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Dedication & Acknowledgements

I would like to dedicate this Master Thesis and express my very profound gratitude to my grandmother, Nina Andriychuk, who passed away during the writing of this work, for believing in me no matter what, and for providing me with her support and encouragement over many years of study, and during the process of researching for this Thesis.

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Introduction

Nowadays, millions of new business entities - which widely differ in forms amongst jurisdictions worldwide - are incorporated daily to become the main players on the vast field of international corporate law. Considering the permanently growing number of business vehicles in the international arena, this work will compare two crucial phases in the life of any business structure - the incorporation and liquidation processes - which should be conducted strictly under the rules of prescribed legislation.

This Master Thesis will aim to conduct a comparative analysis of two different legislations - both having a lot in common - yet still with very different forms of business structures. What makes a comparison especially interesting and unique is the fact that historically, the Canadian legal system developed from a common law tradition of the United Kingdom, whereas only Quebec remained an exception, falling under French civil law tradition.¹

The main aim of this Master Thesis is to put forward an empirical - or at least indicative result, based on theoretical reasoning, comparative analyses and descriptive research. Other methodological approaches that I have used during the conduct of the research are the analytical and structural methods, using the legislation and other sources of law, in order to find out to what extent the law of two different legal systems of the same field of interest differs one from another – specifically examining and understanding the legal conduct of the processes of incorporation, registration, dissolution and liquidation of various business entities. In other words, the main research question to be answered is ‘How different is Canadian corporate legislation from those in the United Kingdom, considering that it has its roots in English precedent law?’ With this, I will attempt to find the aforementioned clear result of governmental regulation on this matter in the United Kingdom and Canada.

In order to conduct a comparative analysis of incorporation and liquidation processes, it is crucial to gain insight on the types of business entities in the United Kingdom and Canada that are going to be analyzed in this work. Thus, the first chapter of this work - “Main forms of business vehicles in the United Kingdom and Canada”,

¹ *Doing Business In Canada* (1st edn, Blake, Cassels & Graydon LLP 2016)
<http://www.blakesbusinessclass.com/wp-content/uploads/2016/09/Doing_Business_in_Canada_2016.pdf> accessed 13 April 2017.

will be focused on the types of businesses existing in these two countries. The chapter introduces the reader to three separate ways of conducting business, briefly characterizing each of them and highlighting its peculiarities.

The second chapter - “Incorporation and registration of a business structure in the U.K. and Canada”, is dedicated to the detailed consideration of the above-mentioned processes and finding the differences and similarities between them. For this purpose, the next business entities will be compared: a sole trader with a sole proprietor, a partnership with a Canadian partnership, and a company with a corporation. In addition, at the very beginning of the chapter I will succinctly provide some historical background on the legal systems of the United Kingdom and Canada.

The third and the final chapter, which is called “Dissolution and liquidation of a business structure in the United Kingdom and Canada”, will be devoted to the sophisticated processes of winding the business up. Before starting the in-depth analyses, I will briefly set the differences between the notions of a liquidation and dissolution, as these two notions are very important for understanding of the following analyses. The business structures that are going to be compared in this chapter are identical to the ones that will be examined in the first two chapters of this work.

Finally, in conclusion to this work, the main investigations of the Master Thesis will be stated, based on the conducted complex legal analyses, in order to suggest a result of the findings.

Having considered the information stated in the previous paragraphs and the aims of the research, the Master Thesis promises to be useful for those who are interested in conducting a business either in the United Kingdom or in Canada, or for any other persons having interest in the field of corporate legislation, as well as for those who are engaged in academic writing, yet namely targeting lawyers and entrepreneurs.

1. Main forms of business vehicles in the United Kingdom and Canada

The first step to be made in order to conduct a qualitative comparison of the incorporation and liquidation processes in two very different but yet to some extent similar legislations of the United Kingdom and Canada, is to define the main forms of business vehicles existing in these countries.

The aim of this chapter is to give the reader an overall perspective of the existing business structures, briefly defining the forms of businesses and highlighting the main ones, which are going to be compared further in this work.

Historically, the Canadian legal system has developed from a common law tradition of the United Kingdom. The explorers and colonists brought the common law principles to Canada in the 17th and 18th centuries. That influenced significantly the formation of Canadian legal postulates. In 1759, after the Battle of Quebec, the whole country fell under the common law system, whereas only Quebec remained an exception, falling under French civil law tradition. ²

Nowadays, the major influence of the legal system of the United Kingdom can still be traced in nearly all areas of Canadian law. Due to this, there are several types of business vehicles in Canadian company law, that correspond to a certain degree to those in the United Kingdom. This will be illustrated further on.

1.1. Business entities in the United Kingdom

In the United Kingdom, there are three main types of businesses: sole proprietorship, company and partnership. ³The decision on a right type of an entity should be made by an entrepreneur very carefully, considering the aims and interests of a future business, advantages and disadvantages of the particular type of a business structure in comparison with others, possible risks arising from this, as well as the targeting market of a future business vehicle.

²'Where Our Legal System Comes From - About Canada's System Of Justice' (*Justice.gc.ca*) <<http://www.justice.gc.ca/eng/csj-sjc/just/03.html>> accessed 13 April 2017.

³'Types Of Business Organisations Types Of Organisation Business Studies And Business English | Business Case Studies' (*Businesscasestudies.co.uk*) <<http://businesscasestudies.co.uk/business-theory/strategy/types-of-business-organisations.html>> accessed 13 April 2017.

A sole trader, also called a sole proprietor, is a type of a business structure, where the owner is not distinguished legally from the business and which is run and owned by one person.⁴

A sole proprietor can be characterized by carrying personal liability for the losses a business makes and keeping a profit of a business they run after the payment of a tax on it. They usually deal with the daily bookkeeping in order to enable an accountant to prepare in the end of a year the accounts and to compute a relevant tax due. A sole trader is self-employed and is classified as a 'trader' for selling goods or services. A large number of registered in the United Kingdom sole traders provide their own money as a capital to start a business.⁵

Under the law of the United Kingdom, a sole proprietor is permitted to run a business using a trade name which does not correspond their legal name, which enables a trader to open a business account with different banking institutions.⁶

Among the advantages of running a business as a sole trader are the simplicity of starting up a business, which is subject to fewer regulations in comparison to other types of business entities, a trader is fully undependable regarding business decisions and all the profits of a business are taken solely by a proprietor.⁷

The biggest disadvantage of this business structure is that when a business grows and becomes successful, the risks that accompany a business are also growing. In order to minimize the risks, a sole trader has an option to form a corporation or a Limited Liability Company.

Simon Goulding, Barrister and Lecturer in law at the University of East Anglia, gave the following definition of the next business structure, a company, which is nowadays probably the most widespread one:

A company is formed or 'incorporated' by a promoter. Shares are issued by the company to shareholders (who are initially 'the subscribers' to the company's constitution), who then enjoy control over the company by voting in meetings, in proportion to the number of shares they hold.⁸

⁴'Sole Trader - What Is A Sole Trader? | Debitoor Accounting Glossary' (*Debitoor.com*, 2017) <<https://debitoor.com/dictionary/sole-trader>> accessed 14 April 2017.

⁵ *Ibid*, para 4.

⁶ 'Set Up As A Sole Trader - GOV.UK' (*Gov.uk*) <<https://www.gov.uk/set-up-sole-trader>> accessed 14 April 2017.

⁷'Advantages And Disadvantages Of A Sole Trader' (*The Company Warehouse*) <<https://www.thecompanywarehouse.co.uk/blog/advantages-and-disadvantages-of-a-sole-trader>> accessed 14 April 2017.

⁸ Simon Goulding, *Company Law* (2nd edn, Cavendish Publishing Limited 1999) 1.

For their intents and purposes companies are divided into public and private, limited and unlimited types. Public companies function by inviting external, public shareholders to buy the shares of a company. Notably, companies could be admitted to the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, the public market in the United Kingdom, where the shares could be sold and purchased only if they fall under certain conditions and particularly by demonstrating a sufficient trading record.⁹

The difference between public and private types of company is stated in the Companies Act 2006. Under this Act, private companies are any companies that are not public. One of the main disadvantages of the private company is the impossibility to enter the market in order to raise a capital. In this case, when a company grows and expands and it is necessary to further invest in a capital, there is a need to re-register a private company as a public company, to enable its shares to be sold to the public.¹⁰

Companies in the United Kingdom, as it was mentioned before, may also be limited or unlimited. According to the law, a company is considered as a limited if the liability of its members is limited by its constitution. Limited companies can be limited by shares or by guarantee.¹¹ A company is limited by shares if the liability of shareholders is limited by the amount of the shares they have taken in it. Contrary, a company is limited by guarantee if its members are tied by a guarantee in the articles of association of a company, under which they are required to pay the debts of a company only up to a fixed sum.¹²

An unlimited company is considered to be the one, where there is no legal limit on the liability of its members.¹³

Another common type of a business structure in the United Kingdom is a partnership. In a partnership, partners run a business together and carry individually share responsibility for a business. That means that they are responsible for any losses of their business, as well as for the bills for all the things they buy for operating a business, like equipment or stock. Partners also share the profits of a business and each partner is

⁹Simon Goulding, *Company Law* (2nd edn, Cavendish Publishing Limited 1999) 2.

¹⁰ Companies Act 2006, s 4(1).

¹¹ *Ibid*, s 3(1).

¹² *Ibid*, s 3.

¹³ *Ibid*, s 3(4).

obliged to pay a tax on their share. Partnerships, just like companies, may be limited or unlimited.¹⁴

1.2. Business entities in Canada

There could be found only few direct equivalents of business structures established in the United Kingdom, compared to businesses established in Canada. However, notwithstanding differences, there are some clear similarities that are to be mentioned further on. Pursuant to Canadian legislation, there are a lot of types of business ownerships that can be incorporated and run in Canada, such as: partnership, corporation, sole proprietorship, cooperative, joint venture.¹⁵ However, in this work only some of them are going to be studied and compared, namely sole proprietorship, partnership and corporation.

