

Creating a Canadian subsidiary

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This article provides an overview of the costs and considerations associated with expanding into Canada as a subsidiary corporation.

Choice of legal structure

When expanding your business into Canada, the first decision that you must make is how you will structure your business. Will your business be carried on directly, as a branch of the foreign entity, or should it be created as a separate Canadian business organization as a subsidiary, proprietorship, partnership or some form of joint venture? For more information on choosing the right legal structure, please see our article [here](#).

Incorporation of a Canadian subsidiary

Jurisdiction

Once the decision has been made, a subsidiary can be formed in Canada either under the federal laws of Canada or the laws of one of Canada's ten provinces or three territories (tax advice should be obtained in making this determination). The choice of jurisdiction is a fundamental question. One of the key drivers in choosing a jurisdiction of incorporation is whether resident directors are required.

Depending on the Canadian jurisdiction where the subsidiary is formed, the subsidiary may be required to have Canadian residents represent at least 25 percent of its directors. In some jurisdictions, these directors must be individuals, Canadian citizens *and* resident in Canada. Companies that wish to avoid such requirements can incorporate in a province with less onerous residency requirements, such as British Columbia, Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Alberta, or Ontario (see our articles on recent amendments to director residency requirements in Alberta and Ontario). These are generally considered more favorable jurisdictions for foreign businesses seeking to establish their Canadian operations because they permit such businesses to operate entirely with non-resident boards of directors.

Name and Articles of Incorporation

The company would need to secure the subsidiary's name and then complete, file and certify the Articles of Incorporation. Additional time may be spent in determining whether the name is available across Canada. This may extend the timeline for incorporation and organization of the subsidiary, as well as increasing the cost of the process.

The process

The incorporation process usually takes two to three days. Once you have the required information for the incorporation, including signatures, you can prepare the incorporation documents and incorporate electronically. The cost of completing the incorporation and organization process exclusive of disbursements will vary depending on the time spent on such issues as picking the appropriate jurisdiction, reserving the name, allocating shareholdings and obtaining funding.

Organization of subsidiary

The subsidiary will need to address various organizational matters, such as approving the subsidiary's bylaws, obtaining banking authority, appointing directors and officers and issuing shares.

Post-incorporation requirements

Extra-provincial registrations

The subsidiary will also need to register in each additional Canadian jurisdiction where business will be conducted. If a subsidiary is a Canadian federal corporation, the subsidiary will need to register primarily in the province where the registered office address is situated and in each Canadian jurisdiction where business will be conducted. Those registrations are made *after* the incorporation is complete. Whether one needs to register in a given province is a very fact-driven determination.

The timeline and cost of extra-provincially registering a corporation varies from province to province where the registered office address is situated.

Industry Canada notification

The company may possibly have to notify Industry Canada – the federal department mandated to increase global trade and build a fair, competitive marketplace – that it is a foreign-controlled business “commencing a new business activity in Canada.” The notification must be made within 30 days of implementing the investment in the new Canadian business.

A new Canadian business arises only once all three of the following are present: (a) a place of business in Canada; (b) an individual or individuals in Canada who are employed or self-employed in connection with the business; and (c) assets in Canada used in carrying on the business. If all three factors are present at the time of incorporation, the notification should be completed as part of the incorporation process. If not, the notification can be deferred until the three factors are present.

The notification requires significant information, including details regarding the investor (including officers, directors and individuals owning more than ten percent), the individuals who ultimately control the investor, whether the investor and its ultimate controller(s) are residents of WTO or NAFTA countries, whether any foreign state has ownership in or control over the investor, the source of funding for the investment, and certain other information about the new business. Most of the information provided is subject to statutory confidentiality, but the identity of the investor, the name of the new Canadian business and its type of products will be published.

Registrations: Tax accounts

Depending on the type of business that is being conducted and depending on which Canadian jurisdiction the subsidiary is formed under, additional registrations may be required, such as a business number, a goods and services tax account, a harmonized sales tax account, a provincial sales tax account, a payroll deduction account, an import/export account and an employer health tax account.

The accounts required depend on the company's business and the specific facts.

Annual maintenance

Annual maintenance, including the upkeep of minute books and having your attorney act as the registered records office,

varies per province. Fees increase if assistance is also required in maintaining registrations for the company in Canadian jurisdictions other than the one in which the company is incorporated.

Subsidiary playbook: The steps to take

- Determine the jurisdiction of formation
- Determine where the subsidiary will “carry on business” in Canada
- Secure the subsidiary’s name and complete, file and certify the Articles of Incorporation
- Attend to the subsidiary’s organizational matters – approving bylaws, securing banking authority, appointing directors and officers and issuing shares
- Consider and attend to regulatory requirements such as Industry Canada notifications
- Identify and make all extra-provincial filings and file annual returns
- Prepare and maintain financial records and minute books

For more information you may contact the authors or any member of our [Canadian Corporate group](#).

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