

## **How can a private company sell securities in Ontario? V2**

### **What is the purpose of this article?**

Enable private company founders, boards of directors, CEOs, CFOs, and investors to structure their discussion on raising capital and how to sell securities (equity or debt) in Ontario.

This article does not provide legal or financial advice. Before making any decisions or take any actions to sell securities in Ontario, you should consult with the appropriate professionals.

### **What are the critical learnings in this article?**

- 1) There are many ways to raise capital, in addition to selling securities.
- 2) There are many provinces and countries to raise capital from.
- 3) You need an experienced finance person or financial advisor to help you think through the best way to raise capital.

### **There are many ways for a private company to raise capital in Ontario.**

- 1) These include: government loans, grants, and tax credits; factoring; pre-payments from customers, deferring payments to suppliers, a variety of financial instruments, loans, and selling securities in Ontario.
- 2) Any company in the world selling securities in Ontario must follow Ontario laws and regulations. The OSC (Ontario Securities Commission) regulates the selling and trading of securities in Ontario.
- 3) Any Ontario company selling securities in another province or country must follow the local laws and regulations. This article is focused on a private company selling securities in Ontario. Publicly traded companies or private companies going public are outside this article's scope.

### **A prospectus is always required unless the company meets specific exemption conditions.**

Creating a prospectus can be a long and expensive process. Much of the funds from the sale of a small amount of securities could be consumed by the prospectus costs.

Under certain situations a prospectus is not required, resulting in a faster and lower cost sale of securities. The following provides a high-level overview of the 6 general situations in which a prospectus is not required. Each situation reflects the characteristics of a specific type of investor. You must consult a securities lawyer for advice, as the laws and regulations are far more detailed than this overview.

- 1) Private issuer: your corporation has fewer than 50 people holding securities. A company starting out with a handful of founding shareholders actually takes advantage of this exemption, often without being aware of it.
- 2) Family, friends and business associates including employees, officers, board directors of the corporation, or consultants to the corporation.
- 3) Accredited investor: These are investors with assets and income which meet the OSC's definition of a "accredited investor". The OSC views these as sophisticated investors who do not require the detail contained in a prospectus in order to make an investment decision.
- 4) Minimum purchase amount of \$150,000. As long as the investor (who cannot be an individual) purchases at least \$150,000 of securities.
- 5) Offering memorandum: an offering memorandum is a simplified prospectus, which must follow OSC regulations and be filed with the OSC.
- 6) Crowdfunding: your corporation can sell simple securities (e.g. common shares and non-convertible debt) through a registered online funding portal.

If you are taking advantage of one of these exemptions, you must file a report with the OSC, unless you are utilizing the Private Issuer or Employee, Officer, Board Director, Consultant exemptions.

### **By utilizing these exemptions, the corporation has multiple potential securities buyers.**

Potential securities buyers may include:

- 1) Friends and family;
- 2) Individual investors;
- 3) Family Offices;
- 4) Venture Capital or Private equity;
- 5) Strategic investors;<sup>1</sup> and
- 6) Institutions.

In addition to the above, the corporation may utilize an exempt market dealer, who is an intermediary between the corporation and accredited investors. The exempt market dealer should have a broad network of potential investors, enabling your company to quickly sell securities. It could be very time consuming for your company to find investors. The exempt market dealer must be registered with the OSC.

### **What are your next steps?**

- 1) Begin your next steps at least 12 months before you need to sell securities.
- 2) Define your company's long-term value creation plan (sometimes called a strategic plan).
- 3) Outline your company's long-term cash-flow and capital requirements plan, linked to your long-term value creation plan.
- 4) Agree on what is driving the need to raise capital at this point. e.g. funding growth, founder(s) want to exit, founder divorce or death.
- 5) Analyze the long-term implications, in multiple-scenarios, of raising capital at this point.
- 6) Determine the best way to raise capital at this point. There may be many options rather than selling securities. There may be many options for which province or country to sell securities.
- 7) What stage is your corporation at? E.g. Seeking angel investors/seed capital or A, B, C series funding? An established corporation that has been in business for many years? Founders seeking to sell their interest or sell the company?
- 8) Founders and major shareholders must also consider their personal and family financial plans.
- 9) Create your plan to build relationships with potential buyers of your securities. Investors, especially funds and institutions, will need time to get to know you e.g. many months of receiving your monthly updates.

### **Footnotes**

<sup>1</sup> Strategic investor: an investor (typically a company) that invests primarily for strategic rather than financial (return) purposes. E.g. in order to gain future access to a key new technology or product. (By contrast, financial investors make investment decisions primarily based on the prospect of a strong financial return.)

### **What further reading should you do?**

- Summary of Key Capital Raising Prospectus Exemptions in Ontario – January 28, 2016 Ontario Securities Commission: [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_ni\\_20160128\\_45-106\\_key-capital-prospectus-exemptions.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_ni_20160128_45-106_key-capital-prospectus-exemptions.htm)
- Detailed OSC rules and policies regarding prospectus exemptions: <https://www.osc.ca/en/securities-law/instruments-rules-policies/4/45-106/unofficial-consolidation-national-instrument-45-106-prospectus-exemptions-1>
- The Ontario Securities commission has a website focused on selling securities without a prospectus: <http://www.osc.gov.on.ca/en/exempt-market.htm#how-do-companies-raise-capital-in-the-exempt-market>