II. RULES

This section of the report canvasses the principal Community and national rules, which would affect a Canadian investment in the EC, points out key differences between Community and Canadian approaches and makes recommendations, where appropriate, as to potential investment strategies.

1. Where to locate

The first thing a Canadian company will do, when proposing to make a direct investment in the Community, is to determine in which Community country or countries it proposes to become established.

a) Commercial Issues

The company must consider all commercial factors, including proximity to target markets, availability of suitable technical and managerial personnel, and costs of plant, labour and other production factors.

b) Regulatory Issues

The company must also consider regulatory factors, including tax obligations and rules governing a variety of business operations, from investment incentives to labour-management arrangements. Although harmonization is occurring in many of these areas, national laws continue to apply where EC-wide rules do not yet exist. Depending on the Canadian company's tax position, objectives or management style, some Community member countries could well be more attractive investment destinations than others.

c) Right of Establishment - General

Among the regulatory issues a Canadian investor must consider before investing is whether or not a foreign-controlled business has the right to carry on a proposed activity. There is no Community-wide restriction on the rights of non-Community residents to do business in the EC. A prospective investor must, accordingly, examine the restrictions on foreign investment imposed by individual countries.

All member states restrict foreign direct investment, at least to some degree, in sectors that affect national security -- for example, certain types of defence-related production. In addition, France prohibits foreign direct investment that competes with state monopolies, while special formalities must be complied with in sensitive sectors such as publishing, oil-gas and pharmaceuticals. Germany prohibits foreign investment only in the postal service, a monopoly that includes telecommunications, while the U.K. has lifted all restrictions on foreign-controlled investment by private investors.

d) Right of Establishment - Services

Generally, national rules governing establishment apply to service providers in the same way they apply to goods producers, with one important difference. A foreign business that proposes to use its own nationals to supply services through an EC operation must first ensure that such persons have the necessary qualifications to practice their profession. Thus, a Canadian engineer might have to get local accreditation, although a software designer would likely not have to do so.

To give itself the greatest flexibility in these circumstances, a Canadian service company planning a Community operation could, where appropriate, consider designating one or more of its EC staff as managers, rather than as practitioners of a profession. An alternate way of solving the accreditation requirement could be to have a Canadian professional do most of the work involved in a particular case and to have this work certified by a locally qualified practitioner.

Non-EC residents will generally have to obtain a work permit, on a country-by-country basis, if they expect to earn income from services provided in the EC. On the other hand, Community-resident employees of an EC-based service company controlled by a Canadian investor are allowed to work freely in any member state.