



# Mining Initial Public Offering Guide

TMX Group's Global Leadership in Mining

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# Canada's Capital Markets for Mining

Canada's world leading mining capital markets offer a wealth of opportunity, with their access to local and global natural resources, finance opportunities for companies at all stages, and sophisticated technical know-how. While Canada has several public listing platforms, the Toronto Stock Exchange ("TSX") and Toronto Stock Exchange Venture Exchange ("TSXV") are the principal and most relevant exchanges for mining companies.

- **Global Leader** - TSX and TSXV combined is the world's largest mining public market with more than 1,300 listed issuers
- **Access to Capital** - over \$6.7 billion in equity capital raised through 1,123 financings in 2015
- **Liquid Trading Market** - over \$147 billion of equity traded in 2015
- **Global Access** - of the approximately 9,500 mineral exploration projects held by TSX and TSXV listed companies, 50% are outside Canada
- **Global Visibility** - 40% of daily trading on TSX and TSXV originates outside of Canada. TSX and TSXV combined is #2 in the world for both number of initial public offerings and new listings as well as number of international initial public offerings and new listings

Source: TMX Group

# Participants in an Initial Public Offering (IPO)

## Issuer

- The issuer sells securities to the public (called a “New Issue IPO”), or a major shareholder sells to the public the issuer’s existing shares that the shareholder owns (called a “Secondary Offering IPO”)
- There is flexibility in determining which type of entity to use as the issuer (i.e., corporation, limited partnership, trust, etc.)
- Issuer need not be Canadian, but cross-border tax and securities law implications for non-Canadian issuers should be considered early in the process
- If using a non-Canadian issuer, stock exchanges and underwriters will require certain shareholder protections that match Canadian or Delaware law, principally:
  - control over election of board of directors and ordinary shareholder matters—usually requires majority of shares voted at shareholders meeting
  - control over fundamental changes, such as a sale or merger of the issuer or a sale of all or substantially all of the assets of the issuer—usually requires two-thirds of shares voted at shareholders meeting
- Dual class share structure with one class having superior voting rights is permitted but stock exchanges and underwriters will require certain protections for shareholders, including “coat-tail” provisions to ensure equal treatment in the event of a take-over bid or tender offer

## Exchanges

- The Canadian marketplace is dominated by two securities exchanges<sup>1</sup>:
  - Toronto Stock Exchange
  - Toronto Stock Exchange Venture Exchange
- An issuer effecting an IPO will likely apply to have its securities listed on one of those Exchanges
- During the listing process, the Exchange reviews key minimum business parameters, including working capital, financial resources, number of shareholders, market capitalization, resource properties, work program and suitability of management and directors
- Each Exchange has different listing requirements; the TSX, being the senior exchange, has the most stringent listing requirements
- Canadian provincial securities regulators also recognize this division; “Venture Issuers” listed on the TSXV are subject to simpler continuous disclosure requirements
- Exchange listing categories:
  - The TSX has three categories of listing for mining issuers:
    - TSX Exempt Issuers, TSX Non-Exempt Producer and TSX Non-Exempt Exploration and Development Stage
    - These requirements are geared toward the stage of development of the issuer at the time of listing
    - Exempt issuers are more advanced and so subject to less stringent reporting requirements
  - The TSXV has two categories of listing requirements for mining issuers:
    - TSXV Tier 1 Issuers and TSXV Tier 2 Issuers
    - Tier placement depends on historical financial performance, stage of development and financial resources of the issuer at the time of listing
    - Tier 1 Issuers are more advanced, with more significant financial resources; they are subject to decreased filing requirements

<sup>1</sup> Canada has other stock exchanges but the TSX and TSXV are the principal and most relevant stock exchanges for mining companies.