A sole proprietorship is a business structure that is owned by a sole owner and, under Canadian law, such business is not legally separated from a person who operates it, so they are considered as a same legal entity. This form of a business structure is equivalent to a sole trader in the United Kingdom, meaning that an owner holds individual responsibility for any obligations, debts and liabilities of his business. In case when these liabilities exceed the assets of a business, an owner may be obliged to declare a personal bankruptcy. Running a business as a sole proprietor is the easiest and usually the least expensive way to start a business.¹⁶

A partnership is another type of a business entity that has an equivalent in the United Kingdom. Just like in the U.K., a partnership in Canada is owned by partners, not by a sole owner. In most Canadian provinces, there are two types of partnerships: general and limited partnership. In a general partnership, the partners carry personal responsibility for their own individual actions, as well as for those made by the other

14 'Set Up A Business Partnership - GOV.UK' (*Gov.uk*) <<https://www.gov.uk/set-up-business-partnership>> accessed 17 April 2017.

15 'Selecting A Business Structure In Canada | New Business Now' (*Newbusinessnow.com*) <<https://www.newbusinessnow.com/article/selecting-a-business-structure-in-canada/>> accessed 17 April 2017.

16 *Ibid*, s.2.

partners. However, in the case of a limited partnership, the liability of partners is limited to an amount of the originally contributed capital.¹⁷

A partnership is a right form to run a business if partners wish not only to share the operation and management of their business, but also the profits, without having considerable liability concerns. Considering a tax perspective, a partnership may be a desirable choice if it is anticipated that a business can lose money during the first operating years and in case when partners can assign that loss against some other taxable income.¹⁸

Another type, which is currently the most popular business entity in Canada, is a corporation. It is a legal entity that provides increased liability protection to its owners, which implies that it is taxed separately from individuals. Under Canadian law there are five types of corporations: Canadian-controlled private corporation (CCPC), Other private corporation, Public corporation, Corporation controlled by a public corporation and Other corporation.¹⁹

As can be understood by the name, the Canadian-controlled private corporation should be private and meet the needed criteria of corporate tax law. The Canadian-controlled private corporation is the most favourable type of business entity for small businesses from a tax standpoint because it provides tax deduction, as well as some other benefits, like capital gains exemptions for its shareholders on the sale of shares and increased investment tax credits.²⁰

Similarly to public limited company in the United Kingdom, in accordance with Canadian laws not only private but also public business entity could be established. Public corporation presupposes the company to have a class of shares that should be listed on a given Canadian stock exchange, though it could also decide to be or be designated as a public corporation in pursuance of Income Tax Regulations, more specifically, Regulation 4800(1).²¹

17 Selecting A Business Structure In Canada | New Business Now' (*Newbusinessnow.com*) <<https://www.newbusinessnow.com/article/selecting-a-business-structure-in-canada/>> accessed 17 April 2017.

18 *Ibid*, s.3.

19 Susan Ward, 'Different Types Of Corporations In Canada Have Different Tax Rates' (*The Balance*, 2017) <<https://www.thebalance.com/types-of-corporations-in-canada-2948060>> accessed 18 April 2017.

20 *Ibid*, para 5.

21 *Ibid*, para 7.

Public corporation could also have a subsidiary which is called a Corporation controlled by a public corporation. By Other private corporation and Other corporation it is implied the type of corporation that has private or public nature but does not fall under any of foregoing categories.²²

²² 'Selecting A Business Structure In Canada | New Business Now' (*Newbusinessnow.com*)
<<https://www.newbusinessnow.com/article/selecting-a-business-structure-in-canada/>> accessed 18 April 2017.

2. Incorporation and registration of a business structure in the U.K. and Canada

Once the desirable type of business structure is selected, a new business ownership should meet all needed requirements pursuant to national law and, in the case of Canada, not only federal law but also the law of the relevant province, to apply for a registration in order to become a legal entity. For different business structures, there are different kind of registering procedures. Some businesses have to be registered to conduct a business, in other words, obtain a legal license that enables to operate a business on particular territory, other businesses have to be incorporated.

The main difference between the registration and incorporation is that an incorporated business becomes a separate legal entity. Under incorporation of a business it is understood a process of turning a sole proprietorship or partnership into a separate legal entity, formally recognized by the state of incorporation.²³

Contrary, business registration could not be considered as a form of incorporation. Often it provides the owners of business no protection of their personal assets. The primary purpose of registering a business, as it was mentioned before, is to obtain a business license, which is required by regional laws, aiming to conduct a business.²⁴

Significantly, incorporated businesses often need to obtain a business license, however, registered businesses do not have to be incorporated. In order to be able to operate, most types of business structures have to be registered, but not all of them. Certain kinds of businesses may in addition require special licenses, for instance, companies that offer financial services. Registered businesses are often open to the public, one could research the contact information, as well as the owners' names of a business.²⁵

Regarding the costs of incorporation and registration - they are often different, depending on a specific jurisdiction. Generally, incorporation is more expansive than registration of a business. Usually, a business owner has to pay a license fee in case of a

²³ Daphne Mallory, 'What Is The Difference Between Incorporation And Registration?' (*wiseGEEK*, 2017) <<http://www.wisegeek.com/what-is-the-difference-between-incorporation-and-registration.htm>> accessed 18 April 2017.

²⁴ *Ibid*, para 3.

²⁵ *Ibid*, para 3.

registration, moreover, such registrations often expire after a fixed time and have to be renewed once in a while.²⁶

In the next paragraphs an incorporation and registration processes of the previously-mentioned business structures of the United Kingdom are going to be analyzed and, in the end of this chapter, compared to an incorporation of their partial equivalents in Canada.

2.1. Steps of incorporation and registration process in the U.K

2.1.1. Sole trader

Lately, sole traders become more and more popular among the other business players in the United Kingdom. This type of business continues to gain popularity due to the simplicity of a registration and record keeping, as well as the fact that after the payment of a tax a trader keeps all the profits.

However, the fact that there is no legal distinction between the owner and the business, making this type of business less attractive. Its biggest disadvantage is that the responsibility for all business fails must be paid out of an owner's pocket. This fact sometimes makes entrepreneurs decide in favour of a business, that limits the liability of an owner, such as a limited liability company. Moreover, when the business is growing - the problems accompanying it emerge. Since the profits are taxed as an income, a trader has to pay certain percentage out of them the moment when the profits exceed the fixed threshold. Thus, taxation is another risk, that should be considered very carefully.²⁷

As a general rule, a sole trading business is from small to medium in size, with a low turnover, and very few employees, if any at all. There are approximately 4.8 million registered active businesses in the United Kingdom, where 3.6 million of these are businesses without employees, so-called, class zero businesses.²⁸

26 Daphne Mallory, 'What Is The Difference Between Incorporation And Registration?' (*wiseGEEK*, 2017) <<http://www.wisegeek.com/what-is-the-difference-between-incorporation-and-registration.htm>> accessed 18 April 2017.

27 *Setting Up A Business In The UK* (1st edn, Enterprise Europe Network London, London Chamber of Commerce and Industry 2010) <<http://www.londonchamber.co.uk/DocImages/7706.pdf>> accessed 19 April 2017.

28 'Registering As A Sole Trader: How To Go Self-Employed' (*Startups.co.uk: Starting a business advice and business ideas*, 2017) <<http://startups.co.uk/registering-as-a-sole-trader/>> accessed 19 April 2017.

In order to become a sole trader a business must meet certain legal requirements, and all the needed documents should be prepared in accordance with law.

First, the business owner should decide under which name they are going to run a business. If they are planning to trade under a name, which does not correspond their personal name, they should still put the name or names of the business owners and relevant address on all headed note-paper and at business premises.²⁹

It is not obligatory to register a business name. However, if an entrepreneur decides to register, this could be done with the National Business Register. A trader must also be very careful choosing a name, because in case of any mistakes it can get them into difficulties. Some words and expressions, for example, international and those that are already registered, are prohibited under the Business Names Act 1985 and the Company and Business Names Regulations 1995. Very helpful for this purpose would be the lists of words and details of their use of Companies House and the National Business Register.³⁰

A name of a business could not be the same or very similar to another business name or a registered trademark. If it looks too similar or the same, one could incur responsibility and face serious legal consequences. To ensure that a certain name can be used, a trader should contact a solicitor and ask them to perform the checks and/or register a business name with the National Business Register.³¹

After a trader has decided on a name of a business and registered it, the next step to be made is to inform authorities and become legally self-employed. To do so a sole trader should register with the HM Revenue and Customs (HMRC).³²

The HMRC is a non-ministerial department, which is supported by two agencies and several public bodies. It was established by Act of Parliament in 2005 as a new department, which replaced the Inland Revenue and Customs and Excise. HMRC is the United Kingdom's tax, customs and payments authority, which main purpose is to 'collect the money that pays for the UK's public services and help families and individuals with targeted financial support'.³³

29 'Registering As A Sole Trader: How To Go Self-Employed' (*Startups.co.uk: Starting a business advice and business ideas*, 2017) <<http://startups.co.uk/registering-as-a-sole-trader/>> accessed 19 April 2017.

30 *Ibid*, para 11.

31 *Ibid*, para 13.

32 *Ibid*, para 15.

33 'About Us - HM Revenue & Customs - GOV.UK' (*Gov.uk*, 2017)

<<https://www.gov.uk/government/organisations/hm-revenue-customs/about>> accessed 19 April 2017.

