



Forms of Business Organization

Doing Business In Canada

Foreign companies may establish business operations in Canada using any one of the business forms described below.

Branch Plant Operation

A foreign corporation can register as an extra-provincial corporation in the province in which it conducts business by obtaining an extra-provincial license. As no new legal entity needs to be created, start-up costs are minimal. Additionally, losses commonly incurred in start-up branch operations can be written off against profits from the foreign corporation's other operations.

There are disadvantages in establishing a branch plant operation including: transfer pricing risks; financial disclosure obligations; legal compliance issues; ineligibility for government funding; the inability to "silo" risks and liabilities relating to the Canadian business from the parent company; the need to post security for costs in a Canadian court proceeding; and the difficulties inherent in computing income for Canadian tax purposes.

Sole Proprietorship

Any person may carry on business in Canada under his or her own name or business style, subject to compliance with the federal *Immigration and Refugee Protection Act* and the registration of the business style in the province(s) in which the person proposes to conduct business.

Canadian Corporation with Share Capital

A corporation may be incorporated in Canada with share capital either federally or provincially. Depending on the

governing statute, a corporation with share capital may be subject to legislative provisions concerning: the residency of the corporation's directors; incorporation requirements; ongoing filing requirements; the establishment of a quorum for valid directors' meetings; matters for which a special resolution of the shareholders is necessary; and the circumstances in which a corporation may indemnify its directors and officers.

Advantages of Using a Corporation

A Canadian corporation is a separate legal (taxable) entity that enjoys perpetual existence (unless dissolved). The corporate form of business organization is very familiar in the Canadian marketplace, and preparation of its documentation is a relatively modest expense. There are no minimum capitalization requirements for a corporation. Working capital can be raised through the issuance of debt or shares, and transfer of control can be effected by the transfer of issued and outstanding shares. The foreign parent company of a corporation is generally shielded from the general liabilities of its Canadian subsidiary unless a lender requires the parent company to provide a guarantee.

Disadvantages of Using a Corporation

There are greater regulatory requirements for corporations than there are for other forms of business organization. Both the federal and provincial regimes have detailed rules relating to the preparation of annual financial statements. Corporations must also adhere to financial solvency tests. For example, whenever shares are redeemed or purchased, or dividends are paid, the corporation must ensure that it will still be able to meet its obligations as they become due and that the realizable value of its assets is not less than the sum of the corporation's liabilities and



the stated capital (i.e., the aggregate amount paid for all shares as they were allotted and issued) of each class of its issued shares.

Partnerships

A partnership is a contractual relationship with legal attributes that are legislated provincially (not federally) — for example, for partnerships carrying on business in Ontario, the Ontario *Partnerships Act*. In Ontario there are three types of partnerships: general partnerships, limited liability partnerships, and limited partnerships.

General Partnerships and Limited Liability Partnerships

A general partnership is a form of business organization where two or more parties carry on business with a common view to making a profit. Under Canadian law, a partnership is not a distinct legal (taxable) entity from its constituent partners. General partners have fiduciary obligations to each other and each partner is considered the agent of the other partners.

Disadvantages in establishing a general partnership include: the expense in preparing a general partnership agreement, given its highly detailed nature; the difficulty in attracting suitable partners and raising necessary capital; the joint and several liability of each partner for all partnership obligations; the limited existence of such partnerships; the need for each partner to qualify as carrying on business in the province(s) in which the partnership carries on business; and the potential complexity in transferring partnership interests.

Whether or not a partnership exists is a question of fact and cannot be determined solely by the language of any agreement between the parties that either denies or asserts a partnership.

The limited liability partnership is a vehicle through which lawyers, chartered professional accountants, and certain other professionals may carry out their practice and limit their liability for debts and obligations of the partnership

Limited Partnerships

A limited partnership is a separate statutory form of partnership created by entering into a limited partnership agreement and filing a form prescribed by the applicable

provincial *Limited Partnerships Act*. A limited partnership has two classes of partners: general partners and limited partners. A limited partner has limited liability for the obligations of the partnership, while the general partners' liability for such obligations are joint and several, and unlimited. Limited partners are prohibited from participating in the management of the business, and if they do so they risk losing their limited liability protection.

Joint Venture with Others

A joint venture is a form of business organization based on a contractual relationship. Each of the parties to the joint venture contributes the use of property owned by it for a single, identified, common purpose. There is no statutory basis for this form of business organization. Under a joint venture arrangement, the parties maintain a significant degree of independence in conducting their other business activities.

Business and Income Trusts

Certain publicly listed trusts and partnerships (collectively referred to as specific investment flow-through vehicles or “SIFTs”) are taxed in the same manner as corporations in respect of taxable distributions, and unitholders are treated as having received dividends of such amounts.

Distributorship, Licensing and Franchise Arrangements

A foreign corporation or investor could enter the Canadian market indirectly through the use of independent sales agent, distribution, licensing or franchising arrangements. Foreign franchisors are generally advised to register under the extra-provincial corporations act(s) of the province(s) in which they intend to operate.

Several factors may influence whether a foreign corporation chooses one of these arrangements including: intellectual property registration requirements; the possible application of a withholding tax; anti-trust provisions under the federal *Competition Act*; provincial regulation of the franchise relationship; the common law tests applied to establish a distribution arrangement; and the need to post security for costs in a court proceeding.



Financial Reporting Standards

Each Canadian publicly accountable enterprise (“**PAE**”) must (and any other enterprise who wishes to opt-in, may) prepare their financial statements according to International Financial Reporting Standards (“**IFRS**”) rather than Canadian generally accepted accounting principles (“**GAAP**”). PAEs which are cross-listed on the Toronto Stock Exchange and the US Securities and Exchange Commission (“**SEC**”) may prepare their financial statements in accordance with US GAAP. All other Canadian business enterprises may prepare their financial statements using Canadian generally accepted accounting principles for small and medium enterprises (“**SME GAAP**”). All Canadian not-for-profit entities may use Canadian GAAP in preparing their financial statements.



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LAWYERS

Cassels Brock & Blackwell LLP
Toronto | Vancouver | Calgary
casselsbrock.com

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