Doing Business in Canada, Eh?

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We encourage you to review this helpful guide to doing business in Canada. If you have any questions or comments, we would be happy to hear from you. Please contact:

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I. Introduction

This guide has been tailored to address the key considerations facing the entrepreneur at the helm of a privately held midsize company who is thinking about doing business in Canada and it's most populated province, Ontario.

For the most part, the information is limited to the laws of Canada and Ontario. Where other provinces provide alternatives that address some specific issues typically faced by foreign enterprises looking to doing business in Ontario, this guide will discuss the alternatives available in that province. Public markets and considerations specific to public companies are not addressed in this guide.

The material contained in this guide is general in nature and is neither exhaustive in the scope of each topic discussed nor in the issues that are raised. The reader should use this guide only as an introduction to the laws of Canada and Ontario affecting persons planning to do business in Canada. The reader should seek the advice of qualified legal counsel before relying on any information provided in this guide.[1]

The law in this guide is stated as of September 1, 2006.

We trust that you will find our guide informative and we look forward to hearing from you should you have any questions or require any advice on doing business or investing in Canada.

II. Background

Canada has a federal system of government, with a national (or federal) government and ten provincial governments. The federal and provincial governments enact laws based on the division of powers set out in Canada's constitution. In some areas, the division of jurisdiction is blurred and both federal and provincial laws apply. Canada has three northern territories. While territorial governments have widely delegated authority, the territories fall under exclusive federal jurisdiction. In addition, municipal governments govern local cities and towns. Often local regions or counties add a further level of government at the municipal level.

There is a great deal of uniformity between the laws and regulations of the provinces. However, each province does have its unique issues. Most notably, while Canada's federal law and the laws of nine of Canada's ten provinces are founded on the judge-made law of the English common law, the law in the province of Québec is founded on the codified civil law rooted in its French legal tradition.

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[1] This guide is intended to provide only general guidance and does not constitute the opinion of the authors or Robins, Appleby & Taub LLP.

Canada has two official languages, English and French. English is the first language of business and government in Canada, other than in the province of Québec, where the French language is predominant and the language of government. Many English language services are also available from the government of Québec. The federal government and the government of the province of New Brunswick provide all services in both English and French. Some French language services are also available from other provincial governments, including Ontario. The province of Québec has enacted the Charter of the French Language, which mandates the use of French in commerce and on commercial signs.

III. Choosing the Right Business Organization

While there are a number of entities through which businesses can be carried on (such as corporations, sole proprietorships, partnerships and trusts), non-residents who wish to establish a business in Canada typically operate in Canada through a branch of their foreign corporation or through a Canadian subsidiary. While we will summarize some of the considerations regarding branch operations, for the most part we will deal with conducting business through a Canadian corporate entity. Alternatives to a corporate vehicle will be referred to further below.

1. Corporations

A business corporation is the most common form under which foreign enterprises conduct Canadian operations.

- Corporations can be incorporated under the federal statute or under the statute of any of the provinces.
- A federal corporation is entitled to operate under its name throughout Canada, while the exclusivity of the use of the name of a provincially incorporated corporation is not assured in other provinces.
- Federal and extra-provincial corporations may be required to register in some provinces (see paragraph III.2(b) below).
- A federal corporation may operate in Ontario and Québec without an extra-provincial licence.
- An Ontario corporation may operate in Québec without an extra-provincial licence.
- Notwithstanding that extra-provincial licences may not be required, annual information filing is required.

(a) *Private Companies*

A private company is a corporation whose articles (the company's charter document):

- restrict the right to transfer shares in the company;

- restrict the number of the shareholders of the company to not more than fifty shareholders. When calculating the number of shareholders, shareholders who are in the employment of the company and shareholders who were shareholders during employment and have continued after termination of that employment to be shareholders of the company are excluded. Two or more persons who are the joint registered owners of one or more shares are counted as one shareholder; and

- prohibit an invitation to the public to subscribe for securities issued by the company.

Private companies are exempt from the filing and disclosure requirements of public companies under securities legislation and public market regulation. A wholly owned subsidiary of a foreign parent having the characteristics listed above will be treated as a private company.

(b) ***Directors***

- For Ontario corporations, a majority of the directors of the corporation must be resident Canadians. If there is only one director, that person must be a resident Canadian and if there are two directors, then at least one must be a resident Canadian.

- For federal corporations, twenty-five percent of the directors of the corporation must be resident Canadians. If there are less than four directors, at least one of them must be a resident Canadian.

- A resident Canadian is a Canadian citizen or landed immigrant permanently resident in Canada. For the purposes of a federal corporation, landed immigrants are no longer resident Canadians if they do not become Canadian citizens once they are eligible. Landed immigrants are usually eligible for Canadian citizenship after three years of permanent residence in Canada.

Neither of the provinces of British Columbia or Nova Scotia have resident Canadian director requirements. Incorporating under one of these jurisdictions avoids the need for outside resident Canadian directors, if the foreign enterprise does not have directors that are resident Canadians from within its organization. A corporation need not have its operations located in the province of incorporation. Therefore, if the jurisdiction of incorporation is British Columbia or Nova Scotia, the corporation is free to carry on business principally or exclusively in Ontario (Nova Scotia companies must register extra-provincially in Ontario).

(c) ***Officers***

- There are no restrictions on appointing officers. Officers are appointed by the directors of the corporation.

(d) ***Directors' and Officers' Liability***

Under specific statutes and occasionally at common law, directors and officers of corporations can be directly and personally liable for certain liabilities of the corporation. The corporation may indemnify the directors and officers from such liabilities provided they act in good faith. Typically, the general by-law of a corporation will contain such an indemnification. Directors' and officers' liability insurance, which insures against the liabilities faced by directors and officers acting *bona fide*, is available from commercial insurers depending on the financial position of the corporation. The premium cost is set commensurate with the policy limit and the degree of anticipated risk.

Among other potential liabilities, directors face direct personal liability for the following:

- up to 6 months' unpaid wages for employees of the corporation and for unpaid vacation pay accruing during a twelve month period;
- if any of the following actions were approved by the director and performed contrary to the provisions of the *Business Corporations Act* (Ontario) and would result in the insolvency of the corporation:
  - any liability of the corporation resulting from the financial assistance by the corporation to another corporation;
  - and any liability of the corporation to its creditors resulting from the payment of dividends by the corporation, payment to a director from the corporation on an indemnity, or other payments to a shareholder;
- unremitted source deductions owed by the corporation (employers are required to deduct income tax, employment insurance premiums, Canada Pension Plan contributions, and health care levies directly from an employee's remuneration as agent for the Crown [federal and provincial governments] and remit such deductions to the Canada Revenue Agency the Canadian federal taxing authority]);
- unremitted goods and services tax owed by the corporation (suppliers of goods and services are required to collect goods and services tax (see paragraph IV.3) from all recipients of most goods or services as agent for the Crown and remit the amount collected or which ought to have been collected to [the Canada Revenue Agency]);
- uncollected and unremitted retail sales tax levied by a provincial government;
- restoration orders under environmental legislation, as well as civil and quasi-criminal penalties for illegal storage or discharge of environmental

contaminants or failing to exercise reasonable care to prevent illegal storage or discharge; and

- workplace health and safety violations.

