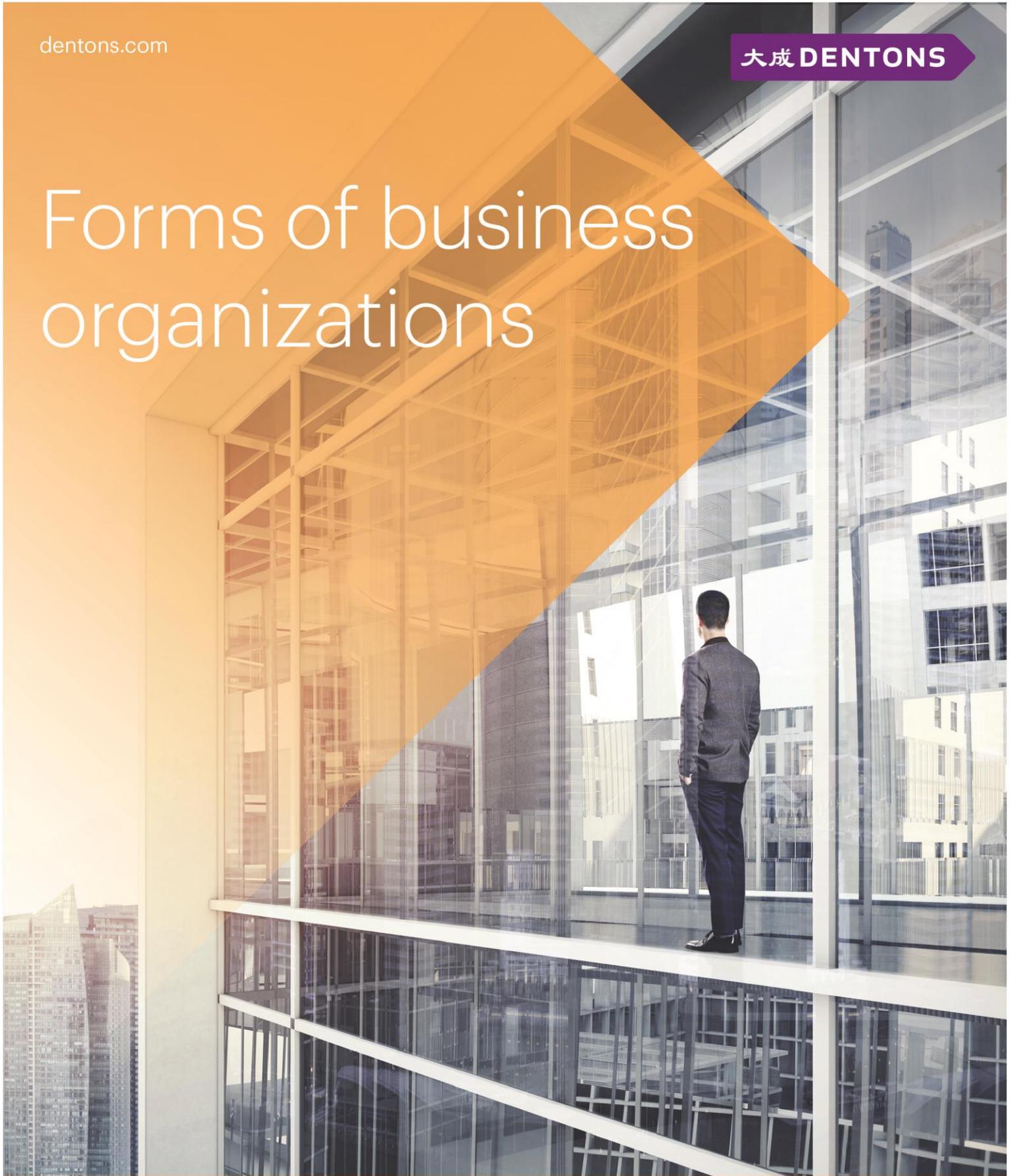


# Forms of business organizations



# Forms of Business Organizations

## Executive Summary

A business can be carried out in various forms. Most commonly, a business in Canada is conducted using a **corporation**. Depending on the nature and scope of the activity, the degree of **limited liability** desired and certain tax and other considerations, a business can be operated through a **sole proprietorship**, a **partnership**, a **corporation**, a **joint venture** or as a **franchise**.

