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ESTABLISHING A BUSINESS ENTITY IN CANADA

ILN CORPORATE GROUP

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ESTABLISHING A BUSINESS ENTITY IN CANADA

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INTRODUCTION

Bilingual and Bi-Juridical

Canada is a bilingual, bi-juridical and multi-cultural country, composed of 10 provinces and 3 territories. English and French are federally mandated official languages pursuant to the *Official Languages Act* (Canada). French is the official language in the Province of Québec pursuant to the *Charter of the French Language* (Québec). The legal system of all provinces and territories (other than the Province of Québec) is based upon the Common Law, derived from England. Québec (like the American State of Louisiana) is governed by the Civil Law system, derived from the French Napoleonic Code, as reflected in the *Civil Code of Lower Canada* adopted in 1866 (one year prior to Confederation) and replaced as of January 1st, 1994 by the *Civil Code of Québec* (the "CCQ").

Levels of Government and Jurisdiction

Canada has several levels of government: federal, provincial/territorial and municipal. The allocation of exclusive jurisdiction between the federal and provincial/territorial governments was established under the *British North America Act* of 1867 at the time of Confederation.

Generally speaking, most matters regarding private property, commerce and business fall under provincial/territorial jurisdiction, with the exception of industries such as airlines, marine transportation and pollution, railways and cross-border and extra-provincial transportation and telecommunications, all of which are federally regulated.

The federal government also deals with bankruptcy, competition, foreign investment, criminal and family law, as well as an array of other matters where it is deemed to be acting "to the general advantage of Canada", which is an ongoing source of friction between the federal government and the various provinces and territories.

TYPES OF ENTITIES AVAILABLE IN CANADA THROUGH WHICH TO CONDUCT BUSINESS

Corporations

In Canada, one may incorporate federally under the *Canada Business Corporations Act* (the "CBCA"), or under the corporate statute of a particular province or territory. Most provinces and territories, including most recently the Province of Québec, have adopted Business Corporations Acts which largely mirror the CBCA.

Generally speaking, one would incorporate under the CBCA if one expects to carry on business in more than one Canadian province or territory. Alternatively, one would consider provincial or territorial incorporation if it is anticipated that the operations will be limited to that jurisdiction, as there are savings to be achieved by making corporate filings and otherwise complying only with the provincial/territorial rules, rather than filing annual returns and other notices at both the federal and provincial/territorial levels.

Canada also has statutes governing the formation and operation of non-profit entities at both the federal and provincial/territorial levels.

BEAUFORT SEA
Banks Island
Victoria Island
NUNAVUT TERRITORY
Davis Strait
YUKON TERRITORY
NORTHWEST TERRITORIES
Hudson Bay
Labrador Sea
BRITISH COLUMBIA
ALBERTA
MANITOBA
ONTARIO
QUEBEC
NOVA SCOTIA
ATLANTIC
PACIFIC OCEAN
UNITED STATES
CANADA

ULC

Unlimited liability companies (ULC's), which are similar to American limited liability companies (LLC's), can currently be formed only in the Provinces of Nova Scotia, British Columbia and Alberta. These entities permit flow-through treatment for profits and losses to their shareholders under U.S. tax law (and are sometimes known as "check the box" entities, on the basis of the election they can make to retain their corporate identity but be taxed as if they were partnerships). However, the Canadian versions do not provide limited liability protection, and it is therefore common practice to interpose a single-purpose holding corporation between the ULC and the ultimate shareholder(s).

Partnerships / Limited Partnerships

These are formed under provincial/territorial law in each case and generally governed by such laws and the particular partnership or limited partnership agreement (as the case may be). Typically, in a limited partnership, the general partner (which is often a shell corporation) is responsible for all the obligations and liabilities of the limited partnership. The liability of the limited partners is restricted to the amount of their respective contributions, provided that they do not become involved in the management of the limited partnership. To retain limited liability protection, the limited partner must remain a passive investor rather than an active participant in the operation of the limited partnership.

