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Guide to going public and listing in Canada

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The Securities & Corporate Finance team at Dentons Canada has extensive knowledge of, and experience in, the Canadian capital markets. From our offices across the country, we regularly advise issuers, registrants, securityholders and others on a broad range of Canadian securities law matters including, of course, the transaction types described in this guide.

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I. Introduction

There are several methods for a private company to become a public company – known as a reporting issuer under Canadian securities laws – and have its securities listed on a stock exchange in Canada. This is commonly known as the process of "going public".

This guide discusses the following paths to going public in Canada:

- Conducting an **initial public offering** (**IPO**) of securities, following the filing of a prospectus, and obtaining a concurrent stock exchange listing.
- Completing a **reverse take-over** (**RTO**) of an existing public company, which involves a private company with an existing business being acquired by a listed "shell" company, i.e., one without an active business but with public shareholders.
- Variations on the RTO, including:
    - The **capital pool company** (**CPC**) regime of the TSX Venture Exchange (**TSXV**), which involves a company getting listed with cash as its main asset, whose sole purpose is to find and acquire an existing private business, thereby taking that business public.
    - The **special purpose acquisition company (SPAC)** rules of the Toronto Stock Exchange **(TSX)** and NEO Exchange **(NEO)**, which resemble the CPC regime, aimed at larger private companies.
    - A pilot program of NEO focused on mid-market companies, known as G-Corps.
- Conducting a **direct listing** on a stock exchange without an associated offering of securities, which is among the least common methods of going public, but an area of recent interest.
- A **dual listing** involves a company already listed on an exchange outside of Canada having its securities listed on an exchange here.

The IPO process is the traditional method of going public and remains a standard and popular approach.

Other ways a company could become publicly listed in Canada include getting "spun out" of, or conducting a non-RTO merger with, an existing public company. These are considered public market transactions more than going public ventures, and are regulated accordingly. Dentons' M&A group has considerable experience in such matters.

II. Consequences of going public

While a company's core business may see little to no direct impact as a result of the shift from being private to being public, the company and its directors and officers will be significantly affected. Some of the principal advantages and disadvantages of going public are set out below:

ADVANTAGES

Access to financing

An IPO, by definition, involves tapping the public markets for cash. While not a requirement for going public, this is very common and most certainly a distinct advantage.

An RTO is likely to involve an associated *private placement* financing, by either the private company or the public shell.

A direct listing does not involve any financing, and a dual listing is unlikely to be accompanied by an offering of securities.

Irrespective of how a company goes public, subsequent financings, though subject to extensive regulation, are typically larger and can be much quicker than securities offerings or bank loans by private companies. This stems from a public company's ability to issue free-trading securities in a short time frame, access to a much broader base of potential investors and an existing disclosure record on which such investors or lenders can rely. Private companies, by contrast, are often required to limit their offerings to a smaller group of potential investors, which can, paradoxically, lead to a more time consuming financing process.

Becoming a public company in Canada can also facilitate access to capital in the United States via, among other methods, the Multi-Jurisdictional Disclosure System, as described in Part VI of this guide.

Further, a public company – especially one with a strong balance sheet – can have greater flexibility to conduct debt financing.

Enhanced valuation for securityholders

The ability to sell shares into the public market applies both to the company itself, as described above, and to its securityholders. This benefits early investors, as well as any employees, consultants and others who have been granted securities such as shares or options. Such securityholders typically enjoy an increase in the value of their securities due to this enhanced liquidity – i.e., the securities are much more easily saleable – because there is an active market of buyers and sellers.

Directors, officers and employees may not see an immediate payday on going public, since their shares are likely to be "locked up" for up to 180 days or "escrowed" (subject to incremental release) for up to three years after going public. The prospect of eventual liquidity, however, is a significant incentive for employees and insiders of private and newly public companies. The ability to compensate employees and others with stock options or other equity-based incentives, the value of which might depend on a go-public event, is also a popular method for early-stage companies to manage their "cash burn".

Facilitates acquisitions

A company interested in acquiring other companies or assets will be better placed to do so once it has gone public, due to the currency-like features of its treasury securities. That is, a public company can issue its own

shares or other securities as payment to acquire the securities or assets of other companies. While this is also possible for private companies, it would involve more significant valuation and liquidity challenges.

Greater exposure and prestige

The process of going public generates publicity that the company can use to enhance its business prospects, in selling its products or services and attracting employees. In addition, perceptions of its worthiness stemming from the due diligence process described in the next section create goodwill among suppliers, clients and customers.

DISADVANTAGES

Time and cost of going public

The directors and officers of a company going public will find the process time consuming, and will impinge on their ability to advance the company's business. As described in this guide, the process involves, among other things: settling the transaction structure, reviewing agreements, preparing disclosure documents, meeting with accountants, investment dealers and lawyers, investor presentations and possibly vetting and appointing new personnel.

The financial costs associated with these matters are also significant, even if (in an IPO or an RTO) they are typically paid out of the proceeds of the associated financing.

Observance of continuous disclosure obligations

Public companies have considerable ongoing reporting obligations under securities laws to which private companies are not subject. Quarterly and annual financial reports, news releases, annual proxy circulars and offering documents, among other things, all require attention and financial resources that might otherwise be dedicated to growing the business. Directors and officers bear ultimate responsibility for the company's continuous disclosure, and have to make their own disclosure of their securityholdings in the company.

Meetings with accounting, legal and other advisers and investors result in additional ongoing costs and demands of management.

Stock exchange rules are an added layer of regulation and associated cost, though in some respects the exchange rules and securities laws operate in tandem.

Risk to founders' control

A company's founders will typically have their ownership diluted when the company conducts a financing on going public and/or in future "seasoned" offerings. This, combined with the fact that outsiders can build up a position in the company's securities through the company's securities offerings or via acquisitions of outstanding securities in the market, can lead to the founders' loss of control over the company.

A public company is also subject to unsolicited take-over bids and contests for board control, e.g., via a "proxy battle". Such events put founders' control at risk in ways not applicable to a private company.

Increased transparency leads to loss of privacy

Public companies are required to disclose all "material", or significant, facts relating to the company and its securities, both in its initial disclosure document and on an ongoing basis. This can lead to unwelcome insight into its business from its competitors and others.

Litigation risk

Public companies and their directors and officers, among others, are subject to greater litigation risks as compared to private companies. Securities laws allow investors to sue the company and key individuals in the event of a misstatement in an offering document or in continuous disclosure, such as a news release, including by way of class action. Protections from such liability can, however, be found in good disclosure practices and legal advice. Individuals, including directors and officers, can also be indemnified by the company for such liability.

III. Preparation for going public

The steps in preparing to go public will depend on which method is selected. This section will focus principally on the IPO process, which is the most traditional method and in many cases the most comprehensive process.

GOVERNANCE

- A public company is expected to have an experienced board and management, including members with experience in continuous disclosure, governance and financial reporting. If a private company is missing any of these elements, it will likely have to add personnel to its management and/or board in connection with going public, irrespective of the method of doing so.
- The number of board members of a public company is typically at least three and at most around 12, with the number tending to increase with the size of the company. The majority of a company's board, especially for senior companies being listed on the TSX or NEO exchanges, are expected to be "independent" of the company, pursuant to sometimes unintuitive securities law rules.
- Public companies must have certain board committees, which are also subject to independence requirements. All public companies must have an audit committee of its board, the members of which are also subject to "financial literacy" rules. Depending on the exchange a company is listed on, it may be required to have nominating and compensation committees, or at minimum procedures for nominating other directors and determining executive and director compensation.

PARTIES AND ROLES

- The key players in a company's IPO process include its management, directors, legal counsel, auditors, one or more investment dealers (often, if confusingly, called "investment banks"), and a transfer agent. Large shareholders who will be selling shares under the prospectus may also be involved.

- Each such actor will be charged with specific tasks that sometimes overlap. For example, the company's lawyers will lead drafting the prospectus and exchange listing application, with significant input from the company, its auditors, and the investment dealer's counsel.
- The company will enter into an engagement letter with the investment dealer(s), which sets out the applicable fees and commission for the securities offering, as well as the securities to be offered and the timeline, among other things. Many of the details of an offering will be fleshed out by an underwriting or agency agreement, which is finalized much later in the process.
- Multiple parties might also work together on reorganizing the company's capital structure. Private companies will commonly have multiple share classes that need to be consolidated into a single class of common shares in order to satisfy exchange rules and market preference.
- Other key tasks in the preparation stage include due diligence on the company by the investment dealer and its counsel, auditing and review of the company's financial statements , obtaining any required third party consents to proceed with the transaction, entering into "lock up" agreements with certain key shareholders and, eventually, marketing the company to potential investors via a "road show".

