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Registering in Harmony: The Case for Pan-Canadian Corporate Registration

by

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- In an increasingly integrated cross-border business environment, the harmonization of corporate registries is proceeding apace around the world. Yet in Canada, incorporated companies are required in most cases to register separately in every province where they want to conduct business.
- Registration across multiple provinces often means that companies operating across Canada have to provide similar information to many governments, often in different formats. They must pay fees in multiple jurisdictions when they register or renew their registration each year. In many jurisdictions, they must also pay to maintain an attorney or “agent for service” to represent the company within its borders.
- This E-Brief recommends relaunching a national process aimed at achieving a pan-Canadian system in which corporations need only “register once” to do business across the country; one that brings Canada up to the best global standards in this area.
- The process should involve harmonizing terminology and, as far as possible, each jurisdiction’s requirements for information; instituting a single business numbering system; and setting up a national database of corporations doing business extra-provincially.

The necessity for a company incorporated in Canada to register separately in every province where it wants to conduct business has long been considered a vexing barrier to trade within Canada. The continued divergence of requirements across Canadian corporate registries in the past two

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decades runs contrary to commitments made by the provinces and federal government in the 1994 Agreement on Internal Trade. This brief explains the importance of addressing the issue, as many of Canada's trade partners have done. While noting the reasons for continued divergence, we propose a specific process by which Canadian governments can get back on track.

Business¹ registries contain basic up-to-date information about businesses operating within a given jurisdiction, such as a business' addresses, whether it has been incorporated and where, and the names of its principals and signing officers. These registries, accessible by the public, are an important tool for ensuring transparent and well-functioning markets. Governments also use them to keep track of businesses' regulatory and other legal obligations and to connect them to a suite of government services and programs.

In Canada, the constitution delegates the authority for "The Incorporation of Companies with Provincial Objects" to the provinces.² Companies may also incorporate federally, with Corporations Canada. However, with one exception – an arrangement between New Brunswick and Nova Scotia – a company incorporated in any one province or territory,³ or even federally, must register in every province in which it conducts business.

Registration across multiple provinces often means that companies have to provide similar information separately to many governments, often in different formats. Further, each provincial government requires additional information that is particular to that province. Guidelines on which companies need to register differ as well. There is no consistent definition across Canada of what constitutes the act of "carrying on a business" in a province that triggers the need to register under provincial legislation. Companies must pay fees when they register and to renew their registration annually. As a condition of registration, companies must also in many jurisdictions pay to maintain an attorney or "agent for service" to represent the company within its borders.

Prominent Canadian business associations have identified extra-provincial corporate registration as an important barrier to a well-functioning internal market in Canada.⁴ The Canadian Chamber of Commerce, for example, has called for mutual recognition among provincial registries. The ideal evoked is that of Canadian businesses having only to "register once" in a Canadian jurisdiction, in order to be able to do business across the country, as is the case among the 26 Swiss cantons, for example. The information a business provides at the time of registration (and later at the time of renewal or a change in circumstances) would be shared among Canadian jurisdictions, in a way that satisfies each jurisdiction's requirements.

Efforts at Harmonizing Business Registration: Where Are We At?

Canadian governments seemed to agree that addressing extra-provincial corporate registration requirements was an important component of a more open internal market, when they signed the Agreement on Internal Trade (AIT) in 1994. The agreement contained very specific commitments by the provinces regarding the harmonization of extra-provincial corporate registration. Annex 606 of the AIT stipulates the adoption, by all

1 This E-Brief addresses corporate registration specifically, but we use the word "business" where it makes sense to refer to both incorporated and non-incorporated businesses.

2 S. 92(11).

3 In this paper, for ease of exposition, the words "provincial" or "province" also refer to "territorial" or "territory" where appropriate.

4 See Canadian Chamber of Commerce (2004) and Canadian Council of Chief Executives (2012).

Table 1: Some Key Requirements on Extra-provincial Corporate Registration and Reporting in the Agreement on Internal Trade

Standard Statement of Registration

A corporation may register extra-provincially using a Standard Statement of Registration containing the following: Name of the corporation, the jurisdiction of incorporation or continuance, and the address for service of documents in the registering province, or name and address of the agent for service if one is required (606.4, 606.5, 606.6).

Change Reporting

For firms domiciled in one province but registered extra-provincially in others, their home province shall make available to these other provinces information concerning proposed or actual name changes, cessation of existence, decision or application to dissolve or be dissolved, or to wind up or be wound up; or an amalgamation or a continuance elsewhere (606.7).

