Strategic Report

From SME Financing to Going Public

2019 Edition

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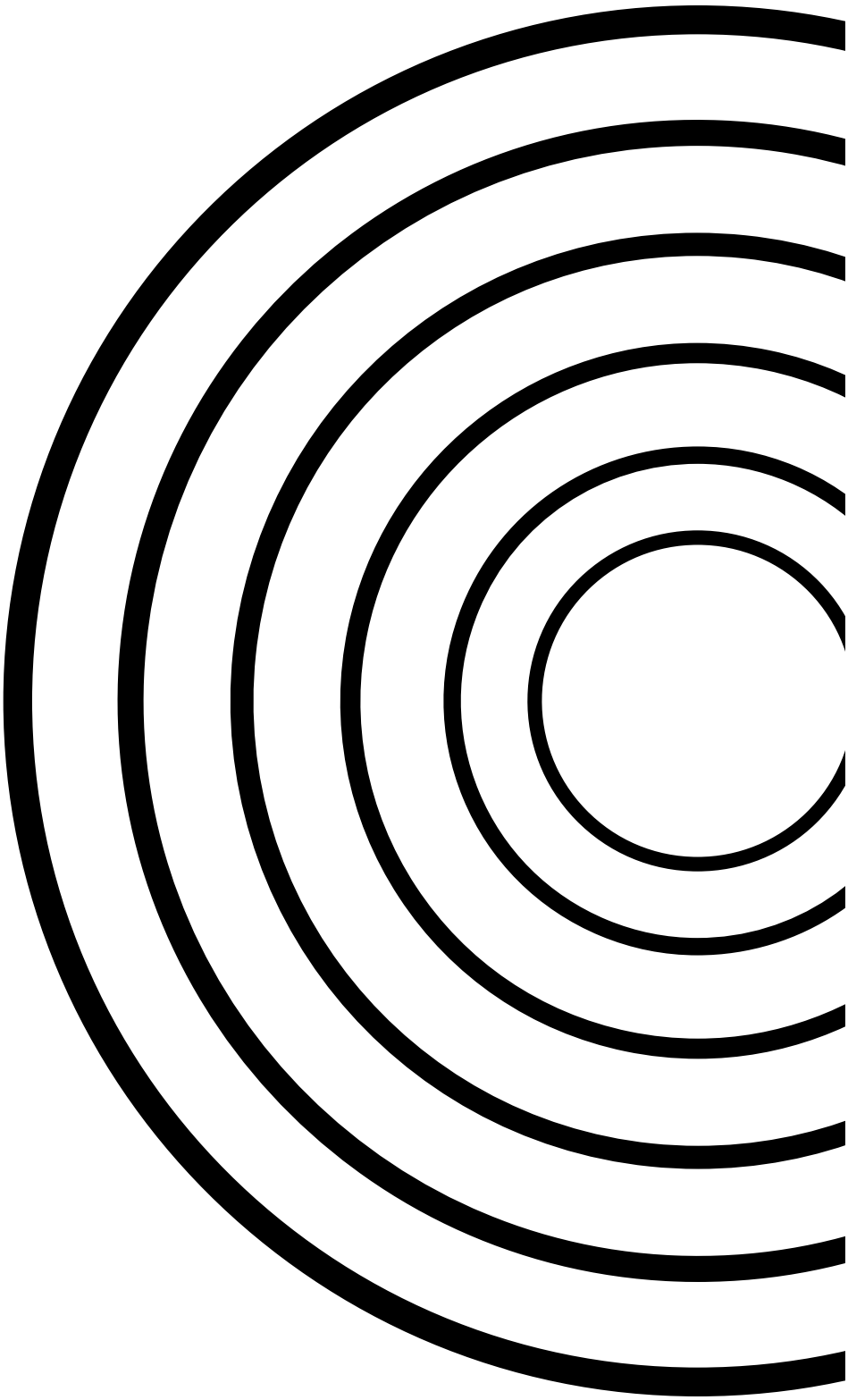

BCF BUSINESS LAW

Foreword

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The number of Canadian public companies established in Quebec is only 7% of the total number of issuers in the country.

However, due to the large number of potential candidates in this region, Quebec is home to many small and medium-sized businesses. This strategic report on corporate finance forms part of a global effort aimed at Quebec regaining its rightful place in the field of corporate financing through the various financing tools available to Quebec businesses.

An alternative to venture capital equity financing is the use of public equities markets, which remains an interesting avenue for business succession. We are fortunate in Canada to have two credible stock exchanges for junior issuers: the TSX Venture Exchange and the Canadian Stock Exchange. Growing Quebec companies would do well to explore this option in their search for financing.

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Here at BCF, the Canadian and Quebec venture capital and startup industry is one of our main priorities.

Therefore, in this first edition we have decided to present separate articles to get you started when thinking about different financing instruments, how to proceed and what to look for when entering your pre-seed and seed rounds of financing as well as when moving on to the next stage of capital growth (Series A, B and C). We have also highlighted our predictions for next year to better position yourself for growth by looking at the industry, trends, where the money is and what we see coming next.

This is of the utmost importance because we feel that VC investments in startups may drop, leaving more capital for investments in late stage companies. Fortunately, we can help create solutions. We believe US investments will increase and other efficient types of financing currently in place will become increasingly popular.

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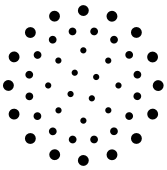

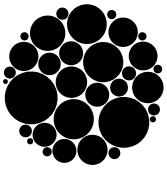

A Flexible Tool to Support a Company's Growth: Mezzanine Debt

By Paule Tardif,
Partner, Lawyer

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A Flexible Tool to Support a Company's Growth: Mezzanine Debt

Given the complexity and vast number of tools available for corporate financing, it is not always easy to understand the relevance and benefits of each one of them. Mezzanine debt is one of these underrated tools.

A Highly Flexible Financing Tool

Also known as "subordinated debt", mezzanine debt is defined as being debt that is payable after the preferred debts are settled (we are speaking here of the debt, not the security that guarantees it). Subordinated debt must not be associated with the rank of the security that guarantees the debts. Subordinated debt requires higher rate of interest because the lender's risk is also higher. It is an intermediate financing tool, between equity and senior debt (debt owing to a bank), and may or may not be convertible into shares.

Mezzanine debt can be useful, and used, to buy out shareholders to finance a business succession, for an acquisition, an expansion project or for any company growth.

Why Turn to Mezzanine Debt?

For a company, mezzanine debt holds many advantages, including no, or minimal, dilution for the shareholders and the optimization of the capital that has already been invested by possibly permitting an increase in the capital gain that would be necessary upon an acquisition.

Mezzanine or subordinated debt has a longer term than conventional debt, which gives the company flexibility and stimulus.

Repayment is often based on cash flow, which has a leveraging effect during the company's growth period before the subordinated debt matures. It is also possible to negotiate moratoria on capital repayment, which will enhance the leveraging effect. The combined effect of the aforementioned advantages is to create significant financial flexibility.

In terms of accounting, mezzanine debt is considered to be quasi-equity and is favourable in the context of the financial ratios demanded by both senior and subordinated lenders, as well as other corporate investors who, in some circumstances, may also offer their expertise to the company either as directors, observers, or simply consultants. Mezzanine debt is usually granted without being secured by the company's assets, which represents a significant advantage if the senior credit facilities are secured by all the existing assets.

One disadvantage of mezzanine debt is its rate of interest, which is higher than a conventional credit facility. However, this drawback is mitigated by the deductibility of interest on the company's income. The lender may also insist on warrants upon the occurrence of certain events or growth steps of the company, considering the cycles that the financing will have allowed the company to achieve.

