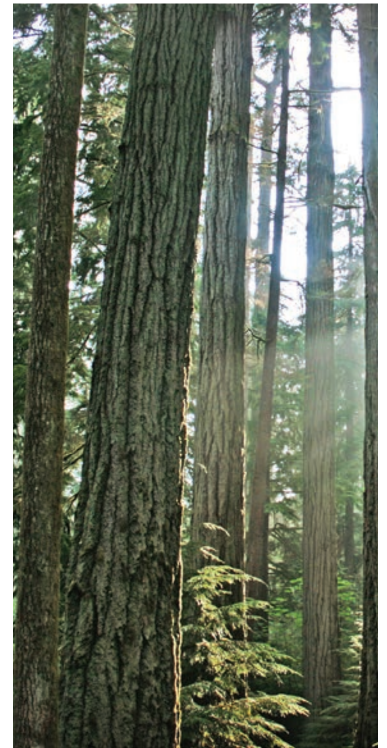
DOING BUSINESS IN WESTERN CANADA

2014

LAWSON LUNDELL LLP

Vancouver ▪ Calgary ▪ Yellowknife



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Introduction

Welcome to the Lawson Lundell guide to Doing Business in Western Canada: 2014

As a firm with deep roots in Western Canada we can assist you in navigating the laws and regulations to establish, acquire or invest in a business operating in the region. Western Canada is among the most robust economic areas of the country with extensive resource activity in energy, mining and forestry.

This guide has been prepared by Lawson Lundell as a concise resource outlining certain key relevant laws and regulations that companies should consider when doing business in Canada. The laws set out in this guide are current to March 1, 2014. Certain industries may also be subject to other laws or requirements that are not set out in this guide. We would be pleased to speak with you about your specific plans and are delighted to welcome you to Western Canada.

Valerie Mann
Managing Partner

Lawson Lundell is a leading full service, business law firm in Western Canada. We were voted #1 Regional Law Firm in British Columbia, Alberta, and the North by *Canadian Lawyer* magazine (2010-2014). With offices in Vancouver, Calgary and Yellowknife, our lawyers are ideally suited to assist investors who wish to establish or expand their business in Western Canada.

Destination: Western Canada

When we talk about Western Canada, we refer to the four western provinces of Canada, namely (from west to east):

- British Columbia
- Alberta
- Saskatchewan and
- Manitoba.

British Columbia is known as "the Pacific province," while Alberta, Saskatchewan and Manitoba are collectively known as "the Prairie provinces." British Columbia and Alberta are also often jointly known as "the Mountain provinces."

Western Canada comprises almost a third of Canada's vast landmass and around 2% of the world's total landmass. If Western Canada were a country, it would be the eighth largest country in the world, after India and displacing Argentina.

Western Canada accounts for 32% of Canada's GDP with economic growth outstripping the Canadian average. It has highly developed infrastructure with 9 major airports (6 of which are international), comprehensive road, rail and shipping networks and stable, affordable water and electrical utilities.

Western Canada has a highly developed service industry. Creativity and innovation are encouraged. Western Canada is at the forefront of the global knowledge economy, supported by various universities and colleges, and a robust healthcare sector.

Western Canada's abundant natural resources, educated and skilled workforce, modern transportation and communications infrastructure, and close proximity and historic ties to the large and growing markets of the United States and Asia all contribute to Western Canada's vibrant business community. Foreign investment is generally welcome in Western Canada, with all levels of government keen to promote a diversified business sector, economic development, and skilled employment.

Western Canada ranks top in lifestyle which, combined with a progressive immigration process, enables businesses to attract and retain talent from around the world. Vancouver, BC is consistently ranked one of the top five cities in the world for livability and quality of life.

Government

The provinces of Western Canada form part of the federal Dominion of Canada, established by the *Act of Union* on July 1, 1867. Manitoba was the first Western Canadian province to join the new Dominion of Canada on July 15, 1870. British Columbia joined on July 20, 1871, with Saskatchewan and Alberta joining on September 1, 1905.

Canada is a constitutional monarchy, with Queen Elizabeth as the formal Head of State. A constitutional monarchy retains a sovereign as Head of State, but only as a symbol of national unity and with no power to influence government policy. The Crown's interest is represented in all federal matters by the Governor General of Canada. The Crown's interest at the provincial level is represented by the Lieutenant Governor of the province.

Canada is a parliamentary democracy with a federal system of government broadly similar to the United States' federal model. Legislative powers are divided between the Federal Parliament (which sits in Ottawa, the capital of Canada) and the ten provincial parliaments. Generally, matters of national and international importance

are the concern of the Federal Parliament, while matters of a local or provincial nature rest with provincial parliaments. The Federal Parliament, for example, has responsibility for international trade and commerce, defence, banking and currency, bankruptcy and insolvency, intellectual property, criminal law and interprovincial transportation, while the provincial parliaments retain responsibility for property law, contract law and the provincial transport infrastructure.

This division of legislative power between federal and provincial governments is enshrined in the *Constitution Act, 1867*. Therefore, anyone doing business in Western Canada should be aware that laws can be enacted at either level of government, depending on the nature of the power. Occasionally, there can also be an overlap of laws and it is left to the courts to decide which parliament has the relevant power.

The federal and provincial governments operate on the "Westminster model" of government, where the executive (government) is drawn from the legislature (parliament) and is directed by, and reports to, the parliament. It is usual for Members of Parliament to belong to a political party, to whom they generally owe their allegiance. Members of Parliament represent single seat constituencies (or "ridings") and serve for a maximum five year term.

The Westminster model tends to produce stable and predictable governments with broad authority to make laws and take executive action, without further consensus being required.

Legal System

Independence of the judiciary from the legislative and executive branches is a fundamental tenet of the Canadian legal system. All government actions, including statutes, regulations, rules, and administrative action are subject to judicial review. The judiciary also enforces Canada's constitution, including the *Charter of Rights and Freedoms*.

The legal systems in Western Canada are based on the English "*common law*" system, where laws are developed and shaped not just by the federal and provincial parliaments, but also through court decisions, which are binding law on lower courts.

The judiciary consists of the federal and the provincial judiciary, although ultimate judicial authority rests with the nine justices of the Supreme Court of Canada. The federal courts are concerned with federal law matters, such as immigration and tax. The provincial courts are structured in a hierarchical manner with the Court of Appeal being the highest provincial authority. It is possible to appeal from the provincial Court of Appeal to the Supreme Court of Canada, but only if the question of law is of national importance and leave is granted by the court. The Supreme Court of Canada is selective as to the cases that will be heard: leave to appeal to is only granted in around 10-15% of cases.

The Supreme Court of Canada retains the power to declare that federal or provincial legislation violates principles of the constitution and is therefore invalid.

Forms of Business Organizations

A number of issues arise in choosing the appropriate form of business organization through which to carry out Canadian operations. Corporations have the choice of operating through:

- a branch corporation
- a subsidiary corporation
- an unlimited liability corporation
- a partnership, or
- a joint venture.

Each vehicle presents some advantages, according to the circumstances.

Branch or Subsidiary Corporation?

Business or investment activities can be carried out either directly through a branch of the existing business or through a subsidiary corporation or other entity established in Canada. There are a number of features that attach to either:

Features of a branch
Possibility to offset losses of the Canadian branch against taxable profits of the parent corporation in other countries
Direct applicability of parent corporation to federal and provincial laws

Features of a subsidiary
The subsidiary may benefit from a lower Canadian tax rate than may be available to the parent country in its home country
The "thin capitalization" rules (see p. 11) do not apply to foreign corporations
Possibility of accessing federal and / or provincial government assistance

Unlimited Liability Corporation (ULC)

Unlimited Liability Companies (in British Columbia) and Unlimited Liability Corporations (in Alberta) have become useful vehicles for the acquisition of Canadian businesses by US investors. An ULC is a separate legal entity and like any other corporation has the capacity, rights, and powers of a natural person. It is treated as an ordinary corporation for Canadian tax purposes but is treated as the equivalent of a partnership in the US, which has tax advantages, so US investors often consider unlimited liability companies. Separate advice on US tax law should be sought before using an ULC.

Partnerships

In Canada it is customary for partners to enter into a detailed partnership agreement in order to avoid any unwanted provisions of the partnership legislation applying by default. The partners of a partnership may be a subsidiary or a branch of the parent corporation, in which case the considerations above will apply. Partners have unlimited joint and several liability for the debts of the partnership, with the potential that any one partner might have to shoulder the entire partnership debt.

Limited partnerships are commonly used for investment purposes to permit the limited partners to obtain the benefit of tax deductions while retaining limited liability. The limited partner is generally the investor and the general partner the executive. If appropriately structured such that the general partner (with unlimited liability) is a corporation, then all liability is effectively limited.

Joint Ventures

True joint ventures or co-ownership arrangements avoid the unlimited joint and several liability applicable to partnerships. They also permit the venturers and co-owners to regulate their tax deductions without being forced to use the same basis as other co-venturers, which would not be possible in the case of partnership. However, as noted above, partnership legislation can apply to partnerships even without an agreement, so a joint venture agreement must be carefully drafted to avoid this possibility.

