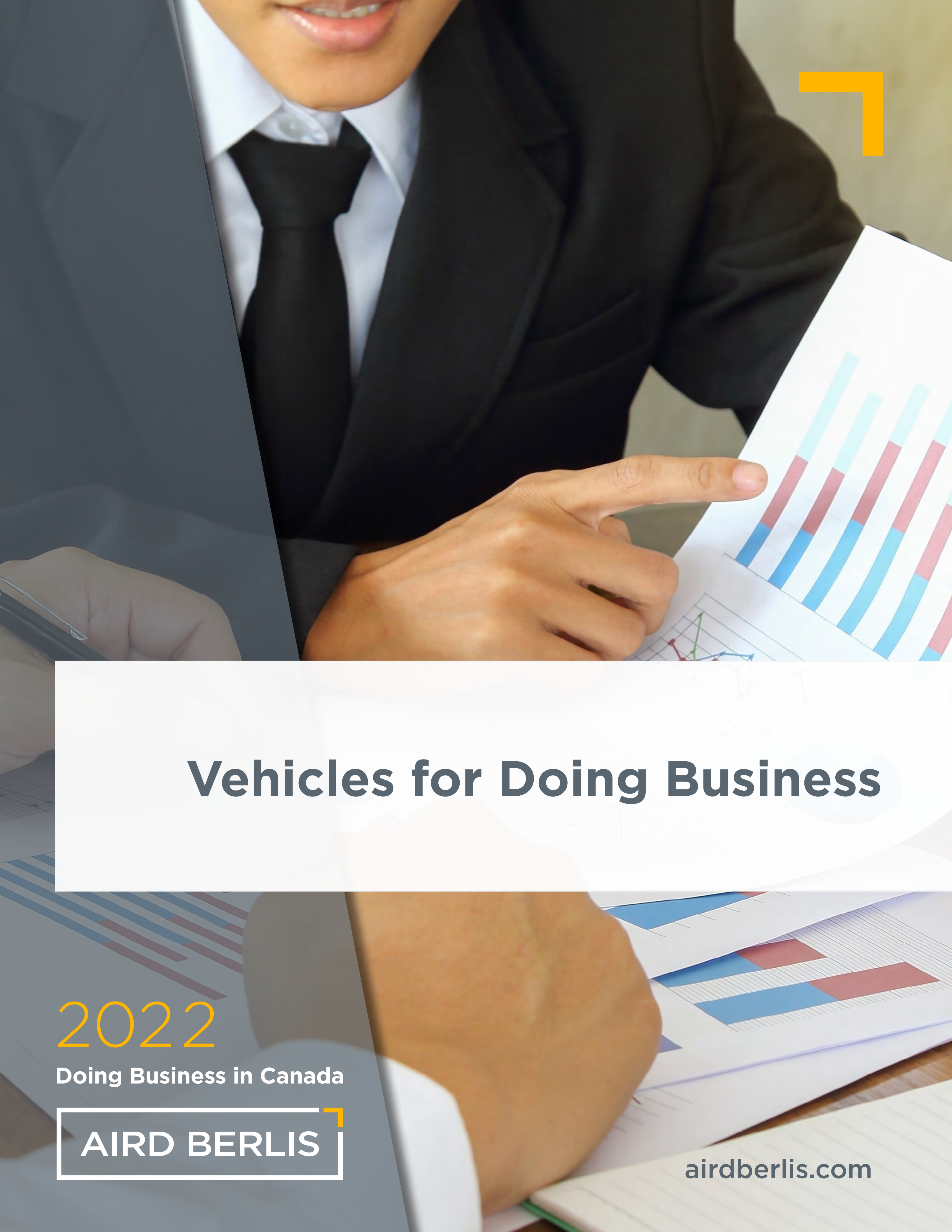

# Vehicles for Doing Business

2022

Doing Business in Canada

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In selecting the most appropriate vehicle for carrying on business in Canada, foreign entities will often be driven by tax preferences. Other factors that should be considered in determining the form of the business organization include potential liabilities, the method of financing and the nature of a particular business. The most common form of business organization in Canada is a corporation. Foreign entities may also consider conducting business in Canada through a branch office, partnership, limited partnership, franchise and licensing arrangement, joint venture, or by entering into contracts with Canadian distributors and independent agents.

