

Mergers and acquisitions in Canada

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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 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.

Canada is an attractive and stable destination for foreign investment, offering a strong rule of law, a highly skilled, well-educated workforce, and a business-friendly regulatory environment. As one of the world’s top mergers and acquisitions (M&A) markets, Canada provides foreign investors with significant opportunities to expand their businesses through acquisitions. A well-structured approach ensures compliance and strategic alignment with business objectives.

Acquisition Structures

Public company acquisitions in Canada typically proceed by one of two methods: a plan of arrangement or a takeover bid.

A plan of arrangement is a court-supervised process under Canadian corporate law that provides flexibility for transaction structure and is generally the preferred method for negotiated transactions. Importantly, an arrangement allows the purchaser to acquire all of the target’s securities in a one-step transaction. However, as an arrangement typically requires approval by at least 66 ⅔ per cent of target shareholders, a special meeting of the target shareholders is required which will impact how quickly the transaction can close. The most expedited timeline for a shareholder meeting is typically around 30 days once the proxy circular is mailed, and a plan of arrangement can generally take around 90 days from signing to closing, assuming no out of the ordinary regulatory approvals are required. In addition, because an arrangement is a negotiated transaction, involvement of and approval by the target’s board of directors is required in addition to shareholder and court approval.

A takeover bid is a direct offer to shareholders to acquire outstanding securities of the target where such securities, together with the purchaser’s securities of the target, constitute 20 per cent or more of the outstanding securities of the target issuer. Unlike a plan of arrangement, a takeover bid does not require the support of the target’s board of directors. Takeover bids are subject to strict securities law requirements, including requirements to treat all target shareholders equally, that the bid remain open for at

least 105 days unless the target board agrees to a shorter period (minimum 35 days) and that at least 50 per cent of the target securities not owned by the purchaser are deposited to the bid. Financing must be secured in advance as bids cannot be conditional on financing. A takeover bid may be friendly or hostile—but given the strict regulatory requirements, the fact that a second-step transaction is required to obtain all of the target’s securities and the comparative flexibility of a plan of arrangement, takeover bids are more typically used in only hostile transactions.

Like in many other jurisdictions, private M&A transactions in Canada are generally structured as either share purchases or asset purchases, depending on the intended outcome of the transaction and tax considerations, among other things.

A share purchase is where the acquirer assumes ownership of the target company, including its assets and liabilities. This structure often requires fewer third-party consents than an asset purchase, and the target business will generally operate as it did prior to the transaction, subject to any post-closing integration plans.

An asset purchase is where the acquirer purchases specific assets and/or liabilities from the target, but not the target company’s shares. While an asset purchase allows for greater control over the acquired business, this structure may require multiple third-party consents, approvals, assignments, or some combination, which can impact the timing of the transaction.

Regulatory Considerations

M&A transactions in Canada are subject to a number of regulatory requirements.

Where a publicly listed company is the target of the M&A transaction and securities are used as consideration, the target’s shareholders are entitled to robust disclosure, including prospectus-level disclosure about the purchaser and *pro forma* financial statements about the resulting business. In addition, Canadian securities laws aim to protect minority shareholders in M&A transactions and may require “majority of the minority” shareholder approval and formal valuations.

M&A transactions in Canada may require approval under the *Competition Act* if they exceed certain financial thresholds, with the Competition Bureau assessing the potential for anti-competitive effects. Additionally, the *Investment Canada Act* (ICA) mandates that foreign investments be reviewed to ensure they provide a net benefit to Canada, particularly in strategic industries such as natural resources, technology and infrastructure. These regulations reinforce Canada’s commitment to maintaining a competitive and fair market while attracting global investment.

Acquisitions of businesses in certain industries will also be subject to heightened regulatory scrutiny. For example, bank and insurance company acquisitions require approval from the Office of the Superintendent of Financial Institutions (OSFI). Businesses in other industries, such as broadcasting, telecommunications or transportation may also be subject to change of control approval, Canadian ownership requirements, or both.

Canada's labour and employment laws are critical to M&A transactions, particularly in industries with unionized workforces. In share purchases, employment obligations transfer automatically, whereas asset deals require renegotiation of employment terms. Employers must comply with Canadian laws regarding termination rights, severance and reasonable notice. Understanding how employment laws impact post-transaction workforce integration is crucial for business continuity and employee retention.

Key Transaction Terms

Negotiated M&A agreements will typically include representations and warranties of the target company, covenants with respect to the parties' conduct between signing and closing, and various conditions of closing.

In the public M&A context, the target's board of directors will often be provided with a right to terminate the agreement and accept an unsolicited superior proposal from a third party, known as a "fiduciary out." The purchaser will be provided with corollary protections such as a matching right, break fees and non-solicitation covenants from the target. Importantly, in a public M&A agreement, the representations and warranties will not typically survive closing as it is not possible to pursue claims against a large group of shareholders.

Comparatively, private M&A agreements will include representations and warranties that survive closing and provide for related indemnities to the purchaser. Private agreements may also include working capital adjustments to ensure the financial condition of the target aligns with expectations at closing and post-closing indemnities to protect against unforeseen liabilities. Representation and warranty insurance is increasingly used in M&A transactions to mitigate risk, allowing sellers to exit cleanly while providing buyers with recourse.

The Role of Private Equity in M&A

Private equity (PE) firms are active participants in the Canadian M&A market, undertaking strategic acquisitions, leveraged buyouts and recapitalization transactions. PE-backed transactions often involve shareholder agreements, negotiated governance structures and exit strategies, such as initial public offerings (IPOs) or secondary sales. Management equity incentives and earn-outs are frequently used to align interests between investors and management teams.

Shareholder Activism and M&A

Shareholder activism continues to play a significant role in Canadian M&A, with investors increasingly influencing corporate governance, deal structures and strategic direction. Activist shareholders may push for changes such as board representation, operational improvements, or the rejection of a proposed transaction if they believe it undervalues the company. Activists can influence the success of a transaction by challenging deal terms, advocating for competing bids or pressuring management to enhance shareholder returns. Canadian securities laws provide a framework for shareholder activism, including early warning reporting requirements for investors acquiring 10 per cent or more of a public company's shares and rules governing proxy

contests and shareholder proposals. Companies facing activism must carefully navigate defensive measures, such as shareholder rights plans (poison pills), staggered boards or strategic transactions that align with long-term shareholder value.

Tax Considerations

Structuring a transaction efficiently from a tax perspective is crucial. Share sales generally favour sellers due to capital gains tax treatment, whereas asset purchases allow buyers to benefit from stepped-up asset values. The *Income Tax Act* imposes withholding tax obligations on payments to non-residents, impacting cross-border deal structures.

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