

Legislative Update

by Elona McGifford *

The following is a list of the Acts passed by the fourth session of the 38th Legislature in 2006 calendar year. Information is current at the time of preparing this article. While every effort has been made to ensure the accuracy of the information provided to you in this article, lawyers should refer to the specific legislative or regulatory provision. Current versions of Manitoba statutes and regulations are available online at <http://web2.gov.mb.ca/bills/sess/index.php>

The Corporations Amendment Act, S.M. 2006, c. 10 (Bill 16, 4th Session, 38th Legislature)

Royal Assent: June 13, 2006

Amends: *The Corporations Act*, C.C.S.M. c. C225

Summary: This Act amends the Manitoba Corporations Act in a number of ways which harmonize it more so with the Canada Business Corporations Act. The s. 42 solvency test for corporate financial assistance has been repealed. The Canadian residency requirement for a corporation's board of directors is reduced to 25% from the previous requirement of a majority. There is increased flexibility in regards to where corporate records are kept. Directors and shareholders can attend and vote at meetings by telephone or electronic means.

Under certain circumstances persons will be deemed to be directors of a corporation. Directors (including deemed directors) are not held personally liable for certain actions if they act with 'reasonable diligence'.

The Act also expands the power of the Director of the Companies Office to dissolve a corporation which fails to comply with the Act.

In Force: Upon Royal Assent (although some sections will come in force on a day fixed by proclamation). The 25% director residency quota and the repeal of s. 42 both came into force on Royal Assent.

The Securities Amendment Act, S.M. 2006, c. 11 (Bill 17, 4th Session, 38th Legislature)

Royal Assent: June 13, 2006

Amends: *The Securities Act*, C.C.S.M. c.S50

Summary: The Act enhances investor protections in some circumstances. An investor has the right to rescission of a contract or to bring a legal action for damages if the investor purchased a security offered by an offering memorandum which contained a misrepresentation. An investor may also bring legal action for damages if there was a misrepresentation or a failure to make timely disclosure after the initial offering of a security.

The Act authorizes Manitoba to participate, along with extra-provincial securities agencies, in a process designed to stream-line the marketing of securities across jurisdictions while continuing to protect investors. This process includes allowing the Manitoba Securities Commission to delegate the powers of regulating the marketing of securities in Manitoba to the securities commissions of other participating jurisdictions. This allows a 'market participant' to access

extra-provincial markets while only having to deal with one regulator and one set of market access laws.

The Act also expands the Manitoba Security Commission's power to make orders suspending securities trading.

In Force: By Proclamation

The Safer Communities and Neighbourhoods Amendment Act, S.M. 2006, c. 16 (Bill 23, 4th Session, 38th Legislature)

Royal Assent: June 13, 2006

Amends: *The Safer Communities and Neighbourhoods Act*, C.C.S.M. c.S5

Summary: This Act expands the circumstances under which an order may be made under *The Safer Communities and Neighbourhoods Act* for vacating and shutting down a building. This expansion includes buildings in which: illegal drugs are grown or produced, children are sexually abused or exploited, prohibited or restricted firearms are illegally stored, stolen or illegally imported weapons are stored, prohibited or restricted weapons are illegally stored or in which explosive are stored.

In Force: Upon Royal Assent

The Tobacco Damages and Health Care Costs Recovery Act, S.M. 2006, c. 18 (Bill 27, 4th Session, 38th Legislature)

Royal Assent: June 13, 2006

Summary: This Act allows the province to take legal action against tobacco manufacturers to recover the cost of health care benefits in respect of a tobacco-related diseases.

In Force: By Proclamation

The Public Schools Finance Board Amendment and The Public Schools Amendment Act, S.M. 2006, c. 21 (Bill 35, 4th Session, 38th Legislature)

Royal Assent: June 13, 2006

Amends:

-*The Public Schools Finance Board Act*, C.C.S.M. c. P260

-*The Public Schools Act*, C.C.S.M. c. P250

Summary:

This Act amends *The Public Schools Finance Board Act* in several respects. The Act introduces new accountability provisions for the Public Schools Finance Board. The finance board must consult with school divisions on a regular basis, develop multi-year operating and capital plans, evaluate its policies and procedures on a regular basis, and adopt a conflict of interest policy. The Board must also conduct an organizational and operating review every five years.