## CORPORATIONS

### Overview

A foreign entity may choose to carry on business in Canada through a Canadian subsidiary corporation. A corporation with share capital is the form of business enterprise used most frequently to carry on commercial activities. A corporation is a legal entity with a separate legal existence from its shareholders, has perpetual existence and, unless its constating documents provide otherwise, has all the rights, powers and privileges of a natural person. A corporation offers the greatest flexibility in both the structuring of decision-making authority and of investment in the business. Its separate legal existence, however, also means that a corporation is subject to separate reporting, regulatory and filing requirements imposed by various levels of government.

### Incorporation as a Federal or Provincial Corporation

In Canada, a corporation may be incorporated under federal law pursuant to the *Canada Business Corporations Act* or under the corporate statute of any province or territory. The key distinction between the two types of corporations is that a federal corporation may carry on business in any province or territory provided that it complies with the applicable registration and reporting requirements of each province. In contrast, a provincial corporation is required to obtain an extra-provincial licence and register in any other province where it carries on business. Many incorporation statutes have minimum Canadian residency requirements for directors. In December 2020, Ontario enacted the *Better for People*, *Smarter for Business Act, 2020*, which, among various significant amendments to the *Business Corporations Act* (Ontario), removed the Canadian residency requirement for directors.

In June 2019, new regulations pertaining to federal corporations and certain provincial corporations came into force, which now require corporations to actively collect and maintain certain information regarding beneficial shareholders with “significant control” over the corporation, in addition to the pre-existing obligation to maintain a database of registered shareholders.

### Unlimited Liability Companies

The laws of Nova Scotia, Alberta, British Columbia and Prince Edward Island provide for the creation of unlimited liability companies. In the United States, we understand that certain rules permit certain entities, including unlimited liability companies, to be treated as partnerships or disregarded entities for U.S. tax purposes rather than as corporations. The use of a flow-through vehicle may be attractive for U.S. investors.

## OTHER BUSINESS VEHICLES

### Branch Office

A non-resident foreign corporation may choose to carry on business in Canada through an unincorporated branch office. A branch operation is not a separate legal entity and, accordingly, exposure to debts, liabilities and obligations of the Canadian operation are important considerations. In addition, the foreign corporation will be subject to federal and provincial laws and must obtain a licence or otherwise register in all provinces in which it carries on business.

### Partnerships

A general partnership is a relationship where two or more persons, either individuals or corporations, carry on a business in common with a view to profit. The partnership is not a legal entity separate from the partners. Subject to the provision of any agreement between the partners, each partner is allocated a specified share of the profits and losses of the partnership business and is entitled to take part in the management of the partnership business. A separate income tax return is not required from a partnership, although in many cases an information return is required for tax purposes. The tax consequences of a partnership’s business activities flow through to the individual partners in their respective proportions and are reported upon individually in each partner’s tax return. All partners assume unlimited liability for the debts and obligations of the partnership.

## Limited Partnerships

A limited partnership is a partnership with unique characteristics. It is comprised of: (a) one or more general partners who manage the business and assume all liabilities of the limited partnership; and (b) limited partners whose liability is limited to their contribution to the partnership. In Ontario, in order to maintain limited liability status, limited partners are not permitted to take part in the management of the business.

Except in certain circumstances, the flow-through features and tax consequences of a general partnership are the same for a limited partnership. In essence, a limited partnership combines the tax benefits of a partnership with the advantages of limited liability.

## Franchising

A foreign entity may expand its business into Canada by means of a franchising arrangement. In a typical franchise arrangement, a franchisor develops a business system, in association with a trademark, and licenses the use of that system and trademark to a franchisee. The franchise relationship is governed by a franchise agreement which sets out the details of the relationship, including the fundamental rights and obligations of the parties and the operating principles of the business system. Foreign entities can choose to set up a separate Canadian entity through which Canadian licences may be granted, or, in certain circumstances, can grant licences directly from the foreign country to Canadian franchisees.

Certain provinces have specific legislation governing the sale of franchises and impose specific disclosure requirements.

## Joint Ventures

The term “joint venture” is commonly used to describe a contractual business arrangement between two or more parties that have agreed to combine complementary resources for a particular undertaking or specific business venture without the formality of a new legal entity such as a corporation or limited partnership. A joint venture is not recognized as a separate legal entity and therefore, for tax purposes, income and losses are calculated separately according to the business structure of each party.

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