

# Country Guide

## Canada

### British Columbia

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### **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.*

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## ABOUT BRITISH COLUMBIA

British Columbia is the westernmost of Canada's provinces, stretching approximately 1180 km from north to south and 1030 km from east to west at its widest point. Its capital is Victoria, and its largest city is Vancouver, which is the third-largest metropolitan area in Canada and one of the two largest in the Pacific Northwest, along with Portland.

With an estimated population of over 5.7 million, more than half of British Columbia's residents live in the Metro Vancouver area. British Columbia's diverse economy blends traditional industries such as natural resources and mining with emerging sectors like digital currency, life sciences, information technology, and gaming. Strategically located at the intersection of major Pacific ports, transcontinental highways and railways, British Columbia is uniquely positioned for international trade, particularly with Asian-Pacific countries. Its natural beauty, cultural richness and mild climate contribute to a thriving real estate market and continue to attract high net-worth individuals from around the world.

## LEGAL SYSTEM

British Columbia operates under a common law legal system and is governed by both provincial statutes, which apply exclusively within the province, and federal statutes, which apply across Canada.

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

## FOREIGN INVESTMENT

### BUSINESS ACTIVITY

British Columbia does not impose any general stand-alone restrictions on foreign investment. General issues of foreign investment are governed by the *Investment Canada Act, RSC 1985* (Investment Canada Act). The Investment Canada Act requires foreign investors to notify the Canadian Government when they commence a new business activity in Canada or acquire control of an existing Canadian business. Certain acquisitions are subject to review to determine whether they are likely to result in a net benefit to Canada:

- A direct acquisition of control of a Canadian business (by way of shares or assets) if the asset value of the business being acquired equals or exceeds CAD\$5 million.
- An indirect acquisition of control of a Canadian business (the acquisition of a non-Canadian parent of a Canadian entity) if the asset value of the business being acquired either:
  - equals or exceeds CAD\$50 million, where the asset value of the Canadian business being acquired is less than 50% of the global transaction's asset; or
  - equals or exceeds CAD\$5 million, where the asset value of the Canadian business being acquired exceeds 50% of the global transaction's asset value.

There are higher thresholds for reviewable direct acquisitions by the World Trade Organisation (WTO) investors and trade agreement investors (which include investors from the EU, the US, the UK, South Korea, Mexico, Chile, Peru, Colombia, Panama, Honduras, Australia, Japan, New Zealand, Singapore, Vietnam, Malaysia and Brunei). The current threshold for reviewable direct acquisitions by WTO investors. The current threshold for reviewable direct acquisitions by trade agreement investors is an enterprise value of CAD2.079 billion (as of January 2025). The enterprise value of a publicly traded company equals its market capitalisation, plus its liabilities, minus its cash and cash equivalents. The enterprise value of a privately-held company equals its acquisition value plus its liabilities, minus its cash and cash equivalents.

The threshold levels for reviewable direct acquisitions by WTO investors and by trade agreement investors are subject to annual inflationary indexing.

The Investment Canada Act also allows the Canadian government to review, prohibit or impose conditions upon a wide range of investments by non-Canadians on the basis of whether an investment is injurious to national security. Particular industry sectors, such as telecommunications, financial services and broadcasting are subject to additional laws that regulate foreign investment.

## RESIDENTIAL PROPERTY PURCHASES

Effective January 1, 2023, the Canadian Government implemented a temporary ban on the purchase of residential property by non-Canadians through the *Prohibition on the Purchase of Residential Property by Non-Canadians Act, SC 2022*. On February 4, 2024, the Canadian Government extended the ban until January 1, 2027.

The legislation prohibits non-Canadians from directly or indirectly purchasing residential property in Canada, including detached homes and similar buildings with one to three dwelling units, as well as portions of buildings such as semi-detached homes, strata units, or comparable premises located within a Census Metropolitan Area or a Census Agglomeration. The ban also applies to vacant land zoned for residential used within these areas.

In addition to direct acquisitions, the prohibition also captures indirect purchases made through corporations, trusts, or other legal entities controlled by non-Canadians.

There are limited exemptions to the ban. Certain categories of non-Canadians – such as international students, temporary foreign workers, and refugees – may be eligible to purchase residential property under specific conditions designed to ensure the ban doesn't unfairly impact people with valid reasons for buying property in Canada.

## BUSINESS ENTITIES

The main business vehicles used in British Columbia are sole proprietorships, corporations, partnerships, limited partnerships, trusts and joint ventures.

The most common form of business vehicle used by foreign companies is the corporation due to its familiarity and the limited liability of shareholders. A corporation can be incorporated either federally under the *Canada Business Corporations Act, RSC 1985* (Canada Business Corporations Act), or provincially/territorially under the relevant provincial or territorial legislation. The provincial *Business Corporations Act, SBC 2002* (Business Corporations Act), provides considerable flexibility over the *Canada Business Corporations Act* and corporate statutes of other Canadian provinces. The following applies to corporations incorporated in British Columbia:

**Registration Formalities.** The corporate name must first be reserved with the Registrar of Companies. The incorporators then enter into an incorporation agreement and file an incorporation application with the

Registrar of Companies and file information on individuals with significant control. These filings, together with payment of the requisite fee, are carried out electronically.

