

# Establishing Your Business in Canada: A Legal Guide for US and International Companies

Canada is often the first international market a US or European company enters, and it is usually the one leadership underestimates. The language is familiar, the legal system outside Quebec is common law, and the commercial culture feels close to home. That familiarity is exactly what makes Canada expensive for companies that treat market entry as an administrative exercise rather than a legal one.

Canada is not a single market. It is a federation of thirteen provinces and territories, each with its own corporate registry, employment standards, privacy rules and, in one case, a language regime with real enforcement behind it. Below are the decisions that matter most, and the ones foreign companies most often get wrong.

**Branch or Subsidiary**

The threshold question is whether to carry on business through a Canadian subsidiary or to register your existing entity extra provincially as a branch. A branch is simpler to establish, but it exposes the parent directly to Canadian liability and to Canadian tax on branch profits, with branch tax layered on repatriation, subject to treaty relief. A subsidiary contains liability, generally sits better with Canadian lenders, landlords and government procurement, and offers cleaner treaty planning.

The right answer turns on projected early year losses and whether they can be used at home, your exit horizon, and your treaty position. Companies that expect losses in the first two or three years sometimes prefer a branch so those losses flow up. Companies planning to sell the Canadian operation later almost always want a subsidiary. Reversing the choice after operations begin is rarely cheap and sometimes triggers tax on the restructuring itself.

**Federal or Provincial Incorporation**

Federal incorporation under the *Canada Business Corporations Act* offers national name protection, but it requires that at least 25 percent of directors be resident Canadians. Ontario, British Columbia and Alberta have eliminated director residency requirements entirely, which is why foreign parents unwilling to appoint a Canadian director frequently incorporate provincially instead. Either route still requires extra provincial registration in every province where you carry on business, and carrying on business is defined more broadly than most foreign executives assume.

**The Filings You Did Not Know You Needed**

Under the *Investment Canada Act,* a non Canadian must file a notification every time it establishes a new Canadian business or acquires control of an existing one, generally within 30 days of implementation. There is no de minimis exemption. A two person sales office triggers the same notification obligation as a significant acquisition.

Above the prescribed thresholds the obligation changes character. A direct acquisition of control cannot be implemented until the Minister is satisfied that the investment is likely to be of net benefit to Canada. For 2026, the enterprise value threshold is C$2.179 billion for trade agreement investors, including those from the US, the EU, the UK and Japan, and C$1.452 billion for other World Trade Organization investors.

Separately, merger notification under the Competition Act is triggered where the target's Canadian assets or revenues exceed C$93 million and the parties clear a C$400 million size test.

**Employment Law is Not At Will**

There is no at will employment anywhere in Canada. Each province sets statutory minimums for notice, severance, overtime and vacation, and the common law adds reasonable notice that can reach 24 months for long serving senior employees. Termination clauses that would be unremarkable in Delaware are routinely struck down by Ontario courts, and when a clause fails, the employee gets common law notice instead of the contractual amount. Termination cost is a modelling input, not a footnote.

Ontario has also moved quickly on hiring regulation. Since January 1, 2026, employers with 25 or more employees must disclose expected compensation in publicly advertised postings, disclose any use of artificial intelligence in screening, confirm the vacancy is real, drop Canadian experience requirements, notify interviewed candidates within 45 days, and retain records for three years. Non competition covenants have been prohibited for most Ontario employees since 2021.

**Getting Your People into Canada**

Foreign nationals need authorization to work in Canada. The default route requires the Canadian operation to obtain a Labour Market Impact Assessment (LMIA), a burdensome process directed largely at showing that no qualified Canadian was available for the position. Under certain conditions an LMIA exempt permit is available instead, and the intracompany transferee (ICT) route is often the answer for executives, senior managers and specialized knowledge employees.

Since October 2024, Canadian immigration authorities have applied distinct rules to transfers establishing a new Canadian office and transfers into an established Canadian operation, and the distinction carries significant commercial and immigration consequences. A transfer to establish a new office is generally limited to an initial permit of one year. A transfer into an established operation may be issued for up to three years initially and extended thereafter, subject to cumulative maximums of five years for specialized knowledge workers and seven years for executives and senior managers.

Nationality may open alternatives. US and Mexican nationals may, where the requirements are met, qualify under the ICT provisions of the Canada US Mexico Agreement (CUSMA), and qualifying EU nationals under the Canada EU Comprehensive Economic and Trade Agreement (CETA), though CETA caps duration at four years.

**Tax Residency and Cross Border Structuring**

A corporation incorporated outside Canada can still be resident here for tax purposes if its central management and control is exercised in Canada, which can happen simply because the board effectively makes decisions from Toronto. Even without residency, a permanent establishment creates Canadian filing obligations. Payments from Canada to non residents may attract withholding at a statutory 25 percent, reduced under the applicable treaty. Intercompany debt is constrained by thin capitalization and interest deductibility limits, and transfer pricing documentation must be contemporaneous. Most businesses will also need to register for GST or HST. These questions should be answered before you incorporate, not after.

**Doing Business in Quebec**

Foreign companies routinely treat Quebec as one more province with a language requirement attached. It is closer to a separate jurisdiction, and the differences run deeper than signage.

Quebec is a civil law jurisdiction. Contracts are governed by the Civil Code of Québec rather than by common law, good faith is a codified obligation in both negotiation and performance, and courts can strike abusive clauses in contracts of adhesion. Standard form agreements drafted for Ontario do not

simply travel across the border. Neither does your security package, since lending in Quebec is secured by hypothec rather than under a personal property security regime.

Employment is materially more protective. An employee with sufficient service who is dismissed without adequate cause has a statutory recourse before Quebec's labour tribunal. Restrictive covenants behave differently too, and an employer's ability to enforce a non-competition covenant can turn on how and why the employment ended.

Then there is language. The Charter of the French Language reaches signage, packaging, employment documentation, customer service and contracts of adhesion, and its requirements tightened on June 1, 2025. Businesses with 25 or more employees must register with the Office québécois de la langue française and complete a francization process.

Quebec also administers its own corporate income tax and sales tax, and maintains its own enterprise registry with its own registration, disclosure and business name requirements. Plan for Quebec counsel from the outset rather than treating it as an extension of the remainder of Canada.

**Make Sure Your Trademark Is Actually Available Before You Use It**

Federal and provincial name approval systems check your proposed name against other corporate and business names on record. They do not check it against registered or unregistered trademarks. A name that clears a corporate name search can still infringe a trademark someone else has been using in Canada for years.

Before committing to a brand for the Canadian market, it is prudent to conduct a full trademark search, one that covers both existing trademark registrations and any unregistered use of the same or a similar name already happening in the marketplace. Skipping this step does not remove the risk. It just delays discovering it until after the signage is printed and the launch budget is spent, closely followed by a cease and desist letter.

Timing matters too. Using a trademark first in Canada generally gives you the strongest underlying claim to it, but registering it is a race, and Canada awards the registration to whoever files first, not whoever used it first. Wait too long, and someone else can file ahead of you. If that happens, clearing your own name later can mean paying to challenge their registration, either by opposing it before it is granted or trying to cancel it afterward, with no guarantee you will win. A search done early lets you find a problem and fix it before it costs you anything. The same problem found later always costs more.

**Before you sign anything**

Canada rewards companies that plan their entry and frustrates those that improvise it. The structure you choose, the province you incorporate in, the terms of your first employment agreement and the filings you make in your first thirty days will shape your cost base and your risk exposure for years. None of these decisions is especially difficult on its own. All of them are difficult and expensive to reverse. If Canada is on your roadmap, we would welcome an early conversation.



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