

EXECUTIVE SUMMARY

In the European Community (EC), rules governing the establishment and organization of business operations, direct and indirect taxation, technical standards and the free trans-border movement of goods are generally more complex and less uniform than those in Canada. This report examines the ways in which the EC is moving to harmonize these and other laws. Canadian investors must recognize, however, that the national laws of member states continue to apply to many operations and transactions within the Community and that these laws tend to vary more than do comparable rules within Canada.

For example, an investor establishing a commercial enterprise in this country can do so by incorporating under rules set out in the Canada Business Corporations Act, regardless of the province or provinces in which the enterprise operates. Moreover, the corporate rules of several provinces, namely Alberta, Ontario, Manitoba and Saskatchewan, are substantially similar to those contained in the federal statute. As far as fiscal factors are concerned, roughly two-thirds of all corporate tax collected in this country is collected under uniform federal rules, with provincial corporate systems accounting for the remainder.

For the most part, the EC uses harmonization as the main instrument for creating a Community-wide set of rules to govern various business activities. Harmonization means that the EC will enact a set of general rules, which individual member states will incorporate into their respective national laws. This is true, for example, of the Community's rules governing the disclosure of corporate information or the use of specified accounting practices. Many such rules will impose minimum standards, leaving each country free to impose stricter rules. This approach still allows some variation in the way each country implements and enforces Community law. Nevertheless, the evolution of business law in the Community is clearly moving toward a common, EC-wide set of minimum standards.

More ambitious is the goal of creating a system of company rules that would be defined by the Community itself. Such rules would not need to become part of the national law of any member state, and their creation would ensure to the highest possible degree that companies are subject to identical administrative treatment, regardless of where they are located within the Community.

In this regard, the European Commission has proposed a European Company Statute, which would allow, for the first time, the creation of a truly European company. The statute would govern all major aspects of company incorporation and organization, including formation, capitalization, administrative bodies, employee participation, tax residence and fundamental changes. Negotiations are continuing at this time, however, to design a version of the statute that will be acceptable to all member states. Developing extensive Community-wide systems in this area will be a major challenge for member states during the 1990s.

The European Company, once it exists, will be an optional vehicle for investors seeking the corporate structure that best reflects their business needs. For companies that plan to do business in more than one EC member state, a major advantage of using a European Company, as in the case of a federal company in Canada, will be the elimination of any need to incorporate individual companies in different jurisdictions, each having somewhat different corporate rules.

Some companies may also perceive that incorporation as a European Company conveys greater status in world markets over a company that is only incorporated in a single country. Similarly, investors, especially foreign investors, may feel that incorporation at the Community level could offer them greater protection than if they were to be at the whim of a single country's lawmakers.

For other companies, particularly those with smaller, more local business operations, incorporating as a European Company may be unnecessary or undesirable. Depending on the cost and complexity of incorporating in a particular EC member state, national incorporation may be the preferred option. This is particularly important in