In certain circumstances, directors and officers can avail themselves of a due diligence defence if they acted in a way to either avoid impropriety or in reliance on information from officers or other directors, after reasonable inquiry. Some liabilities, such as restoration orders under environmental legislation, permit no defences.

Directors and officers can also be liable to the corporation for failing to exercise the standard of care in corporate governance required of them. Directors and officers are required to act in the best interest of the corporation. There has also been an increase in exposure to third parties under tort law for directors whose management of a corporation cause damages, such as those caused by breach of contract by the corporation.

(e) ***Share Capital***

- There are no restrictions on the nationality, residency or citizenship of shareholders under corporate law. However, some restrictions exist under other laws relating to foreign investment control and relating to certain industries, such as cultural industries, banking and transportation (See paragraph V).

- Shares are issued without par or nominal value and must be fully paid for when issued.

- Share capital may be authorized in a specific or an unlimited number of shares.

- Share capital can be divided amongst any number of classes and series of shares, provided that at least one class of shares entitles the holder to vote and at least one class of shares entitles the holder to the remaining property of the corporation upon its dissolution.

2. Branch Offices

(a) ***Operating through a Branch Office***

A foreign enterprise can operate in Canada through a branch office. In the situation when the foreign corporation is carrying on the business in Canada together with a resident Canadian, a partnership can be established for such purpose.

(b) ***Extra-provincial Registration***

A non-Ontario corporation that operates through an office or premises in Ontario that holds an interest in real property (except as security) or otherwise carries on

business in Ontario must register extra-provincially in Ontario. A corporation that merely takes orders or buys or sells wares or services in Ontario is not required to register extra-provincially. Corporations from Canadian jurisdictions do not have to register extra-provincially in Ontario (although, an information filing is required).

3. Sales Representative and Canadian Distributors

A foreign enterprise may conduct its sales and distribution in Canada through sales representatives and distributors. However, every non-resident that conducts business in Canada is required to pay Canadian income tax on income earned in Canada. This general rule may be overridden by treaty. The Canada-U.S. Tax Treaty provides for an exemption for the taxation of the Canadian business income of a U.S. resident if the U.S. resident does not have a permanent establishment in Canada (see paragraph III.7(a)). Proper planning before establishing a sales representative or distributor in Canada can assist in avoiding the designation of permanent establishment status.

4. Partnerships and Limited Partnerships

Under provincial law, partnerships may be created to carry on Canadian activity by written agreement among the partners. A partnership is not a separate legal person from its partners, as a corporation is to its shareholders. Profits and losses of the partnership will flow through to the partner. Partners are liable for the obligations of the partnership. Generally, limited partners in a limited partnership have limited liability to creditors of the limited partnership. A limited partnership is composed of at least one general partner who has management and control of the limited partnership. It will also have any number of limited partners who are not involved in the management of the limited partnership. The general partner's liability is unlimited. However, so long as the limited partners do not take part in the control of the business of the partnership, the limited partners' liability extends only to the capital contribution to the limited partnership that they have made or agreed to make and their share in the profits of the limited partnership.

5. Joint Ventures, Co-tenancies and Syndicates

By agreement, two or more parties, including non-residents, can conduct business as a joint venture, own property in common or conduct a syndicated transaction. Parties to the joint venture, co-tenancy or syndication are independent legal parties. There is no legislative framework specifically governing joint ventures, co-tenancies or syndications. Parties entering into these types of business arrangements are typically governed by agreements that deal with decision-making, financial matters, restrictions against transfers of equity interests, exit mechanisms and procedures to settle disputes.

6. Private Placements

The Ontario Securities Commission extensively regulates public markets, companies issuing equities on public markets in Ontario and dealers in public equities in Ontario in a similar manner to the U.S. Securities and Exchange Commission.

Ontario's *Securities Act* exempts certain corporate issues of securities made in respect of the private placement of funds from disclosure and registration requirements. The issuer is merely required to provide a generic information statement to investors at least four days before the investment. The "Closely-held Issuer" exemption enables issuers, not already public companies, to raise a "lifetime maximum" of CAD$3 million dollars in any number of transactions from up to 35 "unaccredited investors". The 35 "unaccredited investor" limit excludes executives or employees who become investors through remuneration or incentive programs. Investors can resell their securities to a new unaccredited investor up to the 35 investor limit. An additional exemption is available to "accredited investors", who are specified investors under the Act, such as large institutional investors and wealthy individuals (those who (i) jointly with their spouse have a net worth in excess of CAD$1 million dollars; or (ii) an annual income in excess of CAD$200,000.00 in the last two years; or (iii) an annual aggregate income with their spouse in excess of CAD$300,000.00).

7. Tax Considerations

(a) *Branch Office*

A foreign enterprise operating through a branch office in Canada will be treated as a non-resident. If the non-resident is carrying on business in Canada, it will be taxed on its activities in Canada. If the operations are conducted through a "permanent establishment" in Canada, it will be taxed on the income derived from the permanent establishment similar to a Canadian resident. A permanent establishment includes a branch office or other such facility located in Canada. In instances where Canada has a bilateral tax treaty with other countries, residents of those countries may be exempt from tax on profits from business carried on in Canada unless the non-resident has a "permanent establishment" in Canada. The *Canada – United States Tax Convention 1980* ("**Can-U.S. Tax Treaty**"), provides such an exemption.

Under the provisions of the *Income Tax Act* (Canada) branch operations are subject to a 25% branch tax on the after-tax-earnings of the Canadian branch after deducting earnings re-invested in the Canadian branch. The rate of branch tax is reduced under many bilateral treaties. Under the Can-U.S. Tax Treaty, the branch tax is reduced to 5% (after allowing for a one time exemption of CAD$500,000 of profits).

Operating a Canadian branch office can expose the non-resident to other consequences, both desirable and undesirable:

- difficulties arise in satisfying Canadian taxing authorities and the home taxing authority of the non-resident on what income originates from activities in Canada;
- the books of the non-resident, both in Canada and outside Canada, are open to audit by the Canadian taxing authorities; and
- losses experienced at the Canadian branch level will usually be deductible in the non-resident's country of residence. The entitlement is reduced and ultimately eliminated for large corporations.

