

DOING BUSINESS in British Columbia

This Guide to Doing Business in British Columbia is aimed at non-Canadian companies and entrepreneurs looking for general information about laws, regulations and taxes that apply to starting and operating a business in the Province of British Columbia, Canada.

Because every business situation is unique, this guide can not cover all potentially relevant legal and tax considerations. Also, it is not intended to be a substitute for legal, tax, financial or other professional advice that you will need in starting, buying, or investing in a business in British Columbia.

We hope you find this guide helpful in developing your business opportunity in British Columbia. For more information and help, please contact:

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Disclaimer. Every effort has been made to ensure that the information in this publication is accurate and current to October 29, 2010 (the information also includes significant proposed tax changes); however, neither the Ministry of Tourism, Trade and Investment and the Government of British Columbia, nor Fraser Milner Casgrain LLP accepts liability for actions based on this information. For more information on Fraser Milner Casgrain LLP, please visit www.fmc-law.com.

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EXECUTIVE SUMMARY

British Columbia's economy is dominated by free market activities and private enterprise. As a result, it is relatively easy to commence or expand business activities in British Columbia. In addition, in recent years the federal and provincial governments have acknowledged the need for and benefits of attracting foreign investment into the province. As a result, over the last ten years there has been a continuous effort to reduce the amount of rules and regulations effecting businesses and investments in British Columbia. For example, there is no general insistence that foreign businesses operate only on a joint venture basis with Canadian controlled businesses or that they attract Canadian minority investors.

British Columbia has a broad and diversified business sector covering areas such as financial services, tourism, retail, oil and gas, mining and forestry. The province encourages foreign investment in all business segments from all countries, with very limited restrictions. In addition, British Columbia has a competitive tax regime that encourages investment and growth.

British Columbia has a strong, broad and effective legal regime which is supported by an independent and highly competent court system. Employment laws in British Columbia are more flexible than in other jurisdictions around the world allowing businesses to easily expand the scope of their operations and efficiently deal with their employees.

Starting a business in British Columbia is a simple process with few legal formalities. The first step is to decide on the type of business organization to use to carry on the business. The most common business organizations are companies, partnerships and joint ventures. Once the structure is determined, the desired name of the business must be approved. If the business is operated through a company or a limited partnership, incorporation of the company or registration of the limited partnership is necessary. Depending on the nature of the business, you may need to apply for municipal permits or make further registrations. There are no director residency requirements for a British Columbia company.

The United Nations Human Development Reports consistently ranks Canada among the best countries in the world in terms of overall quality of life. These findings bolster Canada as a place to invest, relocate and commence or acquire a business.

British Columbia prides itself on its pristine beauty and quality of life. As such, the province looks to ensure that business operates in a way that ensures good stewardship of the environment.

Legislation affecting business conduct may be national, provincial or municipal in origin depending on the nature and scope of the business activity. This publication has been prepared to provide a general overview of the principal corporate, tax and other legal considerations that would be of interest to foreign businesses wishing to invest in, establish or acquire a business in British Columbia.

WELCOME TO BRITISH COLUMBIA

Welcome to British Columbia

British Columbia (or “BC”) is Canada’s westernmost province and is bordered by the Pacific Ocean to the west, by the American state of Alaska to the northwest, by the Yukon and the Northwest Territories to the north, by the province of Alberta to the east, and by the American states of Washington, Idaho, and Montana to the south.

BC is the second largest province in Canada, and the third most populated. It occupies almost a million square kilometres, larger than California, Oregon and Washington states combined, or the combined area of France and Germany.

British Columbia’s capital city is Victoria, located on the south end of Vancouver Island. British Columbia has a population of 4.5 million people. BC’s largest city is Vancouver, located on the southwest coast. Vancouver is a thriving financial centre and international shipping hub. The Vancouver metropolitan area has a population of over 2 million people.

British Columbia’s gross domestic product (GDP) totals around C\$198 billion and its major export markets include the United States (65%), Japan (12%) and Greater China (6%). Vancouver and the surrounding Metro Vancouver, which includes municipalities such as Surrey, Richmond and Burnaby, is the largest economic region in the province. Nearby municipalities of Abbotsford and Whistler are also tightly integrated into this economy.

Vancouver was the host city for the 2010 Winter Olympic and Paralympic Games. The event put British Columbia in the international spotlight, and was celebrated as one of the most well-organized Games yet, leaving a lasting positive impact on regional economic prosperity.



Other notable economic regions of British Columbia include the Thomson/Okanagan (including the municipalities of Kelowna and Kamloops), southern Vancouver Island (including the municipalities of Victoria and Nanaimo), and the Peace River/North (including the municipality of Prince George).

The workforce in British Columbia is one of the best educated in the world. About 65% of British Columbia employees have post-secondary education and more than 22% hold a university degree. British Columbia has seven universities, including the University of British Columbia in Vancouver, one of the world's leading research universities, and numerous colleges and institutes. Over 81,000 skilled workers immigrated to British Columbia between 2005 and 2009.

For more statistics on British Columbia, please visit <http://www.bestats.gov.bc.ca/>

The Government of British Columbia has a helpful guide: *A Guide to the BC Economy and Labour Market* on their website (http://www.bestats.gov.bc.ca/pubs/econ_gui.asp).

What laws affect business activities?

Canada has a written constitution that distributes law-making powers between different levels of government and imposes certain limits on the authority of all branches of government. The federal *Constitution Act* is the statute that establishes a federal system, in which the authority to pass statutory laws is divided between a national (federal) Parliament and ten provincial legislatures, including British Columbia's Legislature.

The areas of **federal** and **provincial** jurisdiction are generally intended to be separate. In practice, however, **both levels of government** may regulate some activities, since a particular piece of legislation may have a provincial and a federal aspect to it. If there is a conflict between federal and provincial legislation, the federal legislation will take priority. The courts can make decisions about the division of power between the federal and provincial governments.

The governmental jurisdictions may pass laws that affect business activities, such as:

Federal Government

- regulation of foreign investment;
- incorporation of federal companies;
- direct and indirect taxation;
- regulation of interprovincial and international trade;
- general regulation of trade throughout Canada, including competition law;
- patents and copyright;
- immigration;
- bankruptcy and insolvency;
- banking and bills of exchange; and
- interprovincial undertakings in the transportation and communication fields.

British Columbia and Other Provinces

- incorporation of provincial companies;
- direct taxation;
- the regulation of trade and commerce within the province; and
- the creation and regulation of local governments (see following paragraphs).

The provincial government of British Columbia has delegated some of its legislative powers to **local governments**.

British Columbia has two tiers of local government: regional districts and municipal governments.

British Columbia is divided into 28 regional districts. For example, Metro Vancouver includes the City of Vancouver and most of its suburbs. Metro Vancouver oversees resources and services throughout the area, including community planning, water, sewage, drainage, transportation (including public transportation), air quality, and parks.

Every municipal government is run by a mayor and councillors. They have authority over land use and business and construction licensing within a city or a town.

INVESTING IN CANADA

Minimal Regulations

Unlike many foreign jurisdictions, in British Columbia there is minimal government involvement in most industries and businesses. In almost all cases there are no restrictions on the amount which an investor is required to invest in the sector in which the investment takes place. In addition, there are no restrictions on the ability of the investor to repatriate capital back to the investor's home jurisdiction. Over the last ten years the government of British Columbia has worked to significantly reduce the regulatory burden on foreign investment. A recent example of this is the harmonization of the provincial sales tax with the federal goods and services tax. This harmonization both reduced the cost of investing into British Columbia and reduced the administrative burden placed on companies operating in British Columbia.

Canada encourages foreign investment

Canada encourages foreign investment. The *Investment Canada Act* (ICA) regulates the establishment and acquisition of Canadian businesses by non-Canadian investors. The purpose of the ICA is to promote investment in Canada that contributes to economic growth and employment opportunities, and to review significant investments in Canada by non-Canadians. The goal is to approve investments that are of **net benefit to Canada**.

The ICA applies where a **non-Canadian** establishes a new Canadian business or acquires control of an established Canadian business. Therefore, it does not affect:

- any new offshore financing of a Canadian business, which is already foreign-controlled, which does not involve a change in control;
- a passive or portfolio investment in a Canadian business from abroad; or,
- in most cases, the expansion of a foreign-controlled business into new Canadian activities related to its previous Canadian activities.

Who are non-Canadians?

An **individual is a Canadian** for the purposes of the ICA if he or she is a Canadian citizen or a permanent resident who has been ordinarily resident in Canada for not more than one year after becoming eligible for Canadian citizenship. A **non-Canadian** is an individual, government, government agency, or entity that is not a Canadian. Whether a **corporation is Canadian** depends on whether the individuals who are the ultimate controlling shareholders of the corporation are Canadians.

Establishment of a New Business

The establishment of a new business, regardless of size, normally requires no more than the filing of a short notice by the foreign investor. The notice is simply for information purposes. It may be given at any time up to 30 days after the new business becomes operative. The one possible exception to the notice-only requirement on the establishment of a new business is the establishment of a new business in a culturally-sensitive sector, such as publishing, which can be made subject to full review within 21 days after the notice is filed.

Direct Acquisition of an Established Business

In the event of a direct acquisition of control of an established Canadian business, through a purchase of assets or voting interests of a corporation, partnership, trust or joint venture, the foreign acquiror may be required either to file a notice or an application for review and approval, depending on the circumstances. Neither obligation will arise if the transaction falls within one of the general exceptions under the ICA (which general exceptions are, in turn, subject to specific exceptions for certain types of business). These general exceptions include:

- the purchase of less than one-third of the voting shares of a corporation carrying on a Canadian business;
- the acquisition of control of a Canadian business through the realization of security for a loan; and
- a change, through a corporate reorganization, in the immediate control of a Canadian business, but not a change in ultimate control.

If none of the exceptions applies, the direct purchase of control of an active Canadian business by foreign interests will be subject to pre-merger review under the ICA if the Canadian business has assets in excess of certain limits. By virtue of the Agreement Establishing the World Trade Organization (WTO), the review threshold for investors from countries that are members of the WTO, other than where the Canadian business is in one of four specified sectors, has been determined by the Canadian government to be \$299,000,000 for 2010 (based on the assets of the Canadian business for the fiscal year immediately preceding the implementation of the investment). This threshold is adjusted annually. For other investors, the threshold for pre-merger review is \$5,000,000. The lower \$5,000,000 threshold also applies to direct acquisitions of control, whether by WTO investors or not, of Canadian businesses that:

- engage in the production of uranium and own an interest in a producing uranium property in Canada;
- provide any financial service;
- provide any transportation service; or
- are cultural businesses (such as publishing, music, or film).

Indirect Acquisition of an Established Business

- Indirect acquisitions of control are treated somewhat differently under the ICA. If control of an entity (a corporation, partnership, trust or joint venture) carrying on a Canadian business is acquired indirectly, as an incidental result of the sale of its larger foreign parent, the review threshold for non-WTO investors is increased to \$50,000,000 in assets of the Canadian business (provided that if the assets of the Canadian business represent more than 50% of the assets involved in the total international transaction, the review threshold for non-WTO investors remains at \$5,000,000). As a result of the WTO Agreement, an indirect

acquisition by a WTO investor is non-reviewable unless the assets of the Canadian business represent more than 50% of the total assets and the higher WTO threshold is exceeded (\$299,000,000 for 2010). As with direct acquisitions, however, the lower review thresholds applicable to non-WTO investors also apply to indirect acquisitions of control of Canadian businesses in one of the four specified business sectors listed above, regardless of the nationality of the investor.

Restrictions for specific businesses

There are certain business sectors for which the Canadian government has maintained policies that are, to a greater or lesser extent, restrictive of foreign investment. These policies apply whether or not the investor is from a country that is a member of the WTO. In some cases, the policies are effectively implemented through the review process under the ICA. In other cases, the policies take specific statutory form and, as such, operate of their own force and without reference to the ICA. For example, there are a number of policies issued by the Department of Canadian Heritage, which has jurisdiction for review of all investments in Canadian businesses that are involved in activities relating to Canada's national heritage or cultural identity. These policies include limitations on foreign investment in such businesses and outline factors that will be considered during the review process. Specifically, there are policies relating to the publication, distribution or sale of books, magazines or periodicals, as well as the production, distribution, sale or exhibition of film or video, which must be considered when the Canadian business subject to the investment is involved in any of these business activities.

The restrictive rules on foreign investment that have been incorporated in federal statutes include those in relation to broadcasting, telecommunications and certain types of financial services. The level of permitted foreign investment, through an acquisition, in one of these businesses can be even less than the one-third that would be permitted, without approval, by the terms of the ICA. There are no procedures for obtaining approval for investments above the statutory limit because the foreign investment rules for these businesses do not involve a review process but rather an absolute prohibition of foreign investment above a fixed level.

Business investments may be reviewed

If an investment is subject to review, you must submit an application providing certain information about yourself and the Canadian business you are interested in. The application is usually filed before the transaction is completed. Except in certain limited circumstances, you cannot establish or acquire a business until the review process is completed and the investment has been approved.

What is the review process?

Your review application must include a description of your plans for the Canadian business, including a description of how the investment will benefit Canada. Here are some things the government will consider when it reviews a proposed investment:

- What effect will the investment have on the level and nature of economic activity in Canada (including employment, resource processing, use of parts, components and services produced in Canada, and exports from Canada)?
- At what level will Canadians participate in the business?
- Will the business contribute to productivity, industrial efficiency, technological development, product innovation, and product variety in Canada?
- What effect will the investment have on competition within any industry in Canada?
- Is the business compatible with national industrial, economic, and cultural policies?
- Will it contribute to Canada's ability to compete in world markets?

The federal government will notify you of its decision about the investment within 45 days after receiving the review application. The government may request an additional 30 days to complete its review.

The information in your application is confidential

The information in your application is confidential – government officials cannot disclose your information to anyone else. They can, however, consult with federal and provincial government departments.

What if your application for investment is denied?

If the government does not approve the application for investment, you have 30 days to submit further information to support your application.

The government will notify you of its decision at the end of the 30-day period (or any agreed extension period). If it decides that the investment will not be of net benefit to Canada, you cannot proceed with the investment. If you have already made the investment, you must give up control of the business.

Canada does not have exchange controls

Once a Canadian business has been established or acquired, any profits from that business can be freely paid out to the foreign investor, as Canada has no system of exchange control. Therefore, Canadian dollar income can be freely exchanged into another currency at the best available rate of exchange and sent out of the country. The only restriction on such payments is the requirement to satisfy Canadian withholding tax obligations. (For more information concerning withholding tax obligations, see the discussion under the section, entitled Establishing or Acquiring a Business: Tax Considerations.)

Non-Canadians may acquire real estate

Subject to compliance with the general restrictions and limitations on investments described above, a non-Canadian may acquire and own both commercial and residential real estate in British Columbia.

For more information

For more information, please visit the Invest In Canada website at <http://investincanada.gc.ca/>.

ESTABLISHING OR ACQUIRING A BUSINESS

There are many ways to set up your business

Business may be carried on in British Columbia through various types of business organization, including:

- a company;
- a sole proprietorship;
- a general partnership;
- a limited partnership;
- a joint venture; and
- through registering an existing business entity from a jurisdiction outside of British Columbia.

Setting up a company

A company (or corporation) is the most commonly used form of business organization. In Canada, the words **corporation** and **company** generally mean the same thing. The features of a company are:

- it is a **separate legal entity** (a legal “person”) created by one or more people who become its members or **shareholders**;
- unless it is wound-up by its shareholders, it exists forever and may own property, carry on business, possess rights, and incur liabilities;
- shareholders of a company usually have no authority to deal with the assets of, or make legal commitments for, the company;
- shareholders control the company by electing **directors** who manage the company;
- the **liability** of the shareholders is usually limited to the amount of their capital investment in the company;
- a company is **taxed** as a separate legal entity at the rate of tax that applies to companies; and
- the **income or loss** generated by the company belongs to the company and not to the shareholders.

Companies are **private** or **public**. Private companies are those with shares that cannot be offered for distribution to the public and that are held by fewer than 50 shareholders.

Public companies are companies with shares that can be distributed to the public. The shares of public companies are often traded on a stock exchange. For more information, see the chapter on Public Companies.

How do you set up a company?

When establishing a company to carry on business in British Columbia, you must choose whether to incorporate under the *Canada Business Corporations Act* (CBCA) or the *British Columbia Business Corporations Act* (BCBCA). If you plan to operate across Canada, there are advantages to incorporating under the CBCA. For example, a CBCA company is guaranteed the right to use the same name in all provinces and territories of Canada. However, there are also certain disadvantages to incorporating under the CBCA. These include:

- Director residency requirements. Some of the directors of a CBCA company must be Canadian residents.

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- Extraprovincial registration requirement. A CBCA company must be registered in each Canadian province where it carries on business, including British Columbia. This can add to the cost and complexity of setting up and maintaining the company.

Therefore, if you plan to do business only in British Columbia, it is generally better to incorporate under the BCBCA rather than the CBCA. BCBCA corporations may register in other provincial jurisdictions to conduct business in those jurisdictions.

How to incorporate a federal company

If you choose to incorporate under the CBCA, you must file an incorporation application with Corporations Canada. Among other things, this application must include the **articles of incorporation** for the company. The articles of incorporation must provide the following information:

- the name of the company;
- the company's registered office;
- a description of the classes of shares;
- restrictions on share transfers;
- the number of directors; and
- restrictions on the business that the corporation may carry on (if any).

You must pay a fee when you file your application. For more information on applying to incorporate a company under the CBCA, go to the Corporations Canada website (<http://strategis.ic.gc.ca/epic/site/cd-dgc.nsf/en/Home>). Following incorporation, a CBCA company may pass **by-laws** that regulate the internal operations of the company.

How to incorporate a British Columbia company

Before incorporating a company under the BCBCA, you must reserve the name of the new company with the British Columbia Registrar of Companies (the Registrar).

Once your company's name has been reserved, you must file a **notice of articles** and an **incorporation application** with the Registrar. The notice of articles and application must be filed electronically.

The **incorporation application** must set out the name of the company, the desired effective incorporation date, the name and address of the people who want to incorporate, and a certificate confirming that those people have signed an incorporation agreement relating to the company.

The **notice of articles** must set out:

- the name of the company;
- the translation of the name (if any);
- the names and addresses of the initial directors of the company;
- the addresses of the company's registered and records offices;
- a description of the authorized share structure of the company, and
- whether there are any special rights or restrictions.

For more information on reserving a name and filing an incorporation application see the Registrar's website (<http://www.fin.gov.bc.ca/registries/default.htm>).

The nature of a share

A **share** is a fractional part of the capital of a corporation. It gives the holder a certain right to a portion of the company's assets (through dividends or when the company winds up) and governs the shareholder's right to vote at shareholder meetings.

A company may issue different classes of shares with different rights and restrictions. This allows for different levels of participation, control, and risk by different shareholders of the company. Different rights and restrictions may be attached to certain shares. If a company has only one class of shares, all the shareholders will have the same rights, including the right to vote at shareholder meetings, the right to receive a share of the property remaining after the company is wound-up, and the right to receive a share of any dividends (distribution of profits) declared by the company.

What is a shareholders' agreement?

The shareholders of a company may enter into a **shareholders' agreement**, which outlines the business affairs of the company, regulates the rights and obligations of the shareholders to one another, and sets out the rules about transferring shares.

Under the CBCA, the shareholders can agree, under a unanimous shareholders agreement, to restrict the directors' powers to manage the business and to give those rights to the shareholders. Such an agreement might be used in a subsidiary corporation so that it is managed directly by the parent company with an active board of directors. There is a similar concept under the BCBCA.

The company must have directors

Both the CBCA and the BCBCA allow a company to have a flexible number of **directors**, but there must always be at least one. A public company must have at least three directors.

Under the CBCA, at least 25% of the directors present at any directors meeting must be a **resident Canadian**. If there are less than four directors, at least one must be a resident Canadian. (There are certain exceptions; for example companies involved in uranium mining, book publishing or distribution, book sales, and film or video distribution must have a majority of directors who are resident Canadians.) There are no director residency requirements under the BCBCA.

A **resident Canadian** is defined in the CBCA as:

- a Canadian citizen ordinarily resident in Canada;
- a Canadian citizen not ordinarily resident in Canada who is a member of a certain class of persons; or
- a permanent resident within the meaning of the federal *Immigration and Refugee Protection Act* and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship.

Directors must manage or supervise the management of the business and affairs of the company. Generally, the directors delegate day-to-day management of the company to the officers.

Directors must perform their duties honestly, in good faith, and in the best interests of the company. They must apply the care, diligence, and skill that a reasonably careful person would apply in similar circumstances.

In some situations, directors can be held personally liable for certain liabilities and obligations of the company. (See the chapter on Responsibilities of Corporate Directors and Officers.)

Do you have to appoint an auditor?

Both CBCA and BCBCA companies are required to appoint an auditor unless exempt. A company may be exempt if it is a private company and all the shareholders agree that an auditor is not necessary.

What are officers?

The directors of a company may appoint officers (such as a president, chief executive officer (CEO), chief financial officer (CFO), or secretary) to manage the company. Officers may be subject to certain duties and responsibilities. (See the chapter on Responsibilities of Corporate Directors and Officers.)

Other forms of business organization

Your business can be a sole proprietorship

A sole proprietorship is an unincorporated business operated by one individual. Unlike a company, a sole proprietorship is **not a separate legal entity**. The income and losses of the business are income and losses of the owner and are taxed at the owner's personal tax rate.

The owner is also fully liable for the debts and obligations of the business. This means that the owner's personal assets are at risk for all of the business's debts and obligations.

The sole proprietorship is a simple arrangement for carrying on business. There are few legal formalities required to create or operate a sole proprietorship, although a business licence may be necessary. You may also have to register the business's name with a government office.

You can set up a general partnership

You may run your business as a general partnership.

A general partnership exists when two partners carry on **business in common** (which can be an on-going business or a specific transaction) with the intention of making a profit. The relationship between the partners can be set out in a written or verbal **agreement**, or can be implied by the circumstances.

Each partner in a general partnership is **jointly liable** with the other partners for all of the partnership's liabilities. Therefore, like with a sole proprietorship, all of the partners' personal assets are at risk for the debts and obligations of the partnership.

For tax purposes, the income or loss of the business is calculated at the partnership level and then allocated among the partners. The income or losses are then taxable in the hands of the partners.

You can set up a limited partnership

Under the *Partnership Act*, a business may also be organized as a limited partnership. A limited partnership is similar to a general partnership except that it has two different types of partners: **limited partners** and **general partners**.

A **limited partner's liability** for the debts and obligations of the partnership is **limited** to the amount of the limited partner's capital investment in the partnership. This means that a limited partner's other personal assets are not at risk for the debts and obligations of the business. In this sense, being a limited partner in a limited partnership is similar to being a shareholder in a company. In order to keep limited liability status, however, a limited partner cannot participate in managing the business.

General partners manage the business of the limited partnership and are jointly liable with any other general partners for the full extent of the partnership's liabilities. A general partner may also be a limited partner but will not have the benefit of limited liability. Every limited partnership must have at least one general partner.

Limited partnerships are treated like general partnerships for tax purposes. The income or loss of the business is calculated at the partnership level and then allocated among the partners. The income or losses are then taxable in the hands of the partners.

To create a limited partnership in British Columbia, the general partners must file a certificate of limited partnership with the Registrar. The certificate must include the name of the partnership, the nature of the business, the length of time the partnership will exist, the full name and address of each general partner, the total amount of cash and property contributed and agreed to be contributed by all of the limited partners, and the basis on which limited partners are entitled to share profits or receive other compensation.

What is a joint venture?

A joint venture is not a specific type of business organization. It is an **association** of two or more individuals, companies, or partnerships for the purpose of carrying on a single project or a specific business venture.

A joint venture can be a partnership, a limited partnership, the co-ownership of property, or a company. Generally, the parties to a joint venture will prepare a **written agreement** to set out their rights and obligations.

