

# Thinking about going public in Canada?

There are a few things you should consider first.



Becoming a public company is a major step for any business. With continuous disclosure requirements becoming more complex and governance issues mounting, it's critical that companies planning an initial public offering (IPO) do just that—plan—thoroughly and well in advance of any target dates they have in mind.



Certainly, the process can be broken down into fairly broad strokes: initial preparation; file a preliminary prospectus; address any issues raised by the exchange or by provincial securities regulators; issue a final prospectus; wait for the regulator's final decision document; then begin trading shares and operating as a public company.

Making all that happen, however, is far from simple. It takes time, people and resources—both internal and external—to effectively execute the IPO process. The challenges of collecting and providing all the information an IPO prospectus requires are significant, and the importance of assembling the right people—from the management team to the necessary legal, financial and advisory help—can't be understated.

No company should embark on an IPO without a solid knowledge of what's involved. Regardless of industry, private companies looking to go public in Canada follow the same process and take similar steps. This paper provides an overview of those key steps, reviews the information all companies must provide and points to some common challenges IPO aspirants may face along the way.

# The five phases of the IPO process

Specifically, there are five phases to an IPO, each with particular requirements that must be met in order to facilitate a smooth and timely process:

**Phase 1: initial preparation**

The first phase is actually where many companies get derailed, often never truly catching up and putting the overall IPO’s success in jeopardy. There are numerous critical factors in the preparation stage, which include

- establishing a target date for filing,
- developing a business plan,
- selecting lawyers, auditors and underwriters,
- strengthening internal controls,
- preparing financial statements,
- undertaking tax planning and corporate restructuring,
- determining the makeup of the board and the management team,
- reviewing executive compensation policies,
- reviewing material contracts and compiling due diligence materials,
- identifying the appropriate stock exchange (for example TSX or TSX Venture),
- having a pre-filing consultation with the selected exchange.

**Selecting the stock exchange appropriate for your IPO is critical, as each offers different advantages, depending on your company’s size and needs:**

**TSX VERSUS TSX VENTURE**

<b>TSX</b>	<b>TSX Venture</b>
International institutional investors	Access to capital in early stage
Greater analyst coverage	Multiple financing rounds
Globally visible indices	Tailored listing, continuous disclosure and corporate governance practices
Corporate governance practices	Graduation to TSX
Average market cap of \$1.5 billion	Extensive mentoring program for new entities
30 percent of large companies listed in US as well	Average market cap of \$14 million
	Cost efficiency

## Phase 2: the preliminary prospectus

Prospectus development is critical. Not only must you include a large amount of specific information—both financial and non-financial—you should also try to frame your information and goals in ways that will be compelling to potential investors. Once you’ve established a target date for filing and selected your underwriters, the process of due diligence—and collecting the large amount of information required for the IPO—should begin in full. This means forming a collaborative working group comprised of you—the issuer—and your counsel; the underwriter and their counsel; and the auditors.

## The prospectus requires a broad range of information:

- a description of the offering
- a description of the company
- detailed financial information (see below)
- management’s discussion and analysis
- detailed information on management, directors and principal shareholders
- “full, true and plain disclosure of all material facts” signed by the CEO, CFO and two directors
- the same representation from the underwriter, with the addition of “to the best of our knowledge, information and belief”

Note that parties preparing the prospectus (except the issuer) have a “due diligence” defence when it comes to personal liability for the prospectus.



### French translation

If an issuer wishes to distribute securities in Quebec, the IPO prospectus must be translated into French.

## Financial statements included in the prospectus

### Prospectus requirements include the following:

- Statement of income, changes in equity and cash flows for the three most recently completed financial years; statement of financial position for the end of the two most recently completed financial years; and an auditor’s report.
- Regulatory changes proposed for adoption on June 30, 2015 as per our recently released TSC Venture changes document should be addressed.
- Required annual financial statements are for years ended more than 90 days before the date of the prospectus (120 days before the date of the prospectus for TSX Venture entities).
- The third year of income, equity and cash flows and the second year of financial position are omitted if audited financial statements are within 90 days before the date of the prospectus.
- Comparative quarterly financial statements for the period ending more than 45 days before the date of the prospectus (60 days for TSX Venture).
- All statements must be audited except for junior entities whose (i) assets are less than \$10 million, (ii) revenue is less than \$10 million and (iii) shareholders’ equity is less than \$10 million. Junior entities also don’t need their second and third previous years to be audited.
- Financial statements included in the prospectus and prepared for continuous disclosure should comply with IFRS; there are some exceptions for SEC issuers and certain foreign issuers.
- Issuers can elect to present the two most recent years of financial statements in accordance with IFRS and the third year in accordance with the issuer’s previous accounting principles (two sets of financial statements). The second set must be comparative, which brings into presentation a fourth set of financial statements, or they can do year two and three according to previous accounting principles as a second set.

### Phase 3: the waiting period

After the preliminary prospectus is filed, you enter a waiting period—typically around four weeks—as provincial regulators prepare their comments. Once you receive them, you have the opportunity to either respond or to revise the prospectus based on the comments and submit a final draft. A similar process is followed for comments from the TSX or TSX Venture with respect to their listing requirements.