A sole trader has to register as a self-employed within three months period after starting up, otherwise he will face a fine. This three-month term counts from the last day of the first month of trading. In case when a sole trader anticipates that his business' turnover may reach £85,000, the level that requires compulsory VAT registration, for a twelve-month period - then a trader will need to register for VAT.³⁴

In many cases, a sole trader might decide to register for VAT even when they do not have to. Through this, they might gain more credibility by having a VAT number, and in addition, it will enable them to claim the VAT back on eligible purchases that were made.³⁵

It is important to note that a trader is classified as a self-employed person, hence, he also has to make arrangements for self-assessment of income tax and for paying his National Insurance. A sole trader also has to complete a tax return and pay a tax due to HMRC by the specified period of 31 January and 31 July each year.³⁶

Notably, trading as a self-employed, the business income is taxed on a par with the trader's personal tax. That being the case, it is crucial to keep all business records and finances apart from the personal affairs. Therefore, it is recommended to open a separate business bank account.³⁷

In case when a sole trader's business grows and they decide to employ another person, even if this employee would work on a part-time basis, a trader is legally obliged to get employers liability insurance. It has to cover of at least £5 million and a trader is required to display his certificate of insurance on place, where employees can easily acquaint themselves with it. It should be pointed out, that if a trader failed to meet these requirements, he could expect a very heavy fine.³⁸

Thus, despite the apparent ease of running business as a sole trader, there are still a lot of pitfalls that should be taken into account in advance.

34 *Setting Up A Business In The UK* (1st edn, Enterprise Europe Network London, London Chamber of Commerce and Industry 2010) <<http://www.londonchamber.co.uk/DocImages/7706.pdf>> accessed 20 April 2017.

35 '5 Things You Must Do When You Go Self Employed | Bytestart' (Bytestart.co.uk, 2016) <<http://www.bytestart.co.uk/5-things-self-employed.html>> accessed 20 April 2017.

36 *Setting Up A Business In The UK* (n 16).

37 '5 Things You Must Do When You Go Self Employed' (n 17).

38 *Ibid*, s 4.

2.1.2. Partnership

Ordinary partnerships, just like sole traders, should not be incorporated but registered. Due to this, the procedure is similar in many ways to starting up a business as a sole trader.³⁹

A partnership is a perfect option for those entrepreneurs who would like to run a business together but do not want for some reasons to set up a limited liability company. In a 'simple' partnership, two or more partners are linked in the same business structure without creating a separate legal status. Hence, partners are carrying personal liability for any business debts and losses.⁴⁰

Partners may choose between three types of partnerships available in the United Kingdom: ordinary partnership, limited liability partnership and limited partnership.

In an ordinary partnership, one of the partners should be designated as the 'nominated partner'. They are responsible for registering the partnership for a self-assessment with HMRC, as well as for all administration matters and tax returns.⁴¹ Partners in an ordinary partnership should also agree whether they want to create a new business name or to use their personal names. The procedure of choosing the name is the same for any self-employed persons, sole traders and partners, so it would not be described again.⁴²

While setting up a partnership, partners should create an agreement, which comprises the most important information on functioning of a partnership. It should include the percentage of ownership and all contributions to the partnership, outline the distribution of profits and all the losses of a partnership, set out the authority of each partner during decision-making and highlight the main duties of each partner, as well as set out the procedures for admitting a new partner or the exclusion of an existing one.⁴³

39 'Set Up A Business Partnership - GOV.UK' (*Gov.uk*) <<https://www.gov.uk/set-up-business-partnership>> accessed 20 April 2017.

40 'How To Set Up In Business As A Partnership | Bytestart' (*Bytestart.co.uk*) <<http://www.bytestart.co.uk/set-up-partnership.html>> accessed 20 April 2017.

41 'Setting Up A Partnership' (*Rocket Lawyer*) <<https://www.rocketlawyer.co.uk/article/setting-up-a-partnership.rl>> accessed 20 April 2017.

42 'How To Set Up In Business As A Partnership | Bytestart' (*Bytestart.co.uk*) <<http://www.bytestart.co.uk/set-up-partnership.html>> accessed 20 April 2017.

43 *Ibid*, para 5.

Another type of partnership is a limited liability partnership. A Limited Liability Partnership (LLP) is a mixed form of a business entity that comprises features of a limited company and a partnership and, thus, should be incorporated.

Contrary to an ordinary partnership, in a LLP, the liability of each partner is limited to the personal guarantees that they have raised and the amount of money they have invested in the business. In a LLP, unlike an ordinary partnership, at least two of the partners should be 'designated members', meaning that they have extra responsibilities.⁴⁴ Limited Liability Partnerships must register with Companies House (an executive agency which incorporates and dissolves limited companies and makes it available to the public⁴⁵) and have to file annual returns.

The last type of a partnership is a limited partnership (LP). In a limited partnership, at least one of the partners is considered a 'general partner' and at least one of the partners is a 'limited partner'.

A general partner has personal liability for business debts and is responsible for making business decisions. A limited partner has virtually no control over casual business operations and decisions but invests their money in the business. The biggest advantage for the limited partners - no personal liability for the business losses.⁴⁶

The difference between a limited liability partnership and a limited partnership consists in the absence of general partners in the former case, other than that, it is a similar business structure where all owners have limited liability for their business debts.⁴⁷

In order to conduct a business as a limited partnership partners should choose the relevant name and register the business with Companies House. Right after that they must register the business for Self-Assessment with HMRC, moreover, each partner should also register separately from the business, as an individual. In case when the anticipated profit should be more than £85,000 a year, a limited partnership should also

44 *Setting Up A Business In The UK* (1st edn, Enterprise Europe Network London, London Chamber of Commerce and Industry 2010) <<http://www.londonchamber.co.uk/DocImages/7706.pdf>> accessed 21 April 2017.

45 'About Us - Companies House - GOV.UK' (*Gov.uk*)

<<https://www.gov.uk/government/organisations/companies-house/about>> accessed 21 April 2017.

46 Peri Pakroo, 'Limited Partnerships And Limited Liability Partnerships' (*www.nolo.com*)

<<http://www.nolo.com/legal-encyclopedia/limited-partnerships-limited-liability-partnerships-29748.html>> accessed 21 April 2017.

47 'How To Set Up In Business As A Partnership | Bytestart' (*Bytestart.co.uk*)

<<http://www.bytestart.co.uk/set-up-partnership.html>> accessed 21 April 2017.

be registered for VAT. Partners should act for the business if they have decided to wound it up or dissolve.⁴⁸

2.1.3. Company

As it was said in the first chapter of this work, companies are probably the most favourable type of running a business in the modern world. According to Simon Goulding, among the advantages of setting up a company is the availability of a timeless existence of this business structure, meaning that the death or retirement of its members has no essential effect on its further operation, unlike in case of a partnership or a sole proprietorship.⁴⁹

The main legislative source in the United Kingdom that regulates all questions concerning a company and its functioning is the Companies Act 2006 (further ‘the Act’). The second part of this Act is dedicated to a company formation. Under the Act, the general requirements for the formation of a company, no matter on its type, are the subscription of a company members to a memorandum of association and the strict compliance with the requirements on the registration. In addition, a company should not be formed for illicit purposes.⁵⁰

A memorandum of association should state that members of a company, who subscribed to it, have a wish to form a company under the Act, agree to become its members and, in case when a company has a share capital, to take no fewer than one share each.⁵¹

The memorandum of association must be accompanied with an application for registration of a company, the documents requested by the section 9 of the second part of the Act and a statement of compliance. All the foregoing documents should be delivered to the registrar.

The application for a registration must contain the proposed name of a company, the location of the company’s registered office (England, Wales, Scotland or Northern

48 'Set Up And Run A Limited Partnership - GOV.UK' (*Gov.uk*) <<https://www.gov.uk/guidance/set-up-and-run-a-limited-partnership>> accessed 21 April 2017.

49 Simon Goulding, *Company Law* (2nd edn, Cavendish Publishing Limited 1999) 13.

50 Companies Act 2006, s 7.

51 *Ibid*, s 8.

Ireland), the decision on a limited or unlimited liability of the company's members (limited by shares or by guarantee) and the type of the company: private or public.⁵²

In case when a company is limited by shares the application should also contain a statement of capital and initial shareholdings. It must contain the information on the total number of shares of the company taken by its members, who subscribed to the memorandum of association; the aggregate nominal value of the shares, as well as the specific information for each class of shares, specified in section 10, subsection 2(c); and the amount to be paid up or unpaid (if any) on each share.⁵³

In the event that a company is limited not by shares but by a guarantee, the application for registration should be accompanied with a statement of guarantee. Under this statement, each member ensures that, in case when a company has to be wound up during their membership, or within a year after they stop being a member, they have to contribute to the company's assets in an amount that is needed for the payment of debts of the company contracted before they cease a membership. They also have to make a contribution to a payment of the expenses and charges of winding up, as well as to adjust the rights of the investors among themselves, without exceeding a fixed amount.⁵⁴

Except for the aforesaid, the application must be accompanied with a statement of proposed officers and a statement of compliance.

According to the Act, the statement of proposed officers must contain the information on the person or persons who is/are the first director or directors of the company and, upon the type of a company (public or private), on the person who is a first secretary or persons who are joint secretaries.⁵⁵

The statement of compliance confirms that the requirements of the Act as to registration of a company have been complied with and the registrar shall accept this statement as a satisfactory evidence of compliance.⁵⁶

After delivering all the documents to the registrar, providing that the registrar is satisfied with them and they comply with the Act, they shall register these documents and issue a certificate of incorporation. From the date of incorporation, the registration

⁵² Companies Act 2006, s 9(2).

⁵³ *Ibid*, s 10(2).

⁵⁴ *Ibid*, s 11(3).

⁵⁵ *Ibid*, s 12.

⁵⁶ *Ibid*, s 13.

is considered to be completed and a business structure that was registered is allowed to exercise all the functions of an incorporated company.⁵⁷

2.2. Incorporation and registration of a business structure in Canada

2.2.1. Sole proprietorship

A sole proprietorship, just like a sole trader in the United Kingdom, is the easiest way to start and run a business in Canada. In this business organization a sole proprietor, who is considered as a self-employed, is personally responsible for all the functions needed for the effective operation of the business. The proprietor alone establishes a business and operates it, assumes all the risks and secures the capital, pays the taxes and is liable for all business debts and losses.⁵⁸

A sole proprietorship can operate either under the proprietor's personal name, if that is to be the case the registration with the Registrar of Companies is not required, or as a registered unincorporated business under the new business name. Nevertheless, even in case when a sole proprietor decides to operate under their own name and do not want to register a business, it may still have to be registered with local authorities, in order to obtain an industry or province specific business license. Among the other advantages of the registration of a business, that does not have to be incorporated, is that due to the registration it is easier for the public to identify the persons, that are involved in the business.⁵⁹

The registration of a sole proprietorship consists of two steps: getting an approval by the authorities on a chosen business name and filling in and submitting of a Statement of Registration. It is important to emphasize that the procedural details on a registration and fees are not harmonized on a state level, due to this reason a proprietor has to address provincial Business Names Act and register a proprietorship with the Ministry of Government and Consumer Services.⁶⁰

⁵⁷ Companies Act 2006, ss 15,16.

