Global Financial Services Regulatory Guide - Canada

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

The federal and provincial governments share jurisdiction over various aspects of the financial services sector in Canada. While the federal government has sole jurisdiction over banks, the provinces and territories regulate credit unions, mortgage brokers insurance brokers, securities markets, dealers and advisors, mutual fund companies and distributors, credit unions and caisses populaires, and other financial services providers such as payday lenders. Both levels of government regulate insurers and trust and loan corporations. The allocation of responsibilities is as follows:

The Department of Finance Canada is the branch of government responsible for federally regulated financial institutions, including banks, trust and loan companies, insurance companies, and credit unions. The Department of Finance is principally responsible for proposing changes to legislation and adopting new regulations governing federally regulated financial institutions.

The Bank of Canada is Canada’s central bank. It is an independent Crown corporation with considerable autonomy to manage the country’s financial system. The Bank of Canada is responsible for monetary policy in cooperation and consultation with the Department of Finance for central banking services, bank rates, currency, foreign exchange reserves and the administration of public debt. However, the Bank of Canada does not play any part in the regulation or daily administration of commercial banks in Canada.

The Bank of Canada is also taking on a new role. The recently published Retail Payment Activities Act (RPAA) creates a new regulatory regime in Canada for persons who perform retail payment activities. The new regime will impose substantive requirements related to operational risk management, end-user funds safeguarding, reporting, recordkeeping and supervisory information on persons who engage in payment processing activities. Those subject to the RPAA will be required to apply to the Bank of Canada by 15 November 2024 for registration as a payment service provider.

In Canada, banks are federally regulated under the Bank Act and carry on business under the federal supervisory authority of the Office of the Superintendent of Financial Institutions (OSFI) and the Financial Consumer Agency of Canada (FCAC). Banks operating in Canada may be licensed as Schedule I (domestic Canadian banks), Schedule II (foreign bank subsidiaries in Canada) or Schedule III (foreign banks with branch establishments in Canada). A foreign bank that does not have a branch in Canada can conduct limited business in Canada consisting of the promotion of the services of the foreign bank and acting as a liaison between the foreign bank and its customers in Canada. The foreign bank may establish a representative office in Canada for this purpose, which must be approved by OSFI.

OSFI is responsible for prudential regulation and establishing guidelines for capital, reporting and business practices of federally regulated financial institutions. It conducts regular reviews of those institutions and issues review letters that may require or recommend that they implement certain improvements. OSFI determines a confidential risk rating for each federally regulated financial institution (on a scale from low to high) and shares it with the institution. OSFI has the power to intervene in the affairs of federally regulated financial institutions. The objective of the intervention process is to enable OSFI and the Canada Deposit Insurance Corporation (CDIC) (where CDIC member institutions are involved) to identify areas of concern at an early stage and intervene effectively so as to minimize losses to depositors for OSFI and to minimize the exposure of CDIC to loss. If an institution is no longer considered to be viable or its insolvency is imminent, OSFI may: assume temporary control of the assets of the institution and the assets under its administration; take control of assets of the institution and the assets under its administration; take control of the institution unless the Minister of Finance advises OSFI that it is not in the public interest to do so; and/or request that the Attorney General of Canada apply for a winding-up order in respect of the institution under the Winding-up and Restructuring Act where the assets of the institution are under the control of the Superintendent of Financial Institutions or the institution is under the control of the Superintendent of Financial Institutions.

The FCAC has a mandate to protect and inform consumers about financial products and services. It is also responsible for oversight of compliance with certain voluntary codes of conduct, such as the code of conduct for the Credit and Debit Card Industry in Canada, which applies to the payment card industry and provides many measures to protect merchants that accept payments other than cash and/or cheque.

Both OSFI and FCAC also have the power to impose administrative monetary penalties for violations of their enabling legislation. In 2020 amendments to the Financial Consumer Agency of Canada Act significantly increased the maximum monetary penalties that can be imposed by the FCAC as part of its consumer protection mandate. The FCAC has the power to order the following:

Impose a penalty of up to CAD 10 million on banks per violation of their legal obligations (or CAD 1 million for a natural person)

Direct banks to take actions to comply with their legal obligations

Direct banks to undergo a third-party, independent audit to comply with their legal obligations

An entity can also face penal sanctions under the relevant financial institution legislation. For example, under the Bank Act the fine for a contravention is up to CAD 5 million (CAD 1 million for a natural person and imprisonment for up to five years).

