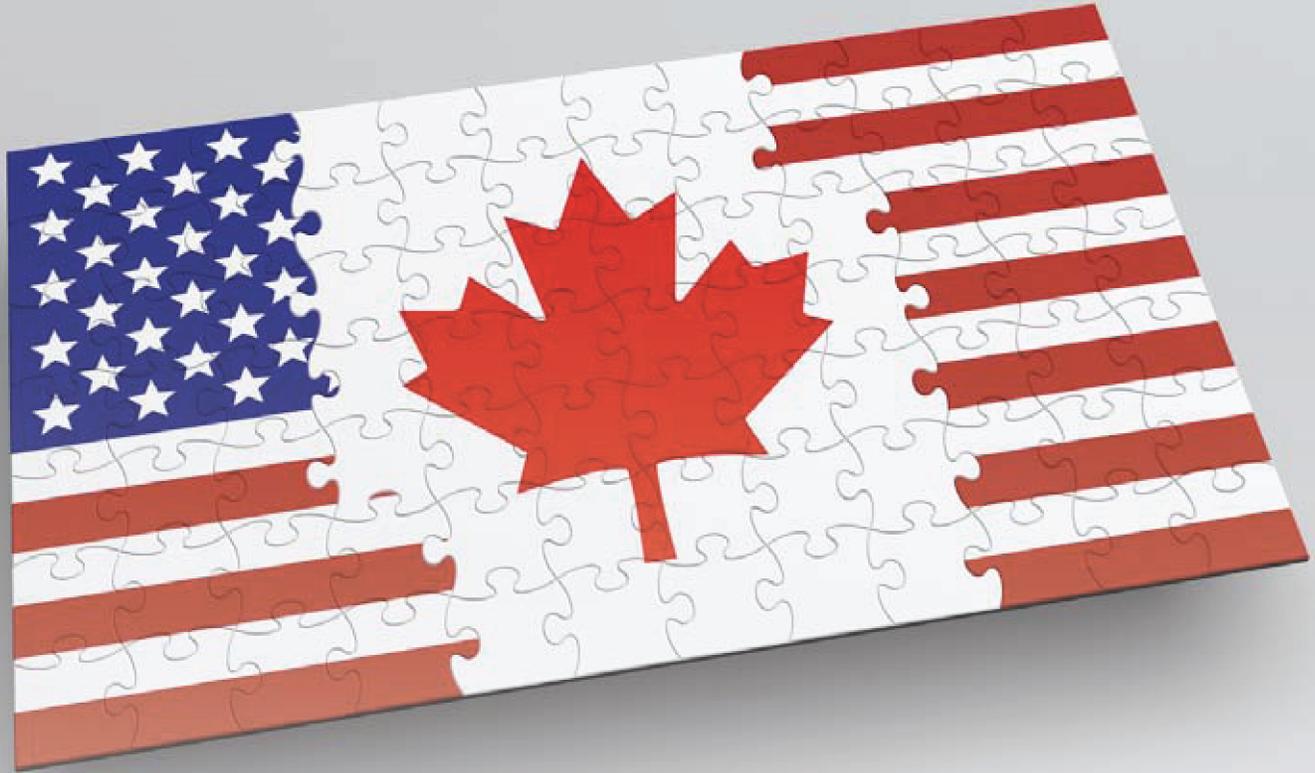


How to Cross the Border...avoid getting caught with all the wrong paperwork...Doing Business in Canada...

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Important information to help you to effectively broker and fund equipment leasing transactions in Canada.



At a time when the United States is facing an economic challenge, many American based vendors are looking north to the land of "Canadian" opportunity. After all, with a strong Canadian dollar, American based goods and services have become very affordable to Canadian companies. But, is the leasing process all "golden?" Many American lease brokers attempting to do business in Canada seem to be faced with a myriad of obstacles that appear quite difficult on the outside, but can easily be navigated if they know where to look.

If we start from the beginning of a typical lease transaction we can see the first step in the process is the credit application. Canadian companies use the same credit applications as their American counterparts, with the exception of a "Privacy Disclosure Statement." The privacy statement briefly summarizes what will happen with the consumer's personal information once collected by the leasing broker and/or leasing company. This privacy statement is a requirement of the Canadian Privacy Commissioner on most types of credit applications. More information about the privacy laws and verbiage can be found at the Privacy Commissioner's website (www.privcom.gc.ca).

Once we have received a completed credit application we can move to the next step: and that is confirming legal names, start dates, directors etc. Every business in Canada can have one of two types of incorporations, either Provincial or Federal. The Provincial Incorporation allows a business to be registered in the province they wish to do business (usually their home province). If the company wishes to do business outside of their home province (depending on the nature of their operations) they may have to register extra-provincially within the other province they wish to do business in (this is usually a requirement if they have a fixed address in a secondary province). Information on corporate searching at the provincial levels can be found at (<http://www.ic.gc.ca/epic/site/cd-dgc.nsf/en/cs01134e.html>).