The mandate of the finance board is to administer the capital support program for schools. Criteria are set out which the board must consider when making decisions about capital support. It must also prepare an annual funding plan for the capital support it provides.

The school divisions are required to submit a five-year capital plan to the finance board every year and must include in this a property inventory.

A school board may not call for tenders on a major capital project until the finance board approves the project. The membership of the finance board will now be three deputy ministers of the government.

The Public Schools Act is amended to require school boards to obtain finance board approval before purchasing land.

In Force: On Royal Assent

The Youth Drug Stabilization (Support for Parents) Act, S.M. 2006, c. 22 (Bill 36, 4th Session, 38th Legislature)

Royal Assent: June 13, 2006

Summary: This Act aims at helping parents of children who have a serious drug addiction. Under the Act parents of a youth may apply to a justice for an order to apprehend their child whose drug consumption is considered serious according to standards laid out in the Act. The youth would be taken to a secure facility for up to seven days where he or she will be assessed by addictions specialists and, if a stabilization order is issued, the youth will remain in the facility for stabilization and development of a treatment plan.

In Force: By Proclamation

The Labour-Sponsored Investment Funds Act, 2006 (Various Acts Amended), S.M. 2006, c. 23 (Bill 37, 4th Session, 38th Legislature)

Royal Assent: June 13, 2006

Amends:

-*The Income Tax Act*, C.C.S.M. c.I10,

-*The Labour-Sponsored Venture Capital Corporations Act*, C.C.S.M. c. L12

Summary: The Act is a response to recommendations by the Crocus Investment Fund Implementation Team in December 2005.

Part One of the Act amends the *Income Tax Act*:

The investment pacing requirements and penalties are repealed (ss. 2 and 3). They are replaced by a simpler set of requirements and penalties in *The Labour-Sponsored Venture Capital Corporations Act* (s. 20).

The tax credit clawback for the acquisition of Class A shares which are sold within eight years, is expanded to also include the return of capital on the share within the eight years. However, if a fund registered under *The Labour-Sponsored Venture Capital Corporations Act* is cancelled, the Class A will no longer be subject to the tax credit clawback.

Additionally, if a registered fund is cancelled, it will be required to pay a tax equal to a pro-rated portion of the tax credit in respect of its Class A shares that have been outstanding for less than 8 years.

Part Two of the Act amends *The Labour-Sponsored Venture Capital Corporations Act*:

The criteria for eligible investments are amended and clarified (ss. 7(1)(c) and (d)). The Act allows a registered fund to apply for de-registration (s. 10) and amends the circumstances under

which a fund's registration may be suspended or cancelled (s. 11). The Act stipulates that a majority of a fund's board members must be elected by the Class A shareholders, and at least two of board members must be elected or appointed by the labour sponsor (s. 14). The board of a fund is required to approve a business plan each year, and to report on that plan in its annual report (s. 16 and 17).

The board of a fund is required to establish policies regarding liquid reserves, to monitor the fund's adherence to those policies and to report on the reserves in its annual report (ss. 16 and 17).

The 10% limitation regarding eligible investments in a single entity or group of entities is to be calculated with reference to the cost, rather than the fair market value, of a fund's investment portfolio. Regulations will vary the limitation during the startup period of a fund (s. 19).

Responsibility for the administration and enforcement of the Act is divided as follows: 1) The minister continues to be responsible for matters relating to the registration of a fund, 2) The Manitoba Securities Commission will be responsible for monitoring a fund's compliance with its disclosure obligations relating to governance, investment policies and share valuations, 3) An independent administrator will be responsible for monitoring and enforcing a fund's compliance with investment pacing, reporting and recordkeeping requirements (s. 23). Both the Securities Commission and the independent administrator must provide annual reports to the minister.

The investment pacing requirements and penalties were transferred to this Act from the *Income Tax Act*; the penalties, imposed by the administrator, may be reviewed by the minister and appealed to Court of Queen's Bench (s. 28). A fund that is penalized one year for having an investment pacing problem, can recover a significant portion of the penalty if does not have an investment pacing deficiency in the following year (s. 21).

In Force: By Proclamation

* Elona McGifford is starting her 3rd year at law school and was the MBA summer student for 2005 and 2006. Thank you to David Meighen at Manitoba Justice -Legislative Counsel for reviewing the article