnership (i) authorized to practice law may only engage in another profession or other business or activities in this state or (ii) which is engaged in a profession or other business or activities other than law may only engage in the practice of law in this state, to the extent not prohibited by any other law of this state or any rule adopted by the appropriate appellate division of the supreme court or the court of appeals.

(o) No foreign limited liability partnership may render a professional service in this state except through individuals authorized by law to render such professional service as individuals in this state.

(p) This section shall not repeal, modify or restrict any provision of the education law or the judiciary law or any rules or regulations adopted thereunder regulating the professions referred to in the education law or the judiciary law except to the extent in conflict herewith.

* (q) Each partner of a foreign limited liability partnership which provides medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in the state and each partner of a foreign limited liability partnership which provides dental services in the state must be licensed pursuant to article 133 of the education law to practice dentistry in this state. Each partner of a foreign limited liability partnership which provides veterinary service in the state shall be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a foreign limited liability partnership which provides professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions.

* NB Effective until January 1, 2005

* (q) Each partner of a foreign limited liability partnership which provides medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in the state and each partner of a foreign limited liability partnership which provides dental services in the state must be licensed pursuant to article 133 of the education law to practice dentistry in this state. Each partner of a foreign limited liability partnership which provides veterinary service in the state shall be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a

foreign limited liability partnership which provides professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions. Each partner of a foreign limited liability partnership which provides creative arts therapy services in this state must be licensed pursuant to article 163 of the education law to practice creative arts therapy in this state. Each partner of a foreign limited liability partnership which provides marriage and family therapy services in this state must be licensed pursuant to article 163 of the education law to practice marriage and family therapy in this state. Each partner of a foreign limited liability partnership which provides mental health counseling services in this state must be licensed pursuant to article 163 of the education law to practice mental health counseling in this state. Each partner of a foreign limited liability partnership which provides psychoanalysis services in this state must be licensed pursuant to article 163 of the education law to practice psychoanalysis in this state.

* NB Effective January 1, 2005

S 121-1503. Transaction of business outside the state. (a) It is the intent of the legislature that the registration of a partnership without limited partners as a registered limited liability partnership under this article shall be recognized beyond the limits of this state and that such registered limited liability partnership may conduct its business or activities, carry on its operations, and have and exercise the powers granted by this article in any state, territory, district or possession of the United States or in any foreign country and that, subject to any reasonable registration requirements any such registered limited liability partnership transacting business outside this state and the laws of this state governing such registered limited liability partnership shall be granted the protection of full faith and credit under section 1 of article IV of the Constitution of the United States.

(b) It is the policy of this state that the internal affairs of a partnership without limited partners registered as a registered limited liability partnership under this article and the liability of partners in a registered limited liability partnership for debts, obligations and liabilities of, or chargeable to, the registered limited liability partnership shall be subject to and governed by the laws of this state, including the provisions of this article.

S 121-1504. Foreign related limited liability partnership. Any foreign related limited liability partnership that has filed a certificate of authority under and satisfied all the requirements of section eight hundred two of the limited liability company law shall be deemed to have filed a notice pursuant to section 121-1502 of this chapter until the fifth anniversary of filing its application for such certificate of authority, at which time the foreign related limited liability partnership shall file a notice pursuant to section 121-1502 of this chapter.

S 121-1505. Service of process. (a) Service of process on the secretary of state as agent of a registered limited liability partnership under this article shall be made by personally delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such registered limited

liability partnership shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such registered limited liability partnership, at the post office address on file in the department of state specified for such purpose.

(b) As used in this article, process shall mean judicial process and all orders, demands, notices or other papers required or permitted by law to be personally served on a registered limited liability partnership, for the purpose of acquiring jurisdiction of such registered limited liability partnership in any action or proceeding, civil or criminal, whether judicial, administrative, arbitratve or otherwise, in this state or in the federal courts sitting in or for this state.

(c) Nothing in this section shall affect the right to serve process in any other manner permitted by law.

S 121-1506. Resignation for receipt of process. (a) A registered agent may resign as such agent. A certificate entitled "Certificate of resignation of registered agent of (name of limited liability partnership) under section 121-1506 of the Partnership Law" shall be signed and delivered to the department of state. It shall set forth:

(1) That he resigns as registered agent for the designated limited liability partnership.

(2) The date the certificate of registration of the designated limited liability partnership was filed by the department of state.

(3) That he has sent a copy of the certificate of resignation by registered mail to the designating limited liability partnership at the post office address on file in the department of state specified for the mailing of process or if such address is the address of the registered agent, then to the office of the designating limited liability partnership in the jurisdiction of its formation.

(b) The party (or the party's legal representative) whose post address has been supplied by a limited liability partnership as its address for process may resign. A certificate entitled "Certificate of Resignation for Receipt of Process under Section 121-1506(b) of the Partnership Law" shall be signed by such party and delivered to the department of state. It shall set forth:

(1) The name of the limited liability partnership and the date that its certificate of registration was filed by the department of state.

(2) That the address of the party has been designated by the limited liability partnership as the post office address to which the secretary of state shall mail a copy of any process served on the secretary of state as agent for such limited liability partnership and that such party wishes to resign.

(3) That sixty days prior to the filing of the certificate of resignation with the department of state the party has sent a copy of the certificate of resignation for receipt of process by registered or certified mail to the address of the registered agent of the designated limited liability partnership, if other than the party filing the certificate of resignation, for receipt of process, or if the resigning limited liability partnership has no registered agent, then to the last address of the designated limited liability partnership, known to the party, specifying the address to which the copy was sent. If there is no registered agent and no known address of the designating limited liability partnership the party shall attach an affidavit to the certificate stating that a diligent but unsuccessful search was made by the party to locate the limited liability partnership, specifying what efforts were made.

(4) That the designated limited liability partnership is required to

Deliver to the department of state a certificate of amendment providing for the designation by the limited liability partnership of a new address and that upon its failure to file such certificate, its authority to do business in this state shall be suspended.

(c) Upon the failure of the designating limited liability partnership to file a certificate of amendment providing for the designation by the limited liability partnership of the new address after the filing of a certificate of resignation for receipt of process with the secretary of state, its authority to do business in this state shall be suspended.

(d) The filing by the department of state of a certificate of amendment providing for a new address by a designating limited liability partnership shall annul the suspension and its authority to do business in this state shall be restored and continued as if no suspension had occurred.

(e) The resignation for receipt of process shall become effective upon the filing by the department of state of a certificate of resignation for receipt of process.

(f)(1) In any case in which a limited liability partnership suspended pursuant to this section would be subject to the personal or other jurisdiction of the courts of this state under article three of the civil practice law and rules, process against such limited liability partnership may be served upon the secretary of state as its agent pursuant to this section. Such process may be issued in any court in this state having jurisdiction of the subject matter.

