Incorporating And Operating A Canadian Subsidiary In Saskatchewan

(Last Revised January, 2005)

The following is information for a non-Canadian corporation which wishes to incorporate a Canadian subsidiary for carrying on business in Saskatchewan. The information is intended for general information only. We advise you to seek specific legal advice prior to making any of the arrangements outlined in this article, as the particular facts of each corporation's situation will vary, as will the advisability and effectiveness of any particular strategy.

- Before you incorporate a subsidiary, you should consult a Canadian tax advisor. Your tax advisor should be either a tax lawyer or a tax accountant. All major law firms and accounting firms have a tax advisor who can help you.

- To understand Canadian incorporations, you must first know a bit about the Canadian structure of government. Canada consists of ten provinces and two territories. Each province has its own government for local matters. In addition, there is a federal government to govern national matters. The jurisdiction to make laws is divided between the provincial governments and the federal government. In some cases, the jurisdiction overlaps, and both the provinces and the federal government can make laws on the same matters.

- Each of the provinces, territories, and the federal government can grant an incorporation. This means that you can incorporate a corporation in any province or territory in Canada, or you can incorporate a federal corporation. There are some differences in the incorporation legislation between each of the provinces and the federal government, which sometimes affects your choice of where to incorporate. All of the provinces will recognize a corporation incorporated in another province or federally, and the federal government will recognize a corporation incorporated in any of the provinces.

- Most businesses choose to use a local lawyer to handle the incorporation of a subsidiary. All Saskatchewan lawyers can incorporate either a Saskatchewan corporation or a federal corporation. They can also assist you in obtaining an incorporation in another province.

- The place where you will choose to incorporate depends mainly on who you wish to appoint to the board of directors. For Saskatchewan corporations, the majority of the directors must be resident Canadians. A "resident Canadian " under the Saskatchewan incorporation legislation means a Canadian citizen residing in Canada, or a permanent resident as defined in the Immigration Act (that is, a landed immigrant). For federal corporations, generally at least 25% of the directors must be resident Canadians or if there are less than four directors, at least one must be a resident Canadian. "[R]esident Canadian " has the same meaning under the federal incorporation legislation as under the corresponding Saskatchewan legislation, except that it does not include a person who is a permanent resident who has
been ordinarily resident in Canada for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship.

- Not all of the provinces have this residency requirement. If you do not have or do not want Canadian residents to sit on your board of directors, then you must incorporate in another province which does not require Canadian residents as directors. If you face this problem, you might choose, for example, to incorporate in the Yukon Territory. The Yukon Territory has incorporation legislation which is very similar to Saskatchewan and the federal government, but does not require any Canadian residents on the board of directors. Your Saskatchewan lawyer can hire an agent to handle the incorporation.

Once the subsidiary has been incorporated in the Yukon Territory, your lawyer will then register it to carry on business in Saskatchewan, and in any other province in which the subsidiary will be operating.

- If you have resident Canadians who will sit on the board of directors, then you can choose to incorporate either a Saskatchewan corporation or a federal corporation. There are very few differences between a Saskatchewan corporation and a federal corporation, and none which make a practical difference for most businesses, except that a Saskatchewan corporation is less expensive to incorporate and maintain.

- Your subsidiary can either be a numbered corporation (for example, "698724 Saskatchewan Ltd." or "279445 Canada Inc."), or have a name (for example, "Burnath Fertilizers Ltd."). All Canadian corporations must end in word "Ltd.", "Limited", "Inc.", "Incorporated", "Corp.", or "Corporation" (or the French version of these words.) If you choose to have a numbered corporation, Corporations Branch will assign the number at the time of incorporation. If you choose to have a name, then the name must first be approved by the Corporations Branch. Corporations Branch will not approve any name which is confusingly similar with the name of any other corporation or registered Canadian trade mark. As well, the name of a Saskatchewan corporation must contain some distinguishing word which indicates the nature of the business (for example, "Burnath Fertilizers Ltd." instead of "Burnath Ltd."). Federal corporations do not have this requirement.

Your lawyer will order the searches and make the applications which are necessary to approve the name. You should always have more than one name in mind, in case your first choice is rejected.

If the name has any commercial value, you should ask your lawyer to have the name (and any associated logos) protected by registering a Canadian trade mark. Trade marks can also be registered through a trade mark agent.

- Within 30 days of having established your new Canadian business, you must notify the Director of Investments under the Investment Canada Act. The notice must meet the
requirements of the Act, so you may wish to have your Canadian lawyer prepare this form. If you are buying an established Canadian business worth more than $5 million, then the filings are more complex, and your purchase may be reviewed by the Director.

- Following incorporation, you will receive a notice from Canada Revenue Agency assigning you a business number for tax accounting purposes. The subsidiary will be required to pay Canadian corporate income taxes, and to remit payroll deductions to Canada Revenue Agency on behalf of the subsidiary and its employees for income tax, employment insurance, and the Canada Pension Plan. You should consult with a Canadian accountant as to how to calculate and remit these amounts.

- Before you start carrying on business, you should apply for a goods and services tax account number. Most Canadian businesses are required to remit goods and services tax (the "GST") on all services and goods which they sell, and are entitled to receive a credit for all GST which they pay. The GST is very similar to the VAT payable in other countries. Your Canadian accountant can assist you in applying for your GST account, and in preparing the quarterly returns.

- Depending on the nature of your business, you might also have to collect and remit certain other taxes to Saskatchewan Finance; for example, the sale of certain goods and services to the public is subject to a provincial sales tax. You should check with your accountant or with the Saskatchewan Finance as to whether there is anything in your business which would require payment of these taxes. Most Saskatchewan businesses are now subject to these provincial taxes.

- Depending upon the nature of your business, you may need special licences before you can start operating. Check with the Canada Business Service Centre in Saskatoon, or with your lawyer, as to the licences you might need to operate your business.

- If you will have any Saskatchewan employees, then before you start operating you must notify the Workers' Compensation Board, Revenue and Employer Accounts. The Workers' Compensation Act, 1979 establishes a fund for the compensation of workers who are injured on the job. The injured worker must deal exclusively with the Workers' Compensation Board, and cannot sue the employer for any injuries suffered on the job. You will be required to make regular remittances to the Board for the fund. The Board will tell you the amount you must pay, which depends upon your industry. Most businesses choose to deal with the Board directly, rather than through their lawyers.

- The management of your subsidiary should be familiar with The Labour Standards Act of Saskatchewan. This Act sets out the minimum employment standards for businesses operating in Saskatchewan. If you do not operate in accordance with these minimum standards, then the employee has a right to lay a complaint with the Labour Standards Board. The Labour Standards Board or your lawyer will answer any questions you might have on the legislation.
• Management must also be aware of the requirements of The Occupational Health and Safety Act, 1993. This Act governs the basic safety requirements for the operation of your Saskatchewan business. Employees of the department may come to examine your operations to make certain that you are complying with these safety requirements.

Contacting a Lawyer on this Subject

For more information on this subject or specific legal advice, contact Robertson Stromberg Pedersen LLP at (306) 652-7575.