

## Winter 2019

### TOPICS:

**Going Public:  
Why Canada is Becoming  
a Choice Listing**

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# GOING PUBLIC: Why Canada is Becoming a Choice Listing

The decision to “go public” is one of the most important decisions facing a private company. Typically, private companies of all sizes “go public” to raise money. Going public entails a private company

listing its securities (most commonly, common shares) on a stock exchange, i.e. becoming a publicly traded and owned entity. The listing of securities on a stock exchange can expand and diversify a company’s investor base and provide greater access to capital and financing opportunities.

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Venture Exchange (TSXV), the two largest securities exchanges in Canada, together they have one of the highest numbers of total listings and new listings of all the securities exchanges around the world. In 2017, a total of 296 companies “went public” on the TSX and TSXV. According to the TMX Group, Canada has become a choice listing among both domestic and international companies because of its strong domestic economy. In addition, the Canadian exchange markets offer companies broad-based market opportunities, greater visibility, access to the North American capital markets, and generally low listing costs.

## **Strong Domestic Economy**

According to the World Economic Forum, at the end of 2018, Canada remained one of the most stable economies in the world. It has a AAA credit rating, as determined by Standard and Poor’s rating system, and one of the lowest net debt-to-GDP ratios and corporate tax rates of all the G-7 countries. During a time of global political and economic uncertainty, Canada’s well-regulated and sound banking system, among other factors, are being credited for the country’s continuous stable financial markets. This market stability has led to a broad-based economic expansion in the country, which makes Canadian capital markets an attractive choice for domestic and foreign companies to “go public.”

## **Broad-Based Market Opportunities**

The TMX Group reported that both the TSX and TSXV are considered to be home to one of the most diverse arrays of companies in the world. In 2018, the total number of issuers on the TSX and TSXV was 3,154. Historically, the majority of issuers were from the mining sector. Today, mining makes up no more than 38% of issuers, with the remaining spread across various sectors including technology, real estate, communications, financial services, etc. In 2018, one of the most active industries was cannabis, as recreational cannabis became legal in Canada in October. The diversification of the TSX and TSXV highlights the growing opportunities for issuers in emerging sectors.

## Cannabis-Related Industries

Since the legalization of recreational cannabis in Canada, the Canadian Securities Exchange (CSE), an alternative stock exchange in Canada, has quickly become a popular listing market for cannabis companies from around the world and in particular the United States. While the TSX has strict rules for listing as a cannabis company, the CSE provides greater flexibility and more opportunity for both domestic and international companies to list with smaller market caps and less onerous disclosure requirements. Given the acceptance of the cannabis industry in Canada, a number of cannabis companies have been successful in raising money at high valuations. For example, in 2018, Canadian cannabis companies raised more than \$2.9 billion.

## Technology and Innovation

Although there has been an increase in the number of issuers listed in Canada in the technology and innovation sector, there is opportunity for growth. As such, companies in this sector can take advantage of the unsaturated market and achieve healthy valuations to raise funds. Since 2015, companies in this sector have raised more than \$20 billion to fund growth and provide liquidity to investors on the TSX and TSXV, with over 25% of the new issuers being from foreign jurisdictions. Many of the companies listing are in healthcare technology, clean technology, renewable energy, and cryptocurrency and blockchain technology.

## Visibility and Access to North American Capital Markets

Companies listed in Canada have access to one of the largest capital pools in the world – the North American capital markets. A unique feature of the Canadian market is that it provides issuers with greater visibility than their larger counterparts, while concurrently offering direct access to larger capital markets in the United States. Greater visibility is especially attractive for smaller and emerging companies as it offers issuers an opportunity to market themselves to a larger audience and access greater liquidity, which they would not have access to as a private company. In 2017, the total equity capital raised on the TSX and TSXV was \$55 billion. Of the \$55 billion, \$6 billion was raised on the TSXV, which services companies at earlier stages of growth such as seed/venture stage companies with much lower market caps than those listed on the TSX.

## Low Listing Costs

The cost of listing is another attractive feature of the Canadian securities exchanges. These low costs are attractive to both domestic and international companies that are interested in maximizing their growth.



Canadian capital markets have historically been a choice listing for resource-based companies worldwide. Now Canada's increasingly supportive financial network and legal environment also provide companies from diverse and emerging sectors with more opportunities to benefit from its stable economy and low market-listing costs to raise capital, improve visibility, and gain exposure to foreign investors. As such, companies of all sizes, types, nationalities, and profiles can benefit from going public in Canada. Please contact Andrew Elbaz and Alexander Katznelson to discuss how your company may be eligible for, and benefit from, going public in Canada.

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*Special acknowledgement and thanks to Nusrat Ali (student-at-law) for her valuable assistance in preparing this article.*



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The recent adoption of Bill C-86 has resulted in significant changes to the record keeping requirements for private corporations governed by the *Canadian Business Corporations Act* (the “CBCA”).