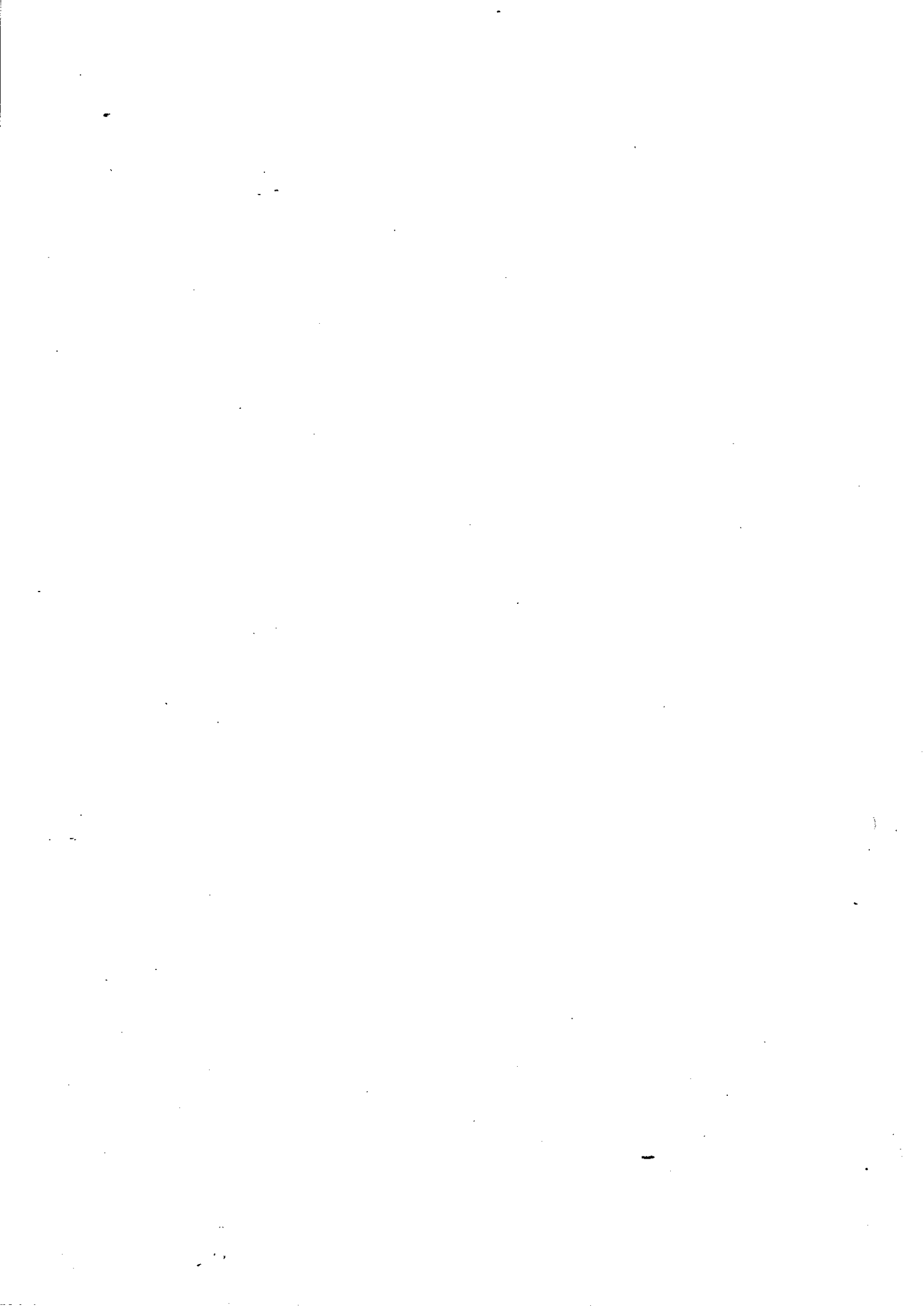
(2) Service of such process upon the secretary of state shall be made by personally delivering to and leaving with him or his deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, a copy of such process together with the statutory fee, which fee shall be a taxable disbursement. Such service shall be sufficient if notice thereof and a copy of the process are:

(i) delivered personally within or without this state to such limited liability partnership by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made, or

(ii) sent by or on behalf of the plaintiff to such limited liability partnership by registered or certified mail with return receipt requested to the last address of such limited liability partnership known to the plaintiff.

(3)(i) Where service of a copy of process was effected by personal service, proof of service shall be by an affidavit of compliance with this section filed, together with the process, within thirty days after such service, with the clerk of the court in which the action or special proceeding is pending. Service of process shall be complete ten days after such papers are filed with the clerk of the court.

(ii) Where service of a copy of process was effected by mailing in accordance with this section, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after receipt of the return receipt signed by the limited liability partnership, or other official proof of delivery or of the original envelope mailed. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such limited liability partnership or other official proof of delivery, if acceptance was refused by it, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused a copy of the notice and process together with notice of the mailing by registered or certified mail and refusal to accept shall be promptly sent to such limited liability partnership at the same address by ordinary mail and the affidavit of compliance shall so state. Service of



Annex 11

Alberta Queen's Printer

Main Floor, Park Plaza, 10611 - 98 Avenue

Edmonton, Alberta T5K 2P7

Tel: (780) 427-4952, Fax: (780) 452-0668, Email: qp@gov.ab.ca, Web site: www.gov.ab.ca/qp

Copyright of the Alberta Statutes and Regulations, whether in print or electronic form is held by the Province of Alberta. No person may download or reproduce copies of the legislation for any purpose other than personal use without the consent of the Alberta Queen's Printer.

This consolidation has no legislative sanction and has been produced solely for the convenience of research. The official bound Statutes and Regulations must be consulted for all purposes of interpreting and applying the law.

This consolidation may not contain maps, charts and graphs contained in the printed version.

