

1968 Bill 44

First Session, 16th Legislature, 17 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 44

An Act to amend The Partnership Act

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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1968

An Act to amend The Partnership Act

(Assented to _____, 1968)

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

1. *The Partnership Act* is hereby amended.
2. The following heading is added after section 2:

PART 1

ORDINARY PARTNERSHIPS

3. The heading "limited partnerships" and sections 48 to 66 are struck out and the following is substituted:

PART 2

LIMITED PARTNERSHIPS

48. The provisions of this Act shall in the case of limited partnerships be read subject to this Part.

49. In this Part

- (a) "Central Registry" means the Central Registry established under *The Chattel Security Registries Act*;
- (b) "certificate" means a certificate made under section 51 and includes a certificate which has been amended.

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

(2) A limited partnership shall consist of

- (a) one or more persons who are general partners, and
- (b) one or more persons who are limited partners.

(3) Notwithstanding section 8 of *The Companies Act*, there may be any number of limited partners in a limited partnership.

Explanatory Notes

- 1.** This Bill will amend chapter 230 of the Revised Statutes to revise the provisions relating to limited partnerships.
- 2.** The Act is divided into Parts for convenience of reference.

3. Limited partnership provisions replaced:

48. Application of Part.

49. Definitions.

50. Limited partnerships authorized.

51. (1) A limited partnership is formed when a certificate substantially complying with subsection (2) is filed and recorded in the Central Registry.

(2) A certificate shall be signed by all the persons desiring to form a limited partnership and shall state

- (a) the firm name under which the limited partnership is to be conducted,
- (b) the character of the business,
- (c) the name and place of residence of each partner, general and limited partners being respectively designated,
- (d) the term for which the limited partnership is to exist,
- (e) the amount of cash and the nature and fair value of other property, if any, contributed by each limited partner,
- (f) the amount of additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which an additional contribution is to be made,
- (g) the time, if agreed upon, when the contribution of each limited partner is to be returned,
- (h) the share of the profits or other compensation by way of income which each limited partner is entitled to by reason of his contribution,
- (i) the right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,
- (j) the right, if given, of the partners to admit additional limited partners,
- (k) the right, if given, of one or more of the limited partners to priority over other limited partners, to a return of contributions or to compensation by way of income, and the nature of the priority,
- (l) the right, if given, of the remaining general partner or partners to continue the business on the death, retirement or mental incompetence of a general partner, and
- (m) the right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

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

(2) A person who is at the same time a general partner and a limited partner has the same rights and powers and is subject to the same restrictions as a general partner except that in respect of his contribution as a limited partner he has the rights against the other partners that he would have if he were not also a general partner.

51. Formation of limited partnership.

52. Person may be both a general and a limited partner.

53. (1) The surname of a limited partner shall not appear in the firm name of the limited partnership unless it is also the surname of one of the general partners.

(2) A limited partner whose surname appears in the firm name contrary to subsection (1) is liable as a general partner to any creditor of the limited partnership who has extended the credit without actual knowledge that the limited partner is not a general partner.

54. (1) A limited partner may contribute cash and other property to the limited partnership, but not services.

(2) A limited partner's interest in the limited partnership is personal property.

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

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

56. Subject to this Part, a limited partner is not liable for the obligations of the limited partnership except in respect of the amount of property he contributes or agrees to contribute to the capital of the limited partnership.

57. A limited partner has the same right as has a general partner

- (a) to inspect and make copies of or take extracts from the limited partnership books at all times,
- (b) to be given, on demand, true and full information of all things affecting the limited partnership, and to be given a formal account of partnership affairs

53. Name of limited partner not to be used.

54. Contribution of limited partner.

55. Rights of general partners.

56. Liability of limited partner.

57. Rights of limited partner.

whenever circumstances render it just and reasonable, and

- (c) to obtain dissolution and winding up of the limited partnership by court order.

58. (1) A limited partner has, subject to this Act, the right

- (a) to a share of the profits or other compensation by way of income, and
- (b) to have his contribution to the limited partnership returned.

(2) A limited partner may receive from the limited partnership the share of the profits or the compensation by way of income stipulated for in the certificate if, after payment thereof is made (whether from the property of the limited partnership or that of a general partner) the limited partnership assets exceed all the limited partnership liabilities, excepting liabilities to limited partners on account of their contributions and to general partners.

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

- (a) receive or hold as collateral security any of the limited partnership property, or
- (b) receive from a general partner or the limited partnership any payment, conveyance or release from liability if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

60. (1) Subject to subsection (2), limited partners, in relation to one another, share in the limited partnership assets in respect of their claims

- (a) for capital, and
- (b) for profits or compensation by way of income on their contributions,

in proportion to the respective amounts of their claims.