BRIEF OVERVIEW OF STEPS TO INCORPORATE/CONSTITUTE EACH TYPE OF ENTITY

Corporations / ULC

Both federal and provincial/territorial corporations and ULCs (where permitted) are formed by filing articles of incorporation and notices of directors and head office with the applicable government authority.

Unless an automatically assigned numbered corporation is desired, the proposed name must be searched to ensure it would not result in confusion with already existing entities. In the case of a CBCA (federal) incorporation, the name must also not create confusion with any registered trademarks or pending trademark applications, as intellectual property (patents, trademarks, copyright and industrial designs) is also a matter of federal jurisdiction in Canada. An expanded search which includes trademarks and may also extend to domain names is not required in other jurisdictions, but is advisable to ensure that a business does not need to later change its name after having built up a brand.

Once incorporated by the issuance of a certificate of incorporation by the applicable government authority, the corporation or ULC must then be “organized” by: (i) the issuance of shares, (ii) the adoption of general, banking and borrowing by-laws, (iii) the confirmation, replacement or addition to the board of directors by the new shareholders and their ratification of the by-laws and (iv) the nomination by the directors of the various officers. Multiple shareholders may enter into an agreement governing the operations of the corporation or ULC. They may also shift some or all of the powers and related liabilities of the board to the shareholders (known as a “unanimous shareholders’ agreement,” not because all of the shareholders are party to it, but because of its effect on the decision-making process).

Partnerships / Limited Partnerships

These are generally formed by the agreement of the partners in the case of a general partnership, or the general and limited partners in the case of a limited partnership. General partnerships do not usually require any other formality in order to be created, whereas a limited partnership generally exists only from its registration date. The partnership agreement or limited partnership agreement, as the case may be, takes the place of the certificate and articles of incorporation and by-laws, and will govern the issuance of partnership units and the operations of the entity.

BRIEF SUMMARY OF REGULATION OF EACH TYPE

Provincial/territorial registration

Any business incorporated under the laws of Canada, or a particular province or territory, which wishes to carry on business in another jurisdiction must be registered or licensed in that additional jurisdiction. While the definition of "carrying on business” varies slightly from one jurisdiction to another, there are usually factual tests based on having a physical presence in the jurisdiction, including having an office, employees who report to work there, or a local telephone listing, without the mind, management and control of the entity necessarily being there. A partnership or limited partnership generally must be registered as carrying on business in the jurisdiction and file annual and updating returns or reports.

A trust carrying on a commercial enterprise, such as a business, investment or real estate trust (whether or not profitable), which is not managed by a registered trustee (such as a trust company) must also register with the Québec Register of Enterprises in the same manner as a sole proprietorship, partnership or legal person (corporation) within 60 days of beginning operations.

Securities Law

Securities law is a matter of provincial/territorial jurisdiction and each province or territory therefore has its own regulator. Unlike the other G7 countries, there is no federal regulator akin to the U.S. Securities and Exchange Commission. It should be noted, however, that the federal Minister of Finance strongly supports the adoption of a single national securities regulator, as does the International Monetary Fund and the Ontario Securities Commission (Ontario being Canada’s largest capital market). Currently, the 10 provinces and 3 territories in Canada are responsible for securities regulations. Securities regulators from each province and territory have teamed up to form the Canadian Securities Administrators, or CSA for short. The CSA is primarily responsible for developing a harmonized approach to securities regulation across the country. In recent years, the CSA has developed the "passport system", through which a market participant has access to markets in all passport jurisdictions by dealing only with its principal regulator and complying with one set of harmonized laws. It is a major step forward in improving Canada's securities regulatory system by providing market participants with streamlined access to Canada's capital markets.

In Canada, shares and other securities to be issued by any organization may only be issued through a qualified prospectus. There are, however, broad exemptions from this prospectus requirement.

