



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **WINDING-UP ACT**

## PLEASE NOTE

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

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

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## WINDING-UP ACT

### CHAPTER W-5

#### 1. Definitions

In this Act

- (a) “**court**” means the Supreme Court;
- (b) “**judge**” means a judge of the court. *R.S.P.E.I. 1974, Cap. W-7, s.1.*

#### 2. Liability to contribute to assets, when deemed to be due

The liability of any person to contribute to the assets of a corporation under this Act, in the event of it being wound up, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing the liability. *R.S.P.E.I. 1974, Cap. W-7, s.2.*

#### 3. Death of contributory, estate liable

If a contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees are liable in due course of administration to contribute to the assets of the corporation in discharge of the liability of the deceased contributory and shall be deemed to be contributories accordingly. *R.S.P.E.I. 1974, Cap. W-7, s.3.*

#### 4. Voluntary winding up

(1) A corporation may be wound up voluntarily

- (a) where the period, if any, fixed for the duration of the corporation by its Act, letters patent or instrument of incorporation, or supplementary letters patent has expired; or where the event, if any, has occurred upon the occurrence of which it is provided by the Act or letters patent or instrument of incorporation or supplementary letters patent that the corporation is to be dissolved, and the corporation in general meeting has passed a resolution requiring the corporation to be wound up;
- (b) where the corporation, in general meeting called for that purpose, has passed a resolution requiring the corporation to be wound up;
- (c) where the corporation, though it may be solvent with respect to creditors, has passed a resolution in general meeting to the effect that it has been proved to its satisfaction that the corporation cannot, by reason of its liabilities, continue its business and that it is advisable to wind it up.

#### Notice of winding up

(2) In addition to any notice of meeting required by the company’s bylaws or charter, notice of a general meeting for the purpose of passing a resolution requiring the corporation to be wound

up under this Act shall be given by publication once a week for two weeks in the Gazette, and where the head office of the company is in Prince County, such notice shall be published once a week for two consecutive weeks in a newspaper published in Summerside, and where the head office of the company is outside Prince County such notice shall be published once a week for two weeks in a newspaper published in Charlottetown. *R.S.P.E.I. 1974, Cap. W-7, s.4.*

**5. Winding up, commencement**

A winding up shall be deemed to commence at the time of the passing of the resolution authorizing the winding up. *R.S.P.E.I. 1974, Cap. W-7, s.5.*

**6. Effect of winding up**

Whenever a corporation is wound up voluntarily, the corporation shall from the date of the commencement of the winding up, cease to carry on its undertaking, except in so far as may be required for the beneficial winding up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alterations in the status of the shareholders or members of the corporation taking place after the commencement of such winding up shall be void; but its corporate state and all its corporate powers, notwithstanding that it is otherwise provided by its constituting instrument or bylaws, shall continue until the affairs of the corporation are wound up. *R.S.P.E.I. 1974, Cap. W-7, s.6.*

**7. Notice of resolution for voluntary winding up**

Notice of any resolution passed for winding up a corporation voluntarily shall be given by publication once a week for two consecutive weeks in the Gazette and where the head office of the company is in Prince County, such notice shall be published once a week for two consecutive weeks in a newspaper published in Summerside, and where the head office of the company is outside Prince County such notice shall be published once a week for two consecutive weeks in a newspaper published in Charlottetown; and in every case the notice shall be filed with the Director of Corporations. *R.S.P.E.I. 1974, Cap. W-7, s.7; 1980, c.2, s.3.*

**8. Actions against corporation after commencement of winding up**

- (1) After the commencement of the winding up, no action or other proceeding shall be proceeded with or commenced against the corporation, and no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation, except by leave of the court and subject to such terms as the court may impose.

