

Section Seven

PARTNERSHIP ACT

CHAPTER P-2

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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 79.3 as an Alberta LLP;
- (a.1) "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;
- (a.2) "business" includes every trade, occupation and profession;
- (b) repealed 1987 c16 s2;
- (c) "Court" means the Court of Queen's Bench;
- (c.1) "extra-provincial LLP" means a limited liability partnership registered under section 79.96 as an extra-provincial LLP;
- (c.2) "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;
- (d) "partnership" means the relationship that subsists between persons carrying on a business in common with a view to profit;
- (e) "partnership property" means 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 of and in the course of the partnership business;

(e.1) "registered LLP" means an Alberta LLP or an extra-provincial LLP;

(f) "Registrar" means the Registrar of Corporations or a Deputy Registrar of Corporations appointed under the *Business Corporations Act*.

RSA 1980 cP-2 s1;1983 cC-7.1 s27;1987 c16 s2;
1999 c27 s2

Meaning of
"firm" and "firm
name"

2 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".

RSA 1980 cP-2 s2

PART 1

ORDINARY PARTNERSHIPS

Body
corporate not
partnership

3 The relationship between members of any company or association who constitute a corporation under any law in force in Alberta is not a partnership within the meaning of this Act.

RSA 1980 cP-2 s3

Determining
existence of
partnership

4 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 profits made by the use of it;

(b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing the returns have or have not a joint or common right or interest in 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 proof that that person is a partner in the business, but the receipt of the share, or of a payment contingent on or varying with the profits of the business, does not of itself make the person receiving the share or payment 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 that person 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 who is a surviving spouse or 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 person was a partner does not by reason only of that receipt become 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 a business on a contract with that person that the lender shall
 - (A) receive a rate of interest varying with the profits, or
 - (B) 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, so long as the contract is in writing and signed by or on behalf of all the parties to the contract;
- (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 that receipt a partner in the business or liable as such.

RSA 1980 cP-2 s4

Rights of lender and seller of goodwill

5(1) When a person to whom money has been advanced by way of loan on a contract referred to in section 4, or a buyer of a goodwill in consideration of a share of the profits of the business,

- (a) makes an assignment for the benefit of his creditors,
- (b) enters into an arrangement to pay his creditors less than 100 cents on the dollar, or
- (c) becomes bankrupt or dies in insolvent circumstances,

the lender is not entitled to recover anything in respect of his 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 have been satisfied.

(2) This section shall be construed as being subject to the the *Bankruptcy and Insolvency Act* (Canada).

RSA 1980 cP-2 s5:1994 c23 s51

Relations of Partners to Persons Dealing With Them

Partner an agent

6 Each partner is an agent of the firm and of his other partners for the purpose of the business of the partnership.

RSA 1980 cP-2 s6

Power of partner to bind the firm

7 The acts of each partner in 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

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

RSA 1980 cP-2 s7

Partners bound by acts on behalf of firm

8(1) An act or instrument relating to the business of the firm and done or executed in the firm name, or in another manner showing an intention to bind the firm, by a person authorized in that behalf, whether a partner or not, binds the firm and the partners.

(2) Subsection (1) does not affect any general rule of law relating to the execution of deeds, instruments or documents affecting land or negotiable instruments.

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 11.1.

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

(2) When a partner dies, his 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.

(3) 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

11.1(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 79.1 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

12 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 his 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 therefor to the same extent as the partner so acting or omitting to act.

RSA 1980 cP-2 s12

Misapplication
of money

13 The firm is liable to make good any loss when

(a) one partner acting within the scope of his 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

14 Except as provided in section 11.1, each partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner in it becomes liable under section 12 or 13.

RSA 1980 cP-2 s14;1999 c27 s5

Improper
employment of
trust property

15(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 1970 c271 s15

Persons liable
by holding out

16(1) Each person who by spoken or written words or by conduct represents himself, or who knowingly permits 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 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 his estate liable for partnership debts contracted after his death.

RSA 1970 c271 s16

Admissions
and represen-
tations

17 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.

RSA 1970 c271 s17

Notice to
acting partner

18(1) Notice to a partner who habitually acts in the partnership business of a matter relating to partnership affairs operates as notice to the firm.

(2) The notice does not operate as a notice to the firm when there is a fraud on the firm committed by or with the consent of the partner to whom the notice is given.

RSA 1970 c271 s18

Liability of
incoming and
outgoing
partners

19(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 by reason of retirement 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.

(4) An agreement under subsection (3) may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

RSA 1970 c271 s19

Revocation of
continuing
guaranty

20 A continuing guaranty given

(a) to a firm, or

(b) 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 a change in the constitution of the firm

(c) to which the guaranty was given, or

(d) in respect of the transactions of which the guaranty was given.

