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SWITZERLAND GLOBAL ENTERPRISE

Canada

Legal Provisions

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CONTENTS

GENERAL REMARKS 3
CUSTOMS LAW AND DUTIES 3
IMPORT REGULATIONS / NON-TARIFF RESTRICTIONS 4
PRODUCT REGISTRATION AND TECHNICAL STANDARDS 4
CURRENCY REGULATIONS AND OTHER TRANSFER RESTRICTIONS 6
COMMERCIAL REGISTRATION AND LEGAL FORMS OF COMPANIES 6
TAXES 7
REGULATIONS GOVERNING SALES AGENTS AND COMMERCIAL REPRESENTATIVES 8
ENTRY CONDITIONS FOR STAFF PERFORMING MAINTENANCE OR REPAIR SERVICES 9
PROTECTION OF INTELLECTUAL PROPERTY 9
PROCEDURES FOR COLLECTING PAYMENT 9
ENFORCING COMMERCIAL CONTRACTS AND RESOLVING DISPUTES 10
OVERVIEW OF PUBLIC PROCUREMENT SYSTEM 11
SOURCES OF INFORMATION AND REFERENCES 11

GENERAL REMARKS

Canada has a diversified economy. Its free-market economy ranges from small owner operated enterprises to multinational corporations. Resource industries such as forestry, mining, energy, agriculture and fishing are an important source of jobs and wealth. However, Canada is also recognized as a world leader in high technology areas such as communications and artificial intelligence.

Canada has two official languages, English and French. The majority of the French-speaking population is concentrated in Quebec with significant minorities in New Brunswick and Ontario. The federal government has undertaken an active role in encouraging and facilitating bilingualism throughout Canada, particularly in public service and in public institutions.

Quebec is different from other Canadian provinces in several respects, most notably because 80 % of its population predominantly speaks French. The Charter of the French Language, administered by the *Office québécois de la langue française* (OQLF), imposes certain obligations for using the French language at work and in commerce, education, legislation and professional orders.

Banks, loan and trust companies, insurance companies, pension funds, and other financial institutions that accept deposits from the public or act in some fiduciary capacity are closely controlled, primarily by the federal government, but with some provincial involvement. The Office of the Superintendent of Financial Institutions (OSFI) was created in 1987 by an Act of Parliament, OSFI has a mandate to safeguard depositors, policyholders and pension plan members from undue loss, and to advance and administer a regulatory framework that contributes to public confidence in a competitive financial system.

The Canada Deposit Insurance Corporation (CDIC) is a federal Crown corporation created by Parliament. CDIC insures Canadians' savings in case their bank or other CDIC member institution fails or goes bankrupt.

The securities market is strictly regulated. The Toronto Stock Exchange publicly known as the "TSX" is the largest stock exchange in Canada. Based in Canada's largest city, Toronto, it is owned and operated by TMX Group. TMX Group has trading capability in cash equities, fixed income, derivatives and energy. Its trading strategy includes best-in-class technology solutions, innovative new trading products and a competitive pricing model that encourages increased trading and order flow Montréal Exchange "MX", wholly-owned by TMX Group, is Canada's oldest exchange and is a fully electronic exchange dedicated to the development of the Canadian derivative markets. https://www.m-x.ca/en/

The Ontario Securities Commission administers and enforces securities legislation in the Province of Ontario. Its mandate is to protect investors from unfair, improper and fraudulent practices and to foster fair and efficient capital markets.

There are no restrictions on the amount of money that a person can bring into or take out of Canada, nor is it illegal to do so. However, all physical importations and exportations of currency and monetary instruments equal to or greater than CAD 10'000, or its equivalent in a foreign currency, must be reported to the Canada Border Service Agency at the time of your arrival in Canada or prior to your departure from Canada.

All levels of government have departments that are engaged in environmental affairs. The main regulatory body at the federal level is Environment Canada.

