Farm Corporations
in Manitoba

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Manitoba

Farm Corporations in Manitoba

The surest way to reach a business goal is to plan on it. Successful Manitoba farmers are focused business people. They have clear, flexible, short and long term business plans – and they monitor their plans regularly.

Whether you're starting, growing or passing along your business, you need a solid business plan. And Manitoba Agriculture can help you build a plan for success.

Farm businesses are rapidly growing in size and complexity. The need for careful assessment of a farm operation and determination of which business structure best meets the needs of a farm is greater than ever. Understanding how a farm corporation is created, how it functions and the advantages and disadvantages of using this structure for your farm operation will provide assistance in making these decisions. Use this as a resource to help you be informed about the Farm Corporation business structure.

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Available in alternate formats upon request

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Definitions

Who is a farmer?

In tax and estate planning, the definition of farmer is important. Canada Revenue Agency defines a farmer as someone who is assuming all the risk in the farming operation. It does not matter who does the actual work. All the labour may be contracted out and the equipment rented, the individual assuming all the risk will still be considered a farmer.

Farming is not:

1. renting out land
2. share crop rental

These do not involve an individual assuming all the risk associated with the farm business.

Capital gains

When property is sold, there may be a difference between the fair market value and the original purchase price (cost base). A capital gain is the difference between the cost base of property (or V-Day value if owned prior to December 31, 1971) and its fair market value. When property is sold or the property owner dies, the *Income Tax Act* deems the vendor/deceased to sell at fair market value, and a capital gain (or recapture) may be generated. There are some exceptions for farm property.

Capital Gain = Fair Market Value – Cost Base

Currently in Canada, capital gains are 50 per cent taxable. Fifty per cent of the gain is included in your income and tax is paid at your marginal rate. Your marginal tax rate is the tax rate payable on your last dollar of taxable income. For tax planning, your marginal tax rate is what you'll likely pay on your next dollar earned. Canada operates on a system of graduated tax rates, where you will pay higher rates of tax as you earn more taxable income.

Capital gains exemption

As of 2015, every resident of Canada has a $1,000,000 exemption to use to offset capital gains that may occur when qualified farm property is sold or deemed sold.

Capital gains are presently 50 per cent taxable; every farmer therefore has an exemption capable of sheltering up to $500,000 of taxable capital gains.

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Note that corporations do not have a capital gains exemption, only individuals do. However, if your farm is incorporated, the shareholders can use their personal capital gains exemptions on the sale of shares of a qualified farm corporation or, if a farming partnership, on the sale of a partnership interest in a qualified farm partnership.

Recapture

For depreciable assets such as buildings and equipment, recapture is the difference between the original cost and the undepreciated capital cost (UCC). UCC is the original cost of an asset, less the depreciation claimed in prior tax years. Recapture is fully taxable and does not qualify for the capital gains exemption.

Spouse / common-law partner

Common-law partners of three years or more and spouses have equal rights under Manitoba's family property legislation. Any time a spouse is referred to in these materials, the provisions apply equally to common-law partners of three years* or more or those who have registered their common-law relationship with Manitoba Vital Statistics.

Please note the *Income Tax Act* defines common-law partners as two persons that are in a conjugal relationship of at least twelve (12) months. Once two people are married or in a common-law relationship, for the purposes of the *Income Tax Act*, their combined incomes are used to determine eligibility for certain benefits and programs.

*There are many instances where property can be subject to equalization when a common-law partnership has existed for less than three years. For further information, please consult a lawyer knowledgeable in family law.

What is a Corporation?

A corporation is an independent organization, legally founded by one or more people to pursue and further the objectives established by those founders. Once created, the law recognizes a corporation as a separate and distinct entity, like a person, with many of the same rights and responsibilities of a natural person. For example, a corporation can buy, hold or transfer property, sue or be sued and enter into contracts. It must also file its own income tax return. The assets and liabilities of a corporation are its own. They do not belong to the shareholders. Compared to a partnership that, in the absence of an agreement, must be dissolved when a partner dies, a corporation does not cease to exist when its shareholders die. Corporations are also different from a sole proprietorship, which no longer exists when the owner dies.

The most common objective of a corporation is pursuit of profit through the operation of a business. But unlike a partnership, carrying on a business is not a requirement for a corporation. A corporation exists as soon as a certificate of incorporation is issued. There are many forms of corporations, but only business corporations will be discussed in detail here.

Corporations may be public or private. A public corporation is one that offers shares for sale to the public. These corporations operate under strict controls designed to protect shareholders and potential investors. Private corporations cannot offer to sell shares to the public and are limited to a maximum of 50 shareholders. Most farm corporations are private corporations.

People Who Make Up a Corporation

There are three different kinds of people involved in the operation of a corporation:

1. directors
2. officers
3. shareholders

Directors

Directors are elected by the shareholders to manage the business and affairs of the corporation. By electing the directors, shareholders place their trust in the directors to manage the corporation's business in a way that will preserve and enhance shareholder investment. Directors bear responsibility for supervising the corporation’s activities and for making decisions regarding those activities. If the expectations of the shareholders are not met, shareholders may elect new directors. They may even choose to remove directors before the end of their term.

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A person is qualified to be a director of a corporation pursuant to *The Corporations Act* unless that person is:

- under the age of 18
- not a natural person (ex: a partnership or another corporation cannot be a director of a corporation)
- bankrupt

In Manitoba, at least 25 per cent of the directors of a corporation must reside in Canada. If the board of directors consists of three directors or less, at least one of the directors must be resident in Canada.

The articles of incorporation or the bylaws stipulate the term of office of a director. If there is no provision for terms of office, a director's term ends at the next meeting of the shareholders. Generally, directors may be removed from office by ordinary resolution of the shareholders at a special meeting and a replacement director can be elected at the same meeting.

Officers

Officers are appointed by the board of directors and are responsible for the day-to-day operations of a corporation. For example, the officers can hire staff and enter contracts on behalf of the corporation. Common corporate offices are those of the president, secretary and treasurer.

Any individual can be an officer of a corporation. Officers may, but do not need to be shareholders or directors of the corporation. It is common in many small, private corporations for one individual to be the sole director, the sole officer and the sole shareholder.

The board of directors may remove an officer at the discretion of the board, subject to any applicable employment legislation.

Shareholders

Shareholders are essentially the owners of a corporation. Owning shares does not entitle a shareholder to claim any specific asset of the corporation, but may entitle the shareholder to a portion of the profits of the corporation's business, or a portion of any money left if the corporation is dissolved and debts have been paid.

Shareholders who own shares with voting rights elect the directors. This means final control of corporate affairs is determined by the number of voting shares and the people who own those voting shares. Shareholders can limit the power of the directors to direct the management of the corporation by means of a unanimous shareholder agreement. If all the shareholders agree, they can take powers away from the directors, but then the shareholders must assume responsibility for those powers themselves.

Creation of a Corporation

A corporation may be formed by one or more persons or corporations. The ability to incorporate is unrestricted, provided the natural person is not under the age of 18 and provided neither the natural person nor the corporation are bankrupt. Once the decision to incorporate is made, there are a number of decisions to make and steps to complete before the corporation comes into existence.

Federal or provincial incorporation

Federal and provincial governments have the power to incorporate corporations. Provincial corporations have the right to carry on business in the province where they are created. They may also carry on business in another jurisdiction if permission is obtained from that jurisdiction. Federal corporations have the right to carry on business anywhere in Canada, subject to provincial laws affecting the business in which they are engaged. In Manitoba, most farm businesses are incorporated under Manitoba's *The Corporations Act.*

Only the Manitoba legislation will be discussed in further detail here.

Corporate name reservation

If the persons creating a corporation intend to give the corporation a name rather than a number issued by the Companies Office, a business name must be reserved. You may find it useful to choose a name for the corporation that is distinctive and descriptive of the type of business. Corporate business names must end with the words Limited, Corporation, Incorporated, the French equivalent of any of those words or an abbreviation of one of those words. Upon receiving a request for the reservation of a name and the required fee, the Companies Office completes a search to ensure there is no corporation using that name or a similar name. If the name is acceptable, it will be reserved for 90 days.

