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Doing Business in Canada

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DOING BUSINESS IN CANADA

This publication has been prepared to provide an overview to foreign investors and business people who have an interest in doing business in Canada. The material in this publication is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors.

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The following currency notation is used in this book.

CND Canadian Dollar

The global financial crisis of 2008 and 2009 revealed the strengths and weaknesses of the world's financial systems. It is universally recognized that Canada's well-regulated financial institutions proved to be a model of prudence to the world. While the Canadian and American economies are interrelated, Canada has forged its own path to become a leader in reducing barriers to global commerce. Canada offers a stable and potentially lucrative market for international businesses and investors.

Over 90% of Canadians live within 160 kilometers (100 miles) of the U.S.-Canada border. As a result, Canada and the United States share many economic imperatives and cultural influences. The economic and material aspirations and realizations of the Canadian and U.S. populations are strikingly similar.

From a historic perspective, however, Canada remains significantly different than the United States. Canada today is a highly multicultural society which generally respects and enshrines cultural heritage rather than encouraging the population to form a homogeneous melting pot. Colonized by the British and French, Canada remains a bilingual country; English and French are the two official languages. Approximately 59% of the population has English as their mother tongue while about 23% of the population is French-speaking (mostly in the province of Québec). The remaining 18% speak other languages.

Canada remains an attractive location for the establishment or expansion of business in North America. During the past decade, there has been a marked trend toward fiscal conservatism. Federal and provincial governments made serious efforts to reduce deficits and balance budgets. Budget surpluses have been achieved on the federal level and in many provinces. Inflation and interest rates have remained low.

Except in certain industry-specific situations where cultural values are at risk, Canada is receptive to foreign investment. Despite its relatively small population, Canada is one of the strongest trading nations in the world. Although historically Canada was an exporter of raw materials and an importer of manufactured goods, shipments from Canada are now balanced between raw materials and finished goods. In addition, Canada is recognized internationally as a world leader in such areas as fibre optics and telecommunications.

This book provides a general overview as of July 2013 of particular matters of interest to businesses considering entry into the Canadian market. Where appropriate, descriptions of both federal and provincial laws are provided. However, this book should not be considered an exhaustive review, and

particular businesses may be subject to industry-specific legislation and other legal requirements which are not dealt with in this book. Accordingly, before undertaking any business transaction involving entry into Canada, it is prudent to seek the advice of counsel.

1. WHAT LAWS INFLUENCE THE RELATIONSHIP BETWEEN LOCAL AGENTS AND DISTRIBUTORS AND FOREIGN COMPANIES?

Foreign companies doing business in Canada will be influenced by legislation, the common law and various international treaties. Canada's Constitution creates mutually exclusive jurisdictions for federal and provincial legislation. For example, Canada's intellectual property, competition, bankruptcy and criminal laws are solely within the purview of the federal government. Provincial legislative authority is granted for the regulation of trade and commerce, education and health within the province. However, the jurisdictional distinctions are often blurry, and the subject matter of federal and provincial legislation sometimes overlaps. In addition, Canada has entered into many international trade and tax treaties with other countries which will influence foreign companies doing business in Canada.

2. HOW DOES THE CANADIAN GOVERNMENT REGULATE COMMERCIAL JOINT VENTURES BETWEEN FOREIGN INVESTORS AND LOCAL FIRMS?

Legislation by the federal government and each of the provincial governments regulates ventures between foreign investors and local firms, including agents and distributors. From a contracting perspective, there is no material distinction between business parties who are foreign and those who are local.

The foreign investor will have to comply with the direct investment provisions noted below in question 3 and discussed in more detail in the Foreign Investment & Merger section of this Guide.

In addition, many obstacles to foreign investment have been removed as a result of the various free trade agreements that Canada has negotiated with other countries, such as the North American Free Trade Agreement discussed in detail in the International Trade section of this Guide.