This guide provides a brief summary of the different forms of business organizations and their legal implications. Terms highlighted in purple are defined in the Glossary at the end of this guide.

## IS THIS GUIDE RIGHT FOR YOU?

## Your Questions Answered

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- What are the advantages and disadvantages of a **sole proprietorship**?
- How can I set up a **sole proprietorship**?

### 2. **Partnerships** (Pages 3-5)

- What are the different types of **partnerships**?
- How can I set up a **partnership**?

### 3. **Corporations** (Pages 5-8)

- What is a **corporation**?
- What are the benefits of incorporating?
- In which jurisdiction should I incorporate?
- How do I incorporate my business?
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- What do **Directors** do in a **corporation**?
- What are "**Shares**" and "**Shareholders**"?

#### 4. Other Forms of Business Organizations (Pages 8-15)

- What is a **joint venture**?
- What is a **franchise**?
- What are the law related to franchising in my province?

Included as an Appendix to this guide is a Glossary defining certain terms used in this guide.

### 1. SOLE PROPRIETORSHIPS

The **sole proprietorship** is the simplest form of business organization. It exists where an individual is the sole owner of a business and there is no other form of organization, such as a **corporation**, used to carry on the business. A **sole proprietorship** is easy and inexpensive to set up; it has the lowest amount of regulation from provincial and/or federal government and minimal working capital requirements to set up.

While all benefits gained from the **sole proprietorship** flow to the owner, so do all debts incurred. In contrast with the **limited liability** of **shareholders** of a **corporation**, there is no **limited liability** for **sole proprietorships**. The personal assets of the sole proprietor may be seized to satisfy any debts of the proprietorship. In addition, all income and losses of the **sole proprietorship** accrue to the individual and are taxed at a personal rate. Therefore, if a business is profitable, then this might place the owner in a higher tax bracket.

The **sole proprietorship** is a simple arrangement for carrying on business. There are few legal formalities required to create or operate a **sole proprietorship**. Before deciding to carry on a business as a **sole proprietorship**, attention should be given to any federal, provincial or municipal licensing requirements.

It is very easy to form a **sole proprietorship**. The only requirement is to register your business name provincially. In every province except Newfoundland and Labrador, if the sole proprietor wishes to open their business in any name other than their personal name (including where just one word is added to the personal name (ex. Cathy Smith Restaurant)) they will be required to register.

The process of name registration varies from province to province but each province that requires registration has a regulatory body that a sole proprietor can register through. Most often, you will need to run a search to determine if the name is already being used prior to registering. There are fees associated with both searching and registering but they typically range between fifty (\$50.00) to one hundred dollars (\$100.00). Something to note is that typically name registration will have a period of validity (as an example it is five years in Ontario) and when your name registration is about to expire you will need to renew the registration.

### 2. PARTNERSHIPS

The **partnership** is a legal relationship that exists between two or more individuals carrying on business together. In most provinces, **general partnerships** and **limited partnerships** may be formed to carry on a business enterprise. Provincial legislation governs **partnerships** and **limited partnerships**.

In a **general partnership**, the liability of each of the partners is unlimited. In a **limited partnership**, the liability of one or more of the general partners is unlimited, but the liability of one or more of the limited partners is limited to the amount that the limited partner contributes or agrees to contribute to the business of the **partnership**. A contribution may be one of money or property, but not services.

Generally, for both general and **limited partnerships**, the income or losses of the **partnership** are determined, for income tax purposes, at the **partnership** level and then allocated to the members of the **partnership**. The income or

losses are then taxable in the hands of the partners.

**(i) General Partnerships**

To be considered a **general partnership**, there must be a relation between persons carrying on a business in common (which can be in the nature of an ongoing business or a specific transaction) with a view to profit (which excludes charitable and cultural organizations). The relation between the persons may be established by written or verbal agreement, or be implied by the circumstances.

A **general partnership** carries on business under a firm name and can sue or be sued under the firm name. Much like a **sole proprietorship**, the business is carried on directly by the partners and a **partnership** does not form a separate legal entity. However, for certain purposes, a **partnership** is treated as a unit. All property contributed by the partners, or purchased by a **partnership**, becomes **partnership** property. All partners in a **partnership** are entitled to **share** equally in the capital and profits of the business, and must contribute equally towards the losses, unless otherwise agreed by the partners. Each of the British Columbia Partnership Act, the Partnership Act (Alberta), the Ontario Partnerships Act, The Partnerships Act (Manitoba) and the Civil Code of Quebec, permits partners to vary a set of statutorily prescribed mutual rights and duties (such as the sharing of profits and losses) by express or implied agreement. Each Act also provides a framework to govern the relationship of partners and third parties (which may not be varied by agreement).