DEALERS, AKA UNDERWRITERS

- An investment dealer – also known as a securities dealer, an underwriter, a broker or (because they must be registered with a securities commission) a registrant – fills the same role as a dealer in any other industry. Just as an art or car dealer is a link between creators (artists or manufacturers) and buyers, an investment dealer matches companies issuing securities with investors who might buy them.
- The critical role of a dealer in the IPO process can be summarised in two related parts:
  - They act as an **intermediary** by introducing investors who will buy shares in the IPO. This is also how they become known as underwriters, in that they typically commit (via the underwriting agreement) to buy any shares not purchased by investors, subject to conditions.[1] An alternative scenario allows a dealer to make only "best efforts" to find buyers, and not commit to buying any unsold shares. In that case, they are known as agents rather than underwriters, and their commission will be lower as a percentage of the offering.
  - They lend **credibility** to the company, through the due diligence process they are expected to undertake, and through their reputations as experienced and savvy assessors of business models and management teams.
- Other duties, such as acting as a *sponsor* to a junior company in its stock market listing, setting the price of the IPO, and signing the prospectus, fall into the broader credibility and intermediary roles.
- As noted, all dealers have to be registered with a securities commission, and they must meet certain solvency, integrity and proficiency tests in order to do so.
- There are dealers at all levels of the capital markets. The largest and most established will be registered in all jurisdictions of Canada, and include those owned by the chartered banks. The smallest investment dealers might only be registered in a single province and might specialise in a niche market such as mineral exploration or cannabis. At the date of this guide, there are 172 registered investment dealers in Canada, as well as numerous firms registered in other categories, all of which can be searched here.
- Larger IPOs will typically involve multiple dealers, one or two of which will act as lead or co-lead.

DUE DILIGENCE

- As noted, due diligence on the company is a critical stage in the IPO process. It provides the dealers – and indirectly investors, securities regulators and the exchange – with comfort that the company's business and prospects are what the company represents them to be.
- The lawyers will work in conjunction with the company's senior management, as well as its auditors, to verify information contained in the prospectus. The dealers will focus on business due diligence to assess the viability of the business and determine the pre-IPO valuation of the company. Counsel for the underwriters will focus on matters that involve legal analysis and ensure that the prospectus contains full, true and plain disclosure of all material facts related to the company and the securities being offered.
- This typically involves a review by the dealer(s), its lawyers and typically lawyers to the company, of the following:
  - Business plans, records of prior sales (if any) and market research;
  - Constating documents, such as articles of incorporation and by-laws;
  - Searches of various public registries that could contain records of the company's business history, including personal property security, real property records, court filings and bankruptcy proceedings;
  - Background searches on current and proposed directors and officers of the company;
  - Minute books, including those of any subsidiaries;
  - Material contracts;
  - Documentation with respect to any prior financings, both debt and equity;

1 Historically, a party making this type of commitment to conditionally guarantee the offering would actually sign its name under that of the principal, hence the colloquial usage of "underwrite" and "underwriter".

- Any litigation documents;
- Any pension, benefits, stock purchase or other similar types of plans;
- Any licenses or permits; and
- Intellectual property, including searches on trademarks and patents, as well as a review of any confidentiality agreements.

ESCROW REQUIREMENTS

- The principals or founders of a company (together, **Principals**) undertaking an IPO may be required to place their shareholdings into escrow for a period of time following closing of the IPO. This is to ensure their interests are aligned with those of the new shareholders, to sustain investor confidence in the company, and prevent them from destabilizing the price of the shares by selling large quantities of stock immediately.
- National Policy 46-201 *Escrow for Initial Public Offerings* (the **Escrow Rule**) provides a national escrow regime and supplements the rules of the stock exchanges.
- The Escrow Rule divides companies (or "**issuers**") into:
  - Exempt issuers, which are not subject to escrow under NP 46-201. An exempt issuer is, in general, a senior issuer listed on TSX or (for certain types of issuers) NEO, or those with a market capitalization of at least $100 million.
  - Established issuers, being less senior companies, but still listed on either TSX, NEO or Tier 1 of the TSXV.[2] Principals of established issuers generally have their securities released from escrow in increments over 18 months from the listing date.
  - Emerging issuers, which is a catch-all for any other issuers. Securities held by Principals under this category generally get released from escrow in stages over the course of three years.
- Securities regulators and any stock exchange on which the shares are listed have the authority to impose more onerous terms than those provided by the Escrow Rule.

2 This distinction between Tier 1 and Tier 2 of the TSXV does not apply to escrow rules in respect of CPCs, for which securities of any "resulting issuer" are subject to an incremental 18-month escrow release following the closing of the transaction.

IV. Going public via IPO

Conducting an IPO is, as mentioned, the traditional way of going public. This process involves the preparation, filing and approval of a prospectus and a listing application to the applicable stock exchange for listing of the company's securities.

RTOs and other alternative methods of going public are described in the following section.

IPO OVERVIEW

- There are two main components to the process of going public by way of a traditional IPO. First, since securities transactions occurring in Canada are primarily regulated by the provincial securities commissions, a company must file and clear a prospectus in each province and territory where purchasers of the company's securities under the IPO reside. Second, the company must make a successful listing application to a securities exchange (TSX or NEO for senior companies, TSXV or CSE for juniors), as applicable, to obtain a listing for the company's securities.
- Advantages and disadvantages of going public in Canada are set out in Part II of this guide. Going public by way of a traditional IPO includes the following advantages:
    - Bringing the entity to the public markets in Canada broadly;
    - Providing the opportunity for the company to obtain the most public exposure possible; and
    - Allowing the greatest penetration of the North American markets on a fully marketed basis.
- Disadvantages to the process include:
    - Being vulnerable to prevailing market conditions at the time of offering, including access to capital; and
    - A risk of insufficient liquidity, and the associated inability for shareholders to sell at a prevailing market price, if the offering is not widely distributed.
- In order to successfully complete an IPO, a securities dealer, who will act as either underwriter or agent, would be engaged to assist the company in the preparation of a prospectus and in marketing. The prospectus rules require the company to prepare considerable disclosure as to its business and the securities being distributed, together with audited financial statements, among other material. It will also require significant co-operation and planning among management and the assembled team of advisors, including legal counsel, auditors and tax advisors. Discussions and possible meetings with securities commissions and the applicable stock exchange will also be necessary.
- An IPO is a time-consuming and labour-intensive process that usually takes between three to six months to complete from the time that a preliminary prospectus is filed, assuming that there are no significant obstacles. This timeframe does not take into account time involved in the planning phase, the preparation of audited financial statements, or any pre-IPO corporate restructuring.

PART 1. FILING A PROSPECTUS

- The prospectus is a detailed document that must contain full, true and plain disclosure of all material information concerning both the company and the securities being issued. Among other things, a prospectus must describe the company's business, strategy, markets, prospects, management, proposed use of proceeds, and financials, as further described in the next paragraphs.
- Preparation of the prospectus usually requires several drafting sessions involving the company, the dealer, their respective counsel and the company's auditors. Extensive due diligence on the company by the dealer and the dealer's counsel will also be conducted prior to filing the prospectus. All parties will participate to ensure that the prospectus meets the requirements of the relevant securities regulations and the rules of the applicable exchange.
- Filing a prospectus is a five-step process, set out below. A list of the disclosures required in the prospectus and the ancillary documents follows.
    1. The preliminary prospectus and supporting documentation are filed with the securities commission (the "**Principal Regulator**") in the company's principal jurisdiction based on the location of head office and mind and management, and other jurisdictions where securities will be sold. The preliminary prospectus will also be submitted, together with the applicable listing application, to the applicable exchange.
    2. Regulatory authorities – primarily the Principal Regulator – will review the prospectus and advise of comments and perceived deficiencies.
    3. Once comments and deficiencies have been resolved to the satisfaction of the regulators, a final prospectus is filed.
    4. The Principal Regulator will issue a final receipt as acceptance of the prospectus.
    5. Upon issuance of the final receipt, the company is authorized to complete the offering of the securities.

