

THIRD SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 75

An Act to amend the Civil Code and the Companies
and Partnerships Declaration Act

First reading
Second reading
Third reading

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Ministre de la justice

L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTE

The object of this bill is to amend certain articles of the Civil Code in order to relax the rules governing limited partnerships contained in articles 1871 and following, and to make the necessary amendments of concordance in the Companies and Partnerships Declaration Act.

Sec. 1. *The proposed amendments relax the rules governing limited partnerships, especially in regard to the rights and obligations of the special partners. They enable the special partners to contribute money or property, by cash payment or by instalment, and to withdraw their contributions. They also allow new special partners to join the partnership. The liability of a special partner will be limited to the amount of his contribution. The general partners will be required to keep a register of the special partners and their contributions, and this is to be available for examination by any person interested.*

Finally, unless otherwise agreed, it will no longer be possible to dissolve a limited partnership by the act of one person; rather, it will require the consent of a majority of the partners.

Bill 75

An Act to amend the Civil Code and the Companies and Partnerships Declaration Act

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

C.C., aa.
1871-1888,
replaced.

1. Articles 1871 to 1888 of the Civil Code are replaced by the following articles:

“1871. Limited partnerships are formed in accordance with the Companies and Partnerships Declaration Act (Revised Statutes, 1964, chapter 272).

“1872. Limited partnerships consist of one or more persons called general partners and of one or more persons called special partners.

“1873. A special partner makes a contribution to the common stock, consisting of a sum of money or of other property; he may make an additional contribution at any time.

“1874. The special partner assumes the risk of loss of the agreed contribution by fortuitous event until it is delivered.

“1875. The general partners are jointly and severally liable for the debts of the partnership in respect of third persons; the special partners are liable therefor only up to the amount of the agreed contribution.

“1876. Only the general partners are authorized to administer the business of and to bind the partnership.

“1877. Persons contracting limited partnerships must make a declaration containing the following information:

1. the firm name of the partnership;
2. the nature of the business for which it is being formed;
3. the location in Québec of its principal establishment;
4. the names and addresses of the general and special partners, distinguishing which are general and which special;
5. the amount of money contributed to the common stock by each special partner and the date of payment or the nature and value of any other property contributed to the common stock;
6. where such is the case, the nature and value of a contribution a special partner undertakes to make subsequently, together with the date and the terms and conditions of payment of this contribution;
7. the period at which the partnership commences and that of its termination.

This declaration is signed by all the partners and is filed and registered in accordance with the Companies and Partnerships Declaration Act.

“1878. The partnership is formed from the date on which the declaration is registered; if the declaration is not registered, the partnership is deemed to be an ordinary partnership.

“1879. In the case of any change in the information required by paragraphs 1, 2, 3 and 7 of article 1877, or of the replacement of any general partner or of any change in the number of general partners, the partners must file a declaration setting forth the changed information.

The change becomes effective upon the registration of this declaration.

“1880. If any false information is contained in the declaration filed pursuant to article 1877 or 1879, the partners are liable in respect of third persons for the obligations of the partnership resulting from this false information, unless they prove that they did not know it was false.

“1881. The general partners keep a register, at the main establishment of the partnership, of the names and addresses of the special partners who have signed the declaration referred to in article 1877, as well as of those persons having become special partners after the filing of the declaration.

This register also contains all information pertaining to the special partners' contributions to the common stock.

This register may be examined by any person on demand.

“1882. Unless otherwise agreed, a special partner's interest in the partnership is transferable.

The person who acquires this interest possesses the rights and obligations of the special partner he replaces; the replaced partner remains liable nevertheless, as if he were still a special partner, for any obligations he might incur by virtue of articles 1880, 1886 and 1887.

“1883. The firm name of the partnership must include the words “and company, limited”.

If the name of a special partner appears in the firm name, he is liable for the obligations of the partnership in the same manner as a general partner, unless his status as a special partner is clearly indicated.

“1884. Suits in relation to the business of the partnership may be brought by or against the general partners in the same manner as if there were no special partners.

“1885. During the continuance of the partnership, no special partner may withdraw either the whole or any part of his contribution to the common stock unless all the partners agree thereto and unless sufficient stock remains after this withdrawal to discharge the debts of the partnership.

“1886. A special partner is entitled to receive his share of the profits.

However, if by the payment of profits the capital is reduced, the partner receiving them is bound to restore the amount necessary to cover his share of the deficient capital, with interest.

“1887. A special partner may, from time to time, examine into the state and progress of the partnership, and may advise as to its management.

He cannot transact any business on behalf of the partnership, nor be employed by it as agent, attorney or otherwise, under pain of being liable in the same manner as a general partner for the debts of the partnership which result from his acts.

“1888. The general partners must render an account of their administration to the partners.

“1888a. In the case of the insolvency or bankruptcy of the partnership, no special partner may, as such, claim as a creditor until all the other creditors of the partnership have been satisfied.

Sec. 2. The proposed amendment to article 1892 of the Civil Code enables the partnership to carry on its business even when one partner's share in the firm has been seized or one partner is bankrupt.

