

A Guide to Doing Business in British Columbia

Prepared for LEX MUNDI

by Farris, Vaughan, Wills & Murphy LLP

Vancouver, British Columbia | 2006

INTRODUCTION TO BRITISH COLUMBIA.....	1
Geography	1
Government.....	1
Economy	1
Infrastructure	1
Language, Business Culture, Business Hours	2
Currency	2
Customs and Immigration	2
Legal System and Courts.....	2
BUSINESS STRUCTURES	3
Introduction	3
Sole Proprietorships	3
General Partnership	3
Limited Partnerships	3
Limited Liability Partnerships.....	4
Corporations.....	4
Federal or Provincial Registration.....	4
Sale of Securities.....	5
Secured Lending.....	5
INVESTMENT	5
TAX	5
Income Tax.....	5
Goods and Services Tax	6
Sales Tax	6
Other Taxes	6
LABOUR LEGISLATION	6
Employment Standards	6
Workers' Compensation.....	7
Human Rights.....	7
Collective Bargaining.....	7
PERMITS AND LICENCES.....	7
ZONING	7
INTERESTS IN REAL PROPERTY	8
ENVIRONMENTAL CONCERNS	8
IMPORT/EXPORT REGULATIONS	8
INTELLECTUAL PROPERTY	8

USE OF THIS GUIDE

This is a general guide to certain laws applicable to doing business in the Province of British Columbia, Canada, and no representations or warranties are made with respect to these materials. They have been prepared primarily for the Lex Mundi website and are for informational purposes only.

The information contained in these materials is given by way of general information and reference only. It is not intended to provide legal advice, and is not to be relied upon in any factual situation as it does not cover all laws or regulations that may be applicable in all circumstances. No responsibility will be accepted by the authors or publishers for any inaccuracy or omission or statement which might prove to be misleading. **You are advised to seek your own professional advice in connection with a particular transaction, or before proceeding to invest or do business, in the Province of British Columbia.**

These materials are not to be used or reproduced without written permission from Farris, Vaughan, Wills & Murphy LLP.

INTRODUCTION TO BRITISH COLUMBIA

Geography

British Columbia is the western most province of Canada. It is bordered on the west by the Pacific Ocean, east by the province of Alberta, north by the State of Alaska and Yukon Territory, and south by the States of Washington, Idaho and Montana.

British Columbia covers approximately 95 million hectares. Topography is largely mountainous, but there are substantial areas of low lands and plateaus. Climate varies from marine on the West Coast to continental in the east.

British Columbia's population is approximately 4.2 million. Approximately 2.1 million people live in or around Vancouver, British Columbia's largest city. Other principal cities include Victoria, the provincial capital (351,000 people) and Kelowna (109,000 people).

Government

British Columbia is a parliamentary democracy. The Head of State is currently Queen Elizabeth II, who is represented in British Columbia by the Lieutenant-Governor.

British Columbia legislation is passed by the Legislative Assembly, located in Victoria, and must receive royal assent before coming into force. British Columbia is also subject to legislation passed by the Canadian federal government located in Ottawa.

As of 2006, the largest party in the Legislative Assembly is the Liberal Party, whose leader, Gordon Campbell, is provincial Premier. Other parties include the New Democratic Party and the Green Party. Elections are generally held every four to five years.

Economy

The main types of business conducted in British Columbia are forestry, tourism, mining, manufacturing and fishing. Manufacturing industries are largely resource based, with a major emphasis on forest products, food, refined petroleum products and metal products. There is also a growing high tech sector and a large film industry in British Columbia.

Infrastructure

British Columbia has an extensive, modern transportation system. Vancouver International Airport provides regularly scheduled world-wide flights through numerous international carriers. Victoria, Kelowna and all other significant population centres also have airports with regularly scheduled service.

Numerous ice-free deep-water ports are located on the West Coast, including Vancouver which is the largest dry cargo port on the North American Pacific coast. A large network of all weather roads provides access to most regions of the province. There is also an extensive rail system throughout the province.

