

# Canada

## Legal Provisions

Compiled by: Swiss Business Hub Canada

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### 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 imposes certain obligations for using the French language at work and in commerce, education, legislation and professional orders.

[www.oqlf.gouv.qc.ca/](http://www.oqlf.gouv.qc.ca/)

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.

<http://www.osfi-bsif.gc.ca/Eng/Pages/default.aspx>

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.

<http://www.cdic.ca/home/Pages/default.aspx>

The securities market is strictly regulated. The Toronto Stock Exchange publicly known as the "TMX" 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. Natural Gas Exchange (NGX), a TMX Group subsidiary, is a leading North American exchange for the trading and clearing of natural gas and electricity contracts. CanDeal.ca Inc., an institutional fixed income trading system with office in Toronto and Montreal and is owned equally by Canada's 6 largest banks and TMX Group. Shorcan is a leading Canadian Inter-Dealer Brokerage firm that specializes in Canadian Fixed Income products and is wholly owned by TMX Group.

[www.tmx.com/](http://www.tmx.com/)

[www.m-x.ca/accueil\\_en.php](http://www.m-x.ca/accueil_en.php)

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.

[www.osc.gov.on.ca/](http://www.osc.gov.on.ca/)

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.

[www.cbsa-asfc.gc.ca/](http://www.cbsa-asfc.gc.ca/)

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

<http://www.ec.gc.ca/>

## **CUSTOMS**

Canada is a member of the World Trade Organisation (WTO).

[www.wto.org/](http://www.wto.org/)

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).

[www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html#current](http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html#current)

## **EFTA-CANADA FREE TRADE AGREEMENT (CEFTA)**

EFTA (comprising Switzerland, Liechtenstein, Norway and Iceland)-Canada Free Trade Agreement

**On July 1st 2009 the Free Trade Agreement and the complementary bilateral agreements on agriculture with the EFTA States came into force following ratification by Norway (27 June 2008), Iceland (30 June 2008), and Switzerland (24 April 2009).**

It is Canada's first Free Trade Agreement with European countries. Most industrial goods, including fish and other marine products, will benefit from duty-free access to the respective markets as of the entry into force of the Agreement. The elimination of barriers to trade and duty-free access to industrial products of each other's markets is expected to boost trade flows between Canada and EFTA countries. Other areas such as services, investment, and intellectual property may be discussed during the review process foreseen within the coming three years.

Pursuant to the CEFTA, 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**.

[www.efta.int/free-trade/free-trade-agreements/canada.aspx](http://www.efta.int/free-trade/free-trade-agreements/canada.aspx)

<http://www.international.gc.ca/commerce/index.aspx?lang=eng>

[www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html#current](http://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/menu-eng.html#current)

EFTA-Canada Free Trade Agreement: Opportunities for Swiss Business

[www.seco.admin.ch/dokumentation/publikation/00008/00023/02337/index.html?lang=en](http://www.seco.admin.ch/dokumentation/publikation/00008/00023/02337/index.html?lang=en)

**Canada's** associated Bilateral Agreements on **Agriculture with Switzerland** (including Liechtenstein) came into effect at the same time as the Free Trade Agreement on July 1, 2009.

<http://www.efta.int/free-trade/free-trade-agreements/canada>

Canada has a free-trade-agreement with the United States and Mexico (the North American Free Trade Agreement, (NAFTA)).

Exporters may take advantage of business growth in Canada by providing goods to companies manufacturing goods in Canada that are entitled to enter the United States and Mexico duty-free.

[www.nafta-sec-alena.org/](http://www.nafta-sec-alena.org/)

In addition, Canada currently has free trade agreements in place with Chile, Columbia, Costa Rica, Israel and Peru.

[www.dfait-maeci.gc.ca/tna-nac/reg-en.asp](http://www.dfait-maeci.gc.ca/tna-nac/reg-en.asp)

Health Products and Food Branch (HPFB), Department of Health of Canada, and the Federal Department of Home Affairs, Acting in the Name of the Federal Council of the Swiss Confederation have signed a Memorandum of Understanding (MOU) regarding Therapeutic Products on October 30, 2006. The purpose of this MOU is to establish an arrangement between the HPFB and Swiss-medic, Swiss Agency for Therapeutic Products, for the exchange of information and in protecting and promoting health in their respective countries. However, the MOU is not intended to be legally binding.

