

Canadian Market Entry Checklist

Presented By

Cassels

Federal Jurisdiction

AGENCY

Financial Transactions and Reports Analysis Centre of Canada

The Financial Transactions and Reports Analysis Centre of Canada is Canada's financial intelligence unit responsible for the collection, analysis and disclosure of information to assist in the detection, prevention and deterrence of money laundering and terrorist financing in Canada and abroad.

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Payments Canada

(formerly Canadian Payments Association)

Payments Canada, established by the federal Payments Act, operates the payment clearing and settlement infrastructure in Canada, and oversees the rules for this infrastructure. Pre-authorized debit agreements (i.e. debiting funds from the bank account of an individual or entity) require prescribed content dictated by Payments Canada. Content of such agreements include the timing of the debit, information on cancellation rights, and pre-notification requirements.

AGENCY

Department of Finance

Manages federal borrowing on financial markets; develops financial sector policy and legislation; represents Canada in various international financial institutions and groups.

AGENCY

The Office of the Superintendent of Financial Institutions

Independent federal government agency that regulates and supervises federally regulated financial institutions and federally regulated private pension plans. Among other responsibilities, the Office of the Superintendent of Financial Institutions interprets legislation and regulation, develops rules, ensures the foregoing federally regulated entities are meeting requirements and are in sound financial condition, and provides regulatory approval for certain matters (e.g. the formation of a bank in Canada).

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The Bank of Canada

Primarily responsible for conducting monetary policy by setting interest-rate targets and adjusting credit supply; serves as the key component in the payments system by providing a check-clearing function; serves as the traditional lender of last resort; provides liquidity to the financial system, gives policy advice to the federal government on the design and development of the system, oversees major clearing and settlement systems, and provides banking services to these systems and their participants; conducts ongoing research into issues related to the financial system's stability and efficiency.

Federal Jurisdiction

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AGENCY

The Canada Deposit Insurance Corporation

Promotes and contributes to the financial system's stability by providing deposit insurance against the loss of eligible deposits at member institutions in the event of failure and acting for the benefit of depositors while minimizing loss.

AGENCY

The Financial Consumer Agency of Canada

Federal consumer agency that monitors and supervises federally regulated financial institutions compliance with the consumer protection provisions of federal legislation, regulations, voluntary codes of conduct and public commitments, and informs consumers of their rights and responsibilities when dealing with such institutions.

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Office of the Privacy Commissioner of Canada

The Office of the Privacy Commissioner of Canada enforces Canada's federal privacy laws and oversees compliance with PIPEDA. The provinces of British Columbia, Alberta and Quebec each have a provincial privacy commissioner, who oversees compliance with the provincial privacy legislation in those provinces.

AGENCY

Canadian Securities Administrators

The 10 provinces and 3 territories in Canada are responsible for securities regulations. Securities regulators from each province and territory have teamed up to form the Canadian Securities Administrators (CSA). The CSA is primarily responsible for developing a harmonized approach to securities regulation across the country.

ACT

Interest Act

Interest rates are generally governed federally pursuant to the Interest Act, which addresses interest rates payable including how the interest rate must be expressed (i.e. per annum).

ACT

Criminal Code

The Criminal Code sets the maximum allowable annualized interest rate that may be charged at 60%. Payday loans are exempt from the Criminal Code's usury rate and are regulated provincially, however, a consultation is being launched by the federal government on lowering the criminal rate of interest applicable to certain lenders, including payday lenders offering installment loans.

Federal Jurisdiction

(continued)

ACT

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Canada's anti-money laundering laws are not applied uniformly to all persons and entities, or to all activities of the persons or entities that are subject to these laws in some way. The most detailed measures to deter money laundering are in the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and its associated regulations, and these measures apply to certain persons and entities (commonly referred to as "reporting entities", such as banks, insurance companies, money services businesses (domestic and foreign) and other prescribed entities). Canada's anti-terrorism financing laws have broad application and are principally found in the Criminal Code.

ACT

Canada's Anti-Spam Legislation

Canada's Anti-Spam Law regulates the sending of "commercial electronic messages" (CEMs), such as advertising, marketing, promotion, etc. messages to electronic addresses (e.g., email, SMS, social media) in commercial activities.