Articles of Incorporation

Articles of incorporation must be filed with the Companies Office in the form acceptable to the Companies Office. The articles of incorporation are the most important documents relating to a corporation because they establish the fundamental characteristics of the corporation itself. The articles of incorporation are the constitution of the corporation. They govern the structure of the corporation and the manner in which the corporation will operate. Articles of incorporation should be drawn up by a lawyer and must contain the following information:

1. the name of the corporation
2. the place in Manitoba where the registered office is to be situated and the address of the registered office, including the street and number, if available
3. the classes and any maximum number of shares that the corporation is authorized to issue and:
   a. if the corporation can issue two or more classes of shares, the rights, privileges, restrictions and conditions attached to each class of shares
   b. if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and the nature of the restrictions
4. if the issue, transfer, or ownership of shares of the corporation is to be restricted, a statement to that effect, and a statement as to the nature of such restrictions
5. the number of directors and full names and addresses of each first director
6. proper consent forms for each first director who is not an incorporator
7. any restrictions that apply to the corporation's business

Please note that articles of incorporation may only be amended by special resolution of the shareholders, which requires two thirds of all shareholders to approve of the change. Information required in the articles of incorporation by *The Corporations Act* cannot be changed without a special resolution, including the name of the corporation and its registered office.

Name of the corporation

As explained above, it is important that corporations do not have the same or substantially similar names. One of the main reasons for this is that a corporate name gains value over time, especially if the corporation is known for providing a superior product or service. For example, Louis produces prize-winning, purebred Hereford cattle through a farm corporation, Hereford Pure Ltd. He obtains premium prices because his stock is well known for high quality. Louis would be very unhappy if another producer was able to sell inferior Hereford cattle under a similar corporate name, such as Pure Hereford Ltd., as it could adversely affect his reputation and his product price.

Place and address of registered office

The registered office of a corporation serves as the location where it keeps its records, where it receives correspondence and where it accepts business documents. The registered office is important because it is where shareholders and directors can obtain and review corporate records, one of their statutory rights. The registered office is also important to creditors and others who may have a legal claim against the corporation and need to serve legal documents.

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Types of shares, share rights and classes of shares

The shares of a corporation are issued by the directors and must be fully paid for before they can be issued. Normally the share structure is arranged by an accountant and a lawyer before the actual incorporation procedure takes place. Different classes of shares may have different share rights attached to them, such as voting rights and dividend rights. This provides the flexibility needed to meet the goals of people who are incorporating. For example, by using different classes of shares, arrangements can be made to split income among family members.

Although not specifically mentioned in *The Corporations Act*, there are two kinds of shares commonly referred to:

1. common shares
2. preferred shares

Common shares

Common shares generally have the following rights:

1. the right to vote at all shareholder meetings
2. the right to receive a dividend if the directors declare one
3. the right to share in any property remaining when the corporation is dissolved, all of its assets have been sold, its debts have been settled and the share capital has been returned

Common shares are shares that increase in value with the growth of the corporation.

Preferred shares

Preferred shares generally have the following rights:

1. the right to a fixed dividend
2. that the owners will be paid the value of the preferred shares before the owners of common shares are paid when the corporation is dissolved

Preferred shares do not generally have:

1. voting rights
2. a right to share in property remaining when the corporation is dissolved

Preferred shares do not increase in value with the growth of the corporation.

Classes of shares

The shares in a corporation can be separated into different classes by setting out those classes and the rights attached to those classes, in the articles of incorporation. *The Corporations Act* states that, unless the articles of incorporation provide otherwise, all shares have the following rights:

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1. to vote at all meetings of shareholders except meetings at which only shareholders of a specified class of shares are entitled to vote
2. to receive any dividend declared by the corporation
3. to receive the remaining property of the corporation upon dissolution

It is important to remember that unless the articles of incorporation set out different types and classes of shares, all shares are the same type and have the same rights, which limits long-term planning abilities.

Voting rights

Any class of shares can be given the right to vote, but usually this right is attached to the common shares. Those shareholders who own the voting shares control the corporation. They elect the directors and thus determine the course of business the corporation will follow.

Right to dividends

Dividends may be declared by the directors, based on their assessment of the financial position of the corporation. The right to receive a dividend payment only arises when a dividend is declared. Some classes of shares may have the right to receive a dividend payment before other classes of shares receive such payments. Some may have the right to receive a fixed amount or rate of dividend. Preferential rights to dividends are usually attached to preferred shares.

Dividends may be cumulative or non-cumulative. If the shares are entitled to a fixed dividend payment every year, and the dividend payments are not made one year, then whether these payments are cumulative or noncumulative becomes very important. If the payments are non-cumulative, then any payments not received in one year are lost to the shareholder. If the dividends are cumulative, then the amount owed becomes an obligation of the corporation and is carried forward to future years. The shareholder does not lose the right to the payment.

Redeemable and retractable shares

A redeemable share is one the corporation can repurchase from the shareholder at the corporation's option. The corporation must pay the shareholder a specified amount plus any dividend owing and the shareholder must sell the share back to the corporation. A retractable share is one which the shareholder can sell back to the corporation at his or her option.

Restrictions on the issue and transfer of shares

In small corporations where there are few shareholders, each shareholder will likely want to have a degree of control over who the other shareholders may be. If the shareholders also work in the corporation, as is often the case with farm corporations, they will not likely want any other shareholder to sell or a new shareholder to be added without their consent. There can be very complicated provisions for the sale of shares included in a shareholders’ agreement. If the articles of incorporation include restrictions, they will generally be simpler provisions such as a requirement for shareholders' and directors' approval of any transfer of shares, or the requirement that any new shares issued are first offered to the existing shareholders. The nature of the restrictions will vary depending on individual circumstances. You should discuss them with your lawyer and business associates.

Number of directors

A corporation may specify a set number of directors or a minimum and maximum number of directors. The number of directors depends upon the size of the business that is being operated and the desire of shareholders to be directors. Every private corporation must have at least one director.

Restrictions on the businesses of the corporation

A corporation may, but is not required to, restrict the activities in which it will engage. If the articles of incorporation do restrict the businesses in which the corporation may participate, the corporation should not participate in those businesses and may be subject to actions from shareholders and creditors if it does. No action of the corporation, including transfer of property, is invalid just because the articles prohibit it. The purpose of restrictions in the articles is to allow shareholders and creditors to take issue if the action is detrimental to their interests. To avoid problems with respect to restrictions on business, it is common that the articles will not contain any restrictions.

Other provisions in the articles of incorporation

Anything that may be included in the bylaws of a corporation may also be included in the articles of incorporation. Bylaws can include almost anything with respect to the business or affairs of the corporation. When deciding whether or not to include provisions respecting a corporation in the articles of incorporation or the bylaws, it is important to consider that changes to the bylaws can be made by way of a simple majority vote of the shareholders. On the other hand, articles of incorporation may only be amended by special resolution of the shareholders, which requires two thirds of all shareholders to approve of the change. It is also important to remember that articles of incorporation are public and bylaws are not. Placing more of the internal corporate arrangements in the bylaws can make the process of incorporation simpler, make changes to internal corporate affairs easier and limit the amount of corporate information that is available to the public.

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Certificate of incorporation

Once the articles of incorporation have been filed with the prescribed fee, the Companies Office will issue a certificate of incorporation, with the articles of incorporation attached. The certificate is legal proof the corporation came into existence on the date it specified.

Organization meeting

Once a certificate of incorporation is issued, the directors named in the articles of incorporation must call a meeting of directors. At that meeting, directors may issue shares, make bylaws, appoint officers, make banking arrangements for the corporation and complete other business or transactions. Other matters that may need to be taken care of include changing vehicle registrations if vehicles are transferred to the corporation, changing insurance policies and advising suppliers that they are now dealing with a corporation.

The first directors must call an annual meeting of shareholders within 18 months of incorporation and hold office only until the first annual meeting of shareholders.

