



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

PARTNERSHIP ACT

PLEASE NOTE

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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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PARTNERSHIP ACT

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PARTNERSHIP ACT

CHAPTER P-1

1. Definitions

In this Act

- (a) “**court**” includes every court and judge having jurisdiction in the case and includes the Supreme Court of Prince Edward Island;
- (b) “**business**” includes every trade, occupation or profession;
- (c) “**proper office**” means the office of the Registrar;
- (d) “**Registrar**” or “**proper officer**” means the Director of Corporations. *R.S.P.E.I. 1974, Cap. P-2, s.1; 1974 (2nd), c.65, s.6; 1977, c.27, s.1; 1990, c.39, s.1.*

2. Rules of equity and common law

The rules of equity and of common law applicable to partnership continue in force, except so far as they are inconsistent with the express provisions of this Act. *R.S.P.E.I. 1974, Cap. P-2, s.2.*

3. Partnership defined

Partnership is the relation which subsists between persons carrying on a business in common, with a view of profit; but the relationship between members of any incorporated company or association is not a partnership within the meaning of this Act. *R.S.P.E.I. 1974, Cap. P-2, s.3.*

4. Rules determining

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 any profits made by the use thereof;
- (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 any 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* evidence that he 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 him 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 him 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 being the surviving spouse or a child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased was a partner, is not by reason only of such receipt 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 any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall 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, but the contract must be in writing, and signed by or on behalf of all the parties thereto,
- (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 such receipt a partner in the business or liable as such. *R.S.P.E.I. 1974, Cap. P-2, s.4; 1987, c.6, s.15.*

5. Persons to whom money advanced becomes bankrupt, effect on other creditors

In the event of any person to whom money has been advanced by way of a loan upon such contract as is mentioned in section 4, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt or insolvent, entering into an arrangement to pay his creditors less than one hundred cents on the dollar, or dying in insolvent circumstances, the lender of the loan 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. *R.S.P.E.I. 1974, Cap. P-2, s.5.*

6. Firm & firm name

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. *R.S.P.E.I. 1974, Cap. P-2, s.6.*

7. Partners as agents of the firm

Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for 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 the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner. *R.S.P.E.I. 1974, Cap. P-2, s.7.*

8. Act of agent, when binding on firm

- (1) An act or instrument relating to the business of the firm and done or executed in the firm's name, or in any other manner showing an intention to bind the firm, by any person thereto authorized whether a partner or not, is binding on the firm and all the partners.

Application of section

- (2) This section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments. *R.S.P.E.I. 1974, Cap. P-2, s.8.*

9. Credit of firm pledged, firm not liable, where

Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners; but this section does not affect any personal liability incurred by an individual partner. *R.S.P.E.I. 1974, Cap. P-2, s.9.*

10. Restriction on power to bind firm, effect of

If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement. *R.S.P.E.I. 1974, Cap. P-2, s.10.*

11. Liability for debts of firm

Every partner of a firm is liable, jointly with the other partners, for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for the debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his separate debts. *R.S.P.E.I. 1974, Cap. P-2, s.11.*

12. Loss or injury to persons outside firm, liability of firm

Where, by any wrongful act or omission of any 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 any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act. *R.S.P.E.I. 1974, Cap. P-2, s.12.*

13. Liability of firm

Where

- (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,

the firm is liable to make good the loss. *R.S.P.E.I. 1974, Cap. P-2, s.13.*

14. Liability jointly & severally

Every partner is liable jointly with his co-partners, and also severally, for anything for which the firm while he is a partner thereof becomes liable under section 11 or 12. *R.S.P.E.I. 1974, Cap. P-2, s.14.*

15. Misapplication of trust funds

- (1) If a partner, being a trustee, improperly employs trust property in the business or on account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein.

Notice of breach of trust

- (2) This section does not affect any liability incurred by any partner by reason of his having notice of a breach of trust.

