

UNEDITED

# *The Partnership Act*

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Chapter P-3 of *The Revised Statutes of Saskatchewan, 1978*  
(effective February 26, 1979).

**NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER P-3

### An Act respecting Partnerships

#### SHORT TITLE

##### Short title

- 1 This Act may be cited as *The Partnership Act*.

#### INTERPRETATION

##### Interpretation

- 2 In this Act:

##### “business”

- (a) “**business**” includes every trade, occupation or profession;

##### “certificate”

- (b) “**certificate**” means a certificate filed under this Act or a declaration registered under *The Business Names Registration Act* and includes a certificate or declaration that has been amended;

##### “court”

- (c) “**court**” means the Court of Queen’s Bench for Saskatchewan and includes a judge of the court sitting in chambers or in court.

R.S.S. 1965, c.387, s.2; 1976-77, c.56, s.2; R.S.S. 1978, c.P-3, s.2.

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#### PART I

#### NATURE OF PARTNERSHIP

##### Definition

- 3(1) Partnership is the relation that subsists between persons carrying on a business in common with a view of profit.

- (2) The relation between members of any company or association who constitute a body corporate under any law in force in Saskatchewan is not a partnership within the meaning of this Act.

R.S.S. 1965, c.387, s.3; R.S.S. 1978, c.P-3, s.3.

##### Rules for determining existence

- 4 In determining whether a partnership does or does not exist, regard shall be had to the following rules:

1. 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;

2. 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 the property from which or from the use of which the returns are derived;
3. 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 such share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business and in particular:
  - (a) 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;
  - (b) 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;
  - (c) a person, being the widow or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;
  - (d) 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, provided that the contract is in writing, and signed by or on behalf of all the parties thereto;
  - (e) 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.S. 1965, c.387, s.4; R.S.S. 1978, c.P-3, s.4.

#### **Postponement of certain claims**

**5** In the event of a person to whom money has been advanced by way of loan upon any contract mentioned in section 4, or of a buyer of a goodwill in consideration of a share of the profits of the business, becoming insolvent, or entering into an arrangement to pay his creditors less than one hundred cents in the dollar, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be 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.S. 1965, c.387, s.5; R.S.S. 1978, c.P-3, s.5.

#### **Interpretation, "firm" and "firm name"**

**6** Persons who have entered into partnerships 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.S. 1965, c.387, s.6; R.S.S. 1978, c.P-3, s.6.

## RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM

**Power to bond firm**

**7** 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.S. 1965, c.387, s.7; R.S.S. 1978, c.P-3, s.7.

**Partners bound by acts of firm**

**8** An act or instrument relating to the business of the firm and done or executed in the firm 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; but this section does not affect any general rule of law relating to the execution of deeds, instruments or documents affecting land or negotiable instruments.

R.S.S. 1965, c.387, s.8; R.S.S. 1978, c.P-3, s.8.

**Using credit of firm for private purposes**

**9** 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 partner or partners; but this section does not affect any personal liability incurred by an individual partner.

R.S.S. 1965, c.387, s.9; R.S.S. 1978, c.P-3, s.9.

**Notice that firm not bound by acts of partner**

**10** 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.S.1965, c.387, s.10; R.S.S. 1978, c.P-3, s.10.

**Liability of partner**

**11** Every partner in 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 due course of administration for those debts and obligations so far as they remain unsatisfied but subject to the prior payment of his separate debts.

R.S.S. 1965, c.387, s.11; R.S.S. 1978, c.P-3, s.11.

**Liability of firm for wrongs**

**12** Where 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 copartners, 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.S. 1965, c.387, s.12; R.S.S. 1978, c.P-3, s.12.

**Liability of firm for misapplication of money**

**13** In the following cases:

- (a) where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and
- (b) where 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.S. 1965, c.387, s.13; R.S.S. 1978, c.P-3, s.13.

**Liability joint and several**

**14** Every partner is liable jointly with his copartners and also severally for everything for which the firm while he is a partner therein becomes liable under either section 12 or 13.

R.S.S. 1965, c.387, s.14; R.S.S. 1978, c.P-3, s.14.

**Improper employment of trust property**

**15** If a partner, being 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 person beneficially interested therein:

Provided as follows:

1. This section shall not affect any liability incurred by a partner by reason of his having notice of a breach of trust; and
2. Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

R.S.S. 1965, c.387, s.15; R.S.S. 1978, c.P-3, s.15.