Prospectus Contents

- As noted, a prospectus filed in Canada must contain full, true and plain disclosure of all "material" or significant information about the company and the securities being issued in the IPO. Canadian securities regulations set out what must be disclosed in an IPO (or "long-form") prospectus, including:
    - The history of the company and a detailed description of its business and operations;
    - A description of management's business plan;
    - The company's relationships with its controlling shareholder or related parties, if any;
    - Significant acquisitions and significant dispositions made by the company;
    - Audited financial statements of the company and a description of its share capital structure;
    - Management's discussion and analysis of the company's financial results as disclosed in the financial statements;
    - Risk factors associated with the company's business and investing in the company's securities;
    - Details concerning the underwriting or agency arrangements;
    - How the company plans to use the proceeds of the offering; and
    - Information concerning the company's directors and officers, including share ownership, any indebtedness to the company and compensation information.

Financial statements and ancillary documents

- As noted, audited financial statements must be included with the prospectus. The number of years of such audits required varies based on the seniority of the company and the length of time it has been in business. Senior companies are generally required to include audited financials for the three most recently completed years, as well as (unaudited) interim statements for any subsequent period.
- Junior companies may be allowed to file a prospectus with a single year's audited statements, irrespective of how long it has been in business, subject to certain securities law rules.
- Both the preliminary and final prospectus are filed electronically with securities commissions via the System for Electronic Document Analysis and Retrieval (**SEDAR**). This allows for regulatory review and, when "receipted", public disclosure of the documents. If securities are to be distributed in Québec, a French-language version of each (and any documents incorporated by reference) must be filed in Québec. In addition, the following documents will be included with the filed copy of the preliminary prospectus:
  - An auditor's comfort letter regarding the audited financial statements of the company included in the prospectus;
  - A completed form authorizing the collection of personal information about the directors, officers and promoters of the company;
  - Certain personal information regarding the company's directors, officers and promoters;
  - A copy of all material contracts;
  - A draft escrow agreement, if applicable;
  - Consent of each person responsible for preparing, or supervising the preparation of, a valuation report or any portion thereof; and
  - Applicable filing fees.

PART 2. LISTING APPLICATION

- As part of an IPO, in addition to filing and clearing a prospectus, the company seeking to list its securities on a stock exchange must complete a listing application with the applicable exchange, which is made shortly after the filing of the preliminary prospectus (see timetable above). Set out in the attached Schedule "A" is a description of the initial listing criteria in order to list on the various exchanges.

TIMELINE

- Below is a sample timeline addressing the key events in an IPO, which assumes the company is fully engaged, with key personnel in place and up to date financial and other records. As noted, completing the IPO often takes three to six months from the date of filing the preliminary prospectus.
- The full IPO process, including planning and initial drafting, typically takes between five and nine months. Factors that could push it to the longer end of this range include issues with regulatory review, the success of marketing efforts and the time of year, as dealers typically conduct less active marketing during the summer.
- A detailed timeline setting out the delivery dates for the full range of events and materials required would be prepared prior to commencement of the process.

A prospectus filed in Canada must contain full, true and plain disclosure of all "material" or significant information about the company and the securities being issued in the IPO. Canadian securities regulations set out what must be disclosed in an IPO (or "long-form") prospectus.

<table>
<tr><th colspan="2">Timeline</th><th>Event</th></tr>
<tr><td rowspan="3">Phase 1

Preliminary meetings, drafting and filings</td><td>Week 1-2</td><td>• Organizational meeting
• Ensure applicable audited financial statements are available
• Identify and engage agent/underwriter
• Commencement of due diligence</td></tr>
<tr><td>Week 3</td><td>• Pre-filing discussions with applicable exchange</td></tr>
<tr><td>Week 1-5</td><td>• Submit Personal Information Forms in respect of key personnel, including directors and officers, to the regulators for review and clearance
• Due diligence continues
• Drafting of preliminary prospectus and (if offering in Québec) concurrent French translation
• Drafting of listing application
• Prepare equity compensation plan and evidence of shareholder approval as applicable
• Obtain copies of all material agreements
• Reserve ticker symbol
• Engage transfer agent
• Obtain translation opinion for preliminary prospectus (if offering in Québec)</td></tr>
<tr><td rowspan="2">Phase 2

Preliminary prospectus and listing application filed</td><td>Week 6-7</td><td>• Oral diligence session
• File and print preliminary prospectus
• Reserve CUSIP/ISIN numbers for securities
• File draft listing application with the exchange and submit, among other things, business plan, budgets and sources of funds, financial statements, charter documents, material agreements, list of securityholders and applicable filing fee
• Obtain legal opinion of local counsel in respect of material subsidiaries</td></tr>
<tr><td colspan="2">From this point, it can take 3-6 months to complete depending on regulatory review, due diligence and marketing, as partially described in the notes below. The following is a best-case scenario.</td></tr>
</table>

Timeline		Event
Phase 3 **Waiting period**	**Week 7-10**	• Review period for preliminary prospectus • Correspond with the applicable stock exchange regarding listing application comments
	Week 10	• Receive comment letter from Principal Regulator
	Week 10-12*	• Period to resolve comments from Principal Regulator and applicable stock exchange *This may expand if comments are extensive
	Week 11-14*	• Commence marketing of the securities *This timeframe is a matter of negotiation and will be impacted by the market's enthusiasm for the securities. While marketing may commence upon obtaining a receipt for a preliminary prospectus (and, technically, "expressions of interest" can be solicited prior to that time under strict conditions), often a dealer will wish to wait until comments from the securities commissions have been resolved before commencing marketing in earnest.
	Week 12	• Conditional listing approval granted • Deliver documentation required by transfer agent and enter into transfer agency agreement • Finalize due diligence for listing application and sponsorship, if applicable • Drafting of final prospectus and (if offering in Québec) concurrent translation • Obtain translation opinion for final prospectus (if offering in Québec)

<table>
<tr><th colspan="2">Timeline</th><th>Event</th></tr>
<tr><td rowspan="2">Phase 4

Final agreements and filings</td><td>Week 13-14</td><td>• Board meeting to approve matters relating to the prospectus, applicable agreements and listing application
• Obtain consents of all parties whose opinion or report are used in the listing application
• Deliver sponsorship letter, if applicable
• Establish filing link with the exchange, as applicable
• Determine price and size offering, if not determined prior to preliminary prospectus
• Bring-down oral due diligence session prior to filing final prospectus
• Enter into Agency/Underwriting Agreement
• File and obtain receipt for final prospectus
• Print and deliver final prospectus</td></tr>
<tr><td>Week 13-14</td><td>• Exchange listing bulletin published</td></tr>
<tr><td>Phase 5

Closing</td><td>Week 14-15</td><td>• Closing of offering
• Trading on applicable exchange commences (trading may begin earlier with settlement on “T plus 2” days)
• Press release announcing closing of offering and listing</td></tr>
</table>

V. Alternatives to IPO

A. REVERSE TAKEOVER, OR RTO

- An RTO, also known as a back door listing, involves a private company with assets and operations (**Opco**), being acquired by or merging with a public shell company with shares publicly held and listed on a stock exchange (**Pubco**). As a result, Opco goes public indirectly.
- Pubco acquires the securities of Opco by issuing to Opco's shareholders shares in Pubco equivalent in value to the assets or operations of Opco. Typically, the result of an RTO is a change of control in the ownership of Pubco, and in many cases, the former shareholders of Opco hold the bulk of the Pubco shares. Pubco remains listed on a stock exchange and now holds assets and/or has operations through its ownership of Opco.
- Pubco could be either a former operating company that has disposed of its assets or business, or one that is incorporated for the sole purpose of conducting an RTO. In the latter case, the Pubco is known as a CPA, G-Corp or SPAC, as described further below.
- The RTO is subject to an approval of the applicable exchange, and the company resulting from the RTO must meet the original listing requirements of such exchange.
- The key advantage of an RTO as compared with an IPO lies in mitigating execution risk, stemming from:
    - Low regulatory burden, in that the transaction typically will not require securities regulator engagement (absent a concurrent public offering); and
    - Existing public ownership of the Pubco shares ensures the public float requirements are met, without any associated financing.
- Potential disadvantages of an RTO versus an IPO include:
    - Risk associated with any liabilities attached to Pubco, e.g., from its predecessor entity or any business or assets previously acquired;
    - Lower public profile due to the (typical) absence of a concurrent public offering;
    - The transaction and "resulting issuer" do not benefit from a dealer's credibility in the same way as an IPO (unless there is a concurrent financing or sponsorship arrangement involving a dealer); and
    - Less control over the process, in that Opco is reliant on a third party for obtaining its public float and exchange listing.

