



Financial and Consumer Services
Justice and Public Safety
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Capital Raising Prospectus Exemptions

Securities law applies to all Islanders looking to raise money from investors, not just public companies listed on a stock exchange. As a general legal requirement, anyone raising money in Prince Edward Island must file a prospectus unless they qualify for an exemption.

Prospectus exemptions are not automatic. Issuers (i.e., anyone looking to raise money from investors) are responsible to ensure they qualify for a specific exemption.

Common Exemptions

Three common prospectus exemptions available for Island businesses raising capital are: the accredited investor exemption, the private issuer exemption, and the offering memorandum exemption.

Accredited Investor Exemption

Any issuer can distribute (i.e., promote or sell) its securities (i.e., shares) to an “accredited investor” without a prospectus.

An accredited investor is an individual who has:

- alone or with a spouse, at least \$1 million in financial assets (i.e., cash but not real estate) before taxes, net of debts;
- net income before taxes of over \$200,000 per year for the past 2 years, (\$300,000 when combined with a spouse); or
- alone or with a spouse, net assets of at least \$5 million.

A company (other than investment fund) can also be considered accredited investor if it has net assets of at least \$5 million as shown on its most recently prepared financial statements.

Issuers must take reasonable steps to substantiate if someone is an accredited investor, and must keep records.

Please see section 1.1 of NI 45-106.

Private Issuer Exemption

Some issuers are considered to be “private issuers”. “Private issuers” can sell securities in any amount without providing a prospectus, as long as they restrict their distribution activities to “specified investors” (See description below).

To be considered a private issuer, a company must have restrictions on share transfers, and cannot have more than 50 shareholders (excluding employees). The company also must not have had a previous public listing.

The list of specified investors to whom the issuer can promote or sell its securities includes:

- directors, officers or employees of the issuer;
- close personal friends or business associates of the issuer, or a person with a direct relationship to the issuer; or
- accredited investors.

Specified investors do not include members of the general public (i.e. people who do not have a reasonable direct connection or relationship to the issuer).

Issuers must take reasonable steps to substantiate if someone is a specified investor, and must keep records.

Please see section 2.4(2) of NI 45-106.

Offering Memorandum Exemption

Any issuer may file an “offering memorandum”, and sell securities of any amount without a prospectus to “eligible investors” (See description below).

An offering memorandum is a disclosure document that identifies risks, describes the business, including management and financial information, and explains how invested funds will be used. It does not, however, require the same level of disclosure as a prospectus.

An eligible investor is someone who has:

- alone or with a spouse, at least \$400,000 in net assets; or
- net income before taxes of over \$75,000 per year for the past 2 years, (\$125,000 when combined with a spouse).

Issuers relying on the offering memorandum exemption may also distribute to persons who do not qualify as eligible investors, but must limit those distributions to no more than \$10,000 per investor.

Issuers must ensure each investor is given an offering memorandum and signs a risk acknowledgement form.

Please see section 2.9 of NI 45-106.

Contact Us

For more information please contact us at:

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Other Important Information

Filing Requirements

Certain exemptions require issuers to file a report of exempt distribution (Form 45-106F1) within 10 days.

Restrictions

Resale restrictions apply to securities issued under an exemption. Please see NI 45-102.

Obtain Professional Advice

Securities laws are complex. Please consult your lawyer before relying on any exemptions.