**TSX Key Listing Requirements**

	TSX Exempt	TSX Non-Exempt Producer	TSX Non-Exempt Exploration/Development
<b>Property Requirements</b>	Three years proven and probable reserves as estimated by an independent qualified person	Three years proven and probable reserves as estimated by an independent qualified person (if not in production, a production decision made)	Minimum 50% interest in an "Advanced Exploration Property"
<b>Recommended Work Program</b>	Commercial level mining operations	Bringing the mine into commercial production	\$750,000 on "Advanced Exploration Property" as recommended in independent technical report
<b>Working Capital and Financial Resources</b>	Adequate working capital to carry on the business. Appropriate capital structure	Adequate funds to bring property into commercial production; Adequate working capital for all budgeted capital expenditures and to carry on the business. Appropriate capital structure	Minimum \$2.0 million in working capital, but sufficient to complete recommended programs; 18 months G&A, anticipated property payments and capital expenditures. Appropriate capital structure
<b>Net Tangible Assets, Earning or Revenue</b>	\$7,500,000 net tangible assets; pre-tax profitability from on-going 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	\$4,000,000 net tangible assets; evidence indicating a reasonable likelihood of future profitability (feasibility study/historical production and financial performance)	\$3,000,000 net tangible assets
<b>Other Criteria</b>	Up-to-date, comprehensive technical report prepared by independent qualified person	Technical Report; 18 month projection (by quarter) of sources and uses of funds, signed by CFO	Same as TSX Non-Exempt Producers
<b>Management and Board of Directors</b>	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		
<b>Distribution, Market Capitalization and Public Float</b>	\$4,000,000 publicly held; 1,000,000 free trading public shares; 300 public holders with board lots	Same as TSX Exempt	Same as TSX Exempt
<b>Sponsorship</b>	Not required	Required (may be waived)	Same as TSX Non-Exempt Producers

Source: TMX Group - "Listing requirements for Exploration and Mining Companies"

**TSXV Key Listing Requirements**

	TSXV Tier 1 Issuer	TSXV Tier 2 Issuer
Property	Material interest in a "Tier 1 Property"	Significant interest in a qualifying property or, at discretion of the Exchange, a right to earn a significant interest in a qualifying property; sufficient evidence of no less than \$100,000 of exploration expenditures on the qualifying property in the past three years
Recommended Work Program	\$500,000 on the "Tier 1 Property" as recommended by geological report	\$200,000 on the qualifying property as recommended by geological report
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 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
Net Tangible Assets, Earning or Revenue Other Criteria	\$2,000,000 net tangible assets	No requirement
Other Criteria	Geological report recommending completion of work program	Same as TSXV Tier 1 Issuer
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" with board lots and having unrestricted shares; 20% of shares held by "Public Shareholders"	Public float of 500,000 shares; 200 "Public Shareholders" with board lots and having unrestricted shares; 20% of shares held by "Public Shareholders"
Sponsorship	Sponsor report may be required	Sponsor report may be required

Source: TMX Group - "Listing requirements for Exploration and Mining Companies"

### Securities Regulators

- Provincial and territorial securities regulators in jurisdictions where securities are to be distributed review disclosure used in the IPO materials
- Securities regulators work in a co-ordinated manner; each IPO is assigned its own “lead” regulator and that regulator co-ordinates with the others
- 3 key required disclosure documents:
  - prospectus
  - audited annual and unaudited interim financial statements/management’s discussion & analysis (“MD&A”)
  - NI 43-101 compliant technical reports in respect of the issuer’s mineral reserves and mineral resources

### Underwriters

- Role:
  - issuer’s initial link to the capital markets
  - sells the offered securities to institutional and retail investors
  - provides structuring and financing advice to the issuer
  - obligated to ensure that the interests of public investors are protected and perform legal and commercial due diligence
- Underwriters’ compensation will typically include:
  - sales commission of between 5% to 10% of gross proceeds raised
  - payment of underwriters’ expenses (can be subject to a cap and/or deducted from fee)
  - sponsorship fee (which may be required for TSXV listings) and broker warrants (for junior issuers)
- Relationship between issuer and underwriters governed by engagement letter until replaced by underwriting agreement
- Engagement letter:
  - entered into early in the process
  - confirms underwriters (typically 1-3) that will lead offering, fees and indemnities, obligation of issuer to reimburse specified expenses, proposed offering structure and syndicate members
- Underwriting agreement:
  - entered into when final prospectus is filed
  - commits underwriter to purchase the offered securities
  - includes pricing terms, representations and warranties, indemnities
  - closing typically occurs within 10 days following execution

