



CHAPTER 13: *Operating a Business*

IT IS EASY TO ESTABLISH, operate, or expand a business in Canada. Business can be conducted using any one of several different legal structures, depending on the nature of the enterprise, the size and scope of operations and the number of people employed. The main types of business recognized under Canadian law are sole proprietorships, partnerships and limited liability corporations.

CORPORATIONS

A corporation — a separate legal entity made up of shareholders — is the most common form of business organization in Canada. Foreign companies establishing an operation in Canada usually choose this form.

A company can be incorporated in one of four ways: federally, under the Canada Business Corporations Act (CBCA); pursuant to the provisions of another federal act, such as the Trust and Loan Companies Act; under one of the provincial acts respecting corporations; or by a special act of incorporation by the federal Parliament or one of the provincial legislatures.

Corporations in Canada can be either public or private. The shareholders of a private corporation are restricted in their ability to transfer and offer shares, and may have no more than 50 shareholders. Public corporations are those which issue securities to the public.

Federal Incorporation

Federally incorporated companies are entitled to carry on business throughout Canada, but are subject to provincial laws of general application. Under federal incorporation, the CBCA makes provision for individuals or corporations to file articles of incorporation and receive a certificate of incorporation. There is a \$500 flat fee for federal incorporation.

The articles of incorporation must include, among other information, details on the rights, restrictions, privileges and conditions attached to each class of shares. Corporations may have any number of shares of one or more classes, but at least one class should have full voting rights.

The corporation's articles must also name the directors, a majority of whom must be Canadian. The corporation's directors, elected by the shareholders, are charged with the overall management of company operations. It is possible, however, to restrict the powers of the directors through a unanimous shareholders' agreement. Directors can be personally liable to the company, to shareholders or to third parties under certain provisions of federal and provincial statutes, or for damages resulting from negligence.

Provincial Incorporation

A provincial charter and incorporation are usually preferable when a company intends to restrict its activities to one province. Provincially incorporated companies must be registered or licensed in other provinces if they wish to conduct business outside the incorporating jurisdiction.

