

# Opportunity awaits

CANADIAN CONSUMERS SPENT OVER \$400BN IN RETAIL STORES IN 2007, MAKING IT ANOTHER YEAR OF STRONG GROWTH, AND ALL INDICATIONS POINT TO A CONTINUATION OF HEALTHY LEVELS OF CONSUMER ACTIVITY. HERE, **ROCKEY M DELFINO** AND **C MARIO PAURA**, PARTNERS WITH CANADIAN-BASED INTERNATIONAL HEAVYWEIGHT, STIKEMAN ELLIOTT LLP, TALK TO RLI ABOUT EXPANDING RETAIL OPERATIONS INTO CANADA

The stability of the Canadian economy and close proximity to the US have historically made 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 about pursuing '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.

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. It is particularly important to take note of this if your business (or the acquired business) sells 'cultural' products, such as books, magazines, CDs or DVDs, in which case the review threshold is much lower.

With limited exceptions, there are no longer any foreign ownership restrictions on acquiring interests in real property in Canada.

There are some notable differences in Canadian labour laws and employment standards regulations. For example, Canadian law does not recognize the US 'employment-at-will' concept. Canadian employment legislation regulates the employer-employee relationship to a greater degree than in most US jurisdictions and labour law concepts also differ in many material respects.

Site selection is one of the most critical issues in developing your expansion strategy, especially in the case of greenfield expansions. The readiness of a site from a land-use

planning perspective is a significant consideration affecting the timing of your retail roll-out. As is the case in many other



ROCKEY M DELFINO



C MARIO PAURA

jurisdictions, Canada's municipal governments regulate the development and construction of retail locations in the form of zoning and building by-laws. Having a firm grasp of local concerns and planning requirements at an early stage will reduce the risk of delays at a later stage.

Any acquisition of real property will attract a land transfer or recording tax in most provinces. Should you be planning to lease your retail space, you will find that the legal and practical considerations are generally similar in nature to those 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.

While law relating to real estate is generally a provincial rather than a federal responsibility, a retailer planning a national presence in Canada will find that laws affecting the purchase, leasing and development of real estate are generally similar from province to province. The exception is Quebec, which is a 'civil code' jurisdiction (rather than a common law jurisdiction like the US, England, Australia and all other provinces and territories of Canada).

Retailers are generally required to charge the federal Goods & Services Tax (GST), a value added tax, generally applying at the rate of five per cent, on sales in Canada. All provinces except Alberta also impose a provincial sales tax on most goods and certain taxable services within their respective provinces. In Quebec, Nova Scotia, New Brunswick and Newfoundland & Labrador, the provincial tax is generally imposed on the same range of goods and services as the GST (and in the last three of these provinces is formally combined with it). 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 goods, and whether they originated in a country that has a free-trade agreement with Canada.

When it comes to intellectual property issues, the key is to get on top of the issues early. You should ensure that, well in advance of any public announcement of your intention to expand into Canada, you have commenced the process of protecting your rights to trademarks in Canada and that you have 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.

**"Site selection is one of the most critical issues in expansion strategy"**