



Doing Business in Canada

2025



**WILDEBOER
DELLELCE^{LLP}**



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About this Guide

Wildeboer Dellelce's *Doing Business in Canada* guide aims to give executives, counsel and foreign investors an insight into the legal framework that governs business operations in Canada. This guide highlights significant factors to consider when investing and conducting business in Canada.

As of April 2025, the contents of this guide are up-to-date and provided for general informational purposes, not as legal advice or opinion. We encourage you to contact any Wildeboer Dellelce lawyer to discuss your particular legal needs or visit our website at wildlaw.ca.

The Canadian Legal System

Canada is a federation of ten provinces and three territories. The *Constitution Act, 1867* apportions Canadian legal authority between the federal government and the provincial and territorial governments, with minor overlap. The legal system of each province and territory, other than Quebec (which uses a civil law system), is based on the principles of English common law.

Business Vehicles

Corporations

Foreign corporations seeking to carry on business in Canada can generally do so either by incorporating a Canadian subsidiary or by operating through a branch office. A subsidiary is a separate legal entity incorporated under Canadian law, typically offering limited liability and potentially favorable tax treatment. In contrast, a branch office is an extension of the foreign corporation itself, requiring registration in the relevant province(s) and subjecting the foreign corporation to direct Canadian tax obligations, including a branch tax. The choice between the two structures depends on legal liability, tax implications, administrative complexity and long-term business goals.



The Incorporation Process

Incorporation – the process of forming a legally recognized business entity – may be accomplished under federal law or through the laws of a province or territory. Incorporation involves the filing of articles of incorporation, which set out the principal attributes of the corporation, including its:

- name;
- location of registered office;
- number of directors;
- composition of share capital; and
- restrictions on the issue, transfer and ownership of shares.

Generally, a corporation establishes rules regulating its business and affairs in its by-laws. These regulations may include:

- borrowing powers;
- banking arrangements;
- execution of documents;
- financial year end; and
- meeting procedures.

Share Capital

Federal and provincial laws relating to the composition of a corporation's share capital allow for flexibility. All shares can be issued without nominal or par value. Consideration for shares can be in the form of money, past services or property. While the right to vote, receive dividends and receive assets of the corporation on dissolution or liquidation must be attached to the shares, these rights do not need to be attached to a single class.

Directors & Officers

Directors that breach their duties can be held personally liable for any resulting loss. Directors can also be liable for breaches of certain statutory requirements, such as unpaid taxes or employee wages.



Residency requirements may apply to a corporation's board of directors, depending on the laws of the jurisdiction in which the entity is incorporated. The federal laws of incorporation, as well as those of Alberta, Manitoba, Newfoundland and Labrador and Saskatchewan require 25% or more of a corporation's directors to be Canadian residents. No such requirement exists under the laws of Ontario or any of the other provinces and territories. There are no residency requirements for officers of a corporation.

Foreign parent corporations can enter into unanimous shareholder agreements for their Canadian subsidiaries that give the shareholder(s) all the powers and duties of directors. This method may be helpful for parent corporations that have had to appoint Canadians to meet directorial residency requirements, but can also result in undesirable tax consequences, such as the loss of access to certain tax credits.

Unlimited Liability Corporations

The corporate laws of Nova Scotia, Alberta and British Columbia permit the establishment of unlimited liability corporations (“**ULCs**”). Although these companies are treated like ordinary Canadian resident corporations for Canadian tax purposes, we understand that, for U.S. federal tax purposes, they should generally be eligible for treatment as pass-through entities. This allows losses of, and taxes paid by, the ULC to flow-through to its U.S.-resident parent for U.S. tax purposes.

Historically, ULCs have been popular vehicles for U.S. investors due to their aforementioned hybrid nature for Canadian and U.S. income tax purposes. However, following changes to the U.S.-Canada bilateral tax treaty, without proper planning, certain amounts (including interest, dividends and management fees) paid by ULCs to a U.S. investor who otherwise qualifies for treaty benefits may not be eligible for treaty-reduced rates of withholding. Nevertheless, since there are planning techniques available to mitigate this potential loss of treaty benefits, a ULC remains a viable alternative for entities who seek pass-through treatment for U.S. tax purposes. These considerations would require further evaluation with respect to a non-U.S. corporation.

Branch Office

A foreign corporation may carry on business in Canada through a branch office so long as it applies for an extra-provincial licence in each province or territory in which it conducts business. While the use of a branch office may have certain tax advantages (such as enabling Canadian losses to be written off in the entity's home jurisdiction), the foreign investor will be directly subject to Canadian laws and will be liable for obligations incurred in its Canadian operations.