National Instrument 45-106 (adopted in Québec and Ontario as Regulation 45-106, and hereinafter “NI 45-106”), sets out the prospectus exemptions, and replaces the exemptions previously found in the provincial/territorial securities legislation. The national rules extend the application of the provincial and territorial securities legislation beyond shares in the capital stock of companies to all securities, excluding only non-convertible debt securities. Thus, warrants, options and convertible debentures are covered by the securities rules, as opposed to only the underlying shares if and when they are exercised.

In order to qualify for an exemption from the prospectus requirement under NI 45-106 as a private issuer, either the charter documents of the corporation or an agreement among all security holders must: (i) permit a maximum of 50 shareholders (not counting former or current employees, directors or officers); (ii) impose restrictions on the free transfer of all securities (such as board or shareholder approval); (iii) prohibit any distribution of securities other than to the permitted categories of potential security holders (generally the founders, directors and officers and their respective family members, close personal friends and close business associates), as well as those who qualify as accredited investors (generally institutions or high net worth individuals or entities).

The accredited investor exemption will apply to individuals in several circumstances, including: (i) individuals, either alone or with a spouse, having financial assets (generally cash or securities but not real estate or non-financial personal property) with net pre-tax realizable value of over $1 million; (ii) individuals, either alone or with a spouse, having net assets of at least $5 million; (iii) individuals with net pre-tax income in each of the last 2 calendar years over $200,000, or $300,000 together with a spouse, and a reasonable expectation of higher income in the current calendar year. A risk acknowledgement form is required to be completed and signed by individual accredited investors, except those who qualify as permitted clients (as defined in NI 31-103). Investors must indicate in the form how they meet the criteria for an accredited investor. The form also requires identification of any salesperson who meets with or provides information to the investor with respect to the investment. If the accredited investor requirements are not met, the corporation will not be a private issuer and must file a prospectus in order to issue shares or deal in (*e.g.,* transfer) its shares, unless another exemption under NI 45-106 is available.

Most of the other exemptions require that a filing be made with the securities regulators in each province or territory in which affected shareholders are situate, which can entail significant fees being payable in the event of a large financing. This would also pose a serious problem in the event that a potential purchaser or investor wishes to obtain an opinion that the target company is indeed a private issuer, and that all securities legislation and regulations have been complied with as a pre-condition to concluding a particular transaction, as is customary in Canadian deals.

Employment Law

In general, Canadian employment law is much more protective (if not overtly biased in favour) of employees than its American counterpart. Both provincial/territorial and federal privacy laws protect an employee's right to privacy and personal information. Employee rights are enshrined in the *Canada Labour Code* and the *Canadian Human Rights Act* and their various provincial and territorial counterparts across Canada. This legislation prohibits any form of discrimination in the hiring and treatment of employees.

Acts and policies which are taken for granted in the United States (such as drug testing and video or other forms of electronic surveillance, including monitoring of electronic or telephone communications) must be carefully reviewed to ensure compliance with Canadian laws, which are more stringent in these regards.

In many jurisdictions (including the Provinces of Ontario and Québec), the purchaser of a business is deemed to be a continuing employer and inherits the employees and their current employment rights, including compensation, seniority, vacation and other benefits. There is no concept under Canadian law of "employment at will". An employee's tenure with a predecessor corporation will be considered for the purposes of determining termination pay required by the employment standards legislation and for determining the amount of reasonable notice which must be given on termination of employment without cause. However, written contracts may reduce, but not entirely eliminate, the non-statutory notice and severance requirements.

Under Canadian law, non-competition and non-solicitation undertakings are seen as a restraint of trade, and are more restrictively interpreted and applied in an employment context than in the context of the sale of a business. Non-competition undertakings will generally be enforced if the scope of the activities covered, the geographical territory and the period of time for which the restrictions are to remain in force are all reasonable in light of the employer's legitimate need to protect its business interests. Further, an ambiguous restrictive covenant is *prima facie* unreasonable and will be unenforceable. The Supreme Court of Canada also recently decided that non-solicitation undertakings are not subject to the same restrictions.