Incorporation

The different jurisdictions under which a Canadian subsidiary can be incorporated have different requirements, which may be important to foreign businesses operating in Canada. The subsidiary may be incorporated under the federal *Canada Business Corporations Act* (the CBCA) or under the laws of one of the provinces or territories of Canada.

Federal Incorporation

Generally, a federal corporation has the capacity and power of a natural person and may carry on business anywhere in Canada without restriction by a province or territory. However, all provinces and territories regulate in some manner the corporate activities of a federal corporation through laws requiring registration, the filing of returns and the payment of fees by every corporation doing business in the province or territory.

The amount and type of authorized capital does not affect the incorporation fee or the corporation's capacity to carry on business. While no set percentage of authorized capital needs to be issued, the amount of subscribed or paid-up capital must be considered because of the "*thin capitalization*" rule described later on under *Taxation*.

The requirement for the number of directors varies according to the jurisdiction and there may also be a requirement for directors to be resident in Canada, depending on the chosen domicile of the corporation. There are no residency requirements under the British Columbia *Business Corporations Act*, which is often helpful for foreign parent corporations.

Incorporation Requirements

Incorporation is accomplished by filing copies of charter documents in the prescribed form, together with the required supporting material and fee. Prior to incorporating, it is necessary to obtain a name search report to determine whether the desired name is available. The name must not be the same as, or similar to, any known entity if the use of the name would be likely to confuse the public (see *Intellectual Property*).

Extra-provincial Registration

To carry on business in any of the Western Canadian provinces, a federal or provincial corporation must be extra-provincially registered there. In addition to filing annual returns and notices of change of directors and registered office as required by the CBCA or home provincial statute, the corporation must also file similar notices as required by the relevant provincial *Business Corporations Act*. Extra-provincial registration may not be granted.

Unanimous Shareholders' Agreements (USA)

Unanimous shareholders' agreements essentially transfer some or all of the general powers to manage the business and affairs of the corporation from the directors of the corporation to the shareholders. The shareholders assume the powers and liabilities. Where there is a residency requirement for directors adopting a USA, the business and affairs of the subsidiary can be controlled by non-resident shareholders rather than its directors.

Meetings

Directors' meetings may be held either inside or outside Canada. However, depending on the jurisdiction, there may be a quorum of resident Canadian directors to transact business.

The corporation's Articles or By-laws will normally direct where the shareholders' meetings may be held. Absent such direction, the relevant legislation would normally specify that the meeting requires to be held in the province or within Canada.

For more information, please visit: www.lawsonlundell.com/expertise-Business-Law.html

Regulation of Investment

Canada welcomes foreign investment and there are few restrictions placed on foreign investors by government. In general, foreign investment is subject to the federal *Investment Canada Act* (see below) by non-Canadians.

Under other federal statutes, there are also specific limitations on the degree of foreign ownership in particular businesses, for example in banking, telecommunications and airline businesses. Canada, the US and Mexico are parties to the North American Free Trade Agreement, which protects investments. in Canada by members of NAFTA countries Canada has also reached agreement in principle with the European Union for a Comprehensive Economic and Trade Agreement (CETA) late in 2013. We look forward to seeing more detail of the terms of the agreement in 2014.

World Trade Organization

Under an agreement establishing the World Trade Organization (WTO), a special status is conferred upon nationals of WTO member states and the entities controlled by them. There are two primary advantages. First, indirect acquisitions by a WTO investor are not reviewable unless they involve a cultural business. Second, the investment threshold limit that triggers review is higher for WTO investors. For the 2013 year, the threshold is $344 million. The 2014 threshold will be set by Industry Canada in the first quarter of 2014.

Investment Canada Act (ICA)

The *Investment Canada Act* is a federal statute that applies broadly to the regulation of investments by non-Canadians in Canadian businesses. Under the *Investment Canada Act*, Industry Canada, a department of the federal government, will review the foreign investment where:

- the value of the acquired assets used in the Canadian business is equal to or greater than C$5 million for a direct acquisition;
- there is an indirect acquisition of a foreign parent, whose Canadian subsidiary has assets of $50 million or more; or
- the Canadian business represents more than 50% of the assets of the group of acquired entities.

Are you non-Canadian?

You are Canadian for the purposes of the ***Investment Canada Act*** if you are:

- a Canadian citizen ordinarily resident in Canada (or posted overseas) or
- a permanent resident ordinarily resident in Canada for more than one year after being eligible to apply for Canadian citizenship.

Otherwise, you are non-Canadian.

Any transaction below the applicable thresholds is not reviewable unless the Canadian business is a "cultural business," in which case the review and approval is carried out by the Minister of Canadian Heritage. The potential investor need only file a notice.

Any transaction above the applicable thresholds will trigger a review.

If a proposed investment is subject to review, and is not in respect of a "cultural business," the Minister of Industry will, on recommendation of Investment Canada, either approve or reject the proposed investment. Where a proposed investment is rejected, the *Investment Canada Act* allows for negotiations to take place between Industry Canada and the investor to amend the terms of the application. Review generally takes 45 days, subject to extension. A transaction may not be completed until the review is complete and the investment is approved.

In order for a reviewable transaction to be approved by Industry Canada, it must result in a net benefit to Canada. The *Investment Canada Act*, sets out a number of factors that are to be taken into account in determining whether the proposed investment is of net benefit to Canada, including the effect of the investment on the level and nature of economic activity in Canada and the degree and significance of participation by Canadians in the existing and proposed businesses. Factors such as continued employment and the infusion of capital by the investor are particularly significant to Investment Canada and assist in meeting the "net benefit test."

The National Security test

In addition to the general "net benefit test," there are guidelines with respect to the acquisition of control of a Canadian business by enterprises controlled directly or indirectly by foreign governments (a "state-owned enterprise"). Where a state-owned enterprise proposes an acquisition, the Minister will assess such factors as whether the state-owned enterprise's governance and reporting are aligned with Canadian standards. Other factors will include where the manufacturing or processing will take place, the participation of Canadians in operations both in Canada and abroad, the support of research and development, and where exports will go.

An investment by a non-Canadian will be blocked where the Minister considers that national security may be at risk, regardless of the size of investment or whether or not there is a change of control.

Although information submitted to Industry Canada is generally confidential, the Minister may disclose the information to other government ministries or agencies where such disclosure is necessary for the purpose of the administration and enforcement of the *Investment Canada Act*, and to certain investigative bodies where information is produced with respect to a national security review.

Competition Act

The federal *Competition Act* is Canada's antitrust legislation enforced by the Competition Bureau. The Act provides for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition.

A "*Cultural Business*"

The Investment Canada Act defines "*cultural business*" as a Canadian business that carries on activities such as:

- the publication, distribution or sale of books, magazines, periodicals or newspapers
- the production, distribution, sale or exhibition of film or video recordings
- the publication, distribution or sale of music

Mergers

The *Competition Act* defines a merger as one or more persons taking control, or a significant interest in another business, whether direct or indirect or in whole or in part. Therefore, a merger is broader than an acquisition of voting control. All mergers are subject to the provisions of the *Competition Act* and the substantive review principles set out below.

The Commissioner of Competition may apply to the Competition Tribunal for a review of any merger or proposed merger. If the Tribunal determines that a merger or proposed merger prevents or lessens or is likely to prevent or lessen competition substantially, then the Tribunal has the power to prohibit or dissolve the merger or order divestiture of assets or shares. The Commissioner may make the application at any time up to three years after a merger has been consummated if, in the Commissioner's opinion, the merger raises concerns of substantial lessening of competition in the relevant market.

Generally, mergers that raise concerns are dealt with by extensive negotiation and agreement between the Commissioner's staff and the parties involved.

For more information, please visit: www.lawsonlundell.com/expertise-Mergers-and-Acquisitions .html

Substantive Review

The *Competition Act* contains a non-exhaustive list of factors that the Tribunal may consider in an assessment of the likely competitive impact of a merger as follows:

- the extent of effective foreign competition
- whether one of the merging parties is a failing business
- the likely availability of acceptable product substitutes
- the extent to which effective competition would remain in a market affected by the merger
- the likelihood that the merger would result in the removal of a vigorous and effective competitor
- any barriers to entry into a market including tariff and non-tariff barriers to international trade and any effect of the merger on such barriers
- the nature and extent of change and innovation in a relevant market and
- any other factor that is relevant to competition in a market affected by the merger.

In assessing whether a merger will or is likely to substantially prevent or lessen competition, the Tribunal will first identify the relevant markets from two perspectives: (i) the product or products with respect to which a merged firm acting alone or in concert with others is likely to be able to exercise market power; and (ii) the geographic area within which such power is likely to be exercised.

Notification

The parties to a proposed merger must notify the Commissioner prior to completion of the transaction where the transaction exceeds two threshold tests, being:

- if the parties to the transaction, together with their affiliates, have assets in Canada, or gross annual revenues from sales in, from or into Canada, that exceed C$400 million, and
- if the transaction is an acquisition, direct or indirect, of an operating business that has assets in Canada the value of which exceeds C$80 million or gross revenues from sales in, from or into Canada generated from those assets exceeding C$80 million. (This threshold is adjusted every year based on growth in GDP. The 2014 threshold has not yet been announced.)