Conclusion

In conclusion, mezzanine debt can be seen as a financing step in the growth of the company's life. It is proving to be a useful tool and an alternative to be considered compared to conventional financing or an equity injection. It allows the existing shareholders to ensure the company's growth without diluting their investment, thus obtaining a better return on their initial investment at key subsequent steps.

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Can a Demand for Share Redemption Lead to a Loss of Shareholder Attributes?

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By François Beaudry,
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Can a Demand for Share Redemption Lead to a Loss of Shareholder Attributes?

Shareholder agreements usually contain mechanisms governing share redemptions on predetermined terms and conditions. Shareholder agreements will contain, for example, a "shotgun clause" so that one shareholder can force another shareholder to withdraw, or provisions for automatic redemption in the case of withdrawal from the business, employment termination, or death.

In a situation where there is a dispute between shareholders, with one shareholder demanding to be bought out, either by exercising a mechanism established for that purpose or as oppression relief, the management powers that go along with holding shares can cause major irritants, especially for the shareholder who remains or operates the company. The argument that we recently submitted to the Court in such a framework was to determine whether the exercise or application of a redemption mechanism could lead to the loss of certain shareholder attributes, thus limiting the power to control and manage which are attached to such shares.

In that case[1], the Honourable Stephen W. Hamilton, J.C.S. (now sitting at the Court of Appeal) found that the exercise of a share redemption mechanism can indeed cause a shareholder to lose some of his attributes. The case involved two shareholders who were seeking an injunction in commercial division to obtain, amongst other things, the calling of an annual shareholders' meeting and the annual financial statements. Considering that the redemption mechanisms in the shareholder agreement had been triggered due to the termination of the two shareholders' employment with the company, the Court determined that there was no rationale for the shareholders' application.

Justice Hamilton stated in particular that the two shareholders in question had lost several of their attributes as shareholders, notably the powers associated with the management of the company. The Court considered that these shareholders had rather become creditors of the company and, accordingly, that there was no reason to force the application of the rights attached to the shares, and it dismissed their application[2]. A few months later, the Court of Appeal also denied them leave to appeal the first judgment.

A Little-Known Jurisprudential Trend

The reasons for judgment in this case apply the principles of a jurisprudence that is not very well-known to practitioners, both litigators and commercial lawyers, notably in the following two decisions of the Superior Court: *Berthiaume c. Joron*[3] (the Honourable Jean-Yves Lalonde, J.C.S.) and *Investissements L'O-Vin Ltée c. Ruel* (the Honourable Jean Bouchard, J.C.S.)[4].

In *Berthiaume*, Justice Lalonde states that in principle, the rights of a shareholder who has exercised a redemption mechanism resemble more those of a creditor than an oppressed shareholder. In consequence, this finding restricts the rights of such shareholders to participate in the active life of the company, and also entails a reduction of their power to obtain certain corporate documents, a shareholder's rights to same resulting from statutory provisions, unlike in the case of a creditor.

Continuing with his analysis, and finding that the shareholders' agreement does not provide what status is to be ascribed to a shareholder who has exercised his right of redemption, Justice Lalonde adds that in such a situation, the shareholder can become a "trespasser" who might interfere

“Whether automatic or voluntary, the triggering of redemption thus becomes not only a highly strategic issue, but also a business decision to be weighed minutely and as a whole.”

with the smooth operation of the company and that the right to participate in the active life of the company is accordingly severely limited[5].

In 2006, the *L'O-Vin*[6] case went even farther, with Justice Bouchard stating that the exercise of the redemption mechanism definitely causes a shareholder's status to revert to that of a creditor. Although this conclusion is harsher than that found in subsequent judgments, the three judgments' common is as follows: the exercise of a redemption mechanism has direct consequences on a shareholder's rights and on his shares' attributes.

The Practical Lesson to Be Retained

It is easy to imagine the impact the redemption mechanism can have on a shareholder's right to obtain certain documents, such as the full set of documentation behind the financial statements, or the right to demand that meetings be held. If such restrictions are imposed de facto, they can be particularly burdensome in the context of a dispute, for instance in a case where the shareholder demands the redemption of his shares because he has lost confidence in the company's administration.

Accordingly, the advisability of demanding redemption as the conclusion of an oppression remedy, as well as the timing for doing so, are strategic decisions which must take into account all of the aforesaid considerations, risks, and factors. Ultimately, there is no reason in such instance not to better delineate or define shareholder status in the shareholder agreement, thus avoiding this type of uncertainty in future and crystallizing everyone's rights. In this instance, this avenue is particularly attractive, in light of the knowledge that these principles are the subject of jurisprudence that is not only relatively new, but also rather rare.

Whether automatic or voluntary, the triggering of redemption thus becomes not only a highly strategic issue, but also a business decision to be weighed minutely and as a whole.

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Capital Pool Companies: a Little-Known but Effective Financing Vehicle

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By Marvin Pavot,
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Capital Pool Companies: a Little-Known but Effective Financing Vehicle

Although relatively unknown to Quebec entrepreneurs, the Capital Pool Company Program administered by the TSX Venture Exchange has a proven track record helping SMEs raise additional capital to develop their operations.

The Capital Pool Company Program (the "**CPC Program**") administered by the TSX Venture Exchange (the "**Exchange**" or "**TSX-V**") is an attractive solution for developing companies. Indeed, this program provides SMEs with a way to launch an initial public offering before they have reached the development stage and the sales volume normally required by senior exchanges such as the Toronto Stock Exchange (TSX).

What Does the Program Consist of?

In a nutshell, the program allows a private company to list its shares on the Exchange through a simplified procedure, by combining its operations with those of another company incorporated specifically for this purpose, the capital pool company ("**CPC**"). The CPC is essentially a shell, having no commercial operations. However, the appeal of the program is that the Exchange allows the shell to complete an initial public offering and become a public company. Since the CPC has the benefit of being listed on the Exchange, the private company will also be listed on the Exchange through what is known as a "qualifying transaction." Essentially, it is a transaction where the CPC acquires the private company, and the shareholders of that private company then become the majority shareholders of the CPC. The resulting issuer of that transaction will be listed on the Exchange.

One can easily see how it could be very appealing to an entrepreneur to take advantage of the program for the purposes of getting a private company listed on an exchange faster than through a traditional initial public offering. It should also be noted that the TSX-V is a subsidiary of the TMX Group, the firm that owns and operates the Toronto Stock Exchange and the Montreal Exchange. The primary purpose of the TSX-V is to be the exchange for growing SMEs.

Beneficial for Startups and Investors Alike

Less Risky Alternative Than a Public Offering

Because of its structure, the process as a whole is less risky, faster, and more economical than a traditional initial public offering ("**IPO**"). The costs associated with organizing and launching an IPO are often a barrier to entrepreneurs hoping to attract public capital to develop their business and the CPC Program was created in response to this concern.

In the current economic climate, capital markets are not always conducive to the launch of an IPO. An entry into the stock market through the CPC Program lets a company get around this difficulty.

Another interesting aspect of the program is that an existing CPC can be used. Thus, a private company that completes a qualifying transaction with an available CPC will save on the overall costs of the initial public offering as these costs have already been assumed by the CPC.

“Once a company is listed on the TSX-V, it can eventually apply for a listing on the TSX if certain conditions are met.”

Less Dilution

Let us also point out that the CPC Program is structured in order to allow the founders to retain a larger stake in the company than they otherwise would with a traditional IPO.

Greater Credibility

Companies that take advantage of the CPC Program become reporting issuers. Although this new status entails a number of additional obligations such as continuous disclosure, it also has its share of advantages. Reporting issuers benefit from greater visibility and credibility with customers and investors, and the existence of a market where their shares can be traded makes it easier to attract new outside capital due to the greater liquidity it offers. Also, the greater transparency required of a reporting issuer inspires more trust on the part of potential investors and creditors than in the case of a private company, which is subject to less stringent disclosure obligations.