The Canadian courts will not generally write down an invalid clause and will invalidate a non-compete undertaking where they find that a non-solicitation undertaking would have sufficed. In Québec, however, an employer cannot enforce a non-competition undertaking if the employer either terminated the employment without "serious reason" or gave the employee "serious reason" to resign from the employment (CCQ 2095).

Privacy Rights and Data Protection

Privacy

Canada's federal privacy and data protection law applicable to the private sector is the Personal Information Protection and Electronic Documents Act (PIPEDA). PIPEDA applies to private sector organizations that collect, use and disclose personal data (called "personal information" (PI) in Canada) in the course of a commercial activity that takes place within a Canadian province or territory, unless the province has enacted "substantially similar" legislation. Such legislation is in force in 3 provinces: Alberta's Personal Information Protection Act (PIPA AB); British Columbia's Personal Information Protection Act (PIPA BC); and Quebec's An Act Respecting the Protection of Personal Information in the Private Sector (Quebec's Privacy Act). Notably, PIPEDA also applies to the inter-provincial and international collection, use and disclosure of PI. PIPA AB, PIPA BC and the Quebec Privacy Act apply to the privacy and data protection practices of organizations within Alberta, BC and Quebec, respectively, which are not otherwise governed by PIPEDA. In Ontario, PIPEDA is the only privacy and data protection law applicable to private sector organizations. Canada also has privacy and data protection laws specific to the health sector and to the public sector.

Anti-spam

The anti-spam provisions of Canada’s Anti-spam Legislation (CASL) require the sender of a commercial electronic message ("CEM") sent from or to a computer system in Canada:

1. to have the consent of the CEM recipient ("Recipient");
2. to identify the CEM sender; and
3. to provide an unsubscribe mechanism.

CASL defines a CEM as any electronic message (including an email, short service message (SMS) text, or social media message) that, reasonably construed, has as one of its purposes encouraging participation in a commercial activity. A CEM includes any electronic message used to promote a business or a business opportunity. Unless a CASL exemption applies, a CEM may be sent to a contact only with their prior express consent or implied consent.

Even a single, first contravention of CASL could result in a penalty of up to $10 million for a corporation and a penalty of up to $1 million for the individual involved (which includes not only the individual CEM sender but anyone who aids, induces or procures a contravention). In addition, the CASL regulators may publicly identify the sender as having contravened CASL which would embarrass the sender and harm its reputation.

If CASL's private right of action ("PRA") ever comes into force, CEM senders who contravene CASL may also be subject to possible class actions and significant damages awards (based on damages for actual loss and on statutory damages of $200 per contravention up to a maximum of $1 million per day). That said, by Order in Council published June 7, 2017, the federal government indefinitely suspended the coming into force of the PRA (which had been scheduled to come into force on July 1, 2017).

Consumer Protection Legislation

Each province and territory has its own consumer protection legislation, which must be carefully examined if a foreign business which deals with the consumer market wishes to establish a Canadian presence.

Depending on the nature of the business, certain permits may be required, and certain types of contracts must be made in writing and in some cases, in a prescribed form. Consumers have certain statutory rights of rescission (cancellation) of many types of contracts within prescribed delays, which compel the business to accept the cancellation of the contract and refund any amounts already paid.

The types of businesses governed by the *Consumer Protection Act* of various provinces and territories include contracts of sequential performance (such as education services and fitness studios), contracts for the provision of credit, long-term leases of goods, contracts for the sale or repair of automobiles and motorcycles, and sales by itinerant vendors.

Under the *Competition Act*, which applies to all of Canada, a person who promotes the supply/use of a product or any business interest, or who conducts any contest, lottery, game of chance or skill, or mixed chance and skill, will be considered to have engaged in reviewable conduct where: (i) adequate and fair disclosure is not made of the number and approximate value of the prizes, the area(s) to which they relate and of any fact that materially affects the chance of winning; (ii) distribution of the prizes is unduly delayed; or (iii) selection of participants or distribution of the prize is not made on the basis of skill or on a random basis.

