

Doing Business in Canada: British Columbia

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

British Columbia has a common law legal system and is regulated by:

- Provincial statutes that apply exclusively within the province.
- Federal statutes that apply across Canada.

Canada has a significant body of common law relating to the rights of aboriginal peoples. This includes, for example, the duty of the government to consult with and, if required, accommodate the interests of aboriginal peoples when the government has knowledge, real or constructive, of the potential existence of an aboriginal or treaty right and to consider conduct that might adversely affect it. Although the duty to consult rests solely on the government, procedural aspects of this duty may be delegated to third parties. This allows for the government to rely on industry consultations with aboriginal peoples to assist in determining whether the duty to consult is triggered.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

British Columbia does not impose any general stand-alone restrictions on foreign investment. General issues of foreign investment are governed by the federal Investment Canada Act.

3. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

British Columbia provides provincial tax credits, exemptions, refunds and deductions to encourage business investment and innovation, including for:

- Research and development.
- Mining exploration.
- Film and television production.
- New media.
- International financial activities.

Sales and property tax exemptions are available for the purchase of certain machinery and equipment. Federal government incentives are also available.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.

- **Directors' liability.**
- **Parent company liability.**
- **Reporting requirements (including filing of accounts) and cost of compliance.**

The most common form of business vehicle used by foreign companies is the corporation. Corporations can be incorporated under the provincial Business Corporations Act. However, corporations can also be incorporated federally under the Canada Business Corporations Act. The following applies to corporations incorporated in British Columbia:

- **Registration formalities.** The corporate name must first be reserved with the Registrar of Companies. The incorporators then enter into an incorporation agreement and file an incorporation application with the Registrar of Companies. These filings, together with payment of the requisite fee, are carried out electronically.
- **Share capital.** There can be one or more classes of shares, which can be issued in different series. Shares may be issued with or without par value. While it is not necessary to prescribe a maximum number of shares, it is possible to do so.
- **Non-cash consideration.** Consideration can take the form of past services, property, and/or money. The value of the consideration received must equal or exceed the issue price set for the share.
- **Rights attaching to shares.** A corporation can set out in its articles various rights attaching to its shares, including:
 - voting;
 - dividends;
 - share of assets on liquidation or dissolution;
 - priority on liquidation or dissolution; and
 - conversion, redemption and retraction.
 Rights can vary among different classes of shares.
- **Foreign shareholders.** There are no restrictions preventing foreign persons from being shareholders.
- **Management structure.** A corporation must have at least one director and a public corporation must have at least three directors. Once a corporation has been created the shareholders elect a board of directors, which then appoints officers of the corporation. There are no residency requirements for directors or officers.

- **Directors' liability.** Directors of corporations operating in British Columbia are subject to a number of potential forms of liability arising from various federal and provincial legislation, as well as common law, which include:
 - liability for breach of fiduciary duties owing to the corporation, its shareholders, and potentially other stakeholders;
 - liability for wages and related benefits, wrongful dismissal, termination pay, workplace safety and protection fines, human rights violations, and sexual harassment; and
 - liability for unpaid taxes and certain government remittances.
- **Parent company liability.** Shareholders are not liable for a subsidiary's obligations.
- **Reporting requirements.** Corporations are required to:
 - file notices as to changes in directors;
 - file an annual report; and
 - make annual accounting records available for inspection.

For public corporations, regardless of where they are incorporated, the provincial Securities Act imposes additional reporting requirements that include:

- annual information forms;
- press releases;
- information circular for shareholders' meetings;
- acquisition reporting requirements; and
- security distribution requirements.

EMPLOYEES

6. What are the main laws regulating employment relationships?

Employment relationships in British Columbia are principally governed by the following (federal equivalents apply to employees of federal undertakings in British Columbia):

- **Labour Relations Code.** This governs the employment relationship for unionised work forces.
- **Employment Standards Act.** This sets out the minimum standards that apply in most work places in British Columbia. These minimum standards cannot be contracted out. The Act does not apply to students, volunteers or members of professional associations.

