

Canadian Take-Over Bids and Acquisitions – Practices and Procedures

在加拿大进行收购公司的方法和步骤

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Potential Transaction Structures

潜在的交易架构

→ There are three commonly used ways to acquire a public company in Canada:

在加拿大通常采用的三种收购上市公司方法：

(i) Take-over bid – 要约收购

(ii) Amalgamation – 合并/兼并

(iii) Plan of Arrangement – 计划安排

Potential Transaction Structure #1 - Take-over Bid

潜在的交易架构方法之一 – 要约收购

- Most straightforward structure: bidder makes an offer to all of the shareholders of the target company to buy their shares
最直接的架构：收购方向目标公司的所有股东出价收购他们所持有的股份
- Bidder can offer cash or some form of non-cash consideration (typically, shares of the bidder)
收购方可以以现金或其它方式收购（最常见的是用收购方的股票）
- Offer is made by way of a take-over bid circular - must be left open for at least 35 days
是否接受标价提出的交易要向股东们发出通告 – 给予股东们接受报价的时间不得少于35天

Potential Transaction Structure #1 - Take-over Bid (Con't)

潜在的交易架构方法之一 – 要约收购 (续)

- Same offer must be made to all shareholders; no collateral agreements or benefits
对于所有的股东们，所开出的价格必须完全一致；不许有任何使某些人可获得额外利益或附加协议
- If bidder acquires 2/3 of shares, can generally acquire remaining shares as well at same price
通常来说，当投标方收购 2/3 的股权时，则剩余股权也可以相同的价格收购

Potential Transaction Structure #2 – Amalgamation

潜在的交易架构方法之二 – 合并/兼并

- Merger of target with affiliate of acquirer
目标公司并入收购方的子公司
- Target company's shareholders exchange their shares of the target for whatever consideration is being offered (either cash or shares of the acquirer)
目标公司的所有股东们将所持的股份按所开出的价格或条件进行对换（现金或收购方的股票）
- 2/3 of target's shareholders need to approve at shareholders' meeting
目标公司需要召集股东会议并获得2/3股东的投票支持

Potential Transaction Structure #2 – Amalgamation (Con't)

潜在的交易架构方法之二 – 合并/兼并(续)

- Enables acquisition of 100% ownership in a one-step transaction
确保能以一个骤步完成收购100%的所有权
- Not commonly used for public company acquisitions
通常来说，收购上市公司不采用这种方法

Potential Transaction Structure #3 – Plan of Arrangement

潜在的交易架构方法之三 – 计划安排

- Companies merge through a court-supervised process
公司合并可以通过法庭的指导予以重组
- Generally requires approval of more than 2/3 of shareholders, and approval by court on basis that transaction is fair
一般需要超过2/3股东的批准，并且法庭审理该项交易是否公平
- Sole purpose of arrangement may be for shareholders of target company to exchange their shares for either cash or some other form of consideration
唯一的目的是使目标公司股东们的股份得以换成现金或其它形式的财物

Potential Transaction Structure #3 – Plan of Arrangement (Con't)

潜在的交易架构方法之三 – 计划安排 (续)

- Two significant advantages in some circumstances: (i) allows for multiple transactions to happen all at once or in a specified sequence; (ii) US exemption from registration for shares issued by acquirer
在某些情况下，计划重组有两大好处：(i)允许多项交易同时进行或按既定顺序完成；(ii)在美国居住的股东们所持有的收购方发行的任何股票均无需在美国注册

Acquisition Documentation – Agreements

收购文件 – 协议

- “Friendly” bidder will generally seek to enter into a support agreement with the target company
“善意”收购通常是寻求与目标公司进行协商，从而达成辅助协议

Acquisition Documentation – Agreements (Con't)

收购文件 – 协议 (续)

- Agreement addresses key terms of deal, for example:
协议涉及交易的关键条款，例如：
 - price (amount and form of consideration)
价格 (金额和代价形式)
 - timetable
时间表
 - target's non-solicitation covenants, subject to target board's "fiduciary out" for superior proposal
董事会通常须同意不再征求其它收购公司的竞争提案，但可保留给予非征求来的询问以答复，和向股东们推荐“更好”的交易提案的权力
 - bidder's right to match
收购方有权改变原提案来匹配新的交易提案
 - break fee (and/or reverse break fee)
终止费 (和/或反向终止费)
 - regulatory approvals
监管机构的批准

Acquisition Documentation – Agreements (Con't) 收购文件 – 协议 (续)

Bidder might also seek to enter into lock-up agreement(s) with significant shareholder(s)
收购方还可以同一名或数名持有大数量股份的股东签定锁定协议

Acquisition Documentation – Disclosure Circulars 收购文件 – 披露通告

→ *Take-over bid:*

要约收购：

→ take-over bid circular (mailed by bidder when offer is made)

要约收购方的通告（一旦决定收购，收购方寄送）

→ directors' circular (mailed by target within 15 days of take-over bid circular)

目标公司的董事会通告（董事通告必须在要约收购通告寄出后的15天之内发出）

Acquisition Documentation – Disclosure Circulars (Con't) 收购文件 – 披露通告 (续)

- *Amalgamation/plan of arrangement:*
合并/计划安排：
 - management information circular for shareholders' meeting
(mailed by target approximately one month before meeting)
为目标公司要召开的股东会议所准备的管理信息通告 (目标公司要在会议前一个月邮寄出去)
- If bidder offering shares as consideration, prospectus-level disclosure is required
如果收购方以股份作为收购代价，则须包含所发布的招股说明书

