Doing Business in Canada: A Concise Guide

Goodmans LLP

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Doing Business in Canada: A Concise Guide

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About This Guide

If you are considering doing business in Canada, this guide may help. It has been created to provide a practical reference to doing business in Canada for executives in and counsel to U.S.-based and other foreign organizations. For tax considerations, please consult our companion publication the Goodmans *Canadian Corporate Tax Guide*.

If you would like to receive a copy of the Goodmans *Canadian Corporate Tax Guide*, please contact Rachel Collins: Tel: +1.416.979.2211 Ext. 3006; Email: updates@goodmans.ca. Or, visit our website, www.goodmans.ca.

Please note: the discussion in this guide is confined to the laws of the provinces of Ontario and British Columbia as well as the federal laws of Canada that apply in those provinces as of May 2006. This guide is very general and should not be relied upon as legal advice. We invite you to contact us directly with specific questions or problems.

About Goodmans LLP

Goodmans is widely recognized across Canada and internationally for its excellence and market leadership in large-scale corporate transactions as well as a broad range of specialized practice areas important to our clients. We are committed to providing the highest quality legal services to our clients – wherever they do business. The firm is home to more than 190 lawyers in offices in Toronto and Vancouver.

Our Business Approach and Firm Philosophy

Our clients range from sole proprietorships to multinational corporations, major financial institutions and crown corporations involved in all business sectors in Canada and around the world. The firm's tradition of working with entrepreneurial clients has shaped our approach to practicing law: we handle every matter entrusted to us thoroughly, creatively and cost-effectively.

Our lawyers have developed close relationships through several generations of client growth, providing strategic and tactical advice to support our clients' short- and long-term business objectives. Today, those clients include some of the most successful businesses in Canada.

Overall, we've earned a reputation for focusing our attention on challenging problems – often international in scope – that demand creative solutions. Our lawyers invest the time needed to understand the business implications of the legal matters we handle for clients. We've long realized that clients want solutions that achieve the desired result cost-efficiently and with a minimum of complexity. And we understand that clear, responsive communication between client and lawyer is critical to building a solid, effective and mutually rewarding relationship.

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Introduction

Canada is a federal state in which jurisdiction is constitutionally divided between two levels of government, federal and provincial. In some areas, either the federal government or the provincial government may have exclusive jurisdiction. In others, both levels of government regulate different aspects of a particular activity. In addition, provincial governments delegate certain powers to municipal governments. A business may therefore be regulated at three levels, federal, provincial and municipal. It may also be affected by policies and decisions of administrative tribunals.

Canada is a constitutional monarchy. Although Queen Elizabeth II is Canada's official head of state, the governments of Canada are democratically elected by the population. At each level, the elections are independent, with the result that the same political party may not always govern at the federal and the provincial levels. In addition, Canada is governed by a Charter of Rights and Freedoms that guarantees certain rights of individuals as against the state.

All the provinces of Canada except Québec are common law jurisdictions, with strong historical ties to the British common law. Québec is a mixed common law/civil law jurisdiction in which private law matters, such as contract and property, are governed by a Civil Code.

Canada provides an attractive climate for foreign businesses. It has stable political and economic systems and is rich in both natural and human resources.

As a result of the North American Free Trade Agreement between Canada, the United States and Mexico, Canada offers foreign businesses improved access to the vast North American market.

Types of Business Organization

The following is a general overview of the different types of business organizations in Canada.

Sole Proprietorships

A business owned by one person is called a sole proprietorship. This is the simplest form of business organization. The individual is responsible for all the obligations of the business and his or her personal assets may be seized to meet these obligations.

There is no commercial legislation dealing specifically with sole proprietorships. However, a sole proprietor may need to comply with federal, provincial and municipal regulations affecting trade and commerce, licensing and registration. For example, in Ontario a sole proprietor who carries on business or identifies his or her business to the public under a name other than the name of the owner must register the name. A substantially similar obligation is imposed in British Columbia. For more information, see the Ontario Business Connects website at http://www.cbs.gov.on.ca/obc/english/4TJTBS.htm and the British Columbia Business Registry at http://www.bcbusinessregistry.ca/.

A sole proprietorship may be suitable for a small enterprise because it avoids many of the costs of setting up and running a corporation and the complex regulatory scheme that governs corporations. In addition, non-capital start-up losses of the business are generally deductible from the sole proprietor's income from other sources. The disadvantages of a sole proprietorship are the unlimited liability of the owner and that the business can be transferred only by selling the assets.

Corporations

General

The corporation is the most common form of business organization in Canada. A corporation has a legal personality distinct from its shareholders and management. A corporation's existence is potentially perpetual, since it is not affected by the departure or death of any or all of its shareholders or managers.

As a separate legal entity, a corporation has the rights, powers and privileges (and potentially the obligations) of a natural person. It can hold property and carry on a business, and it is subject to legal and contractual obligations.

The main advantages of the corporation are the limited liability of the shareholders, the possibility of perpetual existence and the flexibility of the corporate form for financing and estate planning purposes. The disadvantages include the costs associated with incorporation, operation and dissolution. In addition, every corporation resident in Canada or carrying on business in Canada that deals with non-residents not at arm's length must file an annual information return with Canada Revenue Agency containing information about those transactions.

A corporation may be either public or private. In a public corporation, shares may be bought and sold by members of the general public subject to applicable securities legislation. By contrast, the sale or transfer of shares in a private corporation is usually restricted and may require the consent of a majority of the directors or shareholders.

Federal or Provincial Incorporation?

Both federal and provincial legislation provides for the incorporation and regulation of corporations. Those establishing a corporation can choose which statute they prefer.

A company is incorporated federally under the *Canada Business Corporations Act* (CBCA). In Ontario, the governing legislation is the *Business Corporations Act* (OBCA), and in British Columbia the governing legislation is the *Business Corporations Act* (BCBCA). The OBCA, BCBCA and CBCA prescribe essentially the same requirements, with some notable exceptions.

Corporate names and registration: Under the CBCA, a federal corporation has the right to carry on business under its corporate name in any province of Canada, although it may be required to register or obtain a licence in a province in which it does business. Under the OBCA, BCBCA, and other provincial corporate statutes there is no such entitlement. An Ontario or British Columbia corporation applying for a license or registering in another province cannot be licensed or registered under its name if that name is already being used there by another corporation. If this is a concern, incorporation under the CBCA may be advantageous, although as a practical matter a CBCA corporation may need to operate under a different name in any province where its corporate name would be confusing. Both federally and provincially incorporated companies must fulfil the registration requirements of every province in which they carry on business.

Residency requirements for directors: The CBCA requires at least 25% of directors to be Canadian residents. If a corporation has fewer than four directors, at least one director must be a resident Canadian (except for certain business sectors and corporations subject to federal ownership restrictions). The OBCA requires a majority of directors to be Canadian residents. If there are only one or two directors, one director must be a Canadian resident. Similarly, the OBCA requires a majority of the directors appointed to a directors' committee to be Canadian residents, while the CBCA does not have a minimum residency requirement for directors' committees. The BCBCA has no residency requirements for directors or for directors' committees.

Unlike the CBCA and the OBCA, the BCBCA evolved from a contract model of doing business, resulting in certain differences, including the following:

- *Amendments to articles:* The CBCA and OBCA do not provide flexibility on shareholder approvals. A special resolution of shareholders must be passed by 2/3 of the shareholders to carry out amendments to articles and other fundamental changes. Under the BCBCA, levels for various shareholder approvals, other than those prescribed by the legislation, can be set in a corporation's articles. The default threshold is a special resolution with a voting threshold set at no less than 2/3 and no more than 3/4 of votes cast.
- *Modification of directors' powers:* The OBCA and CBCA allow all of the shareholders to enter into a unanimous shareholders' agreement. Such an agreement can effectively transfer responsibility for

the management of the corporation from the directors to the shareholders. The BCBCA permits the company's articles to transfer the directors' powers but makes no reference to unanimous shareholders' agreements.

Management of a Corporation

The directors of a corporation are responsible for its management. Although a majority of the directors of an OBCA corporation must generally be Canadian citizens or permanent residents of Canada, foreign control is still possible, since shareholders (who need not be Canadians) elect the directors and may remove them from office. The shareholders may also enter into a unanimous shareholders' agreement to modify the directors' powers.

Directors may incur personal liability for acts which contravene the statute under which the corporation was incorporated or a myriad of other statutes. For example, they may be held personally liable for certain unpaid wages and wage-related deductions if the corporation becomes bankrupt.

Directors must act honestly and in good faith with a view to the best interests of the corporation. They must also exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The corporation may purchase insurance to cover the personal liability of the directors. However, insurance will only cover liability for acts which were performed by the directors in good faith and within the scope of their duties.

The daily operations of a corporation are normally carried out by its officers. Officers can be non-residents of Canada.

Shareholders are the owners of a corporation, but they are not necessarily responsible for its management and normally cannot bind the corporation. Generally, the authority to bind the corporation rests with its directors and officers. However, as stated above, the CBCA and OBCA allow all of the shareholders to enter into a unanimous shareholders' agreement to modify directors' powers.

Subsidiary or Branch?

A foreign organization may carry on business in Canada by setting up a new corporation as a subsidiary or through a branch of an existing foreign corporation. The choice will be based primarily on tax considerations. For more information on tax considerations, see our companion publication, the *Canadian Corporate Tax Guide.*

If a branch is chosen, the foreign corporation must register in all provinces in which it wishes to carry on business. The corporation cannot register if its name is the same as or similar to one already in use in that province. Business names used by a branch should be properly registered and should not be the same as or similar to names used in the province. A foreign corporation which establishes a branch in Ontario must apply to the Minister of Consumer and Business Relations for a license. British Columbia also requires a foreign corporation that carries on business in the province to be extra-provincially registered.

Partnerships

A partnership is the relationship among natural persons, corporations or other partnerships carrying on business in common with a view to profit. The rights and obligations of the partners among themselves are usually set out in a written partnership agreement. If there is no agreement to the contrary, the rights and obligations of partners will be those stipulated by provincial legislation.

In Ontario, legislation governing partnerships and limited partnerships sets out presumptive rules for the relationship among partners and governs the rights and obligations of the partnership to third parties. British Columbia's partnership legislation is similar to Ontario's.

Income and losses of a partnership, although determined at the partnership level, are taxed in the hands of the partners. This tax treatment is the primary reason for using a partnership rather than a corporation, since each partner may offset its share of the partnership's business tax losses against income from other sources. Partnerships are also used by professionals (such as lawyers) who generally are not allowed to practice their profession through a corporation.

General Partnerships

In a general partnership, each partner has unlimited liability for the liabilities of the partnership. Contributions from each partner may be in money, property or services and, unless otherwise stated in the partnership agreement, all contributions are deemed to be equal. Each partner is jointly liable for all debts and obligations incurred by the partnership. However, a partner is generally not liable for obligations incurred before it became or after it ceased to be a partner. All partners may take an active role in operating a general partnership. Each partner may bind the others unless there are restrictions in the partnership agreement of which third parties have notice. The main disadvantages of a general partnership are the unlimited liability of the partners and the fact that each partner may bind the others.

In Ontario, all the partners of a general partnership must register the name of the partnership unless the business is carried on under the names of the partners.

In British Columbia, persons associated in partnership for trading, manufacturing or mining purposes, unless the firm has been registered as a limited liability partnership, are required to file a declaration under partnership legislation.

Limited Partnerships

A limited partnership provides both limited liability and the ability to flow tax losses through to passive investors. This form of business structure is often used to finance businesses that may have tax losses in the early years that are more valuable to investors than to the enterprise itself. A limited partnership is made up of one or more general partners, each of whom has the same rights and obligations as a partner in a general partnership, and one or more limited partners, whose powers and liabilities are limited.

The general partner or partners manage the partnership. A limited partner may not take part in the control of the partnership without jeopardizing its limited liability.

The primary advantage of a limited partnership over a general partnership is the limited liability of the limited partners. This enables passive investors to receive returns proportional to the amount of their contribution with minimal personal risk.

To establish a limited partnership in Ontario, a declaration must be signed by all of the general partners on behalf of all the partners and filed under limited partnership legislation. The declaration must be renewed every five years. If the partnership wishes to cease operations, a declaration of dissolution must be filed.

In British Columbia, partnership legislation requires the filing of a certificate signed by each person who will be a general partner, setting out the general nature of the business to be carried out, the names and residential addresses of each general partner, respective contributions of each limited partner, the term for which the limited partnership is to exist, and the basis on which limited partners will be entitled to share profits.

Income Funds

An income fund is a trust that invests in assets that produce a stable or predictable stream of income. Like the stock of a public company, the units of the fund are publicly traded on a stock exchange and represent a beneficial interest in the fund with a vote at meetings of unitholders. The structure of an income fund is tax-efficient and generally allows pre-tax operating income to be distributed to unitholders monthly, reducing corporate or asset-level tax. This tax treatment is the primary reason for using an income fund rather than a corporation.

Although no two income funds are identical, the basic income fund structure is generally the same: a Canadian resident trust is created to indirectly acquire a business or other income-producing assets and funds the acquisition and/or the refinancing of the assets from the proceeds of a public offering of trust units. The income fund will be structured so that it is a mutual fund for Canadian tax purposes and income attributable to the acquired business or assets is flowed to the unitholders on a pre-tax basis. Each income fund structure is unique and will be comprised of a number of business entities, which may include trusts, corporations and partnerships.

An income fund may be suitable for businesses with relatively stable, sustainable operating cash flows and some potential for growth, which are sufficiently mature so as not to require significant reinvestment of revenues. However, the range of businesses raising capital through income fund vehicles continues to expand.

There are three general types of Canadian income funds: business trusts, real estate investment trusts (REITs) and resource royalty trusts. A business trust is a trust which owns, indirectly, an interest in an underlying operating business. A REIT is a trust established to consolidate the capital of a large number of investors for the purpose of investment in real estate, typically through the direct acquisition of income-producing real estate assets. A resource royalty trust is a trust which holds as

its primary asset a direct interest in a royalty in a Canadian resource property, typically oil and gas properties.

For more information about income funds, see the *Goodmans Guide to REITs and Income Funds* at http://www.goodmansincomefunds.com/.

Contractual Arrangements

Although the following are not forms of business organization *per se*, they are alternatives to the forms already discussed.

Joint Ventures

A joint venture is an arrangement entered into by two or more parties (individuals, partnerships or corporations) to pool capital and skills for the purpose of carrying out a specific undertaking. Since a joint venture is not a recognized entity for tax purposes, income and losses for tax purposes are computed separately by each joint venturer. A joint venture is thus a means to carry out a single operation using common resources, with each party retaining a substantial degree of independence.

Joint venturers who do not want their joint venture to be a partnership should enter into a written agreement setting out their respective rights and obligations in detail. Otherwise there is a risk that the joint venture may be characterized as a general partnership. If so, each partner would be fully liable for partnership obligations and subject to tax as a partner rather than as a joint venturer.

Since joint ventures are most commonly used in the real estate context, this form of business organization is discussed in more detail in the "Real Estate" section of this guide.

Franchising

A franchise is an agreement whereby one party, the franchisor, gives another, the franchisee, the right to use a trademark or trade name within a certain territory.

Franchising involves an ongoing relationship between the parties. The franchisor generally retains some degree of control over the manner in which the franchisee carries on its business, but neither party is the agent of the other. In British Columbia, franchises are governed by the general law of contracts. In Ontario, franchise disclosure legislation imposes pre-sale disclosure obligations on franchisors and regulates the relationship between franchisors and franchisees. The legislation which applies if the franchise is operated wholly or partly within Ontario and imposes serious penalties for violations.

Licensing

Licensing is a contractual relation between two parties whereby a licensor grants a licensee the right to use a copyright, industrial design, patent, trademark, trade name or know-how. The relationship is governed solely by contract.