In a **general partnership**, each partner is jointly liable with the other partners to the full extent of the partner's personal assets. The estate of a deceased partner remains liable for **partnership** debts incurred when the partner was alive. However, a partner can be discharged from a **partnership** by an agreement and will not thereafter be responsible for debts incurred after the signing of such an agreement. General **partnerships** created under the laws of Quebec, or carrying on business in Quebec, are bound in law to file a declaration of registration in the prescribed form with the Registraire des Entreprises.

**(ii) Limited Partnerships**

A **limited partnership** is created by complying with the relevant provisions of the applicable **partnership** legislation, and is governed by that legislation and **general partnership** law. In Quebec, a **limited partnership** is created by complying with the relevant provisions of the Civil Code of Quebec. The **limited partnership** must consist of one or more general partners, and one or more limited partners. One person can be both a general and a limited partner. A "person" includes an individual, a sole proprietor, a **partnership** and a **corporation**.

A limited partner is much like a passive investor in a **corporation**, sharing the profits of the **limited partnership** in proportion to the contribution made by the partner. This form of **partnership** is used primarily for public financing where passive investors are involved, and is desirable for profits and losses to flow through to the investors. It is also used by investors that are non-taxable entities, such as government-related agencies (e.g. some public utilities or provincial development agencies), where the investor wishes to avoid holding its investment in a **company** that is required to pay taxes before distributing its income to its **shareholders**.

In Ontario, a limited partner may give advice to the **partnership**, or act as an agent or employee of the **limited partnership**. However, in each of British Columbia, Alberta, Ontario and Quebec, if the limited partner takes part in the control or management of the business, then the partner will no longer be considered a limited partner and will be subject to the **unlimited liability** of a general partner. Manitoba is viewed as having the most relaxed approach to a limited partner taking part in the business and still remaining limited for liability purposes. However, if a **partnership** intends to do business outside of Manitoba it is likely that the provincial law where the business is conducted may apply and a more strict approach would be used to determine liability.

General partners in a **limited partnership** have the same rights and obligations as in **general partnerships**, except that certain actions of the general partner may require the prior consent of the limited partners. It is common to have a **corporation** as the general partner because of the **limited liability** feature of the **corporation**.

In British Columbia, Alberta and Ontario, a **limited partnership** is only legally created when a declaration or certificate in prescribed form, signed by all of the general partners (and in Alberta, all of the limited partners), is filed with the relevant registrar. In other provinces, often all that is necessary to create a **limited partnership** is registration of the business name with the business name registrar of the province. In Quebec, the **partnership** is created upon the formation of the contract if no other date is indicated in the contract, and a declaration in prescribed form must be filed with the Registraire des entreprises. In British Columbia, the certificate includes the name of the **partnership**, the nature of the business of the **limited partnership**, the term for which it is to exist, the full name and address of each general partner, the aggregate amount of cash and property contributed and agreed to be contributed by all of the limited partners, and the basis on which limited partners are to be entitled to **share** profits or receive other compensation. In Alberta, the certificate states the firm name, the character of the business, the name and address of each partner (and whether they are a general or limited partner), the term for which the **partnership** is to exist and certain other details of the structure of the **partnership**. In Ontario, the declaration states the name of the **limited partnership**, the name and address of each general partner and the general nature of the business of the **limited partnership**. In Quebec, the declaration states, among other things, the object of the **partnership**, the name and address of each of the known partners at the time the contract is entered into, the place where the register containing up-to-date information on the name and address of each limited partner, and all information relating to the contributions of the partners to the common stock, may be consulted. The declaration also distinguishes between general and limited partners.