*Share Capital.* There can be one or more classes of shares, which can be issued in different series. Shares may be issued with or without par value. While it is not necessary to prescribe a maximum number of shares, it is possible to do so.

*Non-cash Consideration.* Consideration can take the form of past services, property, and/or money. The value of the consideration received must equal or exceed the issue price set for the share.

*Rights Attaching to Shares.* A corporation can set out in its articles various rights attaching to its shares, including voting, dividends, share of assets on liquidation or dissolution, priority on liquidation or dissolution, conversion, redemption and retraction. Rights can vary among different classes of shares.

*Foreign Shareholders.* There are no restrictions preventing foreigners from being shareholders.

*Management Structure.* A corporation must have at least one director and a public corporation must have at least three directors. Once a corporation has been created the shareholders elect a board of directors, which then appoint officers of the corporation. There are no residency requirements for directors or officers.

*Directors' Liability.* Directors of corporations operating in British Columbia are subject to a number of potential forms of liability arising from various federal and provincial legislation, as well as common law, which include:

- liability for breach of fiduciary duties owing to the corporation, its shareholders, and potentially other stakeholders
- liability for wages and related benefits, wrongful dismissal, termination pay, workplace safety and protection fines, human rights violations, and sexual harassment
- liability for unpaid taxes and certain government remittances

*Parent Company Liability.* Shareholders are not liable for a subsidiary's obligations.

*Reporting Requirements.* Corporations are required to file notices as to changes in directors, file an annual report, and make annual accounting records available for inspection.

For public corporations, regardless of where they are incorporated, the provincial *Securities Act, RSBC 1996*, imposes additional reporting requirements that include press releases, information circular for shareholders' meetings, acquisition reporting requirements, and security distribution requirements.

## EMPLOYMENT

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

- *Labour Relations Code.* This governs the employment relationship for unionized workplaces.
- *Employment Standards Act.* This sets out the minimum employment standards that apply in most workplaces in British Columbia. Employers cannot contract out of these minimum requirements.
- *Human Rights Code.* This protects employees against discrimination on prohibited grounds, including race, sex, disability, and religion. Parties cannot contract out of the requirements of the Code.

- *Workers Compensation Act*. This is a mandatory scheme to provide compensation to workers who become ill or injured arising out of their employment. Workers who do become ill or injured arising out of their employment are not permitted to sue their employers in court. This legislation also governs occupational health and safety. Parties cannot contract out of the requirements of the *Workers' Compensation Act*.
- *Personal Information Protection Act*. This governs the collection, use and disclosure of personal information by private sector employers. The *Freedom of Information and Protection of Privacy Act* deals with similar subject matter for public sector employers and employees.
- *Pay Transparency Act*. This governs the sharing and requesting of information about employee pay. *Competition Act*. This federal law prohibits all employers (whether their employment relations are provincially or federally regulated) from conspiring, agreeing, or arranging to fix, maintain, decrease, or control salaries, wages, or terms and conditions of employment or to not solicit or hire each other's employees. Violation of this prohibition is a criminal offence which can also expose employers to civil liability, including class actions. Other aspects of this statute are addressed later in this guide.
- *The Common law*. The common law applies in non-union workplaces.
- *Canada Labour Code*. This legislation is the federal equivalent of the *Employment Standards Act*, the *Labour Relations Code*, and the occupational health and safety aspects of the *Workers Compensation Act*. The *Code* applies to federally regulated workplaces in British Columbia.

## EMPLOYMENT CONTRACTS

A written contract is not usually required, but it is often recommended. Certain terms are implied into employment relationships including that the employer must, absent just cause or a written contract to the contrary, provide reasonable notice of termination to an employee. Written contracts must comply with mandatory statutes, including, in particular, the *Employment Standards Act* or its federal equivalent.

## TERMINATION

If an employee is dismissed for reasons other than just cause, the employer must provide a period of notice (or pay in lieu of notice), which complies with the *Employment Standards Act* and the common law, subject to the terms of an employment contract.

Unless an employment contract provides otherwise, under common law an employee is entitled to reasonable notice of termination where there is no just cause, which is usually between one week and one month per year of service depending on an employee's age, length of service, position and marketability. A written employment contract may provide for a different notice period or pay in lieu of notice on termination, and that will be enforceable (so long as the employment agreement is otherwise enforceable) so long as the following minimum amounts are met (*Employment Standards Act*):

- one week's notice or pay in lieu, after three consecutive months of employment
- two weeks' notice or pay in lieu, after 12 consecutive months of employment
- three weeks' notice or pay in lieu, after three consecutive years of employment, plus one additional weeks' notice or pay in lieu for every additional year to a maximum of eight weeks notice

If an employee is dismissed for just cause, notice obligations do not apply. Examples of just cause may include theft, dishonesty, assault, harassment, fraud, insubordination, and continued incompetence or neglect of duty (after specific warnings).