3. WHAT ROLE DOES THE GOVERNMENT OF CANADA PLAY IN APPROVING AND REGULATING FOREIGN DIRECT INVESTMENT?

Non-Canadians who acquire control of an existing Canadian business or who wish to establish a new unrelated Canadian business are subject to the federal Investment Canada Act (ICA). In either case the non-Canadian investor must submit either a Notification or an Application for Review to the federal government. A Notification must be filed each and every time a non-Canadian commences a new business activity in Canada and each time a non-Canadian acquires control of an existing Canadian business where the establishment or acquisition of control is not a reviewable transaction. Only in certain circumstances does the ICA seek to review or restrict new investments by non-Canadians. In general terms, the transactions which are subject to review under the ICA are larger transactions, and transactions in certain politically and culturally significant sectors (as noted below in question 5). Securities transactions and venture capital deals, acquisitions of control in connection with realization on security, certain financing transactions and certain direct and indirect acquisitions of control by insurance companies are exempt from the ICA. For all other transactions a Notification needs to be filed.

More detailed information on the ICA and direct investment in Canada can be found in the Foreign Investment & Merger section of this Guide.

4. CAN FOREIGN INVESTORS CONDUCT BUSINESS IN CANADA WITHOUT A LOCAL PARTNER? IF SO, WHAT CORPORATE STRUCTURE IS MOST COMMONLY USED?

There is nothing preventing a foreign investor from conducting business in Canada without a local partner. All businesses, foreign or local, must register in the appropriate jurisdiction to conduct business; however, these are administrative filings.

Most foreign investors, however, would incorporate a new company in a Canadian jurisdiction in order to carry on their business. This Canadian subsidiary may be a standard limited liability corporation or it might be an unlimited liability corporation, depending on the tax characteristic of the parent's jurisdiction. More detailed information on the forms of business organization in Canada can be found in the Forms of Business Organization section of this Guide. In addition, the taxation of foreign investors and their Canadian subsidiaries is discussed in detail in the Taxes and Duties section of this Guide.

5. WHAT STEPS DOES THE CANADIAN GOVERNMENT TAKE TO CONTROL MERGERS AND ACQUISITIONS WITH FOREIGN INVESTORS OF ITS NATIONAL COMPANIES OR OVER ITS NATURAL RESOURCES AND KEY SECTORS (E.G., ENERGY AND TELECOMMUNICATIONS)?

As discussed in question 2, non-Canadians who acquire control of an existing Canadian business, or who want to establish a new unrelated Canadian business, are subject to the federal Investment Canada Act (ICA). The transactions subject to review include businesses within a prescribed type of business activity that is related to Canada's cultural heritage or national identity, and transactions where the Minister responsible has reasonable grounds to believe that an investment by a non-Canadian could be injurious to national security. Notice of the transaction is given to the Review Division of Industry Canada. When a transaction is reviewable under the ICA, the investor is required to file an extensive pre-closing filing called an Application for Review with supporting documents. When a review is conducted, the investor is prohibited from closing the transaction until the Minister's approval is obtained. Investment reviews under the ICA proceed in tandem with reviews under the Competition Act.

Merger or antitrust review and prenotification in Canada are governed by the Competition Act. Mergers that exceed a certain size threshold require the Commissioner of Competition to be notified prior to completion. Whether a notification filing is required is determined by the value of the assets in Canada and the annual gross revenues from sales in, from or into Canada of the parties to the transaction, and of the target corporation itself.

There are sectors in Canada, such as telecommunications and other broadcast-related sections, that have ownership restrictions imposed by the federal government. In addition, Canada has anti-dumping legislation which imposes duties to prevent unfair competition with domestic Canadian goods.

More detailed information on the direct investment and competition laws in Canada can be found in the Foreign Investment & Merger section of this Guide.

6. HOW DO LABOUR STATUTES REGULATE THE TREATMENT OF LOCAL EMPLOYEES AND EXPATRIATE WORKERS?

For employers in Canada, the employment relationship is governed by various federal and provincial acts that provide minimum standards for most employees. In most cases, individual or collective agreements will be governed by these minimum standards. Accordingly, Canada cannot be considered a jurisdiction in which there is employment at will. There are minimum standards which mandate that employees are entitled to receive either notice of the termination of their employment or pay in lieu of notice if their employment is terminated without cause. The legislative requirements are minimum standards only and do not restrict an employee's right to sue for breach of contract, wrongful dismissal or other damages arising from the termination of his or her employment. In the absence of a written contract to the contrary, termination of employment without cause generally requires significantly longer notice periods than those provided by the legislation. Appropriate reasonable notice periods have been established by common law through the litigation process on a case-by-case basis. The courts consider various factors, including the employee's age, length of service, position, remuneration, how the employee came to be employed, their chance of finding replacement employment and the manner of dismissal. The judge will consider all of these factors to determine the appropriate "reasonable notice" period.

