

GETTING THE DEAL THROUGH

# Securities Finance

in 31 jurisdictions worldwide

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# Canada

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## Statutes and regulations

- 1 What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

Securities offerings in Canada are governed by:

### Canadian securities laws

Securities regulation in Canada is the responsibility of the provinces and territories. Each of Canada's 10 provinces and three territories has its own legislation and securities regulatory authority that regulates, among other things, public offerings, disclosure and takeover bids.

The provincial and territorial securities regulatory authorities coordinate their activities through the Canadian Securities Administrators (CSA), a forum for developing a harmonised approach to securities regulation across the country. The CSA has a system of mutual reliance whereby one securities regulatory authority acts as the lead authority for reviewing prospectuses and other regulatory filings of Canadian issuers. The Ontario Securities Commission (OSC) is generally regarded as the lead securities regulatory authority in Canada.

The provinces of Ontario and Québec have additional rules (including approval by a majority of the minority shareholders and independent valuation of the subject matter of the transaction) designed to ensure fair treatment of minority shareholders in connection with certain types of transactions involving related parties (which include the holders of 10 per cent or more of the voting securities of a company).

### Self-regulatory organisations

There are two principal stock exchanges in Canada: the Toronto Stock Exchange (senior market) (TSX) and the TSX Venture Exchange (junior market) (TSXV). The exchanges set minimum listing standards for companies seeking an initial listing and ongoing rules applicable to listed companies, including prior notification and approval for new issues of securities.

The Investment Dealers Association of Canada (IDA), Market Regulation Services Inc (RS) and the Mutual Fund Dealers Association of Canada (MFDA) prescribe rules for investment dealers involved in the distribution of securities, including capital adequacy and business and trading conduct.

The Canadian Depository for Securities Limited handles securities clearing and settlement functions.

### Multi-jurisdictional disclosure system

Many Canadian companies are able to take advantage of the Canada/US Multi-jurisdictional Disclosure System (MJDS). This

unique regime allows eligible Canadian issuers to access US public markets using Canadian disclosure documents (subject to review only by the Canadian securities regulatory authorities) without becoming subject to the US domestic registration and reporting system. Also, in many cases, Canadian continuous reporting documents can be used to satisfy US continuous reporting obligations.

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## Public offerings

- 2 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors? Please distinguish between debt and equity, and primary and secondary offerings where relevant.

See question 3.

- 3 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

Unless a statutory exemption is available, or a discretionary exemption has been granted, persons may not distribute securities unless they have filed and cleared a prospectus with the securities regulatory authorities in the provinces and territories where they intend the distribution to take place. The distribution of securities includes issuing previously unissued securities, selling previously issued securities from a holding that materially affects control of the issuer (generally a holding of more than 20 per cent of the outstanding voting securities of the issuer) or reselling securities acquired pursuant to an exemption.

An issuer who wishes to distribute securities pursuant to a prospectus must prepare and file a preliminary prospectus with the applicable securities regulatory authorities. After the authorities have reviewed the preliminary prospectus, an issuer must file a final prospectus addressing any deficiencies identified in the review.

When it files the preliminary prospectus, the issuer, in accordance with prescribed rules, selects a securities regulatory authority to act as the lead authority to review and clear the preliminary prospectus. After it reviews the preliminary prospectus, the lead authority sends a comment letter to the issuer identifying the amendments that must be made to the preliminary prospectus before a receipt for the final prospectus will be issued. The other securities regulatory authorities may provide additional comment letters within a prescribed period after the comment letter of the lead authority has been sent.

Although an offering may commence with the filing of a

preliminary prospectus, it is becoming more common to delay the marketing 'road show' until after the comment letters of the securities regulatory authorities have been received and in some cases resolved.

#### **Long-form prospectus offerings**

Canadian securities law prescribes the information that must be included in the final prospectus. A preliminary prospectus contains all the information that must be included in the final prospectus but the price of the security being offered and related information.

In general, an issuer of securities is required to provide a complete, accurate and plain description of all information, both positive and negative, that prospective purchasers might reasonably require to make an informed investment decision. This includes:

- a description of the issuer's business and assets;
- a summary of the issuer's capital structure, equity and debt;
- a description of the securities being offered;
- management's discussion and analysis of the financial condition and results of operations (MD&A);
- a description of relationships with related parties;
- information relating to directors and officers, including executive compensation;
- a description of the use of proceeds;
- a description of material legal proceedings; and
- risk factors.

