

Key Facts Companies

Companies in Canada are established either under the federal *Canada Business Companies Act (CBCA)* or provincial/territorial legislation. The *British Columbia Business Corporations Act (BCBCA)* is the legislation governing companies in the province of British Columbia and is widely recognized for its flexibility as compared to its federal and provincial counterparts.

Federal Companies

CBCA companies are incorporated through Corporations Canada, based in Ottawa, Canada. The advantages of a CBCA company include the following:

- The company can carry on business anywhere in Canada though it will first need to register in such province or territory
- The company can locate its head office, retain its corporate records and hold its board and shareholder meetings in any province
- Throughout Canada, except in Quebec, the company name can be used without the need to seek approval for the use of the name at a provincial level

Notably, CBCA has introduced a new beneficial ownership reporting regime. CBCA companies are now required to collect and maintain a registry of Individuals with Significant Control (ISC). A natural person can be determined to meet this threshold by holding 25% or a greater number of voting shares or shares based on fair market value, or has influence over the corporation. This ISC register is kept at the company's place of records and is not publicly available. However, the company's shareholders and government authorities can request a copy of the ISC register. This regime mirrors some of the ultimate beneficial ownership

registries found in other non-Canadian jurisdictions. Similar legislation is also being considered in many Canadian provincial/territorial corporate statutes.

Provincial/Territorial Companies

Each of Canada's ten provinces and three territories has its own corporate legislation.

Where a business wishes to operate across Canada, there is no major advantage to incorporating federally versus provincially, because a company formed in any Canadian province or territory can conduct business in any other province or territory. To do so, it would just need to register extra-provincially in the other provinces/territories in which it plans to carry on business.

Certain industries and professionals, such as physicians or accountants, may be restricted to provincial incorporation.

A provincial company can apply for continuation and change to another jurisdiction, be it another province, or to the federal jurisdiction. It may even continue to a jurisdiction outside Canada so long as the new jurisdiction permits it.

British Columbia Companies No Residency Requirements

- the BCBCA has no residency requirements for shareholders, directors or officers; in contrast

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there is a Canadian resident director requirement under the CBCA and the legislation of most other provinces

- a foreign parent company may establish a British Columbia corporate subsidiary with a board comprised entirely of directors from the foreign parent's home jurisdiction

Flexibility in Structuring Corporate Governance

The BCBCA affords a high degree of discretion in structuring the legal framework of a company. For example, the BCBCA includes the following provisions:

- The ability to create par value and non-par value shares
- The ability to have an unlimited number of authorized shares, and multiple classes and series of classes of shares
- The right to issue fractional shares
- The ability to set rights/restrictions among different classes of shares
- No restrictions on the company giving financial assistance
- The level of shareholder approval for passing a special resolution may be set anywhere from 2/3 to 3/4
- The ability to restrict and transfer the powers of directors to one or more other persons
- The ability to reduce capital, in certain circumstances, without the requirement of obtaining a court order
- The ability of a company to purchase and hold its own shares, and a subsidiary to purchase or otherwise acquire the shares of its parent
- Short-form horizontal and vertical amalgamations (merger) without court approval

- Amalgamations involving foreign corporations
- The ability to restore a dissolved company without court order
- Continuation of a company into another jurisdiction and ability for entities to be continued into the province pursuant to the BCBCA

Unlimited Liability Companies (ULC)

British Columbia is one of only three provinces to allow for the establishment of ULCs.

A ULC is a company in which shareholders, and in some cases former shareholders, have unlimited joint and several liability for the obligations of the company arising from actions and proceedings against the ULC before or within one year of a ULC's dissolution. However, such liability arises only where the company is liquidated with insufficient assets to satisfy its obligations.

In 2010, amendments to the Canada-U.S. Income Tax Convention limited the utility of Canadian ULCs as flow-through entities for U.S. tax purposes. However, there continues to be planning opportunities for using such companies. Low incorporation and maintenance fees combined with no residency requirements for directors makes British Columbia the most attractive of the Canadian jurisdictions offering ULCs.

Ability to Waive the Production and Publication of Financial Statements for Companies

The BCBCA allows shareholders to resolve unanimously to waive the production and publication of financial statements, provided that those shareholders holding non-voting shares (if any) also vote in favour of such resolution. A resolution waiving the preparation of financial statements can be passed even after the date on which the financial statements are required but cannot be given generally.

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Ability to Rectify Errors

The BCBCA includes rectification provisions which allow for, among other things, the correction of corporate mistakes and errors in the creation, allotment or issuance of shares. These rectification provisions provide for a cost-effective way to correct corporate deficiencies that often come to light at the time of a transaction or reorganization.

Additional Administrative Highlights

The following are also noteworthy features of BCBCA companies:

- Companies with no active business may use a numerical name
 - Recently introduced legislation now requires companies owning real estate in the province to disclose in a public register its beneficial owners who are natural persons
 - Legislation is also being considered at the time of writing which would require companies to collect and maintain an ISC register. The thresholds for who meets the ISC standard are similar to that in the CBCA legislation. This ISC register is kept at the company's place of records and is not publicly available. However, the company's shareholders and government authorities can request a copy of the ISC register.
 - An individual can hold all corporate offices and be the sole director (one director permitted)
 - Meetings and records can be held anywhere in the world
 - Shareholders and directors can act by written unanimous consent
 - Only natural persons/individuals can serve as directors (no corporate directors permitted)
 - Companies are required to file an annual report, notices of changes to directors and its registered/ records office
- Companies are required to make certain records available for inspection in the province
 - A company's name must end in "Corporation", "Limited" or "Incorporated" or applicable abbreviations

Taxation

A company will be resident in Canada for tax-purposes if either it was incorporated in, or continued in, Canada, or its central management and control is situated in Canada.