Bylaws

The bylaws of a corporation are the rules governing the day-to-day operation of that corporation. Bylaws may include:

- qualifications and requirements for directors
- procedures for meetings of directors, such as notice and quorum
- procedures for meetings of shareholders
- establishing the offices of the corporation and the duties of each office
- signing authority for cheques and other contracts
- banking arrangements and the power of the directors to borrow money
- procedures for payment of dividends
- financial year of the corporation
- remuneration of directors and officers

Most of the rules concerning the day-to-day operations of a corporation are generally set out in one general bylaw. A general bylaw can serve as a guide to nearly all corporate procedures.

The directors of a corporation create bylaws, but all bylaws need approval by the shareholders. A bylaw requires approval by the shareholders at the shareholder meeting immediately following the adoption of that bylaw by the board of directors.

Operating a Corporation

Every corporation set up under *The Corporations Act* must comply with act requirements. Failure to do so could result in fines or forced dissolution.

Registered office

The corporation must maintain a registered office, and the Companies Office must be notified of its address. If the address of the registered office is changed, the Companies Office must be notified within 15 days.

Corporate records

The following documents must be kept at a corporation's registered office:

1. a copy of the articles, bylaws, and all amendments to them
2. a copy of any unanimous shareholder agreement
3. minutes of meetings and resolutions of shareholders
4. a register listing the names, addresses and occupations of anyone who is or was a director of the corporation
5. a securities (share) register, listing:
   a. the names and last known addresses of each person who owns, or has owned, shares
   b. the number of shares held by each person listed
   c. the date and particulars of the issue and transfer of any shares

Normally, the registered office of the corporation is at the office of the corporation's lawyer.

Annual meetings of shareholders

A corporation is required to have an annual meeting of shareholders to:

1. approve, reject, or amend bylaws passed by the directors
2. appoint or dispense with the appointment of an auditor
3. elect directors for the coming year

At the meeting, the directors must present the financial statements of the corporation to the shareholders for approval along with an auditor's report, if there is one. The first annual meeting of the corporation must be called within 18 months of incorporating. Subsequent annual meetings must be called within 15 months of the preceding annual meeting. The directors call the annual meetings and must give between 21 and 50 days notice of the annual meeting to each shareholder entitled to vote, to each director and to the auditor of the corporation, if one has been appointed.

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Annual returns

A corporation must file an annual return with the Companies Office each year on or before the last day of the month immediately following the month in which the corporation was incorporated. If an annual return is not filed for two years, the corporation can be dissolved by the Companies Office. It is important to file annual returns on time, especially if the corporation intends on borrowing money. If a lender contacts the Companies Office and is informed that annual returns are not up to date, it may delay the loan being advanced and can cause unnecessary stress.

Change of directors

The Corporations Act requires a corporation to report any change in directors to the Companies Office within 15 days of the change.

Advantages of a Corporation

Practical advantages

Separation of ownership, control, and division of profits

An appropriate share structure makes it possible to separate ownership of an asset, control of an asset and the right to receive the income from that asset. The ability to separate these rights makes it possible for a parent to transfer ownership of a farm corporation to a child, or to share the income of the farm with a spouse or children, and still maintain control over the management of the farm.

Flexibility in distribution of income

A corporation can distribute its profits in any number of ways and in any combination of those ways. For example, it can pay wages to employees, dividends to shareholders and rent to land or equipment owners. The ability to choose from a number of methods of distributing profits makes it possible to select a method or a combination of methods most advantageous to the corporation and the individuals involved.

Estate planning and transfers

It is easier and less costly to transfer shares in a corporation than it is to transfer the individual assets of a farm. The use of a corporation is an effective way of dealing with some of the problems associated with transferring the farm to the next generation. It can be used to maintain an economical unit for those children who want to continue farming while ensuring that children not interested in farming receive fair value for their share of the inheritance. Additionally, parents can slowly transfer ownership and control of the farm while still receiving some income from it. This makes retirement planning easier.

Limited liability

The liability of shareholders for the debts of the corporation is limited to the amount they have invested in the corporation. Creditors of the corporation cannot sue the shareholders for outstanding debts of the corporation. This feature is usually not significant to most small corporations because lenders will often require a shareholder to personally guarantee any loan. In this situation, limited liability is lost. Limited liability can be important if the corporation is found liable in a lawsuit. In that case, only corporate-owned assets are at risk and they can be protected by purchasing third party liability insurance.

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Continuity

A corporation exists for as long as its shareholders choose and as long as the requirements of the Corporations Act are met. If the owner-manager dies, he or she can be replaced and the corporation will continue operating unaffected. In a sole proprietorship, if the owner-manager dies, so does the business.

Improved management and accounting

The more formal, structured nature of corporations requires a more stringent accounting system. Theoretically, this can lead to better management.

Pooling resources and management skills

The use of a corporation allows a number of individuals to pool their assets, including their labour and management skills. Pooling management skills and ideas should lead to better decision-making. In addition, the increased scale of the operation may improve buying and selling opportunities.

Availability of credit

Some of the advantages discussed, such as more stringent accounting records, more businesslike operation, larger capital base and continuity of operation, may make it easier for the corporation to obtain credit.

Family involvement

An appropriate share structure can allow family members to participate in the farm business and receive income from it while leaving control of the business in the hands of one or two individuals. It may also be easier to transfer the farm to the next generation as shares in a corporation instead of individual assets such as land, equipment and inventory.

Taxation advantages

Income splitting

Corporations provide the greatest opportunity to divide farm income amongst members of a farm family and the greatest ability to control the amount of income each person will receive.

Corporations can employ shareholders and relatives of shareholders as one method of splitting income between different members of the same family. Please note that the corporation normally bears responsibility for sourced deductions such as income tax, Canada Pension Plan and employment insurance premiums. It may be possible for shareholders and their relatives to obtain an exemption for employment insurance premiums. For more information, please refer to our guide *Farm Business Arrangements in Manitoba*.

Income can also be split using dividends. Dividends may be declared by the board of directors for one class of shares and not others. This allows a corporation to control the amount of income paid to different groups of shareholders. For example, John and Beatrice have a farm corporation together with their son Bill. John has 45 Class A common shares, Beatrice has 45 Class B common shares and Bill has 10 Class C common shares. John and Beatrice are the only directors. Beatrice works off the farm and earns an income of $40,000 per year. The corporation pays John a salary of $30,000 per year. Bill is enrolled in agriculture at the University of Manitoba and has no income. The farm corporation made a profit of $60,000 over the previous year. Based on advice received from their accountant, John and Beatrice declare a $10,000 dividend to all Class A common shares and a $40,000 dividend to all Class C common shares. The corporation retains the remaining $10,000.00. John, Beatrice and Bill have managed to draw an additional $50,000 out of the corporation while maintaining relatively low personal marginal rates of tax.

Please note all shareholders of the same class are entitled to dividends on that class if any are declared. As discussed earlier, it is important to specify different classes of shares in the articles of incorporation.

By way of comparison, a sole proprietor must include any income earned by his or her business in his or her income tax return each year. A sole proprietor has almost no ability to split income with other members of his or her family, except through employment agreements. Partnerships provide the opportunity to split income amongst the partners, but the partners must receive income in proportion to their respective interests in the year the income is earned. Sole proprietorships and partnerships do not provide the same opportunities to control the timing and level of income as corporations.

Cash method of reporting income

Unlike most other business owners, farmers and farm corporations are able to use the cash method to report income for tax purposes. Under the cash method, farmers are only required to report money actually received from the sale of farm products as income. The majority of businesses must report income using the accrual method in which income for the purposes of taxation is calculated including all sales made in the year, whether or not money has been received for the products sold.

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The cash method allows farm corporations to deduct the cost of purchasing inventory such as seed, fertilizer, other crop inputs and livestock. This allows a farm corporation to reduce the amount of taxable income in any given year by making cash purchases, if there is good a reason for doing so. Please consult your accountant to determine whether income deferral in your farm corporation is what is right for you. For further information on income deferral and the cash method of reporting income, please see *Farm Sole Proprietorships in Manitoba*.