**Persons liable by "holding out"**

**16** Every one 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 any one who has on the faith of the representation given credit to the firm, 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 suffering it to be made:

Provided that 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 shall not of itself make his executors or administrators, estate or effects liable for partnership debts contracted after his death.

R.S.S. 1965, c.387, s.16; R.S.S. 1978, c.P-3, s.16.

**Admissions and representation of partners**

**17** An admission or representation made by a partner concerning the partnership affairs and in the ordinary course of its business is evidence against the firm.

R.S.S. 1965, c.387, s.17; R.S.S. 1978, c.P-3, s.17.

**Notice to acting partner**

**18** Notice to a 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.S. 1965, c.387, s.18; R.S.S. 1978, c.P-3, s.18.

**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 thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from existing liabilities by an 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.S. 1965, c.387, s.19; R.S.S. 1978, c.P-3, s.19.

**Revocation of continuing guaranty by change in firm**

**20** A continuing guaranty 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 guaranty was given.

R.S.S. 1965, c.387, s.20.

## RELATIONS OF PARTNERS TO ONE ANOTHER

**Variation by consent of terms of partnership**

**21** 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 partners and such consent may be either express or inferred from a course of dealing.

R.S.S. 1965, c.387, s.21; R.S.S. 1978, c.P-3, s.21.

**Partnership property**

**22(1)** All property and rights and interest 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:

Provided that the legal estate or interest in 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.

(2) Where co-owners of an estate or interest in land not being itself partnership property are partners as to profits made by the use of that land or estate and purchase other land or estate out of the profits to be used in like manner, the land or estate 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 or estate first mentioned at the date of the purchase.

R.S.S. 1965, c.387, s.22; R.S.S. 1978, c.P-3, s.22.

**Property bought with partnership money**

**23** 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.S. 1965, c.387, s.23; R.S.S. 1978, c.P-3, s.23.

**Partnership land as personal estate**

**24** 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 representatives of a deceased partner, as personal or moveable and not real estate.

R.S.S. 1965, c.387, s.24; R.S.S. 1978, c.P-3, s.24.

**Procedure against partnership property**

**25(1)** A writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2) The court or a judge thereof or, in cases where judgment has been obtained in the District Court, a judge of that court, may in chambers, on application by summons by 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 that is coming to him in respect of the partnership, and direct all accounts and inquiries and give all other orders and directions that might have been directed or given if the charge had been made in favour of the judgment creditor by the partner or that the circumstances of the case require.

(3) 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 interest charged.

R.S.S. 1965, c.387, s.25; R.S.S. 1978, c.P-3, s.25.

**Rules as to interests and duties of partners**

**26** 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:

1. 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;

2. The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him:

(a) in the ordinary and proper conduct of the business of the firm; or



- (b) in or about anything necessarily done for the preservation of the business or property of the firm;
3. A partner making for the purpose of the partnership any actual 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;
  4. A partner is not entitled before the ascertainment of profits to interest on the capital subscribed by him;
  5. Every partner may take part in the management of the partnership business;
  6. No partner is entitled to remuneration for acting in the partnership business;
  7. No person may be introduced as a partner without the consent of all existing partners;
  8. 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;
  9. 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 when he thinks fit have access to and inspect and copy any of them .

R.S.S. 1965, c.387, s.26; R.S.S. 1978, c.P-3, s.26.

#### **Expulsion of partner**

**27** 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.S. 1965, c.387, s.27; R.S.S. 1978, c.P-3, s.27.

#### **Retirement from partnership**

**28(1)** Where no fixed term has been agreed upon for the duration of the partnership or if a partnership is continued after a fixed term has expired, any partner may determine the partnership at any time on giving notice of his intention to do so to all the other partners.

(2) Where the partnership has originally been constituted by deed a notice in writing signed by the partner giving it shall be sufficient for the purpose of subsection (1).

R.S.S. 1965, c.387, s.28; R.S.S. 1978, c.P-3, s.28.

#### **Continuance of partnership**

**29(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.

(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.S. 1965, c.387, s.29; R.S.S. 1978, c.P-3, s.29.

**Rendering accounts**

**30** 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.S. 1965, c.387, s.30; R.S.S. 1978, c.P-3, s.30.

**Accountability for private profits**

**31(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.

(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 a surviving partner or by the representatives of the deceased partner.

R.S.S. 1965, c.387, s.31; R.S.S. 1978, c.P-3, s.31.

