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The Limited Partnership Agreement

By Drew Mitchell



201 Portage Ave, Suite 2200 | Winnipeg, Manitoba R3B 3L3 | 1-855-483-7529 | www.tdslaw.com

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There are various legal structures that individuals and companies may enter into in order to conduct business. In addition to the often-used corporation, consideration should be given to using a Manitoba limited partnership as the business vehicle.

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 one or more persons (or companies) who contribute a specific or determinable amount to the partnership, called “limited partners”. Under Manitoba law, a limited partnership is not formed, and limited partners are not entitled to the limited liability protection afforded by The Partnership Act (Manitoba), until a declaration is filed in the Manitoba Companies Office pursuant to The Partnership Act (Manitoba) and The Business Names Registration Act (Manitoba).

As with any business arrangement, it is prudent for the partners of a limited partnership (including the general partner) to enter into an agreement governing the management and direction of the limited partnership. Typical provisions in a limited partnership agreement would include, but would not be limited to, the following:

1. Setting out the name and business of the limited partnership. As with any organizational structure, the name of the limited partnership will need to be approved and reserved at the Manitoba Companies Office prior to its use.
2. Imposing restrictions on the transfer of limited partnership units or interests. A limited partnership agreement will often restrict the ability of a limited partner to transfer its interest in the limited partnership (typically except for certain permitted transferees) without the consent of some or all of the other limited partners. The limited partnership agreement may also contemplate that, prior to any transfer of units or interests, those units or interests must first be offered to the other limited partners of the limited partnership. These restrictions are related to point 7 below
3. Setting out the types of partnership decisions that require “special” or unanimous approval of limited partners. Although the limited partnership agreement should provide that the general partner is responsible to manage and operate the business and affairs of the limited partnership, the limited partnership agreement will often contain exceptions to this general power. For example, limited partnership agreements will often provide that without the special (for example, 66 2/3%) or unanimous approval of the limited partners, the general partner may not: (i) dissolve or wind-up the limited partnership; or (ii) sell or otherwise dispose of all or substantially all of the business or assets of the limited partnership.
4. Setting the term of the limited partnership. The limited partnership agreement may set out that the limited partnership must dissolve at a predetermined date or once certain predetermined milestones are met. As with point 2 above, this provision is related to point 7 below.
5. Setting out how the profits and losses of the limited partnership are distributed among the limited partners. Whether left to the discretion of the general partner or required (cash flow permitting) to be made at certain predetermined times, limited partners should consider setting out how and when cash distributions are made to limited partners.

6. Imposing restrictions on the return of capital contributions. The Partnership Act (Manitoba) provides that a limited partner has the right to demand and receive the return of any part of its capital contribution. However, The Partnership Act (Manitoba) also provides that a limited partner is not entitled to receive any part of its capital contribution unless certain financial tests are met and filings are made with the Manitoba Companies Office. This provision is related to point 7 below.

7. Imposing requirements on the general partner to ensure that all required declarations and forms are filed with the Manitoba Companies Office to maintain the limited partnership and to keep the capital contribution of each limited partner up-to-date. There are a number of reasons why limited partners should insist that the general partner diligently effects filings at the Manitoba Companies Office. The Partnership Act (Manitoba) and The Business Names Registration Act (Manitoba) provide that a change in limited partners, including on the transfer of a limited partnership interest (discussed at point 2 above), or an increase or decrease in the capital contribution of a limited partner (discussed at point 6 above) has no effect until a declaration is registered in the Manitoba Companies Office. As limited partners are liable for the debts of the limited partnership up to the amount of their respective capital contributions (determined with reference to the filings in the Manitoba Companies Office), it is easy to see why limited partners should insist that filings are made expeditiously. In addition, although a limited partnership agreement may set out the term of the limited partnership (discussed at point 4 above), The Partnership Act (Manitoba) provides that no dissolution of a limited partnership by the acts of the partners may take place until a notice of the dissolution is registered and published as required under The Business Names Registration Act (Manitoba).

Although limited partnerships are popular business vehicles in Manitoba, both for taxation purposes and owing to the protections provided to limited partners by The Partnership Act (Manitoba) (which are arguably greater in Manitoba than in most other provinces), care must be taken when drafting the form of limited partnership agreement to ensure that the agreement adequately addresses the duties and requirements of both the general partner(s) and the limited partners. 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

Drew Mitchell

Phone: 204.934.2368 | Email: dmm@tdslaw.com | Web: www.tdslaw.com/dmm



Drew carries on a corporate and commercial practice 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.