Sec. 3. The amendment to this article enables a limited partnership to avoid the application of article 1893 of the Civil Code, unless otherwise agreed. This amendment provides concordance.

Sec. 4. This section proposes a change in the duty payable on the registration of a declaration made pursuant to section 4 of the Companies and Partnerships Declaration Act.

Sec. 5. Section 5 provides concordance and complements the amendment made in section 4.

"1888b. Unless otherwise agreed, the partnership is dissolved if the majority of the partners agree thereto; no such dissolution can take place until a notice has been filed and published in accordance with the Companies and Partnerships Declaration Act."

C.C.,
a. 1892,
am.

2. Article 1892 of the said Code, amended by section 32 of chapter 50 of the statutes of 1896/1897 and by section 2 of chapter 38 of the statutes of 1906, is again amended:

(a) by replacing subparagraph 6 of the first paragraph by the following subparagraphs:

"6. By the interdiction of one of the partners;

"6a. By the bankruptcy of one of the partners;"

(b) by replacing the second, third and fourth paragraphs by the following paragraphs:

"The causes of dissolution set forth in subparagraphs 5, 6 and 7 of the first paragraph do not apply to limited partnerships.

Commercial partnerships are also terminated by judgment maintaining the seizure of a partner's share.

Notwithstanding subparagraph 6a of the first paragraph and the third paragraph, a limited partnership is not terminated if the other partners pay the debt of the partner being the judgment debtor or bankrupt, up to the amount of his share; that partner is then deemed to have alienated his share to the other partners."

C.C.,
a. 1893,
am.

3. Article 1893 of the said Code is amended by adding the following paragraph:

"Unless otherwise agreed, this article does not apply to a limited partnership."

R.S.,
c. 272, s. 4,
replaced.

4. Section 4 of the Companies and Partnerships Declaration Act (Revised Statutes, 1964, chapter 272) is replaced by the following section:

Collection
of duty.

"4. The prothonotary collects the duty fixed by the order in council passed in accordance with section 232 of the Courts of Justice Act (Revised Statutes, 1964, chapter 20) for the registration of every declaration made under the authority of this division."

R.S.,
c. 272,
s. 11, am.

5. Section 11 of the said act is amended by replacing the second and third paragraphs by the following paragraph:

Sec. 6. *Section 6 provides concordance. It provides, furthermore, for the publication of a notice in the Gazette officielle du Québec pursuant to the registration of a limited partnership or of a change mentioned in new article 1879.*

Sec. 7. *Section 7 provides concordance.*

Collection
of duty.

“The prothonotary collects the fee fixed by the order in council passed in accordance with section 232 of the Courts of Justice Act for the registration of every declaration made under the authority of this division, and for the issuance of a copy thereof.”

R.S.,
c. 272,
aa. 16-18,
replaced.

6. Sections 16 to 18 of the said act are replaced by the following sections:

Declara-
tion.

“**16.** Every declaration of a limited partnership must be signed, by the several persons forming such partnership, before a notary, who shall certify the signature thereof. The declaration is drawn up substantially as set out in form 5.

Filing.

“**17.** Every declaration must be filed in the office of the prothonotary of the district in which the principal establishment of the partnership is situated.

Registra-
tion.

It shall be registered by the prothonotary, and any person may examine it.

Collection
of duty.

“**18.** The prothonotary collects the duty fixed by an order in council passed in accordance with section 232 of the Courts of Justice Act, for the filing of every declaration of the formation of a limited partnership, and for the registration of such declaration.

Notice.

“**18a.** The prothonotary shall give notice of the registration of the declaration of a limited partnership, or of its dissolution, in the *Gazette officielle du Québec*, in the form prescribed by the Ministre des consommateurs, coopératives et institutions financières.

Idem.

The prothonotary shall also give notice in the *Gazette officielle du Québec* of any change in the firm name or the nature of the business of the partnership, of the change of location of its principal establishment, or of its termination date.”

R.S.,
c. 272,
form 5,
added.

7. The said act is amended by adding, after form 4, the following form:

Sec. 8. *Section 8 is a transitional provision.*

“5. — (Section 16)

“We, the undersigned, declare that we form a partnership under the firm name of “..... and Company, Limited”, (*here indicate the nature of the business of the partnership*).

The address of the principal establishment of the firm in Québec is as follows:

The firm consists of residing usually at, and of residing usually at, as general partners; and of, residing usually at, and of, residing usually at, as special partners.

..... (*name of a special partner*) has contributed a cash sum of to the common stock of the partnership, and (*name of a special partner*), a cash sum of

..... undertakes to pay into the common stock of the partnership the sum of, payable as follows:

..... has contributed (*indicate the nature of the property*), having a value of, to the common stock.

..... undertakes to contribute to the common stock of the partnership, on 19....., the sum of (*or if property, describe and indicate the value*) as an additional contribution. The terms and conditions of this additional payment are as follows:

The partnership commenced on (*specify the period*) in the year and will terminate on (*specify the period*) in the year

Dated, at

Signed in my presence,
Notary”.

Applica-
bility.

8. This act applies to partnerships and limited partnerships formed after its coming into force.

Coming
into force.

9. This act will come into force on the date to be fixed by proclamation of the Government.