



# Expanding to Canada is About to Get Even Simpler

*Why you may soon be able to incorporate or continue your business in Ontario instead of British Columbia or Nova Scotia*

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**Update:** On December 8, 2020, Bill 213 received Royal Assent and was passed into law. The changes to the director residency requirements are contained in Schedule 1 of the Bill, which has not yet been proclaimed into force. However, we expect Schedule 1 to come into effect in the coming weeks. At that time, we will no longer need to look to British Columbia and Nova Scotia to incorporate the Canadian subsidiaries of foreign companies, and we will instead be able to incorporate them in Ontario.

## **i. New Legislation Proposed**

On October 6, 2020, the Ontario government introduced Bill 213, the *Better for People, Smarter for Business Act, 2020*. If passed into law, Bill 213 will amend portions of the *Ontario Business Corporations Act* ("OBCA") to make it easier for companies to do business in Ontario.

One of the proposed changes - the elimination of the requirement that at least 25% of the directors of an Ontario corporation be resident in Canada - is of particular interest to:

- international companies that are considering opening a Canadian subsidiary; and
- international companies that have already incorporated in Canada (usually in British Columbia or Nova Scotia) and may wish to 'continue' their corporations in Ontario under the OBCA.

We will notify you as soon as Bill 213 becomes law.

## **ii. Current Approach**

For international companies considering expansion into Canada, the director residency requirement under the OBCA is a barrier to incorporation in Ontario.

- **Current Workaround:** The main workaround involves incorporating the Canadian subsidiary in either British Columbia or Nova Scotia (neither of which has a director residency requirement) and then extra-provincially incorporating the company in Ontario. Just as many U.S. companies are incorporated in Delaware despite not carrying on business in Delaware, many international companies that expand to Canada end up being incorporated outside of Ontario.
- **Current Alternative:** Alternatively, a company could find a Canadian resident, with whom they may have had limited business dealings, to serve on the corporation's Board of Directors in order to allow them to meet the director residency requirements to incorporate under the OBCA.



***iii. Why the Proposed Changes Matter***

The elimination of the director residency requirement will make the incorporation process even easier and cheaper for international companies looking to expand to Canada. For companies that have already incorporated in other Canadian jurisdictions, the amendments proposed in Bill 213 may prompt them to consider continuing their corporations in Ontario. By relocating to Ontario, some corporations may be able to avoid certain annual fees charged in other provinces and realize savings on these expenses in the long term. There may be other practical reasons why a business might prefer to be incorporated in Ontario rather than in a different province.

Corporations considering continuation under the OBCA should discuss their options with experienced counsel who can assist them in making the best choice in light of their particular needs and circumstances.

***iv. Other Considerations***

While the changes proposed in Bill 213 will make incorporation in Ontario an attractive option for many companies, it may still be advisable for some businesses to incorporate in other provinces in certain circumstances. For example, some American companies may realize tax advantages by incorporating their Canadian subsidiary as an “unlimited liability company,” which is presently only possible in a few provinces (including British Columbia and Nova Scotia), rather than as a traditional Canadian corporation.

***v. About Us***

Aird & Berlis LLP is a leader in helping international companies come to Canada. In the past year, Fiona Brown has assisted more than two dozen companies with their Canadian expansions.

If you represent an international company considering expansion into Canada or a company currently incorporated under the laws of another province, and are considering incorporating or continuing your corporation under the OBCA, we are ready to help you evaluate your options.

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*This communication offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.*

## Contact



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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Litigation Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.

**Amelia McLeod**, a student at Aird & Berlis LLP, contributed to this article.