If an employer has acted in bad faith in the manner in which it terminates an employee, the employee may be entitled to additional damages. Unionized employees have stronger protection against unjust dismissal, and may be reinstated if an arbitrator concludes that there was no just cause for termination. An employer may also be exposed to liability for breaching the *Human Rights Code* in terminating an employee, if the employer has discriminated against the employee contrary to any of the protected grounds, or to liability under the *Workers Compensation Act* if the employer retaliated against an employee for exercising a right under the *Act* or reporting a health and safety issue in the workplace.

## MASS LAYOFFS

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

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

- under the *Employment Standards Act*, if the employment of 50 or more employees at a single location is to be terminated within any two-month period, the employer must give written notice to each employee who will be affected, a trade union certified to represent, or recognized by the employer as the bargaining agent of, any affected employees, and the Minister of Labour. The notice of group termination must specify the number of employees affected, the effective date(s) and reason(s) for termination. The notice period or pay in lieu of notice, increases with the number of employees terminated. The group termination notice and termination pay requirements are in addition to any individual notice under the *Employment Standards Act* or any collective agreement.
- under the *Labour Relations Code*, for unionized workplaces, employers must provide 60-days’ notice to the union(s) of changes that negatively affect the terms or conditions of employment or the job security of a significant number of employees to whom a collective agreement applies. Often the notice periods between the *Labour Relations Code* and the *Employment Standards Act* will coincide.

## WORK PERMITS

Foreign nationals require a work authorization, commonly known as a work permit, to work temporarily in Canada (C\$155). The Canadian government recommends that foreign nationals apply for work permits before travelling to Canada, although citizens of visa-exempt countries may be permitted to apply for a work permit at a Canadian port of entry if they meet certain requirements.

## EMPLOYMENT TAX AND SOURCE DEDUCTIONS

### SOURCED DEDUCTIONS FROM EMPLOYMENT INCOME OF INDIVIDUALS

Every employer who pays salary, wages or other remuneration at any time during a taxation year is required to deduct or withhold from the payment an amount determined in accordance with prescribed rules and must remit that amount to Canada Revenue Agency as an installment of the employee’s tax for the year.

### OTHER STATUTORY LEVIES

In addition to the foregoing source deductions, employees in British Columbia are generally also subject to the following additional statutory levies which must be deducted by their employer from their remuneration and remitted to Canada Revenue Agency:

*Canada Pension Plan Contributions.*

Most employees are required to make a total contribution for 2025 equal to:

- the product obtained when 5.95% is multiplied by that portion of the employee's salary and wages for the year that is greater than C\$3,500 and does not exceed C\$71,300; plus
- the product obtained when 4.00% is multiplied by that portion of the employee's salary and wages for the year that is greater than C\$71,300 and does not exceed C\$81,200.

#### *Employment Insurance Premiums.*

Most employees are required to pay an employment insurance premium which for 2025 is equal to the product obtained when 1.64% is multiplied by the portion of the employee's insurable earnings in the year that does not exceed C\$65,700.

In addition to the obligation to remit the foregoing source deductions and statutory levies to Canada Revenue Agency on behalf of their employees, employers are also required to concurrently pay to Canada Revenue Agency an amount that is equal to the aggregate of (a) 100% of each employee's Canada pension plan contribution and (b) 140% of each employee's employment insurance premium.

#### *Employer Health Tax*

For an employer in British Columbia who pays B.C. remuneration in excess of \$1,000,000 in 2025, such employer is also required to pay an employer health tax to the Government of British Columbia equal up to the product obtained when 1.95% is multiplied by that employer's B.C. remuneration.

### NON-RESIDENT EMPLOYEES

Generally, non-resident individuals employed in Canada are subject to Canadian federal and British Columbia income tax on their employment income as discussed above. However, the rate and extent of taxation may be reduced in certain circumstances by the provisions of any applicable Tax Treaty.

## BASIC PRINCIPLES OF TAXATION

Canada is a federal state and consequently the constitutional authority to legislate is shared between a federal government (the "**Federal Government**"), which enacts legislation at the national level on matters falling within the scope of its constitutional authority, and the ten provincial and three territorial governments, which each enact legislation at their respective regional level on those matters within the scope of their respective constitutional authority. For example, the government of the province of British Columbia (the "**Government of British Columbia**") enacts legislation on such matters as education, local works and undertakings, property and civil rights and intra-provincial commerce affecting British Columbia.

Both the national and regional levels of government have the concurrent constitutional authority to impose tax.

The Income Tax Act (Canada) (the "**Income Tax Act**") was enacted by the Federal Government and imposes income tax annually on residents of Canada and on certain non-resident persons but only in prescribed circumstances and subject to the provisions of any applicable bi-lateral tax treaty made between Canada and another country (a "**Tax Treaty**") which may reduce, or in some circumstances eliminate, the Federal Government's authority to levy income tax on residents of the other country. The Income Tax Act (British Columbia) (the "**BC Income Tax Act**") imposes income tax annually only on persons having a prescribed connection to British Columbia. Every other province and each territory have enacted similar legislation.

