



Canada: Basic Business Law Overview

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Corporation

Business Corporations Acts

Both the federal and provincial governments have enacted legislation providing for the incorporation and regulation of business corporations (known as “companies” under some statutes). A business corporation incorporated under provincial law may carry on business as of right in the province of its incorporation and also has the capacity to carry on business beyond the limits of that province. A federal business corporation is subject to provincial laws of general application, although it has the basic right to carry on business in any province. Most provinces require corporations incorporated in other jurisdictions to register or be licensed before doing business in that jurisdiction and to file initial and annual returns and notices reporting certain basic corporate changes.

Differences Among The Acts

Although federal and provincial business corporation statutes are quite similar in most respects, there are some differences that can affect the decision of whether to incorporate federally or provincially. Examples include ease and timeliness of incorporation, flexibility in carrying out corporate proceedings, licensing requirements, fees and taxes and the extent of continuous disclosure requirements. One consideration often relevant to non-resident investors is the requirement, found in many corporation statutes, of having a minimum number or percentage of resident Canadian directors. It is usually easier for a non-resident to incorporate under a statute with a minimal Canadian residency requirement or no requirement at all. Otherwise, everything else being equal, non-residents are often advised to incorporate federally rather than provincially on the theory that a federal corporation will be more readily recognized and accepted – as a practical rather than a legal matter – outside Canada.

Sector Specific Legislation

Certain types of business corporations (for example, banks, trust and loan companies, credit unions or associations, and insurance companies) are governed by sector-specific legislation rather than the general federal or provincial business corporations statutes.

Unlimited Companies

An interesting hybrid of corporation and partnership is the “unlimited company” (ULC), unique to Nova Scotia, British Columbia and Alberta law in respect of which, among other things, the “members” or shareholders have unlimited liability in certain

circumstances. ULCs gained popularity in the mid-1990s, as a ULC that is a subsidiary of a U.S. parent was able to produce certain tax advantages, as a tax flow-through vehicle, for its parent. Effective January 1, 2010, the Fifth Protocol to the US-Canada Income Tax Treaty limited many of the tax advantages enjoyed through ULCs.

Partnerships

Partnership law in Canada is a matter of provincial jurisdiction. While a partnership is generally formed under the laws of a particular province, partnerships carrying on business in more than one province will be required to comply with the laws of, and may be required to register in, each such province. In the absence of an agreement to the contrary, the rights and obligations of partners are those found in the governing provincial legislation.

Canadian jurisdictions generally recognize two forms of partnership: *general* and *limited*. General partnerships have most of the characteristics of sole proprietorships, except that they include more than one person. Like sole proprietorships, general partnerships can be attractive by virtue of their simplicity and informality, but they also share the characteristic of unlimited liability, which in the case of a general partnership attaches jointly and severally to each partner. The only filing normally required with respect to a general partnership is a registration of the business name where the partners are not using their own names.

Limited partnerships are creatures of statute and are formed by the filing of a declaration of partnership under the relevant partnership statute. Limited partnerships alleviate liability concerns to some extent by allowing the creation, within a partnership arrangement, of limited partners whose liability is limited to their respective contributions to the partnership. The price of this, however, is a prohibition on participation by a limited partner in the “control” of the business of the partnership.

The limited partnership (LP) is distinct from the “limited liability partnership” (LLP), a special form of partnership recognized in most Canadian jurisdictions. The LLP form is designed principally for law firms and other professional services firms.

Joint Ventures

A joint venture may have tax advantages as an alternative to partnership. Because Canadian law does not recognize such an arrangement as a distinct form of business association, a joint venture must take the form of a recognized business organization such as a corporation or partnership, or be carried out through a contractual relationship. In particular, because there is no specific joint venture legislation, parties entering into a joint venture who do not wish to form a partnership must make it clear that they do not intend to be associated in partnership.

Sole Proprietorships

Although the sole proprietorship is free from most government regulations that apply to business corporations, certain registration requirements must be complied with in the jurisdiction in which the business is to be carried on. For example, a sole proprietor who uses as his or her business style a name or designation other than his or her own is required to register the name under applicable provincial legislation.

Franchises and Licensing Arrangements

Franchising and licensing arrangements are generally governed by the applicable law of contracts, although Alberta, Ontario and Prince Edward Island have specific franchising statutes.

Federally, the *Competition Act* addresses certain practices with particular relevance to franchises and licence arrangements. In addition to a prohibition on pyramid selling, the *Competition Act* subjects certain trade practices to review, including pricing practices, refusals to deal, exclusive dealing, tied selling and market restrictions. Also relevant in some cases are the *Trade-marks Act* and the *Patent Act*.

Alberta, Ontario, Prince Edward Island, New Brunswick and Manitoba have enacted specific disclosure legislation with respect to franchising. These acts mandate fair dealing in the franchise relationship and provide special remedies to franchisees in the event of abusive conduct by a franchisor. Other provinces indirectly regulate certain aspects of franchising through their consumer protection and securities laws, as well as through laws relating to fair trade practices, pyramid selling, referral selling and advertising.

About the Firm

When Heward Stikeman and Fraser Elliott first opened the firm's doors in 1952, they were united in their pledge to do things differently to help clients meet their business objectives.

In fact, they made it their mission to deliver only the highest quality counsel as well as the most efficient and innovative services in order to steadily advance client goals.

Stikeman Elliott's leadership, prominence and recognition have continued to grow both in Canada and around the globe. However, we have remained true to our core values.

These values are what guide us every day and they include:

- Partnering with clients – mutual goals ensure mutual success.
- Finding original solutions where others can't – but they must also be grounded in business realities.
- Providing clients with a deep bench of legal expertise – for clear, proactive counsel.
- Remaining passionate about what we do – we relish the process and the performance that results from teamwork.

A commitment to the pursuit of excellence – today, tomorrow and in the decades to come – is what distinguishes Stikeman Elliott when it comes to forging a workable path through complex issues. Our duty and dedication never waver.

This is what makes Stikeman Elliott the firm the world comes to when it counts the most.

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