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OPPORTUNITIES ABOUND IN CANADIAN CAPITAL MARKETS

A Case for Indian entrepreneurs

The Canadian capital markets offer substantial opportunities for Indian companies interested in raising capital and gaining further exposure to foreign investors. The senior market for public trading in Canada is the Toronto Stock Exchange ("TSX") while the TSX Venture Exchange ("TSXV") serves as the largest "venture" market in Canada. The TSX/TSXV form part of the larger TMX Group. These two exchanges have provided issuers with access to equity capital for over 150 years, and with 4,057 listed issuers as of July 31, 2012[1] the TSX/TSXV list the second highest number of companies of any exchange in the world. By comparison, the New York Stock Exchange ("NYSE") has approximately 2,800 issuers; the NASDAQ lists approximately 2,680 companies while London's Alternative Investment Market ("AIM") is home to 1,253 companies.

The TSX is Canada's senior exchange and lists approximately 1,577 senior issuers with a market capitalization of $2 trillion. In 2011, issuers listed on the TSX/TSXV raised approximately $51 billion[2] in total financing, which ranked it as the sixth largest exchange group by equity capital raised. So far this year, financings on the TSX/TSXV amount to approximately $32 billion. Companies with smaller capitalizations list on the TSXV. There are approximately 2,480 issuers listed on the TSXV with a total market capitalization of $40 billion.

The TSXV issuers operate in a wide range of sectors including mining, oil and gas, industrial, life sciences, technology and financial services.

For international issuers and investors, the TSX/TSXV provides capital funding opportunities at every stage of growth. Investors looking to make ground-floor investments can look to the TSXV for small cap companies in need of public venture capital while the TSX attracts mature and advanced stage companies.

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1 Unless otherwise stated, all data is current as of July 31, 2012.

2 Unless otherwise stated, all dollar values are quoted in Canadian dollars.

ADVANTAGES OF LISTING ON THE TSX/TSXV

The principal advantages to listing on the TSX or TSXV are the overall value the company will receive in terms of market leadership, cost competitiveness, industry support and access to capital.

Market Leadership

Mining

Canada is internationally known for its abundance of natural resources. Not surprisingly, Canadian capital markets are particularly attractive to the mining and oil and gas sectors. Mining is one of Canada's most significant industries and the TSX is considered one of the premier exchanges for mining companies globally. Over 58% of the world's public mining companies have listed their securities on the TSX or TSXV. In 2011, the TMX Group was the home exchange for 2,021 financings which together raised over $12.5 billion in equity capital in the mining sector. The first seven months of 2012 brought 157 IPOs raising over $1.6 billion.

There are 1,668 mining issuers on the TSX/TSXV with a combined quoted market value of $370 billion. The world's leading mining companies are tracked on the TSX through the S&P/TSX Global Mining Index, which provides investors with a global snapshot of publicly-traded mining companies. Through the TSX/TSXV and the S&P/TSX Global Mining Index, investors have access to companies such Goldcorp Inc. (G), Potash Corporation of Saskatchewan Inc. (POT), Agrium Inc. (AGU), Barrick Gold Corporation (ABX), Ivanhoe Mines Ltd. (IVN), Kinross Gold Corporation (K), Yamana Gold Inc. (YRI), Silver Wheaton Corp. (SLW) and Teck Resources Limited (TCK).

Energy

The TSX/TSXV is also recognized as a global leader in energy and houses over 35% of the world's publicly traded oil and gas companies. This leadership stems from Canada's long history of financing energy exploration and development companies. By the end of July 2012, there were over 400 listed issuers in the energy sector with a quoted market value of over $350 billion. The oil and gas industry raised over $10.1 billion through 453 equity financings in 2011 and over $3.6 billion through 198 equity financings in the first seven months of 2012. Canadian Natural Resources Limited (CNQ), EnCana Corporation (ECA), Husky Energy Inc. (HSE), Imperial Oil Limited (IMO), Cenovus Energy Inc. (CVE), Talisman Energy Inc. (TLM), Crescent Point Energy Corp. (CPG), Canadian Oil Sands Limited (COS) and Suncor Energy Inc. (SU) are all listed on the TSX.

High Tech

In addition to Canada's top tier status in the fields of mining and energy, the TSX and TSXV offer opportunities for capital formation and trading liquidity for companies operating in several other industry sectors. For example, TSX/TSXV have the second highest concentration of technology companies in North America with a combined quoted market value of over $38 billion. Tech issuers listed on the TSX include Research in Motion Limited (RIM), Open Text Corporation (OTC), Celestica Inc. (CLS) and CGI Group Inc. (GIB).

ETFs

Trading in the world's first Exchange Traded Fund (ETF) (a single security that tracks the performance of an index) began in 1990 on the TSX. By the end of July 2012, there were 271 TSX-listed ETF issuers with a quoted market value of over $60 billion.

Clean Tech

The TSX/TSXV is also highly active in the clean technology/renewable energy sector. As of the end of July 2012, there were 122 issuers in this sector with a quoted market value of almost $17.6 billion. Last year, 76 financings raised over $1 billion in equity capital. Among those was the $100 million initial public offering ("IPO") of EcoSynthetix Inc. (ECO), which now has a quoted market value of over $226 million. Examples of clean tech issuers on the TSX/TSXV are Brookfield Renewable Energy Partners L.P. (BEP), Westport Innovations Inc. (WPT), Northland Power Inc. (NPI), Algonquin Power & Utilities Corp. (AQN), Innergex Renewable Energy Inc. (INE), Newalta Corporation (NAL), ATS Automation Tooling Systems Inc. (ATA), Boralex Inc. (BLX) and Cascades Inc. (CAS).