- **Human Rights Code.** This protects individuals and groups against discrimination on prescribed grounds, including race, sex and religion. Parties cannot contract out of the requirements of the Code.
- **Workers' Compensation Act.** This provides insurance coverage to workers who suffer workplace injuries or occupational diseases, and protects employers from lawsuits from workers affected by the economic hardship caused by work-related injuries or disease.
- **Freedom of Information and Protection of Privacy Act.** This governs the collection, use and disclosure of personal information including employee personal information by public employers.
- **Personal Information Protection Act.** This governs the collection, use and disclosure of personal information including employee information by private employers.
- **Common law.**

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

A written contract is not usually required, but it is often recommended. Certain terms are implied into employment relationships including that the:

- Employer must provide the employee with a safe workplace.
- Employee is entitled to pay for work done.
- Employer must, unless there is just cause or a written contract to the contrary, provide reasonable notice of termination to an employee.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Except for unionised workplaces, employees are not entitled to management representation or to be consulted in relation to corporate transactions.

9. How is the termination of individual employment contracts regulated?

If an employee is dismissed for reasons other than just cause, the employer must provide a period of notice (or pay in lieu of notice), which complies with the Employ-

ment Standards Act and the common law, subject to the terms of an employment contract.

Unless an employment contract provides otherwise, under common law an employee is entitled to reasonable notice of termination, which is usually between one week and one month per year of service depending on an employee's age, length of service, position and marketability. A written employment contract may provide for a different notice period or pay in lieu of notice on termination, so long as the following minimum amounts are met (*Employment Standards Act*):

- One week's notice or pay in lieu, after three consecutive months of employment.
- Two weeks' notice or pay in lieu, after 12 consecutive months of employment.
- Three weeks' notice or pay in lieu, after three consecutive years of employment.
- One additional week or pay in lieu for every additional year to a maximum of eight weeks notice.

If an employee is dismissed for just cause, notice obligations do not apply. Examples of just cause include:

- Theft.
- Dishonesty.
- Assault.
- Harassment.
- Fraud.
- Insubordination.
- Continued incompetence or neglect of duty (after specific warnings).

If an employer has acted in bad faith in terminating an employee, the employee may be entitled to additional damages. Unionised employees have stronger protection against unjust dismissal. An employer can also be exposed to liability for breaching the provincial Human Rights Code in terminating an employee.

10. Are redundancies/mass layoffs regulated? If so, please give details.

A redundancy is not just cause for termination. While an employer can temporarily lay off an employee for redundancy or for economic reasons without giving notice, a layoff exceeding 13 out of 20 weeks is deemed to be a termination, and the employer must provide the applicable notice period or pay in lieu of notice (*see Question 9*).

Mass layoffs are regulated under the Employment Standards Act and the Labour Relations Code.

Under the Employment Standards Act, if the employment of 50 or more employees at a single location is to be terminated within any two-month period, the employer must give written notice to:

- Each employee who will be affected.
- A trade union certified to represent, or recognised by the employer as the bargaining agent of, any affected employees.
- The Minister of Labour.

The notice of group termination must specify:

- The number of employees affected.
- The effective date(s).
- The reason(s) for termination.

The notice period or pay in lieu of notice, increases with the number of employees terminated.

The group termination notice and termination pay requirements are in addition to any individual notice under the Employment Standards Act or the collective agreement.

Under the Labour Relations Code, for unionised workplaces, employers must provide 60 days' notice of changes that negatively affect the job security of a significant number of employees to whom a collective agreement applies. Often the notice periods between the Labour Relations Code and the Employment Standards Act will coincide.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Foreign nationals require a work authorisation, commonly known as a work permit, to work temporarily in Canada (Can\$150 (about EUR95)). If the foreign national is from a country that is a party to the Canadian Visa Waiver programme, applications for work permits can be made in person at a Canadian port of entry (land, air or sea) and there is no need to apply for a temporary resident visa. However, if the foreign national is from a country that is not a party to this programme, they must apply for both their work permit and a temporary resident visa (additional cost of Can\$75 (about EUR47) for single entry and Can\$150 for a multiple entry visa) through a foreign visa office. Depending where the application is submitted, processing times range from two days to three months.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

Generally, an individual is considered a resident of Canada under the federal Income Tax Act if that person regularly, habitually or normally lives in Canada.

An individual is considered a resident of the province where he resided on 31 December of that particular taxation year. Residents of Canada are subject to tax on their worldwide income for federal and provincial taxation purposes.