CUSTOMS LAW AND DUTIES

Canada is a member of the World Trade Organisation (WTO). Canada imposes customs duties on imported goods in accordance with internationally established systems governing value for duty and tariff classification. Canada's customs tariff is based on the World Customs Organization's (WCO) Harmonized Commodity Description and Coding System (HS), which has been adopted by most major trading nations. For all tariff items there are two basic rates of duty: one under the Most-Favoured-Nation (MFN) Tariff, and the other under the General Preferential Tariff (GPT).

Pursuant to the Canada-EFTA Free Trade Agreement (2009), Canada has assigned a new tariff treatment code for Switzerland and Liechtenstein: Switzerland-Liechtenstein Tariff (SLT) – Code 24. SLT codes are listed in the Canadian Customs Tariff under the column Applicable Preferential Tariffs. Most industrial goods, including fish and other marine products, benefit from duty-free access to the respective markets as of the entry into force of the Agreement. At the time of entry into force it was Canada's first Free Trade Agreement concluded with a batch of European countries.

Since 2017, the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) presents Canadian businesses with preferential access to the European Union (EU) countries. CETA sets new standards for trade in goods and services, non-tariff barriers, investment, government procurement, and other areas like labour and the environment. The EU is Canada's second-largest trading partner after the United States. The EU's annual imports alone are worth more than Canada's GDP.

The Canada-United States-Mexico Agreement (CUSMA) entered into force on July 1, 2020, substituting the North America Free Trade Agreement (NAFTA) and reinforcing Canada's strong economic ties with the United States and Mexico. The CUSMA outcomes preserve key elements of the long-lasting trading relationship and incorporate new and updated provisions that seek to address 21st-century trade issues and promote opportunities for the nearly half a billion people who call North America home.

Canada has currently 15 free trade agreements in force. The complete list is accessible here.

The Anti-dumping and Countervailing Program of the Canada Border Services Agency (CBSA) provides help to Canadian producers who face unfair foreign competition in the Canadian market place. The CBSA is responsible for the administration of the Special Import Measures Act (SIMA), which helps to protect Canadian industry from injury caused by the dumping and subsidizing of imported goods.

IMPORT REGULATIONS / NON-TARIFF RESTRICTIONS

Canada has an open economy with relatively few import restrictions. However, some goods may be imported only if an import permit has been obtained, e.g.: agricultural products (e.g. cheese), steel products, firearms as well as textiles and clothing. Goods and technology of some categories, certain origins and going to certain destinations require an export permit: Military and strategic goods and technology, softwood lumber, firearms, sugar and sugar containing products, peanut butter, logs and U.S.-origin goods and technology.

Permits are issued by the Trade Controls & Technical Barriers Bureau (TID) of the Department of Foreign Affairs and International Trade. Most imports are cleared through customs by licensed customs brokers familiar with all the import requirements.

The Canada Border Services Agency (CBSA) created a step-by-step guide to help small and medium enterprises that import goods occasionally or are importing for the first time.

PRODUCT REGISTRATION AND TECHNICAL STANDARDS

The Patent Act and Rules describe the procedures for obtaining and enforcing patent rights in Canada. Both Canada and Switzerland have signed the Patent Cooperation Treaty (PCT). The life of a patent in Canada is 20 years from the date the application was first filed. Payment of maintenance fees throughout the life of the patent is also required to keep it in force. More details here and here.

The Trade-marks Act and Regulations provide for the registration of trademarks and the enforcement of registered marks. A registration is valid for 15 years and is renewable every 15 years thereafter upon payment of a fee.

Copyright protection in Canada is governed by the Copyright Act and Regulations. Protection is automatic, without any formality, although copyrights may be registered with the Copyright Office. Generally, copyright in Canada exists for the life of the author plus 50 years following his or her death. Copyright protection always expires December 31 of the last calendar year of protection.

Canada adheres to various international agreements including the Paris Convention for the Protection of Industrial Property and the Berne Convention.

