



SETTING UP A BUSINESS IN CANADA

C A S E S T U D Y

CANADA

Canada is one of the most attractive places to invest in the world. It has the world's ninth-largest economy with a stable legal and regulatory system. In addition to its traditional strengths in mining, energy, forestry and agriculture, it also has a large financial industry and is an increasingly important player in artificial intelligence and related sectors.

To guide foreign mid-market business owners looking to set up business in Canada, we have assembled a select group of professional service providers who are available to provide expertise in key areas. The professionals identified in this article understand what it takes to achieve success and growth in the Canadian market and have expertise in many areas including the following:

- business structuring;
- acquisitions;
- regulatory requirements;
- tax;
- immigration;
- financing and banking;
- buying and leasing real estate;
- intellectual property; and
- accessing available governmental resources

Our professionals take the time necessary to learn about a business and tailor their approach to the client's needs. They have the skills and experience necessary to ensure foreign companies entering the Canadian market start with a strong foundation for long-term success.

This case study is intended to show just a few of the ways in which our team can assist a business that is expanding to Canada. Please feel free to contact any member of our team for more information.



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Beak Performance employs 50 employees,
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organization for more than 15 years.**

CASE STUDY PREMISE

Claudia Shaeffer is a German businesswoman who is the fifth generation of her family running a successful manufacturing business in southern Germany. She is determined to grow her company's business in North America.

Claudia's company, BluBird Manufacturing, was formed in 1969 and specializes in the production of filtration systems for bird baths. The head office is in Nuremberg, with a branch office in the Netherlands. BluBird has had a presence in Canada since 2010, selling its products through Beak Performance, a local Canadian distributor based in the Greater Toronto Area.

Phase one of Bluebirds' expansion plan into Canada is to purchase Beak Performance. Claudia and members of her management team from Europe are set to travel to Toronto to finalize details of the acquisition and integration of its new Canadian company. One of the key management personnel will remain in Canada to run the company for a 2-year term. The new company requires a credit facility for its operations.

Beak Performance was founded 30 years ago, and its brand is well recognized globally. The company distributes a wide range of products and some of its employees have recently developed a new motor that they believe can be used for bird baths and possibly other products. Beak Performance has also registered the trademark BLUBIRD in Canada. Its lease expires in 2 years, with an option to renew for another 5 years. The company's annual revenue is \$50 million. Beak Performance employs 50 employees, many of whom have been with the organization for more than 15 years. BluBird Manufacturing is seeking to transfer several of Beak Performance's employees to its new Canadian company.

BluBird Manufacturing engaged a number of service providers to facilitate a successful acquisition of Beak Performance. Here is the summary of their advice.

PROFESSIONAL SERVICE PROVIDERS ADVICE

CORPORATE LEGAL ADVICE

Houser Henry & Syron LLP

Houser Henry & Syron LLP ("HH&S") will work with Claudia and members of her management team to determine whether to acquire shares or assets, how the purchase will work with Claudia and members of her management team to determine whether to acquire shares or assets, how the purchase will be financed, and a timeline for the acquisition. Once HH&S incorporates the Canadian branch and an optimal tax structure is determined, HH&S will guide BluBird through the acquisition by negotiating a letter of intent, conducting due diligence on BluBird and settling terms of the purchase agreement including terms of payment, security, confidentiality, non-competition and non-solicitation and transfer of assets.

As part of this acquisition, HH&S would assist BluBird in transferring Beak Performance employees to its new Canadian company. Employees with long service and without contracts limiting notice or termination can be a significant legacy cost and BluBird and Beak Performance will have to negotiate how to allocate this cost. HH&S can also help with managing a smooth closing of the transaction and addressing any issues which arise after closing.

HH&S will also help BluBird benefit from Canada's free trade agreement with the EU.

Houser Henry & Syron LLP helps mid-market business leaders grow their businesses and manage risk successfully. No matter what you have planned for your business, you can count on our people to deliver results and client-centric service... in plain English.

Houser Henry and Syron LLP is a boutique firm offering practical professional advice in the areas of mergers and acquisitions, commercial real estate, reorganizations, shareholders disputes and agreements, commercial agreements, employment issues and financing.