### Lawyers

- Issuer and underwriter each retain own counsel
- If material assets of business are located outside Canada then may need to retain local counsel
- Responsibilities of lawyers include:
  - assisting IPO structuring issues
  - overseeing legal due diligence process
  - managing the preparation of the prospectus
  - assisting with the regulatory review process
- An IPO is a complex, demanding and often time-sensitive process. Issuer’s legal counsel plays a key role in coordinating the many participants and steps in the process



### Auditor

- Auditor provides accounting advice, assists with due diligence, prepares audit opinions and reviews financial statements to be included in the prospectus
- The preparation of financial statements is often one of the greatest challenges in an IPO and it is critical to have an auditor experienced with the IPO process and familiar with the business of the issuer

## Key Documents and Requirements

### Prospectus

- Contains prescribed disclosure including:
  - “full, true and plain disclosure of all material facts relating to the securities” offered by the prospectus
  - a summary of the business of the issuer and risk factors
- Required to be provided to investors in IPO
- Issuer, issuer’s directors, CEO and CFO, underwriters and experts certify that the prospectus does not contain a “misrepresentation”, which term includes a failure to state a fact required to make a statement not misleading in the circumstances

### Financial Statements and MD&A

- An issuer is generally required to prepare financial statements in accordance with IFRS
- Audited annual financial statements generally required as follows:
  - comprehensive income, changes in equity and cash flows for the 3 most recently completed financial years (less than 3 years may be sufficient in certain circumstances)
  - financial position for 2 most recently completed financial years
  - notes to financial statements
- Requirement applies to financial years ended more than 90 days prior to the date of the prospectus (unless a TSXV listing, in which case applies to financial years ended more than 120 days prior)
- Unaudited interim financial statements generally required for most recently completed interim period as follows:
  - financial position as at the end of the interim period
  - comprehensive income, changes in equity and cash flows, all for the year-to-date interim period and comparative financial information
  - for interim periods other than the first interim period, comprehensive income for the three month period ending on the last day of the interim period and comparative financial information
  - notes to the financial statements
- Requirement applies to interim periods ended more than 45 days prior to the date of the prospectus (unless a TSXV listing, in which case applies to interim period ended more than 60 days prior )
- Issuer is required to prepare MD&A for each set of annual and interim financial statements included in the prospectus
- MD&A is “a narrative explanation through the eyes of management” of how the issuer has performed during the prior annual or interim period, and supplements the applicable financial statements
- If the issuer has effected a significant acquisition or disposition or intends to effect such a transaction in connection with its IPO, then *pro forma* annual and interim financial statements reflecting the transaction may be required

## Governance

- For stock exchanges and underwriters, the composition of the board of directors is significant in assessing the desirability of the listing or the engagement
- Stock exchanges and securities regulators perform extensive background checks on members of an issuer's board of directors and senior management
- Directors and senior management are generally required to submit to the applicable stock exchange personal information forms containing detailed information regarding their background
- Securities regulators have adopted a detailed set of corporate governance guidelines recommending, among other things, that:
  - majority of directors be "independent"
  - board chair be "independent"
  - written mandates and codes for key corporate processes, ethical and similar matters be adopted
- An issuer listed on the TSX must have an audit committee composed of a minimum of three independent and financially literate directors; independence is recommended for all members of other committees
- Rules regulate the responsibilities, authority and reporting obligations of the audit committee
- TSXV listed issuers are exempt from this requirement but must disclose how and why their practices differ

## Technical Reports in Accordance With National Instrument 43-101

- Requirement to file a current technical report is triggered by prospectus filing and required to list on TSX/TSXV
- Contents of technical report mandated by form requirements of NI 43-101
- Must be prepared by or under the supervision of a "qualified person" who is an engineer or geoscientist with appropriate qualifications that include:
  - at least 5 years of relevant engineering or geosciences experience
  - experience relevant to the mineral project
  - being a member in good standing with an acceptable professional self-regulatory association
- For an IPO, technical reports must be prepared by or under the supervision of a "qualified person" who is independent of the issuer
- Once public, issuer should have an internal "qualified person" for the purposes of NI 43-101
- Information disclosed regarding "mineral reserves" and "mineral resources" must use definitions and classification system set out in Definition Standards approved by the Canadian Institute of Mining, Metallurgy & Petroleum Council (May 2014)
- Use of an "acceptable foreign code" permitted if issuer is incorporated or organized in a foreign jurisdiction, or in Canada for its properties located in a foreign jurisdiction, provided a reconciliation of any material differences between the mineral resource and mineral reserve categories used and the CIM definition standards is provided
- Purpose is to ensure information regarding mineral assets provided to investors is based on consistent disclosure standards and thus clear and not misleading