Small business deduction

The federal and provincial governments have implemented preferential tax rates for Canadian controlled private corporations (corporations controlled by Canadian residents). These preferential tax rates are designed to encourage small business corporations to reinvest income to expand the business, thereby creating jobs and promoting economic growth.

The federal government has set a base tax rate of 38 per cent for all income earned through a corporation. This rate is reduced by 10 per cent to allow for provincial taxation of a corporation's income. Taxation of the first $500,000 of active business income is reduced by a further 17 per cent and is therefore subject to a federal income tax rate of only 11 per cent.

As of 2015, the federal government has proposed a two per cent decrease to the small business deduction, which is to be implemented in one-half per cent increments over the next four years. If the proposal is implemented, the federal tax rate on the first $500,000 of a corporation's income will be 10.5 per cent as of January 1, 2016, 10 per cent as of January 1, 2017, 9.5 per cent as of January 1, 2018 and nine per cent as of January 1, 2019.

Manitoba also has two different tax rates for corporations. In Manitoba, the first $425,000 of active business income is not subject to any provincial income tax. Active business income above $425,000 and all other sources of income are subject to a tax rate of 12 per cent.

As of 2015, the Manitoba government has proposed increasing the amount of active business income that a corporation is exempt from paying provincial income tax on to $450,000. If implemented, this proposal will take effect on January 1, 2016.

It should be noted that the small business deduction is reduced for corporations having taxable capital of $10 million or more and is not available to corporations with taxable capital of $15 million or more. In essence, a corporation's taxable capital is the combined total of its debts and equity, less certain specified investments. As farms continue to grow in size and the value of farmland steadily rises, it is important to consider whether or not your farm operation qualifies for the small business deduction.

The small business deduction provides corporations a significant advantage over sole proprietorships and partnerships. The low rate of tax ensures corporations have more money available for reinvestment in the business after tax. For an example of the advantages a corporation has over a sole proprietor because of the small business deduction, please see *Farm Sole Proprietorships in Manitoba*.

Corporations may use more than one small business deduction in a joint venture

A joint venture is a contractual relationship in which two or more parties agree to contribute resources to a common objective. The objective is usually limited to a single undertaking or limited to a finite period of time. If two corporations enter into a joint venture, each corporation maintains its own small business deduction.

The joint venture is very similar to a partnership, but each has separate and distinct income tax consequences. If two corporations enter into a partnership agreement, only one small business deduction is available between the corporations. It is important to consult a lawyer before entering into a joint venture to ensure the legal requirements can and will be met. For more information about joint ventures please see *Farm Business Arrangements in Manitoba*.

Rollovers

In a farming operation, there are generally two kinds of assets:

1. capital assets
2. inventory

Capital assets include land and depreciable assets such as buildings, machinery and equipment. Sale of a capital asset may result in either a capital gain or a capital loss. Sale of a depreciable asset for more than the UCC will result in recapture up to the original cost of the asset. One hundred per cent of recapture is included as taxable income. Fifty per cent of capital gains that have accrued since December 31, 1971, or the date the capital assets were acquired, whichever is later (less any capital expenses, such as tile drainage, additions to buildings, etc.), are included in an individual’s taxable income upon disposition of the assets on which the gain has accrued.

Inventory generally includes all assets bought and sold in the course of operating a business. When inventory is sold, the entire amount realized on the sale is taxable income.

Under subsection 85(1) of the *Income Tax Act*, a farmer may incorporate a corporation and elect to sell eligible capital property to the corporation for a price anywhere between the farmer’s cost base and fair market value. The farmer may use his or her capital gains exemption if the amount elected is above his or her cost base.

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A farmer can also transfer depreciable property, such as machinery and equipment, to the corporation at UCC. Electing an amount that is higher than UCC is not advisable as the capital gains exemption cannot be used to offset recapture. If the fair market value of the machinery and equipment is higher than UCC, the farmer can receive preference shares with a value equal to the difference between UCC and fair market value to avoid paying immediate tax.

After using the capital gains exemption, the farmer who transferred his or her assets to the corporation can receive payment of the purchase price from the corporation, less any shares issues and debts assumed by the corporation, without further income tax consequences.

Transfer of inventory to a corporation

Inventory can be transferred into a corporation on a tax deferred basis. The farmer can receive preferred shares equal to the value of the inventory. The company pays tax when it sells the inventory. The farmer will also pay tax on redemption of his or her preferred shares.

Another approach is for the farmer to sell the inventory to the corporation for fair market value. The corporation then provides the farmer a demand promissory note. If both the farmer and the corporation file income tax on a cash basis the corporation will receive a deduction when it makes payments on the promissory note. In addition the farmer can spread the income across any desired period of time, which would be reflected in the terms of the promissory note.

Please note that the payments on the promissory note to the farmer from the corporation are considered business income.

Transfer of partnership interest to a corporation

A partnership interest can also be transferred to a corporation on a rollover basis. The partnership interest includes all of the farm partnership assets, including machinery, equipment and inventory. Depreciable assets such as machinery and equipment do not normally qualify for the capital gains exemption and would normally attract tax. Inventory, such as grain, feed and livestock does not qualify for the capital gains exemption and all of the income realized from the sale of inventory would normally be subject to tax. A partnership interest that includes the value of all the partnership assets, including machinery, equipment and inventory, can qualify for the capital gains exemption upon transfer to a corporation, saving the farm partners a significant amount of tax. For more information on the transfer of a partnership interest to a corporation, please *Farm Partnerships in Manitoba*.

Rollover of partnership assets to a corporation

Although uncommonly used, subsection 85(2) allows partnership assets to be transferred to a corporation on a rollover basis. This is available if there are reasons not to transfer partnership interest. Please consult your accountant and lawyer to determine the best approach in your particular situation.

Farm corporation shares are eligible for the capital gains exemption and rollover

The shares of a farm corporation may be eligible for the capital gains exemption and rollover, but the test is much more stringent than for a sole proprietor. For shares of a farm corporation to qualify for an individual’s capital gains exemption:

1. The farm corporation must use 90 per cent of its assets in active business.
2. The individual disposing of shares must have owned the shares for at least two years prior to the disposition.
3. The corporation must have used its farm assets in the business of farming more than 50 per cent of the time for at least two years prior to the disposition.

Excess cash in a farm corporation that reduces the assets used in active business to less than 90 per cent can be eliminated through the use of a family trust with a corporate beneficiary. For more information please refer to *Family Trusts in Manitoba.*

Potential to use more than one capital gains exemption

It is important to remember that a corporation can provide the opportunity to take advantage of the capital gains exemptions of a spouse, common-partner and adult children, depending on the share structure of the corporation. Use of a family trust can also provide access to multiple capital gains exemptions, especially when a family farm corporation is involved. For further information please refer to *Family Trusts in Manitoba.*

Estate freezes

An estate freeze is a corporate and tax transaction where a corporation’s assets are valued and debts are subtracted by the corporation’s accountant. Common shares are exchanged for preferred shares that are worth exactly what the common shares were worth on the freeze date. All the value of the corporation as of the freeze date is in the preferred shares. Another party, such as a child or a family trust, can then subscribe for common shares at a nominal price (usually $1 per share) and all the future growth of the corporation goes to the party that subscribed for the nominally priced common shares. For more information on estate freezes please see *Family Trusts in Manitoba.*

This publication may contain outdated information.

Two corporation model

It is possible for farmers to use two corporations to protect their farmland from the claims of creditors, while positioning to make an attractive sale to an outside party. This model combines both practical and taxation advantages.

One corporation owns the machinery, equipment and grain inventory and actively farms the land. In this example, that corporation is referred to as Farmco. A second corporation owns only land and farm buildings. It is referred to here as Landco.

As a practical advantage, all of the risk of farming remains with Farmco and therefore only the assets of Farmco are available for creditors. This is largely limited to machinery, equipment and grain inventory.