Financial statements of the issuer must also be provided, including an income statement, a statement of surplus, a statement of changes in financial position, and a balance sheet for specified periods and at specified dates. In addition, separate financial statements for acquired businesses, or financial information reflecting business dispositions, may be required if an issuer has made significant acquisitions, or dispositions, during specified periods.

The long-form prospectus review process typically takes between three and four weeks to complete.

#### **Expedited prospectus offerings**

##### *Short-form prospectus offerings*

Canadian securities law permits eligible issuers to sell securities more quickly using a short-form prospectus. In general, an eligible issuer is a reporting issuer (ie, a person who has either previously distributed securities pursuant to a prospectus or a takeover bid circular, or whose securities are listed on the TSX or TSXV) that has prepared and filed with the applicable securities regulatory authorities current annual financial statements and a current annual information form.

One of the principal components of the short-form prospectus system is the annual information form (AIF), a disclosure document that reporting issuers must prepare and file annually with the securities regulatory authorities. An AIF contains the same information that the issuer would provide in a long-form prospectus. The securities regulatory authorities usually review the reporting issuer's initial AIF, and may periodically review subsequent AIFs.

In general, a short-form prospectus contains information about the securities being offered. It also incorporates, by reference, all the information about the business and assets of the issuer contained in the issuer's current AIF, financial statements, MD&A and management information circular, as well as all subsequent material change reports from the issuer's public file with the securities regulatory authorities.

The short-form prospectus review process typically takes five working days to complete.

##### *Bought deal financings*

Issuers that are eligible to use a short-form prospectus often use a technique called the 'bought deal' to issue securities.

Under bought deal financing, the underwriters commit to purchase securities from the issuer at an agreed price before or when filing a short-form preliminary prospectus (ie, without the usual marketing period). Although the underwriters assume more risk than under a traditional marketed offering, the short time frame for reviewing the preliminary short-form prospectus reduces the chance of a significant fall in the market price of the purchased securities between the time the underwriters agree to buy the securities and the time that the securities can be distributed under the final short-form prospectus. See also question 12.

##### *Special warrant financings*

Issuers that are not eligible to use a short-form prospectus often use a technique called the 'special warrant' to issue securities.

Under special warrant financing, the issuer issues special warrants (or other forms of convertible securities) for cash in a transaction that is exempt from the prospectus requirements (usually pursuant to the accredited investor exemption described in question 7). The issuer then prepares and files a preliminary prospectus, and upon issue of a receipt for the final prospectus the special warrants are converted into the underlying securities (typically, common shares). The distribution qualified by the final prospectus is the conversion of the special warrants into common shares so that the common shares are freely tradable. In effect, special warrant financing allows the issuer to carry out a private placement for cash, and to thereafter deliver freely trading securities to the purchasers of special warrants by way of a prospectus.

##### *Shelf prospectus offerings*

The shelf prospectus system permits issuers who are eligible to use a short-form prospectus to use a shelf prospectus that will allow them to complete a series of distributions of securities over a two-year period. The shelf prospectus system is most commonly used for offerings of debt securities.

To use the shelf prospectus system, the issuer must file a short-form base shelf prospectus containing all of the information required for a short-form prospectus, other than the terms of each particular offering to be made over the two-year period. The base shelf prospectus must also set out the aggregate amount of securities to be offered over the two-year period. To complete a particular offering of securities, the issuer prepares and delivers a prospectus supplement to purchasers, containing the terms of the offering, and files the supplement with the securities regulatory authorities.

##### *MJDS*

MJDS permits substantial Canadian issuers to offer securities in the US using a Canadian prospectus 'wrapped' with certain prescribed additional US disclosure. An MJDS offering may be made as part of an existing Canadian offering or solely within the US. Except in special circumstances, the US Securities and Exchange Commission (SEC) does not review prospectuses for MJDS offerings, and will generally clear such offerings immediately after the prospectuses have been cleared in Canada.