Low Cost of Listing

From a cost perspective, achieving and maintaining a listing on the TSX is very competitive. The base fee for international issuers with market capitalizations of $50M - $100M is $76,750 plus a variable fee of 0.127% for listing excess capitalization. By comparison, the NASDAQ Global Select Market Entry Fees for corporations with over US$50 million market capitalization is US$200,000. In London, the fees for companies with market capitalizations of £50-250 million on the AIM is a maximum of £94,100 (approximately $148,483).

Supportive Financial Network & Legal Environment

Canada also offers a well established financial market and a legal system based on the same British common law principles familiar to Commonwealth nations such as India. Natural resource companies that trade in Canada have access to a large support network comprising research analysts, investment bankers and legal advisors who are specialists in their fields. For example, more than 200 dedicated analysts cover TSX/TSXV listed mining companies. On the investor side, Canadian institutional and high net worth investors are conversant, if not proficient, in the mining and energy sectors.

The Canadian securities regulatory system is highly evolved and transparent. There is a clear system of rules and policies to guide issuers with specific regulations addressing disclosure standards for issuers in certain industries. These disclosure standards are designed to assist the public in making investment decisions. There are also supplemental rules and instruments regulating the mining and energy industries that recognize the large amount of risk capital required in mining, energy and mineral exploration. Mining companies are required to comply with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("NI 43-101") in order to enhance the accuracy and integrity of disclosure in the mining sector. NI 43-101 focuses on five core principles: the involvement of a qualified person; standardized terminology and definitions; the prohibition of misleading disclosure; contextual and cautious disclosure; and technical report supporting disclosure. Similarly, oil and gas companies must follow National Instrument 51-101 *Standards of Disclosure of Oil & Gas Projects* ("NI 51-101") which requires the annual disclosure of oil and gas reserves, properties, activities and technical reports. Please also see the minimum listing requirements for mining and oil & gas issuers on the TSX/TSXV in Appendix A.

In terms of civil liability, all corporate directors and officers face civil liability to investors for misrepresentations in offering and continuous disclosure documents. Recent changes to the *Securities Act* (Ontario) have also increased the scope of civil liability relating to secondary market disclosure, subject to caps on this liability. In general, however, the market in Canada is substantially less litigious than many other jurisdictions such as the United States.

Cross Border Capabilities

Another benefit of listing on the TSX/TSXV is the proximity to and similarities between the Canadian and American markets that make it relatively easy for issuers to access capital on both sides of the border. For example, there are approximately 166 American companies listed on the TSX/TSXV and roughly 32% of TSX-listed issuers with market capitalizations of more than $500 million are listed on a U.S. exchange. The NYSE houses 99 TSX-listed issuers including EnCana Corporation (ECA) and Suncor Energy Inc. (SU).

It is important to note that companies listing on the TSX/TSXV need not be incorporated in Canada. However, the TSX may impose additional requirements on foreign companies depending on their nationality, to ensure that they have the same level of corporate governance, and are prepared to implement disclosure and investor protection mechanisms equivalent to those of Canadian companies. For example, the TSX may require foreign companies to introduce additional shareholder rights on par with Canadian incorporated companies. Once the TSX/TSXV receives an application, it will review the corporate governance regime in the relevant country to determine if any additional requirements are warranted. In general, at least two members of the company's board of directors must be independent and there must be at least two members with board experience on a public North American company.

EMERGING MARKETS COMPANIES LISTING ON THE TSX/TSXV

While the TSX/TSXV continues to service Canadian mining and oil and gas companies, many with significant foreign assets, it has also become increasingly attractive to foreign companies. There are more than 355 international issuers listed on the TSX/TSXV and they constitute approximately 9.3% of the TMX Group. These international issuers raised $3.8 billion in equity financing in 2011. Though American issuers remain the largest component of international companies on the TSX/TSXV at 48%, Chinese/Asian companies have been steadily increasing their presence in recent years. 17% of all TSX/TSXV-listed international issuers are China/Asia-based companies, compared with 10% from the United Kingdom/Europe and 11% Australia. At last count, there were 40 Chinese/Asian companies listed on TSXV and 16 on the TSX, with a combined market capitalization of $4.5 billion. These companies are largely invested in mining, manufacturing and diversified industries.

The reach of TSX/TSXV companies also extends to Latin America. For example, in 2006, Brazilian mining company Companhia Vale do Rio Doce ("Vale") made a US$17 billion takeover bid for Inco, a leading producer of nickel, copper, cobalt and precious metals. Vale is now the second largest mining company in the world, with a market capitalization of more than US$ 125 billion. Chariot Resources Limited (CHD), a TSXV to TSX graduate, owns Mina Justa Project which is one of the premier advanced stage copper projects in South America. Talon Metals Corp. (TLO), a TSX-listed company, recently finalized an agreement giving it the right to acquire a 75% interest in a subsidiary of Lara Exploration Ltd. (LRA), which holds all 13 of Lara's potash exploration licences located in Sergipe State, Brazil. It also concluded an agreement with Brazauro Resources Corporation (BZO) granting Brazauro an option to earn a 100% interest in Talon's Água Branca Gold Project in the Tapajós Gold District in Pará State, Brazil. There are approximately 40 TSX/TSXV listed companies with mining projects in Colombia and 57 TSX/TSXV listed companies with mining projects in China.