PARTNERSHIP ACT

Chapter P-3

Table of Contents

- 1 Definitions
- 2 Meaning of "firm" and "firm name"

Part 1

Ordinary Partnerships

- 3 Body corporate not partnership
- 4 Determining existence of partnership
- 5 Rights of lender and seller of goodwill

Relations of Partners to Persons Dealing with Them

- 6 Partner an agent
- 7 Power of partner to bind the firm
- 8 Partners bound by acts on behalf of firm
- 9 Using of credit
- 10 Notice that firm not bound by acts of partner
- 11 Liability of partner
- ✓ 12 LLP limited liability
- 13 Liability of firm for wrongs
- 14 Misapplication of money
- 15 Liability for wrongs, joint and several
- 16 Improper employment of trust property
- 17 Persons liable by holding out
- 18 Admissions and representations
- 19 Notice to acting partner
- 20 Liability of incoming and outgoing partners
- 21 Revocation of continuing guaranty

Relations of Partners to One Another

- 22 Variation by consent of terms of partnership
- 23 Partnership property
- 24 Property bought with partnership money
- 25 Partnership property is personal estate
- 26 Procedure against partnership property
- 27 Charging partner's interest
- 28 Determination of partners' interest
- 29 Expulsion of partner
- 30 Retirement from partnership at will
- 31 Effect of continuance of partnership business
- 32 Right to accounts

33	Accountability of partners for private profits
34	Account by partner competing with firm
35	Rights of assignee of share in partnership
Dissolution of Partnership and its Consequences	
36	Dissolution by expiration of notice
37	Dissolution by death, assignment in trust or charge
38	Dissolution by illegality of partnership
39	Dissolution by the Court
40	Rights of person dealing with firm against apparent
members of firm	
41	Rights of partner to give notice of dissolution
42	Winding-up
43	Partners' rights to property
44	Partnership prematurely dissolved
45	Rights when partnership dissolved for fraud or misrepresentation
46	Outgoing partner
47	Retiring or deceased partners
48	Distribution of assets on final settlement of accounts

Part 2

Limited Partnerships

49	Application of Part
50	Definition
51	Limited partnerships
52	Formation of limited partnership
53	General and limited partners
54	Name of partnership
55	Contribution of limited partner
56	Rights of general partners
57	Liability of limited partner
58	Rights of limited partner
59	Share of profits
60	Business dealings by partner with partnership
61	Limited partners' rights as between themselves
62	Return of limited partner's contribution
63	Limited partner's liability to partnership
64	Liability to creditors
65	Admission of additional limited partners
66	Assignments
67	Dissolution of limited partnership
68	Death of limited partner
69	Cancellation of certificate
70	Amendment of certificate
71	Order directing cancellation or amendment of certificate
72	Time cancellation or amendment takes effect
73	Settling accounts on dissolution
74	Effect of false statement in certificate
75	Liability of person mistakenly believing the person is a
limited partner	
76	Judgment against limited partner
77	Parties to proceedings
78	Authority to sign
79	Application to existing partnerships
80	Exemption

Part 3

Registration of Limited Liability Partnerships

Registration of Alberta LLPs

81	Definition
82	Application for registration as Alberta LLP
83	Registration
84	Effect of registration
85	Notice to clients

86	Registered office, address for service
87	Partnership list
88	Notice of changes
89	Periodic reports
90	Cancellation of registration
91	Name
92	Service
Registration of Extra-provincial LLPs	
93	Non-registered status
94	Extra-provincial LLP
95	Registration
96	Notice to clients
97	Registered office, address for service
98	Partnership list
99	Name
100	Service
101	Notice of changes
102	Periodic reports
103	Cancellation of registration
104	Law of governing jurisdiction applies

Part 4

General

105	Rules of equity and common law
Registration of Partnerships	
106	Filing of declarations of partnerships
107	Declaration when partner absent
108	Contents of declaration
109	Time for filing declaration

Persons Using Trade Name, Registration

110	Individual using trade name
111	Ceasing to use business name
112	Penalty for late filing
113	Stay of action
114	Binding effect of declaration
115	Liability of persons signing declaration