## Escrow Requirements

- Securities regulators and the Exchanges have developed a national escrow regime for IPOs which impose a requirement for pre-IPO principals to hold equity securities for a period of time following IPO
- Purpose is to ensure market price not depressed by early sales by insiders, etc.
- Applies to certain principals, including:
  - directors and officers
  - promoters during the two years preceding IPO
  - holders of more than 10% of the equity securities (if they have appointed or have the right to appoint a director or senior officer)
  - holders of more than 20% of the equity securities
- For escrow purposes, issuers are classified as “exempt issuers,” “established issuers” or “emerging issuers”.
- Different escrow rules apply depending on classification
  - **Exempt Issuers:** No escrow for issuers conditionally listed on the TSX in its exempt category or those issuers listed on the TSX or TSXV having a market capitalization of at least \$100 million
  - **Established Issuers:** If issuer is listed on the TSX in its non-exempt category or on Tier 1 of the TSXV, then up to 75% of the equity securities (including stock options) owned or controlled by principals will be escrowed and released from escrow in equal tranches at six-month intervals over an 18-month period (i.e., 25% is released from escrow every six months)
  - **Emerging Issuers:** If issuer is not an “Exempt Issuer” or “Established Issuer” as described above, then up to 90% of the equity securities (including stock options) owned or controlled by principals will be escrowed and released from escrow in equal tranches at six-month intervals over a 36-month period (i.e., 15% is released from escrow every six months)
- In addition, underwriters often impose contractual restrictions on insiders of the issuer, preventing sale by them of issuer securities for a period of time after the IPO (6 to 18 months is typical)

## Indicative Timeline for an IPO

- **Weeks 1-2:** Review corporate, board, capital and management structures to identify necessary changes to be implemented in connection with IPO and confirm availability of historical financial statements, current technical reports and qualified persons
- **Weeks 3-5:** Interview and select underwriters
- **Week 5:** Commence due diligence process and drafting of the preliminary prospectus
- **Week 11:** Diligence process and drafts of the following should be nearly complete: preliminary prospectus; financial statements; MD&A; and underwriting agreement. Also expect such documents to have been circulated to the issuer's board and French translation of prospectus commenced (assuming distribution in Québec)
- **Week 13:** Following a formal due diligence session and approval of the preliminary prospectus, financial statements and MD&A by issuer's board of directors, the preliminary prospectus is filed with securities regulators, a listing application is filed with the applicable stock exchange
- **Weeks 15-16:** Securities regulators issue first comment letter, "road shows" begin, comments addressed by issuer, and the preliminary prospectus is cleared to go final. Finalize underwriting agreement; settle all provisions except pricing terms
- **Weeks 16-18:** Issuer and underwriter negotiate and agree on pricing terms. Following a formal "bring-down" due diligence session and approval of the final prospectus by the issuer's board of directors, the underwriting agreement is signed and the final prospectus is filed with the securities regulators
- **Week 19:** "Closing" of the IPO occurs and the issuer's new life as a public company begins

## Life after an IPO

- Once an issuer completes an IPO it becomes a “reporting issuer”
- A “reporting issuer” is subject to 3 main reporting and operational requirements:
  - timely disclosure (disclosure of material information as it arises)
  - periodic disclosure (disclosure of financial and other information on a scheduled basis)
  - internal controls over financial reporting and disclosure controls and procedures

### Timely Disclosure

- Securities regulators and stock exchanges require the filing and prompt public dissemination of information on a timely basis where such information is of a material nature and relevant to investors
- While procedures are in place to preserve confidentiality in appropriate circumstances, issuers are required to promptly disclose, among other things, changes in their business, operations or capital that “would reasonably be expected to have a significant effect on the market price or value of any securities of the issuer”
- The prompt release of material information is necessary to ensure that information is disseminated on a non-selective basis to all investors in a timely manner and to reduce the risk of insider trading or other misuse of the information