Where notification is required, the obligation falls to all parties to the transaction to notify and provide the prescribed information, in accordance with prescribed statutory waiting periods and filing fees.

In circumstances where the parties wish to avoid the extensive information requirements and time delays associated with notification, an advance ruling certificate (ARC) may be sought. The Commissioner is required to consider any request for an ARC as expeditiously as possible. An ARC can also be obtained when the parties desire a high degree of comfort that the Commissioner will not challenge their transaction.

Free Trade Agreements

Canada is party to a number of international trade agreements including the *North American Free Trade Agreement* (NAFTA), which deeply integrates the Canadian economy with that of the United States and Mexico.

In addition to NAFTA, Canada recently concluded free trade agreements with eight countries: Colombia, Peru, Jordan, Panama and the European Free Trade Association states of Iceland, Liechtenstein, Norway and Switzerland.

Canada has recently been invited to join the Trans-Pacific Trade Partnership (TPP) talks. The TPP is an Asia-Pacific economic integration pact that now has 11 members: the United States, Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Japan has also reportedly expressed an interest in joining the talks, which would eclipse NAFTA in size and scope.

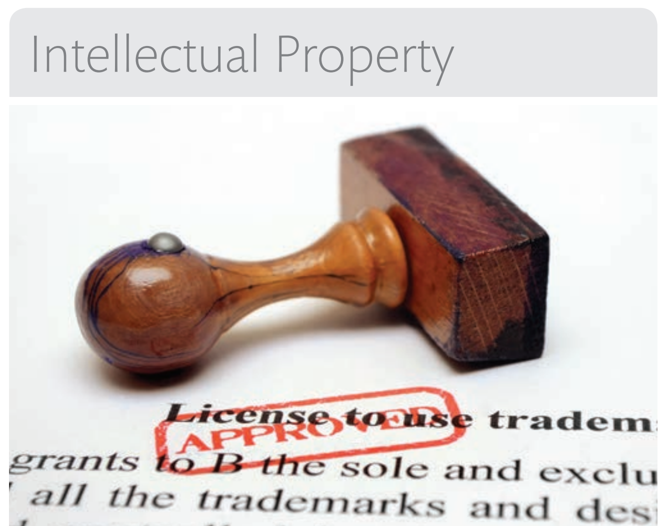
Furthermore, the *Comprehensive Economic and Trade Agreement* (CETA), a free trade agreement with the European Union (EU), is currently close to being finalized. The EU had a population of 500 million and a GDP of $16.8 trillion in 2010. As an integrated block, the EU represents Canada's second largest trading partner.

Canada is also a party to World Trade Organization (WTO) Agreements, including the General Agreement on Tariffs and Trade and the General Agreement on

Trade in Securities. These agreements provide excellent opportunities for businesses located in Canada.

For more information, please visit: www.lawsonlundell.com/expertise-Corporate-Finance-Securities.html

Intellectual Property



Intellectual property (IP) refers to legal rights that result from intellectual activity in the industrial, scientific, literary, and artistic fields. The Canadian Intellectual Property Office (CIPO), a special agency of Industry Canada, administers most of Canada's IP laws and regulations. Canada's IP legislation includes the *Copyright Act*, the *Industrial Design Act*, the *Patent Act*, and the *Trade-marks Act*.

Copyright protects against unauthorized reproduction or exploitation of a wide variety of original "works" including art, music, writings and computer programs, whether published or not. Works automatically receive protection under the *Copyright Act* when they are created. Copyright over a work can be assigned in whole or in part. Canadian copyright law does allow for unauthorized reproduction of a work for limited purposes such as education, research, or satire under the concept of "fair dealing" (rather than the similar concept of "fair use" found in the United States). There have been a number of developments in Canadian copyright law recently. In July 2012, the Supreme Court of Canada released a number of copyright decisions that expanded the definition of fair dealing. The court also mandated a technology neutral approach towards interpreting the *Copyright Act*, specifically in eliminating the difference between tariffs on copyrighted works sold in person or online. The *Copyright Modernization Act* came into force in 2012 making significant changes to the *Copyright Act* to reflect modern consumer and business practice, for example by creating personal use exceptions for copying digital media, broadening the fair use doctrine, and limiting ISP liability.

In order to patent an invention, a patent application must be filed with the Commissioner of Patents, part of the CIPO, and obtained. The invention must be new, useful, and non-obvious. A wide variety of inventions can be patented (and "invention" is defined in the *Patent Act*), but there are limits, including on scientific principles, or higher life forms. If an invention has been made public, a patent must be applied for within a year of the disclosure. Where there are two competing patent applications for the same invention, the inventor who files the first application will be granted the patent. A patent, once granted, gives a patent holder a monopoly over the commercial interests related to the invention, and runs for twenty years from the date of filing the application. Patents can be licensed or assigned in whole or in part, so long as done in writing. The *Patent Cooperation Treaty* of 1970 allows Canadians to file an international application for a patent with the Canadian Patent Office.

Integrated circuit topographies (ICTs), the three-dimensional configurations of electronic integrated circuit products or layout designs, must be registered with the Registrar of Integrated Circuit Topographies in order to be protected. Registration gives exclusive legal rights, including preventing others from reproducing the topography, making an integrated circuit product that incorporates it, or a substantial portion of it, or importing or commercially exploiting a protected topography. The design must be original, and can define all or part of the structure. An application must be made within two years of the first commercial use of the design, and can be made by the current owner of the design. Once registered, ICTs are protected for up to 10 years from the filing date of the application for registration. Unlike patents, an ICT must be registered in each country for which the owner of the design wants protection.

CIPO defines an industrial design as being "the visual features of shape, configuration, pattern or ornament … applied to a manufactured article." Industrial designs must appeal to the eye. To receive protection, industrial designs must be original, and must be registered with the Industrial Design Office. The design must be original, and cannot be, for example, a method of construction, an idea, or the materials used in the manufacture of an article. If there are competing applications for essentially the same design, the first one to be filed will be registered. Once registered, industrial designs are protected from unlawful imitation such as making, selling, importing, or renting, an article to which the industrial design has

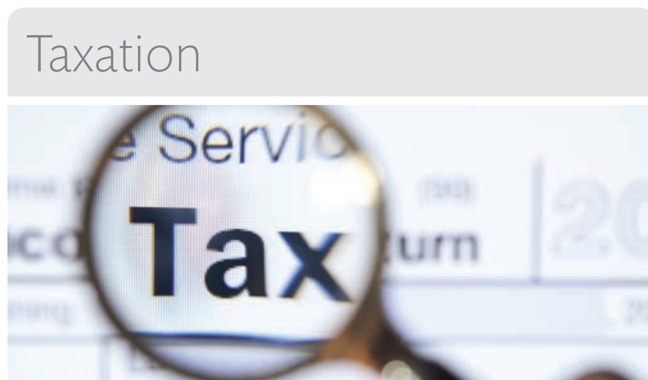
been applied. Registered industrial designs are valid for up to 10 years; to maintain the registration, a fee must be paid at the 5-year mark.

Trade-marks can be registered with the Office of the Registrar of Trade-marks, but are not required to be. In order to be registered in the Register of Trade-Marks, trade-marks must not be confusing with an existing trade-mark, clearly descriptive, or misdescriptive, of the goods or services, words denoting the place of origin or the goods or services, or similar to a "prohibited mark" (e.g. official government designs, coats of arms of the Royal Family, the Armed Forces, or the RCMP). Registrations can be made by a single individual, a corporation, or a partnership. The registration of a trade-mark must be renewed every fifteen years, and provides nationwide protection against the unauthorized use of the trade-mark, or the use of confusingly similar marks by others. Trade-mark rights need to be policed, as they can be lost through non-use, failure to prosecute confusing marks, or by losing their distinctiveness and becoming the generic term for a product. There is some protection for unregistered trade-marks under the common law, but use and goodwill must be separately established when seeking protection for them, unlike registered trade-marks. CIPO is now also accepting applications for trade-marks consisting of sounds.

Canadian IP law does not generally deal with trade secrets and confidential business information by way of statute. Control of trade secrets and confidential business information is generally achieved through contracts and nondisclosure agreements and, if the trade secret is wrongfully disclosed or exploited, actions for breach of confidence.

For more information, please visit: www.lawsonlundell.com/expertise-Litigation-Dispute-Resolution.html

Taxation



Like everywhere else, foreign companies operating in Canada face a variety of taxes. The following is an introduction to the most significant tax considerations that affect investors in Western Canada.

Income and Capital Gains Tax

The federal *Income Tax Act* imposes a tax on the worldwide income of corporations and individuals resident in Canada. For Canadian purposes, income includes business, property and employment income. One half of a capital gain is included in income for tax purposes and then taxed at the applicable income tax rates.

Generally, a corporation will be considered resident in Canada if it is incorporated in Canada or if the central management and control of the corporation is located within Canada. The latter situation will exist, for example, if meetings of the board of directors of the corporation are ordinarily held in Canada.

