GUIDE TO GOING GLOBAL

CORPORATE

Canada

DLA PIPER

INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Corporate.*

GUIDE TO GOING GLOBAL SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Guide to Going Global* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Guide to Going Global – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Guide to Going Global – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

CANADA

Last modified 02 August 2023

FORM OF ENTITY

Corporate subsidiary (corporation form rather than flow-through form)

Separate and distinct legal entity. May incorporate federally (under the Canada Business Corporations Act) or provincially/territorially – for example, under the Business Corporations Act (Ontario). It is managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the corporation. Directors are elected by the shareholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors.

Note: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or not as likely to be relevant to the reader.

ENTITY SET UP

Corporate subsidiary

Corporation form (limited liability corporation)

- Incorporate under either federal or provincial/territorial law
- Most foreign businesses choose this form rather than branch office
- Certain industries are subject to specific legislation and must incorporate under these laws (eg, banking or insurance companies)
- For corporations under federal law, 25 percent of directors must be residents of Canada. If a corporation has less than 4 directors, at least 1 director must be a resident Canadian. Certain corporations in prescribed activities require a majority of resident Canadian directors

- A number of provinces/territories have similar residency requirements for directors; some have no residency requirements

- Cannot consolidate income and loss with operations in other corporate entities for Canadian tax purposes

Flow-through form

- Unlimited liability companies (ULCs) may be created by incorporating in the provinces of Nova Scotia, British Columbia, Alberta or Prince Edward Island

- For Canadian income tax purposes, ULCs are treated as regular corporations, subject to Canadian tax on their worldwide income; however, for US tax purposes, ULCs may be treated either as partnerships or "check-the-box" flow-through entities, possibly offering cross-border opportunities

Branch (permanent establishment)

- A corporation or a foreign (ie, non-Canadian) corporation must register in each province or territory where it plans to own real property located in such province or territory or if its intended business falls under the definition of "doing business."

- Must have a Canadian place of business or address where corporate records are kept. Books and records must also be available for audit by the Canadian Revenue Agency

- Canadian branch operations of foreign corporations are subject to Canadian federal and provincial /territorial tax on income and gains sourced in Canada (primarily income from a business carried on in Canada). The branch is required to calculate income or loss from the business carried on in Canada and may deduct expenses only in respect of that business carried on in Canada

- A 25 percent branch tax (subject to reduction under an applicable tax treaty) levied on after-tax Canadian earnings from business carried on in Canada less amounts that are re-invested in Canadian business (which is intended to mirror the 25 percent withholding tax that would be payable on taxable dividends from a Canadian subsidiary corporation). Financial and tax accounting and reporting obligations may be more complex as the branch is not a legal entity. The rate of branch tax may be reduced under certain tax treaties between Canada and the country of residence of the foreign corporation

- The parent company remains liable for debts and obligations of the branch

- It is common to create a wholly-owned subsidiary in home jurisdiction to consolidate losses from the Canadian branch operations but avoid direct liability

Note 1: The mechanics and operation of corporations are governed by the federal or provincial/territorial laws of incorporation.

Note 2: The shareholders of a federal corporation or the shareholders of most provincial/territorial corporations may enter into a unanimous shareholder agreement which provides for, among other matters, the regulation of the rights and liabilities of the shareholders, the regulation of the election of directors and the management of the business of the corporation including the right to restrict in whole or in part the powers of the directors.

MINIMUM CAPITAL REQUIREMENT

Corporate subsidiary (Corporation form rather than flow-through form)

No minimum capital requirement – however, there are thin-capitalization rules that could deny deductions for interest payments to specified non-residents.

LEGAL LIABILITY

Corporate subsidiary (Corporation form rather than flow-through form)

Shareholders of a corporation are generally not liable for the debts or obligations of the corporation.

TAX PRESENCE

Corporate subsidiary (Corporation form rather than flow-through form)

Canadian resident corporations are subject to federal and provincial/territorial corporate tax on worldwide income. Corporations are not subject to "branch profits tax" but are required to pay withholding tax on dividends and certain other amounts paid or distributed to non-Canadian resident shareholders, the rate of which varies depending upon the existence of a tax treaty between Canada and the shareholder's country of residence. Share capital, however, can generally be repatriated free of any Canadian withholding tax (without first distributing E&P).

INCORPORATION PROCESS

Corporate subsidiary (Corporation form rather than flow-through form)

Companies that are incorporated federally must file Articles of Incorporation with Innovation, Science and Economic Development Canada (Corporations Canada). Companies that are incorporated under a Canadian province or territory must file Articles of Incorporation with the equivalent provincial or territorial government authority.

BUSINESS RECOGNITION

Corporate subsidiary (Corporation form rather than flow-through form)

Well regarded and widely used.