Canadian issuers wishing to use MJDS must meet certain eligibility requirements, including:

- they must be a Canadian corporation;
- they must have been subject to the continuous disclosure requirements of one or more of the Canadian securities regulatory authorities for at least 12 months, and be in compliance with these requirements; and
- they must meet specific minimum market value tests.

### Stock exchange listing

To obtain a listing on the TSX or TSXV, an issuer must complete and file a listing application on a prescribed form with the exchange. The form requires detailed disclosure of the issuer's history, business, authorised and issued share capital, share distribution, principal shareholders and material properties, investments and subsidiaries. Much of this disclosure may be incorporated from a prospectus. The application will be considered in the context of the exchange's listing criteria.

If accepted for listing, the issuer must agree to enter into a listing agreement with the exchange, pursuant to which it agrees to comply with the rules, regulations and by-laws of the exchange. These include rules requiring the issuer to obtain the exchange's approval prior to the issuing of new securities, to notify the exchange in advance of any declaration of dividends, and to comply with the exchange's disclosure policies.

- 4 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Canadian securities laws impose strict limitations on the issuer's publicity during the period of a securities offering. The general rule is that securities should be marketed using only the preliminary prospectus. Accordingly, any advertising or marketing activity that could reasonably be considered to be in furtherance of the offering is prohibited until a receipt for a final prospectus is issued. The publication of research reports by an investment dealer participating in the offering must cease either when the dealer is given a mandate to commence work on the offering or when the dealer is invited to participate in the underwriting syndicate.

- 5 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Generally, there is no distinction between distributions of debt and equity securities or between primary and secondary offerings, except for the type of information required to be provided. Unless specifically required by the articles of the issuer (which is rare), holders of the issuer's securities do not have preferential rights in connection with an offering of securities. Also, the articles of an issuer may permit the issuance of specified classes of securities (eg, preferred shares) on such terms as the issuer's board of directors may determine. The liability issues for sellers of securities in a secondary offering are described in question 18.

- 6 What is the typical settlement process for sales of securities in a public offering?

Public offerings in Canada are typically underwritten (ie, a syndicate of investment dealers is formed to purchase the securities for resale to the public). After the preliminary prospectus is cleared by the securities regulatory authorities, and subject to satisfactory pricing terms, the dealers will commit, as principals, to purchase the securities at the public offering price for their own account, and will earn a commission for doing so. The terms

of purchase are set out in an underwriting agreement. Following the execution of the underwriting agreement, the final prospectus is filed with the securities regulatory authorities and the closing of the purchase is typically scheduled for five to seven business days after the receipt for the final prospectus is issued. Purchasers have a statutory right of withdrawal exercisable in the two days after they receive the final prospectus.

### Private placings

- 7 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Canadian securities law provides a number of exemptions from the prospectus requirements and thereby permits private placements in specified circumstances. In general, there are no mandatory procedures that must be implemented to effect a valid private placement, except for a requirement to file notice of the placement and pay the required fee, and as noted in question 8.

There are two groups of prospectus exemptions: securities-based exemptions and transaction-based exemptions. Of the former, the most important are debt securities of high creditworthiness issuers (eg, Canadian and foreign governments, banks and trust and insurance companies). Of the latter, the most important (in most provinces and territories) are the accredited investor exemption and the private issuer exemption.

In general, in addition to governments, financial institutions and regulated pension funds, an accredited investor includes an individual who, together with his or her spouse, has net financial assets before taxes in excess of C\$1 million or net income before taxes in excess of C\$300,000 (C\$200,000 on his or her own) and a partnership, trust or company that has net assets of at least C\$5 million.

In general, a private issuer is an entity whose shares or equity interests are subject to restrictions on transfer (requiring the approval of the board of directors or shareholders of the entity or their equivalent) and whose outstanding securities are owned by not more than 50 persons, excluding current and former employees of the entity or an affiliate of the entity.

- 8 What information must be made available to potential investors in connection with a private placing of securities?

Canadian securities law generally does not prescribe what an offering memorandum should contain. However, if an issuer distributes securities relying on an exemption from the prospectus requirements, and provides an offering memorandum to prospective purchasers (ie, a document describing the business and affairs of the issuer) for legal or business reasons, the purchasers are entitled to the same statutory right of action as they would have had if they purchased the securities under a prospectus (see 'statutory civil liability' in question 18). The issuer is required to describe the statutory right of action in the offering memorandum.