**Winding-up Act (Canada)**

- (2) This section does not apply to any proceeding taken under the *Winding-up Act (Canada)* R.S.C. 1985, Chap. W-11, or other Act respecting insolvency or bankruptcy. *R.S.P.E.I. 1974, Cap. W-7, s.8.*

**9. Consequences of a voluntary winding up**

Upon a voluntary winding up

- (a) the property of the corporation shall be applied in satisfaction of all its liabilities on an equal footing and, subject thereto, shall, unless it is otherwise provided by the bylaws of the corporation, be distributed rateably among the shareholders or members according to their rights and interests in the corporation;



- (b) in distributing the assets of the corporation, the salary or wages of clerks and wage earners in the employment of the corporation due at the date of the commencement of the winding up or within one month before, not exceeding three months salary or wages, shall be paid in priority to claims of ordinary general creditors, and such clerks and wage earners are entitled to rank of ordinary general creditors for the residue of their claims;
- (c) the corporation in general meeting shall appoint a person or persons to be a liquidator or liquidators for the purpose of winding up the affairs of the corporation and distributing its property and shall fix the remuneration to be paid to and any disbursements made by him or them;
- (d) if one person only is appointed all the provisions in reference to several liquidators apply to him;
- (e) upon the appointment of liquidators all the powers of the directors cease except in so far as the corporation in general meeting or the liquidators may sanction the continuance of such powers;
- (f) where several liquidators are appointed every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two;
- (g) the liquidators shall settle the list of contributories, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (h) the liquidators may at any time after the passing of the resolution for winding up, and before they have ascertained the sufficiency of the assets of the corporation, call on all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability to pay any sum which they may consider necessary to satisfy the debts and liabilities of the corporation, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories among themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same;
- (i) the liquidators shall pay the debts of the corporation and adjust the rights of the contributories, shareholders or members among themselves;
- (j) the corporation may at any time for due cause remove a liquidator and appoint one or more liquidators by resolution at any general meeting. *R.S.P.E.I. 1974, Cap. W-7, s.9.*

#### **10. Costs & charges incurred in winding up**

All costs, charges and expenses properly incurred in the winding up under a court winding up order, including the remuneration of the liquidators, after assessment by the Prothonotary, shall be payable out of the assets of the corporation in priority to all other claims; this section does not apply to a corporation winding up voluntarily. *R.S.P.E.I. 1974, Cap. W-7, s.10.*

#### **11. Liquidators, powers**

- (1) The liquidators may
  - (a) bring or defend any action, suit or prosecution or other legal proceeding, civil or criminal in the name and on behalf of the corporation;
  - (b) carry on the business of the corporation so far as may be necessary for the beneficial winding up of the same;

- (c) sell as one unit or in parcels the real and personal property, effects and things in action of the company, by public auction or private contract;
- (d) do all acts and execute, in the name and on behalf of the corporation, all deeds, receipts and other documents, and for that purpose use the seal of the corporation;
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;
- (f) raise upon the security of the assets of the corporation from time to time any requisite sum or sums of money;
- (g) take out in their official name letters of administration to the estate of any deceased contributory and do in their official name any other act that may be necessary for obtaining payment of any money due from a contributory or from his estate and which act cannot be conveniently done in the name of the corporation;
- (h) do and execute all such other things as may be necessary for winding up the affairs of the corporation and distributing its assets.

**Financial instruments, effect of making on behalf of corporation**

- (2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note on behalf of the corporation shall have the same effect with respect to the liability of the corporation as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the corporation in the course of carrying on the business thereof.

**Liquidators, acting as administrators, for benefit of corporation**

- (3) Where the liquidators take out letters of administration or otherwise use their official name for obtaining payment of any money due from a contributory, the money shall be deemed, for the purpose of enabling them to take out the letters or recover the money, to be due to the official liquidators themselves. *R.S.P.E.I. 1974, Cap. W-7, s.11.*

**12. Committee of shareholders, appointment etc. of liquidators & arrangements with creditors**

A corporation about to be wound up voluntarily, or in the course of being wound up, may, in general meeting, by resolution, delegate to any committee of its shareholders or members, contributories or creditors, hereinafter referred to as inspectors, the power of appointing liquidators and filling any vacancies in the office of liquidators, or may by a like resolution enter into any arrangement with its creditors with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised. *R.S.P.E.I. 1974, Cap. W-7, s.12.*

**13. Deposit money of corporation in bank**

- (1) The liquidators shall deposit at interest in some savings institution at a branch in Prince Edward Island all sums of money which they may have in their hands belonging to the corporation whenever such sums exceed \$100.

**Inspectors to approve**

- (2) If inspectors have been appointed the bank shall have one approved by them.

