

# Manitoba

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## **Introduction**

There are a great many statutes and regulations in force in the Province of Manitoba, Canada, which might be of interest or concern to a foreign business-person or investor. Space constraints make it impossible to mention them all, let alone deal with any of them to any great extent. Before embarking on any venture in this Province, it would be prudent for the businessperson or investor involved to have legal counsel review carefully all laws, both provincial and federal, which might affect the venture. The following summary touches on those Manitoba statutes which, because of their broad and general application, would certainly be of interest to any foreign businessman or investor seeking to carry on business or to invest in Manitoba.

## **Doing Business in Manitoba**

There are a variety of ways one can embark on a business venture in this Province. From sole proprietorships to multi-shareholder companies to simple or complex partnership arrangements, there is sure to be a vehicle to suit every prospective entrepreneur.

## **The Corporations Act**

This statute applies to every corporation carrying on business in the Province of Manitoba. It sets out rules with respect to many business issues, including:

- Establishing a corporation and selecting a corporate name;
- What a corporation has the power to do;
- What records are to be kept by a corporation;
- The rights, duties, liabilities, powers and obligations of shareholders and directors;
- The procedure for registering foreign corporations to carry on business in Manitoba;
- The procedure for winding-up a corporation;
- What matters are to be covered in the incorporating documents and by-laws of a corporation;
- Matters concerning corporate finance; and
- Penalties which may be imposed on a corporation, its officers or directors in the event of a contravention of the Act.

The Act also sets out the provisions for special companies such as insurance corporations, benevolent corporations, community development corporations, and trust and loan corporations.

In Manitoba, it is possible to have one-person corporations (one director and shareholder), public companies with an unlimited number of directors and shareholders as well as every size and shape of corporation in between. The Act prescribes the form of all documents to be filed with the Province's Corporations Branch as well as the details which must be included in the forms, from the names and addresses of the directors (a majority of whom must be residents of Canada) to the permitted name of the company.

In Manitoba, corporations have all the rights of natural persons and there are few restrictions on the business which they may carry on. Many restrictions are found in specific legislation (eg, Bank Act of Canada).

### **The Partnership Act**

This act applies to those situations where two or more parties (including corporations) carry on business together with a view to making a profit. The Act sets out tests for determining whether or not a partnership exists, the extent of the liability of the partners for the debts of the partnership, events which lead to the dissolution of the partnership, and rules for distribution of partnership assets. These aspects of a partnership arrangement can all be set forth in a partnership agreement and where such an agreement and the Act conflict, the agreement will apply.

The concept of a limited partnership is dealt with in the Act. In a limited partnership, the limited partners contribute capital to the partnership and their liability is limited to the amount of that contribution provided they do not engage in the general management of the partnership. Each limited partnership must have at least one general partner who is responsible for all the debts and obligations of the partnership.

### **The Business Names Registration Act**

This Act applies to any person who intends to carry on business in Manitoba as part of a partnership or under a name other than his or her family name (or in the case of a corporation other than the corporate name) and requires registration of a declaration concerning the name under which the business is carried on and the persons actually involved in the business. A business name must be approved by the Manitoba Corporations Branch prior to registration of the required declaration.

### **Taxation**

The taxation of the income of individuals, partnerships and corporations is governed mainly by a federal statute, the Income Tax Act (Canada); however, there are certain aspects of taxation which fall within provincial legislation.

### **The Income Tax Act (Manitoba)**

This Act applies to persons and corporations resident in Manitoba and set out taxes on income earned by them.

## **The Corporation Capital Tax Act**

This Act imposes an annual tax on every corporation (Manitoba and foreign) that has a permanent establishment in Manitoba. There is a formula for calculating the taxable paid up capital which includes, among other things, capital surplus, deferred taxes and other reserves and shareholders loans. The Act does provide exemptions for the payment of the tax to certain corporations whose taxable paid up capital is less than the amount prescribed by legislation.

## **Operating Costs**

There are, of course, certain realty taxes, business taxes and licence costs which must be paid by businesses in Manitoba. The Municipal Act and The City of Winnipeg Charter Act include provisions to this effect.

## **Labor Laws**

### **Individual Employee Rights**

Employers who fall within provincial jurisdiction are subject to a number of different enactments designed to protect individual employee rights.

#### *The Employment Standards Code*

This provincial legislation establishes a minimum wage (presently US \$7.67 (\$9.00 CDN) per hour) for all employees regardless of age. Generally, overtime is payable at the rate of 1.5 times an employee's normal hourly rate for all hours worked in excess of eight hours in a day or 40 hours in a week. Higher minimum wages and different provisions with respect to overtime are applicable to employees who are employed on construction work that is governed by the Construction Industry Wages Act.