Both the Federal Government and the Government of British Columbia provide various tax credits, exemptions, refunds and deductions for certain purposes, such as to encourage business investment in such activities as scientific research and experimental development, mining exploration, film and television production, technology innovation and the provision of international financial services.

Generally, both the Income Tax Act and the BC Income Tax Act are administered by the Canada Revenue Agency and the tax revenue generated is apportioned between the relevant levels of government.

## TAXATION OF RESIDENTS OF CANADA

Part I of the Income Tax Act imposes federal income tax on individuals and corporations that are resident in Canada, or are deemed to be a resident in Canada, (each a “**taxpayer**”) during a taxation year computed in accordance with the provisions of the Income Tax Act based on their respective income earned during the year (or relevant period) from all sources worldwide.

In addition, the BC Income Tax Act imposes provincial income tax on individuals, trusts and corporations in particular circumstances as discussed below.

On a disposition, or a deemed disposition, of a capital property by a taxpayer, such taxpayer generally will realize a capital gain (or incur a capital loss) equal to the amount, if any, by which the proceeds of disposition of the property exceed (or are exceeded by) the aggregate of the person's adjusted cost base thereof and any reasonable costs of disposition.

Currently, only  $\frac{1}{2}$  of each capital gain realized, or deemed to be realized, by a person is subject to income tax as a taxable capital gain. Similarly, only  $\frac{1}{2}$  of each capital loss incurred, or deemed to be incurred, by a person is deductible as an allowable capital loss but only against taxable capital gains realized in the taxation year and not against any other source of income such as income from employment, from property or from carrying on a business. Any net capital loss that is incurred in a taxation year may be carried back and applied in any of the three preceding taxation years and carried forward indefinitely and applied in any subsequent taxation year.

Each resident taxpayer is required by the Income Tax Act (a) to complete a combined federal and British Columbia income tax return in prescribed form for each relevant taxation year in order to compute the amount of federal and provincial income tax that is payable for that year under the Income Tax Act and (b) to submit the income tax return, and to pay the aggregate amount of income tax, to Canada Revenue Agency in accordance with the provisions of the Income Tax Act.

## TAX RESIDENCY OF INDIVIDUALS

An individual may be (a) factually resident in Canada based on the relevant common law principles established by jurisprudence applied to the particular facts and circumstances of that individual or (b) deemed by a provision of the Income Tax Act to be resident in Canada, provided that in either case, the individual is not otherwise deemed to be resident in any other country under the provisions of a Tax Treaty entered into between Canada and that country.

For purposes of the BC Income Tax Act an individual is subject to provincial income tax for a taxation year if either that individual (a) was resident in British Columbia on the last day of that year, or (b) earned income during that year in that province.

## TAX RESIDENCY OF CORPORATIONS

A corporation is generally considered to be resident in Canada under the Income Tax Act if either (a) it was incorporated in, or continued into, Canada or (b) its central management and control are exercised in Canada, provided that in either case, the corporation is not otherwise deemed to be resident in any other country under the provisions of a Tax Treaty entered into between Canada and that country.

For purposes of the BC Income Tax Act a corporation is subject to provincial income tax for a taxation year if the corporation maintained a permanent establishment in that province at any time during the taxation year.

## TAXATION OF NON-RESIDENTS OF CANADA

The Income Tax Act also imposes income tax on individuals, corporations and trusts that are not residents of Canada (each a “**non-resident**”) based on their respective taxable income earned in Canada which consists of income of the non-resident (a) from employment in Canada, (b) from carrying on a business in Canada and (c) from the disposition of “taxable Canadian property” which includes real property situated in Canada and shares of corporation that derive their value primarily from real property in Canada.

Non-residents are also required to pay a surtax, in lieu of provincial tax, equal to 48% of their basic federal tax payable.

On a disposition, or a deemed disposition, of a taxable Canadian property by a non-resident, that non-resident generally will realize a capital gain (or incur a capital loss) equal to the amount, if any, by which the proceeds of disposition of the property exceed (or are exceeded by) the aggregate of the person's adjusted cost base thereof and any reasonable costs of disposition and the capital gain will be taxed as described above under the heading “Taxation of Residents of Canada”. Special rules and forms must be complied with on a sale of taxable Canadian property by a non-resident.

Each non-resident that earns taxable income in Canada is required under the Income Tax Act (a) to complete a federal income tax return in prescribed form for each relevant taxation year in order to compute the amount of federal income tax that is payable for that year under the Income Tax Act and (b) to submit the income tax return, and to pay the aggregate amount of income tax, to Canada Revenue Agency in accordance with the provisions of the Income Tax Act.