The Financial Transactions and Reports Analysis Centre (FINTRAC) was established under the Proceeds of Crime (Money Laundering) Act (PCMLTFA). Unlike many countries, where the central financial intelligence unit is part of the enforcement arm of the government, FINTRAC reports to the Ministry of Finance, and efforts have been made to ensure that it remains independent from law enforcement. FINTRAC is mandated to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information under its control. It analyzes the information it collects from financial entities, intermediaries and other reporting entities to identify patterns of suspicious financial activity and to uncover associations among people and businesses linked to the patterns of suspected money laundering and terrorist financing. FINTRAC shares its intelligence, analysis and data with Canadian law enforcement authorities, and it is responsible for registering money services businesses (MSBs).

Penalties for noncompliance with the PCMLTFA and its associated regulations can be severe, and they are classified as either criminal or administrative monetary penalties. Criminal penalties include fines of up to CAD 2 million and five years' imprisonment. Separately, under the Criminal Code, the criminal offence of laundering proceeds of crime carries a punishment of up to 10 years' imprisonment and forfeiture of any property involved in the transaction or traceable to the proceeds of the money laundering.

Payments Canada (PC) is created under the Canadian Payments Act to establish, operate, and maintain systems for the clearing and settlement of payments among member financial institutions. It is Canada’s main financial market infrastructure for payments. The Bank of Canada and all chartered banks operating in Canada are required to be members of PC. Trust and loan companies, credit union centrals, federations of caisses populaires and other deposit-taking institutions, life insurance companies, as well as securities dealers and money market mutual funds that meet certain requirements are also eligible to be members. PC develops, implements, and updates the rules and standards that govern the clearing and settlement of payments between member financial institutions, and facilitate the interaction of its systems with other national and international payment systems and allow for the development of new payment methods. The Payment Clearing and Settlement Act gives the Bank of Canada the responsibility to oversee clearing and settlement systems for the purpose of controlling systemic risk or payments system risk.

Deposit-taking institutions are members of the Canada Deposit Insurance Corporation (CDIC). CDIC is a statutory corporation that provides deposit insurance for certain types of small deposits to member institutions. Membership in CDIC is mandatory for Canadian banks as well as for certain trust and loan companies that accept deposits.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

Financial services law in Canada is found in both federal and provincial laws and regulations, as well as in regulatory guidance published by the financial regulators. Banks are federally regulated under the Bank Act, insurance companies are both federally and provincially regulated, and most other financial services are provincially regulated.  With the exception of banking products and services, most consumer financial products and their providers/sellers are provincially regulated.

Bill C-86, as part of the Budget 2018, measures introduced the financial consumer protection framework ("Framework") in Part XII.2 of the Bank Act. The Framework took effect on 30 June 2022 and introduced new and enhanced measures, including the following, to protect the banking rights and interests of financial consumers:

New electronic alerts to consumers

Advance notice for the renewal of banking products and services

Separate agreements for optional products and services

Offering banking products and services that are appropriate for consumers' particular needs

Getting consumers' express consent for products and services

Broader protections against providing false or misleading information to consumers or taking advantage or applying undue pressure to them

More effective and timely complaints handling

Requirement to provide refunds and credits (redress)

The Framework also added whistleblower requirements in Part XVI.1 of the Bank Act to prohibit banks from retaliating against employees who report wrongdoing. "Wrongdoing" includes a contravention of: any provision of the Bank Act or its regulations; a voluntary code of conduct adopted by a bank or authorized foreign bank; and policy or procedure established by a bank or authorized foreign bank.

FCAC and OSFI derive their powers from federal legislation, i.e., the Financial Consumer Agency of Canada Act and the Office of the Superintendent of Financial Institutions Act, respectively.