The other way that many businesses incorporate is federally and then file an extra-provincial registration within the province in which they wish to do business. The benefit to this is that a company's name becomes federally approved and then is protected across the country. This is a status second only to trademark protection. Federally incorporated companies can conduct business anywhere in Canada and the CBCA (Canada Business Corporations Act) does not set restrictions regarding the province or territory where the head office is located, where corporate records are maintained and where annual general meetings are held. You can find information on federal registrations at Industry Canada (http://www.ic.gc.ca/epic/site/cd-dgc.nsf/en/h_cs03750e.html)

Searching, filings and discharges are all done through the PPSA (Personal Property Securities Act). Administered by the Ministry of Consumer and Corporate Affairs, it is a provincial statute, which provides a public registration system permitting the owners of equipment and vehicles or creditors with rights over equipment and vehicles to register their interests in such assets, with the exemption of real estate (real property is registered with the local Land Title Office). PPSA, sometimes called the PPSR (Personal Property Securities Registration) is independently run and administered by each province and territory. As a result, a registration filed against a debtor in one province will not appear on a lien search requested in another province. The province of Québec is also quite different. Not only are there requirements for French contracts, they use legislation that sometimes only allows either seizure of an asset or litigation for monies owed but not both (i.e. if a debtor fails to pay, you can either seize or sue) and they use the Civil Code instead of the PPSA/PPSR, which tends to make it uncomfortable for many lessors to do business within the province. It is strongly recommended that you check with an attorney located in Québec to ensure full protection of the lease contract.

Table 1 is a list of PPSA/PPSR Registries across Canada

Province	ACT	WEB URL / Contact Info
Alberta	PPSA	www.servicealberta.gov.ab.ca/WP_PersonalPropertyForms.cfm
British Columbia	PPSA	https://www.bconline.gov.bc.ca
Manitoba	PPSA	https://direct.gov.mb.ca/pprhtml/html/internet/en/ppr.html
New Brunswick	PPSR	http://www.acol.ca/Services/PPR/NB/menu.html
N.F.L	PPSA	http://www.gs.gov.nl.ca/cca/cr/search-serv.stm
Nova Scotia	PPSA	http://www.acol.ca/Services/PPR/NS/menu.html
P.E.I	PPSA	http://www.acol.ca/Services/PPR/PE/menu.html
Quebec	CCQ	CONSULT A LAWYER IN THE PROVINCE OF QUEBEC
Saskatchewan	PPSA	http://www.isc.ca/default.aspx?DN=19,10,1,Documents
N.W.T	PPSA	http://www.justice.gov.nt.ca/PropertyRegistry/ppr_faq.htm#3
Nunavut	PPSA	http://edt.gov.nu.ca/english/services/busdev.htm
Yukon	PPSA	https://ppsr.gov.yk.ca/pls/htmldb/f?p=105:1:17714368356187102413

During the credit adjudication process you will find that, unlike the United States that has four major reporting credit bureaus, Canada only has three major credit reporting facilities. They are Equifax, TransUnion and Dunn & Bradstreet, with Equifax being the dominant player for commercial credit. Although each of the three reporting agencies use a “FICO” derivative-based score, in Canada it is most commonly referred to as the Beacon score. The Beacon score is not considered equivalent, point by point with a US based FICO score. This is due to differences in how the two countries report to the credit bureaus; based on different legislation, i.e. mortgage laws, the number and types of reporting issuers etc. However, the scores will still remain close. You will also notice that a larger portion of deals in Canada tend to be “Corporate Only” deals. Now this is not to say that personal guarantees are not requested in Canada, but it is just that commercial credit is usually based on the financial health and strength of the covenant and that is most commonly the business. personal guarantees are usually there to provide extra strength to weaker deals that may be bordering on being declined (however this not applicable to “B” credit lending).

Unlike the United States, Canada also does not follow the true “Application Only” model, since each deal is usually assessed on the merit of the deal itself, i.e. asset, vendor, lessee, lessee’s industry time in business, residual value, etc. Credit tends to look at the whole deal, sometimes requesting financials and tax returns on deals as little as \$5-\$10,000.00. Another noticeable difference is that most small ticket lease brokers do not pull the Consumer Bureau prior to credit submission. This is because:

- a) Most lessors are very candid in the types of deals they want to see and a good lease broker usually can assess what funding sources a deal should go to by the information submitted on the application
- b) The majority of lessors are going to pull the Consumer Bureaus themselves as part of their audit requirements

Once a credit approval has been granted, one of the biggest challenges the American vendor has is the uneasiness to ship equipment across the Canadian border without knowing how, when, and if they will get paid. To address these concerns, the first step in this process will be based on strength of the relationship between the vendor and the broker. The broker needs to re-assure their vendor that they have taken all reasonable measures to ensure that they are protected. This can be done by ensuring that a completed lease package (including the signed lease and the Lessee’s cheques) has been submitted to the lessor’s funding department for a full lease package review prior to giving the vendor the green light to release the equipment. The second step is to develop a relationship with a Canadian finance partner and during the

deal submittal process request an early commencement (also known as partial pre-funding). Many Canadian lessors are aware of the American vendor's situation and are willing to work with the vendor and will usually advance up to 50% of the payment prior to shipping and have the balance paid upon installation. There are several reasons for waiting for installation to pay the balance to the vendor such as customs charges, duties (if applicable), currency conversion and assurance for the lessor that they don't pay 100% up front to the vendor and then the vendor does not ship the equipment.