Transaction Structure

- An RTO could be effected by way of statutory arrangement or amalgamation, or it may involve a share exchange. In the latter case, shareholders of Opco agree with Pubco to exchange their Opco shares for Pubco shares
- In each case, a transaction agreement would set out key terms of the RTO including timing, conditions, covenants of the parties and representations and warranties. The transaction may include "deal protection" measures such as break fees, non-solicitation provisions and commitments by Pubco insiders to vote in favour of the transaction (where shareholder approval is required).

Due Diligence

- Both parties conduct due diligence of the other early in the transaction. As a shell company, Pubco will typically have minimal assets and liabilities, but it is important that Opco identifies any hidden, inherent liabilities in Pubco.
- In the event of a concurrent "brokered" private placement (i.e., involving one or more dealers, acting as agent or underwriter), or if a sponsor is required (see below), the dealer(s) will also conduct due diligence.

Sponsor

- An RTO may require the involvement of a "sponsor", which is typically an investment dealer operating in its capacity as a member of the exchange. The sponsor, through its due diligence, lends credibility to Opco.
- If the RTO involves a brokered financing (see below), the sponsorship requirement is typically waived, as the dealer in the financing fulfills a substantially similar role as the sponsor.

Private Placement

- A private placement of securities (whether by Pubco or Opco) is often conducted at the same time as the RTO to ensure that following the RTO, Pubco is able to meet the exchange listing requirements and have sufficient working capital to conduct its business.
- The applicable securities offered may be:
  - "Subscription receipts", which automatically exchange into common shares or other securities of Pubco upon completion of the RTO;
  - Shares of Opco, which are exchanged for shares of Pubco upon completion of the RTO; or
  - Securities (typically shares, or shares and warrants) of Pubco.
- Depending on the transaction structure, a "hold period" of up to four months may apply to the issued securities.

Disclosure

- In the case of TSXV or NEO, Pubco will prepare prospectus-level disclosure concerning each of the companies party to the proposed RTO, in either:
  - An information circular, which will inform the vote at a special meeting of shareholders called to consider the transaction; or
  - A filing statement, if:
    - Shareholders' approval for the transaction is obtained by way of written consent, rather than at a meeting; or
    - Shareholders' approval is not required in order to complete the transaction.
- In the case of the CSE, Pubco will prepare a listing statement containing similar disclosure (prescribed by the requirements of the CSE).
- In the case of TSX, Pubco will prepare and file an information circular providing prospectus-level disclosure in respect of the "resulting issuer", i.e. the post-transaction company.

An RTO, also known as a back door listing, involves a private company with assets and operations… being acquired by or merging with a public shell company with shares publicly held and listed on a stock exchange.

Shareholder approval

- Pubco and/or Opco may be required to obtain shareholder approval of the RTO under applicable securities and corporate laws. The threshold of shareholder approval required depends upon the structure of the transaction and could be: (i) a simple majority, (ii) a two-thirds majority, or (iii) a two-thirds majority and a majority of the "minority" of disinterested shareholders (where related parties are involved).

RTO Timeline

- The below timeline is an estimate and a reasonable basis for an RTO transaction and stock exchange listing. Some transactions may differ significantly from this estimate.

Phase	Duration	Activities
Phase 1 **Identifying Target, Commencing Process**	**2-4 weeks**	• Identify Pubco target and commence negotiations • Commence due diligence process on Opco and Pubco • Determine stock consideration ratio or range • Consider whether a financing is required in connection with the RTO • Commence drafting of technical reports (if applicable), required for mining and oil and gas issuers • Begin preparation of audited financial statements of Opco • File Personal Information Forms in respect of new key personnel, including directors and officers
Phase 2 **Announcing Transaction**	**1-2 weeks**	• Announce transaction with Pubco • Commence preparation of Pubco's shareholders meeting materials • Continue preparation of financial statements and technical reports • Continue legal and business due diligence • Select management and board of directors of resulting issuer

Phase 3
Filing Initial Draft Documents
	4-8 weeks	• Deliver initial draft documentation to the exchange, including:
		  ◦ Information circular
		  ◦ Financial statements
		  ◦ Technical reports, if applicable
		  ◦ Listing application
		• Publish record date for shareholders' meeting (at least seven days prior to the record date)

Phase 4
 	
Obtaining Conditional Approval
	2-4 weeks	• Obtain conditional listing approval from applicable exchange
		• If shareholder approval is required:
		  • Determine record date for shareholders' meeting (at least 30 days prior to meeting date); and
		  • Print and mail meeting materials to Pubco shareholders (at least 21 days prior to the meeting date)

Phase 5
 	
Shareholder Approval and Closing
	1-2 weeks	• If shareholder approval is required:
		  • Hold shareholders' meeting
		  • File shareholder approval documents with the applicable exchange
		• Close RTO transaction and any associated financing
		• Exchange issues final exchange bulletin (evidencing final listing approval)
		• Shares of the resulting issuer commence trading

This timeline is indicative and while some elements are based on regulatory requirements, the realities of the market and the specific transactions may allow for shorter, or require longer, periods of time.

B. CAPITAL POOL COMPANY, OR CPC

- A CPC, as noted, is a shell company listed on the TSXV whose reason for being is to conduct an RTO. The transaction is technically referred to as a "qualifying transaction" or QT, but many aspects of the RTO regime, including target company shareholder approval, apply as with an RTO and are not detailed in this section.
- The process is subject to extensive regulation, due to the unique existence of a CPC, with a view to investor protection. It is also well understood by Dentons professionals and other market participants, in that over 2,000 CPC qualifying transactions have been completed on the TSXV.
- This guide focuses on the typical scenario where the resulting issuer is listed on the TSXV. For larger private companies, there is potential scope for the resulting issuer to be listed on the TSX, either concurrent with closing or pursuant to a subsequent "graduation" to the TSX.
- Significant changes to the CPC regime were introduced effective January 1, 2021. Any would-be CPC that has filed a prospectus, but not completed its IPO, may elect to comply with the former or the current rules. More comprehensive transition rules apply to any CPC that has completed its IPO but has not completed its qualifying transaction.

- The CPC's sole asset, other than its listing, is cash. It must raise between $200,000 and $9.5 million in its IPO (and no more than $10 million including any seed financing and other private placement), and then complete a QT within two years of its listing.
- Because the CPC's directors and management must have public markets experience, the program can provide junior companies with access to experienced personnel to support its going-public process.
- The CPC program typically follows three stages:
  - The CPC is formed by a "founders group", which forms the board and management and also typically subscribes for pre-IPO shares.
  - It conducts a simplified IPO and lists its common shares on the TSXV in a special category designated for CPCs, which includes a ".p" designation on its stock symbol.
  - The CPC completes its QT by acquiring one or more businesses or assets within two years of its IPO (or risks being suspended or delisted from the TSXV for failing to do so).
- The CPC program can provide:
  - A target (private) business with an avenue to go public at an earlier stage than would be possible via a traditional IPO, as well as access to capital and experienced management; and
  - Investors with a regulated environment in which to participate in (sometimes highly speculative) early-stage companies.

Pre-IPO

- There are a number of rules and restrictions on the CPC's listing, financing and QT completion, all as set out in TSXV Policy 2.4 aimed at avoiding abuses of the program and self-dealing.
- A key example relates to the "seed capital" raised by the CPC prior to its IPO – i.e., sold to the founders – which cannot be priced at less than $0.05 / share or 50% of the price at which the IPO shares are sold (which must be at least $0.10), and cannot exceed $1 million. In addition, directors and senior officers must invest at least $5,000 each, and together at least $100,000 or 5% of the aggregate proceeds raised prior to listing (including the IPO), whichever is greater.