RSA 1970 c271 s20

Relations of Partners to One Another

Variation by
consent of
terms of
partnership

21(1) The mutual rights and duties of partners whether ascertained by agreement or defined by this Act may be varied by the consent of the partners.

(2) The consent may be either expressed or inferred from a course of dealing.

RSA 1970 c271 s21

Partnership
property

22(1) Partnership property shall be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) Notwithstanding subsection (1), the legal or registered estate or interest in land that belongs to the partnership devolves

(a) according to the nature and tenure of the land, and the general rules of law applicable to it, and

(b) in trust so far as necessary, for the persons beneficially interested under this section in the land.

(3) When

(a) co-owners of an estate or interest in land that is not partnership property are partners as to the profits made by the use of that estate or interest, and

(b) co-owners purchase another estate or interest in land out of those profits, to be dealt with in like manner,

the estate or interest so purchased belongs to those co-owners, in the absence of an agreement to the contrary, not as partners but as co-owners for the same respective estates and interests as were held by them at the date of purchase in the first mentioned estate or interest in land.

RSA 1970 c271 s22

Property
bought with
partnership
money

23 Property bought with money belonging to the firm shall be deemed to have been bought on account of the firm unless there appears to be a contrary intention.

RSA 1970 c271 s23

Partnership
property is
personal
estate

24 When land or an interest in land becomes partnership property it shall, unless the contrary intention appears, be treated as between the partners, including the representatives of a deceased partner, as personal or movable property and not as real property.

RSA 1970 c271 s24

Procedure
against
partnership
property

25 A writ of enforcement shall not issue against partnership property except on a judgment against the firm.

RSA 1980 cP-2 s25;1994 cC-10.5 s166

Charging
partner's
interest

26(1) The Court on application by notice of motion by a judgment creditor of a partner

(a) may 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 on the judgment debt, and

(b) may, by the order referred to in clause (a) or a subsequent order,

(i) appoint a receiver of that partner's share of profits whether already declared or accruing, and of any other money that might be coming to him in respect of the partnership, and

(ii) direct accounts and inquiries and give other orders and directions

(A) that might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or

(B) that the circumstances of the case require.

(2) The other partner or partners is or are at liberty at any time

(a) to redeem the charge against the interest of the partner in the partnership, or

(b) if a sale is directed, to purchase that interest.

RSA 1980 cP-2 s26

Determination
of partners'
interest

27 Subject to section 11.1 and subject to an agreement, express or implied, between the partners, the interest of partners in the partnership property and their rights and duties in relation to the partnership shall be determined by the following rules:

(a) all the partners are entitled to share equally in the capital and profits of the business and shall contribute equally towards the losses, whether of capital or otherwise, sustained by the firm, but a partner is not individually liable to contribute to losses arising from a liability for which the partner is not liable under section 11.1;

(b) the firm shall indemnify each partner in respect of payments made and personal liabilities incurred by the partner

(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,

but a partner is not required to indemnify or make contributions to other partners in respect of debts or obligations of the partnership for which the partner is not liable under section 11.1;

(c) a partner who makes for the purpose of the partnership a payment or advance beyond the amount of capital that he has agreed to subscribe is entitled to interest 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) each partner may take part in the management of the partnership business;

- (f) no partner is entitled to remuneration for acting in the partnership business;
 - (g) no person may be introduced into the firm as a partner without the consent of all existing partners;
 - (h) a difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners;
 - (i) no change may be made in the nature of the partnership business without the consent of all existing partners,
 - (j) the partnership books are to be kept at the place of business of the partnership, or the principal place of business if there is more than one, and each partner may have access to and inspect and copy any of the books.
- RSA 1980 cP-2 s27;1999 c27 s6

Expulsion of partner

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

RSA 1980 cP-2 s28

Retirement from partnership at will

29(1) When no fixed term has been agreed on for the duration of a partnership, or a partnership is continued after a fixed term has expired, a partner may at any time determine the partnership on giving notice of his intention to do so to all the other partners.

(2) If the partnership was originally constituted by deed, a notice in writing signed by the partner giving the notice is sufficient for the purposes of subsection (1).

RSA 1980 cP-2 s29

Effect of continuance of partnership business

30(1) When a partnership entered into for a fixed term is continued after the term has expired and without an 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 they are consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or those of them who have habitually acted in the business during the term without a settlement or liquidation of the partnership affairs shall be presumed to be a continuance of the partnership.

