



Office of the  
Attorney General

# **Limited Liability Partnership Legislation Discussion Paper**

**September 23, 2005**

## **Limited Liability Partnership Legislation Discussion Paper**

### **1. Introduction**

The Corporate Services Section of the Office of the Attorney General has prepared draft legislation to amend the *Partnership Act* R.S.P.E.I. 1988, Cap. P-1 to add provisions dealing with limited liability partnerships. The public is invited to comment generally on the proposed amendments and is invited specifically to address the issues set out below. On request, the Department will arrange meetings with any interested persons or groups.

At the same time the Department is proposing housekeeping amendments to the *Limited Partnership Act* R.S.P.E.I. 1988, Cap. L-13 to simplify the registration process for limited partnerships. Any comments relating to these amendments are also welcome.

Draft legislation to amend the *Partnership Act* is attached as Appendix A. Draft legislation to amend the *Limited Partnership Act* is attached as Appendix B.

### **2. Background Information**

The limited liability partnership or LLP was created in the United States in 1991 in response to concern among professionals, chiefly accountants and lawyers, that they were overexposed to liability claims for negligence or wrongful acts of their partners. Accountants, lawyers and certain medical professionals have traditionally been organized as partnerships and have not been permitted to take advantage of corporate limited liability.

In a partnership, each partner is personally liable for the obligations of the partnership and the other partners. The personal assets of each partner are available to satisfy claims against any of the partners once the partnership property has been depleted. The LLP differs from an ordinary partnership in that in an action for negligence or a wrongful act of a partner, the plaintiff can only enforce a judgment against the partnership assets and the personal assets of the negligent partner or partners. The personal assets of innocent partners are protected.

Since 1991, limited liability partnership legislation has been enacted throughout the U.S. and in a number of other countries. Many large U.S. and international accounting and law firms are now organized as LLPs.

In March 1998, the *Senate Committee on Banking, Trade and Commerce* released a report entitled *Joint and Several Liability and Professional Defendants* recommending that Canadian provinces and territories adopt the LLP model. The Committee stated:

The Committee questions whether there remain good and sufficient reasons for requiring certain professionals to practise within a traditional partnership structure. Why should partners who are not involved in a negligent act be personally exposed to liability arising from the activities of their negligent partners? Why must the traditional professions such

as law, accounting and medicine continue to face exposure to personal liability for the activities of their negligent partners while other professionals can limit their exposure through incorporation or some other limited liability structure?

The Committee believes that structures such as limited liability partnerships should be available to professionals who wish to limit their personal liability.<sup>1</sup>

Ontario, in 1998, was the first Canadian jurisdiction to enact LLP legislation. Alberta followed in 1999 after extensive study of the issue by the Alberta Law Reform Institute. The Alberta Law Reform Institute issues paper and final report is available on the Internet.<sup>2</sup>

In August 1999, the Uniform Law Conference of Canada produced an issues paper on limited liability partnerships and a model LLP Act. The ULCC paper and model Act are also available on the Internet.<sup>3</sup> Since then British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia and New Brunswick have all adopted forms of LLP legislation, drawing to various degrees on the ULCC model Act.

### **3. Prince Edward Island Legislation**

Under existing laws, LLPs cannot be formed in Prince Edward Island. LLPs formed in other jurisdictions which are carrying on business in Prince Edward Island can register under the general partnership provisions of the *Partnership Act*. However, partners in extra-provincial LLPs carrying on business in Prince Edward Island, whether or not the LLP is registered under the *Partnership Act*, are subject to ordinary partnership liability. The partners cannot take advantage of the LLP limited liability in relation to actions governed by the laws of Prince Edward Island.

This puts PEI partners at a disadvantage in relation to partners in the jurisdictions which recognize the LLP structure. The Department is recommending the adoption of LLP legislation in order to correct this imbalance. The proposed amendments provide for the formation of PEI LLPs and for the registration of extra-provincial LLPs such that the PEI partners of an extra-provincial LLP can take advantage of LLP limited liability.

### **4. Who should be eligible to use LLPs?**

Although the LLP emerged as a business form in response to the liability concerns of accountants

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<sup>1</sup>Report on Joint and Several Liability and Professional Defendants, Senate Committee on Banking, Trade and Commerce, March 1998, available at [www.parl.gc.ca](http://www.parl.gc.ca).