(b) *Canadian Subsidiary Corporation*

A Canadian corporation subsidiary to a foreign parent is a Canadian resident and taxed on its worldwide income. A Canadian controlled private corporation ("**CCPC**") is subject to a lower tax rate than a non-CCPC corporation on the first CAD$300,000.00 (will increase to $400,000.00 as of January 1, 2007) of income for federal income tax purposes and on the first CAD$400,000.00 for Ontario income tax purposes, if applicable. Generally, a corporation qualifies as a CCPC provided that it is not controlled directly or indirectly by one or more non-residents of Canada or public companies. Arrangements that give the non-residents or the public company control in fact will result in the corporation not qualifying as a CCPC. Therefore, non-residents that structure businesses in Canada with the participation of Canadian residents should consider whether a corporation can be structured as a CCPC.

(c) *Unlimited Liability Companies*

Nova Scotia and Alberta allow the incorporation of an unlimited liability company (ULC). An ULC also acts as a corporation for the purposes of Canadian law, but acts as a flow through of profits and losses to its parent under U.S. tax law. The shareholders of an Alberta ULC are liable to the creditors of the ULC, while shareholders of a Nova Scotia ULC may participate in the dissolution of the ULC only once creditors of the ULC have been paid. Under U.S. tax law, a ULC may be considered, at its option, an "eligible entity". As an "eligible entity", it is taxed in the U.S. as a branch office, if there is a single shareholder, and as a partnership, if there is more then one shareholder. Of course, the treatment of Nova Scotia or Alberta unlimited liability companies under U.S. tax lax should be reviewed with your U.S. tax adviser. A Nova Scotia company and an Alberta company are free to operate throughout Canada, provided that they register extra-provincially if required by the respective province.

8. Withholding Tax

Both branch offices and Canadian corporate subsidiaries will be affected by a withholding tax of 25% (reduced under the Can-U.S. Treaty to 10%-15%) on certain types of income. In the case of a branch office, customers are required to withhold tax on certain payments to the branch, including rent, interest and royalties. Canadian subsidiaries are required to withhold tax on dividends and other payments to their foreign parents, such as rents, interest and royalties. Typically, non-residents do not want Canadian customers to be subject to a withholding tax obligation. This will often influence their decision to carry on business through a Canadian subsidiary. Normally, withholding taxes are credited to the tax liability of the non-resident in calculating its tax in its country of residency. With respect to dividends from a Canadian subsidiary to its foreign parent, the Can-U.S. Tax Treaty reduces withholding tax to 5% where the parent is a corporation owning at least 10% of the voting shares of the Canadian subsidiary. Otherwise, the rate is 15%. In addition to the tax paid in Canada on its profits, there is an additional branch tax, as described above. This results in equivalency for Canadian branch operations of the foreign corporation.

9. Capitalization: Shares or Debt

(a) *Shares*

Canadian corporations can be capitalized with equity represented by shares in the corporation. The incorporators have wide latitude to design share capital with various rights and priorities concerning voting, dividends, participation on dissolution, redemption, retraction and purchase for cancellation. Initial capital can be returned to shareholders tax free. Shareholders have a proportionate right to the distribution of the corporation's assets on dissolution. Minority shareholders typically cannot prevent the issuance of additional shares. However, protection from dilution of a shareholder's interest can be controlled by a shareholders' agreement.

(b) *Debt*

Canadian corporations can be capitalized by debt through shareholder and third party loans. Withholding taxes may apply to interest paid to non-resident lenders (see paragraph III.8). This can be avoided in some instances with some planning. For example, interest paid by a Canadian corporation to a non-resident who deals at arm's length with the Canadian corporation (a controlling shareholder or related parties are deemed not to deal at arm's length) may be exempt from Canadian withholding tax where the term of the loan exceeds five years and the lender cannot require the borrower to repay more than 25% of the principal during that period, except in case of default. In most cases, the corporation's interest expense can be deducted from income for Canadian tax purposes. However where the loan is from a significant non-resident shareholder (25% or more of the voting shares) interest paid on debt that exceeds a 2:1 debt equity ratio will not be deductible to the borrower. Principal can be returned to the lender tax free.

Absent any restriction to the contrary in the corporation's articles or by-laws, a corporation may grant security over its assets and grant guarantees.

IV. Taxation

1. Income Tax

(a) *Income*

A corporation incorporated in Canada is resident in Canada for Canadian income tax purposes and is taxed in Canada on its worldwide income. Income is essentially profits from the company's business determined in accordance with Canadian generally accepted accounting principles (GAAP) and the provisions of the *Income Tax Act* (Canada). A branch of a foreign corporation carrying on business in Canada through a permanent establishment will also pay tax on its income earned in Canada in substantially the same manner as a resident Canadian corporation. In the case of a partnership, profits and losses are determined at the partnership level and are reported for tax purposes by the partners on the basis of their respective allocations. Partnerships,

therefore, are not taxpayers. There are issues (including with respect to withholding tax) where a partnership includes non-residents, however these are beyond the scope of this article.

Individuals resident in Canada are taxed on their worldwide income. Income tax is assessed for both federal and provincial income taxes.

(b) *Capital Cost Allowance*

Under the *Income Tax Act* (Canada), depreciable capital property is amortized under a system known as capital cost allowance. All depreciable property, patents and other intangible property with a finite life span are classified by regulation. Each class has a maximum rate of deduction allowed for the depreciation of the property which may or may not relate to the useful life of the item. The rate for the class is applied to the total capital cost of all property in that class to determine the maximum deduction. Generally, the capital cost allowance is available for owned assets only and not leased assets. Seventy-five percent of the value of intangible capital assets, such as trade-mark licenses, may be amortized at 7% per annum on a declining balance basis.

(c) *Losses*

Operating losses can be used to reduce income regardless of the source of the loss or income. Losses may be carried back three years and carried forward twenty years. Losses may be lost upon the change of control of a corporation. There are no consolidated income tax returns in Canada, so generally the losses of one corporation cannot be used to offset profits of another corporation.

(d) *Capital Gains*

One half of the gains realized from the sale of capital property are included in income and taxed at normal rates. One half of losses realized from the sale of capital property may be used to reduce the realized gains before they are included in income. Capital losses can be carried back three years and forward indefinitely. Capital losses are lost upon the change of control of a corporation.

(e) *Dividends*

Corporations may return a shareholder's investment tax free up to the amount of the paid-up capital (PUC) for each share. The PUC in respect of a share is the average of all consideration paid to the corporation for the issuance of all the shares in the same class. All other distributions of any kind are considered for tax purposes to be a dividend.

Dividends from Canadian resident corporations received by Canadian resident individuals are subject to a gross-up dividend for credit system, which attempts to integrate the corporate and personal dual taxes. In effect, the highest combined federal and Ontario tax to individuals on payment of dividends is approximately 31.34%, which is preferential to the general combined highest marginal rate for individuals on general

income of 46.41%. Inter-corporate dividends between Canadian corporations are generally tax free. Dividends to foreign shareholders are subject to withholding tax, as noted above (see paragraph III.8).

"Eligible dividends" are those dividends paid by a Canadian Controlled Private Corporation (see paragraph III.7(b)) on income taxed at the general corporate tax rate. These dividends have a combined income tax rate of 25.09% for 2006. It is proposed in the current federal budget that this rate will gradually decrease to 22.38% by 2010.