[www.news.admin.ch/message/index.html?lang=de&msg-id=7966](http://www.news.admin.ch/message/index.html?lang=de&msg-id=7966) (German)

[www.news.admin.ch/message/index.html?lang=fr&msg-id=7966](http://www.news.admin.ch/message/index.html?lang=fr&msg-id=7966) (French)

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.

[www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html)

### **IMPORT AND EXPORT REGULATIONS**

Canada has an open economy with relatively few import restrictions.

[www.international.gc.ca/controls-controles/index.aspx](http://www.international.gc.ca/controls-controles/index.aspx)

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

[www.international.gc.ca/controls-controles/about-a\\_propos/expor/before-avant.aspx?lang=eng&view=d](http://www.international.gc.ca/controls-controles/about-a_propos/expor/before-avant.aspx?lang=eng&view=d)

Permits are issued by the **Trade Controls & Technical Barriers Bureau (TID)** of the Department of Foreign Affairs and International Trade.

[www.international.gc.ca/controls-controles/about-a\\_propos/import/permits-licences.aspx?menu\\_id=13&menu=R](http://www.international.gc.ca/controls-controles/about-a_propos/import/permits-licences.aspx?menu_id=13&menu=R)  
<http://laws-lois.justice.gc.ca/eng/acts/E-19/index.html>

Most imports are cleared through customs by licensed customs brokers familiar with all the import requirements.

[www.international.gc.ca/controls-controles/report-rapports/list\\_liste/customs-douanes.aspx](http://www.international.gc.ca/controls-controles/report-rapports/list_liste/customs-douanes.aspx)  
[www.cscb.ca/](http://www.cscb.ca/)

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.

[www.cbsa-asfc.gc.ca/sme-pme/i-guide-eng.html](http://www.cbsa-asfc.gc.ca/sme-pme/i-guide-eng.html)

### **CURRENCY REGULATIONS**

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.

[www.cbsa-asfc.gc.ca/publications/pub/bsf5052-eng.html](http://www.cbsa-asfc.gc.ca/publications/pub/bsf5052-eng.html)  
[www.cbsa-asfc.gc.ca/security-securite/cbcr-dmte/menu-eng.html](http://www.cbsa-asfc.gc.ca/security-securite/cbcr-dmte/menu-eng.html)

### **REGISTRATION PROCEDURE FOR PRODUCTS**

The Patent Act and Rules describe the procedures for obtaining and enforcing patent rights in Canada.

<http://laws-lois.justice.gc.ca/eng/acts/P-4/>  
<http://laws-lois.justice.gc.ca/eng/regulations/SOR-96-423/index.html>

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.

[www.ige.ch/default.htm](http://www.ige.ch/default.htm)  
[www.wipo.int/pct/en/](http://www.wipo.int/pct/en/)

The Trade-marks Act and Regulations provide for the registration of trademarks and the enforcement of registered marks (Canada is not a member of the Madrid Union).

<http://laws.justice.gc.ca/en/T-13/index.html>  
<http://laws.justice.gc.ca/en/T-13/SOR-96-195/index.html>

A registration is valid for 15 years and is renewable every 15 years thereafter upon payment of a fee.

[www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h\\_wr00002.html?OpenDocument](http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00002.html?OpenDocument)

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.

<http://laws.justice.gc.ca/en/C-42/index.html>

<http://laws.justice.gc.ca/en/C-42/SOR-97-457/index.html>

[www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h\\_wr00003.html?OpenDocument](http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00003.html?OpenDocument)

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

[www.wipo.org/treaties/index.html](http://www.wipo.org/treaties/index.html)

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.

[www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h\\_wr00004.html?OpenDocument](http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00004.html?OpenDocument)

<http://laws.justice.gc.ca/en/I-9/index.html>

**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.**

[www.ige.ch](http://www.ige.ch)

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 information or transactions.

<http://laws.justice.gc.ca/en/P-8.6/>

## **Domain Names**

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.

[www.cira.ca/why-ca](http://www.cira.ca/why-ca)

[www.cira.ca/legal/cdrp/](http://www.cira.ca/legal/cdrp/)

### **STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS**

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.

