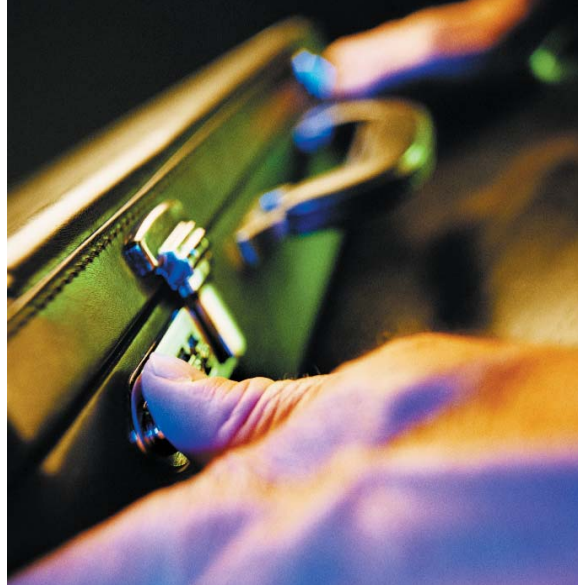


ALBERTA UNLIMITED LIABILITY CORPORATIONS



BUSINESS SERVICES LEGAL ALERT

JUNE, 2005

On May 17, 2005 the Alberta Business Corporations Act (the “ABCA”) was amended. One of the more significant amendments related to the introduction of the Alberta unlimited liability corporation (the “ABULC”). The shareholders of an ABULC are fully liable for all of the liabilities and obligations of the corporation. By contrast, a shareholder is not usually liable for the liabilities and obligations of the typical form of limited liability corporation.

The natural question to ask is “Why would anyone choose to incorporate an ABULC when they could choose to use a typical corporation and not be subject to the possibility of unlimited liability?” The answer lies in the potential for attractive tax advantages for United States shareholders of a business operating in Canada.

For Canadian tax purposes, it is expected an ABULC will be treated in the same manner as a regular corporation – all income is taxed in the hands of the corporation. In the United States, we understand that the ABULC will be treated as a disregarded entity whereby its income or loss (eg. on start-up) will flow through to its shareholder. When there are several shareholders ABULC income and losses would flow through to them as partners for U.S. tax purposes. ABULCs are therefore hybrid entities which are treated as corporations for Canadian tax purposes and as either a branch or partnership for U.S. tax purposes.

Of course, the unlimited liability nature of an ABULC would be a concern to any shareholder. Fortunately, with proper planning a U.S. subsidiary (typically either an “S Corporation” or a “C Corporation”) can be interposed between the U.S. shareholder(s) and the ABULC such that it shields the U.S. shareholder(s) from ABULC liabilities but do not disrupt the flow through of income and losses to the shareholder(s) for U.S. tax purposes.

In a typical structure for a U.S. individual, the shareholder owns the shares of an “S” Corporation which then owns the shares of the ABULC. The shareholder gets the tax benefits discussed above and is shielded from the potential for liability – the best of all worlds.

The ABCA permits an ABULC to be incorporated as a new corporation and also permits an unlimited liability corporation that has been incorporated in Nova Scotia to be “continued” into Alberta as an ABULC. As well, the ABCA permits a limited liability corporation to be “converted” into an ABULC and *vice versa* and amalgamations (including short form amalgamations) are also permitted.

We expect that ABULC’s will become popular hybrid entities and that many Nova Scotia unlimited liability corporations will convert to ABULC’s. Until these amendments came into force, Nova Scotia was the only jurisdiction in Canada that permitted the incorporation of an unlimited liability corporation. The incorporation

fee in Nova Scotia for a Nova Scotia unlimited liability corporation is \$6,000 with an annual renewal fee of \$2,000. By way of contrast, the incorporation fee in Alberta is \$100 and there is no annual renewal fee. In general corporate requirements and procedures under the ABCA are more consistent with modern style corporate law statutes.

These amendments are a welcome change as they provide an additional option for United States businesses and investors wishing to conduct business in Canada in a tax effective way.

For more information please contact John McClure in our Edmonton office at 780-423-8636 or Tom Ryder in our Calgary office at 403-294-7077.

The Fine Print:

This legal alert is intended to provide general information concerning developments in the law and is not intended to provide legal advice in respect of any particular situation.

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