

THINGS YOU SHOULD CONSIDER:

1) If you choose to operate in more than one location, you may need to deal with multiple licensing or regulatory requirements.

2) If your firm operates in an area such as engineering, medical and environmental services, the consequences of error, particularly in the United States, are significant. Be sure to have adequate liability insurance. While the U.S. government is trying to legally limit liability exposure, supporting legislation is not yet in place.

3) If your firm provides professional services, you may need U.S. liability insurance as your Canadian policy probably does not cover services rendered outside of Canada.

4) Be prepared for high insurance rates in the United States, due to the frequency of litigation. For example, the American Consulting Engineer cites insurance costs of approximately four per cent of the average engineering firm's billings. Similarly, be prepared to cover the expense of high deductibles and high coverage limits (up to \$10 million).

5) To be prepared in case of litigation, meticulous record-keeping is essential. You should also become familiar with statutes on how long your business records must be kept in case of a dispute or audit.

To enter the U.S. market, you may choose to establish one of the following business structures. In general, these structures work the same way in both Canada and the United States in terms of corporate law.

There are, however, some corporate tax differences, particularly for public companies. For example, dividends in the United States do not flow tax-free between all companies in a corporate group as they do in Canada. Similarly, firms in one corporate group in the United States can file one consolidated return whereas in Canada separate returns must be filed for each company. You should consult tax advisors in Canada and the United States before making major decisions regarding your business structure.

Corporations

In the United States, most businesses are incorporated so that shareholders may limit their personal liability for corporate debts to their capital investment. Corporations have a legal identity separate from that of their shareholders and continue to exist regardless of the death or disability of shareholders. Shares may be freely transferred without obtaining the approval of the remaining shareholders.

The United States tends to pay more attention to the integrity of the corporation — regular board and shareholder meetings (at least once annually) are recommended. Minutes of annual meetings may have to be maintained in a more thorough manner than you are used to in Canada and reporting requirements to the state government may take more effort. As well, the Internal Revenue Service (IRS) often passes judgement and rulings on whether profits paid to employees are “reasonable compensation”. The IRS may require firms to transfer profits to employees in the form of dividends rather than salary. It is also suggested that U.S. laws are more favourable

toward the incorporation of professional firms and that the practice of incorporating professional firms is more common as a result.

Partnerships

A partnership is an association of two or more persons, including individuals, corporations or other legal entities, to operate a business as co-owners for profit. The rights and duties of partners are generally determined by agreement among the partners and state law. These rights and duties are often set forth in a partnership agreement. Although each state has its own partnership laws, they are similar to each other. Unlike a corporation, a partnership is generally not considered a separate legal entity for all purposes. Depending on the partnership agreement, its existence might terminate on the death or departure of any of its partners.

GENERAL PARTNERSHIPS

In a general partnership, the most common form of partnership, all partners are jointly and severally liable for partnership debts. Unless otherwise stated in the partnership agreement, general partners share equally in profits and losses, participate in management, have the right to refuse new partners and may enter into contracts binding the partnership. The partnership structure is frequently used by professional service organizations, such as accounting and law firms.

LIMITED PARTNERSHIPS

A limited partnership includes one or more general partners, each personally liable for partnership debts, and one or more limited partners. The liability of limited partners is limited to the extent of their capital contributions. Limited partners are prohibited from actively participating in the management and operation of the partnership.

Joint Ventures

Joint ventures are any combination of two or more enterprises associated for the purpose of accomplishing a