## WITHHOLDING TAX ON PAYMENTS BY RESIDENTS TO NON-RESIDENTS

In addition, Part XIII of the Income Tax Act imposes withholding tax of 25% on every amount that a Canadian resident pays or credits to a non-resident person as, on account of or in lieu of payment of, or in satisfaction of, certain prescribed amounts which, subject to certain exceptions, include (a) dividends, (b) participating debt interest, (c) interest if the payor does not deal at arm's length with the non-resident, (d) rents (other than rental payments for the use outside of Canada of any tangible property), (e) royalties (other than royalties paid on or in respect of a copyright in connection with a (re)production of any literary, dramatic, musical or artistic work, (f) management fees, (g) certain estate or trust income, (h) certain pension benefits, (i) timber royalties and (j) payments from a registered retirement savings plan, a registered retirement income fund and similar plans and funds.

Withholding tax is generally required to be deducted by the payor from the relevant amount payable and remitted by the payor to Canada Revenue Agency on behalf of the non-resident. The payor must also (a) prepare an information return, and corresponding information slips, in prescribed form, (b) file a copy of these documents with Canada Revenue Agency and (c) deliver a copy of each information slip to the relevant non-resident in accordance with the provisions of the Income Tax Act.

The amount of tax that is otherwise payable by a non-resident person under Part I or Part XIII of the Income Tax Act may be reduced, or in some cases eliminated, under the provisions of an applicable Tax Treaty entered into between Canada and the country of that person's residence.

## INCOME TAX RATES

### INCOME TAX RATES FOR INDIVIDUALS

The federal income tax rates and tax brackets for 2025 are as follows:

- 15% on taxable income greater than C\$16,129 and less than or equal to C\$57,375;
- 20.5% on taxable income greater than C\$57,375 and less than or equal to C\$114,750;
- 26% on taxable income greater than C\$114,750 and less than or equal to C\$177,882;
- 29% on taxable income greater than C\$177,882 and less than or equal to C\$253,414; and
- 33% on taxable income greater than C\$253,414.

The British Columbia income tax rates and tax brackets for 2025 are as follows:

- 5.06% on taxable income greater than C\$12,932 and less than or equal to C\$49,279;
- 7.70% on taxable income greater than C\$49,279 and less than or equal to C\$98,560;
- 10.5% on taxable income greater than C\$98,560 and less than or equal to C\$113,158;
- 12.29% on taxable income greater than C\$113,158 and less than or equal to C\$137,407;
- 14.7% on taxable income greater than C\$137,407 and less than or equal to C\$186,306;
- 16.8% on taxable income greater than C\$186,306 and less than or equal to C\$259,829; and
- 20.5% on taxable income greater than C\$259,829.

Each of these federal and provincial tax brackets is subject to annual indexation.

## INCOME TAX RATES FOR CORPORATIONS

The combined federal and British Columbia corporate income tax rates for 2025 are as follows:

|                   | CANADIAN CONTROLLED PRIVATE CORPORATIONS* |                        |                                         |                     | OTHER CORPORATIONS |
|-------------------|-------------------------------------------|------------------------|-----------------------------------------|---------------------|--------------------|
|                   | SMALL BUSINESS INCOME                     | ACTIVE BUSINESS INCOME | MANUFACTURING & PROCESSING (M&P) INCOME | INVESTMENT INCOME** |                    |
| COMBINED TAX RATE | 11%                                       | 27%                    | 27%                                     | 50.7%               |                    |

\* In order for a corporation to qualify as a Canadian-controlled private corporation, it must generally be a private corporation that is incorporated in Canada and is controlled by Canadian residents.

\*\* A portion of this tax is refundable when certain dividends are paid by the corporation to shareholders and is imposed on the corporation in order to discourage the use of corporations for the purpose of deferring tax on investment income.

## CERTAIN OTHER TAX MATTERS

### IMPUTED INCOME ON DEBT OWED BY NON-RESIDENTS

In certain circumstances, the Income Tax Act may apply to impute interest income to a corporation resident in Canada on loans made to, or indebtedness incurred by, certain non-residents if and to the extent that the interest payable on the debt is less than the interest that would be payable on the debt if computed at a prescribed rate. The imputed interest income generally applies on loans and indebtedness that are outstanding for more than one year.

### IMPUTED INCOME ON SHARES OF A CONTROLLED FOREIGN AFFILIATE

The Income Tax Act includes complex provisions which may apply in certain circumstances to impute income to any person that is a Canadian resident shareholder of a non-resident corporation if, at the relevant time, the non-resident corporation is a “foreign affiliate” (“FA”), and a “controlled foreign affiliate” (“CFA”), of that shareholder. The income that is imputed to the Canadian resident shareholder is equal to that shareholder’s proportionate share of any “foreign accrual property income” (“FAPI”) that is earned by that CFA during the relevant taxation year. In general, FAPI of a non-resident corporation is the passive investment income of the corporation and taxable capital gains (net of allowable capital losses) realized on the disposition of property used or held by the corporation principally for the purpose of gaining or producing income from property rather than from an active business.

### IMPOSITION OF BRANCH TAX

The Income Tax Act imposes an additional 25% tax on a non-resident corporation carrying on business in Canada through a branch. This tax is imposed on the amount by which the corporation’s taxable income earned in Canada exceeds the aggregate of the Canadian income tax that is payable in respect of such income and the amount claimed by the corporation for the year not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada.

