

Doing Business in Canada

SCG Legal Annual Meeting
Vancouver, British Columbia
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Introduction

- World's second largest country by area
- As of July 1, 2014 – the population was estimated at 35,540,400
- Most people reside within 200 miles of the Canada-USA border

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Government

- Parliamentary democracy based on the British model
- Legislative power shared by federal and provincial governments

Language

- Official languages of Canada are English and French

Foreign Investment Regulation

Investment Canada Act

- Non-Canadian investor file notification
- Notification timeline
- WTO investor threshold of \$600 million
- Non-WTO investor threshold
 - Direct investments of \$5 million
 - Indirect investments
 - \$50 million where the asset value less than 50% of global value
 - \$5 million where the asset value is more than 50% of the global value

Competition Act

- Mergers or business establishments are subject to review by the Commissioner of Competition
- Notification of review is not required unless the merger exceeds thresholds
 - Size of the parties
 - Size of the transaction
- Commissioner must be notified prior to completion of the merger
- *Competition Act* has both criminal and civil provisions with the major difference being the potential penalties

Tax

Income Taxes

- Federal, Provincial and Territory taxes

Dividends and Branch Taxes

- Dividends paid to non-residents
- Bilateral tax treaty rates of 5% and 15%
- Branch tax

Commodities Taxes

- Goods and Services Tax or GST – 5%
- Provincial Sales Tax or PST – Varies by province

Other Taxes

- Employment Insurance Fund
- Canada Pension Plan

Employment Law

Labour and Employment Law

- Statutes
 - *Employment Standards Act, 2000*
 - *Human Rights Code*
 - *Labour Relations Code*
 - *Workers' Compensation Act*
- Minimum employment standards
- Parental leave
- Successor employer rights

Immigration Law

- Governed by the *Immigration and Refugee Protection Act* of Canada
- Foreign nationals
- Labour market opinion – who needs them and who doesn't

Bringing permanent employees to Canada

- Family class
- Skilled workers
- Business class

Foreign Ownership in Real Property

- Provincial legislation governing foreign ownership
 - Provinces can restrict purchases by non-resident or foreign citizens
- Non-resident withholding rights
- Land transfer tax is payable in all provinces when a purchaser acquires interest on real estate through a registered transfer
- FINTRAC reporting requirements

Infrastructure Projects

Infrastructure projects, both public and private, have become a huge business in Canada over the last 20 years.

Private Infrastructure Projects

The country's natural resource economy has made it a demand location for private infrastructure development.

Public Infrastructure Projects

Public infrastructure projects are procured by all level of governments

- Federal – national defence, security, etc.
- Provincial – health care facilities, schools, etc.
- Municipal – local roads, sewers, libraries, etc.

Delivery of Public Infrastructure Projects

- Public-private partnerships (P3s)
- Provinces of Ontario and British Columbia have their own government agencies dedicated to bring together government and private sector to develop P3 projects

Regulatory Approvals for Energy Projects and Resources Projects

Energy and resources projects in Canada could potentially require approvals from all levels of government depending on the nature of the project and its location.

Federal Jurisdiction

- Inter-provincial
- International trade in energy
- Owns and regulated energy resources on federal lands
- Environmental Regulation
- First Nations

Provincial Jurisdiction

- Energy resources are owned and regulated by the province
- Regulatory regimes per province, dealing with environmental, permitting, health and safety etc.
- Real property and mineral rights
- First Nations

Securities Regulation

Regulatory Regime

- Securities primarily regulated at the provincial level
- Each province has securities legislation and a securities regulator
- Securities law regulates those who are in capital markets, trade in securities, provide securities advice and issue securities – consumer protection legislation
- Securities laws also regulate insider reporting requirements

Acquiring a Canadian Company

Take-Over Bids

The take-over-bid regime becomes effective when an offeror makes an offer to acquire 20% or more of the outstanding securities of a Canadian company. The regime applies to public and private companies.

Acquisition from Treasury

Acquiring control from a treasury issuance does not trigger the take-over bid regime but, if dealing with a public company, stock exchange rules will apply.

Stock Exchanges

- Toronto Stock Exchange (TSX) – senior stock exchange
- TSX Venture Exchange (TSXV)– stock exchange for emerging companies
- Canadian Securities Exchange – operated by CNSX Markets Inc.

Intellectual Property

Patents are governed exclusively by the *Patent Act* and operates on a “first to file” system.

- Trade-Marks –the federal *Trade-Marks Act* protects registered marks. Marks are also protected at common law
- Copyright – copyright protection arises under the federal *Copyright Act*
- Trade Secrets and Confidential Information – governed by common law
- Canada is a member of various intellectual property treaties that help extend protection in Canada to non-Canadian jurisdictions.

Anti-Spam Legislation

- Canada's Anti-Spam Law (CASL) came into force on July 1, 2014
- Prohibits the sending of promotional electronic messages without the express consent of the recipient
- Express consent is stricter standard than some other jurisdictions whose legislation works on an “opt out” basis.

Privacy and Data Protection

- All business are subject to Canada's privacy laws
- System is consent driven
- On-going sensitivity over cross-border transfer of data
- Organization requirements
 - Designated person(s) responsible for compliance
 - Policies and procedures
 - Right to access personal information
 - Notification to obtain consent
 - Reasonable reason for information collection

Summary

- How the Canadian firms work to together
- Provide a one stop shop
- Whatever is needed to further the good of the network

Questions?

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Thank You