Other ways of doing business in BC

There are a number of ways that foreign businesses can do business in British Columbia without forming a new business entity.

Extrajurisdictional registration in British Columbia

Entities (companies, partnerships, and other business organizations) formed under the laws of other jurisdictions may become extrajurisdictionally registered in British Columbia. Any non-British Columbian entity that carries on business in BC must be extrajurisdictionally registered. If you are not sure if you are carrying on business in the province, you should consult a lawyer in British Columbia to determine whether you should become extrajurisdictionally registered.

The first step to becoming extraprovincially registered is to file for approval of the entity's name. If the name is already being used in British Columbia by another business, you may adopt a different name for use in British Columbia. A company incorporated under the CBCA is not required to have its name approved before becoming extraprovincially registered.

Once the foreign entity has reserved its name, it must file a registration statement with the Registrar. The registration statement must contain the following information:

- the name and identifying number of the entity in its home jurisdiction;
- the address of the head office of the entity; and
- the name and address of at least one attorney for the entity in British Columbia. Each attorney must be an individual who is ordinarily resident in British Columbia or a company incorporated under the laws of British Columbia.

In addition to the registration statement, the entity must submit proof of existence in its home jurisdiction and pay an application fee.

More information about registering the name of an extraprovincial company is available on the British Columbia Registrar of Companies website (<http://www.fin.gov.bc.ca/registries/corppg/default.htm>).

You can do business with a distributor

Foreign businesses may also be able to sell goods and services in British Columbia through a distributor that is already qualified to do business here. In most cases, selling goods or services through a local distributor does not constitute "carrying on business" in British Columbia. Therefore, you will not have to form a subsidiary or become extraprovincially registered in the province.

A foreign business that uses a distributor or agent to sell goods or services in Canada may be required to pay Canadian income tax on its Canadian sales. (For more information about the income tax consequences, see the discussion in the subsection called Tax Considerations.)

You can do business through a franchise arrangement

Foreign businesses may also wish to expand into British Columbia by establishing franchise arrangements in the province. In a typical franchise relationship, the franchisor (owner) gives a **licence** to the franchisee (the person doing business) to sell the products and services using the franchisor's **trade-mark** and standard **business format**. The franchisee pays **fees and royalties** to the owner. Many "fast food" restaurants are operated under franchise arrangements.

Franchise arrangements can take many different forms, from master franchise relationships (multiple locations) to single unit franchise agreements (individual locations).

Franchisors may become members of the Canadian Franchise Association, which has certain rules of business disclosure.

Businesses expanding into Canada in this way must comply with other laws (trade-marks, product safety and labelling, and so on). Unlike some other provinces in Canada, British Columbia does not have specific franchise legislation that franchisors need to comply with.

Buying an existing business

As an alternative to setting up a new business in British Columbia, you may buy an existing business in the province. The two most common ways of buying a business in British Columbia are:

- buying the **shares** of the company that owns the business; or
- buying the **assets** (property) of the business.

Buying the company's shares

In a share transaction, you buy the company's shares from the **shareholders**. Because it avoids many of the problems with transferring particular property and getting consent from others, buying shares is generally easier and faster than buying a company's assets.

Sellers often prefer to sell their shares because sale proceeds are usually treated as a capital gain for tax purposes. This usually means reduced overall tax liability for the seller compared to a sale of assets.

Buying the company's assets

In an asset transaction, you buy the business's assets (property) from the company that owns it. For example, you might buy the company's building and equipment. The seller is the company, not the shareholders.

You may prefer to buy assets instead of shares because:

- you can choose the assets you want to buy and do not assume the seller's liabilities;
- you deal with only one seller (the company) rather than several (the shareholders);
- you get a "stepped-up" cost base for tax purposes on the assets you buy, and you may have greater capital cost allowance deductions (see Tax Considerations: What about depreciable property?); or
- there is less risk that you will acquire liabilities that the seller did not disclose.

Things to consider when buying a business

Whether you buy the shares or the assets, you should **investigate** the condition of the business, the seller's title (ownership) to the assets of the business, and the status of any contracts between the seller and others.

You must be careful not to unintentionally acquire any of the seller's **liabilities** (such as liabilities under tax or environmental laws). You should always conduct a thorough **due diligence** review of the business and make sure the purchase agreement contains suitable representations, warranties, covenants and indemnities from the seller.

This is especially important in a share transaction where you will acquire all of the assets and liabilities of the company. You should have a lawyer help you to negotiate and prepare the purchase agreement.

What taxes do you pay if you buy shares?

There are no “stamp duty” or similar taxes payable when you buy shares in Canada. The seller may have to pay capital gains tax.

Non-residents who sell shares in Canadian **private** companies that derive their value primarily from real estate and/or resource properties must pay Canadian taxes on the sale and must give the buyer a **certificate** issued by the Canadian tax authorities showing that arrangements have been made to pay the Canadian taxes. If the seller does not provide the certificate, the buyer must **withhold** from the seller and pay to the tax authorities 25% of the purchase price of the shares. If the buyer does not do this, the buyer may be liable to the tax authorities for the amount the buyer should have withheld.

In some limited cases, non-residents may also have to pay Canadian taxes when they sell shares in a Canadian **public** company where during the previous 60 months the seller holds 25% or more of the share of any particular class and the company derived its value primarily from real estate and/or resource properties.

What taxes do you pay if you buy assets?

The income tax issues that arise when you buy a business’s assets are complex and are often the focus of extensive negotiation with the seller. If you plan to buy significant business assets in British Columbia, you should consult with a tax lawyer or an accountant.

The **Harmonized Sales Tax (HST)** may be payable on the sale of business assets. However, if you are buying all or substantially all of the assets of a business, you and the seller may be able to jointly “elect” to have the transaction **exempted** from HST. This election is available if:

- the assets acquired form a “business or part of a business” that was established, carried on, or acquired by the seller; and
- the assets represent at least 90% of the assets of the business or part of the business.

A business’s **goodwill** is exempt from HST.

For more information on the tax consequences of buying a business, see the section called Tax Considerations.

What other issues are important?

Many other issues may arise when buying a business, such as:

- the rights of the employees of the business;
- the rights of the creditors of the business;
- unions and labour law;
- third party consents that may need to be obtained;
- certain government approvals that may be required (e.g., under the *Investment Canada Act*); and
- rules and regulations about distribution of securities in British Columbia.

It is wise to get advice from a British Columbia lawyer who specializes in the buying and selling of businesses.

Tax Considerations

What are Canada's income tax laws?

Canada's federal government and British Columbia's provincial government impose corporate and personal tax on income. In general, the Canadian and British Columbia systems work in harmony and are administered together.

What taxes do Canadian residents pay?

Canadian **residents** (whether individuals or corporations) are taxed on their worldwide income.

What taxes do non-residents pay?

Non-residents of Canada are generally taxed only on their income that comes from sources in Canada, which include:

- carrying on a business in Canada;
- employment in Canada; or
- selling certain types of property situated in Canada (generally speaking real estate, resource properties or shares of private corporations that derive primarily their value from real estate and/or resource properties).

Canada also imposes a **withholding tax** on non-residents who receive dividends, interest, rents, royalties or management fees from Canada. The Canadian who pays this money to a non-resident must withhold this tax on behalf of the non-resident and remit (send) it to the federal government.

Tax treaties between Canada and other countries provide favourable tax treatment to residents of Canada and its treaty partners. These tax benefits may mean that no Canadian tax is payable on business profits where the business does not have a permanent establishment in Canada and the reduction or elimination of withholding tax on dividends, interest, rents, royalties and management fees.

What are the tax rates?

Federal tax rates are the same across Canada. There are, however, certain reductions and credits available to encourage development of business activity and employment in certain industries of the economy and in economically challenged regions of Canada. Tax incentives are also available to encourage research and development in Canada. (More information can be found in Special Considerations for Specific Industries – Scientific Research and Experimental Development.)

British Columbia establishes its own tax rates. In general, the amount of taxable income used to calculate provincial tax is similar to the amount of taxable income used to calculate federal tax. The highest combined federal and British Columbia tax rate for corporations is approximately 28.5%. Over recent years the rate has been declining. The amount of income tax that an individual is required to pay is based on a progressive rate structure, which increases with the amount of taxable income. In British Columbia, the highest combined federal and provincial rate for individuals is approximately 43.7%, although this rate is subject to change. Over recent years the rate has been declining,

What about Canadian subsidiary corporations?

A subsidiary incorporated in Canada will be considered to be a Canadian resident for income tax purposes. It will be subject to Canadian income tax on its income earned anywhere in the world from any source, subject to a credit for foreign taxes paid on non-Canadian income.

The income of the Canadian subsidiary that will be subject to Canadian income tax is generally calculated according to Canadian generally accepted accounting principles and in the future under the International Financial Reporting Standards.

Where a subsidiary corporation has a permanent establishment in British Columbia, the combined rate of federal and provincial tax imposed on its taxable income is 28.5%. The corporation may be eligible for lower tax rates if it qualifies for the **small business deduction**, which requires the corporation to be a private corporation controlled by a Canadian resident where all or substantially all of the fair market value of the corporation's assets is attributable to assets that are used in an active business carried on primarily in Canada. In general, this is a reduced rate of tax on the first \$500,000 (a combined federal and provincial rate in British Columbia of approximately 13.5%).

The fact that a foreign parent has a Canadian subsidiary carrying on business in Canada does not mean that the foreign parent itself will have to pay income tax in Canada (so long as the foreign parent does not have a permanent establishment in Canada). However, the after-tax profits of the Canadian subsidiary, which are distributed to the non-resident parent by way of dividends, will be subject to Canadian withholding tax of 25%. Canada's tax treaties will often reduce the rate to 5% or 15%.

What about loans from the parent to the subsidiary corporation?

If a foreign parent loans money to its Canadian subsidiary, a portion of interest on the loan may not be deductible when calculating the subsidiary's income because of the **thin capitalization rules**. In general terms, the debt (owing to the foreign parent or other non-resident affiliate) of the Canadian subsidiary cannot exceed two times the equity (paid-up capital, surplus and retained earnings) of the Canadian subsidiary. If the debt is greater than two times the equity, the interest on the excess debt will not be allowed. The thin capitalization rules do not apply to Canadian branch operations because the branch operation is not a separate legal entity from the foreign entity.

Transactions between a foreign parent and its Canadian subsidiary

A Canadian subsidiary is not at arm's length with its foreign parent, so the **transfer pricing rules** must be considered. The transfer pricing rules adjust taxable profits between non-arm's length parties in different countries to reflect arm's length pricing policies. In addition to the adjustment, penalties will be imposed for failing to reflect arm's length pricing policies and for failing to maintain appropriate documentation.

In general, transactions between non-arm's length parties should take place at fair market value in order to avoid double taxation and penalties as these types of transactions are said to take place at fair market value without regard to what was in fact paid.

What about Canadian branch operations?

A branch operation is an alternative to incorporating a Canadian subsidiary. As with a subsidiary, the income attributed to a branch operation is subject to income tax in much the same way as if it had been earned by a Canadian subsidiary. However, the majority of Canada's tax treaties with other countries generally provide that the business profits from a branch operation will only be taxable in Canada if they are attributable to a **permanent establishment** located in Canada. A permanent establishment includes branches, offices, agencies and other fixed places of business.

An additional tax, commonly called the **branch tax**, must also be paid. Branch tax is payable at the rate of 25% of the after-tax profits of the branch operations that are not reinvested in Canada. Branch tax is roughly equivalent to the withholding tax which would be payable on dividends paid by a Canadian subsidiary to its foreign parent. The rate is reduced under certain tax treaties to between 5% to 15%. For example, under the Canada-U.S. Treaty, the rate in certain circumstances is 5% of after-tax profits. In addition, certain tax treaties provide for an exemption from branch tax. Under the Canada-U.S. Treaty, the exemption is in respect of the first \$500,000 of branch profits net of prior years' losses.

A foreign entity should determine whether its own jurisdiction will permit a foreign tax credit for Canadian income tax payable, including branch tax, so as to avoid double taxation on income earned by the branch.

How to choose between a subsidiary corporation and a branch operation

A foreign entity that operates through a branch with a permanent establishment in Canada will be subject to Canadian taxation that is roughly equal to the taxation of a Canadian subsidiary. However, if the foreign entity does not have a permanent establishment in Canada, and is resident in a country that has a tax treaty with Canada, that foreign entity can usually carry on business in Canada without paying Canadian income tax. (See also the discussion below – Working with distributors and selling agents.)

Whether a non-resident decides to carry on business in Canada through a subsidiary or through a branch, federal and provincial (British Columbia) income tax returns will need to be filed, and the Canadian business must keep appropriate books and accounting records in Canada.

On a long-term basis, many foreign entities choose to incorporate a subsidiary, because it is a separate legal entity. This means that the foreign parent generally avoids the legal liabilities of its subsidiary. For example, the debts and obligations of the Canadian subsidiary are separate from those of its foreign parent. However, the foreign parent will not be able to use the start-up losses of its Canadian subsidiary to offset its income in its home jurisdiction. Consequently, the foreign entity may initially use a branch so that it can offset its income against the start-up losses of the branch and once the branch becomes profitable, transfer the branch assets, other than real property (land), to a Canadian subsidiary on a tax-free basis for Canadian purposes provided the appropriate tax elections are made. Before a foreign parent transfers assets to a Canadian subsidiary, you should consult tax counsel, as taxes may be triggered on the transfer.

The decision to open a branch or subsidiary will impact the value placed on imported goods. For customs purposes, it is generally the transaction value (the value at which goods are sold to the Canadian importer) that establishes the value for calculating the amount of customs duties owing. However, where goods are transferred to a Canadian branch, a sale has not taken place and, consequently, the transfer price may not be the value used to calculate duty. Another value, such as the selling price in Canada less certain adjustments or the fair market value determined by the customs agents, may become the value used to calculate duty. Likewise, as the HST is payable on the duty-paid value of imported goods, the tax payable depends on the customs valuation of the goods. (For more information about these taxes, see the discussion below under the section Sales Tax.)

How do joint ventures and partnerships work?

A foreign entity may choose to enter into a joint venture or a partnership with a Canadian individual or corporation to carry on a business or a particular activity in Canada. The Canadian tax consequences will depend upon the particular structure chosen. In addition, the foreign entity may choose to hold its interest in a joint venture or partnership directly (in which case the relevant considerations are equivalent to a branch operation) or through a Canadian subsidiary.

A **joint venture** is generally an arrangement in which two or more participants work together in a limited and defined undertaking (but not a partnership, trust, or corporation) and distribute the expenses and revenues in mutually agreed portions. Participants in a joint venture are required to contribute resources (such as money, property, knowledge, skills, experience or time) for use in the performance of the joint venture's activities. Joint venture participants have a well-defined separation of interests in, and ownership of the property subject to the joint venture. As such, joint venture participants are usually only liable for their respective portions of the joint venture's expenses. The income, expenses and capital receipts and outlays of a joint venture are allocated to the participants in the joint venture who then compute their net income based on their own particular tax position. A **partnership** is a relationship between participants carrying on business in common with a view to profit. Unlike a joint venture, the partners are not required to contribute resources to the partnership unless otherwise agreed. However, each partner is liable for all of the expenses of the partnership (although, in the case of a limited partnership, limited partners are only liable to a limited extent). For income tax purposes, the income of a partnership is calculated as if the partnership were a separate entity, even though the income is taxed in the hands of the partners after it is allocated to them.

Another option is for the Canadian entity and the foreign entity to form a Canadian **corporation**, with the shares owned in agreed proportions. In this case, the Canadian corporation will be taxable on its income as a Canadian resident corporation as explained in the section called, What about Canadian subsidiary corporations?. If the Canadian participants are at least equal partners in the Canadian corporation, the corporation may qualify for the small business deduction.

Working with distributors and selling agents

If the foreign entity is in a country with which Canada has a tax treaty, it may be able to have a broker or agent of independent status in Canada without triggering Canadian income tax or creating a permanent establishment. And a foreign entity may be able to enter into sales contracts to supply goods or services to Canadians without being liable for Canadian income tax.

To qualify as a broker or agent of independent status, the Canadian broker or agent must be independent of the foreign entity and cannot devote all or most of its efforts to representing the foreign entity or negotiate contracts in the foreign entity’s name.

Some of Canada’s tax treaties with other countries allow a foreign entity to store products in Canada for the purpose of display or delivery, or to keep an office in Canada for the sole purpose of buying Canadian goods or collecting information without becoming liable for Canadian income tax.

Is there a withholding tax?

Amounts paid by a Canadian resident to a non-resident entity as interest, dividends, rents, royalties or most any other form of income from property, are subject to Canadian withholding tax. The rate is 25% but most tax treaties with other countries reduce the rate to 5% or 15% and is in some cases eliminated (e.g. most interest paid to US residents). However, in the case of rent for Canadian real property (land), the rate may remain at 25% even if a tax treaty exists.

Withholding taxes must be paid on income earned by a non-resident on its investments in Canadian property, regardless of whether the Canadian resident who pays the income is a subsidiary or is unrelated to the non-resident who receives the payment. The tax must be withheld and remitted (sent) to the federal government.

Property or investment income from a branch office is usually considered business income and may not be subject to withholding tax, although the Canada Revenue Agency must consent to this arrangement.

What about depreciable property?

If a business acquires depreciable property (for example, a building, furniture or equipment), it cannot deduct the entire cost of the purchase immediately. The business can, however, deduct or amortize the cost over several years. This deduction is called a **capital cost allowance** (CCA). Real Property (land) is not depreciable property and cannot be deducted or amortized.

The following are some of the more common categories of depreciable properties:

Class	Rate	General Description
1	4%	buildings, including component parts, such as air-conditioning equipment, heating equipment and elevators;
8	20%	property that is not included in another class (e.g. manufacturing equipment, appliances and most furniture);
10	30%	automotive equipment (including automobiles costing \$30,000 or less) and Canadian film or video production;

Class	Rate	General Description
10.1	30%	passenger vehicles costing more than \$30,000; and
12	100%	computer application software and small tools costing less than a prescribed amount.

Taxation of Electronic Commerce

Businesses conducting operations through the use of electronic commerce (E-Commerce) are taxed in a similar manner as businesses operating out of fixed premises. Income tax is required to be paid in respect of income earned in British Columbia. Sales tax will need to be collected and remitted in respect of sales to residents of British Columbia. In certain circumstances, businesses may also be required to collect and remit sales tax applicable to other jurisdictions.

Sales Tax

Canada has a tax on goods and services

The Government of Canada and British Columbia (like many other provinces) have a sales tax on the sale of goods and services called the Harmonized Sales Tax (HST). The HST is regarded as efficient and business-friendly. The HST is a form of **value-added tax** imposed on most goods and services supplied in Canada. The HST rate is 12% on both goods and services. As a general rule, everyone who buys or receives Canadian goods or services must pay HST and everyone who supplies the Canadian goods or services must collect HST from the buyer.

Does HST apply to imported goods and services?

HST applies to goods and services that are imported into Canada. HST must be paid on the **duty-paid value** of the goods (which is the value for duty of the imported goods, plus the applicable customs duty) and is collected when the goods enter Canada. Goods exported from Canada are not generally subject to HST.

Are there any tax credits?

Businesses carried on in Canada and importers that register for HST (called registrants) are eligible to receive **input tax credits**, which are credits or refunds of HST paid on goods and services purchased in the course of their commercial activities. The input tax credit applies to virtually all business purchases; therefore, HST is not a business expense. The key exception is for businesses supplying financial services, including insurance.

HST is intended to be a **consumption tax**, paid by the final consumer. Because most registrants in the production and distribution chain are given a credit or refund of HST paid on imports and domestic purchases of goods and services, the final consumer is usually the only one who is not eligible for a HST refund.

What about taxes on land?

When real property (land) is purchased in British Columbia, the purchaser will be required to pay a property transfer tax. The general rate is 1.0% on the first \$200,000 of the **fair market value** of the real property, and 2.0% on the balance of the fair market value of the real property.

There are some exemptions for first time home buyers and transfers of a deceased person's real property to the receiver (beneficiary).

HIRING EMPLOYEES

Labour and Employment Issues

In Canada, the term **labour relations** refers to situations involving trade unions. The term **employment relations** refers to employment relationships that do not involve trade unions.

Labour and employment relations are, for the most part, governed by the laws of the province in which an employee works. Federal laws mainly apply to **federal works or undertakings**, which include, for example, interprovincial transportation, telecommunications and banking. The *Canada Labour Code* applies to these types of businesses. (See the Canada Industrial Relations Board website at www.cirb-ccri.gc.ca/ for more information.)

All other businesses are provincially regulated, and have similar provisions. This section gives you information about British Columbia labour and employment laws.

An overview of employing and hiring workers in British Columbia may be found at the Invest British Columbia website at <http://apti.teamwork.gov.bc.ca/Invest/Pages/Employing.aspx>.

Employment Law in British Columbia

In British Columbia, the *Employment Standards Act* sets out minimum standards for employment. While employers and employees are free to enter into employment agreements, the minimum standards and protections in the Act must be met. More information about employment standards can be found at the Employment Standards Branch's website (<http://www.labour.gov.bc.ca/esb/welcome.htm>).

How are wages paid?

Wages must be paid regularly in Canadian currency at least semi-monthly and within eight days after the end of the pay period by cheque, draft or money order, or by direct deposit in a saving institution if authorized in writing by the employee. The employer generally must **deduct** money for certain things, like income tax, Canada Pension Plan and Employment Insurance. The employee can agree in writing to other deductions, such as life insurance.

In some cases, directors or officers of the company may be personally liable for up to two months' unpaid wages for each employee.

Employers must pay a minimum wage

The minimum hourly wage is set by regulation. The minimum wage in British Columbia for most employees is presently \$8.00 per hour, or \$6.00 for employees who are new to the work force and have worked less than 500 hours. There are different minimum wage rates for live-in camp or home support workers, resident caretakers and farm workers.

Employers must keep records

After an employee stops work, the company must keep employment records for two years. There are special rules about keeping records for wage statements, payroll records, and hours of work. Payroll records must be in English and kept in the employer's principal place of business in British Columbia.

There are restrictions on working hours

Generally, an employee cannot work more than eight hours in a day, to a maximum of 40 hours per week. After that, the employee is entitled to higher pay for overtime work. These rules do not apply to professionals, managers, residential care workers, and high technology professionals.

Employees are entitled to time off work (at least 32 consecutive hours free from work each week and at least eight hours between shifts). Overtime wages must be paid to the employee if the hours are longer. An employee must not work excessive hours that damage his or her health or safety.

What happens if employees work overtime

Unless the employee is exempt from the overtime requirements or has a flexible work schedule (approved in writing by the employer and the employee) overtime is payable for work over eight hours in a day (**daily overtime**) or 40 hours in a week (**weekly overtime**) at one and one-half times the regular wage rate. Double the regular wage rate must be paid for all hours worked in excess of 12 hours in a day.

Working on statutory holidays

Employees are entitled to an **average day's pay** on certain statutory holidays without working on the statutory holidays. At present, these are New Year's Day, Labour Day, Good Friday, Thanksgiving Day, Victoria Day, Remembrance Day, Canada Day, Christmas Day and B.C. Day.

To qualify for statutory holiday pay, an employee must have been employed by the employer for the 30 days before the statutory holiday and have earned wages for 15 of those 30 days.

If employees must work on a statutory holiday, they must be paid special overtime wages for all hours that are worked on the statutory holiday.

Employees are entitled to vacation and vacation pay

An employee is entitled, after the completion of each year of employment, to at least **two weeks vacation** leave per year, with one additional week after five continuous years of employment. Vacation pay is calculated at 4% of the previous year's total wages for the first five years of employment and 6% thereafter.

Vacation may be taken in periods of one or more weeks. Employers should ensure that employees take their annual vacation within the 12-month period. Any vacation pay entitlement must be paid to an employee upon termination of employment.