This tax (referred to as “branch tax”) is levied in lieu of the withholding tax that would otherwise have been levied if the non-resident corporation were a corporation resident in Canada and paid dividends to a non-resident shareholder. The branch tax may be reduced under an applicable Tax Treaty to the treaty withholding tax rate applicable to dividends.

### TRANSFER PRICING

Canadian resident corporations, as well as non-resident corporations that carry on business in Canada, are required to comply with certain provisions of the Income Tax Act. Generally, such corporations must be able to demonstrate that their transactions with related parties are conducted on terms and conditions that would have prevailed if they were dealing at arm’s length. Under these provisions, Canada Revenue Agency has the authority to adjust prices or other terms and conditions of transactions to the extent that they are inconsistent with terms that arm’s length parties would have agreed to. Moreover, Canada Revenue Agency has the authority to recharacterize a transaction if it is one that arm’s length parties would not have entered into and it was only entered into by the corporation to obtain a tax benefit.

### CERTAIN LIMITATIONS ON THE DEDUCTION OF INTEREST

In certain circumstances, the deductibility of interest that is paid or payable by a Canadian corporation on debt held by one or more “specified non-residents” (generally, non-resident group members) may be restricted or denied under the thin capitalization provisions of the Income Tax Act if the amount of such debt is more than 1.5 times the aggregate of the retained earnings of the corporation, the corporation’s contributed surplus that was contributed by specified non-residents and the paid-up capital of the shares owned by specified non-residents. Interest that is not deductible because of the thin-capitalization provisions is deemed to have been paid as a dividend and is subject to withholding tax as such.

In addition, for taxation years beginning on or after October 1, 2023 (subject to a transitional rule for tax years beginning before January 1, 2024), interest deductions will generally also be limited by Canada’s proposed “excessive interest and financing expenses limitation” (EIFEL) rules. If applicable, these rules will

generally limit the deduction of interest and financing expenses, net of interest and financing revenues, to 30% of the earnings before interest, tax, depreciation and amortization, determined using tax concepts and subject to certain adjustments). Denied deductions may effectively be carried back three tax years or forward indefinitely, subject to certain limitations. Special rules may permit corporate groups to share excess capacity to deduct interest and financing expenses, or, where the group is heavily leveraged by third-party debt, to deduct a higher ratio of expenses.

## SALES TAX

The Federal Government and the Government of British Columbia each impose a consumption tax.

The Federal Government imposes a goods and services tax ("**GST**") under the *Excise Tax Act* (Canada) (the "**GST Act**"). GST is a value-added tax which applies to each "taxable supply" of goods and services that is made in Canada except those supplies that are expressly exempt from GST. Such exempt supplies include prescribed supplies of health care services, educational services, child and personal care services, legal aid services and financial services and prescribed supplies made by charities and public sector bodies.

GST is imposed on recipients of taxable supplies made in Canada and is generally equal to 5% of the amount of the consideration paid for the supply. However, if the taxable supply is a "zero-rated supply", the rate of GST is 0%. The zero-rated supplies include prescribed supplies of prescription drugs and biologicals, medical and assistive devices, basic groceries, agriculture and fishing, exports, travel services and transportation services.

GST is typically levied by the supplier when making a taxable supply in Canada to a recipient and is paid by the recipient of that supply to the supplier. The supplier is required (a) to remit to Canada Revenue Agency the amount of GST that it collected from recipients during each reporting period and (b) to file a return in prescribed form with Canada Revenue Agency for each such reporting period. Generally, businesses making taxable supplies in Canada must register to collect and remit the applicable GST on their taxable supplies made in Canada. This may include non-residents that do not carry on business in Canada but which make taxable supplies in Canada of tangible property using fulfillment warehouses in Canada or which otherwise deliver or make available tangible property in Canada to Canadian consumers. In certain circumstances recipients who are residents of Canada may be required to self-assess GST on taxable supplies acquired outside of Canada.

## COMPETITION LAW

The federal *Competition Act, RSC 1985 (Competition Act)* governs most business conduct in Canada and is generally not regulated by provincial or local laws.

The Competition Act is intended to maintain and promote competition in Canada by prohibiting corporations and individuals from engaging in anti-competitive conduct. It applies to all entities-domestic and foreign-carrying on business in Canada.

The Competition Act focuses on two types of practices:

- **Civil matters.** These are subject to review by the Competition Tribunal (the governmental entity that hears and decides all applications filed under the Competition Act and any related matters) and includes:
  - price maintenance (section 76, Competition Act);
  - tied selling (section 77, Competition Act);

- refusal to deal (section 75, Competition Act);
  - exclusive dealing (section 77, Competition Act);
  - market restriction (section 77, Competition Act);
  - delivered pricing (sections 80-81, Competition Act);
  - drip pricing (sections 74.01(1.1), 74.011(3.1), Competition Act);
  - certain misleading marketing practices (including new “greenwashing” prohibitions) (Part VII.1, Competition Act); and
  - agreements among competitors that substantially prevent or lessen competition (section 90.1, Competition Act).
- **Criminal matters.** These are subject to prosecution in Canadian courts and include (Parts VI-VII, Competition Act):
    - bid-rigging;
    - conspiracies to fix prices, allocate markets or control production of a product;
    - conspiracies to fix, decrease or control salaries or not solicit or hire employees;
    - multi-level marketing;
    - drip pricing; and
    - certain misleading advertising and telemarketing practices.