Conclusion

In choosing the most appropriate form of business organization, the specific needs of the business must be assessed. Factors which require particular consideration include the extent of liability, participation in management, separate legal existence, transferability of interest, financing aspects, complexity of organization, the nature of the business, and tax implications. For more information on tax implications, see our companion publication, the *Canadian Corporate Tax Guide*.

Acquiring or Establishing a Business in Canada

Investment Canada Act

Any non-Canadian who proposes to establish a new business or acquire an existing business in Canada should be aware of the provisions of federal legislation governing investments by non-Canadians. Under the legislation, certain acquisitions of control of Canadian businesses by non-Canadians are subject to review by the Investment Review Division of Industry Canada (Investment Canada). If the Canadian business carries on a cultural business, the review will be conducted by the Cultural Sector Investment Review Division of the Department of Canadian Heritage. If an acquisition is reviewable, the investor must file an application for review and, with limited exceptions, approval must be obtained before completing the transaction. Other acquisitions of Canadian businesses or establishments of new businesses by non-Canadians in Canada are not reviewable, but a non-Canadian investor must file a notice of the investment within 30 days after acquiring the business or establishing the new business.

Reviewable Transactions

The following acquisitions of control by non-Canadians are reviewable:

- A direct acquisition of a Canadian business with assets of $5 million or more. Direct control of a Canadian corporation may be acquired by acquiring voting shares of the corporation or all or substantially all the assets used in carrying on the Canadian business.
- An indirect acquisition of a Canadian business with assets of $50 million or more. Indirect control of a Canadian corporation is acquired by purchasing voting shares in a non-Canadian corporation that controls the Canadian corporation or by acquiring voting interests in a non-Canadian non-corporate entity that controls the Canadian corporation.
- An indirect acquisition of a Canadian business with assets of $5 million or more if the assets of the Canadian business represent more than 50% of all the assets acquired in the transaction.

The legislation sets out rules for determining whether an investor has acquired control of a Canadian business. The following are examples of some of the rules to determine whether an investor has acquired direct control of a corporation:

- Acquisition of a majority of voting shares is deemed to be acquisition of control.
- Acquisition of one-third or more but less than a majority of voting shares is presumed to be the acquisition of control, unless it can be shown that the acquired shares do not give control in fact to the investor.
- Acquisition of less than one-third of the voting shares is deemed not to be an acquisition of control.

There are other rules which may also apply in the case of corporations as well as other forms of business organization.

The thresholds have been significantly increased or eliminated for WTO investors (investors controlled by persons who are residents of World Trade Organization countries or by governments of such countries). A direct acquisition by a WTO investor is reviewable only if the assets exceed an amount which varies annually according to a GDP-based formula (see http://strategis.ic.gc.ca/epic/internet/inica-lic.nsf/en/Home for the current threshold). Any investor acquiring a Canadian business controlled by a WTO investor will also benefit from these higher thresholds. Indirect acquisitions by WTO investors are not reviewable unless the Canadian business carries on certain types of activities, including uranium, financial services, transportation services, and cultural businesses. In these industries, WTO investors also do not benefit from the higher WTO thresholds.

After an investor has filed an application for review with Investment Canada, the Minister of Industry has an initial period of 45 days to determine whether the investment will be of net benefit to Canada. The Minister may require a 30 day extension. If the Minister does not send a notice to the applicant within the prescribed period, the Minister is deemed to be satisfied that the investment is likely to be of net benefit to Canada.

The factors which the Minister will consider include:

- The effect of the investment on the level and nature of economic activity in Canada;
- The degree of participation by Canadians in the Canadian business in particular and in the relevant industry in Canada in general;
- The effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
- The effect of the investment on competition in the relevant industry or industries in Canada;
- The compatibility of the investment with Canadian industrial, economic and cultural policies, taking into account the policy objectives of affected provinces; and
- The effect of the investment on Canada's ability to compete in world markets.

If the Minister is not satisfied, the Minister must send a notice to the applicant, advising the applicant of its right to make representations and to submit undertakings. The Minister's final determination will be made having regard to such representations and undertakings.

Cultural Industries

There are special provisions in the legislation for investments which affect Canada's cultural heritage or national identity ("cultural industries"). The establishment of a new business or the acquisition of control of a Canadian business which would not normally be reviewable under the legislation may be reviewable if it falls within this category. After a notice of the investment has been filed, the federal Cabinet, composed of the Prime Minister and the other ministers, has 21 days to decide whether the investment should be reviewed. The non-Canadian investor must be notified within that time period if a review is ordered.

The Ministry of Canadian Heritage is responsible for investments related to cultural industries. The Cultural Sector Investment Review Division of the Department of Canadian Heritage is the

counterpart to Investment Canada for these investments (jurisdiction is shared for investments which involve both cultural industries and other businesses). The legislation further provides that the Minister of Canadian Heritage has discretion to make determinations which could result in the review of investments in cultural industries which would not otherwise be reviewable. For example, an investor that thinks it is Canadian-controlled because it complies with the rules of the legislation might find that the Minister has determined otherwise. The Minister can use this authority to review investments retroactively to June 18, 1992. Unless appropriate steps are taken, investors must accept a certain amount of risk in proceeding with investments involving cultural industries without review.

Cultural industries include:

- Publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form;
- Production, distribution, sale or exhibition of film or video products;
- Production, distribution, sale or exhibition of audio or video music recordings;
- Publication, distribution or sale of music in print or machine-readable form; and
- Radio communication in which the transmissions are intended for direct reception by the general public, any radio, television and cable television broadcasting undertakings and any satellite programming and broadcast network services.

The Canadian government has recently introduced draft legislation which, if ultimately enacted, will give the Minister of Industry the authority to review investments by non-Canadians to determine if they could be injurious to national security.

For more information about investment legislation, see the Industry Canada website at http://strategis.ic.gc.ca/epic/internet/inica-lic.nsf/en/home.

Competition Act

Federal competition legislation may affect the ability of a person to invest in Canada. Competition legislation aims to maintain and encourage competition in Canada. The legislation creates criminal offences for serious anti-competitive activities such as conspiracies to unduly lessen or prevent competition, predatory pricing and deceptive trade practices. The legislation also creates a system for administrative review of business activities that could affect competition, including mergers and acquisitions of businesses.

The Competition Bureau (www.competitionbureau.gc.ca) is an independent law enforcement agency responsible for competition legislation. The Bureau is headed by the Commissioner of Competition. The Bureau investigates both criminal and civil matters under the legislation. With court approval, it can use certain tools to gather evidence, including search warrants, subpoenas for production of documents and the taking of oral testimony under oath. In relation to the criminal provisions, the Commissioner may refer matters to the Attorney General of Canada for prosecution. For civil matters, including merger review, the Commissioner may apply to the Competition Tribunal (www.ct-tc.gc.ca), a federal tribunal that has the same powers as a court, for remedial relief.

Merger Notification

Subject to certain exceptions, if a proposed acquisition of assets or shares or an amalgamation or other combination exceeds certain size thresholds, the parties to the transaction are required to notify the Commissioner in advance and are precluded from completing the transaction before the expiry of a review period. The parties to the transaction, together with their affiliates, must have total assets in Canada or total revenues from sales in, from or into Canada that exceed $400 million. The subject matter of the proposed transaction itself must also be of a minimum size:

- *Asset acquisition or formation of an unincorporated business combination:* Canadian assets acquired or that are the subject matter of the combination, or the annual gross revenues from sales in or from Canada from such assets, must exceed $50 million ($70 million for a corporate amalgamation).
- *Share transactions:* Canadian assets or sales derived from the corporation whose shares are acquired and all other corporations controlled by that corporation exceed $50 million ($70 million for a corporate amalgamation).
- In addition, the merger notification rules will not apply to a share acquisition unless the party, as a result of the proposed transaction, would own more than 20% of the voting shares of a public company or more than 35% of the voting shares of a private company (unless the party already owns more than these limits, in which case it must be acquiring additional shares to own more than 50% of the voting shares).

Notification to the Commissioner may be short form or long form (which provides more information about the transaction and the parties). If a long form notification is submitted, the review period is 42 days before completing the transaction. If a short form notification is submitted, the review period is 14 days. However, the Commissioner can require a person who has submitted a short form notification to submit a long form notification, beginning a new 42-day review period.

The great majority of mergers subject to review do not raise competition concerns. In these cases, the Commissioner will respond with a no-action letter indicating that the Commissioner does not currently intend to challenge the transaction. The no-action letter provides considerable comfort as the Commissioner has not, since the merger provisions were enacted in 1986, subsequently challenged a merger before the Tribunal where a no-action letter had been issued.

However, a no-action letter does not guarantee that the Commissioner will not decide to re-open a merger examination at a later date. Under the legislation, the Commissioner may file an application with the Tribunal up to three years after a merger is substantially complete. An investor who wants more certainty, and whose transaction does not raise substantive competition issues, may apply to the Commissioner for an advance ruling certificate. Once issued, an advance ruling certificate precludes the Commissioner from filing an application with the Tribunal with respect to a transaction based on information that is substantially the same as the information on the basis of which the certificate was issued. In addition, if the advance ruling certificate is granted, merger notification is not required. If the request is denied but a no-action letter issued instead, it is common practice for the Commissioner to waive notification because substantially similar information was provided in support of the request for the advance ruling certificate.

Substantive Merger Provisions

A merger under competition legislation is widely defined to mean the acquisition or establishment, direct or indirect, of control over or significant interest in all or part of a business of a competitor, supplier, customer, or other person. Significant interest is not defined in the legislation, but the concept relates to the ability to materially influence the economic behaviour of another party. The acquisition of only 10% of the voting shares of a party was found by the Bureau in one case to constitute a significant interest. The Bureau retains the jurisdiction to review a merger even if it falls below the thresholds for notification outlined above. As a result, a competition law risk assessment should be done even if the proposed transaction is not subject to merger notification.

The substantive legal test is whether the merger prevents or lessens, or is likely to prevent or lessen, competition substantially. The Bureau's analytical approach to merger examination is set out in detail in its merger enforcement guidelines, which can be found on its website. The key elements in the analysis include market definition, market concentration and market share, an assessment of entry conditions, competitive effects and effective competition remaining. In addition, Canada is one the few jurisdictions in the world that provides an efficiencies defence to otherwise anti-competitive mergers.

Merger review is essentially a regulatory function in Canada as the great majority of mergers do not raise substantive competition concerns, and those that do are generally resolved by negotiating suitable remedies with the Bureau. Most parties are unwilling to face the time, cost and uncertainty involved in litigating a merger application by the Commissioner before the Tribunal. The legislation has been recently amended to streamline the consent process by allowing for the registration of consent agreements between the Commissioner and the parties with the Tribunal. Once registered, the consent agreement has the same effect as if it were an order of the Tribunal.

If a merger does raise significant competition issues that cannot be resolved through negotiation with the Commissioner, the Commissioner may file an application for relief from the Tribunal. If the Tribunal, after considering the evidence of the Commissioner and the parties, finds that the merger prevents or lessens, or is likely to prevent or lessen competition substantially, it may issue a prohibition order for all or any part of a proposed transaction, dissolve a completed transaction, order divestiture of assets or shares, or make other orders to which the Commissioner and the parties to the transaction consent.

International Agreements

Investment in Canada is affected by NAFTA and other international agreements. As discussed above, Canada increased its screening thresholds under investment legislation for acquisitions of Canadian businesses by American and Mexican investors. In addition, NAFTA Chapter 11 contains investment provisions based on a fundamental principle of non-discrimination. Chapter 11 sets out rules respecting such matters as performance and minimum equity requirements, repatriation and expropriation. NAFTA also sets out investor-state dispute settlement procedures that provide direct remedies to aggrieved investors. NAFTA permitted each country to take reservations respecting certain obligations. Non-conforming provincial and state measures in existence on January 1, 1994 have been grandfathered.

Canada has also signed Foreign Investment Protection Agreements with various countries which provide protection to Canadian investors in those countries. The protections are similar to those found in Chapter 11 of NAFTA. Countries with which Canada has such an agreement include the Czech Republic, Slovakia, Poland, Argentina, Hungary, Russia, Ukraine, Philippines, Barbados, Venezuela, Armenia, Lebanon, Latvia, Trinidad and Tobago, Ecuador, Panama, Thailand, Uruguay and Costa Rica.

Financing a Business Operation in Canada

The most common ways for a business to raise capital are equity and debt financings.

Equity financing involves the issuance of shares of capital stock of a corporation or units of a limited partnership or a trust. Various classes of shares or units may be issued. The rights and privileges attaching to each class of shares or units will depend on the requirements of the issuer and the investors. In the event of dissolution or insolvency of a corporate issuer, capital can be returned to shareholders only after all creditors have been paid in full. The advantage of share or unit ownership is that the investor can share in the success of the issuer through the receipt of dividends or through an increase in the value of the shares or units.

Debt financing may be provided by shareholders, partners or third parties such as banks and other financial institutions. Financing is available in Canada from Canadian chartered banks, Canadian subsidiaries of foreign banks, and other financial institutions including merchant banks, loan and trust companies, and life insurance companies. Lenders to a corporation who do not have a personal interest in it usually require that a certain level of equity investment be maintained by the corporation's shareholders. Lenders may also require personal guarantees from the shareholders of small private corporations.

There are two principal forms of financing available from third-party lenders: operating financing and term financing. Operating financing usually finances the ongoing operations of the business. It is usually provided on a demand basis and generally bears interest at a fluctuating rate linked to the market. Term financing is usually made available for capital investment. It normally requires scheduled repayment over a defined period of time and bears interest determined in any of a number of ways. Term lenders often allow the borrower to choose between fixed or floating rates of interest and may allow the borrower to convert from one interest option to another.

Securities Law

The issuance of securities and trading in securities between investors is governed by legislation intended to create orderly markets and protect investors. Shares, bonds and options are common forms of security. The term security is broadly defined and includes any document evidencing title to or an interest in the capital, assets, profits, or property of a person or corporation and any document, instrument or writing commonly known as a security. In addition, a number of different types of agreements and instruments involving monetary consideration are specifically included in the definition of security. Depending on the circumstances, both equity and debt financing may come within the definition of security and may therefore be subject to securities legislation.

Each province and territory of Canada has securities regulation which is generally comparable to that in effect in the United States. Unlike in the U.S., there is no overarching federal securities regulator. However, many provinces and territories have opted to interpret certain securities laws in the same manner through the adoption of national multilateral instruments. The securities acts, regulations and policies of securities commissions in Ontario and British Columbia are largely similar, with some important distinctions.

Any person or corporation engaged in trading or giving advice about securities must be registered under the relevant provincial securities legislation. In addition, most distributions of securities must be qualified by a prospectus filed with and cleared by the relevant provincial securities commissions. A prospectus is a document of the issuer describing in detail the business and affairs of the issuer, the type of security involved and other relevant information.

There are a number of important exemptions from these registration and prospectus requirements. Perhaps the most useful for a person establishing a business in Ontario are the following:

- *Accredited investor exemption*: This exemption permits issuers to raise any amount from any number of investors provided they meet qualification criteria intended to reflect sophistication.
- *Private issuer exemption:* This exemption permits "private issuers" to sell securities to certain categories of persons (e.g., a director, officer, employee, founder or control person of the issuer or specified family members thereof, close personal friends or close business associates of a director, executive officer, a founder or control person of the issuer or specified family members thereof, accredited investors or security holders of the issuer or other persons that do not constitute the "public" vis à vis the issuer). An issuer is a "private issuer" if: (i) it is not a reporting issuer or an investment fund; (ii) its securities (other than non-convertible debt securities) are subject to restrictions on transfer; (iii) such securities are beneficially owned, directly or indirectly, by not more than 50 holders (excluding employees and former employees of the issuer or its affiliates); and (iv) it has distributed securities only to persons who fit within the permitted categories (referred to above).

