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<p><b>MANZER</b> <b>CANADA–U.S. COMMERCIAL LAW GUIDE</b> <b>Second Edition</b> <b>by Dr. Alison R. Manzer</b> <b>Release No. 4, December 2024</b></p>
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**Publisher’s Release Note**

This publication is a practical guide to commercial business and legal issues that can arise for businesses operating in both Canada and the United States. An examination of each of Canada and the United States, on a comparative basis, indicating areas that should be considered by a business commencing, or continuing, business in both countries. The book highlights commercial law in areas where similarities or differences in the legal systems can affect business operations, legal decisions, legal documentation and practices and processes.

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This release features updates to Chapter 9 Selected Regulatory Compliance Issues in Commercial Transactions, Chapter 13 Corporations and Shareholder Rights and Chapter 15 Securities Law.

**Highlights:**

- **Selected Regulatory Compliance Issues in Commercial Transactions – Confidentiality and Privacy of Information – Open Banking – Data Sharing** – On October 22, 2024, the Consumer Financial Protection Bureau (“CFPB”) issued its final opening banking rule to section 1033 of the Dodd Frank Act (“Final Rule”). Note should be made that as of October 2024 there are active legal challenges to the Final Rule that can affect its application and enforceability. The Final Rule requires data providers, which includes providers of consumer asset accounts and credit cards, among others, to make financial data available in electronic form to the providing consumers and to third parties who are authorized by those consumers. This is a move by the United States towards an “open banking system” which is intended to make it easier for consumers to switch providers. The goal is increased competition, consumer choice, lower loan prices and improved customer service. Consumers are provided access and to share data from their bank accounts, credit cards, mobile wallets and certain payment apps with third parties.
- **Corporations and Shareholder Rights – Accountability and Governance – Corporate Transparency Reporting** – In 2021, Congress enacted the Corporate Transparency Act (CTA), which created a requirement for most companies conducting business in the US effective January 1, 2024 to report information regarding its ownership. The government’s objective is to promote transparency in the ownership of entities conducting business in the US to further the government’s efforts to combat crimes like money laundering. Companies that must comply with the CTA, or “Reporting Companies”, are (i) any domestic entity that is created by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe and (ii) any foreign entity registered to do business in any U.S. state.

## Introduction

The materials which have been assembled in this publication are necessarily constrained by the scope of the work, its length and choice of topics. The materials have been designed to be of use to Canadian and United States businesses, and their professional advisors, as a resource which outlines legal issues of concern to businesses in both Canada and the United States, without purporting to be a complete outline of the details of the law in each of the two countries. It would have been practically impossible to provide for a fairly broad canvas of the commercial issues and matters that face businesses operating on a cross-border basis between Canada and the United States and yet provide a detailed explanation of the law which applies to each of those issues.

The decision was therefore made that this resource book would try to broadly canvas the commercial law issues that could arise in the operation of a business, identify the areas where Canada and the United States are similar and those areas in which they are different, and try to highlight the need for further reviews or research. In each instance these chapters have been drafted as a very general overview of the commercial law issues which could arise in undertaking business practice either on an ongoing basis, or on a start up basis, for the business enterprise which has primarily functioned in the United States and is now functioning in Canada, or the business enterprise functioning in Canada which is now looking at expansion into the United States or is continuing its business enterprises in the United States. This book is intended only to sensitize business managers, directors, and the business law professional to the areas in which they would need to give consideration to differences in the applicable law in each of the two countries.

The book tries to identify the law which applies to the structures which are used in commercial enterprise, the types of transactions in which a commercial enterprise would be engaged and the regulatory issues which face the commercial enterprise. The materials then try to identify those areas where consideration can be given to the similarity of the law in the two countries, and the areas in which the differences between the two countries needs to be taken into account. Although there is some detailed outline of law in certain areas, in others there is only a broad general discussion of the nature of the law which would apply. The reader may need to make further enquiry as to whether other law, statutory or common law, could affect the business matter that they are reviewing.

It is hoped that these materials will provide the reader with the ability to understand the basic similarities and differences between the two legal systems. It should also help to identify types of busi-

ness transactions where law may be applicable, where decisions should be made recognizing the law and where further enquiry needs to be made. It should also assist in noting where agreements need to be considered and where the existing statutory or common law may provide an appropriate basis for the undertaking of the business activity.

The theme of this book is to try to outline the broadest range of commercial law. Looking at the entity forms in which business can be undertaken, with corporations and partnerships receiving specific emphasis, provides a start for considering the application of commercial law. The most common commercial transactions, including secured lending, equipment leasing and the leasing of real property, are also considered. Finally, the regulatory impact on the undertaking of business and the commercial law which applies to business, including intellectual property, consumer protection, and privacy concerns, are reviewed.

The materials which have been prepared for this initial launch try to provide the core of these concepts. Further chapters are planned, and they will supplement the materials included in this book. These include buying and selling corporate shares, buying and selling the assets of a business enterprise, among others. It is hoped that these core materials, with the additional chapters that are being contemplated, will provide a start to the understanding of the law in both Canada and the United States as it applies to business enterprise. It is hoped that it particularly will emphasize similarities and differences in a manner which will permit the business enterprise to appropriately consult legal counsel, and to administer its affairs in a manner which will permit its business to function seamlessly on a cross-border basis.

I have not attempted to make each of the chapters consistent in its approach to the topic. Initially it was felt that different topics merited different types of overview and different depths of discussion as to applicable statutory and common law. In some areas it was quite possible to focus on very specific issues and specific statutory provisions, whereas the breadth of other topic areas did not permit such an approach. Also, in order to provide focussed, specialty-based advice, different authors were selected for each of the chapters. The authors in each instance are experienced practitioners having a practice specialty in the area covered by the chapter content. While the general approach of each of the authors was reviewed for consistency and to ensure that there were no inconsistencies in contents between the chapters, there was no attempt made to ensure that each of the chapters were prepared with a similar writing style. That task would have been essentially prohibitive in its scope and timing commitment. As a result the reader will find that while the chapters are suitable to the individual topics, they will differ as to style, approach, and writing techniques.

The materials in this book will necessarily change. Additional chapters and updates are planned to add to the materials. We hope

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that timely updating will be possible. The reader will however need to ensure that they have updated information, as many of the areas of law change more rapidly than can reasonably be expected to be covered by periodic releases to supplement and update the materials.

It is likely unnecessary to say, but we must clearly state that the materials in this book are a summary of general issues and concerns. No chapter is complete as to all of the issues or concerns which might face a business operating on a cross-border basis, or the professional advisers to such business. No chapter provides specific legal advice. All matters facing the business enterprise, whether business determination or legal matter, will require that the specific circumstances be considered and the law applicable clearly identified and reviewed. This book is not a substitute for properly considered legal or accounting advice on any of the topics covered in these materials. Every effort has been made to try to identify issues which would be of individual concern to the cross-border business enterprise. It does not in any manner purport to be complete and act as an exclusive and definitive checklist of issues and concerns.