Venture Capital Financing: The Canadian Perspective

By

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CHAPTER FOUR – B

VENTURE CAPITAL FINANCING: GETTING FUNDED BY VENTURE CAPITALISTS; WHAT THE VC'S ARE LOOKING FOR; HOW SUCH TRANSACTIONS ARE OFTEN STRUCTURED; THINGS TO WATCH OUT FOR

The Canadian Perspective

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I. INTRODUCTION

The Canadian venture capital (VC) market, although considerably smaller, is very similar to that of the United States. In Canada, as in the US, early stage companies are finding it much more difficult to attract funding than they did 12 months ago. However, a strong company, with good business fundamentals will find VC funding is available.

A start-up or emerging company will need to satisfy several criteria for an investor and a transaction will require planning on the part of the company not only in terms of structuring the deal but also in terms of preparing for investment. This paper will focus particularly on the western Canadian venture capital market and provide an outline of a typical VC investment in a Canadian company including the provisions that a VC will ask for in a term sheet and subsequent definitive documentation.

II. THE CANADIAN VENTURE CAPITAL MARKET

1. Growing Market for VC Investment

The British Columbia and Canadian venture capital markets have grown substantially in the past five years. As in the United States, most VC investment dollars are directed towards technology companies. There are several technology "hubs" in Canada, the largest and fastest growing of which are the Ottawa region, Toronto and Vancouver. Vancouver has graduated to a stage where it has several large corporations who are now listed and trading on the Toronto Stock Exchange or NASDAQ. That, in turn, has lead to technology spin-offs, a growing network of technology-oriented "angel" investors who have "cashed out" of technology ventures, and an attractive investment climate for venture capital companies. Significant funds have been raised by private and institutional VC's. Many of these VC's have investment mandates which focus on either the technology industry as a whole or on a specific technology sector.

Certain Canadian venture capital companies will also invest in US companies, particularly if that investment is syndicated among a number of Canadian and/or US-based VC's. Many of the Canadian VC's work to build relationships with US VC's who they can introduce to Canadian technology companies for syndicated investment purposes. Canadian VC's view this as a competitive advantage in attracting good deal flow. In the Vancouver market, several types of VC's have formed to finance companies from early stage through to later-stage pre-public. Notwithstanding the expansion of VC's, the appetite for VC investment, particularly in early-stage ventures appears to be increasing at a faster rate. In addition to a growing network of "angel" investors, who will typically invest at a much earlier stage of a company's development, formal VC's include pension funds, investment dealers, professional business advisors, subsidiaries of financial institutions, government-sponsored financial institutions and labour sponsored VC corporations. These formal VC's tend to invest at a later stage than angel investors, although some recently established VC's which have attracted significant pension fund monies, have established themselves as seed stage investors to fill what they perceive as a niche for incubating start-ups. Many of the Vancouver VC's maintain good relationships providing deal flow to one another. Those VC's which concentrate on very early-stage companies hope to

develop their investment companies to a point where they can introduce later stage financings to larger or more established VC's at higher valuations.

The Canadian venture capital industry has seen significant growth in the past five years both in terms of aggregate dollars invested and number of investment deals completed. The Canadian Venture Capital Association recorded the following statistics in its annual report for 2000 (prepared by Macdonald & Associates Limited for the Canadian Venture Capital Association):

- A total of (Cdn)$2.7 billion was invested by VC's in 1999, compared to aggregate investment in 1998 of (Cdn)$1.7 billion.
- A total of 989 financings were completed in 1999.
- the average size of investment grew from (Cdn)$1.5 million to (Cdn)$2.75 million.
- most of the investment in 1999 occurred in Ontario (47% of the aggregate amount invested), but British Columbia showed the most dramatic growth in investment over the previous year with an increase of 70%.
- Most investments were made to companies in the technology sector, accounting for almost 70% of all investments made attracting 80% of the total investment capital made in 1999.
- Labour sponsored funds are the most active investors accounting for 28% of all investments made followed closely by private VC firms which accounted for 22% of all investment.
- Foreign investors invested a total of (Cdn)$568 million in 48 companies in 1999. Although the statistics do not disclose the domicile of the investors, it is likely that most of these are from US firms, many of which will have co-invested together with Canadian VC firms.