Employees who qualify are entitled to eight general holidays per year which include Labor Day, Christmas Day and other statutory holidays. As well, employees who qualify are entitled to receive two weeks vacation with pay after each of the first 4 years, and three weeks vacation with pay after five years of service.

Female employees having 7 consecutive months of service are entitled to a minimum of 17 weeks unpaid maternity leave. Both male and female employees having 7 consecutive months of service are entitled to a 37-week unpaid parental leave if they adopt a child or become a parent of a child.

Employees who have worked for an employer for less than one year are generally entitled by statute to receive notice of termination that is at least equivalent to one pay period's notice. Workers in the construction industry may be terminated without any statutory notice. In addition to these minimum requirements, employees who are terminated without cause may be entitled to receive substantially greater notice or pay in lieu of notice under Common Law.

Provincial legislation also provides that an employer who terminates, or in certain cases, lays off, fifty or more employees in a four-week period must give a minimum of 10 weeks' notice of its intention to do so. However, the legislation does not oblige an employer to pay severance pay over and above such notice.

An employer cannot differentiate between male and female employees by paying different wages for substantially the same kind of work performed under similar working conditions in the same establishment. In addition, The Pay Equity Act, which currently applies only to the Crown, certain Crown agencies and certain health institutions, provides a mechanism to implement the concept of pay equity, whereby employees who are performing work of equal or comparable value will be entitled to be paid the same wage irrespective of gender. It is anticipated that this legislation will eventually be extended to the private sector.

#### *The Human Rights Code*

This legislation prohibits discrimination in employment-related matters on the basis of an individual's actual or presumed membership in or association with some class or group of persons rather than on the basis of personal merit. Discrimination is expressly prohibited on the basis of race and ancestry, nationality, ethnic background, religion, age, sex, pregnancy and any other gender determined characteristics, sexual orientation, marital or family status, source of income, political beliefs and physical or mental disability. Accordingly, mandatory retirement is now prohibited. An employer who has discriminated against an employee or a potential employee on a prohibited basis may be compelled to hire or rehire that person and to pay both lost wages and exemplary damages.

#### *The Workers Compensation Act*

Employers generally are required to contribute to the accident fund established under this statute. Employees who are covered by the Workers' Compensation scheme and who suffer a work-related injury are entitled to receive periodic compensation payments. However, the statute removes any right of action that they might have had against their employer for the work-related injury.

## **Collective Employee Rights**

### *The Labor Relations Act*

Employees have the right by law to join a labor union. Where a union files membership evidence indicating that it is supported by 40 per cent or more but fewer than 65 per cent of the employees in an appropriate unit, the Labor Board will order a vote and will certify the union if the majority of those voting support the union. The union will be certified without a vote where the membership evidence indicates that it has the support of at least 65 per cent of the employees. The Labor Board also has a discretionary power to certify a union with less than majority support where the employer has committed an unfair labor practice.

The Labor Board will, at the request of either party, impose a first collective agreement where the parties have been unable to conclude one through collective bargaining.

Any collective agreement which is bargained or imposed must contain a provision requiring that the employer has just cause for disciplining or dismissing any employee who is bound by the agreement. The legislation also obliges the employer, in administering the collective agreement, to act reasonably, fairly, in good faith and in a manner consistent with the collective agreement as a whole. Where there is a collective agreement, the employer must deduct and submit union dues from virtually all of the employees in the bargaining unit. The collective agreement must also contain an arbitration provision for final settlement of all differences. In addition, the legislation establishes an expedited arbitration procedure, whereby the grievor can apply to the Labor Board for the appointment of a sole arbitrator. The legislation also imposes a duty of fair representation on unions.

An employer who is party to a collective agreement is unable to enter into an individual contract of employment with an employee covered by that agreement unless the collective agreement specifically permits him to do so.

Generally, bargaining rights attach to a business and, when that business or part of that business is sold or transferred to a new employer, the union's bargaining rights and any collective agreement then in force are binding on the new employer. The new employer also acquires the rights, privileges and obligations of the predecessor employer, including any labor-related proceedings which are pending on the date that the business is sold.

Manitoba labor legislation also permits the Labor Board to treat two or more employers as one where there is evidence of common control and direction.

Strikes and lockouts are prohibited during the currency of a collective agreement, but once such agreement has expired, the union may declare a strike and the employer may declare a lockout. However, prior to declaring a strike, the union must hold a secret ballot, and a majority of those voting must vote in favor of a strike.

Employers are not prohibited from hiring replacement workers during either a strike or a lockout, but the striking or locked out employees are entitled to displace the replacement workers once the strike or lockout ends.

Where an employer who is bound by a collective agreement proposes to effect technological change that is likely to affect the terms and conditions or security of employment of a significant number of his employees, he must generally give the union 90 days' advance notice of such change. The union may then serve notice on the employer to commence collective bargaining with a view to revision of the then current collective agreement. If the union serves such notice, the collective agreement which is in effect at the time will be terminated on the earliest of its expiry date or 90 days after the day on which the notice to commence collective bargaining was served on the employer.

