Getting ready to launch in Canada:
A How-to Guide for Global Businesses

SINGLETON REYNOLDS

bakertilly

chemistry. HR & Executive Search Experts

Westland Insurance

Ius Laboris Canada MathewsDinsdale

MONTRIDGE® ADVISORY GROUP LTD.

INTRODUCTION

You've decided to expand your business into Canada. Congratulations, it's a big decision that represents an exciting opportunity for you and your business: Canada is the 10th largest global economy and has grown at a stable rate for several years, Canadian citizens are easy to reach and share many similarities with their southern neighbours, and the Canadian government offers significant tax breaks to corporations looking to set up in the country.

The decision is also anxiety-inducing. Launching your business in Canada is not without its risks and complications—if it were, everyone would do it. There are a lot of details to be sorted and decisions to be made. If you've woken up in a cold sweat at 3 a.m. asking yourself questions such as:

Q

Are you asking yourself:

- **Do I need to find a new insurance provider?**
- **What are the tax laws like?**
- **What do employee contracts look like in Canada?**
- **How should I structure my business?**
- **What kind of health benefits should I provide?**

Then we can help.

Our goal is to provide you with the guidance you need to get your business launched in Canada.
We created this whitepaper with the help of several business experts to ensure this document is as useful to you as possible.

***This guide does not constitute legal or other professional advice and should not be relied upon as such.*

GETTING READY TO LAUNCH IN CANADA: A HOW-TO GUIDE FOR GLOBAL BUSINESSES

LEGAL STRUCTURES

By Singleton Urquhart Reynolds Vogel LLP - Business Law

When considering growing your business into Canada it's essential to understand the basics of the legal framework around different business structures.

A primary consideration is to decide what structure works best for your business. In Canada, businesses can take a few different forms. However, the two most often used are corporations and partnerships.

Corporations

Corporations are a distinct legal entity with share capital. They can own property, carry on business and enter into both legal and contractual obligations. In Canada, corporations can be created at either the federal or provincial level, and are subject to applicable securities legislation such that they are a private or public corporation. A corporation is formed pursuant to the applicable business corporations legislation, either federal or provincial.

Certain Canadian provinces do not have residency requirements for directors of a corporation.

Partnerships

Partnerships are two or more persons carrying on business with a view of making a profit. They are not a separate, distinct legal entity, but instead a relational form of business. Partnerships are formed by contract, and certain formations permit limitations on liability.

There are alternatives to the above to consider as well, such as licensing, franchising, establishing a branch office or establishing a network of distributors and/or agents.

Ultimately, determining the structure your business will take in Canada is one that also requires tax consideration. In doing so, your structure may be affected by:

- A tax treaty between Canada and the jurisdiction from which your business originates; your personal circumstances and/or tax residency.
- The flow of funding and investment for your business.

Further, and discussed below, is the consideration around employees. Depending on who is working for your business and where from, a particular structure may be better than another.

Once you have determined the structure for your business, there are a number of other 'housekeeping' items to consider.

Consider your tax obligations

Canada has both federal and provincial levels for taxes. At the federal level, you must ensure your business is properly set up with the Canada Revenue Agency (CRA). Depending on the nature of your business, a company is obliged to pay and remit corporate taxes, goods and services tax (GST) and payroll taxes.

At a provincial level, and from a sales perspective, you must consider whether your business is obliged to register for, collect and remit provincial sales taxes (PST) and/or harmonized sales tax (HST).

Further, provincially, a company must comply with that province's worker's compensation legislation. This requires a company to register with the worker's compensation body, unless exempted, and pay the required fees for the necessary coverage.

At a local level, a company is also obliged to comply with the municipal jurisdictions in which its business operates. Usually this requires a business license; a business license is required in each municipal jurisdiction in which a business operates. Certain types of businesses are obliged to have multiple business licenses as a result.

Finally, you will want to ensure that your company's insurance is up to date, and includes the necessary coverage and limits to ensure adequate protection within Canada, and for the scope and nature of your business inside and outside of Canada.

In addition to the above, other key topics for any company setting up in Canada include:

- Knowing your privacy requirements.
- Considering the protection of your intellectual property, and trademarks.
- Ensuring you are familiar with and have appropriate advice around employment matters and the related obligations under legislation and common law.
- Understanding the ins and outs of immigration for your key employees or team, or for attracting employees (Canada has a number of favourable immigration programs).

TAX CONSIDERATIONS

By Baker Tilly Canada - Accounting, Tax, and Assurance

When looking to launch a business in Canada there are some key tax related considerations foreign companies will need to address.