<sup>2</sup> Limited Liability Partnerships, Alberta Law Reform Institute, April 1999, available at [www.law.ualberta.ca/airi](http://www.law.ualberta.ca/airi).

<sup>3</sup> The Model Limited Liability Partnership Act and discussion papers are available on the Internet at Uniform Law Conference of Canada at [www.ulcc.ca](http://www.ulcc.ca).

and lawyers, many jurisdictions in the U.S. have opened its use to any form of enterprise. The Uniform Law Conference of Canada model Act does not restrict the use of the Act to any types of businesses or professions. The Conference made the following comments on this issue:

The Model Act is neutral as to the type of enterprise that could be carried on as an LLP. The ULCC can see no cogent reason for limiting the availability of LLPs to certain types of enterprise. It is recognized, however, that a jurisdiction might decide to limit the availability of LLPs to certain types of enterprise.

The Alberta Law Reform Commission also supported wide use of the LLP structure.

Canadian jurisdictions enacting LLP legislation have generally limited the use of LLPs to “eligible professions”, i.e. professions which are regulated under an Act, such as accountants, lawyers and doctors. Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia have all taken this approach.

In 2005, British Columbia adopted LLP legislation which places no restrictions on the types of business able to register. The proposed PEI legislation is modelled on the BC legislation, making the LLP format open to any type of business, just as the option of incorporating a company under the *Companies Act* R.S.P.E.I. 1988, Cap. C-14 is open to any type of business.

## **5. How should the professions be regulated?**

Under the proposed PEI legislation, if a partnership is a “professional partnership” the partnership is only eligible to form an LLP if it meets specified requirements. A “professional partnership” is a partnership used by a profession that is governed or regulated by:

- a.) an Act of the PEI legislature, and
- b.) a body created by or under that Act.

Professional partnerships are only permitted to use the LLP structure if:

- a.) the profession is expressly authorized by or under its governing Act to carry on the practice of the profession through an LLP, and
- b.) any prerequisites to that authorization that have been established under that Act have been met by the partnership.

These restrictions apply to both PEI professional LLPs and to extra-provincial professional LLPs carrying on business in the province. Extra-provincial professional LLPs will only be permitted to register in PEI as LLPs if the Prince Edward Island Act and governing body authorize use of the LLP structure. Authorization to use the LLP format from their home jurisdiction is not sufficient.

As the law stands now in Prince Edward Island, of the regulated professions, only the accountants are in a position to employ LLPs. The new *Public Accounting and Auditing Act* R.S.P.E.I. 1988, Cap. P-28.1 includes provisions which authorize the use of the LLP structure by chartered and certified general accountants. Under the proposed PEI legislation, no other professional groups will be able to use the LLP structure until they have amended their governing Acts to specifically address this issue. Again, this is true for both PEI formed professional LLPs and for registration of extra-provincial professional LLPs.

This approach to professional partnerships is also based on British Columbia's recently enacted LLP legislation. As is the case in BC, the responsibility for addressing the question of whether and on what terms and conditions a professional group uses the LLP structure is placed in the hands of the profession, its governing body and the Government Department responsible for the regulation of the profession. For example, possible use of the LLP structure and conditions for its use by the legal profession would be determined by the Law Society of Prince Edward Island and the Office of the Attorney General as responsible for the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1.

This approach is also consistent with present Corporate Services Section functions under the *Companies Act*. The *Companies Act* is silent on the issue of whether and on what conditions the regulated professions can incorporate. The regulated professions have dealt with the issue of whether a profession can operate through a corporation and the conditions on such operation, including liability restrictions, in and under the various professional acts. For example, the legal profession is permitted to carry on practice through law corporations; however, liability for professional services rendered is deemed to be full partnership liability. Section 36.2(6) of the *Legal Profession Act* provides:

**36.2(6)** Every person who is a voting shareholder of a law corporation and every person who is a voting shareholder of a corporation owning voting shares of the law corporation is liable to every person for whom professional services of a barrister, solicitor or attorney are undertaken or provided by a law corporation in respect of such professional services to the same extent and in the same manner as if such voting shareholders were carrying on the practice of barrister, solicitor or attorney in partnership or as an individual.

The *Public Accounting and Auditing Act* includes similar provisions in sections 27 and 51.