[www.scc.ca/](http://www.scc.ca/)

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.

[www.tpsgc-pwgsc.gc.ca/ongc-cgsb/index-eng.html](http://www.tpsgc-pwgsc.gc.ca/ongc-cgsb/index-eng.html)

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.

[www.csa.ca/](http://www.csa.ca/)

### **The Canada Consumer Product Safety Act**

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

[www.hc-sc.gc.ca/cps-spc/legislation/acts-lois/ccpsa-lcspc/index-eng.php](http://www.hc-sc.gc.ca/cps-spc/legislation/acts-lois/ccpsa-lcspc/index-eng.php)

### **The Hazardous Products Act**

Consumer Product Safety of Health Canada establishes and enforces safety standards for consumer products. The Hazardous Products Act covers "any product, material or substance that is or contains a poisonous, toxic, flammable, explosive, corrosive, infectious, oxidizing or reactive product, which is or is likely to be a danger to the health and safety of the public; or any product designed for household, garden or personal use, for use in sports or recreational activities, as lifesaving equipment or as a toy, plaything or equipment for use by children, which is or is likely to be a danger to the health or safety of the public because of its design, construction or contents."

<http://laws-lois.justice.gc.ca/eng/acts/H-3/>

### **Ontario's Electricity Act and the Safety and Consumer Statutes Administration Act and**

**Regulations** establish the Electrical Safety Authority's (ESA) responsibility for regulating the safe use of electricity and equipment in Ontario, enforcing the Ontario Electrical Safety Code, and appointing Inspectors

[www.esasafe.com/Corporate/index.php](http://www.esasafe.com/Corporate/index.php)

Pre-packaged products sold in Canada are subject to statutory packaging and labelling requirements. Both the federal and provincial governments regulate these requirements, although the majority is done federally. The legislation protects consumers by demanding certain standards for merchandising products, articles, materials or substances.

The federal **Consumer Packaging and Labelling Act** contains packaging, labelling, sales, import and advertising requirements with respect to pre-packaged consumer products.

[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_01436.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_01436.html)

<http://laws.justice.gc.ca/en/C-38/>



Products excluded from the Packaging Act are:

- Drugs or devices regulated by the Federal Food and Drugs Act
- Consumer textiles are subject to the Textile Labelling Act.

[www.hc-sc.gc.ca/ahc-asc/activit/fdalo-bllad/index-eng.php](http://www.hc-sc.gc.ca/ahc-asc/activit/fdalo-bllad/index-eng.php)

<http://laws.justice.gc.ca/en/T-10/>

Labels affixed to a product must contain the bilingual identification of the product's name or its function. Furthermore, it must be displayed prominently and legibly on the package and the type must comply with legal height.

The package must not contain any false or misleading representation about the product. Misleading representations may also be enforced by the federal Competition Act and by provincial legislation (such as the Ontario Consumer Protection Act, the Quebec Consumer Protection Act, the British Columbia Business Practices and Consumer Protection Act or the Fair Trading Act in Alberta etc.).

<http://laws.justice.gc.ca/en/C-34/>

[http://www.e-laws.gov.on.ca/html/source/regs/english/2005/elaws\\_src\\_regs\\_r05017\\_e.htm](http://www.e-laws.gov.on.ca/html/source/regs/english/2005/elaws_src_regs_r05017_e.htm)

[http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/P\\_40\\_1/P\\_40\\_1\\_A.html](http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/P_40_1/P_40_1_A.html)

[www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/04002\\_00](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/04002_00)

<http://www.servicealberta.gov.ab.ca/>

Canadian packaging must be bilingual to accommodate French and English-speaking Canadians.

This means a message must be on the package twice - once in English and once in French.

All packaging should reflect Canadians' concerns about environmental issues, such as acid rain, and the need to reduce, reuse and recycle. Where possible, recycled paper and metals should be used.

The packaging should also include the recycling logo, where applicable, and should display additional environmental concern by the use of minimal and/or non-biodegradable packaging. The key Canadian legislation affecting packaging and labelling is the federal Consumer Packaging and Labelling Act.