**Partner competing with firm**

**32** 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 must account for and pay over to the firm all profits made by him in that business.

R.S.S. 1965, c.387, s.32; R.S.S. 1978, c.P-3, s.32.

**Rights of assignee of share in partnership**

**33(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 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.

(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.

(3) In this section "assignee" includes "mortgagee" or "encumbrance".

R.S.S. 1965, c.387, s.33; R.S.S. 1978, c.P-3, s.33.

## DISSOLUTION OF PARTNERSHIP

**Expiration of notice**

**34** 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;

(c) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership;

and 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 so mentioned, as from the date of the communication of the notice.

R.S.S. 1965, c.387, s.34; R.S.S. 1978, c.P-3, s.34.

#### **Death or bankruptcy**

**35(1)** Subject to any agreement between the partners every partnership is dissolved as regards all the partners by the death or bankruptcy of a partner, or by his making an authorized assignment under the *Bankruptcy Act* (Canada).

(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.S. 1965, c.387, s.35; R.S.S. 1978, c.P-3, s.35.

#### **Illegality of partnership**

**36** A partnership is in every case dissolved by the happening of any event that 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.S. 1965, c.387, s.36; R.S.S. 1978, c.P-3, s.36.

#### **Dissolution by court**

**37** On application by a partner the court may decree 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, in which case the application may be made as well on behalf of that partner by his guardian 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 conduct which 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) whenever in any case circumstances have arisen that in the opinion of the court render it just and equitable that the partnership be dissolved.

R.S.S. 1965, c.387, s.37; R.S.S. 1978, c.P-3, s.37.

**Notice of changes in firm**

**38(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.

(2) The registration of a declaration under section 13 of *The Business Names Registration Act* and the publication of notice thereof in *The Saskatchewan Gazette* shall be notice of dissolution to persons who had no dealings with the firm before the date of the publication.

(3) The estate of a partner who dies 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 or retirement respectively.

R.S.S. 1965, c.387, s.38; 1976-77, c.56, s.2; R.S.S. 1978, c.P-3, s.38.

**Notice of dissolution**

**39** On the dissolution of a partnership or retirement of a partner any partner may publicly give notice thereof and may require the other partner or partners to concur for that purpose in all necessary or proper acts that cannot be done without his or their concurrence.

R.S.S. 1965, c.387, s.39; R.S.S. 1978, c.P-3, s.39.

**Continuing authority of partners**

**40** 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 is necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution .

R.S.S. 1965, c.387, s.40; R.S.S. 1978, c.P-3, s.40.

**Application of partnership property**

**41** On the dissolution of a partnership every partner is entitled, as against the other partners in the firm and all 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 such payment applied in payment of what is due to the partners respectively after deducting what is 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 affairs of the firm.

R.S.S. 1965, c.387, s.41; R.S.S. 1978, c.P-3, s.41.

**Apportionment of premium**

**42** Where 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 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

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(b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

R.S.S. 1965, c.387, s.42; R.S.S. 1978, c.P-3, s.42.

**Dissolution for fraud or misrepresentation**

43 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 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 making the representation against all the debts and liabilities of the firm.

R.S.S. 1965, c.387, s.43; R.S.S. 1978, c.P-3, s.43.

**Share of profits made after dissolution**

44 Where a 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 a final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of an 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 on the amount of his share of the partnership assets:

Provided that 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 or his estate is not entitled to any further or other share or 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.S. 1965, c.387, s.44; R.S.S. 1978, c.P-3, s.44.

**Retiring or deceased partner's share a debt**

45 Subject to any agreement between the partners, 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.S. 1965, c.387, s.45; R.S.S. 1978, c.P-3, s.45.

**Rules for final distribution of assets**

46 In settling accounts between the partners after a dissolution of partnership the following rules shall, subject to any agreement, be observed:

- 1.. Losses, including losses and deficiencies of 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;

2. 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:

- (a) in paying the debts and liabilities of the firm to persons who are not partners therein;
- (b) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
- (c) in paying to each partner rateably what is due from the firm to him in respect of capital;
- (d) the residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

R.S.S. 1965, c.387, s.46; R.S.S. 1978, c.P-3, s.46.

### EFFECT OF CERTIFICATE

#### **Binding effect of certificate**

**47** The allegations made in a certificate required under this Act or under *The Business Names Registration Act* shall not be controverted by any person who has signed the certificate nor shall they be controverted as against any party not being a partner by a person who has not signed the certificate but who was really a member of the partnership therein mentioned at the time the certificate was made.