Recovery of trust moneys

- (3) Nothing in this section prevents trust money from being followed and recovered from the firm if still in its possession or under its control. *R.S.P.E.I. 1974, Cap. P-2, s.15.*

16. Holding out as a partner, liability as

Everyone who by words spoken or written, or by conduct, represents himself, or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to anyone who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made but, where after a partner's death the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner's name as part thereof does not of itself make his personal representative, estate or effects liable for any partnership debt contracted after his death. *R.S.P.E.I. 1974, Cap. P-2, s.16.*

17. Evidence against firm

An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm. *R.S.P.E.I. 1974, Cap. P-2, s.17.*

18. Notice, what is effective on firm

Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. *R.S.P.E.I. 1974, Cap. P-2, s.18.*

19. Liability for debts before becoming partner

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. *R.S.P.E.I. 1974, Cap. P-2, s.19.*

20. Retirement, effect on liability

- (1) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

Discharge from liability

- (2) A retiring partner may be discharged from any existing liabilities, by agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. *R.S.P.E.I. 1974, Cap. P-2, s.20.*

21. Continuing guarantee

A continuing guarantee given either to a firm or 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 any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee was given. *R.S.P.E.I. 1974, Cap. P-2, s.21.*

22. Mutual rights and duties of partners

The mutual rights and duties of partners whether ascertained by agreement or defined by this Act, may be varied by the consent of all the parties and such consent may be either expressed or inferred from a course of dealing. *R.S.P.E.I. 1974, Cap. P-2, s.22.*

23. Partnership property, what constitutes

- (1) All 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 and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement, but the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

Co-ownership of land, when not partnership

- (2) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land, and purchase other land out of the profits to be used in like manner, the land so purchased belongs to them, in the absence of an agreement to the contrary, not as partners but as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase. *R.S.P.E.I. 1974, Cap. P-2, s.23.*

24. Property of firm, constructively

Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm. *R.S.P.E.I. 1974, Cap. P-2, s.24.*

25. Partnership property acquired, deemed personalty

Where land or any interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners, including the representative of a deceased partner, and also as between the heirs of a deceased partner and his personal representative, as personal or movable and not as real estate. *R.S.P.E.I. 1974, Cap. P-2, s.25.*

26. Charging partner's interest to satisfy judgment

- (1) The court or a judge thereof may, on the application of any judgment creditor of a partner, 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 thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits, whether already declared or accruing, and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favor of the judgment creditor by the partner, or which the circumstances of the case may require.

Redemption of interest charged

- (2) The other partner or partners shall be at liberty at any time to redeem the interest charged, or, in case of a sale being directed, to purchase the same. *R.S.P.E.I. 1974, Cap. P-2, s.26; 1974(2nd), c.65, s.6.*

27. Interests of partners in property, rules re

The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

- (a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;
- (b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him
 - (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;
- (c) a partner making for the purpose of the partnership any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent per year 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) every partner may take part in the management of the partnership business;
- (f) no partner shall be entitled to remuneration for acting in the partnership business;
- (g) no person may be introduced as a partner without the consent of all existing partners;
- (h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners but no change may be made in the nature of the partnership business without the consent of all existing partners; and
- (i) the partnership books are to be kept at the place of business of the partnership or the principal place, if there is more than one, and every partner may have access to and inspect and copy any of them. *R.S.P.E.I. 1974, Cap. P-2, s.27.*

28. Expelling a partner

No majority of the partners can expel any partner, unless a power to do so has been conferred by express agreement between the partners. *R.S.P.E.I. 1974, Cap. P-2, s.28.*

29. Determination of partnership

- (1) When no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving thirty days notice in writing of his intention so to do to all the other partners.

Method of determination

- (2) When the partnership has originally been constituted by deed, a notice in writing signed by the partner giving it shall be sufficient for this purpose. *R.S.P.E.I. 1974, Cap. P-2, s.29.*

30. Continuation of partnership after fixed term

- (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any 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 is consistent with the incidents of a partnership at will.

Deemed continuance of partnership

- (2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership. *R.S.P.E.I. 1974, Cap. P-2, s.30.*

31. Disclosure to other partners

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. *R.S.P.E.I. 1974, Cap. P-2, s.31*

32. Accounting to firm for benefits derived

- (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection.

Application of section

- (2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner. *R.S.P.E.I. 1974, Cap. P-2, s.32.*

33. Partner competes with firm, accounting for profits

If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business. *R.S.P.E.I. 1974, Cap. P-2, s.33.*

34. Assignment of share in firm, assignee rights

- (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

Dissolution of partnership, rights of assignee

- (2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners and, for the purpose of ascertaining that share, to an account as from the date of the dissolution. *R.S.P.E.I. 1974, Cap. P-2, s.34.*

35. Dissolution of partnership

- (1) Subject to any 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 any partner giving thirty days notice in writing to the other or others of his intention to dissolve the partnership.

