



DOING BUSINESS IN CANADA **PART 1: BUSINESS STRUCTURE**

As trade and investment between Korea and Canada continue to grow, we are increasingly seeing Korean businesses explore expansion into the Canadian market.

Canada is widely regarded as an attractive destination for foreign businesses due to its stable political environment, transparent regulatory framework, and business-friendly climate. One of the first issues a foreign company must consider when establishing a presence in Canada is which legal structure to adopt—particularly given the country’s federal–provincial division of powers and the resulting variations in applicable laws and regulatory requirements. This newsletter series is intended to provide Korean businesses with a practical overview of key legal considerations when doing business in Canada.

- ✓ An important distinction should be made between doing business “in Canada” and doing business “with Canada.” Doing business “in Canada” generally involves establishing a physical or legal presence in Canada—such as incorporating a subsidiary, opening an office, hiring employees, or otherwise carrying on business within the country—which gives rise to Canadian tax and regulatory compliance. By contrast, doing business “with Canada” may involve cross-border sales or transactions conducted from outside Canada without creating a Canadian presence, and, in certain circumstances, may be structured to avoid triggering Canadian income tax exposure.
- ✓ As tax considerations are highly fact-specific and subject to change, readers should consult qualified tax advisors in both Canada and Korea before finalizing any market-entry structure.

1. GENERAL STRUCTURE

A business may be carried on in Canada either by a non-Canadian entity (through what is commonly referred to as a “branch”) or through the establishment of a separate Canadian entity.

A non-Canadian entity may register extra-provincially in a province in which it intends to carry on business. Through extra-provincial registration, the foreign entity may operate in that province without establishing a separate Canadian entity.

- ✓ While extra-provincial registration offers a relatively simple way to enter the Canadian market, it does not provide the additional liability insulation that a Canadian limited liability entity, such as a company or limited partnership, offers.
- ✓ A branch tax applies to a non-resident’s after-tax profits that are not invested in qualifying property in Canada, resulting in less-favourable tax treatment and flexibility when not using a separate Canadian legal entity. Please consult with your tax advisors.

A Canadian entity may be established in several ways, including: by incorporating a corporation under the federal laws of Canada or the laws of a province or territory; by forming a partnership under provincial or territorial legislation; or by entering into a joint venture with a Canadian partner.

The appropriate structure will depend on the business’s commercial objectives, tax considerations, and long-term strategy, and should be determined in consultation with both legal and tax advisors.

in the relevant jurisdictions. This newsletter series will provide a high-level overview of the Canadian entity structuring options noted above.

A. Company

A corporation is a legally separate entity that operates independently from its owners. It can conduct business, enter into contracts, and hold assets in its own name, while shareholders generally benefit from limited liability, with their financial risk typically limited to their investment in the company.

a. Will the company be incorporated federally or provincially?

A corporation in Canada may be incorporated either federally or provincially under the laws of a particular province (such as British Columbia or Ontario).

Among other differences, a federally incorporated company must comply with director residency requirements, with at least 25% of its directors being resident in Canada (or at least one resident Canadian director if there are fewer than four directors). This is not the case in most provinces, including British Columbia which has no director residency requirement. As a result, when a foreign entity expands into Canada through a subsidiary, provincial incorporation is often preferred, particularly if the company lacks access to a Canadian resident willing to serve as a director.

It is worth noting that, despite a common misconception, both federally and provincially incorporated companies are required to register extra-provincially in any province where they carry on business, other than the province in which a provincial corporation was originally incorporated.

b. Will the Canadian company remain private or go public?

Contrary to a common misconception, a company does not need to be incorporated federally or in Ontario in order to go public in Canada—corporations formed under any provincial or federal statute may pursue a public listing. The principal securities regulator is generally determined by the jurisdiction where the company's head office is located; however, securities rules are largely harmonized across provinces. As a result, the choice of incorporation jurisdiction is typically driven more by governance and tax considerations than by public market eligibility.

c. What Are the Ongoing Administrative and Compliance Requirements?

A corporation in Canada is formed by filing prescribed incorporation documents with the appropriate governmental authority.

Once incorporated, aside from ongoing accounting requirements (including filing a separate tax return for the company), the company must complete annual maintenance filings and comply with ongoing corporate requirements. Failure to complete this required annual filings for two consecutive years may result in the administrative dissolution of the corporation. In almost all jurisdictions in Canada, corporations are also required to maintain a transparency register (sometimes referred to as a beneficial ownership register) that records information about individuals who ultimately own or control a significant interest in the company.

The governmental charges for establishing and maintaining a Canadian corporation are relatively modest in most jurisdictions.

B. Partnership

In Canada, a partnership is generally not a separate legal entity, but rather a legal relationship between two or more persons (including individuals or corporations) carrying on business together with a view to profit. Partners may contribute capital, services, expertise, intellectual property, or other assets. Their rights and obligations are primarily governed by a partnership agreement and applicable provincial legislation, and registration may be required in certain provinces. Partnerships commonly take the form of a general partnership or a limited partnership.

In a general partnership, all partners typically participate in management and are jointly and severally liable for the partnership's debts. In a limited partnership, at least one general partner manages the business and assumes unlimited liability, while limited partners contribute capital and enjoy limited liability, provided they do not participate in management.

For Canadian income tax purposes, a partnership is generally treated as a flow-through entity: income or loss is computed at the partnership level and allocated to the partners, who report it on their own tax returns. Because partnerships are not themselves taxable entities, this structure may be advantageous when early-stage losses are anticipated, subject to the "at-risk" limitations applicable to limited partners.

C. Joint Venture

Two or more parties may collaborate through a joint venture to pursue a specific business opportunity. There is no distinct statutory regime governing joint ventures in Canada; rather, they are typically created by contract and are common in industries such as construction and natural resources. A joint venture generally involves parties agreeing to combine capital, assets, expertise, or other resources for a defined project, while sharing profits and losses and retaining some degree of control over the venture.

To avoid inadvertently creating a partnership, the joint venture agreement should expressly state that no partnership is intended and clearly define the scope of the venture, obligations of each party to provide property or services, governance structure, decision-making processes, and dispute resolution mechanisms. Unlike a corporation, a joint venture is not a separate legal entity and cannot sue or be sued in its own name; rights and liabilities remain with the participating parties.

The above is provided for general informational purposes only. We recommend consulting with appropriate legal and tax advisors to assess your specific circumstances before proceeding. Should you wish to discuss any matter or issue relating to the above, please contact:

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In Part 2 of this newsletter series, we will review the principal agreements typically used in Canadian business operations across different industries.