Other legislation which has important information pertaining to packaging and labelling are the:

- Hazardous Products Act
- Food and Drugs Act and related Regulations (Foods, Drugs, Vitamins, Sweeteners, Controlled Drugs, Cosmetics, Food Additives, Medical Devices)
- Trade-marks Act
- Textile Labelling Act
- Charter of the French Language

<http://laws.justice.gc.ca/en/C-38/>

<http://laws.justice.gc.ca/en/H-3/>

<http://laws.justice.gc.ca/en/showtdm/cs/F-27>

<http://laws.justice.gc.ca/en/T-10/>

[http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C\\_11/C1\\_1\\_A.html](http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_11/C1_1_A.html)

Under the Natural Health Products Regulations, Natural Health Products (NHPs) are defined as: vitamins and minerals, herbal remedies, homeopathic medicines, traditional medicines such as traditional Chinese medicines, probiotics, and other products like amino acids and essential fatty acids.

NHPs must be safe for consideration as over-the-counter products and not require a prescription to be sold. Products requiring a prescription will continue to be regulated under the Food and Drug Regulations.

[www.hc-sc.gc.ca/dhp-mps/prodnatur/index-eng.php](http://www.hc-sc.gc.ca/dhp-mps/prodnatur/index-eng.php)

**Organic Products Regulations** require mandatory certification to the revised National Organic Standard for agricultural products represented as organic in international and inter-provincial trade, or that bear the federal organic agricultural product legend (or federal logo).

[www.inspection.gc.ca/english/fssa/orgbio/orgbioe.shtml](http://www.inspection.gc.ca/english/fssa/orgbio/orgbioe.shtml)

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2009-176/index.html>

<http://laws-lois.justice.gc.ca/eng/acts/C-0.4/>

**VegeCert** launched on May 30, 2012 its vegetarian and vegan certification. Food products qualifying for VegeCert's certification will have their packaging branded by the VegeCert symbol and the appropriate designation – either 'Certified Vegetarian' or 'Certified Vegan'

[www.vegecert.com](http://www.vegecert.com)

**Guidelines for Cosmetics** Manufacturers, Importers and Distributors

[www.hc-sc.gc.ca/cps-spc/pubs/indust/cosmet\\_guide/index-eng.php](http://www.hc-sc.gc.ca/cps-spc/pubs/indust/cosmet_guide/index-eng.php)

The **Guide to Importing Food Products Commercially** presents an **overview** of the federal regulatory and policy requirements for the **commercial importation** of food into Canada. It is designed for importers, consultants and those considering embarking on an import venture

[www.inspection.gc.ca/english/fssa/imp/guide1e.shtml](http://www.inspection.gc.ca/english/fssa/imp/guide1e.shtml)

## 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 British Columbia. However, British Columbians voted in a tax referendum to return to the goods and services tax (GST) and the provincial sales tax (PST), thus rejecting the harmonized sales tax (HST).
- Excise taxes and customs and excise duties Oils and gas royalties

[www.cra-adrc.gc.ca/menu-e.html](http://www.cra-adrc.gc.ca/menu-e.html)

### Provincial and territorial governments:

- Income tax
- Retail sales tax (except Alberta, 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 **Guide 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.

[www.cra-arc.gc.ca/E/pub/tg/rc4070/rc4070-11e.pdf](http://www.cra-arc.gc.ca/E/pub/tg/rc4070/rc4070-11e.pdf)

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 petroleum products, heavy automobiles, air conditioners designed for automobiles as well as clocks (The excise tax on all watches was eliminated on November 25, 2005). 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.

[www.cra-arc.gc.ca/tx/tchncl/xcsdy-eng.html](http://www.cra-arc.gc.ca/tx/tchncl/xcsdy-eng.html)

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; see below).

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 British Columbia 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 % (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.

[www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/menu-eng.html](http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/menu-eng.html)

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

[www.fin.gc.ca/treaties-conventions/in\\_force--eng.asp](http://www.fin.gc.ca/treaties-conventions/in_force--eng.asp)

## **COMMERCIAL LAW**

One federal criminal code applies throughout Canada. In other words, criminal laws are the same in all provinces. However, there are two different civil codes that deal with such matters as contracts, wills and property transactions. In Quebec, laws in these and related areas are based on the Code Napoléon for civil law. In all other provinces, these laws are based on British Common Law.