R.S.S. 1965, c.387, s.62; 1976-77, c.56, s.5; R.S.S. 1978, c.P-3, s.47.

#### **Liability of persons signing certificate**

**48** Until a new certificate is made and filed by him or by his copartners or any of them as aforesaid no person who has signed a certificate shall be deemed to have ceased to be a partner; but nothing contained herein shall exempt from liability any person who, being a partner, fails to certify the same in the manner provided, and such person may notwithstanding such omission be sued jointly with the partners mentioned in the certificate or they may be sued alone and, if judgment is recovered against them, any other partner or partners may be sued jointly or severally in an action on the original cause of action upon which such judgment was rendered, nor shall anything in this Act be construed to affect the rights of partners with regard to each other except that no certificate shall be controverted by any signer thereof.

R.S.S. 1965, c.387, s.63; R.S.S. 1978, c.P-3, s.48.

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## PART II

### LIMITED PARTNERSHIPS

#### **Application of Act to limited partnerships**

**49** The provisions of this Act shall in the case of limited partnerships be read subject to this Part.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.49.

**Limited partnership**

**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) Notwithstanding section 4 of *The Companies Act*, there may be any number of limited partners in a limited partnership.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.50.

**Formation of limited partnership**

**51** A limited partnership is formed when the business name of the partnership is registered pursuant to sections 6 and 7 of *The Business Names Registration Act* and persons desirous of forming a limited partnership shall file a declaration in accordance with section 16 of that Act.

1976-77, c.56, s.8; R.S.S. 1978, c.P-3, s.51.

**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 in the same limited partnership 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.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.52.

**Restriction in name of partnership**

**53(1)** The surname of a limited partner shall not appear in the business or 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 business or firm name of the limited partnership 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.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.53.

**Contribution by limited partner**

**54(1)** A limited partner may contribute money and other property to the limited partnership, but not services.

(2) A limited partner's interest in the limited partnership is personal property.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.54.

**General partners to be registered as owners of interests in land**

**55** The interest of the limited partnership in any real property shall be registered in the land titles office in the names of the general partners only.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.55.

**Rights, etc., of general partners**

**56** A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent to or ratification of the specific act by all the limited partners, a general partner has no authority to:

- (a) do any act in contravention of the certificate;
- (b) do any act which makes it impossible to carry on the ordinary business of the limited partnership;
- (c) consent to a judgment against the limited partnership;
- (d) possess limited partnership property, or assign any rights in specific partnership property for a purpose other than a partnership purpose;
- (e) admit a person as a general partner;
- (f) admit a person as a limited partner unless the right to do is given in the certificate; or
- (g) continue the business of the limited partnership after the death or retirement of or on the mental incompetence of a general partner unless the right to do so is given in the certificate.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.56.

**Liability of limited partners**

**57** Subject to this Part, a limited partner is not liable for the obligations of the limited partnership except in respect of the amount of the money and other property, if any, he contributes or agrees to contribute to the capital of the limited partnership.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.57.

**Certain rights of limited partners**

**58** A limited partner has the same right as a general partner:

- (a) to inspect and make copies of or take extracts from the limited partnership books at all times;
- (b) to be given, on demand, true and full information of all things affecting the limited partnership, and to be given an account of the partnership affairs; and
- (c) to obtain dissolution of the limited partnership by court order.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.58.

**Limited partner's right to share of profits, etc.**

**59(1)** A limited partner has, subject to this Act, the right:

- (a) to a share of the profits or other compensation by way of income; and
- (b) to have his contribution to the limited partnership returned.



(2) A limited partner may receive from the limited partnership the share of the profits or the compensation by way of income stipulated for in the certificate if, after payment thereof is made, whether from the property of the limited partnership or that of a general partner, the limited partnership assets exceed all the limited partnership liabilities, excepting liabilities to limited partners on account of their contributions and to general partners.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.59.

**Business dealings by limited partners with partnership**

**60** A limited partner may loan money to and transact other business with the limited partnership and, unless he is also a general partner, may receive on account of resulting claims against the limited partnership, with general creditors, a *pro rata* share of the assets, but a limited partner shall not, in respect of any such claim:

- (a) receive or hold as collateral security any of the limited partnership property; or
- (b) receive from a general partner or the limited partnership any payment, conveyance or release from liability if at the time the assets of the partnership are not sufficient to discharge the limited partnership liabilities to persons not claiming as general or limited partners.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.60.

