

NON-RESIDENT INVESTMENT IN ONTARIO/CANADA



RYE AND PARTNERS Barristers and Solicitors

Suite 1200, 65 Queen Street West
Toronto, Canada
M5H 2M5

Telephone: (416) 362-4901

Fax: (416) 362-8291

partners@ryeandpartners.com

April, 2009

NON-RESIDENT INVESTMENT IN ONTARIO/CANADA

TABLE OF CONTENTS

1. INTRODUCTION	1
1.1 Overview	1
1.2 The Canadian Legal Systems	1
1.3 The Canadian Political System	1
1.4 The Canadian Charter of Rights and Freedoms	2
1.5 Current Trends	2
2. REGIONAL FREE TRADE	3
2.1 Introduction	3
2.2 Trade in Goods	3
(1) Rules of Origin	3
(2) Border Measures	4
(a) Tariffs	4
(b) Customs User Fees	4
(c) Duty Drawbacks and Refunds	4
(d) Import and Export Restrictions	4
(e) Technical Barriers	5
(3) Special Treatment Industries	5
(a) Agriculture	5
(b) Wine and Distilled Spirits	5
(c) Energy	6
(d) Automotive Products	6
(e) Textile and Apparel Goods	7
(4) Competition Policy	7
(5) Safeguard Measures	7
2.3 Trade in Services	7
(1) Services Generally	7
(2) Financial Services	8
(3) Land Transportation	8
(4) Telecommunications	8
2.4 Immigration	9
2.5 Investment	9
2.6 Anti-dumping and Countervailing Duties	9
2.7 Current Trends	10
2.8 Conclusion	10
3. LIMITATIONS ON NON-RESIDENT INVESTMENT	11
3.1 Introduction	11
3.2 Investment Canada Act	11
3.3 Exemptions from the Act	12
3.4 Notifiable Investments	12
3.5 Notification Procedure	13
3.6 Cultural Heritage and National Identity	13
3.7 Reviewable Investments	14
3.8 Net Benefit to Canada	15
3.9 Canadian Status	15
3.10 Special Status Under NAFTA/WTO	16
3.11 Canadian Business	16
3.12 New Canadian Business	16
3.13 Acquisition of Control	17
3.14 Written Opinions, Guidelines and Interpretation Notes	17
3.15 Review Procedure	18
(1) Application	18
(2) Deemed Allowance	18

	(3)	Representations and Further Undertakings	18
	(4)	Planning for Review	18
3.16		Penalties for Contravening the Act	18
3.17		Confidentiality	19
3.18		Assessment	19
4.		CANADIAN BUSINESS ORGANIZATIONS	20
4.1		Overview	20
4.2		Sole Proprietorships	20
4.3		Partnership	20
	(1)	Definition	20
	(2)	General Partnerships	20
	(3)	Limited Partnerships	21
	(4)	Limited Liability Partnerships	21
4.4		Joint Ventures	21
4.5		Co-Ownerships	22
4.6		Corporations	22
	(1)	General Description	22
	(2)	Capital Structure	22
	(3)	Directors and Officers	22
	(4)	Personal Liability of Directors and Officers	23
	(5)	Residency Requirements for Directors	23
	(6)	Public and Private Corporations	23
	(7)	Financial Statements	24
	(8)	Unlimited Liability Corporations	24
4.7		Trusts	25
	(1)	General Description	25
	(2)	Business/Income Trusts	25
4.8		Foreign Business Organizations	25
4.9		Ontario's Filing Requirements	26
4.10		Costs of Establishing a Business in Canada	26
4.11		Conclusion	27
5.		TAXATION	28
5.1		Federal Income and Capital Gains Tax	28
	(1)	Individuals and Proprietorships	28
	(a)	Residence	28
	(b)	Sources	28
	(c)	Capital Cost Allowance	28
	(d)	Capital Gains and Losses	28
	(e)	Deductions and Tax Credits	29
	(f)	Rates of Tax	29
	(g)	Tax-Free Savings Account	30
	(h)	Alternative Minimum Tax	30
	(2)	Partnerships	30
	(3)	Corporations	31
	(a)	Residence	31
	(b)	Public Corporations	31
	(c)	Private Corporations	31
	(d)	Income Distribution	31
	(e)	Corporate Reorganization	32
	(f)	Thin Capitalization	32
	(g)	Branch Tax	33
	(4)	Trusts	33
5.2		Non-Resident Withholding Tax	34
5.3		Impact of Tax Treaties	34
5.4		Provincial Income and Capital Taxes	35
	(1)	Individuals, Proprietorships, Partnerships and Trusts	35
	(2)	Corporations	35

