

# d | Secured Financing



## 1. Banks

The banking system in Canada is sophisticated and well-regulated. Bank loans are available from domestic banks as well as from foreign bank subsidiaries operating in Canada or Canadian branches of foreign banks. The five largest Canadian banks command most of the market and provide debt financing, cash management and investment services across the country. Some of these banks also have subsidiaries operating in the United States and outside of North America.

---

\*Banknote image used and altered with the permission of the Bank of Canada.

Banks in Canada are regulated under the *Bank Act* (Canada), which authorizes domestic banks (Schedule I), foreign subsidiary banks that are controlled by eligible foreign institutions and foreign bank branches of foreign institutions. With increasing competition in this area, a business borrower has a wide range of options.

## 2. Other Financial Institutions

There are also a number of non-bank lenders in Canada that provide debt financing, usually in the form of asset-based loans or mezzanine debt. Among these institutions are trust and loan companies, credit unions, *caisses populaires* (primarily in Québec) and, in some instances, insurance companies.

## 3. Security

Loans can be unsecured or, more commonly, secured against the property of the borrower and any guarantors. There are no financial assistance rules in Canada that prohibit a corporation from giving guarantees to a lender in respect of loans made to a corporation's subsidiary or parent. Security can be taken against personal property (including accounts receivable, securities and intellectual property) and against real property.

### a. Personal Property

Each of the common law provinces has enacted a personal property security act (PPSA) that governs the creation, perfection and enforcement of personal property security interests. PPSA legislation is similar to Article 9 of the *Uniform Commercial Code* in the U.S. Each province has its own electronic registry system to record security interests over personal property.

Although the PPSA legislation in each of the common law provinces is similar in concept, the provisions and requirements vary slightly. Consequently, security given by corporate borrowers with assets in multiple provinces will need to comply with the statutes of each.

The *Civil Code of Québec* governs equivalent matters in Québec, where security over personal property is generally taken by way of a movable hypothec, with or without delivery. Movable hypothecs must be registered in the province's Register of Personal and Movable Real Rights (RDPRM). Québec also has particular requirements for the execution of instruments (e.g., certain instruments must be executed in front of a notary) and certain formal requirements for security documents that differ from those of the common law provinces.

### b. Real Property

A lender may take security over real property by way of a charge/mortgage of land, a debenture or, if real property is to be secured in Québec, an immovable hypothec. All provinces have an electronic land registry system to record interests in real property.

### c. Bank Act (Canada) Security

Pursuant to the *Bank Act* (Canada), banks also have the ability to take security over certain property specified in the Act, such as raw materials, works in progress or finished goods in inventory of businesses. Certain formal requirements must be met in order to take *Bank Act* (Canada) security, and a separate registration system is involved.

# gowlings: expect innovation, results and value

Founded in 1887, Gowlings is one of Canada's largest law firms, with over 750 professionals in offices across the country and in Moscow, London and Beijing. Recognized for excellence in business, advocacy and intellectual property law, Gowlings provides dedicated industry expertise in the energy, mining, infrastructure, life sciences, government, financial services, technology, manufacturing and distribution sectors, and in areas such as corporate finance and M&A, transfer pricing and tax, patents and trade-marks, and occupational health and safety. For more information, visit

**[gowlings.com/dbic](http://gowlings.com/dbic)**

This publication is part of Gowlings' *Doing Business in Canada* guide, which provides business executives, foreign counsel and investors with an overview of the legal aspects of Canadian business operations. The information in this guide is current as of September 2011 and is for general information purposes only. It does not constitute a legal opinion or other professional advice.

For further information or to view the rest of the guide, please visit us at [gowlings.com/dbic](http://gowlings.com/dbic).

---

montréal • ottawa • toronto • hamilton • waterloo region • calgary • vancouver • beijing • moscow • london • [gowlings.com](http://gowlings.com)

Gowlings provides legal services in Canada and abroad through the entities Gowling Lafleur Henderson LLP, Gowling Lafleur Henderson S.E.N.C.R.L., s.r.l., Gowlings (UK) LLP, and Gowlings International Inc. In 2011, the firm opened the Gowlings International Inc. Beijing Representative Office. © 2011 Gowlings