

TEN ERRORS GERMAN COMPANIES MAKE WHEN SETTING UP BUSINESS IN CANADA

By Alessandro Perri & Lukas Kirstgen

Canada is a dynamic market which offers many opportunities for foreign entrepreneurs and business owners who start a business here. However, foreign investors need to commit time in learning about the Canadian marketplace, the legal aspects and costs of its plans, including having employees and choice of business structure.

Alessandro Perri, Associate of Houser Henry & Syron LLP, sat down with Lukas Kirstgen, Department Manager – Legal & Tax of Canadian German Chamber of Industry and Commerce Inc., to discuss their experiences in supporting foreign businesses as they build successful Canadian operations.

HHS: Why do people think Canada is a great place to start business?

Lukas Kirstgen (LK): I think there are several reasons why Canada is a great place to start a business. Canada is one of the ten largest economies in the world. The country itself has an incredible amount of natural resources, from fish and timber to minerals, gas and oil. It has always been a trading nation and with its proximity to the US market, and the CETA and NAFTA (USMCA) international trade agreements, trade between the US, Mexico and Europe is easier and more efficient to navigate.

Alessandro Perri (AP): I agree. I think many foreign businesses see Canada as a safe place to do business. Compared to other countries, especially more recently, we are economically and politically stable.

Our government has also made doing business in Canada increasingly more attractive with competitive corporate tax rates, credits and incentives. But I think, what really sets us apart, is our highly skilled and educated workforce, especially in emerging markets,

like information technology. Of course, we cannot forget our multicultural society and our highly rated quality of life.

LK: In addition to that, the process of starting a business in Canada is easy, compared to Germany, for example. The World Bank Group annually creates an Ease of Doing Business Index, where it compares procedures, time, cost, and minimum capital to open a new business. According to the Index, Canada ranks 3rd out of 190 countries - whereas Germany ranks 125th.¹

HHS: What preparation and research do you suggest a company do before setting up operations in Canada?

LK: We jokingly call it “homework”. Canada and Germany are especially different when it comes to the legal system. At a minimum, we recommend **legal and tax support** from the beginning. Build a knowledgeable and helpful team of advisors. Ideally you complement that with a **market analysis**.

AP: After researching your market and building your team, we suggest creating an expansion plan.

Your plan should consider these key issues:

First, **how are you going to expand into Canada?** For example, are you going to partner with a Canadian distributor to help sell your product, purchase an already established Canadian company as a subsidiary to your parent company, or create a new Canadian subsidiary and start fresh?

Before choosing, work with your team of legal and tax advisors to determine **what are the legal and tax consequences of each option**.

If you plan to hire employees in Ontario, **consider the requirements of employment law in Ontario**. Many of our foreign clients do not consider the differences between employment laws in Ontario and their home jurisdiction. Employment law in Ontario (and generally throughout Canada) is quite protective of employees, especially compared to employment law in the US. For example, in Ontario, employers must give employees various minimum entitlements, including unpaid leaves of absences and termination and severance pay. Also, under human rights laws and occupational health and safety laws, employers must accommodate an employee’s disability up to a point of undue hardship. For some of our clients, these employee-favoured laws can be quite surprising as they can lead to higher operating costs. So, speak with your legal advisor about how employment law will affect your business in Ontario.

¹ The World Bank Group, *Ease of Doing Business Rankings*, online: www.doingbusiness.org/en/rankings.

Our firm regularly offers complimentary employment law seminars to its Canadian and foreign clients and business partners so there are few, if any, surprises. I highly recommend that foreign investors take advantage of these seminars.

Lastly, a foreign business should ***determine whether it needs a physical space to expand into Ontario***. If so, you need to understand the costs and benefits of leasing versus purchasing property. For example, if a space is leased, the tenant should be aware of the various remedies a landlord has against the tenant. Or, if purchasing a property, the foreign business needs to include the cost of land transfer tax in its cost of expanding into Ontario.

HHS: What is the Chamber of Commerce and how do you support foreign businesses wanting to set up operations in Canada?

LK: Since 1894, The German Chambers of Commerce Abroad has acted as official representatives for the interests of the German economy outside of Germany. They are established in countries that are especially relevant to German companies. Currently, German Chambers exist at 140 locations in 92 countries. In Canada, we have over 50 years of experience in German Canadian trade. We understand the business needs of German companies in Canada, and as a "one-stop-shop", we offer well-coordinated and interlinked services from a single source. The range of services includes market research, business partner search, visa consulting, business incorporation, tax registration and support, bookkeeping and payroll.

My department works closely with strong local partners like Houser Henry & Syron LLP to offer tailored services to every client. HHS has a particular focus on helping companies quickly navigate the Canadian landscape, while streamlining the licensing and registration process. They are well versed in Canadian employment law and hold strong relationships with immigration lawyers, bankers, accountants, and other advisors, should we or our foreign business clients require additional direction.

