Global Financial Services Regulatory Guide - Canada

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

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# 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.

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