**Separate account for liquidators**

- (3) The deposit shall not be made in the name of the liquidators generally, but a separate deposit account shall be kept of the money belonging to the corporation, in the name of the liquidators as such and of the inspectors, if any; and the money shall be withdrawn only on the joint cheque of the liquidators and one of the inspectors, if any.





**Passbook showing deposits**

- (4) At every meeting of the shareholders or members of the corporation the liquidators shall produce a passbook, showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal, of which production mention shall be made in the minutes of the meeting, and the absence of such mention shall be *prima facie* evidence that the passbook was not produced at the meeting.

**Production of passbook**

- (5) The liquidators shall also produce the passbook whenever so ordered by the court upon the application of the inspectors or of a shareholder or member of the corporation. *R.S.P.E.I. 1974, Cap. W-7, s.13; 1994, c.48, s.19.*

**14. General meetings of shareholders during winding up**

- (1) The liquidators may from time to time, during the continuance of the winding up, summon general meetings of the corporation for the purpose of obtaining the sanction of the corporation by resolution or for any other purpose they think fit.

**General meetings required**

- (2) In the event of the winding up continuing for more than a year and a half the liquidators shall summon a general meeting of the corporation at the end of the first year and a half and of each succeeding year thereafter, and shall lay before the meeting an account showing the manner in which the winding up has been conducted. *R.S.P.E.I. 1974, Cap. W-7, s.14.*

**15. Vacancy in office of liquidator**

If any vacancy occurs in the office of liquidators appointed by the corporation, by death, resignation or otherwise, the corporation in general meeting may, subject to any arrangement it may have entered into with its creditors upon the appointment of inspectors, fill the vacancy, and a general meeting for that purpose may be convened by the contributing liquidators, if any, or by any contributory, and shall be deemed to have been duly held in the manner prescribed by the bylaws of the corporation, or, in default thereof, in the manner prescribed by this Act for calling general meetings of the shareholders or members of the corporation. *R.S.P.E.I. 1974, Cap. W-7, s.15.*

**16. Trustee Act, re liquidators**

Section 52 of the *Trustee Act* R.S.P.E.I. 1988, Cap. T-8, applies with the necessary changes to liquidators. *R.S.P.E.I. 1974, Cap. W-7, s.16; 1981, c.36, s.15.*

**17. Creditors, arrangements with**

The liquidators with the sanction of a resolution of the corporation in general meeting or of the inspectors, may make such compromise or other arrangement, as the liquidators consider expedient, with any creditor, or person claiming to be a creditor, or having or alleging that he has any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the corporation or whereby the corporation may be rendered liable. *R.S.P.E.I. 1974, Cap. W-7, s.17.*

**18. Power to compromise**

The liquidators may, with the like sanction, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain

or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the corporation and any contributory, alleged contributory or other debtor or person apprehending liability to the corporation and all questions in any way relating to or affecting the assets of the corporation, or the winding up of the corporation, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon; and the liquidators may take any security for the discharge of such calls, debts or liabilities and give a complete discharge in respect thereof. *R.S.P.E.I. 1974, Cap. W-7, s.18.*

### **19. Power to accept other shares**

- (1) Where a corporation is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another corporation, the liquidators of the first mentioned corporation, with the sanction of a resolution in general meeting of the corporation by which they were appointed conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, may receive, in compensation or in part compensation for the transfer or sale, shares or other like interest in the other corporation for the purpose of distribution among the shareholders or members of the corporation which is being wound up, in lieu of receiving cash, shares or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation.

#### **Arrangements binding on shareholders**

- (2) Any sale made or arrangement entered into by the liquidators in pursuance to this section shall be binding on the shareholders or members of the corporation which is being wound up, but if any member or shareholder who has not voted in favor of the resolution expresses his dissent from any such resolution in writing addressed to the liquidators, or one of them, and left at the head office of the corporation or the place where its undertaking is carried on, not later than seven days after the date of the meeting at which such resolution was passed, such dissentient member may require the liquidators to do such one of the following things as the liquidators may prefer, that is to say, either
  - (a) to abstain from carrying the resolution into effect; or
  - (b) to purchase the interest held by the dissentient member at a price to be determined in a manner hereinafter mentioned, such money to be paid before the corporation is dissolved and to be raised by the liquidators in such manner as may be determined by resolution of the corporation.