Non-residents of Canada are liable to pay tax on taxable income earned in Canada, not on their worldwide income as is the case for Canadian residents. Non-residents are taxed:

- at regular income tax rates on income from employment or business carried on in Canada;
- at withholding tax rates on income in the form of dividends, interest (paid to a non-arm's length lender, or participating debt interest), royalties and rents from investments in Canada; and
- at one-half of income tax rates on capital gains from the disposition of taxable Canadian property, which includes real estate, capital property used in carrying on a business in Canada and shares in private (i.e., not Canadian publicly traded) Canadian corporations, if more than 50% of the value of those shares is derived from items including real estate, resource properties, etc.

Personal Income Tax Rates

In Canada, both the federal government and each province and territory impose an income tax. These tables summarize the principal rates of taxation (for residents and non-residents) that apply in Canada as of January 2014.

Federal Income Tax Rates 2014

15%	on the first $43,953 of taxable income +
22%	on the next $43,954 of taxable income (i.e., on the portion of taxable income over $43,953 up to $87,907)
26%	on the next $48,363 of taxable income (on the portion of taxable income over $87,907 up to $136,270) +
29%	of taxable income over $136,270.

Provincial Income Tax Rates 2014

Federal Income Tax Rates 2014	
Manitoba	10.8% on the first $31,000 of taxable income, +12.75% on the next $36,000, +17.4% on the amount over $67,000
Saskatchewan	11% on the first $43,292 of taxable income, + 13% on the next $80,400, + 15% on the amount over $123,692
Alberta	10% of taxable income
British Columbia	5.6% on the first $37,606 of taxable income, + 7.7% on the next $37,607, + 10.5% on the next $11,141, + 12.29% on the next $18,504, + 14.7% on the next $45,142, + 16.8% on the amount over $150,000

Source: Canada Revenue Agency

Corporate Tax Rates

For non-Canadian-controlled private corporations, the net federal corporate tax rate is 15%. The provincial tax rate varies by province. For 2014, the rates are as follows: Manitoba 27%, Saskatchewan 25 or 27% (depending on the type of income), Alberta 25%, British Columbia 26%.

Branch Tax

The after-tax earnings of non-resident corporations are subject to an additional tax, commonly referred to as a "branch tax," whether or not such earnings are distributed or retained in Canada, unless the earnings are reinvested in specified business-related assets in Canada. The branch tax allows Canada to recover what would otherwise be collected as withholding tax if the same after-tax profit were distributed by a Canadian corporation to its non-resident shareholder by imposing a similar tax burden on income earned through a Canadian branch or division of a foreign corporation as on the income of a Canadian subsidiary of a foreign corporation.

Under the *Income Tax Act*, the branch tax rate and the non-resident withholding tax rate on dividends are each 25%. However, these rates have each been reduced to 5% under the terms of the Canada – US Tax Treaty.

Thin Capitalization

Canadian tax law, like virtually all developed taxation systems, contains a series of rules that are designed to limit the deduction of interest expense on debt obligations owing from a Canadian entity to non-residents of Canada within related groups. These rules are referred to as the thin-capitalization or thin-cap rules. The thin-cap rules can deny an investor interest expense deduction on debts and are designed to prevent non-residents from debt financing that is perceived as creating excessive deductions for Canadian tax purposes. The allowable debt-to-equity ratio is 1.5:1, and the thin cap rules have recently been expanded to cover partnerships and trusts, as well as corporations. Non-resident investors in Canadian business and international corporate groups with material Canadian business or subsidiaries should be mindful of the tax traps inherent in the thin-cap rules.

International Transfer Pricing

The Canadian tax system contains transfer pricing rules similar to those imposed in the US and generally follows the Organization for Economic Co-Operation and Development (OECD) model. Non-arm's length cross-border pricing must reflect fair market value computed using one of the accepted transfer pricing methodologies. The Canadian tax system penalizes corporations that cannot justify their transfer price with a pricing study prepared contemporaneously with the relevant transactions.

Royalties

Royalties are a share of the product or profit reserved by the owner for permitting another to use the property. An effective royalty system endeavours to strike the right balance between returning a share of the profits to the government as resource owner, while encouraging risk-taking by the private sector to develop the resource. Both the federal and provincial governments in Canada impose royalties on businesses in certain industries such as forestry, mining, and oil and gas.

Other Taxes

Goods and Services Tax (GST)
Provincial Sales tax (PST)
and Harmonized Sales Tax (HST)

The federal government levies a Goods and Services Tax (GST)—Canada's value-added tax—charged at 5% on all sales of goods and services unless specifically exempted. The GST applies to both Canadian and non-Canadian producers who sell their goods or services in Canada, whether their products are produced within or outside of Canada.

Provinces may also levy a Provincial Sales Tax (PST) although a single, blended combination of the PST and GST, called the Harmonized Sales Tax (HST) can be implemented at the provincial level. Following a 2011 referendum, BC returned to levying the PST on April 1, 2013. As part of this changeover, any BC business with total annual Canadian sales or leases over $1.5 million is now required to efile. Alberta does not levy PST or HST.

Province	GST	PST	HST	Total
British Columbia	5%	7%	-	12%
Alberta	5%	-	-	5%
Saskatchewan	5%	5%	-	10%
Manitoba	5%	8%	-	13%

Excise Taxes

Excise taxes at various rates are levied under the federal *Excise Tax Act* on the manufacturer's prices on specified luxury or non-essential goods such as jewelry, wines, liquor and tobacco, whether manufactured or produced in Canada or imported into Canada.

Customs Duties for Imported Goods

The federal *Customs Act* levies duties on most goods imported into Canada at a variety of rates. Preferential rates are available in respect of imports from Commonwealth countries, imports from countries with which Canada has trade agreements, and imports of specified commodities from certain developing nations. Since it came into force on January 1, 1994, NAFTA has either eliminated or will eliminate duties on most items manufactured in Canada and exported to the US or Mexico as well as on those items manufactured and imported into Canada from the US and Mexico. The *Customs Act* provides for the repayment of duty on imported goods used in the manufacture of products in Canada for export and for imported materials used in the manufacture of goods otherwise exempt from import duties. Special anti-dumping duties may apply to goods imported at less than fair market value in the country of origin if similar goods are made in Canada.

Municipal Taxes

Municipalities are largely funded by taxes they impose on real property. These taxes are assessed annually upon the value of land (and improvements) owned within the municipality.

For more information, please see: www.lawsonlundell.com/expertise-Tax.html

Financing your investment

A newly established business is usually funded by equity contributed by its shareholders, debt, or a combination of the two.

Debt Financing

The decision to capitalize a Canadian subsidiary by way of debt may be made for a variety of reasons. Equity capital tends to be permanent in nature and, generally, no return has to be paid for the use of the equity capital. Debt capital, on the other hand, is usually limited in time and has an interest cost associated with the use of the capital. Furthermore, in a liquidation situation, debts (particularly if secured) will be paid out prior to the return of any equity. Except as discussed below, the subsidiary company may normally deduct interest payable on debt for tax purposes, but dividends, as they are a distribution of profits, will not be deductible.

Thin Capitalization Rules

As discussed above under *Taxation*, thin capitalization rules under Canadian tax law generally force non-residents setting up Canadian subsidiaries to provide a certain level of financing through equity rather than debt only.

Debt Financing from Banks

Banks are often the most readily accessible source of debt funding. Although there are a sizable number of banking institutions authorized to carry on business in Canada, the Canadian banking system is dominated by a handful of very large domestic chartered banks that carry on branch banking operations throughout the entire country. Canadian banks typically provide both operating and term financing.

Operating Loans

Operating loans are usually provided on a demand basis for day-to-day operating expenses, the purchase of raw materials and inventory, the cost of production and the carriage of accounts receivable. The lending institution typically establishes such loans through granting a revolving line of credit.

Collateral security for operating loans typically consists of a security interest in the inventory and receivables of the borrowing company. The amount of available credit under the operating line is customarily restricted to a percentage of the value of the inventory and receivables after taking into account such things as the borrower's bad debts, age of receivables and obsolete inventory. Banks will generally:

- attempt to obtain as much security as possible in order to reduce their exposure and will often request a charge over of all of the assets, property and undertaking of a company
- require that they be named as loss payee on any insurance policies (including "key man" insurance policies)
- seek personal guarantees from the shareholders and
- require postponements of existing shareholder loans.

Term Loans

Term loans are advanced for a fixed period of time and are customarily used for the acquisition of capital or fixed assets by the borrower. Borrowers repay term loans over the term by an agreed schedule of payments, which the bank can accelerate only upon the occurrence of an event of default specified in the loan agreement or promissory note. Collateral security usually consists of a charge on fixed assets, although the bank will frequently require a general charge on the borrower's assets, property, and undertaking together with the other forms of security referred to above for operating loans.

Other Sources of Financing

In addition to the large domestic banks, borrowers may also obtain external financing from a significant number of foreign banks, many of which are based in the US, but which conduct commercial banking operations through branches located in Canada. Trust companies, mortgage brokers, capital finance companies, lease finance companies, insurance companies and other institutional lenders also conduct financing operations throughout the country.