British Columbia's prospectus and registration exemption regime is similar to Ontario's, including an accredited investor exemption for private placements. However, there are some important differences. B.C.'s securities legislation permits private companies (defined as companies with no more than 50 shareholders and restrictions on the transfer of their shares in their constating documents) to issue securities as long as they are not offered for sale to the public. Also, issuers may issue securities in British Columbia by private placement so long as a disclosure document, referred to as an offering memorandum, is prepared in the prescribed form and delivered to investors. Investors must also deliver a signed risk acknowledgement form and purchase securities as principal and not on behalf of others.

In the case of certain exempt trades, it may be necessary to file a report with and pay a fee to the securities commissions of each of the provinces or territories in which the purchasers of the securities reside.

Securities legislation requires continuous disclosure of any material changes in the affairs of public companies (known as reporting issuers) and also includes provisions relating to activities such as insider trading and takeover bids.

Some key steps have been taken to give U.S. issuers easier access to the Canadian financial markets. In 1991, a co-operative effort between Canadian provincial securities regulators and the U.S. Securities and Exchange Commission (SEC) resulted in the multijurisdictional disclosure system (MJDS) whereby securities could be offered by a U.S. issuer in Canada primarily in accordance with SEC rules. Rights offerings, takeover and issuer bids, business combinations, offerings of debt and

preferred shares that have received an approved rating, and offerings of equity and other securities by certain large issuers are included within the MJDS.

Until 1999, there were five stock exchanges in Canada: The Toronto Stock Exchange, the Montreal Exchange, the Vancouver Stock Exchange, the Alberta Stock Exchange and the Winnipeg Stock Exchange. In March 1999, the Canadian stock exchanges announced a restructuring whereby each exchange specializes in a particular type of security in an effort to reduce market fragmentation and ensure a globally competitive market system. Pursuant to this initiative, the following changes have now been implemented:

- All senior equities are traded on the Toronto Stock Exchange (sometimes referred to as the TSX).
- The Alberta Stock Exchange, the Vancouver Stock Exchange, the Winnipeg Stock Exchange, and the Canadian Dealing Network (an over-the-counter equities market) have merged to create the TSX Venture Exchange, a single, national junior equities exchange.
- The Montreal Exchange is now Canada's sole derivatives exchange.
- For more information, see the Ontario Securities Commission website at www.osc.gov.on.ca and the British Columbia Securities Commission website at www.bcsc.bc.ca.

Personal Property Security

Financial institutions which provide debt financing to businesses normally require some form of security over property of the business to protect their investment. In the event of default by the borrower, the financial institution can take ownership of the secured property. Operating financing is usually secured by inventory and accounts receivable of the borrower. Term financing is usually secured by capital assets, such as machinery and equipment, or by a security interest covering all assets of the borrower. The exact nature of the security taken in each instance will depend upon the financial situation of the borrower and the nature of its assets.

Canadian law distinguishes between real estate or immovables (land, buildings and movables which are permanently attached, joined to or incorporated into real property) and personal property or movables (anything not attached to land, including vehicles, equipment, inventory, accounts receivable and other intangibles). This section deals with security over personal property. Real property is dealt with in the "Real Estate" section of this guide.

A business wishing to grant security to a financial institution, protect its own interest in personal property or take a security interest is faced with a complex legislative regime. The provinces have primary legislative authority, but the federal government has authority over personal property security in limited areas such as shipping and certain security taken by banks.

Ontario and British Columbia have personal property security legislation modelled on Article 9 of the pre-2002 U.S. Uniform Commercial Code. This legislation applies to every transaction which in substance creates a security interest, including financing leases and conditional transfers of title. To protect its rights against third parties, a secured party must either take possession of the property or register a financing statement at a computerized central registry. Computer-based searches allow for ease of searching but require the secured party to ensure that its financing statements are correctly

completed: even a minor technical error - such as an incorrect letter in the debtor's name - may invalidate the registration. Further registrations are required in certain circumstances, such as a debtor name change or a transfer of collateral, or to effect a renewal.

Government Assistance Programs

There are many government programs at both the federal and provincial levels to assist businesses in Canada. Assistance may take a number of different forms, including cash grants, forgivable loans, guarantees to lenders, cost-sharing, and advisory services. These programs are too numerous to review in this guide, but they usually have fairly rigid requirements and involve extensive documentation. Generally, the applicant must demonstrate that it has the ability and resources to carry out its project and that the project will benefit Canada. Close attention should be paid in each case to the detailed requirements of a particular program.

An Overview of Canada's Tax Regime

Note: The information in this chapter is excerpted from the Goodmans *Canadian Corporate Tax Guide,* a companion publication to Goodmans *Doing Business in Canada: A Concise Guide.*

The Goodmans Canadian Corporate Tax Guide is an expanded, 25-page discussion of Canada's tax regime for U.S.-based or other foreign companies operating here. To obtain a copy of the Goodmans Canadian Corporate Tax Guide, please contact Carline Bertrand: Tel: +1 416.979.2211 x3006 or email updates@goodmans.ca. Or, visit our website, www.goodmans.ca.

Canada's tax regime for businesses and individuals is largely governed by the federal *Income Tax Act* (ITA) and its regulations, as well as by the sales tax, corporate tax and other laws of Canada's provinces and territories. Companies planning to do business here should also be aware that administrative policies and practices of the Canada Revenue Agency (CRA) also often come into play although we do not discuss these in depth in this overview.

Income Tax

In Canada, income tax is imposed by the federal government and all provincial governments. The ITA levies tax on the taxable worldwide income of every "person" (which includes corporations) resident in Canada in that taxation year. Taxes are imposed on income from all sources and most capital gains of Canadian residents, regardless of the country in which the income is earned. The primary basis for taxation in Canada is the residence of the taxpayer.

A non-resident is subject to:

- Withholding tax on most forms of passive income paid to him or her by a resident of Canada;
- Income tax on Canadian-source employment and business income; and
- Capital gains tax realized on the disposition of "taxable Canadian property."

Taxable Canadian property includes, among other things:

- Real property situated in Canada;
- Assets used in carrying on business in Canada;
- Shares of a private corporation resident in Canada;
- Interests in certain Canadian resident trusts;
- Interests in non-resident private corporations, partnerships and non-resident trusts where 50% or more of the value of the applicable entity is derived from taxable Canadian property at any time in a previous 60-month period; and
- An interest or an option to acquire taxable Canadian property.

Application of Tax Treaties

If applicable, an international tax treaty may reduce or eliminate a non-resident's liability for Canadian tax. To date, Canada has entered into over 80 income tax treaties with other jurisdictions. Generally speaking, these treaties provide that the business profits of a non-resident of Canada are not subject to tax under the ITA except to the extent that such profits are attributable to a permanent establishment of the non-resident in Canada. (A permanent establishment is generally defined in the tax treaties as a fixed place of business.)

While the tax treaties do not bind the provinces, the provinces generally adhere to the provisions of the treaties. The tax treaties usually reduce both the withholding tax rate imposed under the ITA and the branch-profits tax rate.

Resident in Canada

Corporations: A corporation incorporated in Canada after April 26, 1965 (or before this date in certain situations) is deemed to be resident in Canada. A corporation incorporated outside Canada may also be resident in Canada if its central management and control is located in Canada. This is generally the case if the corporation's board of directors meetings in Canada.

Individuals: Whether an individual is deemed resident in Canada depends on his or her particular circumstances. Generally, an individual who, in a settled routine, regularly or normally lives in Canada will be considered a resident in Canada for Canadian tax purposes. In addition, an individual who sojourns in Canada for 183 or more days during a year will be deemed resident in Canada for the year.

Trusts: A trust is generally considered to be resident where the trustee (or majority of trustees) who manages the trust or controls the trust assets resides. The jurisdiction in which the legal rights with respect to the trust are enforceable and the location of trust assets may be relevant factors in determining the residence of a trust.

See the Goodmans *Canadian Corporate Tax Guide* for a detailed discussion on individual and corporate income taxes levied by both levels of governments.

Capital Tax

While the federal government currently imposes a Large Corporations Tax (LCT) on the "taxable capital employed in Canada" in excess of $50,000,000 of any corporation that is resident in Canada or any non-resident corporation that carries on business in Canada through a permanent establishment, the 2006 federal budget proposes to eliminate the LCT with effect as of January 1, 2006.

The 2004 Ontario budget included proposals for the gradual elimination of capital tax in Ontario. For 2006, the deduction from taxable paid-up capital is $10 million and will be increased by $2.5 million on a yearly basis until the deduction reaches $15 million on January 1, 2008. For 2006, corporations are entitled to claim a deduction of $10 million in calculating their taxable paid-up

capital. Accordingly, no capital tax will be payable by a corporation whose taxable paid-up capital does not exceed $10 million. The $10 million deduction must be shared among associated corporations. Starting January 1, 2009, capital tax rates would be reduced each year until the capital tax is fully eliminated on January 1, 2012. Certain small business corporations that are not financial institutions are exempt from capital tax.

In Ontario, capital tax is imposed on the taxable paid-up capital of any corporation carrying on business through a permanent establishment in the province.

British Columbia currently only levies capital tax on corporations that qualify as financial corporations.

See the Goodmans Canadian Corporate Tax Guide for current capital tax rates and more detail on these taxes.

Fiscal Incentives for Scientific Research and Development

Federal: Deductions from Income

The federal *Tax Act* allows a taxpayer doing business in Canada to deduct from its business income certain amounts spent on scientific research and development (SRD), including current expenses such as:

- Expenses connected with SRD carried on in Canada, conducted by the taxpayer or on its account and relating to the taxpayer's business;
- Payments to a corporation resident in Canada or certain other approved entities (e.g., a university) that conducts SRD in Canada related to a business of the taxpayer, to the extent that the taxpayer is entitled to exploit the results of the SRD.

A taxpayer can also deduct certain capital expenses (i.e., expenses incurred to acquire depreciable property other than land or a leasehold interest in land) for SRD carried on in Canada related to the business of the taxpayer.

Qualifying expenses can be claimed in the year they are incurred or another taxation year to the extent that the SRD expenses are identified as such in the prescribed form on or before the day that is 12 months after the taxpayer's filing due date for the year.

Federal: Tax Credits

The most important advantage flowing from the provisions of *the Tax Act* with respect to SRD is the possibility of claiming an investment tax credit with respect to these expenses.

Taxpayers are generally permitted to claim an investment tax credit equal to 20% of allowable SRD expenses made during the taxation year. However, where the taxpayer is a "Canadian controlled private corporation" (CCPC), and meets certain other criteria, an additional tax credit equal to 15% on up to the first $2 million of SRD expenses during the taxation year may be claimed.

Ontario Tax Incentives

Ontario used to provide a "super-allowance" for Scientific R&D conducted in Ontario. This super-allowance permitted an additional deduction in computing Ontario taxable income for qualified expenditures. The "super-allowance" could allow a deduction that exceeded the qualified expenditures. Ontario has eliminated this super-allowance and now allows corporations a deduction in computing their Ontario taxable income that is equal to a portion of the federal investment tax credit that can reasonably be considered to relate to qualified Ontario Scientific R&D expenditures.

Other tax incentives provided by Ontario's legislation include:

- The Ontario Innovation Tax Credit (OITC) to certain eligible corporations with permanent establishments in Ontario, which provides qualifying corporations with a 10% refundable tax credit for SRD carried out in Ontario;
- The Ontario Business Research Institute (ORBI) tax credit, which permits certain corporations carrying on business in Ontario through a permanent establishment to claim a 20% tax credit for expenditures relating to SRD that are incurred in Ontario as part of a contract with an eligible research institute (e.g., qualifying colleges and universities, hospital research institutes, non-profit research institutes).

British Columbia Tax Incentives

British Columbia also provides tax relief for certain small businesses conducting R&D in the province. Under these rules, certain CCPCs with a permanent establishment in B.C. will be entitled to a refundable tax credit equal to 10% of the corporation's "SR&ED qualified B.C. expenditures."

Tax Shelters and Credits for Film and Television Production

Both the federal and some provincial governments offer various forms of tax relief for qualifying film and television productions in Canada, which are explained in Goodmans *Location Canada: A Guide to Producing in Canada and Doing Business with Canadians.* To obtain a copy, please email updates@goodmans.ca.

Goods and Services Tax

Canada's federal sales tax is a comprehensive, multi-stage, value-added tax on the consumption of nearly all property and services in Canada. Known as the Goods and Services Tax (or GST), this tax generally applies at a rate of 7% (to be reduced to 6% as of July 1, 2006 under the 2006 federal budget proposals). A parallel system of input tax credits (ITCs) is designed to ensure that tax is paid at every stage in the chain of supply on the value added at that stage until final purchase, when the final consumer effectively pays the aggregate GST.

GST is imposed on every person who receives a "taxable supply" of property or a service "in Canada." "Property" is broadly described to include virtually every kind of real, personal, tangible and intangible property other than money. "Service" is also broadly defined to include anything other than property, money and, significantly, employment duties. A "taxable supply" means the

provision of property or service by any means whatever (including by sale, transfer, lease, license and gift) in the course of the supplier's commercial activities, unless the supply is expressly exempt. In short, every commercial provision of a property or service, with only relatively limited exceptions, is subject to GST.

Exempt and "Zero-rated" Supplies

Principal categories of exempt supplies include financial services, "used" residential real estate (i.e., new residences are not exempt) and most medical and dental services.

In addition, supplies of certain types of property and services are referred to as "zero-rated" supplies, meaning that they are technically subject to GST but at a rate of 0%. Unlike with an exempt supply, the supplier of a zero-rated supply can recover GST expenses incurred in the course of making the product or providing the service via claming ITCs. Zero-rated goods and services are effectively GST-free. Principal categories of zero-rated supplies are most forms of property or services for export, prescription drugs and basic groceries, certain agricultural products and most forms of financial services to non-residents.

Compliance and Enforcement

GST and ITCs are calculated, reported and paid or refunded on a periodic basis, with the reporting period of the registrant occurring monthly, quarterly or annually, depending upon the amount of the registrant's revenues from taxable and zero-rated supplies.

The GST legislation gives the federal government considerable investigative powers and provides significant civil and criminal penalties for non-compliance.

See the Goodmans *Canadian Corporate Tax Guide* for more detail on Canada's Goods and Services Tax, including examples of how the GST system works.

Other Commodity Taxes

Businesses involved in importing goods into Canada, exporting goods to Canada, or manufacturing and selling goods in Canada may be affected, directly or indirectly, by certain other taxes and duties imposed in Canada. Many products imported into Canada are subject to two types of commodity taxes in addition to the GST: customs and excise duties and taxes, and provincial sales tax. Products such as alcohol and tobacco are subject to additional excise duties.

Customs Duties

The rate of customs duty payable on imported goods depends on both the country of origin of the goods and classification of the goods.

The amount of duty is based on the "value for duty" of the imported goods, which is generally determined by the "transaction value" of the goods. The transaction value is the price paid or

payable by the importer or the goods, subject to adjustment for such items as commissions, brokerage fees, royalties, packaging and transportation costs.

There are special methods of valuation when the transaction value is not accepted or cannot be determined, for example, when a relationship between the vendor and the purchaser has affected the price or where the importer is a Canadian branch of a foreign exporter. Under certain circumstances, refunds, drawbacks and remission of duty are available.

The Canadian tariff classification system incorporates the principles of the Harmonized Commodity Description and Coding System, an internationally accepted classification system.

Canada has entered into free trade agreements with several countries, including the U.S. and Mexico (under the North American Free Trade Agreement or NAFTA), Israel, Chile and Costa Rica. Under these agreements, Canada has eliminated or reduced customs duties payable on goods imported from these countries of origin.