#### **Resolution not invalidated by**

- (3) No resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with a resolution for winding up the corporation or for appointing liquidators.

#### **Price to be paid for shares of dissentient shareholder**

- (4) The price to be paid for the purchase of the interest of any dissentient shareholder or member may be determined by agreement; but if the parties differ as to the same, the price shall be determined by arbitration. *R.S.P.E.I. 1974, Cap. W-7, s.19.*

### **20. Proof of claims**

Unless otherwise ordered by the court or a judge, claims against a corporation in process of being wound up shall be proved as follows:



- (a) every person claiming to be entitled to rank as a creditor shall furnish to the liquidator particulars of his claim proved by affidavit, together with such vouchers as the nature of the case admits;
- (b) if any person claiming to be entitled to rank as a creditor does not, within one month after last publication of the notice mentioned in section 7, furnish to the liquidator satisfactory proof of his claim, a judge may, upon a summary application by the liquidator or inspector, (of which application at least ten days notice shall be given to the person alleged to have made default in proving a claim as aforesaid) order that unless the claim is proved to the satisfaction of a judge within a time to be limited by the order, the person so making default shall no longer be deemed a creditor of the corporation being wound up, and shall be wholly debarred of any right to share in the proceeds thereof; and if the claim is not so proved within the time so limited, or within such further time as the judge may allow, the same shall be wholly barred, and the liquidator is at liberty to distribute the proceeds as if no such claim existed;
- (c) at any time after the liquidator receives proof of a claim as hereinbefore mentioned, notice of contestation of the claim may be served by the liquidator upon the claimant; within thirty days after the receipt of the notice, or such further time as a judge may allow, an action shall be commenced by the claimant to establish the claim, and a copy of the notice therein served on the liquidator; and in default of such action being commenced and notice served within the time aforesaid, the claim shall be forever barred;
- (d) the notice of contestation mentioned in clause (c) shall contain the name and place of business of one of the attorneys of the court, upon whom service of notice may be made, and service upon such attorney shall be deemed sufficient service of the notice.  
*R.S.P.E.I. 1974, Cap. W-7, s.20.*

## **21. Application to a judge re section 16**

- (1) A judge may, upon the application of the liquidators or of the inspectors or of any creditor affected by section 16, and after hearing such parties as he shall direct to be notified, or after such steps as he may prescribe have been taken, may give his opinion, advice or direction in any matter arising in the liquidation, and it shall be followed and it shall be binding upon all parties in the liquidation, and the order of the judge shall be final and binding in the liquidation, subject to an appeal to the full court in the cases where such appeal lies under this Act.

### **Re section 19**

- (2) A creditor affected by anything done or proposed to be done under section 19 shall have the like right to apply in respect thereof, and in other respects the provisions of subsection (1) shall apply. *R.S.P.E.I. 1974, Cap. W-7, s.21.*

## **22. Winding up under court order**

A corporation may be wound up by order of the court

- (a) where it may be wound up voluntarily;
- (b) where proceedings have been begun to wind up voluntarily and it appears to the court that it is in the interests of contributories and creditors that they should be continued under the supervision of the court;
- (c) where in the opinion of the court it is just and equitable for some reason other than the bankruptcy or insolvency of the corporation that it should be wound up;

- (d) where the letters patent have been declared forfeited or revoked or made void.  
*R.S.P.E.I. 1974, Cap. W-7, s.22.*

**23. Winding up order**

- (1) The winding up order may be made by a judge upon the application of the corporation or of a shareholder or member or, when the corporation is being wound up voluntarily, of the liquidator or a contributory or of a creditor having a claim of \$200 or upwards.