Québec also has its own rules governing publicity contests where the aggregate prize value exceeds $100. The contest rules must be translated into French (although they may also be in another language) and filed with the *Régie des alcools, des courses et des jeux,* along with payment of a fee based on a percentage of the aggregate prize value, and a report once the contest is closed confirming the prize awards.

Québec Charter of the French Language

French is the official language in the Province of Québec, although other languages (such as English) may be used in certain circumstances and under certain conditions. Legislation and regulations are published in both French and English, and both versions have equal ranking. Parties may use either language before the courts and may request a translation of any decision rendered by any court or any quasi-judicial tribunal or body, at the government's expense. However, French remains the official language of government, as well as all para-public organizations, including professional orders.

Employees have the right to work in French, and knowledge of another language cannot be made a prerequisite of employment unless it can be justified by the nature of the person's duties and functions. Workplace communication must be in French, although it may also be in other languages as well. Businesses in Québec employing 50 or more people must obtain a francization certificate attesting to their use of French in the workplace, which must be confirmed by triennial reports. Businesses employing 100 or more people must establish a francization committee composed of management and employees, with the mandate of ensuring French is used in the workplace.

Publicity and advertising must be in French. Other languages may be used, provided that no inscription in another language is given greater prominence than that in French. For example: signage on the sides of motor vehicles, such as delivery trucks, which venture onto the territory of the Province of Québec (even if they are licensed elsewhere) must be in French; markings on products intended to be sold in Québec must be in French but may also be in another language; and software offered for sale in Québec must be available in a French version upon no less onerous conditions. The web site of any business conducted in Québec must operate in French, regardless of its head office location or where the web site is hosted or controlled, but may also operate in other languages, if so desired. There have been several recent decisions imposing fines for contraventions of these rules, although the resulting adverse publicity arguably has a more immediate impact.

In order to obtain provincial/territorial registration to carry on business in the Province of Québec, the entity must register and operate under the French version of its name. If the English element is trademarked and it can be demonstrated that the name cannot be readily translated (for example, "Second Cup" does not work quite as well as "*Deuxième Tasse*"), the English trademark may be used but must be accompanied by a French element (such as, "Café Second Cup").

All commercial advertising on billboards, signs, posters or other media having an area of 16m^2 or more and visible from any public highway, other than a sign on the firm's premises, or on or in any public transportation or accesses thereto (including bus shelters) must be in French only; however public signs and posters on or in a vehicle regularly used to transport passengers or goods (such as a delivery truck) both within and outside Québec may be in both French and another language, provided the French is displayed at least as prominently (as defined by the Regulation respecting the language of commerce and business, the "Regulation").

Furthermore, in 2016, the Quebec government amended the Regulation to require that all signs and posters displaying trademarks in a language other than French also contain a French generic term, descriptive element, slogan or other information about the products and services offered. This new rule applies to all signs and posters "outside an immovable" (or building), which includes signs or posters outside premises located within a larger building (for example a store or kiosk in a shopping centre) or inside a building but designed to be seen from the outside. The French content must have a "sufficient presence": it must be permanent, with similar visibility and equal legibility in the same visual field (e.g., size, color, lighting) to the non-French content, and this will be assessed based upon the position from which the signage is intended to be viewed (e.g., from a sidewalk, the centre aisle of a shopping centre or a highway). The new regulations apply immediately to all new signs and posters as well as replacements of existing signs and posters; however businesses will have 3 years to comply for existing signs and posters as well as for trademarks already used on signs and posters as part of a franchise system or where the proposed sign or poster has been the object of either an application for or the issuance of a municipal or analogous government permit in the 6-month period preceding the adoption of the regulation.

Adhesion (non-negotiable) and standard form contracts, as well as any annexed documents, must be drafted in French, unless the parties expressly agree otherwise. It is for this reason that one commonly sees a clause in any contract involving one or more Québec parties, whether or not it was in fact negotiable, to the effect that: "*The parties have requested that this Agreement and all documents ancillary thereto be drafted in English. Les parties ont exigé que la présente convention ainsi que tout document ancillaire soient rédigés en anglais*."