Declaration of Dissolution

116	Declaration of dissolution
-----	----------------------------

Regulations

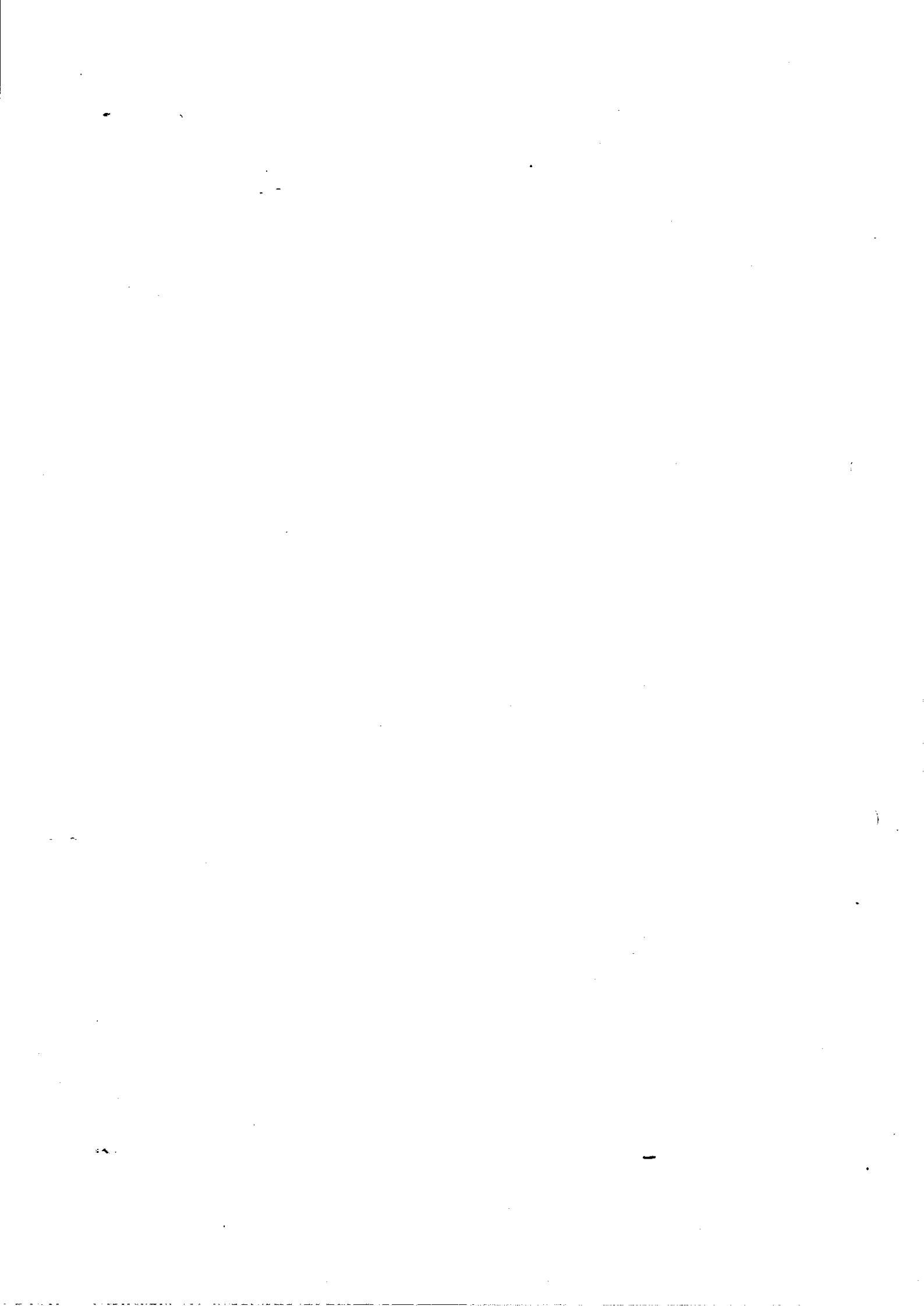
117	Regulations
-----	-------------

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

Definitions

1 In this Act,

- (a) "Alberta LLP" means a partnership registered under section 83 as an Alberta LLP;
- (b) "Alberta partner" with respect to an extra-provincial LLP includes a partner who ordinarily resides outside Alberta all or part of the time but practises in Alberta;
- (c) "business" includes every trade, occupation and profession;
- (d) "Court" means the Court of Queen's Bench;
- (e) "extra-provincial LLP" means a limited liability partnership registered under section 95 as an extra-provincial LLP;
- (f) "governing jurisdiction" with respect to a partnership means the jurisdiction the law of which 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;



RSA 1980 cP-2 s8

Using of credit

9(1) If one partner pledges the credit of the firm for a purpose apparently not connected with the ordinary course of business of the firm, the firm is not bound unless the partner is in fact especially authorized by the other partner or partners to do such an act.

(2) Subsection (1) does not affect any personal liability incurred by an individual partner.

RSA 1980 cP-2 s9

Notice that firm not bound by acts of partner

10 When the partners have agreed that a restriction is placed on the power of one or more of the partners to bind the firm, an act done in contravention of the agreement is not binding on the firm with respect to persons having notice of the agreement.

RSA 1980 cP-2 s10

Liability of partner

11(1) This section is to be applied subject to section 12.

(2) Each partner in a firm is liable jointly with the other partners for debts and obligations of the firm incurred while that partner is a partner.

(3) When a partner dies, the partner's estate is severally liable, in the due course of administration, for any debts and obligations of the firm incurred while the deceased partner was a partner that remain unsatisfied.

(4) The payment of debts and obligations under subsection (2) is subject to the prior payment of the separate debts of the deceased partner.

RSA 1980 cP-2 s11;1999 c27 s3

LLP limited liability

✓ 12(1) Subject to subsections (2) and (4), a partner in an Alberta LLP is not individually liable, directly or indirectly by means of indemnification, contribution, assessment or otherwise, for debts, obligations or liabilities of the partnership or another partner that arise from the negligence, wrongful acts or omissions, malpractice or misconduct of

(a) another partner, or

(b) an employee, agent or representative of the partnership

that occur in the ordinary course of carrying on practice in an eligible profession within the meaning of section 81 while the partnership is an Alberta LLP.

(2) Subsection (1) does not operate to protect a partner from liability

(a) where the partner knew of the negligence, wrongful act or omission, malpractice or misconduct at the time it was committed and failed to take reasonable steps to prevent its commission, or

(b) where

(i) the negligence, wrongful act or omission, malpractice or misconduct was committed by an employee, agent or representative of the partnership for whom the partner was directly responsible in a supervisory role, and

(ii) the partner failed to provide such adequate and competent supervision as would normally be expected of a partner in those circumstances.

(3) A partner in an Alberta LLP is not a proper party to a proceeding by or against the partnership that claims relief in respect of negligence, wrongful acts or omissions, malpractice or misconduct referred to in subsection (1).

(4) The protection from liability given to a partner under

subsection (1) shall not be construed as offering any protection from claims against that partner's interest in the partnership property.

1999 c27 s4

Liability of firm for wrongs

13 When, by a wrongful act or omission of a partner acting in the ordinary course of the business of the firm or with the authority of the partner's co-partners, loss or injury is caused to a person not being a partner in the firm, or a penalty is incurred, the firm is liable for it to the same extent as the partner so acting or omitting to act.

RSA 1980 cP-2 s12

Misapplication of money

14 The firm is liable to make good any loss when

(a) one partner acting within the scope of the partner's apparent authority receives the money or property of a third person and misapplies it, or

(b) a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm.

RSA 1980 cP-2 s13

Liability for wrongs, joint and several

15 Except as provided in section 12, each partner is liable jointly with the partner's co-partners and also severally for everything for which the firm while the partner is a partner in it becomes liable under section 13 or 14.

RSA 1980 cP-2 s14;1999 c27 s5

Improper employment of trust property

16(1) If a partner who is a trustee improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested in it.

(2) Subsection (1) does not affect a liability incurred by a partner by reason of that partner's having notice of a breach of trust.

(3) Subsections (1) and (2) do not prevent trust money from being followed and recovered from the firm if still in the firm's possession or under its control.

RSA 1980 cP-2 s15

Persons liable by holding out

17(1) Each person who by spoken or written words or by conduct represents that person, or who knowingly permits that person to be represented, as a partner in a particular firm is liable as a partner to any one who has on the faith of that representation given credit to the firm.

(2) Each person liable as a partner under subsection (1) is so liable whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or permitting it to be made.

(3) If after the death of a partner the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part of that name does not of itself make the executor or administrator of the deceased partner or the deceased partner's estate liable for partnership debts contracted after the deceased partner's death.

RSA 1980 cP-2 s16

Admissions and representations

18 An admission or representation made by a partner concerning the partnership affairs and in the ordinary course of the business of the partnership is evidence against the firm.



Whole Enactment Mode

Law Selection Setting: Current English Ord. & Sub. Leg.

[Back to List of Laws](#)

CHAPTER CHOSEN:

- **CAP 38 PARTNERSHIP ORDINANCE**

- - Long title - 30/06/1997
- Section 1 - Short title - 30/06/1997
- Section 2 - Interpretation - 30/06/1997
- Section 3 - Definition of partnership - 01/07/1997
- Section 4 - Rules for determining existence of partnership - 30/06/1997
- Section 5 - Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency - 30/06/1997
- Section 6 - Meaning of firm and firm-name - 30/06/1997
- Section 7 - Power of partner to bind firm - 30/06/1997
- Section 8 - Partners bound by acts on behalf of firm - 30/06/1997
- Section 9 - Partner using credit of firm for private purposes - 30/06/1997
- Section 10 - Effect of notice that firm will not be bound by acts of partner - 30/06/1997
- Section 11 - Liability of partners - 30/06/1997
- Section 12 - Liability of firm for wrongs - 30/06/1997
- Section 13 - Misapplication of money or property received for or in custody of firm - 30/06/1997
- Section 14 - Liability for wrongs joint and several - 30/06/1997
- Section 15 - Improper employment of trust property for partnership purposes - 30/06/1997
- Section 16 - Persons liable by "holding out" - 30/06/1997
- Section 17 - Admissions and representations of partner - 30/06/1997
- Section 18 - Notice to acting partner to be notice to firm - 30/06/1997
- Section 19 - Liabilities of incoming and outgoing partners - 30/06/1997
- Section 20 - Revocation of continuing guarantee by change in firm - 30/06/1997
- Section 21 - Variation by consent of terms of partnership - 30/06/1997
- Section 22 - Partnership property - 30/06/1997
- Section 23 - Property bought with partnership money - 30/06/1997
- Section 24 - Conversion into personal estate of land held as partnership property - 30/06/1997
- Section 25 - Procedure against partnership property for partner's separate judgment debt - 30/06/1997
- Section 26 - Rules as to interests and duties of partners, subject to special agreement - 30/06/1997
- Section 27 - Expulsion of partner - 30/06/1997