IPO and Post-IPO

- The CPC's public shareholding must satisfy certain criteria (amended effective the beginning of 2021), which generally align with the criteria for Tier 2 issuers on the TSXV, as set out in Schedule A. Additional rules aimed at creating a diffuse shareholder base include that at least 75% of the shares issued in the IPO must be purchased by shareholders owning no more than 2% of such shares.
- Escrow applies to any seed shares issued at a price below the IPO price, and to most securities acquired by non-arm's length persons. They are released in stages over 18 months following closing of the qualifying transaction.
- There are limits on and disclosure rules in respect of compensation paid to the CPC's technical consultants and the "agent" (i.e., the dealer) in the IPO. There are also limits on the grant of stock options.
- The use of the CPC's cash is constrained by the TSXV rules, including the general rule that it can only incur expenses to operate its business of identifying and acquiring a target asset or business. In most respects, the limits are subjective (i.e., they must be "reasonable"), but some hard rules apply, including a maximum $3,000 per month to be spent on professional fees and rent, in aggregate, and no vehicle costs.

Qualifying Transaction

- If the target is considered to be at arm's length from the CPC, there is no shareholder approval requirement, though thorough (prospectus-level) disclosure of the transaction is required in a public filing – either a "filing statement" or a prospectus.
- If the target is *not* considered to be at arm's length from the CPC, shareholder approval is required, which involves a similar process as a traditional RTO, i.e., disclosing the transaction via information circular and calling a meeting of shareholders, which will require "minority" shareholder approval.

- Whether or not shareholder approval of the QT is required, the transaction and applicable disclosure documents will be subject to review and "acceptance" by the TSXV. Such documents include the news release announcing the QT, a sponsor's report if applicable, financial statements, and (for mining or oil and gas companies) any geological or reserves report.
- The TSXV will require information from and may conduct background searches on insiders, including directors, officers and any controlling shareholder (as well as directors and senior officers of any controlling corporate shareholder), and any "promoter", in respect of the resulting issuer.
- Additional rules, introduced at the beginning of 2021, apply in respect of:
    - Any "concurrent financing" (i.e., concurrent with the closing of the qualifying transaction);
    - Any "bridge financing" (i.e., a financing entered into after agreeing to, and in order to pay the costs associated with, the qualifying transaction, other than costs payable to the vendor); and
    - Compensation payable to any person (e.g., a finder) in respect of any private placement by the CPC.
- Trading in the securities of the CPC will remain halted pending the TSXV's "preliminary assessment", in reviewing the documents and conducting any background searches. In some circumstances, that halt could be extended until the completion of the QT, which would follow either shareholder approval or the applicable filing (filing statement or information circular).
- The TSXV has broad authority not to accept the transaction if, for example, the nature of the post-QT business "is or will be unacceptable" to the TSXV.
- The CPC program is not available when the two companies – the would-be CPC and the active business – have an "agreement in principle" prior to the would-be CPC becoming a CPC. TSXV Policy 2.4 provides guidance on when such an agreement exists.
- Below is an estimated timeline for a qualifying transaction, assuming:
    - The requirement for a meeting of shareholders of the CPC;
    - A concurrent private placement;
    - The reasonable expeditiousness of due diligence and any required background checks; and
    - No statutory arrangement, which requires court approval, and can be a practical requirement, for example if the target company requires a level of shareholder approval (Prepare pro forma financial statements for resulting issuer that is not attainable).
- Some transactions may differ significantly from this estimate.

The TSXV will require information from and may conduct background searches on insiders, including directors, officers and any controlling shareholder (as well as directors and senior officers of any controlling corporate shareholder), and any "promoter", in respect of the resulting issuer.

Weeks 1-2	• Determine the officers and directors of resulting issuer and submit applications for their acceptance with TSXV • Arrange for pre-filing conference with the TSXV • Determine financing structure and negotiate engagement letter with agent(s) • Draft and settle subscription agreement • Ascertain scope of financial statements disclosure in the information circular • Create virtual data room
Weeks 1-8	• Obtain audit and review of target company's financial statements, and prepare associated management's discussion and analysis • Prepare pro forma financial statements for resulting issuer
Weeks 3-8	• Negotiate and draft definitive acquisition agreement • Market financing • Agent's due diligence • Draft and negotiate financing-related agreements (agency agreement, special warrant indenture/subscription receipt agreement) • Prepare TSXV submission materials, including legal opinions in respect of the CPC, the target company and, in some cases, its assets
Weeks 8-9	• Execute the acquisition agreement and issue news release • Close financing • Make initial submission to TSXV / receive conditional acceptance
Weeks 8-11	• Prepare information circular in respect of the shareholders' meeting
Weeks 11-13	• Receive comments from the TSXV on the initial submission material • Mail shareholders' meeting materials • File meeting and other materials with TSXV
Week 16	• Shareholders' meeting
Week 17	• Final TSXV filings, including any required sponsor's report
Week 18	• Closing of qualifying transaction • TSXV final bulletin approving the listing of securities of the resulting issuer • Shares of the resulting issuer commence trading on the TSXV

C. GROWTH ACQUISITION CORP, OR G-CORP – NEO PILOT PROGRAM

- This is a pilot program aimed at "mid-market growth companies", being those with an enterprise value of between $50 and $500 million. It is aimed at bridging a perceived gap between the CPC and SPAC (described below) regimes.
- This category was created in April of 2021, and the first G-Corp was listed the following July. The program will be assessed after the 12-month pilot.
- Criteria for listing the Pubco include:
  - A minimum IPO of $2,000,000, all of which must be held in escrow
  - Founders' equity ownership of not more than 20% immediately following the closing of the IPO, excluding any securities purchased at or prior to the closing of the IPO at not less than the IPO price; and
  - A minimum investment by the founders, ensuring at least $300,000 of free working capital
- Other criteria, including in respect of the "resulting issuer", include:
  - A qualifying transaction identified within 24 months and completed within 27 months;
  - A resulting issuer that has a market capitalization of at least $30,000,000 and meets NEO's initial listing standards;
  - A prospectus in connection with the IPO and another in respect of the qualifying transaction; and
  - The qualifying transaction is subject to shareholder approval, excluding any holders of non-IPO securities.

D. SPECIAL PURPOSE ACQUISITION COMPANIES, OR SPACS – TSX AND NEO

- A SPAC is the senior exchanges' answer to the CPC regime. There are only minor differences between the SPAC rules of TSX and NEO.
- Like a CPC, a SPAC is a listed shell company that is looking for an acquisition transaction, though SPACs tend to involve larger transactions and capital raises. The minimum IPO size is $30 million.
- SPACs are subject to strict regulation, in some senses more stringent than the CPC regime. Among other distinctions:
  - At least 90% of the proceeds raised in the SPAC's IPO (and half of the underwriters' commission) is placed in escrow, and returned to investors if the SPAC does not close a qualifying acquisition within 36 months of its IPO;
  - No security-based compensation awards, such as stock options, may be granted before completion of a qualifying acquisition; and
  - A SPAC must either obtain shareholder approval for the qualifying acquisition or file a non-offering prospectus (rather than a filing statement, in the case of a CPC) in respect of the transaction.
- The SPAC regime provides an efficient time frame for an advanced private company to go public, and the initial IPO process can be highly streamlined. Each transaction (apart from the sourcing of the qualifying acquisition, i.e., finding the target company) can be completed in as little as three months.
- The regime has not been as popular as the CPC regime of the TSXV.[3]
- NEO SPACs have been somewhat more active than those on TSX, but less popular than the CPC regime.

E. SPECIAL WARRANT FINANCING

- A "special warrant" is a convertible security that a company issues by private placement. It automatically converts into an equity security, without further payment by the holder, when the company files a "non-offering" prospectus and lists on an exchange.
- Special warrants can be issued by public companies, using a similar process as set out below, but in this guide, we focus on their use by private companies as a step in a go-public process.

3 TSX, as at October 19, 2020.

- The regulatory considerations applicable to an IPO will apply similarly to a special warrant transaction, despite the absence of a "public offering". The company will still be required to file a prospectus with and receive approval from the applicable securities commissions, and to obtain stock exchange acceptance for listing.
- The dealer's due diligence will be conducted – or at least will have commenced – at the time of the private placement.
- One advantage over a traditional IPO or an RTO is the ability to lock in capital quickly, in that the special warrant private placement can be completed in one to three weeks.
- The special warrant financing structure can be used as an alternative to an IPO or RTO where the "public float" requirements of the applicable stock exchange can be satisfied by one or more private placements. That is, the private placement(s) will have to involve a broad base of arm's-length investors. To list on Tier 2 of the TSXV, for example, there must be at least:
  - 500,000 shares in the "public float", i.e., held by investors at arm's-length from the company;
  - 200 arm's-length shareholders each holding a "board lot" (being 1,000 shares if the trading price is below $0.10, 500 if between $0.10 and $0.99, or 100 if over $1.00); and
  - Twenty percent of issued and outstanding shares in the hands of arm's-length shareholders.
- The process of going public with a special warrant financing typically involves the following:

Private Placement

- The company will complete one or more private placement financing(s) of special warrants, typically to "accredited", i.e., wealthy, investors. This will usually involve one or more dealers, who will be tasked with conducting due diligence and finding a broad number of subscribers, as would be the case in an IPO.
- The company can use the proceeds immediately.
- The company commits to filing a non-offering prospectus within a period of time, typically 4-6 months, from the private placement. If it fails to do so, additional shares (typically around 10%) are required to be issued on the conversion of the special warrants.

