

LIMITED PARTNERSHIPS: WHEN TO HEAD TO MANITOBA AND WHEN TO STAY AT HOME?

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Limited partnerships are widely used in Canada as a business vehicle providing a useful combination of limited liability to limited partners and flow through tax consequences. Generally, limited partnership legislation in Canada limits the liability of a limited partner, and a limited partner is not liable as a general partner unless, in the case of the Ontario *Limited Partnerships Act* (the "**Ontario Act**") "the limited partner takes part in the control of the business." Limited partnership legislation in most other Canadian jurisdictions (except Manitoba) have similar provisions that cause limited partners to lose their limited liability status if they take part in the control of the limited partnership business. Moreover, the case law provides that a third party's knowledge that he is dealing with a limited partner does not protect a limited partner.

Manitoba's *Partnership Act* (the "**Manitoba Act**") offers an alternative jurisdiction with a better regime for the limited liability of limited partners: where a limited partner in a Manitoba limited partnership takes an active part in the business of the partnership, he is liable as a general partner to third parties dealing with the partnership, but only if they do not know that he is a limited partner. Moreover, the liability to the third party only extends to liabilities incurred by the partnership between the time of first dealing and when the third party learns that he is dealing with a limited partner.

Therefore, the key advantage of forming a limited partnership in Manitoba is the ability to protect a limited partner by making it known to third parties that they are dealing with a limited partner. If the loss of limited liability status due to a limited partner potentially taking part in the business of the limited partnership is a concern, forming the limited partnership in Manitoba may be the preferred structuring choice. The Ontario Act explicitly recognizes that for a Manitoba limited partnership doing business as an extra-provincial limited partnership in Ontario, the laws of Manitoba will govern the limited liability of its limited partners. This is not the case in every province; for example, the Manitoba liability regime for a Manitoba limited partnership carrying on business in Alberta would not apply.

That being said, the advantage of forming a limited partnership in Manitoba must be weighed against a number of other considerations that may support choosing another province.

1. A Manitoba limited partnership gives rise to higher formation and maintenance costs, including extra-provincial registration requirements in Manitoba (if the general partner is not a Manitoba corporation), involvement of Manitoba counsel for formation, financing and legal opinion work, regular updating of the required disclosure of limited partner capital contributions and regular renewal costs.
 - Formation and maintenance costs in the province where the business is to be conducted may be less, with one set of counsel and no extra-provincial registration costs.
2. The Manitoba Act requires public identification of the limited partners and their capital contributions on the Manitoba public register.
 - The Ontario Act does not require any public identification or disclosure of the limited partners or their capital contributions.
3. The requirements of the Manitoba Act regarding naming a limited partnership should be carefully considered. They may interfere with a client's plans to share its name with the limited partnership: distinctive elements of the names of any limited partners cannot be used in the limited partnership name; otherwise, the limited partner will lose its status and be deemed to be a general partner.
 - The Ontario Act allows a limited partnership to use part of the name of a limited partner so long as it is also used in the name of the general partner.
4. Pursuant to the Manitoba Act, all partners (including limited partners) will be liable to any person who suffers injury or loss by reason of a false statement in a partnership declaration. This imposes a requirement to ensure that addresses and capital contributions, among other things, remain up-to-date and accurate.
 - The Ontario Act only imposes liability on the general partner(s) who knew, upon signing, that the declaration contained a false or misleading statement or who failed to file a declaration of change within a reasonable amount of time after becoming aware of the false or misleading statement on the signed declaration.
5. In the event of bankruptcy or insolvency of the limited partnership, the Manitoba Act places the priority of all partners (including limited partners) behind all other creditors of the limited partnerships.
 - Subject to certain restrictions regarding collateral security and preferential treatment of persons who are not partners of the limited partnership, the Ontario Act states that a limited partner that is a creditor of the limited partnership may receive a prorated share of the assets along with general creditors of the limited partnership.

6. To dissolve a Manitoba limited partnership, the process is more onerous and a notice of intention to dissolve the limited partnership must be published, at least once in each of three consecutive weeks, in a newspaper with circulation in the district of the limited partnership's principal place of business in Manitoba.

- The Ontario Act has a simple requirement for the dissolution of a limited partnership: the filing of a declaration of dissolution.

As evidenced by these comparisons, choosing a jurisdiction in which to form a limited partnership requires consideration of a number of factors. Where loss of limited liability of a limited partner due to taking part in the business of the limited partnership is a concern, consideration should be given to a Manitoba limited partnership. Where limited partners are silent/passive investors and there is no concern that a limited partner may take part in the control of the business of the partnership, it may make sense to use one's home jurisdiction. Moreover, it may be possible to mitigate risk for limited partners by including non-recourse provisions in the contracts that a limited partnership enters into.

For further advice on structuring alternatives, please contact any of the authors or another member of McMillan LLP's [*Business Law Group*](#).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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