Prudential regulators such as OSFI have an interest in ensuring the sound financial management of financial institutions. This is achieved by publishing guidelines and advisories. Legislation also requires financial institutions to adopt their own policies that are best suited to their business and operations. Therefore, rather than prescriptive rules, prudential regulators in Canada adopt a regulatory approach based on principles. As an example, the policies and procedures that OSFI expects federally regulated financial institutions to adopt include the following:

Capital adequacy requirements

Prudential limits relating to commercial lending, lending exposures, assets securitization and related-party transactions

Sound business and financial practices, which cover corporate governance, outsourcing arrangements, regulatory compliance management, operational risk management, use of derivatives, residential mortgage underwriting, interest rate risk, and AML/TF and reinsurance

Accounting, financial reporting and disclosure

Cyber and operational resilience, cybersecurity and reports of data breaches

As part of its mandate to contribute to the safety and soundness of the Canadian financial system, OSFI publishes guidelines and advisories for the purpose of ensuring compliance with requirements under federal financial institution legislation. The guidelines and advisories fall into four general categories: capital adequacy requirements (i.e., tier 1 and 2 capital and liquidity and leverage ratios), limits and restrictions on lending, accounting and disclosure, and sound business and financial practices.

Money laundering compliance is a matter of federal jurisdiction under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). In June 2018, the Department of Finance announced proposed amendments to the PCMLTFA. The proposed amendments added requirements, among other provisions, to update customer due-diligence requirements and beneficial ownership reporting requirements and allow the regulation of businesses dealing in virtual currency and update the foreign money service businesses regime.

The insurance industry in Canada is highly regulated by both federal and provincial legislation. The federal government has jurisdiction over the financial stability and solvency matters of insurers in Canada and over the licensing of foreign-incorporated insurance companies that insure risk in Canada.  Provincial and territorial governments have jurisdiction over most other insurance matters, including the sale of insurance products, the form and content of insurance contracts, business and marketing practices, agent and broker licensing, and the handling of premiums. Provincial regulation extends to all insurance companies intending to do business in a particular province, regardless of whether they are incorporated under federal, provincial or foreign legislation.

Securities law matters are generally governed by provincial or territorial laws. There is no national securities regulator or legislation in Canada, but there are certain harmonized securities rules that have been adopted as regulations by all provinces and territories and are referred to as national instruments. The process of harmonization and the publication of guidance is done by the Canadian Securities Administrators (CSA), a not for profit organization that brings together all the provincial and territorial securities regulators in Canada. Securities laws seek to protect prospective investors by ensuring that the dealers of various investment products are registered with securities regulators, and that investors are provided with sufficient disclosure for example, by way of a prospectus). Exemptions to these requirements are available in certain prescribed circumstances.

Securities regulators in Canada rely on the oversight and enforcement by self-regulatory organizations (SRO) for certain types of registrants. SROs are regulatory bodies recognized by securities regulators that have the power to adopt particular rules to certain participants in the securities industry. SROs are typically structured as not-for-profit entities and apply a membership model to participants in the SROs. They also have enforcement powers, including the discipline of members. The SRO that regulates both investment dealers and mutual fund dealers across Canada is the Canadian Investment Regulatory Organization (CIRO).

Legislation applicable to securities registrants is more prescriptive and sets out requirements for these firms to have in place an internal control system, adequate policies and procedures, and a qualified chief compliance officer responsible for monitoring compliance with their policies and procedures.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

There is a broad range of banking and financial service activities that require licensing or registration in Canada, either at the federal or provincial level, including the following:

Accepting deposits

Carrying on insurance business (life, property and casualty, etc.), including acting as an insurer, underwriter, agent or broker, claims adjuster

Providing investment, fund management and financial advice and engaging in investment management activities

Trading and distributing securities, derivatives and other investments, including as a broker dealer or marketplace

Dealing in, trading in, and administering mortgages and mortgage lending, including acting as a mortgage agent, broker, administrator or lender

Providing money services, including dealing in foreign exchange; transferring funds from one individual or organization to another using an electronic funds transfer network or any other method; and cashing or selling money orders, traveler’s checks or anything similar and dealing in virtual currencies

Engaging in retail payment activities

Providing payday loans as a lender or broker

Providing credit reports

Collecting debts on behalf of another

In Canada, many crypto-assets qualify as securities (in particular, investment contracts) on the basis of their characteristics. The test for investment contracts developed by case law is the Pacific Coin test (modeled after the Howey test in the United States). However, irrespective of the characterization of a particular crypto-asset, if a crypto-asset trading platform or service (CTP) custodies that crypto-asset for Canadian clients, the CTP will still need to obtain registration as a dealer in securities in Canada because it will be deemed to be dealing in crypto contracts.