(f) ***Provincial Income Taxes***

Income tax has both a federal and a provincial component. The provincial income tax rate varies by province and is payable by companies with permanent establishments in that province. Companies with permanent establishments in more than one province pay tax to each province based on a formula related to payroll and revenues associated with each permanent establishment.

(g) ***Foreign Tax Credits***

A resident taxpayer is typically entitled to credit against income taxes paid in a foreign jurisdiction on income derived outside of Canada up to the amount of tax otherwise payable in Canada. The credit may be carried back three years and carried forward ten years.

(h) ***Rates***

The effective federal corporate income tax rate for 2006 on general income is 22.12%, with a reduction to 19% by 2010 proposed in the current federal budget. The effective Ontario corporate tax rate for 2006, for income from manufacturing and processing businesses is 12%, and for other general income is 14%. Canadian controlled private corporations (CCCPs) experience lower taxation. Federally, on the first CAD$300,000 (CAD$400,000.00 for 2007 and subsequent years) of annual active business income earned by it and its associate corporations, the rate is 13.12%, and in Ontario on the first CAD$400,000 of annual active business income the rate is 5.5%. The resulting combined federal and Ontario rate for 2006 is 18.62% as compared to the combined rate of 36.12% on general income. 36.12% is the same rate as a foreign corporate branch operation would pay on its income earned in Canada). The CCPC entitlement is reduced and ultimately eliminated for large corporations and their associated corporations that have between CAD$10 Million and CAD$15 Million of taxable capital used in Canada.

(i) ***Corporate Minimum Tax***

Ontario is the only jurisdiction in Canada which has a corporate minimum tax. If the total assets of a corporation and/or any associated corporations exceed $5 million, or if its total revenue in a taxation year exceeds $10 million, the corporation is liable to pay the corporate minimum tax at a rate of 4% on the income as reported on the

corporation's financial statements. The tax payable is the greater of the corporate minimum tax, and the corporation's regular Ontario corporate income tax. If the corporate minimum tax is greater, the excess amount must be paid, but may be carried forward for up to 10 years to offset regular Ontario corporate income tax in future years to the extent it exceeds the corporate minimum tax. It should be noted, however, that corporate minimum tax losses cannot be carried back.

2. Payroll Taxes

Employers are generally required to make contributions on behalf of their Canadian employees to the Canada or Québec Pension Plan and to the federal Employment Insurance plan. Certain provinces also impose employer health levies. Workplace Safety Insurance is also obligatory for most businesses. (Please see more detail under Labour and Employment in paragraph VI.5.)

3. Federal Goods and Services Tax

The Goods and Services Tax ("**GST**") is a form of value-added tax which applies to most goods and services at the rate of 6%. Unlike income tax, the GST is a tax on consumption rather than profits. The goods and service tax is almost universally applied to all supplies of goods and services. "Zero-rated" items such as groceries, prescription drugs, residential rent and items purchased for export are effectively exempt from goods and services tax.

Each registered supplier of taxable goods and services collects the applicable tax from its purchasers at the time of sale. The supplier must collect the GST as agent for the government, while the purchaser is legally responsible for the payment of the tax. Suppliers deduct from their collections any GST they have paid on their own purchases (called "input tax credits") and remit the difference to the federal government. If the supplier pays more tax than was collected, the supplier is entitled to a refund of the difference. The result is that the tax is imposed on the value added to the product at each stage of production and distribution and the final consumer ultimately bears the full amount of the tax.

The province of Québec has harmonized its provincial sales tax base with that of the GST. Therefore, most of the discussion that follows applies equally to the Québec Sales Tax or QST. Also, the provinces of New Brunswick, Nova Scotia and Newfoundland and Labrador have implemented a 14% combined federal/provincial GST (called the Harmonized Sales Tax or HST).

Most persons who carry on business in Canada must register to collect and remit GST. By way of exception, small suppliers with sales of less than CAD$30,000 per year are generally not required to register for GST purposes and cannot claim input tax credits. In determining whether this threshold has been met, sales of associated corporations are included.

Non-residents who solicit orders in Canada or offer for sale prescribed goods (such as books, newspapers or magazines) to be sent to persons in Canada by mail

or courier are deemed to carry on business in Canada. Accordingly, they must register to collect and remit GST on their sales.

Non-residents who are not carrying on business in Canada may register for and collect and remit GST if they regularly solicit orders for the supply of goods in Canada. Registration would be desirable if such non-residents wish to obtain input tax credits for GST paid to Canadian suppliers. A non-resident without a permanent establishment may be required to post security in connection with its obligation to collect and remit GST. To ensure that direct exporters to Canada do not receive advantageous treatment, imported goods are subject to GST based upon their duty paid value. Imported services and payments to non-residents in respect of intellectual property are not subject to GST if wholly used in the taxable commercial activities of the purchaser.

(a) ***Special Rules for Non-Residents***

To encourage non-residents to do business in Canada, the legislation provides relief from the GST in connection with certain transactions:

When a non-resident sells goods to a Canadian customer on a "delivered" basis, the non-resident will be required to pay GST on the importation of the goods. Where the non-resident is not a GST registrant, the non-resident will not be able to obtain an input tax credit (i.e., refund) of the GST. In effect, the GST legislation would increase the non-resident supplier's costs and the price to the Canadian customer would include GST. This is contrary to the intent of the GST legislation. As a result, the Canadian customer is permitted to claim an input tax credit in respect of the GST paid at the border by the non-resident supplier, where the customer obtains proof of payment of the GST from the non-resident. Therefore, the Canadian customer will reimburse the non-resident for the GST paid at the border, and the customer will claim the GST input tax credit as if the goods were purchased from a Canadian supplier. This levels the playing field between Canadian customers who deal with non-resident suppliers and those who deal with Canadian suppliers. This is referred to as the "flow through" mechanism.

A second relieving provision is referred to as the "non-resident override rule". This rule applies to deem a supply made by a non-resident in Canada to be made outside Canada and therefore beyond the scope of the GST. The provision applies where the non-resident supplier does not carry on business in Canada and is not registered for GST purposes.

A third relieving provision is referred to as the "drop shipment" rule. In general, this rule applies where an unregistered non-resident sells goods to a Canadian customer, sources those goods from a Canadian supplier, and arranges for delivery by the Canadian supplier directly to the Canadian customer. In these circumstances, the Canadian supplier selling to the non-resident seller must collect GST on the sale to the non-resident, and if the ultimate sale is to an individual consumer, the GST will be collected on the non-resident's re-sale price to the consumer. The drop-shipment rule applies to deem the sale by the Canadian supplier to the non-resident re-seller to be made outside Canada and therefore not subject to GST, where the non-resident's customer

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provides a "drop shipment certificate" to the Canadian supplier. This places the Canadian customer in the same position as if the goods were purchased directly from a Canadian supplier.