Taxation of Canadian Subsidiaries

General Rates

A Canadian subsidiary is declared a resident of Canada for the purposes of the federal *Income Tax Act (Canada)* (the “ITA”) and will be subject to Canadian income tax on its worldwide income.

The rate of taxation will depend on the province(s) or territory(ies) in which the entity carries on business. For business carried on through a permanent establishment in Ontario, the corporate income tax rate for 2025 is 26.5%.

Dividends paid by a Canadian subsidiary to a foreign parent will be subject to Canadian withholding tax. The rate of such withholding tax is often reduced under the provisions of bilateral tax treaties.

It is generally possible for a Canadian subsidiary to return capital (as opposed to paying a dividend) to a foreign parent without any Canadian withholding tax, regardless of whether the Canadian subsidiary generated earnings or profits (subject to the Canadian subsidiary satisfying corporate solvency requirements).

There is no Canadian withholding tax on payments of non-participating debt interest by persons resident in Canada to arm’s length non-resident lenders under the ITA. Payments of interest by persons resident in Canada to non-arm’s length, non-resident persons are generally subject to a 25% withholding tax under the ITA, which rate may be reduced pursuant to an applicable bilateral tax treaty.

Losses

Operating losses realized by a Canadian subsidiary may be carried back three years and carried forward twenty years as a deduction in computing taxable income in those other years. However, it is not possible for two or more corporations to jointly file a consolidated return in Canada, and the profits of one corporation in a related group may not be offset by losses in another (subject to limited exceptions).

We understand that any operating losses of a Canadian subsidiary may also not be consolidated with its related U.S. corporations (unless the Canadian subsidiary is a ULC that is disregarded for U.S. tax purposes). These considerations would require further evaluation with respect to a non-U.S. corporation.



Thin Capitalization

A statutory thin capitalization (earnings stripping) provision limits the amount of interest-bearing debt that may be owed by a Canadian subsidiary to specified non-resident shareholders (generally, persons who, together with other non-arm's length persons, own at least 25% of the votes or value of the Canadian subsidiary).

The maximum debt (interest-bearing debt held by specified non-resident shareholders) to equity (paid-up capital, retained earnings and other surplus accounts) ratio of a Canadian subsidiary is effectively 1.5:1 under the current rules. If the debt-to-equity ratio is exceeded, the interest on the amount of debt above the permitted limit is not deductible in computing the income of the Canadian subsidiary. Such excess is deemed to be a dividend, which would attract withholding tax.

Pursuant to recent amendments, the thin capitalization rules also apply to Canadian and non-resident trusts and corporations carrying on business in Canada as a branch, as well as to partnerships including the foregoing persons.

Excessive Interest and Financing Expenses Limitation

The Excessive Interest and Financing Expenses Limitation (“**EIFEL**”) rules restrict the deductibility of interest and financing expenses for corporations and trusts, except for those classified as excluded entities. These rules cap the amount of net interest and financing expenses that can be deducted based on a fixed ratio of the taxpayer's adjusted taxable income, as defined under the EIFEL regime. The rules apply to taxation years beginning on or after October 1, 2023, with the fixed ratio set at 30% for taxation years starting on or after January 1, 2024.

Transfer Pricing

Canada has adopted the recommendations of the Organization for Economic Co-operation and Development pertaining to transfer pricing guidelines. Transactions between a Canadian subsidiary and its foreign parent (or any other non-resident entity with which a Canadian subsidiary does not deal at arm's length) are subject to Canadian tax as if they had taken place between arm's length persons. Further, there may be a penalty on any net adjustment made by the Canada Revenue Agency (the “**CRA**”) to the transfer prices of a Canadian affiliate. This penalty can be avoided if the taxpayer demonstrates that it has made reasonable efforts to meet the transfer pricing rules in its determination of transfer prices.



Disposition of the Business

There are essentially two choices for disposing of the business carried on by a Canadian subsidiary.

First, the Canadian subsidiary could dispose of the assets of the Canadian business. The Canadian subsidiary will realize various forms of income in doing so, however, this income will be further taxed upon distribution to the foreign parent as a dividend subject to non-resident withholding tax.