Excise Duties and Taxes

Certain goods (including jewellery and gasoline) manufactured in or imported into Canada are subject to an excise tax which applies at varying rates depending on the product manufactured or imported, in addition to any applicable customs duties.

Excise duties are a special form of federal tax applicable to specific goods, which are imposed in addition to GST and customs duties. Spirits, beer and tobacco products manufactured in Canada are subject to excise duties. Where such goods are imported fully manufactured, they are subject to the excise duty on importation. The amount of the excise duty is added to the value for duty when calculating customs duties payable on importation.

Provincial Sales Tax

Both Ontario and British Columbia impose retail sales tax. Every vendor in the business of selling taxable goods or providing taxable services is required to obtain a vendor's permit.

The current retail sales tax rate in Ontario is 8%. This rate is applied to the retail sale price of goods and specified services at the time of purchase or import into Ontario and is payable by the consumer or user. If property is purchased in or imported into Ontario for subsequent resale, the retail sales tax is imposed not on the original purchase or importation but on the resale. For sales in Ontario, this tax is collected by the vendor as agent for the provincial tax authorities and remitted by the vendor.

British Columbia imposes a retail sales tax, called the Social Services Tax (SST), in the amount of 7% of the amount paid on leases or purchases of tangible personal property for use or consumption. The SST is therefore designed only to apply to the end user of such tangible personal property. "Tangible personal property" is defined broadly by statute to include property that can be "seen, weighed, measured, felt or touched". Certain other specific transactions, including the lease/sale of computer software, telecommunications services and electricity, are also subject to the SST.

Importing or Trading Goods

Businesses involved in importing or trading goods may be subject to domestic legislation dealing with product standards, consumer protection and competition. International trade agreements, import controls, and special import measures such as antidumping duties also affect trade in goods and services.

Product Standards

Product standards legislation in Canada is intended to prevent deceptive labelling and potential health and safety problems. This legislation requires goods being imported into Canada to meet prescribed standards. Both the federal and provincial governments have legislated extensively in this area. Non-governmental bodies are also involved in prescribing technical standards.

Federally, consumer packaging and labelling legislation regulates packaging and labelling of pre-packaged consumer products. The legislation requires display of information including product identity, quantity, and the manufacturer or person for whom the product was manufactured or produced for resale. The legislation prohibits false or misleading representations.

Additional requirements are imposed for certain products including food and drugs. This legislation requires display of additional information relating to durable life of food, storage, ingredients and nutritional facts. For drugs, additional information relates to medicinal ingredients, lot numbers, directions for use and expiration date. New drugs cannot be sold or advertised without a notice of compliance from Health Canada. Particularly stringent prohibitions, controls, manufacturing and labelling requirements are imposed on narcotics and certain drugs.

Provincial legislation may also regulate specific products. For example, each province has its own legislative scheme regulating the practice of pharmacy, including specific provisions relating to the sale of drugs. Provincial legislation also controls such activities as inspecting, grading, labelling and marketing certain food products (e.g., margarine and edible oil products). This legislation may impose different and sometimes higher standards than those set federally.

Specialized federal legislation also regulates hazardous or potentially dangerous products, pesticides and other pest control products, textiles, and precious metals.

Metric units of measurements (e.g., metres, grams, litres) must be used for all aspects of trade.

(a) Canadian Standards Association International

The Canadian Standards Association (CSA) International (www.csa.ca) is a private, not-for-profit organization that develops standards and applies them through product certification, management systems registration, and information products. CSA International tests and certifies products for sale in Canada, wherever produced. CSA International certification tells customers that a product or system has been evaluated in a formal process that includes examination, testing and follow-up inspection, and that the product or system complies with all applicable standards.

Products and services that meet CSA's safety or performance standards are permitted to bear the internationally-recognized CSA International mark. The CSA International program is voluntary. The burden of application and compliance is on the manufacturer or person wishing to apply the CSA International mark.

CSA International has a global scope. It can test and certify products for both U.S. and Canadian markets. Thus, duplicate testing is unnecessary. CSA International also helps exporters conform to the requirements for marketing products in the European Union. As a member of the International Certification Bodies (CB) Scheme, CSA International can test and certify a wide range of products. Testing is performed locally and is recognized in over 35 countries.

Compliance with CSA International standards or standards of other testing and certification companies (such as Intertek Testing Services and Underwriters' Laboratories) or testing and approval authorities (such as Ontario's Electrical Safety Authority) is sometimes dictated by law.

Consumer Protection

All of the provinces have some form of consumer protection legislation.

Ontario consumer protection legislation applies to all consumer transactions where the consumer or the person with whom the consumer is conducting the transaction is located in Ontario. The legislation provides broad protection to consumers through consumer rights and warranties (e.g., an implied warranty that services are of a reasonably acceptable quality), prohibition of unfair practices (e.g., false or misleading representation, and negative option marketing where businesses demand payment for unsolicited goods or services), and requirements for certain types of consumer agreements. The legislation also creates effective consumer remedies.

Ontario consumer protection legislation imposes information requirements for particular types of consumer agreements, including future performance agreements over $50, internet agreements over $50, direct (e.g., door-to-door sales) and remote agreements over $50, credit agreements, motor vehicle repair and leasing agreements, time share agreements and agreements for personal services. The requirements are intended to inform consumers of exactly what they are contracting to receive, what they will be paying, and who they are contracting with. In some cases, a written copy of the agreement must be given to the consumer including specific information such as the name and contact information of the supplier, description of goods and services, full pricing and payment information. In the case of internet agreements and remote agreements, the consumer must be given an express opportunity to accept or decline the agreement and to correct errors before entering into it. For direct agreements, the consumer has a 10-day cooling off period to cancel the agreement for any reason.

The information requirements in Ontario consumer protection legislation are enforced by allowing the consumer to cancel an agreement within certain time periods if the requirements are not met. If a consumer has the right to cancel an agreement, he or she may do so by giving notice. The agreement and all related agreements are then cancelled as if they never existed. Consumers may also request that a credit card issuer cancel or reverse a charge where the card was used to pay for a consumer agreement that was cancelled, to make a payment that was received in contravention of

the legislation, or to make a payment that was collected for unsolicited goods or services. Similarly, the legislation allows a consumer to rescind an agreement if it was entered into as the result of an unfair practice.

British Columbia's consumer protection legislation protects recipients of unsolicited goods and services, regulates negative option billing, provides a cooling-off period for direct sales, and regulates unfair trade practices.

Competition

As mentioned earlier in this guide, federal competition legislation governs trade practices affecting competition in Canada. The legislation creates criminal offences for serious anti-competitive activities and a system for administrative review of non-criminal business activities that could affect competition.

Many practices are reviewable by the Competition Tribunal. For example, abuse of dominance occurs when a firm with a dominant position in a relevant market engages in a practice of anti-competitive acts that has had, is having, or is likely to have the effect of preventing or lessening competition substantially. Anti-competitive acts usually refer to exclusionary, predatory or disciplinary conduct that has the effect of acquiring, augmenting or entrenching market power. Other reviewable practices relate to the advertising or supply of products and services. These practices include misleading advertising (where the advertisement is not the subject of criminal proceedings), refusal to deal, exclusive dealing, tied selling, and market restriction.

The Commissioner of Competition may conduct full inquiries into certain reviewable trade practices and bring actions in relation to matters which are reviewable by the Competition Tribunal. Where the Tribunal finds that conduct substantially affects competition, it can make several remedial orders. The Tribunal can also make orders concerning the enforcement of foreign laws, directives, judgments, orders and other processes that would adversely affect competition in Canada. Failure to comply with an order of the Tribunal is a criminal offence and may also be a basis for civil liability.

Conduct that is criminal in and of itself includes conspiracies and agreements to lessen or prevent competition unduly, bid-rigging, price discrimination, price maintenance, predatory pricing, misleading advertising (where the advertising is intentionally misleading or misleading due to recklessness) and deceptive telemarketing. The Commissioner may refer criminal matters to the Attorney General of Canada for prosecution. The legislation prescribes a range of specific penalties for the various criminal offences. For example, the maximum penalty for conspiracy offences is a $10 million fine and five years' imprisonment.

In addition to the criminal offences and reviewable trade practices governed by the legislation, common law actions regarding competition exist, such as conspiracy to injure and contracts in restraint of trade.

The merger review provisions of the legislation are discussed in the "Acquiring or Establishing a Business in Canada" section of this guide.

Environmental Law and Patents and Trademarks

Federal and provincial environmental regulation and federal patent and trademark regulation impacts on the import and trade of goods in Canada. See the "Environmental Law" and "Industrial and Intellectual Property" sections of this guide.

International Commerce

Trade Agreements

Canada is a member of the World Trade Organization (WTO) and has signed a number of trade agreements including NAFTA.

NAFTA is designed to remove all trade barriers between Canada, the U.S. and Mexico. NAFTA is a comprehensive agreement which sets out rules of origin, deals with antidumping, countervailing duties and many other trade issues, and provides dispute resolution procedures.

Canada has entered into three additional free trade agreements with Israel, Chile and Costa Rica. Canada is also participating in negotiations for a Free Trade Agreement of the Americas with 33 other countries and conducting free trade negotiations with Singapore, four Central American countries, the European Free Trade Association and South Korea.

Import Duties

Canada's Customs Tariff imposes duties on imported goods. Federal customs legislation sets out the enforcement and administrative structure to levy these duties. The duties depend on the country of origin and the nature of the goods.

The Customs Tariff sets out a number of tariff structures, depending on country of origin. The regulations set out rules of origin that apply to each tariff structure. The Most-Favoured-Nation (MFN) Tariff applies to goods of all countries that are members of the WTO as well as to goods of certain other countries. The General Preferential Tariff (which is lower than the MFN Tariff) applies to specified goods from WTO members which are developing countries. Specified goods from Commonwealth and Caribbean countries and all goods from least-developed developing countries receive duty-free treatment. If a country is entitled to more than one tariff, the lowest applies.

The United States Tariff applies to U.S. goods satisfying NAFTA origin requirements. NAFTA also added a Mexico Tariff (which applies to goods of Mexico) and a Mexico-United States Tariff (which applies to goods, other than agricultural goods and textile and apparel goods, of mixed Mexican-U.S. origin). Canadian regulations set out rules to determine which goods qualify for each tariff. With NAFTA duty elimination virtually complete as between Canada and each of the United States and Mexico, the United States Tariff, the Mexico Tariff and the Mexico-United States Tariff nil on virtually all goods imported from these countries. However, high over-quota rates continue to apply on supply-managed products such as dairy and poultry products. For a good to benefit from tariff elimination, it must originate from within the free trade area. Whether a good is originating is determined under the NAFTA rules of origin which are the same in all countries in the free trade

area, do not distinguish between countries, and are administered according to uniform regulations in effect under the laws of each country.

The Canada-Israel, Canada-Chile and Canada-Costa Rica agreements each set out rules of origin for determining eligibility for the preferential tariff treatment. Tariffs on virtually all goods of Israel (other than agricultural and fish products) have been eliminated and tariffs on a number of agricultural and fish products have been eliminated or reduced. Tariffs on all goods from Chile have been eliminated in stages. Tariffs on most industrial products from Costa Rica have been eliminated, and tariffs on other goods such as certain textile and apparel goods are still being phased out. As with the United States and Mexico, supply-managed goods imported from Israel, Chile and Costa Rica continue to be subject to high over-quota rates.

Goods from a country not falling under any of the foregoing are subject to a General Tariff of 35%.

The rate of duty that applies to goods depends upon their classification for tariff purposes. The Customs Tariff classifies thousands of types of commodities in accordance with the Harmonized Commodity Description and Coding System which has been adopted by Canada, the United States, Mexico, Chile, Israel, Costa Rica and other WTO countries.

(a) Duty Relief

There are various duty relief programs under Canadian customs law, such as duty drawback (a refund of the duties paid on imported goods) and duty deferral for imported inputs that are incorporated into finished exported goods. However, there is no equivalent in Canada to the U.S. foreign trade zone or the U.S. outward processing rules.

With some exceptions, NAFTA restricts duty drawback and duty deferral (inward processing rules) respecting goods exported to the United States and Mexico. Duty drawback and duty deferral are unaffected by the Canada- Israel, Canada-Chile and Canada-Costa Rica agreements.

Remedies for Dumping and Subsidization

Federal special import measures legislation empowers the federal government to protect Canadian producers from the competition of foreign goods priced artificially low due to dumping or subsidization.

Dumping occurs when the export price of a product is lower than that charged to buyers in the exporter's own domestic market or when the export price is consistently below cost. Antidumping duties can be imposed where dumping causes material injury to producers of like goods in Canada. Antidumping procedures in Canada are based on the rules established in the WTO Agreement respecting antidumping measures.

The legislation also allows countervailing duties to be imposed when it is found that imported goods have been subsidized so as to cause material injury to Canadian producers of like goods in Canada. As with antidumping duties, countervailing duty procedures in Canada follow the requirements of the WTO Agreement respecting subsidies and countervailing measures.

NAFTA Chapter 19 permits NAFTA countries to retain their antidumping and countervailing duty but requires that amendments to such laws conform to WTO requirements and apply to goods of other NAFTA countries only to the extent explicitly stated. NAFTA Chapter 19 also establishes a system of binational panel review of certain major determinations in antidumping and countervailing duty laws. A binational panel applies the domestic law of the NAFTA country whose determination is being reviewed. A person affected by a determination has the choice of requesting judicial review under domestic procedures or requesting binational panel review. In the case of a Canadian determination (such as a determination of dumping or subsidization or material injury), a U.S. or Mexican exporter can choose between judicial review by the Federal Court of Appeal or review by a binational panel under Chapter 19.

The North American Free Trade Agreement

Under NAFTA, tariffs on originating goods traded between Canada, the United States and Mexico have been virtually eliminated. For a good to benefit from tariff elimination it must originate from within the free trade area. Whether a good is originating is determined under the NAFTA rules of origin which are the same in all countries in the free trade area, do not distinguish between countries, and are administered according to uniform regulations in effect under the laws of each country.

With some exceptions, NAFTA restricts duty drawback and duty deferral (inward processing rules) respecting goods exported to the United States and Mexico.

NAFTA eliminates export taxes and imposes conditions (on proportionality and price) if a country relies on exemptions in the General Agreement on Tariffs and Trade (GATT) 1994 under which export restrictions can be justified. These affect Canada's ability to restrict exports of oil, natural gas and electricity. The rules on export restrictions do not apply to Mexico. The *quid pro quo* for Mexico's exemption from these requirements was a corresponding exemption of Canada *vis à vis* Mexico.

Other trade restrictions were untouched by NAFTA. For example, Canadian restrictions (in the form of prohibitive over-quota tariff rates) respecting supply-managed products such as dairy products and poultry products are unaffected, and NAFTA confirms certain restrictions on the export of logs and east coast fish.

The NAFTA side agreement on the environment could affect lax enforcement of environmental laws. The NAFTA agricultural provisions also set out sanitary and phytosanitary provisions that will affect standards relating to the protection of human, animal and plant life and health. There are comparable WTO provisions.

In addition, NAFTA sets out obligations affecting investment, services and financial services. As discussed under "Acquiring or Establishing a Business in Canada", Canada increased its screening thresholds under investment legislation for acquisitions of Canadian businesses by American and Mexican investors. The investment provisions set out in NAFTA Chapter 11 are based on a fundamental principle of non-discrimination and set out rules respecting such matters as performance and minimum equity requirements, repatriation and expropriation. NAFTA also sets out investor-state dispute settlement procedures that provide direct remedies to aggrieved investors.

NAFTA permitted each country to take reservations respecting certain obligations. Non-conforming provincial and state measures in existence on January 1, 1994 have been grandfathered. NAFTA contains a financial services chapter with principle-based obligations analogous to the investment and services chapters.