Investor Protection

In addition, the program includes a number of measures designed to protect investors, which further facilitates the attraction of capital. For example, the directors and officers of a CPC are also required to invest personally in the process by subscribing for a certain proportion of the company’s seed shares.

Potential

Finally, it is worth noting that the program offers great growth potential to the companies that choose to take advantage of it, and that once a company is listed on the TSX-V, it can eventually apply for a listing on the TSX if certain conditions are met.

Although the CPC Program is a little-known financing vehicle, its provisions are perfectly suited to the needs of Quebec entrepreneurs. The BCF team has extensive experience with the CPC Program, the firm having acted as legal counsel to the very first Quebec company that took advantage of it.

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How Did Venture Capital Fare in Quebec in 2018 and What Can We Expect to See Next?

By Mireille Fontaine,
Partner, Lawyer
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How Did Venture Capital Fare in Quebec in 2018 and What Can We Expect to See Next?

The most crucial factor for entrepreneurs in the startup phase and as their business grows is undoubtedly the influx of capital.

It's not enough to have the best concept or a revolutionary product if there's no money to develop it (the pre-seed phase), or to go on to the trial phase or into pilot production (the seed phase), and then produce it and bring it to market (the later development phase, Series A and subsequent financings).

Quebec prides itself on being a fertile ground for startups, but that's not enough — it has to be able to supply entrepreneurs with the necessary tools, such as financing, so they can grow their business and become the next unicorn. One method of financing preferred by entrepreneurs is venture capital.

What is Venture Capital?

Let's start off by defining venture capital. Venture capital is an equity or quasi-equity investment to finance a start-up with high growth potential. As its name indicates, the investment is risky for the party that is financing the company but, if that business is successful, can yield a high return on the investment.

In Quebec, based on data gathered by Réseau Capital as published in its report titled "*Aperçu du marché québécois du capital de risque et du capital de développement/T3 2018*," the first three quarters of 2018 saw more than 125 venture capital deals, for a total investment in excess of $575M. However, these figures are down from 2017 when, for such comparative period and for an equivalent number of deals, a total of more than $1B was invested.

Who Benefited from the Money Invested in 2018?

When it comes to venture capital financing, Quebec compares favourably to the rest of Canada with the number of venture capital deals in Quebec representing 29% of the total number of deals in Canada, and 24% of the money invested. Once again, information technology companies garnered the biggest share of the investments—a total of over $350M (i.e., more than 60% of the total money invested).

Venture capital investment in early-stage companies represented only 6% of the total money invested, compared to 94% for companies at the startup and later stages of development (Series A and subsequent investments).

This indicates to us that early-stage companies are suffering from a lack of funding and, for the most part, do not have the capital they need to reach the startup phase and thus ensure their survival. Does this mean that early-stage companies will continue to be Quebec's poor orphans in terms of venture capital in 2019? Here is what we expect.

“Venture capital investment in early-stage companies represented only 6% of the total money invested, compared to 94% for companies at the startup and later stages of development.”

Our Forecasts for 2019

Quebec is currently experiencing a startup boom. Numerous accelerators and incubators have been created in recent years and many initiatives have been set up to encourage entrepreneurship. As a result, many companies — many more than in the past — need early-stage venture capital. As we see it, venture capital market has adjusted to this situation and many funds have been created, or soon will be, to meet this growing demand.

Furthermore, many players have defined the market by financing these ventures through debt or quasi-equity, a formula that is working extremely well for the ventures in conjunction with injections of capital from other companies.

We are also seeing the creation of family offices, where wealthy investors surround themselves with skilled people and make regular investments in various companies, most notably providing seed funding. As well, our Quebec and Canadian companies are visible and attract more and more foreign investment, particularly from the U.S. These players are aggressive, and our investors need to make an effort to ensure the growth of our talented Quebec and Canadian businesses to keep them here, at home! BCF’s seasoned venture capital team is here to assist you each step of the way and guide you through the entire process.

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How to Go About Pre-seed and Seed Funding?

By Mireille Fontaine, Partner, Lawyer and Dawei Ding, Lawyer

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How to Go About Pre-seed and Seed Funding?

An investor invests capital in a company or lends it money in exchange for securities, such as shares, a promissory note (convertible or non-convertible) or bonds, allowing the investor to obtain a return on his investment, for instance in the form of dividends.

To an investor wishing to finance a startup at the pre-seed or seed stage, aside from the challenge of choosing from among numerous candidates that all promise to embody innovation and growth, there are a number of legal issues surrounding the investment that should be considered in order to protect the rights and interests of the investor. In this article, we will focus specifically on the legal issues involved when investing in a startup which can be grouped into two successive steps, namely due diligence and negotiation of the investment instrument.

Due Diligence: a Crucial Step in the Investment Process

Conducting due diligence on the company's affairs can be quite a tedious process, but it is an important step for the investor's protection. Although an early-stage startup seldom has an operational or financial history that will permit an assessment of the company's activities in terms of accounting and legal matters, due diligence can guide the investor in deciding whether or not to invest and in determining the points to be negotiated with the company.

Firstly, a legal counsel's work consists of analysing the company's "genealogy" to ensure that the chain of title is valid if the investment is to be made by way of a subscription of shares. The links in this chain are essentially constituted of each successive issuance or transfer of the securities that the investor wishes to acquire. Accordingly, the title examination has a dual purpose: 1) to establish that the holders are the true owners of the securities issued and 2) to ensure the investor ensure the investor has an undisputable title of ownership.

Secondly, the purpose of due diligence is to obtain detailed knowledge of the company's key projects, to consult the documents supporting its valuation (e.g., financial statements, business plan, presentations) and to gain access to the company's financial forecasts. At this stage, the analysis will generally include a background check on the founding shareholders and a review of the company's principal assets and obligations, including contracts with customers, debts, security interests, potential litigation, leases, employment contracts, intellectual property, and licence agreements.

It is unlikely that the investor will be investing in the same conditions if it comes to light that the company is being sued or is hampered by a non-competition clause covering a particular activity sector or territory, or that the intellectual property is unprotected or could easily be copied by a competitor.

Of course, this process varies from one investment to another, according to the extent and nature of the activities of the subject company. At the outcome of the process, the investor will be able, on one hand, to clearly identify the company's strengths and weaknesses and thus know what may be problematic, and on the other hand, to evaluate his return on his investment opportunities.

Negotiation of the Investment Instrument

Since 2013, the number of ventures obtaining pre-seed and seed funding quickly through standardised investment instruments has been growing steadily. The Simple Agreement for Future Equity (SAFE) and the Keep It Simple Security (KISS), which were first developed in the U.S., are examples of such instruments which are now common in Canada. These instruments, which are virtually identical from one investment to another, are very similar to the convertible promissory note in that they permit the obtaining of immediate funding from investors in exchange for a future stake in the company's capital stock when a financing round takes place.

Despite the apparent simplicity of these instruments, a precautionary approach is warranted. Indeed, these instruments typically provide investors with little or no significant rights in the interest of expediting the process and minimizing the costs and the timeline as much as possible.

However, unlike a business partner, an investor is generally not involved in the operation of the company or in daily decision-making. The financial instrument through which the investor acquires an interest in the company must therefore be carefully negotiated to ensure the investor's rights and interests are protected. It will be necessary to include, for instance, voting rights or the right to ask questions at shareholders' meetings to learn about the company's successes or failures, and even to systematically obtain pertinent information about the company, such as financial information.

Where applicable, the investor should also review the existing or proposed shareholder agreement, which will vary widely from one company to another, and seldom favour a minority investor.

Conclusion

Startup financing is an area where passion and reason are in a continual tug of war. It is therefore always essential that an investor enlist the aid of experienced professionals who can guide him when he invests in a company at the pre-seed or seed stage. The result will be a more efficient process and the elimination of post-investment concerns.

