

Securities regulation in Canada: What international businesses need to know

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This article is part of a practical series written for international companies looking to establish, launch, operate or invest in a business in Canada. Each article covers a major area of law in Canada – everything from employment laws to taxes. Access all the articles on the [“Doing business in Canada: A practical guide from ‘Eh’ to ‘Zed’”](#) page.

Unlike the United States, Canada does not have a single federal securities regulator. Instead, each province and territory has enacted its own securities legislation and has established a regulatory authority to administer it. However, the various securities regulatory authorities (collectively known as the Canadian Securities Administrators or CSA) have worked towards harmonizing securities laws, rules and regulations across the various jurisdictions. As a result, the laws are generally very similar (and in many cases uniform), with some procedural and substantive differences. Importantly, while national securities transactions require compliance with several regulatory regimes, the CSA have implemented procedures to reduce the difficulties of dealing with multiple regulators. Importantly, Canadian securities regulation is relevant to all businesses who issue securities to their shareholders, as well as a wide variety of interested parties, particularly those trading securities in Canada; providing investment advice or portfolio management services in Canada; managing investment funds that have investors in Canada or actively solicited investors; issuing securities in Canada; or acquiring or offering to acquire more than 20 per cent of the voting or equity securities of a class of an issuer from securityholders, including securityholders in Canada. Securities regulation is also relevant to issuers who list their securities on a Canadian stock exchange or offer to acquire their own securities from securityholders in Canada and to certain investors, directors and senior officers of Canadian public issuers.

Registration of dealers

Generally, persons or companies engaged in the business of trading in securities are required to be registered as dealers in the provinces or territories in which they do business. Depending on their activities, they may also be required to become members of the Canadian Investment Regulatory Organization (CIRO). These dealers have to satisfy certain financial, insurance and other requirements as well. As part of the registration process, for most categories of registration, individuals acting as officers or representatives will have to demonstrate that they have the required knowledge,

experience and integrity. There are exemptions from these requirements in certain circumstances. In particular, foreign dealers can engage in certain specified limited activities if they file a form submitting to the local jurisdiction and appointing an agent for service of process.

Registration of advisers

Generally, persons or companies that engage in the business of providing investment advice (including providing portfolio management services) are required to register as advisers in the provinces or territories in which they do business. An investment adviser will have to satisfy certain financial, insurance and other requirements. As part of the registration process, those individuals providing advice or acting as officers or representatives will have to demonstrate that they have the required knowledge, experience and integrity. There are exemptions from these requirements in certain circumstances. In particular, foreign advisers can engage in certain specified limited activities if they file a form submitting to the local jurisdiction and appointing an agent for service of process.

Registration of investment fund managers

Persons or companies that act as investment fund managers are generally required to register as such in the provinces or territories in which they do business. A registered investment fund manager will have to satisfy certain financial, insurance and other requirements. If an investment fund manager does not have a place of business in Canada, it may be exempt from these requirements in certain circumstances. Ontario, Québec and Newfoundland and Labrador take a different approach to exemptions than the other provinces and territories.

Issuing securities in Canada

Absent the availability of an exemption, issuers of securities in Canada are generally required to file a prospectus with the securities regulatory authorities in the jurisdictions in which the securities will be distributed. The prospectus must contain prescribed information about the issuer and the offering including full, true and plain disclosure of all material facts relating to the issuer and the offered securities.

An issuer that offers securities by way of a prospectus (or, in some jurisdictions, one that merges with a reporting issuer that offers securities in a securities exchange takeover bid for a reporting issuer or that lists its securities on a recognized Canadian stock exchange) becomes a “reporting issuer”. Reporting issuers are subject to certain continuous and timely reporting obligations. For example, they must file and send to securityholders unaudited quarterly financial reports, audited annual financial statements, annual and quarterly management’s discussion and analysis, and information circulars in connection with meetings of securityholders. They must also make prompt announcements and filings in connection with material changes in their business, operations or capital.

Issuers can also offer or issue their securities on a prospectus exempt basis, depending on the facts and circumstances of the offering. For example, an exemption is available

for sales to those defined as “accredited investors” or non-individuals who spend at least C\$150,000 to purchase the securities. Exemptions are also available for certain sales to family and friends, sales to employees and sales made under a prescribed form of offering memorandum. Each exemption will have its own conditions to be satisfied and may be subject to certain filing requirements and disclosure obligations.

Listing requirements

Issuers who wish to list their securities on stock exchanges, such as the Toronto Stock Exchange, the TSX Venture Exchange, CBOE Canada or the Canadian Securities Exchange must satisfy minimum listing requirements relating to their management, issued capital, distribution of securities and financial resources. They must also sign a listing agreement with the stock exchange and agree to comply with its rules.

Listed issuers must notify and, in some cases, obtain the consent of the stock exchange before making corporate changes or entering into certain transactions, such as changes in **capital structure, material transactions (including share exchange M&A transactions)** and issues of shares or options. Listed issuers must also make regular filings with the exchanges, pay annual fees and timely satisfy disclosure requirements. By listing its securities, an issuer becomes a reporting issuer in one or more provinces and, therefore, becomes subject to the continuous and timely reporting obligations referred to above in “Issuing Securities in Canada”.

Takeover bids

A person who offers to acquire outstanding voting or equity securities that, if acquired, would cause the offeror’s securities holdings to exceed 20 per cent of the outstanding securities of that class is considered to be making a “takeover bid”. Unless it can avail itself of an exemption, a takeover bidder must comply with certain rules, including a requirement that it prepares and sends a takeover bid circular with specified disclosure to all holders in Canada of securities of the class concerned and makes an offer to buy their securities.

Generally, a formal takeover bid must be outstanding for at least 105 days, subject to abridgement by the target company to 35 days. Where a mandatory 50 per cent minimum tender condition has been achieved, and all other terms and conditions of the bid have been satisfied or waived, the bid must be extended for an additional 10 days to permit other shareholders a further opportunity to tender to the bid.

Issuer bids

Similarly, an issuer that offers to acquire its own securities (other than non-convertible debt securities) from holders in Canada is considered to be making an “issuer bid” in Canada. Unless an exemption from applicable requirements is available, an issuer bidder must comply with certain rules, including the requirement that it send an issuer bid circular with specified disclosure to all holders of securities of the class concerned, in Canada, offering to buy their securities.

Investors, directors and senior officers

Certain securityholders of Canadian reporting issuers have obligations under Canadian securities laws. For example, “reporting insiders” (which include directors, senior officers and 10 per cent or greater shareholders) are required to report their trades. Those who acquire at least 10 per cent of the outstanding voting or equity securities of a particular class (5 per cent if a formal takeover bid has been made) are also required to report and, in some cases, to make an announcement concerning such trades and to wait a business day before making further purchases. Dispositions of securities may trigger similar reporting requirements. There are exceptions to these reporting requirements for certain classes of institutional investors, such as pension funds and investment fund managers, which may be eligible to provide monthly reports regarding their ownership of securities.

Those “persons in a special relationship” with an issuer, such as directors, certain officers and significant stakeholders, are prohibited from trading in securities of the issuer while in possession of material undisclosed information relating to the issuer and from “tipping” others as to that information.

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