The Industrial Designs Act provides some protection to the author of an industrial design. An industrial design is defined as the visual features of shape, configuration, pattern or ornament (or any combination of these) applied to a finished article of manufacture. It may be, for example, the shape of a table or the ornamentation on the handle of a spoon. The article can be made by hand, tool or machine. Obtaining registration for an industrial design will give an inventor exclusive rights for a period of ten years from the date of registration. In order to protect the registration for another five years, a maintenance fee has to be paid before the fifth anniversary of the registration date.

Standards

Canada's federal and provincial governments set mandatory standards for the performance of safety of many products and services. Electrical wiring, equipment and appliances are an example of a category that is relatively rigorously regulated. Numerous business associations also set voluntary standards for their industries or for certain aspects of their businesses.

Efforts are made to avoid duplication between federal and provincial governments in setting standards. In the case of the rules governing electrical safety standards, for example, each province has adopted the Canadian Standards Association's guidelines in its regulations as well as its certification services. Nonetheless, investors should be aware of the two levels of regulation involved and consult the relevant government departments or experts in the applicable field.

The **Standard Council of Canada (SCC**) is an independent agency responsible for the promotion of voluntary standardization in Canada. The SCC coordinates the National Standards System, a federation of organizations providing standardization of services. Members of the national Standards System write standards, tests, and certify products and register the quality systems of companies. The SCC operates accreditation programs for members of the system. It is also Canada's voice in the International Standards Organization and the International Electro technical Commission.

Companies producing certain goods in Canada can benefit from having their products certified by one of the accredited certification organizations. This allows the manufacturer to use certification marks subject to regular checks to ensure that the item continues to meet the standard involved. Canadian companies also have the opportunity to provide input into the development of international standards through the SCC.

The **Canadian General Standards Board (CGSB)** is a federal government organization that offers client-centred, comprehensive standards development and conformity assessment services in support of the economic, regulatory, procurement, health, safety and environmental interests of our stakeholders — government, industry and consumers.

The **Canadian Standards Association**, a not-for-profit membership-based association, is serving business, industry, government and consumers in Canada. The CSA develops standards that address issues such as enhancing public safety and health, advancing the quality of life and helping to preserve the environment. The CSA mark appears on a wide variety of qualified products manufactured for consumer, commercial and industrial uses. Examples include: gas and electrical appliances, HVAC (heating, ventilation and air conditioning) systems and components, lighting products, home entertainment products, industrial controls and switchgear, electro-medical and laboratory equipment, plumbing products, recreational vehicles, process controls, power supplies, sport and personal safety devices, and information technology equipment.

The Canada Consumer Product Safety Act applies to suppliers of consumer products in Canada, including manufacturers, importers, distributors, advertisers and retailers. The Act recognizes that suppliers of consumer products have an essential role to play in addressing any dangers to human health or safety that may be posed by these products in today's global marketplace

CURRENCY REGULATIONS AND OTHER TRANSFER RESTRICTIONS

The monetary unit is the Canadian dollar, which is divided into 100 cents. The dollar is denoted internally by the symbol $ and externally by the symbol CAD. The Canadian dollar is fully convertible. Canada has no exchange controls. However, a person has to report to a customs officer amounts equal to or greater than CAD 10,000, or its equivalent in a foreign currency that he or she is bringing into or taking out of Canada.

COMMERCIAL REGISTRATION AND LEGAL FORMS OF COMPANIES

The principal forms of business enterprise available in Canada are the following:

Corporation: A corporation is an entity with legal status independent of its shareholders. Corporations utilized by foreign investors are usually created by incorporation under the Canada Business Corporations Act (CBCA) or under similar provincial laws. Some types of corporations can be formed under other federal legislations, such as the Trust and Loans Companies Act, or under provincial equivalents. Both the federal parliament and provincial legislatures can also form corporations by special acts.

