



Going Public

As the owner of a private company you have a lot to keep in mind:

- your financial well being
- your employees' financial well being, health and safety
- good supplier relations
- customer needs, wants, concerns
- providing a healthy workplace where ideas and thoughts can be openly expressed
- government regulatory issues

When private companies want to raise capital, they often think of going public with some or all of its share capital being publicly traded.

Once a company goes public, there are all above concerns and more. You have to consider other stakeholders in the form of a board of directors, regulatory authorities and other shareholders. A more formalized structure is needed for the public company, including an extensive Board of Directors.

The new legislation also imposes greater responsibility on a reporting issuer to ensure there is timely continuous disclosure of the company affairs.

The revised definitions of 'material change' and 'material fact' raise the bar on what must be reported.

The new securities regime imposes onerous personal responsibilities on CEO's and CFO's to sign on the dotted line. In the first instance, they must attest to the completeness and fairness of their company's quarterly and annual financial statements.

Secondly, and with broader implications, is the requirement for the CEO and CFO to sign certifications with respect to the adequacy and effectiveness of their company's procedures and system of internal controls.

The first certificate addresses the establishment, design and evaluation of internal controls; the second certifies the company's procedures and controls with respect to disclosure and reporting.

It's Expensive

While there are no reliable Canadian estimates on the daunting costs of complying with all these new regulations, U.S. experience shows that for medium-sized companies, internal control costs could be as much as US \$500,000 a year, while audit fees are likely to jump 30%.

In a private company the Board could take the form of an Advisory Board that includes outside participants who are trusted advisors and business people. This provides the discipline of dealing with a supervisory authority within the corporate structure.

Members of the Advisory Board act as a formal Board of Directors without the authority or the responsibilities associated with a formal Board.

There are a number of advantages for the public company. These include:

- Access to capital. By offering stock for sale to the public a company can access a
- substantial source of corporate funding.
- Increased financing alternatives such as bonds, convertible bonds, secondary equity offering
- Stock may be more liquid with investors able to buy and sell their shares
- Increased compensation options for senior management, e.g. stock options
- Heightened prestige creating an impression of stability, lenders and creditors may perceive the company as a safer credit risk
- Stock can be used to acquire other businesses

There are also some disadvantages for the public company. These include:

- Dilution of votes
- Requirements for greater public disclosure with quarterly reporting. In addition to normal financial statements, the stock exchanges require more formal reports on a regular basis
- The company has to be prepared to disclose, among other things, all financial results, terms of contracts and executive compensation. All this becomes available to competitors
- Audited statements are required and, with new regulations, will be more expensive
- Stricter requirements on management reports with senior management guaranteeing the information is correct
- Detailed reporting of insider trading in the stocks
- Effective internal controls must be in place
- Increased legal costs as many issues require legal oversight, ensuring all regulations are followed
- Increased management focus on fulfilling reporting requirements can take focus away from day to- day management
- Management needs to spend time with investor analysts to generate a following for the company's stock.
- A company's share price can become too much of a focal point, distracting employees who own shares or options and leading to management decisions being made based on the short term desire to boost the share price rather than the long term interests of the company
- Typically higher corporate tax rates