MATTERS TO BE CONSIDERED BY AN OFFSHORE PARTY WHEN SELECTING BUSINESS ENTITY TYPE

BARRIERS TO ENTRY

Competition Act

A foreign investor must consider the *Competition Act* (Canada), which is analogous to US antitrust legislation, when seeking to acquire an interest in a Canadian business, either by acquiring assets or shares.

The first step, in any acquisition, is to determine whether the acquirer and target, on a consolidated basis (including their respective affiliates), will have CDN $400 million or more in aggregate asset value or gross revenues after completing the transaction. If so, the second step is to determine whether (a) in an asset deal, the aggregate value of the Canadian assets to be acquired or of the annual Canadian sales generated by such assets exceeds the annual threshold (set for 2018 at CDN $92 million), or (b) in a share deal, the aggregate value of the Canadian company whose shares are to be acquired or of the annual Canadian sales generated by such company exceeds the annual threshold (set for 2018 at CDN $92 million). If so, then in both cases pre-notification is required and the acquirer must receive the approval of the Competition Bureau before it may proceed with the transaction.

Even if the financial threshold is not met, the transaction will be reviewable if it is found not to be in the public interest or to create a concentration which would unduly reduce competition. Furthermore, the Competition Bureau always retains the right under Section 92 of the *Competition Act* to review any transaction where there is a lessening of competition; however, where the transaction is non-notifiable, the Competition Bureau will generally only learn of it if a third party complaint is made.

The statutory exceptions to the application of the *Competition Act* include acquisitions of public companies or real estate, and transactions made in the ordinary course of business.

The approval may be conditional upon the divestment by the acquirer and/or target of certain businesses, but generally speaking the Competition Bureau favours structural remedies over behavioural ones.

Investment Canada Act

A non-Canadian establishing a new business in Canada or acquiring control of an existing Canadian business must also consider the *Investment Canada Act*. Any investment by a non-Canadian to establish a new business is subject to notification, either prior to implementation or within the following 30 days. The information required includes the identification of the investor, the projected number of employees at the end of the 2nd full year of operation, the projected amount to be invested in the new business over the first 2 full years of operation, and the projected level of annual sales or revenues during the 2nd full year of operation.

The acquisition of control (as defined by certain statutory formulae) of a Canadian business is reviewable if the assets of the entity or entities being acquired exceed certain thresholds. Luckily for members of the World Trade Organization (WTO), the usual thresholds of CDN $5 million for direct investments and CDN $50 million for indirect investments are replaced by an annually prescribed amount based on a comparative of the Canadian GDP (gross domestic product) in the current year to that of the previous year. The prescribed amount for 2018 has been set at CDN $398 million. Even though such transactions are not automatically reviewable, notification of the transaction to the Canadian government along with the filing of forms under the *Investment Canada Act* is required, either prior to or within 30 days after the completion of the transaction. Any acquisition by a WTO investor (other than a state-owned enterprise) of a Canadian business having an enterprise value in excess of $1 billion may also be reviewed to determine the "net benefit to Canada."

Certain transactions are automatically reviewable without consideration of any threshold, such as the acquisition of control by a non-Canadian of any Canadian business which is engaged in the production of uranium, or is a cultural business. Businesses involved in mining, oil, water and defense and satellite technology are also subject to more stringent requirements.

A "cultural business" is defined by Section 14.1 of the *Investment Canada Act* as the publication, distribution and sale of books, magazines, periodicals or newspapers in print or machine readable form (other than merely printing or typesetting them); the production, distribution, sale or exhibition of film or video recordings, audio or video music recordings, music in print or machine readable form or radio communication in which the transmissions are intended for the general public; and radio, television and cable television broadcasting undertakings, satellite programming and broadcast network services.

Lastly, the government has the power to block transactions involving national security issues, as well as to review transactions involving state-owned entities.

