

# Canadian Plan of Arrangement – Do I Need U.S. Counsel?

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You're a Canadian public company with no U.S. operations. You don't file reports with the SEC. You plan to merge with another Canadian public company in a share-for-share exchange, structured as a Canadian plan of arrangement. Do you need to hire U.S. counsel to assist on this Canadian deal?

Yes. Canadian public companies invariably have shareholders resident in the United States. If the acquirer will issue shares to the target shareholders, or if there will be an amalgamation in which shareholders of both companies receive shares of amalco, the transaction will be deemed to involve the offer and sale of securities to the U.S. shareholders. This requires either registration with the SEC and applicable states, or an exemption. The good news is that the U.S. requirements for a plan of arrangement are relatively manageable, and exemptions are available in most states. New York likely requires an advance filing.

Other reasons to involve U.S. counsel include:

- The acquirer is required to analyze the U.S. tax treatment to U.S. shareholders, and disclose this in a specific tax form;
- Securities registration or exemptions will be required for the future exercise or conversion of any stock options, warrants or other convertible securities outstanding and held by U.S. residents;
- If there are any U.S. executives, the tax consequences of the transaction to them and to the company should be analyzed; and
- A compliance review with respect to U.S. securities and other laws, especially if a party has U.S. investors, business activities, contracts, subsidiaries, regulatory filings or is listed on any U.S. market.

## Related People

- Christopher L. Doerksen

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