## **6. Full Shield or Partial Shield Liability**

The original form of limited liability partnership created in 1991 provided a shield against liability of a partner for debts and obligations of the partnership that arose from negligence, omission or wrongful acts of another partner (partial shield liability). As the LLP form spread throughout the U.S., the liability shield was broadened to cover ordinary contractual debts of the partnership (full shield liability). Many U.S. jurisdictions that initially adopted a partial shield have amended their legislation to adopt the full shield. The American *Uniform Partnership Act (1996)* is full shield legislation. The Uniform Law Conference of Canada recommended adoption of a full shield, at page 27 of the ULCC discussion paper:

It is hard to argue that there is a compelling policy reason for insisting that members of LLPs remain personally liable for ordinary contractual obligations when they can already avoid such liability through the expedient of forming management corporations. All that the partial-shield approach would achieve is to require members of LLPs to incorporate a management corporation if they want to insulate themselves from ordinary contractual obligations of the firm. Giving members of LLPs the same sort of liability shield as is enjoyed by shareholders of corporations has the advantage of eliminating pointless and potentially confusing variations between the rules applicable to different types of limited liability business organizations.

To date, Alberta, Manitoba, Quebec and Nova Scotia have adopted partial shield LLP legislation. Ontario has adopted a narrow form of partial shield which only protects from “negligent acts or omissions” instead of the usual protection from “negligence, wrongful act or omission, malpractice or misconduct”. Saskatchewan, New Brunswick and British Columbia have adopted the full shield.

While it is generally accepted that the full shield model provides greater advantages than the partial shield model, there are tax implications to use of the full shield LLP. The federal government treats partial shield LLPs as ordinary partnerships for income tax purposes since the partial shield does not apply to contractual debts and obligations of the partnership. In contrast, the federal tax authorities treat full shield LLPs as limited partnerships for income tax purposes. The differing treatment of the two forms is set out in greater detail in an article by John Wonfor entitled *Full Shield LLPs - Review the Tax Consequences Before Registering*.<sup>4</sup>

## **7. Limited Partnerships**

The present *Limited Partnership Act* requires filing of information on limited partners in the Corporate Registry. The proposed amendments replace this with the requirement that the limited partner information be maintained in the registered office of the limited partnership and provided to interested persons without charge. The amendments are modelled on the limited partnership legislation in New Brunswick and are similar to Ontario and BC laws.

Comments should be submitted by October 21, 2005 to:

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<sup>4</sup>Prepared by John Wonfor, C.A., CFP, TEP, National Tax Partner, BDO Dunwoody LLP, for the National Liability Reform Task Force, available at [www.ica.bc.ca](http://www.ica.bc.ca), under Publications/Beyond Numbers, February 2005.

APPENDIX A - An Act to Amend the Partnership Act

Hon. Mildred A. Dover  
Attorney General

DRAFT

**BILL NO.**

**2005**

**An Act to Amend the Partnership Act**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

**1. The *Partnership Act R.S.P.E.I. 1988, Cap. P-1* is amended**

**(a) by the addition of the heading “PART I RULES OF EQUITY AND COMMON LAW” before section 2;**

**(b) by the addition of the heading “PART II NATURE OF PARTNERSHIP” before section 3;**

**(c) by the addition of the heading “PART III REGISTRATION” before section 48;**

**(d) by the addition of the heading “PART IV GENERAL” before section 55.**

**2. The Act is amended by the addition of the following after section 65:**

PART V

LIMITED LIABILITY PARTNERSHIPS

Interpretation and Application

**66. In this Part**

Definitions

(a) “distribution” means, in relation to partnership property, a transfer of money or other partnership property by a partnership to a partner or an assignee of a partner’s share in the partnership, whether as a share of profits, return of contributions to capital, repayment of advances or otherwise;

distribution

(b) “extra-provincial limited liability partnership” means a partnership registered under section 88 as an extra-provincial limited liability partnership;

extra-provincial  
limited liability  
partnership



governing jurisdiction	(c) “governing jurisdiction” means, in relation to a partnership, the jurisdiction whose law governs the interpretation of the partnership agreement by operation of law or through a provision in the partnership agreement or another document created by the partnership;
partnership obligation	(d) “partnership obligation” means any debt, obligation or liability of a partnership, other than debts, obligations or liabilities of partners as between themselves or as between themselves and the partnership;
PEI limited liability partnership	(e) “PEI limited liability partnership” means a partnership registered under section 76 as a PEI limited liability partnership;
profession	(f) “profession” means a profession or occupation that is governed or regulated by <ul style="list-style-type: none"> <li>(i) an Act, and</li> <li>(ii) a body created by or under an Act;</li> </ul>
professional partnership	(g) “professional partnership” means a partnership through which one or more persons carry on the practice of a profession.
Application of Act	<b>67.</b> (1) Part III does not apply to a PEI limited liability partnership or to an extra-provincial limited liability partnership.
_____	(2) Parts I, II and IV apply to a PEI limited liability partnership and to an extra-provincial limited liability partnership except in so far as those Parts are inconsistent with this Part.