AP: Because our firm has extensive experience advising companies based throughout the world, including Europe, the US and Asia, we have built great relationships with international Chambers and their teams, like with Lukas and the German Chamber of Commerce. When a Chamber connects us to a foreign business, we will help the business from incorporation onwards, with corporate and real estate transactions, commercial agreements, financings, mergers and acquisitions, employment law, and general issues that owners and entrepreneurs face every day. With these services, we have helped our clients work through important business and legal issues to successfully establish and operate a business in Ontario.

HHS: How can a foreign business make a successful launch to Canada?

LK: Apart from the steps outlined above, I think it is important to realize that **business culture in Canada is different** from that of Germany. Germany tends to take a direct approach in how businesses operate internally and when dealing with customers. Whereas in Canada, business operators develop internal and external customer relationships to **build trust, loyalty and value**. It is especially important to understand customers and their needs. Therefore, foreign businesses entering the Canadian market need to be open minded and willing to learn how to adjust business-oriented behaviors.

“Relationship selling” is a proven model in Canada. Sales and business relationships focus on the interaction between the buyer and the seller, rather than the price or details of the product. Furthermore, it is important to understand that each province has a unique approach on business operations.

AP: To transition successfully to Canada, *start by building your team of advisors*, so that you can understand all the options on how to expand, and the benefits and consequences of each option. I recommend learning from your team about Canadian law and how it inevitably affects your plan to expand into Canada. With this knowledge, **build your expansion plan** and follow it. But, always be flexible – if the plan is not working, adapt quickly or your launch will become more stressful and more expensive and be less likely to succeed. Once your plan is in place, **determine (very early on) who will run the operations in Canada**. Whether you choose a known individual from your foreign business or a feet-on-the-ground Canadian to run your operations in Canada, the **parent company must have constant oversight** to ensure the expansion is successful. This is especially important in the first few years of expansion.

HHS: Why do some companies fail?

LK: The most common mistake is that there is **no real commitment** to grow Canadian business from the beginning. Companies should not underestimate the Canadian market and adapt their business strategy. If a product is successful in the US or in Germany, it will not necessarily become an instant hit in Canada. Oftentimes, a company enters the Canadian market with **just a “German or European” mindset** and is not flexible with its sales strategy, which leads to a higher risk of failure. As mentioned above, companies need to examine and understand their respective markets, the major players, their products, the processes and adapt to that model.

Another common mistake, which we have observed, is choosing the **wrong location**. Companies sometimes start in remote cities where the respective industry is not located. That happens many times when the local representative recommends his hometown as company headquarters. Go where your customers are and where you find the best conditions.

AP: That is a great point. We had an experience with one of our foreign clients who put *too much trust in a Canadian-based executive* to run the business. Because the parent company did not supervise the executive closely, the executive was running his own side business while working to expand our client's business. As a result, our client's Canadian business suffered, and the executive was fired, and the firing led to litigation.

Foreign businesses also tend to *underestimate the cost of doing business* here. For example, many of our clients do not realize how expensive it can be to employ a workforce in Canada or to purchase property. As Lukas mentioned previously, sometimes companies fail because they fail to grasp *cultural differences* in how to operate their business in Canada compared to their home jurisdiction. For example, in Europe, business contracts are usually short and direct. Whereas in Canada, business contracts are usually lengthy and discuss the most minute details. You should engage a strong team of advisors to help you understand and overcome these differences.

LK: For foreign companies that fail, what is the aftermath?

AP: If a foreign company fails to launch its business in Canada, the business simply fizzles in the Canadian market, forcing the company to refocus its energies in other markets. This can result in substantial financial losses, which could take a long time to recover. In worst cases, the failure to launch could tarnish the company's reputation in Canada and elsewhere.

When we work with our clients, our goal is to help them create and execute a thorough and appropriate expansion plan, so that they will build an enduring and profitable business in Canada.

HHS: If you could summarize the keys to success in a few words, what would you say?

LK: To succeed in Canada, a foreign business needs time, commitment and professional advice.

Conclusion

If you are looking to expand your business to Canada, you should invest time with local experts who can guide you. If you have questions or require additional information relating to this interview or how to set up a business operation in Canada, please contact:

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About HHS

Since 1934, Houser Henry & Syron LLP has provided legal services to Canadian and foreign private businesses, helping them deal with complex legal challenges to grow and to manage risk successfully. We help our clients with mergers and acquisitions, commercial real estate, reorganizations, shareholders disputes and agreements, commercial agreements, employment issues and financing. We also pride ourselves in advising in *Plain English*.

About Canadian German Chamber of Industry and Commerce Inc.

The Canadian German Chamber of Industry and Commerce Inc. enhances the bilateral economic relations between Canada and Germany. The Chamber was founded in 1968 in Montreal and its office in Toronto is the primary contact for German-speaking clients who want to start a business relationship in Canada.