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COMPANY FORMATION IN CANADA

Canada is a common law jurisdiction, with the exception of Quebec which is a civil code jurisdiction. Common business structures in Canada are Partnerships and Corporations, with Corporations being the most popular form. In Canada, a corporation is a legal entity distinct from its shareholders. It can own property, carry on business, borrow, lend, sue or be sued. Generally, shareholders are not personally responsible for the liabilities of the corporation. Corporations offer limited liability, ease of transfer of assets and perpetual existence.

A corporation may be created under either federal or provincial law. The decision as to the jurisdiction of incorporation will depend on where the company plans to transact its business. In addition, particular local nuances in the provincial statutes may result in a foreign investor favoring certain jurisdictions.

In Canada, a corporation is composed of officers, directors and shareholders. The officers are responsible for the daily management of the corporation's affairs. The directors appoint the officers and the shareholders elect the directors. The board of directors is charged with oversight over the officers and management. There are certain liabilities attached to the office of director but insurance may be purchased to shield directors from such liability.

The federal statute requires that at least 25% of directors (or at least 1 director where there are fewer than 4) be resident in Canada. Provincial statues have different residency requirements, some do not require any directors to be resident in Canada.

In Canada, income tax is levied by both the federal and provincial governments, and a variety of other taxes, including federal and provincial value added and sales taxes, are also imposed. A corporation incorporated outside Canada can be resident in Canada if its central management and control is located in Canada and there is no treaty provision deeming it to be resident where organized.

Canadian resident corporations are taxable on their worldwide income from every source. Income is classified as business income if a certain degree of commercial activity exists. Property income is derived from more passive sources, and may include interest, dividends, rents and royalties. There may be different tax rates on each source of income.

A Canadian-controlled private corporation (CCPC) receives preferential tax treatment, including reduced tax rates on a specified amount of its active business income. Special tax planning is required if a non-resident wishes to carry on business in Canada through a CCPC.

In addition, the Income Tax Act of Canada imposes withholding tax on the gross amount of certain payments made by a Canadian resident to a non-resident, including management fees, related party interest, dividends, rents and royalties. These rates may be reduced or eliminated pursuant to an applicable Tax Treaty.

The books and records of the corporation must be maintained at a Canadian place of business, or otherwise made available in the event of an audit by the Canada Revenue Agency.