**Notice to corporation, where**

- (2) Except where the application is made by the corporation ten days notice shall be given to the corporation before the making of the same. *R.S.P.E.I. 1974, Cap. W-7, s.23.*

**24. Commencement of winding up**

Where a winding up order is made by the court without prior voluntary winding up proceedings the winding up shall be deemed to commence at the time of service of notice of the presentation of the application. *R.S.P.E.I. 1974, Cap. W-7, s.24.*

**25. Jurisdiction of court re petition**

The court may make the order applied for or may dismiss the petition with or without costs, may adjourn the hearing conditionally or unconditionally, or may make any interim or other order, including an order for interim costs, and upon the making of the order may, according to its practice and procedure refer the proceedings for the winding up and delegate any powers of the court conferred by this Act to any officer of the court. *R.S.P.E.I. 1974, Cap. W-7, s.25; 1994, c.48, s.19.*

**26. Court appointment of liquidators, notice to**

- (1) The court in making the winding up order may appoint a liquidator or liquidators of the estate and effects of the corporation; but no liquidator shall be appointed unless a previous notice is given to the creditors, contributories, shareholders or members in the manner and form prescribed by the court.

**Notice not required, where**

- (2) If a liquidator has already been appointed in a voluntary liquidation the notice need not be given. *R.S.P.E.I. 1974, Cap. W-7, s.26.*

**27. Appointment of liquidator upon petition of shareholders**

- (1) If from any cause there is no liquidator acting either provisionally or otherwise, the court may on the application of a shareholder or member of the corporation appoint a liquidator or liquidators.

**Removal of liquidator**

- (2) The court may also, for due cause, remove a liquidator and appoint another liquidator.

**No liquidator, estate under control of**

- (3) When there is no liquidator the estate is under the control of the court until the appointment of a liquidator. *R.S.P.E.I. 1974, Cap. W-7, s.27.*



**28. Proceedings for winding up**

When a winding up order has been made, proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as hereinbefore provided for a voluntary winding up, except that the list of contributories shall be settled by the court unless the same has been settled by the liquidator prior to the winding up order, in which case the list is subject to review by the court, and except that all proceedings in the winding up, are subject to the order and direction of the court. *R.S.P.E.I. 1974, Cap. W-7, s.28.*

**29. Meetings of shareholders, court may call**

- (1) The court may direct meetings of the shareholders or members of the corporation to be summoned, held and conducted in such manner as the court considers fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of it to the court.

**Contributory or officer, production of books etc. by**

- (2) The court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker or agent or officer of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any sum or balance, books, papers, estate or effects which are in his hands and to which the corporation is *prima facie* entitled.

**Order for inspection by creditors & contributories**

- (3) The court may make an order for the inspection by the creditors and contributories of the corporation of its books and papers and any books and papers in the possession of the corporation may be inspected in conformity with the order of the court, but not otherwise. *R.S.P.E.I. 1974, Cap. W-7, s.29.*

**30. Summoning officer of the corporation**

- (1) The court may, at any time after the commencement of the winding up, summon to appear before the court or liquidator any officer of the corporation or any other person known or suspected to have in his possession any of the estate or effects of the corporation or supposed to be indebted to it, or any person whom the court may consider capable of giving information concerning its trade, dealings, estate or effects.

**Misapplication of corporation funds by promoter, officer etc.**

- (2) Where in the course of the winding up, it appears that any person who has taken part in the formation or promotion of the corporation or any past or present director, manager or official or other liquidator or receiver or any officer or employee of the corporation has misapplied or retained in his own hands or become liable or accountable for money of the corporation or has been guilty of any misfeasance or breach of trust in relation to it, the court may, on the application of a liquidator or of any creditor or contributory, examine the conduct of the person charged and compel him to repay the money so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the court considers just, or to contribute such sum to the assets of the corporation by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust as the court considers just. *R.S.P.E.I. 1974, Cap. W-7, s.30.*

**31. Proceedings by shareholder**

- (1) If a shareholder or member of the corporation desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the shareholders or members, or of the inspectors, refuses or neglects to take such proceeding after being required so to do, the shareholder or member may obtain an order of the court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk upon such terms and conditions as to indemnity to the liquidator or corporation as the court may prescribe.

**Benefit derived, entitlement to**

- (2) Thereupon any benefit derived from the proceeding belongs exclusively to the shareholder or member instituting it for his benefit and that of any other shareholder or member who may have joined him in causing the institution of the proceeding.