⁵⁸ *Information On Registration Of Proprietorship* (BC Registry Services)
<http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/partnerships-proprietorships/pnp-info-packages/reg21_registration_of_proprietorship.pdf> accessed 24 April 2017.

⁵⁹ *Ibid*, 1.

⁶⁰ *Ibid*, 1.

Since there is no harmonization of registration of a sole proprietorship in Canada, in this work the registration process would be illustrated by two examples of a province Ontario and British Columbia.

In the province of Ontario, the first step in order to register a business is to apply for a registration of a business name with the Ministry of Governmental and Consumer Services. Under the Ontario Business Names Act, a proprietor should pay a fee for a registration and once a new business is registered - the registration will last for 5 years and then has to be renewed.⁶¹

As soon as a business name is registered, a proprietor will receive a Master Business Licence, which is known as MBL. This License shall be used as an evidence of business name registration at different financial institutions and organization, as well as to manage other business transactions with the Ontario government.⁶²

Additionally, a sole proprietorship registered in Canada has to comply with all governmental business regulations on federal, provincial and municipal level. The laws to comply with concern business licenses, record-keeping of business transactions, the collection of taxes and law that regulates employees.⁶³

Most businesses also have to register for the collection of the Harmonized Sales Tax, also called HST, which is a joint federal and provincial sales tax. A proprietor can register through Canada Revenue Agency (CRA), after that CRA will issue a Harmonized Sales Tax remittances. Significantly, a sole proprietorship's business profits are not taxed separately, but they are embedded in the tax return of a business owner, and, thus, are taxed at the proprietor's personal tax rate.⁶⁴

In the province of British Columbia, all unincorporated businesses must comply with the Partnership Act⁶⁵, namely with a part 4 of the Act, that regulates the 'Registration of General Partnerships and Sole Proprietorships'.

The first step of registration is the same for Ontario and British Columbia - to register a business name of a sole proprietorship. In order to ensure that a chosen

61 'How To Register A Business Name - Legal Line' (*Legal Line*) <<https://www.legalline.ca/legal-answers/how-to-register-a-business-name/>> accessed 26 April 2017.

62 *Ibid*, para 2.

63 'Government Regulations, Accounting And Taxes - Legal Line' (*Legal Line*) <<https://www.legalline.ca/legal-answers/government-regulations-accounting-and-taxes/>> accessed 27 April 2017.

64 *Ibid*, paras 3, 4.

65 Partnership Act [RSBC 1996] Chapter 348 (Queen's Printer 2017).

business name is available for registration, a sole proprietor should make a Name Approval Request and pay a submitting fee.⁶⁶

It is worthy of note that a business name does not enjoy the same protection as a corporate name. According to the Partnerships Act, the registrar must not file a certificate or a registration statement under this Act, that contains a business name, that is the name of an incorporated corporation, which is registered or continued in British Columbia, or if it nearly resembles that name, therefore, in the opinion of the registrar, could confuse or mislead.⁶⁷

Upon receiving a business name approval and reservation number of the name, a sole proprietor may immediately register a proprietorship online or fill in the forms on the Statement of Registration. Finally, when the Statement of Registration has been accepted and registered, a sole proprietor would receive a registration acknowledgment, that shows a date of registration and a registration number.⁶⁸

2.2.2. Partnership

A partnership is another form of unincorporated business that is run by two or more persons who wish to share the business profits. As it was mentioned in the first part of this work, there are two types of partnerships in Canada: general partnership, in which the partners have to share all the profits and losses of their business; and limited partnership, in this type of a partnership the limited partners are only responsible for the losses up to the fixed amount that they have contributed to the business and, as a rule, they are not involved in the daily business operations. There is also a third type of a partnership, which is relevantly new to Canada - a limited liability partnership. However, since this type of a partnership could be established only in specific business fields and not in all provinces, it would not be described in this work.⁶⁹

The first thing to be done while setting up a partnership is to decide on a type of a partnership (general or limited) and choose a name of a business. It is important to

⁶⁶ *Information On Registration Of Proprietorship* (BC Registry Services)

<http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/corporations/partnerships-proprietorships/pnp-info-packages/reg21_registration_of_proprietorship.pdf> accessed 76 April 2017.

⁶⁷ Partnership Act [RSBC 1996] Chapter 348, s 89(1).

⁶⁸ *Information On Registration Of Proprietorship* (n 40).

⁶⁹ Susan Ward, 'Everything You Need To Know About Business Partnership In Canada' (*The Balance*, 2016) <<https://www.thebalance.com/partnership-in-canada-2948122>> accessed 27 April 2017.

ensure that the desired name has not been registered by another partnership or company. There are several ways to search for already registered names: partners-to-be could perform the search by themselves or they can pay for the service of a search company to do it for them.⁷⁰

Once the name is chosen, partners should file an application, depending on the type of a partnership, and submit it together with a payment of a nominal governmental fee to the relevant provincial authority. In this work, the process will be illustrated on the example of the province of Ontario, hence, the relevant provincial authority is the Ministry of Government and Consumer Services. After the application has been submitted, a Master Business Licence would be issued to the partners by the Ministry, which will be valid for the next five years from the date of the registration. The registration can be done in one of the three ways: online, in person, or by e-mail.⁷¹

However, not every partnership should be registered. In the province of Ontario only partnerships that decided on business names, that are different from their own, are obliged to register. In this case, the name of a partnership is different from the names of the partners who run it or contain additional words and, thus, the registration is required by law of the province. There is another important reason for registration of a business name and it is quite simple: the registration is required by banks and different government departments.⁷²

Separately from the process of registration, partners should consider drawing up a partnership agreement. The agreement will help to avoid any misunderstandings between the partners in future. Typically, a partnership agreement establishes the basic rules on functioning of a partnership, including the information on the partners and their roles in the partnership, the bank where a business will be served, division of the profits and losses of the business among the partners, the contribution of each partner to the capital of a partnership, and the information on dissolution of a business.⁷³

70 'Choosing And Searching A Partnership Name - Legal Line' (*Legal Line*)

<<https://www.legalline.ca/legal-answers/choosing-and-searching-a-partnership-name/>> accessed 27 April 2017.

71 "Registering A Partnership Name - Legal Line' (*Legal Line*)

<<https://www.legalline.ca/legal-answers/registering-a-partnership-name/>> accessed 27 April 2017.

72 *Ibid*, paras 2, 3.

73 'Partnership Agreements - Legal Line' (*Legal Line*) <<https://www.legalline.ca/legal-answers/partnership-agreements/>> accessed 27 April 2017.

It is of importance to note, that in case when a partner has a criminal record, they are restricted by law to do specific business-related actions, such as obtaining a business loan, getting a commercial lease or entering into various business contracts. Hence, before becoming a partner in a business such persons should get their criminal record removed.⁷⁴

In far as it concerned the payment of taxes, most partnerships, just like sole proprietors, must also register to collect the Harmonized Sales Tax. Significantly, there are various tax and government filing rules for entrepreneurs who are self-employed and for individuals who are employees. The Canada Revenue Agency sets its own rules for determining if a person is to be considered as a self-employed.⁷⁵

Business accounting records is another crucial point in operating a partnership. Partners are responsible for the maintenance of business records and transactions, including bank statements, sales records, all business expenses and even cancelled cheques. Therefore, it might be a good decision to hire a bookkeeper or accountant, who will do this work for partners. It must be stressed, that the personal finances of the business partners must be kept separately from business records.⁷⁶

Besides the aforementioned cases when a business has employees, it is required to allocate Employment Insurance premiums, income tax from employee salaries, as well as Canada Pension Plan contributions. The federal government is responsible for the designation of employee deductions amounts. In order to accurately make and submit these deductions, a partnership should be registered with Canada Revenue Agency. The Agency should then issue a partnership its Business Number, which is similar to the one that was issued for Harmonized Sales Tax purposes, except for two additional letters at the end. Moreover, depending on a business sphere, a partnership that has employees may be obliged to register with the Workplace Safety and Insurance Board (WSIB). The WSIB assures funds for employees who are injured at work. However, not all types of businesses are required to be registered with the WSIB.⁷⁷

74 'Partnership Agreements - Legal Line' (*Legal Line*) <<https://www.legalline.ca/legal-answers/partnership-agreements/>> accessed 27 April 2017.

75 'Government Regulations, Accounting And Taxes - Legal Line' (*Legal Line*) <<https://www.legalline.ca/legal-answers/government-regulations-accounting-and-taxes/>> accessed 26 April 2017.

76 *Ibid*, para 6.

77 *Ibid*, paras 7-9.

2.2.3. Corporation

Most business structures in Canada, regardless their size, are established as a corporation. This business entity should comply with the requirements of a provincial or federal statute. A corporation is a business that has to be incorporated, as the result of this a separate legal entity is created. Thereby, a corporation may enter into business-related contracts, sue or be sued under its own distinct name, possess a property like a natural person.

There are a lot of advantages of an incorporation of a corporation that induce entrepreneurs to run their business under this particular form. Among the advantages are: potential immortality of a corporation, limited liability to its shareholders, transferability of business shares, functioning as a separate legal entity, granting of specific rights and remedies to shareholders and tax advantages.