**Limited partners' rights as between themselves**

**61(1)** Subject to subsections (2) and (3), limited partners, in relation to one another, share in the limited partnership assets in respect of their claims:

- (a) for capital; and
- (b) for profits or compensation by way of income on their contributions;

in proportion to the respective amounts of their claims.

(2) Where there are several limited partners, the partners may agree that one or more of the limited partners is to have priority over other limited partners with respect to:

- (a) the return of contributions;
- (b) compensation by way of income; or
- (c) any other matter;

but the existence of and nature of the agreement shall be stated in the certificate.

(3) Where the certificate does not contain a statement respecting the existence of and nature of an agreement mentioned in subsection (2), all limited partners stand, subject to subsection (1), upon equal footing.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.61.

**Return of limited partner's contribution**

**62(1)** A limited partner is not entitled to receive from a general partner or out of the limited partnership property any part of his contribution until:

- (a) all liabilities of the limited partnership, excepting liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains sufficient limited partnership property to pay them;

- (b) the consent of all partners is obtained, unless the return of the contribution may be rightfully demanded under subsection (2); and
  - (c) the certificate is cancelled or so amended as to set forth the withdrawal or reduction.
- (2) Subject to subsection (1), a limited partner may rightfully demand the return of his contribution:
- (a) upon the dissolution of the limited partnership;
  - (b) when the time specified in the certificate for its return has arrived; or
  - (c) after he has given six months' notice in writing to all other partners if no time is specified in the certificate either for the return of the contribution or for the dissolution of the limited partnership.
- (3) A limited partner has, irrespective of the nature of his contribution, only the right to demand and receive money in return therefor, unless:
- (a) there is a statement to the contrary in the certificate; or
  - (b) all the partners consent to some other manner of returning the contribution.
- (4) A limited partner is entitled to have the limited partnership dissolved where:
- (a) he rightfully demands the return of his contribution but is unsuccessful in securing it;
  - (b) the other liabilities of the limited partnership have not been paid; or
  - (c) the limited partnership property is insufficient for the payment of the liabilities of the limited partnership excepting the liabilities to the partners mentioned in clause (a) of subsection (1) and the limited partner seeking dissolution would otherwise be entitled to the return of his contribution.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.62.

**Limited partner's liability to partnership**

- 63(1)** A limited partner is liable to the limited partnership:
- (a) for the difference, if any, between the amount of the contribution he actually made and the amount stated in the certificate as having been made by him ; and
  - (b) for any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions, if any, stated in the certificate.
- (2) A limited partner holds as trustee for the limited partnership:
- (a) specific property stated in the certificate as contributed by him, but which has not in fact been contributed or which has been wrongfully returned; and
  - (b) money or other property wrongfully paid or conveyed to him on account of his contribution.
- (3) Subject to subsection (4), the liabilities of a limited partner set forth in this section may be waived or compromised subject to the consent of all partners.

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(4) A waiver or compromise agreed to pursuant to subsection (3) does not affect the right of a creditor of the limited partnership to enforce a liability arising from credit that was extended or a claim that otherwise arose:

- (a) subsequent to the filing of the certificate whereby the limited partnership was formed ; and
- (b) prior to the cancellation or amendment of the certificate whereby the waiver or compromise was effected.

(5) Where a limited partner has rightfully received the return, in whole or in part, of the capital of his contribution he is liable to the limited partnership for any sum, not in excess of that return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims otherwise arose before the return.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.63.

**Liability to creditors**

**64** A limited partner is not liable as a general partner unless, in addition to exercising his rights and powers as a limited partner, he takes part in the control of the business.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.64.

**Admission of additional limited partners**

**65** After the formation of a limited partnership, additional limited partners may be admitted by amendment of the certificate in accordance with Part II of *The Business Names Registration Act*.

1970, c.46, s.4; 1976-77, c.56, s.10; R.S.S. 1978, c.P-3, s.65.

**Certain rights of assignees of limited partners**

**66(1)** A limited partner 's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in the limited partnership.

(3) An assignee who does not become a substituted limited partner does not have the right:

- (a) to require any information or account of the partnership transactions; or
- (b) to inspect the partnership books;

but is entitled only to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee may become a substituted limited partner:

- (a) if all the members, other than the assignor, consent thereto; or
- (b) if the assignor, being so authorized by the terms in the certificate gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with Part II of *The Business Names Registration Act*.