ACT

Personal Information Protection and Electronic Documents Act

The Personal Information Protection and Electronic Documents Act ("PIPEDA"), and substantially similar legislation in certain provinces, governs the collection, use, and disclosure of personal information by businesses. In addition, this Act contains various provisions to facilitate the use of electronic documents.

ACT

Payments Act

An Act respecting Payments Canada and the regulation of systems and arrangements for the making of payments.

ACT

Human Rights Act

Federal (and provincial) human rights laws in Canada make it illegal to discriminate against persons in a contractual relationship on the basis of several protected grounds including race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

ACT

Sanctions laws

A variety of federal sanction laws prohibit dealings with certain persons and entities, as such persons and entities are identified in those laws. Canadian sanctions laws apply to all persons (i.e. natural and entities) in Canada and Canadians outside of Canada.

Provincial Jurisdiction

AGENCY

Consumer Affairs Regulatory Agencies

Each Canadian province and territory has a regulatory agency with oversight over the applicable consumer protection legislation in that province or territory. Provincial or territorial licenses, permits or registrations are required for certain entities to conduct certain types of transactions with consumers, and such approvals would be obtained from the applicable consumer affairs regulatory agency. In particular, consumer lenders are required to be licensed in certain provinces. As a prerequisite to such licenses, the lender must also be extra-provincially registered in the applicable province. Certain lenders are subject to their own licensing regime, such as payday lenders and high-cost credit lenders. Licensing regimes also exist for credit reporting, debt collection, motor vehicle dealers, and loan brokers.

ACT

Payday Loan Legislation

Payday loans are regulated provincially and are subject to restrictions on certain lending practices. Payday loan legislation also requires prescribed disclosure to borrowers, sets out parameters regarding communications to a borrower, regulates interest rates, and provides borrower's with prescribed rights and remedies.

ACT

Consumer Protection Legislation

Provincially, consumer protection laws generally categorize consumer agreements by type (e.g. lease agreement, credit agreement, and internet agreement). Disclosure requirements under consumer agreements vary by agreement type and, in some instances, by jurisdiction. Generally, consumer agreements must be in writing, consumer protections cannot be waived, and the prescribed disclosure must be provided to the consumer prior to entering into an agreement with the consumer.

ACT

Credit Reporting/Consumer Reporting Legislation

Provincial credit reporting laws govern the collection, use and disclosure of consumer credit reports. A credit reporting agency can provide a credit report in permitted circumstances. Credit reporting agencies are subject to various requirements, including as to the content of reports, disclosure upon request, licensing, and record-keeping. A lender must obtain a consumer's consent before obtaining a credit report. Where credit is denied based on information on the credit report, a notice of denial or adverse action containing prescribed information must be provided to consumers.

ACT

Credit Union Legislation

Provincial credit unions are regulated under provincial credit union legislation and are subject to the requirements in such legislation, including in respect of the establishment of credit unions and their membership, capital structure, governance and business powers.

Provincial Jurisdiction

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ACT

Privacy Laws

Every province and territory has its own laws that apply to provincial government agencies and their handling of personal information. Some provinces have private-sector privacy laws that may apply instead of PIPEDA.

ACT

Debt Collection Legislation

The provinces and territories regulate collection practices through a variety of laws. The laws provide exemptions to the licensing requirements in some circumstances but, generally, third party debt collectors are required to be licensed and are subject to each jurisdiction's requirements (e.g. record keeping, disclosure, requirements regarding trust funds, registration of employees, prohibited collection practices).

ACT

Gift Card/Prepaid Card Legislation

Gift cards and prepaid cards are regulated across Canada under consumer protection legislation. Generally, these laws prescribe requirements as to disclosure, prohibit the expiration of funds (subject to prescribed exemptions), and limit fees charged to consumers.

ACT

Mortgage Lending

Mortgage lending is regulated provincially (and federally under the Bank Act) as to, among other matters, licensing and disclosure in mortgage documents.

ACT

Personal Property Security Legislation

The personal property security legislation in the Canadian jurisdictions regulate taking security in consumer goods. The legislation prescribes registration procedures for registering a security interest in consumer goods.

ACT

Repair and Storage Liens; Possessory Liens

Provincial legislation that sets out rights and requirements for repair, storage and possessory liens.

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