

NON-RESIDENT INVESTMENT

IN ONTARIO/CANADA

1. INTRODUCTION

1.1 Overview

This manual provides concise summaries of information regarding the fundamental elements of Canada's legal system for residents and non-residents, particularly members of the international business community, interested in investing in or immigrating to Canada. Potential investors and business immigrants will be able to use this manual as an excellent starting point in assessing the various considerations involved with investment in Canada.

Although every effort has been made to ensure that the information supplied is accurate and up-to-date, the reader is advised to be cautious in relying upon generalizations without critical analysis. Accordingly, potential investors and immigrants should seek assistance from qualified Canadian professional advisors for an in-depth explanation and interpretation of particular subjects of interest to them. We are always prepared to spend up to one hour of professional time without charge to assist anyone interested in Canadian business, investment or immigration.

1.2 The Canadian Legal Systems

Canada has two legal systems which are derived from the French and British historical influences. All Canadian provinces, except Quebec, operate under the common law based on British legal tradition. Under this system, judges are required to consider the principles from past court decisions involving similar facts and issues and then apply the "precedent" to the present case. A hierarchy exists in the application of precedents, with higher court decisions having both more weight than, and the power to overrule, lower court decisions. The Supreme Court of Canada is the final arbiter of any legal issue in Canada if it grants leave to appeal from the decision of the lower court.

Quebec operates under a more codified legal system based on the *French Civil Code* which places a stronger emphasis on laws set out in a code as opposed to judicial precedents. Although statutes and regulations exist throughout the rest of Canada, either relating specifically to a particular province or relating to all of the provinces including Quebec, the common law tradition remains a strong influence as statutes and regulations cannot specify their application to every conceivable set of circumstances. The courts are, therefore, the final interpreters of these legislative enactments.

The current trend in the law is toward the codification by statute and regulation of many areas of fundamental concern to both Canadians and non-Canadians, so particular attention must be paid to the regulatory regime in each area of commercial activity. Immigration, income tax, criminal law and a large part of corporate/commercial law have been codified and are frequently subject to amendment.

1.3 The Canadian Political System

Canada is a federal state in which jurisdictional power is divided by the Canadian constitution between federal and provincial governments. The principal source of provincial power is the exclusive right to legislate regarding property and civil rights in the province, with the federal government having jurisdiction to legislate on matters of concern to all provinces such as criminal justice, monetary policy, defence, aviation, immigration and international affairs. If provincial legislation is in conflict with federal legislation, the constitution grants the federal legislation paramountcy in areas of over-lapping or unallocated jurisdiction, and again the Supreme Court of Canada is the final arbiter in any such dispute.

The issue of Quebec's independence has been at the forefront of a federal/provincial struggle for more than 225 years. This long-lasting controversy culminated in a 1995 Quebec Referendum vote in favour of remaining in Canada. However, a federal law passed in 2000, the *Clarity Act* (Canada), effectively makes it more difficult for Quebec to secede by refining the terms that must be met before secession may

occur. The *Clarity Act* gives the Canadian House of Commons power to determine whether any referendum question is sufficiently clear, as well as authority to decide whether the will to secede has been expressed by a clear majority. As in the past, Quebec separatism is an issue that pervades all federal elections. After the aftermath of the 2008 federal election, the Conservative Party gained seats throughout the country except for Quebec, where the Bloc Quebecois made marginal gains. Commentators indicate, however, that separatism is in fact on the back burner in Quebec, with support consistently around 40 per cent in the last three years.

1.4 The Canadian Charter of Rights and Freedoms

Since 1982, Canada has had a comprehensive Bill of Rights, the *Canadian Charter of Rights and Freedoms* ("Charter"), which acts as an important control mechanism against potential violations of basic human rights and freedoms by legislatures or other legal procedures, policies and standards that exist in a democratic multicultural society. Such violations of basic human rights and freedoms will not be permitted unless they can be shown to be reasonably justifiable in a free and democratic society. Yet the events of September 11, 2001, and international efforts to control money laundering, counterfeit activities, and the financing of terrorism have, in many respects, weakened the protections afforded by the Bill of Rights. Terrorism in particular has resulted in governments at all levels imposing restrictions on civil liberties which the public seems prepared to accept in the circumstances which now exist. In particular, Canada passed the Anti-Terrorism Act (Canada) ("ATA") on December, 2001, which defined terrorism and made it a punishable offence within Canada's Criminal Code. However, there was a backlash against the ATA from civil liberty advocates and the general public due to concerns that some of the measures contained in the act violated fundamental rights. The Supreme Court of Canada, in a series of decisions, has struck down certain procedures, such as the manner with which security certificates are issued and used to deport individuals suspected of terrorism, as violating the Charter and has ordered the government to draft new legislation that complies with the fundamental justice provisions of the Charter.

1.5 Current Trends

Even as the financial crisis that is wreaking global havoc appears not to be relenting, Canada has weathered this financial storm remarkably well and continues to be a place of unlimited opportunities for both residents and non-residents. Some commentators have noted that Canada will not only survive the financial meltdown but rather thrive in the opportunities it creates due to the unique ability of its major financial institutions to shield themselves from the worst aspects of this crisis. As well, Canada has had 12 years of budget surpluses and is in a strong position to aid in the recovery of the economy. The recent trend towards the implementation of more market friendly policies has also resulted in reductions in levels of taxation by the federal and most provincial governments as well as efforts to make regulatory regimes more efficient. Overall, Canada remains attractive to investors because of what it can offer - a stable financial system amidst growing uncertainty, a developed society with educated citizens, a clean environment, high ethical standards and reliable business people - in all, a nation known world wide as an excellent place to live.