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# DOING BUSINESS IN CANADA

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FORMS  
OF BUSINESS  
ORGANIZATION

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DOING BUSINESS IN CANADA

FORMS OF BUSINESS ORGANIZATION

Prepared by  
DEPARTMENT OF INDUSTRY  
OTTAWA

FORMS OF BUSINESS ORGANIZATION

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### FOREWORD

Information in this booklet deals with federal and provincial legislation affecting the form and commencement of business in this country. It is intended as a guide in this field of legislation and, as such, refers only to the basic principles involved.

Since the law contains a considerable amount of detail, it is suggested that an enquirer consult with relevant authorities or solicitors of his choice when seeking precise and detailed guidance. Specific information on federal requirements can be obtained from Companies and Corporations Branch, Department of the Secretary of State, Ottawa. Appropriate provincial authorities are listed in Appendix A to this booklet.

Other publications available from the complete series of "Doing Business in Canada" are:

The Canadian Environment

Canadian Customs Duties

Taxation - Income, Business, Property

Taxation - Sales, Excise, Commodities

Labour Legislation

Construction and Equipment Standards

Federal Incentives to Industry

Patents, Copyrights and Trade Marks

Tariff Preferences for Canadian Goods Abroad



### SOLE PROPRIETORSHIP

A business operated under sole proprietorship comes under provincial or territorial jurisdiction and most of the regulations are practically identical in nature and scope.

It may be generally stated that, in Canada, those who are capable of entering into a binding agreement are capable of engaging in any lawful business activity they choose. They are, of course, bound by general legal principles governing persons, property and obligations, but apart from that there are no other legal requirements with which they must comply when operating as a sole proprietorship.

Practically every business, large or small, is affected by some form of governmental licensing control. Sole proprietorships, partnerships and corporate or other forms of business organization are equally affected. Accordingly, most of the "control" requirements outlined in the section of Partnership can apply to a Sole Proprietorship.

Any individual who desires to use some distinctive name other than his own, or to add "and company" or similar words to his own, must file a declaration in the same place and within the same time, as indicated in the following section dealing with the registration or partnerships.

Generally speaking, declarations must state the full name and residence of the person involved, the name under which he intends to carry on business, must state that no other person is in partnership with him, and that he is 21 years of age. If under 21, the date of birth must be shown.

### PARTNERSHIP

Partnerships come under provincial or territorial jurisdiction and most of the regulations are practically identical in nature and scope.

A partnership is an arrangement whereby two or more persons combine some or all of their resources, skill or industry, in a business undertaking, with a view to profit to be shared by all members of the partnership. The relationship existing between members of an incorporated company or association is not a partnership in the legal meaning of the word.

The most common forms of partnership are: General Partnership and Limited Partnership. Each has the same powers, but differs in formation, registration (in some instances), and the individual liability of the members to one another and to the public. In some of the provinces, the Partnership Act makes no distinction between General and Limited Partnerships, but in practice, however, partnerships may fall under one or the other class.

There are no general restrictions with regard to firm name other than where the name does not comprise the actual names of the partners, it must not be the same as that of any other registered firm or so similar as to cause confusion. The use of "and Co." and "and Company" is permissible. The words "limited", "incorporated" or their abbreviations cannot be used. In Quebec, all documents issued in the course of business must bear the word "registered" or the abbreviation thereof.

It is customary for the partners to sign an agreement covering such matters as purpose of business, name of firm, duration of agreement, place of business, capital to be contributed by each partner, division of profits and losses, rights of management, and procedure for termination or re-organization of the partnership.

Apart from such agreement, dictated by self-interest and sound business practice, there is also a statutory requirement with which a partnership must comply. Provincial and territorial laws require that partnerships must be registered with the proper authorities.

There are no other general requirements with which a partnership must conform. However, consideration must be given to licences, privileges, or permits that may be required by any of the three levels of government in connection with the operation of particular type of business. Where a particular type of business is subject to regulatory or revenue - protecting control, only one licence is usually required, rather than one for each member of the partnership.

#### General Partnership

In a 'general partnership' the members are not only jointly liable (liable in equal shares) for the debts of the partnership, but in addition are jointly and severally liable (each member liable for

the full amount). Each partner can bind the partnership irrespective of the consent of the other partners.

Registration usually consists of filing a declaration signed by all partners, stating the name in full and residence of each, the firm name under which the business is to be carried on, and the time during which the partnership has existed. The declaration must also include an averment that the parties named are the acknowledged partners.