#### Liability of Partners

Limited liability	<b>68.</b> (1) Except as expressly provided in this Part, in another Act or in an agreement, a partner in a PEI limited liability partnership <ul style="list-style-type: none"> <li>(a) is not personally liable for a partnership obligation solely by reason of being a partner;</li> <li>(b) is not personally liable for an obligation under an agreement between the partnership and another person; and</li> <li>(c) is not personally liable to the partnership or another partner by way of contribution, indemnity or otherwise, in respect of an obligation to which paragraph (a) or (b) applies.</li> </ul>
Personal liability	(2) Subsection (1) does not relieve a person who is a partner in a PEI limited liability partnership from personal liability for a negligent or otherwise wrongful act or omission, malpractice or misconduct of the person for which that person would be personally liable if the person were not a partner.

(3) Subsection (1) does not protect a partner's interest in the partnership property from claims against the partnership in respect of a partnership obligation. Claims against partnership property

**69.** (1) Partners in a PEI limited liability partnership are personally liable for a partnership obligation for which they would be liable if the partnership were a corporation of which they were directors. Partners subject to same obligations as corporate directors

(2) Where a corporation is a partner in a PEI limited liability partnership, the directors of the corporation are jointly and severally liable for any liability imposed on the corporation under subsection (1). Joint and several liability of directors of corporate partner

**70.** Nothing in this Part limits the liability of partners in a PEI limited liability partnership for any partnership obligation that Previous partnership obligations

- (a) arose before the partnership became a PEI limited liability partnership; or
- (b) arises out of a contract entered into before the partnership became a PEI limited liability partnership.

#### Distribution of Property

**71.** (1) A PEI limited liability partnership shall not make a distribution of partnership property in connection with the winding up of its affairs unless all partnership obligations have been paid or satisfactory provision for their payment has been made. Restrictions on distribution of partnership property on winding up

(2) In circumstances other than in connection with the winding up of its affairs, a PEI limited liability partnership shall not make a distribution of partnership property if there are reasonable grounds to believe that after the distribution Restrictions on distribution of partnership property re liquidity

- (a) the partnership would be unable to pay its partnership obligations as they come due; or
- (b) the value of the partnership property would be less than the partnership obligations.

(3) Subsections (1) and (2) do not prohibit a payment made as reasonable compensation for current services provided by a partner to the PEI limited liability partnership, to the extent that the payment would be reasonable if paid to an employee who was not a partner as compensation for similar services. Reasonable compensation for services

(4) A PEI limited liability partnership may base its determination of whether a distribution is prohibited by subsection (2) Basis for determination of liquidity

- (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;
- (b) on a fair valuation; or
- (c) on another method that is reasonable in the circumstances.

Liability of partner for prohibited distribution	<p><b>72.</b> (1) A partner in a PEI limited liability partnership who receives a distribution contrary to section 71 is liable to the partnership for the lesser of</p> <ul style="list-style-type: none"> <li>(a) the value of the property received by the partner; and</li> <li>(b) the amount necessary to discharge partnership obligations that existed at the time of the distribution.</li> </ul>
Joint and several liability	<p>(2) A partner in a PEI limited liability partnership who authorizes a distribution contrary to section 71 is jointly and severally liable to the partnership for any amount for which a recipient is liable under subsection (1), to the extent that the amount is not recovered from the recipient.</p>
Commencement of proceedings	<p>(3) Proceedings to enforce a liability under this section may be brought by the PEI limited liability partnership, any partner in the partnership or any person to whom the partnership was obligated at the time of the distribution to which the liability relates.</p>
Limitation period	<p>(4) No proceedings to enforce a liability under this section may be commenced later than two years after the date of the distribution to which the liability relates.</p>