What benefits does the employer have to pay?

The employer must remit (send money) to federal government departments for the employee's income tax, as well as contributions to the Canada Pension Plan and Employment Insurance.

New employers in almost all industries must register with the **WorkSafe BC** and make payments to a fund for employees who are **injured at work**. An employee who is injured at work must usually rely on this accident fund and cannot bring a legal action against the employer for his or her injury.

Many employers provide certain benefits to their employees (such as medical, dental, disability, or life insurance) although the law does not require them to do so.

Employees are entitled to pregnancy and parental leave

Pregnant employees are entitled to **pregnancy leave** (up to 17 consecutive weeks) followed by **parental leave** (up to 35 consecutive weeks if pregnancy leave was taken; up to 37 consecutive weeks if not taken). The employee is entitled to return to his or her same job (or its equivalent) after the leave, if the job still exists. Parental leave is also available to fathers and adoptive parents. In some cases, both pregnancy and parental leaves can be extended for certain periods of time.

The employer does not have to pay the employee during pregnancy and parental leave. Employees may apply for government-paid Employment Insurance benefits.

Other leaves of absence

Employees are entitled to five days' unpaid leave each year to deal with family responsibilities, as well as three days' unpaid bereavement leave on the death of a member of the employee's immediate family. Employees can also take compassionate care leave of up to eight unpaid weeks to be with a dying family member; this leave may be extended in certain circumstances. Employees are entitled to take unpaid leave for jury duty.

These leaves are called **protected leaves** because the employer:

- cannot terminate the employment or change a condition or term of the employment without the employee's written consent;
- must give the employee his or her old job (or comparable one) upon return to work;
- must treat the employment as continuous when calculating employment benefits;
- must give the employee all increases in wages and benefits they would have received if not on leave; and
- must continue to pay benefits for the employee (if the employee was paying a portion and continues to do so).

When employment ends

Employees may be terminated for **just cause** or **without cause**.

An employer may have just cause to terminate an employee if he or she did something seriously wrong. If there is just cause to end the employment, the employer does not have to give notice or payment to the employee. It is a good idea to get legal advice before ending someone's employment for just cause.

When an employee is terminated **without cause**, the employer must give the employee written notice of the termination or pay instead of notice (or a combination of both). The minimum amount of notice that an employee is entitled to receive depends on the length of his or her employment. The rules are set out in the *Employment Standards Act*. The current maximum statutory notice is eight weeks of wages.

Greater notice periods may be set out in the employment contract or ordered by the court if the employee commences a legal action against the employer. The employee is entitled to **reasonable notice** or **pay instead of notice**. The court will decide what is reasonable notice depending on the employee's age, position, length of service, and the availability of other employment.

Employment contracts

An employer may enter into a written employment contract with an employee. Many things can be part of the contract including letters and office policy booklets. Parties to an employment contract are not allowed to contract out of the minimum standards outlined in the *Employment Standards Act*.

As well as clearly identifying the terms and conditions of the employment, a written contract can outline what will happen if the employment ends and limit the employee's opportunities to compete with the employer.

Trade Unions in British Columbia

The British Columbia *Labour Relations Code* regulates collective bargaining between employers and trade unions as representatives of non-managerial employees. Although the construction industry is organized according to traditional crafts or trades, general industry employees and provincial government employees are typically organized by job function or employer.

An employer can have more than one bargaining unit in a single business.

How trade unions are set up

Trade unions have considerable freedom to **organize employees**, and employers have limited rights to interfere or oppose the union. There are three stages to a union organizing drive, which are:

1. The union conducts an organizing campaign. At this stage, if at least 45% of the employees sign memberships with the union, **the employees have the right to a vote**.
2. The union files the application for certification. Once an organizing campaign has begun and particularly after an application is filed, the employer must be careful in how it states its opposition to the union. The employer must comply with the legal procedures of the Labour Relations Board, which certifies unions as bargaining agents and regulates labour relations in the province.
3. The employees vote whether to proceed. A vote will be ordered where 45% or more of the employees are members of the union. Upon an application for certification by a trade union, the Labour Relations Board must decide if the group is appropriate for collective bargaining. The Labour Relations Board may examine records, make inquiries, and hold hearings. If the employer is involved in unfair labour practices, the trade

union can be certified without a vote. If a simple majority of the employees who cast a ballot vote for the union, the union will be certified.

If a union is certified, it has the absolute right to be the **bargaining agent** for all employees in that bargaining unit. The employer and the individual employees therefore do not have the right to make individual contracts of employment.

Trade unions require collective bargaining

If a trade union is certified, the employer must bargain in good faith with the union in an attempt to reach a collective agreement. Poor bargaining by the employer or the union may result in the case being taken to the Labour Relations Board.

What is the law on work stoppages?

Work stoppages such as strikes and lockouts are generally not allowed during the term of a collective agreement and during negotiations leading up to an agreement.

If the negotiations do not result in a collective agreement, members of the bargaining unit may start strike action, or the employer may start lockout procedures.

Peaceful picketing is allowed. Replacement workers cannot be hired.

How are disputes settled?

During the term of a collective agreement, all disputes between the union and the employer, including employee discipline and discharge, have to go through a **grievance procedure** and, if not settled, to binding arbitration.

There is a limited right of appeal to the Labour Relations Board and to the British Columbia Court of Appeal. In typical cases, the court will only review an arbitrator's decision if the arbitrator exceeded his or her jurisdiction or interpreted the collective agreement in an unreasonable way.

More information about labour relations in British Columbia can be found at the Labour Relations Board's website (<http://www.lrb.bc.ca/>).

Employers are responsible for occupational health and safety

Employers have a duty to provide a safe workplace. Workplaces must meet various requirements with respect to lighting, atmospheric conditions, heating, venting, cooling and exhaust systems, lunchrooms and washrooms.

More information about occupational health and safety can be found at the Workers' Compensation Board's website (<http://www.worksafebc.com/>).

British Columbia protects human rights

The British Columbia *Human Rights Code* **prohibits discrimination** on the basis of many things, including race, religion, sex, sexual orientation, age, and physical and mental disability. An employer cannot specify employee qualifications that tend to discriminate against potential employees unless the employer can prove that the

qualification is a real occupational requirement. The employer must show that the needs of an individual cannot easily be accommodated.

The Human Rights Tribunal oversees human rights legislation. More information about human rights can be found at the Tribunal's website (<http://www.bchrt.bc.ca>).

Acquiring an Existing Business

The above summary outlines the various labour and employment law issues when **starting** a new business in British Columbia. But be aware of **successor rights and liabilities** if you are **buying** an existing business in British Columbia.

Labour relations legislation creates a very wide definition of a **sale of business**. Buyers of a substantial part of a business's assets, a lease, or even a purchase from a trustee in bankruptcy, may have to accept existing collective agreements.

Whether the business has unionized employees or not, the buyer should find out if there are outstanding employee lawsuits, grievances, Labour Relations Board complaints, human rights complaints, Workers' Compensation Board claims or health and safety orders which could affect the on-going business.

An employee's years of service continue with the new employer. Calculation of an employee's years of employment is important if the buyer of an existing business wants to end the employment of some or all of the existing employees.

Bringing foreign workers to British Columbia

What is Canada's immigration policy?

Under Canadian immigration law, a citizen of a country other than Canada is called a **foreign national**. Foreign nationals are not entitled to work in Canada unless they are **permanent residents** of Canada or they are authorized to work under Canada's immigration law. In most cases, a **work permit**, which is a written authorization to work in Canada, is required.

In Canada, **work** is defined as any activity for which a person is paid wages or earns a commission, or an activity that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market (federal *Immigration and Refugee Protection Act*). An activity may be considered work, even if the foreign national is paid from a source outside of Canada.

Ownership or **control** of a Canadian business does not include the right to hire citizens of a country to staff the business. Although the **North American Free Trade Agreement (NAFTA)** gives some greater flexibility to United States and Mexican companies, United States and Mexican citizens, as well as other foreign nationals wanting to work in Canada, must meet the criteria set out in Canada's immigration law.

Canada's immigration law allows Canadian employers to hire foreign workers needed for the effective functioning of the Canadian labour market. Employers must show that they have made reasonable efforts to locate or train

Canadian citizens or permanent residents. The reason for this policy is to limit the negative impact on work opportunities for Canadians.

Canada's immigration program is federally regulated and is administered by a number of government agencies. You can find more information about immigration to Canada at these agencies' websites:

- Citizenship and Immigration Canada (CIC) (www.cic.gc.ca). The CIC website has definitions for many of the terms that are highlighted in this chapter.
- Canada Border Services Agency (www.cbsa-asfc.gc.ca)
- Human Resources and Skills Development Canada (www.hrsdc.gc.ca)
- Government of British Columbia's official site for Immigration and Welcoming Communities (<http://www.welcomebc.ca/wbc/immigration/come/work/about/index.page?>)

Workers may need a medical examination

Foreign nationals who want to enter Canada must meet public health, safety, and security standards before they will be admitted to the country. Depending on the person's nationality, country of residence, and the length of their stay to Canada, the foreign national may need a medical examination.

Temporary foreign workers who intend to work in jobs where the protection of public health is essential (such as in health sciences, primary or secondary education, home care and child care) must have a medical examination regardless of the country they came from or the length of time they intend to stay in Canada.

Foreign nationals who have lived in countries where there is a high risk of communicable disease and who want to come to Canada for more than six months (183 days) must have a medical examination. The CIC website has a list of the countries for which medical examinations are required

(<http://www.cic.gc.ca/english/information/medical/dcl.asp>). A **designated medical practitioner** who is registered with CIC must conduct the medical examinations (<http://www.cic.gc.ca/dmp-md/medical.aspx>).

Workers may need a security background check

Foreign nationals who want to enter Canada must meet security standards before they will be admitted to the country. Depending on the person's nationality, country of residence, and the length of their stay in Canada, the foreign national may need a police certificate declaring the absence of a criminal record or providing a copy of the criminal record.

Foreign nationals who have been committed or convicted of a criminal offence may not be allowed to enter Canada. For a complete list of criminal offences in Canada, see the Canadian *Criminal Code*.

Workers may need a temporary resident visa

Foreign nationals must apply for a **temporary resident visa** before coming to Canada, unless they are from a visa-exempt country. The CIC website has a list of countries whose citizens require a temporary resident visa (<http://www.cic.gc.ca/english/visit/visas.asp>).

Temporary workers

Temporary workers may need a work permit

Foreign nationals who are coming to Canada temporarily to work for a Canadian employer (or to produce goods or provide services) usually require a work permit. CIC issues work permits for specific periods of time, ranging from a few months to three years. The work permits often contain conditions. Work permits can sometimes be renewed.

What does the employer have to do?

Before a work permit will be issued to a foreign national, the prospective Canadian employer may have to get a confirmation of an offer of employment from a Human Resources and Skills Development Canada (HRSDC) regional office. This job offer confirmation is called a **labour market opinion (LMO)**. HRSDC considers several factors when deciding whether to confirm an offer of employment — the wages that will be paid, the working conditions, the employer’s recruitment efforts to hire or train Canadian citizens and permanent residents, the transfer of skills and knowledge to Canadian citizens and permanent residents, potential benefits to the Canadian labour market, as well as any regional labour shortages. If the HRSDC decides that hiring the foreign national will not harm the Canadian labour market, it will approve the offer of employment.

Sometimes, a foreign national may be allowed to work in Canada without the employer having to apply for an LMO. Exemptions from the requirement to obtain an LMO are set out in Canada’s *Immigration and Refugee Protection Act*. Common exemptions include business visitors, intracompany transferees (executives, senior managers, and specialized knowledge workers), as well as certain professionals specified in NAFTA or the General Agreement on Trade in Services.

To find out if the exemption from obtaining an LMO applies to a specific foreign worker, you can contact one of CIC’s Temporary Foreign Worker Units or get advice from a Canadian immigration lawyer or an immigration consultant who is a member in good standing of the Canadian Society of Immigration Consultants.

How do you apply for a work permit?

Usually, applications for work permits are submitted to the Canada visa office in the foreign national’s country of origin or habitual residence, particularly if a visa is required to travel to Canada. Some foreign nationals can apply for a work permit at a Canadian port-of-entry (airport or border crossing). Information on visa requirements for travel to Canada is on the CIC website (<http://www.cic.gc.ca/english/visit/visas.asp>).

The North American Free Trade Agreement may apply to you

NAFTA is an agreement between Canada, the United States, and Mexico that helps the temporary movement of business persons between the three countries. To enter Canada as a business person under NAFTA, business travelers must meet public health, safety and national security requirements, must be a citizen of the United States or Mexico, and must qualify in one of the following four categories of business persons:

- business visitors;
- intracompany transferees;

-
- traders and investors; and
 - professionals.

All business persons covered by NAFTA are exempt from the requirement to obtain a job offer confirmation (LMO) from HRSDC.

What about business visitors?

Business visitors are people who want to come to Canada to engage in international business activities, but do not enter the Canadian labour market directly. Business visitors may be admitted to Canada to engage in international business or trade activities where the main source of their payment for business activities and the principal place of the business are outside of Canada. Usually business visitors to Canada do not require a work permit.

Business visitors include:

- foreign nationals buying Canadian goods or services for a foreign business or government, or receiving training for goods or services;
- foreign nationals receiving or giving training within a Canadian parent or subsidiary of the business that employs them outside of Canada, as long as any production of goods or services that results from the training is incidental; and
- foreign nationals representing a foreign business.

For citizens of the United States and Mexico, NAFTA expands the scope of international business to include commercial activities involving research and design, growth, manufacture and production, marketing, sales, distribution, after-sales service, and general service.

If the foreign national does not qualify as a business visitor, a work permit may be required.

Can employees be transferred from another country?

Canada allows for the transfer of executives, senior managers, and specialized knowledge workers from a foreign business to a Canadian parent, branch, subsidiary or affiliate company. To qualify for an **intracompany transfer** (a transfer within the company), the foreign and Canadian business must show that they are or will be doing business in both Canada and the foreign country during the period of the transfer. Doing business means regularly, systematically, and continuously providing goods and/or services in both Canada and other countries. It does not include the mere presence of an agent or office in Canada. Business relationships based on contracts, licensing arrangements, and franchise agreements would not qualify.

To qualify as an intracompany transferee, a foreign national must pass the public health, safety, and national security requirements, and must have worked continuously for at least one year of the previous three years in a similar position (executive, senior manager, or specialized knowledge worker) for the foreign business that plans to transfer the foreign national to Canada. The foreign national does not have to be a current employee of the foreign business in order to be transferred to Canada.

Intracompany transferees do not have to get an LMO, but do need to get a work permit. Foreign nationals can apply for a work permit under the general exemptions of Canada's *Immigration and Refugee Protection Act*, or if they are citizens of the United States or Mexico, under NAFTA.

The maximum amount of time that foreign nationals can remain in Canada as an intracompany transferee (specialized knowledge) is three years under the general exemptions of Canada's *Immigration and Refugee Protection Act* and five years under NAFTA. The maximum authorization to work in Canada for executives and senior managers is seven years under NAFTA.

Traders and investors require work permits

NAFTA assists entry into Canada for traders and investors who carry on substantial trade in goods or services between the United States or Mexico and Canada, or who are committing a substantial amount of capital in Canada. Traders and investors must be United States or Mexican citizens who are employed as supervisors or executives, or a position that involves essential skills.

Traders and investors do not require an LMO, but they do require a work permit. Work permit applications for traders and investors under NAFTA must be submitted to a visa office outside of Canada before travel to Canada. The work permit for traders and investors under NAFTA is for one year. Renewals of up to two years may be granted. Foreign nationals applying as traders or investors must pass public health, safety, and national security requirements.

For more information on work permits for traders and investors, refer to the CIC website or contact your local Canadian visa office.

What about NAFTA professionals?

Citizens of the United States and Mexico can work in Canada as NAFTA professionals if they are coming to Canada to provide professional services in one of 60 occupations set out in an appendix to NAFTA. The professional must have certain education levels and credentials.

NAFTA does not permit self-employment in Canada. United States and Mexican citizens seeking a work permit under this category must show that they have a pre-arranged offer of employment with a Canadian employer. The Canadian employer must be legally distinct from the foreign national who is applying. If the employer is a sole proprietorship operated by the foreign national, or the employer is a corporation substantially controlled by the foreign national, the application for admission as a NAFTA professional will be refused.

NAFTA professionals do not require an LMO, but do require a work permit unless they qualify under the general provisions for business visitors. Work permit applications for NAFTA professionals can be submitted at a port-of-entry; however, if the foreign national requires a medical examination, the application should be submitted to a visa office outside of Canada.

Work permits are issued for up to a three-year period and extensions can be issued in increments of up to three years. NAFTA professionals must pass the public health, safety, and security requirements that apply to all foreign nationals who want admission to Canada.

Temporary workers may bring family members

Foreign nationals coming to Canada on a temporary work permit may bring their spouse or common-law partner and dependent children. Usually, family members will be admitted to Canada for the same length of time as the applicant.

Spouses may work in Canada if they have been issued a work permit or are exempt from having to obtain a work permit under the exceptions set out in the *Immigration and Refugee Protection Act*. Spouses of skilled workers may be issued open work permits, allowing them to accept work from most employers in Canada. Children who will be studying at an elementary or secondary school do not require a study permit and are usually issued visitor records. A study permit is required for post-secondary education at a college or university.

Permanent admission into Canada

Permanent residents of Canada can live, work, and study in Canada. After residing in Canada for a minimum of three years, **permanent residents** can apply for Canadian citizenship.

Skilled workers can apply for permanent residence

Canada's skilled workers program allows foreign nationals to apply for permanent residence based on their ability to become economically established in Canada. To qualify for permanent residence as a skilled worker, foreign nationals must meet minimum work experience requirements, prove that they have enough money to settle in Canada, and earn enough points based on six selection factors to meet the pass mark.

The **point system** is designed to favour those applicants who have considerable post-secondary or specialized education and are more likely to be able to adapt to changing employment and economic circumstances. Applicants are assessed against a detailed point system which considers six factors:

- education;
- work experience;
- arranged employment in Canada;
- age;
- proficiency in the English or French languages; and
- personal adaptability.

Skilled workers must have a minimum of 67 points out of a possible 100 points in order to be eligible for permanent residence. There is a self-assessment guide on the CIC website (<http://www.cic.gc.ca/english/immigrate/skilled/apply-who.asp>).

Qualified applicants who are currently working in Canada or who have arranged employment with a Canadian employer will have their applications processed in priority to others.

Applicants who have had one year of paid work experience in an eligible occupation within the last ten years may be eligible to have their applications processed without pre-arranging employment with a Canadian employer. Eligible occupations may vary from time to time as Canada's immigration goals change. There are also limits on the number of applications that are considered for processing under this category each year.

Business immigrants can apply for permanent residence

Canada's business immigration program is looking for experienced business people who will make a positive contribution to the Canadian economy through investment, business ownership, or management. Canada has three categories of business immigrants:

- entrepreneurs;
- investors; and
- self-employed persons.

There are different eligibility criteria and application procedures for each category of business immigration. There is a simplified application process for business immigrants and certain skilled workers. Under this process, applicants submit only a basic application form and fee. Additional information and supporting documentation is requested once the Canadian visa office is ready to review the application.

Business immigrant applicants are also assessed against five selection criteria including:

- education;
- experience;
- age;
- proficiency in English or French; and
- adaptability.

To be considered for permanent residence, business immigrant applicants must obtain a minimum of 35 points out of a possible 100 points.

For more information on how to apply for permanent residence to Canada as a business immigrant, please see the CIC website (<http://www.cic.gc.ca/english/immigrate/business/index.asp>).

Entrepreneurs can apply for permanent residence

Entrepreneurs are people who have the intention and ability to establish, purchase, or make a substantial investment in a Canadian business which they will be actively involved in managing. To qualify as an entrepreneur, foreign nationals must have relevant business experience and a legally obtained minimum net worth of \$300,000. This category of permanent residence is well-suited for experienced business people seeking to manage small and medium-sized businesses in Canada.

Permanent residence status for entrepreneurs is conditional. Within three years of becoming a permanent resident of Canada, the entrepreneur must meet the following requirements:

-
- the entrepreneur must control a percentage of the equity of a qualifying Canadian business equal to or greater than 33⅓%;
 - the entrepreneur must provide active and on-going management of the qualifying Canadian business; and
 - the entrepreneur must create at least one incremental full-time job equivalent in the qualifying Canadian business for Canadian citizens or permanent residents, other than the entrepreneur and their family members.

Investors can apply for permanent residence

The **Immigrant Investor Program** allows foreign nationals with business experience and a legally obtained minimum net worth of \$800,000 to immigrate to Canada and make a minimum investment of \$400,000 to Canada. Current legislative changes are expected to increase these amounts to \$1,600,000 and \$800,000 respectively. Canadian provinces use the investment funds to increase economic growth and employment opportunities for Canadian citizens and permanent residents. Investment funds are fully guaranteed by the provinces and are returned, without interest, approximately five years and two months after payment.

Investors are not required to participate actively in the operation or management of a Canadian business and their permanent residence status is not subject to any conditions or monitoring apart from the commitment to invest funds in Canada. Payment is generally requested on approval of the application for permanent residence.

For additional information on how to apply for permanent residence to Canada as an investor, see the CIC website (<http://www.cic.gc.ca/english/immigrate/business/investors/index.asp>).

Self-employed people can apply for permanent residence

Foreign nationals with experience in the areas of culture, athletics, or farm management can apply for permanent residence to Canada as a self-employed person. This category of permanent residence is intended to bring to Canada applicants who will make a significant contribution culturally or athletically, or who will manage a farm in Canada. To qualify as a self-employed person, foreign nationals must demonstrate that they have at least two years of relevant experience as well as the intention and ability to be self-employed in Canada. Unlike the investor and entrepreneur programs, there is no minimum net worth requirement for self-employed persons. Applicants are required to demonstrate that they have sufficient capital to support themselves and their accompanying dependents in Canada. Applicants must also show that they are able to finance the specific economic activities that formed the basis for their permanent residence application.

People with Canadian work or educational experience can apply for permanent residence

Foreign nationals who are temporary foreign workers or foreign students who graduated in Canada can apply for permanent residence in Canada under the **Canadian Experience Class** program. Temporary foreign worker applicants must have at least two years skilled work experience in Canada and can apply while working in Canada. Foreign student applicants are required to have graduated from a Canadian college or university and must have at

least one year of skilled work experience in Canada. All applicants will be evaluated on proficiency in English or French.

British Columbia supports business immigrants

There are a number of advantages for immigrants seeking new business opportunities in British Columbia – abundant natural resources, advanced infrastructure, competitive markets, and a highly skilled workforce.

British Columbia recognizes the significant contribution that business immigrants make to local economies and communities and has developed a number of resources to assist qualified candidates who wish to move to British Columbia. The British Columbia Ministry of Regional Economic and Skills Development, Business Immigration Office offers guidance and support for business immigrants, including one-on-one personal business counselling as well as immigration and investment seminars. The Business Immigration Office also provides detailed information about life in British Columbia and answers questions about health care, education, culture, recreation, and lifestyle opportunities in British Columbia.

Further information can be found on the WelcomeBC website

(<http://www.welcomebc.ca/wbc/immigration/choose/index.page?>).

What is British Columbia's Provincial Nominee Program?

The Province of British Columbia (in partnership with CIC) operates the **British Columbia Provincial Nominee Program** (BC PNP). It is an immigration program that helps to process immigration applications quickly for qualified skilled workers and experienced entrepreneurs and their families who want to settle in British Columbia. The BC PNP selects and nominates potential immigrants for permanent residence based on their ability to contribute to the economy in British Columbia.

Successful nominees, together with their spouse or common-law partner and dependent children, receive faster processing of their applications for permanent residence to Canada and support from the province for their work permits applications.