EXAMPLES OF INDIAN INVESTMENT IN COMPANIES ON THE TSX

Some of the larger Indian companies have also taken advantage of the opportunities available in the Canadian market. Many of these entries have been by way of takeover of TSX-listed companies by Indian investors, such as the acquisition and privatization of Minacs Worldwide Inc. by Aditya Birla Group in late 2006 and Essar Steel's acquisition and privatization of Algoma Steel in 2007. More recently, GMR Group has taken a controlling equity stake in Homeland Energy Group Ltd., while Tata Steel, the world's sixth largest steel company, is New Millennium Capital Corp's largest shareholder with a 19.9% equity interest. Tata Steel is also a strategic partner of New Millennium. In 2009, Tata Steel's wholly owned subsidiary Tata Steel Global Minerals Holdings Pte Ltd. of Singapore signed a joint venture agreement to advance the development of a Direct Shipping Ore project. The TSX/TSXV has indicated its interest in attracting more investment from India.

SPECIFIC PROGRAMS TO ASSIST COMPANIES GOING PUBLIC

The TSX/TSXV offers several programs to help companies of all sizes interested in offering securities to the public in Canada. In fact, the TSX/ TSXV boasts the ability to finance companies from $1 million to $1 billion or more.

Capital Pool Company Program

The Capital Pool Company Program on the TSXV ("CPC") is a vehicle designed to afford early stage and small cap companies access to needed capital and expertise to promote growth. International companies may utilize the CPC provided they meet TSXV listing requirements. The two-step program operates as follows:

Phase 1 – Set up the Capital Pool Company

- Three to six experienced directors and officers may form a "Capital Pool Company" with a minimum of $100,000 of initial seed capital but no other assets and no commercial operations. The minimum price per share at which the seed shares may be issued is the greater of $0.05 and 50% of the price at which shares are sold under the IPO of the CPC.
- The CPC files and clears a prospectus with the TSXV with the intention of raising between $200,000 and $4,750,000 pursuant to an IPO. The minimum price at which shares may be issued under the IPO is $0.10. Only a single class of common shares may be issued as seed shares and IPO shares.
- A broker is engaged by the CPC to sell the shares, pursuant to the prospectus, to at least 200 arm's length shareholders, each of whom buys at least 1,000 shares. No one purchaser may purchase more than 2% of the offering, and no one purchaser together with his, her, or its associates or affiliates may purchase more than 4% of the offering.

Phase 2 – The Qualifying Transaction

- The proceeds of the seed capital financing and the public offering may be used to discharge the expenses of the IPO and to identify and acquire a business or assets through a "Qualifying Transaction".
- In pursuing a Qualifying Transaction, the CPC must acquire assets or a business which, following the completion of the transaction, will allow the resulting issuer to meet the minimum listing requirements in the appropriate industry category (as set forth in Appendix A). A CPC must complete a Qualifying Transaction within 24 months of its listing. The Qualifying Transaction need not be a Canadian investment or involve a Canadian company or asset.
- The target assets in a Qualifying Transaction may be outside of Canada and the United States. However, enhanced disclosure is required in the form of a non-offering prospectus in connection with Qualifying Transaction involving non-mining and non-oil and gas assets outside of Canada and the United States, where the CPC is a reporting issuer in Ontario.
- Following completion of the Qualifying Transaction, the CPC continues trading as a regular TSXV listed company.

The CPC program has remained popular with companies with smaller capitalizations since its beginnings in 1987. As of December 31, 2011, over 2,283 companies have gone public through the CPC process and 83% have completed their Qualifying Transactions. As of July 31, 2012, there are over 100 CPCs listed on TSXV which have not announced Qualifying Transactions. As well, as TSXV companies mature, they often go on to list on the senior TSX through a stream-lined graduation process. So far this year there have been 3 graduates from the TSXV to the TSX. In 2011, there were 45 graduates and 40 in 2010.

Special Purpose Acquisition Corporation Program

The new Special Purpose Acquisition Corporation Program of the TSX ("SPAC") has been designed to allow for the creation of investment vehicles for public investors in companies and/or industry sectors normally of interest to private equity firms. Available to both domestic and international issuers, SPAC may provide an opportunity for individuals unable to buy into hedge or private equity funds to participate in the acquisition of private operating companies traditionally targeted by those funds.

SPAC enables experienced directors and officers to form a corporation that has no commercial operations or assets other than cash contributed by the founders. The SPAC corporation is then listed on the TSX following an IPO, in which it must raise a minimum of $30 million. Ninety percent of the funds raised in the IPO are required to be placed in escrow and used toward a future acquisition.

The SPAC corporation must then seek out an investment opportunity in a business or asset, to be completed within 36 months of its listing on the TSX, and defined as the "Qualifying Acquisition". Once again, the Qualifying Acquisition need not be a Canadian investment or involve a Canadian company or asset. Once the SPAC corporation has completed its Qualifying Acquisition, the resulting company must meet TSX listing requirements and its shares will continue trading as a regular listing on the TSX.

By virtue of filing and clearing a prospectus in connection with its IPO, a SPAC corporation becomes a reporting issuer, which is subject to continuous disclosure rules (including those requiring financial reporting) and other requirements under applicable securities regulations. Because it is a publicly traded entity, it also provides access to liquidity for investors.

GOVERNMENT REVIEW OF FOREIGN INVESTMENT

Canadian markets have increasingly welcomed foreign investment. However, there are regulatory requirements that must be observed. The *Investment Canada Act* (Canada) ("ICA") provides for the review of significant investments into Canada involving acquisitions of control by non-Canadians to ensure they are of net benefit to Canada. Non-Canadians must file either a notification or an application for review, depending on the value of the Canadian assets or the enterprise value of the Canadian business being acquired and the industry involved.