#### Successor Partnership

Successor partnership	<p><b>73.</b> (1) For the purposes of this Part, a new partnership is the successor partnership of an original partnership where</p> <ul style="list-style-type: none"> <li>(a) at a particular time, the original partnership is registered as a PEI limited liability partnership;</li> <li>(b) immediately after that time, a new partnership with different partners is carrying on the business of the original partnership;</li> <li>(c) one or more of the partners in the original partnership are members of the new partnership; and</li> <li>(d) there is an express or implied agreement between the partners in the original partnership and new partnership that the new partnership will assume all partnership obligations of the original partnership.</li> </ul>
Deemed to be same partnership	<p>(2) A successor partnership is deemed to be the same partnership as the original partnership for the purposes of this Part and, without limiting this, is subject to all the partnership obligations of the original partnership.</p>

#### Formation of PEI Limited Liability Partnerships

Application	<p><b>74.</b> (1) Subject to subsection (2) and section 75, the partners of a partnership may apply to register the partnership as a PEI limited liability partnership by submitting to the Registrar, on behalf of the partnership, a declaration in such form as the Registrar may require.</p>
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(2) No limited partnership may be registered as a PEI limited liability partnership.

Prohibition on limited partnership

(3) A declaration referred to in subsection (1) must set out

Contents of declaration

- (a) the name of the partnership;
- (b) the address of the registered office of the partnership in the province;
- (c) if the partnership is registered under section 48 of the Act, its registration number.

**75.** A professional partnership shall not register as a PEI limited liability partnership unless

Professional partnership

- (a) members of that profession are expressly authorized by or under the Act by which that profession is governed to carry on the practice of the profession through a limited liability partnership; and
- (b) any prerequisites to that authorization that have been established under that Act have been met by the partnership.

**76.** (1) If a declaration submitted to the Registrar under section 74 is in accordance with the requirements of this Part, the Registrar shall file the declaration, issue to the partnership a certificate of registration and publish notice of registration in the Gazette.

Certificate of registration

(2) On issuance of the certificate of registration under subsection (1), the partnership is registered as a PEI limited liability partnership.

Registration

(3) If a partnership registered under section 48 is registered as a PEI limited liability partnership,

General partnership registration cancellation

- (a) the partnership's registration under section 48 is cancelled; and
- (b) Part III ceases to apply to the partnership.

**77.** The registration of a PEI limited liability partnership is not adversely affected by a change in the partners in the partnership.

Change of partners

**78.** Subject to any agreement among the partners, the registration of a partnership as a PEI limited liability partnership does not cause the dissolution of the partnership, and the PEI limited liability partnership continues as the same partnership that existed before the conversion.

Registration does not dissolve partnership

**79.** A PEI limited liability partnership must have the words "Limited Liability Partnership", "Société à Responsabilité Limitée" or "Société en nom collectif à responsabilité limitée" or the abbreviation "LLP", "SRL" or "SENCRL" as part of and at the end of its name.

Legal elements in name

**80.** On registration as a PEI limited liability partnership, the partnership shall immediately send to all of its existing clients a notice that advises of the registration and explains in general terms the potential changes in

Notice to clients

liability of the partners that result from the registration and the operation of this Part.

Registered office **81.** (1) A PEI limited liability partnership shall at all times have a registered office in the province.

Address for service by mail (2) A PEI limited liability partnership may designate a separate post office box within the province as its address for service by mail.

List of partners **82.** A PEI limited liability partnership shall keep at its registered office a list of its partners and shall, without delay, provide the following information without charge to any person who requests it:  
 (a) a list of the partners;  
 (b) a list of the persons who were partners in the PEI limited liability partnership on a date specified in the request.

Annual return **83.** (1) A PEI limited liability partnership shall annually, within 2 months after each anniversary of the date on which the partnership was registered as a PEI limited liability partnership, file with the Registrar an annual return in such form as the Registrar may require.

*Idem* (2) A PEI limited liability partnership that has not filed with the Registrar one or more annual returns under this Act must remedy that default before filing with the Registrar any other annual returns under this Act.

Notice of change **84.** (1) If, at any time, information included in a declaration under clauses 74(3)(a) or (b) or this section changes, the PEI limited liability partnership shall promptly file a notice of change to the declaration, in such form as the Registrar may require, indicating the change.

Amended certificate of registration (2) The Registrar shall issue an amended certificate of registration on filing of a notice of change to the name of the PEI limited liability partnership under subsection (1) and shall publish notice of the change in the Gazette.