Second, the foreign parent could dispose of the shares of the Canadian subsidiary. In general, a non-resident holder of shares of a Canadian subsidiary will not be subject to tax under the ITA in respect of the disposition of such shares, provided that the shares are not deemed to be “taxable Canadian property” of the non-resident holder at the time of disposition (the “**Disposition Date**”). The shares of the Canadian subsidiary will generally not constitute taxable Canadian property of the foreign parent unless, at any time during the sixty-month period prior to the Disposition Date, more than 50% of the fair market value (the value that the shares would sell at on the open market) was derived, directly or indirectly, from one or any combination of:

- real or immovable property situated in Canada;
- Canadian resource properties;
- timber resource properties; and
- options in respect of, interests in, or for civil law rights in, any such properties.

If the shares are taxable Canadian property, the foreign parent would generally be subject to Canadian tax on the capital gain realized upon their disposition. 50% of any capital gain realized will be required to be included in income and subject to tax.



Taxation of Canadian Branches

Is Your Branch Taxable in Canada?

Under the ITA, a non-resident of Canada is subject to Canadian income tax on its taxable income earned in Canada, including income from carrying on business in Canada. However, under most of Canada's bilateral tax treaties, a person that is resident in another country for the purposes of such treaty will only be liable for Canadian income tax on its business income if the person carries on business through a permanent establishment in Canada, and only in respect of income attributable to that permanent establishment. A foreign resident who carries on business in Canada, but who does not have a Canadian permanent establishment, will still have to file a Canadian income tax return, but will not have any tax liability in Canada. Analyses should be undertaken to determine whether a foreign corporation has a permanent establishment in Canada and to ensure that it is eligible for the benefits of applicable bilateral tax treaties.

General Rates

A foreign corporation carrying on business in Canada through a Canadian branch is generally liable for income tax on its Canadian-source business income at the same rates that apply to Canadian resident corporations. While such a corporation is also subject to an additional tax on the after-tax branch profits that are not reinvested in the Canadian business (referred to as the “**Branch Tax**”), the rate used to calculate such tax is usually reduced under Canada's bilateral tax treaties.

The Branch Tax is meant to approximate the rate of withholding on dividends that would apply if a Canadian subsidiary had been used to carry on the business. However, there is a crucial timing difference if not all available profits generated by the Canadian business are distributed: the Branch Tax is levied annually on, essentially, after-tax profits available for distribution, but the withholding tax on dividends is only levied when dividends are paid. Consequently, if profits are to be retained in Canada in a manner that subjects such profits to the Branch Tax, then there will be a deferral advantage to using a Canadian subsidiary to carry on the Canadian business. Interest payable by a foreign resident corporation that is deductible in computing the Canadian-source income of the corporation may be subject to Canadian withholding tax in the same manner as interest paid by a Canadian subsidiary.



Losses

As with a Canadian subsidiary, the Canadian-source losses attributable to the permanent establishment may be carried forward up to twenty years and back up to three years to be set-off against Canadian-source profits in those other taxation years. However, such losses could be applied immediately by its foreign parent against its foreign source income. We understand that the latter would not be true of a Canadian subsidiary, other than a ULC that is disregarded for U.S. tax purposes.

Transferring Branch Assets to a Canadian Subsidiary

It is generally possible to transfer the assets and liabilities of a branch to a Canadian corporation in exchange for shares of the corporation on a tax-free basis, thus “converting” a branch into a Canadian subsidiary.

Disposition of the Business

Carrying on the Canadian business directly through a branch operation entails rather different tax consequences upon a subsequent disposition of that business than is the case where a Canadian subsidiary is used. Disposition of the Canadian business by its foreign resident parent is a taxable event, which may trigger income in the form of inventory gains, goodwill proceeds, recaptured depreciation previously claimed and capital gains from the disposition of taxable Canadian property (including assets used in carrying on the business). As a general proposition, the Branch Tax, as well as ordinary income tax, would apply to the income generated on the sale. Provisions of Canada’s bilateral tax treaties generally do not exempt such gains and income from Canadian taxation.

Other Considerations

Although the Canadian transfer pricing rules have no application to Canadian branches, the allocation of profits to the Canadian branch is of primary concern. Canada’s bilateral tax treaties generally limit the application of Canadian tax to business profits attributable to the Canadian permanent establishment and provide a number of rules that are relevant to this calculation. Among these is the concept that Canada shall attribute to the Canadian permanent establishment the profits which it might be expected to make if it were a distinct and separate person, engaged in the same or similar activities, under the same or similar conditions, and dealing independently with the foreign resident and related persons.



Advantages & Disadvantages of Corporations and Branch Offices

Below is a chart comparing the advantages and disadvantages of a corporation versus a branch office.