4. Provincial sales taxes

Ontario levies a retail sales tax of 8% on the purchaser of most tangible personal property purchased for consumption or use in Ontario or imported into the province. Some intangible property that is "perceptible to the senses", such as computer software licences, is also taxable. Certain services, such as telecommunication services, transient lodging, labour on or in respect of tangible personal property and licences to park vehicles, are also subject to this tax. Generally, the tax is based on the sale price of the taxable goods or services being sold at the retail level. Most other Canadian provinces also impose sales taxes. It should be noted that Ontario retail sales tax is calculated on the purchase price excluding the federal GST and that the GST is calculated on an amount excluding all provincial sales taxes. Some provinces do, however, include the GST in the tax base when calculating sales taxes.

The Ontario *Retail Sales Tax Act* provides that the vendor of the taxable goods or services is required to register and act as the agent for the provincial government in collecting the sales tax. However, a non-resident vendor without a physical presence in the province is not required to register for purposes of the tax.

Various goods are exempt from Ontario retail sales tax, including certain foods, drugs, motor and heating fuels, certain production machinery and equipment, custom computer software, many items used in farming and fishing. and items to be shipped directly out of the province. Also, there is a rebate for tax paid on goods purchased in Ontario and subsequently exported, provided that (i) the purchaser pays tax in another Canadian jurisdiction, and (ii) that tax is not refunded.

5. Capital Taxes and Surtaxes

Ontario levies a corporate capital tax on a corporation's capital employed in the province generally at a rate of 0.3% on taxable capital above CAD$10 Million of the corporation and its associated corporations. It is proposed that the exemption limits be increased by CAD$2.5 Million per year to CAD$15 Million in 2008. Ontario has proposed eliminating corporate capital tax by 2012. (All provinces levy a capital tax except Alberta. British Columbia, Prince Edward Island and Newfoundland and Labrador levy capital tax only on financial institutions.) For the purposes of capital tax, capital includes paid-up capital, retained earnings, surpluses and most debt.

The federal government assesses a tax of 0.125% on capital employed in Canada in excess of CAD$50 million dollars on Canadian residents and permanent establishments. It has been proposed under the current federal budget that the federal corporate capital tax be eliminated retroactive to January 1, 2006.

There may be a credit on capital tax for a corporation's surtax liability. Also, provincial capital taxes are fully deductible in computing income.

The federal government levies a surtax of 4.0% on federal corporate income tax (the effective rate is 1.12% of income) levied on income. The surtax is scheduled to be eliminated by 2008.

V. Foreign Investment Review

Under the *Investment Canada Act* (Canada) ("**ICA**"), if a non-Canadian directly or indirectly acquires control of a Canadian business or establishes a new business, the transaction is reviewable by Industry Canada (a department of the federal government) to determine if the investment is likely to be of "net benefit to Canada". A "non-Canadian" is a person who is not: (i) a Canadian citizen; (ii) an individual who is a permanent resident, unless he or she has not become a Canadian citizen within in one year of becoming eligible; or (iii) a corporation or other entity controlled by a Canadian. Where the investor is a national of, or a corporation incorporated in a country which is a member of the World Trade Organization (which includes, among others, the U.S., EU and all member states, Norway, Brazil, China, Japan, South Korea and Israel), the value of the investment must exceed CAD$150 million (in 1993 dollars, adjusted to inflation – CAD $265 million in 2006) otherwise it is exempt from review. All investments by non-Canadians which are not reviewable are notifiable under the ICA. Notification means providing Investment Canada, prior to or within 30 days following the completion of the transaction, with certain information on the parties to the transaction, the number of employees of the business and the value of the assets of the business. The review exemption is not available to certain industries of national importance, such as media, broadcasting and publication, oil and gas, transportation and financial services.

VI. Employment and Labour Law

1. Labour Law

Trade union organization and collective bargaining are governed by legislation in each province for non-federal works and by federal labour legislation for federal works. Employees have the right to organize and to be represented by a bargaining agent through a certification process. It is an offence for an employer to interfere with the exercise of those rights. Where an employer has operations in more than one province, it will have to comply with the labour legislation for the specific employees of the respective province in which the employees are located. Proceedings necessary for the certification of a trade union occur in front of a labour board.

2. Employment Standards

Ontario regulates the minimum standard for employment in the province through the Ontario *Employment Standards Act, 2000* ("**ESA**").

(a) *Minimum Wages*

Minimum wage in Ontario for most employees over 18 years old is currently CAD$7.45/hr. The government of Ontario has committed to increasing the

minimum wage to CAD$8.00/hr by 2007. Of interest to employers in the hospitality industry, the current minimum wages of employees serving liquor is CAD$6.75/hr.

Minimum Wage Rate	February 1, 2006	February 1, 2007
General Minimum Wage	$7.75 per hour	$8.00 per hour

(b) *Hours of Work*

In most industries, the maximum work day is 8 hours and the maximum work week is 48 hours, which can be extended by agreement between the employer and employee to a maximum of 60 hours per week. Employees receive wages at 1.5 times their regular hourly rate during overtime over 44 hours per week. An employer and employee can agree to an averaging mechanism over a four week period to determine whether overtime pay is payable.

(c) *Holidays*

On Ontario's public holidays or days in lieu of those statutory holidays, employees are entitled to paid vacation. Public holidays in Ontario are New Years Day (January 1), Good Friday (Friday before Easter), Victoria Day (3rd Monday in May), Canada Day (July 1), Civic Holiday (1st Monday in August), Labour Day (1st Monday in September), Thanksgiving (2nd Monday in October), Christmas Day (December 25) Boxing Day (December 26). Employees who work on statutory holidays and do not take a day's vacation in lieu of the statutory holiday are entitled to time and a half their regular wages over and above their regular wages. There are special provisions in the legislation dealing with continuously operating businesses.

(d) *Vacations*

Employees are entitled to a minimum of two weeks paid vacation for every 12 months worked.

(e) *Pregnancy and Parental Leave*

In Ontario, female employees are entitled to 17 weeks of pregnancy leave after 13 weeks of employment. In addition to pregnancy leave, both male and female employees who have been employed for at least 13 weeks are eligible for up to an aggregate of 35 weeks' parental leave (37 weeks where pregnancy leave is not taken). Wages are not paid by the employer during pregnancy or parental leave, but the employee remains entitled to employee benefits. After pregnancy and parental leave, an employee is entitled to return to her position or a comparable position if her position has been eliminated. During pregnancy and parental leave, the employee receives 55% of her

or his pre-leave wages up to CAD$413.00 per week, through the federal employment insurance program.

(f) *Emergency Leave*

An employee whose employer regularly employs 50 or more employees is entitled to a leave of absence without pay because of: (a) a personal illness, (b) injury (c) medical emergency, (d) the death, illness, injury or medical emergency of an immediate relative, or (e) an urgent matter that concerns an immediate relative.

