INTRODUCTION


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 51 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.
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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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CANADA

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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)). 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% of directors must be residents of Canada. If a corporation has less than four directors, at least one director must be a resident Canadian. Certain corporations in prescribed activities require a majority of resident Canadian directors
• Provinces/territories have different 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 in the provinces of Nova Scotia, British Columbia and Alberta

• 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 are treated either as partnerships or "check the box" flow-through entities, possibly offering cross-border opportunities

Branch (permanent establishment)

• Parent corporation must register and obtain an extra-provincial or extra-territorial license from each province/territory where it plans to conduct business

• Must have a Canadian place of business where corporate records are kept

• 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 will be 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% branch tax levied on after-tax Canadian earnings carried on in Canada less amounts that are reinvested in Canadian business (which is intended to mirror the 25% 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: The mechanics and operation of corporations are governed by the federal or provincial/territorial laws of incorporation.

MINIMUM CAPITAL REQUIREMENT

Corporate subsidiary (Corporation form rather than flow-through form)
No minimum capital requirement (but, 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 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. This “dual layer of tax,” ie first at the corporate level and then again upon distribution at the shareholder level, is sometimes referred to as double taxation. 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. Companies that are incorporated under a Canadian province or territory must file articles of incorporation with the relevant 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. 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. 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 provincial/territorial tax authorities.

**BUSINESS REGISTRATION FILING REQUIREMENTS**

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

Most provinces and territories require initial registration, as well as annual filings to the extent the corporation carries on business in the province or territory.

**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.

**ANNUAL CORPORATE MAINTENANCE REQUIREMENTS**

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

Annual director and shareholder meeting, or resolution signed by all directors or shareholders, as the case may be.

**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% of directors must be resident Canadians.
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 their 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.

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 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.

**MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS**

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

There must be a minimum of one shareholder. There is no maximum number. For directors, generally the minimum number is one for non-public companies, while there is no maximum number. There may be a required minimum number of directors (ie, more than one) for public companies in some provinces and territories.
MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

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

One 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 shareholders; removal 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; any other officer is allowed, but not required.

BOARD MEETING REQUIREMENTS

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

Typically at least one annual director meeting is required, which can 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 by-law must be present during the shareholder meeting. For directors, typically a majority of directors must be present (including 25% resident Canadian directors in some jurisdictions) during a board meeting; alternatively, all of the directors may execute written resolutions.

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 and most provincial and territorial statutes, shares do not have any 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 two-thirds of the shareholders at a meeting and all the shareholders if by 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 company consent typically needed for private companies.

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.

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)

Generally, two-thirds of shareholders must approve any amendment to the articles of incorporation at a meeting and all shareholders must approve any amendment if by resolution in writing.

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 imposed by each province or territory in which the corporation carries on business. Licenses might be required in certain specific regulated industries.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

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

It is possible, but not typical, to purchase a shelf company.
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