### Periodic Disclosure

- Reporting issuers are required to file:
  - annual audited financial statements with MD&A
  - quarterly unaudited financial statements with MD&A
  - management certification with each set of financial statements filed
  - an “Annual Information Form” (“AIF”), which includes certain prescribed disclosure of the issuer’s business and operations and supplements its financial statements and MD&A (AIF not required if TSXV listed issuer)
  - proxy and other shareholder meeting materials
  - Business Acquisition Reports, for significant acquisitions
  - material contracts and documents affecting the rights of security holders

### Internal Controls over Financial Reporting, Disclosure Controls and Procedures

- CEO and CFO are required to certify that they have designed and evaluated the effectiveness of internal controls over financial reporting (“ICFR”) and disclosure controls and procedures (“DC&P”) and have caused the issuer to disclose in its annual MD&A their conclusions about the effectiveness of the ICFR and the DC&P
- CEO and CFO are also required to annually and quarterly certify that:
  - they have caused the issuer to disclose in its MD&A any material weakness relating to its design of ICFR or DC&P and any changes in ICFR
  - applicable filings do not, to their knowledge, contain any “misrepresentations” and fairly present the issuer’s financial position
- Canadian issuers are not required to obtain from their auditors an opinion covering management’s assessment of the effectiveness of the ICFR (as required under Sarbanes-Oxley in the United States)
- TSXV listed issuers may file certificates that are less onerous than those described above

## Other Ways to Go Public

Issuers can also become a “reporting issuer” and achieve a listing on the TSX or TSXV by way of reverse take-over, qualifying transaction for a Capital Pool Company or acquisition by a Special Purpose Acquisition Corporation.

### Reverse Take-Over (RTO)

- A reverse take-over is also known as a “back door listing” or “reverse merger” of a company already listed on TSX or TSXV
- This listing can be done in a number of ways, including an amalgamation or issuance of shares in exchange for other shares or assets of the issuer
- The issuer resulting from the RTO must meet the applicable original listing requirements of either the TSX or TSXV and must submit to an approval procedure similar to that of an original listing application

### Capital Pool Company (CPC)

- The Capital Pool Company program is a unique two-stage listing process offered by the TSXV
- In stage one of the process, a new company (known as a “Capital Pool Company” or “CPC”) is listed on the TSXV by way of an IPO raising between \$200,000 on \$4,750,000. The issuer initially contains no commercial operations or assets other than cash
- In stage two (the “Qualifying Transaction”), the CPC acquires an asset or completes a transaction with a private business which meets the applicable listing requirements and results in the listing of the acquired business on the TSXV. Directors, officers and shareholders of the private business may become directors, officers and shareholders of the listed CPC
- The listing of a business or asset through the CPC program can be a more cost and time efficient alternative than a listing through a traditional IPO and provides an opportunity to reduce the underwriting risk of an IPO

### Special Purpose Acquisition Corporation (SPAC)

- A SPAC is an investment vehicle allowing the public to invest in companies or industry sectors normally sought by private equity firms
- The SPAC program enables seasoned directors and officers to form a corporation that initially contains no commercial operations or assets other than cash. The SPAC is then listed on TSX via an IPO, raising a minimum of \$30 million. 90% of the funds raised are placed in escrow, and must then be used toward the acquisition of an operating company or assets within 36 months of listing
- SPACs become reporting issuers as a result of their IPO, and thus are fully regulated by the relevant securities regulators as well as TSX. The issuer acquired becomes part of the SPAC. Directors, officers and shareholders of the acquired issuer may become directors, officers and shareholders of the SPAC

**For further information:**



Abbas Ali Khan

Partner

**Tel:** 416.777.5388 | **Email:** alikhana@bennettjones.com



Sander A.J.R. Grieve

Partner

**Tel:** 416.777.4826 | **Email:** grieves@bennettjones.com

**Our Corporate Finance Group**

The Bennett Jones Corporate Finance Group consists of more than 55 partners and over 20 counsel and associates based in Calgary, Toronto, Edmonton, Vancouver, Ottawa, Doha, Bermuda and Washington, DC.