Hostile or Friendly? 恶意收购或是善意收购？

- Bidder typically contacts target in advance to open negotiations for a “friendly” transaction
收购方通常先同目标公司取得联系并进行一项善意的交易谈判
- Bidder may wish to conduct due diligence on the target (likely two to four weeks)
收购方通常会要求进行尽职调查 (大概2-4周)
- If so, bidder will be asked to sign a confidentiality agreement
如果可行，收购方须签署保密协议

Hostile or Friendly? (Con't) 恶意收购或是善意收购？(续)

- Target will often insist on a *standstill clause*
目标公司会坚持在保密协议中纳入 *静止条款*
- If target will not support bid, only option is a so-called “hostile” or “unsolicited” bid
一旦目标公司不支持出售，则唯一选择即是“恶意”或“被动”收购
- If hostile bid, target will often establish a “poison pill” and seek a “white knight”
一旦遭遇恶意收购，目标公司经常制定“毒丸”计划并寻求“白骑士”

Illustrative Timetable

说明性的时间表

- ↪ *Days 1 – 10*: initial approach/signing of confidentiality agreement
第1-10天：收购方开始同目标公司接触并签订保密协议
- ↪ *Next 30 days*: due diligence
此后的30天：尽职调查
- ↪ *Day 40*: support agreement signed; press release issued
第40天：签订辅助协议；通过新闻发布披露所提出的交易
- ↪ *Day 50*: take-over bid circular and directors' circular mailed to target shareholders.
第50天：将要约收购通告和董事通告寄发给目标公司的股东们

Illustrative Timetable (Con't) 说明性的时间表 (续)

- *Next 35 Days*: offer open to be accepted by shareholders
此后的35天：允许股东们接受收购开价的期限
- *Day 85*: conditions to bid satisfied; bid completed
第85天：一旦收购条件得到满足时，则此项收购得以完成
- *Day 135*: if greater than 66⅔% tender has been achieved, bidder completes squeeze-out process to acquire 100% ownership of target
一旦获得超过66⅔% 的股权时，收购方完成合并排斥程序，以得到目标公司100%的所有权

Establishing a Toe-Hold

获得立足点

- Bidder can purchase up to 10% of the target company's outstanding shares in the market without disclosure (as compared to 5% in U.S.)
收购方从股票市场上购买目标公司达10%的发行股权，没有必要披露个人身份（相比美国的5%）
 - Usually done prior to contacting target to negotiate
通常在完成之后才与目标公司接触谈判
- If bidder crosses 10% threshold, must immediately issue a press release and promptly file “early warning” and insider reports disclosing ownership and intentions
一旦收购方购买股权超过10%的门槛时，则必须立刻披露新闻消息并及时递交“早期警告”和内幕人报告，公开其股权占有率和对目标公司所抱有的意图。
At 10%, bidder becomes an “insider” - bid is potentially subject to heightened disclosure and shareholder approval requirements
因为凡持有10%的股权人士则转为“内幕人” – 其潜在的收购则受到更高的资料披露和股东同意的要求

Establishing a Toe-Hold (Con't) 获得立足点 (续)

- Bidder could purchase up to 20% without making take-over bid, but above 10% the bidder is required to report each acquisition of an additional 2%
收购方可在没有进行要约收购时购买高达20%的股权，但收购方收购超过10%的股权时，每次收购如达到或超过2%，均须递交报告，
- Bidder needs to be careful to avoid being caught by Canadian “pre-bid integration” rules
收购方积累任何目标公司股份时须谨慎小心，以免无意中触犯加拿大的“购前合并”规则

Exempt Take-over Bids

豁免收购交易

- If a bidder offers to purchase 20% or more of a target's shares (including in such calculation shares already owned by the bidder), the offer must generally be made to all shareholders by way of a formal take-over bid circular

一般来说，如果收购方提出购买一家上市公司20%以上的债券，其中包括收购方和相关方已经拥有的部分，该购买提议必须以要约收购通告的方式寄送给目标公司的所有股东

Exempt Take-over Bids (Con't)

豁免收购交易 (续)

- There are a limited number of exceptions to this rule, including:
就此项规定，法律上具有有限的例外，包括：
 - “private agreement exemption” - no offer to the public generally, not more than five vendors involved, and the price must be less than a 15% premium to the average market price
“私下协议豁免” - 交易一般不对外，而且所涉及证券商不超过五人，以及价格同按证券法案算出的平均市场价格的差价必须低于15%
 - exemption to accumulate not more than an additional 5% of the target's shares in any 12 month period in normal course stock exchange transactions
在任何一个12个月之内，股东通过正常的股票交易所积累的5%的额外债券

Financing the Bid

收购资金筹备

- In Canada, unlike in the United States, it is not permissible to make a take-over bid conditional on arranging financing
与美国不同，加拿大不允许以筹措资金为条件的要约收购
- The bidder must have made “adequate arrangements” for its financing
收购方必须对资金做好“充足的准备”
- Typically, the bidder will have signed a binding commitment letter with a bank or other source of funds prior to launching its take-over bid
通常，收购方已经同银行或其它资金来源方签署了具有约束力的保证函

Financing the Bid (Con't)

收购资金筹备 (续)

- The conditions in the bank commitment letter should be as similar as possible to the conditions in the take-over bid circular
在银行的保证函中，收购方会要求所阐明取得资金的条件尽量与寄送给目标公司规定的要约收购通告中所陈述的条件相同
- The law requires that the bidder reasonably believes that the possibility to be remote that, if the conditions to the bid are satisfied or waived, the offeror will be unable to pay for the securities due to a financing condition not being satisfied
法律要求收购方有理由相信在满足收购条件或免除以上条件的情况下，由于不尽人意的资金筹措状况而无法支付证券的可能性微乎其微

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Discussion and Questions
提问和讨论

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