- 9 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

If a person distributes securities relying on an exemption from the prospectus requirement, the securities usually will not be freely tradable in the secondary market unless the issuer of the securities is, or becomes, a reporting issuer, and the purchaser holds the securities for a prescribed period (typically four months). Trades

in the securities before the end of the prescribed period may only be made pursuant to a further exemption from the prospectus requirement. See also 'special warrant financings' in question 3.

### Offshore offerings

**10** What specific rules, if any, apply to offerings of securities outside the home jurisdiction made by an issuer in your jurisdiction?

Under Canadian securities law, there is currently no equivalent to Regulation S of the SEC dealing with the extra territorial application of the registration requirements of US securities laws. However, the OSC has commented that a distribution outside of Canada by a Canadian issuer might be a distribution in Ontario requiring a prospectus or reliance on an exemption from the prospectus requirements. This is dependent on the connecting factors with Ontario (eg, the existence of a trading market in Ontario, the likelihood that the securities will come to rest in Ontario and the method of distribution of the securities). In general, if reasonable steps are taken by the issuer and other participants in the distribution to ensure that the securities come to rest outside Ontario, no prospectus or exemption from the prospectus requirements is required.

The CSA has proposed a multilateral instrument that would address the subject of distributions outside Canada. The instrument is currently the subject of industry review and comment.

### Particular financings

**11** What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Canadian issuers may offer convertible securities, exchangeable securities, warrants and depositary receipts in addition to other more common types of securities. The methods of distributing these types of securities are similar to those described in question 3.

Rights offerings are less common in Canada than in jurisdictions where shareholders have preferential rights in connection with offerings of securities. Rights offerings are, however, used in Canada as part of capital reorganisations in financial distress situations or where there is a significant shareholder that wishes to maintain its percentage equity interest or the issuer wishes to provide its shareholders with a right of first opportunity to participate in a financing transaction.

In a rights offering, shareholders receive rights to subscribe for additional securities of the issuer upon payment of a fixed subscription fee. Rights holders may elect to exercise or sell their rights, which are typically listed on the stock exchange. A rights offering must be open at least 21 days. If a third party has agreed to acquire any securities that are not subscribed for pursuant to the rights offering, rights holders must have an additional subscription privilege before the third party may exercise its rights.

It is also relatively common for Canadian issuers to finance an acquisition using a subscription receipt financing. In this type of financing, subscription receipts are offered and the proceeds from the sale of subscription receipts are held in escrow pending the closing of the transaction. Upon the closing of the transaction, the proceeds are released to the issuer and the subscription receipts are automatically converted into freely trading common shares of the issuer (similar to a special warrant financing). If the transaction does not close, the purchase price for the subscription receipts (plus accrued interest) is returned to the holders of the subscription receipts.

### Underwriting arrangements

**12** What types of underwriting arrangements are commonly used?

There are two types of arrangements used in connection with Canadian public offerings: agency or 'best efforts' arrangements (where investment dealers agree to use their best efforts to sell the securities on behalf of the issuer at a specified price and pass on the proceeds, net of commission, to the issuer) and underwritten arrangements.

In general, there are two types of underwritten arrangements:

- marketed arrangements: where investment dealers agree to purchase the securities from the issuer at the time of filing the final prospectus (ie, after the offering has been marketed) at the public offering price for their own account and at their own risk, and they earn a commission for doing so; and
- bought deal arrangements: where investment dealers agree to purchase the securities from the issuer before the filing of the preliminary prospectus (ie, before the offering has been marketed) at the public offering price for their own account and at their own risk, and they earn a commission for doing so.

**13** What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and over-allotment options?

The underwriting agreement typically contains provisions with respect to indemnity, termination rights and over-allotment options. Success fees are unusual.

### Indemnities

Underwriters are typically indemnified for losses arising as a result of:

- a misrepresentation in the prospectus and related documents. A misrepresentation is an untrue statement of material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. A material fact is a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of an issuer's securities;
- non-compliance with securities law; and
- any order or investigation based on a misrepresentation or alleged misrepresentation in the prospectus and related documents.