Equity Financing

Private Placements

Private placements are the sale of equity securities or debt securities to a relatively small number of select investors as a way of raising capital through exemptions in securities regulations (i.e., prospectus requirement exemptions). This type of distribution is usually settled through brokers and investment dealers.

Public Offerings

Securities can be distributed to the public under a prospectus that is filed with and reviewed by the applicable regulatory authorities. Distributions of this kind almost always involve brokers and investment dealers. Since the fees and expenses for this type of offering tend to be substantial, this option is only suitable if large sums of money are to be raised.

For more information, please visit: www.lawsonlundell.com/expertise-Corporate-Finance-Securities.html

Acquisition of Public Companies

The acquisition of equity interests in Canadian companies is governed by two sets of requirements:

1) corporate law and
2) securities regulatory requirements, including the rules imposed by stock exchanges. These requirements affect how acquisitions are structured.

In Canada, there is currently no federal securities legislation (although the Federal, Ontario and British Columbia governments are in the process of enacting

a single federal law for those jurisdictions). Each of the provinces and territories has its own securities legislation and its own securities commission or other authority with jurisdiction over securities transactions connected to its jurisdiction. Despite multiple statutes and regulatory authorities with overlapping jurisdictions, provincial securities laws are harmonized to a significant degree.

The securities of Canadian public companies are principally listed on the Toronto Stock Exchange ("TSX"), the senior capital market, or the TSX Venture Exchange ("TSX-V"), the junior capital market. Although the listing requirements of these exchanges differ, the rules regulating the activities of listed companies are similar.

Takeover Bids, Private Purchases and Mergers

The acquisition of a controlling interest in a target company can be effected in three ways, which may be combined:

1. by a tender offer, referred to in Canada as a "takeover bid"
2. by private purchases from existing shareholders, or
3. by a merger, usually effected by a statutory amalgamation or arrangement.

Generally, stock exchange approval is not required unless the transaction involves the issuance of shares of a listed class (such as the acquiror's shares).

A takeover bid is an offer to purchase voting or equity securities made directly to the holders of the securities where the securities to be purchased, together with the securities held by the bidder and its "joint actors," constitute 20% or more of the target company's outstanding securities of that class. Unlike a merger, the approval of the target company is not required for a takeover bid, and offers are frequently made on a "hostile" basis. Canadian securities laws set out various requirements that apply to takeover bids, such as the requirement that the bidder prepare and send a takeover bid circular to all the target company's shareholders, that the same consideration be offered to all, and that the offer remain outstanding for at least 35 days. Partial bids are permitted, but if the bidder wishes to acquire 100% of the target it will typically specify a 66 2/3% minimum tender, which will then allow a second-stage "squeeze out" amalgamation, or a minimum 90% tender which will permit a statutory acquisition of the remaining shares.

A significant equity interest in a target company can be acquired by purchasing shares through any mechanism, including public market purchases that do not take the holdings of the bidder and its joint actors to 20% or more. In addition, a bidder can acquire shares privately from up to five shareholders in total if the purchase price for the shares is no more than 115% of their market price. Such purchases are exempt from the takeover bid requirements and do not require an offer to all shareholders.

A commonly used defensive tactic to a hostile bid or a creeping takeover is a shareholder rights plan, colloquially known as a "poison pill." If triggered, the plan would materially dilute an acquirer which exceeds a specified shareholding (typically 20%) without making a "permitted bid" that has certain key characteristics. Traditionally Canadian securities regulators have not permitted such plans to be used indefinitely to thwart a bid, but the use of such plans is currently undergoing significant review by those regulators.

In Canada, mergers are generally implemented as an "amalgamation" or an "arrangement." Arrangements are very flexible and require the agreement of the acquirer and the target company. It must be approved by the shareholders of the target company by a special majority of the votes actually cast at a shareholders' meeting. Under this structure, if 50% of the shares were voted and 70% of those votes were in favour of the transaction, it would go through with the affirmative vote of only 35% of the shares rather than needing 67% under a tender offer. Generally a shareholder may exercise dissent and appraisal rights if it does not vote in favour of the transaction at the meeting.

Shareholders' meetings must be called and held in accordance with the requirements of corporate and securities legislation, compliance with which means

that the shareholders' meeting is typically held 60-90 days after the acquirer and target company have agreed to the transaction. Depending on the transaction structure and the jurisdiction involved, the governing corporate legislation may require court approval of a merger. The court must be satisfied as to the fairness of the proposed transaction to the shareholders of the target company.

While a number of factors are relevant to the selection of a transaction structure, acquirers often prefer mergers to takeover bids because of the lower level of shareholder support required to successfully conclude the acquisition of all the target company's outstanding equity.

Special requirements apply to insider bids and to going private transactions that involve insiders.

Reporting

Under Canadian securities legislation, a person who together with its joint actors acquires more than 10% of the outstanding common shares of a target company must file an "early warning" report and becomes an "insider" of the company. An insider must subsequently file reports of changes in their holding of securities. Securities regulators have proposed lowering the threshold for early warning reports to 5%.

A person in a "special relationship" with an issuer (including an insider) may not purchase or sell securities while in possession of material undisclosed information about the company or "tip" another person about the existence of such information.

Dispositions

A person that holds more than 20% of the outstanding common shares of a company is presumed to become a "control person" with respect to the company, and the person's ability to resell the securities is then subject to significant restrictions under applicable securities legislation.

Exchangeable Shares

Shares of an acquiring company are frequently the "currency" used to acquire the shares of a Canadian target company whether the acquisition is made by a take over bid or a plan of arrangement or amalgamation. If the acquiring company is a Canadian company, the exchange of shares can occur on a tax-deferred basis, but if the acquiring company is not a Canadian company, the "roll-over" provisions of the *Canadian Income Tax Act* do not apply and the shareholders of the Canadian target company would realize an immediate taxable capital gain on the exchange of shares. To avoid this, foreign issuers who wish to use their own stock for an acquisition create a Canadian company to issue shares which are exchangeable at the holder's option for shares of the foreign company.

For more information, please visit: www.lawsonlundell.com/expertise-Corporate-Finance-Securities.html

Investing in Canadian Real Estate

Primary responsibility for property law rests with the provinces. There are generally no restrictions on foreign ownership of Canadian land and there are generally no consents or government approvals required to buy or sell land. Interests in land are generally held directly in fee simple or by leases as leasehold interests. Condominium or strata title ownership is also common throughout Canada. All provinces maintain a system of public land titles registration through which interests in land are registered.

Investment Vehicles

Investment in Canadian real estate can be undertaken through a variety of legal structures, including:

- a partnership
- a limited partnership
- a limited liability partnership
- co-ownership (a joint venture)
- a corporation
- a trust or
- personal ownership.

The choice of an appropriate investment structure will be governed by various factors, including tax planning requirements, liability issues and business considerations.

Acquisitions

Real estate transactions are generally carried out in Canada through negotiations, often using a real estate agent, leading to an agreement of purchase and sale. Once the agreement of purchase and sale is signed, it is usually the responsibility of the purchaser, usually through counsel, to conduct due diligence with respect to the property being acquired. Due diligence typically consists of title and zoning searches and a review of any leases and surveys of the property. The purchaser's counsel will provide a title report to the purchaser. Although title insurance is available in Canada, it is not commonly utilized since the title is guaranteed under the land title systems in Western Canada.

Leasing

Ground Leasing

Property may be leased as well as purchased. One form of leasing arrangement is a long-term ground lease, in which a tenant leases vacant land and develops it. Once development is completed, the ground tenant will sublet space to office or industrial tenants, depending on the type of development. Ground leasehold interests may be bought and sold in a manner similar to fee simple property interests.

Commercial Leasing

Most commercial office and retail space and much of the standard industrial space in Canada is available only through a commercial lease. Most commercial lease transactions commence with an agreement to lease or an offer to lease, either of which will establish the business terms agreed upon by the parties, including the space, term, rent, and any tenant inducements. Commercial leases in Canada typically operate on a triple net rental basis, which requires a tenant to pay basic rent plus additional rent comprising a proportionate share of realty taxes, insurance, utilities and common area maintenance charges. In a retail lease, a tenant may also pay rent based on a percentage of its annual sales.

Residential Leasing

Residential leases are regulated by provincial legislation and in some cases, the applicable legislation will override the terms of the lease contract regardless of the intention of the parties. In some provinces, the ability of the landlord to increase residential rents is limited by provincial regulation.

Financing

Most real estate financing is arranged through institutional lenders such as banks, trust companies, pension funds, credit unions, and insurance companies. Credit terms will vary from institution to institution and will be dependent on the nature of the transaction and the credit risks involved. Most institutions will not provide financing in an amount greater than 75% of the appraised value of the property. However, secondary financing may be obtained to finance a greater percentage of a property, usually with less than favourable credit terms due to the increased risk incumbent upon a secondary lender.