Entity	Advantages	Disadvantages
Corporation	<ul style="list-style-type: none">• is a separate legal (taxable) entity• parent corporation is generally shielded from liabilities of subsidiary• preparation of initial documentation is streamlined and involves relatively modest expenses• no minimum capitalization requirements• working capital can be raised through the issuance of debt or shares, and transfer of control can be affected by the transfer of issued and outstanding shares	<ul style="list-style-type: none">• greater regulatory requirements than for other types of entities• detailed rules relating to preparation of financial statements• must adhere to financial solvency tests whenever shares are redeemed or purchased, or dividends are paid
Branch	<ul style="list-style-type: none">• since no new entity is created, start-up costs are minimal• losses commonly incurred in start-up operations can be written off against profits in residence jurisdiction	<ul style="list-style-type: none">• financial disclosure obligations• legal compliance and regulatory issues• ineligibility for government funding• inherent difficulties in computing income for Canadian tax purposes

Employment & Labour Law

Canadian employment law is generally governed by provincial and territorial statutes, although certain businesses are subject to the federal *Canada Labour Code*. Hence, if your business is operating out of more than one province or territory, it is important to coordinate policies and practices that are compliant with the laws of each. These employment statutes will generally set out minimum requirements that will be read where an employment contract is silent as to a particular term or condition.



The most notable difference between U.S. and Canadian employment law concerns “employment-at-will”. This notion, which allows employers to unilaterally end employment relationships, does not exist in Canada. Rather, Canadian employers are obligated to provide employees with reasonable notice upon termination or, alternatively, pay in lieu of notice. The amount of this payment is determined by statutory minimums set out in the relevant provincial or territorial employment standards act, but the common law often entitles employees to amounts greater than such minimums.

Employees represented by a union will be governed by the terms of any collective agreement that the union has entered into. As these employees will not have individual contracts with their employer, disputes between employee and employer must be resolved in accordance with the process set out in the employees’ collective agreement.

Foreign Investment Restrictions

If a non-resident of Canada acquires control of a Canadian business, the acquisition may be reviewable or notifiable under the *Investment Canada Act* (the “ICA”). If the acquisition is reviewable, the Canadian government will have to ascertain whether the transaction is “likely to be of net benefit to Canada”. If the acquisition is notifiable, the non-resident must submit a report to the CRA after closing. Any acquisition of control that is not reviewable is notifiable.

For an acquisition of control to be reviewable, it must reflect a direct acquisition of voting interests of all or substantially all of the assets of a Canadian business. A direct acquisition of control occurs where a non-resident acquires at least 50% of the voting interest in a Canadian business, and it is presumed to occur where a non-resident acquires between 33% and 50% of the voting shares.

An acquisition will only be reviewable if the value of the Canadian business and all other subsidiary businesses in Canada that end up being acquired as a result of the acquisition is equal to or greater than either \$1.931 billion or \$1.287 billion, depending on the non-resident’s country.



Value is calculated based on the nature of the acquisition:

- for the acquisition of shares of a public corporation, the ICA calculates value as the sum of market capitalization and total liabilities (excluding operating liabilities), less cash and cash equivalents;
- for the acquisition of shares of a private corporation, the ICA calculates value as the sum of total acquisition value and total liabilities (excluding operating liabilities), less cash and cash equivalents; and
- for acquisitions of assets, the ICA calculates value as the sum of total acquisition value and assumed liabilities, less cash and cash equivalents transferred to the buyer.

Competition (Anti-Trust) Law

The federal *Competition Act* provides the Commissioner of Competition (the “**Commissioner**”) with the ability to review merger activity. If it is believed that a transaction may significantly prevent or lessen competition, the Commissioner may challenge the transaction before an independent administrative tribunal (the “**Tribunal**”).

The two parts of the *Competition Act* that might apply to your merger are:

- the pre-merger notification rules; and
- the substantive merger rules.

Pre-Merger Notification Rules

Pre-merger notification is only required in five specific situations:

1. when acquiring an operating business’ assets;
2. when acquiring voting shares of a corporation that will result in the buyer and its affiliates holding greater than:
 - i. 20% of the shares of a publicly traded corporation;
 - ii. 35% of the shares where none of the shares are publicly traded; or
 - iii. 50% of the shares if the buyer(s) already owned more than the percentages in i. or ii., as the case may be, before the proposed acquisition;
3. when acquiring more than a 35% interest in non-corporate combinations;
4. the amalgamation of two or more corporations; or
5. when a combination is formed (e.g. joint venture) as between two or more entities that will be carrying on business otherwise than through a corporation.