- o Section 28 - Retirement from partnership at will - 30/06/1997
- o Section 29 - Where partnership for term is continued over, continuance on old terms presumed - 30/06/1997
- o Section 30 - Duty of partners to render accounts, etc. - 30/06/1997
- o Section 31 - Accountability of partners for private profits - 30/06/1997
- o Section 32 - Duty of partner not to compete with firm - 30/06/1997
- o Section 33 - Rights of assignee of share in partnership - 30/06/1997
- o Section 34 - Dissolution by expiration or notice - 30/06/1997
- o Section 35 - Dissolution by bankruptcy, death, or charge - 30/06/1997
- o Section 36 - Dissolution by illegality of partnership - 30/06/1997
- o Section 37 - Dissolution by the court - 30/06/1997
- o Section 38 - Rights of persons dealing with firm against apparent members of firm - 01/07/1997
- o Section 39 - Right of partner to notify dissolution - 30/06/1997
- o Section 40 - Continuing authority of partners for purposes of winding-up - 30/06/1997
- o Section 41 - Rights of partners as to application of partnership property - 30/06/1997
- o Section 42 - Apportionment or premium where partnership prematurely dissolved - 30/06/1997
- o Section 43 - Rights where partnership dissolved for fraud or misrepresentation - 30/06/1997
- o Section 44 - Rights of outgoing partner in certain cases to share profits made after dissolution - 30/06/1997
- o Section 45 - Retiring or deceased partner's share to be a debt - 30/06/1997
- o Section 46 - Rules for distribution of assets on final settlement of accounts - 30/06/1997
- o Section 47 - Saving for rules of equity and of common law - 30/06/1997

Chapter: 38 PARTNERSHIP ORDINANCE

Version Date 30/06/1997

Long title

[Back to Individual Section Format](#)

To codify the law relating to partnership.
[cf. 1890 c. 39 U.K.]

[15 May 1897]

(Originally 2 of 1897 (Cap 38, 1950))

Section Num: 1
Heading Short title

Version Date 30/06/1997

[Back to Individual Section Format](#)

This Ordinance may be cited as the Partnership Ordinance.
(Amended 5 of 1924 s. 6)

Section Num:	2	Version Date	30/06/1997
Heading	Interpretation	Back to Individual Section Format	

In this Ordinance, unless the context otherwise requires-
 "business" (業務) includes every trade, occupation, or profession;
 "court" (法院) includes every court and judge having jurisdiction in the case.

Section Num:	3	Version Date	01/07/1997
Heading	Definition of partnership	Back to Individual Section Format	
Remarks	Adaptation amendments retroactively made - see 25 of 1998 s. 2		

NATURE OF PARTNERSHIP

- (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
- (2) But the relation between members of any company or association which is-
- (a) registered as a company under any Ordinance relating to the registration of joint-stock companies; or (Amended 50 of 1911; 1 of 1912 Schedule)
- (b) formed or incorporated by or in pursuance of any other Ordinance, or any enactment or instrument, (Amended 25 of 1998 s. 2) is not a partnership within the meaning of this Ordinance.

Section Num:	4	Version Date	30/06/1997
Heading	Rules for determining existence of partnership	Back to Individual Section Format	

In determining whether a partnership does or does not exist, regard shall be had to the following rules-

- (a) joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
- (b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
- (c) the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular-
- (i) the receipt by a person of a debt or other liquidated amount, by instalments or otherwise, out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
- (ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;

(iii) a person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not, by reason only of such receipt, a partner in the business or liable as such;

(iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such: Provided that the contract is in writing and signed by or on behalf of all the parties thereto; and

(v) a person receiving, by way of annuity or otherwise, a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not, by reason only of such receipt, a partner in the business or liable as such.

Section Num:	5	Version Date	30/06/1997
Heading	Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency	Back to Individual Section Format	

In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in section 4, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

(Amended 50 of 1911 s. 4; 5 of 1924 s. 8)

Section Num:	6	Version Date	30/06/1997
Heading	Meaning of firm and firm-name	Back to Individual Section Format	

Persons who have entered into partnership with one another are, for the purposes of this Ordinance, called collectively a firm, and the name under which their business is carried on is called the firm-name.

Section Num:	7	Version Date	30/06/1997
Heading	Power of partner to bind firm	Back to Individual Section Format	

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM

Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his

partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

Section Num:	8	Version Date	30/06/1997
Heading	Partners bound by acts on behalf of firm	Back to Individual Section Format	

An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners:

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

Section Num:	9	Version Date	30/06/1997
Heading	Partner using credit of firm for private purposes	Back to Individual Section Format	

Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners; but this section does not affect any personal liability incurred by an individual partner.

Section Num:	10	Version Date	30/06/1997
Heading	Effect of notice that firm will not be bound by acts of partner	Back to Individual Section Format	

If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Section Num:	11	Version Date	30/06/1997
Heading	Liability of partners	Back to Individual Section Format	

Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied but subject to the prior payment of his separate debts.

Section	12	Version	30/06/1997
----------------	-----------	----------------	-------------------

Num: **Date**
Heading **Liability of firm for wrongs** [Back to Individual Section Format](#)

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Section Num: **13** **Version Date** **30/06/1997**
Heading **Misapplication of money or property received for or in custody of firm** [Back to Individual Section Format](#)

In the following cases, namely-

- (a) where one partner, acting within the scope of his apparent authority, receives the money or property of a third person and misapplies it; and
(b) where a firm in the course of its business receives the money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,
the firm is liable to make good the loss.

Section Num: **14** **Version Date** **30/06/1997**
Heading **Liability for wrongs joint and several** [Back to Individual Section Format](#)

Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under section 12 or 13.
(Amended 50 of 1911 s. 4; 5 of 1924 s. 8)

Section Num: **15** **Version Date** **30/06/1997**
Heading **Improper employment of trust property for partnership purposes** [Back to Individual Section Format](#)

If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein:
Provided as follows-

- (a) this section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and
(b) nothing in this section shall prevent trust money from being followed and recovered from the firm, if still in its possession or under its control.