SHAREHOLDER MEETING REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors, unless a unanimous shareholder agreement is in effect that specifies how directors are to be appointed. A resolution signed by all shareholders is valid in lieu of a meeting.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Annual meeting of the directors is required, unless dispensed with by the provisions of a unanimous shareholder agreement. A resolution signed by all directors is valid in lieu of a meeting.

ANNUAL COMPANY TAX RETURNS

Corporate subsidiary (Corporation form rather than flow-through form)

Must annually file tax returns with federal and (potentially) provincial/territorial tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Most provinces and territories (and federal corporations) require initial registration, as well as annual filings in the province or territory where the corporation is incorporated or registered. A change of directors of a corporation also requires the corporation to update the public record by filing of a notice of a change of directors (and officers in some provinces), usually within 15 days of when the change takes place.

BUSINESS EXPANSION

Corporate subsidiary (Corporation form rather than flow-through form)

No need to change as business expands.

EXIT STRATEGY

Corporate subsidiary (Corporation form rather than flow-through form)

File dissolution documents with the appropriate federal, provincial or territorial government authority, as the case may be, and final tax returns with federal and provincial/territorial tax authorities.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Subject to any unanimous shareholders agreement, the directors and shareholders have a statutory obligation to hold an annual meeting, or pass resolutions in lieu of a meeting, in connection with the annual requirement maintenance which is a standard requirement for each province and territory (the Annual Requirement). The Annual Requirement includes (i) the directors to approve the financial statements of the preceding financial year end, (ii) the shareholders to elect the board of directors for the ensuing year and (iii) the directors to appoint the officers for the ensuing year.

For a meeting of the shareholders, the notice of the time and place of the meeting shall be sent, in the case of an offering corporation, not less than 21 days and, in the case of any other corporation, not less than 10 days. In either case, the notice should not be sent more than 50 days before the meeting. The notice must be sent to each shareholder entitled to vote at the meeting, to each director and to the corporation's auditor. Unless the bylaws otherwise provided, voting at a meeting of shareholders shall be by show of hands, except where a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

For a meeting of the directors, unless stated otherwise in the bylaws, the notice of the time and place shall be given to every director of the corporation by sending the notice 10 days or more before the date of the meeting to each director’s latest address as shown on the records of the corporation.

DIRECTOR / OFFICER REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Directors are required; officers are almost always appointed, but not generally legally required. Under some corporate statutes, at least 25 percent of directors must be resident Canadians.

For more information on directors’ duties, see our Global Guide to Directors’ Duties.

LOCAL CORPORATE SECRETARY REQUIREMENT

Corporate subsidiary (Corporation form rather than flow-through form)

Not generally required.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Corporate subsidiary (Corporation form rather than flow-through form)

Most provinces and territories require a corporation registered in their jurisdiction to have an agent for service or power of attorney where the entity does not otherwise have a place of business in the province or territory. An agent for service or power of attorney is generally an individual who is 18 years or older and resides in the province or territory of registration.

LOCAL OFFICE LEASE REQUIREMENT

Corporate subsidiary (Corporation form rather than flow-through form)

None required for incorporation.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Some provinces and territories require a corporation registered in their jurisdiction to maintain a registered office address in that jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Corporate subsidiary (Corporation form rather than flow-through form)

Sufficient for incorporation.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Corporate subsidiary (Corporation form rather than flow-through form)

Allowed for incorporation, though not common.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Corporate subsidiary (Corporation form rather than flow-through form)

Allowed for incorporation, though not common.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Corporate subsidiary (Corporation form rather than flow-through form)

Only for directors under some corporate statutes.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Corporate subsidiary (Corporation form rather than flow-through form)

Not applicable.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Corporate subsidiary (Corporation form rather than flow-through form)

Directors are elected by the shareholders (or may be appointed under a unanimous shareholder agreement) and are the highest authority in the management of the corporation and govern the organization by establishing broad policies and objectives. In contrast, officers are appointed by the directors to oversee day-to-day operations of the corporation. Shareholders may adopt a unanimous shareholders agreement to restrict powers of directors.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Corporate subsidiary (Corporation form rather than flow-through form)

Identity of directors is publicly disclosed; certain jurisdictions require disclosure of officers; identity of shareholders of private, non-listed companies is not publicly disclosed in most jurisdictions. In Alberta, the voting shareholders must be disclosed to the Alberta corporate registrar and on the annual returns filed by the corporation each year. In Quebec, the three shareholders holding most voting shares must be disclosed to the Quebec corporate registrar and will be disclosed on the public corporate register.

