



Aird & Berlis LLP Article

Expanding Your Business into Canada: Why a Subsidiary Is Not the Sub-Par Choice

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This article is a collaboration between [Aird & Berlis LLP](#) and [Dhillon Immigration Law PLLC](#).

Canada is a coveted destination for international business expansion on account of its stable economy and diverse population. From the bustling cities of Toronto and Vancouver to its vast natural resources, Canada offers an array of benefits. The country's close proximity to the United States and highly educated workforce are other notable advantages to expanding your business north of the border.

Expanding your business into Canada presents a world of opportunity, but it also comes with critical decisions. A primary decision to consider is whether to establish a Canadian subsidiary or work with a Professional Employer Organization ("PEO").

A subsidiary is a distinct and separate legal entity that is owned and controlled by a parent company. In contrast, a PEO functions as an outsourced human resources firm that assists international companies with hiring and managing Canadian employees, without the need to establish a legal entity in Canada. Instead, the PEO assumes the role of the "Employer of Record" for your employees.

As summarized below, a subsidiary is often preferable to a PEO when considering expanding your business to Canada. A subsidiary establishes a strong Canadian presence, provides general market credibility and key tax incentives, and can be set up quickly, efficiently and remotely.

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The Benefits of a Subsidiary

Through the creation of a Canadian subsidiary, your business will establish a permanent presence in Canada, allowing the opportunity to open a local office, hire employees directly, support immigration applications and exercise full control over your operations while ensuring compliance with employment standards and obligations. It shows Canadian customers and partners that you are serious about establishing a long-lasting presence in the Canadian market. Additionally, certain government and company “Requests for Proposal” are only available to Canadian companies.

We are often surprised to hear how long it takes to incorporate in different jurisdictions, as the process for incorporating a subsidiary in Canada is fast and straightforward. To streamline the incorporation of a Canadian subsidiary, Aird & Berlis provides a pre-incorporation checklist with a list of six to seven questions (e.g., preferred legal name, name of directors and shareholders). After we receive the completed checklist, the subsidiary can be set up within 24 hours. It is not necessary to be physically present in Canada as all forms are available electronically. Unlike certain European jurisdictions, there is no notary requirement. In addition, it is worth noting that in most Canadian provinces, the requirement for a Canadian resident director is no longer in place, thus removing a significant hurdle for international companies during the initial stages of their expansion into Canada.

To take advantage of Canada’s generous corporate immigration policies, a Canadian subsidiary is the best option. Only Canadian employers can support a work permit application and employer-driven permanent resident options. New entities in Canada benefit from a number of Canadian immigration programs geared toward employers seeking to expand into and grow in Canada.

Many companies are establishing Canadian subsidiaries to hire global talent. With greater restrictions on individual immigration options, global talent increasingly seeks employment offers from Canadian companies. Thus, the presence of a Canadian subsidiary can serve as a competitive advantage in the global war for talent.

Establishing a Canadian subsidiary also provides the opportunity to access key tax benefits as many Canadian tax incentives are only available to Canadian entities.

Drawbacks of PEOs

While PEOs may offer expertise in compliance with local employment laws, key drawbacks of this structure include limited control, increased liability, limited initial cost savings and a high variability in quality.

PEOs that serve as the “employer of record” to a former employee or a new hire in Canada must enter into a formal employment agreement with the candidate, and the foreign entity must enter into an agreement to contract that candidate’s services. Due to the complex contractual underpinning of this type of arrangement, there are important ramifications for the foreign entity. There is an added layer of complexity when a PEO hires a former employee who has relocated to Canada. It is critical to obtain independent legal advice for the multiple contracts that may be involved, including but not limited to:

1. the PEO’s employment agreement with the employee;
2. the Foreign entity’s agreement for services rendered by the former employee; and
3. severing the employment relationship with the employee and the foreign entity (in the case of former employees relocating to Canada).

Although a PEO may seem like less work, it also means that the company no longer makes many important decisions about its employees. For example, PEOs often have established relationships with specific employee benefits companies. This can result in your business failing to offer competitive benefit packages, thus reducing your ability to recruit top talent. In addition, many PEOs use standard agreements (e.g., employment agreements and IP assignment agreements). While the use of these agreements may appear beneficial because they are assumed to be compliant with Canadian employment law, such agreements often do not adequately limit employer liabilities and commonly contain enforceability issues. This is particularly problematic as, despite the PEO being formally named the “Employer of Record,” the service agreement will often specify that the headquartering company is responsible for employee liabilities.