Canadian law provides for several other trade remedy procedures when imports from other countries are causing or threatening serious injury to Canadian producers. These procedures are based on the safeguard provisions of the WTO Agreement and can result in the imposition of surtaxes and quotas. Determinations of serious injury are made by the Canadian International Trade Tribunal but the imposition of the trade restrictions just described is wholly at the discretion of the Minister of Finance

There are special safeguard procedures in NAFTA and in Canada's bilateral agreements with Israel, Chile and Costa Rica. Canadian legislation also sanctions a special safeguard procedure against goods of China that cause market disruption to which China agreed when it acceded to the WTO.

Import Restrictions

Canada imposes import restrictions on some goods and tariff rate quotas with prohibitive over-quota rates on certain supply-managed agricultural goods, all as listed in Canada's Import Control List. Generally speaking, goods on the Import Control List can only be imported under the authority of a general import permit or an import permit issued by the Export and Import Controls Bureau (EICB) (www.dfait-maeci.gc.ca/eicb). The specifics are best determined by reviewing the Import Control List and contacting the EICB.

Certain goods, such as counterfeit coins and obscene literature, are prohibited from entering Canada.

Import prohibitions can also be found in statutes such as the *Criminal Code*. For example, the Import Control List makes no reference to gambling equipment but persons bringing such equipment into Canada can be subject to criminal sanctions.

The Canada-Israel, Canada-Chile and Canada-Costa Rica agreements each contain provisions respecting import and export restrictions similar to those in NAFTA.

Export Restrictions

Canada also maintains controls over the export of a wide range of goods as listed in Canada's Export Control List. Exportation of goods on the Export Control List must be authorized under a general import permit or under an expert permit issued by the EICB. The specifics are best determined by reviewing the Export Control List and contacting the EICB. Exports to certain countries are prohibited.

The export of energy goods such as oil, natural gas and electricity is regulated by the National Energy Board, although the level of regulation has been relaxed considerably in recent years. Imports of energy goods and their distribution within Canada are also regulated by the Board.

NAFTA eliminates export taxes and imposes conditions (on proportionality and price) if a country relies on exemptions in the General Agreement on Tariffs and Trade (GATT) 1994 under which export restrictions can be justified. These affect Canada's ability to restrict exports of oil, natural gas and electricity. The rules on export restrictions do not apply to Mexico. The quid pro quo for Mexico's exemption from these requirements was a corresponding exemption of Canada vis **á** vis Mexico.

Other trade restrictions were untouched by NAFTA. For example, Canadian restrictions (in the form of prohibitive over-quota tariff rates) respecting supply-managed products such as dairy products and poultry products are unaffected, and NAFTA confirms certain restrictions on the export of logs and east coast fish.

Export charges are prohibited by the Canada-Israel, Canada-Chile and Canada Costa-Rica agreements.

These agreements each set out rules of origin for determining eligibility for the preferential tariff treatment

Employment and Labour

The federal government and all provincial governments have enacted minimum employment standards legislation as well as legislation regarding human rights, occupational health and safety, workers' compensation, pay equity, labour relations, and privacy.

Whether an employer operates in a provincially or federally regulated industry will determine whether federal or provincial employment laws apply. Most industries, such as manufacturing and retail, are provincially regulated, and the relationship between the employer and employees will be governed by the laws of the province in which the business is located. Industries that are inter-provincial in nature (e.g., railways and airlines) as well as certain specific industries (e.g., banking) are federally regulated and federal employment laws apply. Although provincial and federal legislation contains the same basic principles, specific rules can vary significantly.

Employment Standards

Each province and the federal government have enacted their own employment standards legislation that provides specific workplace standards, such as maximum hours of work, minimum wage rates, compulsory public holidays, minimum vacation time and vacation pay, rights to pregnancy leave, minimum notice of termination and severance pay requirements. These are minimum standards with which employers must comply.

Notwithstanding these legislative standards, employees may be entitled to more generous treatment based on common law principles. For example, if an employer terminates an employee, the employee may be entitled to extended notice of termination or pay in lieu in addition to the legislated minimum requirements for notice of termination and severance pay.

Employers and employees cannot contract out of the minimum standards provided by legislation. For example, if an employment contract provides less than the minimum notice of termination required by the applicable employment standards legislation, it will be unenforceable, and the more generous common law requirements will govern. Unlike in certain states in the United States, employment at will, where employers are not required to give employees advance notice of termination, is not applicable to employers operating in Canada.

Employment standards legislation provides protection for employees in the event of a sale or transfer of a business or a bankruptcy or restructuring. Such legislation generally provides that a purchaser who hires the employees of the seller's business must recognize the employees' past service with the seller for the purposes of calculating future entitlements to notice of termination and severance pay.

Most legislation establishes priority for employee claims for unpaid wages and accrued vacation pay in a bankruptcy or restructuring. Legislation also commonly imposes personal liability on the directors of a business for these types of employee claims.

It is relatively easy and inexpensive for employees to pursue their rights under employment standards legislation. Employment standards are not enforced by the courts, but by specialized

labour tribunals which have relatively informal rules of procedure and independent adjudicators. Employees do not have to retain legal counsel to file a complaint and appear before such tribunals.

For more information about employment standards and other employment issues, see the Ontario Ministry of Labour website at www.labour.gov.on.ca and the British Columbia Ministry of Labour and Citizens' Services website at www.labour.gov.bc.ca.

Human Rights

The federal government and all provincial governments have adopted human rights legislation prohibiting discrimination and harassment in the workplace. This legislation generally provides that an employer must treat all people equally without discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or physical or mental disability. In exceptional cases, discriminatory treatment may be justified if a requirement is determined to be a valid occupational requirement.

Human rights legislation also prohibits indirect discrimination. This type of discrimination typically occurs when a company rule which appears neutral on its face negatively impacts a particular group or class of employees. For example, a requirement to work on Saturdays may discriminate against employees whose religious beliefs and practices do not allow them to work on Saturdays.

The legislation sets a stringent standard for employers with disabled employees. Employers are required to accommodate disabled employees to the point of undue hardship, which is a very high standard, typically requiring an employer to prove that accommodation would be financially unfeasible.

Alcohol and drug dependence has been found to be a disability, and employers are required to accommodate employees who suffer from such disabilities. Many provincial human rights commissions have established written policies on alcohol and drug testing. In most jurisdictions, random alcohol and drug testing is prohibited, but it might be allowed where an employee occupies a safety sensitive position.

Generally, human rights legislation is enforced through a complaint driven system. The federal government and almost all provincial governments have established human rights commissions (to investigate and mediate complaints) and human rights tribunals (to adjudicate complaints that are not settled through mediation). These tribunals have the authority to issue orders requiring employers to comply with legislation and to impose financial penalties. Employees are not required to retain counsel to file a complaint and appear before a tribunal.

For more information, see the Ontario Human Rights Commission website at www.ohrc.on.ca and the British Columbia Human Rights Tribunal website at www.bchrt.bc.ca.

Labour Relations

The federal government and all provincial governments have enacted labour relations legislation to allow employees to join unions and to facilitate collective bargaining between unions and employers.

A union can apply for certification to become the exclusive bargaining agent of a group of employees of an employer. Certification is granted if the right level of employee support is established through a vote or other evidence. Following certification, the employer is required to bargain in good faith with the union to establish a collective agreement covering all of the terms of employment between the employer and employees.

The legislation includes mandatory conciliation, mediation, and arbitration provisions designed to facilitate the settlement of workplace disputes or grievances without work stoppages. It includes a number of conditions that must be met before employees can lawfully strike or before an employer can lawfully lock employees out.

The legislation also protects a union's bargaining rights when a business is sold. These provisions have been interpreted broadly.

Independent labour relations boards are established by the legislation to oversee the administration of labour relations laws and to provide investigative and adjudicative functions. Boards have significant enforcement powers to ensure that employers comply with the legislation.

Pay Equity

The federal government and certain provinces in Canada have passed legislation and regulations for pay equity. While employment standards legislation typically requires employers to provide equal pay for equal work, pay equity legislation requires employers to provide equal pay for work of equal value. It is aimed at addressing the historical wage gap between men and women, particularly in certain jobs which traditionally have paid lower wages. Women in female job classes who perform jobs of equal value to employees in male job classes have the right to salary adjustments. Such legislation requires employers to complete internal pay equity assessments in order to establish that they are in compliance with the legislation. Employers must make job comparisons using a gender-neutral comparison system taking into account skill, effort, responsibility and working conditions. Employees' pay must be fair and based upon the results of these job comparisons. Like human rights legislation, pay equity legislation establishes a commission and tribunal.

Employment Equity

Employment equity legislation establishes an affirmative action/hiring quota system designed to encourage employers to hire and promote women, aboriginal people, people with disabilities and visible minorities. Currently, none of the provinces has such legislation in force and the federal legislation applies only to businesses which employ 100 or more employees in connection with a federal work, undertaking or business. This includes any corporation established to perform a function or duty on behalf of the Canadian government.

Privacy

The federal and provincial governments have established privacy legislation which applies to certain employers. The legislation requires employers to obtain employees' consent to the collection and

use of personal information. Privacy commissions oversee the administration and enforcement of privacy laws. Please see the "Privacy" section of this guide for more information.

Occupational Health and Safety and Workers' Compensation

All provinces and the federal government have legislation that sets out certain standards for occupational health and safety and provides for compensation to employees who are injured in the course of employment. The legislation imposes duties on employers, supervisors, workers, and other persons (e.g., owners) concerning workplace safety. It also permits employees to refuse to work where they have reason to believe that their safety or that of another employee is endangered. The legislation is enforced internally by mandatory workplace health and safety committees and externally by government-appointed health and safety inspectors. The penalties for offences under the legislation are very significant. For example, the maximum fine for a corporation under Ontario's legislation is $500,000 for each offence. The maximum penalty for an individual for each offence is $25,000 and/or one year in prison. Directors and officers of a corporation may also be liable. The federal government recently amended the *Criminal Code* to provide criminal liability for corporations found to be in breach of occupational health and safety standards.

Workers' compensation legislation establishes a no-fault insurance system. It provides compensation to employees for workplace injuries, including rehabilitation and retraining, and benefits to dependents of workers who are killed at work. Benefits are provided on a no-fault basis and workers covered by the system are prohibited from suing their employer. Each provincial workers' compensation system is administered by a provincial board which has significant investigative and enforcement powers. Disputes regarding the interpretation of the legislation and the administration of the overall system are adjudicated by an independent tribunal.

Payroll Deductions and Remittances

Employers are required to make certain deductions and remittances and, in some cases, payments to various governments and agencies based on the wages paid to their employees. This includes employment insurance premiums, Canada Pension Plan contributions, workers' compensation assessments and, in Ontario, employer health tax remittances.

The employment insurance program is an income replacement program for employees who are temporarily unemployed. Employment insurance benefits are paid to employees who lose their jobs due to lay-off or termination. Employees who are on maternity leave or parental leave or compassionate care leave or are absent due to illness are also covered. No benefits are paid to those who quit a job without cause. Employees who are fired for misconduct may also be ineligible. Self-employed persons are ineligible. Both employees and employers are required to contribute to the funding of this program which is administered by the federal government. Although the exact amount of the contributions varies from year to year, employers' contributions typically range from 1% to 2% of the employees' insurable earnings, and employees' contributions typically range from 2% to 3%. The employer's contributions are deductible for tax purposes as a normal business expense.

With the exception of employers and employees in Québec, all employers and employees in Canada are also required to contribute to a national pension plan known as the Canada Pension Plan (CPP). Québec has its own provincial pension scheme, the Québec Pension Plan (QPP), which provides benefits comparable to the CPP. CPP provides retirement pensions to contributors who have reached 65 years of age, benefits to a surviving spouse and/or surviving dependant child of the contributor, and disability benefits to a contributor who is no longer able to secure substantially gainful employment. The employee's contribution under the CPP or QPP is a percentage of earnings which is matched by the employer's contribution. The employer can deduct contributions under CPP or QPP for tax purposes as a business expense. All provinces have pension benefits legislation governing the establishment and financial administration of private pension plans.

With the exception of a few industries, most employers are required to participate in provincially-based workers' compensation systems. Employers who are required to participate in these systems must pay premiums calculated as a percentage of workers' wages.

Employers operating in Ontario must also pay an employer health tax calculated as a percentage of their payroll. Eligible employers are exempt from employer health tax on the first $400,000 of their Ontario payroll. Self-employed individuals do not pay health tax on their self-employment incomes.

For more information, see the Canada Revenue Agency website at www.cra-arc.gc.ca/tax/business.

Business Visits and Relocation

A non-Canadian who wants to work in Canada has two options: temporary entry or permanent residence. In all provinces except Québec, an applicant must meet only Canadian federal government requirements. In Québec, an applicant must also satisfy Québec immigration criteria.

Temporary Entry

With some exceptions, a person seeking entry to Canada for employment on a temporary basis must have an Employment Authorization. A labour market opinion or confirmation of job offer from Human Resources Development Canada (HRDC) (www.hrsdc.gc.ca) is required to get an Employment Authorization (commonly called a work permit). An Employment Authorization is usually issued for an initial period of six months to one year but may be extended for up to five years following the date of entry.

To obtain a confirmation from HRDC, the employer must satisfy Canadian authorities that employment opportunities for Canadians will not be adversely affected if it employs the non-resident. (The rules are somewhat different for live-in caregivers.) This will entail, among other things, convincing Canadian authorities that the employer has attempted to hire Canadians for that position and either no Canadian fulfilled the job requirements or no Canadian responded to the employer's advertisement. Factors such as whether skills and knowledge transfer would result from confirming the foreign worker and whether the work is likely to create other jobs for the benefit of Canadians are considered.

Generally, an applicant for a temporary work permit who is not sent by an employer must prove that he or she has already obtained employment in Canada and that no Canadians could be found to fill that position.

Some people need not obtain a work permit, including diplomats, employees who come to a Canadian affiliate for less than 90 days to consult with other employees of the corporation and governmental or business representatives who come to Canada to purchase or sell goods for that business or government for less than 90 days (provided they do not sell directly to the public).

In addition, the Free Trade Agreement between the United States and Canada provides a streamlined procedure under which certain business people who are U.S. citizens may enter Canada to work temporarily. Under the North American Free Trade Agreement (NAFTA), this procedure is extended to Mexican citizens. There are four categories of business people for these purposes:

- *Business visitors*: A business visitor is a business person who is seeking temporary entry into Canada for one of a series of specific purposes listed in the Agreement. People who qualify need not apply for a work permit and may be admitted to Canada at a port of entry.
- *Traders and investors*: A trader is a business person who seeks temporary entry to carry on substantial trade in goods and services principally between the United States and Canada or Mexico and Canada under NAFTA, and who will be employed in a supervisory or executive

capacity. An investor is a business person who seeks entry to develop and direct operations of a business in which he or she has invested or will invest a substantial amount of capital.

- *Professionals*: A professional is a business person who will engage in one of a series of specifically listed professions while in Canada temporarily.
- *Intra-company transferees*: An intra-company transferee is a person who has been employed by the company or an affiliate or subsidiary for at least one year within the three-year period immediately before the date of application and who is coming to Canada to work temporarily for the same employer or a subsidiary or affiliate in a capacity that is executive, managerial, or involves specialized knowledge.

Although traders, investors, professionals and intra-company transferees who are U.S. or Mexican citizens coming into Canada temporarily must obtain work permits, they need not comply with the prior approval procedures, petitions, labour certification tests and other similar procedures generally required to obtain a work permit. However, all business persons are subject to general security and health restrictions.

