

Manitoba Provincial Nominee Program

# Business Performance Agreement Overview

January 2019



## Business Performance Agreement Overview

This overview provides you, the Applicant, with highlights and important milestones of the Business Performance Agreement (BPA). This information may support your research and planning for applying to the MPNP Business Entrepreneur Pathway. This information is only an overview and does not replace the BPA. In case of any inconsistency between the information provided in this overview and the information in your BPA, your BPA shall be deemed correct.



### What is a BPA?

The BPA is required as part of your MPNP application. It details the obligations you and your business must fulfill. You must fulfill all of these obligations within the time specified in the BPA in order to be nominated by Manitoba for Permanent Residence in Canada.

If your application is approved in principle, you will need to sign the BPA and accept these obligations before Manitoba will provide you with a Letter of Support for your Work Permit.

Note:

- The Government of Canada has sole authority for your admission to Canada as a temporary resident and issuance of your Work Permit.
- The Manitoba Government has the final authority for any interpretation and explanation of terms in the BPA.



### BPA Obligations Overview

The BPA states that you must:

- Attend an arrival meeting with Program staff in the City of Winnipeg within thirty (30) days of your date of arrival on work permit status. The Program will ask for your contact information at this meeting;
- Submit progress reports and final report to the Program. Reporting requirement will be discussed with you. A Program Officer will determine the frequency, format and content of the report based on your proposed business plan.
- Establish or purchase the business proposed in your Business Plan in the Province of Manitoba within fourteen (14) months of your Date of Arrival;
- Invest at least the amount committed in your Business Plan to establishing or purchasing the Business, in accordance with Schedule A of your BPA;
- Continue to own, control, and financially support the Business at all material times;
- Operate the Business on a day-to-day basis for the purpose of generating profits;
- Actively direct and manage day-to-day operation of the Business from the business premises on a regular basis;

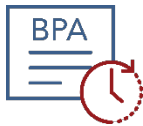
- Reside in the Province of Manitoba within one hundred (100) kilometres of the Business, and remain in the Province of Manitoba, for at least eighty per cent (80%) of the time following your Date of Arrival;
- Comply with all applicable federal, provincial and municipal statutes, regulations and bylaws in establishing, purchasing and operating the Business, including but not limited to all provincial employment standards legislation;
- Obtain all necessary licenses and permits to establish and operate the Business;
- Obtain appropriate independent advice from professionals who are familiar with the laws of the Province of Manitoba with respect to establishing, purchasing or operating the Business;
- Submit a Final Report to the Program no later than twenty (20) months after your Date of Arrival;
- Operate the Business for at least six (6) months before submitting your Final Report to the Program;
- Provide proof to the Program that neither you nor the Business are the subject of bankruptcy proceedings, insolvency, or dissolution at the time you submit your Final Report to the Program;
- Allow the Program to inspect the physical premises of the Business and any Business information or documents (including audited financial statements, payroll, and tax records) that the Program may request or require to determine if you have fulfilled your BPA obligations; and
- Satisfy the job-creation requirements:
  - If you are creating a new business, you must create at least one (1) full-time equivalent jobs in the Province of Manitoba as committed in your BPA, to be staffed for at least six (6) months before submitting your Final Report by a Canadian citizens or permanent residents who reside in the Province of Manitoba and are not your spouse or dependant;
  - or
  - If you are purchasing an existing business, you must maintain the same number of full-time equivalent jobs in the Province of Manitoba already existing in the Business at the time of its purchase, to be staffed for at least six (6) months before submitting your Final Report by Canadian citizens or permanent residents who reside in the Province of Manitoba and are not your spouse or dependant.



## Changes to the BPA

The Program expects that you will establish or purchase a business as specified in your BPA. If you want to establish or purchase a business other than as specified in your BPA, you must make a written request to the Program. Manitoba may consider your Change of Business request under the same criteria applied in assessing your original Application. However, note that:

- Manitoba is under no obligation to approve a Change of Business request, and the decision is at the sole discretion of Manitoba;
- Your request must include sufficient supporting information and documents;
- Manitoba will not consider a Change of Business request that may decrease the amount of your Investment, change any of the commitments you made in your Application, and/or would have reduced your Expression of Interest points;
- Manitoba will only consider a Change of Business request if it is received within twelve (12) months of your Date of Arrival; and
- Manitoba will consider no more than one (1) Change of Business request.



## Requesting a BPA Extension

If you are unable to fulfill all of your BPA obligations within the specified time, you must make a written request to the Program for an extension of time, and for Manitoba to provide a second Letter of Support for a Work Permit application to Immigration, Refugee and Citizenship Canada (IRCC), if necessary. Manitoba may consider your request; however:

- Manitoba is under no obligation to approve a BPA extension request, and the decision is at the sole discretion of Manitoba;
- Your request must include sufficient supporting information and documents;
- Your request must be received at least thirty (30) days prior to the expiration of the Business Establishment Period;
- Manitoba will consider no more than one (1) extension request;
- You acknowledge that even if Manitoba provides you a second Letter of Support, the final decision regarding any extension of your temporary resident status of Work Permit will be made solely by Canada, and Manitoba has no authority regarding whether Canada will extend your temporary resident status of Work Permit; and
- All amendments to the signed BPA should be consented by Manitoba.