An investment involving an acquisition of control by a non-Canadian is reviewable (as opposed to being merely notifiable) if the asset or enterprise value of the Canadian business being acquired exceeds one of the following thresholds:

- If the investor is a World Trade Organization ("WTO") member but is acquiring a business engaged in cultural industries or is not a WTO member, and the investment is over $5 million for a direct acquisition, or over $50 million for an indirect acquisition. However, the $5 million threshold applies for an indirect acquisition if the asset value of the Canadian business being acquired exceeds 50% of the asset value of the global transaction.
- If the investor is from a WTO member country, any direct investment in excess of $330 million in 2012. Indirect investments by WTO members are not reviewable. Legislative amendments not yet in force will dramatically increase the threshold for review for WTO member investments progressively to US$1 billion, based on "enterprise value", over the next six years.

Under the review process, the Minister of Industry ("Minister") will assess whether the proposed investment will be of net benefit to Canada. The investment cannot be completed until the Minister has made a positive determination that the transaction will be of net benefit to Canada.

Though significant investments in Canada are rarely blocked by the federal government, it is important to note that, in some cases, negotiated undertakings relating to the investor's operation of the Canadian business going forward are given by the investor as a condition of the Minster's approval of a reviewable transaction. An example of a recent investment review and approval is the $1.9-billion investment of PetroChina International Investment Company Limited in two projects held by Athabasca Oil Sands. In order to obtain approval, PetroChina made several significant commitments and undertakings to the Canadian government, to increase employment levels over the next three years for the oil projects; make upwards of $250 million in capital expenditures for its share of development expenses; to maintain an Alberta head office for the operating companies for the next five years; to ensure a majority of senior management positions are filled with Canadians and that the operating companies will remain subject to Canadian laws; and that it will work with Athabasca to enhance the productivity and efficiency of the oil sands projects. Any potential merger or acquisition must also comply with the *Competition Act* (Canada).

The federal government has also introduced guidelines for investment by "state-owned enterprises," which are entities that are owned or controlled by a foreign government and "sovereign wealth funds," which are the investment and management arms of foreign governments of resource reserves or national savings (collectively "SOE"). The Minister will assess a proposed SOE investment using the same ICA principles to determine whether a reviewable acquisition of control by an SOE is of net benefit to Canada. The Minister will examine the SOE's corporate governance practices, reporting structure and its adherence to Canadian laws and practices. The Minister will also consider the extent to which the business will continue to operate commercially as it relates to export, processing and its Canadian workforce.

MERGERS AND ACQUISITIONS BY FOREIGN INVESTORS OF CANADIAN BUSINESSES

International companies interested in investing or bidding for a company listed on a Canadian exchange are subject to certain restrictions relating to consideration. If a foreign bidder wants to issue consideration other than cash to Canadian shareholders, the foreign bidder must be capable of providing prospectus-level disclosure relating to the issuer and the share consideration. It is also important for a shareholder to be able to freely resell those securities either on a foreign market or, in some cases, to other Canadians. This will depend upon the nature of the consideration being offered, the jurisdiction of the bidder and other factors. A technique used in non-cash acquisitions in which a significant Canadian shareholder is seeking deferral of tax otherwise payable will involve the use of exchangeable securities. Exchangeable securities are basically synthetic securities that mirror and are exchangeable for the bidder's foreign-listed securities, but are considered Canadian securities for Canadian income tax purposes.

Acquisitions of Canadian public companies may be structured by way of a public takeover bid or by a statutory plan of arrangement. In a takeover bid, a formal offer is made to all shareholders, which is consummated by acceptance (or tenders of shares) by the target's shareholders. These transactions can be either management recommended or hostile. Statutory plans of arrangement are unique to Canada and will generally be implemented by agreement between the bidder and the target. A plan of arrangement may provide for a wide range of pre and post acquisition transactions, such as share purchases, amalgamations, divestitures, winding-ups, debt restructurings, redemptions of shares, transfers of assets, issues of new shares. It is this flexibility, and ability to accommodate various transaction objectives and tax-planning requirements, which makes plans of arrangement so attractive to bidders and target shareholders alike. A plan of arrangement requires both shareholder and court approval.

CANADIAN TAX CONSIDERATIONS

An Indian investor who is considering a TSX/TSXV listing or making a business investment in Canada will need to take Canadian tax considerations into account when determining what course of action to take. Such advice is best obtained through a tax lawyer, as only advice from a lawyer is protected from disclosure to tax authorities by solicitor-client privilege.

The first question for the Indian investor to consider is whether to undertake the business activity directly or use a Canadian corporation for this purpose. While the optimal choice will depend on both tax and non-tax issues, the effect for Canadian tax purposes is profound. Canada taxes persons who are "resident in Canada" for tax purposes on their world-wide income, while non-resident persons are subject to Canadian tax only certain kinds of Canadian-source income. Most foreign investors use a Canadian corporation to carry on any Canadian business activities, for a combination of tax and non-tax reasons.

Canadian Corporations

Canadian Income Tax: a corporation created under Canadian law will typically be considered to be resident in Canada for tax purposes. As such, any income earned by the corporation will be subject to Canadian income tax unless excluded under a specific exemption or deduction. A foreign-owned Canadian corporation earning income from carrying on a business in Canada will pay income tax at a rate of roughly 25% - 30% of its "taxable income" (income minus permissible deductions and expenses), depending on which provinces of Canada are involved.