### 3. **CORPORATIONS**

#### (a) **General**

A **corporation** is the most common vehicle for business used in Canada. The words “**corporation**” and “**company**” are most often used synonymously. A **corporation** is a separate legal entity constituted by one or more persons who become its members or “**shareholders**”. **Corporations** have perpetual existence and may own property, carry on business, possess rights and incur liabilities. Generally, **shareholders** of a **corporation** have no authority to deal with the assets of the **corporation** and cannot make legal commitments that would bind the **corporation**. The **shareholders** maintain control of the **corporation** by voting their **shares** to elect the **directors** who are, in turn, responsible for management of the **corporation**. The liability of a **shareholder** is usually limited to the amount that they invest into the **corporation** or the supervision of management of the **corporation**. A **corporation** is taxed as a separate legal entity at the rate of tax applicable to **corporations**. The income or loss generated by the **corporation** accrues to the **corporation** and not to the **shareholders**.

The corporate form is a flexible structure for business organizations. It is possible to utilize different classes of **shares** and **share** conditions to provide for different levels of participation, control and risk-taking in the **corporation**. Once established, a **corporation** can obtain additional funds by the sale of unissued **shares** or by the issuance of debt. Most **corporations** in Canada are **private corporations**, generally having fewer than 50 **shareholders**, which carry restrictions on the right to transfer the **shares** of the **corporation**. The most common restriction is obtaining the consent of a majority of the **directors** or **shareholders** to any proposed sale or transfer of **shares** and which expressly prohibits any invitation to the public to subscribe for securities of the **corporation**. Non-private or **public corporations** are generally more widely held and the **shares** of such **corporations** are often listed on a **stock exchange**.

#### (b) ***Incorporation and Organization of Corporations***

##### A. **Choice of Jurisdiction**

Operating as a **corporation** in Canada means that you must choose a jurisdiction in which to incorporate between the federal *Canada Business Corporations Act* (“**CBCA**”) and the equivalent provincial legislation in British Columbia, Alberta, Ontario and Quebec. Depending on where the business activities are going to be taking place (at least initially) narrows the decision to between the CBCA and the equivalent provincial acts (*British Columbia Business Corporations Act* (“**BCBCA**”), *Alberta Business Corporations Act* (“**ABCA**”), *Ontario Business Corporations Act* (“**OBCA**”) or the *Quebec*

*Business Corporations Act* (“QBCA”) (all other provinces and territories would be governed by the CBCA as they do not have province specific **corporation** acts).

In deciding whether to incorporate under the CBCA or the equivalent provincial legislation, the type of business will be the key factor to consider. As an example, **corporations** operating small business in a specific province not crossing provincial boundaries must be incorporated under the relevant provincial legislation.

The principal distinction between a federal **corporation** and a provincial **corporation** is that a federal entity has the right to carry on business under its **corporation** name across Canada. A provincially incorporated **corporation** will be required to obtain an extra-provincial license or become registered in each province in which it proposes to carry on business. An extra-provincial license or registration in another province can be refused by the provincial body if the name of the provincial entity conflicts with the name of an existing **corporation**, licensed or registered in that province. Note that in Quebec, **corporations** will be required to adopt a French trade name in conformity with the Charter of the French Language. Accordingly, if there are any plans for future expansions across provincial borders, it would be wise to clear the name and seek registration or licensing in the provinces in which the **corporation** imagines it may expand into in the future. A federal **corporation** is also required to obtain an extra-provincial license or registration in each province in which it carries on business, however, no province (except Quebec in very limited circumstances) can refuse to register the **corporation**.

## B. Incorporation

To incorporate a business under the CBCA, ABCA, OBCA or QBCA, **articles of incorporation** must be filed in the appropriate office along with the required fee (depending on the jurisdiction it can range from \$100 to \$360). The **articles of incorporation** must provide certain information including the name of the proposed **corporation**, its registered office, a description of the classes of **shares**, any restrictions on **share** transfers, the number of **directors** and any restrictions on the business that the **corporation** may carry on. The filing is an over-the-counter procedure and registration can usually be completed on the same date that the **articles of incorporation** are filed.

To incorporate under the BCBCA, a notice of articles, together with an **incorporation** application and the required fee, must be filed electronically with the Registrar or Companies. The **incorporation** application sets out the name of the **company**, the desired effective **incorporation** date, the name and address of the incorporator and includes a certification confirming that the incorporator has signed an **Incorporation** Agreement relating to the **company**. The notice of articles sets out the name of the **company**, the translation of the name (if applicable), the names and addresses of the initial **directors** of the **company**, the addresses of the **company’s** registered and records offices, a description of the authorized **share** structure of the **company** and where there are any special rights or restrictions.