13. What income tax or social security contributions must the following pay:

- Tax resident employees?
 - Non-tax resident employees?
 - Employers, in relation to their employees?
-

Tax resident employees

A person who is resident in British Columbia (see *Question 12*) during a taxation year is subject to the following taxes on his worldwide income from all sources:

- **Federal income tax.** Federal income tax rates in 2010 are as follows:
 - 15% on taxable income less than or equal to Can\$40,726 (about EUR25,850);
 - 22% on taxable income greater than Can\$40,726 and less than or equal to Can\$81,452 (about EUR51,701);
 - 26% on taxable income greater than Can\$81,452 and less than or equal to Can\$126,264 (about EUR80,145); and
 - 29% on taxable income greater than Can\$126,264.
- **Provincial income tax.** Provincial income tax rates in 2010 are as follows:
 - 5.06% on taxable income less than or equal to Can\$35,716 (about EUR22,670);
 - 7.76% on taxable income greater than Can\$35,716 and less than or equal to Can\$71,433 (about EUR45,342);
 - 10.5% on taxable income greater than Can\$71,433 and less than or equal to Can\$82,014 (about EUR52,058);

- 12.29% on taxable income greater than Can\$82,014 and less than or equal to Can\$99,588 (about EUR63,213); and
- 14.7% on taxable income greater than Can\$99,588.
- **Canada Pension Plan (CPP).** For 2009 the rate is 4.95%, payable on earnings up to a maximum of Can\$46,300 (about EUR29,389) and with a basic personal exemption of Can\$3,500 (about EUR2,222).
- **Employment Insurance (EI).** This is payable at 1.73% on earnings up to Can\$42,300 (about EUR26,850).

Non-tax resident employees

Generally, a non-tax resident is taxed on Canadian source employment income at the same rates as a tax resident.

Employers

Employers are required by federal law to deduct certain amounts from the income of their employees for EI premiums, CPP contributions and income tax. The employer is also required to make matching EI premium payments and CPP contributions.

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

A corporation is resident where its central management and control is situated. The federal Income Tax Act provides that a corporation incorporated in Canada after 26 April 1965, is deemed to be a resident in Canada throughout its taxation year. A corporation is also deemed to be a resident of Canada if any of the following apply:

- Before 18 June 1971, it was a foreign business corporation that was controlled by a corporation resident in Canada.
- During the ten-year period ending on 18 June 1971, it carried on business in a country other than Canada but during this period paid dividends to shareholders resident in Canada on which the shareholders paid tax to the government of the other country.
- At any time in the taxation year or in any preceding taxation year commencing after 1971, it was resident in Canada or carried on business in Canada.

15. Please give details on the main taxes that potentially apply to a tax resident business vehicle (including rates).

A corporation resident in Canada is taxable on its worldwide income. Generally, the federal corporate income tax rate in 2010 for general income is 18% and the British Columbia tax is 10.5%.

16. How are the activities of non-tax resident business vehicles taxed?

A non-resident corporation is subject to income tax on its taxable income from carrying on a business in Canada and from the disposition of taxable Canadian property.

17. Please explain how each of the following is taxed:

- **Dividends paid to foreign corporate shareholders.**
- **Dividends received from foreign companies.**
- **Interest paid to foreign corporate shareholders.**
- **Intellectual property (IP) royalties paid to foreign corporate shareholders.**

- **Dividends paid.** These are generally subject to non-resident withholding tax at the rate of 25%.
- **Dividends received.** A person resident in Canada must include dividends paid by a foreign corporation in his taxable income. A corporation resident in Canada may, in calculating taxable income, deduct dividends paid by a controlled foreign affiliate which are paid out of the exempt surplus (generally, the after-tax earnings) of the foreign corporation.
- **Interest paid.** Interest paid to an arm's-length non-resident is generally not subject to non-resident withholding tax. Interest paid to a non-resident person not acting at arm's length (which would generally include most non-resident shareholders) is subject to non-resident withholding tax at the rate of 25%.
- **IP royalties paid.** These are generally subject to non-resident withholding tax at the rate of 25%.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

The federal Income Tax Act contains thin capitalisation rules which deny a deduction for interest on certain loans from foreign affiliates to the extent that the loan exceeds twice the capital of the corporation.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

A Canadian resident taxpayer must include in income for a taxation year its participating percentage of the foreign

accrual property income of the controlled foreign affiliate. Generally speaking, foreign accrual property income consists of:

- Passive investment income.
- Gains on the sale of investment property.
- Income that is deemed to be passive investment income.

