

# Key Facts Companies

Companies in Canada are established either under the federal *Canada Business Companies Act (CBCA)* or provincial/territorial legislation. The *British Columbia Business Corporations Act (BCBCA)* is the legislation governing companies in the province of British Columbia and is widely recognized for its flexibility as compared to its federal and provincial counterparts.

## Federal Companies

CBCA companies are incorporated through Corporations Canada, based in Ottawa, Canada. The advantages of a CBCA company include the following:

- The company can carry on business anywhere in Canada though it will first need to register in such province or territory
- The company can locate its head office, retain its corporate records and hold its board and shareholder meetings in any province
- Throughout Canada, except in Quebec, the company name can be used without the need to seek approval for the use of the name at a provincial level

CBCA companies are required to collect and maintain a registry of Individuals with Significant Control (ISC). A natural person can be determined to meet this threshold by holding 25% or a greater number of voting shares or shares based on fair market value, or has influence over the corporation. This ISC register is kept at the company's place of records and is not publicly available. However, the company's shareholders and government authorities can request a copy of the ISC register. This regime mirrors some of the ultimate beneficial ownership registries found in other non-Canadian jurisdictions.

## Provincial/Territorial Companies

Each of Canada's ten provinces and three territories has its own corporate legislation.

Where a business wishes to operate across Canada, there is no major advantage to incorporating federally versus provincially, because a company formed in any Canadian province or territory can conduct business in any other province or territory. To do so, it would just need to register extra-provincially in the other provinces/territories in which it plans to carry on business.

Certain industries and professionals, such as physicians or accountants, may be restricted to provincial incorporation.

A provincial company can apply for continuation and change to another jurisdiction, be it another province, or to the federal jurisdiction. It may even continue to a jurisdiction outside Canada so long as the new jurisdiction permits it.

## British Columbia Companies No Residency Requirements

- the BCBCA has no residency requirements for shareholders, directors or officers; in contrast there is a Canadian resident director requirement under the CBCA and the legislation of most other provinces

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- a foreign parent company may establish a British Columbia corporate subsidiary with a board comprised entirely of directors from the foreign parent's home jurisdiction

## Flexibility in Structuring Corporate Governance

The BCBCA affords a high degree of discretion in structuring the legal framework of a company. For example, the BCBCA includes the following provisions:

- The ability to create par value and non-par value shares
- The ability to have an unlimited number of authorized shares, and multiple classes and series of classes of shares
- The right to issue fractional shares
- The ability to set rights/restrictions among different classes of shares
- No restrictions on the company giving financial assistance
- The level of shareholder approval for passing a special resolution may be set anywhere from 2/3 to 3/4
- The ability to restrict and transfer the powers of directors to one or more other persons
- The ability to reduce capital, in certain circumstances, without the requirement of obtaining a court order
- The ability of a company to purchase and hold its own shares, and a subsidiary to purchase or otherwise acquire the shares of its parent
- Short-form horizontal and vertical amalgamations (merger) without court approval
- Amalgamations involving foreign corporations
- The ability to restore a dissolved company without court order

- Continuation of a company into another jurisdiction and ability for entities to be continued into the province pursuant to the BCBCA

## Unlimited Liability Companies (ULC)

British Columbia is one of only three provinces to allow for the establishment of ULCs.

A ULC is a company in which shareholders, and in some cases former shareholders, have unlimited joint and several liability for the obligations of the company arising from actions and proceedings against the ULC before or within one year of a ULC's dissolution. However, such liability arises only where the company is liquidated with insufficient assets to satisfy its obligations.

In 2010, amendments to the Canada-U.S. Income Tax Convention limited the utility of Canadian ULCs as flow-through entities for U.S. tax purposes. However, there continues to be planning opportunities for using such companies. Low incorporation and maintenance fees combined with no residency requirements for directors makes British Columbia the most attractive of the Canadian jurisdictions offering ULCs.

## Ability to Waive the Production and Publication of Financial Statements for Companies

The BCBCA allows shareholders to resolve unanimously to waive the production and publication of financial statements, provided that those shareholders holding non-voting shares (if any) also vote in favour of such resolution. A resolution waiving the preparation of financial statements can be passed even after the date on which the financial statements are required but cannot be given generally.

## Ability to Rectify Errors

The BCBCA includes rectification provisions which allow for, among other things, the correction

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of corporate mistakes and errors in the creation, allotment or issuance of shares. These rectification provisions provide for a cost-effective way to correct corporate deficiencies that often come to light at the time of a transaction or reorganization.

## Additional Administrative Highlights

The following are also noteworthy features of BCBCA companies:

- Companies with no active business may use a numerical name
- In 2020, BCBCA introduced a new beneficial ownership reporting regime. BCBCA private companies are now required to prepare and maintain a Transparency Register. This Register must include for each person who is a significant individual (generally, the holder of 25% or more of the issued shares or 25% or more of the voting rights) their name, birthdate, address, citizenship and tax jurisdiction, together with the description of how they are a significant individual and the date they became or ceased to be a significant individual. The Register must be maintained at the registered office of the company. Only the following persons may have access to the Register: directors of the company, police officers, tax authorities of British Columbia and Canada and certain specific regulators including the BC Securities Commission and the BC Financial Services Authority.
- An individual can hold all corporate offices and be the sole director (one director permitted)
- Meetings and records can be held anywhere in the world
- Shareholders and directors can act by written unanimous consent
- Only natural persons/individuals can serve as directors (no corporate directors permitted)
- Companies are required to file an annual report, notices of changes to directors and its registered/ records office
- Companies are required to make certain records available for inspection in the province
- A company's name must end in "Corporation", "Limited" or "Incorporated" or applicable abbreviations

## Taxation

A company will be resident in Canada for tax purposes if either it was incorporated in, or continued in, Canada, or its central management and control is situated in Canada.

Canadian companies making dividends, royalties or payments to foreign shareholders of interest (if the party is non-arm's length) are subject to general 25% withholding tax, unless reduced by an available tax treaty, of which Canada has more than 90 double taxation agreements in force, including treaties with the US, UK, Australia, HK, China and France.

## Income Tax

A company resident in Canada pays federal and provincial income tax on its worldwide income (income includes 50% of capital gains).

In 2022, the combined federal and British Columbia provincial rate was 27%. Some companies may be able to access exemptions and incentives, and lower their effective tax rate.

## Excise Tax

Excise tax must generally be charged and remitted by Canadian companies on business provided in Canada. Excise tax includes the Goods and Services Tax (GST) at a rate of 5% (a federally administered tax) and, if in British Columbia, the applicable Provincial Sales Tax (PST) of 7%.

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## How Trident Can Assist You in Canada

Our Vancouver office provides the following company establishment and maintenance services:

- Formation of British Columbia companies and federal companies through dedicated local counsel
- Providing professional intermediaries with appropriate statutory documents including relevant memoranda and articles of association/incorporation
- Attending to the extra-provincial registration of provincial companies or non-Canadian companies
- Maintaining a company in good standing in the relevant jurisdictions and acting as the registered and records office/registered agent
- Coordinating any related work in other jurisdictions within Canada

If you are interested in our service please contact us as follows:

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