Section Num: **16** **Version Date** **30/06/1997**

Heading **Persons liable by "holding out"**[Back to Individual Section Format](#)

Every one who, by words spoken or written or by conduct, represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm is liable as a partner to any one who has, on the faith of any such representation, given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made:

Provided that where, after a partner's death, the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators, estate or effects, liable for any partnership debts contracted after his death.

Section Num: 17**Version Date** 30/06/1997**Heading** **Admissions and representations of partner**[Back to Individual Section Format](#)

An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

Section Num: 18**Version Date** 30/06/1997**Heading** **Notice to acting partner to be notice to firm**[Back to Individual Section Format](#)

Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Section Num: 19**Version Date** 30/06/1997**Heading** **Liabilities of incoming and outgoing partners**[Back to Individual Section Format](#)

(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Section Num: 20**Version Date** 30/06/1997**Heading** **Revocation of continuing guarantee by change**[Back to Individual Section Format](#)

in firm

A continuing guarantee given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee was given.

Section Num:	21	Version Date	30/06/1997
Heading	Variation by consent of terms of partnership	Back to Individual Section Format	

RELATIONS OF PARTNERS TO ONE ANOTHER

The mutual rights and duties of partners, whether ascertained by agreement or defined by this Ordinance, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing.

Section Num:	22	Version Date	30/06/1997
Heading	Partnership property	Back to Individual Section Format	

(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Ordinance partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement:

Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law applicable thereto, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(2) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land, and purchase other land out of the profits to be used in like manner, the land so purchased belongs to them, in the absence of any agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase.

Section Num:	23	Version Date	30/06/1997
Heading	Property bought with partnership money	Back to Individual Section Format	

Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

Section Num:	24	Version Date	30/06/1997
Heading	Conversion into personal estate of land held as partnership property	Back to Individual Section Format	

Where land or any interest therein has become partnership property, it shall, unless the contrary intention appears, be treated, as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate.

Section Num:	25	Version Date	30/06/1997
Heading	Procedure against partnership property for partner's separate judgment debt	Back to Individual Section Format	

- (1) A writ of execution shall not issue against any partnership property except on a judgment against the firm. (Amended 50 of 1911 s. 4)
- (2) The court or a judge may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may, by the same or a subsequent order, appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions, which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require. (Amended 50 of 1911; 1 of 1912 Schedule)
- (3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or, in case of a sale being directed, to purchase the same.
- (4) This section shall apply in the case of a cost-book company as if the company were a partnership within the meaning of this Ordinance.

Section Num:	26	Version Date	30/06/1997
Heading	Rules as to interests and duties of partners, subject to special agreement	Back to Individual Section Format	

The interests of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, subject to any agreement, express or implied, between the partners, by the following rules-

- (a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;
- (b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him-
- (i) in the ordinary and proper conduct of the business of the firm;
- or
- (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (c) a partner making, for the purposes of the partnership, any

actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of eight per cent per annum from the date of the payment or advance;

(d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him;

(e) every partner may take part in the management of the partnership business;

(f) no partner shall be entitled to remuneration for acting in the partnership business;

(g) no person may be introduced as a partner without the consent of all existing partners;

(h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners; and

(i) the partnership books are to be kept at the place of business of the partnership (or the principal place, if there are more places than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

Section Num:	27	Version Date	30/06/1997
Heading	Expulsion of partner	Back to Individual Section Format	

No majority of the partners can expel any partner, unless a power to do so has been conferred by express agreement between the partners.

Section Num:	28	Version Date	30/06/1997
Heading	Retirement from partnership at will	Back to Individual Section Format	

(1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention to do so to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

Section Num:	29	Version Date	30/06/1997
Heading	Where partnership for term is continued over, continuance on old terms presumed	Back to Individual Section Format	

(1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

Section Num:	30	Version Date	30/06/1997
Heading	Duty of partners to render accounts, etc.	<u>Back to Individual Section Format</u>	

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Section Num:	31	Version Date	30/06/1997
Heading	Accountability of partners for private profits	<u>Back to Individual Section Format</u>	

(1) Every partner must account to the firm for any benefit derived by him, without the consent of the other partners, from any transaction concerning the partnership or from any use by him of the partnership property, name, or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

Section Num:	32	Version Date	30/06/1997
Heading	Duty of partner not to compete with firm	<u>Back to Individual Section Format</u>	

If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

Section Num:	33	Version Date	30/06/1997
Heading	Rights of assignee of share in partnership	<u>Back to Individual Section Format</u>	

(1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of the profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2) In the case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Section Num:	34	Version Date	30/06/1997
Heading	Dissolution by expiration or notice	Back to Individual Section Format	

DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES

- (1) Subject to any agreement between the partners, a partnership is dissolved-
- (a) if entered into for a fixed term, by the expiration of that term; or
- (b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or
- (c) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.
- (2) In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

Section Num:	35	Version Date	30/06/1997
Heading	Dissolution by bankruptcy, death, or charge	Back to Individual Section Format	

- (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.
- (2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Ordinance for his separate debt.

Section Num:	36	Version Date	30/06/1997
Heading	Dissolution by illegality of partnership	Back to Individual Section Format	

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

Section Num:	37	Version Date	30/06/1997
Heading	Dissolution by the court	Back to Individual Section Format	

- On application by a partner, the court may decree a dissolution of the partnership in any of the following cases-
- (a) when a partner is found lunatic by inquisition, or is shown, to the satisfaction of the court, to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee, or next friend, or person having title to intervene as by any other partner;
- (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;

- (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to affect prejudicially the carrying on of the business;
- (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (e) when the business of the partnership can only be carried on at a loss; and
- (f) whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

Section Num:	38	Version Date	01/07/1997
Heading	Rights of persons dealing with firm against apparent members of firm	Back to Individual Section Format	
Remarks	Adaptation amendments retroactively made - see 25 of 1998 s. 2		

- (1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.
- (2) An advertisement in the Gazette as to a firm whose principal place of business is in Hong Kong shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised. (Amended 50 of 1911 s. 4; 25 of 1998 s. 2)
- (3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

Section Num:	39	Version Date	30/06/1997
Heading	Right of partner to notify dissolution	Back to Individual Section Format	

On the dissolution of a partnership or retirement of a partner, any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

Section Num:	40	Version Date	30/06/1997
Heading	Continuing authority of partners for purposes of winding-up	Back to Individual Section Format	

After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue, notwithstanding the dissolution, so far as may be necessary to

wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:
 Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has, after the bankruptcy, represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Section Num:	41	Version Date	30/06/1997
Heading	Rights of partners as to application of partnership property	Back to Individual Section Format	

On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.

