Federal Government to Create New Environmental Disclosure Rules for Large Corporations

The federal government has opened a new front on its war on climate change—the corporate board room. On October 9, 2024, the Government of Canada confirmed that it intends to propose a new law that would require large, private companies that are incorporated under the *Canada Business Corporations Act* (CBCA) to incorporate information about their climate-related activities into the financial disclosures they must make under the law. That same day, the government also promised to release plans for voluntary Made-in-Canada sustainable investment guidelines, aka, a sustainable finance taxonomy. Here's a look at both initiatives and their potential impact on large, federally regulated companies.

1. Mandatory Climate-Related Financial Disclosure

Green disclosure didn't come out of the blue. As environmental management has emerged as a material factor in determining a company's value and share prices, lenders and investors around the world have been seeking uniform sustainability-related financial standards that they can use in making decisions about particular companies. In 2021, the global financial community created a special body called the International Sustainability Standards Board (ISSB) to establish those standards.

The Government of Canada has been a vocal supporter of the ISSB from the beginning. In 2022, the federal agency that regulates banks, pension plans and other financial institutions, the Office of the Superintendent of Financial Institutions (OSFI), announced that climate-related disclosures would be mandatory for those institutions, starting in 2024. Environmental disclosure is also now currently required for federal Crown corporations. Meanwhile, mandatory climate disclosure for private companies is taking root outside of Canada, including in the EU, UK, New Zealand, California, and other jurisdictions.

In its October 9 announcement, the federal government said that it will make mandatory sustainability disclosure a new corporate duty under the CBCA. The Ministries of Finance and Environment and Climate Change would then have to create new CBCA disclosure regulations filling in the crucial details. The expectation is that the requirements will align with the upcoming Canadian Sustainability Standards Board (CSSB) standards, which in turn are based on the ISSB standards that were released for public comment in March 2024. The federal government indicated that it intends to work with provincial and territorial securities regulators in developing the substance of the new disclosure rules.

Takeaway

The federal government didn’t indicate a timetable for implementing the new mandatory climate-related financial disclosure rules. What we do know is that the requirements will apply only to large private corporations that are incorporated under the CBCA. That means disclosure will not be mandatory for:

- Small and medium-sized businesses;
- Public corporations; or

- Large private companies that are incorporated under provincial corporation laws rather than the CBCA.

2. Made-in-Canada Sustainable Investment Guidelines

Terms like “green”, “sustainable”, and “transition” get tossed about in the investment community all the time. The objective of the Made-in-Canada Guidelines sustainable investment guidelines is to create an authoritative taxonomy that investors, lenders, and other stakeholders in Canada can rely on in assessing corporate environmental activities and efforts. Specifically, the taxonomy would include two categories of companies:

- **“Green,”** defined as a company that engages in low or zero-emitting activities that don’t have material scope 1 and 2 emissions, low or zero downstream scope 3 emissions and that sells into or benefits from markets that are expected to grow in the global net-zero transition; and

- **“Transition”** as a company that engages in decarbonizing activities that have material scope 1 and 2 emissions, including those with low or zero scope 3 emissions, that don’t face immediate demand-side risk, i.e., market contraction, and don’t create carbon lock-in and path dependency.

Unlike mandatory sustainability disclosure, the Made-in-Canada taxonomy is a voluntary program. More than 40 jurisdictions around the world have developed (or are in the process of developing) their own taxonomies tailored to their own domestic economies. To ensure credibility and alignment with international standards, the development of the Canadian taxonomy will be overseen by an external, third-party organization. The plan is to focus on priority sectors, including electricity, transportation, buildings, agriculture and forestry, manufacturing, and extractives, including mineral extraction and processing, and natural gas.

Takeaway

The federal government has suggested that once the third-party overseer is hired, it will conduct public engagements with and release a taxonomy for two to three priority sectors within 12 months. While they're voluntary, complying with the new taxonomy might help financial institutions, asset managers, and other stakeholders avoid liability against greenwashing, securities fraud, and unfair competition claims to the extent the Made-in-Canada Guidelines represent a standard for assessing and communicating a corporation's environmental activities to investors, consumers, and the public.