In Alberta, the declaration must be filed in the local Registry Office, within six months after formation.

In British Columbia, the declaration must be filed with the Registrar of the County Court within the territorial limits of which they intend to carry on business and such declaration should be filed within three months after formation of the firm.

In Manitoba the declaration must be filed with the office of the Provincial Secretary in Winnipeg.

In New Brunswick, the declaration must be filed with the Registry Office for the county in which the principal place of business is to be located. Registration must be effected before the commencement of business.

In Nova Scotia, the declaration must be filed with the Registrar of Joint Stock Companies, before beginning to carry on business.

In Ontario, the declaration must be filed with the Registrar of the Registry Division in which the business is to be carried on.

In Prince Edward Island, the declaration must be filed in the office of the Deputy Prothonotary for the county in which the principal place of business is to be located.

In Quebec, the declaration must be filed with the Prothonotary of the Superior Court in each district in which the partnership proposes to carry on business.

In Saskatchewan, the declaration must be filed with the office of the Provincial Secretary within two months after the formation of the partnership.

In the Yukon and the Northwest Territories, the declaration must be filed in the office of the registration clerk of the registration district in which the business is to be carried on.

Partnerships are liable to fine should they fail to register as prescribed. In Nova Scotia and Ontario, there is an additional penalty in that such partnerships are precluded from resorting to the Courts to enforce contracts made in the normal course of business.

### Limited Partnership

A limited partnership is composed of one or more general partners who conduct the business, and one or more persons who contribute an amount in actual cash called special or limited partners.

As opposed to the unqualified liability of a general partner, a limited partner is normally liable to the firm or its creditors only to the extent of the capital he has agreed to contribute, and no more. He may share in profits according to the partnership agreement, but must take no part in the management of the firm, or he becomes a general partner.

Parties to a limited partnership must sign a declaration stating, usually, the name under which the business is to be carried on; the general nature of the business; the names of all general and special partners, indicating which are the former and which the latter; the residence of each partner; the amount of capital each limited partner has contributed; the date when the partnership is to commence and terminate; and the principal place of business of the partnership. The declaration must be signed before a notary public.

The place of filing the declaration, in all provinces and the two Territories other than Alberta and Saskatchewan, is the same as for general partnerships. In Alberta, it must be filed with the Supreme Court for the judicial district in which the principal place of business is to be. In Saskatchewan and Manitoba the declaration must be filed in the office of the Provincial Secretary.



## CORPORATE FORMS OF BUSINESS ORGANIZATION

In Canada there are 11 general Companies Acts, one for incorporation under federal law and one each for incorporation under provincial law. There is also a Companies Ordinance in the Yukon Territory, which provides for the incorporation of a limited liability company established for the purpose of doing business within the territory. There is no Companies Ordinance in the Northwest Territories. Extra-territorial companies, including federally incorporated companies, wishing to carry on business, in the Northwest Territories should get in touch with the Commissioner of the Northwest Territories, Ottawa.

Most companies are incorporated under the authority of a general Companies Act. Only a few are created by Special Act of the Parliament of Canada or of the Legislature of any one of the provinces. The creating of a corporate entity by Special Act is restricted mainly to insurance companies, bank, loan companies, trust companies and railways. Since the creation of such companies is of limited interest only, the following will not touch upon the procedure and legislation under which they are organized.

It might be mentioned also that the creation of Corporations for social, literary, or similar purposes embraces a slightly different procedure in most instances. Since this type of organization is not usually formed for purposes of gain, it is considered that comment is not required.

A corporate form of business organization is the most complex and the most expensive to organize, but nevertheless the most satisfactory. The services of a lawyer are usually retained for the preparation of the necessary legal forms and for advice on a wealth of matters relating to formation, internal conduct, and external relations.

## PUBLIC AND PRIVATE COMPANIES

In most instances, either, a public or a private company may be created under federal or provincial law.

Public companies are those that may offer their shares or debentures for sale to the general public, place no limitation on the number of shareholders or restrict the transfer of their shares.

A private company is formed by (a) including in the Letters Patent, Memorandum or Articles of Association a restriction on the right to transfer shares, (b) subscribing to a provision whereby the number of the members is limited to 50, and (c) undertaking to abide by a regulation stating that the general public may not be invited to take up any shares or debentures of the company.