2. Target Industry Overview

As mentioned above, most VC funding has been in the technology industry. The industry in Canada has proven to be particularly attractive to US technology companies in large part because of competitive labour costs and a favourable dollar. Canadian companies also enjoy a good supply of technology innovation from some of the best engineering programs in North America and access to various research and development programs, both tax incentive and grants driven. The technology industry is becoming a more important driver of the economy and is representing an increasing part of Canada's export market.

A useful report on the British Columbia market is published by BC Statistics and the Ministry of Finance and Corporate Relations (BC). This report recorded total 1998 revenues generated by

technology companies in 1998 of $5.21 billion. Technology companies in British Columbia represent the fastest growth sector in terms of gross domestic product and employment.

III. WHAT VENTURE CAPITALISTS ARE LOOKING FOR

1. Target Company Characteristics

Generally, VC's tell potential investees that they look for the following factors before investing:

(i) Strong Management Team – Industry experience; drive and ambition; and technical expertise are all elements of a management team that VC's will say they are investing in. Depending upon the VC, however, a lack of depth in a particular area of management is not necessarily a bar to investment. Certain VC's, particularly those who invest in very early stage companies, will bring that talent to the company from the VC itself, through the VC's network of talent or through recruiting efforts.

(ii) Market Opportunity – Overall size of the commercialization opportunities for the company's product or service; barriers to entry; current competitive and possible competitive landscape; profit margins and customer "excitement". The VC wants to know that it is investing in a company that, preferably, will be the dominant player in an emerging area.

(iii) Technology/Business Concept – Uniqueness of product or service; development risks; ownership of proprietary rights, in some cases a determination of patentability of a proprietary technology.

How much weight a VC puts on each of the above criteria will depend in part on the VC and in part on the make-up of the potential investee company. A very strong management team with "serial" entrepreneurs who have proven track-records in the same or similar technology endeavours may be sufficient to attract the VC investment. However, if the other two fundamentals are not present, then a strong management team on its own is not likely to be sufficient to complete the investment.

2. Preparing for VC Investment

Companies that are seeking financing from VC's often concentrate on the development of their idea, concept, market or prototype. While all of these matters are important, there are a number of issues, both business and legal, that a company will have to address before it even knocks on the door of a VC. Once a VC is interested in a potential investment, it will conduct due diligence on the company. Therefore, it is important that a company have its organization and documentation in order to enable it to advance to actual financing.

(i) Business Plan – Certain VC's will tell you that they do not concentrate on the business plan. While this may be true, it is very difficult in practice to get in the door of a VC

without a business plan. Business advisors and legal counsel can assist a company with this process by reviewing the plan from the perspective of a potential investor. Legal counsel can also help the company determine what measures should be taken, if they have not been taken already, to confirm and protect the intellectual property assets which the company will commercialize.

(ii) Key Contracts – In many cases, an early-stage company has either not put in place any written contracts during its development or has put its own contracts together from a variety of sources. The internet provides companies with all kinds of information, but in many cases, it provides just enough information for a company to get into trouble. Legal counsel should review with a company what contracts it has, or should have, before requesting financing from a third party. In most cases, employment and/or independent contractor agreements which include proprietary rights provisions acknowledging ownership of all intellectual property in the company should be in place. If appropriate, non-solicitation clauses should also be included in such contracts.

(iii) License Agreements/Strategic Alliances – If an investee company has entered into distribution, reseller or license arrangements, these should be properly documented and legal counsel should review the rights that have been granted by the company with respect to its intellectual property. The company and its legal counsel should ensure that "competing" rights or rights which are greater than necessary have not been granted, such as exclusive license grants where such rights are not giving significant benefit to the company.

(iv) Organizational and Capital Structure – A small start-up private company may have incorporated on its own, adopted overly restrictive articles and issued a minimal number of shares to founders. Typically, "friends and family" investors will invest in the same class of common shares. However, a VC investment will usually be structured with some form of preferred share, often with conversion features. This topic is discussed further below. In addition, a company should have its minute book in order, with proper recording of annual general meeting matters and the completion of filings with the Registrar of Companies. If there are any concerns with any prior issues of shares, then these should be addressed before the VC is involved.