There is no limit on the number of nominees that can be selected by the Province of British Columbia each year.

The BC PNP will continue to expand and develop as British Columbia's economic needs grow and change. In 2008, over 3600 nominations were made by British Columbia.

The BC PNP has two programs:

- strategic occupations; and
- business immigration.

What are strategic occupations?

The strategic occupations part of the BC PNP is designed to meet the current and future skill needs of employers in British Columbia who want to recruit or retain qualified foreign workers. This part of the BC PNP is employer-driven and foreign nationals are ineligible for nomination unless they have a permanent job offer from an employer

in British Columbia. The application for nomination by the Province of British Columbia is a joint application by the employer and the applicant for permanent residence.

Five categories of applications will be considered under the strategic occupations part of the BC PNP:

- skilled workers;
- designated health professionals;
- international graduates;
- entry-level and semi-skilled workers (pilot project); and
- international post-graduates (pilot project).

The skilled worker category was introduced to help British Columbia employers meet skill shortages. Initially, the program assisted the permanent residence of nurses and doctors in the public sector, but it quickly expanded to include highly skilled workers in the private sector. Employers can sponsor foreign employees who they want to hire permanently and who have skills that they cannot find locally.

The international graduates category was introduced to allow applications from foreign graduates from approved Canadian universities and colleges in applied sciences and commerce and other areas of study and who have a permanent job offer from an employer in British Columbia.

The entry-level and semi-skilled category pilot project, which has been extended to August 31, 2011, was designed to meet select labour demands in the tourism and hospitality, long-haul trucking and food processing industries in British Columbia. Under this category, applicants must have worked for an eligible employer in British Columbia for nine consecutive months and have continuing full-time employment with that employer at the time of application.

The international post-graduates pilot project runs until May 28, 2013. The project is directed at foreign students who have graduated from an eligible masters or doctorate degree program from a college or university in British Columbia. Applications under this category must be received within two years of graduating.

For more information, including the eligibility criteria for each of the five categories of applicants, consult the WelcomeBC website (<http://www.welcomebc.ca/wbc/immigration/come/work/about/index.page?>).

Business and investment opportunities

This program assists investment-ready foreign entrepreneurs or foreign companies who want to invest in a new business or to expand a business in British Columbia that they will actively manage. A regional business category was added to encourage foreign investment outside of Greater Vancouver and Abbotsford. Applicants in this category must locate their business outside the Vancouver Metropolitan or Abbotsford Metropolitan area, and are assessed under lower investment, personal net worth, and job creation criteria than the more general criteria for business immigrants.

For details on the program categories, eligibility criteria and to download application forms, see the WelcomeBC website: <http://www.welcomebc.ca/wbc/immigration/come/work/about/index.page?> or enquire by email at Bus.Imm@gov.bc.ca.

How do you apply for Canadian citizenship?

Adult permanent residents of Canada may be eligible to apply for Canadian citizenship if at least two years have passed since they became permanent residents of Canada and if they resided in Canada for a minimum of three of the four years before submitting their application for citizenship. To see if you meet the residence requirements for citizenship, you can complete the residence calculator on the CIC website (www.cic.gc.ca).

Applicants for citizenship must also be able to communicate in either English or French, know about Canada, and understand the rights and responsibilities of Canadian citizenship. If you are between the ages of 18 and 54, you will be required to pass a citizenship test. CIC has prepared a study guide, *Discover Canada: The Rights and Responsibilities of Citizenship*, to help you prepare for the test. The guide is available on the CIC website.

Canadian law permits **dual citizenship**. When a person becomes a Canadian citizen, the laws of his or her former country of citizenship may allow him or her to continue to hold his or her previous citizenship.

Income tax issues

Who has to pay income tax in Canada?

A person who moves to Canada to work may have to pay income tax in Canada if he or she becomes a **resident** of Canada.

Canadian residents must pay tax on their income earned from all sources, anywhere in the world.

Income includes:

- employment income;
- business income;
- income from property; and
- one-half of realized capital gains (net of realized capital losses).

Employment income includes the value of most employee benefits including housing, automobiles, low-interest or interest-free loans, stock options, profit-sharing plans, and insurance benefits.

If a person becomes resident in Canada part way through a year (or leaves Canada part way through the year), he or she only has to pay income tax in Canada on worldwide income earned while resident in Canada in that year. When the person is no longer resident in Canada, he or she may also be taxed on unrealized capital gains arising from an increase in the value of certain capital property while resident in Canada.

On the other hand, non-residents of Canada, pay tax only on Canadian employment income, business income, and gains arising from the disposition (sale or transfer) of taxable Canadian property. Certain exemptions may be available under tax treaties with other countries.

What are Canada's tax rates?

The amount of income tax that an individual is required to pay increases with his or her taxable income. Basic federal income tax rates range from 15% to 29% (excluding any surtaxes (an additional tax levied as a percentage of the income tax amount)).

In addition to federal income tax, British Columbia has its own income tax, which applies the British Columbia provincial tax rate to the federal taxable income amount.

British Columbia income tax rates range from 5.06% to 14.7% of taxable income. British Columbia income taxes are not deductible when computing an individual's federal taxable income.

BUYING AND DEVELOPING LAND

Buying and selling land

When land is bought in British Columbia, usually the buyer offers to buy the land from the seller. If the seller agrees to sell the land to the buyer, the buyer and the seller of the land sign a contract called a **contract of purchase and sale**. The contract of purchase and sale is in writing, and sets out the main terms of the agreement — the parties, the property, and the price. If the contract is not in writing or does not identify these terms clearly, the buyer or seller may not be able to ask the court to enforce the contract.

Usually, the buyer's lawyer prepares the buyer's offer to purchase and the contract of purchase and sale. The buyer's lawyer must also make sure that the contract of purchase and sale contains the main terms of the contract and that the buyer acquires good title (ownership) to the land, and is able to use or develop the land as the buyer intended.

The contract of purchase and sale may have **conditions** that require the buyer or seller to do something by a certain date. A common condition in a contract of purchase and sale is called **due diligence**. This means that the buyer can research information about the seller and the land before the sale becomes final. The buyer's lawyer conducts searches and investigations to make sure that the seller is the registered owner of the land, has the ability to transfer title to the land to the buyer, and that the buyer can use the land for the intended purpose. If the buyer is satisfied by the searches, the buyer can remove the condition from the contract of purchase and sale. On the removal of all other conditions, the contract of purchase and sale becomes final, which means the buyer or seller can enforce the sale of the land.

The final step in buying and selling land is the **closing** or **completion**. Although the buyer and seller have already signed the contract of purchase and sale, the actual transfer of title to the land (ownership) happens on the closing date agreed on in the contract. On the completion or closing date, the buyer must pay the seller and the seller must file a transfer of title in the land title office in order to transfer ownership of the land to the buyer.

If the land being sold affects the rights of Aboriginal people in British Columbia, the purchase and sale of the land will become more complex. (for example, see the section titled Obtaining Permits and Licences – Issues Concerning Aboriginal People)

Owning land

Land in British Columbia can be owned as a freehold interest or leasehold interest. A **freehold interest** is the greatest interest that an owner can hold in land.

A **leasehold interest** is an interest in land (or land and buildings) for a fixed period of time and arises from and is governed by a lease. Instead of buying a freehold interest in land, a person may choose to lease or rent property from the owner of the land. A lease is a transfer of land by a landlord, allowing the tenant to occupy and use the land for a period of time. Under the lease the tenant agrees to pay rent and other operating costs and expenses and to repair and maintain the leased property.

How is land leased?

If a person wants to lease instead of buy land, the person offers to lease the land and if the landlord agrees, the landlord prepares a **lease agreement**. The lease agreement includes all of the rights and obligations of the landlord and tenant. Unless it is not allowed under the lease, a tenant has the right to register a lease or notice of its leasehold interest in the land in the land title office.

What about condominiums?

Condominiums can also be owned as freehold or leasehold interests. Condominiums are strata lots — parcels of land or land and buildings together with a joint interest in common property. Ownership of a strata lot includes the individual strata lot as well as an interest in the assets and liabilities of the strata corporation. The British Columbia *Strata Property Act* governs the creation of strata lots and the rules for developers and owners of strata property.

Ownership includes interests registered against the land

Ownership of land may also include other property interests such as mortgages, easements, covenants, rights of way, leases, options to purchase, rights of first refusal, caveats, liens and certificates of pending litigation. These interests are also registered in the land title office and appear on the registered title of the land.

Who owns the land?

More than one person or legal individual (or a company, partnership, limited or limited liability partnership, joint venture, income fund, or trust) can own land at the same time. The land may be owned in two ways: a tenancy-in-common or a joint tenancy.

In a **tenancy-in-common**, each of the owners owns a separate and partial (proportionate) interest in the land. Each owner's interest is treated as a separate title and may be sold, leased, or mortgaged independently of the other owner's interest. This type of ownership is most common in commercial transactions where the owners want to own different shares in the land and to receive profits or losses on their interests.

In a **joint tenancy** all of the owners own, jointly, and without divided percentage, the entire land under a single title. When one owner dies, the owner's interest in the land automatically goes to the remaining joint tenants. This type of ownership is most common among spouses and family members. Joint tenancy may be changed to a tenancy in common.

How do you register land ownership in British Columbia?

The British Columbia land title system is one of the best in the world for assuring ownership of land (who owns the land and what is registered on title to the land). The *Land Title Act* governs the registration of title to land, and the registration system is based on the principles of indefeasibility, registration and assurance.

An owner must **register** the owner's interest in land to show that the owner has an **indefeasible title** to the land and to prove ownership to other people. This means that the registered owner need not be concerned about past defects in the chain of title to the land. In other words, in British Columbia, once an interest in land is registered in the land

title office, subject to any exceptions set out in the *Land Title Act*, the registered owner of the land has an indefeasible title that cannot be revoked, defeated, or made void.

Assurance means that a person who loses title or an interest in land because of an error in the land registration system will be paid money from a special compensation fund.

Buying and leasing Crown land

Over 92% of the land in British Columbia is owned by the provincial government or “Crown”. Where land is readily available through the real estate market, it will not be supplied from the Crown land base which is reserved by the Crown for competing uses. Some Crown land, mostly located in or near urban areas, is actively marketed by Land and Water British Columbia (LWBC). LWBC is authorized to develop, market and sell Crown land for specific purposes. They periodically publish a listing of properties approved for sale. More information about buying or leasing Crown land is available on the British Columbia Crown Land Registry website (<http://archive.ilmb.gov.bc.ca/irb/clrs/index.html>).

Borrowing money to buy land

In British Columbia most buyers of land borrow money from institutional lenders such as banks, credit unions, and trust companies. Most lenders giving a loan to buy land require security for the money loaned, such as a mortgage against the land or a debenture or collateral security, such as a general security interest or a guarantee.

The **mortgage** is the most common form of security for a loan to buy land. A mortgage means the borrower will promise the land as a security for the borrower’s payment of the loan. The terms of the mortgage are usually non-negotiable and prepared by the lender. If the borrower does not repay the loan in accordance with the terms of the mortgage, the lender has several options to recover its loss. The lender’s options for recovery are usually set out in the mortgage document and often include the lender requiring the borrower to pay the full amount of the loan at one time, the lender asking a court to transfer ownership of the land to the lender (this is called foreclosure), and the lender taking the land or selling the land.

A tenant who has a leasehold interest in land can also borrow money secured by a mortgage to a lender.

The mortgage must be registered against title to the land in the land title office. There are specific rules for the form of a mortgage that must be followed in order to file the mortgage in the land title office (*Land Title Act*).

Lenders frequently use **debentures** to secure loans to corporate borrowers. Debentures typically take security over the land and assets of the borrower.

Lenders often require a mortgage to charge the lands and a **general security agreement** to charge the borrower’s personal property related to the land, particularly with commercial financing. A notice of the security interest in the personal property related to the lands must be registered in the British Columbia Personal Property Registry.

Paying taxes on land

When land is bought and sold in British Columbia, the buyer has to pay taxes.

When property is bought or a lease of more than 30 years (including renewals) is registered, the buyer or tenant must pay **property transfer tax**. The tax rate is 1% of the first \$200,000 of the fair market value of the property being transferred or leased and 2% on the value over \$200,000. If freehold title to land is sold, the tax is usually based on the purchase price of the property. If a leasehold interest is registered or transferred, the amount of property transfer tax depends on the type and term of the lease.

Some land purchases are exempt from property transfer tax. The most common exemption is when the buyer of the land is a first-time home buyer of a residence with a value below a set price. The British Columbia *Property Transfer Tax Act* contains a list of the exemptions to the tax.

The Harmonized Sales Tax (HST) applies to charge the buyer 12% of the purchase price of most types of property including commercial property, newly constructed residential housing, and substantially renovated residential housing. There are exemptions. For example, HST does not apply to the purchase of used residential housing. The federal *Excise Tax Act* sets out in detail the type of property and transactions that are exempt from HST.

All municipalities within British Columbia charge owners of land **annual property taxes**. Municipal property taxes are based on the assessed value of land and buildings on the land. The amount of money that is to be raised through property taxes, and the property tax rate, is generally set by the municipal council each year. The tax rate together with the assessed value of the property determines the amount of property tax payable each year. Tax rates are expressed in “dollars per thousand”. A rate of \$10 per thousand means that the property owner would pay \$10 for every \$1,000 of assessed value. The value of a property for tax purposes is determined by BC Assessment, independent of the municipality. Land that is located outside of municipal boundaries is taxed as rural property by the provincial government’s Property Taxation Branch which bills and collects annual taxes on rural land using assessment information provided by BC Assessment.

What happens if a non-resident sells land?

If a **non-resident** of Canada sells land in Canada, the *Income Tax Act* (Canada) requires the collection of income tax. (A resident is a person who regularly, normally or customarily lives in Canada.) The non-resident seller must provide the buyer with a **clearance certificate** from the Canada Revenue Agency showing that the seller paid the income tax on the sale. If the non-resident seller does not provide a clearance certificate to the buyer, the buyer must withhold the tax from the seller’s sale proceeds and send the money to the Canada Revenue Agency.

Using and developing land

In British Columbia, municipal governments make rules on land use, zoning bylaws, and subdivision bylaws (British Columbia *Local Government Act*). Owners who intend to develop the land must get approvals from the municipal government for zoning, subdivision, development, and building.

Municipalities make rules on the use of land and the construction of buildings and other structures through **zoning** bylaws. Land within a municipality is divided into legal zoning classifications that specify the types of buildings

that may be constructed and the uses or activities that can take place on that property. Owners of land can make rezoning applications to change the zoning of the land to another category.

Subdivision is the division of land into two or more parts. An owner's right to subdivide land is controlled by provincial and municipal authorities. An application to subdivide land must comply with the law (British Columbia *Land Title Act* and *Local Government Act*) and be approved. The subdivision of land into strata lots must comply with the British Columbia *Strata Property Act*, and be approved.

The **development** of land means a change in the permitted use of the land. Municipalities make rules on the development of land by requiring permits before certain land can be developed. Land owners may need a permit from the municipality to develop the land in a certain area, or a permit to change a zoning bylaw.

There are rules about building on land

The government of British Columbia has a set of rules about the design and construction of buildings in British Columbia (British Columbia *Building Code*). Municipal governments can also enact building bylaws to regulate the construction of new and existing buildings. For example, a typical building bylaw may require that an owner obtain a building permit before constructing a building to make sure it is built safely.

BUYING EQUIPMENT

Financial options for buying or leasing equipment

Equipment is **personal property** (as opposed to land, which is called real property).

Your business can get equipment in British Columbia in a number of ways, including:

- buying (purchasing);
- financial leasing; and
- regular leasing

When you **buy** equipment it becomes your property as soon as the transaction is complete. Most equipment purchases are financed with a loan from a financial institution, such as a bank or credit union.

You can lease equipment for a set period of time, with an option to buy the equipment at the end of the time period.

This is called **financial leasing**. There may be some tax or accounting advantages to this arrangement because all of the leasing costs can be charged to your business's operating expenses. Financial leasing is generally more expensive than buying the equipment.

Your business can make regular lease payments in exchange for your continuing right to use the equipment (called **regular leasing**). Your business never owns the equipment and there is no obligation to buy the equipment at the end of the lease term. Leasing costs are charged to the business's operating expenses. This is the best option if you are buying technology equipment that changes rapidly.

You will have to give security for the equipment

If you cannot buy the equipment outright, the leasing company (lessor) that you lease the equipment from, the financial institution that will finance your purchase, or the equipment seller who provides financing for your equipment purchase will all require your business to grant a **security interest** in the equipment. A security interest is a lien (charge) against the equipment that allows the lessor, financial institution, or seller to take back the equipment if your business does not pay its loan or lease payments.

Personal property security in British Columbia

In Canada, each province has authority over security interests in personal property located in the province. In British Columbia, the *Personal Property Security Act* (PPSA) applies to security interests. The PPSA has rules for all forms of security granted by those who owe money (debtors) against personal property. The PPSA uses a computer-based registration system that provides notice of security interests to people who deal with a debtor and the debtor's property.

A security interest must "attach" to the collateral (for example, equipment) in order for the security interest to be enforceable against the debtor. Attachment occurs when there is a signed security agreement, the debtor has rights in the collateral and value has been given in exchange for the security interest (for example, a loan of money).

In order to ensure that the security interest is enforceable against third parties, the security interest must be “perfected”. A creditor can perfect its security interest either by registering a financing statement in the computerized British Columbia Personal Property Registry (PPR), or by taking possession of the collateral in which they have a security interest. There are strict rules about what a financing statement must contain. Secured creditors are required to correct any errors in a registration, or file notices of changes to the essential elements of the registration as soon as the error is found or the change occurs, or else they risk their security interest becoming unperfected.

The general rule is that the first person to perfect its interest will usually have priority over other security interests – the **first to perfect rule**. Where a creditor finances the purchase of a specific equipment, the creditor will usually have priority over others regardless of the order of perfection, so long as they follow the strict rules under the PPSA.

Special types of security for banks

In addition to the usual ways that banks secure loans, Canadian chartered banks have a special form of security they can take under the federal *Bank Act*. For some kinds of businesses who want to borrow money (manufacturers, shippers, wholesale and retail purchasers, and dealers in farm, mine, and sea products), the bank can take security over their inventory and other property (such as receivables generated from sales).

Canadian banks also have special security rights under the *Bank Act* for loans and advances made on the security of hydrocarbons and minerals—a form of security that may be useful in the oil and gas and mining sectors. This security covers related rights such as licences or permits and equipment used in the extraction, mining, production, or storing of hydrocarbons or minerals.

Bank Act security is relatively easy, and the security is effective throughout Canada. This is different than British Columbia PPSA security, which security is only effective while the property remains in British Columbia.

Other laws may apply

Other laws may be relevant to financing of equipment. For example, laws about fraud have rules about transfers of property that are intended to avoid creditors. Laws on liens give protection to people who repair personal property. Canadian bankruptcy law recognizes the rights of those who have taken security under provincial laws, but their rights may change once a company is bankrupt.

Taxes on equipment

You may have to pay income tax or sales tax when you buy certain equipment.

If your business acquires depreciable property (equipment), you cannot deduct the entire cost of the purchase. The business can, however, deduct or amortize the cost over several years. This deduction is called a **capital cost allowance** (CCA). This reduces the amount of tax payable.

If you are importing equipment into Canada, and have paid Harmonized Sales Tax (HST) on them, you can claim an income tax credit if they are used for your business activities in Canada. (See Establishing or Acquiring a Business: Sales Tax.)

Formerly, Provincial Sales Tax (PST) exemptions were available when purchasing or leasing certain machinery or equipment for use in certain kinds of manufacturing. Under the HST, these exemptions are no longer available. Instead, you can claim input tax credits to offset the full amount of tax paid on all equipment purchased or leased if they are used for your business activities in Canada.

OBTAINING PERMITS AND LICENCES

Business Permits and Licences

In British Columbia, municipal governments have the authority to pass by-laws and make regulations for the health, safety, and well-being of the people living and working in the municipality. They also have the authority to give licences for business, and to regulate their activities. The Government of British Columbia has delegated much of the authority to regulate businesses to municipal governments.

Business licences allow cities and municipalities to regulate the type and location of businesses in their communities. And it is a way for the municipality to protect the public.

Municipalities may regulate businesses through zoning or building laws, or through laws that apply to specific industries such as taxi services or fireworks sellers.

How do you apply for a business licence?

To apply for a business licence, you go to a municipality's licensing office and complete a form describing your business and the address. You must also pay a fee for the licence.

Commercial or industrial businesses may also require building inspections, plumbing inspections, electrical inspections, fire inspections, and health inspections before a licence is issued. Businesses operated from residences, such as a bed and breakfast operation, have specific regulations that must be complied with before a licence is issued.

Are other approvals necessary?

Before a business licence is issued, you may also have to get approval from the police, fire, or health departments. You may also need an environmental permit depending on the nature of the business. (More information can be found in the following section on environmental issues.)

Some professionals, such as doctors, lawyers, accountants, registered massage therapists, plumbers, electricians and engineers, must be certified to practice in British Columbia. In addition to obtaining a business licence, you may also have to get approval from the appropriate governing body or licensing agency. You must show your professional certification or trade qualifications when you apply for your business permit.

What kinds of incentives are available?

Municipalities attract businesses through planning controls and incentives. Since municipalities have the authority to set their own property tax rates, the tax rates may vary among communities in British Columbia. And to attract certain businesses, a municipality may reduce or streamline administrative requirements or approvals in order to encourage business to locate there.

Environmental Issues

Canadian corporations are now addressing environmental issues – corporate social responsibility, corporate sustainable growth, and climate change.

The federal and provincial governments mainly regulate environmental issues, and municipal governments are involved to a lesser extent. Legislation covers:

- environmental permits;
- environmental assessment and review procedures;
- emission allowances;
- emission limits;
- spills and spill reporting;
- contaminated site clean-up;
- waste reduction and disposal; and
- toxic substances (importing, exporting, transporting, identifying, and handling).

Depending upon the nature of the proposed activities, a business may be required to comply with legislation from all three levels of government.

Canada's environmental laws

The *Canadian Environmental Protection Act* (CEPA) is the most important legislation the federal government uses to regulate activities affecting the environment. CEPA applies to lands, works, and undertakings that are within the jurisdiction of the federal government. CEPA is primarily responsible for the management of **oceans** and the regulation of **toxic substances and hazardous waste** entering or leaving Canada or crossing provincial borders, and toxic and polluting substances that do not fall within the jurisdiction of the provincial government. CEPA lists certain substances that cannot be discharged into the environment.

The *Species At Risk Act* (SARA) is federal legislation aimed at protecting **habitat** and recovering **species** listed as endangered, threatened, or of special concern. SARA prohibits killing any listed wildlife species or destroying their critical habitat.

British Columbia's environmental laws

In British Columbia, the *Environmental Management Act* (EMA) governs environmental regulation and protection in British Columbia. The Environmental Protection Division of British Columbia's Ministry of Environment is the main provincial authority regarding the regulation of the environment. This ministry keeps records of permits and approvals granted under EMA.

You may need a permit to discharge waste

Under the EMA, certain industries, trades, businesses, operations and activities as prescribed in the *Waste Discharge Regulation* (WDR) require a **permit** for the storage, treatment, or discharge of waste. Under the WDR, businesses are classified as low, moderate or high risk. Businesses identified as **high risk** in the WDR must obtain a permit.

Businesses in the **moderate** category, while not required to obtain permits, are required to follow other practices. All businesses, regardless of their classification in the WDR, must ensure that their operations and activities do not cause pollution.

Under the EMA, certain wastes may be discharged without a permit and others wastes may be discharged with a permit, approval, order, regulation, or waste management plan. A **director of waste management** (an authorized government employee) can issue a permit.

How do you apply for a permit?

The *Public Notification Regulation* (PNR) passed under the EMA tells you how to apply for a permit or approval.