Farmco rents the land from Landco. In this situation the association rules are beneficial. Even though Farmco and Landco only share one small business deduction, the rental income Landco receives from Farmco is considered active business income, provided Farmco and Landco are associated. To ensure association, all of the shareholders of Farmco should be related to all of the shareholders of Landco. Provided the cash that remains in Landco does not exceed 10 per cent of the value of the cash and land combined, the shares of Landco qualify for the capital gains exemption.

Prospective purchasers generally prefer to purchase assets rather than shares to avoid taking liabilities associated with the operation of the existing corporation. Vendors generally prefer to sell shares of a corporation so the capital gains exemption can be utilized. The shares of Landco can be sold, multiple capital gains exemptions can potentially be used, and the farmer and his or her family can receive the proceeds of sale free of tax.

Landco’s shares are more attractive because Landco has no liabilities and a purchaser is able to increase the cost base of the shares as though it had purchased the assets directly. The purchaser accomplishes this by purchasing the shares of Landco through a corporation, Pco. The purchaser then amalgamates Pco with Landco.

Disadvantages of a Corporation

Practical disadvantages

Extra costs

There are legal and accounting fees when starting up the corporation and annually during its lifetime. Fees are also charged by the government to register the corporation and to maintain a licence. In addition, when assets are transferred to the corporation, appraisals may have to be done to establish values which will be acceptable for tax purposes.

Extra administration

There are more rules and regulations to follow and more formal documentation required with the corporate form of business organization than with a sole proprietorship. As a result, more consultation with lawyers and accountants will be required, increasing the amount of professional fees that must be paid. It should be noted however, that many of these professional fees will be deductible to the corporation as business expenses.

Minority shareholders

Shareholders who hold a small proportion of the total shares of a corporation are not able to influence the operation of the corporation. The ability of minority shareholders to sell their shares or to force payment of a dividend may be limited. *The Corporations Act* offers some protection to minority shareholders who feel they are being treated unfairly. In some circumstances they can apply to the court and may be granted a remedy. Some of the remedies available include the replacement of some or all of the directors of the corporation, forcing the corporation to repurchase the shares of the aggrieved shareholder or setting aside contracts that are unfair. The articles or bylaws of the corporation, or a shareholder agreement may also give minority shareholders some protection.

Loss of freedom and individual identity

The more complex nature of a corporation requires devoting more individual time and effort to understand its operation than does a sole proprietorship. In addition, pride in personally owning farmland may be reduced if land is transferred to a corporation.

This publication may contain outdated information.

Ability to work together

As in a partnership, the success of a multi-owner corporation will depend on the ability of the shareholders to work together. The goals and values of each must be similar and the corporation must generate enough income to support the people involved. If they find it difficult to get along before incorporation, the pressures of operating a corporation are likely to intensify any disagreements.

Risk of change

There is a chance that income tax rules could change and that some of the opportunities to defer tax or avoid tax that are available now may not be available in the future. For example, the tax rate on corporate dividends may change, the small business deduction may be reduced or the capital gains exemption may no longer be available for the transfer of shares in a farm corporation.

Law imposes responsibilities on directors and officers

The Corporations Act gives the directors of a corporation the authority to direct the management and business affairs of the corporation. The directors are empowered to appoint officers and delegate management authority within the corporation.

Directors and officers must comply with *The Corporations Act* and cannot be relieved of that duty. *The Corporations Act* requires directors and officers to:

a. act honestly and in good faith with a view to the best interests of the corporation
b. exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

The best interests of a corporation are not limited to the best interests of the shareholders. The directors and officers must look to maximize the value of the corporation, which includes the long-term viability and productivity of the corporation. There may be circumstances where the interests of shareholders, employees, suppliers, creditors, consumers, governments and the environment all need to be considered by the directors.

The directors and officers also owe the corporation a duty of loyalty, sometimes called a fiduciary duty. Directors and officers must avoid conflicts of interest with the corporation and must avoid abusing their positions for personal gains. Directors and officers are required to disclose any interest they may have in a contract with the corporation.

Confidential information obtained by virtue of being a director or officer must be kept confidential. A director or officer of a corporation cannot seize a business opportunity that came to his or her attention by virtue of his or her position with the corporation. This is the case even if the corporation cannot seize the opportunity itself. Directors and officers are obligated to serve the corporation selflessly, honestly and loyally.

There may be cases where directors and officers are not required to avoid personal gain through their position within a corporation. Receiving remuneration for acting as a director or officer is not a breach of duty to the corporation if the amount is reasonable. A director or officer may also be a shareholder and can profit through dividends, provided those dividends do not affect the ability of the corporation to meet its obligations to other shareholders and creditors.

The law even permits the same person to serve as a director or officer of two competing corporations at the same time, unless the articles of incorporation or bylaws of one of the corporations require the director or officer to serve one corporation alone. The director or officer must be able to maintain his or her obligations to both corporations.

Taxation disadvantages

No principal residence exemption

Every individual may elect one principal residence in each taxation year. The principal residence exemption provides a formula for reducing or even eliminating taxable capital gains that may arise on the disposition of the property. The formula is:

$$\frac{\text{Number of years the property is elected as the principal residence + 1}}{\text{Total number years of ownership}}$$

The resulting figure is the proportion of any taxable capital gain on a principal residence that is exempt from taxation.

Corporations do not have principal residence exemptions. Speak with your lawyer about creating a principal residence agreement if you are planning to live on land owned by a corporation. You may be able to maintain your personal principal residence exemption and avoid being deemed to receive a taxable benefit from the farm corporation. For further information about the principal residence exemption, please refer to *Farm Sole Proprietorships in Manitoba*

Corporations do not have capital gains exemptions

A corporation does not have a capital gains exemption and cannot transfer property by way of rollover. If a corporation sells capital assets, such as land, the corporation will pay tax on any capital gain realized. The shares of a farm corporation may be eligible for the capital gains exemption and rollover, but the test is much more stringent than for a sole proprietor. For shares of a farm corporation to qualify for an individual's capital gains exemption:

 This publication may contain outdated information.

1. The farm corporation must use 90 per cent of its assets in active business
2. The individual disposing of shares must have owned the shares for at least two years prior to the disposition
3. The corporation must have used its farm assets in the business of farming more than 50 per cent of the time for at least two years prior to the disposition

With proper planning, the challenges corporations pose with respect to the capital gains exemption can be overcome. It is important to remember that a corporation can provide the opportunity to take advantage of the capital gains exemptions of a spouse, common-partner and adult children.

Use of a family trust can also provide access to multiple capital gains exemptions, especially when a family farm corporation is involved. For further information please refer to *Family Trusts in Manitoba*.

Benefits received from a corporation are taxable

Any benefits received by corporate shareholders or employees, such as use of a corporate owned house or car, are taxable unless a reasonable amount is paid for these benefits. If a shareholder withdraws corporate funds for personal purposes, the amount withdrawn from the corporation is considered income unless repaid within a set time frame. The money withdrawn is subject to taxation, interest and penalties payable by the shareholder unless these funds are properly accounted for as salaries, loan payments or dividend payments.

For example, Curtis operates his farm through a corporation called Curt Farms Ltd. Instead of borrowing the money personally, Curtis decides to withdraw money from Curt Farms Ltd. to purchase a hot tub for his farm house. The amount withdrawn is shown in the financial records of Curt Farms Ltd. as a loan receivable from the sole shareholder. Curtis never repaid the money. Canada Revenue Agency reassessed Curtis for unpaid taxes in the year he withdrew the money together with interest and penalties.

Consult with your accountant and lawyer before drawing money from your corporation for personal purposes.

Corporate losses cannot offset personal income

Corporate losses cannot be transferred to an individual to offset income from other sources as can losses from a sole proprietorship or partnership.

Regular corporate tax rates

The Manitoba small business deduction only applies to the first $425,000 (increasing to $450,000 in 2016) of active business income. The federal small business deduction only applies to the first $500,000.00 of income. Any income above these limits is taxed at the regular corporate tax rate set by the provincial and federal governments.