(v) No Real Dress Rehearsals – The VC community in Canada, and particularly in British Columbia is a small one. VC's quite often manage deal flow by sharing prospects with other investors, including VC's in the community. Therefore, it is important that a company have a clear idea before approaching potential investors of what it wants to accomplish and how it proposes to sell its prospects. Starting with the "B" list to practice the company's approach is a good idea, but remembering that the community is a small, cohesive one, is also wise. Every meeting should be for the purpose of "closing the sale". However, a company should also be flexible in its presentation strategy. It should alter

future presentations based on feedback received from VC's that have already reviewed the proposal.

IV. STRUCTURING THE TRANSACTION

1. Introduction

How a VC investment is structured will depend, in part, on the nature of the VC, the VC's particular funding mandate and investment objectives and the stage of the company's development. Typically, the VC will treat the investment as more than just a passive equity stake and will seek certain protection and controls to ensure that the investment achieves the primary objective of a high rate of return while minimizing the level of risk associated with early-stage private investments. A VC seeks investments which have potential for growth and which will allow the VC to realize on its investment either when the company goes public or is sold.

2. A VC's Objectives

VC investment, particularly from private or labour-sponsored VC firms, is usually based on the premise that the investment is not a passive one. A VC invests in order to achieve a superior return. However, VC's also need to balance the risk associated with early-stage or at least pre-public investments. They accomplish this risk-reduction by either actively participating in the company's affairs or at the very least, monitoring the day-to-day performance of the company's management. VC's, as opposed to angel investors, need to satisfy their own investors that they are managing the portfolio investments in a prudent manner. The funding structure will vary depending upon the nature of the VC and its own investment mandate, the stage of development of the investee company and whether there are other VC's concurrently participating in the investment. However, there are some common terms that most VC's will request which may include some significant restrictions on the entrepreneur/founder(s) and the company itself.

3. Typical VC Provisions

The following are some typical provisions which a VC will request in respect of its investment:

(a) *Rights and Restrictions of Shares:*

(i) Type of Securities

As in the US, Canadian VC's quite often invest in convertible preferred shares which carry a liquidation preference and preferred dividend rights. Depending upon the nature of the investor, financing might also be by way of convertible debt. In addition, warrants, typically with a 1-3 year exercise period might also form part of the deal. If warrants are included, they will usually be in respect of common shares, not the preferred shares that are issued on the closing of the financing. Depending upon the development stage of the

investee company, a VC will occasionally invest in tranches, with subsequent tranches dependant upon the company achieving certain milestones. This is particularly the case when a VC funds a start-up that is in the process of, and using funding to achieve, completion of a specific objective such as the assembling and testing of a working prototype.

(ii) Conversion

Conversion can occur at the shareholder's election and will automatically convert on a "qualified liquidity event" (see below). If there are redemption rights, then conversion will be allowed during the notice period of redemption issued by the Company. Conversion will also be automatic if a majority of the preferred shares convert. The conversion price might be based on a formula or ratio which is different from 1:1 in the first instance, but in any case will be subject to anti-dilution provisions.

(iii) Qualified Liquidity Event

A 'qualified liquidity event' is defined as an event which effectively realizes an exit strategy for the company, whether by initial public offering or by sale or merger of the company. As mentioned above, the occurrence of such an event will trigger an automatic conversion of the preferred shares to common shares pursuant to the conversion formula then in effect. Typically, there are parameters which "qualify" such liquidity events based on minimum thresholds for the size of offering or the valuation of the company or assets, as applicable. For example, a qualified liquidity event might be described as an IPO on a specified stock exchange or exchanges, resulting in minimum net proceeds to the company of a particular amount at a price per share which is a certain multiple of the issue price of the preferred shares on an adjusted basis or a sale of the company at a certain multiple of the issue price of the preferred shares.

(iv) Dividends

Typically, early-stage companies will not be in a position to pay dividends and infusions of capital and revenues fund the continued development of the business and commercialization of the technology. Nevertheless, VC's often request that the preferred shares have a cumulative dividend at a rate of between 5 – 10% per annum, payable in preference to the common shares. At the very least, the preferred shares will be entitled to a comparable dividend to the common shares on an as-converted basis.