Canadian Withholding Tax on Payments to Non-Residents: to the extent that the Canadian corporation makes various payments of a passive nature to a non-resident person, Canadian non-resident withholding tax may apply to the payment. The Canadian payer and the non-resident recipient are both jointly liable for the tax, which is 25% of the gross payment unless the foreign recipient is entitled to a lower rate of tax under a tax treaty with Canada. The relevant rates of tax applicable to payments from a Canadian corporation to an Indian recipient are 10% - 15% for royalties, 15% on dividends,[3] 15% on interest[4] and 0% on management fees (assuming that the management services are provided from outside Canada).

Foreign Subsidiaries of Canadian Corporations: where a Canadian corporation has business operations outside Canada, usually it will set up foreign subsidiary corporations to conduct those activities rather than conducting them directly. This is because Canada's tax rules dealing with income earned by foreign subsidiaries of Canadian corporations are relatively favourable. By earning the income in the foreign subsidiary rather than directly in the Canadian corporation, the income is not subject to Canadian tax at the time it is earned. The one exception to this rule is income of a passive, investment-type nature earned by the foreign subsidiary (e.g. some forms of interest, dividends, royalties, etc.), which is imputed to and taxed in the hands of the Canadian corporation at the time it is earned by the foreign subsidiary. Moreover, when the foreign subsidiary's income is repatriated back to Canada in the form of a dividend paid by the foreign subsidiary, Canada either completely exempts the dividend from Canadian tax (in the case of a dividend paid out of business income earned in a country with which Canada has a tax treaty) or reduces the Canadian tax on the dividend by a grossed-up amount based on any foreign taxes paid on the underlying income (in the case of a dividend paid out of business income earned in a country with which Canada does not have a tax treaty). Canadian corporations are often used as group parent companies because of Canada's favourable system for taxing business income of foreign subsidiaries.

Foreign Corporations

A corporation or similar entity created under the laws of a country other than Canada will generally not be considered to be resident in Canada for Canadian tax purposes unless its "central management and control" is physically located in Canada.[5] As a non-resident of Canada, such a foreign entity will generally only be subject to Canadian tax in three ways.

Carrying on Business in Canada: if the corporation "carries on business in Canada" through a "permanent establishment" in Canada, it will be subject to Canadian income tax on taxable

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[3] If the Indian recipient is a company that owns at least 10% of the voting shares of the Canadian corporation; otherwise 25%.

[4] If the Indian recipient and the Canadian payer are related parties; otherwise 0%.

[5] It is important for foreign corporations to conduct their management so as not to become residents of Canada for tax purposes, e.g., hold directors' meetings outside Canada, etc.

income from carrying on that business at a rate of approximately 25%-30% (depending on which provinces of Canada are relevant).[6] "Carrying on business in Canada" requires more than just making sales to customers in Canada, but it is still a fairly low threshold of Canadian activity, especially since the Income Tax Act (Canada) ("ITA") deems "carrying on business in Canada" to include the soliciting of orders or the offering of anything for sale in Canada through an agent or servant, regardless of where the transaction is to be completed. A Canadian "permanent establishment" means an office or other fixed place of business in Canada, or an employee in Canada who executes contracts in the name of the foreign corporation. By itself a TSX/TSXV listing would not ordinarily create a Canadian permanent establishment.

Branch Tax: to the extent that a foreign corporation carries on business in Canada and does not reinvest profits from the business into the assets of the Canadian business, Canada levies a branch tax meant to correspond to the dividend withholding tax that would apply if the Canadian business were a separate corporation paying dividends to the foreign corporation. The rate of branch tax for an Indian corporation is 15%.

Capital Gains on Taxable Canadian Property: a foreign entity that sells "taxable Canadian property" and realizes a gain on the sale is subject to Canadian tax on the gain. Capital gains are effectively taxed at half the normal rate of income tax (e.g., 12.5% - 15%). "Taxable Canadian property" includes most assets used in a business carried on in Canada. It also includes land in Canada (or an interest therein) and shares of a corporation or interests in a partnership that derive more than 50% of their value (directly or indirectly) from land or natural resources in Canada at any time during the immediately preceding 5 years. Shares listed on certain stock exchanges will not be taxable Canadian property unless the foreign shareholder also meets a 25% ownership threshold within the past 5 years.

Set out below is a summary of the key elements of how Canada taxes Canadian corporations and foreign corporations on activity inside and outside Canada.

CANADIAN TAXATION OF INVESTMENT IN CANADA

		Foreign Corporation Managed Outside Canada
Operations In Canada	Subject to Canadian income tax on world-wide income Canadian withholding tax applicable on various payments to non-residents (dividends, royalties, management fees, non-arm's length interest) at 25% rate, unless foreign recipient is entitled to relief under a tax treaty	Subject to Canadian income tax on income from carrying on business in Canada through a Canadian permanent establishment (or if foreign corporation is resident in a non-tax treaty country, simply income from carrying on business in Canada) Also subject to Canadian branch tax to the extent of Canadian business profits not reinvested in the business (generally equivalent to Canadian dividend withholding tax) Subject to Canadian capital gains tax on sales of taxable Canadian property, unless treaty-exempt

6 If the foreign corporation is a resident of a country that has no tax treaty with Canada, Canada will tax that corporation's income from "carrying on business in Canada" even if no Canadian permanent establishment exists.

		Foreign Corporation Managed Outside Canada
Operations Outside Canada	Taxable in Canada if carried on directly (with reduction of Canadian tax for foreign taxes paid) When carried on through foreign subsidiary corporations: • income earned by foreign subsidiaries is not subject to Canadian income tax unless it arises from passive activities (e.g., interest, royalties, rents, etc.) • dividends received by Canadian corporation attributable to active business income earned by foreign subsidiary are either not taxed in Canada at all (if foreign subsidiary carries on business in a tax treaty country) or taxed in Canada at a reduced rate to reflect foreign taxes paid (if otherwise) Same Canadian withholding tax applicable on various payments to non-residents made by Canadian corporation	Typically no Canadian tax liability

In most cases foreign investors in Canada will use a Canadian corporation, and the balance of the discussion proceeds on that basis.