Indeed, it will be very difficult for an investor who voluntarily eschewed the due diligence process to argue that his consent was vitiated. Similarly, it is strongly recommended that investors seek legal counsel to ensure that the drafting of the investment instrument is in line with the parties' expectations and that it includes any additional protections that may be needed. This is where BCF's venture capital team can be of assistance, guiding its clients from the very beginning so they can properly understand the issues and address them.

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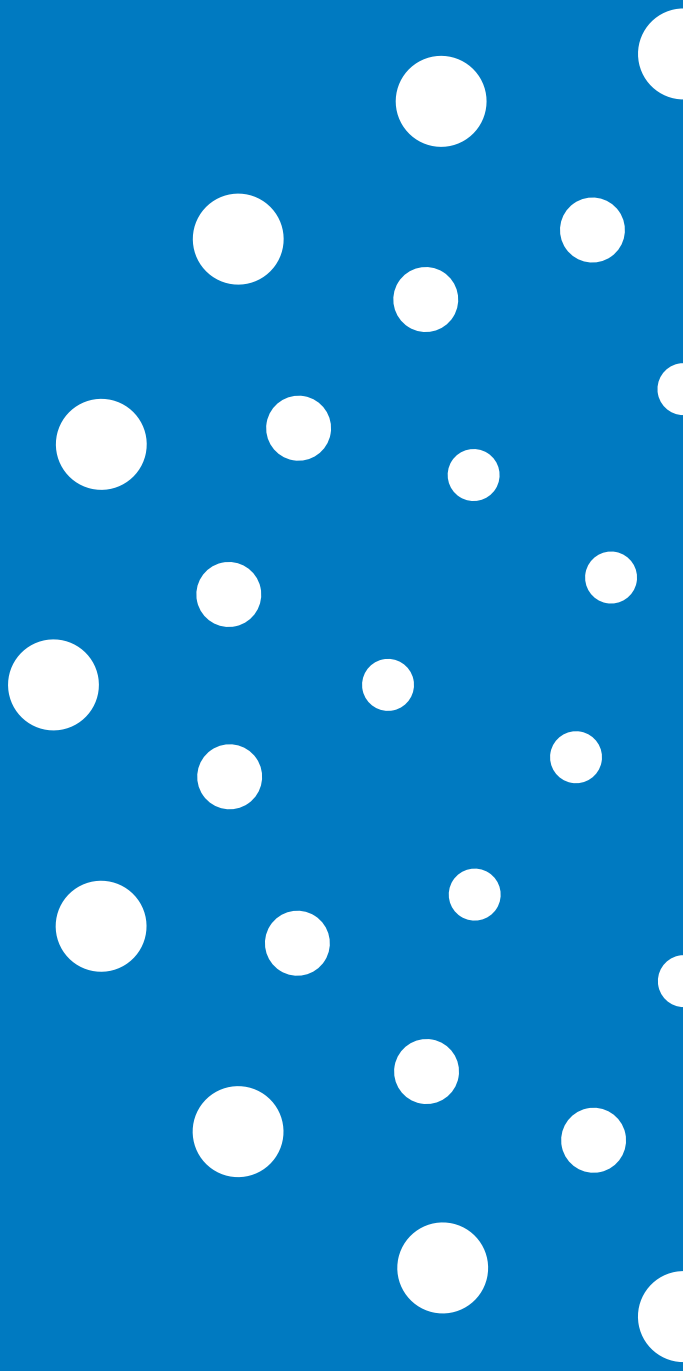
Public Funding in the Cannabis Industry



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Public Funding in the Cannabis Industry

For some time, we have seen the emergence of financial markets in the cannabis industry, particularly due to the legalisation of cannabis for recreational use adopted last fall.

Indeed, 145 Canadian companies (with approximately 10 from Quebec) currently hold a licence issued by Health Canada to grow, process or sell cannabis and, of these, a large proportion have financed their projects and capital needs through the sale of shares to the general public through an initial public offering (IPO), i.e. listing on a stock exchange.

To this end, in Canada, during the first quarter of 2018, $1.2B in capital was linked to the cannabis industry and obtained by stock-exchange listed cannabis licensees[1].

Major Canadian cannabis producers authorised by Health Canada, such as Aurora Cannabis, Hexo, Canopy Growth Corporation, Apria or CanTrust Holdings, are listed on the Toronto Stock Exchange (TSX). Some producers are listed on the New York Stock Exchange (NYSE) and others, such as Cronos Group Inc. seeking access to U.S. capital, have recently registered with the National Association of Securities Dealers Automated Quotations (NASDAQ), although the regulatory environment in the United States remains uncertain for cannabis companies. Cannabis is still illegal in the United States at a federal level, as well as in 40 states that have not legalised cannabis for recreational purposes, and 33 of these have, however, accepted legalisation for medical purposes.

Several Canadian companies in this sector - currently totalling more than 60, including American companies such as Green Thumb Industries Inc., for whom capital is still difficult to access in the United States - are turning to the Canadian Securities Exchange (CSE). This exchange accepts registration requests from companies that do not yet hold a licence, but which have submitted their applications to Health Canada. The CSE is an alternative market whose reporting requirements for issuers are simplified and the barriers relating to registration easier to overcome for start-ups in the cannabis sector.

Capital contributions enabling the funding of companies within the cannabis industry are very high, in particular due to the costs of preparing a licence application (accounting fees, consultants, legal fees, etc.), land acquisition costs, greenhouse construction, equipment purchases, retention of qualified personnel and the implementation of security systems. However, it is still difficult to obtain this type of capital for these companies for a variety of reasons, including the ongoing reluctance of several traditional lenders to finance this sector of activity due to concerns regarding negative public perception of financial institutions that support the cannabis industry. Also, as mentioned above, regulatory uncertainty in the United States is a barrier to many investors buying shares in a company operating in the sector. This is related to the risk of being considered by the American authorities as an inadmissible foreigner and therefore banned for life from the U.S. border due to their financial interests in the industry.

Thus, since legalisation, cannabis companies have relied mainly on the public market as a financing strategy given the lack of private capital, thereby bypassing the unlikelihood of borrowing from traditional lenders.

"To this end, in Canada, during the first quarter of 2018, $1.2B in capital was linked to the cannabis industry and obtained by stock-exchange listed cannabis licensees."

Initial Public Offering of Securities (IPO)

This method of financing has enabled many companies in the medical cannabis industry to raise public capital since the legalisation of cannabis for medical reasons in Canada in 2001. However, this means that a company that goes public then becomes an issuer, subject to the requirements of the applicable securities commissions. In addition to raising capital, a public offering (IPO) can be advantageous as it allows companies to attract media and public attention, enabling them to better promote themselves and potentially strengthen their brands. However, it should be noted that the *Cannabis Act* is rather restrictive with regards to brand choice and it is important to be well-informed in advance. Becoming a public company can also be a financial leverage strategy, as the company must demonstrate its financial strength and provide continuous disclosure of its performance, which can facilitate mergers and acquisitions.

Although attractive to companies in the cannabis industry, this method of financing can be long, risky and expensive, and also requires preparation as well as strong and structured governance. The admission rules, ongoing requirements, regulatory context, market access and the conditions for admission to the stock exchange are not the same for each of the exchanges: a significant amount of work is required in advance in order to analyse these various elements. Also, when a company becomes public, officers are subject to public scrutiny by shareholders and securities regulators. This includes the provision and filing of quarterly reports, financial statements, management reports, an annual information form, a change report, etc., all of which must be in accordance with applicable regulations. Several steps must be taken to set up a public offering (IPO), including the preparation and filing of a prospectus with securities regulators to provide potential investors with detailed information about the company. This includes risk factors related to the company and its industry and the filing of an application for listing on an exchange, all of which require considerable resources.