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The purchase of a business will almost always involve the transfer of employees. Employees with long service and without contracts limiting notice or termination can be a significant legacy cost.

Houser Henry
& Syron LLP

ACCOUNTANT/TAX ADVICE

Segal GCSE

Segal would advise BluBird to incorporate a Dutch holding company (HoldCo). HoldCo would then incorporate a wholly owned Canadian subsidiary company (AcquisitionCo). It was determined that AcquisitionCo would be financed through a combination of debt and equity. Depending on the legal and tax advice obtained, and the negotiated business terms with the shareholders of Beak Performance, AcquisitionCo will either purchase the shares of Beak Performance or the business assets of Beak Performance. If the shares are purchased, immediately after the acquisition, AcquisitionCo and Beak Performance will be amalgamated.

There are Canadian tax issues that must be considered when operating a business in Canada. Some of these considerations include:

- Registration and collection of HST on its sales to Canadian customers;
- Filing of HST returns;
- Filing of corporate income tax returns;
- Payment of taxes (HST, income);
- Registration for payroll taxes, including remittances to the CRA and annual information return;
- Withholding taxes in relation to payments made to non-resident persons;
- Transfer pricing study in relation to transactions and loans payable to non-arm's length non-resident persons;
- Taxation matters in relation to the immigration of Beak Performance's employees to Canada: will they remain residents of Germany; will they be equalized in relation to the overall taxation in Canada vis a vis the German taxation; filing of personal income tax returns.

Canadian legal and tax advice is critical at the outset to ensure that the overall structure is tax efficient.

Segal GCSE LLP is an audit, accounting, tax and business advisory leader in Toronto and surrounding regions. Segal LLP was founded in 1976 and has grown to become one of the largest, most-respected accounting firms in the Greater Toronto Area. The firm merged two independent firms, Segal LLP and GCSE LLP in 2022, adding to its portfolio of experts.

Services include: Assurance & Advisory, Business Advisory, Outsourced Accounting Services, Taxation, Transaction Advisory, Transfer Pricing, Valuations, Pen Testing.

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ACCOUNTANT/TAX ADVICE

RDP Associates Inc.

Canada has many grants and tax credits for businesses in the area of R&D/product development; hiring/training; export and business expansion. In addition, there are many substantial new grants and tax credits being introduced into priority industries such as clean tech, advanced manufacturing and agriculture (farms and food producers). It can be quite difficult for foreign companies to navigate grants and tax credits.

RDP can assist companies take advantage of all government assistance to which they are entitled.

In this case, RDP would start with a grant/tax credit search for BluBird and provide a list of relevant grants and tax credits available to the company. RDP would review the list with BluBird and determine which grants can be applied for now and in the next few years.

Should the company wish to proceed, RDP would write the grant application. If approved, RDP can also file the periodic reports necessary to receive the funding.

Where applicable RDP can work on a success fee based on a % of grant/tax credit proceeds received. RDP can also quote on an hourly or fixed fee basis.

RDP assists companies identify, prepare applications and reports for grants, tax credits and government loans and have been operating since 1987 in Canada. They also have offices in UK, Ireland, Netherlands and Germany.

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IP LEGAL ADVICE

CPST Intellectual Property

In addition to the usual due diligence, Blubird will need to consider two specific issues that are raised by the above fact pattern.

First, Blubird will need to determine whether Beak Performance owns the patent rights and other intellectual property rights to the invention created by its employees and consider obtaining written assignments of these rights from the employees in question.

Second, Blubird will, at a minimum, want to obtain an assignment of the trademark registration that Beak Performance obtained for the BLUBIRD trademark. It should also consider having Beak Performance acknowledge in writing that beneficial ownership of the BLUBIRD trademark in Canada has always been held by Blubird and not Beak Performance.

CPST Intellectual Property is an intellectual property law firm and patent/trademark agency firm that was started in February 2020 by a group of partners from Blake, Cassels & Graydon. Clients range from large, multi-national corporations to local start-ups.

CPST handles the full range of intellectual property matters, including Patent, Trademark and Copyright Litigation, Filing and Prosecution of Patent, Trademark and Industrial Design Applications, IP Transactions, and IP advice.