Once the shareholders have decided on a form of a corporation, they have to choose a jurisdiction under which a corporation will be incorporated. There are two types of jurisdictions In Canada, that have an authority to incorporate: federal and provincial. The Constitution Act 1867, namely s. 91(2), authorizes a Parliament to create corporate entities. The Parliament of Canada is also permitted to incorporate by royal prerogative. In addition to this, under the Constitution Act 1867, section 92(11), each province must be able to incorporate a company ‘with provincial objects’.⁷⁸

In case when a corporation is going to be incorporated under a federal authority, business owners can choose from several federal statutes, that can be used for this purpose. The most universal statute is Canada Business Corporations Act, R.S.C., 1985, c. C-44. Another example, under which a business can be incorporated are Canada Corporations Act (R.S.C. 1970, c. C-32) and special Acts of Parliament.⁷⁹

In circumstances where business owners decide to incorporate their business for provincial objectives, they should choose a relevant provincial statute. For instance, in

⁷⁸ Katie McConchie, *Business: Company* (The Law society of British Columbia 2017) <<https://www.lawsociety.bc.ca/Website/media/Shared/docs/becoming/material/Company.pdf>> accessed 28 April 2017.

⁷⁹ *Ibid*, para 1.11.

British Columbia relevant statutes are: the Business Corporations Act (S.B.C. 2002, c.57), Societies Act (S.B.C. 2015, c. 18), Special Acts of the Legislative Assembly and others.⁸⁰

Given that there are thirteen provinces in Canada, each of which has its own provincial laws (in case of a Quebec - even different law system), there are five various ways of incorporation in the country: letters patent, registration of memorandum and articles, incorporation application, filing of articles of incorporation and statute.

Letters patent are used as a way of incorporation in the provinces of Quebec, Prince Edward Island and New Brunswick. Letters patent are given by the government, they typically state a name of a corporation, its purpose, founding directors' names and the address of the corporation's head office. Such corporations are considered to have the legal capacity of a natural person. In case when a company incorporated in this way does any act that contradicts its letters patent, such an act will not be considered ultra vires, but will solely constitute company's charter violation, rendering the liability for penalties.⁸¹

Registration of Memorandum and Articles is another method of incorporation that is currently used in two provinces: Nova Scotia and Newfoundland, previously it was also used in British Columbia. Normally, such corporations do not enjoy the powers of a natural person. However, they do enjoy the powers given to them by the governing statute or those that are set out in the memorandum. In this capacity, the doctrine of ultra vires may be applied to them.⁸²

Incorporation application is another method of incorporation, that is used in British Columbia and is required by the Business Corporations Act (S.B.C. 2002, c. 57). Under this Act, the incorporation application should state certain information, such as: the name of the corporation; the completing party statement, incorporators full names and mailing addresses; a notice of articles that represents the information, that is to be applied to the corporation after its incorporation.⁸³

⁸⁰ Katie McConchie, *Business: Company* (The Law society of British Columbia 2017) <<https://www.lawsociety.bc.ca/Website/media/Shared/docs/becoming/material/Company.pdf>> accessed 28 April 2017.

⁸¹ *Ibid*, para 1.13(1).

⁸² *Ibid*, para 1.13(2).

⁸³ Katie McConchie, *Business: Company* (The Law society of British Columbia 2017) <<https://www.lawsociety.bc.ca/Website/media/Shared/docs/becoming/material/Company.pdf>> accessed 28 April 2017.

Filing articles of incorporation is a method that is used in the Canada Business Corporations Act, R.S.C. 1985, c. C-44 (further CBCA). This method of incorporation is used in the provinces of Alberta, Saskatchewan, Manitoba and Ontario, that have adopted provincial Acts, and that are based on the CBCA. Articles of incorporation should state the proposed name of a corporation, the province or territory in Canada, where a corporation is established, the division of shares and the restrictions on share transfers (if any), the number and names of corporation's directors, and any other restrictions on business activities that might be agreed upon between the shareholders.⁸⁴

The last method of incorporation requires a company to be incorporated under a particular statute or by a special Act. Such companies are subject to the doctrine of ultra vires and do not have the powers of a natural person, but only the powers prescribed by the legislation.⁸⁵

2.3. Comparison and analyses of similarities and differences of incorporation and registration processes in the U.K. and Canada

Having examined some of the main types of business structures currently existing in the United Kingdom and Canada, this subheading will be focused on the detection and comparison of the similarities and differences of the above-described incorporation and registration processes. By virtue of the fact that legal consequences of these two processes are fundamentally different, businesses are going to be compared based on the type of the process required to run the peculiar business form.

With regard to unincorporated business entities, a sole trader is to be compared to a sole proprietorship, and, respectively, Canadian partnership will be compared to the same business structure in the United Kingdom in the next paragraphs.

As previously mentioned, a sole proprietorship is not required to be incorporated - and is comparatively easy to start and run, both in the U.K and in Canada. Despite this, in most cases a sole proprietorship must be registered with national authorities, which is a common feature for this business structure in both countries. Notably, it is highly important prior to the registration to choose the relevant business name, one that has not been registered before. In the United Kingdom, in order to become self-employed, a sole

⁸⁴ *Ibid*, para 1.13(2).

⁸⁵ *Ibid*, para 1.13(5).

trader should register for their income tax, as well as for the National Insurance contributions with the HM Revenue and Customs. In Canada, the majority of sole proprietorships are required to register with the Canadian Revenue Agency for the collection of the Harmonized Sales Tax - a combined federal and provincial sales tax.

Having considered the registration of a sole proprietorship in Canada and in the United Kingdom, it seems reasonable to conclude that the process of establishment of this business form is pretty similar in the aforementioned countries, with no significant differences detected.

Another business form that should not be incorporated in the countries that are compared in this work, is a partnership. Prior to the registration of a partnership, partners should decide on its type. In the United Kingdom, there are three types of partnership, however only one of them should be registered - an ordinary partnership. The analogue of this type of partnership in Canada is a general partnership. In order to set up the ordinary partnership in the U.K., partners should first choose the name of a business and register it with the HM Revenue and Customs. Similarly, a general partnership, established in Canada, is needed to be registered with the local provincial authorities, in case of a province of Ontario - with the Ministry of Government and Consumer Services.

It is important to emphasize that quite a different procedure is seen in case of choosing a different type of a partnership in the U.K. - a limited liability partnership or limited partnership. Under the law of the United Kingdom, these two business forms have to be incorporated, just like a company, and thus are required to register with the Companies House. Likewise, a limited partnership and limited liability partnership have to be incorporated under the relevant Canadian provincial legislation.

In the United Kingdom, a partnership should also be registered for a Self-Assessment with the HM Revenue and Customs, moreover, each partner has to register themselves separately as an individual. In addition to this, if the anticipated income exceeds the prescribed threshold, a partnership should also be registered for VAT, without regard to some other types of taxes (income tax, capital gains tax etc.). In a similar manner, a partnership established in Canada should register for the collection of the Harmonized Sales Tax with the Canada Revenue Agency, as well as it having to pay an alternative minimum tax and other taxes.

As it has been demonstrated above, the types of partnerships that exist in the United Kingdom correspond to those in Canada. However, Canadian limited liability partnership differs from the same type established in the United Kingdom, in a way that it could be set up only in specific professional spheres (e.g. law, medicine). Another common feature for the both countries is the necessity to incorporate a limited partnership and limited liability partnership, unlike the ordinary or general partnership, which has to be registered. With regards to the differences, the legislation regulating taxation noticeably differs and should be considered very carefully in each specific case. Furthermore, in the United Kingdom and Canada the legal regulation of contributions and deductions to pension fund, the maintenance of workplace safety and insurance contributions for employees is significantly different.

The last type of a business entity that has been analyzed in this chapter, is a corporation, or its equivalent in the United Kingdom - a company. Regarding this most popular business form, it is important to note the significant difference in a governmental approach to the legal regulation of the incorporation process. In the United Kingdom, the law is harmonized countrywide, hence, all companies must be incorporated under the Companies Act 2006. Quite the reverse is seen in Canada, where there is no harmonization on a state level and, therefore, before the incorporation, business owners should choose a jurisdiction: federal or provincial.

Unlike partnerships, the types of which are similar in the both countries, there could be found no equivalents among the types of corporations. There are five types of corporations in Canada, which were previously mentioned in the first Chapter, whereas some of these types do not exist in the United Kingdom - for instance, a corporation controlled by a public corporation.

Thanks to the harmonization of the corporate law in the United Kingdom, it is quite easy to comply with the Companies Act 2006 and incorporate the company. In order to do so, after choosing the type of a company, its members should subscribe to a memorandum of association and fill in the application for a registration. The application should be accompanied with the statement of proposed officers and a statement of compliance. In contrast, in Canada there is no single way to incorporate a corporation, but there are five separate ways, depending on the province where a business is to be incorporated, and the choice of a jurisdiction.

In conclusion, it is evident that notwithstanding the significant differences in the corporate legislation in two separate legal systems of the United Kingdom and Canada, they still share many common features regarding the requirements for the registration and incorporation of a business.

3. Dissolution and liquidation of a business structure in the United Kingdom and Canada

Nothing lasts forever, and when it comes to bringing a business to an end it is crucial to follow the prescribed by a state laws, in order to avoid any possible legal consequences. Consequently, different legal procedures are set for various business entities. This Chapter is aimed at the definition, analysis and comparison of various winding up procedures, existing in the United Kingdom and Canada.

Before moving on to the details, it is necessary to set out the differences between the notions of a liquidation and dissolution.

A liquidation is the process of a complete sale of a business' assets. It is often a needed step, that takes place prior to the dissolution of a company. The extracted assets of a business are often used to pay off any of its debts, and once this is done, any money that is left over goes back to the shareholders. There are several types of a liquidation, depending on the reasons that led to it.⁸⁶

A liquidation can be compulsory, and if that is the case, the creditors virtually force business owners into it. Another type of liquidation is a creditors' voluntary liquidation (CVL), when the shareholders come to the conclusion that their business is no longer able to pay for its debts. In such a case, the whole process is controlled by a liquidator, requiring the input of the creditors. The result of a CVL is a sale of all business' assets and a surplus is divided between the members. The third type is a member's voluntary liquidation. If that is to be the case, a business is able to pay for its debts, but at least three quarters of members must have a wish to wind the business up. In a MBL a liquidator is appointed and the assets are to be realized, in order to convert them into cash. After that, the resulting balance is divided among the shareholders.⁸⁷

A dissolution means the closure of a business, which most often takes place on some voluntary conditions of the business owners. On this basis, a dissolution is a more complex notion than a liquidation, making the latter a crucial part of the former.⁸⁸

⁸⁶What'S The Difference Between Dissolve And Liquidate?

