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How to Raise Capital by "Going Public" in Canada

By Janny Cho
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What is "Going Public"?

Companies can raise funds from investors by "going public". "Going public" means offering equity securities to the public. In Canada, each province or territory has its own securities legislations. In general, the securities regulations, laws, rules and policies are comparable among all Canadian provinces and territories. A "security" is broadly defined as any documents evidencing title to or an interest in the capital, assets, profits, or property of a person or company. Securities include stocks, bonds, loans, mortgages and other agreements with monetary consideration.[1] A distribution of securities must be qualified by a prospectus that is approved by the relevant securities regulators, unless an exemption applies.[2] Different listing requirements apply to companies in different industries, e.g. exploration and mining; oil and gas; industrial, technology and research and development sectors.[3]

Advantages and Disadvantages of "Going Public"

Some advantages that are associated with going public include: (1) access to capital without the interest costs of debt financing; (2) liquidity for shareholders subject to certain escrow requirements, if applicable; (3) liquidity for founders who could sell their shares or use them as collateral for personal loans; (4) use of equity as compensation to management; (5) improve the company's debt to equity ratio and expedite loan approval; (6) provide accurate market value assessment.

Some disadvantages that are associated with going public include: (1) large initial costs, including lawyer, accountant and listing fees; (2) ongoing costs associated with continuous disclosure and corporate governance; (3) pressure on management to meet shareholders' expectations; (4) lack of confidentiality due to financial reporting requirements; (5) loss of certain tax benefits that were available to Canadian controlled private corporations; and (6) susceptible to hostile takeover if founders own fewer shares than the majority shareholder(s).[4]

Initial Public Offering (IPO) and Reverse Takeover (RTO)

The major stock exchanges in Canada are the Toronto Stock Exchange ("TSX") and the TSX Venture Exchange ("TSXV"). They list securities of established companies and venture capital companies respectively. Companies can get listed by launching initial public offerings ("IPOs"). An IPO is usually completed by preparing a long form prospectus with an initial listing. A reverse takeover (an "RTO") typically takes place when a private company with assets acquires control of a listed public company with little assets and no active operations. In effect, the private company becomes a public company without launching an IPO.[5]

Capital Pool Company (CPC)

The TSXV operates the Capital Pool Company ("CPC") program, which allows a new shell company without commercial operations and assets, except for cash (a minimum of the greater of $100,000 and 5% of total funds raised), to launch an IPO and become temporarily listed on the TSXV as a CPC. After trading has begun, the CPC has

1 Securities Act, R.S.O. 2017, c. 8, Sched. 28, s. 1
2 Securities Act, R.S.O. 2017, c. 8, Sched. 28, ss 72-74
3 Toronto Stock Exchange, 2017, Retrieved from https://www.tsx.com/listings/listing-with-us/listing-guides
4 Toronto Stock Exchange, 2017, *TSX Guide to Listing 2017*, p. 14
5 Toronto Stock Exchange, 2017, *TSX Guide to Listing 2017*, p. 17

24 months to complete a qualifying transaction, e.g. by acquiring a business that meets certain listing requirements of the TSXV. After the qualifying transaction is closed, the CPC becomes a public company listed on the TSXV.[6]

Special Purpose Acquisition Company (SPAC)

The TSX operates the Special Purpose Acquisition Company ("SPAC") program, which allows a shell company known as a SPAC to be temporarily listed and later acquire an operating business with the capital raised. A SPAC must raise a minimum of $30 million through its IPO, with at least 90% of which being placed into escrow. The funds raised will be used to acquire a qualifying operating business within 36 months of the temporary listing date. The acquired business must have an aggregate fair market value equal to at least 80% of the value of the escrowed funds. After the SPAC has closed the qualifying acquisition, it becomes listed on the TSX as a regular issuer. Although the CPC and SPAC programs are similar, SPACs are subjected to much stricter regulatory requirements due to the larger amount of capital involved.[7]

What should be included in a Prospectus?