The preparation of a prospectus takes a significant amount of time and, once completed, it must be filed with a stock exchange, the securities regulatory authority in the relevant province and the authorities where the equities may be offered. Following analysis of the prospectus and any corrections required to satisfy the securities regulators, the company may file the prospectus and then sell its shares in the provinces where the company is authorised.

Although it is a significant and highly valued source of funding due to the particular context of the cannabis industry, listing is a costly process both in terms of energy and financial resources, and accountability to investors, brokers and securities regulators is mandatory and ongoing. It is therefore essential for a company operating in the cannabis sector to ensure it has the competent resources for the implementation of this financing method, in order to meet the high requirements to which public companies are subject, and this, within the legal framework applicable to cannabis.

The Canadian Securities Commission?

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By Michel Rochefort,
Partner, Lawyer

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The Canadian Securities Commission?

Since November 9, 2018, a Canadian Securities Commission is a bigger possibility than ever, for that is when the Supreme Court of Canada handed down a unanimous ruling to the effect that the federal government does indeed have authority to establish a pan-Canadian securities regulator.

This Supreme Court decision puts an end to nearly 10 years of proceedings and various initiatives attempted by the Harper government in the wake of the 2008 financial crisis.

A Long-Term Federal Project

In its initial form, the project was in fact found unconstitutional by the Supreme Court in December 2011, the Court characterising the federal project as a "comprehensive foray" into the realm of securities regulation, which is under provincial authority.

So, what has transpired since December 2011 and what is it that explains that the Supreme Court would now authorise the federal government to move forward with its project? In one word: cooperation.

Indeed, unlike the federal government's first attempt submitted to the Supreme Court in June 2010, wherein the Harper government proposed unilaterally moving to create a pan-Canadian securities regulator, the current scheme is completely cooperative, which means that each province or territory can choose to opt in or out.

Moreover, in its December 2011 decision, the Court had suggested that avenue by mentioning a "cooperative approach that permits a scheme recognizing the essentially provincial nature of securities regulation while allowing Parliament to deal with genuinely national concerns."

To date, the following six jurisdictions have already officially chosen to opt in to the cooperative system: British Columbia, Saskatchewan, Ontario, Prince Edward Island, New Brunswick, and Yukon. In addition, Nova Scotia recently announced that it intends to opt in. However, it is hard to imagine a scenario where Quebec and Alberta would decide to join those jurisdictions in developing such a cooperative system. Indeed, the governments of those two provinces have consistently resisted the federal government's attempts to create a national securities regulator. At this stage, it is important to bear in mind that the idea to create a national securities regulator is not new, and that discussions in that respect have been held at various levels for decades.

In Canada, the existing system consists of 13 different jurisdictions, with each province and territory having its own regulations and its own securities regulator. Proponents of the cooperative system delight in reiterating that Canada is currently the only G20 country without a national securities regulator like in the U.S. for example, where the Securities and Exchange Commission has jurisdiction over the entire country. However, these critics forget to mention that Canada's current system has achieved a level of standardisation and efficiency that is unrivalled in our history. Let us simply mention the development of the passport system, for instance, which allows an issuer that files a prospectus in each province of the country to be able to proceed with that distribution while dealing only with the securities regulator in its own jurisdiction.

"What is it that explains that the Supreme Court would now authorise the federal government to move forward with its project? In one word: cooperation."

Be that as it may, the objectives sought by proponents of the cooperative system relate primarily to questions of harmonisation and efficiency, the cooperative system allowing the implementation of a single national securities scheme overseen by a council of the federal and provincial finance ministers.

A Look at the Supreme Court of Canada Decision

In the reference of November 9, 2018, the Supreme Court of Canada had to answer two very specific questions:

1. Does the Constitution of Canada authorize the implementation of pan-Canadian securities regulation under the authority of a single regulator?
2. Does the draft of the federal *Capital Markets Stability Act* exceed the authority of the Parliament of Canada over the general branch of the trade and commerce under the *Constitution Act, 1867*?

Answering the first question in the affirmative, the Court commented that since the system in question is a cooperative one, with each province and territory retaining the right to opt in to the system or not, "[W]e find that the Cooperative System does not improperly fetter the legislatures' sovereignty, nor does it entail an impermissible delegation of law-making authority."

As for the second question, the Court answered it in the negative, initially stating that, "[O]ur view is that the subject matter of the Draft Federal Act falls within the general branch of Parliament's trade and commerce power pursuant to s. 91(2) of the *Constitution Act, 1867*." Later on, the Court added the following: "When the Draft Federal Act is viewed as a whole, its pith and substance clearly does not relate, as Quebec suggests, to regulation of the trade in securities generally. Rather, its subject matter accords with its stated purposes: 'to promote and protect the stability of Canada's financial system through the management of systemic risk related to capital markets', and "to protect capital markets, investors and others from financial crimes'."

What Can We Expect Next?

In closing, what developments can we expect in the coming months? Obviously, this is a question that is more political than legal. In view of the many new governments (both federal and provincial) that have been elected since the current memorandum of agreement was formulated, it is not easy to determine exactly where this question will fit into the governmental priorities of these multiple legislatures, not to mention that there will be a federal election before the end of 2019. To be continued…

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The Exempt Market: a World of Possibilities

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By Alexandre McGraw,
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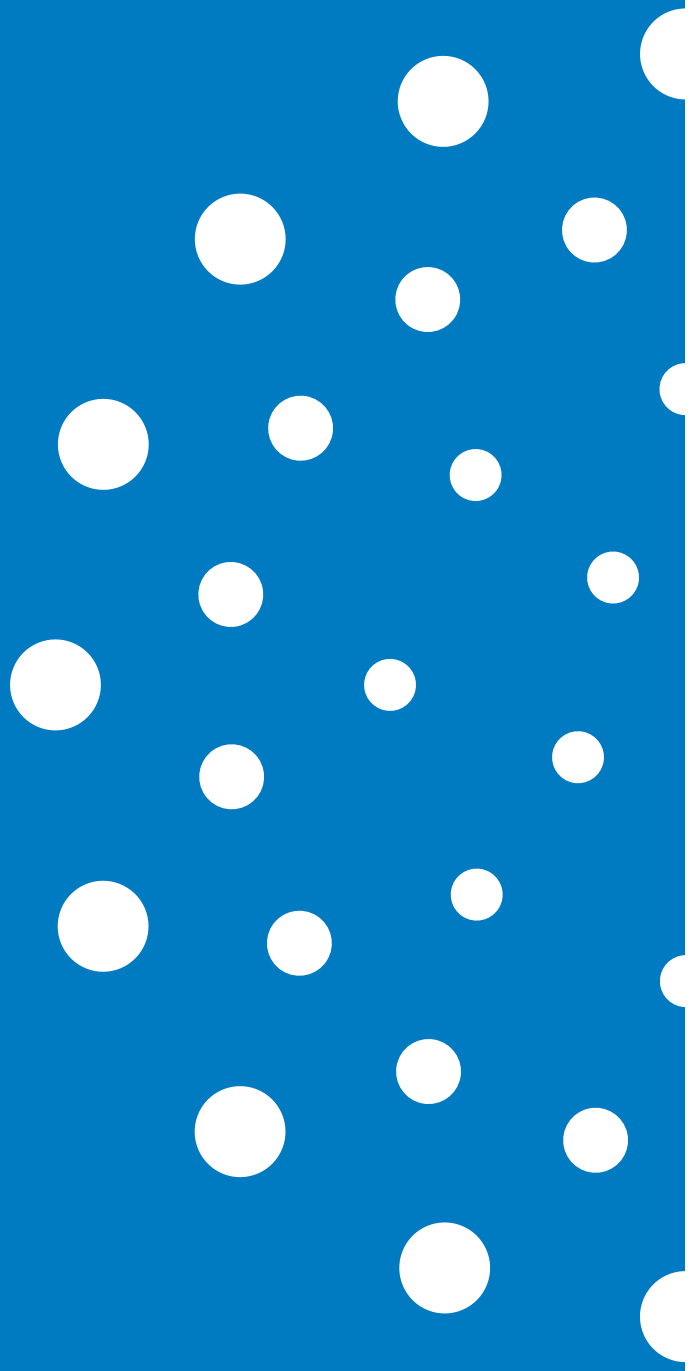

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The Exempt Market: a World of Possibilities

Large corporations of this world, like Google, Amazon, and Facebook, have all resorted to private capital to boost their growth before making the leap to public markets. Here is how Canadian companies, big and small, can also raise private capital on the exempt market.