	(3)	Capital Tax	36
	(4)	Ontario Corporate Minimum Tax	36
5.5		Death, Departure from Canada or Entry into Canada	36
	(1)	Consequences of Death	36
	(a)	Death Duties	36
	(b)	Capital Gains Tax	36
	(2)	Departure Tax	37
	(3)	Entry Considerations	37
	(a)	Revaluation	37
	(b)	Immigration Trust	38
	(c)	Timing of Income	38
5.6		Ontario Land Transfer Tax	38
	(1)	Rates of Tax	38
	(2)	Imposition	38
	(3)	Deferrals on Corporate Reorganization	38
5.7		Municipal Land Transfer Tax	39
	(1)	Rates of Tax	39
	(2)	Imposition	39
5.8		Other Canadian Taxes	39
	(1)	Customs Duties and Excise Taxes	39
	(2)	Goods and Services Tax	40
	(3)	Provincial Sales Tax	41
	(4)	Additional Taxes on Alcohol and Tobacco	41
	(5)	Real Property Taxes	41
	(6)	Employer Health Tax	41
6. FINANCING THE INVESTMENT			42
6.1		Foreign Loans	42
6.2		Domestic Loans	43
6.3		Public Financing	43
6.4		Government Funding	43
6.5		Money Laundering	44
	(1)	Cross Border Transactions	44
	(2)	Suspicious Circumstances	45
	(3)	Large Cash Transactions	45
6.6		General Monetary Considerations	45
7. IMMIGRATION			47
7.1		Overview	47
	(1)	Admission	47
	(2)	Status	47
	(3)	Permanent Resident Applicants	48
	(4)	Visas	49
	(5)	Applications	49
	(6)	Priorities	49
	(7)	Processing Times	50
	(8)	Current Trends in Immigration Policies	51
7.2		Business Immigrants	51
	(1)	Entrepreneurs	51
	(2)	Investors	52
	(3)	Self-Employed Persons	53
7.3		Skilled Workers	53
7.4		Canadian Experience Class	54
7.5		Provincial Nominees	54
7.6		Spouses and Children	55
7.7		Selection Criteria	55
	(1)	Points System	55
	(2)	Family Class Members/Convention Refugees	57
7.8		Loss of Permanent Resident Status	57

7.9	Employee Transfers	57
7.10	Facilitated Processing of Employment Authorizations for Information Technology Workers	58
7.11	North American Free Trade Agreement	58
	(1) General	58
	(2) Business Visitors	58
	(3) Investors and Traders	59
	(4) Professionals	59
	(5) Intra-Company Transferees	59
7.12	Temporary Entry Under the General Agreement on Trade In Services	60
	(1) General	60
	(2) Business Visitors	60
	(3) Intra-Company Transferees	60
	(4) Professionals	61
7.13	Canadian Citizenship	61
7.14	Settlers' Effects	61
7.15	Corporate Immigration	62
7.16	Enemy Aliens	62
7.17	Abuses	62
7.18	Conclusion	63
8.	OTHER LEGAL CONSIDERATIONS	64
8.1	Contractual Considerations	64
8.2	Intellectual Property	64
	(1) General	64
	(2) Patents	64
	(3) Trade Marks	65
	(4) Copyright	66
	(5) Industrial Designs	67
	(6) Integrated Circuit Topography	67
	(7) Trade Secrets and Confidential Information	67
	(8) Passing Off/Goodwill	67
8.3	Privacy Law	67
8.4	Employment Law	68
8.5	Environmental Protection	69
8.6	Matrimonial Property	70
8.7	Resolution of Legal Disputes	71
	(1) Arbitration	71
	(2) Courts	71
	(3) Administrative Tribunals	72
	(4) Alternative Dispute Resolution	72
9.	PRACTICAL CONSIDERATIONS	74
9.1	Preliminary Preparation by the Investor	74
9.2	Establishing Contacts in Canada	74
9.3	Preparation of a Comprehensive Business Plan	74
9.4	Necessity for Professional Assistance	75
9.5	Preparation of the Required Documentation	75
9.6	Establishing the Canadian Business Organization	75
	(1) Tax Planning	75
	(2) Use of a Corporate Vehicle	75
	(3) Canadian Business Practices	76
	(4) Protection of Corporate and Product Names	76
	(5) Compliance with Public Disclosure Requirements	77
9.7	Arranging the Personal Affairs of the Investor	77
	(1) Structuring the Investment	77
	(2) Income Splitting	78
	(3) Retention of Foreign Assets	78

	(4)	Matrimonial Concerns	78
9.8		Necessity for Careful Organization and Planning	79
9.9		Retaining a Lawyer in Canada	79
9.10		Timing	80
10.	EPILOGUE		81
10.1		Assessment	81
10.2		Nature of Canadian Business	81
10.3		Mobility of Capital	81
10.4		Outlook for the Future	81
10.5		A Final Word	82

First Edition - December, 1983
 Second Edition - July, 1985
 Third Edition - April, 1986
 Fourth Edition - September, 1987
 Fifth Edition - August, 1988
 Sixth Edition - September, 1989
 Seventh Edition - August, 1990
 Eighth Edition - January, 1993
 Ninth Edition - November, 1994
 Tenth Edition - February, 1996
 Eleventh Edition - August, 1998
 Twelfth Edition - September, 2005
 Thirteenth Edition - April, 2009

© 2009
 Rye and Partners