20. Are there any transfer pricing rules? If so, please give details.

The transfer pricing rules in the federal Income Tax Act generally provide that where a taxpayer and a non-arm's-length, non-resident person enter into one or more transactions and where:

- The consideration paid in the transaction is not an arm's-length amount, the consideration paid will be deemed to be the arm's-length amount.
- The transaction is not one which would have been entered into had the parties been at arm's length and it may reasonably be considered that the transaction was not entered into other than to obtain a tax benefit, the nature of the transaction entered into will be deemed to be that which would have been entered into had the parties been at arm's length.

21. How are imports and exports taxed?

The federal Customs Act imposes liability for customs duties on a person who reports the importation of the goods calculated on the basis of the value for duty of the goods as determined under the rules contained in the federal Customs Act.

The federal Excise Tax Act requires every person who is liable to pay duty on goods imported into Canada or who would be liable to pay duty if the goods were dutiable, to pay goods and services tax (GST) at 5% on the value of the goods. An importer of record is therefore generally required to pay GST on imported goods. A registrant who imports goods can recover GST paid on such imports to the extent they are imported for use in the registrant's commercial activities. Input tax credits on imported goods are claimed in the same manner as for domestic purposes.

Special rules are provided for imports of goods into Canada by unregistered non-resident vendors. Under the federal Excise Tax Act, recipients of certain imported services and intangible personal property must self-assess tax and may be able to recover GST paid on the same basis as described above.

The provincial Social Service Tax Act imposes a retail sales tax of 7% on purchases and leases of tangible personal property brought into the province for the consumption or use of the purchaser or lessee. Commencing 1 July 2010, the retail sales tax will be replaced by a 7% tax expected to be levied on a substantially similar basis as the GST under the Excise Tax Act. The combined 12% tax (5% GST and 7% provincial tax) will be referred to as the British Columbia Harmonized Sales Tax (HST).

COMPETITION

22. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

The federal Competition Act governs most business conduct in Canada. It contains both criminal and civil provisions aimed at preventing anti-competitive practices in the Canadian marketplace.

INTELLECTUAL PROPERTY

23. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- Nature of right.
- How protected.
- How enforced.
- Length of protection.

Patents

- **Nature of right.** Under the federal Patent Act, in order to patent an invention, it must:
 - be novel;
 - possess utility; and
 - not be obvious.
- **How protected.** A patent application must be filed with the Canadian Intellectual Property Office.
- **How enforced.** The patentee can sue the patent infringer for damages.
- **Length of protection.** Patents last for 20 years from the filing date provided the prescribed maintenance fees are paid. In rare circumstances, the life of patent rights can be extended by an act of Parliament according an extension of a particular patent to a particular patent holder.

Trade marks

- **Nature of right.** Rights arise in a trade mark in Canada as soon as it is used in association with wares or services.
- **How protected.** A trade mark holder can, under the common law action for passing off, prevent subsequent use of the same or a confusingly similar trade mark for similar wares and/or services. However, without registration under the federal Trade-marks Act such protection is limited to the geographic area in which there can be said to be reputation in the trade mark. Only registration under the federal Trade-marks Act, with the Canadian Intellectual Property Office, gives the full protection available by law. It also allows an action to be brought in any court of competent jurisdiction to prevent depreciation of goodwill in the trade mark.
- **How enforced.** The right holder can sue under common law and/or the Trade-marks Act, the latter of which empowers a court to grant injunctive relief and the recovery of damages or profits where justified.
- **Length of protection.** A trade mark is valid for 15 years, but can be renewed indefinitely.

Industrial designs

- **Nature of right.** To qualify for protection, a design must:
 - be original; and
 - not have been published in Canada or elsewhere more than one year before the filing date.
- **How protected.** Protection is through registration, under the federal Industrial Design Act, with the Canadian Intellectual Property Office which examines applications on a “first-to-file” basis.
- **How enforced.** The right holder can sue for infringement under the federal Industrial Design Act, which provides that the court may make orders for relief by way of injunction and/or the recovery of damages or profits.
- **Length of protection.** The owner of a registered industrial design has exclusive rights to it for ten years, provided the prescribed maintenance fees are paid.