The enforceability of the underwriters' indemnity has not been tested in Canada. Courts in the US have, however, held that the underwriters' indemnity is not enforceable in circumstances of wilful misconduct or negligence on the part of the underwriters. For this reason, Canadian underwriting agreements have followed the US practice of introducing a contribution clause, which attempts to apportion responsibility for losses between the underwriter and the issuer on the basis of the relative benefit received by them, and, in some cases, the relative fault between them. The contribution clause applies only if the underwriters' indemnity is determined not to be enforceable.

### Termination rights

Underwriters typically retain the right to terminate an underwriting agreement in the following circumstances:

- an investigation or order that prevents or restricts the distribution of the offered securities or trading in securities of the issuer;

- new legislation or any occurrence of national or international consequence that, in the judgment of the underwriters, will seriously affect either the financial markets or the issuer's business (the so-called 'disaster out');
- the state of the financial markets is such that, in the judgment of the underwriters, the offered securities cannot be profitably marketed (the so-called 'market out'); and
- the occurrence of a material change (ie, any change in the issuer's business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of the issuer's securities), or a change in a material fact that, in the judgment of the underwriters, will materially and adversely affect the market price or value of the offered securities (the so-called 'material change out').

Other typical 'outs' include a change in the rating of debt securities, and a change in the expected tax treatment of the securities offered.

In the case of bought deal underwriting agreements, termination rights do not typically include the market out.

The inclusion or exclusion of the disaster out and the market out clauses may affect the underwriters' margin requirements applicable to their underwriting commitment.

#### Over-allotment options

Underwriters may also be given the right (an over-allotment option or 'greenshoe') to purchase additional securities (up to 15 per cent of the securities offered under the prospectus in circumstances where the over-allotment option does not expire on the closing date) for market stabilisation purposes and to cover over-allotments (ie, sales in excess of the number of securities that the underwriters are obliged to purchase pursuant to the underwriting agreement).

#### 14 What additional regulations apply to underwriting arrangements?

The IDA, RS and MFDA prescribe certain rules for investment dealers involved in a distribution of securities, including capital adequacy and business and trading conduct.

### Ongoing reporting obligations

#### 15 In which instances does an issuer of securities become subject to ongoing reporting obligations?

An issuer of securities becomes subject to ongoing reporting obligations when it distributes securities pursuant to a prospectus or takeover bid circular or lists its securities on the TSX or TSXV (ie, becomes a reporting issuer).

#### 16 What information is a reporting company required to make available to the public?

#### Annual and quarterly reports

Reporting issuers are required to prepare, file with the securities regulatory authorities and publicly disclose interim quarterly unaudited and annual audited financial statements and related MD&A. Reporting issuers listed on the TSX are also required to prepare and file with the securities regulatory authorities an annual AIF setting out all material information with respect to their business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of their securities.

#### Material change

Reporting issuers are required to make immediate public disclosure of any material change in the business, operations or capital of the issuer (ie, any change that would reasonably be expected to have a significant effect on the market price or value of the securities of the company) followed by a filing with the securities regulatory authorities.

#### Shareholder meetings

Reporting issuers are required to prepare a management information circular in connection with the solicitation of proxies for the annual meeting of shareholders. In addition to information regarding the business to be concluded at the meeting (eg, information with respect to nominees for election as directors), the circular must include prescribed information with respect to:

- compliance with corporate governance best practices prescribed by the CSA;
- shareholdings of significant shareholders; and
- director and senior officer compensation and indebtedness to the issuer, including a report of the board, or the board compensation committee, on executive compensation.

Other information may also be provided, such as a summary of board and committee meetings held and a record of attendance by directors.

#### Insiders

Insiders (ie, directors, senior officers and shareholders owning 10 per cent or more of the voting securities) of a reporting issuer are required to disclose changes in their share ownership.

#### Liability for ongoing disclosure

Effective 1 January 2006, a person who buys or sells securities of a reporting issuer that has a real and substantial connection to Ontario at a time when the issuer's public disclosure record is incorrect or incomplete may have, depending on the circumstances, a right of action for damages against the issuer, a person who is in a position to influence the conduct of the issuer (eg, an insider, a 20 per cent shareholder or a promoter of the issuer), the directors and officers of the issuer or the influential person or an involved expert (eg, an accountant, actuary, engineer, geologist or lawyer).