Non-Offering Prospectus

- The company then prepares and files a preliminary prospectus, followed by a final prospectus, both on a non-offering basis. The prospectus qualifies the conversion of each special warrant into a common share (or a "unit", consisting of a common share and a warrant to acquire part or all of an additional share), which become freely tradeable. This amounts to the company going public and becoming a reporting issuer.
- The conversion happens within a few days after the approval (or "receipt") of the final prospectus.
- The non-offering prospectus process and requirements will be substantially similar to those described for an IPO (other than with respect to the requirements applicable the IPO financing itself).
- There is precedent for obtaining relief from the Québec securities regulator from having to translate into French the non-offering prospectus (and any documents incorporated by reference therein).

Listing Application

- The non-offering prospectus will typically serve as the listing document, with some modifications to address specific exchange requirements.

F. DIRECT LISTING

- To the extent it is able to satisfy listing standards (including public float requirements, as described in (e) above), a company can list directly on a stock exchange by filing a non-offering prospectus. This method is often used where the company does not require immediate access to capital.
- As with other means of going public, the company will be required to obtain approval from the applicable securities commissions and the applicable stock exchange.
- The non-offering prospectus process and requirements will be substantially similar to those described in (e) above, though without the special warrant private placement, and dealer involvement.

G. DUAL LISTING

- A company already listed on a stock exchange outside of Canada may apply for a dual listing. That method of going public in Canada is not addressed in this guide in any detail, but we have broad experience in cross-border listings (inbound and outbound), and we would be pleased to provide further information. See Part VI below for a description of the Multi-Jurisdictional System for Disclosure, or MJDS, which governs offerings and reporting in both Canada and the United States for companies that want to access capital on either side of the border.

VI. Multi-Jurisdictional Disclosure System – an overview

- As noted, the MJDS governs Canadian and US issuers that wish to access capital on either side of the border. This guide discusses the "southbound" MJDS regime, which allows certain Canadian public companies to access public financing in the US using Canadian prospectus and continuous disclosure documents, filed with the Unites States Securities and Exchange Commission, or SEC. The MJDS also facilitates cross-border take-overs and other public markets transactions, which are outside the scope of this review.
- The MJDS should be contrasted with a full registration of a Canadian company as a domestic issuer in the US, which is often associated with a US-only listing, or as a "foreign private issuer" under US law (which generally means a majority of the company's directors, officers and assets, and its head office, are not in the US). Each of these generally involves greater reporting, a long form prospectus in accordance with US disclosure standards, and associated costs, and can involve a lengthier timeline (in particular for SEC review) depending on the procedures utilized.
- The MJDS stems from an agreement between the SEC, and the Canadian securities commissions, dating to 1991. The Canadian rules are set out in National Instrument 71-101.
- In an MJDS offering, the Canadian company can offer securities either in Canada and the US or in the US only. In either case, it files its prospectus with the applicable provincial securities commissions and it is reviewed by the regulators as normal. While the SEC reserves the right to review MJDS filings, they generally do not, deferring to the home jurisdiction review in Canada. The SEC will declare the MJDS filing effective after it receives a copy of a receipt from the principal provincial securities regulator. As a result of this typical non-SEC review, the offering will often close quickly.
- Once a Canadian company conducts such an offering in the US, it can generally satisfy US continuous disclosure obligations by filing its Canadian reporting documents in the US.

ELIGIBILITY

- The key eligibility requirements for Canadian companies to participate in MJDS are:
    - Being incorporated or organized under the laws of Canada or any Canadian province or territory;
    - Being a "foreign private issuer" under US law, which in practice generally means a majority of the company's directors, officers and assets, and its head office, are not in the US;
    - Have been reporting in Canada for at least 12 months (or 36 months for certain types of offerings);
    - The value of its "public float", or shares held by non-affiliates of the company, is at least US$75 million; and
    - Not being an "investment company" registered or required to be registered under the US *Investment Company Act of 1940*, as amended.

APPLICABLE US RULES

- Some US rules and obligations that a Canadian company using the MJDS should be aware of include:
    - Registration can be required under US state securities laws, in addition to the federal rules, absent an exemption. Securities offerings in the US, including offerings by MJDS companies, are exempt from registration for "covered securities" (for example, a security that is listed or authorized for listing on the New York Stock Exchange or Nasdaq). Dentons lawyers can assist in qualifying for applicable exemptions.
    - Continuous disclosure rules require reporting in the US under the *Securities Exchange Act of 1934*, as well as in Canada after filing a prospectus (a filed version of which is known in the US as a "registration statement"). As noted, an MJDS issuer can generally satisfy this by filing its Canadian equivalent documents in the US, supplemented by additional disclosure requirements as follows:
    - Certain "certifications" of an issuer's financial reporting controls, though these are similar between the US and Canadian regimes, so would not be new for a Canadian issuer that adopts the MJDS.
    - The "attestation" by an external auditor is required in the US under the MJDS, and not in Canada.
- The US standards for civil liability for misstatements or omissions in the prospectus in similar to that in Canada, as are statutory defences. The US also features a liability regime for misstatements or omissions in continuous disclosure documents that is similar to the Canadian equivalent, with some distinctions. As in Canada, indemnification and liability insurance can limit potential liability to directors and officers.

VII. Conclusion

Canada's capital market features a variety of methods to taking a private company public, as overviewed in this guide. The Securities and Corporate Finance group at Dentons Canada has broad experience across this area. We would welcome the opportunity to discuss any points touched on in this guide, and how any of them might make sense for your business.

SCHEDULE "A"
Stock exchange listing requirements

The four stock exchanges in Canada are TSX, TSXV, NEO and CSE.

TSX and TSXV, the longstanding senior and junior exchanges, are owned by TMX Group Inc., which is a public company with its own securities listed on TSX.

These two exchanges set out their listing standards by industry, which are replicated below.

NEO and CSE are described, and their listing standards are set out, in parts B and C below, respectively.

A. TSX AND TSXV

TSX Mining

TSX

	TSX NON-EXEMPT EXPLORATION AND DEVELOPMENT STAGE	TSX NON-EXEMPT PRODUCER	TSX EXEMPT
Property Requirements	Advanced Property detailed in technical report prepared by an independent qualified person. Minimum 50% ownership of property.[3]	At least three years proven and probable reserves as calculated by an independent qualified person (if not in production, a production decision made).	At least three years proven and probabl reserves as estimated by an independe qualified person.
Recommended Work Program	$750,000 on advanced exploration property[2] as recommended in a technical report[6] prepared by an independent qualified person.	Bringing the mine into commercial production.	Commercial level mining operations.
Working Capital and Financial Resources	Minimum $2,000,000 working capital and appropriate capital structure. Sufficient funds to complete planned programme meeting G&A[1] costs, property payments and capital expenditures for 18 months.	Sufficient funds to bring the mine into commercial production; plus adequate working capital for all budgeted capital expenditures and to carry on the business. Appropriate capital structure.	Adequate working capital to carry on th business. Appropriate capital structure
Net Tangible Assets, Earnings or Revenue	$3,000,000 net tangible assets.	$4,000,000 net tangible assets; evidence indicating a reasonable likelihood of future profitability supported by a feasibility study or documented historical production and financial performance.	$7,500,000 net tangible assets; pre-tax profitability from ongoing operations in fiscal year; pre-tax cash flow of $700,0 last fiscal year and average pre-tax cas of $500,000 for past two fiscal years.
Other Criteria	Management-prepared 18 month projection (by quarter) of sources and uses of funds detailing all expenditures and signed by CFO.		Up-to-date, comprehensive technical r prepared by independent qualified pers
Management and Board of Directors	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's mining pr as well as adequate public company experience. Companies are required to have at least two independent directors, a Chief Executive Of (CEO), a Chief Financial Officer who is not also the CEO, and a Corporate Secretary.		
Distribution, Market Capitalization and Public Float	Minimum 1,000,000 freely tradeable shares with market value of $4,000,000 held by at least 300 public holders, each with one board lot or more.		
Sponsorship	Required (may be waived if sufficient previous third party due diligence).		Not required.

