On May 17, 2005, the Business Corporations Amendment Act, 2005 S.A. 2005, c. 8, was proclaimed into force in Alberta. This legislation contained a number of amendments intended to modernize Alberta’s Business Corporations Act (the “ABCA”), which had not been substantially changed since 1987. The most significant of these amendments is that Alberta will now permit the creation of an “unlimited liability corporation” or “ULC” for short.

A ULC differs from a traditional corporation in that there is no limit on the liability of the shareholders of a ULC. Section 15.2 of the ABCA now provides that:

“The liability of each of the shareholders of a corporation incorporated under this Act as an unlimited liability corporation for any liability, act or default of the unlimited liability corporation is unlimited in extent and joint and several in nature.”

The traditional limited liability corporation will continue to exist in Alberta. A ULC will simply be an alternative form of carrying on business.

Previously in Canada, Nova Scotia was the only jurisdiction for creating a ULC pursuant to legislation passed in Nova Scotia at the turn of the last century. Alberta will now provide businesses with a modern legislative alternative that provides simple procedures for:

1. the incorporation of ULCs;
2. the continuance of extra-provincial traditional limited liability corporations into Alberta as Alberta ULCs;
3. the continuance of extra-provincial ULCs into Alberta as Alberta ULCs;
4. the conversion to and from a ULC by Alberta corporations; and
5. the amalgamation of a ULC with other ULCs or with other traditional limited liability corporations or combinations of both.

Aside from the fact that the Alberta legislation is much more modern than the Nova Scotia legislation, there are some other benefits to using an Alberta ULC as opposed to a Nova Scotia ULC. One benefit is that under the ABCA an extra-provincial corporation is allowed to continue into Alberta as a ULC regardless of whether the extra-provincial corporation was a ULC or not in its original jurisdiction. Thus, non-Alberta limited liability corporations and Nova Scotia ULCs may continue into Alberta as AULCs in a one step process. Nova Scotia ULCs must undergo a two-step process where by an extra-provincial corporation must first continue into Nova Scotia and then must amalgamate with a Nova Scotia ULC, be wound up into a Nova Scotia ULC or undergo a court-
ordered arrangement. Another benefit of using an Alberta ULC is that the cost of incorporating a Nova Scotia ULC is $6,000 with a $2,000 annual renewal fee. In Alberta, a ULC will have the same incorporation costs as a limited corporation which is currently only $100.

Under the Income Tax Act (Canada) a ULC is treated like any other corporation for Canadian tax purposes. However, a ULC is a useful tax-planning vehicle for businesses that are involved in cross-border transactions. This is because for U.S. tax purposes the U.S. Internal Revenue Service treats a ULC as either a branch (if there is only one shareholder) or as a partnership (if there is more than one shareholder). The end result is that the ULC is a hybrid entity - a corporation for Canadian tax purposes and a flow-through entity for U.S. tax purposes. It is this hybrid treatment that has resulted in ULCs being used in an array of situations including:

1. by companies making cross-border share or asset acquisitions;
2. by U.S. businesses seeking a more tax-efficient manner to hold their existing Canadian business operations;
3. by Canadian income trusts holding U.S. based income producing assets; and
4. by Canadian and U.S. businesses making foreign investments in a manner that enhances the cross-border financing structures.

Any business with both Canadian and U.S. operations, or any adviser to such a business, will wish to consider whether an Alberta ULC may be used to enhance the Canadian and U.S. tax position of these operations.

To discuss the uses of an Alberta ULC, or to find out more about them or the Business Corporations Amendment Act, 2005, please contact:

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