A private company incorporated under federal, British Columbia and Ontario corporate law must maintain a register of individuals with significant control over the company. The criteria for determining who is a significant individual vary by jurisdiction and are nuanced, but a common theme is evaluating ownership percentage (25 percent or more, either by number or outstanding shares measured by fair market value, depending on jurisdiction) and voting rights (25 percent or more). The transparency registers are not publicly disclosed but must be maintained in the company’s record books and are accessible by certain designated individuals. Effective March 2023, Quebec will impose similar transparency requirements, but the transparency register information will be publicly accessible.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Corporate subsidiary (Corporation form rather than flow-through form)

There must be a minimum of 1 shareholder. There is no maximum number fordirectors, generally the minimum number is 1 for non-public companies, while there is no maximum number. There may be a required minimum number of directors (ie, more than one, typically 3) for public companies federally and in many provinces and territories.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Corporate subsidiary (Corporation form rather than flow-through form)

1 shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Corporate subsidiary (Corporation form rather than flow-through form)

Removal of directors is generally allowed by a vote of all shareholdersremoval of officers is generally allowed by a vote of directors.

REQUIRED AND OPTIONAL OFFICERS

Corporate subsidiary (Corporation form rather than flow-through form)

Typically, a President and Secretary is appointed, which may be the same individual; any other officer is allowed but not required.

BOARD MEETING REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Typically at least 1 annual director meeting is required, which may be completed by written resolutions signed by all directors.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Corporate subsidiary (Corporation form rather than flow-through form)

For a shareholder meeting, the quorum set out in the corporate bylaws, articles of incorporation or unanimous shareholder agreement must be present during the shareholder meeting. For directors, typically a majority of directors must be present (including 25 percent resident Canadian directors in some jurisdictions) during a board meeting; alternatively, all of the directors may execute written resolutions. In Ontario, where a corporation has fewer than three directors, all directors must be present to constitute quorum.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Corporate subsidiary (Corporation form rather than flow-through form)

Not necessary in order to incorporate. When necessary, a bank account can be opened anywhere.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

Corporate subsidiary (Corporation form rather than flow-through form)

Auditor

An audit is not generally required for private, non-listed companies provided shareholder approval is obtained.

Books

Generally corporate books, such as the minute book, must be kept in Canada, typically with the company or with the company's attorneys. A corporation may keep all or any of its records at a place other than the registered office of the corporation if the records are available for inspection during regular office hours at the registered office by means of a computer terminal or other electronic technology.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Corporate subsidiary (Corporation form rather than flow-through form)

For federal companies and most provincial and territorial companies, shares are issued without nominal or par value.

INCREASING OF CAPITALIZATION IF NEEDED

Corporate subsidiary (Corporation form rather than flow-through form)

An increase in authorized capital may be effectuated by amending the articles of incorporation, which requires authorization, generally, from 2/3 of the shareholders at a meeting and all the shareholders if by special resolution in writing.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Corporate subsidiary (Corporation form rather than flow-through form)

Funds can be repatriated abroad from Canada via dividends, return of capital or redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Corporate subsidiary (Corporation form rather than flow-through form)

Shares can generally be transferred between shareholders via a written agreement, with directors' consent typically needed for private companies. If there is a unanimous shareholder agreement in place for a private company, typically it places restrictions on the transferability of shares of that private company and may include other provisions such as "piggyback" rights, rights of first refusal and other similar steps that must be taken before a transfer of shares can take place.

OBTAINING A NAME AND NAMING REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Proposed name can be reserved. Certain name requirements apply. It is possible to incorporate with a generic "numbered company" name. In Quebec, a corporation must have a French name and be compliant with the Charter of the French Language. The Charter of the French Language is a significant piece of legislation with wide-reaching consequences for businesses operating in Quebec.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Corporate subsidiary (Corporation form rather than flow-through form)

Typically required by law societies in various Canadian provinces and territories.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Corporate subsidiary (Corporation form rather than flow-through form)

Typically, a corporation’s shareholders must approve, by special resolution, any amendments to the articles of incorporation. Some changes to the articles give rise to a mandatory vote of shareholders or even a separate class vote. Some changes to the articles also give rise to an appraisal right.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Corporate subsidiary (Corporation form rather than flow-through form)

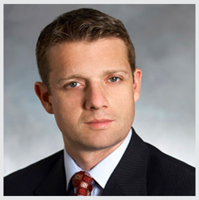
Typically, the only license required would be an extra-provincial or extra-territorial license (registration) in each province or territory in which the corporation carries on business. Licenses might be required in certain specific regulated industries or by municipalities where the corporation carries on business.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Corporate subsidiary (Corporation form rather than flow-through form)

It is not typical to be able to purchase a shelf company.

KEY CONTACTS



Ted Maduri
Partner
DLA Piper (Canada) LLP
ted.maduri@dlapiper.com
T: +1 416 941 5412
View bio

Rownock Zamani
Associate
DLA Piper (Canada) LLP
rownock.zamani@dlapiper.com
T: +1 416 941 5408
View bio

Disclaimer