Canadian companies making dividends, royalties or payments to foreign shareholders of interest (if the party is non-arm's length) are subject to general 25% withholding tax, unless reduced by an available tax treaty, of which Canada has more than 90 double taxation agreements in force, including treaties with the US, UK, Australia, HK, China and France.

Income Tax

A company resident in Canada pays federal and provincial income tax on its worldwide income (income includes 50% of capital gains).

In 2018, the combined federal and British Columbia provincial rate was 27%. Some companies may be able to access exemptions and incentives, and lower their effective tax rate.

Excise Tax

Excise tax must generally be charged and remitted by Canadian companies on business provided in Canada. Excise tax includes the Goods and Services Tax (GST) at a rate of 5% (a federally administered tax) and, if in British Columbia, the applicable Provincial Sales Tax (PST) of 7%.

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How Trident Can Assist You in Canada

Our Vancouver office provides the following company establishment and maintenance services:

- Formation of British Columbia companies and federal companies through dedicated local counsel
- Providing professional intermediaries with appropriate statutory documents including relevant memoranda and articles of association/incorporation
- Attending to the extra-provincial registration of provincial companies or non-Canadian companies
- Maintaining a company in good standing in the relevant jurisdictions and acting as the registered and records office/registered agent
- Coordinating any related work in other jurisdictions within Canada

If you are interested in our service please contact us as follows:

Katrina Leung
Executive Vice-President
TT Services (Canada) Limited
6th Floor, 890 West Pender Street
Vancouver, British Columbia, V6C 1J9
Tel: +1 604 687 0811
kleung@tridenttrust.com
www.tridenttrust.com

Offices

The Americas/Caribbean

Bahamas

Trident Corporate Services
(Bahamas) Ltd
T: +1 242 322 6154
bahamas@tridenttrust.com

Barbados

Trident Corporate Services
(Barbados) Ltd
T: +1 246 621 0760
barbados@tridenttrust.com

British Virgin Islands

Trident Trust Company (BVI) Ltd
T: +1 284 494 2434
bvi@tridenttrust.com

Canada

TT Services (Canada) Ltd
T: +1 604 687 0811
vancouver@tridenttrust.com

Cayman Islands

Trident Trust Company
(Cayman) Ltd
T: +1 345 949 0880
cayman@tridenttrust.com

Nevis

Morning Star Holdings Ltd
T: +1 869 469 1817
nevis@tridenttrust.com

Meridian Trust Company Ltd

T: +1 869 469 1333
nevis@tridenttrust.com

Panama

Trident Trust (Panama) S.A.
T: +507 302 7494
panama@tridenttrust.com

United States

Atlanta
Trident Corporate Services, Inc
T: +1 404 233 5275
usa@tridenttrust.com

Trident Fund Services, Inc

T: +1 404 364 2019
americasfunds@tridenttrust.com

Miami

Integritas, Inc
T: +1 305 405 9006
contact@integritastrust.com

New York

Trident Corporate Services, Inc
T: +1 212 840 8280
nyc@tridenttrust.com

Sioux Falls

Trident Trust Company
(South Dakota) Inc
T: +1 605 679 4355
sd@tridenttrust.com

US Virgin Islands

Trident Trust Company (VI) Ltd
T: +1 340 774 7322
usvi@tridenttrust.com

Asia

Hong Kong

Trident Corporate Services (Asia) Ltd
& Trident Trust Company (HK) Ltd
T: +852 2805 2000
hongkong@tridenttrust.com

New Zealand

Trident Trust Company (NZ) Ltd
T: +64 9 300 6067
nz@tridenttrust.com

Singapore

Trident Corporate Services
(Singapore) Pte Ltd &
Trident Trust Company
(Singapore) Pte Ltd
T: +65 6653 1800
singapore@tridenttrust.com

EMEA

Cyprus

Trident Trust Company (Cyprus) Ltd
T: +357 258 20 650
cyprus@tridenttrust.com

Trident Fiduciaries (Middle East) Ltd

T: +357 253 53 520
fiduciariesme@tridenttrust.com

Dubai

Trident Trust Company (UAE) Ltd
DMCC Branch
T: +971 4 423 9988
dubai@tridenttrust.com

Trident Fund Services (DIFC) Ltd

T: +971 4 277 1191
dubai@tridenttrust.com

Guernsey

Trident Trust Company
(Guernsey) Ltd
T: +44 1481 727571
guernsey@tridenttrust.com

Isle of Man

Trident Trust Company (IOM) Ltd
T: +44 1624 646700
iom@tridenttrust.com

Jersey

Trident Trust Company Ltd
T: +44 1534 733401
jersey@tridenttrust.com

Luxembourg

Trident Trust Company
(Luxembourg) S.A.
T: +352 26 30 28 48
luxembourg@tridenttrust.com

Malta

Trident Corporate Services
(Malta) Limited &
Trident Trust Company (Malta) Ltd
T: +356 21 434 525
malta@tridenttrust.com

Mauritius

Trident Trust Company
(Mauritius) Ltd
T: +230 210 9770
mauritius@tridenttrust.com

Seychelles

Trident Trust Company
(Seychelles) Ltd
T: +248 4 422 000
seychelles@tridenttrust.com

Switzerland

Trident Corporate Services AG
T: +41 44 396 1080
switzerland@tridenttrust.com

United Kingdom

Trident Trust Company (UK) Ltd
T: +44 20 7935 1503
uk@tridenttrust.com

Trident Company

Services (UK) Ltd
T: +44 20 7487 0460
corpservices@tridenttrust.com