## C. By-laws

Following the **incorporation** of a business under the CBCA, ABCA, OBCA or QBCA, a general **by-law** to regulate the affairs of the **corporation** is passed. If desired, further **by-laws** relating to the regulation of the business and affairs of the **corporation** may be passed. Under the BCBCA, the articles are the general regulations which govern the internal affairs of the **company** (similar to the general **by-law** of a CBCA, ABCA or OBCA **corporation**). They set out: the terms of any special rights and restrictions attaching to **Shares** of the **company**; any restrictions on the businesses to be carried on by, or the powers of the **company**; and any restrictions on **share** transfers. They may **also** contain special provisions permitted by the BCBCA.

## D. Directors

Each of the CBCA, BCBCA, ABCA, OBCA and QBCA, permit a **corporation** to have a flexible number of **directors**, being not less than one, or in the case of a reporting **company/public corporation**, no fewer than three. All CBCA, ABCA and QBCA **private corporations** and BCBCA non-public companies must have **boards of directors** consisting of one or more **directors**. Under the CBCA, subject to certain exemptions (including uranium mining, book publishing or distribution, book sales and file or video distribution for which the threshold is higher) , only 25 percent of the **directors** need be

resident Canadians (or if there are less than four **directors**, only one must be a resident Canadian). Under the OBCA, at least 25 percent of the **directors** must be resident Canadians (or if there are less than four **directors**, one **director** must be a resident Canadian). There are no **director** residency requirements under the BCBCA or the QBCA and the ABCA requires that at least one quarter of the **directors** be resident Canadians.

A “resident Canadian” is defined in the CBCA as:

- a Canadian citizen ordinarily resident in Canada;
- a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons; or
- a permanent resident within the meaning of the Immigration and Refugee Protection Act (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship.

The corresponding definitions in the ABCA and the OBCA are essentially the same, except that they do not contain the exception found in the last two lines of the above definition.

Under the CBCA, 25 percent of the **directors** (or, if there are less than four **directors**, at least one of them) present at any meeting must be resident Canadians. Under the ABCA, at least one-quarter of the **directors** present must be Canadian residents.

The **directors** of a **corporation** are required to manage or supervise the management of the business and affairs of the **corporation**. The officers of a **corporation** undertake the day-to-day operations and affairs of the **corporation**. **Directors** have a fiduciary duty to act honestly, in **good faith** and with a view to the best interests of the **corporation**, and must also exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**Directors** may incur personal liability in their capacities as **directors** under the common law and under an increasing number of statutory provisions, including the Income Tax Act (Canada), environmental protection legislation, employment legislation, and occupational health and safety legislation, as referred to elsewhere in this publication. For example, under the CBCA, the BCBCA, the ABCA, the OBCA and the QBCA, **directors** are liable to the **corporation** if they vote for, or consent to, a resolution authorizing certain corporate action contrary to those acts, such as the declaration of a **dividend** or other distribution, at a time when there are reasonable grounds for believing that the **corporation** would be unable to satisfy a solvency test.

## E. Auditors

Both federal and provincial **corporations** are required to appoint an auditor, unless exempted. Generally, a **corporation** may be exempt from this requirement if the **corporation** is not a **public corporation** and all the **shareholders** consent to the exemption.

## F. Shareholders' Agreements

The **shareholders** of a **corporation** may enter into a **shareholders'** agreement which provides for the conduct of the business and affairs of the **corporation**, regulates the rights and obligations of the **shareholders** to one another, and which may provide for rights of first refusal or other provisions dealing with the transfer of **shares**. Under the CBCA, the ABCA, the OBCA and the QBCA, all of the **Shareholders** may agree, under a “unanimous **shareholders'** agreement”, to restrict in whole or in part, the powers of the **directors** to manage the business and affairs of the **corporation**, and to give to the **shareholders** the rights, powers and duties, which they have removed from the **directors**. The **directors** are thereby relieved of such duties and liabilities. Such an agreement might be used in a subsidiary **corporation** so that it is managed directly by the parent **company** with an active **board of directors**. Under the BCBCA, the articles of the **company** may restrict the powers of the **directors** and may transfer those powers, in whole or in part, to one or more

other persons.