During this phase, underwriters may make presentations to institutional investors and investment dealers, often done as a road show. The underwriting agreement is also finalized.

### Phase 4: the final prospectus

Once all comments from securities regulators are resolved, you will get clearance to file the final prospectus. You must also ensure the TSX or TSX Venture has provided you with a conditional letter of approval to issue shares. At this point, you and the underwriter finalize the price and size of the offering, enter into an underwriting agreement and file the prospectus.

The final prospectus, which is understood to be a “full, true and plain disclosure of all material facts,” is used as a marketing document by the offeror and the underwriter. It’s important to note, however, that a new regulation—NI 41-101—allows for a “testing of the waters” exemption. This allows the offeror and the underwriter to solicit confidential expressions of interest from accredited investors through an investment dealer—prior to the prospectus being filed—to ascertain if there is sufficient interest in the proposed offering.

### Phase 5: closing

Approximately five days after the final prospectus is filed, a decision document is issued by the regulator. At closing, securities are issued, proceeds from the issue are delivered to the issuer and shares begin trading on either the TSX or TSX Venture exchange.



### Escrowed shares

Both the TSX and TSX Venture impose escrow requirements on the securities held by directors, officers, principal shareholders and promoters for release over 18 to 36 months. Underwriters may request that key individuals contractually agree to restrict resale of their securities for a period of time.

# Corporate governance

The importance of corporate governance pervades virtually every issue facing business organizations today. Going public is no different, although there are different governance rules depending on whether you file with the TSX or the TSX Venture.

For the TSX, the board will need three independent directors who are financially literate to serve on the audit committee while a TSX Venture board requires two. It is a listing requirement for both the TSX and TSX Venture that management and the board have adequate experience and technical expertise relevant to the entity's business and industry, as well as public company experience. Also, election of directors is individually – in other words, no slate voting.

You should also address the following voluntary corporate governance guidelines, as issued by regulators:

- The board should consist of a majority of independent directors with an independent chair.
- Written board and committee mandates should be developed.
- Clear position descriptions should be developed for the chairman of the board, chairs of committees and the CEO.
- A written code of conduct and ethics should be established.
- An entirely independent nominating and compensation committee should be created.
- There should be regular assessments of the board, all committees and each board member's effectiveness.

## **Alternative ways to go public**

The preceding steps cover the typical IPO process. There are, however, other scenarios in which a company can go public.

### **Reverse takeover of an existing TSX- or TSX Venture-listed issuer**

A publicly listed company (typically dormant) acquires a private issuer; shareholders of the private issuer become the controlling shareholders of the publicly listed issuer; the transaction is subject to the approval of the shareholders of the listed company; a proxy circular is prepared with financial statements similar to the requirement in an IPO prospectus; the private issuer conducts due diligence on the public shell company to ensure any legacy issues in the public shell are identified.

### **Capital pool company**

A company with no commercial operations and no assets except cash completes an IPO—raising between \$200,000 and \$4.7 million and obtaining a listing on the TSX Venture—with the sole purpose of completing a required qualifying transaction within two years; the company completes the necessary qualifying transaction within two years. The advantage of this method over a reverse takeover is that the approval of a capital pool company's shareholders is not required (unless they are not at arm's-length). Prospectus-level disclosure is, however, required.

### Common challenges to going public

Whichever approach your company takes to going public, experience shows that there are a number of challenges common to the process. These include:

- coping with increased continuous disclosure obligations
- managing relationships with shareholders
- staying focused on day-to-day business concerns
- adapting to reduced flexibility with respect to board, and sometimes shareholder, involvement
- dealing with increased vulnerability to takeover
- meeting the demands of increased regulatory scrutiny
- handling the selective disclosure of information, including competitive information
- resisting pressure to keep stock up at all costs, which can engender a short-term outlook inconsistent with existing strategy
- getting experienced, capable senior management and board members in place
- dealing with an owner who isn't ready to cede control of the company
- managing interest from the investment community

According to Investopedia.com, the TSX was created by 24 men in October 1861. There were only 18 stocks listed on the exchange, mostly banks and real estate companies. At first it cost only \$5 for companies to list on the Toronto Stock Exchange, but that increased to \$250 a decade later. By 1901 there were 100 companies on the TSX and in 1913 the exchange moved into its very own building. By 1936 the TSX was North America's third largest exchange.

### Preparation enables ambition

No matter how ready they think they are, companies tend to underestimate the amount of time the IPO process demands. The fact is, the challenges that inevitably present themselves—both expected and unforeseen—can be many and varied. Going public is not a “quick-turnaround” undertaking, and—as one of the most pivotal turning points in any company's life—the planning should start the day you start talking about it.

At Grant Thornton, we have a broad, established background working with both public and private companies. We also understand the dynamics of the public market, the advantages different stock exchanges offer, the difficulty of building a comprehensive and compelling prospectus, and the complexities involved in fulfilling an IPO's many regulatory and exchange-related requirements. In other words, we know what it takes to help dynamic private companies take the next step, execute a quality IPO process and become a public company that's ready to succeed in the Canadian marketplace and beyond.

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**For more information on preparing for and executing your company's IPO, please speak to your Grant Thornton advisor or contact our Public Company Advisory practice directly at:**

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