Permanent Residence

Canadian immigration legislation recognizes the many contributions that immigrants and refugees make to Canada, encourages workers with flexible skills to choose Canada, and helps families reunite more quickly. The legislation is stringent with those who pose a threat to Canadian security while continuing Canada's tradition of providing a safe haven to people who need protection.

A person who wants to settle permanently in Canada can be admitted under one of a number of classes of immigrants: Family Class, Business Class, Skilled Worker Class, and Provincial Nomination Class. The Convention Refugee Class, International Adoption Class and Québec Selected Immigration Class will not be discussed.

Family Class Immigration

To be admitted under the Family Class, an applicant must be sponsored by a qualifying close family member who is 18 years of age or older and currently living in Canada as a Canadian citizen or a permanent resident. Sponsors must promise to support the relative or family member and his or her accompanying family members for a period of three to ten years to help them settle in Canada. In Québec, necessary steps must also be taken to meet provincial requirements. Members of the Family Class include spouses, common-law or conjugal partners, parents, grandparents, dependent children, children under 18 to be adopted, and orphaned siblings, nephews, nieces or grandchildren (if under 18 and not married or in a common-law relationship). Citizenship and Immigration Canada (www.cic.gc.ca) has an interim policy to recognize same-sex marriages.

Business Class Immigration

The Business Immigration Program is designed to facilitate immigration for qualified business persons who intend to invest capital in Canadian business ventures.

In general, the Business Immigration Program gives people who want to engage in business priority in terms of the processing of their applications over other types of immigrants. Business immigrants may be conditionally or unconditionally admitted into Canada depending on the circumstances.

This program applies to three categories of immigrants:

- *Self-employed immigrants*. Self-employed immigrants are those with the intention and ability to establish or purchase a business in Canada which will keep them employed and make a significant contribution to the economy in cultural activities or athletics, or with the intention of purchasing and managing a farm in Canada. This category consists mainly of artists, farmers, consultants and operators of small businesses. There is no minimum amount of capital required, nor is there a requirement that the person create employment for anyone other than her or himself. Factors considered in approving applications under this category include an applicant's managerial skills, his or her business experience and financial status.
- *Entrepreneurs*: Entrepreneurs are people with the intention and ability to purchase, establish, or make a substantial investment in a qualifying business or commercial venture in Canada, and who plan to take an active role in its management. A qualifying business is measured by the number of employees, sales, net income and equity share. The entrepreneur is assessed on his or her track record, financial capacity to undertake a significant enterprise and experience in a specific sector. Entrepreneurs must have legally obtained a net worth of at least CDN$300,000 and, after becoming a permanent resident, undertake to create and manage a business in Canada that will meet employee, sales, net income and equity shares criteria. The business must provide full-time employment for at least one Canadian citizen or permanent resident other than the applicant and his or her dependents. This class is intended for people who operate small to medium-sized businesses in the manufacturing or retail sectors.
- *Investors*: Investors are people with a proven business record who have accumulated some wealth and who are prepared to make an investment in Canada, but who do not wish to actively participate in its administration. An investor is required to have a net worth of more than $800,000 and to invest a minimum of $400,000 for a minimum five year period in the Immigrant Investor Fund.

Skilled Worker Class Immigration

Skilled workers are people who may become permanent residents because they are able to become economically established in Canada. Skilled Worker Class applicants are assessed according to a point system and must meet minimum work experience requirements and prove that they have the funds required for settlement. The point system is based on six selection factors: age, education, work experience, language skills, arranged employment and adaptability. A pass-mark (e.g., 67/100) is set as the primary tool to balance the qualifications and quantity of skilled worker immigrants.

Provincial Nomination

Most provinces in Canada have an agreement with the federal government that allows them to play a more direct role in selecting immigrants who wish to settle in that province. If you wish to immigrate to one of Canada's provinces as a provincial nominee, you must first apply to the

province where you wish to settle. The province will consider your application based on its immigration needs and your genuine intention to settle there.

Privacy and Data Protection

Canada has both provincial and federal privacy legislation. Organizations that conduct business in Canada are expected to comply with provincial legislation in each province in which they collect, use or disclose personal information. Canada, like Europe, but unlike the United States, also has overarching federal privacy legislation applying to all sectors. Depending on where they do business, businesses may be subject to the overlapping jurisdiction of one or more provinces and the federal government.

Federal privacy legislation regulates the collection, use and disclosure of personal information. It affects almost all personal information being collected, used, or disclosed by any private enterprise (corporation, person, partnership, association or trade union) in the course of commercial activities. Under the legislation, the federal government may exempt organizations and/or activities in provinces that have adopted substantially similar legislation. Quebec, British Columbia and Alberta have all enacted private-sector privacy legislation recognized as substantially similar to the federal legislation. Although they apply to a wider class of organizations (such as not-for-profits) and have other distinct features, the requirements under this provincial legislation are not significantly different from the federal legislation (except in relation to employee personal information, discussed below) in most respects, and are more lenient in some aspects. Ontario has legislation that protects health information, but Ontario and the remaining provinces have not yet implemented comprehensive private-sector privacy legislation. Even where there is substantially similar provincial privacy legislation, inter-provincial and international transfers of personal information remain subject to the federal legislation.

Due to Canadian constitutional requirements, federal privacy legislation does not apply to the collection, use or disclosure of personal information relating to employees except employees of federal works and undertakings. That said, privacy legislation in Alberta, British Columbia and Quebec does cover employee information, and it is expected that Ontario will also introduce legislation covering employee information. As a result, it is prudent for organizations to include employee personal information in their privacy policies and procedures.

The underpinning of federal privacy legislation is that an organization can collect, use and disclose personal information if its purpose is reasonable and the organization has obtained the informed consent of the individual to whom the information relates. Informed consent can be obtained formally or implied from the circumstances surrounding the exchange of information.

Personal information is broadly defined in federal privacy legislation to mean any information about an identifiable individual whether recorded or not. This includes data such as name, age, ethnic origin, financial history, behaviour, identification numbers, health information, viewpoints, and personal opinions (but not business card information of employee name, title, business address or telephone number). Although considered personal information, specified publicly available information (e.g., information included in a telephone directory) is also excluded. One of the first steps for organizations developing procedures to deal with personal information is to identify what personal information they collect, how they use it and to whom they disclose it.

Obligations Imposed By Canadian Privacy Law

Although the concepts of consent and reasonableness are the keystones of federal privacy legislation, the federal legislation also imposes obligations on organizations that collect, use or disclose personal information. These obligations are similar to the obligations outlined in substantially similar provincial legislation.

Policies and Procedures

Organizations must prepare privacy policies setting out how they deal with information that they collect, how such information is used, and to whom such information is disclosed.

Organizations are required to implement practices: (i) to ensure that personal information is properly safeguarded, (ii) to ensure that information in their custody is kept accurate and up-to-date (if the organization is making decisions based on such information), (iii) to receive and respond to complaints and inquiries, and (iv) to train staff about the organization's obligations.

Designating a Privacy Officer

Every organization must appoint an individual to be responsible for privacy matters. This person's responsibilities include dealing with requests for access to information and with complaints relating to non-compliance with the organization's privacy policies or privacy legislation.

Safeguarding Personal Information

Organizations are required to protect personal information in their possession or control against loss, theft, unauthorized access, disclosure, copying, use and modification.

Required safeguards include physical measures such as locking filing cabinets, organizational measures such as security clearances and technological measures such as encryption. More sensitive information such as financial and health information must be safeguarded by a higher level of protection.

Personal Information In The Control Of A Third Party

If an organization transfers personal information to a third party (e.g., through outsourcing certain functions), it must ensure that such information is secure. One way for a transferring organization to protect itself is by including appropriate restrictions and obligations in the contracts under which the information is transferred, such as requiring the third party transferee to have in place similar privacy protection procedures and policies.

Data Retention

Organizations must develop guidelines and implement procedures with respect to the retention of personal information, including minimum and maximum retention periods. Personal information may only be kept for as long as it is required to satisfy the purpose for which it was collected.

Access to Personal Information

If an individual writes to an organization and requests a copy of any personal information that the organization possesses in relation to the requesting individual, that organization is required to respond promptly (in most cases within thirty days of the request). For this reason, it is important that an organization's document retention policy provide that all information that is no longer required is either destroyed or anonymized.

Challenging Compliance

Organizations are required to ensure that individuals who are assigned the task of responding to access requests, as well as any other staff members who may receive such requests, are properly trained. Organizations must develop policies and procedures to receive and respond to complaints or inquiries about their policies and practices relating to the handling of personal information.

Enforcement

The Privacy Commissioner of Canada (http://www.privcom.gc.ca/) oversees federal privacy legislation. The Commissioner may commence an investigation where there are reasonable grounds to investigate a matter. An individual may also register a complaint directly with the Commissioner, which is the most common approach. The Commissioner can make recommendations, but has no power to issue orders or enforce recommendations. The Commissioner does have the power to disclose to the public any information relating to the personal information practices of an organization if the Commissioner considers that it is in the public interest to do so.

Provincial privacy commissioners in Ontario (http://www.ipc.on.ca/) and British Columbia (http://www.oipcbc.org/) oversee the legislation of those provinces. The Ontario and British Columbia privacy commissioners have the power to make orders in addition to the power to disclose and publicize information about organizations, and are more likely to name organizations with deficient privacy practices than the federal Commissioner.

Non-Canadian Businesses

Although the federal legislation covers collection, use and disclosure of data in Canada regardless of who is collecting the data, as a practical matter the federal Commissioner's ability to enforce the legislation outside Canada is limited. Nonetheless, as stated above, the Commissioner can publicize the personal information management practices of an organization if the Commissioner considers that such publicity is in the public interest.

Industrial and Intellectual Property

Copyright

Federal copyright legislation grants an exclusive right to the copyright owner of any original literary (e.g. novels, magazines and computer programs), dramatic (e.g., films, videos and plays), musical (e.g., music, lyrics and instrumental compositions) or artistic work (e.g., paintings, photographs, sculptures and architectural works) to control the copying and other commercial exploitation of that work. Performers have copyright in their performances. Broadcasters have copyright in their broadcast communication signals. The copyright owner has the exclusive right to publish, produce, reproduce, translate, broadcast, adapt, perform, and communicate to the public by telecommunication. The copyright owner also has the exclusive right to authorize others to do these acts. Generally, copyright in Canada exists for the life of the author and 50 years following the end of the year of his or her death, after which time the work falls into the public domain. Other terms apply to particular works, such as photographs, phonograph records, home videos, posthumous works and jointly authored works.

Copyright arises automatically in Canada in any original literary, dramatic, musical or artistic work, including a compilation and sound recording, provided that the creator or author of the work is at the time of its creation a citizen, subject or person ordinarily resident in Canada or a treaty country and the work is first published (made available to the public) in Canada or a treaty country. A treaty country is a country that is a party to the Berne Copyright Convention or the Universal Copyright Convention, or a member of the World Trade Organization. To be protected the work must be fixed (expressed in a more or less permanent tangible form so as to make the work identifiable). In most cases, copyright belongs initially to the author of the work. The most prominent exception to this rule is that copyright in works made in the course of employment belongs initially to the employer unless there is an agreement to the contrary.

The legislation also creates some royalties and levies. Performers and producers of published sound recordings share equally in royalties established pursuant to the statute and also have the right to royalties from any of the 50 countries who are party to the Rome Convention. The legislation contains a regime for the determination and collection of cable and satellite retransmission royalties payable for the retransmission of copyrighted works on distant signals. As a *quid pro quo* for the legalization (since 1998) of the copying of musical sound recordings onto audio recording media for the private use of the copier, the legislation imposes a private copying levy on recordable blank audio recording media (e.g., audio cassettes, CD-R, CD-RW and Mini Discs) which is payable by manufacturers and importers of such media.

Anyone using a work without the copyright owner's consent infringes the copyright. People who rent, sell, distribute or import infringing works are indirect infringers of copyright under Canadian law. Under the legislation, copyright infringers may be subject to criminal penalties or to civil remedies sought by copyright owners. There are exceptions to infringement for non-profit organizations (e.g., schools, libraries and museums) in prescribed circumstances and a fair dealing defence which may be invoked in the case of private study, research, criticism and news reporting.

The legislation provides a system for the registration of copyright interests and assignments of copyright interests. Registration is not necessary to create copyright in a particular work, but does serve as evidence of copyright ownership and strengthens the remedies available to a party whose copyright is infringed. An assignee of a copyright interest which fails to register its assignment may risk losing its interest to a subsequent assignee who does register its assignment of the work. Marking of copyright material is not essential in Canada but it may be prudent and is required to obtain copyright protection under the Universal Copyright Convention. Marking uses the symbol ©, the name of the copyright owner and the year of first publication. For more information about copyright registration, see the Copyright Board Canada website at www.cb-cda.gc.ca/info/registration-e.html.

In addition to the economic rights mentioned above, the legislation gives authors (as opposed to owners) certain moral rights. These include the right of an author to claim authorship of the work and the right of integrity of the work (to prevent distortion or modification of the work or its use in association with a product, cause or institution in a way that prejudices the integrity or reputation of the author). Moral rights exist for the same term as copyright in the work. They belong to the author and may not be assigned, although they may be waived in whole or in part. An assignment of copyright in a work does not, by that act alone, constitute a waiver of any moral right.

In recent years, the legislation has been amended to keep up with the demands of changing technology. For example:

- In 1988, the legislation was amended to provide more explicit protection for computer programs in both source code and object code.
- In 1989, following the signing of the Canada-United States Free Trade Agreement, the legislation was amended to require cable and satellite companies to pay for the retransmission of copied original works included in distant broadcast signals.
- In 1994, when NAFTA came into force, the legislation was amended to introduce a rental right for sound recordings and computer programs (i.e., to permit copyright owners to authorize or prohibit the rental of their works) and to increase protection against the importation of pirated works.
- In 1996, the legislation was amended to give performers protection against bootleg audio recordings in accordance with legislation to implement the World Trade Organization Agreement.
- In 2002, the legislation was amended to apply the compulsory retransmission license provisions to the Internet.

In 1997, the Government of Canada signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty which had both been adopted in Geneva in 1996 by the World Intellectual Property Organization (WIPO) Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions. In 2005, the Ministers of Canadian Heritage and Industry introduced a bill to amend copyright legislation to implement the copyright protections required by the two WIPO Treaties to clarify the liability of Internet Service Providers, facilitate the use of new technologies for education and research purposes, and harmonize the treatment of photographers with that of other creators.

The amendments would exempt Internet Service Providers from copyright liability where they are acting merely as intermediaries but require them to forward and record a notice to a subscriber when they receive a notice from a copyright owner that the subscriber is hosting or sharing infringing material (the notice and notice regime). The amendments would also allow educational institutions to make available lectures to students using networking technology, deliver licensed material to students electronically, and deliver academic articles and other material directly to library patrons using electronic desktop delivery. Educational institutions are required to adopt safeguards to prevent misuse of the copyrighted material.

In addition, the amendments deal with the following issues:

- The granting of full reproduction rights for performers in sound recordings (for a term of 50 years from the publication of the sound recording);
- The introduction of a new right of authors, sound recording makers and performers to control the making available of their material, sound recordings and performances on the Internet;
- Amending the term of copyright protection in photographs to be the life of the photographer plus 50 years;
- Clarifying the right of copyright holders to control the first distribution of their material in tangible form;
- Introducing new remedies against the circumvention (for infringing purposes) of technological measures used by copyright owners to protect their works from unauthorized copying (e.g., data encryption, signatures, access codes and asymmetric key systems);
- Introducing new remedies to prohibit and punish those engaged in unauthorized tampering with electronic rights management information (information which identifies the work, author or owner in the work) in order to further or conceal infringement; and
- Granting moral rights to performers in their fixed and live performances.

Domain Names

A Domain Name is the unique electronic address of a website on the Internet for an individual, business or other entity. No two sites can have the same address on the Internet.