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

- (a) as to the return of contributions, or
- (b) as to compensation by way of income, or
- (c) as to any other matter,

but the existence of and nature of the agreement shall be

58. Share in profit by limited partner.

59. Limited partner may do business with the partnership.

60. Limited partners' rights as between themselves.

stated in the certificate, and in the absence of a statement all limited partners, subject to subsection (1), stand upon equal footing.

61. (1) A limited partner is not entitled to receive from a general partner or out of the limited partnership property any part of his contribution until

- (a) all liabilities of the limited partnership, excepting liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains sufficient limited partnership property to pay them,
- (b) the consent of all partners is obtained, unless the return of the contribution may be rightfully demanded under subsection (2), and
- (c) the certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(2) Subject to subsection (1), a limited partner may rightfully demand the return of his contribution

- (a) upon the dissolution of the limited partnership, or
- (b) when the time specified in the certificate for its return has arrived, or
- (c) after he has given six months' notice in writing to all other partners, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the limited partnership.

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

- (a) there is a statement to the contrary in the certificate, or
- (b) all the partners consent to some other manner of returning the contribution.

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

- (a) he rightfully but unsuccessfully demands the return of his contribution, or
- (b) the other liabilities of the limited partnership have not been paid, or the limited partnership property is insufficient for their payment as required by clause (a) of subsection (1) and the limited partner seeking dissolution would otherwise be entitled to the return of his contribution.

62. (1) A limited partner is liable to the limited partnership

- (a) for the difference, if any, between the amount of his contribution as actually made and the amount stated in the certificate as having been made, and

61. Return of limited partner's contribution.

62. Limited partners' liability to partnership.

- (b) for any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions, if any, stated in the certificate.
- (2) A limited partner holds as trustee for the limited partnership
 - (a) specific property stated in the certificate as contributed by him, but which has not in fact been contributed or which has been wrongfully returned, and
 - (b) money or other property wrongfully paid or conveyed to him on account of his contribution.
- (3) The liabilities of a limited partner as set forth in this section may, subject to subsection (4), be waived or compromised, but only with the consent of all partners.
- (4) A waiver or compromise agreed to pursuant to subsection (3) does not affect the right of a creditor of the limited partnership to enforce a liability arising from credit which was extended or a claim which otherwise arose
 - (a) subsequent to the filing of the certificate whereby the limited partnership was formed, but
 - (b) prior to the cancellation or amendment thereof whereby the waiver or compromise was effected.
- (5) Where a limited partner has rightfully received the return in whole or in part, of the capital of his contribution, he is nevertheless liable to the limited partnership for any sum, not in excess of that return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims otherwise arose before the return.

63. A limited partner does not become liable as a general partner unless, in the addition to exercising his rights and powers as a limited partner, he takes part in the control of the business.

64. After the formation of a limited partnership, additional limited partners may be admitted by amendment of the certificate in accordance with this Part.

65. (1) A limited partner's interest is assignable.

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

(3) An assignee who does not become a substituted limited partner has no right

(a) to require any information or account of the partnership transactions, or

(b) to inspect the partnership books,

but is entitled only to receive the share of the profits or other compensation by way of income, or the return of his

63. Limited partner's liability to creditors of partnership.

64. Adding new limited partners.

65. Assignment of limited partner's interest.

contribution, to which his assignor would otherwise be entitled.

(4) An assignee may become a substituted limited partner

- (a) if all the members (except the assignor) consent thereto, or
- (b) if the assignor, being so authorized by the terms in the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with the requirements of this Part.

(6) A substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of an assignee as a limited partner does not release the assignor from liability under sections 62 and 66g.

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

- (a) pursuant to a right to do so stated in the certificate, or
- (b) with the consent of all the remaining partners.

66a. (1) The executor or administrator of the estate of a deceased limited partner has

- (a) all the rights and powers of a limited partner for the purpose of settling the estate of the deceased limited partner, and
- (b) whatever power the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner is liable for all his liabilities as a limited partner.

66b. (1) A certificate shall be cancelled when

- (a) the limited partnership is dissolved, or
- (b) all limited partners cease to be limited partners.

(2) The notice to cancel a certificate shall be signed by all the partners.

66c. (1) A certificate shall be amended when

- (a) there is a change in the name of the limited partnership or in the amount or character of the contribution of any limited partner not provided for in the certificate, or

66. Dissolution of limited partnership.

66a. Death of limited partner.

66b. Cancellation of certificate.

66c. Amendment of certificate.

