

FOREIGN LAW ADDENDUM

March 21, 2013

Solicitors using this opinion should refer to the comments under “Notes Re: Sample Opinions for guidance on the use of this opinion and summary explanations of some of the terms used

1. **Recognition of Choice of Foreign Law.** Assuming that the choice of [name of jurisdiction] (the “Governing Law Jurisdiction”) law (the “Governing Law”) is legally binding and enforceable under the Governing Law, the choice of the Governing Law to govern the Documents will be recognized by a British Columbia court of competent jurisdiction (a “BC Court”) in any proceedings that are heard in the BC Court to enforce the Documents, provided that:

- (a) the choice of the Governing Law is *bona fide* and legal [(that is, either that there is a real and substantial connection between the subject matter of the Documents and the Governing Law Jurisdiction or the parties to the Documents did not choose the Governing Law to avoid the application of the law of another jurisdiction with which the transactions governed by the Documents have the closest connection)].
- (b) the choice of the Governing Law is not contrary to public policy (“Public Policy”) under the laws of British Columbia and the laws of Canada applicable in British Columbia (“BC Law”);

and in any such proceedings the BC Court will apply the Governing Law to all issues which under BC Law are to be determined in accordance with the chosen law of a contract, if the Governing Law is specifically pleaded and proved in the BC Court, except that:

- (c) the BC Court may decline to give effect to any Governing Law to the extent that to do so would be contrary to Public Policy;
- (d) the BC Court will not apply Governing Law which it characterizes as revenue, expropriatory, penal or similar laws;
- (e) the law governing the validity, perfection and effect of perfection or non-perfection of any security interest in personal property of the type which is subject to the *Personal Property Security Act* (British Columbia) will be determined in accordance with the conflict of law provisions of that Act;
- (f) the validity and enforceability of any interest in land in British Columbia created by the Documents will be governed by BC Law;
- (g) the BC Court will not enforce the performance of any obligation provided for in the Documents if such performance is illegal under the laws of any jurisdiction in which such obligation is to be performed;

(h) will apply provisions of BC Law that have overriding effect or apply notwithstanding the Governing Law [**or, if requested, consider specifying any substantive BC Law which has overriding effect or applies notwithstanding the Governing Law**]; and

(i) on matters governing procedure before the BC Court, BC Law will be applied.

2. **Recognition of Submission Clause.** Assuming that the provision (the “Submission Clause”) of the Documents whereby the Corporation has submitted to the jurisdiction of the courts (the “Foreign Court”) of competent jurisdiction in [**name of jurisdiction**] (the “Foreign Jurisdiction”) are legally binding and enforceable under the Governing Law, the Submission Clause will be recognized and given effect by a BC Court as an effective submission by the Corporation to the jurisdiction of the Foreign Court in any action in a BC Court with respect to the enforcement of the Documents for the amount due under a final and conclusive judgment *in personam* granted by a Foreign Court. [**Note: Paragraph 2 is becoming less common and should not be given unless specifically requested.**]

3. **Enforcement of Foreign Judgment.** Subject to the qualifications in paragraph 6, a final and conclusive judgment *in personam* against the Corporation in an action with respect to the enforcement of the Documents for a sum certain granted by [**name of court**] (the “Foreign Court”) that is subsisting and unsatisfied and has not been stayed is enforceable without reconsideration of the merits in a BC Court by an action on such judgment for the amount due under such judgment:

(a) if the Foreign Court had jurisdiction over the Corporation, as recognized BC Court for purposes of enforcement of foreign judgments;

(b) if the judgment is not void or voidable or otherwise ineffective under the laws (the “Foreign Law”) of [**name of jurisdiction**] (the “Foreign Jurisdiction”);

(c) if the judgment was not obtained in any manner contrary to the rules of natural justice;

(d) if the enforcement of the judgment would not be inconsistent with Public Policy;

(e) if the enforcement of such judgment in British Columbia does not constitute, directly or indirectly against the Corporation, the enforcement of laws characterized by a BC Court as being a revenue, expropriatory, penal or similar law;

(f) unless the judgment was obtained by fraud [going to the jurisdiction of the Foreign Court or where new and material facts are discovered that the Corporation could not have discovered and brought to the attention of the Foreign Court through the exercise of reasonable diligence)];