Historically, access to private capital has been restricted by securities authorities, because securities of private companies are less regulated and are subject to fewer continuous disclosure requirements than those of public companies. However, high-net-worth individuals who meet certain minimum annual income criteria can, thanks to their high income and therefore their capacity to take financial risks, avail themselves of the accredited investor exemption to invest in private companies. This exemption means that a company has the right to raise capital from certain investors without having to provide a prospectus. A less wealthy investor who does not qualify as an accredited investor may, however, take advantage of the offering memorandum exemption and invest on a smaller scale in private companies that have prepared an offering memorandum. An offering memorandum is a disclosure document that summarises the company's activities, how the capital raised will be used, and the terms of subscription for the company's securities.

The securities of private companies may be sold on the exempt market through exempt market dealers. These dealers act as intermediaries between investors and companies and they are registered with the securities regulators of the provinces where they operate. Their clientele consists of investors wishing to invest in the exempt market and companies seeking to raise private capital.

Advantages of the Exempt Market for Investors...

In these times of stock market uncertainty, it is opportune for investors to diversify their investment portfolios by buying securities of private companies. This strategy is not known to most individuals, who generally place all their investments in public markets. However, investing in private companies is routine practice for institutional investors, such as pension funds, insurance companies, foundations, etc.

For example, as at December 31, 2017, the Caisse de dépôt et placement du Québec had private investments representing 12.5% of its overall portfolio, which amounts to $37.3B of investment.

If the big players do it, smaller investors should also consider diversifying their investments by utilising the private market.

One of the advantages of holding securities of private companies is the relative price stability. The share price of a publicly-traded company will vary as a result of many factors that do not necessarily reflect the company's intrinsic value. Conversely, the security of a private company will not fluctuate with the mood of the markets or according to supply and demand for its securities, but rather based on the real value of its assets and operations.

“For example, as at December 31, 2017, the Caisse de dépôt et placement du Québec had private investments representing 12.5% of its overall portfolio (...).”

Moreover, many securities of private companies on the exempt market are eligible for deferred tax schemes, such as RRSPs, RESPs, and TFSAs. Investors can therefore subscribe for securities of certain private companies using money from their RRSP, just like for their investments in the stock market.

... and for the Companies

It is advantageous for companies to turn to the exempt market to raise capital due to the easy access to capital this market provides. In general, Canadian securities laws require companies to publish a prospectus and satisfy numerous continuous disclosure obligations if they want to sell their shares to outside investors — a tedious and costly process. Meanwhile, the exempt market allows companies to raise money from outside investors without having to prepare a prospectus or comply with the same continuous disclosure requirements as those that apply to public companies.

Companies on the exempt market only generally need to prepare an offering memorandum and/or a subscription agreement to raise money from individual investors and provide them with their audited financial statements. Thus, the regulatory burden and the legal and accounting expenses are significantly reduced, which facilitates access to private capital.

In addition, the exempt market affords the companies greater flexibility by allowing them to issue corporate shares, bonds, convertible debentures, etc. Therefore the company has the option to raise capital in debt or equity form, depending on its preferences and its long and short-term needs.

In summary, the exempt market is a tool that is overlooked by many investors and companies, which are failing to exploit its full potential. Individuals looking to diversify their investments will find it to their advantage, as will companies that are looking to raise funds in amounts varying from a few hundred thousand to millions of dollars.

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The Impact of Restrictive Covenants When Obtaining Bank Financing

By Claude Paquet,
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and Melissa D'Errico-Provencher,
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The Impact of Restrictive Covenants When Obtaining Bank Financing

No matter its size, sooner or later, every business will consider bank financing as an option for sustaining its growth.

Bank financing plays a significant role in sustaining a company's development, its expansion projects, or its internal growth. Contracts formalizing relationships between lenders and companies are numerous. To ensure that loan agreements will be duly performed and to evaluate the likelihood of repayment and limit the risks associated with the loan, financial institutions will include restrictive covenants in their loan agreements.

Under these terms, the borrower will guarantee, most notably, the company's financial health and the performance of the loan conditions. Although there are many types of restrictive covenants, those most commonly used deal with the borrower's financial disclosure obligations and the measurement of the company's financial capacity.

It is important to properly understand the full scope of such undertakings, which create obligations of result.

Financial Ratios to Monitor Risk

EBITDA

Many financial ratios are calculated for purposes of evaluating a company's financial health, so that financial institutions can monitor risk effectively. Accordingly, a company will often be required to comply with certain contractual financial measurements, for instance by maintaining specific financial ratios. EBITDA (earnings before interest, taxes, depreciation, and amortization) is a financial indicator on which lenders frequently rely to evaluate a company's earnings before deductions or influence of interest, taxes, asset depreciation, and the amortization of capital expenditures. By using this indicator, the lender can monitor and compare data on the growth of the company's earnings and profits.

EBITDA is usually calculated once a year, more precisely at fiscal year-end. The lender will consider a company to be profitable if the EBITDA calculation is positive. Accordingly, a company may be bound to meet a specific EBITDA calculation, as stipulated in a clause included in the commitment letter, and failure to meet it could place the company in default with the lender. The financial health of a company may also be measured by the evolution of its share value, market capitalisation, and general indebtedness.

Current Ratio

Another indicator valued by financial institutions is the working capital ratio, otherwise known as the current ratio, being the ratio of short-term assets to short-term liabilities. A financial institution might determine, for instance, that a company is in good financial health if its working capital ratio is higher than 1:1, meaning that it has sufficient assets to cover its short-term liabilities.

However, it is worth noting that too high a working capital ratio, for instance 3:1, is not necessarily a positive indicator, since it could mean that the company has a surplus of obsolete inventory.

Capital Expenditure

Finally, it is also worth mentioning that clauses are also inserted in loan agreements to govern and monitor a company's capital expenditure, or "Capex," being the capital expenditures incurred by a company for the acquisition of physical assets for the purpose of improving its long-term productivity. Aside from the purchase of real estate, such expenditures will include every outlay deemed to be an investment in the business, such as the purchase of equipment, machinery, or rolling stock, which must therefore be listed on the company's balance sheet.

Negative Pledges

Sometimes, under certain financing structures, a company will have to satisfy what is known in the financial community as "negative pledges." Here are a few examples:

- Not to grant, create, assume, or tolerate any hypothec, mortgage, security, or other charge on any of its properties, assets, or other rights without the lender's prior written consent;
- Not to sell, transfer, assign, sell, or otherwise alienate its properties or assets other than in the normal course of its business and according to commercially reasonable terms without the lender's prior written consent;
- Not to guarantee or otherwise act as surety, directly, indirectly, or potentially, for the payment of an amount or the performance of an obligation by another person without the lender's prior written consent;
- Not to proceed with an amalgamation, merger or other business combination without the lender's prior written consent; or
- Not to repay the debts owed to equity lenders.

To conclude, when it obtains bank financing, a company agrees to honour numerous terms benefitting the lender, which may be measured on a monthly, quarterly, or annual basis. Should certain covenants not be satisfied, thus causing the company to be in default of its financial undertakings, the financial institution could choose to modify the terms of the financial assistance or the rate schedule, or establish terms of extension. The financial institution might also decide to realise its conventional security registered against the company at the time of financing.