Reasonable notice established by the common law in Canada often greatly exceeds the obligations of U.S. employers to their employees. The grounds for termination for cause in Canada are also very limited and reserved for the most serious misconduct (for example, where the termination results from acts of dishonesty of the employee, or where the employee has been warned in writing various times and provided with assistance, yet continues to perform below expectations).

More detailed information on employment law in Canada can be found in the Employment Law section of this Guide. In addition, more detailed information on business visitors (temporary residents), temporary workers, professional workers under the various international trade agreements and permanent residents can be found in the Immigration Restrictions section of this Guide.

7. HOW DO LOCAL BANKS AND GOVERNMENT REGULATORS DEAL WITH THE TREATMENT AND CONVERSION OF LOCAL CURRENCY, REPATRIATION OF FUNDS OVERSEAS, LETTERS OF CREDIT AND OTHER BASIC FINANCIAL TRANSACTIONS?

Banking, currency and negotiable instruments are regulated uniformly in Canada by the federal government. Specifically, all banks in Canada are regulated by the federal government. *The Bank Act*, S.C. 1991, c. 46 is the main federal statute which regulates Canadian banking. Canadian banks are divided into three distinct categories. Schedule I banks are domestic banks that are allowed to accept deposits which may be eligible for deposit insurance. Schedule II banks are foreign bank subsidiaries that are authorized to accept deposits which may be eligible for deposit insurance. Foreign bank subsidiaries are controlled by eligible foreign institutions. Schedule III banks are foreign bank branches of foreign institutions that are authorized to do banking business in Canada.

8. WHAT TYPES OF TAXES, DUTIES AND LEVIES SHOULD A FOREIGN INVESTMENT IN CANADA EXPECT TO ENCOUNTER?

When doing business in Canada, you can expect to encounter sales and transfer taxes, income and capital taxes, and custom and excise duties.

Canada has a 5% goods and services tax (GST) which applies to most goods and services on the purchase price. Those engaged in commercial activity in Canada having worldwide sale of goods and services subject to GST greater than CND30,000 per year must register to collect GST. Registration entitles businesses to input tax credits (ITCs) equal to the full amount of GST paid by them on all business purchases. Some nonresidents carrying on business in Canada are also required to register to collect GST. Most Canadian provinces charge a sales tax ranging between 5% and 10% on tangible property and certain services. Harmonized Sales Tax (HST) has been implemented in Nova Scotia, New Brunswick, Newfoundland, British Columbia and Ontario. HST applies to all goods and services that are subject to GST and ranges between 12% and 15%. Registrants for HST are entitled to claim ITCs. The province of Québec administers its own sales taxes together with the GST. The rate of the Québec sales tax is 9.975%. In addition, a land transfer tax, ranging from .02% to 2%, is payable on the acquisition of real property in each province.

Canada imposes a federal income tax on nonresidents who conduct business or sell real property in Canada. Canada also imposes a federal nonresident withholding tax on certain Canadian source payments. This requirement can be waived if the non-resident is carrying on business through a permanent establishment. Canada has entered into bilateral treaties with many countries which contain tax relief provisions. A foreign tax credit may be available in the nonresident's own jurisdiction. A corporation incorporated in Canada will be considered a resident of Canada for income tax purposes. This means the corporation will be subject to Canadian income tax on its worldwide income. Foreign businesses can also be carried on through branch operations. Provinces and territories typically impose income tax on corporations carrying on business within the province and some impose a capital tax on corporations.

All goods entering Canada go through a customs inspection at the point of entry. Documentation accompanying goods ascertains the transaction value of the goods (the price paid for the goods by the importer, subject to adjustments for royalties, shipping fees and transportation). The amount of customs duty is determined by the customs tariff that sets out a specific list describing the class of goods and setting out the corresponding rate of duty. Member countries of North American Free Trade Agreement (NAFTA) receive a preferential duty rate. Imported goods, such as alcohol and tobacco, are subject to a special duty under the customs tariff that is equal to the excise duty paid by Canadian producers.

There are special anti-dumping duties for imported goods sold in Canada at prices that are below the prices in the home market. Dumping occurs when the "normal value" of the imported goods exceeds the "export price." These anti-dumping duties are imposed to provide Canadian producers with relief from unfair import competition.