Civil matters are subject to remedial orders and administrative monetary penalties, whereas criminal matters are punishable by fines and/or imprisonment.

The Competition Act has been subject to notable recent government review and amendments, with further developments and guidance anticipated

## INTELLECTUAL PROPERTY

### PATENTS

*Nature of Right.* Statutory rights are created by the federal *Patent Act*, RSC 1985. In order to patent an invention, it must be novel, possess utility, demonstrate inventive ingenuity and not be obvious to someone skilled in the area.

*How Protected.* A patent application must be filed with the Canadian Intellectual Property Office.

*How Enforced.* The patent holder can sue an infringer and the court can make orders for an injunction and/or recovery of damages or profits.

*Length of Protection.* Patents last for 20 years from the filing date provided the prescribed maintenance fees are paid. Certain pharmaceutical patent rights may be extended an additional two years. Patent rights

are generally not renewable, but in rare circumstances can be extended by an act of Parliament giving an extension of a particular patent to a particular patent holder.

## TRADE-MARKS

*Nature of Right.* Trade-marks do not need to be registered to be protected. Under the common law, rights arise in a trade-mark in Canada through use in association with wares or services.

*How Protected.* A trade-mark holder can, under the common law action for passing off, prevent subsequent use of the same or a confusingly similar trade-mark for similar wares and/or services. However, without registration under the federal *Trademarks Act, RSC 1985 (Trademarks Act)* such protection is limited to the geographic area in which there can be said to be reputation in the trade-mark. Only registration under the Trademarks Act, with the Canadian Intellectual Property Office, gives the full protection available by law. It also allows an action to be brought in any court of competent jurisdiction to prevent depreciation of goodwill in the trade-mark.

*How Enforced.* The right holder can sue under the common law and/or the Trademarks Act, the latter of which empowers a court to grant injunctive relief and the recovery of damages or profits where justified.

*Length of Protection.* A trade-mark registration is valid for 10 years, but can be renewed for successive 10 year terms indefinitely; however, any person may request a trade-mark registration be removed if the owner is unable to show use of the trade-mark in Canada during the prior three-year period.

## INDUSTRIAL DESIGN

*Nature of Right.* To qualify for protection, a design must be original and not have been published in Canada or elsewhere more than one year before the filing date.

*How Protected.* Protection is through registration, under the federal *Industrial Design Act, RSC 1985 (Industrial Design Act)*, with the Canadian Intellectual Property Office which examines applications on a “first-to-file” basis. The Industrial Design Act does not provide for any rights in unregistered designs, although certain such rights may arise under trade-mark or copyright laws.

*How Enforced.* The right holder can sue for infringement under the Industrial Design Act, which provides that the court may make orders for relief by way of injunction and/or the recovery of damages or profits.

*Length of Protection.* The owner of a registered industrial design has exclusive rights to it beginning on the date of registration and ending the later of 10 years from the registration date and 15 years from the filing date, provided the prescribed maintenance fees are paid. A registered industrial design cannot be renewed.

## COPYRIGHT

*Nature of Right.* There are four categories of works which are protected by copyright law: literary works; artistic works; dramatic works; and musical works. Copyright does not exist in ideas themselves, but only in the original, fixed expression of ideas.

Copyright law provides the copyright owner with certain exclusive rights, including the right to produce, reproduce, perform or publish a work. In addition, copyright law provides for moral rights that are specific to the author of a work. Moral rights include the right to the integrity of the work and the right to be associated with the work as its author. Moral rights cannot be assigned and can only be waived by the author.

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

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

*How Enforced.* Copyright can be enforced by the copyright holder through common law remedies and/or federal *Copyright Act, RSC 1985*, remedies such as injunctive, monetary, and/or other forms of relief.

*Length of Protection.* In most works, copyright subsists for the life of the author, the remainder of the year in which the author dies, plus 70 years. If the author is unknown, the term of copyright will expire 75 years after the year in which the work is made or, if published before the copyright expires, will expire the earlier of 75 years after the end of the year the work was first published, and 100 years after the year in which the work was made. Copyright cannot be renewed.

## CONFIDENTIAL INFORMATION

*Nature of Right.* Trade secrets and other confidential information are maintained in strict confidence by their owners, who rely on contractual obligations imposed on recipients to ensure the protection of such information. Legal protection against disclosure and unauthorized use is grounded in court rulings under the common law.

*How Protected.* To be protected, the information must generally have been acquired in circumstances that give rise to an obligation of confidence. The most common example is the employer-employee relationship.