Accordingly, it is essential that a company properly understand and validate the nature and scope of its undertakings and the restrictive covenants when it enters into an agreement with a financial lender and make certain that it can comply with them.

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Targeting an IPO in 2019? What Unicorns Should Expect

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By Valérie Charpentier,
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Targeting an IPO in 2019? What Unicorns Should Expect

An initial public offering ("IPO") can represent a significant opportunity for a company. It can attract significant funding, liquidity and public exposure.

While there has been a decline in broader follow-on equity financing activity in Canada, the US equity market's performance stands out in 2018 by being the strongest market since 2014[1]. Part of the reason why Canadian IPO volumes were muted in 2018 is due to the underperformance of resource-related sectors and, consequently, the lack of new names in such sectors entering public markets[2]. Aftermarket performance of recent issuers serves as evidence of investor appetite for newcomers as both institutional and individual investors look for quality companies that exhibit strong growth prospects[3].

2019: a Record-breaking Year for IPOs?

On the other hand, concerns that more market declines lie ahead and that the economic cycle may have turned could actually encourage and revive IPO activity by putting pressure on firms considering listings to finally take the plunge. Many anticipate 2019 could be a record-breaking year for IPOs in terms of money raised. The fact that investors have an eye out for shares in fast-growing companies is one of many factors that may encourage startups and other private companies to go public in 2019.

It is expected that Uber, Lyft, Slack, Palantir, Pinterest and Airbnb, all of which are unicorns, will likely transition to public markets in the first half of 2019.

Uber, Lyft, Slack and Palantir are considering IPOs that, according to recent reports, could reach a combined valuation of over $200 billion[4].

2018 marked an historic year for the cannabis industry and marketplace with TerrAscend Corp. (CSE:TER), Canopy Growth Corp. (TSX:WEED), Neptune Wellness Solutions Inc. (TSX:NEPT), Aphria Inc. (TSX:APHA) and Aurora Cannabis Inc. (TSX:ACB). These Canadian cannabis stocks demonstrate Canada's competitive advantage regarding the continued and future relevance of this sector in Canadian capital markets. Canadian companies can benefit from the industrial, information technology and health care sectors in order to be more competitive on Canadian capital markets.

What You Should Consider Before Going Public

Going public and offering stock in an IPO represents a milestone for certain ambitious privately-owned companies. We will hereunder describe the main benefits of going public and the criteria that CEOs of outstanding startups and other private companies should consider when thinking about eventually going public.

A successful IPO by a company offering its securities to the public can generate substantial proceeds and can render the company's shares more marketable as there is a regulated and liquid market on which the company's shares are traded. One of the main reasons companies decide to go public is to raise money and spread the risk of ownership among a larger group of

"It is expected that Uber, Lyft, Slack, Palantir, Pinterest and Airbnb, all of which are unicorns, will likely transition to public markets in the first half of 2019."

shareholders[5]. In addition to raising funds, going public creates currency for acquisitions in order for the company to complete mergers and acquisitions by using its publicly traded shares as "currency" for an acquisition[6]. Moreover, the IPO process can be an opportunity to improve the company's ability to attract and retain top talent personnel through tax-efficient employee stock option plans.

A significant advantage of public listing is to provide investors an opportunity to realize appreciation in value of their investment. An IPO would also facilitate future financing and increase access to a broader range of financial markets and vehicles to raise additional cash more easily in the future in subsequent offerings. When a company goes public, it enhances the perception of a company's financial stability and transparency. In addition, as the going-public process is quite rigorous, it tends to reassure customers and suppliers.

It is often argued that an IPO is an expensive and time-consuming process, with numerous regulatory requirements. We believe that with the appropriate team of advisors (including legal counsel, investment bankers and auditors as well as an experienced CFO that could be attracted to join the venture in due time), it is possible for companies to successfully prepare for an IPO within reasonable fees by adopting an efficient and practical approach.

As the above points sum up, it is important to underline the fact that investors always like to invest when it is a buyer's market. 2019 is going to be a big year for IPOs, and it could be a big year for you!

BCF's securities team offers effective, practical and thorough advice to companies wishing to complete IPOs, RTOs, as well as to CPCs or SPACs. Our team is also renowned for its unique expertise in exempt market securities, and we regularly represent issuers and brokers on the public and exempt markets.

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Venture Capital Financing Instruments: Which Way to Go?

By Audrey St-Pierre,
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Venture Capital Financing Instruments: Which Way to Go?

When seeking financing for their businesses, entrepreneurs generally knock on their financial institution's door. As business people are quite familiar with traditional loans, which trespass very little on the life of the corporation and, above all, do not give access to the capital stock, this method of financing allows entrepreneurs to keep, with some exceptions, control of their corporations.

At the seed or startup phase, a corporation may, however, have trouble obtaining bank financing given that it is still at the concept or development stage of a product. Accordingly, venture capital in combination with a traditional loan, subordinated or not, is an attractive source of financing for a savvy entrepreneur who is not averse to sharing his capital stock.

A Growing Market in Quebec

Venture capital is a specialised type of capital investment which makes high-risk or very high-risk investments in corporations at the early seed or startup stage, or at the intermediate or later stages of development. Such financings primarily take place in the high-tech or scientific sectors, which offer strong growth potential. However, venture capitalists or investors diversify their portfolios in so-called traditional sectors, like manufacturing.

Quebec sometimes ranks as high as second among the Canadian provinces in terms of its importance in the venture capital market (both in terms of the number of deals and the amounts invested).

However, the venture capital market is still expanding in this province, most notably due to the number of startups and other corporations in the above-mentioned sectors that have set up their headquarters here.

Financing Tools Generally Utilised

Venture capital is generally provided through two instruments, namely convertible debentures or share subscriptions.

Convertible Debenture

A convertible debenture is an instrument by which an investor advances to the corporation a sum of money which will bear interest. The amount (including interest) is repayable at maturity or convertible into shares of a specified or determinable class at a price that is discounted on a predetermined date if there is a default or a liquidity event.

The debenture contains representations and warranties pertaining to every aspect of the business, but is generally not accompanied by a security. However, depending on the corporation's stage of maturity, the entrepreneur might have to make those representations and warranties solidarily with the corporation. Since this instrument presupposes that the investor will become a shareholder of the corporation, the debenture frequently contains the anticipated terms and conditions of a potential shareholders' agreement.

Capital Stock

A subscription for shares of the capital stock is made by way of a subscription agreement containing representations and warranties pertaining to every aspect of the business which, depending on the corporation's stage of maturity, may also be made solidarily by the entrepreneur.

"Quebec sometimes ranks as high as second among the Canadian provinces in terms of its importance in the venture capital market (both in terms of the number of deals and the amounts invested)."

Shares can be in two forms: common shares or preferred shares. Common shares carry the right to vote, the right to dividends, and the right to share asset residue in the event of liquidation. Investors favour this type of shares when the target corporation is well established, has a good reputation and solid earnings. In a venture capital context, investors will favour a subscription of preferred shares. The rights and restrictions carried by preferred shares will be negotiated by the parties at the stage of the letter of intent. Generally, they will be voting and will stipulate an annual rate of dividends that will be in line with the risk, payment priority in the event of liquidation, and "anti-dilution" clauses.

Since the investor becomes an owner of the corporation to the extent of the percentage of his shareholding, he will want to make sure that he will benefit from certain rights and that the object of his investment will be well protected. A shareholders' agreement will therefore have to be put in place for this type of investment. In addition to the usual rights, the agreement will contain:

- A right of redemption by the corporation or the entrepreneur after a certain period of time (note that this type of capital is patient. In Quebec, depending on the investors, the exit horizon can generally vary between 5 and 10 years); and
- A right to have the corporation sold if it or the entrepreneur is unable to proceed with the aforesaid redemption.