Simplification of Annual Filings

All provinces shall accept an annual report submitted by an extra-provincial corporation in its incorporating jurisdiction as fulfillment of its own requirements of an annual report, on the date required in the corporation's home jurisdiction – and each annual report should identify all provinces in which a corporation is registered as an extra-provincial corporation (606.9, 606.10, 606.11).

Source: Agreement on Internal Trade (606.4-606.11); available at: http://www.ait-aci.ca/index_en.htm

parties, of a *Standard Statement of Registration*, the sharing of information across provinces on changes to the status of corporations, and the simplification of annual filing requirements (see Table 1 for details).

Despite this apparent alignment of purpose, pan-Canadian harmonization of corporate registration has not yet occurred. This is in spite of follow-up entreaties such as that of the Canadian Premiers, at the August 2010 meeting of the Council of the Federation, formally directing the ministers responsible for Internal Trade to reconcile their extra-provincial corporate registration and reporting requirements by December 31, 2010. This would appear to have been an over-ambitious directive, given the extensive reconciliation involved and the fact that most internal trade ministers have no direct responsibility for corporate registries. Be that as it may, following this directive, officials had planned to focus on (i) harmonization of terminology and filing dates for registration, (ii) the use of the Business Number (BN) issued by the Canada Revenue Agency to facilitate data sharing and (iii) the need for an agent or attorney for service (Canadian Association of Corporate Law Administrators 2011). But limited resources and competing priorities appear to have stalled their work.

One important provincial priority is likely to have conflicted with pan-Canadian harmonization of business registries: intra-provincial integration along a single provincial platform of various services under provincial jurisdiction.

These efforts at integrating the registries with other programs have made it easier for businesses to deal with regulations and government programs in each province. They have applied the principle of “one business, one number” and offer a single point of contact (such as Service BC, Service Ontario, Services Québec, Access Nova Scotia, and so forth) for all the different provincial requirements and programs affecting a business. In turn, provinces can more efficiently collect information for purposes going well beyond corporate registration,

and some are naturally concerned at the potential loss of information under more harmonized pan-Canadian registration procedures. These considerable investments in integrating the relevant systems within each province, rather than between the provinces, may have made inter-provincial harmonization that much more complicated. As well, for some provinces, the prospect of facing revenue losses under a harmonized “register once” system across Canada may have been a disincentive to actively pursue the notion of a national system.

Progress, in short, has not been nearly as quick or meaningful as hoped. Nevertheless, certain jurisdictions have undertaken their own significant initiatives to ease the burden on businesses of registering extra-provincially. Three such inter-jurisdictional initiatives, summarized in Table 2, have borne fruit.

From an “ease of doing business” and administrative costs perspective, the New Brunswick and Nova Scotia mutual recognition system, enshrined in these provinces’ respective legislation governing corporations, is the most advanced example of cooperation between two Canadian jurisdictions. But the *quid pro quo* of this arrangement is that each partner must be content that the information required by the other meets their own minimum requirements, and that they have access to this information. In the case of these two provinces, mutual recognition is not accompanied by a mandate to exchange information, although searches of companies operating in one but domiciled in the other can be made on the registry website of a company’s home province.

Another example of cooperation is the New West Partnership Trade Agreement (NWPTA), established between British Columbia, Alberta (2007) and Saskatchewan (joined in 2010). It fulfills some important objectives of the AIT with respect to easing extra-corporate registration, albeit among three provinces only. While some of the requirements for registration differ by province, the home province of a business will facilitate registration in the other two by collecting and remitting the required information to sister provinces – so a company wishing to conduct business across the three jurisdictions needs to deal directly with just one business registry. Extra-provincial registration fees are waived and a business needs only to submit its annual report in its home province, containing only the information required by that province – a mutual recognition system for annual reports at least (New West Partnership Trade Agreement 2013). But all three provinces still require corporations registered in other provinces to be represented by a local attorney or agent for service.

The federal government has conducted its own attempt at harmonization through the Joint Online Registration System run from the Corporations Canada website. Agreements between Canada and the provinces of Newfoundland and Labrador, Nova Scotia and Ontario (all joined in 2004) and Saskatchewan (added in 2006) allow businesses incorporating federally to save time on completing extra-provincial registration for these provinces. The system automatically populates the registration forms of these provinces with the information provided federally, and guides the user through additional requirements specific to each province. But as it stands, the process has not moved entirely online. The only province for which complete online registration is possible is Ontario; the other participating provinces require submission of forms in paper in addition to the information populated online.