Interest rates are generally fixed for a specified period of time or variable based on the lending institution's prime rate. The prime rate is based upon a rate announced by the central bank—the Bank of Canada—every week. A borrower may consider borrowing in other currencies and has a choice of interest rate pricing. Certain fees, such as commitment and processing fees are normally charged by lenders. Typically, it will be the borrower's responsibility to pay for all of the lender's legal and other costs in arranging property financing.

Lending institutions typically take both primary and collateral security in real property and related assets. Because many foreign lenders in Canada are subsidiaries of the world's major banks, they typically participate by way of syndicated loans, which are often arranged by major Canadian lending institutions.

Environmental Concerns

The owner of property has certain duties in connection with the discharge of contaminants and hazardous materials into the environment from the property. A purchaser should inspect the company and public records to determine the environmental status of the property and identify any risks. In many cases, a purchaser may carry out an "environmental audit" of the property being purchased, which can include conducting scientific testing and technical analysis of the property. Lending institutions will often require that an environmental audit of the property be obtained before advancing any funds.

Development Controls

Property development is provincially regulated, primarily at the municipal level, and municipalities typically control land use and development density through official plans and zoning by-laws. The ability of an owner to subdivide property is restricted and regulated in most provinces. Development charges are also imposed by many municipalities on new developments within their jurisdiction.

Construction of new projects is also subject to provincial and municipal legislation. Building codes set specific standards for the construction of buildings, and most municipalities require building permits before the commencement of construction.

Before commencing the development of any project, it is essential that all required regulatory approvals be obtained.

Disclosure Requirements on Resale to Public

Many provinces have legislation requiring the registration and distribution of a prospectus or disclosure statement where an entity wishes to sell, lease, or offer for sale or lease parcels of real estate to members of the public. This disclosure document describes the material characteristics. Significant penalties exist for the failure to comply with such legislation.

For more information, please visit: http://www.lawsonlundell.com/expertise-Commercial-Real-Estate-and-Development.html

Immigration for Business People

The enviable Western Canadian lifestyle enables businesses to attract and retain talent from around the world. With 12 public universities, lots of colleges and technical institutes, and many government sponsored programs, the training and skills required for industry are readily available.

As a general rule, a person who is not a Canadian citizen or a Permanent Resident must hold a valid work permit in order to work in Canada. Work permits are issued by Citizenship and Immigration Canada (CIC). Generally, prior to the CIC issuing a work permit, an employer must apply to Employment and Social Development Canada (ESDC) to offer the position in question to the foreign worker. The consent from ESDC is called a "Confirmation of Employment" or "Labour Market Opinion." In addition, foreign workers may require a temporary resident visa to enter or transit Canada depending on citizenship; however, citizens of many countries including the US are exempt from this requirement.

There are a number of exemptions from the requirements for work permits and confirmations of employment, particularly under NAFTA, the General Agreement on Trade in Services (GATS), and other Free Trade Agreements (FTAs).

Work Permit

Under Canadian immigration law, it is the foreign worker who must apply for and receive the work permit. They must submit to CIC a copy of the EDSC Confirmation of Employment (if not exceptions apply) and a detailed description of the position and employment offer (provided by the employer). There is a non-refundable fee of C$155 for processing an application for an individual work permit.

A worker may apply for a work permit before entering Canada, at a port of entry, or from inside Canada, depending on the worker's status. Temporary foreign workers who require a visa to enter the country must apply for a work permit before departing for Canada, although the actual work permit will be printed and given to the foreign worker at the port of entry when entering Canada.

If the foreign worker is a citizen of a country that does not require a temporary resident visa to visit Canada, then they can apply for a work permit at a port of entry or, may apply before entering Canada at a Canadian consulate.

In the following situations a foreign worker can apply for a work permit while already situated in Canada when the worker:

- has a valid study or work permit, or his or her spouse or parents have a study or work permit
- has a work permit for one job but wants to apply for a work permit for a different job
- has a temporary resident permit that is valid for six months or more or
- is in Canada because he or she has already applied for permanent residence from inside Canada and has passed certain stages in the main application process.

In assessing the work permit application, CIC will, on the basis of the report issued by ESDC, ascertain whether the employment offer is genuine and if the employment of the foreign national is likely to have a neutral or positive economic effect on the labour market in Canada. CIC will also assess if the foreign worker has the necessary qualifications for the position. There are certain circumstances in which immigration officials cannot issue a work permit to a foreign national.

Entry into Canada may be subject to medical and security clearances, which vary according to the home country of the worker and the position sought. Any criminal record may preclude the issuance of a work permit, and the worker will be required to apply for criminal rehabilitation by an advance application.

While in Canada, the worker is expected to abide by the terms and conditions set out in the work permit. Work permits are generally valid only for a specified job, employer and time period. Workers can apply to the CIC to modify or extend their work permit. An application to extend a work permit should be made at least 30 days prior to the permit's expiry. If applicable, an extension of the Confirmation of Employment must first be obtained.

Confirmation of Employment

An employer who wishes to hire a temporary foreign worker is responsible for having the job offer validated by ESDC, provided that no exceptions to this requirement apply. If ESDC is satisfied that the employment offer to a foreign national will not adversely impact the Canadian labour market, it will issue a Confirmation of Employment to the employer and enter the Confirmation of Employment into a database that can be accessed by Immigration officials. The ESDC confirmation is typically given for a specific period of time, and the work permit will be issued to coincide with this period. Renewal of a work permit beyond the specified period will therefore likely require a new opinion from ESDC. The processing fee for each position is $275.

Typically, an employer is required to advertise in the Canadian labour market for a suitable candidate and illustrate that a comprehensive job search has been conducted for the position to be filled.

Exemptions from the Work Permit Requirement or Confirmation of Employment Requirement

Certain categories of workers are exempt from obtaining work permits. Individuals who meet the requirements of these categories can engage in work in Canada without a permit and are treated as visitors to Canada.

These categories include:

- athletes and coaches
- aviation accident or incident investigators
- business visitors [Note that a business visitor is someone who comes to Canada to engage in international business activities without directly entering the Canadian labour market.]
- civil aviation inspectors
- clergy
- convention organizers
- crew members
- emergency service providers
- examiners and evaluators
- expert witnesses or investigators
- family members of foreign representatives
- foreign government officers
- foreign representatives
- health-care students
- judges, referees and similar officials
- military personnel
- news reporters, film and media crews
- performing artists
- public speakers
- students working on campus

More information on these categories can be found on CIC's website at www.cic.gc.ca/english/work/apply-who-nopermit.asp.

Special Criteria

Special criteria may apply if you hire foreign workers in some industry sectors and occupations including:

- academics;
- seasonal agriculture;
- film and entertainment; and
- live-in caregivers.

NAFTA, GATS, and Other Free Trade Agreements

NAFTA sets out a list of exemptions from the requirement for confirmation of employment. These exemptions include traders, investors, professionals and intra-company transferees. NAFTA provisions apply exclusively to citizens of the US and Mexico. They do not apply to permanent residents of those countries.

The General Agreement on Trade in Services (GATS), developed under the auspices of the World Trade Organization, establishes worldwide rules on trade and investment in services, including the temporary entry of business persons employed in specified sectors. More than 150 nations have ratified GATS with respect to specified sectors. Canada has agreed to the inclusion of the following service sectors in the GATS agreement: business services, communication services, construction services, distribution services, environmental services, financial services, tourism and travel related services and transport service.

Other free trade agreements (FTAs), like the Canada-Chile FTA and the Canada-Peru FTA, are also making it easier for business persons from one country to temporarily enter the other country.

Labour and Employment

The regulation of employment matters in Canada is divided between federal and provincial or territorial jurisdictions. The vast majority of employment matters fall within the provincial jurisdiction although the federal government has jurisdiction in certain industries such as interprovincial transportation, banking and communications. Criminal Code provisions apply to all employers whether federally or provincially regulated.

The major pieces of federal legislation affecting employment in Canada are the *Canada Pension Plan Act*, the *Employment Insurance Act*, the *Employment Equity Act*, the *Canada Labour Code* and the *Canadian Human Rights Act*. Some of these Acts have general application while others only apply to federally regulated employers.

Employment relationships in most provinces are governed primarily by common law and each province has its own unique legislation pertaining to employment matters that must be considered when planning business operations in Western Canada.

Common Law Rules Affecting the Workplace

Entitlement to Notice of Termination

Unless dismissed for just cause, non-union employees in both the federal and provincial sectors are entitled to receive reasonable notice of the termination of their employment. Failure to give adequate notice of termination or severance pay in lieu is called a wrongful dismissal and damages may be awarded through the courts.

An employee may also bring a claim for wrongful dismissal where there has not been a dismissal from employment but rather where the employer has unilaterally changed the terms and conditions of employment to such an extent that there is a fundamental change in the employment relationship. This is often referred to as a "constructive dismissal" and, in general, involves an employee being demoted to a position with less status in the organization or a reduction in salary.

The concept of reasonable notice only applies to non-union employees. For unionized employees, lay-offs and termination from employment are governed by the terms of the collective agreement.