Staff Notice 21-327 Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets sets out the CSA's position in regards to platforms that facilitate trades in crypto-assets. They will be subject to securities laws, notwithstanding whether or not those platforms trade assets that are in fact “securities.” Regulators in Canada require CTPs to seek registration as restricted dealers in securities, subject to bespoke terms and conditions.

Subsequently, the CSA published Staff Notice 21-332 Crypto Asset Trading Platforms: Pre-Registration Undertakings - Changes to Enhance Canadian Investor Protection, which imposes investor protection requirements on CTPs both pre- and post-registration in the form of pre-registration undertakings. The notice also contemplated that CTPs could obtain consent with respect to trading, on an interim basis, certain stablecoins, referred to by the CSA as "value referenced crypto assets" (VRCAs). In October 2023, the CSA published Staff Notice 21-333 Crypto Asset Trading Platforms: Pre-Registration Undertakings – Changes to Enhance to provide further developed terms and conditions for CTPs that permit trading in VRCAs. CTPs are required to comply with the imposed additional requirements for prescribed disclosures, disclaimers in marketing materials, and updated know-your-product policies and procedures. The deadline for compliance was extended to 31 October 2024.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

**Banking**

Foreign banks and entities associated with foreign banks that are not authorized under the Bank Act are prohibited from undertaking any business directly or indirectly, in Canada, except in limited circumstances. Furthermore, any prohibited activity carried out by an agent or nominee in Canada on behalf of a foreign bank constitutes an activity of the foreign bank. Therefore, a foreign bank or entities associated with a foreign bank that are not approved under the Bank Act cannot engage local agents to offer or provide products or services to residents of Canada.

A foreign bank and its financial agent are not within the regulatory purview of OSFI if they do not have any physical establishment in Canada andor if their business is not conducted in Canada. From a banking law perspective, there are generally no restrictions on residents of Canada engaging in offshore banking and becoming clients of a foreign bank that is not licensed in Canada, provided the foreign bank conducts business outside of Canada, a practice commonly referred to as "suitcase banking." In order to avoid being seen as conducting business in Canada, the products and services of the foreign bank must be provided outside Canada, with no agent or representative of the foreign bank having a business presence in Canada or traveling to Canada to carry on business.

The Bank Act does not provide guidance on the factors that OSFI may take into account in determining whether a foreign bank or an entity associated with a foreign bank is engaging in or carrying on business in Canada directly or through an agent or nominee. As such, in making its determination, OSFI generally assesses the facts and circumstances of each case to determine whether there is a sufficient connection between the activities of a foreign bank or an entity associated with a foreign bank and Canada. In making that determination. OSFI considers factors comparable to those often considered by judicial bodies in interpreting the concept of “carrying on business in Canada” under other statutes such as the Income Tax Act. For example, the place where agents, employees or technological or other assets of the foreign bank are located is  relevant criteria.

In its Ruling 2008-01, OSFI remarked that under the common law and even the Bank Act, promotional activities alone do not constitute, nor are deemed to constitute, carrying on business” in Canada.

**Insurance**

A “foreign entity” shall not insure in Canada a risk unless it is authorized by a Ministerial order made under the Insurance Companies Act. OSFI Advisory 2007-01-R1 Insurance in Canada of Risks provides guidance on key indicia to consider in determining, for the purposes of the Insurance Companies Act, whether a foreign entity is insuring in Canada a risk, and how OSFI will apply these indicia to a particular business model. It also provides guidance on  other matters related to foreign insurers in Canada. Ultimately, it is a fact-driven analysis that determines whether or not a foreign insurer is insuring in Canada a risk.