The takeaway from these experiments is, on the whole, sobering. A straightforward extension of the New Brunswick and Nova Scotia mutual recognition system across Canada’s multiple provincial jurisdictions, each with its distinct information requirements, is not likely in the cards without progress on three fronts: (i) achieving some harmonization of information requirements across registries, (ii) agreeing on arrangements to share the information on an ongoing basis among them, and (iii) addressing the question of fees and requirements for an agent for service.

Similarly, extending the NWPTA model would require addressing its principal weakness – high costs and technical complexity at the administrative “back end” in the name of providing a seamless experience to business clients. This points to the need to focus first on harmonization of registration requirements and streamlined information sharing among registries. For its part, the Joint Online Registration System is a valuable time-saving

Table 2: Canada's Three Systems of Extra Provincial Registration

System	Jurisdictions Involved	Description	Strengths	Weaknesses
Nova Scotia and New Brunswick (1994)	Nova Scotia, New Brunswick	Mutual recognition of corporations registered in each jurisdiction	<ul style="list-style-type: none"> • Reduced cost to businesses operating across multiple jurisdictions. • Reduced administrative costs to registries 	<ul style="list-style-type: none"> • No mandate to share information between registries, resulting in possible gaps in both registries' information records.
The New West Economic Partnership (2010)	British Columbia, Alberta, Saskatchewan	Assistance to clients for registration in partner's jurisdiction	<ul style="list-style-type: none"> • Home province collects information for extra-provincial registration in partner provinces and fee is waived. • Annual report is filed only in home jurisdiction. 	<ul style="list-style-type: none"> • Provinces have different information requirements. • All provinces still require agent for service for all extra-provincially registered corporations.
Joint Online Registration System (2004)	Canada, Newfoundland and Labrador, Nova Scotia, Ontario, Saskatchewan (2006)	Assistance for federally-incorporated businesses to register in provincial jurisdictions	<ul style="list-style-type: none"> • Ability to partially or fully complete extra-provincial registration through federal system. 	<ul style="list-style-type: none"> • Ontario is the only province for which complete registration is possible through the system. Others have paper and/or additional requirements.

Sources: New Brunswick Attorney General Legislature (2013), at 195.1, Nova Scotia House of Assembly (2013), at 3(3), New West Partnership Trade Agreement (2013), and Corporations Canada (2013).

and information-sharing tool worthy of expansion, but it certainly falls short of the ideal of a “one-stop” shop, as all the individual provincial information requirements pertaining to where a business wishes to operate need to be fulfilled in addition to the federal online registration.

Revisiting the Benefits of Harmonization⁵

We estimate that the cost to businesses of the fragmented corporate registration system across the country is in the low-to-mid tens of millions of dollars annually across Canada: not insignificant, but hardly of itself a screaming economic emergency (Schwanen 2014). But the issue is broader than the costs to existing businesses alone.

5 The word harmonization here means making corporate registration across Canada based on more comparable information requirements, interoperable systems, and user-friendly access to information by both private actors and governments. A single system is not necessary for these things to happen, or for the various registries to communicate with each other, although the term implies reconciliation of the various systems.

Other costs include the deadweight loss to the economy of activities that do not take place as a result of businesses, of necessity smaller businesses, finding it too onerous to expand across borders. This creates a hurdle for business to grow. In Canada, the small size of the typical firm, combined with the relatively low productivity of smaller firms, is a significant impediment to productivity performance, at least compared to the United States (Baldwin and Yan 2014). Furthermore, the productivity benefits of a firm starting to export across a provincial border are just as large as those of a firm doing business across international borders (Statistics Canada 2012). This suggests that unnecessary barriers to firms' ability to expand their businesses across the country – of which the burden of multiple extra-provincial registrations is one – have ongoing economic costs.

There is another reason for streamlining information requirements and information exchange protocols across registries, and eliminating the need to register in multiple registries. These improvements would allow the private sector and public authorities access to timely and reliable information on companies domiciled in other provinces, but with which they increasingly do business (as customers, creditors, etc.) in an integrated world. In Europe, for example, difficulty in accessing such information has been found to inhibit e-commerce.

Governments similarly have an interest in jointly identifying the firms with which they engage. In Canada, for example, this could aid coordination of various federal and provincial programs that, in principle, should complement each other. Internationally, the need for exchange of timely corporate information appears to be on the rise, with, for example, discussions at the G8 on sharing information for tax and revenue compliance, and other international discussions underway for sharing information for the purposes of combatting terrorism funding.