Income Tax - Branch or Subsidiary

Companies looking to do business in Canada must decide how to structure their Canadian business operations. Generally, a global business looking to launch in Canada will look at whether to incorporate a Canadian subsidiary or to establish a Canadian branch operation.

A Canadian subsidiary will be considered a Canadian tax resident and will be subject to Canadian income tax on its worldwide income.

A Canadian branch of a foreign company that is carrying on business in Canada through a permanent establishment will be subject to Canadian tax on its Canadian business income. In addition, branch profits tax may also apply on branch profits not reinvested in the Canadian branch.

The determination of the optimal Canadian business structure will be dependent on a number of factors, including but not limited to home country taxation laws, the expected profits and losses, and the plans for the repatriation of profits.

Sales and Commodity Taxes

The GST is a 5% federal tax paid on most goods and services purchased in Canada. Some provinces apply PST or retail sales tax in addition to the GST on certain purchases or sales. Some provinces have combined the GST with PST to create the HST.
HST rates vary by province, and certain goods and services are exempt from GST/HST. The items that are taxed (and their tax rate) vary from province to province.

Businesses are required to charge GST/HST or PST on the "taxable" goods or services provided in the course of business activities carried on in Canada once a specified sales threshold is met. The meeting of this threshold requires a business to register for a GST/HST account.

In certain scenarios, it may be beneficial to voluntarily register for GST/HST, which can result in recovery of GST/HST that would otherwise form a cost of doing business in Canada.

Payroll Tax

When a new Canadian business involves employees (either Canadian resident employees or employees of the foreign parent company working in Canada) certain source deductions will be required on amounts paid to the employees.

These deductions will have to be remitted to the CRA. Source deductions generally include amounts for Canada Pension Plan (CPP) contributions, Employment Insurance (EI) premiums, and federal, provincial, or territorial income tax. In conjunction with payroll and employee remuneration, some provinces may also require a business to pay premiums to a provincially managed workplace insurance and labour management fund such as WorkSafeBC.

Employer Health Taxes

The Canadian health care system is principally a publicly funded service, which in some provinces is partially achieved through an additional health tax levied on qualifying businesses or employers. Health taxes are generally based on remuneration paid to employees, and the rates vary from province to province.

EMPLOYMENT CONTRACTS

By Mathews Dinsdale & Clark LLP – Labour and Employment Law

Employers in Canada are often unaware of the potential liabilities associated with their employment relationships. Identifying, managing and mitigating these liabilities is an important part of starting any business in Canada. To this end, all employers should be encouraged to use written employment contracts.

An employment contract is a document setting out the key rights and obligations of an employer and employee. Investing in the preparation of written employment contracts is always a wise decision – they will serve to reduce the likelihood of costly disputes and minimize the employer's liability when disputes arise. Regardless of whether the business is small or large, every employer should have employment contracts in place.

Employment contracts do not have to be complex. With the right language, a simple "Welcome Letter" can constitute an effective employment contract. With respect to content, an employment contract can address issues such as wages, benefits, hours of work, vacation entitlements and the like. Most importantly, employers should include a provision setting out the parties' rights and obligations when the employment relationship is terminated.

Employment Contract: Termination Provisions

A termination provision will establish the amount of notice an employer is required to give an employee if they are dismissed. Without one, the Canadian common-law may impose significant notice obligations.

The common-law notice regime in Canada does not allow for "at-will employment", where the employer is entitled to end the employment relationship at any time for any reason, without any notice or severance obligation. The common-law requires employers to provide "reasonable termination notice", which often amounts to as much as one month per year of service and even more than that in some circumstances. Reasonable notice entitlements are decided on a case by case basis, subject to an employee's "duty to mitigate" and generally are difficult to predict.

Common-law notice periods are costly because once the decision has been made to dismiss an employee, employers usually choose to provide severance pay in lieu of working notice.

A properly drafted termination clause will not give an employer as much latitude as US employers, but can significantly reduce notice/severance obligations. Parties to an employment contract in Canada are permitted to expressly set out the necessary notice/severance entitlement upon dismissal by the employer on a without cause basis – effectively (and lawfully) contracting out of the common-law notice requirements.

For example, employment contracts often include termination provisions that limit the necessary notice/ severance to only that which is required under the BC Employment Standards Act (just one week after three months of employment, two weeks' after one year, three weeks after three years, and an additional week for each subsequent year, up to a maximum of eight weeks' notice).

This, of course, is significantly less than "reasonable notice" under the common-law. That said, parties to an employment contract are also permitted to craft a termination provision that is more generous, so as to provide certainty in this respect and avoid reliance on difficult to predict common-law entitlements.