#### Extra-provincial Limited Liability Partnerships

Non-registered status **85.** A partnership that has the status of a limited liability partnership under the laws of a jurisdiction outside the province shall be treated as an ordinary partnership with respect to rights and obligations that it acquires or incurs under Prince Edward Island laws while carrying on business in the province without being registered as an extra-provincial limited liability partnership.

Application **86.** (1) Subject to section 87, a partnership that has the status of, or a status equivalent to, a limited liability partnership under the laws of a

jurisdiction outside the province may apply to register as an extra-provincial limited liability partnership.

- (2) A declaration referred to in subsection (2) must Declaration
- (a) set out the name of the partnership;
  - (b) set out the address of the registered office of the partnership in the province;
  - (c) identify the governing jurisdiction of the partnership, and confirm that the partnership has the status of a limited liability partnership in its governing jurisdiction.

**87.** A professional partnership that has the status of a limited liability partnership under the laws of a jurisdiction outside the province shall not register as an extra-provincial limited liability partnership unless Professional partnership

- (a) members of that profession are expressly authorized by or under the Act by which that profession is governed in Prince Edward Island to carry on the practice of the profession through a limited liability partnership; and
- (b) any prerequisites to that authorization that have been established under that Act have been met by the partnership.

**88.** (1) If a declaration submitted to the Registrar under section 86 is in accordance with the requirements of this Part, the Registrar shall file the declaration, issue to the partnership a certificate of registration and publish notice of registration in the Gazette. Certificate of registration

(2) On issuance of the certificate of registration under subsection (1), the partnership is registered as an extra-provincial limited liability partnership. Registration

**89.** The registration of an extra-provincial limited liability partnership is not adversely affected by a change in the partners in the partnership. Change in partners

**90.** (1) The name of an extra-provincial limited liability partnership must Legal elements in name

- (a) contain the words and abbreviations required under the law of its governing jurisdiction; and
- (b) comply with section 79.

(2) In the event of a conflict between the requirement under clause (1)(a) and the requirement under clause (1)(b), the requirement under clause (1)(b) prevails. Conflict

**91.** On registration as an extra-provincial limited liability partnership, the partnership shall immediately send to all of its existing Prince Edward Island clients a notice that advises of the registration and explains in general terms the potential changes in liability of the partners that result from the registration and the operation of this Part. Notice to clients

Registered office	<b>92.</b> (1) An extra-provincial limited liability partnership shall at all times have a registered office in the province.
Address for service by mail	(2) An extra-provincial limited liability partnership may designate a separate post office box within the province as its address for service by mail.
List of partners	<b>93.</b> An extra-provincial limited liability partnership shall keep at its registered office a list of the Prince Edward Island partners and shall, without delay, provide the following information without charge to any person who requests it: <ul style="list-style-type: none"> <li>(a) a list of the Prince Edward Island partners;</li> <li>(b) a list of the persons who were Prince Edward Island partners in the partnership on a date specified in the request, which must be after it was registered under this Part.</li> </ul>
Annual return	<b>94.</b> (1) An extra-provincial limited liability partnership shall annually, within 2 months after each anniversary of the date on which the partnership was registered as an extra-provincial limited liability partnership, file with the Registrar an annual return in such form as the Registrar may require.
<i>Idem</i>	(2) An extra-provincial limited liability partnership that has not filed with the Registrar one or more annual returns under this Act must remedy that default before filing with the Registrar any other annual returns under this Act.
Notice of change	<b>95.</b> (1) If, at any time, information included in a declaration under clauses 86(2)(a) or (b) or this section changes, the extra-provincial limited liability partnership shall promptly file a notice of change to the declaration, in such form as the Registrar may require, indicating the change.
Amended certificate of registration	(2) The Registrar shall issue an amended certificate of registration on filing of a notice of change to the name of the extra-provincial limited liability partnership under subsection (1) and shall publish notice of the change in the Gazette.
Law of governing jurisdiction	<b>96.</b> (1) Except as provided in another Act, the law of the governing jurisdiction of an extra-provincial limited liability partnership applies <ul style="list-style-type: none"> <li>(a) to the organization and internal affairs of the extra-provincial limited liability partnership; and</li> <li>(b) to the liability of the extra-provincial limited partnership and its partners for debts, obligations and liabilities of or chargeable to the extra-provincial limited liability partnership or its partners.</li> </ul>

(2) Despite subsection (1), a Prince Edward Island partner of an extra-provincial limited liability partnership does not have any greater protection against individual liability for partnership obligations with respect to his or her activities in Prince Edward Island than a partner in a PEI limited liability partnership has under this Part.