- (b) a person is substituted as a limited partner, or
 - (c) a person is added as a limited partner, or
 - (d) a person is added as a general partner, or
 - (e) a general partner retires, dies or becomes mentally incompetent, and the business is continued pursuant to section 66, or
 - (f) there is a change in the character of the business of the limited partnership, or
 - (g) a false or erroneous statement is discovered in the certificate, or
 - (h) there is a change in the time as stated in the certificate for the dissolution of the limited partnership or for the return of a contribution, or
 - (i) a time is fixed for the dissolution of the limited partnership or for the return of a contribution, no time having been specified in the certificate, or
 - (j) the partners desire to make a change in any other statement in the certificate in order to make the certificate accurately represent the agreement between them.
- (2) The notice to amend a certificate shall
- (a) set forth clearly the change in or addition to the certificate which is desired, and
 - (b) be signed by all the partners.
- (3) A notice to amend a certificate by substituting a limited partner or adding a limited or general partner shall also be signed by the person to be substituted or added and, where a limited partner is substituted, the amendment shall also be signed by the assigning limited partner.

66d. (1) Where anyone designated under section 66b or 66c as being a person who must sign a notice to cancel or amend a certificate refuses to do so, a person desiring the cancellation or amendment, may apply to the Court for an order directing the cancellation or amendment.

(2) Upon hearing an application brought under subsection (1) the Court, if it finds that the applicant is entitled to have the notice in question signed, shall by order direct the registrar of the Central Registry to record the cancellation or amendment of the certificate as set forth in the order.

66e. A certificate is cancelled or amended, as the case indicates, when there is filed with and recorded in the Central Registry

- (a) a notice signed as required by this Part, or
- (b) a certified copy of a Court order made under section 66d.

66d. Cancellation or amendment of certificate by court order.

66e. Effective time of cancellation or amendment.

66f. In settling accounts after the dissolution of a limited partnership the liabilities of the partnership to creditors, excepting

- (a) to limited partners on account of their contributions, and
- (b) to general partners,

shall be paid first and then, subject to any statement in the certificate or to subsequent agreement, in the following order:

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

66g. Where a certificate contains a false statement, any person suffering loss as a result of relying upon that statement may hold liable as a general partner every party to the certificate who

- (a) knew, when he signed the certificate, that the statement relied upon was false, or
- (b) became aware, subsequent to the time when he signed the certificate, but within a sufficient time before the false statement was relied upon to enable him to cancel or amend the certificate or to commence proceedings in accordance with this Act for the cancellation or amendment of the certificate, that the statement relied upon was false.

66h. A person who contributes to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership,

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

if, upon ascertaining the fact that he is not a limited partner, he promptly renounces his interest in the profits or other compensation by way of income from the business.

66i. (1) The Court may, upon application by a judgment creditor of a limited partner, charge the interest of

66f. Settling accounts on dissolution.

66g. Effect of false statement in certificate.

66h. Liability of person who mistakenly believes he is a limited partner.

66i. Charge on interest of limited partner.

the indebted limited partner with payment of the unsatisfied amount of the judgment debt, and may appoint a receiver and make all other orders, directions and inquiries which the circumstances of the case require.

(2) A charged interest referred to in subsection (1) may be redeemed with the separate property of a general partner, but may not be redeemed with limited partnership property.

(3) The remedies conferred by subsection (1) are not exclusive of others which may exist.

66j. A limited partner, unless he is also a general partner, is not a proper party to proceedings against a limited partnership, except where the object of the proceedings is to enforce a limited partner's right against or liability to the limited partnership.

66k. (1) An actual or proposed general or limited partner may give special authority to any other person to execute on his behalf any document under this Part.

(2) A special authority referred to in subsection (1) shall be filed in the Central Registry and recorded with the document or one of the documents executed in the exercise of the special authority.

66l. (1) A limited partnership formed prior to June 1, 1968 may become a limited partnership under this Part by complying with section 51, if the certificate states

- (a) the amount of the original contribution of each limited partner and the time when the contribution was made, and
- (b) that the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of the limited partners.

(2) A limited partnership

- (a) in existence prior to June 1, 1968, and
- (b) that does not become a limited partnership under this Part,

continues to be governed by sections 48 to 66 as they read prior to June 1, 1968.

4. The following heading is added immediately before section 67:

PART 3

GENERAL

5. The Schedule is amended by striking out Form A.

6. This Act comes into force on June 1, 1968.

66j. Parties to proceedings against limited partnerships.

66k. Authority to sign.

66l. Effect of new legislation on existing limited partnerships.

4. New heading added.

5. A form required under the replaced sections is repealed.