TSXV

	TSXV TIER 1	TSXV TIER 2
Property Requirements	Material interest in a Tier 1 property.[4]	Significant interest[5] in a qualifying property or, at discretion of TS a right to earn a significant interest[5] in a qualifying property. Suffi evidence of no less than $100,000 of exploration expenditures on qualifying property in the past three years.
Recommended Work Program	$500,000 on the Tier 1 property[4] as recommended in a geological report.[6]	$100,000 of Approved Expenditures by the issuer on the qualifyin property within 36 months period preceding application of listing $200,000 on the qualifying property as recommended in a geological report[6].
Working Capital and Financial Resources	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 months following listing; $200,000 in unallocated funds.	Adequate working capital and financial resources to carry out sta work program or execute business plan for 12 months following listing; $100,000 in unallocated funds.
Net Tangible Assets, Earnings or Revenue	$2,000,000 net tangible assets.	No requirement.
Other Criteria	A geological report[6] recommending completion of work program.	
Management and Board of Directors	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's mining pro as well as adequate public company experience. Companies are required to have at least two independent directors, a Chief Executive Offi (CEO), a Chief Financial Officer who is not also the CEO, and a Corporate Secretary.	
Distribution, Market Capitalization and Public Float	Public float of 1,000,000 shares; 250 public shareholders each holding a board lot and having no resale restrictions on their shares; 20% of issued and outstanding shares in the hands of public shareholders.	Public float of 500,000 shares; 200 public shareholders each holding a board lot and having no resale restrictions on their shares; 20% of issued and outstanding shares in the hands of public shareholders.
Sponsorship	Sponsor report may be required.	

① "G&A" means general and administrative expenses.

② TSX will consider a property to be sufficiently advanced if continuity of mineralization is demonstrated in three dimensions at economically interesting grades.

③ A company must hold or have the right to earn and maintain at least a 50% interest in the property. Companies holding less than a 50% interest will be considered on a case-by-case basis looking at program size stage of advancement of the property and strategic alliances.

④ "Tier 1 property*" means a property that has substantial geological merit and is:

a. a property in which the Issuer holds a material interest;

b. a property on which previous exploration, including detailed surface geological, geophysical and/or geochemical surveying and at least an initial phase of drilling or other detailed sampling (such as trench or underground opening sampling), has been completed;

c. a property that has, at a minimum, a current inferred mineral resource; and

d. an independent geological report recommends a minimum $500,000 Phase 1 drilling (or other form of detailed sampling) program based on the merits of previous exploration results; or an independent, positive feasibility study demonstrates that the property is capable of generating positive cash flow from ongoing operations.

* see guidance note at Policy 1.1 of the TSXV Corporate Finance Manual

⑤ "significant interest" means at least 50% interest.

⑥ "geological report" or "technical report", in the case of a mining property, is a report prep in accordance with National Instrument 43-101[1] – Standards of Disclosure for Mineral Pro or any successor instrument.

[1] Mining Disclosure Standards

National Instrument 43-101 is the Canadian Securities Administrators' policy that governs the scientific and technical disclosure for mineral projects made by mineral exploration and mini companies, including the preparation of technical reports. The instrument covers oral statem as well as written documents and websites. NI 43-101 requires that all technical disclosure b prepared by or under the supervision of a "qualified person." Issuers are required to make dis of reserves and resources using definitions approved by the Canadian Institute of Mining, Met and Petroleum. National Instrument 43-101 is available at: www.osc.gov.on.ca/en/15019.htm

TSX Industrial, Technology and Research & Development

	TSX NON-EXEMPT TECHNOLOGY ISSUERS[1,7]	TSX NON-EXEMPT RESEARCH AND DEVELOPMENT (R&D) ISSUERS[7]	TSX NON-EXEMPT FORECASTING PROFITABILITY[7]	TSX NON-EXEMPT PROFITABLE ISSUERS[7]	TSX EXEMPT INDUSTRIAL COMPANIES[8]
Earnings or Revenue			Evidence of earnings from on-going operations for the current or next fiscal year of at least $200,000[2] before tax and extraordinary items.	Earnings from on-going operations of at least $200,000 before tax and extraordinary items in the last fiscal year.	Earnings from on-going operations of at least $300,000 before tax and extraordinary items the last fiscal year.
Cash Flow			Evidence of pre-tax cash flow for the current or next fiscal year of at least $500,000.[2]	Pre-tax cash flow of $500,000 in the last fiscal year.	Pre-tax cash flow of $700,000 in the last year, and an average pre-tax cash flow of $500,000 for the past two fiscal years
Net Tangible Assets			$7,500,000[3]	$2,000,000[3,4]	$7,500,000[3]
Adequate Working Capital and Capital Structure	Funds to cover all planned development expenditures, capital expenditures, and G&A[5] expenses for one year.[6]	Funds to cover all planned R&D expenditures, capital expenditures and G&A[5] expenses for two years.[6]	Working capital to carry on the business, and an appropriate capital structure.		
Cash in Treasury	Minimum $10,000,000 in the treasury, the majority of which has been raised by the issuance of securities qualified for distribution by a prospectus.	Minimum $12,000,000 in the treasury, the majority of which has been raised by the issuance of securities qualified for distribution by a prospectus.			
Products and Services	Evidence (satisfactory to TSX) that products or services at an advanced stage of development or commercialization and that management has the expertise and resources to develop the business.[9]	Minimum two year operating history that includes R&D activities. Evidence (satisfactory to TSX) of technical expertise and resources to advance its research and development programme(s).[10]			
Management and Board of Directors	Management, including the board of directors, should have adequate experience and technical expertise relevant to the company's busine and industry as well as adequate public company experience. Companies are required to have at least two independent directors, a Chief Executive Officer (CEO), a Chief Financial Officer who is not also the CEO, and a Corporate Secretary.				
Public Distribution and Market Capitalization	Minimum 1,000,000 free trading public shares. Minimum $10,000,000 held by public shareholders. 300 public shareholders each holding a board lot. Minimum $50,000,000 market capitalization.	Minimum 1,000,000 free trading public shares. Minimum $4,000,000 held by public shareholders. 300 public shareholders each holding a board lot or more.			
Sponsorship	Sponsor Report may be required (generally not required for IPOs or TSXV Graduates).				Not required.

	TSXV TIER 1 INDUSTRIAL TECHNOLOGY LIFE SCIENCES	TSXV TIER 2 INDUSTRIAL TECHNOLOGY LIFE SCIENCES	TSXV TIER 1 REAL ESTATE OR INVESTMENT	TSXV TIER 2 REAL ESTATE OR INVESTMENT
Net Tangible Assets, Revenue or Arm's Length Financing (as applicable)	$5,000,000 net tangible assets or $5,000,000 revenue. If no revenue, two-year management plan demonstrating reasonable likelihood of revenue within 24 months.	$750,000 net tangible assets or $500,000 in revenue or $2,000,000 Arm's Length Financing. If no revenue, two-year management plan demonstrating reasonable likelihood of revenue within 24 months.	Real Estate: $5,000,000 net tangible assets. Investment: $10,000,000 net tangible assets.	$2,000,000 net tangible as or $3,000,000 Arm's Lengt Financing.
Adequate Working Capital and Capital Structure	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 months following listing; $200,000 unallocated funds.	Adequate working capital and financial resources to carry out stated work program or execute business plan for 12 months following listing; $100,000 unallocated funds.	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 months following listing; $200,000 unallocated funds.	Adequate working capital financial resources to carr stated work program or ex business plan for 12 mont following listing; $100,000 unallocated funds.
Property	Issuer has significant interest in business or primary asset used to carry on business.		Real Estate: Issuer has significant interest[11] in real property. Investment: No requirement.	
Prior Expenditures and Work Program	History of operations or validation of business.		Real Estate: No requirement. Investment: Disclosed investment policy.	Real Estate: No requirement. Investment: (i) disclosed investment pc and (ii) 50% of available fu must be allocated to at lea two specific investments.
Management and Board of Directors	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's busir and industry as well as adequate public company experience in Canada or a similar jurisdiction. Companies are required to have at l two independent directors, a Chief Executive Officer (CEO), a Chief Financial Officer who is not also the CEO, and a Corporate Secret			
Distribution, Market Capitalization and Public Float	Public float of 1,000,000 shares; 250 public shareholders each holding a board lot and having no resale restrictions on their shares; 20% of issued and outstanding shares in the hands of public shareholders.	Public float of 500,000 shares; 200 public shareholders each holding a board lot and having no resale restrictions on their shares; 20% of issued and outstanding shares in the hands of public shareholders.	Public float of 1,000,000 shares; 250 public shareholders each holding a board lot and having no resale restrictions on their shares; 20% of issued and outstanding shares in the hands of public shareholders.	Public float of 500,000 sha 200 public shareholders e holding a board lot and ha no resale restrictions on t shares; 20% of issued and outstanding shares in the of public shareholders.
Sponsorship	Sponsor report may be required.			