Even if your transaction falls into one of these situations, it will still need to meet the following two thresholds to be subject to the pre-merger notification rules:

- Party Size:
 - the parties, together with their respective affiliates, must have aggregate assets in Canada or annual gross revenues from sales in, from or into Canada, in excess of \$400 million; and
- Transaction Size:
 - the value of the assets in Canada, or the annual gross revenue from sales (generated from those assets) in or from Canada, of the target operating business and, if applicable, its subsidiaries, must be greater than \$93 million; or
 - for amalgamations (mergers), each of at least two of the amalgamating corporations (together with its affiliates) must exceed \$93 million.

Substantive Merger Rules

The substantive merger rules apply to all mergers, regardless of whether the pre-merger notification rules apply to the transaction. These rules are meant to identify transactions that could significantly lessen or prevent competitive behaviours.

Factors that the Commissioner will consider include, among others:

- whether the transaction results in the removal of a successful competitor;
- whether the transaction will result in ineffectively competitive markets;
- competing businesses' barriers to entry;
- the availability of comparable products/services;
- the importance of change and innovation in the particular market; and
- whether the business being acquired is failing.

Where the Commissioner challenges a merger, the matter is referred to the Tribunal, which is capable of delaying or blocking the proposed merger.

Privacy Law

In Canada's private sector, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") restricts the collection, use and disclosure of personal information on a federal level. However, the provinces of Quebec, British Columbia and Alberta have substantially similar privacy statutes, which supersede PIPEDA.



PIPEDA specifically protects “personal information,” which is defined as “information about an identifiable individual” (e.g. salary information that can be linked to an individual). PIPEDA requires that businesses obtain the consent of individuals to the collection, use or disclosure of their personal information. Businesses should have policies in place to ensure the protection of personal information relating to employees, customers and other business contacts. Businesses must also be careful to obtain consent to the disclosure of personal information in the course of commercial transactions (such as during due diligence phases).

Anti-Spam Law

Canada’s Anti-Spam Legislation (“**CASL**”) regulates certain electronic communications, such as e-mails and SMS, as well as the installation of computer programs. The Canadian Radio-television and Telecommunications Commission, Canada’s broadcasting and telecommunications regulator, has the primary enforcement responsibility under CASL, and can investigate, take action against and set administrative monetary penalties for breaches of CASL. Breaches of CASL can result in significant monetary penalties.

Generally, CASL prohibits:

- the sending of commercial electronic messages (“**CEM**”), to an electronic address (such as an e-mail address or social networking account), without an individual’s consent;
- the alteration of transmission data in an electronic message, in the course of a commercial activity, which results in the message being delivered to a different destination without an individual’s express consent; and
- installing computer programs, in the course of a commercial activity, without the express consent of the owner or user (e.g., an authorized employee) of the computer systems.

CASL deems individuals to have given implied consent to the receipt of CEM in certain situations.



Language Law

The *Charter of the French Language* (the “**Charter**”) states that every person has the right to be communicated to in French by all civil administration, health services, public utility firms, professional corporations, associations of employees and businesses operating in Quebec. The Charter implements language requirements with respect to contracts, commercial advertising, product labelling, commercial publications and business names. If your company has 50 or more Canadian employees and is based out of Quebec, further restrictions may apply to its internal and external operations. This threshold will be lowered to include entities with at least 25 employees effective June 1, 2025.

About Wildeboer Dellelce LLP

Wildeboer Dellelce is one of Canada’s premier corporate, securities and business transaction law firms. We offer private and public clients advice in:

- Asset Management & Investment Funds
- Corporate & Commercial
- Corporate Finance & Securities
- Corporate Governance
- Debt Products
- Entertainment, Media & Sports
- Executive Compensation
- Mergers & Acquisitions
- Private Equity & Venture Capital
- Real Estate
- Regulatory & Compliance
- Start-Ups & Emerging Companies
- Tax
- Wills, Estates & Trusts

The firm works across all industries including agribusiness, food & beverage, automotive, cannabis, financial services, fintech, industrial & consumer goods, life sciences, healthcare & pharmaceuticals, mining, energy & natural resources and technology.



We are recognized in the Chambers Canada 2025 Guide as Highly Regarded for Corporate/Commercial in Ontario, as one of Canada's Best Law Firms for 2025 by The Globe and Mail and as one of the 'Top 10 Corporate Law Boutiques in Canada' by Canadian Lawyer Magazine. In addition, the Canadian legal LEXPERT Directory and Best Lawyers Canada recognize Wildeboer Dellelce lawyers in several areas including mergers and acquisitions, corporate finance, securities, and technology.

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