Application of law of governing jurisdiction to PEI partners

#### Name of Partnership

**97.** (1) The name of a PEI limited liability partnership or an extra-provincial limited liability partnership shall not be

- (a) identical to the name of any other PEI limited liability partnership or any other extra-provincial limited liability partnership; or
- (b) so similar to the name of any other PEI limited liability partnership or any other extra-provincial limited liability partnership that the only difference is with respect to the phrase or abbreviation required to be included pursuant to section 79.

Restrictions on name

(2) Clause (1)(b) does not apply if the written consent of the other limited liability partnership is filed with the Registrar.

Consent

(3) If a PEI limited liability partnership or an extra-provincial limited liability partnership is registered with a name that does not comply with this Part, the Registrar may, by notice in writing to the partnership, direct the partnership to change its name to one that complies with this Part within 60 days after the date of the notice.

Direction to change

#### Winding Up and Cancellation of Registration

**98.** (1) When a PEI limited liability partnership dissolves and its affairs are to be wound up, the partnership maintains its status as a PEI limited liability partnership while its affairs are being wound up.

Partnership status in winding up

(2) A PEI limited liability partnership is deemed, for the purposes of this section and subsection 71(1), to have dissolved and to be winding up its affairs if

Deemed dissolution

- (a) the partnership ceases to carry on business; or
- (b) there is any change in the membership of the partnership and there is not a successor partnership within the meaning of section 73.

(3) When a PEI limited liability partnership has dissolved and its affairs are being wound up, the Supreme Court of Prince Edward Island may on the application of any interested person make any order with respect to the partnership that could be made with respect to a corporation under subsection 211(8) of the *Canada Business Corporations Act*.

Powers of Supreme Court



Notice of dissolution	<b>99.</b> (1) On the dissolution of a PEI limited liability partnership or an extra-provincial limited liability partnership, the partnership shall submit to the Registrar for filing a notice, in such form as the Registrar may require, advising the Registrar of the dissolution of the partnership.
Filing by partner	(2) For the purposes of subsection (1), any person who was a partner of the partnership at the time of its dissolution may file the required notice.
Cancellation of registration	(3) Where a PEI limited liability partnership or an extra-provincial limited liability partnership files a notice of dissolution under subsection (1), the Registrar shall cancel the registration of the partnership and shall publish notice of cancellation in the Gazette.
Application of law of governing jurisdiction	<b>100.</b> Despite the dissolution of an extra-provincial limited liability partnership, section 96 as it relates to the liability of the partnership and the partners continues to apply to the partnership and its partners until the business and affairs of the partnership are wound up.
Cancellation of registration	<b>101.</b> (1) Subject to subsections (2) and (3), the Registrar may cancel the registration of <ul style="list-style-type: none"> <li>(a) a PEI limited liability partnership if <ul style="list-style-type: none"> <li>(i) the PEI limited liability partnership fails to file an annual return required under section 83, or</li> <li>(ii) there is filed with the Registrar a request, in such form as the Registrar may require, that the registration be cancelled; or</li> </ul> </li> <li>(b) an extra-provincial limited liability partnership if <ul style="list-style-type: none"> <li>(i) the extra-provincial limited liability partnership fails to file an annual return required under section 94, or</li> <li>(ii) there is filed with the Registrar a request, in such form as the Registrar may require, that the registration be cancelled.</li> </ul> </li> </ul>
Notice of intended cancellation	(2) Before the Registrar cancels the registration under subsection (1), the Registrar must provide to the partnership, a notice informing it of the intended cancellation.
Cancellation after notice	(3) At any time later than one month after the date of the notice, the Registrar may cancel the registration of the partnership, unless the default is remedied or the Registrar is satisfied that reasonable steps are being taken to remedy the default and the Registrar shall publish notice of cancellation in the Gazette.
Cancellation does not dissolve partnership	(4) Cancellation of the registration of a PEI limited liability partnership or an extra-provincial limited liability partnership does not dissolve the partnership, but instead only removes its status as a limited liability partnership.