**Advantage belongs to corporation, where**

- (3) If before the order is granted the liquidator signifies to the court his readiness to institute the proceeding for the benefit of the corporation an order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the corporation. *R.S.P.E.I. 1974, Cap. W-7, s.31.*

**32. Rights conferred, additional**

The rights conferred by this Act are in addition to any other right of instituting proceedings against any contributory, or against any debtor of the corporation, for the recovery of any call or other sum due from the contributory or debtor or his estate. *R.S.P.E.I. 1974, Cap. W-7, s.32.*

**33. Order staying winding up**

At any time after an order has been made for winding up, the court, upon the application of any contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the same either altogether or for a limited time, on such terms and subject to such conditions as the court deems fit. *R.S.P.E.I. 1974, Cap. W-7, s.33.*

**34. Appeal to Supreme Court**

An appeal lies to the Court of Appeal from any order or decision of the court or a judge thereof in any proceeding in a winding up, when

- (a) the question raised on the appeal involves future rights;
- (b) the order or decision is likely to affect other cases of a similar nature in the winding up proceedings; or
- (c) the amount involved in the appeal exceeds \$500. *R.S.P.E.I. 1974, Cap. W-7, s.34; 2008, c.20, s.72(94).*

**35. Rules for carrying out Act**

The Lieutenant Governor in Council may make rules for the due carrying out of this Act, and except as otherwise provided by this Act or by the rules, the practice and procedure in a winding up under the *Winding-up Act (Canada)* applies. *R.S.P.E.I. 1974, Cap. W-7, s.35.*



**36. Account of winding up, by liquidator, laying before general meeting**

- (1) Where the affairs of the corporation have been fully wound up the liquidator shall make up an account showing the manner in which the winding up has been conducted, and the property of the corporation disposed of and thereupon shall call a general meeting of the shareholders or members of the corporation for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator, and the meeting shall be called in the manner provided by the bylaws for calling general meetings.

**Dissolution of corporation upon filing**

- (2) The liquidator shall make a return to the Director of Corporations of the meeting and of the date at which it was held, and the return shall be filed by the Director of Corporations; and on the expiration of three months from the date of the filing the corporation is dissolved. *R.S.P.E.I. 1974, Cap. W-7, s.36; 1980, c.2, s.3.*

**37. Order dissolving corporation**

- (1) Notwithstanding section 36, the court, at any time after the affairs of the corporation have been fully wound up, may make an order dissolving the corporation, and the corporation shall be dissolved at and from the date of the order.

**Report to Director of Corporations**

- (2) The order shall be forthwith reported by the liquidator to the Director of Corporations.

**Penalty for not transmitting return**

- (3) If the liquidator makes default in transmitting the return, or in reporting the order, if any, declaring the corporation dissolved, he incurs a penalty not exceeding \$20 for every day during which he is in default. *R.S.P.E.I. 1974, Cap. W-7, s.37; 1980, c.2, s.3.*

**38. Dividends remaining unclaimed**

All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the corporation shall be left for two years in the bank where they are deposited, or in another bank if so ordered by the court or judge, and, if then unclaimed, shall be paid over, with interest accrued thereon, to the Minister of Finance, and if afterwards duly claimed, shall be paid over by the Minister of Finance to the persons entitled thereto. *R.S.P.E.I. 1974, Cap. W-7, s.38; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4; 2010, c.31, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

**39. Deposit of surplus money, by liquidator, sworn statement re**

- (1) Every liquidator shall, within thirty days after the date of the dissolution of the corporation, deposit in the bank appointed or named as hereinbefore provided any other money then in his hands not required for any other purpose authorized by this Act, with a sworn statement giving an account of the money, and stating that it is all he has in his hands; and in case of default he incurs a penalty not exceeding \$10 for every day during which he is in default.

**Period of deposit, payment to**

- (2) The money so deposited shall remain deposited as provided by section 38 for two years in the bank, and shall be then paid over, with interest to the Minister of Finance, and if afterwards duly claimed, shall be paid over to the person entitled thereto.

**Disposition of books, accounts & documents of corporation & liquidator**

- (3) Where a corporation has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the corporation and of the liquidators may be disposed of as the corporation by resolution directs in case of voluntary winding up or as the court directs in the case of winding up order.