A corporation can be incorporated by individuals or other corporations. Both federal and provincial corporations are created by filing articles of incorporation with the appropriate government authorities. The articles must include details of the rights, restrictions, privileges and conditions attached to each class of shares. Corporations may have any number of shares of one or more classes but at least one class must have full voting rights.

A federal corporation's articles must also name the first directors, a minimum of 25 % of whom must be resident Canadians. While the directors generally exercise management authority on behalf of the shareholders, their power can be restricted through a unanimous shareholder agreement. The corporation, its shareholders or third parties can hold the directors personally liable for certain aspects of their decisions.

Provincial incorporation is often used when a corporation intends to restrict its activities to one province. The provincial acts governing corporations vary somewhat, and, while many of their provisions are similar to those of the CBCA, there are number of differences in some of the provinces

- **Alberta**: www.qp.alberta.ca/documents/Acts/B09.pdf
- **British Columbia**: www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/02057_01
- **Manitoba**. http://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=c225
- **Ontario:** http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90b16_e.htm
- **Quebec**:http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2009C52A.PDF
- **Saskatchewan:** https://publications.saskatchewan.ca/#/products/113407

Branches of Foreign Corporations: While most foreign investors elect to conduct business in Canada through a Canadian corporation, a foreign entity can carry on a business in Canada directly, through a branch operation. The branch must be licensed or registered in each of the provinces in which it will operate. The taxation of branches and subsidiaries varies considerably, and differences exist in the liability of parent companies.

Partnership: A partnership is a business owned by two or more individuals or corporations, based on a contract between them. Partnerships are governed by provincial legislation and generally must be registered with provincial authorities. There are three types of partnership: general, limited and limited liability.

In a general partnership, all partners are subject to unlimited liability. Unless otherwise agreed, the partners have an equal claim on capital and profits, and are equally responsible for all losses, debts and liabilities of the partnership.

A limited partnership consists of both general and limited partners. One or more general partners are responsible for managing the business. One or more limited partners contribute capital, and may work for the firm, but do not participate in its management. Unlike general partners, limited partners are not exposed to unlimited liability unless they take part in the control or management of the business. The

partnership legislation of several provinces, including Ontario and Alberta, has been amended in recent years to make provision for limited liability partnerships in certain professions. Generally, in a limited liability partnership a partner is not exposed to liability for the acts of another partner who is not under his or her direct supervision or control.

Sole proprietorship: A sole proprietorship is a business owned by one person. The owner is entitled to all profits and is personally liable for all debts and other liabilities of the business. This liability can be limited by contract or covered by insurance. There is no registration required to a sole proprietorship which operates under its owner's name. Nonetheless, in some jurisdictions an operating license may be required to conduct certain types of business. If the sole proprietorship will operate under some other name, such as by adding "and Company" to the owner's name, a declaration must be filed in each province in which the business operates.

Joint venture: A joint venture is an association of two or more business entities for the purpose of carrying on a single enterprise or specific venture. Joint ventures take several forms. They can be set up through a separate corporation, a general or limited partnership, or the joint ventures can simply jointly own business assets. Joint ventures between Canadian and foreign companies are an excellent vehicle for combining the strengths of the participating firms, while reducing the risk of taking on new markets.

Franchises: A franchise is a business relationship in which a franchise contracts for the right to sell proprietary products or services using business names, styles and methods developed by the franchisor. The franchisee generally agrees to comply with performance standards set by the franchisor. In return, the franchisee normally pays an up-front fee as well as ongoing royalties. A simple franchise agreement typically gives the franchisee the right to operate a single outlet at a specific location. A master franchise agreement generally provides for multiple outlets within a specified area. All franchises must comply with federal competition and trade-mark legislation, as well as any other legislation governing businesses generally. Alberta and Ontario are the only provinces that currently have legislation regulating franchises.