## G. Share Capital

A **share** is a fractional part of the capital of a **corporation** which confers upon the holder a certain right to a proportionate part of the assets of the **corporation**, whether by way of **dividend** or upon a distribution on the **dissolution** of the **corporation**, and governs the right to vote at **shareholder** meetings. The **corporation** may issue more than one class of **shares** and may designate the **shares** in any way, unless restricted by the constating documents. There is no restriction on the number of **shares** of each class that may be issued by a **corporation**. Under the CBCA, the ABCA and OBCA, the concept of **par value shares** does not exist and, therefore, **shares** are not expressed as having a nominal or specified value in dollars or other currency. Under the BCBCA and the QBCA, the authorized capital of a **company** may consist of **shares** with or without par value. The **share capitalization** of a **corporation** may be very flexible and can be tailored to meet its specific requirements. Very simple **share** provisions will usually suffice in the cases of a small or closely-held **corporation**.

If the **share capitalization** of a **corporation** consists of only one class of **shares**, all the **shareholders** will have equal rights: the right to vote at any **shareholders'** meeting; the right to receive the remaining property of the **corporation** on **dissolution**; and the right to receive any **dividend** declared by the **corporation**. If the articles provide for more than one class of **shares**, the above rights must be attributed to at least one of the classes of **shares**, but it is not necessary that one class have all of these rights. If there is more than one class of **shares**, or if there is only one class of **shares** with rights in addition to the fundamental rights described above attaching to the **shares**, these rights and conditions must be set out in the articles of a CBCA, a BCBCA, an ABCA, an OBCA and a QBCA **corporation**.

The rights that may be attached to the **shares** of a class are virtually limitless, but some of the common provisions are as follows:

- the right to **dividends**;
- a preference over another class of **shares** as to the payment of **dividends**;
- a preference over another class as to the repayment of capital upon the **dissolution** of the **corporation**;
- the right to elect a specified number of **directors**, or other special voting rights or restrictions;
- the right to convert a certain class of **shares** into another class of **shares** or a debt obligation;
- the right of the **corporation**, at its option, to redeem all or part of the **shares** of the class; and
- the right of the **shareholder**, at its option, to require the **corporation** to redeem its **shares** (this form of redemption is known as **retraction**).

It is also possible to have several series of **shares** within one class of **shares**. The use of these series is advantageous where the **directors** wish to issue **shares** with certain differing characteristics over an extended period of time, without obtaining the **shareholders'** approval of the particular characteristics of each series when the series is issued.

## 4. OTHER FORMS OF BUSINESS ORGANIZATIONS

### (a) **Joint Ventures**

A **joint venture** is not a specific type of business organization but rather, it is more aptly described as an association of two or more individuals, **corporations** or **partnerships**, or some combination of these, for the purpose of carrying on a single undertaking or a specific business venture. A **joint venture** may take the form of a **partnership**, a **limited partnership**, a co-ownership of property or a **corporation**. Generally, the parties to a **joint venture** will enter into a written agreement which establishes the respective rights and obligations of the parties in respect of the venture.

(b) **Franchising**

Franchising, as a method of business expansion and organization, represents one of the most dynamic commercial sectors in Canada. In a typical **franchise** relationship, the **franchisor** licenses the **franchisee** the right to sell products and services under the **franchisor's trade-mark** using the **franchisor's** prescribed business format. In return, the **franchisee** agrees to comply with the standards of the **franchise** system, and to pay an up-front fee and continuing royalties. **Franchise** arrangements can take many different forms, from master **franchise** relationships involving multiple locations to single unit **franchise** agreements for individual locations.

Currently, only Alberta, Ontario, Prince Edward Island, New Brunswick and Manitoba have specific registration or disclosure legislation in force, with which a **franchisor** looking to set up a **franchise** system in those provinces must comply. There is currently no specific registration or disclosure legislation dealing with franchising which is in force in the other provinces, although, as noted below, British Columbia is currently contemplating such legislation and the British Columbia Law Reform Commission has recommended that **franchise** legislation be implemented in British Columbia. However, many business practices prevalent in franchising are subject to regulation by both federal and provincial laws of general application. In addition, **franchisors** that are members of the Canadian **Franchise** Association are encouraged to comply with the minimum disclosure obligations of that organization.

