INVESTMENTS & CAPITAL MARKETS CONFERENCE 2018

Day 3
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SESSION 7: CANADA
Doing Business in Canada

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Jefferies

CAPITAL MARKETS LIMITED

JAMAICA OBSERVER

About Bennett Jones LLP

- National full-service Canadian law firm with ~450 lawyers across Canada
- Offices in Toronto, Vancouver, Calgary, Ottawa, Bermuda, Beijing, Doha and Washington D.C.
- Specialize in all areas of commercial law

Outline

- Setting up your business in Canada
  - Focus: Corporations
  - CBCA vs. Provincial Statutes
  - Articles of Incorporation
  - Boards of Directors and Officers
  - Shareholders
  - Annual Filing Requirements – Corporations
- Entering the Canadian Market
  - Reverse Take-overs (RTOs)

Doing Business in Canada

Setting Up Your Business

Setting Up Your Business in Canada

- Types:
  - Partnerships – General, Limited and Limited Liability Partnerships (LLP)
  - Corporations

Setting Up Your Business in Canada:

Corporations

- What jurisdiction to incorporate?
  - Federal vs Provincial/Territorial
- Things to consider
  - Jurisdiction will depend on a number of factors, including:
    - flexibility in corporate proceedings
    - ease of obtaining a desired corporate name
    - director residence requirements

Setting Up Your Business in Canada:

CBCA vs. Provincial Statutes

- CBCA | *Canada Business Corporations Act*
- CBCA is very similar to most provincial jurisdictions (including Ontario, Alberta and British Columbia)
- CBCA residency requirements
  - No Canadian residency requirement in British Columbia, Nova Scotia, New Brunswick, Prince Edward Island, Nunavut, Northwest Territories, Yukon or Quebec
- Federal incorporation appeals to public or large private corporations
- Registered office can be anywhere in Canada
- CBCA name approval process is more stringent, however, once registered, the name can be used anywhere in Canada

Setting Up Your Business in Canada:

Articles of Incorporation

- Must set out:
  - name of corporation;
  - location of the registered office;
  - authorized capital;
  - restrictions on the transfer of shares;
  - number of directors; and
  - any restrictions on business
- If any changes to any of the above or to add provisions and require shareholder approval, Articles of Amendment must be filed

Setting Up Your Business in Canada: Articles of Incorporation (cont'd)

- Contents – Share Capital
  - Powers of Shareholders:
    - Powers, rights and duties of shareholders include the following:
      - election/removal of directors
      - receive financial statements
      - appointment of auditors; and
      - approval of fundamental changes

Setting Up Your Business in Canada: Articles of Incorporation (cont'd)

- Contents – Share Capital (cont'd)
  - Authorized vs. Issued Share Capital
  - Classes of Shares
    - Articles must set out rights, privileges, restrictions and conditions associated with each class
  - Common Shares vs. Preferred Shares
  - Voting rights are allocated to non-voting shares in certain circumstances
  - Rights of each class of shares allows incorporators to tailor the structure

Setting Up Your Business in Canada:

Boards of Directors and Officers

- Boards of Directors
  - Directors are charged with the management and supervision of the corporation's business
  - Directors also have other prescribed duties under various statutes, including:
    - issuing shares;
    - reviewing financial statements;
    - declaring dividends

Setting Up Your Business in Canada: Boards of Directors and Officers (cont'd)

- Board of Directors (cont'd)
  - Directors may delegate some, but not all, of these powers to manage the corporation's business and affairs to the managing director, a committee of directors, or an officer that has been appointed by the Board
    - How the work of the corporation is delegated between the Board and the Officers is a business decision
    - Even if these powers are delegated, the directors remain responsible for the duty of supervision

Setting Up Your Business in Canada: Boards of Directors and Officers (cont'd)

- Board of Directors - Composition
  - Public and Private Requirements
    - Private – Minimum of one director
    - Public – Minimum of three directors and must adhere to the independence requirements of securities legislations

Setting Up Your Business in Canada: Boards of Directors and Officers (cont'd)