**S**tarting June 13, 2019, CBCA corporations will be required to create and maintain a register of its shareholders that have “significant control” over the corporation. Shareholders who have “significant control” are those that:

- own, control, or direct (whether as a registered or beneficial owner) an amount of shares
  - i holding more than 25% of the corporation’s outstanding voting shares; or
  - ii constituting more than 25% of the fair market value of the corporation’s outstanding shares;
- have any direct or indirect influence that, if exercised, would result in “control in fact” of the corporation; or
- an individual to whom “prescribed circumstances” apply.

The register must contain the following information about each individual identified:

- name, address, and birthdate;
- residential jurisdiction for tax purposes;
- day on which the individual obtained or ceased to hold significant control of the corporation; and
- description of how the individual qualifies as having significant control.

The register must also describe the steps taken by the corporation in each financial year to ensure that the register is complete, accurate, and up-to-date.

Although the amended regulations have not been released yet, it is anticipated that they will provide further guidance on how “significant control” will be determined and provide additional details regarding the content and form that the register must take.

If a corporation does not comply with the new recordkeeping requirement, it may be found guilty of an offence and subject to a fine not exceeding \$5,000. However, if the directors, officers, or shareholders of the corporation knowingly record or knowingly authorize, permit, or acquiesce in the recording of false or misleading information in the register, they could be subject to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or both.

The new register will not be available to the public. However, corporations will have to disclose the register to the Director of Corporations Canada upon request. In addition, shareholders and creditors can request access to the register and obtain an extract of it.

All private CBCA corporations must prepare a proper register prior to the June 13, 2019 deadline. Corporations should begin to notify their shareholders of the new requirements under Bill C-86 and collect and compile information regarding shareholders with significant control.



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## Firm News

The 2019 *Lexpert/ALM Guide to the Leading 500 Lawyers in Canada* continues to recognize **Stephen Posen** and **Stephen Messinger** as two of the country's top practitioners in Property Leasing. A new addition to this list is **Adam Perzow**, also listed in Property Leasing. In this edition, **Stephen, Stephen, and Christina Kobi** co-authored the Property Leasing arti-

cle "Recent Developments of Importance" with the assistance of **Nusrat Ali**, Student-at-Law.

Minden Gross LLP was recognized in the Ontario Reports for its contribution to the Lawyers Feed the Hungry Program on Oct. 10, 2018. Ten Minden Gross LLP volunteers served dinner to those in need.

## Professional Notes

**Joan Jung, Michael Goldberg, Samantha Prasad, and Matthew Getzler** participated in "Shareholders' Agreement: Tax & Estate Planning Considerations" webinar in Nov.

**Michael Goldberg** hosted the second session of Tax Talk: Season 6 on Nov. 21. He also presented "Planning For High Net Worth Clients" on Dec. 4.

**Samantha Prasad** published two articles in *The Fund Library* including "Should you use the Home Buyers' Plan?" on Nov. 28. *The TaxLetter* published two of her articles including "Tax Traps for Family Owned Businesses" in Dec.

**Whitney Abrams** published three articles on *Canada Cannabis Legal* including "The Proposed Framework for Cannabis Edibles, Extracts, and Topicals" on Dec. 21. She posted three articles including "Ontario Cannabis Licence Act, 2018 and Regulations Proclaimed into Force" on Nov. 14. *CannaInvestor* published her article "Roll-

ing out new cannabis consumption rules in Ontario and the powerful role of municipalities" in their Nov. edition and she was profiled in their Dec. edition.

**Christina Kobi** presented "Insurance Subrogation in Commercial Leasing after *Royal Host*," **Steven Pearlstein** presented "Real Estate Negligence Claim: A Real Life Case Study," and **Reuben M. Rosenblatt LLD, QC, LSM**, presented "What Happened This Year" at The Six-Minute Real Estate Lawyer event on Nov. 20. **Reuben** also spoke at "Avoiding Liability: What Every Real Estate Lawyer Should Know" on Nov. 13.

**Christina Kobi** was part of a panel on "Retail Real Estate 2019: The Professional Consumer (REIC)" at The Buildings Show on Nov. 29.

**Yosef Adler, Andrew Elbaz, David Judson, and Jessica Thrower** acted for Enthusiast Gaming as it completed an oversubscribed non-brokered private placement of

convertible debenture units in Nov. **Yosef, David,** and **Jessica** also acted for Enthusiast Gaming as it acquired the assets of Operation Sports in Nov.

**Andrew Elbaz, Alexander Katznelson,** and Student-at-Law, **Nusrat Ali,** posted “CSA issues warning to issuers regarding promotional activities” on Dec. 3 and it was republished by *Canadian Securities Law News* in Dec. **Andrew** and **Alexander** acted for Aura Health Inc. as it completed an oversubscribed non-brokered private placement of units in Jan. They also acted for them in connection with a private placement of convertible debentures in

Oct. **Andrew** and **Alexander** acted for Freckle I.O.T. Ltd. in connection with two non-brokered private placements of units, which closed in Sept and Dec. They acted for the Haywood Securities Inc. and Clarus Securities Inc., the financial advisors, in connection with the non-brokered private placement of \$6 million of convertible debenture units of Isodiol. **Andrew, Alexander,** and **Matthew Getzler** acted for Eguana Technologies Inc. in connection with a flow through private placement of exchangeable units of its subsidiary EGT Markets Limited Partnership in Dec.

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