Section Num:	42	Version Date	30/06/1997
Heading	Apportionment or premium where partnership prematurely dissolved	Back to Individual Section Format	

Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless-

- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Section Num:	43	Version Date	30/06/1997
Heading	Rights where partnership dissolved for fraud or misrepresentation	Back to Individual Section Format	

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled-

- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and
- (c) to be indemnified by the person guilty of the fraud or making

the representation against all the debts and liabilities of the firm.

Section Num:	44	Version Date	30/06/1997
Heading	Rights of outgoing partner in certain cases to share profits made after dissolution	Back to Individual Section Format	

Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of eight per cent per annum on the amount of his share of the partnership assets:

Provided that where, by the partnership contract, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the preceding provisions of this section.

Section Num:	45	Version Date	30/06/1997
Heading	Retiring or deceased partner's share to be a debt	Back to Individual Section Format	

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Section Num:	46	Version Date	30/06/1997
Heading	Rules for distribution of assets on final settlement of accounts	Back to Individual Section Format	

In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed-

- (a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits; and
- (b) the assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order-
 - (i) in paying the debts and liabilities of the firm to persons who

are not partners therein

(ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due from the firm to him in respect of capital; and

(iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

Section Num:	47	Version Date	30/06/1997
Heading	Saving for rules of equity and of common law	<u>Back to Individual Section Format</u>	

The rules of equity and of common law applicable to partnership shall continue in force, except so far as they are inconsistent with the express provisions of this Ordinance.

Whole Enactment Mode

Law Selection Setting: Current English Ord. & Sub. Leg.

[Back to List of Laws](#)**CHAPTER CHOSEN:**

- **CAP 37 LIMITED PARTNERSHIPS ORDINANCE**

- - Long title - 30/06/1997
- Section 1 - Short title - 30/06/1997
- Section 2 - Interpretation - 01/07/1997
- Section 3 - Definition and constitution of limited partnership - 30/06/1997
- Section 4 - Registration of limited partnership required - 30/06/1997
- Section 5 - Modifications of general law in case of limited partnerships - 01/07/1997
- Section 6 - Law as to private partnership to apply - 30/06/1997
- Section 7 - Manner and particulars of registration - 30/06/1997
- Section 8 - Registration of changes in partnerships - 30/06/1997
- Section 9 - Advertisement of certain changes - 30/06/1997
- Section 10 - (Repealed 19 of 1977 s. 2) - 30/06/1997
- Section 11 - Making false returns to be misdemeanor - 30/06/1997
- Section 12 - Registrar to file statement and issue certificate of registration - 30/06/1997
- Section 13 - Register and index to be kept - 30/06/1997
- Section 14 - Inspection of statements registered - 30/06/1997
- Section 15 - Rules - 01/07/1997
- Section 16 - Fees - 01/07/1997
- Schedule - SCHEDULE - 01/12/1997

Chapter: 37 LIMITED PARTNERSHIPS ORDINANCE**Version
Date** 30/06/1997**Long title**[Back to Individual Section Format](#)

To establish limited partnerships.

[1 June 1912]

(Originally 18 of 1912 (Cap 37, 1950))

**Section
Num:**

1

**Version
Date** 30/06/1997**Heading****Short title**[Back to Individual Section Format](#)

This Ordinance may be cited as the Limited Partnerships Ordinance.
(Amended 43 of 1912 Schedule ; 5 of 1924 s. 6)

Section Num:	2	Version Date	01/07/1997
Heading	Interpretation	Back to Individual Section Format	
Remarks			
Adaptation amendments retroactively made - see 23 of 1999 s. 3			

(1) In this Ordinance, unless the context otherwise requires-
 "firm" (商號), "firm name" (商號名稱), and "business" (業務) have the same meanings as in the Partnership Ordinance (Cap 38);
 "general partner" (普通合夥人) means any partner who is not a limited partner as defined by this Ordinance;
 "Registrar of Companies" (公司註冊處處長) means the officer appointed for the registration of companies under the Companies Ordinance (Cap 32).

Application

(2) This Ordinance shall apply to partnerships carrying on business in Hong Kong. (Replaced 23 of 1999 s. 3)
 (Amended 43 of 1912 Schedule)
 [cf. 1907 c. 24 s. 3 U.K.]

Section Num:	3	Version Date	30/06/1997
Heading	Definition and constitution of limited partnership	Back to Individual Section Format	

(1) Limited partnerships may be formed in the manner and subject to the conditions by this Ordinance provided. (Amended 43 of 1912 Supp. Schedule; G.N. 246 of 1913)

(2) A limited partnership shall not consist in any case of more than 20 persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed. (Amended 5 of 1924 Schedule)

(3) A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of this contribution, and if he does so draw out or receive back any such part, shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.

(4) A body corporate may be a limited partner.
 [cf. 1907 c.24 s.4 U.K.]

Section Num:	4	Version Date	30/06/1997
Heading	Registration of limited partnership required	Back to Individual Section Format	

Every limited partnership must be registered as such in accordance with the provisions of this Ordinance, or in default thereof it shall be deemed

to be a general partnership and every limited partner shall be deemed to be a general partner.
[cf. 1907 c. 24 s. 5 U.K.]

Section Num:	5	Version Date	01/07/1997
Heading	Modifications of general law in case of limited partnerships	<u>Back to Individual Section Format</u>	
Remarks	Adaptation amendments retroactively made - see 23 of 1999 s. 3		

(1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm: Provided that a limited partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon.

(2) If a limited partner takes part in the management of the partnership business, he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner.

(3) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court unless the lunatic's share cannot be otherwise ascertained and realized.

(4) In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners unless the court otherwise orders.

(5) Application to the court to wind up a limited partnership shall be by petition under the Companies Ordinance (Cap 32), and the provisions of that Ordinance relating to the winding-up of companies by the court and of the rules made thereunder (including provisions as to fees) shall, subject to such modification (if any) as the Chief Executive in Council may by rules provide, apply to the winding-up by the court of limited partnerships, with the substitution of general partners for directors.

(Amended 23 of 1999 s. 3)

(6) Subject to any agreement expressed or implied between the partners-

(a) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;

(b) a limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;

(c) the other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;

(d) a person may be introduced as a partner without the consent of the existing limited partners;

(e) a limited partner shall not be entitled to dissolve the partnership by notice.

[cf. 1907 c. 24 s. 6 U.K.]

Section Num:	6	Version Date	30/06/1997
---------------------	----------	---------------------	-------------------

Heading **Law as to private partnership to apply**[Back to Individual Section Format](#)

Subject to the provisions of this Ordinance, the Partnership Ordinance (Cap 38), and rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Ordinance, shall apply to limited partnerships.