More detailed discussion of this topic can be found in the Taxes and Duties section of this Guide.

9. HOW COMPREHENSIVE ARE THE INTELLECTUAL PROPERTY LAWS OF CANADA, AND DO THE LOCAL COURTS AND TRIBUNALS ENFORCE THEM OBJECTIVELY, REGARDLESS OF THE NATIONALITY OF THE PARTIES?

Canada offers a fully developed and modern intellectual property law regime. Through federally based legislation that governs the acquisition and enforcement of intellectual property rights throughout Canada, parties are able to register and protect all aspects of intellectual property, including trade-marks, copyright, patents of invention and industrial designs. Canada is also a party to all of the major world intellectual property law treaties and conventions, including the Patent Cooperation Treaty, the Berne Convention and the various World Intellectual Property Organization treaties. Parties, including those based in foreign jurisdictions, have the ability to enforce their intellectual property rights in either the superior courts of the Canadian provinces, or, more often, in the Federal Court of Canada, which courts are required to enforce Canada's laws fairly and objectively, regardless of a party's national origin.

A more detailed discussion of this topic can be found in the Intellectual Property section of this Guide.

10. IF A COMMERCIAL DISPUTE ARISES, WILL LOCAL COURTS OR ARBITRATION OFFER A MORE BENEFICIAL FORUM FOR DISPUTE RESOLUTION TO FOREIGN INVESTORS?

Whether or not foreign investors will benefit more from bringing a dispute to private arbitration or to the courts will depend on the nature of the dispute. For example, a foreign investor may benefit from having a complex commercial matter arbitrated privately, as the parties can attempt to select an arbitrator who has experience and knowledge related to the subject matter at issue. Private arbitration can also be beneficial because it is generally a much faster process than court proceedings. In either case, Canadian law, and in particular Canada's Charter of Rights and Freedoms, guarantees equality under the law, which extends to foreign participants in court or arbitration proceedings, such that neither party to a dispute should benefit (or suffer) from the fact of their national origin.

Generally, Canadian companies are expected to be self-supporting, but for companies involved in export development, there are several types of investment incentive programs which are designed to assist investment in new Canadian business initiatives. In fact, Canada is one of the top-ranked countries in the world for investment opportunities. Various levels of government have direct and indirect assistance programs which can involve capital grants or loans or may involve job training supplements. Alternatively, a tax credit system has been established which may effectively permit acceleration of deductibility for capital expenses which might otherwise only be amortized over an extended period.

PROGRAM REQUIREMENTS

Eligibility for most direct incentive programs is often limited to companies incorporated under federal or provincial laws. Capital grants are generally available only for manufacturing or processing projects. Various provinces have targeted industry segments such as tourism projects for eligibility for an indirect capital grant which gives a rebate to shareholders taking minority positions. Labour-sponsored venture funds provide a new source of venture capital in some provinces by providing individual investors with tax credits to encourage investment. Some municipalities provide incentives for locating a new enterprise within their boundaries. These are negotiated on an individual basis.

Often government assistance is available only where it is demonstrated that traditional private-sector financing cannot be obtained. Accordingly, unless a project is industry-specific or designed to be implemented in a geographical area designated as eligible for assistance, an applicant for assistance often walks the fine line of asserting a project's viability while demonstrating that no financial institution will provide the necessary funds.

EXPORT FINANCING AND MARKETING

Export Development Canada (EDC) is a federal crown corporation which has programs to encourage domestic producers of goods and services to expand beyond Canadian borders. Most EDC programs relate to guarantees of foreign receivables. However, there are several specialized credit products, which include the financing of foreign receivables. EDC operations are not intended to be grant programs. Accordingly, EDC charges interest and fees similar to other financial institutions. However, many local banks do not like to margin or provide credit for foreign receivables and the EDC's programs are quite worthwhile.

The government of Canada has extended EDC's domestic activities in order to provide capacity in the domestic credit market to meet the needs of Canadian exporters, in a manner that complements the activities of the Business Development Bank of Canada and private sector lenders. The government will make amendments to the Export Development Canada Exercise of Certain Powers Regulations that clarify the circumstances under which EDC will be able to provide support in the domestic market. The temporary powers granted to EDC since 2009 have been extended until 12 March 2014 or until the new regulations come into force.