RSA 1980 cP-2 s30

Right to accounts

31 Each partner is bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representative.

RSA 1970 c271 s31

Accountability
of partners for
private profits

32(1) Each partner shall account to the firm for a benefit derived by him without the consent of the other partners from

- (a) any transaction concerning the partnership, or
- (b) any use by him of the partnership property, name or business connection.

(2) Subsection (1) applies to transactions undertaken after a partnership has been dissolved by the death of a partner and before the affairs of the partnership have been completely wound up by a surviving partner or by the representative of the deceased partner.

RSA 1970 c271 s32

Account by
partner
competing
with firm

33 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, he shall account for and pay over to the firm the profits made by him in that business.

RSA 1970 c271 s33

Rights of
assignee of
share in
partnership

34(1) An assignment by a partner of his share in the partnership, either absolute or by way of mortgage, encumbrance or redeemable charge, does not as against the other partners entitle the assignee during the continuance of the partnership

- (a) to interfere in the management or administration of the partnership business or affairs,
 - (b) to require accounts of the partnership transactions, or
 - (c) to inspect the partnership books.
- (2)** An assignee under subsection (1)
- (a) is entitled to receive the share of profits to which the assigning partner would otherwise be entitled, and
 - (b) shall accept the account of profits agreed to by the partners.
- (3)** When a partnership is dissolved whether with respect to all the partners or the assigning partner, an assignee is entitled
- (a) to receive the share of the partnership assets to which the assigning partner is entitled as between that assigning partner and the other partners, and
 - (b) to an account as from the date of the dissolution of the partnership, for the purpose of ascertaining the share referred to in clause (a).

(4) In this section "assignee" includes "mortgagee" and "encumbrancee".

RSA 1970 c271 s34

Dissolution of Partnership and its Consequences

Dissolution by
expiration of
notice

35(1) Subject to an 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 partner or partners of his intention to dissolve the partnership.

(2) In the case mentioned in subsection (1)(c) the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or if no date is mentioned in the notice, then as from the date of communication of the notice.

RSA 1970 c271 s35

Dissolution by
death,
assignment in
trust or charge

36(1) Subject to an agreement between the partners, a partnership is dissolved with regard to all the partners

- (a) by the death of a partner,
- (b) by the assignment of a partner's property in trust for the benefit of his creditors, or
- (c) by the bankruptcy of a partner.

(2) A partnership may at the option of the other partners be dissolved if a partner permits his share of the partnership property to be charged under this Act for his separate debt.

RSA 1970 c271 s36

Dissolution by
illegality of
partnership

37 A partnership is dissolved by the happening of an event that makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry on the business in partnership.

RSA 1970 c271 s37

Dissolution by
the Court

38(1) On application by a partner the Court may order a dissolution of the partnership in any of the following cases:

- (a) when a partner is shown to the satisfaction of the Court to be of permanently unsound mind;

- (b) when a partner other than the partner suing becomes in any way, other than through permanent unsoundness of mind, permanently incapable of performing his part of the partnership contract;
 - (c) when a partner other than the partner suing has been guilty of conduct that 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;
 - (f) when circumstances have arisen that in the opinion of the Court render it just and equitable that the partnership be dissolved.
- (2) In a case arising under subsection (1)(a) the application may be made
- (a) on behalf of the partner alleged to be of permanently unsound mind by his guardian, next friend or a person having a right to intervene, or
 - (b) by any other partner.

RSA 1970 c271 s38

Rights of
person dealing
with firm
against
apparent
members of
firm

39(1) When a person deals with a firm after a change in that firm's constitution he is entitled to treat apparent members of the old firm as still being members of the firm until he has notice of the change.

(2) The filing of a declaration under section 91 and the publication of the declaration in at least 2 consecutive issues of The Alberta Gazette is notice of dissolution to persons who had no dealings with the firm before the date of filing the declaration and publication.

(3) The estate of a partner who

- (a) dies,
- (b) makes an assignment for the benefit of his creditors,
- (c) becomes bankrupt, or

- (d) 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, assignment, bankruptcy or retirement, as the case may be.

(4) This section shall be read subject to the *Bankruptcy and Insolvency Act* (Canada).

RSA 1980 cP-2 s39:1994 c23 s51

Rights of partner to give notice of dissolution

40 On the dissolution of a partnership or retirement of a partner, any partner

- (a) may publicly give notice of the dissolution or retirement, and
- (b) 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 or their concurrence.

RSA 1970 c271 s40

Winding-up

41 When a partnership is dissolved the authority of each partner to bind the firm and the other rights and obligations of the partners continue notwithstanding the dissolution, but only to the extent necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution.