A reporting issuer's public disclosure record is 'incorrect' if the issuer or an influential person releases a public document or makes a public oral statement that relates to the business and affairs of the issuer and contains a misrepresentation. A reporting issuer's public continuous disclosure record is 'incomplete' if the issuer does not make timely disclosure of a material change in its business and affairs.

If guilty, the defendants will be liable for any loss in value of the securities purchased or sold by the security holder that is attributable to the incorrect or incomplete disclosure. In general, each defendant will be liable only for its proportionate share of the loss (ie, to the extent that it has contributed to the loss) as determined by the Ontario court. The following are the limits of a defendant's liability:

- the reporting issuer or a corporate influential person: the greater of C\$1 million and 5 per cent of the defendant's market capitalisation;
- an individual: the greater of C\$25,000 and 50 per cent of the defendant's compensation from the reporting issuer or the influential person and its affiliates for the 12 months preceding the violation; and

**Update and trends**

In December 2006, the CSA published for comment a proposed rule intended to create a comprehensive and transparent set of national prospectus requirements for all issuers. The comment period is scheduled to expire in March 2007.

- an expert: the greater of C\$1 million and the expert's revenues from the company and its affiliates for the 12 months preceding the violation.

**Foreign reporting issuers**

Reporting issuers incorporated or organised in certain foreign jurisdictions (eg, Australia, France, Germany, Italy, the Netherlands, Spain, Sweden, Switzerland and the UK), may use their home country disclosure documents to comply with Canadian ongoing reporting obligations if less than 10 per cent of their shareholders are resident in Canada.

**Anti-manipulation rules**

- 17** What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

Throughout the period of distribution of securities by an issuer, underwriters may not bid for or purchase any of the securities offered by the issuer. This restriction is subject to certain exceptions, provided that the bid or purchase is not engaged in for the purpose of creating actual, or apparent, active trading in the securities or raising their price. The exceptions include: a bid or purchase permitted under the rules of the TSX or the TSXV and the Universal Market Integrity Rules for Canadian market places relating to market stabilisation; passive market making activities; and, a bid or purchase made for, or on behalf of, a customer where the order was not solicited during the period of distribution. Pursuant to the first exception, the underwriters may over-allot or effect transactions that stabilise, or maintain, the market price of the securities at levels other than those that might otherwise prevail on the open market.

**Liabilities and enforcement**

- 18** What are the most common bases of liability for a securities transaction?

**Criminal liability**

A person who makes a misrepresentation in a prospectus is guilty of an offence unless the person did not know, and, in the exercise of reasonable diligence, could not have known that they had made a misrepresentation. The offence is punishable by a fine of not more than C\$5 million or imprisonment for a term of not more than five years less a day, or both. Any director or officer of the person who authorises, permits or acquiesces to the making of the misrepresentation is also guilty of an offence, and on conviction is liable to the same penalties.

**Statutory civil liability**

A purchaser of securities under a prospectus that contains a misrepresentation is deemed to have relied on the misrepresentation and has a right of action for damages against the issuer, the selling security holder (in the case of a secondary offering), the underwriters, the directors of the issuer and the officers of the issuer who signed the prospectus, or a right of rescission against the issuer, the selling shareholder or the underwriters.

The right of rescission must be exercised within 180 days after the date of the purchase. An action for damages must be commenced by the earlier of 180 days after the purchaser first becomes aware of the misrepresentation and three years after the date of the purchase.

The underwriters and the directors and the officers of the issuer are not liable for damages for a misrepresentation in a prospectus unless they either believed that there had been a misrepresentation or they failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation (the so-called 'due diligence defence'). In determining what constitutes reasonable investigation, the standard is that of a prudent person in the particular circumstances.

Any liability for damages may not exceed the purchase price paid for the securities.

**Common law liability**

A purchaser of securities may also have a right of action for common law damages against any person whose misrepresentation induced the purchase, whether the misrepresentation was made in a prospectus or otherwise. This right of action, which has been rarely used, is not subject to the limitation periods contained in securities law.

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**19** What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

The main mechanisms for seeking remedies and sanctions for improper securities activities are administrative proceedings, initiated by the securities regulatory authorities and civil litigation, by way of class action proceedings. Criminal prosecution is rare.