<<https://www.theformationscompany.com/difference-between-dissolve-liquidate>> accessed 12 May 2017

⁸⁷ *Ibid*, paras 3-5.

⁸⁸ Justin Johnson, 'Difference In A Liquidated Company And A Dissolved Company'

(*Smallbusiness.chron.com*) <<http://smallbusiness.chron.com/difference-liquidated-company-dissolved-company-23255.html>> accessed 12 May 2017.

3.1. Peculiarities of a dissolution and liquidation process in the U.K.

It is of foremost importance for an entrepreneur to be acquainted with the peculiarities of winding up of a business form they run. One should be prepared to face any possible difficulties, arising from their business, because running a business entity is always accompanied with great risks. This subheading is dedicated specifically to the understanding of the various types of winding up procedures, prescribed by the legislation of the United Kingdom.

When a sole trader decides to stop their business activity, they must inform the authorities of their decision. In the U.K. the relevant authority is the HM Revenue and Customs, who will, based on this decision, cancel the Class 2 National Insurance contributions of the corresponding business entity. A sole trader is also obliged to send final tax returns, which must be sent before the deadline and have to contain: the trading income plus the allowable expenses, which are mainly the costs spent on closing of a business; calculations of capital allowances; calculations of the final profit/loss. Sometimes, a sole trader might be able to lower a final tax bill by claiming an entrepreneur's relief, overlap relief, or terminal loss relief.⁸⁹

Additionally, if a sole trader has employees, they have an obligation to close the PAYE scheme and send business' final payroll reports to the HM Revenue and Customs. Moreover, a sole trader has to inform their employees in advance of their decision to close the business.⁹⁰

It is also important to cancel a VAT registration, in cases when a trader was registered. This could be done online and it usually takes 3 weeks for HM Revenue and Customs to confirm a de-registration and confirm the official date of a de-registration. Finally, if it was an insolvency that led to the decision to close the business up, as a rule, a trader should carry a personal liability for all the debts of their business. Otherwise, the business' creditors may sue a trader.⁹¹

⁸⁹"Stop Being Self-Employed - GOV.UK' (*Gov.uk*) <<https://www.gov.uk/stop-being-self-employed>> accessed 13 May 2017.

⁹⁰'Stop Being An Employer - GOV.UK' (*Gov.uk*) <<https://www.gov.uk/stop-employing-staff>> accessed 14 May 2017.

⁹¹'VAT Registration: Cancel Registration - GOV.UK' (*Gov.uk*) <<https://www.gov.uk/vat-registration/cancel-registration>> accessed 14 May 2017.

There are several main reasons that can lead to the decision to wind up a partnership. It is very common after a partner's death or retirement, in case if the partners did not agree to the contrary in advance. In the event when the members of a solvent partnership have a wish to close it up, the best way to do this is to come to this decision amicably. In other words, if it is obvious that winding up is unavoidable, a voluntary winding up is always advantageous.⁹²

Before starting the process of voluntary winding up, partners should study carefully their partnership agreement. In many cases, it already states the agreed scenario of winding up. It is also required to collect the information on the ownership status of all items of the property owned by the business, and all assets that were purchased in the name of the partnership, because they will be liquidated. The best way to ensure that the process of winding up is conducted under the law, is to consult a legal adviser.⁹³

However, since the partners are personally liable for the debts of a partnership, a business could not only be wound up, but also some partners could go bankrupt and then special bankruptcy orders could be made against those partners. The main piece of a legislation, that regulates this matters in the United Kingdom, is the Insolvent Partnerships Order 1994.

In case when a partnership is insolvent and the partners achieve this decision together, they should jointly apply to the court, in order to become officially bankrupt. The application to the court must be made under the Insolvent Partnerships Order 1994. Under this Order, the partners should complete several forms (forms 14, 17, 18) and pay the following fees: a court fee in the amount of £180, and a petition deposit in the amount of £550. The payment can be made by postal orders, cash, or a cheque of a solicitor, made payable to the HM Courts and Tribunals Service.⁹⁴

When it comes to winding up a company in the U.K., under the Insolvency Act 1986, there are two ways to do it: compulsory and voluntary. Compulsory winding up is

92 'Winding Up A Partnership' <<http://www.rallipartnershiplaw.co.uk/specialist-partnership-law-solicitors/winding-up-a-partnership/>> accessed 14 May 2017.

93 *Ibid*, para. 4.

94 'How To Wind Up An Insolvent Partnership - GOV.UK' (Gov.uk) <<https://www.gov.uk/government/publications/how-to-wind-up-an-insolvent-partnership/how-to-wind-up-an-insolvent-partnership>> accessed 15 May 2017.

ordered by the court, whereas voluntary winding up is an initiative of the company's members.

There are several grounds for the compulsory winding up, that are stated in the Insolvency Act 1986, Section 122(1). Some of these grounds are: the statement in a special resolution that the company will be wound up by the court; in case if the public company was registered as such on initial incorporation but the certificate that enables it to do a business has not been issued under the Section 761 of the Company Act 2006, considering that more than a year has passed since the registration, the company has not started a business within a year of incorporation or suspends its business for a year, the number of a company's members is reduced below two, excluding a private company, or the failure of a company to pay its debts.⁹⁵

Under the Insolvency Act, an application for a winding up order should be made in a form of a petition. It can be submitted by the company, directors, creditors, contributories, or, in some cases, by the clerk of a magistrates' court.⁹⁶

According to Section 130 of the Insolvency Act, there are four consequences of a winding-up order: upon the making of the order, a copy of it must be instantly forwarded by the company to the registrar of companies who will enter it in the records relating to the company; upon the making of a winding up order or the appointment of a provisional liquidator, no action can be proceeded with or commenced against the company's property of the company, except by leave of the court. No action or proceeding can be commenced with against the company or its property, in respect of any debt of the company, except by leave of the court, a winding up order of a company operates in favour of the creditors and of contributories of the company as if it would be made on the joint petition of the creditors and of the contributories.⁹⁷

As previously mentioned, there is a second way of winding up a company - a voluntary winding up. According to the Section 84 of the Insolvency Act 1986, there are two circumstances, in which the winding up is to be considered voluntary, they read as follows:

(a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles

⁹⁵ Insolvency Act 1986, s 122(1).

⁹⁶ Nicholas Bourne, *Bourne On Company Law* (6th edn, Routledge 2013) 390.

⁹⁷ Insolvency Act 1986, s 130.

provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it be wound up voluntarily;

(b) if the company resolves by special resolution that it be wound up voluntarily.⁹⁸

A company that has a right to be wound up voluntarily should pass a resolution for winding up. After this resolution has been passed, a company must, within fourteen days, give a notice of their resolution by giving an advertisement in the London Gazette.⁹⁹

If the Section 85 of the Act was not fulfilled, a company and every company's officer, who failed to comply with this section, is liable to a fine and, in case of continued contravention, is liable to a daily default fine. Notably, in this section the liquidator is considered an officer of the company.¹⁰⁰

A voluntary winding up commences on the date when the resolution for a voluntary winding up was passed. It should be also mentioned, that any transfer of company's shares, which was not made to or with the sanction of a liquidator, as well as any changes of the status of the members of a company, which are made after the commencement of a winding up in a voluntary way, under the Section 88 of the Insolvency Act, are considered to be void.¹⁰¹

3.2. Peculiarities of a dissolution and liquidation process in Canada

One will face more difficulties closing up a business entity in Canada, in comparison to closing it up in the United Kingdom. This is due to the fact that there is a lack of harmonization in the Canadian legislation throughout the country and every business has an obligation to comply both with federal and provincial laws. The legal peculiarities of winding up a business entity in Canada would be elaborated in the following paragraphs.

As any other registered business, a sole proprietorship should file a notice of dissolution after the decision to close it up. In order to do that, a sole proprietor should

⁹⁸ Insolvency Act 1986, s 84.

⁹⁹ *Ibid*, s 85(1).

¹⁰⁰ *Ibid*, s 85(2).

¹⁰¹ *Ibid*, s 71.

fill in a “Dissolution or Change of Proprietorship” form and send it to the Corporate Registry office of the province, where the business was registered.¹⁰²

The next step of great importance while closing the business is taking care of the tax obligations. It is crucial to pay all taxes within the given time limit, otherwise the Canada Revenue Agency will exercise its rights to collect the taxes due, and to impose penalties on delinquent taxes. A sole proprietor should bear in mind that payment deadlines are relatively short (up to 30 days) and to put the payments away for later may be a bad strategy.¹⁰³

In case when a sole proprietor had employees, they should remit the remuneration owed to employees to the Canada Revenue Agency, together with the outstanding pension contributions and the employment insurance. All these documents must be sent via mail or fax to the Ottawa Technology Centre. To complete this task, a sole proprietor is given seven days after closing the business up.¹⁰⁴

In addition, if a sole proprietorship has a business number, they must notify the Canada Revenue Agency to cancel the registration. Finally, after completing all the steps above, a sole proprietor should close all business accounts.

The next business structure - a partnership - could be dissolved for a lot of reasons. One of the partners might want to retire or simply has no more interest in conducting a business. Among the other reasons that lead to the dissolution are: the court order, death of a partner, changes in legislation that prohibit further functioning of a partnership in a specific business sphere. Whatever the reason is, the legal principle behind the dissolution of a partnership stays the same: partners have a right to a return of their contributions, in reliance upon their share of partnership liabilities. In order to comply with this principle and lawfully conduct a dissolution, partners should follow the prescribed crucial steps.¹⁰⁵

Firstly, partners have to review carefully their partnership agreement, because it may already constitute the agreed scenario of dissolution and the distribution of shares

102 'Tax Obligations After Closing Your Business | TurboTax Canada Tips' (*TurboTax Canada Tips*) <<https://turbotax.intuit.ca/tips/tax-obligations-after-closing-your-business-6132>> accessed 17 May 2017

103 'Closing Your Business | TurboTax Canada Tips' (*TurboTax Canada Tips*) <<https://turbotax.intuit.ca/tips/closing-your-business-6210>> accessed 17 May 2017

104 'Tax Obligations After Closing Your Business | TurboTax Canada Tips' (n72).