Provincial insurance law generally provides more specific restrictions on the activities of foreign insurers and their agents engaged in insurance business. Even if not subject to  the Insurance Companies Act, a foreign insurer would have to check the provincial licensing requirements in the context of the specific transaction being contemplated. Provincial regulation extends to all companies that do business in a particular province, regardless of whether they are incorporated under federal, provincial or foreign legislation.

For example, the Insurance Act of (Ontario) regulates the business of insurance in Ontario and requires every insurer undertaking insurance in Ontario or carrying on business in Ontario to obtain and hold a license. Even without a business presence in Ontario, a foreign insurer will be deemed to be carrying on business in Ontario within the meaning of the Insurance Act if such insurer, its employees, agents or other representatives market or solicit insurance products in Ontario, issue or deliver a policy of insurance in Ontario or collect or receive premiums in Ontario. Furthermore, a foreign insurer will be deemed to be undertaking insurance in Ontario if it maintains an action or proceeding in Ontario in respect of a contract of insurance.

Provincial insurance regulation also governs the form and content of insurance contracts, business and marketing practices, agent and broker licensing and conduct rules, and the handling of premiums.

**Securities and derivatives**

Generally, persons who are in the business of dealing in securities or derivatives directed to persons residing in Canada are required to register as a dealer unless an exemption from registration is available. Similarly, persons who are in the business of advising Canadian residents on securities or derivatives are required to register as an adviser unless an exemption from registration is available. Interpretation of Canadian securities laws takes a broad approach to the concepts of “trading,” “securities,” “advising” and “acting in furtherance of a trade,” so most activities involving securities of a company are caught in one way or another, including on a cross-border basis. The concept of a trade is defined broadly and notably includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade.

The issue of whether an entity is in the business of trading is referred to in securities laws as the "business trigger" test. A list of factors that securities regulators will consider when determining whether or not a person or a company’s  activities satisfy the business trigger test is included in the Companion Policy to National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations. These factors include whether the person or company intermediates trades for a business purpose (like a broker), engages in market-making activities, holds itself out to be a dealer, engages in trading activity for remuneration, or actively solicits traders.

Securities Laws also regulate the operation of "marketplaces," which includes exchanges, quotation and trade reporting systems, and alternative trading systems. Particular concepts, definitions and rules apply in the case of marketplaces.

**Other financial services**

Other provincial financial services statutes that require licensing may apply irrespective of the domicile of the financial services provider if the customer is located within the province or territory of Canada. This is particularly true for consumer financial services.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

The requirements to obtain a required license or registration vary significantly according to the particular financial service and regulatory regime in question and the type of license or registration sought.

**Banking and insurance**

In reviewing an application for approval by a new entrant, OSFI assesses a wide range of factors, including ownership and financial strength, business plan, corporate structure, proposed activities, credit products and underwriting criteria, trading and investment strategy, information technology environment, risk management controls, integrity and security against threat actors, internal audit practices, regulatory compliance management, business continuity, and exit strategy. OSFI has published guidelines that set out its expectations and requirements for financial institutions seeking to be federally regulated (for example, Guideline E-4 Foreign Entities Operating in Canada on a Branch Basis published by OSFI in 2021).

While authorized foreign banks and foreign insurers are expected to maintain an establishment in Canada, certain branches under the Bank Act and Insurance Companies Act are exempted from the requirement to keep copies of certain records at the prescribed locations in Canada. In those circumstances, the branch must provide OSFI with immediate, direct, complete and ongoing access to the records that are stored outside Canada.

As reporting entities, banks and life insurers doing business in Canada must satisfy the obligations under the PCMLTFA, namely: reporting requirements, recordkeeping, client due diligence, and developing a comprehensive compliance program. The compliance program must include: appointment of an AML compliance officer, development of written AML compliance policies and procedures; a risk assessment of clients and their activity to decide on the level of ongoing client due diligence; development and maintenance of compliance training programs for employees, agents and other mandatories/attorneys; and carrying out biannual effectiveness reviews.

Given a greater reliance by financial institutions on technology systems and processes and the handling of customer data, regulators expect them to provide Service Organization Control (SOC) reports by external experts that attest to the financial institutions' internal management and controls relating to security, availability, processing integrity, confidentiality and privacy controls.