There are many export financing options available through EDC. For example, under the Export Guarantee Program, banks are encouraged to grant pre-shipment loans to Canadian exporters to enable growth of Canadian exporting companies. The Canadian Direct Investment Abroad Program is designed to help companies expand by assisting them in investing in strategic global markets. As well, through EDC's Bank Guarantee Program, EDC supports banks that finance the sale of Canadian exports. Under another incentive program, the federal Global Opportunities for Associations (GOA), formerly known as the federal Program for Export Market Development-Associations (PEMD-A), export feasibility studies, trade fair sponsorship and other like services are made available on a subsidized basis to Canadian businesses wishing to expand to markets beyond Canada. Under the Export Express Credit Program, exporting companies can receive a CND50,000 unsecured loan to promote their company in foreign markets.

THE SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED) PROGRAM

The federal tax incentive SR&ED program gives tax breaks to Canadian corporations that engage in research and development projects aimed at developing new, improved or technologically advanced products or processes. The program is the primary method by which the federal government supplies funding for research and development initiatives.

SR&ED tax credits can be applied to a wide range of expenses such as wages, materials, machinery, equipment, overhead and SR&ED contracts.

THE EMPLOYMENT RELATIONSHIP

There are many different types of relationships which businesses can have with the people and corporations who perform services for the business, including but not limited to employment relationships, independent contractor relationships, dependent contractor relationships and partnerships. Different legal rules apply depending upon the type of relationship(s).

While there is no single conclusive legal test for determining whether a relationship is an employment relationship or not, courts often consider the level of control the purported employer has over the worker's activities, the degree to which the worker provides his own equipment, whether the worker has the power to hire and fire fellow workers or helpers, the degree of financial risk and opportunity for profit of the worker, and the degree of responsibility for investment and management held by the worker.

Businesses deciding to operate within Canada should determine the degree to which the various services required to be performed for the business should be performed by employees, and the degree to which these services should be performed by contractors, partners or via other types of legal relationships. Those wishing to conduct business in Canada should be aware of the basic employment and labour law regimes in Canada and be cognizant of the potential legal obligations which employment relationships are subject to.

APPLICABILITY OF LAWS

Both the federal government (Parliament) and the 10 provincial governments (Provincial Legislatures) of Canada have the power to pass laws. The laws passed by the federal government are generally binding Canada-wide, whereas laws enacted by a provincial government will usually only be binding within the province which enacted the law.

The federal government has passed several laws which are generally binding on all employers operating within Canada. These federal laws include laws relating to employment insurance, Canada Pension and income tax.

Both the federal government and provincial governments have enacted laws governing labour relations, the terms of employment and human rights. Some employers will be obliged to follow the laws enacted by the federal government, and other employers will be obliged to follow the laws enacted by the provincial government(s) in the province(s) in which the employer operates.

The laws relating to labour relations, terms of employment and human rights which have been enacted by the federal government, will generally only apply where the ongoing dominant character of work performed by an employee relates to:

- A work, business or undertaking whose essential operational nature falls within a federal head of power in the Canadian Constitution; or
- A work, business or undertaking whose essential operational nature is integral to a federal undertaking.

Employees whose ongoing dominant character of work does not fall within either of the above noted categories will be subject to the labour relations, employment and human rights laws enacted by the provincial government in the province in which the employment relationship is governed.

Types of businesses which are subject to federal jurisdiction include, but are not limited to: transport businesses which physically operate or facilitate carriage across interprovincial boundaries; stevedoring work which is integral to extra-provincial transport by ship; work integral to the establishment and operation of a telecommunications network; enterprises which operate inter-provincial pipelines; postal services; the armed forces; banks; federal crown corporations; airlines; railways; marine shipping; longshoring; grain elevators; television; telephone; radio and cablevision.

MINIMUM STANDARDS OF EMPLOYMENT

The federal government and all provincial governments have passed laws establishing minimum standards of employment for employees. Employment relationships will be governed by these minimum standards and various financial penalties and remedial orders can be made against employers who fail to provide these minimum standards to employees. Accordingly, Canada cannot be considered a jurisdiction in which there is "employment at will," as the minimum standards mandate what employees are minimally entitled to. As discussed below, the minimum standards laws only establish minimum requirements and do not restrict an employee's right to sue for breach of contract, wrongful dismissal or other damages arising from the termination of his/her employment (depending on the wording of the written employment agreement, if any).