Structuring the Investment

When an Indian entity makes an investment in a Canadian corporation (either by establishing a new business or acquiring an existing one), one of the most important decisions to make is whether to make a direct India-to-Canada investment or alternatively whether to insert a holding company resident in a third country in between India and Canada. This is because while India and Canada have an income tax treaty, the relief provided under that treaty is significantly less than that provided under other Canadian tax treaties:

- the rate of Canadian withholding tax on dividends from closely-held corporations is reduced to 5% under most Canadian tax treaties, as opposed to the 15% rate in the Canada-India treaty;

- the rate of Canadian withholding tax on interest paid to related parties is reduced to 10% under most Canadian tax treaties (and 0% under the Canada-U.S. treaty), as opposed to the 15% rate in the Canada-India treaty;
- the rate of Canadian withholding tax on royalties is reduced to 0% - 10% under most Canadian tax treaties, as opposed to the 10% - 15% rates in the Canada-India treaty; and
- most Canadian tax treaties significantly reduce the scope of Canadian capital gains taxation, while the Canada-India treaty provides virtually no relief.

In a situation where significant amounts of interest, dividends or royalties are expected to be payable from Canada or where the shares of the Canadian corporation will be taxable Canadian property (i.e., derive their value primarily from Canadian real property or natural resources), it is usually advisable to explore the benefits of utilizing a third-country holding company.

Where the Indian investor is acquiring an existing Canadian corporation, generally it is advisable for the Indian investor to create and fund a new Canadian corporation to make the acquisition. Doing so has a number of advantages, including maximizing of the "paid-up capital" (or "PUC")[7] of the top-tier Canadian corporation (discussed below) and potentially enabling the cost for tax purposes of the acquired corporation's non-depreciable capital property to be increased in as a basis push-down (the "s. 88(1)(d) bump").

Financing the Investment

The two basic methods of financing a newly-created Canadian corporation established to make or acquire the Canadian investment are debt and equity. An equity investment results in the Canadian corporation issuing shares of itself to the investor, and if structured properly the PUC of those shares will equal their fair market value. The Canadian corporation can choose to pay dividends on these shares from time to time, which are not deductible in computing the Canadian corporation's income for Canadian tax purposes.

The other basic form of financing is debt (e.g., a loan to the Canadian corporation). Interest payable on debt incurred by a Canadian corporation is deductible in computing its income for Canadian tax purposes, subject to the following limitations:

- the borrowed money must be used for an income-earning purpose (e.g., purchasing the shares of another company, acquiring business assets, etc.);
- the rate of interest cannot exceed a commercially reasonable amount; and
- in the case of debt owing to a non-resident person who is (or who is related to) a person who owns 25% or more of the Canadian corporation's shares (by votes or value), a thin capitalization regime limits interest expense deductibility. To the extent that the Canadian corporation owes money to such "specified non-residents" in excess of 1.5 times the sum of the corporation's total retained earnings plus the PUC attributable to shares of the corporation owned by non-residents who are 25-percent-plus shareholders, the Canadian corporation cannot deduct interest on the excess debt. No thin capitalization restriction applies to debt owing to other creditors.

In international structures, foreign investors need to consider (1) what mixture of debt and equity to use in financing their Canadian corporation, and (2) where arm's-length borrowing is involved, whether that borrowing is best made by the Canadian corporation, the Indian investor or in a third-country holding company.

[7] Paid-up capital is essentially the tax version of the corporate law concept of stated capital, and reflects the amount received by a corporation in exchange for issuing new shares.

Repatriating Funds From Canada

When a Canadian corporation wants to distribute surplus funds to a foreign investor in excess of interest on debt[8], there are three basic options for doing so. First, the Canadian corporation can choose to pay a dividend on its shares. Dividends received by a non-resident shareholder will be subject to non-resident dividend withholding tax at a 25%, unless reduced under an applicable tax treaty (15% for an Indian shareholder holding more than 10% of the payer's shares).

A Canadian corporation can also choose to make a distribution of PUC to shareholders. Such a distribution is not a dividend and does not give rise to non-resident dividend withholding tax, but it does reduce the shareholder's cost for Canadian tax purposes in their shares of the Canadian corporation. Unlike the U.S., there is no rule in Canada that deems a distribution to be a dividend for tax purposes to the extent of the corporation's earnings and profits. The ability to make tax-free distributions as returns of PUC makes PUC a very valuable tax attribute.

Finally the Canadian corporation can make a loan to the non-resident investor. The Canadian corporation will be required to charge a minimum rate of interest on the loan, which must be repaid by the end of the corporation's taxation year in which the loan was made, failing which it will be treated as a dividend giving rise to non-resident dividend withholding tax.

CANADIAN TAXATION ON REPATRIATION FROM CANADA

	Dividend from Canco	PUC Reduction from Canco	Loan from Canco
Withholding Tax	25%; potentially reduced as low as 5% by tax treaty	None if sufficient PUC; reduces holder's basis in shares of payer	None if repaid within permitted timeframe and not part of a series of loans and repayments; otherwise treated as a dividend
Comments	Consider whether relevant Canadian corporate law places any constraints on Canco's ability to declare and pay dividend (e.g., solvency test)	No U.S. style E&P rule; can choose to reduce PUC even if profits exist (subject to limits for public corporations) Consider effect on thin capitalization rules to Canco	Various rules require market interest rate to be charged by Canadian lender

Sale of the Investment

When an Indian investor sells its Canadian investment, this will typically involve a sale of the Canadian corporation's shares, unless one or more holding companies have been inserted between India and Canada, in which case the investor has the option to sell at the level of the holding company(ies) or at the level of the Canadian corporation. There may be a significant tax difference (in Canada and elsewhere) from the level at which the sale took place.