Just Cause

If an employer dismisses an employee for just cause, the employee is not entitled to notice or severance pay in lieu of notice. It is only in exceptional circumstances that an employer may summarily dismiss an employee for a single mistake. Theft, serious dishonesty, wilful disobedience, assault, insubordination, competing with the employer's business, and sexual harassment (depending on the nature of the work place) have all been found to be cause for dismissal. Whether an employer has just cause to dismiss an employee varies depending upon the specific facts of the situation.

If the employer is unable to prove just cause, the employee can recover whatever he or she would otherwise have received had the employee continued to work during a period of reasonable notice, including salary, commissions, non-discretionary bonuses, retirement savings plan and pension contributions, the employer's portion of Canada Pension Plan premiums, the value of vested stock options, the taxable value of a company car, fringe benefits and, in some instances, short-term or long-term disability payments.

Fair Dealings with Employees—Being a Good Employer

Courts now place an obligation of good faith and fair dealing on employers with respect to the manner of dismissal. Employers must be reasonable and forthright with their employees. They must not mislead or be unduly insensitive to their employees. Where a court finds that an employer acted in bad faith, it can award additional damages in the form of an extended period of notice, particularly where the employer's conduct made it more difficult for the employee to find a new job.

New West Partnership Trade Agreement (NWPTA)

The New West Partnership Trade Agreement, an accord between the governments of British Columbia, Alberta and Saskatchewan was fully implemented on July 1, 2013. It replaced the Trade Investment and Labour Mobility Agreement (TILMA). The agreement is intended to open up trade, investment and labour mobility between the three provinces.

For more information, please visit: www.lawsonlundell.com/expertise-Labour-and-Employment.html or www.lawsonlundell.com/expertise-Pension-and-Employee-Benefits.html

The Environment

Prior to conducting business in Canada, a corporation must assess which environmental laws apply to its activities. Assessing potential environmental issues is particularly important when a corporation is purchasing or leasing real property, or when its business involves the production or movement of toxic substances or hazardous waste.

The regulatory framework in Canada governing the environment consists of three different but often overlapping jurisdictional levels: federal, provincial or territorial, and municipal. Also, if business is being conducted on any lands controlled and governed by Aboriginal peoples, there may be a fourth level of jurisdiction to consider.

Environmental policy on all governmental levels continues to evolve as new concerns such as cumulative effects, endangered species, and carbon emissions are considered.

Federal Regulation

The federal government has legislative jurisdiction over environmental matters of international and inter-provincial concern as well as over fisheries, navigable waters, and anything dealing with federal lands, such as Indian reserves or National Parks.

Provincial/Territorial Regulation

The provinces and the territories are, for the most part, responsible for matters within their boundaries. Each has numerous pieces of environmental legislation in place, including laws that specifically deal with particular industries, such as forestry, mining, or oil and gas. Provincial governments tend to be very active in their regulation of environmental matters.

Municipal Regulation

There may be additional layers to environmental regulation in Canada as municipalities also have the authority to regulate and manage the environment. Municipal powers may extend to include areas such as environment, public health, business licensing and regulation, and control of dangerous substances. Municipalities also have primary responsibility for water and sewer systems, control of noise and land use planning.

Aboriginal Lands

Some Aboriginal peoples have negotiated self-government agreements or have been authorized under the *First Nations Land Management Act* to control the use of their lands. Under these agreements, First Nations may have jurisdiction over environmental assessment and land use planning.

Contaminated Land

Development of contaminated land is one of the most difficult environmental issues faced by landowners in Canada. Generally speaking, contaminated industrial sites should be reclaimed to legislated standards prior to redevelopment. Liability and responsibility for contamination can be a contentious issue and unfortunately the approaches to contaminated land taken by different provinces may not be consistent. As this area continues to evolve, it is hoped that a universal approach will be adopted. In the meantime, it is important for purchasers to make the appropriate inquiries, have the necessary inspections performed, and negotiate some level of warranty about the environmental condition of the property prior to finalizing any purchase agreements.

Enforcement and Prosecution

Canadian government authorities have several different tools at their disposal to ensure compliance with environmental legislation. These include reporting obligations, inspections, Administrative-monetary policies (AMPs), and orders.

The prosecution of individuals and corporations for violations of environmental legislation have risen dramatically in Canada. Fines of up to C$1 million or more for each day the offence occurs can be imposed. Moreover, individuals responsible for the offence can be imprisoned for up to five years.

Federal Laws that apply:

- Canadian Environmental Assessment Act, 2012 (CEAA)
- Canadian Environmental Protection Act (CEPA)
- Fisheries Act
- Navigable Waters Protection Act

Environmental Duties and Liabilities of Directors and Officers

Directors and officers of corporations face personal liability for causing or permitting harm to the environment under several environmental statues in Canada.

The *Canadian Environmental Protection Act* (CEPA) provides that an officer, director, or agent of a corporation who "directed, authorized, assented to, acquiesced in or participated in the commission of an offence" is guilty of the offence, whether or not the corporation is prosecuted. In addition, every director and officer of a corporation is responsible for taking reasonable care to ensure that the corporation complies with CEPA and its regulations as well as all orders and directions imposed by the federal Minister of the Environment. Provincial legislation has very similar provisions.

Officers and directors may avoid personal liability by establishing the defence of "due diligence." To be able to raise the defence of due diligence, directors should consider taking several steps towards creating an environmental management system that works to mitigate potential risks related to their business. The benefits of creating an environmental management system far outweigh any costs as such a system maximizes the protection of directors and officers from environmental liability.

Corporations in Canada are actively seeking methods to improve their environmental systems. Some tools for identifying problems and developing solutions include environmental audits, training programs, the development of corporate policies, and extensive reporting structures. As well, many corporations in Canada have established work committees to oversee their environmental management system.

For more information, please visit: www.lawsonlundell.com/expertise-Environmental.html

Oil and Gas

Canada is abundant in natural resources and these natural resources play a key role in the country's economy. In particular, Canada is rich in natural gas and petroleum resources, resulting in it emerging as a world leader in this market. The global demand for energy is expected to rise by 40% by 2035, as economies in both developed and emerging countries continue to grow and the standard of living improves in the developing world.

Western Canada's oil and gas industry plays a vital role in the economy, creating opportunities for companies to enter the sector and grow both domestically and internationally.

On a world scale, Canada ranks as:

- 3rd largest natural gas producer
- 6th largest crude oil producer
- 5th largest energy producer

The oil and gas industry is the largest single private investor in Canada, investing $62 billion in the economy in 2011. The Canadian marketplace is fully deregulated and the oil and gas industry represents 25% of value on Toronto Stock Exchange. It employs 550,000 in Canada (direct and indirect).

Some recent highlights of the oil and gas sector in Canada include:

- Oil industry produces over 3.054 million barrels of oil per day and is part of the global crude oil market. This production is comprised of:
  - o 1.31 million barrels per day of conventional oil; and
  - o 1.744 million barrels per day of oil sands production (mining and in situ bitumen)
- Average annual natural gas production of 13.7 billion cubic feet (bcf)
- $62 billion in capital spending
- Oil sands are forecasted to create 905,000 new jobs by 2035 (Canadian Energy Research Institute - May 2011).

Source: Canadian Association of Petroleum Producers. Basic Statistics.

Regulation

Federal, Provincial, and Aboriginal governments together own the vast majority of oil and gas rights in Western Canada. For historical and constitutional reasons, the ownership and regulation of mineral rights in Western Canada varies from jurisdiction to jurisdiction. In strict legal theory, the provincial and federal governments hold these lands in right of her Majesty the Queen; thus the term "the Crown" is often used interchangeably with "the Government." For instance, within the province of Alberta, approximately 89% of mineral rights are held by the Provincial and Federal Crown and 11% are freehold mineral lands owned by individuals and private corporations, with the majority of the freehold lands in the south.

Generally speaking, the provincial government has jurisdiction over most matters relating to the exploration and exploitation of oil and gas resources within its borders. The exception is for matters that are of extra-provincial or international application (for example, projects such as pipelines that straddle two or more jurisdictions), in which case the federal government will have jurisdiction.

For more information, please visit: www.lawsonlundell.com/expertise-Energy.html

Aboriginal Land Rights

There are two main ways in which Aboriginal Rights may affect a business operation in Canada, particularly land or resource based operations like oil and gas extraction. First, many Aboriginal groups have constitutionally protected Aboriginal and Treaty Rights under section 35 of the *Constitution Act*, 1982. Second, current Canadian case law requires the provincial and federal governments to consult with, and accommodate the concerns of, Aboriginal groups who may be affected by a government decision such as granting a resource tenure or an approval for a proposed resource development activity on their traditional lands.

Aboriginal rights are communally-held common-law rights to use lands and resources that arise as a result of Aboriginal groups' traditional use of lands and resources. Supreme Court of Canada decisions have recognized Aboriginal rights to hunt, to fish, to cut trees for domestic purposes, and to build cabins on Crown lands as required to exercise other Aboriginal rights. Treaty rights include rights under historic treaties between the federal government and Aboriginal groups, most of which were concluded before 1930, as well as modern land claim agreements that have been concluded with Aboriginal groups in British Columbia, the Yukon, the Northwest Territories and Nunavut. Lands held under Aboriginal title cannot be sold, transferred, or surrendered to anyone other than the federal government.