Date of dissolution

- (2) In the last mentioned case, the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is mentioned, as from the date of the communication of the notice. *R.S.P.E.I. 1974, Cap. P-2, s.35.*

36. Dissolution upon death

- (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy or insolvency of any partner.

Dissolution where partner's share charged

- (2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt. *R.S.P.E.I. 1974, Cap. P-2, s.36.*

37. Dissolution where event makes operation unlawful

A partnership is in every case dissolved by the happening of an event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership. *R.S.P.E.I. 1974, Cap. P-2, s.37.*

38. Dissolution by court

On application of a partnership, the court may adjudge a dissolution of the partnership

- (a) when a partner is found mentally incompetent by inquisition or is shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner;
- (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;
- (c) when a partner, other than the partner suing, has been guilty of such conduct as in the opinion of the court, regard being had to the nature of the business, is calculated to prejudicially affect 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; or
- (f) whenever, in any case, circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved. *R.S.P.E.I. 1974, Cap. P-2, s.38.*

39. Change in firm, third party rights *re* partners

- (1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

Advertisement in Gazette

- (2) An advertisement in the Gazette shall be notice as to persons who had no dealings with the firm before the date of the dissolution or change so advertised.

Liability of estate for debts

- (3) The estate of a partner who dies, or who became bankrupt, or of a partner who, 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, bankruptcy or retirement respectively.

Notice of dissolution, filing

- (4) The retiring partner shall file with the Director of Corporations a notice of the dissolution not later than three days after the required notice is published in the Gazette. *R.S.P.E.I. 1974, Cap. P-2, s.39; 1980, c.2, s.3; 1992, c.52, s.1.*

40. Public notice of dissolution

On the dissolution of a partnership, or retirement of a partner, any partner may publicly give notice of the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence. *R.S.P.E.I. 1974, Cap. P-2, s.40.*

41. Authority to bind firm after dissolution

- (1) After the dissolution of a partnership, the authority of each partner to bind the firm and the other rights and obligations of the partners continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but not finished at the time of the dissolution, but not otherwise.

Exception

- (2) Notwithstanding subsection (1) the firm is in no case bound by the acts of a partner who has become bankrupt, but this section does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt. *R.S.P.E.I. 1974, Cap. P-2, s.41.*

42. Application of property of firm to debts

On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all other persons claiming through them in respect of their interest as partners to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after the payment applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the court to wind up the business and the affairs of the firm. *R.S.P.E.I. 1974, Cap. P-2, s.42.*

43. Premium paid upon entering firm, restitution, where

Where a 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 such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless

- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the 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 any part of the premium. *R.S.P.E.I. 1974, Cap. P-2, s.43.*

44. Partnership contract rescinded for fraud

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled

- (a) to a lien on or the 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 payments made by him in respect of the partnership liabilities; and
- (c) to be indemnified, by the person guilty of the fraud or the making of the representations, against all the debts and liabilities of the firm. *R.S.P.E.I. 1974, Cap. P-2, s.44.*

45. Termination of membership in firm, assets not distributed, rights

- (1) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then in the absence of any agreement to the contrary the outgoing partner or his estate is entitled at the option of himself or his representatives, to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent per year on the amount of his share of the partnership assets.

Option to purchase exercised, rights of outgoing partner

- (2) Notwithstanding subsection (1) where, 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 duly exercised, the estate of the deceased partner, or the outgoing partner of his estate, as the case may be, is not entitled to any further or other share of profits: but if any partner assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section. *R.S.P.E.I. 1974, Cap. P-2, s.45.*

46. Amount due from surviving partners accrues, when

Subject to an agreement between the parties, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death. *R.S.P.E.I. 1974, Cap. P-2, s.46.*

47. Settlement of accounts, rules for

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 on capital shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits; and
- (b) the assets of the firm including the sums, 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 therein,
 - (ii) in paying to each partner rateably what is due from the firm, to him for advances as distinguished from capital,
 - (iii) in paying to each partner rateably 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. *R.S.P.E.I. 1974, Cap. P-2, s.47.*

48. Registration required

All persons who are, or who hereafter may be, associated in partnership business in this province shall cause to be filed in the proper office a declaration in writing signed by at least two members of the partnership. *R.S.P.E.I. 1974, Cap. P-2, s.48; 1990, c.39, s.2; 2000, c.16, s.1.*

49. Authorization from absent partners

Repealed 2000, c.16, s.3.