<http://laws-lois.justice.gc.ca/eng/>

[www.canlaw.com/rights/provlaws.htm](http://www.canlaw.com/rights/provlaws.htm)

## SETTING UP 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.

Federal: <http://laws-lois.justice.gc.ca/eng/acts/C-44/index.html>

Alberta: [www.qp.alberta.ca/documents/Acts/B09.pdf](http://www.qp.alberta.ca/documents/Acts/B09.pdf)

BC: [www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/02057\\_01](http://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](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 [www.qp.gov.sk.ca/documents/English/Statutes/Statutes/B10.pdf](http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/B10.pdf)

**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 opportunities:** 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 franchisee 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.

### **PROMOTION OF INVESTMENT**

Canada generally encourages foreign investment. Most industries are open to foreign investment. However, certain industries (e.g. broadcasting and public utilities), whose output is considered vital or in which there is little competition, are either government-owned or subject to substantial government regulations.

Industry Canada administers the Investment Canada Act that regulates foreign investment.

[www.ic.gc.ca/eic/site/ica-lic.nsf/eng/Home](http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/Home)

Financial institutions are subject to various investment restrictions designed to provide the public with a high degree of security for its deposits. The Office of the Superintendent of Financial Institutions is responsible for regulating all financial institutions falling under federal jurisdiction.

[www.osfi-bsif.gc.ca/](http://www.osfi-bsif.gc.ca/)

### **ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW**

A Swiss visitor needs a valid Swiss passport to enter Canada. Other nationals should check with the Canadian Visa Office.

Swiss residents have to apply for a Permanent or Temporary Resident Visa at the Visa Office of the Canadian Embassy in Paris. Applications for a Study Permit or a Work Permit can be submitted either at the Canadian Visa office at the Embassy in Paris or Berlin.

Bern: [www.canadainternational.gc.ca/switzerland-suisse/](http://www.canadainternational.gc.ca/switzerland-suisse/)

Berlin: <http://www.cic.gc.ca/english/information/offices/missions/berlin.asp>

Paris: <http://www.cic.gc.ca/english/information/offices/missions/paris.asp>

Visitors are generally admitted to Canada for up to six months from the original date of entry.

Extensions may be made within Canada and are normally not difficult to secure. Generally visitors are not allowed to work or study while in Canada without authorisation. Visitors to Canada are not eligible for provincial health coverage and are advised to obtain medical insurance for the period of their stay. Individuals wishing to work or study should apply early for a visa because it will take time to receive all the papers and certificates that are needed. Before leaving home, a person should also get a health insurance plan to pay for any hospital or medical services which may be needed while in Canada. Independent immigrants are selected according to the knowledge, skills and experience needed in Canada's labour market.

The rules and regulations governing both permanent and temporary entry to Canada are complex and ever-changing. It is therefore prudent for any company to become familiar with Canadian immigration laws before establishing a commercial presence in Canada.

[www.canadainternational.gc.ca/switzerland-suisse/](http://www.canadainternational.gc.ca/switzerland-suisse/)

#### **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 recouvrement de certaines créances", in British Columbia by the Business Practices and Consumer Protection Act and the Fair Trading Act in Alberta.

[www.ic.gc.ca/eic/site/oca-bc.nsf/eng/h\\_ca02149.html](http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/h_ca02149.html)

[www.collection-calls.ca/largest-canadian-agencies.html](http://www.collection-calls.ca/largest-canadian-agencies.html)

#### **SOURCES OF INFORMATION AND LINKS**

*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 firm McCarthy Tétrault.*

[www.ey.com/ca](http://www.ey.com/ca)

[www.fasken.com](http://www.fasken.com)

[www.mccarthy.ca/home.aspx](http://www.mccarthy.ca/home.aspx)

Date: 30<sup>th</sup> July 2014 (latest update July 2020)

Author's address: Swiss Business Hub Canada  
1572, Docteur-Penfield Avenue  
Montréal QC  
H3G 1C4, Canada  
[montreal.sbhcanada@eda.admin.ch](mailto:montreal.sbhcanada@eda.admin.ch)