(6) A substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor other than such liabilities of which he was ignorant at the time he became a limited partner and that could not be ascertained from the certificate.

(7) The substitution of an assignee as a limited partner does not release the assignor from liability under sections 63 and 71.

1970, c.46, s.4; 1976-77, c.56, s.11; R.S.S. 1978, c.P-3, s.66.

#### **Dissolution of limited partnership**

**67** The retirement, death or mental incompetence of a general partner dissolves a limited partnership unless the business is continued by the remaining general partners:

- (a) pursuant to a right to do so stated in the certificate; or;
- (b) with the consent of all the remaining partners.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.67.

#### **Certain powers, etc., of representative of deceased limited partner**

**68(1)** The executor or administrator of the estate of a deceased limited partner has:

- (a) all the rights and powers of a limited partner for the purpose of settling the estate of the deceased limited partner; and
- (b) the powers the deceased possessed to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner is liable for all his liabilities as a limited partner.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.68.

#### **Cancellation and amendment of certificate**

**69** A certificate shall be cancelled or amended in accordance with *The Business Names Registration Act*.

1976-77, c.56, s.12; R.S.S. 1978, c.P-3, s.69.

#### **Settlement of accounts on dissolution of limited partnership**

**70** In settling accounts after the dissolution of a limited partnership the liabilities of the partnership to creditors, excepting:

- (a) to limited partners on account of their contributions; and and
- (b) to general partners;

shall be paid first and then, subject to any statement in the certificate or to subsequent agreement, in the following order:

1. to limited partners in respect of their share of the profits and other compensation by way of income on their contributions;
2. to limited partners in respect of the capital of their contributions;
3. to general partners other than for capital and profits;

4. to general partners in respect of profits;
5. to general partners in respect of capital.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.70.

**Liability for false statements in certificates**

**71** Where a certificate contains a false statement, any person suffering loss as a result of relying upon that statement may hold liable as a general partner every party to the certificate who:

- (a) knew, when he signed the certificate, that the statement relied upon was false; or
- (b) became aware, subsequent to the time when he signed the certificate and within a sufficient time before the false statement was relied upon to enable him to cancel or amend the certificate or to commence proceedings in accordance with this Act for the cancellation or amendment of the certificate, that the statement relied upon was false.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.71.

**Person mistakenly believing he is a limited partner not liable**

**72** A person who contributes to the capital of a business conducted by a person or partnership and erroneously believes that he has become a limited partner in a limited partnership:

- (a) is not, by reason only of his exercising the rights of a limited partner, a general partner with the person or in the partnership carrying on the business; and
- (b) is not bound by the obligations of the person or partnership carrying on the business;

if, upon ascertaining the fact that he is not a limited partner, he promptly renounces his interest in the profits or other compensation by way of income from the business.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.72.

**Judgment against limited partner**

**73(1)** The court may, upon application by a judgment creditor of a limited partner:

- (a) charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgement debt; and
- (b) appoint a receiver and make all other orders, directions and inquiries that the circumstances of the case require.

(2) The interest of a limited partner charged under subsection (1) may be redeemed with the separate property of a general partner but may not be redeemed with limited partnership property.

(3) The remedies conferred by subsection (1) are not exclusive of others that may exist.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.73.

**Limited partners not to be parties to proceedings except in certain cases**

**74** A limited partner, unless he is also a general partner, shall not be made a party to proceedings against a limited partnership except where the proceedings are to enforce a limited partner's right against or liability to the limited partnership.

1970, c.46, s.4; R.S.S. 1978, c.P-3, s.74.

**Application to existing limited partnerships**

**75** A limited partnership formed prior to the first day of June, 1970, may become a limited partnership under this Part by complying with sections 6 and 7 of *The Business Names Registration Act* if the certificate states:

- (a) the amount of the original contribution of each limited partner and the time when the contribution was made; and
- (b) that the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of the limited partners.

1970, c.46, s.4; 1976-77, c.56, s.14; R.S.S. 1978, c.P-3, s.75.

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## PART III

## SUPPLEMENTAL

**Rules of common law and equity**

**76** The rules of common law and equity applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

R.S.S. 1965, c.387, s.84; R.S.S. 1978, c.P-3, s.76.

## REGISTRATION FEES

**Fees, etc.**

**77** The fees payable for services under this Act shall be such as may be prescribed by the Lieutenant Governor in Council.

R.S.S. 1965, c.387, s.85; R.S.S. 1978, c.P-3, s.77.