TAXES

The federal, provincial, territorial and municipal levels of government impose taxes in Canada. The bulk of total government revenues in Canada are attributable to the various taxes imposed by the federal government, which in turn makes tax-sharing payments and grants to provincial, territorial and municipal governments. The principal sources of government tax revenues in Canada are as follows:

Federal:

- Income tax
- Capital tax
- Goods and services Tax (GST)
- Harmonised sales tax (HST) (only in New Brunswick, Newfoundland, Nova Scotia, Ontario and Prince Edward Island)
- Excise taxes and customs and excise duties

Provincial and territorial governments:

- Income tax
- Retail sales tax (except Alberta, Prince Edward Island, New Brunswick, Newfoundland, Nova Scotia, and the Northwest, Nunavut and Yukon Territories)
- Mining taxes
- Natural resource royalties
- Capital taxes (except the Northwest, Nunavut and Yukon Territories)
- Land transfer tax

Municipal governments:

- Real property taxes
- Business taxes

The Checklist for Canadian Small Business provides comprehensive information on a broad range of business tax issues, such as the GST/HST, excise taxes and duties, payroll deductions, and income tax.

The Goods and Services Tax (GST) is a consumption tax similar to the VAT in Switzerland. Designated to be paid by the ultimate consumer or purchaser, it is collected throughout the production and distribution chain by businesses or vendors (registrants), which serve as agents of the federal government. The tax is levied at a rate of 5 % on the sale of goods or the provision of services. It usually becomes payable by the recipient of the supply at the time of purchase. Registrants are entitled to an input credit for the tax paid on their purchase. The net amount is remitted to the government periodically.

Excise taxes are imposed on certain products such as petroleum, heavy automobiles, air conditioners designed for automobiles. There is also a tax imposed on insurance premiums and a charge imposed under the Air Travellers Security Charge Act. In addition, excise duties are imposed on the production of beer, spirits and tobacco products at various rates. Excise taxes are also levied by provincial governments.

Each of the provinces imposes a Retail Sales Tax (Provincial Sales Tax), with the exception of the following:

- Quebec, which uses a form of tax similar to the GST
- Alberta, which does not impose any provincial sales taxes
- The provinces participating in the Harmonised Sales Tax (HST)

Provincial sales taxes are imposed on purchasers or importers (consumers) of goods, which, in general, include tangible personal property and specified services in the relevant province. New Brunswick, Newfoundland, Nova Scotia, Ontario and Prince Edward Island harmonised the provincial retail sales tax with the federal GST. The **Harmonised Sales Tax (HST)** operates in accordance with the GST rules, but tax is levied at 13% or 15% (rather than 5 %) with respect to supplies made in these provinces. Complex place-of-supply rules determine where a supply is deemed to have been made for the purposes of the HST.

Switzerland and Canada have signed a convention for the avoidance of double taxation with respect to taxes on income and on capital.

REGULATIONS GOVERNING SALES AGENTS AND COMMERCIAL REPRESENTATIVES

There are several options available to suppliers for establishing a distribution structure. The most common structures and their principal features are outlined below:

- **Direct distribution**, where the foreign supplier uses a Canadian subsidiary or its own employees to sell goods in Canada.
- **Independent agents and representatives**, where the supplier relies on an agent or representative to originate sales of goods in Canada and pays them a commission on the goods sold to customers in Canada.
- **Trademark licensing**, where the supplier gives a Canadian entity a licence entitling it to use its intellectual property rights to manufacture and distribute goods for the Canadian market; franchises, which give rise to special considerations given that several Canadian provinces (namely, Ontario, British Columbia, Alberta, Prince Edward Island, New Brunswick and Manitoba), have enacted franchise-specific legislation (the Franchise Acts), under which the term ‘franchise’ is broadly defined - as a result, a variety of other contractual relationships, including distribution, agency and trademark licensing agreements, may possibly be encompassed.
- **Private label**, where a Canadian distributor sells the foreign supplier’s products under its own name and trademark. This allows the foreign supplier to sell products in Canada while having the benefit of being recognised under local brand name, but generally provides very little control by the supplier.
- **Joint ventures**, where the supplier relies on a local distribution partner that is owned in part by the supplier.