## Other important terms

- You must obtain Independent Legal Advice and consult with advisors and/or translation services to the extent necessary to understand the terms and condition of BPA prior to signing it.
- You give Consent to Collection and Disclosure of Information to the Program on any personal, financial, or other information or documents with respect to you or the Business that may be required by the Program to determine if you have satisfied your BPA obligations.

## **SCHEDULE A**

### **Investment Eligibility Criteria**

#### **A. Eligible Expenditures**

1. To purchase:
  - a) An existing business already in operation in the Province of Manitoba, by way of either a share purchase agreement or an asset purchase agreement;
  - b) An existing franchise already in operation in the Province of Manitoba, by way of a franchise agreement;
  - c) Tangible Assets, for the purpose of establishing or operating the Business in the Province of Manitoba; or
  - d) Start-up costs such as legal services, permits and licenses, for the purpose of establishing or operating the Business.

#### **B. Specific Eligibility Criteria**

1. The amount of the Investment specified in paragraph 2.7(e) of this Agreement shall be transferred by the Applicant from a foreign jurisdiction into the Province of Manitoba and be expended out of the personal resources of the Applicant.
2. The Applicant shall hold and control at least thirty-three and one third percent (33.33%) of the equity in the Business, or if the Applicant does not hold and control at least thirty-three and one third percent (33.33%) of the equity in the Business, the Applicant shall make an equity investment in the Business of at least one million dollars (\$1,000,000.00), notwithstanding the amount specified in paragraph 2.7(d) of this Agreement.
3. All incorporated businesses should be incorporated either with the Province of Manitoba or Federal Government of Canada.
4. Any shares in the Business controlled by the Applicant shall be Class A, voting and non-redeemable.
5. If the Investment is made in a business that is newly established by the Applicant, the total amount of the Investment specified in paragraph 2.7(e) of this Agreement shall be expended on Tangible Assets and start-up costs such as legal services, permits and licenses.
6. If the Investment is made in an existing business or franchise, the value of goodwill will not be considered eligible as an Investment unless the Applicant can support the valuation of the goodwill by providing a business valuation report issued by a Canadian chartered accountant or chartered business valuator. The Program will determine in its sole discretion the eligibility of any goodwill. If eligible, the value of the Investment in goodwill will be limited to a maximum of thirty percent (30%) of the amount specified in paragraph 2.7(d) of this Agreement.
7. Working capital will not be considered eligible as an Investment, with the exception of the purchase of start-up inventory which is essential to the Business. The Program will determine in its sole discretion the eligibility of any inventory purchased, based on the industry, size and scope of the Business and the type of inventory purchased. If eligible, the value of the Investment in inventory will be limited to a maximum of six (6) months' worth of inventory. However, if the investment is made in an existing business or franchise, the value of investment in inventory will be limited to a maximum of three (3) months' worth of inventory.

8. The purchase of a motor vehicle will not be considered eligible as an Investment unless the purchase of the vehicle is essential to the Business. The Program will determine in its sole discretion if a vehicle is essential to the Business. If eligible, the value of the Investment in a vehicle will be calculated as the lesser of either the total purchase price of the vehicle or thirty thousand dollars (\$30,000.00).
9. The purchase of real estate will not be considered eligible as an Investment unless the purchase of real estate is essential to the Business. The Program will determine in its sole discretion if a purchase of real estate is essential to the Business. If eligible, the value of the Investment in real estate will be calculated as the lesser of either the total purchase price of the real estate or seventy-five thousand dollars (\$75,000.00).
10. Cash or cash equivalents, including but not limited to cash identified as current assets in the financial statements of the Business, will not be considered eligible as an Investment.
11. A maximum of three (3) months' of operating expense will be considered Eligible as Investment. The operating expense must have incurred and been paid for in the normal operation of the Business for the purpose of generating active business income.
12. Personal property such as residential real estate or personal vehicles will not be considered eligible as an Investment.
13. The following types of businesses are not eligible as Investments:
  - a) businesses operated primarily for the purpose of deriving passive income such as rent, interest, dividends or capital gains, including a business prohibited by subsection 87(6)(a) of the Regulations;
  - b) immigration-linked investment schemes, as that term is defined in subsection 87(9) of the Regulations;
  - c) businesses established or purchased by another Program applicant or nominee within the previous seven years from the date of this Agreement;
  - d) businesses that are considered ineligible by the Program; and
  - e) Businesses which include a share redemption or buy back option.
14. For the above noted 13. (d), following is the current list of the businesses considered ineligible by the Program.
  - a) home-based businesses;
  - b) property investment (purchase/construction/development of real estate);
  - c) project based or seasonal businesses;
  - d) all rental or leasing businesses including vehicle rental or leasing businesses;
  - e) pay-day lending, cheque cashing or money changing businesses;
  - f) businesses providing financial intermediation or money market products or services, including mortgage brokerages;
  - g) pass-through import-export businesses;
  - h) property management,
  - i) bed and breakfasts;
  - j) cash machine businesses;
  - k) lottery kiosks;

- l) taxi cab or limousine licenses;
- m) a hobby farm\*;
- n) business offering self-employed professional services such as representation, consulting, brokerage, accounting, moving, trade services etc.;
- o) self-employed truck drivers/ owner-operators/ single vehicle transport business;
- p) transport business without their own dispatching, loading and storage facility; and
- q) any type of business that by association would tend to bring the Program or Manitoba into disrepute

\* If your intention is to establish a primary production farming operation, please apply under Farm Investor Pathway.

The final interpretation and explanation of terms in the BPA resides with the Program.