

Expanding Your Business to CANADA?

You Need to See the Forest and the Trees

The Canadian economy is growing briskly, particularly relative to the growth the U.S. is experiencing, and many U.S. companies looking for new opportunities are eyeing their northern neighbor.

Before setting up shop in Canada, there are a number of “big picture” issues that U.S. companies must consider:

- Do we incorporate a separate subsidiary in Canada?
- What are the corporate income tax rates in Canada?
- Are there any laws prohibiting us from starting a business in Canada?

Additionally, there are a number of secondary – albeit important – matters that companies should address before establishing operations in Canada. While focusing on the big picture may get the doors open, starting and maintaining a successful and profitable business in Canada requires a comprehensive understanding of important laws and regulations.

INCORPORATING JURISDICTION

Each of Canada’s ten provinces and three territories has the power to incorporate companies, similar to the right to incorporate in each of the 50 U.S. states. Unlike the U.S., Canada’s federal government also has this power. While provincial corporations are essentially on a par with federal corporations, there may be some administrative, legal and perceptual advantages to incorporating federally, especially for a company that will have locations in several provinces.

NON-RESIDENT DIRECTORS

Most Canadian jurisdictions require at least one Canadian resident on the board of directors of their corporations. The foreign company will have to find a Canadian resident prepared to take on that responsibility. Steps can be taken by the U.S. parent to assume many of the powers and liabilities of the directors, including the Canadian director. This makes it easier to recruit resident Canadian directors and for the U.S. parent to function with them. The most common step is for the U.S. parent, as the sole shareholder of the Canadian subsidiary, to enter into a “unanimous shareholder agreement,” which restricts the powers of the directors of the Canadian subsidiary to manage the business and affairs of the Canadian corporation. Under most Canadian corporation statutes, this restriction has the effect of transferring the

directors’ liabilities (including those of the resident Canadian director) relating to the exercise of the restricted powers to the parent corporation.

BUSINESS NUMBERS

Before conducting business, a Canadian company must apply to the federal government for a “Business Number.” This number, similar to a U.S. federal tax identification number, is used to identify the company for all federal taxes and remittances, including income tax, federal sales tax, employee tax deductions, and unemployment insurance premiums.

EMPLOYMENT LAWS

Foreign parent companies, especially U.S. companies, must understand and comply with Canadian employment laws, in particular those regarding termination of employment and applicable human rights legislation.

IMMIGRATION

If the U.S. parent intends to send any of its employees to perform services in Canada on behalf of the Canadian subsidiary or otherwise, it is important to ensure that they comply with Canadian immigration rules so they can enter Canada without being delayed or, worse yet, turned back at the border.

WORKERS’ COMPENSATION

All Canadian provinces have workers’ compensation boards. In Ontario, for example, it is mandatory that certain categories of companies insure their employees in order to carry on business.

MISCELLANEOUS AGREEMENTS

The foreign parent company should examine any contracts, rights or licenses it holds from other parties to ensure that they extend to Canada. These include franchise agreements or reseller agreements. Also, where the parent company itself holds intellectual property rights, rights should be granted by the parent to the Canadian subsidiary and applicable governmental registrations made. This is as much a matter of protecting the intellectual property and contractual rights of the U.S. parent as it is for the benefit of the subsidiary.

While this article touches upon some of the issues faced by foreign companies conducting business in Canada, it merely scratches the surface of issues that must be considered. What to do? If you are interested in doing business in Canada, please contact us for advice.



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