All these have also been decisive factors in other jurisdictions, such as Australia, the European Union, or Switzerland, to mention three prominent and comparable cases, in which harmonization or integration of business registries has been seen as an integral part of a wider process to open up internal markets, improve cross-border business transparency, and promote more efficient program delivery (see, for example, Australian Government 2008 and European Commission 2011, described in Schwanen 2013, and Confédération Suisse 2007).

The federal Minister of Industry recently “challenged his provincial and territorial colleagues...to each bring forward three specific actions they could enact to advance internal trade in Canada” (Canada 2014, 110). A pro-active way for governments to address this challenge would be to propose, together, that they complete the task they have already given themselves to remove the barrier of multiple extra-provincial registrations. Such a renewed effort at harmonization would help Canada to remain competitive with the many jurisdictions around the world that are engaging in efforts to integrate corporate registries or streamline information exchanged among them. This is also an area where Canada could promote itself as business-friendly relative to the United States, where a corporation from another state is treated by each state registry as a foreign business, and there is no coordination among registries.

Next Steps for Canada

The federal government and the provinces should recommit themselves to a more streamlined corporate registration framework across the country. Enabling companies to operate across provincial jurisdictions without having to register separately – mutual recognition – should be acceptable to provinces if two conditions are met. First, provinces must be assured that they are able to receive from a company's home province timely information that meets their own provincial requirements. And second, that they do not suffer high ongoing costs or involuntary loss of revenue from cooperating with other jurisdictions.

It seems inevitable that, under a “register once” system acceptable to all, corporations wishing to gain a general “extra-provincial” status would need to provide more information than they would in any given province.

To reduce this potential drift towards added “red tape,” we recommend first a one-off effort at harmonizing concepts such as that of “business presence” and harmonizing legislative requirements under the act in each province that governs corporations. This is required because the information requirements of registries are embedded in provincial legislation and regulations.

Here, Canadian governments should apply a “means-ends” test, so that no more information than necessary is collected from corporations for mutual recognition to work across the country (bearing in mind that, once they have the basic information about a business conducting business in their jurisdiction, governments know where to reach them and can separately request additional information if they so wish). Registrars in each province could work with competent professional bodies to put this test into effect.

A committee representing legal professional bodies from across Canada should also be specifically mandated to examine, in this day and age of electronic transmission of documents and increasing legal comity (judgements rendered in one jurisdiction can be enforced in another), the need for agents for services to be physically based in the province in which a company is doing business. The goal should be the elimination of this requirement. That some provinces do not impose it suggests the possibility that all could do away with it, without losing their or their public’s ability to reach any company domiciled in Canada.

A next step would involve registries being able to share information in a timely way. This would seem to require an agreement to institute a pan-Canadian single business identifier. The latter could simply be based on provincial numbers to which would be added provincial prefixes,⁶ for provinces that prefer not to use a commonly used single identifier across the country, such as the CRA number.

Recent efforts by the CRA to improve its online registration process for obtaining a business number and to enhance identity authentication could facilitate the move toward a pan-Canadian single business identifier. Indeed, the CRA’s business number is rapidly becoming the common identifier for interactions between all levels of government and businesses.

Given the multiplicity of systems in place in Canada, we recommend a joint registry maintained at the federal level where provinces could upload and download the information relevant to their own registries, and to which the public would also have relatively easy access. This new pan-Canadian registry “exchange” would likely be less costly to implement than requiring the provincial systems to communicate directly with each other. It would ensure the information exchange necessary for a mutual recognition (or “register once”) system to be acceptable to all provinces. In turn, this registry “exchange” would list all the provinces where each corporation conducts business, and collect and remit the relevant registration and reporting fees for these provinces.

Conclusion

In an increasingly integrated cross-border business environment, the harmonization of business registries is proceeding apace around the world. Governments are seeking to reduce paperwork, open market access to small and medium-sized businesses in particular in order to foster economic growth, and ensure well-functioning markets and public programs.

Canadian jurisdictions have already pledged to address this issue but have been distracted by other priorities. Although certain jurisdictions have made commendable efforts to cooperate and reduce costs to business, a

⁶ As suggested by Farrell (2006) for Europe.

pan-Canadian approach is required. This E-Brief recommends re-launching a national process, involving those ministries responsible for corporate registries, and aimed at achieving a workable system in which corporations need only “register once” to do business across the country; one that brings Canada up to the best global standards in this area.

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