

# TAKEOVERS LAW REFORMS - INTERESTING PROPOSALS IN CANADA

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Legal Briefings - By **Rodd Levy**

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## IN BRIEF

- Proposed changes to Canadian takeover laws seek to strengthen the position of the minority and give target boards additional time to respond to hostile bids.
- Takeover bids will be subject to a minimum 50% acceptance condition of all target securities not including those owned by the bidder.
- Any new rules will be introduced in 2015 at the earliest.

## PROPOSED REFORMS

Canadian takeover regulators have proposed some interesting reforms designed to introduce fundamental changes to the ways takeover bids are conducted in Canada.

The proposals are in response to concerns about the impact on takeovers caused by the adoption by Canadian target companies of US-style poison pill shareholder rights plans. The proposals aim to:

*'facilitate the ability of shareholders to make voluntary, informed and co-ordinated tender decisions and provide target boards with additional time to respond to hostile bids, each with the objective of re-balancing the current dynamics between hostile bidders and target boards.'*

There are three key changes proposed:

1. a takeover bid must include a mandatory condition that tenders are received for more than 50% of all issued target securities, other than those owned by the bidder and its 'joint actors',
2. a takeover must be extended for an additional 10 days after the bidder satisfies the minimum tender condition and intends to take up and pay for the securities (ie go unconditional), and
3. takeover bids must remain open for 120 days, subject to the ability of the target directors to waive, in a non-discriminatory manner where there are multiple bids, the minimum bid period to a period of no less than 35 days.

The changes, if adopted, will assist target company directors to respond to takeover bid and protect the interests of shareholders (which is the idea behind a shareholder rights plan).

In particular:

- The requirement that takeover bids be subject to a mandatory 50% minimum acceptance condition (excluding the bidder's stake) will strengthen the position of the minority. It would ensure that control could only pass at a price which the majority of the other holders find is fair. It would prevent control passing at levels less than 50%, which can happen if the bidder frees its bid from conditions or bids unconditionally. I have previously suggested a similar rule be adopted in Australia, though I think that once the bidder reaches 50% of all issued shares (including any shares held pre-bid), it should be able to go unconditional as control has then passed.
- The proposal to require a bid to be extended for 10 days after the minimum acceptance condition is met mirrors the rule changes introduced in Australia in 2000. That rule has worked well here to protect shareholders (and bidders) from adverse consequences that may arise if control passed at the last minute and the bid is not extended (as demonstrated by old AMP bid for GIO).
- The proposal to require a bid to stay open for 120 days seems, at first blush, to create financing and risk issues for bidders and may deter bids. However, the ability of the target to shorten the period ought to mean that bidders will have an incentive to speak to the target to gain a recommendation from the outset. That should mean that the bid is less disruptive and at a fair price.

Any new rules would only be adopted in 2015, at the earliest.

Takeovers law reform is frequently mooted, but rarely comes to fruition. Despite that, it is interesting to consider rule changes in other jurisdictions and ponder whether the Australian rules could be improved to enhance takeover regulation here.

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**RODD LEVY**  
PARTNER,  
MELBOURNE  
+61 3 9288 1518  
rodd.levy@hsf.com

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