

DOING BUSINESS IN CANADA:

TOP TEN THINGS THAT MAY SURPRISE YOU



Although Canada's legal system may be familiar to many foreign investors and companies, it has a number of unique aspects that may surprise you. Understanding these unique aspects of Canadian law is critical to your business success in Canada.

As one of Canada's leading law firms, **Gowling WLG** understands the challenges of establishing and conducting business in this country. Here are the top 10 things our team wants you to know:

1. MULTIPLE JURISDICTIONS

Most of the Canadian laws that affect day-to-day business operations are made by the country's 13 provinces and territories and there are some unique differences to be aware of if you intend to operate in multiple provinces/territories. These include residency requirements for directors, what it means to "carry on business" in the province and corresponding registration requirements, privacy obligations, language requirements and regulatory compliance.

2. LEGAL SYSTEMS

Unlike the common law system in the rest of Canada, the province of Quebec is a civil law jurisdiction. In addition, the *Quebec Charter of the French Language* mandates French as the official language of commerce, business, civil administration, labour relations and other areas in Quebec. This means that all work-related documents must be available to employees in French, including employment agreements, employer policies, and software or computer programs. Further, it is

prohibited for an employer to make knowledge of any language other than French a job requirement, unless the employer can establish that such language skills are truly necessary for the position.

3. COMBINING ENTITIES

In Canada, an amalgamation is a statutory means of combining two or more corporations into one continuing amalgamated corporation possessing all of the property, assets, rights and liabilities of each of the amalgamating corporations. Unlike a US merger, a Canadian amalgamation does not include the concept of a surviving corporation, nor do any of the amalgamating entities cease to exist on amalgamation.

4. TAXATION

Income taxes in Canada are based on residency of the taxpayer and not the taxpayer's citizenship. Also, while there are a few jurisdictions that allow the incorporation of an unlimited liability company (ULC), which can be taxed as a flow-through entity in the US, ULCs are not flow-through entities for Canadian income tax purposes.

5. PRIVACY

The transfer or storage of personal information outside of Canada is generally permissible in the private sector. However, there are varying restrictions imposed by some provincial privacy laws. For example, you may be required to ensure appropriate security of personal information before it is sent outside of Canada. Certain types



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of personal information (i.e. personal health information or information under the custody or control of public bodies) have specific restrictions on disclosure outside of Canada.

6. DAMAGES

As a general rule, awards for damages in Canada are considerably more modest than in the US. Jury trials are also much less common in civil matters. The losing party in a civil matter is usually required to pay some (and in some cases, all) of the winning party's legal costs.

7. EMPLOYMENT

Canada does not have employment "at will." Most employer-initiated terminations require the employer to give working notice or pay in lieu of notice. The length of notice required will depend on a number of factors, but older employees with very long term service have been awarded as much as 24 months. Also, business practices common in some jurisdictions can be difficult to execute in Canada. For example, non-competition agreements are often unenforceable on public policy grounds, drug and alcohol testing is severely restricted and reliance on criminal background checks is limited.

8. COPYRIGHT

Outside of a true employer/employee relationship, the concept of "work for hire" does not exist. An independent contractor is the first owner of copyright in works that they create, even if the works are commissioned and paid for by another party.

9. ANTI-SPAM

Canada has some of the most prescriptive and punitive anti-spam laws (CASL) anywhere in the world. It specifically prohibits the sending of unsolicited commercial electronic messages unless its requirements are met. Before sending any promotional or advertising emails, the recipient must have given consent (subject to specific exemptions). It also requires commercial messages to include specific disclosures and an unsubscribe mechanism. CASL applies to messages accessed by a computer in Canada, regardless of the residence of the sender.

10. TRADEMARKS

Canada's trademark licensing regime requires that the owner of a trademark exercise actual control over the goods and services provided by its licensees under the mark. Such control will not be assumed, however, simply because the licensor and licensee are related entities.

As a global, full-service law firm, Gowling WLG can handle your legal needs through our 18 offices as well as our extensive network of associate firms. We've been a trusted partner to US businesses for more than 100 years, helping them to seize opportunities, overcome complex challenges and achieve their goals.