Copyright

- **Nature of right.** There are four categories of works which are protected by copyright law:
 - literary works;
 - artistic works;
 - dramatic works; and
 - musical works.

Copyright does not exist in ideas themselves, but only in the original, fixed expression of ideas.

- **How protected.** Copyright automatically subsists in a work in Canada on the creation of an original work (whether or not the work was published), if at the time the work was created, the author was:
 - a Canadian citizen;
 - a British subject; or
 - a citizen of a country that is a member of an international agreement for the protection of copyright to which Canada is a party.

Although registration of copyright is not necessary, it is prudent. A registration application must be filed with the Canadian Intellectual Property Office.

- **How enforced.** Copyright can be enforced by the copyright holder through common law remedies and/or federal Copyright Act remedies such as injunctive, monetary, and/or other forms of relief.
- **Length of protection.** In most works, copyright subsists for the life of the author, plus 50 years. If a work was not published before the death of the author, copyright will subsist until publication and for a period of 50 years after publication.

Confidential information

- **Nature of right.** Trade secrets and other confidential information is maintained in strict confidence by the owner of such information and such owners rely on contractual obligations placed on the recipients of the information to ensure information protection. The legal protection of trade secrets and confidential information from disclosure and unauthorised use is based on court rulings under common law.
- **How protected.** Generally, to be protected, the information in question must have been acquired in circumstances that produce an obligation of confidence. The most common example is the employer-employee relationship.
- **How enforced.** Owners of trade secrets may seek redress through the courts in certain circumstances if their secrets are disclosed or misused. The grounds for redress often include breach of confidence and fiduciary duty under common law. There is a duty on the owner of trade secrets to document their creation and use, as well as the measures taken to keep them confidential.
- **Length of protection.** The length of trade secret protection depends on the owner's ability to maintain the information in confidence.

MARKETING AGREEMENTS

24. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
- **Distribution.**
- **Franchising.**

- **Agency.** While there is no specific legislation governing agency in British Columbia, people who act as agents/brokers in certain industries are regulated by specific legislation, including the:
 - provincial Real Estate Services Act;
 - provincial Mortgage Brokers Act; and
 - provincial Securities Act.
- **Distribution.** There is no specific legislation governing distribution in British Columbia, other than liquor distribution.
- **Franchising.** There is no specific legislation governing franchising in British Columbia.

E-COMMERCE

25. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

E-commerce is principally regulated by:

- **Provincial Electronic Transactions Act.** This sets out rules for conducting business transactions electronically and governs the validity of electronic contracts and electronic signatures.
- **Federal Personal Information Protection and Electronic Documents Act.** This applies to companies that operate under federal jurisdiction and provides guidelines relating to electronic signatures.

DATA PROTECTION

26. Are there any data protection laws? If so, please give brief details.

Data protection is principally regulated by public and private sector legislation that exists on both the provincial and federal levels. In British Columbia, the following apply:

- **Provincial Freedom of Information and Protection of Privacy Act.** This governs the collection, use and disclosure of personal information by provincial departments, agencies and government corporations, and provides individuals a right of access to personal information being held by such public bodies. It also establishes rules that provincial public bodies must follow in responding to access to information requests.
- **Provincial Personal Information Protection Act.** This governs the collection, use and disclosure of personal information by private sector organisations (both companies and non-profits) in British Columbia, and provides individuals a right of access to personal information being held by these organisations.
- **Federal Personal Information Protection and Electronic Documents Act.** This applies to federally-regulated private sector organisations (for example, in the transportation, communications, broadcasting, federal banking and offshore sectors), as well as to the collection, use and disclosure of personal information by provincially regulated private sector organisations across provincial and international borders in the course of commercial activities.
- **Federal Privacy Act.** This governs the collection, use and disclosure of personal information by federal departments, agencies and government corporations, including those operating in British Columbia. It also provides individuals a right of access to personal information being held by such public bodies.

PRODUCT LIABILITY

27. Are there any laws regulating product liability and product safety? If so, please give brief details.

Generally, under common law, product manufacturers have a post-sale duty to warn consumers and users of their products of defects and dangers that become known to the manufacturer after its products were manufactured and sold into the marketplace. In addition, post-sale duties for certain types of products exist under common law.

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