In general, private companies are governed by the same law as public companies, but because of their exclusive nature and because the general investing public is not concerned, the governing Companies Acts grant certain concessions which are not permitted to public companies. For example, loans are usually permitted to directors and shareholders to enable them to purchase the shares of a deceased or bankrupt shareholder; a private company is not normally required to file a prospectus; the requirements and penalties upon directors of public companies in the matter of personal speculation in the shares of the company do not usually apply to private companies.

Specific provision for the creation of a private company is not to be found in the Companies Act in Newfoundland, Nova Scotia, Prince Edward Island or Quebec. However, all of these provinces allow the passing of a company by-law having the same restrictive effect with regard to the transferability of shares. (There is no federal income tax advantage to be realized in operating as a private company.)

#### PROSPECTUS

In those cases where capital is desired from the public, the governing Companies Act, Companies Information Act or Securities Act usually requires that a prospectus be prepared and filed with the relevant authorities in the provinces concerned. In addition, federal companies must also file a prospectus with the authorities in Ottawa.

From a promoter's point of view, the prospectus is drawn up to describe the Company and its business in terms that make it as attractive as possible to the investing public. Such objectives sometimes conflict with the public interest. In order to ensure that material facts are fairly presented, federal and provincial authorities usually require that a prospectus contain very extensive information along certain

lines. A copy signed by every director, proposed director, or his agent, must usually be filed with the federal or provincial authorities concerned with the creation of companies.

It is usually stipulated that no application for securities may be accepted unless a copy of the prospectus was mailed or delivered to the would-be subscriber or applicant within a certain length of time prior to the acceptance of his subscription.

#### INCORPORATION UNDER FEDERAL LAW

The Companies Act is the general statute whereby companies are incorporated under federal law. The administering body is the Companies and Corporations Branch, Department of the Secretary of State, Ottawa.

Under the Act, the Secretary of State may, by letters patent, grant a charter to any number of persons, not less than three, thereby constituting them "a body corporate and politic" for any legal purpose other than the construction and working of railways within Canada or of telegraph or telephone lines within Canada, the business of an insurance, loan or trust company and the business of banking and the issue of paper money.

The following documents must be completed and forwarded to the Companies and Corporations Branch; application for incorporation; memorandum of agreement; affidavit of a subscribing witness; and statutory declaration of one of the applicants. A copy of the Companies Act may be purchased from the Queen's Printer, Ottawa.

#### Application for Incorporation

Applicants must be persons of the full age of 21 years. The application must contain: (a) the proposed company name; (b) the objects for which the company wishes to be incorporated; (c) the location in Canada of its head office; (d) details as to capital stock; (e) a statement as to whether the company is to be a private company, and if so, the restrictions to be placed on the transfer of shares; (f) the names in full, addresses, and callings of the applicants; and (g) the names of the applicants, not less than three, who are to be the first or provisional directors. The customary practice is to make contact with the Companies and

Corporations Branch prior to the submission of application.

The corporate name must convey the information that the firm has the protection of limited liability for its members. It is required that the word "Limited" or the abbreviation "Ltd.", be the last word of the company's name. Names liable to conflict with that of any other existing business organization, whether incorporated or not, are not acceptable. The Branch has a listing of all companies incorporated in Canada and in some instances, information regarding the first names under which partnerships carry on business. The Branch may also refuse to accept the choice on grounds that it is otherwise objectionable, such as phraseology that tends to be misleading with regard to the nature of the business.

(Canada), may be included in the corporation's name, when the entity is a subsidiary of a concern of an identical name organized under the laws of a foreign country, or of a province. The use of (Canada) is not permitted under other circumstances.

"Objects" clauses are generally drafted in the widest possible terms, with the principal activity of the company being clearly indicated. In many instances, the Department will accept such phraseology as "to manufacture, buy, sell and deal in goods, wares and merchandise". The objects must not be for any illegal purpose nor for a purpose specifically excluded by the general Act. A company cannot be incorporated to practise such professions as law, medicine, accountancy, engineering, architecture, etc.

A federal company must have its head office in Canada. The company's books, recording the charter, by-laws, shareholders, and directors, must be kept, at such location or, in certain circumstances, at the office of its transfer agent. Other offices can be established elsewhere, of course.

In order to issue shares, a company must have specific authority in its charter; at one and the same time such specific authority also limits the number that may be allotted. The maximum number of shares or the maximum amount of stock which a company is allowed to issue (the authorized capital of a company), may consist of a differing classes of shares, with or without par value. The charge for incorporation is based upon the amount of authorized capital.