(i) **Franchise Disclosure, Registration and Regulation**

Alberta, Ontario, Prince Edward Island, New Brunswick and Manitoba are the only provinces in Canada with legislation in effect that specifically governs certain aspects of franchising. The province of British Columbia is also currently examining the possibility of enacting legislation. Each of these Acts contains broad definitions of what constitutes a **franchise** and, as a result, many distribution and dealership arrangements may also be subject to their requirements.

In substance, the Alberta, Ontario, Prince Edward Island, New Brunswick and Manitoba Acts are very similar. They primarily contain disclosure requirements and a number of relationship provisions. None of these Acts directly regulate the substantive aspects of the **franchise** relationship. The Acts require fair dealing between parties to **franchise** agreements, that **franchisees** have the right to associate, and they impose disclosure obligations on **franchisors**.

All five Acts require **franchisors** to provide a disclosure document to prospective **franchisees**. The disclosure document must contain copies of all **franchise** agreements and financial statements, and all material facts, including specifically listed material facts. In Alberta, Prince Edward Island, Manitoba and New Brunswick, **franchisors** are permitted to use disclosure documents acceptable under **franchise** legislation in jurisdictions outside of those provinces, as the case may be, provided that these disclosure documents include, by way of an addendum or "wrap around" document, any information necessary to meet the requirements of a disclosure document under the relevant provincial **franchise** legislation. The Ontario Act does not specifically provide for an addendum or "wrap around" document. As a result, a disclosure document is often prepared for Ontario in accordance with the Ontario Act, and then a "wrap around" is prepared to meet the requirements of the other provinces.

Financial statements prepared in accordance with generally accepted accounting principles must normally be included within the disclosure statement. The minimum standards of review under the Acts are those of review engagement standard. Certain **franchisors** are exempt from the requirement to include financial statements in their disclosure documents. The disclosure document must also include a certificate certifying that the disclosure document contains no misrepresentation. The Acts impose on the parties to a **franchise** agreement a duty of fair dealing in the performance and enforcement of that agreement. They also provide the **franchisee** a private right of action for damages against the **franchisor**, and every person who signed the disclosure document if the **franchisee** suffers a loss because of a misrepresentation contained in the disclosure document. As well, if the **franchisee** did not receive the **franchise** disclosure document within the time limits set out in the appropriate Act, the **franchisee** has the right to rescind all **franchise** agreements.

(ii) *Quebec*

Franchising in Quebec is different than in the other provinces, in that the law is governed by the Civil Code of Quebec. One interesting feature of the Civil Code of Quebec is the concept of **contracts of adhesion**, where the essential provisions are imposed by one of the contracting parties and are not negotiable. The consequences of a contract being qualified as a **contract of adhesion** are that if one of its provisions is incomprehensible, unreadable or abusive, that provision may be nullified or modified by a court. The same applies to “external” clauses (i.e. clauses that are not contained in the contract but to which the contract refers). The courts of Quebec have often characterized a **franchise** agreement as an adhesion contract, when it has been shown that its essential provisions could not be negotiated.

**Franchise** businesses intending to operate in Quebec must also comply with French language laws and, in particular, the Charter of the French language. **Franchisors** should realize that they will be expected to carry on business in French, especially outside Montréal, and have all of their materials (operations manuals and other documentation for use by employees) translated into French, although the **franchise** agreement itself need not be translated.

(iii) *Other Areas of Law Affecting Franchising Arrangements*

In addition to complying with the specific **franchise** legislation, businesses expanding by way of franchising will also want to ensure that they comply with other laws of general application affecting franchising arrangements. These include ensuring that their **trade-marks** are protected under Canadian **trade-mark** legislation, that their products and practices comply with applicable product labelling (e.g. for food and drugs) and consumer protection legislation, and that their arrangements comply with Canadian competition laws (which deal with matters such as exclusive dealing, market restriction and tied-selling) and applicable tax requirements.<sup>i</sup>

# Glossary

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**Articles of incorporation:** a set of formal documents filed with a government body to legally document the creation of a corporation.

**Board of Directors:** a group of individuals that are elected as representatives of the Shareholders to establish corporate management related policies and to make decisions on major company issues.

**By-law:** a rule governing the regulation of a corporation's internal affairs.

**Company:** a corporation.

**Contract of adhesion:** a contract prepared entirely by the party with bargaining power offered to the weaker party on a "take it or leave it" basis.