Association rules

In Manitoba, a corporation is taxed at a low rate for the first $425,000 of its active business income (increasing to $450,000 in 2016) due to the operation of the small business deduction. The $425,000 is called the small business limit. When corporations are controlled by the same person, group of people or certain combinations of related people, the corporations are considered associated and must share one small business limit.

For example, Harvey is the sole shareholder of two farm corporations, Harv Grains Ltd. and Harv Livestock Ltd. Harv Grains Ltd. and Harv Livestock Ltd. do not each enjoy the small business deduction on their first $425,000 of income; a single $425,000 small business limit is divided between them. Association rules are very complicated, it is important that you seek accounting and legal advice.

Kiddie tax

Dividend income allocated to minors is taxed at the high rate due to a tax commonly referred to as kiddie tax. This tax generally does not apply to capital gains. Expert advice is needed.

Family law considerations

Homestead rights

When an individual resides outside of a city, town or village, a homestead includes the quarter section (or smaller parcel of land) on which the family home is located and any adjacent land to a maximum of 320 acres.

Homestead rights prevent the owner from:

- granting someone else an interest in the land
- transferring the land
- selling the land
- making an agreement to sell the land
- giving someone else an option to purchase the land
- giving someone else a right of first refusal to purchase the land
- leasing the land for more than three years
- leaving the land to a beneficiary in his or her will
- mortgaging the land
- doing almost anything else without consent from a spouse or common-law partner that could affect the title to that land

 This publication may contain outdated information.

A corporation does not have a spouse. If farmland is owned by a farm corporation, the spouse or common-law partner of a shareholder that lives on the farmland will not have homestead rights in the land. If there is a principal residence agreement, his or her rights may be limited to the principal residence located on the farm. For more information on homestead rights please see *Farm Sole Proprietorships in Manitoba.*

Equalization of family property

Shares in a corporation are treated like other assets. The entire value of the shares is subject to an accounting and equalization pursuant to *The Family Property Act* if the shares were acquired during the relationship. If the shares were acquired before the relationship, only the increase in value during the relationship is subject to equalization.

Individual assets of the corporation are not included in an accounting pursuant to *The Family Property Act* because they are owned by the corporation, not the shareholders. The assets of the corporation do contribute to the overall value of the shares.

If shares in a corporation were acquired by way of gift or inheritance those shares may be exempt from equalization of family property. However, there are circumstances where the courts have held that a portion of the value of shares in a corporation received by way of gift or inheritance may be subject to an accounting and equalization on the breakdown of a relationship. It is the burden of the person claiming the exemption to prove that partnership interest is exempt.

It is important to note that, even if no money was paid for the shares, if a spouse or common-law partner received shares of corporation through a transaction that was structured as a sale for tax purposes, the courts will hold the shares were acquired by way of sale and not a gift.

An agreement between spouses or common-law partners, either before or during the relationship, stipulating how property is to be divided in the event of a relationship breakdown is the only way to fully protect property, including shares in a corporation, from the provisions of *The Family Property Act*.

Less financial disclosure

If you own shares in a farm corporation and experience a relationship breakdown, you may not be required to provide full disclosure of the financial affairs of the corporation if you do not hold a majority of the shares.

Is Incorporation Right for Your Farming Operation?

Before taking any steps to incorporate, it is important to get some advice from such professionals as lawyers, accountants and farm management specialists. Before you meet with these professionals, you should collect some information on your farm business. The professionals will help you go over your personal situation and advise you on what form of business organization best suits your needs. Every situation is different, and a sole proprietorship or a partnership may be better for you than a corporation.

The best business and estate plan is one that develops after you have considered all factors. Some of the major factors to be considered when thinking about incorporating include:

- the size of the operation
- tax deferral
- tax saving
- income splitting
- the number of individuals who will potentially be involved

All of the advantages and disadvantages of incorporating must be carefully weighed and discussed with professionals in the field before any decision is made.

To obtain tax advantages, the farm business must generate more income than is necessary to meet the living expenses of the individuals involved. Many farm businesses do not generate this amount of income. However, there may be other factors which make incorporating worthwhile. For example, incorporating makes it easier to bring new people into the farm business. Incorporating may also be worthwhile for people entering a second marriage, and who want to freeze the value of their estates at that time, for children from a previous marriage. Future growth in the value of their assets can be passed to the new family unit.

It is important to remember that a corporation is a long-term arrangement and once formed can be expensive to dissolve. Try to consider all factors before making the decision to incorporate. You should weigh the benefits obtained against the drawbacks incurred. What may look good for tax reasons may not be the best for other reasons. Once the corporation is formed and assets are transferred it may not be easy to dissolve without incurring substantial costs. It may be wise to talk to people you know who have incorporated and get their opinions on the benefits and drawbacks of incorporating.

Although it is possible to form a corporation without using a lawyer or an accountant, it is not advisable to do so. Improper formation of the corporation and its share structure can cause legal and tax problems, particularly if property is transferred to the corporation. When choosing a lawyer or an accountant, you should try to find one that is familiar with, and has been involved in, the agricultural field. It is also desirable to choose an accountant and a lawyer who work well

 This publication may contain outdated information.

together; possibly people who have worked together in the past on such business arrangements.

Background information required by an accountant or lawyer

Although every farming operation is different, there are common pieces of information that will be helpful to a lawyer and accountant in determining whether or not incorporation is right for you. When meeting with a lawyer or accountant to discuss your business structure you should be ready to provide the following information:

A sketch or a photograph of the physical layout of the farm

It is important that lawyers, accountants and other professional advisors have a clear understanding of your farming operation. Farm advisors need to know more than just your assets, debts and cash flow. To provide the best advice and fully understand your goals and objectives, farm advisors have to fully understand the practical realities of your operation. Maps, sketches and photographs of the different parcels of land that are the basis of your operation, and the location of your home and other buildings, can help your farm advisors better understand your specific needs and advise you accordingly.

A summary of assets and liabilities

Your advisors will need to know the fair market value of all farm assets, and the amounts of any liabilities outstanding, at the time you meet with them, to provide you with the best advice possible. Verification of fair market value by an independent appraiser may be advisable to avoid problems with Canada Revenue Agency. It may also be possible to verify values on your own by contacting the land titles office and getting sale values of comparable land.

If your family owned the farm prior to December 31, 1971, a complete listing of all farm assets owned at that time, together with their original cost and estimates of their fair market value on December 31, 1971, is also necessary.

Personal and farm income and expense information

Personal tax returns and farm financial statements for previous years are useful, as are budget projections for the current and future years. As stated above, the farm business must generate more income than is necessary to meet the living expenses of the individuals involved for incorporation to provide tax advantages. Your advisors will likely want to determine your living expenses and whether or not you can expect to have any excess income.

Long-term plans for the operation and all those involved

Provide your advisors with a list of personal objectives and financial goals as well as those of other family members who will be involved in the farm business. The format of the proposed corporation should meet objectives such as:

- how you plan to distribute your assets in the future
- your retirement plans
- the likelihood of the farm staying in the family or being sold to an outsider

The arrangement of ownership and control of the corporation is the most difficult decision to make. The different share structures available can be outlined by advisers but the final decision on the type and number of shares to be issued, and to whom they will be issued, will have to be made by you.

Potential name choices for the corporation

As two corporations cannot have the same name, an alternative may be necessary if your first choice cannot be reserved for your corporation.

This publication may contain outdated information.

Appendix – Forms

Contact the Companies Office to ensure that the most current version is being used.

Annual Return

Articles of Incorporation (share capital)

Notice of Change of Directors

Notice of Change of Registered Office

Request for Name Reservation

Instructions

Français

The Corporations Act
20____ ANNUAL RETURN OF INFORMATION

Manitoba

A

1. BUSINESS NUMBER	2. JURISDICTION	3. DATE OF INCORPORATION OR AMALGAMATION	4. LAST ANNUAL RETURN

5. CORPORATION NAME & MAILING ADDRESS

THE FOLLOWING INFORMATION IS ACCURATE FOR THE CORPORATION AS OF THE LAST DAY OF ITS ANNIVERSARY MONTH IN THE YEAR FOR WHICH THIS ANNUAL RETURN IS FILED (SEE INSTRUCTION SHEET).