To get a permit, the applicant must submit an application to a director with a description of:

- the source and location of waste;
- a description of the waste (including type and amount);
- a legal description of the land where the business will be located; and
- where the waste will be discharged.

As part of the review process, other federal or provincial agencies may make comments about the application.

Under the PNR, anyone who may be negatively affected by the granting of a permit may notify a director in writing of his or her concerns.

In some cases, a director may allow waste to be discharged into the environment with an approval, but not a permit. An approval allows you to discharge waste into the environment for a limited period of time (15 months or less) and is subject to other requirements imposed by the director. Applications for approvals are governed by the PNR.

Who is responsible for contaminated sites?

The EMA, in conjunction with the *Contaminated Sites Regulation* (CSR), also governs the treatment of spills or contaminated sites in British Columbia. The purpose of the legislation is to ensure that contaminated soil, surface water, sediments, and ground water are cleaned up to scientifically based standards.

Under the EMA, responsibility for the contamination is based on a **polluter-pays principle**. This means that a person who has contaminated or contributed to the contamination of land should pay for the clean-up.

Those responsible for contaminated sites include:

- current owners or operators of contaminated sites;
- past owners or operators of contaminated sites;
- current and past owners and operators of contaminated sites from which substances have migrated;
- producers or transporters of the substance that caused contamination; and
- in certain circumstances, secured creditors.

However, an innocent purchaser of contaminated land is not likely to be responsible for the cost of clean-up if he or she did not know about or contribute to the contamination.

Responsible persons become liable for contaminated sites as a result of Ministry orders or civil actions brought by parties who incur remediation costs.

There is a public registry for contaminated sites

There is a public registry for contaminated sites. It contains current and historical information about contaminated sites including site investigations and profiles, approvals, and remediation orders. This information is available to the public and it is wise to search the site registry before you purchase land.

Development of contaminated sites

Developers should be concerned about contaminated sites. Municipalities cannot approve applications for development permits (or development variance permits) unless the conditions set out in the *Local Government Act* are met. In certain cases, municipalities may require approval of the clean up (in the form of a **certificate of compliance**) before they grant development approval. And it is not likely that you will get financing for a project that has contaminated land.

A **site profile** of land, which contains information about the environmental condition of the land, must be provided to the applicable local government for:

- applications to subdivide land used for industrial or commercial activity; and
- applications for zoning or development permits related to industrial or commercial land.

What are the penalties for environmental damage?

A person can be charged with a wide variety of offences under CEPA and the penalties include fines, imprisonment, injunctions, civil remedies and proceedings, and compensation orders. In addition to these penalties, a court may also order the offender to perform community service, take remedial action, compensate the ministry for remedial action taken by the ministry, or compensate a person who suffered loss or damage as result of the offence.

A person may be charged with a wide variety of offences under the EMA. The penalties for these offences may be a fine, imprisonment, or both. The court can also restrain activities that violate the legislation, prohibit future actions, order payment for the cost of clean-up, and so on.

You may be personally liable for the damage

Directors and officers of a company may be personally liable for the company's violation of environmental legislation if he or she directed, authorized, or agreed to the offence being done. In addition, a director or officer has a duty to take reasonable care to ensure that the company complies with CEPA and other orders or requirements imposed by the Environment Minister, enforcement officers, or review officers.

Directors and officers of a company have a responsibility to ensure that their company does not unlawfully contaminate the environment, even if the damage was not intentional. To avoid personal liability for environmental offences, directors and officers must prove that they took steps to avoid and minimize the effects of an accidental discharge (such as creating an environmental management system).

Issues Concerning Aboriginal People

Canada was home to **Aboriginal** people before Europeans settled in North America. Aboriginal people include **First Nations** or **Indians**, **Inuit** (formerly known as **Eskimo**) and **Metis** (mixed French or British fur-trader and First Nations descendants). Because of their longstanding use and occupancy of the land, they have **Aboriginal rights** (for example, the right to hunt and fish on their traditional land), which are recognized under Canadian law. Throughout the history of Canada, the government signed **treaties** with various Aboriginal groups, which set aside certain lands (called **reserves**) for use by the Aboriginal group, and affirmed certain rights, including rights to hunt and fish outside of reserve lands. However, very few historic treaties were signed in British Columbia. At the present time, the federal and provincial government are working with Aboriginal groups to negotiate and conclude new or “modern day” treaties.

Because of the unique status of Aboriginal people in Canada, the federal and provincial governments have an obligation to consider how a proposed activity, such as the development of land, may impact Aboriginal rights. This obligation involves consulting with the potentially affected Aboriginal group by exchanging information about the proposed development and considering any concerns of the Aboriginal group. This obligation of the government to consult exists whether or not a treaty has been signed.

How are treaties negotiated?

As part of the British Columbia **treaty negotiation** process, Aboriginal groups submit a statement, which identifies the land that forms part of its traditional territory. Ongoing treaty negotiations deal with matters such as ownership of land by the Aboriginal group, and the use of that land and its resources. The interests of third parties, such as business operators and private landowners, are taken into account during the treaty negotiation process.

These government websites will give you more information about Aboriginal treaties:

- Treaties and Negotiations www.gov.bc.ca/arr/treaty/default.html; and
- Historic Treaty Information Site <http://www.ainc-inac.gc.ca/al/hts/index-eng.asp>.

Do you need a permit?

If you need a permit to use federal or provincial land (Crown land) for an activity that may impact Aboriginal land or rights, the government must consider what effect the activity may have on the Aboriginal group before granting a permit.

As part of the review process, the government may consult with any Aboriginal groups who may be affected by the proposed activity. Aboriginal interests may have to be accommodated, and efforts made to minimize impacts, to the extent practicable, if the consultations suggest there may be significant undesirable effects on asserted or proven Aboriginal rights.

Who else is consulted about permit applications?

Some environmental laws (such as the provincial *Environmental Management Act* and the federal *Environmental Assessment Act*) require that the general public have an opportunity to give their views about a proposed development.

SELLING YOUR PRODUCTS AND SERVICES

Laws regulate selling products and services

The governments of Canada and British Columbia have strict laws about products and services sold in Canada. The laws restrict what can be sold, what information about the product and services you must give to the buyer, and your legal responsibility if the product or service is defective.

There are laws about both consumer products and industrial products. The most important laws are:

- the federal *Food and Drugs Act*, which regulates everything about food, drugs (and drug-like products), cosmetics, natural health products, and medical devices;
- the federal *Consumer Packaging and Labelling Act*, which regulates packaging and labelling of consumer products; and
- the BC *Food Products Standards Act*, which requires food products to comply with federal laws.

Consumer products

What is a consumer product?

The *Consumer Packaging and Labelling Act* does not define consumer product. Instead, it defines a product as “any article that is or may be the subject of trade or commerce but does not include land or any interest therein”.

However, the Act clarifies that it applies to all products except medical devices and drugs. Those products are covered under the *Food and Drugs Act*.

Packaging and labelling consumer products

The *Consumer Packaging and Labelling Act* states that consumer products must be packaged and labeled in a way that does not mislead the buyer.

A **product** is anything that can be traded or sold, and includes both food and non-food items. This law applies to **dealers** (retailers, manufacturers, processors and producers of products, and anyone who imports, packs, or sells any product).

You can find out more about consumer packaging and labelling on the Canadian Competition Bureau’s website (www.competitionbureau.gc.ca/internet/index.cfm?lg=e). The Canadian Food Inspection Agency also has a useful Food Labelling Guide (<http://www.inspection.gc.ca/english/fssa/labeti/guide/toce.shtml>).

What has to be on the label?

A dealer cannot sell, advertise, or import into Canada any pre-packaged product unless it has a label that meets certain requirements. For example, the label must:

- state the net quantity;
- be clearly displayed and easy to read;
- be in metric units;
- be in both English and French;
- describe the product by its generic or common name; and
- show the identity and place of business of the manufacturer or seller.

What kind of package does it have to be in?

Certain products must be sold in standardized containers in order to avoid misleading consumers. For example, peanut butter, wine, and refined sugar syrup are products that must be packaged in standardized containers according to the net quantity of the product.

What are the laws about food products?

Under the *Food and Drugs Act*, **food** includes anything offered as food or drink for human consumption (including chewing gum and any ingredient that can be mixed with food). The food must have been prepared according to strict standards. The Act does not allow misleading or deceiving labelling, advertising, or packaging of food products.

Specific nutrition information must be provided for most pre-packaged food sold in Canada, including the serving size, energy value, amount of fat, cholesterol, carbohydrate, fibre, etc. The Canadian Food Inspection Agency also has a useful Food Labelling Guide (<http://www.inspection.gc.ca/english/fssa/labeti/guide/toce.shtml>).

The *BC Food Products Standards Act* requires food that is manufactured, sold or advertised in BC to meet the requirements of the federal *Food and Drugs Act*. The *BC Food Safety Act* ensures that restaurant food is also safe – a business licence is required for the restaurant and the premises must be regularly inspected.

What is the law about agricultural products?

The *Canada Agricultural Products Act* regulates the marketing of agricultural products for import, export, and interprovincial trade in Canada, and provides national standards and grades of agricultural products for inspection and grading purposes. It also gives licences to agricultural products dealers, packaging and labelling requirements of certain products, and dispute resolution mechanisms between dealers of fresh fruits and vegetables. More information can be found on the Agriculture and Agri-Food Canada website (www.agr.gc.ca/puttingcanadafirst/index_e.php).

Are there laws about organic products?

Organic foods are subject to *Organic Products Regulations* under the *Canada Agricultural Products Act*. These Regulations set out the requirements for marketing and selling organic products, the procedure for organic certification, as well as labelling and advertising.

Organic farming is subject to the *Agri-Food Choice and Quality Act*, and is governed by the *Organic Agricultural Products Certification Regulation*. More information can be obtained on the British Columbia Ministry of Agriculture website (<http://www.agf.gov.bc.ca/organics/overview.htm>).

Some food can be **certified organic** and use the **BC Certified Organic** name and symbol. Regulation of this is handled by the Certified Organic Associations of British Columbia (COABC), a voluntary agri-food quality program that is endorsed by the Government of British Columbia under the *Agri-Food Choice and Quality Act*. (For further information, see the COABC website: [http://www.certifiedorganic.bc.ca/.](http://www.certifiedorganic.bc.ca/))

What laws apply to the sale of drugs?

Under the *Food and Drugs Act*, a **drug** includes any substance or mixture of substances manufactured, sold or represented for use in:

- diagnosing, preventing or treating a disease, disorder or abnormal physical state in either humans or animals;
- restoring, correcting, or modifying organic functions in humans or animals; and
- disinfecting premises in which food is manufactured, prepared or kept.

A product may be classified as a drug if the manufacturer claims that it is therapeutic. Before the product can be marketed and sold as a drug:

- the therapeutic claims must be verified through scientific study; and
- the product must be approved by the Health Protection Branch of the Department of Health.

Information about regulation of prescription drugs and other health products can be found on the Health Canada website (<http://www.hc-sc.gc.ca/dhp-mps/index-eng.php>).

What about other supplements?

Drug-like products, which are not prohibited or restricted under the *Food and Drugs Act*, may be advertised and sold to the general public under certain guidelines. The Code of Ethical Practices of the Association of Canada's Research-Based Pharmaceutical Companies (Rx&D) governs advertising to health care professionals. Labelling must be in accordance with the Food and Drug Regulations and Labelling Guide.

How are Internet pharmacies controlled?

All drugs imported into or sold in Canada must meet federal requirements. Operators of Internet pharmacies must comply with provincial prescribing and dispensing regulations and practices. See http://www.hc-sc.gc.ca/dhp-mps/compli-conform/info-prod/drugs-drogués/fact_sheet_feuille_t_c-tm-eng.php for more information on cross-border drug sales.

Are natural health products controlled?

Natural health products are regulated under the federal *Food and Drugs Act* and its Regulations. Natural health products include supplements, herbal remedies, homeopathic medicines, traditional medicines (e.g., traditional Chinese medicines), amino acids, and the like. They can be sold in Canada with a licence from Health Canada. British Columbia also regulates natural products under the *Natural Products Marketing Act* and its Regulations.

What about cosmetics?

Cosmetics cannot be sold in Canada if they contain substances that may be harmful to health. The *Food and Drugs Act* requires that cosmetics imported into or sold in Canada be manufactured, labelled, packaged, stored and advertised in compliance with the Cosmetic Regulations.

Medical devices are regulated

The *Food and Drugs Act* prohibits misleading labelling, packaging, or advertising of medical devices. Some types of medical devices must be approved for sale in Canada. More information can be found in the Medical Devices Regulations in the Act.

Industrial Products

While the laws discussed above are designed to protect consumers and the products they buy and use in their personal lives, there are also laws that are designed to protect both consumers and workers from some of the dangers they face when using certain products in the workplace.

Dangerous products

The purpose of the *Hazardous Products Act* is to protect the health and safety of consumers and workers by regulating the sale of products that are dangerous or potentially dangerous. Dangerous or **hazardous products** may be:

- prohibited (which may not be sold in or imported);
- restricted (must meet certain safety standards); or
- controlled (toxic, corrosive, and flammable products for use in the workplace).

The Canadian Environmental Protection Agency (CEPA) sets out the procedures for applying for permission to import, export, or transport hazardous waste. For more information, see Environment Canada's Waste Management website <http://www.ec.gc.ca/default.asp?lang=En&n=6B993ED0-1>.

Liability for defective products and services

You may be legally responsible for the consequences of selling defective goods and services in British Columbia. When you sell products or services directly to a person or a business, you have a contract with the purchaser to provide products or services that meet certain standards and expectations. If those standards are not met, the purchaser may have a legal right under the laws of British Columbia to hold the seller responsible for the consequences.

Even where there is no contract between the seller and the purchaser of products and services, the seller may be responsible under the general laws of negligence. Under those laws, a seller has a duty to use reasonable care in producing goods. If a company fails to take care in producing goods and as result injures a customer, then the company may be liable to the customer for his or her injuries.

Canada's laws are very strict. Those who design, supply, manufacture, distribute and sell defective or dangerous products may be legally responsible to purchasers (even second-hand purchasers) and people who receive the product for free.

People who provide deficient or careless services may be legally responsible for damages caused to the purchaser of those services. For example, if a company provides advice to a customer, but does not take reasonable care to ensure that the advice is accurate, the company may be required to pay any damages the customer suffers as a result.

The North American Free Trade Agreement

The aim of the North American Free Trade Agreement (NAFTA) is to ensure that product standards and certification procedures do not create unnecessary barriers to trade between Canada, the United States, and Mexico. Laws, regulations, and policies that were created to ensure that the health, safety and environmental interests of consumers are not seen as unnecessary obstacles to trade, as long as those laws are not more restrictive of products imported from a NAFTA country than they would be of domestic products.

The food products sector is an example of the efforts taken to standardize product standards. Canada and other members of the World Trade Organization (WTO) have agreed to base their national food product standards on international standards and practices. The standards are based on scientific research and risk assessment.

Sales Tax

The supply of goods and services are taxed in Canada. More information can be found at: [Establishing or Acquiring a Business - Sales Tax](#).

IMPORTING AND EXPORTING

Canada promotes importing and exporting

Canada encourages importing and exporting. Its federal laws govern importing and exporting goods. These laws set out the tariffs on imported goods (*Custom Tariff*) and the procedure for importing goods and how tariffs are remitted (sent to the government) (*Customs Act*). They also include rules about what kind of goods require import and export permits (*Export and Import Permit Act*). The Government of Canada has a website with information on exporting at <http://www.canadabusiness.ca/eng/105/165/> and on importing at <http://www.canadabusiness.ca/eng/105/172/>.

The Province of British Columbia is also active in promoting trade and investment in British Columbia. The Ministry of Finance has a practical guide, *British Columbia Exporting and Importing Information Guide*, on its website (<http://www.smallbusinessbc.ca/pdf/SBImportExportGuide.pdf>).

Canada has trade agreements with many countries

Trade is also governed by trade agreements between countries. Canada is a party to many trade agreements that reduce the duty to be paid on imports or exports, provide greater access to local markets, help with fair treatment when trading in another country, and provide protection for investments. An overview of all of Canada's trade agreements is available on the website of Foreign Affairs and International Trade Canada (<http://www.international.gc.ca/trade-agreements-accords-commerciaux/index.aspx>).

Canada belongs to the World Trade Organization

The World Trade Organization (WTO) agreements, negotiated and signed by most of the world's trading nations, set the rules for international commerce. These agreements bind governments to keep their trade policies within agreed limits. Although the governments sign the agreements, they affect business organizations trading within the WTO member states. Because most countries trading with Canada are WTO members, trade from Canada is usually governed by WTO rules, unless another specific trade agreement takes priority over the WTO agreement.

Canada is part of the North America Free Trade Agreement

The **North America Free Trade Agreement** (NAFTA) is an agreement between Canada, the United States, and Mexico. It supports and expands the international trade rules under the WTO.

The **rules of origin** in the NAFTA govern which goods are eligible for special tariff treatment and give preference to goods wholly produced, substantially transformed, or whose major component (part) is produced, in the free trade area. The rules of origin are different for each product. For example, a product may be considered to have originated in one country and be eligible for duty-free access, even if some of its components were imported from a country outside the NAFTA. The rules of origin do not depend on the ownership of the company producing the goods. So, for example, a European-owned business that manufactures goods in Canada can export to the United States under the special tariff rules.

Canada is part of other trade agreements

Other free trade agreements include:

- Canada-Israel Free Trade Agreement;
- Canada-Chile Free Trade Agreement;
- Canada-Costa Rica Trade Agreement;
- Free Trade Agreement Between Canada and the States of the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland); and
- Canada-Columbia Free Trade Agreement.

If your business is located in these countries or if you want to export to these countries from Canada, special rules may apply, including reduced rates of import and export duties, rights of market access, and non-discrimination and investment protection.

Canada also has **Foreign Investment Protection and Promotion Agreements** (FIPAs) with 26 countries (two are not in force). Canada is currently in the process of negotiating FIPAs with India, China, Bahrain, Tunisia, Tanzania, Madagascar, Vietnam, Mongolia, Kuwait, Vietnam and Indonesia. FIPAs are designed to promote and protect foreign investment through legally binding rights and obligations. Although Canada's original FIPAs are based on the Organization for Economic Co-operation and Development (OECD) model, most of Canada's FIPAs were entered into after 1993 and are modeled on the more comprehensive NAFTA model. They include a more mature and comprehensive investor-state dispute mechanism.

There are penalties for not following trade rules

If Canada's import and export rules are not followed, there may be penalties such as criminal prosecution (which may include payment of fines or imprisonment), the seizure of goods, and the seizure of the vehicle, vessel or aircraft used to transport the goods.

The **Administrative Monetary Penalty System** (AMPS) is a monetary penalty system for not following the laws and regulations for importing or exporting. It sets out the fine for each violation and the penalty may increase each time an importer or exporter repeats a violation.

Who controls importing and exporting?

The **Canada Border Services Agency** (CBSA) is the federal agency that controls importing and exporting of goods. You must report all goods brought into Canada to the CBSA. The CBSA checks that imported goods comply with Canadian laws, and it also collects duties and taxes payable on imported goods.

The CBSA website provides an overview of their policies and guidelines (<http://www.cbsa-asfc.gc.ca/>).

Do you need a business number?

All individuals or business organizations in Canada that import or export goods on a commercial basis must get a business number from the Canada Revenue Agency. (See Business Registration On-line at <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/bn-ne/bro-ide/menu-eng.html>)

Importing goods into Canada

If you import goods into Canada, you have to pay customs duties and follow Canadian federal laws that regulate customs procedures, quotas, product standards, and labeling requirements within Canada.

Not all goods can be imported into Canada

Some goods cannot be imported into Canada because they are illegal in Canada or because of international concerns, such as human rights, embargoes, conservation, or to protect domestic industries.

You may need a permit to import some goods into Canada

The federal *Export and Import Permits Act* does not allow some goods to be imported into Canada unless you get an import permit. The goods on the **Import Control List** include certain weapons, animal and agricultural products, clothing, textiles, and footwear from countries that Canada has agreed to restrict trade with. There are quotas for some goods. You can get an import permit only if the exporter has an export quota and an export licence.

Other goods such as alcoholic beverages, radiation emitting devices, hazardous products, explosives, offensive weapons, oil and gas, and animal and agricultural products require a permit to be imported.

You must follow packaging and labelling requirements

Pre-packaged goods sold in Canada are subject to federal and provincial packaging and labelling requirements.

There are general obligations on the type of product company information that must be displayed, as well as bilingual labelling requirements (*Consumer Packaging and Labelling Act* (Canada)).

For goods such as drugs, foods, and textiles there are additional obligations (the federal *Food and Drugs Act* and the federal *Textile Labelling Act*).

More information on this topic can be found in the chapter called Selling Your Products and Services.

You may have to pay customs duty

Canada charges customs duty on some goods imported into the country. Canada has signed the **International Convention on the Harmonized Commodity Description and Coding System**. The **List of Tariff Provisions** (in the Schedule to the *Customs Tariff*) categorizes goods by description and sets out the applicable duty rate. (See the most recent consolidation of Custom Tariffs at <http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html>).

Classifying the goods is the first step in finding out the amount of customs duty you must pay. The CBSA calculates the amount of customs duty that you must pay by looking at the classification of the goods and the duty rate under the List of Tariff Provisions.

The duty rate is calculated on the **value for duty** under the *Customs Act*. Customs duties on goods imported into Canada are usually calculated on the basis of their transaction value—the price a buyer in Canada paid or will pay for the goods, subject to a number of adjustments including royalties, the costs of shipping, transportation, and

commissions. Where a price cannot be determined, the *Customs Act* has other ways to value the goods, such as the transaction value of identical or similar goods.

Canada applies different duty rates (preferential and non-preferential) to the same goods, depending on where they were manufactured, grown, or extracted. Preferential and non-preferential duty rates are set out for each tariff item in the List of Tariff Provisions. Goods coming from most countries have the Most Favoured Nation (MFN) rate of duty. If the goods come from a country that Canada has a trade agreement with, the rules and rates in the agreement apply. The agreement usually sets a lower duty rate.

If you disagree with the CBSA's decision, you can appeal the decision on the classification, valuation, or origin of the goods. The *Customs Act* contains procedures for appealing the CBSA's decision.

You may be able to reduce the customs duty you have to pay

Canada wants to promote trade and support Canadian industries, so there are programs that reduce the amount of customs duty you have to pay. The CBSA has drawback and remission programs that you can use to reduce, eliminate or defer the payment of customs duties on certain goods.

The **drawback program** allows some importers to get a full or partial drawback (refund) on customs duties paid on goods imported to manufacture goods in Canada and later exported. Other drawbacks are available for goods imported into Canada for specific purposes.

Canadian customs law allows a **refund of duties** on some imported goods if the business meets performance requirements related to production, exports, or employment. These refunds are called **remissions**, and they can partially or entirely avoid duty or taxes (permanently or temporarily), and apply to particular products, industries, or companies. Permanent remission orders include machinery that is not available from any Canadian manufacturer. The NAFTA greatly limits the availability of such remission programs.

You may have to pay taxes or excise duties

When goods and services are imported into Canada, you must pay Harmonized Sales Tax (HST), which is 12% of the value of the goods plus the amount of any duty on the goods.

If you produce, package, store, transport, or sell spirits, beer, tobacco, and related products you have to pay a special form of tax called **excise tax** (federal *Excise Act, 2001*).

You may have to pay anti-dumping and countervailing duties

Dumping occurs when goods are exported to Canada at prices below home market prices, or below the total cost of production. **Countervailing duties** are imposed when the exporting country subsidizes goods imported into Canada. Some imported goods may be subject to **anti-dumping** and countervailing duties (under the federal *Special Import Measures Act*). These rules help to protect Canadian producers from unfair import competition. You may have to pay anti-dumping and countervailing duties on the goods as well as other tariffs.