The minimum standards vary from province to province and on whether the employee falls under federal jurisdiction. However, the following is a list of some issues regulated by the various minimum employment standards laws:

- Minimum wages
- Method of payment of wages
- Hours of work
- Overtime

- Statutory holidays
- Vacation with pay
- Pregnancy/parental leave designed to allow time to care for the child after childbirth

TERMINATING EMPLOYMENT

Under the above-noted minimum employment standards laws, employers must provide employees who are terminated without cause either advance notice of termination or pay in lieu of providing such notice. The notice period to be given to an employee who is terminated without cause is based upon the length of service of the employee to the employer. Notice requirements under these minimum standards laws generally range from no notice for employees employed less than three months to eight or more weeks for employees employed longer than 10 years.

The above notice obligations are mandatory statutory minimums. In the absence of a written contract providing an alternative period of notice of termination which meets or exceeds these mandatory minimum notice obligations, courts generally require that an employer provide an employee employed pursuant to an indefinite term contract with "reasonable" advance notice of termination, or pay in lieu of such amount, where the employee is terminated without "just cause." What constitutes "just cause" and "reasonable notice" is established through litigation on a case-by-case basis. Courts consider various factors in determining what constitutes reasonable notice, including the employee's age at termination, length of service to the employer, the employee's position at termination, remuneration, how the employee came to be employed, and the employee's chance of finding replacement employment.

Reasonable notice established by Canadian courts often exceeds the obligations of American employers to their employees. It is generally accepted by many employment law lawyers that the Canadian case law establishes a rule of thumb of between one and two months of notice for every year of service an employee has to the employer, although there are cases which do not abide by this rule of thumb. Twenty-four months has usually been accepted as the very maximum period which could constitute "reasonable notice" and this amount is usually only awarded for employees who are 50 years of age or older, occupied senior level employment positions when terminated, and had 15 to 20 or more years of service with the employer.

There is no hard and fast method as to what constitutes just cause for termination. Each case is unique and is determined on the basis of its particular facts. The grounds for termination for cause in Canada are reserved for the most serious misconduct. When determining whether there is just cause, courts

will assess whether the employee's misconduct caused a breakdown in the employment relationship (i.e., the breach of an essential term of the employment contract, or the breach of the employer's inherent faith in the employee). If the answer is yes, there will be just cause; however, if the answer is no, the employer will be required to give either the notice of termination set out in a written contract, or reasonable notice of termination or payment in lieu of notice.

In addition to the obligation to provide prior notice of termination, an employer owes its employee(s) a duty to act in "good faith" in the manner in which employment is terminated. While this duty does not oblige an employer to have a valid reason for termination, employers are required to be candid, reasonable, honest and forthright with their employees, and refrain from unfair, untruthful, misleading or unduly insensitive conduct when terminating employment. An employee may be entitled to financial compensation for mental distress resulting from an employer's failure to act in good faith in the manner of termination.

EMPLOYMENT CONTRACTS

In order to avoid the uncertainties that arise in litigation, it is recommended that all employers have written employment contracts with all employees. Such contracts should specifically and clearly address issues that arise upon the termination of employment, including termination pay as well as covenants for noncompetition and non-solicitation.

An important component of a written employment contract is the clause(s) governing how much advance notice of termination an employer must provide the employee. As noted, Canadian courts frequently impose an obligation on employers to provide employees with "reasonable" advance notice of termination. However, Canadian courts will not impose this "reasonable notice" obligation on employers where:

- An alternate notice period is provided for in a binding written employment contract;
- The alternate notice period is clearly worded; and
- The alternate notice period meets or exceeds the applicable minimum standards laws

SUCCESSOR EMPLOYERS

According to some provincial statutes, where a business is acquired and continued in substantially the same manner and the purchaser hires the vendor's employees, the purchaser may have obligations toward the vendor's employees. For example, the purchaser may inherit the vendor's obligations under an existing collective agreement with a certified bargaining agent (i.e., union). Tenure with the predecessor corporation will be considered for various purposes including determining vacation leave and termination pay required by the minimum standards laws and may be considered in determining the amount of reasonable notice which must be given on termination of employment. A detailed understanding of the nature and relationship of the employees to a business being sold is required so that the ongoing obligations can be quantified and factored into the negotiations on the purchase.