B

1. **MAIN TYPE OF BUSINESS** (MAKE CHANGES IF NECESSARY)

2. **REGISTERED OFFICE ADDRESS** (IF CHANGED, INDICATE THE DATE OF CHANGE (DAY, MONTH, YEAR) AND THE N EW ADDRESS)

3. **DIRECTORS** (IF CHANGED, DATES **MUST** BE SHOWN (E.G. APPOINTED FEB. 1, 2006 OR CEASED SEPTEMBER 4, 2006)

FULL NAME	RESIDENCE ADDRESS	DATE OF CHANGE

4. OFFICERS

FULL NAME	RESIDENCE ADDRESS	OFFICE HELD

C **ONLY SHARE CORPORATIONS COMPLETE SECTION C**

1. ◯ SHARES ARE DISTRIBUTED TO THE PUBLIC

   ◯ SHARES ARE NOT DISTRIBUTED TO THE PUBLIC

2. THE FOLLOWING HOLD 10% OR MORE OF ISSUED VOTING SHARES

FULL NAME	NO. & CLASS OF SHARES	FULL NAME	NO. & CLASS OF SHARES

D **ATTORNEY FOR SERVICE**

FULL NAME AND ADDRESS OF INDIVIDUAL APPOINTED IN MANITOBA

E THE ABOVE INFORMATION IS CORRECT

DATE	**SIGNATURE**	**OFFICE HELD**	**CONTACT PERSON & PHONE NO (8:00 TO 4:30)**

THIS FORM WILL BE REJECTED IF ALL APPLICABLE QUESTIONS ARE NOT ANSWERED

MG-14269
(REV.01/02)

RETURN TO:
Companies Office
1010-405 Broadway
Winnipeg, MB R3C 3L6

Reset

Print

Filing The Annual Return of Information Under The Corporations Act of Manitoba

Manitoba

WARNING: FAILURE TO FILE RETURNS FOR TWO CONSECUTIVE YEARS RESULTS IN: DISSOLUTION OF MANITOBA CORPORATIONS OR CANCELLATION OF REGISTRATION OF EXTRA-PROVINCIAL AND FEDERAL CORPORATIONS.

INSTRUCTIONS
An Annual Return of Information must be filed every year. It must state information as of the last day of the anniversary month of incorporation or amalgamation (for example, a corporation incorporated January 5th, 1987, files a return as of January 31st every year.) If the corporation has stopped doing business in Manitoba, call or write this office for information on the three ways to dissolve/cancel.

SECTION A (basic corporate information)
Section A states information on file in Manitoba. If anything has changed, contact this office for information on what forms and fees must be filed.

SECTION B (main type, registered office, directors, officers)
1. MAIN TYPE OF BUSINESS
— The main type of business must be noted. The Standard Industrial Code (SIC) can be noted, if it is known.
2. REGISTERED OFFICE
— Must be answered completely, including postal code.
— If the registered office changed, the new registered office and the date of change MUST be noted.
— Manitoba corporations must keep their Registered Office in Manitoba.
— Manitoba corporations must have the Registered Office address identical to the mailing address.
3. DIRECTORS
— Full names and residence addresses (including postal codes) must be noted.
— If any directors have been appointed or ceased, the details of the change must be noted. (example: John Smith, 41 Sykes Blvd, Winnipeg, MB R0A 0A0, appointed Jan 01/1991)
— Nonshare (nonprofit) corporations must have at least three directors. Share corporations must have at least one director.
— Attach a list if all the names can't fit on the return.
4. OFFICERS
— Full names and residence addresses (including postal codes) must be noted.
— If no officers have been appointed, write "none appointed".

SECTION C (share information)
(only share corporations complete this section)
1. Asks: does this corporation offer shares or securities to the public? To answer, check off the applicable box.
2. List the full name of the shareholders who hold 10% or more of issued voting shares, and the number and class of shares they hold. Please indicate if none issued or if no shareholders qualify.
— Attach a list if all the names can't fit on the return.

SECTION D (attorney for service)
A Manitoba corporation with officers or directors living in the province does not have to appoint an attorney for service. Write N/A. Otherwise, an attorney for service is needed for:
— any Manitoba corporation without a resident director or officer
— any federal corporation which does not have **both** a resident director (officer) and a registered office in Manitoba
— all other non-Manitoba corporations
An Attorney for Service must be appointed and Form #8 filed with this office. Please contact this office for more information.

SECTION E (signature)
Must be signed, in ink, by an officer or director (or agent given authority by the corporation). The office held by the signer must be shown. Note: An agent must use the word AGENT to describe his/her office.

ANY QUESTIONS?? CALL (204) 945-2955, Toll Free in Manitoba: 1-888-246-8353
HOURS: 8:00 – 4:30, MONDAY TO FRIDAY

RETURN FEE AND FORM TO:
1010-405 BROADWAY, WINNIPEG, MANITOBA R3C 3L6

NOTICE UNDER THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Information about this corporation is collected pursuant to *The Corporations Act*. It is made available for public searching pursuant to that Act. Information will be shared with other government departments and the Minister of National Revenue pursuant to The Electronic Commerce and Information Act for the purposes of obtaining a Business Number (BN) for this company and administering a common business numbering and information system. If you have any questions about its collection, contact: The Director, Companies Office, 1010-405 Broadway, Winnipeg, MB, R3C 3L6 or phone (204) 945-2500.

Instructions Guidelines

Français

The Corporations Act

ARTICLES OF INCORPORATION (share capital)

Manitoba

1. Name of Corporation

2. The address in full of the registered office (include postal code)

3. Number (or minimum and maximum number) of directors

4. First directors

Name in full	Address in full (include postal code)

5. The classes and any maximum number of shares that the corporation is authorized to issue

6. The rights, privileges, restrictions and conditions attaching to the shares, if any

7. Restrictions, if any, on share transfers

8. Restrictions, if any, on business the corporation may carry on

9. Other provisions, if any

10. I have satisfied myself that, the proposed name of the corporation is not the same as or similar to the name of any known body corporate, association, partnership, individual or business so as to be likely to confuse or mislead.

11. Incorporators

Name in full	Address in full (include postal code)	Signature

Note: If any First Director named in paragraph **4** is not an Incorporator, a Form 3 “Consent to Act as a First Director” must be attached. State the full civic address in paragraphs **2**, **4** and **11** – a P.O. box number alone is not acceptable.

OFFICE USE ONLY

Corporation Number: ______________________

Business Number: ______________________

Reset

Print

The Corporations Act

NOTICE OF CHANGE OF DIRECTORS

Français

Manitoba

	NAME OF CORPORATION
	Address (include postal code)

Notice is hereby given that on ______________________ the following persons ceased to be directors of the above corporation:
(Date)

FULL NAME	ADDRESS	OCCUPATION

Notice is hereby given that on ______________________ the following persons became directors of the above corporation:
(Date)

FULL NAME	ADDRESS	OCCUPATION

Date ______________________

____
(Signature of officer of the corporation)

Business Number ______________________

OFFICE USE ONLY

Corporation Number: ______________________

Reset

Print

FORM 21

The Corporations Act

NOTICE OF CHANGE OF REGISTERED OFFICE

Français

Manitoba

NAME OF CORPORATION

Address (include postal code)

Notice is hereby given that on ______________________ the location or address of the registered office of the above corporation was changed to:
(Date)

____
(Full address giving street number and postal code, and if multi-office building, give room number)

Date ______________________ ______________________
(Signature of officer of the corporation)

Business Number ______________________

OFFICE USE ONLY

Corporation Number: ______________________

FORM 20

Reset

Print

The Corporations Act / The Business Names Registration Act
Loi sur les corporations / Loi sur l'enregistrement des noms commerciaux

Manitoba

REQUEST FOR NAME RESERVATION
DEMANDE DE RÉSERVATION DE NOM

$45.00
45,00 $

CAUTION: RESPONSIBILITY FOR CHOICE AND USE OF THE NAME RESTS ENTIRELY WITH THE APPLICANT. READ TERMS AND CONDITIONS ON REVERSE BEFORE ANSWERING ALL QUESTIONS.
ATTENTION : LE CHOIX ET L'UTILISATION DE LA DÉNOMINATION INCOMBENT AU REQUÉRANT. LIRE LES MODALITÉS ET CONDITIONS QUI FIGURENT AU VERSO AVANT DE RÉPONDRE AUX QUESTIONS.