British Columbia operates one of the largest ferry systems in the world, primarily connecting points on the West Coast with numerous islands off shore in the Pacific Ocean.

British Columbia has an extensive, modern communications infrastructure comprised of facilities for providing telephone, broadcasting, cable, internet and other telecommunications and information services.

Most electricity in the province is provided by British Columbia Hydro and Power Authority, a Provincial Crown (or government) corporation. Small, but growing, amounts of electricity are provided by various independent power producers.

Most natural gas is provided by private companies, and is subject to regulation by the British Columbia Utilities Commission.

Language, Business Culture, Business Hours

English is the primary language spoken by the vast majority of people in British Columbia, and is the language generally used in business.

Cultural influences on business are generally the same as those found elsewhere in Canada and the United States.

Most business (with the exception of retail) and government offices are open Monday to Friday, 9 a.m. to 5 p.m., and are closed Saturdays, Sundays and holidays. Holidays when most offices close include: New Year's Day (January 1), Good Friday, Victoria Day, Canada Day (July 1), British Columbia Day, Labour Day, Thanksgiving Day, Remembrance Day (November 11), Christmas Day (December 25). Retail businesses are generally open much broader hours.

Currency

The Canadian dollar is the currency used in British Columbia. The Canadian dollar fluctuates against other world currencies. Current conversion rates can be found on the Bank of Canada's internet website, www.bankofcanada.ca.

Customs and Immigration

Customs, immigration and international affairs are regulated by the Canadian federal government. Current information on customs and immigration can be found on the Government of Canada's internet websites, www.cbsa-asfc.gc.ca and www.cic.gc.ca.

Legal System and Courts

The British Columbia legal system is based on the English common-law system, as is the legal system in all of the other Canadian provinces (except for Quebec).

The British Columbia court system has two trial-level courts, the Provincial Court and the Supreme Court, and the British Columbia Court of Appeal. The Provincial Court deals with small claims and a large number of lesser criminal matters. The Supreme Court deals with most ordinary civil matters, most of the more serious criminal matters and appeals from the Provincial Court. Appeals from the Supreme Court are made to the British Columbia Court of Appeal. Appeals can be made from the British Columbia Court of Appeal to the Supreme Court of Canada, located in Ottawa, with leave of the Supreme Court of Canada.

A significant number of matters under federal jurisdiction are dealt with by the Federal Court of Canada, with appeal to the Federal Court of Appeal and then the Supreme Court of Canada.

Arbitration is available as an alternative method of dispute resolution. Arbitration can be carried out under the British Columbia *Commercial Arbitration Act*, or under accepted international rules such as UNICTRAL.

BUSINESS STRUCTURES

Introduction

Both unincorporated and incorporated business structures are used in British Columbia. The most common unincorporated structures are the sole proprietorship and partnership, with the most common incorporated structure being the limited liability corporation.

Other specialized business structures are also available for particular business activities. These include joint ventures and non-profit organizations, such as societies, and co-operatives. Further information on specialized business structures should be obtained from a specialist in the relevant area of law.

Sole Proprietorships

A person can carry on business by his or herself as a sole proprietorship, in which case the business is not a separate entity from the business owner.

The only legal requirement for a sole proprietorship (apart from laws of general application, such as income tax and licensing provisions), is that if a person is engaged in business for trading, manufacturing, or mining purposes, and uses a business name other than his or her own, that person must file a declaration of the business name with the Registrar of Companies.

Since there is no corporate entity interposed between the business owner and the income and losses generated by the business, the profit or loss from the business is included with the other personal income of the business owner for the purpose of calculating the business owner's applicable income tax.

General Partnership

A general partnership arises when two or more persons "carry on business in common with a view to profit".

Partnerships will generally be governed by a partnership agreement entered into by the various partners, but a partnership agreement is not required for the formation of a partnership.