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COMMERCIAL REAL ESTATE ADVISORY ADVICE

ENCOR Advisors

To support BluBird's entrance into Canada and the Greater Toronto Area from a commercial real estate perspective, **ENCOR Advisors** would assist BluBird with the following:

Acquiring Beak Performance:

- Provide an Executive Summary of Beak Performance's existing lease including key business terms, terms, conditions, key dates, options, privileges and obligations;
- Prepare a detailed Market Analysis to understand how Beak Performance's existing lease compares to the market today;
- The Market Analysis will outline if there is an opportunity for savings (i.e. BluBird is above market) or at risk of future expense (i.e. BluBird is below market),

Understand and Evaluate Needs, Operational Challenges and Opportunities:

- Determine the pros and cons of the existing facility;
- Evaluate the facility's suitability to accommodate future growth;
- Consider factors such as location, size, shipping, clear height, power, parking, public transit, and any operational challenges;
- Evaluate the market to determine if alternative facilities might better meet BluBird's requirements.

Location, Commute and Demographic Analysis:

- Understand where Peak Performance's staff live and how they commute to work;
- Ensure the catchment area does not adversely affect the existing staff's commute;
- Ensure the available labour pool adequately supports BluBird's anticipated growth.

These steps are a great starting point for Claudia and BluBird Manufacturing. Additional support, resources, and due diligence will be undertaken as we work through the process.

ENCOR Advisors is an occupier-focused commercial real estate brokerage with the evolution of a top-performing team with a passion for delivering better value for clients. They strive to understand clients unique needs, opportunities, challenges and objectives. Their service offering is custom tailored to deliver maximum value to clients including; better space, lower occupancy costs, operational flexibility and risk mitigation.

ENCOR Advisors Services include: Advisory, Consulting, Financial Advisory, Transactional Management, Project Management and Lease Administration.

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IMMIGRATION ADVICE

Green and Spiegel LLP

The people coming into Canada for the due diligence would enter as visitors, but the person staying would need a work permit. That individual would qualify based on an Intra Company Transfer (ICT category). The ICT category is applicable to specialized knowledge workers, senior executives, and managers. This category is limited to individuals seeking to transfer from a foreign entity to an affiliate, parent, or subsidiary of a foreign-based company in Canada.

There are certain requirements to be met for the ICT category. Generally, the employee must:

- Be currently employed by a multi-national company outside of Canada;
- Have been employed continuously by that company in a full-time position for at least one year in the three-year immediately preceding the date of their initial application;
- Be seeking entry to Canada to work in a similar full-time position in a parent, subsidiary, branch or affiliate of that enterprise in Canada;
- Be undertaking employment at a legitimate and continuing establishment of that company in Canada.

Executive capacity means that the employee:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization or function;
- Exercises wide latitude in discretionary decision making; and
- Receives only general supervision or direction from higher level executives.

Managerial capacity means that the employee:

- Manages the organization, a department, subdivision or function of the organization;
- Supervises and controls the work of other managers or supervisors, professional employees, or manages an essential function within the organization or a department or subdivision of the organization;
- Has the authority to hire and fire or recommend employee promotion or leave;
- Functions at a senior level within the organization hierarchy or with respect to the function managed; and
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has the authority.
- as a key employee abroad in significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position.

Specialized knowledge is knowledge that is not general knowledge held commonly throughout the industry and that is truly specialized. It is unusual and different than that found generally in a particular industry. It does not need to be proprietary. We would review the role and request information on the knowledge possessed by a particular applicant to confirm. Some characteristics of a specialized knowledge worker are:

- Possesses knowledge that is valuable to the employer's competitiveness in the market place;
- Uniquely qualified to contribute to the Canadian employer's knowledge of foreign operating conditions;
- Knowledge has been gained through extensive prior experience with the employer;
- Is a key employee abroad in significant assignments which have enhanced the employers productivity, competitiveness, or financial position.

Green and Spiegel LLP was founded by Mendel Green and is Canada's largest and oldest immigration law practice with nearly 60 years of experience assisting a diverse global clientele. The firm is headquartered in Toronto, Canada with U.S. offices in Philadelphia, Pennsylvania, Providence, Rhode Island and Vail, Colorado.

