

Equity Crowdfunding Coming to Canada Soon

Current securities regulations in Canada make it impossible (or at least very impractical) for start-ups to use crowdfunding to raise money by offering shares to the public. If the recently proposed changes to securities legislation in Ontario and other provinces¹ become law, this may change.

Ontario and certain other provinces² have proposed new rules (the "Crowdfunding Exemption") that would allow crowdfunding through online portals (websites) that are registered with securities regulators. Some of the key requirements are:

1. Maximum Amount – no more than \$1.5 million can be raised in any 12-month period.
2. Individual Limit – individual investors cannot invest more than \$2,500 in particular offering, or more than \$10,000 in all crowdfunding offerings, in a calendar year.
3. Offering Materials, Advertising – investors must be provided with basic information on the start-up and the offering in a disclosure document in prescribed form, which is posted only on one crowdfunding portal's website; other advertising or soliciting investors by the start-up or portal operator is restricted (and the portal operator cannot provide investment advice to investors).
4. Risk Acknowledgement, Withdrawal Right – investors must sign a risk acknowledgement form, and must be given a right to withdraw from any agreement to purchase shares for 2 days prior to completion of the offering.
5. Regulatory Filings – a copy of the offering materials must have been provided to securities regulators at the time posted to the portal's website, and a report on the distribution must be filed with securities regulators within 10 days after completing the offering. Financial statements must also be filed with securities regulators annually.
6. Ongoing Reporting – investors must be provided with annual financial statements (reviewed by independent accounting firm or audited, depending on certain financial tests), and notice of certain material events or changes involving the start-up.

Many of the provinces³ have proposed a separate rule that would allow crowdfunding through an online portal that is not registered. This rule (called the "Start-Up Exemption" to

¹ The proposed legislation was released by various securities regulators on March 20, 2014, for comments by June 18, 2014.

² The Crowdfunding Exemption was also proposed by the securities regulators in Quebec, Nova Scotia, New Brunswick, Saskatchewan and Manitoba.

³ The Start-Up Exemption was proposed by the securities regulators in Quebec, Nova Scotia, New Brunswick, Saskatchewan, Manitoba and British Columbia.

distinguish it from the Crowdfunding Exemption) is more limited in terms of funds that can be raised, but has less onerous requirements; specifically:

1. Maximum Amount – no more than \$150,000 can be raised per offering, and limited to 2 offerings per calendar year.
2. Individual Limit – individuals cannot invest more than \$1,500 per offering.
3. Offering Materials, Advertising – investors must be provided with basic information on the start-up and the offering in a disclosure document in prescribed form (a simpler form than required for the Crowdfunding Exemption), which is posted only on one crowdfunding portal's website; other advertising or soliciting investors by the start-up or portal operator is restricted (and the portal operator cannot provide investment advice to investors).
4. Risk Acknowledgement – investors must sign a risk acknowledgement form (but there is no withdrawal right as under the Crowdfunding Exemption).
5. Regulatory Filings – the offering document (as well as other prescribed forms containing information about officers, directors, controlling shareholders and promoters) must be delivered to securities regulators at least 10 business days in advance of the offering, and a report on the distribution must be filed within 30 days after completion of the offering.
6. Ongoing Reporting – no additional reporting beyond corporate legislation (which does require financial statements to be delivered to shareholders).

Unfortunately, these new regulations are not being proposed uniformly across all the provinces. Notably, B.C. has not proposed adopting the Crowdfunding Exemption, Ontario has not proposed adopting the Start-Up Exemption, and certain other provinces and territories⁴ have not proposed adopting either exemption (although Alberta is considering adopting the exemptions).

Further details on the Crowdfunding Exemption or the Start-Up Exemption, can be found [here](#).

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[a cautionary note](#)

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⁴ Alberta, Prince Edward Island, Newfoundland & Labrador, Yukon, Northwest Territories, and Nunavut.