Although it is not necessary to have a written partnership agreement, one is generally recommended. The British Columbia *Partnership Act* imposes a system of rights and duties upon partners, which they may wish to vary. For example, under the *Partnership Act* all of the partners are entitled to share equally in the profits of the business. If this is not the arrangement the partners want, it must be changed by agreement.

As with a sole proprietorship, a partner's share of the partnership's income and losses is included with the other personal income of the partner for the purpose of calculating the partner's applicable income tax.

A partner has unlimited liability for the losses and other debts of the partnership. A partner may also be responsible for the wrongful acts of his or her fellow partners if the acts are committed in connection with the partnership business.

Limited Partnerships

Limited partnerships can be formed under the *Partnership Act*, but unlike general partnerships do not come into existence until the requisite statutory requirements have been fulfilled.

A limited partnership consists of two types of partners, "general" and "limited". General partners participate in the management of the limited partnership and generally have the same liabilities, rights and duties as partners in a general partnership. Limited partners, on the other hand, are intended to be primarily investors. Provided a limited partner does not participate in the management of the limited partnership, the liability of the limited

partner for losses and other debts of the limited partnership will be limited to the amount of capital he or she has agreed to contribute.

Both a general and limited partner's share of the partnership's income and losses is included with the other personal income of the partner for the purpose of calculating the partner's applicable income tax.

Limited Liability Partnerships

The *Partnership Act* permits the formation of limited liability partnerships. This type of partnership entity shields an individual partner from debts of the partnership, and from any negligence or wrongdoing of other partners unless the partner seeking relief knew of the negligence or wrongdoing at the time and failed to take reasonable action to prevent it. Individual partners incur personal liability for their own negligence or wrongful acts and those of the persons they directly supervise or control.

The limited liability structure is available (but not restricted to) professional partnerships where the relevant profession's governing legislation permits.

For income tax purposes, limited liability partnerships are treated like limited partnerships.

Corporations

Most business in British Columbia is carried on in the form of a limited liability corporation. The persons who form a corporation and become its shareholders are only required to contribute the amount that they have agreed to pay for their shares towards the liabilities of the corporation. A corporation exists as a separate, distinct legal entity, and has the capacity, rights, powers and privileges of a natural person. This means that a corporation can sue and be sued, hold property and enter into contracts in its own name.

Regulation of corporations generally falls within provincial, and not federal, jurisdiction and corporations can be incorporated in British Columbia under the British Columbia *Business Corporations Act*. However, corporations can also be incorporated federally under the *Canada Business Corporations Act*.

The first step in incorporation in British Columbia is the reservation of a corporate name with the Registrar of Companies. Once the name is reserved the incorporators enter into an incorporation agreement and file with the Registrar of Companies an incorporation application in the prescribed form, which includes a Notice of Articles. These filings, together with payment of the requisite fee, are carried out electronically.

Once a corporation has been created the shareholders elect a board of directors who will be responsible for management of the corporation. It is common for the directors to then delegate much of their responsibility for the supervision and management of the corporation's daily affairs to the officers they appoint. There are no residency requirements for directors or officers of corporations incorporated in British Columbia.

Because it is a separate legal entity, a corporation is taxed as such. There are numerous strategies available to corporations to allow them to optimize their tax situation, such as eligibility to receive small business deductions, deferral of taxes and the division of business income. Further information on this should be obtained from a tax law specialist.

Federal or Provincial Registration

If a corporation wishes to carry on business solely in British Columbia, it will generally incorporate provincially. If it then wishes to carry on business in another jurisdiction, it must receive the right to do so by registering as an extra-provincial corporation in that jurisdiction.

A federal corporation has the capacity to carry out its purposes throughout Canada as a right, however, most provinces require that it register as an extra-provincial company in the province and pay the fees associated with such registration.

Federal corporations require that at least 25% of the directors be resident Canadians.