(g) *Termination of Employment*

Employees, other than employees employed for a specific term, are entitled to notice of termination or payment in lieu of notice. The statutory minimum notice for employees of three months to less than a year is one week. Statutory minimum notice for employees of one year to less than three years is two weeks. For every year of service, an employee is entitled to additional notice of one week per year of service, up to a maximum of 8 weeks. The employee is also entitled to pursue termination pay under common law, which may be higher than under the ESA.

An employer is entitled to terminate an employee without notice or pay for just cause.

(h) *Severance*

An employee of five or more years of service with an employer with a payroll of CAD$2.5 million or more or an employer which has severed more than 50 employees in the last 6 month period because of a permanent discontinuance of all or part of a company's business at an establishment is entitled to severance pay if he or she is terminated. The employee is entitled to one week of pay for every year of service up to 26 weeks.

(i) *Equal Pay for Equal Work*

Employers must pay both men and women the same rate for work that is substantially the same.

(j) *Federal Works and Other Exceptions to the ESA*

While most employment in Ontario is governed by the ESA, the federal parliament has jurisdiction over federal works or undertakings (such as banks, pipelines, telephone systems, television, air transport, inter-provincial trucking and fishing), and regulates employment and labour matters within its jurisdiction through the *Canada Labour Code.*

Many provisions in the ESA are not applicable to some professional employees and commissioned salespeople.

3. Human Rights

In Ontario, under human rights legislation, no employee or recruit for employment may experience discrimination on prohibited grounds including race, religion, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, handicap, record of offences, family status, marital status and same sex partnership status. The Ontario Human Rights Commission investigates complaints of discrimination and imposes penalties. The federal government has enacted similar legislation for federal works and undertakings.

4. Retail Holidays

Retail businesses must close on designated statutory holiday days (see paragraph 2(c) "Holidays" above). Retail businesses may open on Sundays, but employees cannot be compelled to work on a Sunday.

5. Government Pension and Insurance Plans

Employers and employees make matching contributions to the Canada Pension Plan of 4.95% of pensionable earnings up to a maximum pensionable earning determined by the Canadian taxing authority ($42,100.00 at 2006, less an exempted amount of CAD$3,500). Self-employed individuals contribute both the employer and employee contributions. The province of Québec has a separately administered pension plan as well.

Employers and employees make contributions to a government employment insurance program, which provides the employee with a period of income replacement benefits for periods of unemployment, disability and pregnancy or parental leave. The premium is comprised of the employee's contribution, which in 2004 is calculated at 1.87% of insurable earnings up to a maximum annual contribution of CAD$729.30 and the employer's contribution of 1.4 times the employee's contribution.

Most businesses are required to participate in a government run workplace safety insurance plan which compensates workers injured during the course of their employment. Premium rates vary according to the accident experience of the particular industry in which the employer is engaged. Employees do not contribute to the premium.

VII. Cross-border movement of Goods and People

1. Customs

Goods entering Canada are typically subject to custom duties and taxes, namely: customs duty, federal goods and services tax and provincial sales tax. Liquor and tobacco products may have further excise duties. Duties are determined by the federal *Customs Tariff*. Canada is a signatory to the *Harmonized Commodity Description and Coding System*, which provides for a standardized classification of customs tariffs. The U.S. is also a signatory. Duties are determined by multiplying the tariff by the value of

the imported goods. Canada imposes a self-assessing custom duties system with severe penalties for non-compliance.

Canada is a member of the World Trade Organization (WTO). WTO member nations (see paragraph V above "Foreign Investment Review") (which include, among others, the U.S., EU and all member states, Norway, Brazil, China, Japan, South Korea and Israel) are granted most-favoured nation status in Canada. Therefore, where a special consideration is given to one member state (such as a lower customs duty rate for one of its products), Canada will be required to do the same for all other WTO member states.

2. North American Free Trade Agreement

Canada is a signatory of the North American Free Trade Agreement (NAFTA), together with the U.S. and Mexico. NAFTA provides for the gradual removal of impediments to trade between its three signatories, including customs duties and discriminatory trade practices. Duties will be completely removed as of 2008. NAFTA applies to goods and services only if they satisfy the "rules of origin" which determines the North American content of the goods or service. The rules of origin are based on the value of the North American raw material and labour used compared to raw material and labour originating elsewhere.

Under NAFTA, in Canada, services provided by nationals of the U.S. and Mexico are treated no less favourably than services provided by nationals of Canada. Specified services are excluded. Licensing requirements under local law cannot discriminate against other North American nationals based on nationality.

NAFTA also provides for the free movement of business people who are nationals of a NAFTA member on temporary business (public health and national security rules still apply). It also liberalizes intra-company transfers across the border of qualified employees who are nationals of a NAFTA member by eliminating the requirement to prove that the employer could not get a comparable Canadian to fill the position (known as the HRSDC labour market opinion; HRSDC or Human Resources and Skills Development Canada is a department of the federal government). Certain professionals are also exempt from the HRSDC labour market opinion. NAFTA's immigration provisions only apply to citizens of the member states.

NAFTA also provides some protection for foreign investors in Canada who are nationals of a NAFTA member state from some discriminatory practices.

3. Bilateral Free Trade Agreements

In addition to NAFTA, Canada has entered into bilateral free trade agreements with Israel, Chile and Costa Rica.

4. Immigration

Individuals and their families can immigrate to Canada on a permanent resident and a temporary resident basis. Temporary workers must obtain a work permit. Immigration Canada determines applications on a case by case basis.

(a) *Work Permits*

Non-residents wishing to work in Canada require a work permit. The applicant must first obtain an HRSDC labour market opinion. The applicant's Canadian employer must prove that there are no Canadian or permanent residents able to perform the employment. Work permits are usually available for a one year period, but may be issued for a different period. Work permits may be extended under an abridged application**.**

Intra-company transferees may obtain a work permit without obtaining HRSDC approval. Intra-company transfers must be executive or managerial level employees of a foreign enterprise that is operating in Canada through a branch or subsidiary. NAFTA provides a streamlined process for intra-company transfers and expands the employees who may qualify to any employee with specialized knowledge who has been employed by an American or Mexican company for at least one year in the last 3 years.

Business visitors may be admitted to Canada for specified activities such a taking orders, promotion or negotiating contracts. They will require citizenship identification and a brief explanation of the applicant's intended activities. Visas may be required. However, visas are not required for visitors national to the US and most European countries.

(b) *Spouse and Dependants*

A spouse and dependants can enter and live in Canada with a person granted a work permit. However, the spouse and dependants cannot work or go to school unless they themselves obtain the necessary work or student authorization.

(c) *Permanent Residents*

Immigrants are admitted to Canada as permanent residents under various programs including: family reunification, skilled workers, refugee protection and business class. Entrance visas for permanent resident status can take from 12 to 36 months to obtain. Application should be made to the Canadian embassy or consulate in the applicant's home country. Business immigrants may go through a more thorough screening process. Business immigrant applicants fall under one of three categories: Self employed; investors; and entrepreneurs. Permanent residents may apply for citizenship after three years of residency in Canada.