**Securities and derivatives**

Securities regulators assess the integrity as well as the experience and proficiency for the Canadian securities industry of prospective registrants. To be fit for registration as dealers or advisers in securities or derivatives, firms must satisfy the following requirements at a minimum:

Individuals must meet proficiency requirements as set out in part 3 of National Instrument 31-103.

Firms and individuals must conduct themselves with integrity, which includes honesty and good faith, particularly in dealing with clients; those who have a history of noncompliance with regulatory and legal requirements may be denied.

Firms must maintain solvency by meeting the capital and insurance requirements required to conduct their obligations on a daily basis.

Firms must develop a full compliance framework and a Policies and Procedures Manual, as well as client disclosures (e.g., account statements, trade confirmations, relationship disclosure information and annual fee and performance disclosures) and processes for know your product (KYP), know your client (KYC), suitability and managing conflicts of interest.

Similar to financial institutions, firms registered as dealers or advisers in securities are reporting entities under the PCMLTFA and are subject to the compliance obligations under the PCMLTFA discussed above.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

**Banking and insurance**

Financial institutions need to apply for regulatory approval under federal acts that OSFI, including incorporation of new financial institutions and opening of foreign bank branches. OSFI publishes transaction instructions for each of the different sectors to inform applicants what information is needed to assess the application and what OSFI looks for in applications.

The incorporation of a bank or, a federally regulated trust and loan company, or a federally regulated insurance company involves a three-phase process:

Phase 1 (Pre-Application) – This involves initial discussions with OSFI, submission of preliminary information (ownership and financial strength, business plan, credit products and underwriting criteria, trading and investment strategy, information technology environment, etc.), business plan discussion with OSFI, and receipt of a letter from OSFI outlining its expectations regarding material risks or concerns and additional information requirements.

Phase 2 (Letters Patent) – This involves submission of a notice of intention to apply for Letters Patent (to inform the public) in a form approved by OSFI setting out the name, geographical location/jurisdiction of the applicant, proposed name of institution, and a brief description of proposed activities; submission of formal application including information about ownership and financial strength, including capitalization, business plan, management, risk management, board of directors and committees, internal audit, regulatory compliance management, information technology, and other requirements such as proposed name, by-laws, non-refundable service charge, etc. The institution comes into existence on the date provided in the Letters Patent when issued.

Phase 3 (Order) – The institution may only commence business once an Order providing for the same is issued by the Superintendent. Once Letters Patent have been issued, and before an Order is made by the Superintendent, OSFI must be satisfied that the institution has the necessary systems, management structure, control processes and regulatory compliance systems in place. The Order may impose conditions or limitations on the business to address supervisory or regulatory concerns.

A similar approval process exists for a foreign bank intending to operate in Canada as a branch (full service or lending), consisting of a pre-notice period, a post-notice period and an order permitting a foreign bank to establish a branch in Canada. In the case of a full-service branch, the foreign bank will generally not be permitted to accept “retail” deposits, defined for this purpose as amounts less than CAD 150,000, and it is generally required to maintain assets on deposit with a Canadian financial institution approved by the Superintendent of Financial Institutions equal to at least 5% of the authorized foreign bank in respect of its business in Canada or CAD 5 million, whichever is greater. The process, including the broad considerations taken into account by OSFI when making a recommendation to the Minister of Finance to establish the branch (e.g., any national security concerns, the best interests of the financial system in Canada) is fully described in OSFI's Guide to Foreign Bank Branching.

OSFI publishes its Service Standards and Fees, which sets out the time from the date a complete application is received to provide a decision or make a recommendation to the Minister of Finance.

OSFI recently started a "digital innovation sandbox” to test "potential viable concepts" relating to digital innovation matters, including AI, fintech and crypto-assets. Certain provincial regulators of financial services also offer test and learn environments to allow registrants to use novel business models.