Each of the above can be established by a contractual arrangement and the parties are generally free to determine their respective rights and obligations under the agreement, subject to certain restrictions.

ENTRY CONDITIONS FOR STAFF PERFORMING MAINTENANCE OR REPAIR SERVICES

Since 2015, the labour market impact assessment (LMIA) exemption C13 has been expanded in order to allow non-Canadian technicians into Canada on an expedited basis when industrial machinery needing repair is no longer under warranty or the entry is not supported by an “after-sales” or lease agreement. To qualify for a work permit under this exemption:

- The repair technician must have specific knowledge about the machinery.
- The company that manufactured the machinery being serviced must have no commercial presence in Canada; and
- There must be evidence that Canadian jobs will be greatly affected if the machinery is not repaired in a timely fashion.

The responsibility is on the foreign worker to provide evidence that the worker meets these requirements. Such evidence may include a letter from the home employer outlining the foreign worker’s status with the company, the purpose of the visit and evidence that the worker has the specialized knowledge required to repair the machinery (copies of degrees, any required professional licences or certifications, a copy of the curriculum vitae). The admission under this exemption is expected to be of short duration (less than 30 calendar days).

As with all LMIA exempt work permit applications, the employer is required to pay a $230 employer compliance fee, and complete and submit the Offer of Employment to a Foreign National Exempt from a Labour Market Impact Assessment form (IMM 5802) before the worker can apply for a work permit. At the time of the application, the foreign worker will also be required to pay a 155 Canadian dollar processing fee. The application can be made at any border office provided the technician is a citizen of a visa exempt country, such as Switzerland.

PROTECTION OF INTELLECTUAL PROPERTY

Swiss companies are advised to contact the Swiss Federal Institute of Intellectual Property (Eidg. Institut für Geistiges Eigentum/Institut Fédéral de la Propriété Intellectuelle) in Bern for the protection of their patent in Canada.

The Personal Information Protection and Electronic Documents Act (PIPEDA) supports and promotes electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record in-formation or transactions.

The Internet’s domain name system and the Internet-based practice of meta-tagging present the intellectual property system and especially trade-mark law with some interesting challenges. To obtain a Canadian “.ca” registration, a would-be registrant must meet certain Canadian-presence requirements. These present certain challenges for foreign entities that do not wish to incorporate in Canada. The Canadian Internet Registration Authority (CIRA) Domain Name Dispute Resolution Policy (CDRP) is an online domain name dispute resolution process for the “.ca” domain community.

PROCEDURES FOR COLLECTING PAYMENT

There are debt collection agencies with networks allowing them to act all over Canada. Third party-collectors are regulated in Ontario by the Collection Agencies Act., in Quebec by "La loi sur le re-couvrement de certaines créances", in British Columbia by the Business Practices and Consumer Protection Act and the Fair Trading Act in Alberta.

ENFORCING COMMERCIAL CONTRACTS AND RESOLVING DISPUTES

Should issues arise, there are two basic options available for dispute resolution in Canada: litigating through the courts and alternative dispute resolution (mediation and arbitration).

Litigating through the courts

a) Choice of governing law and forum

In Canada, parties may choose which laws govern their agreement through the inclusion of a “choice of law” clause. However, this clause is subject to certain limitations, such as legal provisions of public order, which may not be contractually waived. Parties can also include a “choice of forum” clause in their contract, requiring any disputes that arise to be dealt with in a specific jurisdiction or forum.

Canadian courts will presumptively uphold such clauses unless the validity of the contract itself is called into question, there is a statutory prohibition, or there are very strong public policy reasons for overriding the provision.

Where parties have not included a forum clause, Canadian courts may decline to take jurisdiction over matters if there is a forum better suited to hear the case.

