

# **Business Structures, Minutes and Resolutions**

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*Junior Solicitor Business Law Basics*

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## **BUSINESS STRUCTURES, MINUTES AND RESOLUTIONS**

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### **EXECUTIVE SUMMARY**

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The purpose of this paper is to provide junior solicitors (1 to 5 years at the Alberta Bar) (“you”) with an overview of the potential forms of business structures that you may encounter in your practice as a solicitor in the Province of Alberta. In addition, it will provide you with some guidance on best practices for preparing minutes of directors meetings in the event the business structure you are working with is a corporation, whether private or public. As well, it will explore when and why resolutions in writing, rather than minutes of a directors meeting, may be sufficient and are often a practical alternative for private corporations for routine corporate matters, but which are not appropriate for particular decisions that may face the scrutiny of other stakeholders and give rise to possible breach of fiduciary claims being made against the directors or an oppression action being brought against the corporation.

### **BUSINESS STRUCTURES: HOW DO YOU DETERMINE WHAT STRUCTURE IS RIGHT FOR YOUR CLIENT?**

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Corporations are the most common form of business structure either on their own or as part of the development of another more complex business structure such as a limited partnership structure that requires at least one general partner or a joint venture whereby the venturers are in fact shareholders of the joint venture corporation. General partnerships can be utilized to carry on any business that a corporation can and the flow-through nature of partnership income and losses to its partners may be so attractive to its partners that the risk of joint and several liability of the partners does not dissuade them from pursuing this business structure, particularly if holding corporations are used to hold the partnership interests. Limited liability partnerships are often used by eligible professionals, such as doctors, accountants, and lawyers, whereas limited partnerships are an efficient structure where capital is to be raised from outside investors who are seeking limited liability protection and a flow-through for Canadian tax purposes. Although the sole proprietorship is a business structure, it is less likely to be recommended by solicitors as the risk of unlimited liability to the individual proprietor and the risk to his or her own personal assets is mitigated by advising the individual to incorporate a corporation and to become the sole shareholder instead.

Below are the key characteristics of (1) the sole proprietorship, (2) the general partnership, and (3) the corporation.

## A. Sole Proprietorship

A sole proprietorship exists, by operation of law, where a single individual carries on a business in their personal capacity and there is no other form of business structure in place. A separate legal entity is not created.

- *Registration requirements:* There are no registration requirements to create a sole proprietorship in Alberta. The sole proprietor simply starts carrying on the intended business and similarly ends the sole proprietorship by ceasing to carry on the business. Despite the lack of registration requirements to create a sole proprietorship, the sole proprietor may nonetheless be required to obtain federal, provincial or municipal licences or permits to operate in a specific industry. A sole proprietor can also, as a declarant, file a declaration of trade name with the Alberta Registrar of Corporations for a nominal fee.
- *Liability considerations:* A sole proprietor has unlimited personally liability for the business operations of the sole proprietorship and his or her personal assets (regardless of whether or not they are used in the business) are at risk of loss in the event of a lawsuit relating to the business or claims of third party creditors. Additionally, assets used in the business are at risk from a personal claim to the sole proprietor.
- *Tax considerations:* All income and losses of the sole proprietorship accrue to the sole proprietor and are taxed at rates applicable to individual taxpayers. All assets and liabilities of the sole proprietorship are also the assets and liabilities of the sole proprietor.
- *Notable advantages and disadvantages:* The lack of formal registration requirements to create a sole proprietorship and no requirement for it to comply with any other statutory governance requirements (as in the case of a corporation) make this an easy and inexpensive structure to create and maintain, but should be carefully considered by any individual in light of the unlimited liability risks. As well, it cannot be used by two or more individuals who wish to conduct business together and there is no ability to raise capital through this structure from outside investors except in the form of personal loans to the sole proprietor. It is also difficult to obtain financing from a financial institution to grow the business as there is no distinction between the business assets/liabilities and the personal assets/liabilities of the sole proprietor.