105 Lloyd Duhaime, 'Ending A Business Partnership' (*Duhaime.org - Learn Law*, 2011) <<http://www.duhaime.org/LegalResources/ConsumerCommercial/LawArticle-1123/Ending-A-Business-Partnership.aspx>> accessed 17 May 2017.

back to the partners. It may also be the case that a partnership agreement gives no plain answer to a dissolution procedure, and in such a scenario, the courts may interpret the contract - although it is an expensive option.¹⁰⁶

The dissolution of a partnership typically ends by one of the partner's formal notice, in case if there are no other occurrences that may have ended it. It is to be emphasized, that a notice to dissolve could not be taken back, unless a partner who received it gives their consent.¹⁰⁷

Notwithstanding the absence of harmonization, all provinces provide its codified law regarding the dissolution of a partnership - for instance, Ontario's Partnership Act 2009 (§32-44) or the Partnership Act of the British Columbia as of 2009 (§42, §47).¹⁰⁸

In terms of the procedure, partners should file a form to Canada Revenue Agency, in order to call off their Business Number (BN). They should also remit all contributions, premiums, and income tax deductions within 7 days of the day the business ends to their tax centre, as well as file other documents, prescribed by a relevant legislation. Once it is done, the Canada Revenue Agency business account will be closed.¹⁰⁹

There are three ways of the legal termination of a Canadian corporation, however, the result is always the same - a corporation receives a certificate of dissolution issued by the Corporations Canada. The date of dissolution is stated on this certificate.¹¹⁰

The first type of a dissolution is a voluntary dissolution. It is an option for directors or shareholders to dissolve their business by special resolution. As a rule, in order to be able to dissolve a business in a voluntary way, a corporation should have no property or liabilities. Notably, if there are several classes or groups of shareholders, each class or group should accept a special resolution for the authorization of the dissolution, even when those shareholders are not entitled to vote in other

¹⁰⁶ Lloyd Duhaime, 'Ending A Business Partnership' (*Duhaime.org - Learn Law*, 2011) <<http://www.duhaime.org/LegalResources/ConsumerCommercial/LawArticle-1123/Ending-A-Business-Partnership.aspx>> accessed 17 May 2017.

¹⁰⁷ *Ibid*, paras 6,7.

¹⁰⁸ *Ibid*, paras 22,23.

¹⁰⁹ 'Closing Accounts' (*Cra-arc.gc.ca*) <<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/lf-vnts/clsccts-eng.html>> accessed 17 May 2017.

¹¹⁰ 'Changing The Structure Or Nature Of The Corporation - Corporations Canada' (*Ic.gc.ca*, 2017) <<https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06647.html#toc-06>> accessed 18 May 2017.

circumstances. In case when there are no shareholders in the corporation, because no shares were issued, a resolution to authorize a dissolution should be passed by the directors.¹¹¹

There are two ways to dissolve a corporation with property or liabilities: the liquidation will take place before the dissolution process or the dissolution will take place before the liquidation. In the first case, the directors of a corporation must dispose of all the property and liabilities before they apply for a certificate of dissolution. In the second case, a corporation ceases carrying on its business alongside with the process of liquidation. Once the business owners prove that their corporation no longer carries any business activities, except for those that are necessary for the liquidation, they are allowed to apply for a certificate of intent to dissolve.¹¹²

A corporation should also notify its creditors of the intent to dissolve; in each province of Canada where it is carrying business activities notify of the intent to dissolve; and perform some other acts that are required for the conduction of dissolution.¹¹³

In the case of an administrative dissolution, the certificate of dissolution is issued by Corporations Canada, based on the initiative of the corporation, only under one of the following circumstances: within three years after the day of incorporation the corporation has not started its business activity; the corporation was inactive for three consecutive years; for a one-year period the corporation failed to send a notice, fee or any other to Corporations Canada; or the corporation has no directors. If one of these circumstances occurs, Corporations Canada has to give a notice of an intent to dissolve such corporation to each of its directors. After receiving a notice, the corporation should within 120 days provide satisfactory information and its reasons why it should not be dissolved, otherwise, Corporations Canada will issue a certificate of dissolution.¹¹⁴

The last way to dissolve a corporation is an involuntary dissolution by court order. This could take place for several reasons. The director (or any other interested

¹¹¹ 'Guide On Dissolving A Business Corporation - Corporations Canada' (*Ic.gc.ca*) <<https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs07074.html>> accessed 18 May 2017.

¹¹² *Ibid*, paras 7, 8.

¹¹³ Corporations Canada, 'Guide On Dissolving A Business Corporation - Corporations Canada' (*Ic.gc.ca*) <<https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs07074.html>> accessed 18 May 2017.

¹¹⁴ Corporations Canada, 'Changing The Structure Or Nature Of The Corporation - Corporations Canada' (*Ic.gc.ca*) <<https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06647.html#toc-06>> accessed 18 May 2017.

person) of a corporation may apply for an order to dissolve their corporation if the corporation: failed to run annual meetings of shareholders, as it is required by Canada Business Corporations Act; contravened the requirements of the Canada Business Corporations Act, for instance, carried some activities that are strictly prohibited by the articles of the Act; restricted the access for its shareholders to the records of the corporation; did not provide the shareholders with financial statements; or has obtained any certificates by misrepresentation.¹¹⁵

Importantly, a corporation may change its decision to dissolve after issuing of a certificate of intent to dissolve. In order to stop the process of dissolution, the corporation should apply for a certificate of revocation. This could be done by submission of a completed and signed Statement of Revocation of Intent to Dissolve, together with the payment of a filing fee.¹¹⁶

3.3. Comparison and analyses of similarities and differences of the dissolution and liquidation processes in the U.K. and Canada

Since the subject matter of this chapter is the termination of the business entity in the United Kingdom and Canada, and based on the analyses of the existing laws regarding this matter, this subheading is dedicated to the comparison of the sophisticated processes of dissolution and liquidation.

The first business structure that is going to be compared is a sole proprietorship. Once a sole trader has come to the decision to close the business up, and either this business was incorporated in the United Kingdom or in Canada, a proprietor must notify the authorities of that decision. Obviously, the authorities that are responsible for deregistering business entities are different in these two countries. In the United Kingdom, a sole trader should contact the HM Revenue and Customs with the request to confirm the de-registration. A sole proprietor in Canada should submit a notice of dissolution to the Corporate Registry office of the appropriate province.

¹¹⁵ Corporations Canada, 'Changing The Structure Or Nature Of The Corporation - Corporations Canada' (*Ic.gc.ca*) <<https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06647.html#toc-06>> accessed 18 May 2017.

¹¹⁶ Corporations Canada, 'Guide On Dissolving A Business Corporation - Corporations Canada' (*Ic.gc.ca*) <<https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs07074.html>> accessed 18 May 2017.

Another important obligation of any proprietor, both in the United Kingdom and in Canada, is to ensure that the tax due is paid within the time frame, given by the authorities, otherwise a proprietor will be obliged to pay additional penalties.

A sole trader must also bear in mind that if the business has employees, they should be warned of the decision to dissolve a proprietorship in advance, and this requirement is equally noticeable for both countries. However, as long as the labor law is different and does not fall within the scope of this work, a proprietor should consult the appropriate legislation in order to ensure that their actions are lawful in this regard.

Once a sole proprietor has submitted all required documents to the authorities, paid the taxes, and closed business accounts, as well as completed any other action, required by the law of the country or a province - they are to be issued a confirmation from the authorities on the legal termination of the business existence. In the United Kingdom, the HM Revenue and Customs will confirm a de-registration and announce the official date of the de-registration. Contrastingly, in Canada - the Canada Revenue Agency is the authority that will cancel the registration.

The first and the most important step after the decision to wind the partnership up, no matter in the United Kingdom or in Canada, is to refer to the partnership agreement. In many cases, the agreement already includes the procedural details of the dissolution process and the information on the division and delivery of shares. It also contains the agreed disputes resolution mechanism, which might be helpful in cases where there are serious misunderstandings between the partners.

Closing up a partnership is in many ways similar to the process of closing up a sole proprietorship. In the case of voluntary dissolution, no matter where it takes place - in the United Kingdom or in Canada, partners should notify the relevant authorities of their decision to bring the business to the end. As the result of their wish and after the performance of all prescribed actions, partners will be issued a certificate of legal termination. It is important to note that for limited partnerships and limited liability partnerships, the procedure is completely different.

When the business is to be closed in an involuntary way or in case if there are some circumstances that left partners no choice, for instance, the bankruptcy of one of the partners, in their actions they should rely on the relevant governmental acts and statutes. In the United Kingdom, the main piece of legislation that regulates the

questions arising from the insolvency of partnerships, is the Insolvent Partnerships Order 1994.

Similarly, in event where a partnership was incorporated in Canada, the main statute to consult with, on the federal level, should be The Bankruptcy and Insolvency Act. It consists of provisions both on the liquidation and on the reorganization of an insolvent business. Regarding the relevant laws on provincial level - it differs from province to province and addresses more specific issues than The Bankruptcy and Insolvency Act. Good examples of provincial legislation on this issue might be the Ontario's Partnership Act 2009 and the Partnership Act of the British Columbia as of 2009.

Given this information, it may be stated that dissolution processes of a sole proprietorship and partnership are mostly similar in the both countries, that have been analyzed in this work.

The last but not least of importance type of business entity, that is going to be compared in this work, is a company. Under the law of the United Kingdom, there are two ways to dissolve a company: voluntary and compulsory. In contrast, under the Canadian legislation there are three ways of corporation's dissolution: voluntary, involuntary and administrative dissolution.