The CBSA investigates complaints about dumping, makes decisions on dumping, and enforces the payment of the duty. These duties can be imposed only after the CBSA has made a proper inquiry. The **Canadian International**

Trade Tribunal, an independent tribunal, also decides questions of whether dumped or subsidized imports will have a negative impact on Canadian producers.

Get more information about importing

The following CBSA publication contains more information on importing into Canada:

- *A Step-by-Step Guide to Importing* (<http://www.cbsa-asfc.gc.ca/sme-pme/i-guide-eng.html>).

Exporting goods from Canada

You may need a permit to export certain goods

Canada's export control policy limits the export of strategic goods and technologies to unstable or unfriendly countries, or to countries whose government has a poor human rights record.

Exports are controlled through a permit system. If you want to export goods included in the **Export Control List** from Canada to any country (except the United States), and all exports from Canada to countries specified in the **Area Control List**, you have to obtain a **Canadian Export Permit** to lawfully export. The Export Control List includes weapons and munitions, nuclear goods, high technology goods, goods having potential military applications and related technical information, lumber and certain agricultural products, U.S. origin goods, and many chemical goods that could be used for either warfare.

The Area Control List includes countries with hostile governments. Currently, the only country on the list is Myanmar, Belarus and North Korea.

The relevant country for Canadian export control purposes is the country in which the exports will ultimately be consumed. Goods that originate in the United States that are exported from Canada also require an export permit in order to prevent circumvention of United States export controls.

You or your agent must apply in writing for an export permit. The Export and Import Controls Bureau of the Department of Foreign Affairs and International Trade reviews your application and issues the permit.

A **General Export Permit** is often available, and you can use it without making an application every time. If one is not available, then you must make a specific application for an export permit.

You may need to make an export declaration

Certain commercial goods are subject to an **export declaration** when exported to countries other than the United States.

Canada may not trade with some countries

Canada participates in international organizations and imposes international economic sanctions to help bring about a change in the behaviour of specific countries or individuals. Canada follows decisions of the United Nations Security Council on sanctions and makes them law (under *The United Nations Act*). Usually, the sanctions are directed towards specific countries and may establish a trade embargo against certain goods. Currently Canada has imposed economic sanctions on a number of countries.

The Canadian Government can also make its own decision to impose economic sanctions on other countries. Or, it may follow a decision of an international organization other than the United Nations, such as NATO (under *The Special Economic Measures Act*). Currently Canada has imposed sanctions against Burma, Zimbabwe and Iran under this law.

After September 11, 2001, the United Nations decided to freeze the property of listed individuals (under The United Nations Suppression of Terrorism Regulations). Canadian financial institutions must report if they are in possession or control of the property of a listed person.

Get more information on exporting

The following CBSA publications contain more information on exporting from Canada:

- *A Step-by-Step Guide to Exporting* (<http://www.cbsa-asfc.gc.ca/sme-pme/e-guide-eng.html>).
- *Exporting Goods from Canada - A Handy Guide for Exporters* (<http://www.cbsa-asfc.gc.ca/publications/pub/bsf5081-eng.html>).

ELECTRONIC COMMERCE

Establishing a domain name in Canada

The top level Internet domain associated with Canada is “.ca” (for example, the Government of Canada’s website is www.gc.ca). The Canadian Internet Registration Authority (CIRA) handles registration of **.ca domain names**. A list of CIRA certified registrars is available on the CIRA website at www.cira.ca.

How do you register a domain name?

In order to register a “.ca” domain, you must satisfy the **Canadian Presence Requirements** established by the CIRA. Only certain specified individuals and entities may apply to register, hold and maintain a .ca domain name. These include:

- a Canadian citizen or permanent resident;
- a corporation incorporated under the laws of Canada or any province or territory of Canada;
- a partnership registered under the laws of any province or territory of Canada (more than 66% of whose partners meet one of the above requirements);
- certain associations, trade unions and political parties; and
- the owner of a trade-mark registered in Canada (in which case registration is limited to a .ca domain name consisting of or including the exact word component of the registered trade-mark).

How are disputes about domain names handled?

CIRA has a **Dispute Resolution Policy** (CDRP). The spirit of the policy is the same as the Uniform Dispute Resolution Policy (UDRP) which governs “.com”, “.net”, “.org” and other top-level domain disputes, but there are several differences between the CDRP and the UDRP.

Under the CDRP, disputes about .ca domain name registrations must go to arbitration. The arbitrator’s decision, however, is not binding and you can still take legal proceedings for some disputes about domain names.

Other top level domains such as “.com”, “.net”, “.org” and “.biz” are also available to businesses operating in Canada. However, registration of those domain names must be done through the appropriate registrar or registration authority in the jurisdiction where they are administered.

Laws regulate electronic commerce

While electronic commerce (**e-commerce**) has created many new business opportunities for investors in British Columbia, it has also raised a number of unique legal issues about electronic commercial transactions. In an attempt to address some of these problems, the British Columbia government has enacted laws to regulate electronic transactions in the province. The most important is the *Electronic Transactions Act* (ETA).

Based on the United Nations *Model Law on Electronic Commerce*, the ETA is similar to e-commerce legislation in many other jurisdictions around the world and is intended to address issues about whether electronic documents are valid, how they are created and enforced, and the rules about sending and receiving electronic documents.

Are electronic records valid?

The *Electronic Transactions Act* states that electronic records are **valid**, provided certain conditions are met. Here are the general principles:

- Providing a record in electronic form will satisfy a requirement to provide the record **in writing** if the electronic form can be accessed for future reference and can be retained by the person to whom it is provided.
- A record in electronic form will satisfy a requirement for an **original record** if there is reasonable assurance as to the integrity of the electronic form and the electronic form can be accessed and retained for future reference by any person to whom it is provided.
- A requirement to provide a record in a specified non-electronic form is satisfied by providing the record in **electronic form** if the electronic form is organized in substantially the same manner as the specified non-electronic form, is accessible for future reference, and can be retained by the person to whom it is provided. A record in electronic form is not capable of being retained if the person providing the record inhibits the printing or storage of the document by the person who receives it.
- An **electronic signature** is as good as a person's real signature. An electronic signature is any information that a person has created or adopted in order to sign a record and that is in, attached to, or associated with the record.

What is the law about sending and receiving electronic documents?

The ETA establishes these rules for sending and receiving electronic documents:

- Information in electronic form is **sent** once it enters an information system outside the sender's control or, if the sender and receiver are in the same information system, once the receiver is capable of retrieving and processing the information.
- A person **receives** information in electronic form when it enters the information system used by that person for the purpose of receiving the type of information sent. If the receiver has not designated or does not use an information system for the purpose of receiving information of the type sent, the information is said to have been received when the person receiving it becomes aware that the information is in his or her information system.
- Under most circumstances, information in electronic form is said to be sent from the sender's place of business and received at the recipient's place of business. If there are multiple places of business, the relevant place of business will be the one with the closest relationship to the underlying transaction.

Are electronic contracts valid?

Electronic contracts are **valid** under the ETA, but some rules apply:

- An **offer** to enter into a contract can be **made** and **accepted** electronically, such as when you touch or click on a computer screen icon.

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- A contract can be made when a person **interacts** with an electronic agent or when two electronic agents interact. (An electronic agent is a computer program that automatically handles electronic information.) This means that a contract entered into over the Internet will be valid even if a computer program was entirely responsible for deciding to enter into the contract on behalf of one of the parties (e.g., on behalf of an on-line retailer). Under certain circumstances, however, a contract created between a person and an electronic agent is not valid if the person made a significant error when entering into the contract (such as when someone accidentally selects the wrong product).

You must keep paper copies of some documents

The ETA does not apply to some types of documents. You must sign and keep the original hard (paper) copy of these documents.

- wills;
- trusts created by wills;
- powers of attorney concerning the financial affairs or personal care of an individual; and
- certain documents that create or transfer interests in land.

What about consumer contracts?

Electronic consumer contracts used in British Columbia must comply with the *Business Practices and Consumer Protection Act* (BPCPA) **only if** the buyer is an **individual** and the goods or services are mainly for **personal, family, or household use**. You do not need to comply with the BPCPA if you are supplying goods or services to a business or to someone who intends to use the goods or services for a business.

Contracts entered into over the Internet or via email (**distance sales contracts**) must contain the following information, which must be clearly communicated to the consumer before he or she enters into the contract:

- the supplier's name, address, telephone number and e-mail address;
- a detailed description of the goods or services to be supplied (including technical or system specifications);
- the supplier's delivery arrangements, including the identity of the shipper, the mode of transportation, and the place of delivery to the consumer;
- the supplier's cancellation, return, exchange and refund policies, if any;
- an itemized purchase price;
- other costs payable by the consumer, including taxes and service charges;
- a description of any customs duties, brokerage fees, or other additional fees;
- the total price under the contract;
- the currency in which the amount owing must be paid;
- the supply date (if applicable); and
- any other restrictions, limitations, or other terms or conditions that apply to the contract.

The consumer has the right to cancel the contract

Under the terms of the BPCPA, the consumer sometimes has the right to **cancel** the contract.

A consumer may cancel a **distance sales contract** within seven days after receiving a copy of the contract:

- if the consumer did not have an opportunity to correct errors and to accept or decline the contract; or
- if the contract did not contain the information listed above.

A consumer may cancel a distance sales contract for any reason within 30 days of entering into the contract if the supplier did not provide a copy of the contract as required by the BPCPA.

A consumer may cancel a distance sales contract at any time before the goods or services are delivered:

- if they are not delivered within 30 days of the date specified in the contract; or
- if the supply date is not specified in the contract and the goods or services are not delivered within 30 days from the date of the contract.

A supplier must provide a copy of the distance sales contract to the consumer within 15 days after the contract is entered into. The copy provided to the consumer must contain the information listed above, as well as the consumer's name and the date the contract was entered into.

If a supplier gives **credit** to a consumer, there may be further rules under the BPCPA.

What other laws apply?

If you are doing business in British Columbia, remember that in addition to e-commerce legislation, other federal and provincial laws also apply to on-line businesses (e.g., privacy and advertising laws).

RESPONSIBILITIES OF CORPORATE DIRECTORS AND OFFICERS

Directors and officers may be personally liable

In Canada, directors and officers of companies may be **personally liable** when acting on behalf of the company.

Directors are accountable to **shareholders** and are responsible for the company's illegal actions.

In the past, directors and officers were only responsible to the shareholders. Now, however, directors and officers may have an obligation to consider the interests of other **stakeholders**, like employees, creditors, communities, consumers, and regulatory agencies.

Directors have fiduciary duties

Directors are **fiduciaries** of the companies they serve. This means that they must act honestly and in good faith, always in the best interests of the company, and put the company's interests ahead of their own.

Directors must avoid **conflicts of interest**. Conflicts may arise, for example, when a director holds a personal interest in a contract with the company or gains an opportunity because of information learned during the time he or she is a director. In general, directors are also prohibited from taking advantage of a business opportunity that the company had or was seeking. A director may be personally liable even where he or she resigns before taking the opportunity and the company did not sustain a loss from the breach of fiduciary duty.

Officers have fiduciary duties

Senior officers have the same fiduciary relationship to the company as the directors. Employees who have the power and ability to direct the company are generally considered to be senior officers.

Directors and officers owe a minimum standard of care

Directors and officers must give a minimum standard of care when carrying out their responsibilities. This minimum standard is described in British Columbia *Business Corporations Act* (BCBCA) as the care, diligence and skill that a **reasonably cautious person** would use in similar circumstances. Directors who work in the business may be held to a higher standard of care than those who only sit on the board of directors, because they are generally better informed about the company's business.

Directors can delegate work to others

While directors may delegate responsibilities to the company's management, independent advisors and special committees, the directors must supervise all work. They are liable for all actions of the board of directors.

Directors may be liable for environmental offences

Directors may be liable for environmental offences, for causing or permitting environmental damage, or for environmental offences committed by the companies they serve. They can be liable both personally and for failing to properly control the business of a company.

Under the (federal) *Canadian Environmental Protection Act* and British Columbia's *Environmental Management Act* a director may be liable for offences committed by the company, whether or not the company has been prosecuted or convicted. The penalties can be significant – a fine of \$1 million or five years imprisonment. A director's liability is not limited to offences under environmental legislation. Directors can be liable for the cost of contaminated site clean-up if he or she directed, authorized, or agreed to the company's activities. (More information can be found in *Obtaining Permits and Licences – Environmental Issues*)

Directors may be liable for employment-related problems

Directors can be held personally liable where a company commits an offence relating to **employment pension benefits**. An example would be failure by a company to submit payment to a pension fund or insurance company on behalf of employees.

Directors may be liable for **unpaid employee wages** and vacation pay and for a company's failure to send **deductions** to the government, such as Canada Pension Plan and Employment Insurance, on behalf of its employees. In practice, a director's liability for wages is only relevant where the company has gone bankrupt because an employee must first look to the company's assets to satisfy his or her claim. Directors can only be held liable if they held the position of director when the employment issue arose.

In British Columbia, directors can also be held personally liable for a company's failure to follow **occupational health and safety** legislation requirements. Directors of companies that fall under federal jurisdiction can be held liable under the *Canada Labour Code*.

Directors may be liable for tax offences

Directors may be personally liable for the company's tax offences, such as failing to remit (send to the government) taxes owing under many federal and provincial tax laws, such as the *Income Tax Act* and *Excise Tax Act*.

Directors of public companies have special duties

Directors of public companies have a responsibility to meet all of the usual obligations of directors (described above) as well as the requirements of provincial securities regulations. For example, directors can be liable for:

- distributing incorrect information to the public;
- failing to comply with continuous disclosure requirements;
- failing to file certain documents, such as financial statements, or for misrepresentations in such documents; and
- insider trading (trading in securities of their company with knowledge of important information that is not disclosed to the public).

Shareholders and stakeholders can take legal action against directors and officers

Company shareholders and stakeholders can bring legal actions against directors and officers who have breached their duties. Legal actions can be based on the shareholder's belief that the company's management group or board

of directors acted in a way that harmed their interests. They can also start a legal action on behalf of the company if they believe that the directors and officers violated some of the company's rights.

If the legal action is successful, the directors and officers may have to give up any benefits gained by their wrongful conduct, be removed from office, or reverse some transactions they entered into. In short, directors and officers may be personally liable for their actions.

Government regulators can take action against directors

Government regulators can take action when the company or its directors do not meet certain standards. Penalties include fines and imprisonment. For example, conviction for an offence under the British Columbia *Securities Act* can result in fines of up to \$3 million and imprisonment for up to three years. Other organizations (such as the Toronto Stock Exchange) may require companies to comply with their own rules.

How can directors and officers protect themselves from liability?

In addition to performing their duties diligently (conscientiously and carefully), directors and officers can reduce the risk of personal liability. For example, a **shareholder agreement** can shift some or all of the directors' responsibilities and liabilities to the shareholders. **Trust accounts** and **letters of credit** can be set up so the company does not default on payment of sums for which the directors and officers would be personally liable. As well, directors and officers who **resign** are not liable for events that occur after they leave. Furthermore, companies can indemnify (cover) its directors and officers for actions taken on behalf of the company, provided they acted lawfully, honestly, and in good faith.

Companies can get **liability insurance** to protect directors and officers who acted honestly and in good faith. Note, however, that insurance policies usually do not cover acts of fraud, illegal acts, or claims for fines or penalties.

Companies cannot protect directors or officers who breach their fiduciary duties.

The best defence for directors and officers is to prove that they acted with **due diligence** (conscientiously and carefully) when carrying out their duties. They must prove that:

- they reasonably believed in a mistaken set of facts that, if true, would make their conduct innocent; or
- they took reasonable care to avoid the event that caused the problem.

Due diligence can be a **defence** even in actions for breach of fiduciary duty, unless certain legislation states that it is not possible. For example, a director cannot use a defence of due diligence where the problem concerns employee wages. In some cases, an officer cannot use a due diligence defence because he or she is closely connected with the daily management of the company and is well informed about the company's business affairs.

PROTECTION OF INTELLECTUAL PROPERTY

How does Canada protect intellectual property?

Canadian laws protect:

- trade-marks;
- copyright;
- patents;
- industrial designs;
- integrated circuit topographies; and
- trade secrets.

Intellectual property is governed mainly by federal legislation. The Canadian Intellectual Property Office (CIPO) is responsible for maintaining databases for various types of intellectual property registered in Canada. More information about CIPO and various Canadian intellectual property laws, and lists of trade-mark and patent agents, can be obtained at the CIPO website (www.cipo.gc.ca).

Trade-marks

A **trade-mark** is a mark that is used to distinguish your goods or services from other people's goods or services. It can be a word or phrase, a picture or design, the shape of a product or its packaging, or anything that distinguishes your product from other products, as long as the mark is used as a trade-mark. Examples of trade-marks include COCA-COLA, the Coca-Cola glass bottle, and MICROSOFT.

You cannot register certain types of marks, such as marks that are mainly the name or surname of an individual or clearly descriptive (or deceptively misdescriptive) of the character or quality of goods or services.

The federal *Trade-marks Act* governs trade-mark protection in Canada. More information regarding trade-marks and trade-mark registration is available at the CIPO website (http://www.cipo.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00002.html).

What rights do you get by registering a trade-mark?

You do not need to register a trade-mark but it is a good idea to do so. Registering a trade-mark in Canada gives you the **exclusive right to use** the trade-mark in Canada for 15 years. You can renew registration for further 15-year periods.

Registration of a trade-mark gives you certain advantages when enforcing the trade-mark. Registration is evidence that you own the trade-mark. Registration also gives you certain legal rights. For example, you can bring a legal action for infringement. A legal action called "passing off" is the only way to enforce an unregistered trade-mark, and it can be difficult to prove.

It is important to file your trade-mark application right away, and certainly before your products or services enter the market in British Columbia. If someone files an application for or uses a trade-mark before you file your application

for trade-mark registration, you may get a trade-mark that is limited in scope or may not be able to register or use it at all.

If you intend to establish your business as a franchise, you must first register your trade-mark.

Can you license a trade-mark?

You can license your trade-mark to someone else if you keep control of the character and quality of the product or service associated with the trade-mark.

Does the product have to be marked in some way?

You do not have to mark your product in any particular way, but it is a good idea to put a symbol on your product, such as:

- R in a circle (registered);
- TM (trade-mark);
- SM (service mark);
- MD (marque déposée); or
- MC (marque de commerce).

The **symbols** TM, SM or MC may be used whether or not the trade-mark is registered. On the other hand, the R in a circle, or MD should be used only if the mark is registered.

What happens if the trade-mark is not used?

Once you have registered a trade-mark, you must use it in Canada. If you do not use it, it may be removed from the register.

Copyright

Copyright is the **exclusive right to produce or reproduce** in any material form, perform, or publish a work or any substantial part of the work. You have copyright in your work as soon as you create it. You do not have to register anything to get copyright. Generally, copyright exists for the life of the person who created the work, and for 50 years following his or her death.

The federal *Copyright Act* governs copyright law in Canada. More information regarding copyright and copyright registration is available in at the CIPO website (http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00003.html).

Do you have copyright in your work?

You will have copyright in Canada for every **original literary, dramatic, musical and artistic work** if, at the date of the making of the work, you were a citizen or subject of, or a person ordinarily resident in, a **treaty country** (a country that is either party to the Berne Convention or the Universal Copyright Convention, or a member of the World Trade Organization).

If the work was **published**, you will have copyright from the date that copies of the work were made available to the public in a quantity that satisfied the reasonable demand of the public.

Computer **software** is considered to be a literary work and has full copyright protection in Canada.

Do you need to register copyright?

You do not need to register your copyright but registration gives you certain advantages. A registered copyright owner would find it easier to enforce the copyright. Also, registration gives others notice that you have copyright in the material.

Do you have to mark your material as subject to copyright?

In Canada, you do not need to mark your works as subject to copyright. However, it is wise to put a © **symbol** or the word **copyright** followed by year of first publication and the name of the copyright owner. This provides notice of your rights in the works.

Who owns the copyright?

Generally, the author or creator of a work is the **first owner** of the copyright in a work. In some situations, the parties can agree that copyright belongs to someone else. If you are an employee and create a work for your employer, the employer usually owns copyright in the work.

What are moral rights?

The author or creator of a work has **moral rights** in the work. This means that the author has the right to be associated with the work by name or under a pseudonym, or the right to remain anonymous. It also means that no one can change the work in a way that damages the author's honour or reputation. The author cannot give his or her moral rights to anyone, but may **waive** (agree not to enforce) moral rights.

Patents

A patent gives you the **right to exclude others** from making, constructing, using, and selling the patented **invention** for a period of 20 years from the date you file your application for the patent. You cannot renew the patent after the 20-year period has expired.

Inventors use patents to protect their work. An **invention** is any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement to these. For example, these may be inventions: a product or device (such as a can opener), a process or method of doing something (such as a method for curing

leather), an apparatus (such as a machine for producing hinges), and a composition (such as a chemical composition used as a pharmaceutical).

The invention must be novel (new and original), useful, and not obvious to someone who is skilled in the relevant technical area.

The federal *Patent Act* governs patent protection in Canada. More information about patents is available at the CIPO website (http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00001.html).

How do you apply for a patent?

Under the federal *Patent Act*, you can apply for a patent for an invention if you invented it or the inventor has given to you his or her rights to apply for the patent. The first person to file an application for a patent (not the inventor) is generally entitled to the patent.

You have one year to apply for a patent after you having told any member of the public about your invention. If you do not apply within the first year, you cannot get a Canadian patent for your invention.

The content of a patent application is generally made available to the public 18 months after the filing date or the convention priority date, whichever is earlier. Any member of the public can then review the application.

If you want to apply for a patent in Canada but do not live or carry on business here, you must appoint a representative in Canada.

Can you file for patents in multiple countries?

A patent provides protection in only the country that has granted that patent. If protection is required in multiple countries, patents must be obtained for each of those countries.

Under the Paris Convention for the Protection of Industrial Property, you can file a first patent application in a country that is party to the Paris Convention (such as Canada) and avoid filing in any other country that is party to the Paris Convention for up to 12 months. You still get the benefit of the filing date for the first application (known as the convention priority date). This allows you to delay your decision to file in other countries, and the cost of doing so.

Canada is a member of the Patent Cooperation Treaty (PCT), which allows you to file one application to get patents in over 130 other countries who are also members (including the United States, Japan and most of the European Community). You can later decide whether to proceed to the “national phase” in various member countries. In this way, you can delay your decision to register your patent in another country, as well as some of the cost. Only residents and nationals of Canada may file in Canada under the PCT.

Do you have to mark your invention as patented?

In Canada, you do not need to mark your invention as being patented. After you have filed a patent application, you can mark the invention with the words **patent pending**. After a patent has been granted, you can mark the invention as patented and specify the patent number. While the words have no legal effect, they warn others that you can prevent them from making, using, and selling your invention once the patent is granted.

Industrial Design

An industrial design is a **design** – features of shape, configuration, pattern or ornament, or any combination of those features – which has only visual appeal or serves only as a form of ornamentation for an item. For example, the ornamentation or visual design features of a video game controller or of a vacuum cleaner may be registered as an industrial design. However, there is no protection for the way a design functions, any method of producing the design or merely the configuration of an item.

Registration of an industrial design gives the owner the exclusive right to make, import, or sell items to which the design is applied. The owner's rights are protected for up to 10 years from the date of registration, provided that maintenance fees are paid when due.

The federal *Industrial Design Act* governs industrial design law in Canada. More information regarding industrial designs and industrial design registration is available at the CIPO website

(http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00004.html).

When do you have to register the design?

You must apply to register the industrial design within one year from the date it is first made public in Canada.

Do you have to put a mark on your design to show that it is registered?

You do not need to mark your design as registered, but there are benefits to marking it. If you mark the design with the capital letter “D” in a circle, and your name (or an abbreviation of your name), you can claim damages against anyone who uses the industrial design without your permission.

