



Rely on



# Considering a Manitoba Limited Partnership? There are some things you should know

By Drew Mitchell



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There are various legal structures which individuals and companies may create to conduct business in Manitoba. When making a determination as to your business structure, consideration should be given to using a Manitoba limited partnership.

*The Partnership Act* (Manitoba) provides that a limited partnership for the transaction of business may be formed by two or more persons (or companies), and may consist of one or more persons (or companies) called “general partners”, and of one or more persons (or companies) who contribute a specific or determinable amount to the partnership called “limited partners”. Although, for a number of reasons (which will be discussed in a subsequent article), including the beneficial tax treatment and the limited liability afforded to limited partners, a limited partnership may be the ideal structure for your transaction, there are a number of considerations to be taken into account before deciding.

## **FILING REQUIREMENTS**

There are filing requirements to establish a limited partnership and to maintain the limited liability of the limited partners. Limited partners are not entitled to the limited liability afforded by *The Partnership Act* (Manitoba) until a declaration has been filed in the Manitoba Companies Office. In addition, certain changes to the make-up of a limited partnership (such as a change in the capital contributed by a limited partner) are not effective until certain registration requirements are met. *The Business Names Registration Act* (Manitoba) also imposes certain filing requirements which a limited partnership will need to meet.

## **BUSINESS NAME**

Care should be taken when choosing a name for the limited partnership. *The Partnership Act* (Manitoba) provides that the business of a limited partnership must not be conducted under a name in which a name of a limited partner is used. Use of a limited partner’s name in the name of the limited partnership can result in the limited partner being treated as a general partner.

Although Manitoba partnership legislation does not (unlike some jurisdictions) deal specifically with corporate names of limited partners, in our view a corporate limited partner should not allow the limited partnership to use any distinctive part of its corporate name in the name of the limited partnership.

## BANKRUPTCY OR INSOLVENCY

In the case of insolvency or bankruptcy of the limited partnership, none of the partners is permitted, in any circumstances, to claim as a creditor of the limited partnership until the claims of all other creditors of the limited partnership have been satisfied. In other words, if, in addition to providing a capital contribution, a limited partner makes a loan to the limited partnership, on an insolvency or bankruptcy of the limited partnership, the repayment of that loan (whether a secured or unsecured loan) would fall behind the claims of all other creditors of the limited partnership.

## LOSS OF LIMITED LIABILITY STATUS

Although it is difficult to do so (in Manitoba anyway), it is possible for a limited partner to lose its limited liability status. *The Partnership Act* (Manitoba) provides that where a limited partner takes an active part in the business of the partnership, he is liable as if he were a general partner, to any person with whom he deals on behalf of the partnership and who does not know that he is a limited partner. Generally speaking, only the general partner(s) of the limited partnership may manage the business and affairs of the limited partnership. That being said, the limited partnership agreement (discussed below) can be used to expand the rights of the limited partners and, provided this is done correctly, the limited partners would not be at risk of losing their limited liability status.

## CAPITAL CONTRIBUTION

Limited partners contribute money or property to the limited partnership as a capital contribution. There are certain restrictions in *The Partnership Act* (Manitoba) dealing with the return of capital contributions. *The Partnership Act* (Manitoba) provides, for example, that a limited partner has, despite the nature of its initial contribution, only the right to demand and receive money in return for its contribution unless: (a) the partnership agreement provides otherwise; or (b) all the partners consent to another form in which to return the contribution.

We recommend that, to deal with some of the issues set out above, all limited partnerships have a comprehensive limited partnership agreement setting out the rights and obligations of the partners (general partner(s) and limited partners). Care must be taken when drafting limited partnership agreements to ensure that they are comprehensive, and include provisions (for example) imposing restrictions on the transfer of limited partnership units or interests, setting out the types of partnership decisions that require “special” or unanimous approval of limited partners, and setting out how the profits and losses of the limited partnership are distributed among the limited partners. Please see “The Limited Partnership Agreement” for additional information.

The Manitoba limited partnership is an effective and user-friendly vehicle for most transactions. From the tax benefits to the limited liability afforded to limited partners, a Manitoba limited partnership should be considered as one of the potential vehicles for your transaction. However, as with all legal entities, care must be taken when setting up and maintaining a Manitoba limited partnership.

TDS assists clients with the formation and governance of limited partnerships, and would be happy to be of assistance to you.

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## ABOUT THE AUTHOR

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Drew's practice is focused on corporate and commercial law, and can be divided into four areas: (i) securities law, including private placements and advice on regulatory requirements; (ii) a general corporate and commercial practice involving advising a wide variety of businesses from small to large on acquisitions, dispositions, mergers and reorganizations, as well as advising on the organization and structure of corporations and other business entities, such as limited partnerships; (iii) banking and finance, including acting for financial institutions and borrowers; and (iv) real estate and development, including acting on purchases and sales, leasing and financings.