The first two types of dissolution are similar to the same types in the United Kingdom, however, the third type - the administrative dissolution, does not exist there and is typical for Canada. There are several circumstances, under which administrative dissolution could take place. When one of these circumstances occurs, a notice of intent to dissolve a corporation will be given by Corporations Canada and in 120 days, if only the corporation would not provide weighty reasons why it should not be dissolved, Corporations Canada will issue a certificate of dissolution.

The procedure of compulsory dissolution is in certain degree similar both in the United Kingdom and in Canada. In addition, the result of this winding up is always the same - a dissolution by a court order. However, the circumstances when a company may be dissolved in this way are different. For instance, in the United Kingdom, sufficient grounds could be a case when the number of company members are reduced below two persons (exclusion for a private company), whereas an example of the relevant reason

for the involuntary dissolution in Canada could be a failure of the corporation to run annual meetings of shareholders.

In case of voluntary dissolution in the United Kingdom a company should pass a resolution for winding up. In the same manner, a Canadian corporation has a right to pass a special resolution for voluntary winding up, but only if it has no property or liabilities. Under the law of the United Kingdom there are also several requirements, and only when a company complies with them it could be dissolved in a voluntary way. These requirements were mentioned in the subheading 3.1.

Regarding the governmental regulation of the dissolution process of a company, in both countries there is harmonized legislation on this matter. In the United Kingdom, it is the Companies Act 2006, whereas in Canada the relevant Act is the Canada Business Corporations Act. Notably, insolvent corporations must be dissolved under the different Acts: in the United Kingdom - under the Insolvency Act 1986, and in Canada - under the Bankruptcy and Insolvency Act.

Having examined and compared the legislation of the United Kingdom and Canada on the dissolution and liquidation of the business entity, it may be stated that although the procedural part of these processes shares a lot of common features, the requirements and grounds for starting the termination process are quite different and has very little in common.

Conclusions

In light of the investigation results, there are several conclusions to be found. Having considered all the requirements for the incorporation and registration of the business entity, it can be concluded, that notwithstanding the significant differences in the corporate legislation of the United Kingdom and Canada, the legal regulation of these two processes share many common features in regard to the governmental procedural requirements. In contrast to this, after the analyses of the legislation of the United Kingdom and Canada on the dissolution and liquidation matters, it should be stated, that although the procedural elements of these processes have a lot of common features, the requirements and grounds for starting the termination process are very different.

Considering the fact that every business structure is very different in terms of its purposes, it should be examined separately and must be compared only to a similar structure in another country.

The first type that has been analysed in this Master Thesis is a sole proprietorship. This business form is not required to be incorporated in both countries and, thus, is comparatively easy to start and run. Based on the analyses mentioned in Chapter Two, it seems reasonable to conclude that the process of registration is largely identical in the United Kingdom and Canada, with no significant differences. When it comes to the decision to close the business up, and if this business was registered in the United Kingdom or in Canada, a sole proprietor must notify the authorities of that decision. Once a proprietor has collected and submitted all needed documents to the authorities, as well as completed all other actions, prescribed by the legislation of one of these countries, the confirmation of de-registration will be issued. To conclude, one might say that although the legal authorities and some of the requirements (for instance, tax due) to comply with are different, the process of dissolution of a sole proprietorship is fairly similar.

Another business form examined in this work in the UK and Canada, is a partnership. It is important to emphasize that among three distinct types of partnerships in these two countries, only one of them should be registered (general/ordinary partnership), and other types should be incorporated (limited and limited liability

partnerships). As it has been demonstrated in Chapter two, the types of partnerships which exist in the United Kingdom, correspond to those in Canada. However, Canadian limited liability partnership differs from the same types established in the United Kingdom, in a way that it could be set up only in specific professional spheres. Another noticeable difference is understood from the fact that the legislation regulating taxation largely differs and must be considered very carefully in each case.

Regarding the winding up of a partnership, the first step to be made both in the United Kingdom, or in Canada, is to refer to the partnership agreement, as it may already state the procedural details. Closing up a partnership in both countries is in many ways similar to the process of closing up a sole proprietorship. In a case when there is a voluntary dissolution, partners should notify the authorities of their decision. As the result of their request and after the performance of all needed actions, partners will be issued a certificate of legal termination. It is also noticeable that for limited partnerships and limited liability partnerships, the procedure is different and is more akin to the process of a company liquidation. Given this information, one should state that dissolution process of a sole proprietorship and partnership is mostly similar in the both the UK and Canada.

The last type of a business entity to be analyzed in this conclusion is a Canadian corporation, or its equivalent in the United Kingdom - a company. Concerning this very popular business form, it should be noted that there is a significant difference in a governmental approach to the legal regulation of the incorporation process. This is due to the fact that in the United Kingdom the law is harmonized countrywide, hence all companies must be incorporated under the Companies Act 2006. A quite different situation can be seen in Canada, where there is no harmonization on a state level and, therefore, before the incorporation procedure owners of the business should choose a jurisdiction: federal or provincial, while still complying with both. Concerning the dissolution and liquidation of a company in the United Kingdom, there are two ways to dissolve it: voluntary and compulsory. In contrast, under the Canadian legislation there are three ways of a corporation's dissolution: voluntary, involuntary and administrative dissolution. Relying on this, it seems clear that the first two types of dissolution are similar in both countries, but the third type - the administrative dissolution, exists only in Canada. Following the analysis conducted in Chapter three and the comparison of the

legislation of the United Kingdom and Canada on the dissolution and liquidation matters, it must be stated that although the procedural part of the processes shares a lot of common features, the requirements and grounds for starting the termination process differ greatly.

Concluding all the above information and analysis, it is clear that the processes of liquidation and dissolution are more complicated in Canada than in the United Kingdom, because of the lack of harmonization in the legislation that is caused by the Canadian bi-juridical regime and the fact that different provinces have their own laws. In terms of the incorporation stages, United Kingdom businesses and Canadian legal entities have a lot in common, even though the requirements are different. As such, while the two jurisdictions share many legal similarities, works such as this highlight that there are significant differences too, and these must be realised and understood for anyone wishing to know about this topic.

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Abstract

The main objective of this work centres on the investigation and examination of Incorporation and Liquidation of business entities in the United Kingdom and Canada. Taking into consideration the constantly growing number of business vehicles in the international landscape, this work compares the two crucial phases in any business structure – the incorporation and liquidation processes.

The main question that this work aims to answer is the one of ‘How different is Canadian corporate legislation from those in the United Kingdom, considering that it has its roots in English precedent law?’ Hence, the aim of the work is particularly focused on finding the differences and similarities in corporate legislation of these two countries, namely on the complex processes of incorporation and liquidation.

The methodology of this work is based on a comparative analysis of these two different legislations in particular - as both have a lot in common in points of law, yet still with very different forms of business structures, and having no direct equivalents in the business world. The investigation focuses specifically on academic and literary sources, as well as case law and legislation analysis, in order to build a broad comparative body of findings - looking at sub-topics such as partnership, sole proprietorship, company, and sole traders.

The main conclusions of the work suggest the clear indication that the processes of liquidation and dissolution are more complicated in Canada than in the United Kingdom. This is in a large part due to the lack of harmonization in the legislation that is caused by the Canadian bi-juridical regime and the fact that different provinces have their own laws. In terms of the incorporation stages, United Kingdom businesses and Canadian legal entities have a lot in common, even though they have different requirements.

The Master Thesis promises to be a useful resource for those who are interested in conducting business either in the United Kingdom or in Canada, entrepreneurs and lawyers, or for any other persons having interest in the field of corporate legislation, as well as for those who are engaged in academic writing.

Zusammenfassung

Das Hauptziel dieser Arbeit ist die Recherche und Untersuchung der Eintragung und Liquidierung von Wirtschaftseinheiten in Kanada und Großbritannien. Diese Arbeit zieht die stetig wachsende Anzahl von Wirtschaftsorganisationen in der internationalen Landschaft in Betracht und vergleicht zwei äußerst wichtige Phasen von jeder Wirtschaftsstruktur – die Eintragung- und Liquidierungsprozesse.

Die Hauptfrage die diese Arbeit beantworten will : „Wie stark unterscheidet sich die kanadische Handelsrecht von derjenige in Großbritannien, unter Beachtung der Tatsache, dass es hat seine Wurzeln in englisches Präjudiz?“ Infolgedessen der Schwerpunkt dieser Arbeit ist die Unterschiede und Ähnlichkeiten in Handelsrecht von zwei erwähnten Ländern, nämlich der komplexe Prozess von Eintragung und Liquidierung.

Die Methodik dieser Arbeit stützt sich auf die Synopse von den zwei verschiedenen Gesetzgebungen – seitdem beide haben viel gemeinsame Punkte von Gesetzte, jedoch unterschiedliche Wirtschaftsstrukturen, haben sie keine Äquivalente in der unternehmerischen Welt. Die Forschung erfolgt durch den Schwerpunkt auf akademische und Literaturquellen, sowie Gesetzgebungsanalyse, und um reiche Forschungsergebnisse werden auch sub-topics, wie Partnerschaft, Eigentümerschaft, Gesellschaft und Einzelunternehmer analysiert.

Die Schlussfolgerung der Arbeit zeigt dem Leser, dass die Prozesse der Eintragung und Liquidierung in Kanada deutlich komplizierter sind, als in Großbritannien. Die Hauptgründe dafür sind die Mangel an Harmonisierung der Gesetzgebung, die eine Konsequenz des Kanadischen bi-juristischen Regimes und der Tatsache, dass verschiedene Provinzen eigene Gesetzgebungssystem haben. In den Bedingungen der Eintragsphase, Großbritannische und Kanadische Rechtssubjekte haben viele gemeinsame Punkte, trotzdem haben sie verschiedene Anforderungen.

Die Masterarbeit könnte nützliche Ressource sein, für die Unternehmer und Rechtsanwälte, die in Großbritannien oder Kanada ein Geschäft leiten wollen, sowohl für die Leute die sich für das Handelsrecht interessieren, als auch für solche die wissenschaftliche Arbeit schreiben.