Sale of Securities

The sale of securities in British Columbia, be it by a partnership, corporation or otherwise, is governed by the British Columbia *Securities Act*. Generally speaking, an issuer cannot issue securities to the public unless it files a prospectus with respect to the issuance and utilizes a person registered to sell securities, or is able to utilize one of the exemptions from the prospectus and registration requirements contained in the *Securities Act*. This is a complex area of law, and further information should be obtained from a securities law specialist if required.

Secured Lending

The British Columbia *Personal Property Security Act* integrates all secured personal property transactions governed by British Columbia law under one system by creating one registration system, one set of priority rules and one set of rules to govern the rights and remedies of secured parties upon default of the debtor. The British Columbia *Personal Property Security Act* is similar to other personal property security legislation in Canada.

INVESTMENT

A full range of experienced, sophisticated financial institutions are available in British Columbia, including chartered banks, credit unions, trust companies and stock exchanges.

British Columbia provides provincial tax credits, exemptions and deductions to encourage business investment and innovation in the province. Certain incentives target particular industries. Examples of such exemptions include the Mining Exploration Tax Credit, Film and Television Tax Credit Program (for British Columbia controlled production companies), Production Services Tax Credit Program (for non-British Columbia controlled production companies) and New Media Tax Credit. British Columbia also provides tax credits and deductions for research and development, and provides sales and property tax exemptions for the purchase of certain machinery.

British Columbia's tax incentives are provided as "entitlements", meaning they do not have to be negotiated and are available equally to all eligible businesses for qualifying activities. Federal government incentives that in many cases mirror provincial incentives are also available. For more information on British Columbia's business incentives refer to the Invest British Columbia internet website, www.investbc.com.

TAX

Taxes in British Columbia are levied at the federal, provincial and local levels. The basic features of the tax system are similar to those of the rest of Canada and the United States.

Income Tax

Pursuant to the terms of a tax collection agreement between the British Columbia and federal governments, the federal government administers the provincial income tax system and collects provincial income tax on behalf of British Columbia, using the same determination of taxable income for both federal and provincial tax purposes.

British Columbia's corporate income tax rate for 2005 is 12%. Tax rates for individuals are calculated on an incremental marginal basis, with British Columbia's 2006 rates ranging from 6.05% to 14.7%.

Goods and Services Tax

The federal government imposes a 7% tax on certain goods and services. For more information on the federal Goods and Services Tax refer to the Canada Revenue Agency internet website, www.cra.ca.

Sales Tax

The provincial government imposes a 7% sales tax on tangible personal property and some services. For more information on British Columbia's sales tax, refer to the Invest British Columbia internet website, www.investbc.com.

Other Taxes

A provincial property tax is payable, with the rate varying by the type of activity the property is being used for and the municipality or region in which the property is located.

Other taxes imposed in British Columbia include the following:

- Property Transfer Tax – applies only to land purchases. Tax rates are 1% on the first \$200,000 of the purchase price and 2% on the balance.
- Canada Pension Plan – payable by an employer on an employee's net contributory earnings up to \$37,900 at a rate of 4.95%.
- Employment Insurance – payable by an employer on an employee's insurable earnings up to \$39,000 at a rate of 2.73%.
- Workers' Compensation – payable by an employer on an employee's assessable earnings up to \$61,300. Rates vary by industry and individual employer's safety records.

LABOUR LEGISLATION

Employer/employee relations in British Columbia are governed by the British Columbia *Labour Relations Code*, *Employment Standards Act*, *Human Rights Code*, and *Workers' Compensation Act*.

Employment Standards

Full-time employees generally work 40 hours per week. Anything beyond 40 hours per week generally entitles the employee to overtime pay.

The minimum wage for an entry level worker is \$6.00 per hour. Once 500 hours have been accumulated with one or more employers, the employee is entitled to a regular minimum wage of \$8.00 per hour.

Employees are entitled to a minimum of two weeks vacation after 12 consecutive months of employment. After five consecutive years of employment, employees are entitled to a minimum three weeks vacation. Employees are also entitled to up to five days of unpaid sick leave during each employment year.