And Afterwards?

Unlike a loan, after the investment, the investor will take part in the corporation's governance. Without necessarily being involved in the day-to-day decisions, the investor will:

- Have the right to at least one seat on the board of directors and to appoint members to any committee of the board;
- Have the right to name an observer on the board of directors and any committee of the board; and
- Have controlled management rights (or veto rights) under the terms of the shareholders' agreement or the debenture.

Partnering a corporation with a venture capitalist should be studied in depth by the entrepreneur. In advance of that entire process, the entrepreneur should make certain that the venture capitalist shares his values and his vision of the corporation's growth.

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What Issues Can Arise During a Series A Financing Round?

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By Mireille Fontaine,
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What Issues Can Arise During a Series A Financing Round?

There are a number of financing options available to a company seeking external financing at its early stages or to sustain its growth.

It is important that a company properly understands the various forms of financing available and assess them according to its needs, objectives, stage of maturity, sector of activity and other important factors. This article focuses only on venture capital financing — an option preferred by a number of innovative and high-growth companies (for purposes of this article, a "**company**").

Venture capital financing may be required at various stages of the company's development and depending on its stage of maturity. These different types of financing are referred to as follows, their respective names reflecting the development stages of the companies seeking funding:

1. Pre-seed capital,
2. Seed capital, and
3. Series A, B, C (and any subsequent) rounds.

For the purposes of this article, we will focus on the Series A financing round, which is the first round of venture capital financing after the raising of pre-seed or seed capital, if any. A Series A financing round is significant as it often focuses on the company's growth and the funds raised generally range between $2M and $15M, although they may be higher. At this point, the company is usually in the optimization stage, experiencing and pursuing strong growth and moving towards "scalability".

What Are the Typical Issues in a Series A Financing Round?

In a Series A financing round, the investors involved are mostly venture capital funds, i.e. sophisticated investors with a strong understanding of the issues related to their investments.

Unlike in the pre-seed and seed rounds, investors at this stage want a bigger say in the company's affairs.

It is important that the founders have sufficient knowledge and adequate understanding of the issues when negotiating with the investors in a Series A financing round, in addition to consulting with advisors who have extensive experience in this field. Here are some of the issues that can be encountered during a Series A financing round.

Due Diligence

During a Series A financing round, as in the pre-seed and seed rounds, investors will insist on conducting due diligence, which, although it may vary in scope, will generally be fairly thorough at this stage. A well organised, well documented and legally orderly company facilitates the process.

"Unlike in the pre-seed and seed rounds, investors at this stage want a bigger say in the company's affairs."

Valuation/Dilution

After the issuance of shares to the investors, the founders will hold a smaller percentage of shares than before; this is known as "dilution." The company's valuation is therefore an important factor, as the number and value of the shares issued to the investors will depend on it. It is also important to clarify from the outset whether the valuation is pre-money or post-money, to avoid (bad) surprises. A pre-money valuation refers to the value of the company before the investment and, conversely, a post-money valuation includes the amount of the investment. In any case, the higher the valuation, the less dilution for the founders. On the investors' side, a lower valuation gives them a bigger stake in the company for the same amount invested.

Board of Directors

In a Series A financing round, the investors, or at least the major investors in that round, generally expect to be represented on the company's board of directors. Some may insist on the right to appoint observers. In this respect, the founders' priority should be to maintain control of the board of directors.

Veto Rights

Following a Series A financing round, the investors usually hold a minority stake in the company and do not control the board of directors. They therefore generally insist on a veto right (so as to block a decision) over a number of the company's decisions, such as the amendment of its governing documents, the creation and issuance of new shares, the redemption of shares, and the sale of the business. This list can be considerably extended following the investors' requests and can be subject to negotiation with the founders, who will wish to retain control over the majority of the company's decisions and maintain their latitude.

Anti-dilution

Some investors insist on having some form of anti-dilution protection against any possible share issuance at a valuation lower that the one to which they subscribed. There are a number of mechanisms, sometimes quite complex, that provide for this type of protection, which can be the subject of heavy negotiations between investors and founders.

Liquidation Preference

To assure that the amounts invested have some degree of protection, investors often insist on obtaining a preferential right in the case of a liquidity event, in the form of an amount of money expressed as a multiple of the initial investment, which they are entitled to receive should such event arise. The value of this multiplier must be negotiated and the definition of "Liquidity Event" must be agreed upon by the parties (such definition often refers to a subsequent investment, the sale of the business, a public offering or any other liquidity event).

Other Rights

Investors also generally insist on several other rights that are found in the shareholders' agreement. If a shareholders' agreement is already in place, the investors will insist on amending it or terminating it and drafting a new agreement so they can include certain specific rights. Such rights will often include pre-emptive rights, rights of first refusal, piggyback rights, and drag-along rights. Shareholders' agreements require careful negotiations by the parties' legal counsels.

Future Rounds of Financing

There is a possibility that the company will resort to subsequent rounds of financing. This reality can have various impacts on both investors and founders. For example, will the investors have the option or the obligation to subscribe for additional shares in these future rounds? If so, according to what terms? These concerns are usually addressed in the shareholders' agreement and need to be analysed by the parties' legal counsels.

Key Takeaway

A Series A financing round can be crucial to a company's growth and have many positive benefits, but it also entails its share of issues. Some of these are summarily dealt with above but, in reality, can prove to be very complex. There are also a number of other considerations and factors to take into account during a Series A financing round. In that context, BCF's venture capital team assists clients and helps them fully understand and address these issues.

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About BCF

With more than 500 employees and 275 professionals, BCF Business Law is the go-to firm for business leaders, growing companies, and well-established global enterprises that have chosen Quebec and Canada as a stepping stone to growth and success. Our entrepreneurship not only distinguishes us from the competition but has earned us the recognition of one of *Canada's Best Managed Companies* for the 12th year in a row.

BCF understands its clients' business which makes us the ideal partner for ambitious startups, well-established private and public companies, investment bankers, venture capital and private equity firms. BCF's pragmatic and forward-thinking solutions turn clients' dreams into viable and innovative businesses. Our relentless pursuit of excellence has earned BCF the trust of companies in all sectors of activity throughout Quebec, Canada and the world.

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Notes

Can a Demand for Share Redemption Lead to a Loss of Shareholder Attributes?

[1] *Steinberg* c. *Voizard*, 2017 QCCS 3531 (leave to appeal denied in 2017 QCCA 1564).

[2] Supra, note 1, in particular at paragraphs 30 and 31.

[3] 2013 QCCS 2756.

[4] 2006 QCCS 2657.

[5] Supra, note 3, in particular paragraphs 28 et seq.

[6] Supra, note 4, in particular paragraphs 31 and 36.

Public funding in the cannabis industry

[1] Alan Brochstein, "*Canadian Cannabis Stocks Weighted Down By Capital Raises And New Issues*", Forbes.com.

Targeting an IPO in 2019? What Unicorns Should Expect

[1] Deloitte LLP, "Canadian IPO Market Review – Q3 2018: IPO market in a holding pattern", online (PDF): <https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/audit/ca-audit-ipo-quarterly-report-en-aoda.pdf>.

[2] *Ibid.*

[3] *Ibid.*

[4] Eric Rosenbaum, "Get Ready for the $200 billion IPO shakeup in 2019" (December 17, 2018), online: <https://www.cnbc.com/2018/12/14/get-ready-for-the-200-billion-ipo-shakeup-in-2019.html>.

[5] Practical Law Canada Corporate & Securities, "Deciding to Go Public: Initial Public Offering (IPO)", Thomson Reuters, Practice Note, <https://ca.practicallaw.thomsonreuters.com/6-571-8606>.

[6] *Ibid.*

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