The administrative organization which governs the Canadian (.ca) domain name regime is the Canadian Internet Registration Authority (CIRA) (www.cira.ca).

Those seeking to register a .ca name must meet CIRA's Canadian Presence Requirements which permit Canadian companies, Canadian individuals, and foreigners who own Canadian trade-mark registrations or official marks to register as many domain names as they wish through a CIRA-approved registrar. CIRA uses a first come first served system which does not require evidence of entitlement to a proposed domain name (by providing proof that the proposed domain name is a corporate/business name or a trade-mark). CIRA has adopted a Canadian Domain Name Dispute Resolution Policy (CDRP) for complaints relating to the registration of .ca domain names. There are some significant differences between the CDRP and the Uniform Dispute Resolution Policy (UDRP) which result in a more narrow scope of available complaints under the CDRP.

Industrial Design

The term industrial design generally refers to the pattern, shape or configuration of an article that serves a strictly aesthetic purpose and not a functional purpose. Original design features represent valuable intellectual property and are important business assets. Federal industrial design legislation recognizes this fact and provides a procedure to protect an exclusive right to exploit those assets.

The legislation provides for the registration by Canadians and non-Canadians of original features of shape, configuration, pattern, and ornamentation applied to a finished article produced or intended to be produced in numbers greater than fifty. Unlike copyright (which arises automatically upon creation) or trade-mark rights (which may accrue through use), industrial design rights may only be obtained by registering the design with the Canadian Intellectual Property Office (CIPO) (www.cipo.gc.ca).

If an article is not useful, a design applied to it will not be registrable. Designs applied to articles that have no fixed appearance are not registrable nor are features of shape or appearance that are invisible at the time of purchase or during normal use.

If a design is an artistic work or was originally created as a work of art, it is automatically protected by copyright, and can be registered as such. However, if a design is used or intended to be used as a model or pattern to produce fifty or more manufactured articles, it can be protected only by industrial design registration. However, there are many exceptions and the legal distinction between copyright and industrial design is very fine. It is advisable to seek legal advice to best assess your potential rights.

Certain classes of designs are excluded from industrial design registration since they are protected under copyright legislation. Designs that are functional only and not intended to provide any visual appeal are not registrable as industrial designs under Canadian law.

Once a design has been registered, it is important to determine if different aspects of an article can be protected by different laws for patent, trade-mark or copyright.

An industrial design registration protects not only the specific design registered, but also any design not differing from it. The owner of the design is the only one who can apply for registration. The original creator or author of the design is the owner unless the design was created for another person for payment, such as in an employment situation, in which case the other person is the owner and should apply. The right to make, use and sell a design can be licensed within and throughout Canada.

The registration of an industrial design can usually be accomplished within six to twelve months. One important consideration, however, is that no registration can be obtained if the application is filed more than twelve months after publication of the design in Canada or elsewhere. Publication means making the design public or offering for commercial use and includes distributing samples of an article bearing the design, selling or exhibiting such articles for sale, publishing the design in advertising or other printed material, and public use of articles bearing the design.

Registration gives an exclusive right to make, sell, rent, or import for trade or business the design applied to any article for which it is registered for ten years.

Most countries, including Canada, belong to the Paris Convention. This international treaty allows a design applicant to claim priority in respect of an earlier filed design application. Applications filed in a Paris Convention country within six months of the filing date of the original application are treated as though they were filed on the original filing date.

Patents

The terms and conditions for receiving a patent in Canada are set out in federal patent legislation. To qualify as patentable, an invention must be novel and useful, and must constitute an unobvious step in the development of a new product. The invention may be any new and useful art, process, machine, manufacture, composition of matter, or improvement.

The basic principle of the legislation is that a patent is only granted to an original inventor or to his or her legal representatives. In addition, the exclusivity of a patent is granted on the basis of a first-to-file system. Because of the importance of the filing date of an application, an applicant should make every effort to file at least the minimum information permitted under the Patent Rules as early as possible. If a person has previously filed an application for a patent in another country, that application may have the same force and effect in Canada as if it had been filed in Canada. The person must be entitled to protection under a treaty or convention to which Canada is a party, and the country in which the original application was filed must give similar protection to citizens of Canada. The Canadian application must be filed within 12 months from the date of filing in the other country. No marking of the product is required to indicate the patent although it may be advantageous. However, it is an offence to falsely mark an article as patented if it is not patented in Canada.

For applications filed after October 1, 1989, the term of the patent is 20 years from the date of the filing of the application in Canada. A patent is infringed by the unauthorized trespass on the patentee's exclusive right to make, construct or use the invention or sell it to others for their use. A patentee may seek an injunction to stop the infringement and damages, or an accounting of the infringer's profits from the infringement.

Novelty has always been a condition of patentability in Canada. Therefore, any public disclosure of an invention in Canada or elsewhere before the filing date of a Canadian patent application on or before its priority date is a bar to patentability. However, if the disclosure is by the applicant or a person who has been informed by him or her of the invention, the applicant has a 12-month period in which to file an application.

Patents are only available for inventions that have a practical application and whose function is not dependent upon the exercise of judgement or professional skill. For example, patents are not available for mere scientific principles, abstract theorems, methods of medical treatment or, at least for the moment, methods of doing business.

While computer programmes *per se* are not patentable, many computer-software related inventions can be claimed as an integral part of another invention. In addition, there is recent jurisprudence which indicates that there may be copyright protection for the non-literal aspects of computer object or source code, for example in the structure or algorithm of the program.

For patented medicines, the legislation provides that where a company seeks to market a drug containing a medicine previously marketed by a patentee who has listed patents that contain claims for the medicine or for the use of the medicine in the prescribed manner, the company must issue an allegation stating why its sale of the drug will not infringe any of the subject patents. The company will not obtain health and safety approval to market its drug until its allegations have been litigated. In addition, the legislation provides price control powers to the Patented Medicine Prices Review Board. If the Board determines that a patentee obtained excess revenue by selling a drug at an excessive price, the Board will choose from among a list of remedies which can be directed against the patented or other medicine sold by the patentee.

For more information, see the CIPO website at www.cipo.gc.ca.

Trade-marks

A trade-mark is a mark or name which distinguishes the goods or services of a particular business from those of other businesses. An unregistered mark may be protected against use of a confusing mark by another person if the owner can establish that the public exclusively associates the mark with its goods or services, but the protection is limited to the geographical area in which distinctiveness is established. There are several advantages to registering a trade-mark under federal trademark legislation. The applicant is granted the exclusive right to use the mark throughout Canada, irrespective of the extent of use, and to prevent the use of a confusing mark. Registration provides proof of ownership and the date of first use set out in the registration (unless contradictory evidence is provided later). There is no obligation to demonstrate a reputation in association with the trade-mark in order to sustain an action.

An application to register a trade-mark may rely on one of several grounds. An applicant can file for a mark that is in use in Canada or for a mark that the applicant proposes to use in Canada. A foreign applicant may rely on its foreign registration, application, use or, in appropriate circumstances, the fact that the trade-mark used in the foreign country has been made known in Canada. The registration term is 15 years and may be renewed indefinitely. Proof of use is not required upon renewal. While there are no marking requirements, marking is prudent, especially where a mark is used under license. Marking uses symbols to indicate registration, such as ® (registered trade-mark) or ™ (trade-mark but not necessarily registered.)

Applications are examined by CIPO on both technical and substantive grounds. Once a trade-mark application has been examined, and all requirements or citations overcome, the application will be advertised. If no opposition is filed, or an opposition is unsuccessful or withdrawn, the applicant will then proceed to allowance. Upon payment of the registration fee (and providing a document attesting to use of the mark having taken place in Canada for an application filed on proposed use), a certificate of registration is then issued.

Registration may be refused on a number of bases including if the trade-mark is primarily merely the name or surname of an individual, the portrait or signature of a living person or one who has died within the preceding 30 years, if it is misleading as to the character and quality of the goods or services, if it is clearly descriptive of the business or goods it is associated with, if it is geographically descriptive or misdescriptive, if it is a name in any language of the relevant wares or services, if it is confusing with a registered trade-mark, if it is an official mark, or if it is scandalous. Descriptive trade-marks may become registerable if their use has become so extensive that they actually distinguish the wares or services in association with which they are used from wares or services offered by another.

Trade-marks may be assigned and it is prudent for assignments of the trade-mark registration or pending application trade-marks to be filed with CIPO.

Trade-marks may also be licensed to third parties. The legislation only requires that use of a licensed trade-mark be subject to the direct or indirect control of the trade-mark owner. A written license is recommended. It is not mandatory to register trade-mark license agreements. To the extent that the existence of the license is made public, there is a presumption that the use by the licensee of the trade-mark in question will not jeopardize the distinctiveness of the trade-mark. Use by a licensee without the control of the trade-mark owner or without disclosure of the license may result in the loss of the trade-mark's distinctiveness and the possible expungement of the mark.

Since the coming into force of the World Trade Organization Agreement, new rules concerning the registration of the names of wines and spirits have been enacted. Therefore, the use by a person who is not from that area of a protected geographical indication referring to a wine or a spirit is prohibited.

Any unauthorized use of a trade-mark may lead to civil liability and criminal penalties.

For more information, see the CIPO website at www.cipo.gc.ca.

Environmental Law

Canada, like other industrialized countries, has experienced an increase in awareness of environmental issues and, as a result, an increase in government regulation aimed at dealing with environmental matters. Although the federal, provincial and local levels of government share authority to legislate with respect to the environment, most environmental regulation is carried out at the provincial level. Inevitably there is some overlap of the levels of government.

Federal environmental legislation regulates all aspects of toxic substances including development, handling and transportation. Federal and provincial legislation deals with transportation of dangerous goods and hazardous products and affects the importing and transportation of goods and substances.

Ontario environmental legislation imposes a duty not to pollute (or discharge contaminants other than in accordance with relevant requirements and permits), a duty to report a spill immediately, and a duty to pay for the cleanup of the spill. The range of regulated contaminants is very broad, including such things as odour, noise and vibration in addition to solids, liquids and gases. Contaminants and their adverse effects are not limited to a finite list or to prescribed levels or concentrations. The legislation creates civil and criminal liability for the breach of its provisions and grants broad powers to the Ministry of the Environment of Ontario (www.ene.gov.on.ca) to enforce the legislation. The Minister can bring criminal or civil proceedings, issue orders, investigate, limit or prohibit releases or discharges, and order remediation. Ontario's occupational health and safety legislation imposes obligations on employers in respect of the use, storage, handling and manufacturing of controlled substances.

Under Ontario legislation, both present and past owners and occupiers of land are parties against which administrative orders can be issued, even if they did not cause the contamination of the property. The legislation provides standards, procedures and approval processes for the clean up of contaminated lands which may be necessary to obtain approval for development.

Compliance with the requirements of environmental legislation is mandatory for all corporations. In Ontario, officers and directors are required to keep themselves aware of their corporation's compliance with environmental law. Setting up a system for compliance with environmental law will provide a defence if an issue is raised about the corporation's environmental practices. Sanctions may be directed at the officers and directors of the corporation and not solely at the corporation itself, whether or not the corporation is charged.

In British Columbia, environmental legislation is very broad and extends to virtually all activity which contaminates or has the potential to contaminate the environment (air, land, water and all other external conditions which affect plants, animals and people). The legislation borrows heavily from state and federal legislation in the United States to establish what is commonly known as a "Polluter – Pay" regime. This regime has significant practical implications for light and heavy industrial businesses, land developers, users and transporters of hazardous materials and many other commercial activities. The key elements of the British Columbia environmental legislation are:

- Defining and identifying contaminated sites by establishing a public registry and a system of mandatory disclosure to increase the quality and the accessibility of environmentally-oriented information generally;
- Identifying responsible persons from among past and present owners, operators, producers and transporters to bear responsibility for the contamination and clean-up;
- Imposing absolute, retroactive and joint and several liability on responsible persons for clean-up costs incurred privately or by regulatory authorities; and
- Establishing a legislative basis for pollution abatement orders, pollution prevention orders, remediation orders and methods of cost recovery by which contaminating activity is controlled and paid for.

In British Columbia, the Minister responsible for the environment (www.gov.bc.ca) is also given extraordinary powers to declare states of environmental emergency and to take measures necessary to prevent impending hazardous events or to deal with environmentally hazardous events which have already occurred.

Environmental due diligence has become an important part of acquiring businesses or real estate in both Ontario and British Columbia. The system of compulsory disclosure, public registration and civil liability impacts past and present owners, operators and occupiers of land. Lenders will normally require evidence from third party professionals that the property is in compliance with all environmental laws. Specialized consultants are often retained to carry out site investigations and to assist with the development approval process.

Real Estate

Canada occupies an immense geographical area totalling approximately 9,976,000 square kilometres (3,851,000 square miles) with varying population densities. Canada offers ample opportunity for those who wish to acquire or deal in land.

Capacity to Buy, Hold and Sell Real Property

Individuals and corporations can acquire real property (land, buildings and interests in land) in Canada. A non-resident can acquire, hold and dispose of real property in the same way as a Canadian citizen or resident unless a province has restricted the right of non-residents to acquire land.

In Ontario, a corporation incorporated in another country must obtain an extra-provincial license to acquire, hold or convey real property, otherwise than by way of security, in the province. It can take from two to four weeks to obtain an extra-provincial license for a non-Canadian corporation. A non-Canadian corporation must also have an agent for service located in Ontario.

In British Columbia, it is recommended that a corporation incorporated outside of British Columbia that carries on business in British Columbia register under the *Business Corporations Act*. Whether a company carries on business in British Columbia is determined by a number of factors including the presence of an office, advertising, telephone listings and other indicators of commercial activity.

Forms of Land Ownership

Most land in Canada is held on a freehold/fee simple basis (full ownership of indefinite duration) rather than leasehold basis (an estate for a fixed period of time after which the estate reverts to the landlord, as is often the case in England).

Land can be owned by more than one person in one of two ways. In a joint tenancy, the owners have equal interests, cannot sell or convey their interest (without converting it to a tenancy in common) and have the right to each other's interest when one dies. In a tenancy in common, the owners can have equal or unequal interests, can sell or convey their interests, and on death ownership passes to the owner's heirs.

Condominiums

Real estate in Ontario may be condominiumized. After going through an approval process with the municipal government, the owner of land may register a condominium plan and a declaration to establish a condominium. In doing so, the land is subdivided into residential, commercial, parking and/or storage units and common elements. A non-share capital condominium corporation is established, whose members are the unit owners from time to time. Each unit owner has an appurtenant interest in the common elements of the condominium. In addition to standard freehold condominiums, there are a variety of types of condominiums in Ontario, including: (a) common elements condominiums, where the property of the corporation consists solely of common

elements without any units; (b) leasehold condominiums; and (c) vacant land condominiums, where vacant land is subdivided into units within the condominium plan with the ability to construct structures after the condominium has been registered. The British Columbia equivalent of condominium ownership is strata title.

Joint Ventures

Commercial properties may also be held in a joint venture. A joint venture is a relationship between two or more entities who have invested or propose to invest cash, property and expertise, and in some cases, propose to carry on business in concert with the desire to realize a gain or profit. There are several alternative structures through which joint ventures may be conducted. The three most common vehicles for such arrangements are single joint venture corporations, partnerships (both general and limited) and co-tenancies or co-ownerships.

Joint venture corporations are generally created with a specific investment or project in mind. The usual arrangement is that each joint venture party holds shares of the corporation and enters into a shareholders agreement to govern their corporate relationship. The advantages of joint venture corporations are essentially the same as those enjoyed by corporations in general. They offer limited liability, ease of transfer of joint venture interests, ease of administration and, as the arrangement is governed by a set of well-understood legal and accounting principles, there is certainty of rights and obligations. There are some advantageous tax considerations for joint venture corporations. Participants may roll real estate into the corporation on a tax-deferred basis to avoid a taxable event on the formation of the corporation. There is also an advantage where participants propose to sell their interest: a transfer of shares does not attract the Ontario land transfer tax. The predominant drawback is that shareholders bear income tax at two levels, on the income of the corporation and then on income as shareholder.