(g) if:

(i) the BC Court [has territorial competence under the *Court Jurisdiction and Proceedings Transfer Act* (British Columbia) and] does not decline to exercise its

territorial competence on the ground that a court of another state is a more appropriate forum in which to hear the action; or

(ii) the BC Court exercises its discretion under the *Court Jurisdiction and Proceedings Transfer Act* (British Columbia) to hear the action despite lacking territorial competence;

(h) if the action to enforce such judgment is commenced and maintained in accordance with the procedural requirements of BC Law;

(i) if the action to enforce the judgment is commenced against the Corporation within the applicable limitation periods under BC Law; and

(j) unless the judgment was obtained by default and there is a manifest error on the face of the judgment;

provided that the BC Court may stay or decline to hear the action because an appeal is pending or the time for appeal has not expired or there is another subsisting judgment in any jurisdiction relating to the same cause of action.

4. **Reciprocal Enforcement of Judgments.** Subject to the qualifications in paragraph 6, a judgment creditor may apply to register a judgment in respect of enforcement of the Documents given in a court (the “Foreign Court”) of **[name of reciprocating jurisdiction]** (the “Foreign Jurisdiction”) in a civil proceeding for payment of money in the British Columbia Supreme Court (the “BC Court”) unless:

(a) the time for enforcement has expired in the Foreign Jurisdiction;

(b) 10 years have expired after the date the judgment became enforceable in the Foreign Jurisdiction;

(c) the Foreign Court acted either:

(i) without jurisdiction under the conflict of law rules of the BC Court; or

(ii) without authority, under the law of the Foreign Jurisdiction to adjudicate concerning the cause of action or subject matter that resulted in the judgment or concerning the judgment debtor;

(d) the judgment debtor, if a person who was neither carrying on business nor ordinarily resident in the Foreign Jurisdiction, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of the Foreign Court;

(e) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the Foreign Court and did not appear, even though the judgment debtor was ordinarily resident or was carrying on business in the Foreign Jurisdiction or had agreed to submit to the jurisdiction of the Foreign Court;

- (f) the judgment was obtained by fraud;
- (g) an appeal is pending or the time in which an appeal may be taken has not expired;
- (h) the judgment was for a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the BC Court;
- (i) the judgment debtor would have a good defence if an action were brought on the judgment; or
- (j) the judgment enforces a judgment in respect of the Documents given by foreign Court of a jurisdiction which is not a reciprocating jurisdiction under Part 2 of the *Order Enforcement Act* (British Columbia).

On application to register the judgment, the BC Court may order that the judgment be registered.

5. ***Enforcement of Canadian Judgments and Decrees Act.*** Subject to the qualification in paragraph 6, a Canadian judgment (as defined in the *Enforcement of Canadian Judgments and Decrees Act* (British Columbia)) that requires a person to pay money may be registered under the Act and enforced if:

- (a) it is a final judgment;
- (b) the time for enforcement of the judgment has not expired in the province or territory where the judgment was made;
- (c) not more than 10 years has passed after the date on which the judgment became enforceable in the province or territory where it was made; and
- (d) directions of the BC Court are obtained if:
 - (i) the enforceability of the judgment is, by its terms, subject to the satisfaction of a condition; or
 - (ii) the judgment was obtained without notice to the persons bound by it.

6. **Qualifications.** The enforceability or registration in British Columbia of a judgment of a Foreign Court is subject to:

- (a) applicable bankruptcy, insolvency, moratorium, arrangement, winding up and other similar laws generally affecting the enforcement of rights of creditors;
- (b) general principles of equity;
- (c) the qualification that a judgment of a BC Court will be given only in Canadian Dollars; and
- (d) the qualification that interest accruing on the judgment of the Foreign Court will be calculated in accordance with the *Court Order Interest Act* (British Columbia).

- (e) an order or regulation affecting the judgment:
 - (i) under the *Foreign Extra-Territorial Measures Act* (Canada), the *United Nations Act* (Canada) or the *Special Economic Measures Act* (Canada); or
 - (ii) by the Competition Tribunal under the *Competition Act* (Canada) relating to the enforcement of the judgment as a result of the finding of the Competition Tribunal of an adverse effect, restraint or injury to competition in Canada or the domestic or foreign trade and commerce of Canada.