Unlimited Liability Corporations

We have considerable experience converting existing Canadian corporations into ULCs so that U.S. corporations can consolidate financial results. Typically, this occurs as part of an acquisition, but we have also recently completed the conversion to ULC status of numerous existing Canadian subsidiaries.

We have also incorporated ULCs as subsidiaries of U.S. corporations to act as a financing vehicle for the Canadian operations of a U.S. parent corporation. The subsidiary pays the parent corporation with shares which results in a "double dip" as the ULC claims an interest expense in Canada and the U.S. corporation claims an interest expense in the United States. We are able to vary this structure to take advantage of other tax efficient opportunities.

Also, we have established ULCs as financing vehicles for the U.S. operations of Canadian parent corporations to take a double interest deduction in the U.S. by taking advantage of the U.S. dual consolidated loss rule.

We hope you find the enclosed summary of ULCs helpful. For more information please contact Ken Flowers in Calgary at (403) 218-7524 or kflowers@lawsonlundell.com or contact Leonard Glass in Vancouver at (604) 631-9140 or lglass@lawsonlundell.com.

Yours very truly,

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Introduction of ULC Legislation in Alberta

The *Business Corporations Act* (Alberta) (the "ABCA") has been amended to provide for the establishment of unlimited liability corporations (ULCs).

ULCs have been used for cross-border tax planning for a number of years. Until recently, the only Canadian jurisdiction that allowed for the creation of ULCs was Nova Scotia, pursuant to anachronistic legislation inherited from the United Kingdom. The recent amendments to the ABCA allow the creation of ULCs in a more modern corporate regime.

Lawson Lundell has extensive experience in structuring transactions that utilize ULCs.

Characteristics of a ULC

A ULC has the characteristics of a limited corporation, including separate legal personality. The major difference is that the liability of shareholders of a ULC for any liability, act or default of the ULC is unlimited. This unlimited liability must be reflected in the name and articles of the ULC and noted on the share certificates of the ULC.

Like all Alberta corporations, ULCs must have one director resident in Canada, but directors' meetings may be held outside of Canada.

Tax Treatment

ULCs are treated as corporations for Canadian tax purposes, but are treated as flow-through entities for U.S. tax purposes (although a ULC can elect to be treated as a corporation by checking the appropriate box on its return). This provides many opportunities for cross-border tax planning, such as:

- increasing the availability of the U.S. foreign tax credit;
- reducing the rate of Canadian withholding tax on dividends;
- consolidating losses;
- avoiding the Canadian branch tax;
- obtaining the U.S. interest deduction on money borrowed by the ULC and avoiding the thin capitalization rules;
- creating a "double dip" by lending funds to a ULC from its U.S. parent;
- avoiding double taxation due to transfer pricing rules; and
- reducing U.S. taxes paid by a controlled foreign corporation.

Other tax-planning strategies are also available.

Creating a ULC

Creating ULCs in Alberta is a straightforward process. They can be created by incorporation, amendment, continuation or amalgamation.

A ULC can be created by incorporating a new corporation with the appropriate name and articles.

An existing Alberta limited corporation can be converted into a ULC by amending its articles and changing its name. Likewise, a ULC may be converted to a limited corporation by amending its articles and changing its name.

A corporation from outside Alberta, whether a limited corporation or a ULC, may continue into Alberta as a ULC.

When a ULC and a limited corporation amalgamate, the resulting corporation may be a ULC or a limited corporation, at the option of such resulting corporation.

Liability

The shareholders of a ULC are liable for any liability, act or default of the ULC.

In addition, when a limited corporation amends its articles to become a ULC or a limited corporation continues into Alberta as a ULC, the shareholders of the ULC become liable for any liability, act or default of the limited corporation that existed as of the date of the amendment or continuance.

Similarly, the shareholders of a ULC that was formed by amalgamation are liable for any liability, act or default of the ULC whether it arose before or after the amalgamation.

If a ULC becomes a limited corporation by amending its articles or by amalgamation, the shareholders of the ULC continue to be liable for any liability, act or default of the ULC that existed as of the date of the amendment or amalgamation.

To address the risk created by the unlimited liability of shareholders of a ULC, it is prudent to hold the shares of the ULC through a limited corporation or a limited partnership, generally with assets limited to the shares of the ULC, to isolate any potential liability in respect of the ULC at the level of the limited corporation or limited partnership.

For further information on Alberta ULCs, please contact Ken Flowers at (403) 218-7524 or Leonard Glass at (604) 631-9140.

This brief is provided for general information purposes only and should not be relied on as legal advice or opinion.