Section Num: **7****Version Date** **30/06/1997****Heading** **Manner and particulars of registration**[Back to Individual Section Format](#)

The registration of a limited partnership shall be effected by sending by registered post or delivering to the Registrar of Companies a statement signed by the partners containing the following particulars-

- (a) the firm name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) the full name of each of the partners;
- (e) the term, if any, for which the partnership is entered into, and the date of its commencement;
- (f) a statement that the partnership is limited, and the description of every limited partner as such;
- (g) the sum contributed by each limited partner, and whether paid in cash or how otherwise.

[cf. 1907 c. 24 s. 8 U.K.]

Section Num: **8****Version Date** **30/06/1997****Heading** **Registration of changes in partnerships**[Back to Individual Section Format](#)

(1) If during the continuance of a limited partnership any change is made or occurs in-

- (a) the firm name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) the partners or the name of any partner;
- (e) the term or character of the partnership;
- (f) the sum contributed by any limited partner;
- (g) the liability of any partner by reason of his becoming a limited instead of a general partner or a general instead of a limited partner,

a statement, signed by the firm, specifying the nature of the change shall within 7 days be sent by post or delivered to the Registrar of Companies.

(2) If default is made in compliance with the requirements of this section, each of the general partners shall be liable on summary conviction to a fine of \$50 for each day during which the default continues. (Amended 21 of 1912 s. 2; 22 of 1950 Schedule)

[cf. 1907 c. 24 s. 9 U.K.]

Section Num: **9****Version Date** **30/06/1997****Heading** **Advertisement of certain changes**[Back to Individual Section Format](#)

Notice of any arrangement or transaction under which any person will cease to be a general partner in any firm and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall be forthwith advertised in the Gazette, and until notice of the arrangement or transaction is so advertised the arrangement or transaction shall, for the purposes of this Ordinance, be deemed to be of no effect.

[cf. 1907 c. 24 s. 10 U.K.]

Section Num:	10	Version Date	30/06/1997
Heading	(Repealed 19 of 1977 s. 2)	Back to Individual Section Format	

Section Num:	11	Version Date	30/06/1997
Heading	Making false returns to be misdemeanor	Back to Individual Section Format	

Any person who makes, signs, sends or delivers for the purpose of registration under this Ordinance any false statement known by him to be false or any incomplete statement known by him to be incomplete shall be guilty of an offence triable upon indictment.

(Amended 33 of 1939 Schedule; 50 of 1991 s. 4)

[cf. 1907 c. 24 s. 12 U.K.]

Section Num:	12	Version Date	30/06/1997
Heading	Registrar to file statement and issue certificate of registration	Back to Individual Section Format	

On receiving any statement made in pursuance of this Ordinance and upon receipt of the prescribed fee payable in respect thereof, the Registrar of Companies shall cause such statement to be filed, and he shall send by registered post to the firm from whom such statement has been received a certificate of the registration thereof.

(Amended 33 of 1939 Schedule; 19 of 1977 s. 3)

[cf. 1907 c. 24 s. 13 U.K.]

Section Num:	13	Version Date	30/06/1997
Heading	Register and index to be kept	Back to Individual Section Format	

The Registrar of Companies shall keep at his office, in proper books, to be provided for the purpose, a register and an index of all the limited partnerships as aforesaid, and of all the statements registered in relation to such partnerships.

[cf. 1907 c. 24 s. 14 U.K.]

Section Num:	14	Version Date	30/06/1997
Heading	Inspection of statements registered	Back to Individual Section Format	

- (1) Any person may, on payment of the fee specified in the Schedule-
- (a) inspect the statements registered under this Ordinance; and
- (b) require to be issued-
- (i) a certificate of the registration of any limited partnership;
- (ii) a copy of or extract from any registered statement;
- (iii) a copy of or extract from any registered statement duly certified by the Registrar of Companies or one of the deputy registrars.
- (Replaced 19 of 1977 s. 4)
- (2) A certificate of registration, or a copy of or extract from any statement registered under this Ordinance, if duly certified to be a true copy under the hand of the Registrar of Companies or one of the deputy registrars (whom it shall not be necessary to prove to be the Registrar or deputy registrar) shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence.
- [cf. 1907 c. 24 s. 16 U.K.]

Section Num:	15	Version Date	01/07/1997
Heading	Rules	Back to Individual Section Format	
Remarks	Adaptation amendments retroactively made - see 23 of 1999 s. 3		

- The Chief Executive in Council may make rules providing for- (Amended 23 of 1999 s. 3)
- (a) (Repealed 19 of 1977 s. 5)
- (b) the duties or additional duties to be performed by the Registrar of Companies;
- (c) the performance by deputy registrars and other officers of acts by this Ordinance required to be done by the Registrar of Companies;
- (d) forms; and
- (e) generally the conduct and regulation of registration under this Ordinance and any matters incidental thereto.
- [cf. 1907 c. 24 s. 17 U.K.]

Section Num:	16	Version Date	01/07/1997
Heading	Fees	Back to Individual Section Format	
Remarks	Adaptation amendments retroactively made - see 23 of 1999 s. 3		

- (1) There shall be paid to the Registrar of Companies in respect of the several matters set forth in the Schedule the several fees therein specified.
- (2) The Chief Executive in Council may by order amend the Schedule. (Amended 23 of 1999 s. 3)
- (Added 19 of 1977 s. 6)

Schedule
Num:

Version
Date 01/12/1997

Heading SCHEDULE

Back to Individual Section Format

[sections 14 & 16]

TABLE OF FEES PAYABLE TO THE REGISTRAR OF COMPANIES

Item	Matter in respect of which a fee is payable	Fees
	\$	
1.	For registering a limited partnership And, in addition, for every \$1000 or part of \$1000 of the sum contributed by each limited partner	340.00
	8.00	
2.	For registering a statement of any change within the meaning of section } occurring during the continuance of a limited partnership And, in addition- (a) in the case of a statement of increase of the sum contributed by any limited partner: for every \$1000 or part of \$1000 of such increase (b) in the case of a statement specifying that a general partner or any other person has become a limited partner: for every \$1000 or part of \$1000 of the sum contributed by such limited partner	26.00
	8.00	
	8.00	
3.	For inspecting under section 14(1) any statement filed by the Registrar of Companies, for each inspection	13.00
4.	For issuing under section 14(1) a certificate of the registration of any limited partnership	45.00
5.	For issuing under section 14(1) a copy of or extract from any registered statement or part thereof by photostatic means, per sheet or page	5.00
6.	For issuing under section 14(1) a copy of or extract from any registered statement or part thereof where the copy or extract is made other than by photostatic means, per folio of 100 words or part thereof of the first or top copy	5.00
	For each additional copy or extract after the first or top copy, per folio of 100 words or part thereof	