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8 Interest owing to a related creditor must be paid within a specified time frame or else the Canadian corporation's deduction from income will be reversed.

As noted earlier, a non-resident of Canada is potentially subject to Canadian capital gains tax on a disposition of "taxable Canadian property," defined to include shares of a corporation (whether Canadian or foreign) that at any time in the previous 5 years have derived their value primarily from Canadian real property or natural resource properties (e.g., mining concessions). In the case of shares of a corporation that are listed on most stock exchanges, the non-resident must have also owned 25% or more of any class of the corporation's shares during that 5-year period (directly or indirectly, and including for this purpose shares owned by any person with whom the non-resident deals non-arm's-length) in order for the shares to be taxable Canadian property.

Where the non-resident shareholder is resident in a country with which Canada has a tax treaty, in many cases that tax treaty significantly reduces Canada's right to tax capital gains. For example, various treaties (1) limit taxation to shares of Canadian corporations, (2) reduce the 5-year period during which the shares are tested to see if they derive their value primarily from Canadian real property or natural resources, or (3) exclude real property used in the Canadian corporation's business from the "primarily from real property" test. No such relief exists in the Canada-India treaty, making desirable the use of a holding company in a jurisdiction with which Canada has a favourable tax treaty if the shares in question may be taxable Canadian property.

The sale of most forms of taxable Canadian property by a non-resident of Canada generally triggers a requirement on the vendor to notify Canadian tax authorities of the sale and to file a Canadian tax return. These rules also require the purchaser to withhold and remit 25% of the purchase price, unless the vendor has obtained permission from Canadian tax authorities to forego withholding. Subject to limited exceptions (including on the sale of publicly-traded shares), these rules apply whether or not there is any gain on the property or tax payable on the sale.

ABOUT BLG'S INDIA DESK

BLG's India Desk consists of a national team of over 20 lawyers located in our 6 offices across Canada. Lawyers at our India Desk make up one of the largest and most experienced India practices having provided legal services to leading Canadian, Indian and global companies and financial institutions for over 20 years. Our India Desk lawyers have substantial experience in advising clients in a wide range of industry sectors including mining, oil and gas, biopharma, financial services, automotive and real estate, construction and infrastructure. Our passion and drive to offer exceptional service to our clients – wherever they may reside – truly sets BLG apart!

FURTHER INFORMATION

Interested in receiving more information? Contact **Manoj Pundit**, Securities Partner and Leader of our India Desk, at **416.367.6577** or **mpundit@blg.com**

APPENDIX A

Minimum Listing Requirements for the Mining Sectors.

Minimum Listing Requirements for the Oil & Gas Sectors.

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LISTING REQUIREMENTS FOR EXPLORATION & MINING COMPANIES

	TMX TSX Venture Exchange		TMX Toronto Stock Exchange		
	TSX Venture Tier 1	**TSX Venture Tier 2**	**TSX Non-exempt Exploration and Development Stage**	**TSX Non-exempt Producer**	**TSX Exempt**
Property Requirements	Material interest in a Tier 1 property[4]	Significant interest[5] in a qualifying property or, at discretion of the Exchange, a right to earn a significant interest[5] in a qualifying property; sufficient evidence of no less than $100,000 of exploration expenditures on the qualifying property in the past three years	Advanced Exploration Property[2] Minimum 50% ownership in the property[3]	Three years proven and probable reserves as estimated by an independent qualified person (if not in production, a production decision made)	Three years proven and probable reserves as estimated by an independent qualified person
Recommended Work Program	$500,000 on the Tier 1 property[4] as recommended by geological report	$200,000 on the qualifying property as recommended by geological report[6]	$750,000 on advanced exploration property[2] as recommended in independent technical report[6]	Bringing the mine into commercial production	Commercial level mining operations
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 stated work program or execute business plan for 12 months following listing; $100,000 in unallocated funds	Minimum $2.0 million working capital, but sufficient to complete recommended programs, plus 18 months G&A, anticipated property payments and capital expenditures. Appropriate capital structure	Adequate funds to bring the property 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 the business. Appropriate capital structure.
Net Tangible Assets, Earnings or Revenue	$2,000,000 net tangible assets	No requirement	$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 historical production and financial performance	$7,500,000 net tangible assets; pre-tax profitability from ongoing operations in last fiscal year; pre-tax cash flow of $700,000 in last fiscal year and average of $500,000 for past two fiscal years
Other Criteria	Geological report[6] recommending completion of work program		Up-to-date, comprehensive technical report[6] prepared by independent qualified person and 18 month projection (by quarter) of sources and uses of funds, signed by CFO		Up-to-date, comprehensive technical report[6] prepared by independent qualified person
Management and Board of Directors	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.				
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	$4,000,000 publicly held 1,000,000 free trading public shares; 300 public holders with board lots		
Sponsorship	Sponsor report may be required		Required (may be waived if sufficient previous 3rd party due diligence)		Not required

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

(2) "advanced exploration property" refers to one on which a zone of mineralization has been demonstrated in three dimensions with reasonable continuity indicated. The mineralization identified has economically interesting grades.