*How Enforced.* Owners of trade secrets may seek redress through the courts if their information is disclosed or misused. Common grounds for redress include breach of confidence and breach of fiduciary duty under the common law. Owners also have a duty to document the creation and use of the trade secrets, as well as the measures taken to keep them confidential.

*Length of Protection.* Trade secret protection lasts as long as the owner is able to maintain the confidentiality of the information.

## MARKETING AGREEMENTS

*Agency.* While there is no overarching legislation governing agency relationships in British Columbia, individuals acting as agents or brokers in certain industries are subject to industry-specific statutes, including the *Real Estate Services Act SBC 2004*, *Mortgage Brokers Act RSBC 1996*, and *Securities Act RSBC 1996*.

*Distribution.* While there is no overarching legislation specifically governing distribution in British Columbia, there are industry-specific regimes, such as the *Liquor Distribution Act RSBC 1996*, and the *Cannabis Distribution Act SBC 2018*.

*Franchising.* Franchising in British Columbia is governed by the *Franchises Act SBC 2015* and the associated *Franchises Regulation BC Reg 238/2016* (Franchises Regulation). Franchisors carrying on business in British Columbia must provide a disclosure document to a prospective franchisees before entering into a franchise agreement, with the required consents set out in the Franchises Regulation. Disclosure must also be provided to existing franchisees on certain prescribed occasions. While there is no regulatory body responsible for administering or enforcing the legislation, certain court remedies are available for non-compliance.

## E-COMMERCE

E-commerce in British Columbia is regulated by the *Electronic Transactions Act, SBC 2001* which sets out rules for conducting business transactions electronically and governs the validity of electronic contracts and electronic signatures. The federal *Personal Information Protection and Electronic Documents Act, SC 2000* applies to companies that operate under federal jurisdiction and provides guidelines relating to electronic signatures. Additionally, Canada's Anti-Spam Legislation (CASL) protects consumers and businesses by imposing consent requirements and restrictions on commercial electronic messages.

On April 27, 2023, the *Online Streaming Act, SC 2023* (Online Streaming Act) amended the *Broadcasting Act SC 1991* and began regulating commercial content distributed via streaming services and social media platforms in Canada. The Online Streaming Act aims to ensure that Canadian stores and music are widely available on streaming platforms.

The *Competition Act* governs business conduct in Canada (see above) and applies equally to both online and offline business. The deceptive marketing practices provisions apply to anyone promoting a product, service, or business interest, including online influencers. Influencers should disclose all material connections they have with the business, product or service they are promoting. This includes payments, discounts, in kind-consideration, or special relationships.

## PRODUCT LIABILITY

Product safety falls within both federal and provincial jurisdiction, with a variety of legislation regulating a wide range of products. The following federal statutes, among others, regulate product-safety Canada-wide:

- *Canada Consumer Product Safety Act, SC 2010.*
- *Food and Drugs Act, RSC 1985.*
- *Consumer Packaging and Labelling Act, RSC 1985.*
- *Radiation Emitting Devices Act., RSC 1985.*
- *Hazardous Products Act., RSC 1985.*

British Columbia's *Safety Standards Act, SBC 2003*, regulates the safety of several products and forms of regulated work, such as electrical and gas equipment, boilers and boiler systems, refrigeration equipment, elevators and other passenger conveyors. The provincial *Sale of Goods Act, RSBC 1996*, implies statutory warranties of quality and fitness for purpose of goods and products that are sold within the province (which can be excluded by contract). In addition, the provincial *Business Practices and Consumer Protection Act, SBC 2004*, regulates the advertising and marketing of products that are sold to consumers in the province.

Product liability in British Columbia is also governed by the common law, particularly the law of negligence. Under the common law, manufacturers generally have a post-sale duty to warn consumers and users about defects or dangers that become known after the product has been manufactured and sold. In addition, certain categories of products may attract specific post-sale duties under the common law.

## DATA PROTECTION

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

### PROVINCIAL

*Freedom of Information and Protection of Privacy Act, RSBC 1996.* This Act governs the collection, use and disclosure of personal information by provincial departments, agencies and government corporations, and provides individuals a right of access to personal information being held by such public bodies. The Act also establishes rules that provincial public bodies must follow in responding to access to information requests.

*Personal Information Protection Act, SBC 2003.* This Act governs the collection, use and disclosure of personal information by private sector organizations (both companies and not-for-profits) in British Columbia, and provides individuals a right of access to personal information being held by such organizations.

### FEDERAL

*Personal Information Protection and Electronic Documents Act, SC 2000.* This Act applies to federally-regulated private sector organizations (i.e., in the transportation, communications, broadcasting, federal banking and offshore sectors), as well as to the collection, use and disclosure of personal information by provincially-regulated private sector organizations across provincial and international borders in the course of commercial activities.

*Privacy Act, RSC 1985 (Privacy Act).* This Act governs the collection, use and disclosure of personal information by federally regulated bodies (including federal departments, agencies and government corporations), including those operating in British Columbia.

*Access to Information Act, RSC 1985.* This Act provides individuals a right of access to personal information being held by the public bodies regulated under the Privacy Act.

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