A

1. What is the proposed company name? / Quel est le nom proposé de l'entreprise?

2. Select the reason for the reservation / Choisissez le motif de la réservation

- ☐ Incorporation (share) / Constitution en société par actions
- ☐ Amalgamation / Fusion
- ☐ Incorporation (non-share) / Constitution en société sans capital actions
- ☐ Continuance / Prorogation
- ☐ Business Name Registration / Enregistrement du nom d'entreprise
- ☐ Name Notation / Demande d'inscription de nom
- ☐ Registration of Federal Corporation / Enregistrement d'une société de capitaux fédérale
- ☐ Registration of Extra-Provincial Corporation / Enregistrement d'une société de capitaux extra-provinciale
- ☐ Trust or Loan Corporation / Société de fiducie ou de prêt
- ☐ Revival or Restoration/ Revitalisation ou restauration
- ☐ Change of Name From / Changement de nom de ______________________________

CURRENT NAME / NOM ACTUELLE

3. How or why was this name chosen? / Comment ou pourquoi ce nom a-t-il été choisi?

4. Indicate where in Manitoba the business will be carried on (i.e. Gimli, Winnipeg, etc.)
Indiquez l'endroit au Manitoba où l'entreprise sera en exploitation (p. ex. Gimli, Winnipeg, etc.)

5. Describe the nature of business. Please provide a detailed description. / Décrivez la nature de l'entreprise. Veuillez donner une description détaillée

6. Note any other relevant information / Indiquez tout autre renseignement pertinent (e.g. names of affiliated businesses, consents available from other companies, home jurisdiction of extra-provincial corporation, etc.) / (p.ex., nom des société affiliées, consentements offerts par d'autres entreprises, autorisation d'exploitation locale de sociétés à l'extérieur de la province, etc.)

7. (a) The cost of expediting is double the cost of the request. If you would like to expedite your request, please select this option.
Le coût du service accéléré est le double de celui d'une demande ordinaire. Si vous préférez le service accéléré, veuillez sélectionner cette option.

EXPEDITE / SERVICE ACCÉLÉRÉ

(b) Client's File Number or Name (optional) / Numéro de dossier ou nom du client (facultatif) ______________________

B

Delivery and Contact Information / Données de contact et de livraison

Name and Address of Sender
Nom et adresse de l'expéditeur ______________________________

____

____

Contact person______________________
Personne-ressource

Telephone
Téléphone ______________________

How would you like the reply delivered?
Comment est-ce que vous aimeriez la réponse livrée?

Mail / Courrier
Pickup / Cueillette

Fax # / Télécopieur ______________________

E-mail address / ______________________
Adresse courriel

SEND FEE AND ONE COPY OF THIS FORM TO:

COMPANIES OFFICE
1010-405 BROADWAY
WINNIPEG, MB R3C 3L6
(204) 945-2500

FAITES PARVENIR LE DROIT ET UNE COPIE DE LA PRÉSENTE FORMULE À :

OFFICE DES COMPAGNIES
405, BROADWAY, BUREAU 1010
WINNIPEG (MANITOBA) R3C 3L6
(204) 945-2500

TERMS AND CONDITIONS

1. A name reservation request must be done to determine if a name is available to register a business name, register a name notation, incorporate or register a company or to change an existing name. (Note: If a company name is being registered as or changed to a numbered name, a name reservation request is not required. e.g. 3456789 Manitoba)

2. A name reservation request will result in a five page report. The first two pages list names on record in Manitoba. The next two pages list names in other Canadian jurisdictions. The last page will list trademarks.

3. It is your responsibility to ensure that the name you choose is not identical or confusingly similar to an existing trademark, business, association or body corporate. If anyone complains about your name, and that complaint is held to be valid, it will be your obligation to change your name. <u>The Companies Office does not provide any guarantee or warranty that the obtaining of a name reservation, or a subsequent registration, means that the name that you have chosen will not be the subject of such a complaint or direction to change your name</u>.

4. You can check for similar names by reading telephone directories, trade publications, magazines, advertisements, and by contacting the corporations branches in other jurisdictions.

5. Reservation of a name is not “protection” or a “guarantee” that your name is automatically available. <u>Use of a name is done at the risk of the user.</u>

6. Only one name can be requested on this form. If the name is not available, a new name must be selected, AND a new Reservation form AND FEE will have to be filed. Careful selection and research of a name may save you time and money.

MODALITÉS ET CONDITIONS

1. Il faut soumettre une demande de réservation de nom pour établir si un nom peut être utilisé pour enregistrer un nom commercial, déposer une demande d'inscription de nom, constituer une entreprise en société, enregistrer une entreprise ou modifier un nom existant. (Nota. Si on enregistre le nom d'une entreprise comme un nom à numéro ou si on modifie le nom pour qu'il devienne un nom à numéro, il n'est pas nécessaire de soumettre une réservation de nom, p. ex. 3456789 Manitoba.)

2. Toute demande de réservation de nom se traduit par la production d'un rapport de cinq pages. Les deux premières indiquent les noms enregistrés au Manitoba. Les deux suivantes indiquent les noms enregistrés ailleurs au Canada. La dernière indique les marques de commerce.

3. Il vous incombe de veiller à ce que le nom que vous choisissez ne soit pas identique ou trop semblable à une marque de commerce, une entreprise, une association ou une personne morale existante. Si quelqu'un dépose une plainte au sujet de votre nom et que la plainte est fondée, il vous incombe de modifier le nom que vous avez choisi. <u>L'Office des compagnies ne garantit aucunement que l'obtention d'une réservation pour le nom que vous avez choisi ou l'enregistrement subséquent du nom réservé signifie qu'il ne fera pas l'objet d'une plainte ou d'une directive de modification</u>**.**

4. Vous pouvez vérifier la présence de noms semblables en consultant des annuaires téléphoniques, des publications spécialisées, des revues ou des annonces, et en communiquant avec les directions responsables des entreprises des autres autorités provinciales ou territoriales.

5. La réservation d'un nom ne « protège » pas le nom et ne « garantit » pas qu'il sera automatiquement à votre disposition. <u>L'utilisateur d'un nom doit assumer tous les risques liés à cette utilisation.</u>

6. Un seul nom peut être réservé en utilisant ce formulaire. Si le nom n'est pas disponible, il faut choisir un nouveau nom ET soumettre un nouveau formulaire de réservation, accompagné des DROITS exigibles. La recherche attentive et le choix judicieux d'un nom peuvent vous épargner du temps et de l'argent.

REASONS FOR REJECTION OF NAME / MOTIFS DE REJET D'UN NOM

- Prohibited / Nom interdit
- Consists of general words or only describes the nature of business / Comprend des mots courants ou ne décrit que la nature de l'entreprise
- Consists of surname or geographical name only / Ne comprend qu'un nom de famille ou un nom géographique
- Too similar to other name(s) / Trop semblable à d’autre nom (s).
- Obscene or on public grounds objectionable / Nom obscène ou choquant pour une utilisation publique
- Distinctive element should be added / Un élément distinctif devrait être ajouté.
- Descriptive element should be added / Un élément descriptif devrait être ajouté.

Contact us

- For more information, contact a Farm Management Specialist
- manitoba.ca/agriculture
- mbfarmbusiness@gov.mb.ca
- 1-844-769-6224

Available in alternate formats upon request.