Joint venturers may also hold property in either a general or a limited partnership. A partnership is not a separate legal entity, but rather a relationship that subsists between persons carrying on business in common with a view to profit. A partnership agreement is typically used to allocate profits and losses between the partners. For land transfer tax purposes, each partner is treated as having an interest in the underlying real estate. Partnerships generally have greater advantages than joint venture corporations. It is possible to flow losses and profits to partners and to use some of those to off-set profits and losses from other projects. One of the greatest advantages of a partnership is its flexibility. Subject to income tax legislation, the structure allows for a preferential, varying or other non-proportionate share of the profits. Partnerships also attract many of the disadvantages associated with joint venture corporations. All capital cost allowance deductions must be claimed at the partnership level; therefore, each partner is not free to choose what best suits its own needs. Other disadvantages to partnerships are that partners are constrained in their independence by their fiduciary obligations to each other, and there is unlimited liability. The option of limited partnership is available but limited partners cannot participate in control and management of the business.

Real estate joint ventures are often structured as tenancies in common. A tenancy in common is a relationship between two or more parties who have direct or indirect ownership interest in property.

The ownership is undivided, entitling each co-tenant to an equal right of use and possession. Usually, co-tenants will enter into a co-ownership agreement which dictates the extent to which each party is at liberty to deal with its interest by way of transfer, mortgage, lease or otherwise without interference by the other co-tenants. In the absence of a contrary provision in the agreement, every co-tenant has a right to receive a proportionate share but has no obligation to fund any portion of the costs. Unlike partnerships, there is no responsibility for the debts of other co-tenants, no right to act as agent for any other co-tenant, and no fiduciary obligations owed to any other co-tenants. Many disadvantages of the corporate vehicle are not present where the joint venture property is held by participants in a co-ownership. Each co-tenant is an entity unto itself. Therefore, the tax return of each co-tenant simply reports the co-tenant's percentage of gross revenues and profits, and each co-owner can claim its own capital cost deductions on its own percentage interest in the building. Each co-tenant is entitled to sell or finance its own interest in the joint venture property. Furthermore, where property held by one party before it is contributed to the joint venture appreciates in value, there is a taxable sale only to the extent of the undivided interest being sold to the other joint venture parties. Co-tenancies have the benefit of partial limited liability in that no co-owner is liable for the debts of co-venturers; and co-tenants have great latitude in their dealings as each is at liberty to compete with the project in operation. However, depending on the circumstances, co-tenants can be held to be partners.

Agreements to Buy, Sell and Lease Land

Land is bought and sold pursuant to written agreements of purchase and sale between the buyer and seller. In Ontario, the Ontario Real Estate Board's standard form agreement of purchase and sale is typically used for most transactions for single-family residential property and some simple commercial transactions (supplemented by additional provisions in schedules). More complex transactions are effected by way of agreements prepared by the parties and their counsel and typically incorporate terms to address, among other things, the due diligence process, title to the property, covenants, representations and warranties from the parties and various conditions to the completion of the transaction. Similarly, land is typically leased pursuant to written agreements. Parties may begin with an offer to lease setting out the basic terms of the tenancy and contemplating the execution of a formal lease at some point in the future (usually before the tenant takes occupancy). Alternatively, the parties may go straight to a formal lease. Commercial leases are typically fully net to the landlord (i.e. all costs related to the premises are passed on to the tenant in addition to the basic or minimum rent payable by the tenant); gross leases (i.e. where rent is inclusive of all costs and recoveries payable by the tenant) or something between the two. Typically, the lease documentation will set out the premises demised, the term of the tenancy, the rent, the recoveries that are to be passed on to the tenant, the various covenants, representations and warranties, events of default, and the landlord's remedies if the tenant defaults.

Conveyancing

Title to land in Ontario is recorded in 54 separate land registry offices. Most of the records kept in these offices are automated and available remotely. Ontario is the first jurisdiction in the world to provide electronic registration of land-related documents. Specific legislation has been enacted to remove the requirement for traditional paper documents and signatures. Rather, electronic documents are used and signatures are electronically affixed by the parties' representatives who are

licensed users of Teraview, the software used to access the Province's electronic registry system. In order to do so, their representatives are authorized to electronically sign, complete and register the documents. In some circumstances, statements of law are required; only Ontario lawyers in good standing with the Province's law society who are licensed Teraview users (and not, for example, paralegals) may make such statements. Documents prepared and submitted by authorized users of the Teraview system on behalf of other parties are deemed to be documents of those other parties and not of the authorized users.

Title Opinions and Title Insurance

Traditionally, in Canada purchasers and lenders have received a solicitor's title opinion in respect of any property that they are acquiring or over which they are taking security. To give such an opinion, the solicitor needed to examine title to the property and make a series of off-title searches. If a defect in title was not addressed in such an opinion, and to the extent that the purchaser or lender suffered a loss as a result, it would be necessary for the purchaser or lender to sue the lawyer for negligence or breach of contract.

However, in recent years, Canadian lenders and, to a growing extent, purchasers, are more apt to accept title insurance policies in lieu of a solicitor's title opinion. In the United States, title insurance is the accepted norm. Title insurance is issued by a title insurance company licensed under provincial insurance legislation to issue title insurance policies. The title insurance policy provides two distinct forms of protection. The primary one is the duty to indemnify: the insurer will reimburse the insured for actual loss only. The second is called the duty to defend, and it is also contained in many other types of insurance policies. This means the insurance company must pay legal defence costs and related costs and expenses in the event that a claim threatens the insured's title or mortgage.

Land Use Planning

In Canada, land use is subject to regulation and control by provinces and municipalities. Land use planning affects everything from the location where homes and businesses can be built to whether an owner can subdivide a property.

Land use planning is generally supervised at the provincial level, but significant planning functions have been delegated to the various regional governments and municipalities in Ontario and British Columbia. The provinces generally set policy and goals. Regional governments (where they exist) and municipalities control land use through such instruments as an official plan or official community plan (a long-range general plan for a community) and zoning by-laws (rules which regulate use, height, density, and other performance standards such as parking). For a purchaser of land, the provisions of both the official plan and zoning by-law that apply to the property are crucial as they determine the permitted uses and other development standards applicable to the property.

In Ontario, most municipalities require that site plans be approved before the construction of any new development. Site plans set out the details of a development (including the location of buildings and related facilities, such as landscaping, services, driveways and parking spaces). Most municipalities require the developer to enter into an agreement ensuring construction and ongoing maintenance in accordance with the site plans. In addition, municipalities may impose charges

against land to pay for the increased capital costs of servicing new development. When considering development in a particular municipality, it is advisable to determine whether a development charge bylaw has been, or is in the process of being, enacted.

Any subdivision of land in Ontario requires the consent of the municipal or regional authority. The developer may be required to submit a draft plan of subdivision for approval. Normally, the municipality will require the developer to enter into development agreements agreeing to provide sewers, roads and other services for the subdivision, the dedication of certain lands for public use and certain other public benefits.

Finally, other special legislation and regulations in Ontario may affect the use and/or development of certain lands, including, for example, heritage protection legislation and regulations applicable to designated environmental regions of the Province (e.g., the Niagara Escarpment, the Oak Ridges Moraine and the Greenbelt).

In British Columbia, planning functions and control of the development process are largely within the ambit of the various regional governments and municipalities. The control of land development generally includes regulation of the subdivision of land, the use and density of the project, the size and location of buildings and the provision of basic services. Development approval often involves some negotiation with planning departments. It is therefore essential that a developer work closely with the planning officials in each municipality. For most commercial and other large developments, professional consultants are retained at an early stage to assist in this process.

Environmental Concerns

Anyone intending to purchase real estate in Canada should be alert to environmental legislation that can affect the use of property. For more information, see the "Environmental Law" section of this guide.

Property Taxes and Fees

A variety of taxes apply to the sale and ownership of land in Canada. Tax considerations are also discussed in our companion publication, the *Canadian Corporate Tax Guide*.

Land Transfer Tax

Both Ontario and British Columbia impose tax on transfers of real property.

In Ontario, land transfer tax applies to the registration of a transfer of land. For these purposes land includes a lease where the unexpired term of the lease (including revisions and extensions) exceeds 50 years. The tax is 0.5% of the value being paid for the land up to $55,000, 1% of the next $195,000 in value, and 1.5% of the value over $250,000. If the land contains at least one and not more than two single-family residences, a 0.5% surtax on the amount of the value which exceeds $400,000 is imposed. In addition, any unregistered transfer of a beneficial interest in land gives rise to land transfer tax. There are exceptions, such as for certain tax-driven intercorporate transfers.

British Columbia levies a tax on registration of most transfers of title to real estate regardless of the commercial, industrial or residential use of the land. Tax is payable at the time of registration at the rate of 1% on the first $200,000 of fair market value and 2% on the balance. Registration of long term leases with terms (including renewal options) exceeding 30 years is subject to tax computed by a valuation formula set out in regulations.

In Ontario and British Columbia, there are no special land transfer taxes on the transfer of lands to non-residents.

Goods and Services Tax

Canada's goods and services tax (GST) applies to all supplies of Canadian real property, other than sales of used residential real estate and rent of residential real estate. In a purchase and sale transaction involving commercial real property, where a purchaser is registered for GST purposes, special rules are generally applicable so that the purchaser is not required to pay GST in connection with the acquisition of the property.

Profits from the Sale of Land

A non-resident is taxed in Canada on the same basis as a Canadian resident on gains realized on the disposition of real estate in Canada, whether the gains are treated as business income or capital gains. Generally, only one half of capital gains are included in income while the entire gain treated as business income is subject to tax. To ensure that tax on the disposition of land is collected, a purchaser of real estate from a non-resident will normally require the vendor to provide a clearance certificate from the Canada Revenue Agency in advance of closing. Otherwise, the purchaser will withhold a portion of the price and remit it to the Receiver General on account of the non-resident vendor's Canadian tax liability.

Income earned by a non-resident from renting real property in Canada is subject to different tax regimes depending upon whether the non-resident is earning passive rental income or carrying on business in Canada. A non-resident earning property income is subject to Canadian tax equal to 25% of the gross rents. A non-resident carrying on business in Canada (or a non-resident earning property income that files the requisite election) is taxed at approximately 34% on its net real income.

Municipal Taxes

Municipalities in Canada collect taxes on real property in order to fund a wide variety of services. Property owners pay municipal taxes every year based on the market value of their property. The tax rates are set by municipal authorities and local school boards. In Ontario and British Columbia, every parcel of land is assessed annually for municipal tax purposes. In Ontario, assessments are conducted by the Municipal Property Assessment Corporation (MPAC) (www.mpac.ca). Property owners can request reconsideration of their assessment by MPAC or appeal their assessment to the Assessment Review Board, an independent tribunal. In British Columbia, assessments are conducted by BC Assessment (www.bcassessment.bc.ca).

Residential Rent Controls

Provinces across Canada have created legislation to protect residential tenants. In some cases, this legislation limits the amount of rent or rent increases that a landlord can impose.

In Ontario, no rent control is imposed on landlords when a unit is first rented to a tenant. A landlord and a tenant are free to negotiate a market rent and the services that are included in the rent. However, once the tenant has entered into a lease, tenant protection legislation limits annual rent increases. Once a tenant moves in, the rent will not increase for the next twelve months. The landlord can then increase rent once a year by the rent control guideline percentage. The guideline is determined by the Minister of Municipal Affairs and Housing for each calendar year and is available on the Ontario Rental Housing Tribunal website at www.orht.gov.on.ca. A landlord can charge a rental increase that is above the guideline if the landlord and tenant have agreed to a higher increase because of unit-specific capital expenditure work or new services provided by the landlord or if the landlord has successfully applied to the Tribunal for an order for an above-guideline increase to cover certain additional costs. The Tribunal deals with all disputes in the residential rental housing sector, including rent control matters.

In British Columbia, a landlord is generally precluded by residential tenancy legislation from directly or indirectly increasing rent until twelve months after the last rental increase. A landlord can increase the rent annually by an amount equal to the inflation rate plus two percent. The annual rate is available on the Residential Tenancy Office website at www.rto.gov.bc.ca. A landlord can apply to an arbitrator to approve a higher rent if the landlord has completed significant repairs or renovations, incurred a financial loss from an extraordinary increase in operating expenses, or incurred a financial loss from an increase in financing costs that could not have been reasonably foreseen. Vacancy rates in larger population centres such as Vancouver are relatively low, and the effect of combined provincial and municipal regulation is to limit or prohibit the conversion of rental accommodation to individual strata lots for resale.

Regulation of Real Estate Brokers

Real estate agents must be licensed in order to trade in real estate in Canada.

In Ontario, real estate brokers are governed by legislation administered by the Real Estate Council of Ontario (RECO) (www.reco.on.ca) on behalf of the Ministry of Consumer and Commercial Relations. Subject to specific exemptions, the legislation requires a person who wishes to trade in real estate (which is broadly defined) as a broker or a salesperson (a person employed, appointed or authorized by a broker to trade in real estate) to be registered in that capacity. A person cannot act on behalf of a corporation or partnership in connection with a trade unless the person and the corporation or partnership are registered as brokers. Registration is a prerequisite to recovering a commission or remuneration in connection with a trade. A registered broker or salesperson must be a Canadian resident and may not trade in Ontario real estate from an office outside Ontario. Registration may be refused on the basis of financial instability or past conduct and can be subject to conditions. Brokers and salespersons must comply with not only the legislation, but also the terms and conditions of membership in RECO, including compliance with its Code of Ethics. RECO handles consumer complaints against its members. While new legislation governing real estate

brokers has been enacted in Ontario, it has not yet been proclaimed into law. RECO expects it to be proclaimed prior to April, 2006.

In British Columbia, an individual applicant for a real estate license must be over 18 years old to be a salesperson or 21 years old to be an agent, of good reputation, have served as a licensed agent or salesman under the legislation for two of five preceding years, and to have passed the required courses and exams. A corporate applicant must be financially responsible, have an approved corporate name, and submit the name of an individual nominee who has the qualifications required of an individual broker who is actively engaged in the work of the corporation. Only licensed real estate agents and sales persons may collect rents, negotiate real estate security or offer land owned by another person for sale or lease in British Columbia, and arrangements for sharing commissions and fees are regulated. Real estate agents in British Columbia are licensed by the Real Estate Council of British Columbia (RECBC) (www.recbc.ca). Information about other provinces can be obtained through the Real Estate Institute of Canada's website at www.reic.ca.

Regulation of Mortgage Brokers

Mortgage brokers in most provinces are governed by provincial legislation and regulations. In Ontario and British Columbia, a mortgage broker is a person who carries on the business of lending money on the security of real estate, whether the money is the person's own money or that of another, and includes a person who holds itself out or advertises itself as being a mortgage broker or who carries on the business of dealing in mortgages. Excluded from most legislation are Canadian insurance and trust companies, banks, credit unions (in Ontario) and liquidators and trustees in bankruptcy (in British Columbia). For more information about mortgage brokers, see the Canadian Institute of Mortgage Brokers and Lenders website at www.cimbl.ca.

Goodmans LLP - Toronto

250 Yonge Street, Suite 2400, Toronto, Ontario M5B 2M6
Telephone: 416-979-2211 Fax: 416-979-1234

Goodmans - Vancouver

355 Burrard Street, Suite 1900, Vancouver, British Columbia V6C 2G8
Telephone: 604-682-7737 Fax: 604-682-7131

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Goodmans LLP

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