50. Contents of declaration

- (1) The declaration shall be in such form as the Registrar may require and shall contain the names, surnames and residences of each partner or associate as aforesaid, and the name, style or firm under which they carry on, or intend to carry on, the business, and shall state also the time during which the partnership has existed or is to exist, also declaring that the persons therein named are the only members of the partnership or association.

Affidavit of at least one partner

- (2) The declaration shall contain a statement signed by at least one of the partners stating that the partner has searched or caused to be searched the index books mentioned in section 56 and the records kept in the office of the Director of Corporations relating to companies, and that the name, style or firm under which they carry on, or intend to carry on business, is not the name of any other known partnership, or any name liable to be confused therewith, or otherwise on public grounds objectionable.

Refusal to register firm name

- (3) The proper officer may refuse to register any partnership or firm name submitted for registration if, in his opinion, the proposed name is in conflict with, or is liable to be confused with that of another existing duly registered name, partnership or incorporated company or is on public grounds objectionable.

Notice of refusal to register

- (4) Where the proper officer refuses to register a name of a partnership, he shall, by notice in writing, notify the partnership or person adversely affected by such decision made by him.

Service

- (5) The notice shall be served as follows
- (a) by personal delivery of the notice to the person or partnership to be notified; or
 - (b) by registered mail, postage prepaid, addressed to the partnership or person to be notified at the address as shown in the application for registration.

Appeal to judge

- (6) Any person or partnership considering himself or itself aggrieved by a decision of the proper officer under this section may, within twenty days after service upon him of the notice of the decision to refuse to register the partnership or name, appeal from or against the decision to a judge of the Supreme Court by filing in the office of the Clerk of the Supreme Court at Charlottetown, Summerside, or Georgetown, as the case may be, and serving on the proper officer a notice of appeal, setting out the grounds of the appeal.

Hearing, date of

- (7) Within five days of filing and serving the notice of appeal, the appellant shall apply to the judge to fix a date for the hearing of the appeal and the judge shall appoint a time and place for the hearing, which shall not be later than fifteen days from the date of the application.

Notice of hearing

- (8) The appellant shall not less than eight days before the date fixed for the hearing of the appeal, serve either personally, or by registered mail, upon the proper officer, a notice setting forth the time and place fixed for the hearing of the appeal.

Jurisdiction of court

- (9) The judge on the appeal may make such order as the circumstances may require and any order so made shall be binding on the appellant and upon the proper officer.

Application

- (10) If an appellant fails to comply with any of the provisions of this section, or fails to appear either in person or by his attorney, on the day appointed for the hearing of the appeal, the proper officer may without notice to the appellant or any other person, apply to the judge to have the appeal dismissed and the judge shall dismiss the appeal. *R.S.P.E.I. 1974, Cap. P-2, s.50; 1980, c.2, s.3; 1990, c.39, s.4; 2000, c.16, s.1.*

51. Cancellation of registration of a firm name

- (1) If a name, style or firm becomes registered and it is afterwards discovered that the name thereof is the same or liable to be confused with the name of a previously registered name, style or firm, a judge of the Supreme Court, on the application of the partnership first registered, and after notice to the partnership last registered, may order the last registration to be cancelled.

Filing order

- (2) The order referred to in subsection (1) shall be filed in the proper office and upon the filing the Registrar shall cancel the last registration. *R.S.P.E.I. 1974, Cap. P-2, s.51; 1990, c.39, s.5.*

52. Time within which declaration to be filed, publication

The declaration shall be filed within three months next after the formation of the partnership and notice thereof shall be published in the Gazette and when any dissolution of partnership or change in the membership of the partnership or in the name, style or firm under which it intends to carry on business takes place, a similar declaration shall be filed and notice thereof published in the Gazette. *1990, c.39, s.6.*

53. Sole proprietorship, declaration to be filed

Every person who now is or hereafter may be engaged in business, and who is not associated in partnership with any other person or persons, but who uses, as his business style, some name or designation other than his own name, or who in such business uses his own name with the addition of “and Company” or some other word or phrase indicating a plurality of members in the concern, shall cause to be filed in the proper office a declaration in such form as the Registrar may require. *R.S.P.E.I. 1974, Cap. P-2, s.53; 1990, c.39, s.7; 2000, c.16, s.1.*

54. Contents of declaration

- (1) The declaration referred to in section 53 shall contain the name, surname, addition and residence of the person making the same and the name, style or firm under which he carries on, or intends to carry on business, and shall also state that no other person is associated with him in partnership: and the same shall be filed and notice thereof published in the Gazette.