**Liability of corporation for unclaimed moneys**

- (4) After the lapse of five years from the date of the dissolution no responsibility rests on the corporation or the liquidators, or any one to whom the custody of the books, accounts and documents has been committed, by reason that they or any of them are not forthcoming to any person claiming to be interested therein. *R.S.P.E.I. 1974, Cap. W-7, s.39; 1983, c.1, s.6; 1986, c.5, s.2; 1993, c.29, s.4; 2010, c.31, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

**40. Discharge of liquidator**

- (1) Whenever a corporation is being wound up under an order of the court, and the realization and distribution of its assets has proceeded so far that in the opinion of the court it becomes expedient that the liquidator should be discharged, and that the balance remaining in his hands of the money and assets of the corporation can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such officer or person as the court may direct, of such money and assets, and the same shall be realized and distributed by or under the direction of the court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator.

**Disposition of books, accounts & documents**

- (2) In such case the court may make an order directing how the books, accounts and documents of the corporation and of the liquidator may be disposed of, and may order that they be deposited in court or otherwise dealt with. *R.S.P.E.I. 1974, Cap. W-7, s.40.*

**41. Application to Acts of incorporation**

This Act applies to every company incorporated by or under any special or general Act of the Legislature. *R.S.P.E.I. 1974, Cap. W-7, s.41.*

**42. Powers exercisable by single judge**

The powers conferred by this Act upon the court may, subject to the appeal in this Act provided for, be exercised by a single judge; and such powers may be exercised in chambers. *R.S.P.E.I. 1974, Cap. W-7, s.42.*

**43. Description of liquidator**

In all proceedings connected with the company, a liquidator shall be described as the liquidator of the (name of company), and not by his individual name only. *R.S.P.E.I. 1974, Cap. W-7, s.43.*

**44. Court proceedings, manner**

The proceedings under a winding up order shall be carried on as nearly as may be in the same manner as an ordinary action or proceeding within the jurisdiction of the court. *R.S.P.E.I. 1974, Cap. W-7, s.44.*





**45. Delegation to court officer**

After a winding up order is made the court may, subject to an appeal according to the practice of the court, by order of reference, refer and delegate, according to the practice and procedure of the court, to any officer of the court any of the powers conferred upon the court by this Act. *R.S.P.E.I. 1974, Cap. W-7, s.45.*

**46. Process on persons out of jurisdiction**

The court may cause or allow the service of process or proceedings under this Act to be made on persons out of the jurisdiction of the court, in the same manner, and with the like effect, as in actions within the ordinary jurisdiction of the court. *R.S.P.E.I. 1974, Cap. W-7, s.46.*

**47. Order for payment of money or costs, deemed judgment**

Every order of the court or judge for the payment of money or costs, charges or expenses made under this Act shall be deemed a judgment of the court, and may be enforced against the person or goods and chattels, lands and tenements of the person ordered to pay, in the manner in which judgments or decrees of the court obtained in any action or suit may bind lands or be enforced in this province. *R.S.P.E.I. 1974, Cap. W-7, s.47; 1974(2nd), c.65, s.15.*

**48. Tenant making an assignment for benefit of creditors or tenant company being wound up**

- (1) In case of a tenant making an assignment for the general benefit of creditors, or of a tenant company being wound up under this Act, the right of the landlord to distrain or to complete a distress upon any goods which pass to or vest in the assignee or liquidator ceases from and after the date of the assignment or of the resolution or order for winding up, and the assignee or liquidator is entitled to immediate possession of the property of the tenant; but in the distribution of the property of the tenant the assignee or liquidator shall pay, in priority to all other debts, the landlord's claim for rent to an amount not exceeding the value of the distrainable assets of the tenant and not exceeding the rent due and accruing due at the date of the assignment or of the resolution or order for winding up, for a period equal to three terms or times of payment, according as the term or times of payment may be weekly, monthly or quarterly, or for a period of one year if the term or times of payment are more than three months, and the costs of distress, if any distress has been commenced.

**Landlord as general creditor**

- (2) In the case of an assignment or winding up the landlord may prove as a general creditor for
- (a) any surplus of rent accrued due at the date of the assignment or of the resolution or order for winding up over and above the amount mentioned in the preceding subsection for which the landlord may have a preference or priority in payment; and
  - (b) any accelerated rent to which he may be entitled under his lease, not exceeding an amount equal to three months rent.