RSA 1970 c271 s41

Partners' rights to property

42(1) On the dissolution of a partnership each partner is entitled, as against the other partners and persons claiming through them in respect of their interests as partners,

- (a) to have the property of the partnership applied in payment of the debts and liabilities of the firm, and
- (b) to have the surplus assets after that payment applied in payment of what is due to the partners respectively after deducting what is due from them as partners to the firm.

(2) For the purposes of subsection (1) 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.

RSA 1970 c271 s42

Partnership prematurely dissolved

43 When 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 any part of it that it thinks just, having regard to the terms of the

partnership contract and to the length of time during which the partnership has been continued, unless

- (a) the dissolution is in the judgment of the Court wholly or chiefly due to 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 the premium or any part of it.

RSA 1970 c271 s43

Rights when
partnership
dissolved for
fraud or mis-
representation

44 If a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties to it, 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,
- (b) to stand in the place of the creditors of the firm for any payment made by him in respect of the partnership liabilities, and
- (c) to be indemnified against all the debts and liabilities of the firm by the person guilty of the fraud or making the representation.

RSA 1970 c271 s44

Outgoing
partner

45(1) When a 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 a final settlement of accounts as between the firm and the outgoing partner or his estate, the outgoing partner or his estate, in the absence of an agreement to the contrary, is entitled at the option of himself or his representatives to

- (a) the share of the profits made since the dissolution of the partnership that the Court finds to be attributable to the use of his share of the partnership assets, or
- (b) interest on the amount of his share of the partnership assets.

(2) When 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 exercised, the estate of the deceased partner or the outgoing partner or his estate, as the case may be, is not entitled to a further or other share of profits.

(3) If a partner assuming to act in exercise of the option referred to in subsection (2) does not in all material respects comply with the terms of the option, he is liable to account under subsection (1).

RSA 1980 cP-2 s45

Retiring or
deceased
partners

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

RSA 1980 cP-2 s46

Distribution of
assets on final
settlement of
accounts

47 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, must be paid
 - (i) first out of profits,
 - (ii) next out of capital, and
 - (iii) last, 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 section 11.1;

- (b) the assets of the firm including the sums of money, 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 in the firm;
 - (ii) in paying to each partner ratably what is due from the firm to him for advances as distinguished from capital;
 - (iii) in paying to each partner ratably what is due from the firm to him in respect of capital;
 - (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

RSA 1980 cP-2 s47;1999 c27 s7

PART 2

LIMITED PARTNERSHIPS

- Application of Part** **48** This Act shall, in the case of limited partnerships, be read subject to this Part.
RSA 1970 c271 s48
- Definition** **49** In this Part “certificate” means a certificate made under section 51 and includes a certificate that has been amended.
RSA 1980 cP-2 s49
- Limited partnerships** **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)** There may be any number of limited partners in a limited partnership.
- (4)** Persons comprising a firm may enter into a limited partnership with other persons, including persons comprising 1 or more other firms.
RSA 1980 cP-2 s50;1981 c28 s2;1987 c16 s2
- Formation of limited partnership** **51(1)** Subject to subsection (1.1), a limited partnership is formed when a certificate substantially complying with subsection (2) is filed with and recorded by the Registrar.
- (1.1)** A partnership which
- (a) was formed in a jurisdiction, other than Alberta, that is designated by the Lieutenant Governor in Council for the purposes of this subsection, and
- (b) is registered or otherwise formally recognized as a limited partnership under the laws of that jurisdiction
- may be registered as a limited partnership under this Act on the filing with and recording by the Registrar of a certificate which complies, or in the opinion of the Registrar substantially complies, with subsection (2).
- (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 on, 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.
- (3)** The Registrar may register a partnership under subsection (1.1) if he has received
- (a) from the jurisdiction in which it was formed a copy of its original certificate of registration as a limited partnership, or the equivalent document, and of all amendments to the

certificate verified by the proper authority of that jurisdiction,

- (b) evidence satisfactory to him that the partnership still exists as a limited partnership in that jurisdiction, and
- (c) a copy of the partnership agreement and of all amendments to the agreement verified by a notary public or the equivalent from that jurisdiction.

(4) A firm registered as a limited partnership under subsection (1.1) has the same rights and is subject to the same duties, restrictions and liabilities under this Act as a firm formed as a limited partnership under subsection (1).

RSA 1980 cP-2 s51;1981 c28 s3;1983 cC-7.1 s27;1987 c16 s2

General and
limited
partners

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.

RSA 1980 cP-2 s52

Name of
partnership

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.

RSA 1980 cP-2 s53

Contribution of
limited 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.

(3) Only the general partners shall be shown at the land titles office or the Metis Settlements Land Registry as owners of any interest of the limited partnership in real property.

RSA 1980 cP-2 s54;1998 c22 s28