

1999 Winnipeg MB

Limited Liability Partnership (Draft Legislation) Uniform Limited Liability Partnership Act

NOTE: This Uniform Act only deals with the issue of liability of LLP partners. Provisions relating to the establishment or registration of LLPs or extra-provincial LLPs are not included nor are provisions relating to particular professions, which it is assumed will be dealt with in the relevant professional statutes. Any enterprise that may be carried on through an ordinary partnership should be able to be carried on through an LLP. This is a decision for each enacting jurisdiction to make. This Uniform Act is drafted so that it can be included in the enacting jurisdiction's Partnership Act.

1 In this Act,

- (a) "[Enacting jurisdiction] LLP" means a partnership registered under [insert appropriate section of the legislation that deals with this] as an [Enacting jurisdiction] limited liability partnership;
- (b) "distribution" means a transfer of money or other partnership property by a partnership to a partner or an assignee of a partner's share in the partnership, whether as a share of profits, return of contributions to capital, repayment of advances, or otherwise, but does not include a payment made as reasonable compensation for current services provided by a partner to an [Enacting jurisdiction] LLP, to the extent that the payment would be reasonable if paid as compensation for similar services to an employee who was not a partner;
- (c) "extra-provincial LLP" means a partnership registered under [insert appropriate section of the legislation that deals with this] as an extra-provincial limited liability partnership;
- (d) "LLP agreement" means a partnership agreement in writing that stipulates that the partnership is to register as an [Enacting jurisdiction] LLP, and includes a partnership agreement that has been amended to so stipulate;

(e) "obligation" includes any debt or liability, but does not include debts or liabilities of partners as between themselves or as between themselves and the partnership.

2(1) Except as otherwise expressly provided in this or any other Act or in an agreement, the liability of a partner in an [Enacting jurisdiction] LLP for an obligation of the partnership is limited to the partner's interest in the partnership property. [Rec #1]

(2) Except as otherwise expressly provided in this Act or an LLP agreement, no partner in an [Enacting jurisdiction] LLP is personally liable to the partnership or another partner by way of contribution, indemnity or otherwise with respect to any obligation to which subsection (1) applies. [Rec #3]

(3) A judgment against an [Enacting jurisdiction] LLP is enforceable only against partnership property. [Rec #10]

(4) Subsection (1) does not apply so as to protect a partner in an [Enacting jurisdiction] LLP from personal liability for injury suffered by a person

(a) because of that partner's negligent or otherwise wrongful acts or omissions, including negligence in appointing, supervising or failing to supervise another member, employee or representative of the firm,

(b) because of the negligent or otherwise wrongful acts or omissions of another member, employee or representative of the firm, where the partner knew of the wrongful acts or omissions and failed to take reasonable steps to prevent the acts, omissions or injury. [Rec #4]

(5) Nothing in this Act limits the liability of members of an [Enacting jurisdiction] LLP with respect to any obligation of the partnership that arose before, or that arises out of a contract entered into before, the partnership became an [Enacting jurisdiction] LLP. [Rec #1]

3(1) Partners of an [Enacting jurisdiction] LLP are personally liable for any obligation of the LLP for which they would be liable if the LLP was a corporation and they were the directors of the corporation. [Rec #2]

(2) Where a corporation is a partner of an [Enacting jurisdiction] LLP, the directors of the corporation are jointly and severally liable for any liability incurred by the corporation under subsection (1). [Rec #2]

4 (1) An [Enacting jurisdiction] LLP shall set out its name on all contracts, invoices, negotiable instruments and orders for goods and services.

(2) Where an [Enacting jurisdiction] LLP fails to comply with subsection (1) and, because of that failure, a person enters into a contract with the partnership without knowledge that it is an LLP, the partners are personally liable under the contract to the same extent as if the partnership was not an LLP.

5(1) An [Enacting jurisdiction] LLP shall not make a distribution if there are reasonable grounds to believe that, after the distribution,

- (a) the LLP would be unable to pay its obligations as they come due, or
- (b) the value of the partnership property would be less than the LLP's obligations. [Rec #7]

(2) An [Enacting jurisdiction] LLP may base its determination of whether a distribution is prohibited by subsection (1) either

- (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, or
- (b) on a fair valuation or other method that is reasonable in the circumstances. [Rec #7]

(3) An [Enacting jurisdiction] LLP shall not make a distribution in connection with the winding up of its affairs unless all obligations of the LLP have been paid or satisfactory provision for their payment has been made. [Rec #7]

(4) A member of an [Enacting jurisdiction] LLP who receives a distribution contrary to subsection (1) or (3) is liable to the LLP for the amount, not exceeding the amount of money or value of the property received, necessary to discharge obligations of the partnership that existed at the time of the distribution. [Rec #9]

(5) Any members of an [Enacting jurisdiction] LLP who authorize a distribution contrary to subsection (1) or (3) are jointly and severally liable to the LLP for any amount for which a recipient is liable under subsection (4), to the extent that the amount is not recovered from the recipient. [Rec #9]

(6) The [Enacting jurisdiction] LLP, any partner of the LLP or any person to whom the LLP was obligated at the time of a distribution contrary to subsection (1) or (3) may initiate proceedings to enforce the LLP's rights under this section.

(7) Proceedings to enforce a liability under this section must be commenced within 2 years after the date of the distribution.

6(1) Where

(a) at a particular time a partnership (the "original partnership") is registered as an [Enacting jurisdiction] LLP,

(b) immediately after that time a differently constituted partnership (the "continuing partnership") is carrying on the business of the original partnership,

(c) one or more of the members of the original partnership are members of the continuing partnership, and

(d) there is an express or implied agreement between the members of the original and continuing partnerships that the continuing partnership will assume all obligations of the original partnership

the continuing partnership is deemed, for the purposes of this section, to be the successor partnership of the original partnership.

(2) A successor partnership is the same partnership as the original partnership for the purposes of this Act and, without limitation, succeeds to the original partnership's status as an [Enacting jurisdiction] LLP and is subject to all the obligations of the original partnership.

7(1) When an [Enacting jurisdiction] LLP dissolves and its affairs are to be wound up, the partnership maintains its status as an LLP while its affairs are being wound up.

(2) Where

(a) an [Enacting jurisdiction] LLP ceases to carry on business, or

(b) there is any change in the membership of an [Enacting jurisdiction] LLP,

and there is not a successor partnership to the LLP within the meaning of section 6,

the LLP is deemed for the purposes of this section and section 5(3) to have dissolved and to be winding up its affairs.

(3) When an [Enacting jurisdiction] LLP has dissolved and its affairs are being wound up, the Court may on the application of any interested person make any order with respect to the LLP that could be made with respect to a corporation under [relevant section of the jurisdiction's legislation on business corporations.]

8 Except as expressly provided in any other Act, the law of the governing jurisdiction of an extra-provincial LLP applies

(a) to the organization and internal affairs of the LLP, and

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