Application to ss 50(2)

- (2) Subsection 50(2) applies, with the necessary changes to a declaration filed under this section. *R.S.P.E.I. 1974, Cap. P-2, s.54; 1990, c.39, s.8; 2000, c.16, s.1.*

54.1 Expiration of declaration

- (1) A declaration filed under section 48 or 53 expires three years after its date of filing.

Renewal

- (2) A declaration may be renewed for a further period of three years by filing a renewal of registration in a form approved by the Registrar.

Idem

- (3) Subject to subsections (4) and (5), the Registrar may remove from his records any declarations that are not renewed under subsection (2).

Notice of intention to remove

- (4) The Registrar shall not remove a declaration under this section until he has published notice of his intention to do so in the Gazette and in a newspaper having general circulation in the province.

Notice of removal

- (5) Unless cause to the contrary is shown the Registrar may, on the expiration of ninety days after the publication of the notice, remove the declaration from his records and shall give notice of such removal in the Gazette. *1990, c.39, s.9, 1992, c.52, s.2; 1994, c.48, s.12.*

55. Minors, declaration re

If any member of a partnership is under the age of eighteen years, the declaration shall state also the age of the partner under that age. *R.S.P.E.I. 1974, Cap. P-2, s.55; 1990, c.39, s.10; 2000, c.16, s.1.*

56. Indices

The Registrar shall keep an alphabetical index of all declarations and partnerships or business styles filed in his office in pursuance of the provisions of this Act. *R.S.P.E.I. 1974, Cap. P-2, s.56; 1990, c.39, s.11.*

57. Firm Index Book

In the index the Registrar shall enter in alphabetical order the styles of the respective firms and businesses in respect to which declarations have been delivered to him, and shall place opposite each entry the names of the persons composing the firm or carrying on the business, and the dates of the receipt by him of the declarations. *R.S.P.E.I. 1974, Cap. P-2, s.57; 1990, c.39, s.12.*

58. Individual Index Book

Repealed by *1990, c.39, s.13.*

59. Offences and penalties

Any member of any partnership or association as aforesaid and any person carrying on business as mentioned in section 53, who fails to comply with the requirements aforesaid, is guilty of an offence, and upon summary conviction, is liable to pay a fine of not less than \$100 or more than \$500. *R.S.P.E.I. 1974, Cap. P-2, s.59; 1994, c.58, s.6.*

60. Allegations in declaration not controvertible

The allegations made in the declaration shall not be controvertible as against any party by any person who has signed it, nor as against any party not being a member of the partnership by any person who has signed it or who was really a member of the partnership therein mentioned at the time the declaration was made. *R.S.P.E.I. 1974, Cap. P-2, s.60.*

61. Firm not registered, actions lie against partners

- (1) If any persons are associated in partnership and no declaration is filed under this Act with regard to the partnership, any action which might be brought against all the members of the partnership may also be brought against any one or more of the partners as such, without naming the others as defendants, under the name and style of their partnership; and if judgment is recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment was obtained.

Enforcement of judgments against partners

- (2) Any judgment obtained against any member of the existing partnership for a partnership debt or liability may be enforced by process against all and every the partnership stock, property and effects in the same manner and to the same extent as if the judgment had been obtained against the partnership.

Parties to action on judgment

- (3) If any action referred to in subsection (1) or (2) is founded on any obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action. *R.S.P.E.I. 1974, Cap. P-2, s.61.*

62. Execution of judgment

Any judgment recovered under section 61 against any member of an existing partnership, for a partnership debt or liability, shall and may be executed by process of execution against all and every the partnership stock, property, assets, and effects, in the same manner and to the same extent as if judgment had been recovered against all the members of the co-partnership in the usual way. *R.S.P.E.I. 1974, Cap. P-2, s.62.*

63. Regulations

The Lieutenant Governor in Council may make regulations prescribing fees for the purposes of this Act. *1981, c.26, s.1.*

64. Fees payable

All fees levied by or payable to the Registrar under this Act are payable to the Minister of Finance. *R.S.P.E.I. 1974, Cap. P-2, s.64; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4; 2010, c.31, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

65. Registrar, duties of

The Registrar shall keep and maintain all matters filed with him under this Act and all index books kept by him under this Act. *R.S.P.E.I. 1974, Cap. P-2, s.65.*

SCHEDULE

repealed by 1990, c.39, s.14.