The listing requirements above must be met at the time of listing. Any funds raised or transactions closing concurrent with listing contribute to the company meeting the listing requirements.

1. Generally includes companies engaged in hardware, software, telecommunications, data communications, information technology and new technologies that are not currently profitable or able to forecast profitability.
2. Applicants should file a complete set of forecast financial statements covering the current and/or next fiscal year (on a quarterly basis). Forecasts must be accompanied by an independent auditor's opinion that the forecast complies with the CICA Auditing Standards for future-oriented financial information. Applicants should have at least six months of operating history, including gross revenues at commercial levels for the last six months.
3. Under certain circumstances, deferred development charges or other intangible assets can be included in net tangible asset calculations.
4. Companies with less than $2 million in net tangible assets may qualify for listing if the earnings and cash flow requirements for exempt companies are met.
5. "G&A" means general and administration expenses.
6. A quarterly projection of sources and uses of funds, for the relevant period, including related assumptions signed by the CFO must be submitted. Projection should exclude uncommitted payments from third parties or other contingent cash receipts. R&D issuers should exclude cash flows from future revenues.
7. Exceptional circumstances may justify granting of a listing, notwithstanding minimum requirements – generally an affiliation with established business and/or exceptionally strong financial position is required.
8. (7), as well as for granting Exempt status. Special purpose issuers are generally consider on an exceptional basis.
9. "Advanced stage of development or commercialization," generally restricted to historical revenues from the issuer's current business or contracts for future sales. Other factors may also be considered.
10. Other relevant factors may also be considered.
11. "significant interest" means at least 50% interest.

B. NEO

The NEO Exchange was set up as an alternative to TSX and TSXV and is backed by several Canadian institutional investors. It has been in operation since 2014 and markets itself as providing greater (and free) transparency to investors, and as having countered "predatory practices" such as high-frequency trading associated with the traditional exchanges.

As of the date of this guide, there are 33 companies (including listed shells, as noted in Parts V.c and V.d) and 85 funds listed on NEO.

NEO has quantitative and qualitative criteria for listing across industries, rather than having criteria differ by industry.

i. Quantitative Criteria

The company must demonstrate at the time of the application to list on NEO that it meets the requirements of at least one of the following categories:

1. **Equity Standard:**

- Shareholders' equity of $5,000,000;
- Market value of public float of $10,000,000; and
- An operating history of at least two years.

2. **Net Income Standard:**

- Shareholders' equity of $2,5000,000;
- Market value of public float of $5,000,000; and
- Net income from continuing operations in the last fiscal year, or in two of its last three fiscal years, of at least $750,000.

3. **Market Value Standard:**

- Shareholders' equity of $2,500,000;
- Market value of securities listed (or to be listed) on the NEO, another Canadian marketplace or a foreign exchange (for which the company demonstrates that the exchange and securities law requirements of the foreign exchange and jurisdiction are substantially similar to the requirements of the NEO and Ontario securities laws) of $50,000,000; and
- Market value of public float of $10,000,000.

4. **Asset and Revenue Standard:**

- Total assets and total revenues in the last fiscal year, or in two of its last three fiscal years, of at least $50,000,000 each; and
- Market value of public float of at least $5,000,000.

The NEO also has minimum requirements generally applicable to all listing category standards:

Minimum Requirements:

- Public float distribution of 1,000,000 securities and 300 public security holders (not a director, officer or 10% security holder) holding at least a board lot.
- A price of $2 per security, subject to certain exemptions.
- Adequate working capital to carry on business and an appropriate capital structure.
- A written investor relations strategy and an annual investor relations budget of at least $50,000.

ii. Qualitative Criteria

NEO has qualitative listing requirements with respect to the management of a company, including:

i. Acting with integrity;

ii. Conducting the business and affairs of the company with integrity and in the best interests of securityholders;[4] and

ii. Knowledge and expertise relevant to the business of the company.

4 This is different from the fiduciary duties of directors and officers under corporate law, which requires them to act in the best interest of the company.

C. CSE

The CSE is a private company operated by CNSX Markets Inc. It offers a simplified listing process, which has proved attractive for junior companies. There are almost 700 companies listed on CSE as of the date of this guide.

The CSE's listing requirements vary depending on the type of securities to be listed – equity or debt – rather than by industry, as to TSX and TSXV. It also sets out both quantitative and qualitative criteria for each security type:

i. *Quantitative Criteria*

Equity Securities:

- A public float of at least 500,000 freely tradeable shares and at least 150 public holders holding at least a board lot each of the security; that constitutes at least 10% of the total issued and outstanding number of that security.
- Either:
    - An operating company with revenue from the sale of goods or services;
    - A non-operating company with financial resources to carry out a proposed work plan or achieve stated objectives for 12 months following a listing (subject to a minimum of $200,000 in working capital at the time of listing) and have advanced to a stage of development at which additional financing is typically available to companies in the industry; or
    - A company that is listed on an exchange in Canada and is not proposing a transaction or change that would be considered a fundamental change under CSE Policy 8 provided that the company has the resources to achieve stated objectives for 12 months following listing (this qualification will not be met by a company that is only listed on a board or tier of a stock exchange that is designated for issuers that do not meet the ongoing requirements of that exchange).
- If an operating company, has achieved revenue from the sale of goods or services and has financial resources and a business plan that demonstrates a reasonable likelihood that the company can sustain its operations and achieve its objectives for 12 months following listing.
- If a non-operating company, a significant interest in its primary business or asset, a history of development of the business or asset and specific objectives and milestones and the financial resources necessary to achieve them.
- Management with a track record of acquiring and divesting interests in arm's length enterprises in a manner that can be characterized as conducting an active business and a clearly defined investment policy disclosed in the listing statement.

- Must not sell shares offered in an initial public offering for less than $0.10 per share or unit and, for issuers not yet generating revenue from business activity, no securities can have been issued to a related party for less than $0.005 per share in the previous 18-month period.

Debt Securities:

- Net assets of at least $1 million (the assets of an underlying entity may be considered for a special purpose vehicle or holding company).

ii. *Qualitative Criteria*

Equity Securities:

- A reporting issuer in Canada (excluding certain issuers, such as those deemed to be reporting solely as a result of Multilateral Instrument 51-105 - *Issuers Quoted in the US Over-the-counter Markets* (MI 51-105) or any successor or similar rule or law in Canada).
- Not be in default of any securities law requirements in any Canadian jurisdiction.

Debt Securities:

- A reporting issuer in Canada (excluding MI 51-105 issuers); or
- Want to list debt securities issued or guaranteed by a government in Canada that are exempt from the prospectus requirements pursuant to section 73(1)(a) of Ontario's *Securities Act* (OSA) and filed a prospectus in Canada for those securities; or
- Want to list debt securities issued or guaranteed by a financial institution that are exempt from the prospectus requirements pursuant to section 73(1)(b) of the OSA and filed a prospectus in Canada for those securities; and
- Not be in default of any securities law requirements in any Canadian jurisdiction;
- Appoint a trustee or other independent representative to hold the assets and represent the holders of any asset-backed securities; and
- Appoint a payment agent acceptable to the CSE.

In addition to the above, issuers wanting to list equity or debt securities on the CSE must:

i. Not have any related persons or investor relations persons associated with the company that have been convicted of fraud, breach of fiduciary duty, violations of securities laws (other than minor breaches that do not give rise to investor protection or market integrity concerns) or any other activity that concerns the integrity of conduct; and

ii. Have an acceptable capital structure.

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