Any federal company has specific powers to borrow, and there is no stipulation regarding the maximum amount that may be brought into the organization in such manner. Letters patent usually reproduce section 63 of the Companies Act which provides that a company may exercise borrowing powers, if authorized by by-law passed by the directors and sanctioned by at least two-thirds of the votes cast at a special general meeting of shareholders called for the purpose of considering the by-law.

There are no regulations in the Companies Act with regard to the beneficial ownership of the shares or debentures of a company incorporated by letters patent under the federal Companies Act. Ten, fifty, or one hundred per cent of the issued capital of such company can be held in any country or by persons of any nationality or residence, and the company in question comes under no disability whatsoever. (There are exceptions in connection with commercial aviation, fishing and coasting. The requirements with regard to share ownership in these cases have been laid down either in specific legislation, or, have been developed in the course of administrative practice. There is no connection between such restrictive measures and the Companies Act).

It should be noted that a company cannot deal in its own shares, except for the purchase of fractions of its shares for the purpose of any consolidation, although it has ancillary powers to buy, sell or deal in the shares of most other companies.

#### Memorandum of Agreement

The Memorandum of Agreement is in the nature of a contractual document, signed and sealed by the applicants, in which they agree among themselves to subscribe for shares in a company to be incorporated under a certain name and with a certain amount of authorized capital.

Each subscriber to the Memorandum agrees to take the amount of capital stock opposite his signature, and becomes a shareholder upon incorporation of the company.

The Memorandum is executed in duplicate, one copy being forwarded to the Secretary of State with the application for Incorporation.



### Affidavits

The person who has witnessed the execution of the Application and the Memorandum of Agreement must sign an affidavit in prescribed form.

In a second declaration, the one required from one of the applicants, the deponent states that (1) he is one of the applicants; (2) he has knowledge of the matter, and the allegations in the application are true; (3) the proposed name of the company is not objectionable; and (4) no public or private interest will be prejudiced by the incorporation.

### Directors

The letters patent of a company name the first or provisional directors. They are charged with the organization and management of the company until the first general meeting of shareholders and the election of a board of permanent directors.

The federal Act requires that the affairs of a company be managed by a board of not less than three directors. There are no residence requirements with which a director must comply, although the meeting at which directors are to be elected must take place in Canada.

The qualifications of directors are set out in the governing Act, the charter and the by-laws of the company. A director must own at least one share of the company.

### Commencement of Business

Letters patent are only issued after receipt and approval by the Department of the Application for Incorporation and the Memorandum of Agreement. From the time its letters patent are granted a federal company is deemed to be in existence, and can commence operations as of that date.

### INCORPORATION UNDER PROVINCIAL LAW

The Companies Acts of the provinces vary according to history and local requirements, although in the main they are comparable to the general legislation under which federal companies are incorporated.

The following text has been prepared to point up some of the salient differences, although repetition has been practised where some of the more important features are involved. Where no particular reference is made to a point appearing to be of interest, it should be considered that provincial law follows the federal Companies Act very closely. Despite the similarity, however, it is usually found advisable to retain competent legal counsel qualified to practise before the Bar of the Province in which it is proposed to incorporate the company.

As with federal law, a company can be created either by a special Act of the Legislature or under the Companies Act of the province in question. In general, a special Act of the legislature is required only for the creation of a company engaged in the construction or operation of a railway, or carrying on the business of a trust and loan company.

A company incorporated under provincial law usually has its head office in the province of incorporation, and annual meetings must normally be held within the province unless special permission is obtained to do otherwise.

Share capital may be held by anyone, either in Canada or a foreign country (with qualifications regarding the ownership of shares in commercial airline, fishing and coastal shipping companies).

Incorporation fees vary from province to province and the tariff of fees can be obtained from the provincial authorities listed in Appendix A.

#### LETTERS PATENT SYSTEM

##### General

The Letters Patent System of incorporation is used in the Provinces of Manitoba, New Brunswick, Ontario, Prince Edward Island and Quebec. The requirements, provisions and documents to be completed are largely similar to those under the federal Act. (Refer to Page B10, Incorporation under Federal Law).

The Acts of these five provinces require that the board of directors consist of not less than 3 members. There are no residence requirements for directors, but each must hold at least one share in the company.