Green and Spiegel offer a full range of Canadian and American immigration services for employers, temporary workers, individuals and their families. Services include:

Canadian Immigration Services — Permanent Residence, Work Permits, Start-up Visa/Business/Investor/Entrepreneur Immigration and Family Sponsorships.

USA Immigration Services - Employment Based Immigration, Investment Based Immigration, Family Based Immigration, Removal Defense Litigation, Corporate Compliance and Customs and Import/Export Advice.

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**GREEN
AND SPIEGEL LLP**
AN IMMIGRATION LAW FIRM



BANKING/FINANCING ADVICE

Royal Bank of Canada (RBC)

BluBird Manufacturing can rely on Royal Bank of Canada (RBC) for all its banking and financing needs. The company will have access to RBC's industry-specialist Relationship Managers, who will spend time learning about the business to provide the most suitable and sophisticated financial solutions. BluBird can open their bank accounts remotely, without travelling to Canada. RBC has the capability to offer CAD, USD and EUR accounts to BluBird, with access to accounts through state-of-the-art digital banking solutions.

In addition, the RBC Commercial credit card program can provide increased control, insights, savings and rewards. BluBird can also get access to financing solutions— from working capital needs to financing equipment, leaseholds, or other long-term assets. RBC can offer preferred rates on safe and secure Guaranteed Investment Certificates (GIC). With RBC's Beyond Banking solution, clients can be introduced to various business service providers such as payroll processing, online merchant services, employee retirement benefit and wellness plans, etc.

The Royal Bank of Canada (RBC) is Canada's largest bank, and among the largest in the world based on market capitalization. The organization employs 97,000+ full- and part-time employees and service 17 million clients in Canada, the U.S. and 27 other countries. RBC is one of North America's leading diversified financial services companies and provide personal and commercial banking on a global basis.

In addition to core banking services, RBC also offers its clients access to Wealth Management, Investing at RBC, Capital Markets, Insurance, and Investor & Treasury Services.

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A foreign business entering the Canadian market will require a local financial institution for banking and financial needs.

FOREIGN CHAMBERS & LOCAL ASSOCIATION SUPPORT

Additional resources are available to foreign companies entering the Canadian market that can provide networking events, informative courses/webinars, a roster of professional services and market intelligence. Below are three key players who work closely with the professional organizations in this article and can assist inbound foreign companies looking to set up business in Canada.

Toronto Global is an organization that assists foreign companies interested in expanding to the Toronto Region. Their team of business advisors connects investors with the right opportunities to facilitate the successful growth of their business.

Toronto Global works with the Ontario and Canadian governments to provide a comprehensive, customized service that allows for a smooth transition for international companies wishing to do business in Canada. Toronto Global is dedicated to understanding client's business needs and delivering tailored, innovative solutions to set the stage for their success in the Toronto Region.

Services include:

- Conducting one-on-one consultations with businesses and site selectors making global business investment decisions;
- Assisting companies locating in the Toronto Region with navigating the transition process;
- Facilitating introductions to sector experts and all three levels of government;
- Providing guidance on site selection;
- Providing market information and industry and economic benchmarking analysis;
- Connecting clients to qualified professional service providers.

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The Canadian German Chamber of Industry and Commerce Inc. (CGCIC) is an organization that supports Mid-Market German businesses starting and growing in Canada. The organization also assists Canadian companies interested in Germany and German business partners.

Services include Business Partner Search, Market Research, Services for German Companies, Services for Canadian Companies, Business Delegations.

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The Netherlands-Canada Chamber of Commerce (NCCC) is a non-profit organization promoting trade, investment, industry, commercial services and cultural affairs between Canada and the Netherlands for more than 75 years.

The organization assists Dutch companies that want to start or expand in Canada and also Canadian companies interested in the Dutch (and European) Market.

Through the organization of member events, networking sessions, on-on-one introductions, seminars, workshops and trade delegations – in close cooperations with the Canadian and Dutch governmental agencies, they help companies find their way and meet the most appropriate people.

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