(3) A company must hold or have the right to earn and maintain 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; and
- (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 on which drilling or other detailed sampling on the property has identified potentially economic or economic materialization; and
- (d) an independent geological report recommends a minimum $500,000 Phase 1drilling (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.

(5) "significant interest" means at least 50% interest

(6) "geological report" or "technical report", in the case of a mining property, is a report prepared in accordance with National Instrument 43-101 – Standards of Disclosure for Mineral Projects or any successor instrument.

***Mining Disclosure Standards**

National Instrument 43-101 is the Canadian Securities Administrators' ("CSA") policy that governs the scientific and technical disclosure for mineral projects made by mineral exploration and mining companies, including the preparation of technical reports. The instrument covers oral statements as well as written documents and websites. NI 43-101 requires that all technical disclosure be prepared by or under the supervision of a "qualified person." Issuers are required to make disclosure of reserves and resources using definitions approved by the Canadian Institute of Mining, Metallurgy and Petroleum.

NI 43-101 is available at:
http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20051223_43-101_mineral-projects.jsp

Frequently Asked Questions at
http://www.osc.gov.on.ca/en/Regulation/Rulemaking/Notices/csanotices/2003/csan_43-302_faq-43_101_20030124.htm#faq

All amounts are expressed in Canadian dollars.

The foregoing is a summary of the applicable listing requirements only.
For detailed listing requirements, refer ro the TSX Venture Exchange Corporate Finance Manual and the Toronto Stock Exchange Manual, both of which are available at go to www.tmx.com

LISTING REQUIREMENTS FOR OIL & GAS (EXPLORATION OR PRODUCING) COMPANIES

TMX | Toronto Stock Exchange

	TSX Non-Exempt Oil & Gas Development Stage Issuers[9]	TSX Non-Exempt Oil & Gas Exploration and Development Issuers	TSX Exempt Oil & Gas Issuers[4]
Net Tangible Assets, Earnings or Revenue	No requirements		Pre-tax profitability from ongoing operations in last fiscal year. Pre-tax cash flow from ongoing operations of $700,000 in last fiscal year and average pre-tax cash flow from ongoing operations of $500,000 for the past two fiscal years.
Working Capital and Financial Resources	Adequate funds to either: (a) execute the development plan and cover all other capital expenditures & G&A[1] + debt service expenses, for 18 months with a contingency allowance; OR (b) bring the property into commercial production, & adequate working capital to fund all budgeted capital expenditures + carry on the business. 18 month projection of sources & uses of funds signed by CFO[6]; appropriate capital structure	Adequate funds to execute the program and cover all other capital expenditures & G&A[1] + debt service expenses for 18 months with a contingency allowance; 18 month projection of sources and uses of funds signed by CFO; appropriate capital structure	Adequate working capital to carry on the business. Appropriate capital structure.
Distribution, Market Capitalization and Public Float	At least 1,000,000 freely tradable shares with an aggregate market value of $4,000,000; 300 public holders, each with one board lot or more. Minimum market value of the issued securities that are to be listed of at least $200,000,000	At least 1,000,000 freely tradable shares with an aggregate market value of $4,000,000; 300 public holders, each with one board lot or more	
Sponsorship	Sponsor report may be required (generally not required for IPOs or TSX Venture Graduates)		Not required
Property Requirements	Contingent resources[7] of $500,000,000[8]	$3,000,000 proved developed reserves[2,5]	$7,500,000 proved developed reserves[2, 5]
Recommended Work Program	Clearly defined development plan, satisfactory to the Exchange, which can reasonably be expected to advance the property	Clearly defined program to increase reserves	
Management and Board of Directors	Management, including the board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.		
Other Criteria	Up-to-date technical report prepared by an independent technical consultant (NI 51-101[3])		

(1) "G&A" means general and administrative expenses.
(2) "Proved developed reserves" are defined as those reserves that are expected to be recovered from existing wells and installed facilities, or, if facilities have not been installed, that would involve low expenditure, when compared to the cost of drilling a well, to put the reserves on production.
(3) "NI 51-101" National Instrument 51-101 – Standards of Disclosure for Oil & Gas Activities – available at: http://www.osc.gov.on.ca/
(4) Exceptional circumstances may justify the granting of Exempt status notwithstanding the minimum requirements – generally an affiliation with an established business and/or exceptionally strong financial position is required.
(5) Reserve value of pre-tax net present value of future cash flows using a 10% discount rate: forecast pricing assumptions are used.
(6) This projection must also include actual financial results for the most recently completed quarter;
(7) "Contingent resources" are defined in accordance with Canadian Oil and Gas Evaluation Handbook and National Instrument 51-101, however the Exchange in its discretion may exclude certain resources classified as contingent resources after taking into consideration the nature of the contingency. The Exchange will use the best-case estimate for contingent resources, prepared in accordance with National Instrument 51-101.
(8) The Company must submit a technical report prepared by an independent technical consultant that conforms to National Instrument 51-101 and be acceptable to the Exchange. Reports prepared in conformity with other reporting systems deemed by the Exchange to be the equivalent of National Instrument 51-101 will normally be acceptable also. The value of the resources should be calculated as the best-case estimate of the net present value of future cash flows before income taxes, prepared on a forecast basis, and discounted at a rate of 10%. The Exchange may, at its discretion, also require the provision of a price sensitivity analysis.
(9) The Exchange strongly recommends pre-consultation with the Exchange for any applicant applying under this listing category. Generally, this category will be limited to issuers with unconventional oil & gas assets, such as oil sands

All amounts are expressed in Canadian dollars.

For detailed listing requirements, go to www.tmx.com.

Borden Ladner Gervais

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