VIII. Real Estate

The acquisition, financing and development of land and land use planning in Canada is under the jurisdiction of the provinces. Comments under this heading are specific to the province of Ontario.

1. Title

Ontario has two title registration systems for property, the older registry system and the newer land titles system. Land under the registry system is slowly being converted to land titles. Under both systems, interests in land are recorded by registration of a deed, charge or other document asserting an interest. Unless contrary arrangements are agreed to by contract, the priority of interest follows the chronology of registration. With few exceptions, all interests in land must be perfected by registration. Exceptions are made for certain unregistered liens created by statute, such as realty tax arrears, unpaid accounts to public utilities and unpaid damages payable by the landowner under a court order registered in the local sheriff's office. Short term leases do not need to be registered in order to perfect the lessee's interest.

Land may be held by a number of investors through various vehicles allowing for a joint venture. Land may be held jointly, jointly through a nominee, in partnership or through a corporation. There are numerous ways in which investors may structure their ownership such as joint ventures, co-ownerships, limited partnerships, joint venture corporations and through a sale and leaseback arrangement.

Property can be held as a freehold (complete ownership) or as a leasehold (under a lease for a finite period of time).

Under condominium law, Ontario allows for a property interest to be held in a unit contained upon a single tract of land. Each unit is held by an individual unitholder. Common areas in the condominium are held by the condominium corporation. The condominium corporation is in turn owned by each of the unitholders. Condominiums are usually created for residential use. However, condominiums are sometimes used for commercial developments.

2. Land Transfer Tax

Ontario imposes a tax on the transfer of land or the lease of land of 50 years or longer based on the consideration paid: 0.5% on the first CAD$55,000.00, 1% on consideration from CAD$55,000.01 to CAD$250,000.00; 1.5% on the consideration from CAD$250,000.01 to CAD$400,000.00; and 2% on consideration over CAD$400,000.00. Some rebates are available on residential properties.

3. Purchase of Real Estate

An agreement to purchase and sell real estate must be in writing. Typically, real estate transactions are brokered by a real estate broker licenced by the province. Typical commissions to real estate brokers are between 5% to 6% on residential

properties and paid by the vendor. Commissions are usually reduced for commercial properties and larger properties.

4. Land Use

Land use in Ontario is regulated by the *Planning Act*. The determination of land use in most areas of Ontario is delegated by the province to the municipalities. Municipalities create by-laws, known as zoning by-laws, regulating the use of particular parcels within their territory based on principles enumerated in the *Planning Act*. Landowners may appeal land use restrictions imposed by municipalities to the Ontario Municipal Board. The *Planning Act* also regulates the subdivision of land and prevents the subdivision of land without the consent of the municipality.

Land Developers will typically enter into agreements with the relevant municipality relating to development charges, planning, land use, subdividing the parcel into individual units, developing the property, the construction of infrastructure and access, and the connection of the developed land to municipal services. Developers will typically post security in favour of the municipality as an assurance for the full performance of its obligations under its agreements.

5. Realty Taxes

Municipalities impose a realty tax on land within their territories. Realty taxes are determined by multiplying a mill rate (a tax rate set by the municipality for each type of property based on use) against the assessed value of the real estate. The value is assessed by an independent agency of the province. For example, the City of Toronto's 2005 mill rate for occupied commercial property developed after 1998 was 4.509%.

Municipalities may also impose a development charge on improvements made to real estate. For example, the City of Toronto development charge on retail properties is CAD$78.22/$m^2$ for 2006 (approximately $1m^2$ = 10.76sq. ft.). The rate is indexed to inflation thereafter. An education development levy may also be charged. The City of Toronto's current education development levy for non-residential development is CAD $2.37/$m^2$ (CAD$0.22/sq. ft).

IX. Intellectual Property

The federal government has jurisdiction over trade-marks, patents, copyright, industrial designs, circuit topography and plant breeds. Federal legislation creates rights in intellectual property through a series of registration systems. The legislation also affirms intellectual property rights that exist under common law. Because the legislation is federal, registration under the various acts provide protection for the intellectual property throughout Canada. Canada is also a signatory to the principal multilateral treaties and conventions affecting intellectual property rights such as the Convention of the Union of Paris, the Berne Convention, the Universal Copyright Convention and the World Trade Organization.

Intellectual property rights in trade secrets, proprietary information and confidential information and protections from passing-off are under the private property jurisdiction of the provincial governments. For the most part, these rights are governed by contract and the common law.

1. Trade-marks and Passing-off

A trade-mark may be protected in Canada by registration whether or not it is being immediately used in Canada. Trade-mark applications are made to the Canadian Intellectual Property Office. The application process can take from a year to two years to complete. However, trade-mark rights under a successful application arise as of the application filing date. Rights also accrue in a trade-mark under common law by its use in Canada without registration. Registered trade-marks are valid in Canada for 15 years and may be renewed every 15 years thereafter upon payment of the renewal fee. Registered trade-marks are subject to being expunged if not in use or not renewed.

Applicants can make application for the registration of a trade-mark based on an application made in another Paris Convention member state. The U.S. and the member countries of the EU are Convention members. Applications made in Canada within six months of an application in another member country will have the priority filing date of the foreign application.

Through a court action for passing-off, a person may protect from misrepresentations intentionally created by another party in order to confuse the consumer into thinking that the transgressor's product is associated with the aggrieved party.

2. Patents

Canadian patents may be obtained for a twenty year period, during which the holder will have an exclusive right in Canada to use and licence the invention protected by the patent. Patents may be obtained on an innovation not disclosed to the public for processes, machines, manufactured guides and composition of matter. Applications are made to the Canadian Intellectual Property Office. Applicants may rely on the priority date given to a patent application in another Paris Convention member state, provided that the Canadian application is filed within one year of the foreign application.

3. Copyright

Copyright grants the holder the exclusive right to reproduce a "work". Copyright arises as a result of the creation of the work. Copyright exists in the work for the life of the author/maker plus 50 years. Canada has a voluntary registration system. Registration is not necessary to assert copyright. International copyrights from member states are protected in Canada by the Berne Convention, the Universal Copyright Convention and the World Trade Organization. Employers typically own the copyright on work created by their employees. However, it is prudent when contracting with a non-

employed service provider for the provision of a service that may create a copyrighted work to specify by written agreement who owns the resulting copyright.

Independent of copyright is the author/maker's unassignable moral right to protect the integrity of the work. Unless his or her moral rights are waived, the creator can prevent alterations to the work.

4. Other Statutory Protections for Intellectual Property

Canada also affords protection for industrial designs, circuit topography and created plant breeds.