Virtually all parts of western and northern Canada are affected by Aboriginal rights and treaty rights. Although these rights are constitutionally protected, the rights are not absolute. Governments may infringe on or limit the exercise of those rights where justified. Oil and gas resources under reserves are administered under the *Indian Oil and Gas Act* (Canada).

The Supreme Court of Canada has held that, in light of government's unique relationship with Canada's Aboriginal peoples, the government must consult with Aboriginal groups in respect of any proposed government action or decision that would infringe on the group's Aboriginal and treaty rights. Only through consultation is it possible to minimize impacts on the group's constitutionally protected Aboriginal or treaty rights.

The case law in Canada concerning Aboriginal and treaty rights continues to evolve from year to year. It is essential for companies active in land and resource development activities in western and northern Canada to remain up to date on current case law, as Aboriginal law issues can have a significant impact on operations if not addressed appropriately.

Because of the continued uncertainty regarding Aboriginal and treaty rights and their potential consequences for land and resource development, many companies have expanded stakeholder consultation activities to include Aboriginal communities. By consulting with Aboriginal communities and attempting to address as many of their concerns as possible, companies have been able to avoid or limit the effects of Aboriginal and treaty rights issues on their operations. Many companies are also finding it in their interest to work closely with relevant government departments and agencies in ensuring that roles are clearly defined and responsibilities are carried out.

For more information, please visit: www.lawsonlundell.com/expertise-Aboriginal-Law.html

Mining

There are more than 200 active mines in Canada, producing more than 60 minerals and metals.

The total value of Canadian mineral exports was $92.4 billion in 2012, accounting for 20.3% of Canada's total exports. Key exports included aluminum, nickel, copper, gold, silver, uranium, coal, potash, zinc, diamonds, iron, steel and iron ore. The mining and mineral processing industries made significant contributions to the Canadian economy in 2011, including more than $17 billion in capital investment, $63 billion in nominal GDP and $24.7 billion in trade surplus.

In 2011 alone, the mining sector contributed $63 billion to Canada's nominal GDP, accounting for 3.9% of total GDP, while mining and processing companies paid some $7.1 billion in corporate taxes and royalties that help support the programs and services that Canadians in every part of the country use every day, from roads and bridges to education and health care.

Canada remained the world's top destination for mineral exploration in 2012, attracting 16% of budgeted spending. Total exploration expenditures within Canada were about $3.9 billion in 2012.

source: Natural Resources Canada: *Canada is a Global Mineral Exploration and Mining Giant*

Finance

Canada is a world-leader in raising equity for mineral exploration and development, with both Vancouver and Toronto being global hubs. In 2011, almost 40% of the world's equity financing for mineral exploration and mining was raised by companies listed on Canadian stock exchanges. Canadian-headquartered mining companies accounted for nearly 37% of budgeted worldwide exploration expenditures in 2012. The TSX handled 83% of the world's mining equity transactions over the past five years.

Vancouver is home to the world's largest cluster of exploration companies. Edmonton is a global center for oil sands expertise; Calgary is a global center for the oil and gas industry; and Saskatoon is a global center for potash and uranium expertise.

Regulation

Canadian mining law is location-dependent, and there are many locations: ten provinces and three territories, each with its own laws, and within each province or territory areas within Aboriginal land claim settlement areas or reserves; areas in which the surface is owned by the Crown or by Aboriginal groups or privately; and areas in which the minerals are owned by the Crown or by Aboriginal groups or privately. Canadian mining law is also commodity-dependent, with different laws applicable to hard rock minerals, coal, industrial minerals, petroleum and natural gas, uranium, etc.

Canadian mining law emphasizes environmental protection, sustainable mining and corporate social responsibility.

The development of a mine in Canada involves:

(i) securing the necessary mineral and surface tenures, in most cases from the federal or provincial Crown but in some cases from private land owners, which may include Aboriginal groups;

(ii) taking the project through environmental assessment to identify environmental and socio-economic effects, their significance, and related mitigation measures and obtaining project certification from the federal or provincial board or agency with jurisdiction in the geographic location of the project;

(iii) proceeding through the regulatory stage where the federal and/or provincial regulators issue the necessary permits, licenses and other authorizations; and

(iv) obtaining the requisite social licence which may include an Impact Benefit Agreement or other appropriate level of agreement with Aboriginal groups or First Nations.

Permits, licences and other authorizations typically cover construction activities, the mine plan, environmental reclamation and monitoring programs, reclamation bonding and annual reporting requirements, discharges to the environment, use of water, mine health and safety, etc.

Aboriginal issues have a bearing on land or resource based operations in Canada in several ways. Aboriginal groups have constitutionally protected Aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*. In addition, Canadian law requires the provincial and federal governments to consult with and accommodate the concerns of Aboriginal groups whose constitutionally protected Aboriginal and treaty rights may be affected by governmental decisions, such as grant of a resource tenure or an approval for a proposed resource development activity. Aboriginal groups, particularly in the Northern territories of Canada, are now the owners of surface and mineral rights pursuant to the terms of modern land claim settlement agreements.

Lawson Lundell LLP is a globally recognized leader in mining law, practicing in all parts of Canada and around the world. For more information, please visit: www.lawsonlundell.com/expertise-Mining

Liquified Natural Gas (LNG)

British Columbia's conventional and unconventional natural gas potential is estimated at over 2,933 trillion cubic feet. In 2012, the government of British Columbia announced a strategy to tap the vast shale gas resources in the northeastern part of the province, and build a liquefied natural gas (LNG) industry. One of the Province's goals is to have three LNG export facilities in operation by 2020.

The resource potential and positive LNG strategy has the attention of major multinational energy companies. Since the announcement of the new LNG strategy, an estimated $6 billion dollars in investments have been made to acquire upstream natural gas assets and execute corporate acquisitions, partnerships and joint ventures as the basis for developing pipelines and LNG export facilities. In addition, an estimated $1 billion has been spent to prepare for the construction of LNG infrastructure.

New pipeline and LNG export facility proposals will be subject to provincial and federal government approval.

In addition to supporting development of an LNG export industry, the government of BC is also supporting increased use of LNG by the transportation sector as a cleaner alternative to diesel. The government is supporting incentives to increase the adoption of natural gas in the transportation sector, including transport trucks, mine-haul trucks, trains and marine-transportation vessels.

About Lawson Lundell

Lawson Lundell LLP is a leading full service law firm in Western Canada, and known for our practical, strategic approach to legal and business problems. Our lawyers are widely recognized by respected legal and business publications. Our clients are leaders in the jurisdictions where we are located and around the world. Our practice areas and some of the industries we serve include:

- Aboriginal Law
- Banking and Debt Financing
- Business Law
- Commercial Real Estate and Development
- Corporate Finance & Securities
- Energy
- Environmental
- Financial Recovery
- Insolvency and Restructuring
- Labour and Employment
- Litigation & Dispute Resolution
- Mergers and Acquisitions
- Mining
- Northern Practice Group
- Pension and Employee Benefits
- Public Utility and Regulatory
- Tax

Our offices are in Vancouver, Calgary and Yellowknife. These three centres are key access points to the rich natural resources of western and northern Canada. Our diverse client base requires that we also focus on activities in other parts of the world, which offers us ever increasing opportunities to stay aware of changes and developments worldwide.

With the current focus on the global economy, energy efficiency and the environment, Lawson Lundell is perfectly suited and prepared to provide the advice and commitment required to assist in our clients' success. We are here to make a difference as we have for over 100 years.

Lawson Lundell is ranked the #1 regional law firm in BC, Alberta and the North by *Canadian Lawyer* magazine (2010-2014).

- The *Canadian Legal Lexpert* Directory ranks us as one of the top three corporate law firms in Vancouver. Twenty-three of our lawyers are ranked Leading Practitioners in their respective practice areas
- The *Lexpert/American Lawyer Media Guide* to the Leading 500 Lawyers in Canada includes 5 of our lawyers
- *Benchmark Canada*: *The Guide to Canada's Leading Litigation Firms* recommends us for litigation in the following areas: Aboriginal Law, Class Actions, Commercial Law, Energy and Natural Resources Law, Environmental Law, Insurance Law, Labour and Employment, Product Liability, Public Law and Securities Law. Lawson Lundell was named British Columbia Firm of the Year in Litigation at the Benchmark Litigation Canada Awards 2014.
- *Best Lawyers in Canada* ranks us the #1 law firm in Vancouver for our Banking and Finance, Employee Benefits, Energy Regulatory, Private Funds Law and Public Procurement Law practices and 39 of our lawyers as Leading Practitioners in their respective practice areas. In Canada, we are top-listed in Aboriginal Law. *Chambers Global* recognizes 13 of our lawyers
- *Legal 500* ranks us as a leading firm in Canada for Energy (mining, oil and gas, and power), Environment, Infrastructure and Projects, Labour and Employment, and Real Estate, as well as for Dispute Resolution in British Columbia. Three of our lawyers are recognized as Leading Individuals in their respective practice areas.

For more information about Lawson Lundell please visit:

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