Integrated Circuit Topography

Integrated circuit topography is a three-dimensional configuration of electronic circuits (contained in an integrated circuit product). Integrated circuit products (sometimes called **microchips**) are products intended to perform electronic functions and in which the elements (at least one of which is an active element), and some or all of the interconnections, are integrally formed in, on or both in and on a piece of material.

Registration of a topography gives the owner the exclusive right to reproduce the topography, manufacture an integrated circuit product incorporating the topography, and import and sell the topography or integrated circuit product. The owner's rights are protected for 10 years from the date on which the application for registration is filed. Registration does not protect functions performed by the integrated circuits.

The federal *Integrated Circuit Topography Act* governs protection of integrated circuit topographies in Canada. More information regarding integrated circuit topographies and their registration is available at the CIPO website (http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00005.html).

Trade Secrets

The term **trade secret** is used to refer to any information of value to a business that is kept **confidential** (secret or private). While there is no legislation in Canada that relates to trade secrets, there is protection for a trade secret under Canadian law if:

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- it is not publicly available or otherwise generally known within the relevant industry or trade; and
 - it is treated as secret or confidential at all times by its owner, who has taken steps to protect it.

A third party who gets confidential information illegally or in confidence may be prevented from using or disclosing the trade secret, and may have to compensate the owner of the confidential information for using it without permission.

PUBLIC COMPANIES

Raising capital through equity financing

A company may want to raise capital through equity financing instead of debt financing.

Equity investments in **private companies** are generally made by people involved in the business or by certain investment companies which are less “risk averse” and which have been established to provide merchant banking, mezzanine financing, or venture capital investments for start-up and early stage corporate ventures.

For **public corporations**, equity financing is achieved by offering shares to the public or by using a private placement exemption under securities legislation. In either case, companies that issue securities must follow registration and prospectus legal requirements.

Are there federal securities laws?

Although some have been proposed, there are no federal laws that apply generally to securities transactions in Canada; securities laws of general application are created by each province.

Although the federal *Canada Business Corporations Act* (CBCA) contains rules about **insider trading**, those rules apply only to companies incorporated under the CBCA. The CBCA is not a comprehensive regulatory scheme for the distribution of securities.

The federal *Bank Act* sets out rules about insider trading and distribution of securities of chartered banks. The federal *Trust and Loan Companies Act* sets out similar rules about federally chartered trust and loan companies.

Who regulates securities in British Columbia?

Each province of Canada has its own securities legislation and its own securities regulator. However, while the laws are not yet uniform among the provinces, the basic concepts are the same. In addition, Canadian provincial securities regulators co-ordinate their regulatory initiatives through a national organization known as the Canadian Securities Administrators (CSA) to ensure a certain degree of consistency across the country. Information about the CSA can be found on its website (www.csa-acvm.ca).

In British Columbia the relevant legislation is the *Securities Act*. The *Securities Act* is administered and enforced in the province by the British Columbia Securities Commission (BCSC). The objective of the BCSC is to protect the investing public, the integrity of the market and the confidence of investors. More information about the BCSC can be found on its website (www.bcsc.bc.ca).

How does British Columbia monitor securities?

The British Columbia *Securities Act* regulates securities in the province. It does this principally through:

- Registration requirements. Participants in the capital markets who **trade** in securities, **underwrite** securities, or **give advice** about investing in securities must be **registered**. The definition of “trade” includes a trade on the secondary market. There are some exemptions for certain types of trades and securities.
- Disclosure Requirements. Securities issuers are required to disclose information to ensure that investors have adequate information on which to base their investment decisions. There are two types of disclosure requirements:
 - prospectus disclosure requirements; and
 - continuous disclosure requirements.
- These are discussed in more detail below.
- Take-over bid and issuer bid requirements. These govern acquisitions of significant (large) interests in public companies and acquisitions by companies of their own securities.
- Enforcement powers and remedies. The BCSC has the authority to impose penalties for those who breach securities laws, including jail.

Restrictions on issuing securities

The BCSC requires you to prepare a preliminary prospectus and a final prospectus before there is a **distribution** of securities. In general, a distribution includes a trade in securities that have not been previously issued, a trade in previously issued securities from a “control block” and trades in previously issued securities that are subject to certain resale restrictions.

A **prospectus** is a comprehensive disclosure document about the affairs of the company and the details about the securities being distributed. It must be prepared according to British Columbia securities laws.

There are some exemptions to the requirement for a prospectus. National Instrument 45-106 – *Prospectus and Registration Requirements* creates a national set of exemptions (with a few differences in each province). Some of the more commonly relied upon exemptions are as follows:

- Accredited investor exemption. No prospectus is required for distributions of securities to **accredited investors**. An accredited investor includes, among others:
 - an investor with assets greater than \$1 million;
 - an investor whose net pre-tax income in each of the last two years was greater than \$200,000; and
 - certain banks, trust institutions, insurance companies, municipal corporations, etc.
- Minimum amount exemption. No prospectus is required where the minimum amount of securities purchased is \$150,000.

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- Employee exemption. No prospectus is required for distributions of securities to the issuer's **directors, officers, employees and consultants**.
 - Private issuer exemption. No prospectus is required when securities are issued by certain eligible private companies to purchasers who are purchasing as principal and who are not members of the "public" in relation to the company.

Are there resale restrictions?

Securities legislation may restrict the resale of securities issued without a prospectus under an exemption. Under the **closed system** of securities regulation, further trades in securities issued in reliance on a prospectus exemption must generally be made:

- under a prospectus;
- under a further prospectus exemption; or
- in compliance with the relevant resale restrictions (including hold period requirements) of provincial securities legislation.

In contrast, when securities are distributed by way of a prospectus, they are freely tradable unless they form part of a "control block".

There are ongoing (continuous) disclosure requirements

In British Columbia, public companies that are **reporting issuers** must promptly report any material changes in their business affairs, and prepare quarterly interim and comparative annual financial statements with notes (management discussion and analysis of financial condition and results of business). Reporting issuers must also file an annual information form, which provides more analysis and background material about the business.

Any person who solicits proxies from voting shareholders of a reporting issuer must provide an information circular to those shareholders.

Insiders of reporting issuers must report their shareholdings and cannot trade when they have knowledge of material (significant) undisclosed information about the business's affairs.

Certain foreign reporting issuers that have very few shares held by Canadian residents do not have to comply with the continuous disclosure requirements.

Reporting issuers who issue new securities may be eligible to file **short form** or **simplified prospectuses** that incorporate their continuous disclosure documents by reference.

British Columbia recognizes other countries' disclosure criteria

The CSA allows United States issuers that meet certain criteria to distribute securities in Canada using disclosure documents prepared according to the requirements of United States regulatory authorities.

In turn, the United States Securities and Exchange Commission has similar rules that allow eligible Canadian issuers to register securities in the United States using disclosure documents prepared according to the requirements of Canadian regulatory authorities, although further filings may be required.

This multi-jurisdictional disclosure system also facilitates compliance with other disclosure requirements.

PRIVACY ISSUES

Canada's laws protect personal information

Canadian companies have privacy obligations to protect the **personal information** of their customers and employees. The laws aim to balance privacy interests with business interests.

Personal information is information about an identifiable individual. This includes information such as home address, telephone number, age, sex, marital status, education, social insurance number, credit history, race, and ethnic origin.

Business **contact information** such as name, title, business address, business email, business fax number and business telephone number are **not** considered to be personal information and are therefore not protected by British Columbia's *Personal Information Protection Act* (PIPA).

Personal information contained in a telephone directory, professional or business directory, registry, printed or electronic publication are not protected by PIPA, provided that the information is available to the public and, in the case of directories, the person was given an opportunity to refuse to allow their personal information to be included in the directory.

Provincial and federal privacy laws

PIPA is the most important privacy law in British Columbia. PIPA applies to provincially regulated companies doing business in British Columbia. It would apply, for example, to a manufacturing business located in British Columbia.

While most British Columbia companies will only be concerned with PIPA, federally regulated businesses operating in British Columbia must follow Canadian federal legislation called the *Personal Information Protection and Electronic Documents Act* (PIPEDA). For example, a trucking company that transports items between provinces or across Canada would be subject to PIPEDA.

PIPEDA applies in all Canadian provinces that do not have their own privacy laws that are similar to the federal Act. At the present time, only British Columbia, Alberta and Quebec have legislation that is similar to PIPEDA. For example, if a company were doing business in British Columbia, Alberta, and Manitoba, it would be governed by PIPA, Alberta's privacy legislation, and PIPEDA (because Manitoba does not have its own privacy legislation). For this reason, companies that pass personal information about their customers from one province to another must be aware of all privacy laws in Canada.

It is important to find out which laws apply to your business. If PIPEDA applies to your business, you can get more information from the Office of the Privacy Commissioner of Canada's website (www.priv.gc.ca). If PIPA applies to your business, you can get more information from the Office of the Information and Privacy Commissioner for British Columbia's website at www.oipc.bc.ca. There is helpful information in the publication entitled *A Guide for Businesses and Organizations to British Columbia's Personal Information Protection Act*.

General principles of BC's legislation

PIPA was created to govern the collection, use and disclosure of personal information. Here are some of the most important features of the legislation:

You are responsible for the information you collect

A business involved in the collection, use, or disclosure of personal information is responsible for the information in its control.

The business must have a **privacy policy** which should address:

- what personal information is collected;
- why it is collected;
- how consent is obtained;
- what the limits are on collection, use or disclosure of personal information;
- how accuracy is ensured;
- security measures;
- retention and destruction;
- how access is handled; and
- how inquiries and complaints are handled.

The business must also have a policy and system for keeping and destroying the personal information when it is no longer needed to satisfy its original purpose. There are special rules about keeping the information.

Every business must also have a **privacy officer** or designated person(s) to whom privacy related queries might be made. The privacy officer's contact information must be available to the public.

Get consent to use personal information

A person must **consent** to the collection, use, and disclosure of his or her personal information. In most cases, the business must have the person's **informed consent** to collect and use the information. In other words, the person who provided the personal information must understand why the information is being collected, and how it will be used and disclosed.

In some cases, however, the business can rely on **deemed consent**. This means that a person has voluntarily provided personal information for a purpose that would be obvious to a reasonable person. For example, when you provide banking information for a business to process your monthly bill, there is "deemed consent" for the business to use that information for one specific purpose.

A business can sometimes rely on **opt-out consent**. This means that the person is given a reasonable period of time to "opt out" and refuse consent. If the person does not refuse his or her consent in that time period, the business can conclude that the person consented. Opt-out consent is generally not appropriate when dealing with sensitive personal information.

It is important to remember that consent may be withdrawn or the nature of the consent changed. For this reason, individuals must be given appropriate and reasonable opportunities to withdraw or alter the consent they gave.

A business does not need the person's consent where the information collected is:

- in the clear interest of the individual and consent cannot be obtained in a timely fashion (e.g., a health related emergency);
- necessary to comply with a subpoena, warrant or court order;
- for a public body or law enforcement agency in Canada to assist an investigation of an offence;
- necessary to contact next of kin or a friend of an injured, ill or deceased individual;
- to a lawyer representing the organization; or
- required by law.

Only collect information you need

The personal information that you collect must be reasonable in the circumstances. If you are collecting information as a condition of supplying a product or service, it must be information necessary to provide that product or service.

Information can be used only for a stated purpose

The personal information collected must not be used or disclosed for any other purpose, unless you get that person's further consent or the law allows it.

Information must be accurate

You must ensure that the personal information is as accurate and current as needed for your purposes.

You need security measures

If your business collects, uses, or discloses personal information, you must have security measures to protect personal information against loss, theft, unauthorized access, disclosure, use, modification, or copying. Your business must have security measures to destroy the personal information when the purpose for which the information was collected is no longer being served and it is no longer necessary to have it for legal or business purposes.

Your privacy policy must be available and accessible

People must be given the opportunity to challenge a business's compliance (or lack of compliance) with privacy laws and to contact the person responsible for ensuring compliance with privacy laws.

Your business's practices and policies about managing personal information should be available to those who provide the information.

A person who provides personal information to a business is normally entitled to receive, on request, accurate information about the existence, use, and disclosure of that information. In addition, the person must be given access to that information, as well as the opportunity to correct any inaccuracies in it.

What about information collected before PIPA was enacted?

Personal information that was collected prior to PIPA's enactment on January 1, 2004 is "grandfathered". This means that such information can continue to be used or disclosed without obtaining new consent, provided that the use or disclosure is consistent with the original purpose for which the personal information was collected.

Personal information about employees

Under PIPA, **employee personal information** may be collected, used, or disclosed without the employee's consent if the information is necessary for establishing, managing, or terminating the employment relationship. While consent is not required, the employee must be given prior notice that his or her personal information is being collected, used, or disclosed. This rule gives employers some flexibility in the management of its employees. Employees include volunteers so their personal information is protected in the same way as regular employees.

Exemptions for business transactions

Parties to a business transaction (or those considering a business transaction) such as a purchase, sale, lease, merger or amalgamation, can collect, use and disclose personal information about individuals (such as employees and customers) without their consent where that information is necessary to evaluate the business transaction. The parties must enter into an agreement to use or disclose the personal information for purposes solely related to the transaction.

If the transaction is not completed, the personal information exchanged must either be destroyed or returned. If the transaction is completed, the individuals to whom the personal information relates must:

- be given notice that the transaction completed; and
- be advised that the personal information was disclosed to the other party in the transaction.

When personal information is disclosed in a business transaction, the purchaser may only use the information for the same purpose as intended by the vendor.

SPECIAL TAX INCENTIVE PROGRAMS

Venture Capital, Research and High Tech

What is venture capital?

Venture capital usually refers to funds that are raised and pooled together for the specific purpose of investing in high-growth, start-up, or early-stage business enterprises, typically in high-technology fields. **Venture capitalists** are the people who manage the funds.

The structure of venture capital investment in British Columbia is similar to other jurisdictions in Canada and the United States. Typically, the venture capital fund is structured as a limited partnership (see *Establishing or Acquiring a Business*).

Investors in a venture capital limited partnership fund are the **limited partners**, who contribute capital but do not manage the fund. The managers of the fund are the **general partners**, who make choices about what companies to invest in, at what price to invest, how much to invest, and what other conditions should be attached to the provision of money to the company. The general partners invest cash in companies in exchange for stock in the hope that the stock will appreciate rapidly with the growth of the small company. The life of a fund is usually around 10 years. A percentage of the profit from the fund (called a **carried interest**) is paid to the general partners for their successful management of the fund, and the remainder of the profit is paid back to the limited partners. General partners are also paid an annual management fee from the fund to pay for the day-to-day operations of the partnership over the life of the fund.

Venture capital disbursements in 2009 totaled \$141 million in British Columbia.

You can find more information about venture capital on the Canada Venture Capital & Private Equity Association's website (<http://www.cvca.ca/>).

British Columbia's Equity Capital Program

The Equity Capital Program (ECP), which operates under British Columbia's *Small Business Venture Capital Act*, provides **tax credit** incentives to encourage early-stage investment in small businesses throughout the province.

Corporations that invest in a registered venture capital corporation (VCC) or a registered eligible business corporation (EBC) may receive a non-refundable tax credit against British Columbia tax equal to 30% of the investment. Individuals who take advantage of the program receive refundable tax credits.

What is a Venture Capital Corporation?

A VCC is a corporation that has been organized for the purpose of providing equity capital to **start-up**, emerging and expanding eligible small businesses. A VCC is similar to a holding corporation. In order to qualify as a VCC, the corporation must register under the *Small Business Venture Capital Act*.

What is an Eligible Business Corporation?

An EBC is a small business that has been registered under British Columbia's *Small Business Venture Capital Act*. The EBC can accept equity capital directly from investors without having to set up a VCC. An EBC is ideal for an investor who is planning to be **actively involved** in the growth of the small business.

What small businesses qualify?

To qualify to receive funds from a VCC or to qualify as an EBC, a small business must have the following criteria, among others:

- together with affiliates, have no more than 100 employees;
- pay at least 75% of the wages and salaries to employees who regularly report to work in British Columbia; and
- be substantially engaged in one of the following activities:
 - manufacturing, processing or export of value-added goods produced in British Columbia;
 - destination tourism;
 - research and development of proprietary technology;
 - community economic diversification outside of the Vancouver Lower Mainland and the Capital Region (Victoria) – see the Ministry of Regional Economic and Skills Development website (<http://www.gov.bc.ca/tted>); or
 - development within British Columbia of interactive digital new media product.

To constitute interactive digital new media, the product must:

- educate, inform or entertain and present information using at least two of the mediums of text, sound or visual images;
- not be developed for internal corporate use involving the promotion of products or services;
- not be used primarily for interpersonal communication; and
- not be a product for which public financial support would, in the opinion of the certifying authority, be contrary to public policy.

Film, Television and Video Game Tax Credits

British Columbia supports the film industry

British Columbia actively encourages the film industry and prides itself on its role as “Hollywood North”. The **British Columbia Film** website (www.bcfilm.bc.ca) is a good resource for information about the BC film industry, incentive programs, and other resources.

Three tax credit programs encourage investment in the film, television and video game industries in British Columbia. The **Film Incentive BC Tax Credit** (FIBC), is available only to production companies controlled by

British Columbians. The **BC Production Services Tax Credit (PSTC)** is available to everyone, including foreign film and television producers. The **BC Interactive Digital Media Tax Credit (IDMTC)** provides a refundable tax credit for those engaged in producing digital media.

All three programs provide refundable corporate income tax credits if certain criteria are met. When filing tax returns, eligible production companies may claim a specified percentage of the labour costs incurred in making a film, television, digital animation, interactive digital media or visual effects production in British Columbia. These tax credits reduce the amount of provincial income tax payable by the producer, with any remaining balance being paid directly to the producer by the province. For an eligible production, a production company may only claim the FIBC or PSTC, not both.

What qualifies for FIBC?

To qualify for the FIBC, a production company (and the production) must meet the following criteria:

- the production company must be Canadian owned and controlled, with a permanent establishment in British Columbia (details can be found on the British Columbia Film website www.bcfilm.bc.ca);
- the production company must own more than 50% of the copyright in the production;
- key creative employees must qualify as Canadians;
- at least 75% of the principal photography days of the production must be done in British Columbia;
- at least 75% of the cost of producing the British Columbia portion of the production must be paid to BC-based individuals or corporations; and
- at least 75% of the cost of post-production work for the production must be carried out in British Columbia.

There are certain exceptions for international treaty co-productions, interprovincial co-productions, and documentary productions.

What does not qualify for FIBC?

Pornography, talk shows, live sports events, game shows, reality television and advertising, are not eligible for the FIBC credits under any circumstances.

What is the FIBC?

If a production company and its production qualify for the FIBC incentive, the following tax credits are available:

Tax Credit	Value	Credit amount calculated based on
Basic	35%	Qualified BC labour expenses
Regional (additional tax credit designed to encourage film and television production outside the greater Vancouver area)	12.5%	Qualified BC labour expenses pro-rated by the number of days of principal photography in BC outside the Vancouver area
Distant Location Regional (additional tax credit designed to encourage film and television production far from the greater Vancouver area)	6%	Qualified BC labour expenses pro-rated by the number of days of principal photography in BC within a prescribed area
Training	30%	Amount paid to a BC-based individual in an approved training program (capped at 3% of total qualified labour expenses)
Digital animation or visual effects (DAVE)	17.5%	BC labour expenses directly attributable to digital animation or visual effects activities.

What labour expenses are allowed?

Qualified British Columbia labour expenses include salaries and wages paid to BC-based people for work on the production, and payment to certain BC-based individuals, proprietorships, partnerships, or corporations for services provided on the production.

In calculating FIBC, eligible labour expenses are capped at 60% of the total production budget.

How do you claim FIBC?

To claim FIBC, you must apply to British Columbia Film to receive an eligibility certificate and a completion certificate for the production. You must file these certificates, along with a corporate income tax return for the company, with Canada's federal taxation authority (Canada Revenue Agency).

What qualifies for PSTC?

To qualify for PSTC, a film or television production must meet the following minimum budget criteria:

- \$100,000 per episode for episodic television episodes less than ½ hour;
- \$200,000 per episode for episodic television episodes longer than ½ hour;
- \$0 per episode for episodic television episodes that are all or substantially all digital animation and are less than ½ hour; or
- \$1,000,000 for all other cases (e.g., a television movie, mini-series, or feature length film).

In addition, the production company claiming the PSTC must have a permanent establishment in British Columbia and must own the copyright in the production or have a direct contract with the owner of the copyright in the production.

What does not qualify for PSTC?

As with FIBC credits, pornography, talk shows, live sports events, game shows, reality television and advertising are not eligible for the PSTC under any circumstances.

What is the PSTC?

If a production company and its production qualify for the PSTC, the following credits are available:

Tax Credit	Value	Credit amount calculated based on
Basic	33%	Qualified BC labour expenses of the company
Regional	6%	Qualified BC labour expenses pro-rated by the number of days of principal photography in BC outside the Vancouver area
Distant Location Regional (additional tax credit designed to encourage film and television production far from the greater Vancouver area)	6%	Qualified BC labour expenses pro-rated by the number of days of principal photography in BC within a prescribed area
Digital Animation or Visual Effects (DAVE)	17.5%	Qualified BC labour expenses directly attributable to digital animation or visual effects

There is no limit on the PSTC that a company may claim in connection with a particular production, nor is there an absolute limit on the amount of PSTC that a company or group of companies may claim.

How do you claim PSTC?

To claim PSTC, a production company must apply to British Columbia Film to receive an accreditation certificate for the production.

What qualifies for IDMTC?

Corporations are eligible for the IDMTC if they:

- develop or provide an eligible activity to a corporation that develops interactive digital media products;
- are Canadian and have a permanent establishment in British Columbia; and
- have eligible salary and wage costs in excess of \$100,000.

In addition, the production company claiming the IDMTC must have a permanent establishment in British Columbia and must own the copyright in the production or have a direct contract with the owner of the copyright in the production.

What is an interactive digital media product?

Qualifying products must be designed primarily to educate, inform or entertain, and must be capable of presenting information in two of the following forms: text, sound and images. Products must be developed in British Columbia and be intended to be used interactively by individuals.

What is not an interactive digital media product?

Operating system software products for interactive communication, adults only products, products for marketing or promotions, or products for which public financial support would be contrary to public policy are excluded from the definition.

What is the IDMTC?

The IDMTC provides a refundable 17.5% tax credit on eligible salary and wages incurred by corporations which develop eligible products after August 31, 2010 and before September 1, 2015.

How do you claim IDMTC?

To claim IDMTC, an eligible corporation must apply for registration with the Commissioner of Income Tax, pay the prescribed fee, and file a prescribed form with its income tax return.

Federal Production Tax Incentives

Two federal tax credits may also be available to producers who produce film or television content in British Columbia. They are in addition to the provincial tax credits. The **Canadian Film or Video Production Tax Credit** is available only to Canadian producers for productions that meet certain stringent Canadian content and control criteria.

However, the **Film or Video Production Services Tax Credit** is similar to the British Columbia PSTC, and is available to foreign film and television producers with labour expenses in Canada. Like the British Columbia tax credits, a production company may only claim one of the federal tax credits for an eligible production.

You can get more information from the Canadian Audio Visual Certification Office website

(www.pch.gc.ca/progs/ac-ca/progs/bcpac-cavco/index_e.cfm).

International Business Activity Program

British Columbia provides tax incentives

British Columbia's *International Business Activity Act* has established the **International Business Activity (IBA) program**, which provides a refund of provincial income tax paid on income earned while conducting international business. The IBA program is available to **eligible corporations** and **specialist employees** participating in international business activities in British Columbia.

What kinds of business activities qualify for the program?

International financial, film distribution and patent businesses are eligible. Also eligible are international digital media distribution, carbon trading and certification and clean technology businesses. Such activities must be carried out for, with, or on behalf of a non-resident of Canada.

