Commercial transactions in Canada: Four essential privacy tips for U.S. businesses

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If you are a consumer-facing business in the United States or are in the field of advising them on privacy matters, you are aware of the importance of privacy and data protection compliance.

Despite this awareness, too many companies and counsels tend to overlook the need to consider Canadian privacy laws when engaging in cross-border commercial transactions, also overlooking that Québec privacy law has a strict regime comparable to the General Data Protection Regulation (GDPR), with fines reaching up to $25 million or 4 per cent of global revenue.

This article provides four essential privacy and data protection elements to keep top of mind prior to engaging in and during commercial transactions.

1 – NDAs require specific customization

Standard non-disclosure agreements (NDAs) may not meet the legal requirements in provinces like Québec where the law mandates specific language to protect personal information during a transaction. Legal counsel familiar with the province's privacy regime should review and tailor NDAs to ensure they reflect legislative obligations.

2 – Privacy due diligence is critical

During the due diligence phase, it is essential to identify and assess specific legal privacy requirements. Even if a target organization may have a robust privacy framework, a thorough risk and gap analysis based on applicable provincial privacy laws and regulatory guidance must be conducted by local counsel. This review may reveal compliance issues that can either be remediated post-closing or justify the inclusion of additional indemnity provisions in the share or asset purchase agreement.

3 – Post-closing notification obligations

Following a transaction, the acquiring entity may be required to notify affected individuals of changes in the possession or control of their personal information. Local legal advisors play a key role in crafting these communications to ensure they are tailored to the specific groups affected, written in plain language, and compliant with applicable privacy laws.

4 – Ongoing privacy management post-transaction

After closing, the new entity must promptly address any privacy risks identified during the due diligence process to avoid penalties and reputational damage. The new entity must establish an ongoing privacy management process, including proper training for its privacy officer and all personnel who handle personal information. A local lawyer can provide ready-to-use templates and can help adapt existing policies and processes to ensure optimal compliance.

Conclusion

We hope that these four key privacy points, are carefully considered during your company's next commercial transaction in Canada.

For tailored guidance, please reach out to BLG's Privacy team. We are here to help you navigate the evolving legal landscape.

By

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