Immigration

The *Immigration and Refugee Protection Act* (IRPA) (Canada) permits a foreign national to apply for a work permit, if necessary, where they will be engaging in "work" in Canada. Work permits are assessed and issued under one of the following programs: 1. International Mobility Program (IMP); or 2. Temporary Foreign Worker Program (TFWP). The IMP allows for foreign nationals to apply for a work permit directly to Immigration, Refugees, and Citizenship Canada (IRCC). Most IMP work permit categories are based on reciprocity and multi/bilateral agreements with other countries, such as the North American Free Trade Agreement and the General Agreement on Trade in Services. The IMP is primarily for high-skilled and high-wage occupations; however, it also includes work permits under the working holiday category. Work permits issued under an IMP category are usually employer-specific, however some categories allow for open work permits, including spousal work permits and post-graduate work permits. All employer-specific work permits under the IMP require an Offer of Employment through an online employer portal prior to the submission of a work permit application.

The Temporary Foreign Worker Program (TFWP) is managed by Employment and Social Development Canada (ESDC) and is based on employer demand to fill specific positions. Employers must demonstrate that they have made efforts to find a Canadian for the position before filing a Labour Market Impact Assessment (LMIA) application with ESDC to support the foreign national's job offer. As it is an employer-driven process, an LMIA approval allows a foreign national to apply for an occupation and employer-specific work permit. Foreign nationals who require a visa to travel to Canada must file their work permit application at a visa post. Visa-exempt applicants may apply for their work permits at the port of entry.

IRCC does allow limited categories of business visitors to work in Canada without a work permit, including, but not limited to: (i) some commercial speakers, seminar leaders and guest public speakers; (ii) some performing artists, athletes, sports officials, journalists, clergy and providers of emergency services; (iii) diplomats, consular officers and other representatives or officials of other countries; (iv) expert witnesses or investigators.

Additional procedures apply for foreign workers who intend to work in many jurisdictions, notwithstanding that immigration is a matter of federal jurisdiction. It is an offence for Canadian employers to hire anyone who is not authorized to work in Canada.

Canada has introduced a rigorous employer compliance program that requires employers to keep all documentation for a foreign worker on file for a minimum of six years. All employers who have foreign national employees with employer-specific work permits are subject to an inspection or employer compliance review. Employers may be selected randomly or based on a complaint. In December 2015, the government introduced a system of administrative monetary penalties (AMPs) and varying bans on employers in order to address employer non-compliance with the TFWP and IMP employee conditions. The AMPs range from $500 to $100,000 depending on the size of the employer, the severity of the violation and the number of previous violations. Employers may also be subject to a ban on hiring foreign workers for a limited or indefinite period of time, or a warning where justification for the non-compliance is accepted.

The North American Free Trade Agreement ("NAFTA")

Under NAFTA, citizens of Canada, the United States and Mexico can gain quicker and easier temporary entry into the three countries to conduct business-related activities or investments. All provisions are equally available to citizens of the three countries. Permanent residents of these countries who are not citizens are not covered by the NAFTA provisions. NAFTA applies to four specific categories: (i) business visitors, (ii) professionals, (iii) intra-company transferees and (iv) persons engaged in trade or investment activities, all of whom can apply to enter Canada on a work permit or as a business visitor without the need for a LMIA. It should be noted that on September 30, 2018, agreement was reached on a re-negotiated NAFTA entitled the *United States, Mexico, and Canada Agreement* (the “USMCA”). Once ratified and implemented by all three countries, the USMCA will replace NAFTA. The USMCA is a complex trade agreement comprising 34 chapters, many annexes and numerous side letters. It is anticipated that the USMCA will take effect on January 1, 2020.

CONCLUSION

As can be seen from this summary review, although the commercial considerations involved in establishing and operating a business in Canada are substantially the same as in other jurisdictions, specific knowledge of the particularities of Canadian business law at the federal, provincial and territorial levels is essential to carrying on that business successfully in the “Great White North.”