**Credit for unexpired term, none**

- (3) Except as aforesaid, the landlord is not entitled to prove as a creditor for rent for any portion of the unexpired term of his lease, but the assignee or liquidator, shall pay to the landlord for the period during which he actually occupies the leased premises from and after the date of the assignment or of the resolution or order for winding up a rental calculated on the basis of the lease and payable in accordance with the terms thereof, but any payment already made to the landlord as rent in advance in respect of that period and any payment to be made to the landlord in respect of accelerated rent, shall be credited against the amount payable by the assignee or liquidator for the period of his occupation.

**Continuing in possession after lease expired, liquidator or assignee**

- (4) Notwithstanding any provision, stipulation or agreement in any lease and notwithstanding the lease may have terminated or expired at or before the date of an assignment or of the resolution or order for winding up, the assignee or liquidator is entitled to continue in occupation of the leased premises for the purposes of liquidation of the tenant's estate for a period of thirty days from and after the date of the assignment or of the resolution or order for winding up, without notice to the landlord, and has the further right by giving notice in writing to the landlord at least ten days before the expiration of the thirty days to retain possession for an additional period of thirty days, subject to the payment of rental calculated on the basis of the lease. *R.S.P.E.I. 1974, Cap. W-7, s.48.*

**49. Unexpired term, assignee or liquidator in possession for**

- (1) Notwithstanding the legal effect of any provision or stipulation in the lease, in case of an assignment for the general benefit of creditors or of winding up under this Act, the assignee or liquidator may at any time while he is in occupation of leased premises for the purpose of liquidation of the estate and before he has given notice of intention to surrender possession or disclaimed, elect to retain the leased premises for the unexpired term, upon giving notice thereof in writing to the landlord, and he may, upon payment to the landlord of all overdue rent, assign the lease to any person who will covenant to observe and perform its terms and agree to occupy the demised premises for a trade, occupation or purpose which is not reasonably of a more hazardous nature than that for which the premises were occupied by the lessee, and who shall on application by the assignee or liquidator be approved by a judge as a person fit and proper to be put in possession of the leased premises; and upon the assignment the liability of the assignee so making the assignment or of the liquidator and also all liability of the estate of the lessee is, subject to this Act, limited and confined to the payment of rent for the time during which the assignee or liquidator occupies the leased premises for the purpose of liquidation of the estate.

**Surrender possession or retain lease, rights to**

- (2) The assignee or liquidator has the further right at any time before so electing to retain the premises, to surrender possession or disclaim any such lease upon giving notice thereof in writing to the landlord, and his entry into possession of the leased premises and their occupation by him while required for the purposes of liquidation of the estate shall not be deemed to be evidence of an intention on his part to elect to retain possession pursuant to this section.

**Notice to landlord required of assignee or liquidator**

- (3) If the assignee or liquidator does not, within the time in which he may remain in occupation of the premises for purposes of liquidation, give the landlord notice in writing of his intention either to retain the premises or to surrender possession or disclaim the lease, he shall be deemed to have disclaimed the lease.

**Possession surrendered, effect on landlord's rights**

- (4) After the assignee or liquidator surrenders possession, such of the landlord's rights as are based upon actual occupation by the assignee or liquidator shall cease. *R.S.P.E.I. 1974, Cap. W-7, s.49.*

**50. Rights of under-lessee**

- (1) Where the lessee, before making an assignment for the general benefit of creditors or before a resolution or order for winding up has been made against him, has demised by way of under-



lease, approved or consented to in writing by the landlord, any premises, and the assignee or liquidator surrenders, disclaims or elects to assign the lease, the under-lessee shall, if he so elects in writing within two months of the date of the assignment or of the resolution or order for winding up, stand in the same position with the landlord as though he were a direct lessee from the landlord, but subject, except as to rental payable, to the same liabilities and obligations as the lessee was subject to under the lease at the date of the assignment or of the resolution or order for winding up.

**Covenant between under-lessee and landlord**

- (2) The under-lessee shall in that event be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the lessee, and if such last mentioned rental is greater than that payable by the lessee to the landlord the under-lessee shall be required to covenant to pay to the landlord the like greater rental. *R.S.P.E.I. 1974, Cap. W-7, s.50.*