



Bringing a Retail Business to Canada: Top 10 Considerations

As more retailers prepare to expand beyond local markets, many are considering the outstanding opportunities in Canada's retail environment. Canadian consumers spend in excess of C\$500 billion annually in retail stores and on-line, and the growth in this sector has been robust. A stable overall economy and close proximity to the United States make Canada a destination of choice for retail businesses from abroad. In pursuing Canadian expansion, however, a number of factors must be considered. The mode of entry will affect the timing and cost of establishing a business, and decisions regarding whether to pursue "greenfield" expansion as opposed to the acquisition of an existing business will impact whether, among other things, Canadian securities, anti-trust or foreign investment rules are triggered. Although the nature and extent of such considerations will vary depending on the manner of entry and the nature of the retailer and products, retailers should be mindful of the applicable legal requirements, some of which are unique to Canada.

1 | Foreign Investment Rules

Notifications and/or governmental approvals may be required in the case of a foreign retailer establishing or acquiring a Canadian business, where certain financial thresholds are exceeded. If the business engages, or will engage, in the sale of "cultural" products such as books, magazines, CDs or DVDs, a much lower threshold will initiate a review.

2 | Canadian Cultural Issues

French is an official language of Canada and the dominant language of the province of Quebec. In the retail context, the use of French is legislated with respect to signage, advertising, packaging and labelling in Quebec. As noted below, federal requirements are more limited, although as a practical matter almost all consumer packaging and labelling in Canada is bilingual. Furthermore, social and political considerations as well as cultural diversity may impact store location, marketing and merchandising choices.

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3 | Employment and Labor Laws

Canada does not have U.S. “employment-at-will” concepts. Canadian employment legislation regulates the employer-employee relationship to a greater degree than in most U.S. jurisdictions and labor law concepts also differ in many material respects. Further, provincial human rights legislation protects against workplace discrimination on the basis of a number of enumerated characteristics and regulates background checks and drug testing at both the pre-employment and employment stages.

4 | Real Estate

The purchase, leasing and development of real estate do not vary greatly from province to province, with the exception of Quebec, which is a “civil code” rather than a common law jurisdiction. With limited exceptions, there are no longer foreign ownership restrictions on acquiring interests in real property. Acquiring real property will attract a land transfer or recording tax in most provinces. The site selection process is one of the most critical issues in developing the retailer’s expansion strategy, especially in the case of greenfield expansions. Municipalities regulate the development and construction of retail locations in the form of zoning and building by-laws. The readiness of a site from a land use planning perspective is a significant consideration affecting the timing of the rollout of one’s retail locations. Leasing retail space in Canada, meanwhile, is generally similar in nature to that of many foreign jurisdictions. The most notable difference, however, is the significant leverage landlords currently possess in Canada given the consolidation of the commercial retail real estate market.

5 | Privacy, Data Collection and Anti-Spam Legislation

Legislative initiatives at both the federal and provincial levels have created a more stringent landscape for retailers with respect to collecting, storing and using the personal information of customers and employees. For example, the previously common practice of recording and storing a customer’s driver’s licence number as part of a cheque acceptance or product return procedure is no longer permissible. More generally,

businesses must be mindful of the impact of privacy laws in relation to the cost and time of developing compliant IT systems and protocols. Canadian anti-spam legislation, which took effect in 2014 and is popularly known as “CASL”, is significantly more stringent than its U.S. equivalent, requiring affirmative opt-in by consumers before commercial electronic messages may be sent to them, although there are some important exceptions. U.S. and other foreign retailers must be aware of CASL compliance issues when they deal online with customers located in Canada.

6 | Intellectual Property

The retailer should ensure that, well in advance of any public announcement of its intention to expand into Canada, it has commenced the process of protecting its rights to trademarks in Canada and reserved a Canadian domain name, if required, before “squatters” have an opportunity to act. In the case of material trademarks, advance searches should be conducted to determine whether any potential problems can be expected.

7 | Packaging and Labelling

The federal *Consumer Packaging and Labelling Act* requires, among other things, that, unless exempt, (i) certain minimum information must be contained on the product label; and (ii) aspects of such information must be displayed in both English and French. While there is no federal legislation that requires fully bilingual labelling on products, as a practical matter, almost all consumer packaging and labelling in Canada is fully bilingual. Further, as noted above, Quebec legislation requires products distributed in that province to have all information on labels, together with accompanying materials, in French.

8 | Consumer Protection and Product Safety Legislation

Most provinces have enacted legislation that regulates sales to consumers, requires certain mandatory disclosure depending upon the nature of the consumer agreement and restricts the retailer’s ability to exclude certain statutorily implied warranties. More recently, consumer protection legislation has been amended in a number of provinces to regulate gift cards,

particularly by prohibiting expiry dates and by regulating fees. Consumer product safety is regulated in Canada in ways similar to the U.S. and the E.U. but there are specific obligations on retailers in Canada including mandatory incident reporting and document retention.

9 | Immigration

As part of the exploratory and set-up work, foreign retailers will often send employees to Canada either on a temporary or fixed-term basis. Retailers should ensure that the arrangements are properly structured so that any requisite visas and/or work permits are applied for and obtained in advance.

10 | Taxes and Duties

In Canada, sales taxes are levied by federal and provincial governments. Retailers are generally required to collect the federal Goods and Services Tax (GST), a value-added tax, which applies at the rate of 5% to most supplies of goods and

services in Canada. The provinces of Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland & Labrador have combined their provincial taxes with the GST to form a single Harmonized Sales Tax (HST) of either 13% in Ontario or 15% in the other participating provinces. Quebec imposes its own 9.975% value-added tax (QST) on virtually the same range of goods and services as the GST. Saskatchewan, Manitoba and British Columbia each impose a Provincial Sales Tax (PST) of between 6% and 8% that applies to the sale of most tangible goods and certain taxable services within their respective provinces. Provinces with the PST or QST are also subject to GST, as is Alberta, which does not have any form of provincial retail sales tax. Canadian cities and counties do not levy their own sales taxes.

Customs duties may also apply to goods imported by the retailer into Canada. The amount of duty payable, if any, depends on the nature of the good, and whether it originated in a country that has a free-trade agreement with Canada, such as the U.S. or Mexico.

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