Canadian corporate immigration laws are designed to support employers facing a labour market shortage, not for PEOs. Only an employer that is actively engaged in business in Canada *and* intends to “direct and control” an employee’s work can support a Canadian work permit application and/or provide direct support for Canadian permanent residence applications. Most foreign nationals seeking to enter Canada to work for a company require a valid job offer from a Canadian employer. While there are limited circumstances for a PEO to support a Canadian work permit, most do not meet the minimum threshold of creating a true employer-employee relationship from an immigration perspective. Thus, there may be immigration compliance issues that impact not only the PEO, but also the former employee.

Additionally, the quality of PEO services can vary greatly between service providers. Some may lack in-depth knowledge or dedicated account managers, making it crucial to pick a reputable PEO partner. There is no guarantee that they will ensure that you are in compliance with Canadian employment laws, for which you will ultimately be responsible.

In addition to compliance with local employment laws, many companies often choose to use a PEO to test the waters, as PEOs offer cost-effective solutions through pooling resources across multiple clients. However, the cost of using a PEO can quickly exceed the cost of setting up a Canadian subsidiary as PEOs typically charge a monthly fee based on the number of employees and the type of services required. In contrast, there is an initial one-time fee for establishing a Canadian subsidiary and a relatively inexpensive annual maintenance obligation to keep the corporation in good standing (please see our article [Corporate Maintenance - Is Your Corporation Up-To-Date?](#)). Moreover, a PEO cannot leverage specialized immigration programs. By engaging a PEO, foreign companies must sever the employer-employee relationship, which limits the ability to leverage an intracompany transfer, one of the most important options for relocating global talent to Canada.

Ultimately, a PEO can make creating and maintaining a distinct work culture exceptionally difficult. If you are aiming to establish a robust local presence, create an optimal employee experience, support and protect your employees, retain control over all operational aspects, access key tax incentives and reduce liability, the formation of a subsidiary is the ideal choice.

With effective corporate, employment, tax and immigration planning, establishing a Canadian subsidiary can be a streamlined and efficient process.

Reach out to Aird & Berlis today to learn more about how we can help you achieve your Canadian business expansion goals. Together, we'll unlock the full potential of this dynamic and promising market for you.

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



Pavan Dhillon

Founder,

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Pavan is the founder and principal attorney at Dhillon Immigration Law, a boutique Seattle-based law firm providing solution-driven legal expertise for inbound Canadian matters. Pavan is admitted to practice law in both the Province of British Columbia and the State of New York. She is also a Foreign Legal Consultant in Washington.

As a leading Canadian immigration lawyer, she provides strategic guidance to corporate clientele, ranging from Fortune 100 companies to startups. A trusted adviser, she regularly counsels clients regarding complex issues such as immigration compliance and initial corporate expansion into Canada.



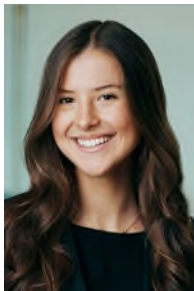
Felix Ng

Partner

Felix is a dedicated corporate lawyer. He is committed to learning about the intricacies of his clients' businesses in order to help them reach their goals. Felix's clients appreciate his responsiveness and problem solving skills on a wide variety of corporate matters.

Felix is a member of the firm's Corporate/Commercial Group. His practice focuses on M&A transactions and advising international clients on expanding their businesses into Canada. Felix represents clients in a range of industries, including pharma, e-commerce, transportation, agriculture, food and beverage and construction.

Felix has passed Level III of the Chartered Financial Analyst (CFA) Program.



Hannah Downard

Articling Student

Hannah summered at the firm in 2022 and recently graduated from Western University's Faculty of Law.

After her first year of law school, Hannah worked as a summer student for the United Nations. Working in the High Commissioner for Refugees branch, she supported Canada's obligation as a UN member state to protect individuals fleeing persecution.

Prior to attending law school, Hannah worked for Navigator, Canada's leading high-stakes public strategy and communications firm, where she helped to develop crisis management strategies for major corporations and public figures.