[www.bennettjones.com/CorporateFinance](http://www.bennettjones.com/CorporateFinance)

**For more information about the firm, please visit us online at [bennettjones.com](http://bennettjones.com)**

### **Calgary**

4500 Bankers Hall East  
855 2nd Street SW  
Calgary, Alberta  
T2P 4K7 Canada  
Tel 403.298.3100

### **Toronto**

3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario  
M5X 1A4 Canada  
Tel 416.863.1200

### **Edmonton**

3200 TELUS House  
South Tower  
10020 - 100th Street  
Edmonton, Alberta  
T5J 0N3 Canada  
Tel 780.421.8133

### **Ottawa**

Suite 1900 World Exchange Plaza  
45 O'Connor Street  
Ottawa, Ontario  
K1P 1A4 Canada  
Tel 613.683.2300

### **Vancouver**

1055 West Hastings Street, Suite 2200  
Vancouver, British Columbia  
V6E 2E9 Canada  
Tel 604.891.7500

### **Doha**

Qatar Financial Centre Branch  
37th Floor, Tornado Tower  
Al Funduq Street, West Bay  
PO Box 11972  
Doha  
Qatar  
Tel +974 4 020 4777  
Fax +974 4 020 4799

### **Washington, DC**

1730 Pennsylvania Avenue NW  
Suite 875  
Washington, DC  
20006  
United States  
Tel 202 207 1049  
Fax 202 204 0498

### **Bermuda**

Bennett Jones (Bermuda) Ltd.  
Hamilton House  
10 Queen Street  
P.O. Box HM 1154  
Hamilton HM EX  
Bermuda  
Tel 441 292 4229  
Fax 441 292 6140

### **Beijing Representative Office**

Bennett Jones Commercial Consulting Inc.  
Room 09, Level 14  
China World Office Tower 1  
1 Jianguomenwai Avenue  
Chaoyang District, Beijing 100004, China  
Tel +86 10 6535 0123  
Fax +86 10 6535 0122



# MEET OUR BUSINESS DEVELOPMENT TEAM

## SECTOR HEADS

### Priya Patil

Head, Business Development – Diversified Industries  
Toronto Stock Exchange and TSX Venture Exchange

T 1 416 947-4710

[priya.patil@tsx.com](mailto:priya.patil@tsx.com)

### Michael Kousaie

Head, Business Development – Technology & Innovation  
Toronto Stock Exchange and TSX Venture Exchange

T 1 416 947-6626

[michael.kousaie@tsx.com](mailto:michael.kousaie@tsx.com)

### Monica Rovers

Head, Business Development – Global Energy  
Toronto Stock Exchange and TSX Venture Exchange

T 1 403 218-2805

[monica.rovers@tsx.com](mailto:monica.rovers@tsx.com)

### Orlee Wertheim

Head, Business Development – Global Mining  
Toronto Stock Exchange and TSX Venture Exchange

T 1 416 947-4477

[orlee.wertheim@tsx.com](mailto:orlee.wertheim@tsx.com)

## BUSINESS PRACTICE LEADERS

### Dani Lipkin

Head, Business Development – ETFs & SP  
Toronto Stock Exchange

T 1 416 814-8874

[dani.lipkin@tsx.com](mailto:dani.lipkin@tsx.com)

### Gina Pappano

Head, Business Development – Market Intelligence  
Toronto Stock Exchange and TSX Venture Exchange

T 1 416 947-4272

[gina.pappano@tsx.com](mailto:gina.pappano@tsx.com)

## GEOGRAPHIC HEADS

### Graham Dallas

Head, Business Development – Europe/Middle East/Africa  
Toronto Stock Exchange and TSX Venture Exchange

T 44 20 3194-2580

[graham.dallas@tsx.com](mailto:graham.dallas@tsx.com)

### Vera Xu

Associate, Business Development – Asia  
Toronto Stock Exchange and TSX Venture Exchange

T (8610) 6505-8011

[vera.xu@tsx.com](mailto:vera.xu@tsx.com)

## Disclaimer

This publication is not intended to provide legal advice but to highlight matters of interest in the area of law. If you have any questions or comments, please call or visit:

[www.bennettjones.com](http://www.bennettjones.com)

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