## REGISTRATION SYSTEM

### General

The Registration System of incorporating companies is followed in Alberta, British Columbia, Newfoundland, Nova Scotia, Saskatchewan and the Yukon Territory.

Under this system, the type of incorporation which may be effected varies in each of these jurisdictions. However, in general, there are three classes of corporation that may be created -- a company limited by shares, a company limited by guarantee and a company with unlimited liability. Under each one of these classes the shareholders are subject to varying degrees of liabilities.

In a company limited by shares, the liability of each shareholder is limited to the unpaid portion of the shares for which he has subscribed. In a company limited by guarantee, the liability of each member is limited to the amount he has agreed to contribute to the assets of the company in the event of insolvency and winding-up. In a company with unlimited liability, there is no limit placed on the liability of members.

In general, three or more applicants may form an incorporated company.

Insofar as documentation is concerned, the applicants for incorporation are normally required to sign only a Memorandum of Association. When filed and approved by a certificate from the provincial registrar concerned, the Memorandum of Association becomes the charter of the company.

Generally speaking, the Memorandum of Association sets out such information as the name of the company, the location of its head office, the objects for which the company is formed, provides detail regarding authorized capital and the shares which the subscribers to the Memorandum agree to take; and, stipulates the nature of the shareholder's liability.

The governing Acts usually provide for the adoption and filing of a set of regulations and rules, known as Articles of Association. Such articles are analogous to by-laws (letters patent system) in that they regulate the internal management of the company in question, but unlike in that they must be filed with

the administering office and consequently are deemed to be public knowledge. An appendix to each Act contains a model of articles, and it is usually provided that, except where modified or specifically excluded, such model constitutes the articles of the company being formed.

#### Alberta

The Alberta Companies Act makes no provision for the incorporation of companies with unlimited liability.

No organization consisting of more than 20 persons can carry on business for purposes of gain unless incorporated as a company, or unless working under some other legislation.

#### British Columbia

Under the British Columbia Companies Act, all companies have a share capital with limited liability. There is no provision for incorporating a company limited by guarantee or with unlimited liability. Mining companies may be incorporated with specially limited liability, but are then required to have (Non-Personal liability) or (N.P.L.) after their corporate title.

At least one of the directors must be a resident of the province.

Five or more applicants are needed for the formation of a public company, and two for a private company.

A partnership of more than 20 must normally incorporate. However, special permission may be obtained from the Lieutenant Governor-in-Council for a partnership with up to 35 members.

#### Newfoundland

An organization carrying on business for profit must incorporate if it has more than 10 members or partners.

#### Saskatchewan

Saskatchewan requires that at least one director reside in the province.

An organization must be incorporated if it consists of more than 20 persons in business for profit.

#### COMMENCEMENT OF BUSINESS

The letters patent (in Manitoba, New Brunswick, Ontario, Prince Edward Island and Quebec) or the certificate of incorporation (in Alberta, British Columbia, Newfoundland, Nova Scotia, Saskatchewan and the Yukon Territory) are conclusive evidence that the formal preliminaries have been complied with and that the company is duly incorporated. However, they indicate only that the statutory requirements have been fulfilled and that the prescribed fees have been paid; in most provinces there are still other formalities to comply with before a company can obtain authority to commence business operations. Some of the more important formalities for respective provinces are as follows:

##### Alberta

Companies are required to file with the Registrar of Companies, within seven days of issue, an identical copy of the prospectus which has been approved by the Alberta Securities Commission. Once this document has been filed, they are in business.

##### British Columbia

Both public and private companies may carry on business on the issue of the Certificate of Incorporation. There is no need of a further certificate to commence business. However, for a public company to sell its shares, debentures or any other securities to the public, registration must be obtained under the Securities Act and a prospectus must be filed with the Securities Commission.

##### Newfoundland

A statutory declaration by a solicitor engaged in the formation of a company indicating compliance with all the requirements of the Companies Act in respect of registration must be filed with the Registrar at the time of the filing of the Memorandum and Articles of Association (if any). However, as soon as its certificate of incorporation is issued a company may carry on business.



Nova Scotia

All companies, whether private or public and no matter where they are incorporated must register under the Domestic, Dominion and Foreign Corporations Act to carry on business in the Province.

Prince Edward Island

Capital stock to an amount not less than \$500 must be subscribed before letters patent are granted.