HUMAN RIGHTS

Canadian workplaces are regulated by either provincial or federal human rights laws which prohibit discrimination and harassment on the basis of a number of grounds, including but not limited to race, colour, religion, sex, sexual orientation, age, disability and family status. These prohibited grounds of discrimination vary depending upon whether federal or provincial laws apply.

Discrimination must be considered at all stages of the employment relationship, including decisions to hire and dismiss employees, and in dealing with employees who have indicated that they need special accommodation or leave as a result of one or more of the prohibited grounds of discrimination. For instance, human rights law may require an employer to provide certain workplace accommodations to employees due to their religion, sex, disability and/or family status.

Claims of discrimination often arise in situations where an employee develops a long-term physical or mental disability and seeks special accommodations from his/her employer. An employer may be required to accommodate the employee, and if the employer does not, the employee can file a complaint of discrimination against the employer. A valid complaint of discrimination can result in an award of damages, financial penalties and other orders against an employer.

It is recommended that all employers have a written anti-harassment/anti-discrimination policy setting out procedures and possible penalties.

LABOUR RELATIONS

The Canadian Charter of Rights and Freedoms protects the right of employees to associate together to achieve collective goals. Accordingly, both the federal and provincial governments have enacted various labour relations laws which allow for most types of employees (excluding managerial employees) to form or join a union and engage in collective bargaining with the employer.

Under most of these regimes, a union must apply to a government tribunal for an order certifying the union as the exclusive bargaining agent for a group of employees. Where certification occurs of a group of employees, all employees within this group give up their right to individually bargain the terms of their employment with their employer, in favour of collective bargaining by the union.

There are various considerations the government tribunal is required to consider before certifying the union as the exclusive bargaining agent for a group of employees, including but not limited to whether a majority of employees of the group of employees which the union seeks to be certified for, are in favour of union certification.

These labour relations laws create various statutory offences for "unfair labour practices" by employers, unions and/or employees, which offences include interference with the formation of a union. As such, employers must be careful of their words and actions during union organizing drives.

Where a union has been certified as the exclusive bargaining agent for a group of employees, both the union and the employer are obliged to bargain in good faith with one another. If the collective bargaining fails to achieve a mutually acceptable collective agreement, conciliation and mediation can be imposed upon both the union and the employer. In certain circumstances, the content of a collective agreement can be imposed upon both the union and employer if neither conciliation nor mediation has resulted in a mutually acceptable collective agreement.

OTHER EMPLOYER OBLIGATIONS

Employers generally have the following mandatory obligations:

EMPLOYMENT INSURANCE

Employers must contribute to a federal employment insurance fund which assists employees who are laid off, terminated, become ill or take a pregnancy/parental leave. Employees also must contribute to the fund by way of deductions from their pay which are remitted by the employer to the fund on the employees' behalf.

CANADA PENSION

Employers and employees contribute to a federal pension fund that employees can draw on upon retirement or disability. The employees' contributions are deducted from the employees' pay.

WORKERS' COMPENSATION

In most employment relationships, employers are required to have workers' compensation insurance. These insurance plans are governed by either federal or provincial statutes, depending on the nature of the employers' businesses.

PRIVACY

Under federal and many but not all provincial statutes, employers have an obligation to ensure personal information about their employees is obtained, retained, disclosed and destroyed according to strict guidelines. Breaches can lead to various financial penalties. It is important for employers to ensure their privacy policies are up to date and that their privacy practices are in accordance with the applicable legislative requirements.

Canada has become a world leader in reducing global trade barriers. Free trade with the United States and Mexico and freer trade with other countries have lowered many of the barriers to entering into the Canadian market. Canada, with its rich resources and vibrant marketplace, presents many opportunities for foreign businesses and investors. The foreign investor is encouraged to explore the competitive advantages of Canada. Sensitivity to the cultural, administrative and legislative differences in Canada will assist an enterprise's entrance into the Canadian market.

Through the general information provided in this book, we have attempted to illustrate the highly multicultural society that is Canada and to provide an overview of some of the main issues faced by foreign businesses and investors in Canada. It is important for foreign businesses and investors wishing to invest in Canada or enter into trade with Canadian businesses to understand the laws and culture of this country and to seek the advice of counsel at the appropriate time.

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