(5) On the cancellation of the registration of a partnership as a PEI limited liability partnership or an extra-provincial limited liability partnership, Effect of  
cancellation

(a) if the partnership has Prince Edward Island as its governing jurisdiction, this Act applies to the partnership as if it were an ordinary partnership and section 68 ceases to apply to the partnership and its partners, and

(b) if the partnership does not have Prince Edward Island as its governing jurisdiction, this Act applies to the partnership as if it were a partnership that does not have Prince Edward Island as its governing jurisdiction and that is not an extra-provincial limited liability partnership and clause 96(1)(b) ceases to apply to the partnership and its partners.

(6) Cancellation of the registration of a partnership as a PEI limited liability partnership or an extra-provincial limited liability partnership does not affect the liability of a partner in the partnership in respect of any partnership obligation that *Idem*

(a) arose before the cancellation of the registration of the partnership as a limited liability partnership, or

(b) arose out of a contract entered into before the cancellation of the registration of a partnership as a limited liability partnership.

**3. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.**

**EXPLANATORY NOTES**

**SECTION 1** divides the Act into Parts and adds headings for each Part.

**SECTION 2** adds a new Part to the Act dealing with the formation and registration of PEI limited liability partnerships and extra-provincial limited liability partnerships.

**SECTION 3** is the commencement clause.

APPENDIX B - An Act to Amend the Limited Partnership Act

Hon. Mildred A. Dover  
Attorney General

DRAFT

**BILL NO.**

**2005**

**An Act to Amend the Limited Partnership Act**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

**1. Section 3 of the Limited Partnership Act R.S.P.E.I. 1988, Cap. L-13 is amended**

**(a) in subsection (2)**

**(i) by the deletion of the words “all of the partners” and the substitution of the words “all of the general partners”,**

**(ii) in clause (c), by the deletion of the words “partners, general and limited partners being respectively designated and for each partner” and the substitution of the words “general partners and for each general partner”, and**

**(iii) by the deletion of clause (d);**

**(b) in subsection (3), by the deletion of the words “including a declaration filed by an extra-provincial limited partnership” and the substitution of the words “and every declaration filed by an extra-provincial limited partnership under subsection 24(1)”.**

**2. Section 8 of the Act is amended by the deletion of the words “as stated in the declaration” and the substitution of the words “as stated in the list referred to in clause 30(1)(b.1)”.**

**3. Subsection 15(1) of the Act is amended by the deletion of the words “stated in the declaration” and the substitution of the words “stated in the list referred to in clause 30(1)(b.1)”.**

**4. Section 16 of the Act is amended by the deletion of the words “amendment of the declaration in accordance with section 18” and the substitution of the words “amendment of the list referred to in clause 30(1)(b.1)”.**

**5. Subsection 17(5) of the Act is amended by the deletion of the words “when the declaration is amended in accordance with section 18” and the substitution of the words “when the list referred to in clause**

30(1)(b.1) is amended to include in relation to the assignee the information required by that paragraph”.

**6. Section 18 of the Act is amended by the deletion of subsection (4).**

**7. Section 24 of the Act is amended**

**(a) in subsection (3), by the deletion of the words “and one limited partner”; and**

**(b) in subsection (7), by the deletion of the words “and one limited partner”.**

**8. Clause 28(d) of the Act is amended by the deletion of the words “a declaration to be filed with the Registrar showing the person to be a limited partner” and the substitution of the words “his or her name to be added to the list referred to in clause 30(1)(b.1)”.**

**9. Subsection 30(1) of the Act is amended by the addition of the following after clause (b):**

(b.1) a list of all the limited partners including, for each limited partner,

(i) the surname of the limited partner,

(ii) the first or other given name by which the limited partner is commonly known,

(iii) the first letters of the other given names if any, of the limited partner,

(iv) the residence address or address for service of the limited partner, including the street name and number, if any, and

(v) the value of money and other property contributed or to be contributed by the limited partner;

### **EXPLANATORY NOTES**

**SECTION 1** removes the requirement that limited partners be listed on and sign the declaration of partnership.

**SECTIONS 2, 3, 4 AND 5** remove the references to limited partners on the partnership declaration and replace them with references to the list of limited partners which is now required to be held at the partnership's place of business.

**SECTION 6** removes a reference to limited partners listed in the declaration.

**SECTION 7** removes references to limited partners on the declaration of limited partnership.

**SECTION 8** replaces a reference to limited partners on the declaration of partnership with a reference to the list of limited partners maintained at the partnership's place of business.

**SECTION 9** adds a requirement that a list of limited partners be maintained at the partnership's place of business.