Saskatchewan

A public company must obtain a certificate entitling it to commence business after it is incorporated. Such a certificate can be obtained by filing a prospectus or a "Statement in lieu of Prospectus" with the Registrar of Joint Stock Companies within seven days of issue.

EXTRA-PROVINCIAL COMPANIES

General

All provinces require that foreign or extra-provincial companies be registered or hold a licence when "carrying on business" in their respective areas. Their individual requirements differ slightly, but it may be generally stated that each has legislation or regulation of one sort or another with which a foreign or extra-provincial company must comply.

The definition of 'foreign' or 'extra-provincial' company usually includes all companies other than those incorporated under statute of the province in question. Banking, railway, insurance, trust and loan companies are sometimes excepted. In the Provinces of Ontario and Quebec licensing provisions are inoperative insofar as federal companies and companies incorporated in either of the two Provinces are concerned. In all other provinces federal companies are considered as extra-provincial companies for purposes of registration or licensing.

A company incorporated under the laws of another country is under no obligation to incorporate a subsidiary in this country providing it complies with provincial registration or licensing requirements.

Registration is effected by filing a statement and specified documents with the provincial authorities concerned. In general, the statement must include the corporation name; when, where and under what special or general act it was incorporated; where its head office is located; the nature of the business carried on; the address of the principal place of business in the province in question, and, the date on which business was or is to be commenced. All the provinces do not require the same information, and complete detail as to format and content in each can be obtained from the pertinent provincial office. (See Appendix A)

In addition to such sworn statement, a copy of the charter and regulations of the company must normally be filed. In most instances, a Power of Attorney must be recorded empowering a resident of the province, among other things, to carry out contracts and accept service of process in all suits and proceedings by or against the company within the province.

As a general rule, the contracts made by non-registered extra-provincial corporation, in the course of or in connection with business carried on in a specific province, are not void but only unenforceable. Non-registered extra-provincial companies cannot maintain action or other proceedings in any court in the province. Such disability does not apply to federal companies. However, in most provinces, federal Companies, like any other non-registered extra-provincial company, suffer from a disability with regard to acquiring or holding lands in a province.

In addition, a heavy fine is usually imposed upon the company and upon its officers and agents where a company carried on business without being registered or licensed, as the case may be. The fine, heavy enough in the first instance, is cumulative.

In most provinces, the schedule of fees for registration or licensing are related to the capital employed in the province, subject usually to a minimum charge in some cases, and a maximum charge in other cases. Methods followed by the various provinces differ in determining the amount of capital employed in their respective areas.

Details of the registration requirements for extra-provincial companies, including schedules of fees, are available from the appropriate provincial authorities. (See Appendix A)

### FEDERAL OR PROVINCIAL INCORPORATION

A company created by federal authority has the capacity and status to carry on business in all parts of Canada. The powers conferred by federal statute cannot be limited by legislative action on the part of provincial governments nor circumscribed by administrative action on the part of provincial officials, unless such legislative or administrative action applies to all companies.

While the powers and status of a federal company cannot be restricted nor curtailed by discriminatory legislation on the part of provincial authorities, it must be mentioned that such powers are exercisable only within the general framework of provincial law. Even though the status of any particular company cannot be adversely affected, federal companies as a group are required to comply with provincial laws of general application. Their position, under general legislation enacted by provincial governments, is the same as that of any other company in such matters as taxation, land, licences, annual returns, contracts, etc.

For example, a federal company carrying on business in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan, is required to take out a licence or to register as an "extra-provincial" company under the laws of the province in question. In Prince Edward Island a federal company must file a declaration with the Provincial Secretary prior to commencing business.

A federal company must comply with provincial legislation regarding annual returns, as, of course, must all companies carrying on business in the province concerned. In addition, a federal company is also required to file an annual return with federal authorities.

Any company proposing to sell securities must file a prospectus with the relevant authorities in the province or provinces in which the sale is to be undertaken. Federal companies are not exempt, and in addition must file a prospectus with the authorities in Ottawa.

In connection with the licensing of particular types of business operations, a federal company, or any company, is obliged to make application and pay

the requisite fee, whether the licence is a feature of federal, provincial or municipal control. All companies are equally liable no matter where incorporated and no matter how long in existence.

In summation it may be said that a federal company cannot be prevented from exercising the powers that have been validly conferred on it by federal authority. A province cannot prohibit a federal company from doing business within its borders, nor can it prevent such a company from suing in the courts to enforce contracts made in the course of business authorized by its charter. However, each province can and does require that a federal company comply with legislation of general application. Such legislation of general application will most certainly have an effect on day to day operations.