5. Confidentiality and Trade Secrets

Confidential information and trade secrets not ordinarily known can be protected from disclosure by contract. Certain relationships, such as high level employment relationships, by their nature, will give rise to an obligation of confidentiality.

6. Licensing

Intellectual property may be licenced in Canada by agreement. Some intellectual property, which requires exclusive use as the basis for the proprietary claim, require a licence before a third party can use it. For example, tolerating the use of a trade-mark by another party not under licence will dilute the trade-mark owner's interest in the mark and prevent the owner from protecting against third party use regardless of registration. However, use under a licence maintains the integrity of the trade-mark owner's proprietary claim.

X. Franchising

Franchising is a dynamic and widely used business concept in Canada. The provinces of Ontario, Alberta and Prince Edward Island have legislation regulating franchises. Most notably, the legislation imposes an obligation of fair dealing amongst the parties in a franchise relationship and requires the disclosure by the franchisor of enumerated material information to potential franchisees before the franchisee commits to the franchise relationship. Disclosure includes information about the finances and experience of the franchisor, financial information related to the investment, and current and former franchisees. The disclosure required in Ontario, Alberta and Prince Edward Island is somewhat simpler than the Uniform Franchise Offering Circular required in the U.S. The Ontario, Alberta and Prince Edward Island legislation regulating franchising creates private rights between the parties enforceable in private actions before the courts. There is no governmental enforcement of the legislation.

XI. Anti-competitive Practices

The federal *Competition Act* characterizes specific anti-competitive trade practices as reviewable by the Competition Tribunal. The Competition Commissioner

has authority to investigate reviewable practices. The Competition Tribunal reviews practices and makes orders with respect to a reviewable practice. Failure to comply with an order of the tribunal is a criminal offence. The *Competition Act* also enumerates several anti-competitive trade practices as criminal offences prosecuted by the Competition Commissioner. The *Competition Act* allows consumers to bring civil actions for damages caused by a criminal offence under the *Competition Act*.

Reviewable transactions include: mergers, abuse of dominant position, delivered pricing, refusal to deal, refusal to supply by foreigners, consignment selling, exclusive dealing, tied selling, market restrictions, price discrimination and predatory pricing. It is a criminal office to conspire to maintain prices or to knowingly and recklessly make materially false or misleading representations to the public in the promotion of a product. The *Competition Act* also prohibits deceptive telemarketing.

The Competition Tribunal may review mergers that inhibit competition in a relevant market. Mergers may result from the purchase of shares or assets of an existing business. Mergers that result in a substantial lessening of competition in a market may be prohibited or restrained. Completed mergers can be reversed or partly reversed. Mergers can be submitted for pre-approval.

XII. Privacy Legislation

Canada regulates the collection, use, retention and disclosure of personal information of identifiable individuals by the private sector under the federal *Personal Information Protection and Electronic Documents Act* ("**PIPEDA**"). Provincial governments can usurp the authority of PIPEDA by enacting their own private sector privacy law. To date, only the provinces of Alberta, British Columbia and Québec have enacted their own privacy legislation. PIPEDA is applicable in the province of Ontario. For the most part, PIPEDA was a response to privacy laws in the European Union that prevented the export of personal information to a jurisdiction without adequate protection for personal information. Canada now complies with the EU requirements. The British Columbia legislation also provides some restriction on the export of personal information to a jurisdiction where adequate protections are lacking, which may include most U.S. jurisdictions.

PIPEDA requires that all personal information collected, used, retained and disclosed be done with the consent of the individual to which the information relates. The consenting individual must be aware of the reason for the collection, use, retention or disclosure of the information. Consent can be express or implied depending on the circumstances and the sensitivity of the personal information. Organizations are responsible for safeguarding personal information in their possession and personal information given to a third party service provider in connection with an outsourced service. It must ensure that the service provider has adequate measures in place to secure the personal information. This is achieved by contract.

PIPEDA requires that organizations develop written privacy policies and appoint a privacy officer to deal with all requests and concerns concerning personal

information. Any individual is entitled to require an organization to disclose to that individual any personal information that the organization may have on that individual. The organization must correct the information in the event of errors.

PIPEDA is enforced by the federal Privacy Commissioner using quasi-penal sanctions and directives. The Privacy Commissioner is entitled to audit an organization for compliance with PIPEDA. Currently, it does so only on the basis of reported complaints.

Personal information is information about an identifiable individual other than his or her business contact information. Employee information is not subject to PIPEDA, but it is protected under provincial employment laws.

The federal government and each province has public sector privacy legislation regulating the collection, retention, use and disclosure of private information by government.

XIII. Labelling and Packaging

Pre-packaged consumer products sold or imported into Canada must be labelled in accordance with the federal *Consumer Packaging and Labelling Act*. Principally, the label must describe in both English and French: the contents of the package in generic terms; the net quantity of the product in count or in metric units; the identity and address of the manufacturer or reseller; and the place of manufacture. The *Consumer Packaging and Labelling Act* does not apply to food and drugs, goods produced for export and textiles. Textile labelling is governed by the federal *Textile Labelling Act* which requires labelling on textiles to identify the relative fabric content of the textile in both English and French. Under NAFTA, Canada, the U.S. and Mexico are working to create a uniform labelling standard for North America.

Upholstered and stuffed articles are controlled by provincial legislation. To ensure public health, Ontario requires that only new material be used for stuffing and that certain processes be performed on biological material such as down feathers. All upholstered and stuffed articles must be labelled in accordance with the *Upholstered and Stuffed Guides Regulation*.

Hazardous products permitted to be sold in Canada must be labelled in accordance with the federal *Hazardous Products Act*. Part II of Schedule I of the *Hazardous Products Act* specifies those articles which require special warning labels in English and French or using international warning symbols.

XIV. Environmental Protection

In Canada, environmental protection is generally regulated by the provinces. In Ontario, the *Environment Protection Act* ("EPA") regulates the use, storage and release of substances into the air and water and onto land. The *Environmental*

Assessment Act (Ontario) requires environmental assessments for projects of considerable scope or government projects.

Under the EPA, the Ministry of Environment (MOE) has wide powers to order the cessation of activities causing contamination and the remediation of contamination. The MOE may enforce an order on a broad spectrum of parties who had any control or ownership over the property or a controlled substance including owners/landlords, tenants, mortgagees-in-possession, trustees or receivers in possession and the directors and officers of those parties. Certain steps can be taken to insolate mortgagees, trustees and receivers from liability.

It is common that some form of environmental audit will be required in connection with the purchase or financing of real property or a business with a real property interest. There are three levels of audit standards for environmental audits conducted in Ontario, phase I being the most limited in scope and phase III being the most thorough. The level of inquiry ranges from visual inspection to drilling and analyzing core samples. Audits are performed by private engineering firms.

XV. Conclusion

This guide is intended to canvas some of the principal considerations when deciding to do business or invest in Canada. Any plans to invest or do business in Canada should be carefully reviewed with legal counsel and other professional advisors.