#### *The Workplace Safety and Health Act*

Employers regularly employing twenty or more employees at a workplace must generally establish workplace safety and health committees composed equally of employee and management representatives. Employees who sit on such committees, or who are designated as a worker representative in cases where committees are not required, are entitled to receive two days paid educational leave each year for the purpose of attending related courses.

Worker protection in different types of workplaces is addressed under the various regulations that have been promulgated under the act.

### **Business Transactions**

There are a number of statutes which impact on the actual conduct of business in Manitoba.

#### **The Consumer Protection Act**

This Act applies to retail sales on credit, retail hire-purchases and loans, retail sales and hire-purchases made on variable credit where there is cost of borrowing and requires disclosure of certain information concerning those types of transactions. This Act also applies to credit cards, time sales and chattel mortgages and the seller's and buyer's rights in the event of default.

The Act also sets out a series of statutory warranties of a seller which are implied in every retail sale of goods and hire-purchase of goods.

The act establishes the Consumer's Bureau with the power to investigate and generally supervise the operation of the Act.

## **The Sale of Goods Act**

This statute covers the formation and performance of contracts for the sale of goods and sets out the rights of sellers and buyers in various types of sales transactions — for example, sales by sample, sales by description, sales by auction. The Act sets out tests for determining when title in goods passes, when delivery of goods is effected and what remedies are open to each side in the event of a breach of the sale contract.

## **The Personal Property Security Act**

The Personal Property Security Act applies to every transaction that contains a grant of a security interest in personally to secure payment of money or performance of an obligation, including chattel mortgages, conditional sales, fixed charges, floating charges, pledges, trust indentures, trust receipts, assignments, leases, consignments, trusts and transfers of chattel papers intended as security. The Act governs the creation, perfection and priority of security interests and sets out the rules for determining the rights of holders of competing security interests in the same goods as well as certain of the rights between the owner of the goods and the party to whom a security interest in those goods has been granted. The Act also establishes the Personal Property Registry which is the central registry office in the Province and where all registrations concerning security interests (including, for example, the creation thereof, the change of secured party and the change of debtor) are processed.

## **Investment in Manitoba**

There are two statutes in particular which impact on investors and potential investors in this province: The Securities Act and The Farmlands Ownership Act.

## **The Securities Act**

This Act requires registration in respect of:

- Persons (or corporations) purporting to trade in securities;
- Trades in securities; and
- Securities being traded.

The definition of ‘security’ is extensive and includes, among other things, any document, instrument or writing commonly known as a security. The Act states that all persons, trades and securities must be registered and then incorporates a list of wide-ranging exemptions including:

- Exemption from separate registration by persons or corporations registered as brokers, investment dealers, broker dealers, underwriters, investment counsel, securities advisors or security issuers.

- Exemption from registration in respect of trades is provided by the regulations to certain qualifying isolated trades in specific securities; trades where one party is a bank, trust company, government officer or employee; sales by a company of its securities pursuant to the right granted by the company to holders of its securities (where certain information has been provided to the Securities Commission established for the purpose of enforcing the act); trades in securities with an acquisition cost of not less than \$97,000; and
- Exemptions by the Commission if it is of the opinion that it is not prejudicial to the public interest.

The Act also establishes The Manitoba Securities Commission which is authorized to:

- Deal with all matters relating to trading in securities;
- Protect the investing public; and
- Administer the Act and conduct investigations to carry out its objectives.

The Act's provisions extend to prospecting syndicates and trading in the course of primary distributions to the public. In addition, there is an extensive section on take-over bids with emphasis on the information to be contained in take-over bid circulars and directors circulars. The act also contains a section respecting proxy solicitation which prescribes the form of proxy which must be provided to shareholders.

There are also filing requirements with respect to insider trading and financial disclosure imposed on corporations (and the directors and officers thereof) that:

- Are listed on a stock exchange; or
- Have made by distribution to the public of equity shares.

### **The Farmlands Ownership Act**

This statute puts restrictions on the number of acres of farmland in Manitoba that may be owned by persons other than residents of Manitoba or corporations which are primarily engaged in farming. Unless a person or corporation falls within one of the permitted categories, the maximum acreage which may be owned by that person, or corporation, either directly or indirectly, is 40 acres.

The Act does protect holdings in existence when the act came into force and therefore a non-qualifying owner would only be restricted in terms of future acquisitions (there also is no restriction on interests acquired to replace previous interests which were held prior to the Act).

The Act sets up the Manitoba Farm Lands Ownership Board which has the power among other things to administer the Act, to conduct hearings and to order persons to divest themselves of interests in farmland where the Board determines that the act is being contravened.