Canadian courts are increasingly open to conducting various parts of the litigation process, including examinations, hearings, and even trials, virtually through video-conferencing software. Thus, even if the litigation forum is within Canada, witnesses and other participants may not need to attend in-person. While this adoption was accelerated by the difficulties surrounding the COVID-19 pandemic, these changes are widely expected to continue.

a) Treatment of commercial matters

Several Canadian jurisdictions have taken steps recently to reform and speed up the litigation process, particularly with respect to commercial matters. In Toronto, parties in a commercial dispute can opt to proceed before a special branch of the Superior Court known as the “Commercial List.” If available, it is generally the preferred route as it allows cases to be heard by a judge specializing in commercial litigation, often resulting in a speedier trial and decision.

In the province of Quebec, pursuant to legislation that came into effect on January 1, 2016, parties to an eventual litigation have the obligation to consider alternative dispute resolution methods before introducing a civil claim. The legislation also encourages litigators to present oral contestations (rather than proceeding in writing), which significantly reduces fees and costs.

b) Costs

In the United States, parties in a dispute typically pay their own legal costs. By contrast, the general rule in Canadian courts is that a portion of the costs of litigation is ordered to be paid by the losing party to the successful one.

Alternative dispute resolution: mediation and arbitration

a) Mediation

In mediation, a neutral third-party mediator assists parties in settling a dispute. Mediation is a more amicable and co-operative process than other forms of dispute resolution, which are based on an adversarial model. In addition, mediation tends to focus on practical, as opposed to strictly legal, solutions to particular disputes.

Mediators do not decide cases or impose settlements. A mediation depends on the commitment and good faith of the parties involved in order to succeed. Following a successful mediation, parties generally enter into an agreement to resolve a dispute.

In certain Canadian courts, parties may be obligated to attend a mediation session as part of the litigation pretrial procedure – a requirement that is increasingly being implemented as caseloads continue to grow. Upon request, Quebec courts can provide the parties involved in a litigation with the service of a judge-assisted mediation.

b) Arbitration

Arbitration can be a highly effective means of resolving disputes between two commercial parties. It is a more formal process than mediation because the tribunal considers evidence and legal arguments from the counsel of the respective parties. In contrast to the mediation process, arbitration proceedings are legally binding and arbitration awards are enforceable.

Arbitration is generally confidential by nature with most jurisdictions requiring confidentiality unless otherwise agreed to by the parties. In certain jurisdictions, the only parties bound by a duty of confidentiality in an arbitration are the arbitrators, requiring the parties in a dispute to agree to a confidentiality agreement at the outset if desired. In any event, arbitration is private, taking the dispute out of the public eye because it is not held in the courts.

OVERVIEW OF PUBLIC PROCUREMENT SYSTEM

The rules governing public procurement in Canada stem from a number of legal sources, including trade agreements, legislation and the common law. In Canada, the common law on public procurement has been established over the past 30+ years.

In Canada, competitive procurement is the primary method used by public entities to procure goods, services, and construction. Procuring entities are not required to lower their legitimate operational requirements to increase opportunities for bidders who would otherwise not be able to succeed in a competition. But if a competition is to be held, the requirements must be defined in a manner that allows for competition.

Government procurement in Canada has been subject to trade agreements for decades, and Canada's promotion of plurilateral and bilateral trade agreements remains very active. More-recent trade agreements, such as the Canada–European Union Comprehensive Economic and Trade Agreement (CETA), have introduced further access to international trade and expanded the application of various trade agreements to territorial, provincial, municipal, academic, school, and hospital sectors. That being said, the free trade agreement between Canada and EFTA (which Switzerland is a member of) is a goods-only trade agreement. Consequently, in most cases Swiss companies are not allowed to bid directly on public tenders in Canada. However Swiss companies can circumvent this obstacle to some extent by partnering with a local Canadian counterpart.

SOURCES OF INFORMATION AND REFERENCES

In addition to above-mentioned websites, information for this paper was also drawn from the publications Doing Business in Canada by Ernst & Young, the business and litigation law firm Fasken and Martineau as well as the Canadian law firms McCarthy Tétrault and McMillan.

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