

# EXTRA-PROVINCIAL LIMITED LIABILITY PARTNERSHIPS

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## Limited Liability Partnerships – The American Influence

Limited Liability Partnerships (ALLP<sup>®</sup>) originated in the United States in 1991 to provide a greater level of liability protection for business partnerships. In recent years a number of other jurisdictions have followed the United States=lead and have enacted similar LLP legislation. In Ontario, on July 1, 1998 amendments to the *Partnerships Act* (Ontario)(the AAct<sup>®</sup>) were proclaimed into force and allowed certain professional partnerships to practice as LLPs. These amendments recognized the fact that certain professions in Ontario cannot incorporate and must, therefore, organize as partnerships placing the partners=personal assets at risk. The amendments to the Act created a narrow Apartial shield@in that a non-negligent partner=s personal assets are only protected from negligent acts or omissions of other individuals and then only if the negligent individual is not under the partner=s direct supervision or control.

Currently, the LLP provisions of the Act apply solely to professions and allow a professional partnership to organize as an LLP only if the legislation governing the profession so permits and the governing body of the profession requires the partnership to maintain a minimum level of liability insurance. To date, pursuant to recent amendments to the *Law Society Act* (Ontario) and the *Chartered Accountants Act* (Ontario), the LLP organization is only available to lawyers and accountants.

## Extra-Provincial LLPS

When the LLP amendments to the Act came into force, the section relating to extra-provincial LLPs was not concurrently proclaimed. As a result, although an extra-provincial LLP was not prohibited from practising in Ontario, it remained uncertain whether its LLP status would be recognized by Ontario courts if it was ever sued in Ontario. On February 15, 2001, however, this uncertainty was removed as section 7 of the *Partnerships Statute Law Amendment Act, 1998*, dealing with extra-provincial LLPs, was proclaimed in force.

## Legislative Amendments

Section 7 of the *Partnerships Statute Law Amendment Act, 1998* adds a new section 44.4 to the Act which provides,

- 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*.
- (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*.
- (3) No extra-provincial limited liability partnership shall carry on business under a name other than its registered firm name.
- (4) The laws of the jurisdiction under which an extra-provincial limited liability partnership is formed shall govern,
- (a) its organization 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.
- (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.

Corresponding amendments to the *Business Names Act* (Ontario) were proclaimed in force on February 15, 2001. Subsection 2.1(1) of the amended *Business Names Act* (Ontario) defines an extra-provincial LLP as an unincorporated association, other than a partnership, formed under the laws of another jurisdiction that grants to each of its members limited liability with respect to the liabilities of the association. Section 2.1 further provides that No extra-provincial LLP shall carry on business in Ontario unless it has registered its company name.

### **Liability of an Extra-Provincial LLP**

Pursuant to subsection 44.4(4) of the amended Act, an extra-provincial LLP practising in Ontario is governed by the laws of the jurisdiction under which the extra-provincial LLP was formed not only with respect to its organization and internal affairs, but also with respect to the liability of its partners.

As stated above, a partner of an Ontario LLP is afforded only a partial shield protection in that he/she is only protected from the negligent acts or omissions of other individuals and only if the negligent individual is not under that partner's direct supervision or control. An LLP created in another jurisdiction, however, may not necessarily provide for such limited, partial protection. The LLP legislation in some United States jurisdictions, for example, offers protection to the LLP's partners that is similar to the limited liability protection afforded to the shareholders of a corporation (i.e. a full shield protection). Further, as these United States LLPs are not governed by Ontario legislation they may not be required to maintain adequate insurance.

## **LLP Legislation of other Canadian Jurisdictions**

To date, the only other Canadian jurisdiction to legislate for the creation of LLPs is Alberta. The liability and insurance provisions of the Alberta legislation are substantially similar to Ontario's amended Act; however, the Alberta Act limits extra-provincial LLP registration exclusively to the eight professions that may organize as Alberta LLPs.

### **Conclusion – A Word to the Wise**

Although an extra-provincial LLP may register and carry on business in Ontario, the amended Act does not legislate minimum requirements with respect to partnership and partners' liability and insurance coverage. Therefore, prudence dictates that anyone transacting business in Ontario with an extra-provincial LLP will investigate further the legal status of the LLP in its home jurisdiction.