If an employer wishes to dismiss an employee, the employer must provide the employee with a minimum of:

- (i) one week's notice, if the period of employment is more than three consecutive months;
- (ii) two week's notice, if the period of employment was 12 consecutive months;

- (iii) three week's notice, if the period of employment was three consecutive years;
- (iv) one additional week for every additional year to a maximum of eight weeks notice.

The notice periods above are statutory minimums. The actual notice period required by the common law may be greater due to the explicit or implied terms of an employment agreement. No notice is required if the employee is dismissed for cause.

Workers' Compensation

Workers' compensation is governed by the *Workers' Compensation Act*. Employers are required to establish an account with the Workers' Compensation Board (the "WCB"). Information on registration can be found at the WCB internet website, www.worksafebc.com.

Once an employer is registered with the WCB, that person is protected against lawsuits from injured workers. If a worker is injured or contracts an occupational disease while on the job and during the course of employment, the WCB covers the worker's medical and wage loss costs.

Human Rights

The British Columbia *Human Rights Code* prohibits discrimination in the employment context. Employers must not discriminate between employees and prospective employees on the basis of any prohibited grounds, which include sex, age, religion or race.

Collective Bargaining

Collective bargaining and trade unions are recognized and actively supported in British Columbia. Collective bargaining is regulated by the *Labour Relations Code*.

A trade union has exclusive jurisdiction to bargain collectively with the employer. Once certified, the employer has the duty to bargain in good faith with the union.

Strikes and lock-outs are illegal during the course of a collective agreement. Strikes and lock-outs are only permissible once a collective agreement has expired and the collective bargaining process has failed to produce a satisfactory replacement collective agreement.

Disputes arising out of the interpretation of a term at a collective agreement are resolved through binding arbitration.

PERMITS AND LICENCES

Generally speaking, before a business can be operated in British Columbia a business licence must be obtained from the municipal government in the area in which the business is located. A representative for the business should contact the municipal office where the business is located to obtain the necessary license.

ZONING

Municipal governments in British Columbia have been granted the power to enact zoning by-laws, and prior to commencing operations a business should ensure that it conforms to the relevant zoning by-laws. Information on zoning by-laws can be obtained by contacting the municipality in which the business will be located.

INTERESTS IN REAL PROPERTY

The British Columbia *Land Title Act* governs the recording of interests in land and provides for a modified Torrens system of land titles. Generally speaking, under a modified Torrens system title to a parcel of land is registered with the government, which then issues a warranted title deed to the parcel.

ENVIRONMENTAL CONCERNS

The principle environmental statutes in British Columbia are the *Environmental Management Act* and the *Environmental Assessment Act*. There is legislation and regulations dealing with the control of, use and disposal of hazardous substances, clean up of affected areas, contaminated site liabilities, underground storage and various harmful substances such as PCBs, asbestos, etc. There is also legislation governing air emissions, water discharges, sewage and effluent discharges, marine pollution, wildlife protection, forest conservation, wetland protection and director and officer liability.

IMPORT/EXPORT REGULATIONS

Importing into and exporting from Canada is regulated at the federal level, not by British Columbia at the provincial level. See the information on importing and reporting on the Government of Canada website, www.importsource.ca.

INTELLECTUAL PROPERTY

Intellectual property is also regulated at the federal level. Federal legislation governing intellectual property includes the *Patent Act*, *Trade-Marks Act*, *Copyright Act*, *Industrial Design Act*, *Integrated Circuit Topography Act* and *Plant Breeders' Rights Act*. Canada is a member of a number of world organizations dealing with intellectual property, such as the World Trade Organization. Canada is also a signatory to the Paris Convention and Budapest Treaty and a member of the Patent Co-operation Treaty with respect to patents, and a signatory to the Berne Convention, Universal Copyright Convention, Rome Convention and World Intellectual Property Copyright Treaty with respect to copyright.

FARRIS

25th Floor, 700 W Georgia St
Vancouver, British Columbia
Canada V7Y 1B3

Tel 604 684 9151
Fax 604 661 9349
www.farris.com