- Board of Directors - Composition
  - Independence Requirements
    - Requirement for public corporations that a certain number of directors (including all directors serving on the Audit Committee) be considered independent
    - Independence is defined to include absence of any direct or indirect material relationship between director and issue

Setting Up Your Business in Canada: Boards of Directors and Officers (cont'd)

- Officers
  - Chosen by the board
  - Given authority to run different aspects of the corporation's business

Setting Up Your Business in Canada: Shareholders

- Shareholder Meetings
  - Public corporations are required to hold annual shareholders' meetings
  - Annual shareholders' meeting provides the shareholders with the opportunity to:
    - question directors and officers on affairs of the corporation, financial statements and business decisions;
    - vote on the directors for the coming year;
    - appoint the auditors; and
    - vote upon shareholders' proposals and other items of special business

Setting Up Your Business in Canada: Shareholders (cont'd)

- Shareholder Resolutions
  - Written Resolution
    - In lieu of a meeting, directors or shareholders may pass a resolution with consent in writing of all who are entitled to vote at the meeting
  - Ordinary Resolution
    - A resolution passed by a majority of votes cast by shareholder
  - Special Resolution
    - Passed by a majority of not less than 2/3 of the votes cast by shareholders

Setting Up Your Business in Canada: Shareholders (cont'd)

- Unanimous Shareholders' Agreements (USAs)
  - USAs are generally defined as agreements which restrict the powers of the Board
  - In restricting the powers of the directors, the USA may also change the corporate procedures (i.e. right of first refusal on transfer of shares)
  - Common in venture capital or private equity situations where an investor wants control over decisions of the Board or transfer of the shares and join venture situations

Setting Up Your Business in Canada: Shareholders (cont'd)

- Unanimous Shareholders' Agreements (USAs) (cont'd)
  - Fundamental Changes - Examples:
    - changing the maximum number of shares the corporation is authorized to issue
    - Plan of Arrangement/Business Combination
    - creating new classes of shares
    - certain fundamental changes give rise to "dissent rights" which give shareholders the right to be paid fair value for their shares

Setting Up Your Business in Canada:

Filing Requirements

- Public corporations are required to file the following documents:
  - Annual Information Form (AIF)
  - Management Information (Proxy) Circular (MIC)
  - Management's Discussion and Analysis (MD&A)

Doing Business in Canada

Entering the Canadian Market

Entering the Canadian Market

Reverse Take-overs (RTOs)

JANUARY, 2018							
	S	M	T	W	TH	F	S
Week 1		1	2	3	4	5	6
Week 2	7	8	9	10	11	12	13
Week 3	14	15	16	17	18	19	20
Week 4	21	22	23	24	25	26	27
Week 5	28	29	30	31			
FEBRUARY, 2018							
	S	M	T	W	TH	F	S
					1	2	3
Week 6	4	5	6	7	8	9	10
Week 7	11	12	13	14	15	16	17
Week 8	18	19	20	21	22	23	24
Week 9	25	26	27	28			
MARCH, 2018							
	S	M	T	W	TH	F	S
					1	2	3
Week 10	4	5	6	7	8	9	10
Week 11	11	12	13	14	15	16	17
Week 12	18	19	20	21	22	23	24
Week 13	25	26	27	28	29	30	31
APRIL, 2018							
	S	M	T	W	TH	F	S
Week 14	1	2	3	4	5	6	7
Week 15	8	9	10	11	12	13	14
Week 16	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30					

Week	**Key Action(s)**
Week 1	Identify Shell
Weeks 2-4	Finalize letter of intent, circulate PIFs, Issue news release
Weeks 3-5	Complete initial filings
Weeks 5-6	Commence drafting of Amalgamation/Share Exchange Agreement
Weeks 6-8	Various drafting of key documents, including Filing Statement
Weeks 8-10	Obtaining final comments, completing due diligence of Target
Weeks 10-12	Obtain first comments of TSX Venture Exchange re Filing Statement/Information Circular
Weeks 12-13	TSX Venture listings committee to approve transaction
Weeks13-16	Prepare draft closing documents for qualifying transactions
Post-Closing	Prepare/file annual information form (AIF), take steps to become short-form prospectus eligible

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