**Securities and derivatives**

The process for registration as a dealer or adviser under securities laws is set out in National Instrument 33-109 Registration Information. Provincial securities regulators such as the Ontario Securities Commission (OSC) publish guidance and checklists to provide step-by-step information about how a market participant may apply to register a firm. The OSC has a service standard of 120 days in the case of firms and 30 days in the case of individuals to provide a decision on registration applications. Time is counted from the date the regulator receives "a complete and adequate application in acceptable form."

Firms that are seeking registration as an investment dealer must also make an application for membership to CIRO. The Guidance for Applicants and the New Membership Application – Documentation Checklist provide applicants information on the materials and supporting documents that they must prepare for their membership application. In order to be admitted, firms must be able to satisfy the requirements for financial and operations compliance, business conduct compliance, trading conduct compliance, and registration. Generally, the time for review and approval of a membership application is a minimum of six months. Applications for firms with complex or novel business models can take much longer than the six-month period.

The CSA Financial Innovation Hub is a collaborative effort by Canadian securities regulators to consider new technologies and innovative business models, including assessing the scope and nature of regulatory implications and evaluating what changes may be required to securities regulatory frameworks or possible exemptive relief. It has been in operation for several years and was instrumental in developing the CSA's approach to regulating crypto-assets. Firms can access the sandbox by contacting their local securities regulator.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

**Banking and insurance**

In the Canadian banking, trust and loan company, and insurance sectors, there are no “passporting” arrangements with any other jurisdiction. As mentioned, foreign financial institutions are subject to specific rules under the Bank Act, the Trust and Loan Companies Act, and the Insurance Companies Act.

**Securities and derivatives**

For most foreign-based securities dealers, the most common exemption from registration under Securities Laws is the international dealer exemption (IDE). The IDE allows a foreign firm to offer certain trading in securities with "permitted clients," as defined in National Instrument 31-103, without being registered in the relevant Canadian jurisdictions, as long as the foreign firm is registered to perform such functions in its home jurisdiction and subject to certain conditions. The exemption allows international securities dealers to deal with certain Canadian-permitted clients as long as certain eligibility criteria are met and filing and fee payments are made. To qualify for the IDE, a foreign firm must satisfy all of the following requirements:

The foreign firm's head office or principal place of business must be in another jurisdiction.

The foreign firm must be registered under the securities legislation of that foreign jurisdiction in which its head office or principal place of business is located. Its category of registration in the foreign jurisdiction must permit it to carry on the activities of a dealer.

The foreign firm must engage in the business of a dealer in the foreign jurisdiction in which its head office or place of business is located.

The foreign firm must be trading as a principal or agent for any of the following:

The issuer of the securities

A permitted client

A person or company that is not a resident of Canada

The foreign firm has submitted to the relevant Canadian securities regulatory authority a completed Form 31-103F2 Submission to Jurisdiction and Appointment of Agent for Service.

Foreign firms that meet the requirements above are permitted to carry on the following registerable activities while relying on the international dealer exemption:

An activity, other than a sale of a security, that is reasonably necessary to facilitate a distribution of securities that are offered primarily in a foreign jurisdiction

A trade in a debt security with a permitted client if the debt security is: (i) denominated in a currency other than the Canadian dollar; or (ii) is or was originally offered primarily in a foreign jurisdiction and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution

A trade in a debt security that is a foreign security with a permitted client, other than during the security's distribution

A trade in a foreign security with a permitted client, unless the trade is made during the security's distribution under a prospectus that has been filed with a Canadian securities regulatory authority

A trade in a foreign security with an investment dealer

A trade in any security with an investment dealer that is purchasing as principal

A similar exemption in Canada exists for foreign licensed investment advisers, and many of the requirements mentioned above apply in addition to others, mutatis mutandis.

# 8. Authors and contact information

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[Canada: Amplified risks for financial institutions from AI, OSFI and FCAC Report (28 Nov 2024)](https://insightplus.bakermckenzie.com/bm/banking-finance_1/canada-amplified-risks-for-financial-institutions-from-ai-osfi-and-fcac-report)

[Canada: Deadline approaching for registration under the Retail Payment Activities Act (04 Nov 2024)](https://insightplus.bakermckenzie.com/bm/banking-finance_1/canada-deadline-approaching-for-registration-under-the-retail-payment-activities-act)

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