The Provinces derive their powers to incorporate companies from a provision in the British North America Act stating that Provincial Legislatures may exclusively make laws with regard to the incorporation of companies having provincial objects. While it might appear that Provincial Legislatures have an authority that is clear-cut and all-inclusive, although limited insofar as the sphere of jurisdiction is concerned, subsequent rulings of the courts have served to qualify the position.

One of the more important modifications refers to the exclusive position of the Provinces, and is centred around the difficulty of accurately defining the phrase 'provincial objects'. It has now become accepted that there is no derogation from the status or capacity of a federal company where that company confines the exercise of its powers to one province only, as against the two or more provinces in which it has the right and capacity to exercise its powers. A company incorporated under federal authority can operate solely within one province without invalidating the charter by which it was incorporated.

A second qualification refers to the powers of provincially incorporated companies to carry on business beyond the province of incorporation. While the actual powers and rights which a Provincial Legislature can bestow are limited to those exercisable within the province, the incorporation authority is not precluded from conferring capacity to accept

extra-provincial powers and rights. Companies incorporated under provincial jurisdiction do not have, in their own right, a status enabling them to exercise their powers in any other province; they obtain such status only where it is granted by the other province, and, of course, become eligible only when they comply with requirements. The rights of a provincially incorporated company to carry on business in another province are made available solely at the discretion of that other province. As a consequence, such company could find that the powers granted to it by its document of incorporation might be circumscribed insofar as its operations in a second province are concerned.

It may be generally stated that a provincial company must register or take out a licence in each of the provinces in which it proposes to carry on business. One important exception is the reciprocal arrangement between the Provinces of Ontario and Quebec whereby licensing requirements are inoperative insofar as companies incorporated in the other province are concerned. Such reciprocal exemption does not apply to companies merely licensed to do business; only companies that have been incorporated under laws of one or the other province are entitled to such relief.

A provincial charter is usually preferable for a company intending to restrict its activities to one province. The instrument of incorporation is drawn up in the light of laws of that province and the company is responsible to one authority only. Duplication in the matter of filing prospectuses and returns is eliminated. Furthermore, the power to hold land or to begin business operations as a corporate entity is obtained without recourse to two differing legislative bodies.

However, where an operation in more than one province is contemplated it is usually found advisable to incorporate under federal authority. Incorporation under federal statute ensures that a company can exercise the same powers in all provinces. Any one province or all provinces cannot by discriminatory legislation restrict the powers that have been validly conferred by federal statute.



## APPENDIX A

### ADDITIONAL INFORMATION

Additional information including copies of the respective Acts, Schedules of fees, together with instructions regarding departmental requirements, may be obtained from the following authorities:

- |                         |   |
|-------------------------|---|
| FEDERAL                 | - Director,<br>Companies & Corporations Branch,<br>Department of the Secretary of State,<br>Ottawa. |
| Alberta                 | - Registrar of Companies,<br>Department of the Provincial Secretary,<br>Edmonton.                   |
| British Columbia        | - Registrar of Companies,<br>Attorney General's Department,<br>Victoria.                            |
| Manitoba                | - Registrar of Companies,<br>Department of Provincial Secretary,<br>Winnipeg 1.                     |
| New Brunswick           | - Deputy Provincial Secretary,<br>Department of Provincial<br>Secretary-Treasurer,<br>Fredericton.  |
| Newfoundland            | - Assistant Deputy Attorney General,<br>Department of the Attorney General,<br>St. John's.          |
| Nova Scotia             | - Registrar of Joint Stock Companies,<br>Department of Provincial Secretary,<br>Halifax.            |
| Ontario                 | - Companies Division,<br>Department of the Provincial Secretary<br>& Citizenship,<br>Toronto.       |
| Prince Edward<br>Island | - Deputy Provincial Secretary,<br>Department of Provincial Secretary,<br>Charlottetown.             |

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|-----------------|---|
| Quebec          | - Director,<br>Companies Branch<br>Department of the Provincial Secretary,<br>Quebec.           |
| Saskatchewan    | - Registrar of Joint Stock Companies,<br>Department of Provincial Secretary,<br>Regina.         |
| Yukon Territory | - Registrar of Joint Stock Companies,<br>Government of the Yukon Territory,<br>Whitehorse, Y.T. |

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