Note that a termination provision in an employment contract must be drafted properly in order to be of any value to the employer. If the provision is ambiguous or fails to meet the minimum requirements under the applicable employment standards legislation, it will not be enforceable and the common-law rules will apply. It is also important to keep in mind that employment legislation governing notice entitlements vary from province to province.

Therefore, a termination clause that is acceptable in British Columbia may not be enforced by courts elsewhere in the country. If you are considering starting a business in Canada that will operate in more than one province, it will be necessary to tailor each employment contract according to the jurisdiction in which the employees are working.

In sum, when starting a business in Canada, an employer must recognize that Canadian law offers significant protection to employees and that this can result in increased costs. To address this, employers should use employment contracts and include carefully drafted termination provisions.

EMPLOYEE HANDBOOK CONSIDERATIONS

By Chemistry Consulting Group Inc. – Human Resources Consulting

Regardless of where your organization operates, when growing your business in a different county, organizational leaders must pay heed to the social and political landscape of the new environment. As government mandates shift and evolve, and as social contracts are rewritten, it is vital to regularly review policies and procedures in light of changing workplace climates. In Canada, we have recently seen the following changes in the workplace environment:

Q

Do your policies and procedures consider the current social and political landscape?

- **New legislation regarding the use of cannabis.**
    - Recreational use of cannabis became legal in October 2018, though the use of medical marijuana has been legal for decades.
    - It's incumbent on employers to have clear policies in place regarding the use of cannabis and other intoxicating substances which may affect employees while at work
- **Increased awareness on expectations for workplace behaviours, including what constitutes bullying and harassment.**
    - Some provincial workers' compensation boards (such as WorkSafeBC) require employers to have procedures in place regarding workplace bullying and harassment.
- **Expanding legal and best practice obligations on the part of company leaders for identifying and supporting mental health issues.**
    - There is increasing evidence that support for mental health issues makes sense in order to reduce presenteeism, absenteeism, and disability claims.
    - Equally true is that there are still many barriers in place around seeking help. Developing a safe workplace culture requires a deft touch and a need to comply with Human Rights legislation and employment law.
- **Shifting demographics in workforce composition; increased emphasis on institutional commitment to environmental issues.**
    - With five generations in the workforce, adopting policies around flexible work hours, working from home, expanded leaves, and social and environmental issues are increasingly important when competing for talent.
- **Alternative work options, impactful on many levels including communication and team development.**
    - With an increase in remote work, virtual offices, and shared space, what processes does a company need in place to create a team environment? What onboarding, training, and project management happens as well as it does in a traditional office setting?

In addition to the global shifts in the workplace environment, across Canada provinces are taking a slightly different approach on employer/employee relations - from unionization to payment and calculation of wages. These provincially based employment standard legislations are overlaid with others such as the Canadian Human Rights Code and health and safety legislation such as WorkSafeBC. It is critical that companies operating in more than one province or territory adapt employee handbooks to reflect the differences in legislation.

CROSS BORDER INSURANCE

By Westland Insurance Group Ltd. – Commercial Insurance

When US domiciled companies open locations in Canada, there are a number of insurance considerations to be aware of. The following is a high level overview of some of the key insurance differences between the two countries.

Insurance Rates

In the US, insurance rates are regulated by the state and each insurer must file rates in accordance to state regulations. In Canada, Property and Casualty insurers are not subject to the same restrictive structure. This generally translates to insurance pricing flexibility that ultimately benefits the consumer.

To protect consumers, Canadian Insurers are still regulated in terms of their overall solvency and financial soundness.

Liability Structure

Compared to the US, the liability structure in Canada is somewhat different. In the US, insurers typically provide a smaller underlying liability limit and then add top-up layers to achieve the desired liability limit. In Canada, $10MM and $25MM liability limits are readily available for many industry sectors; therefore reducing any possible gaps in coverage. If higher limits are required or if the business has vehicles that require a higher liability limit, an umbrella liability policy is available.

To arrange coverage for Canadian locations, US companies can often make arrangements with their US insurer to provide coverage through a fronting arrangement. This includes a Canadian licenced insurer and broker.

For continuity reasons it is best, where possible, for both US and Canadian operations to be insured with the same insurer. To address gaps in coverage between the US and Canadian policies, the US insurer will usually include a Difference in Conditions and Difference in Limits clause on the primary policy.

Other Canadian considerations/differences:

- Unlike Property and Casualty insurance, Auto insurance rates are regulated by each province.
- Canadian Workers' Compensation Boards (WCB) provides insurance for workplace injuries. Workplace injuries and illnesses are provincially regulated in Canada. The insurance programs are funded by the employers who require the coverage. This coverage is not purchased as part of a commercial insurance policy.