Unless an exemption applies, a company must prepare a prospectus when it offers securities to the public. A prospectus should include the following: (1) income statements; (2) statements of retained earnings; (3) cash flow statements for the previous three years; and (4) balance sheets for the previous two years and for the most recently completed quarterly period since the last year end. The prospectus should include all material facts related to the securities proposed to be distributed or issued.[8]

Common Prospectus Exemptions

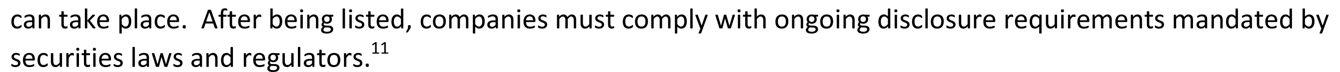
The accredited investor exemption allows certain qualified accredited investors, who met the income and asset criteria, to be exempted from the prospectus requirement. Accredited investors also include Canadian banks, trust and insurance companies, registered dealers, government and pension funds.[9] The substantial purchase exemption allows a person to acquire securities on a prospectus exempt basis where each purchaser invests $150,000 or more. In Ontario, exemption applies to founders, affiliates of founders, control persons who hold sufficient voting rights to materially affect the control of the issuer, certain family members of the executive officers, directors or founders.[10]

Steps involved in the Preparation of a Prospectus

Securities lawyers and accountants would prepare a preliminary prospectus, which is a draft prospectus without pricing information. The preliminary prospectus together with various supporting documents would be filed with the relevant securities regulator. After reviewing the preliminary prospectus and supporting documents, the securities regulator will provide comment letters to the issuer stating any "deficiencies". The issuer will negotiate the terms of the proposed amendments by responding to the comment letters. After amendments are made to the satisfaction of the regulator, the final prospectus which includes pricing information will be filed. At closing, after the expiration of the purchaser's withdrawal rights, the issuer issues the securities to the underwriters who would make payment for them minus the underwriting fees owing. The underwriters would allocate the securities according to the subscription received and the terms of the underwriting arrangement. After closing, formal trading of the securities

6 Toronto Stock Exchange, 2017, *TSX Guide to Listing 2017*, p. 17
7 Toronto Stock Exchange, 2017, *TSX Guide to Listing 2017*, p. 17
8 Securities Act, R.S.O. 2017, c. 8, Sched. 28, s. 56(2)
9 Securities Act, R.S.O. 2017, c. 8, Sched. 28, s. 73.3

10 Securities Act, R.S.O. 2017, c. 8, Sched. 28, s. 73.7



can take place. After being listed, companies must comply with ongoing disclosure requirements mandated by securities laws and regulators.[11]

Getting listed on the TSX or TSXV – Special Considerations for Chinese Companies

Chinese companies may be required to re-domicile prior to attempting to get listed on the TSX or TSXV in Canada. Chinese companies may re-domicile in a Canadian jurisdiction or in another jurisdiction if the corporate laws are similar to Canadian statutes with respect to shareholder protection.

Financial statements and audit reports must be prepared in compliance with International Financial Reporting Standards and International Auditing Standards respectively. Financial statements and audit reports prepared according to Chinese accounting principles and Chinese auditing standards are not acceptable. Chinese companies intending to be listed on the TSX or TSXV should become familiar with Canadian financial reporting requirements. In addition, they should train their finance staff in preparing financial reports and complying with disclosure requirements, which are in compliance with relevant Canadian securities regulators' requirements.[12]

For more information, please call Barbara Hendrickson or Janny Cho at BAX Securities Law 416.601.1004.

Janny Cho practises corporate and securities law in association and not in partnership with BAX Securities Laws. She was called to the bar in Ontario in 2002.

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11 Securities Act, R.S.O. 2017, c. 8, Sched. 28, ss 52-71
12 Ontario Securities Commission, (2012, March 20), *Emerging Market Issuer Review - OSC Staff Notice 51-719*, http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20120320_51-719_emerging-markets.htm