**Corporation:** a legal entity that is separate and distinct from its owners

**Director:** an individual elected by the Shareholder(s) to supervise the management of a corporation.

**Dissolution:** the act of ending the existence of a corporation, under certain circumstances. Under the CBCA there is a certain filing requirement in order to affect a dissolution. Corporations can also be dissolved for failure to comply with the Acts mentioned above.

**Dividend:** a distribution of a portion of a company's profits, decided by the Board of Directors, to a class of its Shareholders.

**Fiduciary duty of Directors:** directors in Canada are regarded as fiduciaries of the corporation which means that directors must ensure that the corporation's needs and interests are held higher than others (including themselves or the Shareholder who nominated them to the board). In addition, the fiduciary duty places a duty on the director to act honestly, in good faith and with a view to the best interest of the corporation.

**Franchise:** where the franchisor licenses the franchisee the right to sell products and services under the franchisor's trade-mark using the franchisor's prescribed business format.

**Franchisee:** one who purchases a franchise from a franchisor.

**Franchisor:** owns the overarching company, trademarks, and products, but gives the right to the franchisee to run the franchise location, in return for an agreed-upon fee.

**General partnership:** where partners conducting a business jointly have unlimited liability.

**Good faith:** effort made, information given, or transaction done, honestly without a deliberate intention to defraud another party.

**Incorporation:** the process of legally declaring a corporation to be an entity separate from its owners.

**Joint venture:** an association of two or more individuals, corporations or partnerships, or some combination of these, for the purpose of carrying on a single undertaking or a specific business venture.

**Limited liability:** where an individual's liability does not exceed the amount invested in a partnership or limited liability

company.

**Limited partnership:** where partners unite to jointly conduct a business but one or more of the partners is liable only to the extent of the amount of money which that partner has invested.

**Partnership:** where two or more individuals share the profits and liabilities of a business venture.

**Par value Share:** face or stated value of a Share; the value stated in the corporate charter below which Shares of that class cannot be sold upon initial offering.

**Private corporation:** a corporation with private ownership where Shares do not trade on public stock exchanges.

**Public corporation:** a corporation that has its Shares traded on at least one stock exchange.

**Retraction:** the right of the Shareholder, at its option, to require the corporation to redeem its Shares

**Share:** a measure of ownership of a corporation.

**Share capitalization:** the sum of a corporation's Shares, long-term debt and retained earnings. It can also be used to refer to the number of Shares issued multiplied by the Share price.

**Shareholder:** an individual who owns at least one Share of a company

**Sole Proprietorship:** where an individual is the sole owner of a business and there is no other form of organization, such as a **corporation**, used as a vehicle to carry on the business

**Stock exchange:** a market in which Shares of public companies are issued and traded

**Trade-mark:** a distinctive design, image, symbol or words that uniquely identifies a firm and its goods or services

**Unlimited liability:** where individuals are responsible for the entire amount of debt and other liabilities of the business regardless of the amount of investment the individual has personally made

# ADDITIONAL RESOURCES

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British Columbia Partnership Act - [http://www.bclaws.ca/civix/document/id/complete/statreg/96348\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/96348_01)

Partnership Act (Alberta) - <http://www.qp.alberta.ca/documents/Acts/P03.pdf>

Ontario Partnerships Act - <https://www.ontario.ca/laws/statute/90p05>

Civil Code of Quebec - <http://legisquebec.gouv.qc.ca/en/showdoc/cs/CCQ-1991>

British Columbia Business Corporations Act - [http://www.bclaws.ca/civix/document/id/complete/statreg/02057\\_00](http://www.bclaws.ca/civix/document/id/complete/statreg/02057_00)

Alberta Business Corporations Act - <http://www.qp.alberta.ca/documents/Acts/B09.pdf>

Ontario Business Corporations Act - <https://www.ontario.ca/laws/statute/90b16>

Quebec Business Corporations Act - <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-31.1/>

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<sup>i</sup> The purpose of this guide has been to present a general overview of some of the major forms of business organizations in Canada. It is beyond the scope of such a summary to review such legislation in depth, or to provide particulars of the legal and other considerations which should be reviewed when dealing with a particular industry. This publication does not constitute legal or tax advice to any person. Persons contemplating business activity in Canada should consult with their professional advisers to ensure that their endeavours are structured in compliance with local laws and to ensure maximum benefit.

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