EMPLOYEE BENEFITS

By Montridge Advisory Group Ltd. – Employee Benefits Advisors

There is a common misconception that employers in Canada don't need to worry about offering benefits and retirement solutions to their staff, as Canadian government social programs offer everything needed. This perception is a far cry from reality, and these programs are a cornerstone of compensation for employers.

In fact, approximately 70% of Canadians have private drug coverage, with the majority of this coverage being offered by their employer. As well, 75% of employees say they would not consider a position with an employer that didn't offer a health benefit plan.

75% of employees say they would not consider a position with an employer that didn't offer a health benefit plan.

Offering benefit and retirement programs are a tax-efficient form of compensation for both employees and employers alike. So when opening your Canadian operations, where do you start?

Employer Considerations

Most Canadian insurers will underwrite employee benefit plans starting at 2-5 employees. Historically, insurers have wanted to see a two-year track record of the business, but this has changed and an experienced advisor can create a narrative highlighting the success of the global employer.

Employees must be Canadian residents with either provincial coverage or replacement coverage for their first 3 months of residency. Independent contractors and employees on working visas can be insured with plan design considerations.

Typically, an insurer will request premium payments be made via a Canadian bank. Payment can be made either with a cheque or Pre-Authorized Debit (PAD). Some insurers will consider a wire transfer for premium payments. This is most common for new employers who are still setting up Canadian banking and need a binder premium for their benefits plan.

Plan Design Considerations

Benefit plans in Canada, by law, must be designed to dovetail provincial coverage. Therefore, a benefit plan will not insure items such as doctor and specialist visits, doctor-prescribed tests, hospital stays (with the exception of room upgrades), and prescription drugs that are administered in a hospital.

Benefit plans in Canada will typically include the following:

- Life Insurance for employees, spouses, and dependent children
- Disability Insurance (short and/or long-term)
- Critical Illness
- Extended Health (common categories are: prescription drugs, paramedical services, medical services/supplies, and out-of-country travel insurance)
- Dental
- Employee and Family Assistance Plans

The extent of coverage will depend on your industry, demographics, benchmarking to both competitors and local employers, as well as your budget.

How to Get Started

Choosing a benefits advisor who has experience with multinational or global employers is an excellent start. They will be able to help you determine the appropriate plan design given the above factors, as well as what is equitable to other plans your company may have in other countries.

Census data regarding your employees will be required for underwriters to propose rates. This, along with your advisor's work in plan design options, is submitted to insurers for consideration.

Once received, your advisor will summarize the options and work with you to create and implement a plan that meets your objectives. Ideally, an effective date for the policy should be 4-6 weeks away, giving ample time to have employees complete their enrolment forms, contracting to be completed, and the insurer to set up the policy and produce materials.

Your advisor will then work with you regarding plan administration training, employee communications, provide ongoing support for administration and claim issues, negotiate annual renewals, and suggest plan design amendments when appropriate.

ABOUT THE EXPERTS

Visit their website

Singleton Urquhart Reynolds Vogel LLP | Law Firm

With offices in Vancouver and Toronto, Singleton Urquhart Reynolds Vogel LLP provides an extensive range of legal services, with a focus on finding solutions to complex legal problems, and providing service excellence in their approach and execution.

Visit their website

Baker Tilly Canada | Accounting, Tax, and Assurance Firm

Baker Tilly Canada's independent firms provide value-added audit, tax and advisory solutions across every major industry sector through an established platform, deep local expertise and access to the highest quality resources in the international marketplace.

Visit their website

Mathews Dinsdale & Clark LLP | Law Firm

With over half a century of experience, Mathews Dinsdale & Clark LLP has helped redefine the landscape of Canadian workplace law. They provide legal services, advice and representation to both provincially and federally regulated employers across a broad range of industries and practice areas within the field of workplace law.

Visit their website

Chemistry Consulting Group Inc. | HR & Executive Search Experts

Chemistry Consulting Group Inc. are a team of human resources, recruitment, and event management experts. They offer a range of services and deliver exceptional results with a personal touch.

Visit their website

Westland Insurance Group Ltd. | Insurance

Westland Insurance Group Ltd. was established in 1980 to meet the insurance needs of individuals, businesses and non-profit organizations. Today, they are one of Western Canada's leading independent insurance brokers, providing personalized insurance services in more than 130 locations and 75 communities throughout BC, Alberta and Saskatchewan.

Visit their website

Montridge Advisory Group Ltd. | Benefits Advisors

Formed in 1997, Montridge Advisory Group Ltd. are the benefit advisors to some of Canada's most dynamic employers. Specialists in our respective fields, our team is experts in employee benefits, retirement, and executive compensation solutions. With local, multinational and global clients, we play an integral role in the ecosystem of our clients' compensation strategies.