How to qualify for the IBA program

Eligible corporations must **register** themselves and may register any specialist they employ under the *International Business Activity Act* in order to qualify for the program.

A corporation may qualify for registration under the IBA program if it:

- was incorporated in Canada and since incorporation has not been continued outside of Canada;
- has a permanent establishment in British Columbia;
- is not exempt from income tax under the *Income Tax Act* (British Columbia);
- establishes and carries on an international business within 90 days of registration;
- establishes and maintains a membership in the International Financial Centre British Columbia Society;
- keeps its books and records in British Columbia; and
- pays the application and registration fee.

Where to get more information

For more information, visit the Government of British Columbia's website

(http://www.rev.gov.bc.ca/business/Income_taxes/International_Business_Activity/IBA.htm).

Scientific Research and Experimental Development Tax Incentives

Canada offers tax incentives for research and development

The Scientific Research and Experimental Development Program (SR&ED) provides **tax incentives** to encourage research and development in Canada. It is administered by the Canada Revenue Agency (CRA) and is the largest single source of federal government support for industrial research and development.

Full details of the SR&ED program can be found on the Canada Revenue Agency's website (<http://www.cra-arc.gc.ca/txcrdt/sred-rsde/menu-eng.html>).

Program incentives

The two main program incentives are the deduction of current and capital SR&ED expenditures to reduce income for tax purposes, and investment tax credits (ITCs) that can also be used to reduce tax liability or, in some cases, can result in a cash refund. Qualified SR&ED expenditures are immediately deductible. There is no requirement for the claimant to repay the money, provide guarantees or other security, or surrender any intellectual property rights to the Canadian government.

Deduction of Current and Capital SR&ED Expenditures

The claimant can deduct current and capital SR&ED expenditures in computing income for tax purposes to reduce tax liability in the current year, or carry expenditures forward indefinitely to reduce income for tax purposes and thus tax liability in future years.

Investment tax credit refunds

The claimant can receive investment tax credits on qualifying expenditures through a cash refund, a reduction of taxes payable, or both. Unused investment tax credits can be carried back 3 years or forward 20 years. The amount of the ITC will depend on whether or not the claimant is a qualifying Canadian-controlled private corporation (CCPC).

- A CCPC with \$500,000 or less of taxable income can generally receive an ITC for 35% up to the first \$3 million of qualified SR&ED expenditures carried out in Canada and 20% of any excess amount.
- ITCs must first be applied against taxes payable in the year of the claim, after which cash refunds may be received subject to certain restrictions.
- A Non-CCPC can receive an ITC of 20% for both current and capital qualified SR&ED expenditures. These credits are non-refundable and may be carried back three years, or carried forward 20 years to reduce tax liability.
- Proprietorships, partnerships, and certain trusts can earn ITCs at the rate of 20% of the qualified current and capital SR&ED expenditures. After applying ITCs against payable taxes, cash refunds may be received subject to certain restrictions.

Qualifying SR&ED Expenditures

Expenditures include:

- the salaries and wages of employees performing SR&ED work;
- materials that are consumed or transformed;
- machinery and equipment that is rented or purchased;
- some overheads; and
- certain third-party payments and other SR&ED contracts.

“All or substantially all” (i.e. 90% of greater) of such expenses must have been incurred for SR&ED purposes. In addition, repayments of government or non-government assistance can also increase the pool of deductible SR&ED expenditures.

What projects qualify as SR&ED?

In order to qualify for the SR&ED incentive program the project must be carried out in Canada. In some cases, a Canadian corporation may execute only one phase or stage of a larger project directed by a global network of corporations. In either case, the contribution of the Canadian corporation must meet the three following criteria to be eligible for SR&ED benefits:

- Scientific or technological advancement – The project must generate information that advances the understanding of scientific relations or technologies. “Routine” engineering development will not be eligible.
- Scientific or technological uncertainty – Whether the desired result or objective can be achieved, or how to achieve it, must be unknown or undetermined based on commonly available sources of scientific or technological knowledge or experience before the project begins.
- Scientific and technical content – There must be evidence that qualified personnel with relevant experience are responsible for directing or performing a systematic investigation of the project hypothesis through experiments or analysis.

What work qualifies as SR&ED work?

Not all work done by a corporation carrying out a SR&ED project will be considered a qualified SR&ED expenditure. The legislative definition of SR&ED includes the following four types of work:

- Experimental Development – work done to achieve technological advancement to create, or improve, new materials, devices, products or processes, including incremental improvements thereto.
- Applied Research – work done to advance scientific knowledge with a specific practical application in view.
- Basic Research – work done to advance scientific knowledge without a specific practical application in view.
- Support work – work that directly supports and is commensurate with the above three, that is undertaken in Canada by, or on behalf of, the taxpayer (the corporation). This includes only the following 8 types of work: engineering, design, operations research, mathematical analyses, computer programming, data collection, testing, and psychological research.

Eligible work may be done by the corporation itself, or on behalf of the corporation. However, only SR&ED carried on in Canada qualifies. When work is carried on both inside and outside Canada, only expenditures for work done in Canada will be eligible for the incentive program.

- Ineligible work includes:
- research in social sciences or humanities;
- commercial production of new or improved material, device, or product, or the commercial use of a new or improved process;
- style changes;

-
- market research or sales promotion;
 - quality control or routine testing of materials, devices, products, or processes;
 - routine data collection; and
 - prospecting, exploring, or drilling for or producing minerals, petroleum, or natural gas.

Applying

Applicants must complete certain prescribed forms on a timely basis including a comprehensive technical description of the SR&ED work being performed with prescribed details. Essentially, claimants need to convince the CRA that the project and associated expenditures meet the requirements described above.

Maximizing Benefits

There are several ways for a foreign company (FORco) to structure its Canadian operations in order to maximize SR&ED benefits

- a FORco can undertake SR&ED activities through a Canadian subsidiary;
- SR&ED can be contracted out to a Canadian company (Canco), that will factor the tax benefits, such as refundable ITCs, into the contract price;
- the FORco could become a minority shareholder in a CCPC. Typically, other shareholders would include venture capital companies, Canadian researchers, hospitals, and universities. In this case, the FORco cannot control, or have future rights to control, the company in order to maintain CCPC status; and
- the FORco could enter into a joint venture with a Canco.

Generally, a Canco is established to perform the Canadian research and development. The FORco then contracts with the Canco for the Canco to perform the SR&ED activities on its behalf. Ownership of any resulting intellectual property will depend on the negotiated contractual relationship.

For example, it is possible for the following relationships to be established:

- the FORco enters into an R&D agreement with the Canco, by which the Canco will perform qualifying R&D activities for the FORco. Any resulting intellectual property will accrue to the FORco, with the exception of those Canadian rights that are necessary for the Canco to be eligible for the SR&ED program;
- the Canco will licence any existing intellectual property to the FORco that is necessary for the FORco to have the beneficial interest in the new intellectual property; and
- the Canadian rights that remain with the Canco for SR&ED purposes will be licensed to the FORco for a royalty payment.

What SR&ED incentives does British Columbia have?

In British Columbia, the provincial SR&ED tax credit program provides a 10% tax credit on provincial tax to qualifying corporations that carry on SR&ED in British Columbia. The rules are very similar to the federal SR&ED program.

SELLING AND PARTNERING WITH GOVERNMENT

The federal and British Columbia governments often **buy goods and services from outside private suppliers**. For example, the government may hire private contractors to build buildings, consultants to analyze a particular problem, or suppliers for equipment. The purchases are typically arranged through an on-line tendering process.

How does the Government of Canada buy goods and services?

Public Works and Government Services Canada (PWGSC) is the government's largest purchasing organization and annually purchases over \$20 billion worth of goods and services. PWGSC buys goods on behalf of most departments of the federal government; services tend to be purchased directly by the departments themselves. MERX is the name of the electronic tendering system. More information can be found on their website (Government Electronic Tendering Service/MERX <http://www.merx.com/>).

How does the Government of British Columbia buy goods and services?

In British Columbia, individual ministries identify their needs for certain goods and services and then generally prepare a **requisition** (request) for the Purchasing Services Branch (PSB). The PSB then determines which type of tendering process to use. See the PSB website (<http://www.pss.gov.bc.ca/psb/>). One common method is BC Bid. BC Bid is an on-line tendering site for the government of British Columbia. See the BC Bid website (<http://www.bcbid.gov.bc.ca>).

The government of British Columbia also implements some large-scale public infrastructure projects in partnership with private businesses (called **Private-Public Partnerships (PPP)**) to deliver goods and services. Contracts are usually performance-based.

Partnerships British Columbia is a corporation owned by the British Columbia government. Its mission is to encourage public-private partnerships by bringing together government ministries and private corporations. More information can be found on its website (<http://www.partnershipsbc.ca/>).

Typical PPPs are in the fields of transportation, health, and advanced education. A private partner may design, construct, finance, maintain or operate a project. Examples of recent PPPs include health care centres, highways, and bridges.

SPECIAL CONSIDERATIONS FOR SPECIFIC INDUSTRIES

General Investment Considerations

Certain industries may have restrictions on investment (or require governmental review of an investment), including broadcasting, telecommunications, financial services, transportation, uranium production and cultural industries (film, music and publishing). See the Investing in Canada chapter.

Assisted Living

What is assisted living?

Assisted living residences provide accommodation and support services for senior citizens and people with disabilities who can live somewhat independently, but require assistance with daily activities.

Accommodation may be in the form of a one-room or suite apartment. Private cooking facilities may be included, though typically there is a common dining area. Assisted living residences also have recreational space and hospitality services including meal services, housekeeping, laundry, social, and recreational opportunities and a 24-hour emergency response system.

Who regulates assisted living?

The *Community Care and Assisted Living Act* regulates assisted living and protects seniors and people with disabilities by providing for health and safety standards for assisted living residences. All assisted living residences that meet the definition in the Act must be registered with the Office of the Assisted Living Registrar and follow health and safety standards that are implemented and administered by the Registrar. (More information can be found on this website: <http://www.hls.gov.bc.ca/assisted//index.html#>)

What is Independent Living BC?

Independent Living BC (ILBC) is a housing and health partnership between BC Housing (the Province of British Columbia), Canada Mortgage and Housing Corporation (CMHC) (the Government of Canada), the five regional health authorities in British Columbia, and non-profit and private housing providers. Seniors and people with disabilities are referred to the ILBC program by their local health authority. Generally, the residents pay 70% of their after-tax income for rent and services, which include:

- accommodation;
- hospitality services such as meals, housekeeping, laundry, recreational opportunities and 24-hour emergency response; and
- personal care services such as assistance with grooming, mobility, and medications.

What business opportunities are available with Independent Living BC?

Partnerships are a key component of ILBC developments. (See the section on Selling and Partnering with Government). Housing providers may receive funding and support from all levels of government.

BC Housing typically signs an operating agreement with each non-profit and private housing provider.

For non-profit developments, the federal government provides capital grants, the provincial government provides operating subsidies and municipal governments may waive or reduce development cost charges.

For privately run developments, BC Housing provides a monthly rent supplement for each subsidized ILBC client living in a private operator-managed assisted living development and health authorities also provide funding for the support services offered at all ILBC units.

More information can be found on the ILBC website (<http://www.bchousing.org/programs/independent>).

Gaming

Who is responsible for BC's gaming policies?

The Ministry of Public Safety and Solicitor General is responsible for all gaming in British Columbia. It ensures the reliability of gaming service providers, and investigates all claims of misconduct. The Ministry regulates lotteries, casinos, commercial bingo halls, the horse racing industry, other licensed gaming events, and all employees of gaming service providers. The Ministry establishes gaming policies for the province. The Ministry is also responsible for registering people or companies who want to work in the gaming business.

More details can be found at the following website: www.hsd.gov.bc.ca/gaming.

Who manages gaming service providers?

Under the BC *Gaming Control Act*, BC Lottery Corporation (BCLC) has authority to manage commercial gaming (including commercial casinos and bingo halls, but not horse racing) in British Columbia.

BCLC contracts with gaming services providers. Service providers receive a commission based on generated revenue (totaling \$570 million in 2009-2010). At the present time, BCLC is working with eight private sector casino service companies that provide both facility and day-to-day operational services.

BCLC makes the final decision on gaming issues in British Columbia. It is responsible for the conduct and management of gaming on behalf of the government, and in that role it:

- ensures commercial gaming facilities operate according to government and corporation standards, policies and procedures;
- authorizes the location or relocation of, and any substantial changes to, gaming facilities;
- sets operational rules of play in all gaming facilities;
- manages contracts with gaming service providers and ensure that they fulfill their contracts;
- transfers net proceeds from commercial gaming to the Province; and
- ensures there is responsible gambling addiction information at all gaming facilities.

BCLC has the authority to relocate casinos according to marketplace demand, subject to approval of the local municipal government.

More information can be found on BCLC's website (www.bclc.com).

What role do local (city or town) governments play?

City or town governments have the authority to decide if they want to allow gaming in their territory and, if so, what type. They must consult with local residents about proposed gaming projects. Local governments receive a portion of gaming revenue from casino games located within their boundaries.

Electricity Generation

Canada encourages investment in renewable energy sources

The federal and provincial governments have created policies to encourage the development of **renewable energy**, including direct subsidies, tax measures, and renewable energy content targets. For example, the provincial *Clean Energy Act* proposes a feed-in tariff system which will encourage the development of energy technologies by offering stable prices under long-term contracts for energy generated from renewable sources. Furthermore, tax deductions are available for renewable energy equipment, and write-offs are available for intangible costs associated with certain investments.

Electricity generation is a growing industry

Electricity generation by private corporations or **Independent Power Producers (IPPs)** is a rapidly growing market in British Columbia, with huge export potential to the province of Alberta and the United States (California, Washington and Oregon).

British Columbia has a current generating capacity of over 14,000 MW, which is dominated by **hydro electric** (over 80% of generation capacity) and has interconnections and a net export of electricity to the U.S. Pacific Northwest and Alberta. Growth in electricity demand in Canada and the United States, as well as the retirement of environmentally challenged facilities, will require increases in generation capacity in both countries.

Who regulates electricity in British Columbia?

The federal government has jurisdiction over electricity **exports** and international and designated interprovincial transmission lines. British Columbia has jurisdiction over **generation, transmission, and distribution** of electricity within its boundaries.

The British Columbia Utilities Commission (BCUC) is the **independent regulatory agency** of the provincial government. The BCUC's primary responsibility is the regulation of energy utilities to ensure that the rates charged for energy are fair, just, and reasonable, and that utility operations provide safe, adequate, and secure service to customers. Although private producers (such as IPPs) which sell electricity to BC Hydro are largely exempt from the BCUC's oversight, the BCUC generally supervises contracts between utilities and large suppliers, including IPPs.

In the past, BC Hydro (a Crown corporation) provided generation, transmission, and distribution services to the entire province. British Columbia now allows IPPs to generate power and distribute to large industrial users. For more information, see BCUC's website (<http://www.bcuc.com/>).

The market in British Columbia

The BC Energy Plan of 2007 describes the government's energy objectives and encourages IPPs to develop **new electricity generation plants**. As contemplated in the plan, a standing order for clean electricity projects with sizes up to 10 MW has been established via BC's *Clean Energy Act*. This Act also allows for a feed-in tariff program which will further encourage the development of technologies in renewable power production.

BC Hydro has been a net importer of electricity in most years since 2001 and the demand is expected to grow significantly in the next 20 years. In fact, BC Hydro anticipates an estimated growth in demand of 20% to 40%. For this reason, BC Hydro has been actively purchasing electricity from IPPs. BC Hydro issues expressions of interest and issues requests for proposals for the supply of electricity, which IPPs may bid on.

Large electricity consumers can choose their electricity supplier and IPPs may use the transmission system to access these wholesale markets.

There are currently 63 functional IPPs in British Columbia plus another 27 projects which were selected in the 2008 Clean Power Call and have yet to commence delivering power.

For more information, see BC Hydro's website (www.bchydro.com).

What contracts are necessary?

IPPs typically sell their electricity to an energy purchaser such as BC Hydro. BC Hydro undergoes periodic open tender bids for the supply of electricity. Once BC Hydro and successful bidders have signed an electricity purchase agreement, the agreements must be filed with and approved by the BCUC, although some exemptions may be available. BC Hydro evaluates bids based on transparent criteria. These may include financial strength, technical aspect, First Nation engagement, permits and approvals required, energy source data and price. Other factors will be specified in the call for tenders.

What other permits or contracts are required?

Most projects require further **provincial permits** or authorizations for project design, construction, operation, and land use. If the project is on **Crown land**, you must negotiate a contract for its use and resources (such as water). Municipal permits may be required if the project is located within a municipality.

Are there environmental issues?

All projects over a certain minimum size are subject to the provincial environmental assessment (EA) process and must obtain an EA certificate before they may proceed. A federal EA may be required depending on the impact that the project has on federal jurisdictions such as fisheries and Aboriginal groups. (See the section on Obtaining Permits – Issues Concerning Aboriginal People.)

Private Post-secondary Education

Universities

A **university** is a post-secondary educational institution. An institution can only use the word “university” in its name or grant degrees with the permission of the Minister of Science and Universities under British Columbia’s *Degree Authorization Act*. Private and out-of-province public post-secondary institutions may apply for the Minister’s consent to use the word “university” or grant degrees.

Information about how to apply for consent from the Minister to use the word “university” or grant degrees is described on the Ministry’s website (<http://www.aved.gov.bc.ca/degree-authorization/private/welcome.htm>).

Private career training institutions

Career-related training is training for an **occupation** (such as carpentry or office management, but does not include religious occupations).

The Private Career Training Institutions Agency (PCTIA), created under the British Columbia *Private Career Training Institutions Act*, regulates private career training in British Columbia and is responsible for the registration and **accreditation** (official recognition) of private career-related training institutions.

Institutions that offer career-related training programs with at least 40 hours of instruction and at least \$1,000 in tuition must **register** with the PCTIA. Registered institutions must contribute to the Student Training Completion Fund, which helps compensate students if their school closes before their training is complete.

The PCTIA also offers accreditation to registered institutions that meet its standards of quality. Accreditation is mandatory only for institutions that wish to be designated under StudentAid BC, which allows enrolled students to apply for student financial assistance.

More information can be found on the PCTIA website (<http://www.pctia.bc.ca/>).

Religious Education

Religious training is exempt from the regulations described above. For example, the *Degree Authorization Act* does not regulate degrees in theology. The PCTIA does not regulate other types of religious training.

Engineering and Environmental Consulting

A number of organizations oversee individuals providing engineering and environmental consulting services. You may be required to meet the membership requirements of these organizations before you can provide services in British Columbia.

What are the licensing requirements for engineers?

The **Association of Professional Engineers and Geoscientists of British Columbia** (APEG) regulates professional engineers and professional geoscientists in the province. With the exception of people allowed to practice as licensees or under a non-resident licence, anyone who claims to be a Professional Engineer or Professional Geoscientist must also be a member of APEG.

APEG regulates the qualifications and practice of its members and licensees. Its main purposes are to protect the public, exercise its powers and functions, and enforce the *Engineers and Geoscientists Act*.

To register as a Professional Engineer or Professional Geoscientist in British Columbia you must meet these requirements:

- Canadian citizenship or permanent resident status;
- acceptable academic qualifications;
- a minimum of four years of satisfactory engineering or geoscience experience;
- completion of the Law & Ethics Seminar requirement;
- successful completion of the Professional Practice Examination; and
- evidence of good character.

See the APEG website for more information (<http://www.apeg.bc.ca/>).

What are the rules about environmental consulting?

Currently the Society of Contaminated Sites Approved Professionals of British Columbia (CSAP) maintains a **list of professionals** who are qualified to assist the Ministry of Environment review contaminated sites in British Columbia. (More Information about this can be found at <http://www.csapsociety.bc.ca/membership-database>).

CSAP is a self-regulating professional society, comprised of engineers and scientists who are qualified to perform specific contaminated site functions on behalf of the Ministry. For the most part, its members are drawn from the following organizations: the Association of Professional Engineers and Geoscientists of British Columbia, the College of Applied Biology, and the British Columbia Institute of Agrologists. To become a member of CSAP, you must have these qualifications:

- be a member or licensee, in good standing, of the Association of Professional Engineers and Geoscientists of British Columbia, the College of Applied Biology, or the British Columbia Institute of Agrologists, or possesses the specialized knowledge required to perform the work expected of a CSAP member;
- satisfy rules respecting work experience;
- obtain a passing grade on qualification examinations;
- have the required insurance; and
- pay applicable examination and registration fees.

See the CSAP website for more information (<http://www.csapsociety.bc.ca/>).

Tourism and Resort Development

Who regulates and promotes tourism in British Columbia?

The Province of British Columbia has many initiatives to support its tourism industry. The Ministry of Tourism, Trade and Investment (MTTI) is in charge of promoting and regulating tourism in BC (<http://www.gov.bc.ca/tca/>).

What is Tourism British Columbia?

Of particular interest, Tourism British Columbia, a Crown corporation established in 1997, is the responsibility of the MTTI and operates under the direction of an industry-led board of directors. Tourism BC has the responsibility for marketing the *Super Natural British Columbia*® brand to the world. Tourism BC works cooperatively with industry partners to promote the development and growth of British Columbia's tourism industry and ensure its long-term success. More information can be found on its website (<http://www.hellobc.com>).

Who regulates resort development?

British Columbia is one of the premier outdoors resort destinations in the world. Resort development is regulated by the MTTI, which has been given delegated powers under the *Land Act* and *Ministry of Lands, Parks and Housing Act* to control the administration and allocation of Crown land for commercial recreation and adventure tourism, including all seasons resorts such as those used for commercial alpine ski purposes. Since most areas that would be attractive for the development of resorts are located on Crown land, the British Columbia government's MTCA is closely involved in the regulation of resort development. The MTTI has established guidelines and policies for resort development that can be accessed at this website:

http://www.tca.gov.bc.ca/resort_development/applying/applying_intro.htm.

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11	http://strategis.ic.gc.ca/epic/site/cd-dgc.nsf/en/Home
12	http://www.fin.gov.bc.ca/registries/default.htm
15	http://www.fin.gov.bc.ca/registries/corppg/default.htm
25	www.cirb-ccri.gc.ca/
25	http://apti.teamwork.gov.bc.ca/Invest/Pages/Employing.aspx
25	http://www.labour.gov.bc.ca/esb/welcome.htm
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56	www.competitionbureau.gc.ca/internet/index.cfm?lg=e
56	http://www.inspection.gc.ca/english/fssa/labeti/guide/toce.shtml
57	http://www.inspection.gc.ca/english/fssa/labeti/guide/toce.shtml
57	www.agr.gc.ca/puttingcanadafirst/index_e.php
58	http://www.agf.gov.bc.ca/organics/overview.htm
58	http://www.certifiedorganic.bc.ca/
58	http://www.hc-sc.gc.ca/dhp-mps/index-eng.php
58	http://www.hc-sc.gc.ca/dhp-mps/compli-conform/info-prod/drugs-drogues/fact_sheet_feuillelet_doc_tc-tm-eng.php

59	http://www.ec.gc.ca/default.asp?lang=En&n=6B993ED0-1
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78	http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00004.html
78	http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00005.html
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93	http://www.cra-arc.gc.ca/txcrdt/sred-rsde/menu-eng.html
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97	http://www.pss.gov.bc.ca/psb/
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INVEST BRITISH COLUMBIA is an investment attraction and facilitation service partnership led by the Province of British Columbia. Harnessing the resources and expertise of provincial, federal and local regulatory agencies, economic development organizations, and private sector professionals, Invest BC staff work to expedite investment projects from concept to completion.

Invest British Columbia also works closely with an extensive network of public and private sector organizations to provide a comprehensive, coordinated and confidential service for companies interested in locating or expanding in British Columbia.

TO RECEIVE MORE INFORMATION ABOUT INVESTING IN THE PROVINCE OF BRITISH COLUMBIA, CANADA,
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