In some cases, American leasing companies under N.A.F.T.A. are looking to write paper directly in Canada without a Canadian presence. Now this can be done but there are some issues that affect both the lessee and the lender. For example, The Canada Revenue Agency applies a withholding tax on income generated on finance contracts where the financier is a non-Canadian entity and vice versa with the IRS. Also, there can be problems with asset recovery in the event of default by the Lessee, i.e. if the lessor's venue for litigation is in the US and if judgment is granted in the US against a Canadian lessee, the judgment still has to be registered and enforced in a Canadian court prior to execution of the judgment, and the Lessee can still challenge the validity of the American judicial system (the judgment) in Canada. Then there are the taxes on the lease (where the lessor is a non-Canadian entity). This can pose another problem for the lessee since Canada has three levels of taxation that can affect the lessee's payment.

- a) The Provincial Sales Taxes (<http://www.taxtips.ca/pst/pstrates.htm>), which is not applicable in all provinces
- b) The Federal G.S.T. (Goods and Services Tax)
- c) H.S.T. (Harmonized Sales Tax), this is applicable only in some provinces

Information on both the G.S.T. and H.S.T. can be found at (<http://www.taxtips.ca/gst.htm>)

*When providing leasing to government not all levels/branches of the government pay all of the taxes.

* First Nations can be exempted from the taxes depending on the point of delivery of the goods and or services.

If a non-Canadian finance entity does not have a Canadian "Incorporation" which requires a Canadian director and or nominee, the lessee may have to pay all the taxes upfront on a lease deal. This, in turn, defeats the objective of deferring the taxes on the lease for the lessee, i.e. on a \$50,000.00 lease in the province of British Columbia, the lessee may have to pay 5% G.S.T. and 7% P.S.T. for a total of 12% or \$6,000.00 upfront in taxes, plus Canada customs, duties and any other charges (not including any down payments) upfront, just to start the lease. If the Financing entity were Canadian, the Canadian lessee would not be responsible for any of these charges up front (so let's put ourselves in the Canadian lessee's shoes for a moment and ask ourselves, whom would we use, a Canadian or American lessor?).

Now that we have figured out where to go to get information about the bulk of the process we only have two more points to touch on - Canada customs and locating a Canadian finance partner.

In most cases when goods are shipped across the border the customs charges, customs brokerage charges and taxes can be dealt with in advance with the aid of a Canadian partner. These charges must be billed to the "Importer of record"; this will usually be the lessor. If the lease broker is managing the whole transaction by themselves, the lessor will have to provide a Power of Attorney to the lease broker that allows the customs brokerage to bill the lessor directly for any of the above mentioned charges. More information on Canada border services can be found at (<http://www.cbsa-asfc.gc.ca/menu-eng.html>).

The last point to cover is finding a Canadian finance partner. Headed by some of Canada's top senior leasing executives from companies such as G.E. Capital, De Lage Landen and CIT Credit Group, The CFLA (Canadian Finance and Leasing Association) (<http://www.cfla-acfl.ca/>) manages and oversees the leasing industry in Canada and provides a great depth of information about it. The CFLA is also an invaluable source in locating a Canadian finance partner. Canada is a dynamic and vibrant country with a very strong and healthy growing economy that can help to provide a new source of business for you and your vendor, provided that you have the right partner to help you navigate, just as you (the American leasing broker) will provide Canadians lease brokers with the ability to navigate the American markets.

Notice to reader:

*The intent of this article is to provide you with information and assistance when conducting business in Canada and not to provide a legal opinion.

*Subject to implementation of a new tax treaty between Canada and the United States, please consult an international tax advisor for your specific situation.

About the Author:

Anthony attended Devry Institute of Technology with a Major in Business Operations Management and a Minor in Computer Information Systems. He also attended Algonquin College of Applied Arts and Technology with a Major in Information Systems. Anthony worked at CIBC (Canadian Imperial Bank of Commerce) in individual banking (consumer loans) department. During his 12 years in the equipment lease sector, his career has grown from legal accounts management, customer service, funding and booking, credit and vendor services to account executive. While working as a business development manager, Anthony also helped a small equipment-leasing firm grow from \$4 million to just under \$10 million in new originations in fewer than two years. Anthony is also the founder and president of both Litehaus Systems and Provisio Financial Services. Litehaus is a technology company that offers off the shelf equipment lease broker software. Provisio Financial Services is an equipment leasing company based in Western Canada focusing on small / mid ticket and cross border lease transactions.