

LEX MUNDI
PUBLICATION



ISSUES RELATING TO FOREIGN INVESTMENT

CANADA – MANITOBA Thompson Dorfman Sweatman LLP

CONTACT INFORMATION:

Doug Forbes

Thompson Dorfman Sweatman LLP

2200-201 Portage Avenue

Winnipeg, Manitoba R3B 3L3

Tel: 204.934.2426 / Fax: 204.934.0526

djf@tdslaw.com

1) Is provincial governmental permission required for foreign investors to acquire real estate? If so, please identify.

No. All property can be owned by companies or individuals who are not Canadian citizens or residents.

2) Are there other provincial restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Generally, all real property in Manitoba can be taken, held, possessed, and conveyed equally by Canadians and Non-Canadians equally under The Law of Property Act (Manitoba). A similar provision appears federally in the Citizenship Act (Canada).

The exception to the general rule above is farm lands which cannot be acquired or held by a non-resident of Canada either personally or through a corporation in which the non-resident has direct or indirect power or control. Specific provisions are found in The Farm Lands Ownership Act (Manitoba).

Farm land is considered to be all land, in excess of 5 acres, outside a city, town, or village but does not include mineral rights of the land or land used for extracting minerals or supplying telecommunications or pipeline services.

An application can be made to exempt farm lands from the Act to allow foreign ownership. The cost of such an application is \$250.00.

Also foreign investors who invest by way of a Manitoba Corporation should be aware of the restriction on non-resident directors under The Corporations Act (Manitoba). A Manitoba Corporation must have at least 25% Canadian resident directors. There are other jurisdictions in Canada that allow corporations to exist without resident Canadian directors, however.

LEX  MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

3) Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

No, foreign individuals have a stand alone right to invest. However, this may be regulated federally by the Investment Canada Act (Canada), where notice must be given of a non-Canadian gaining controlling interest in a Canadian company, or commencing a new business activity in Canada.

For Farm land, the same considerations set out above relate to foreign investment. If investment is by a foreign individual or corporation it is prohibited.

4) What provincial taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

Foreign individuals or entities are not subject to any extra provincial or municipal taxes. However, the *Income Tax Act* (Canada) does not afford the same treatment to non residents as it does to “Canadian Controlled Private Corporations”.

5) Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

No provincial reporting requirements. However, there are reporting requirements under the *Investment Canada Act* (Canada) for foreign investment in Canadian companies. Acquiring control of a Canadian corporation for investment in real estate, or commencing a business activity in Canada would be subject to these reporting requirements. As well, acquiring control of a Canadian corporation with asset values above certain thresholds is reviewable under the *Investment Canada Act* (Canada). Currently the threshold for direct acquisitions is \$50 million Canadian Dollars for investors from non-WTO members and \$265 million Canadian dollars.