(v) Voting Rights

The preferred shares will carry the same number of votes per share as the common shares, in almost all cases, one vote per share. The VC, as a preferred shareholder, will therefore be entitled to all notices of meetings of shareholders and to attend and vote on

any matters on which common shareholders are entitled to vote. In addition, certain specific matters may require the vote of only the preferred shareholders to pass, granting them a veto regardless of their relative proportionate share of all outstanding voting equity in the company.

(vi) Liquidation Preference

The preferred shares will be senior to all other classes of shares and the share rights contained in the amended constating documentation of the company will provide that no other class or series of shares can be created without the approval of the holders of the preferred shares. On dissolution, winding-up, merger or sale of the company or sale of substantially all of the assets of the company, the preferred shareholders are entitled to receive: (i) the issue price of the preferred shares, or (ii) some multiple of the issue price of the preferred shares, plus all accrued and unpaid dividends. This allows the preferred shareholder to determine whether to take the proceeds from the liquidation preference or exercise the conversion feature.

(vii) Anti-dilution

Anti-dilution mechanisms are always present, but the calculation formula varies. The effect of the anti-dilution provision is to ensure that, upon the occurrence of certain events such as subdivision, consolidation or reclassification of common shares, the payment of stock dividends, the merger or other corporate arrangement resulting in the exchange of common shares, or any financings which are completed at a price which is lower than the issue price of the preferred shares, the holders of preferred shares will maintain their relative positions in the company. The method of calculation may vary, but typically, the provision will adjust the preferred shares based upon a weighted average formula.

(viii) Retraction

The preferred shares may have a retraction right. The right of retraction will likely be exercisable after a certain period of time following which, on notice by the preferred shareholders, the company will be required to repurchase the preferred shares. The retraction price may be some multiple of the issue price, plus declared (or undeclared cumulative) but unpaid dividends. Payment might be made over a certain period of time, such as a certain number of quarters following notice, to allow the company sufficient cash flow to meet its obligations.

(ix) Redemption

If a retraction right is included, the company might also include the right, on notice to the preferred shareholders, to repurchase the preferred shares. As with a retraction right, the

right of redemption will only be in effect after a period of time, usually matching the retraction period. The redemption price will typically be the same as the retraction price.

(b) *Shareholder Agreement Rights*

(i) Board Rights

As mentioned, a VC rarely makes a passive investment. Almost always, a VC will require that one or more of their personnel be appointed a director of the investee company. The VC might also wish to set the number of directors and the identification of first directors at the time of closing of the financing. If there is more than one VC investor, each will typically require board membership. In certain circumstances, in addition to identifying those matters that require shareholder approval, the VC might also wish to prescribe certain matters that will come before the board, which might otherwise be within management's mandate. Quorum for meetings, location and frequency of meetings, the identification of a board chair, the granting of a veto to the board chair, and the establishment of board committees may also be stipulated. If there is an appointment of an audit committee and/or a compensation committee, then the VC will likely wish to ensure that its representative board member is part of such committee or committees.

In addition to, and very rarely, in substitution for, board rights, a VC might also require certain regular reporting or information rights as well as observer status at board meetings. Information rights might include the regular delivery of management financial statements on a monthly or quarterly basis, reports on technical developments, reports on major contracts signed or customers attained, and budget information. Observer status would allow certain individuals to receive notice of, and attend at, board meetings. These observers, however, would not be entitled to vote.

(ii) Matters Which Require Preferred Shareholder Approval

The rights and restrictions attaching to the preferred shares will generally be contained in the memorandum and articles (in the case of a British Columbia company) or the articles (in the case of a Canadian corporation). These rights and restrictions will prescribe certain matters which pertain to the preferred shares specifically such as dividend rights, redemption and retraction provisions and conversion features. In addition, a shareholders agreement might also contain an expanded list of matters which require shareholder, and specifically, preferred shareholder, approval. This is discussed below under the heading "Shareholders Agreement".

(iii) Rights of First Offer

A shareholders agreement in a private company will typically have simple rights of first offer on all transfers of shares. A VC will also require these provisions. Shareholder

agreements generally grant to either the company or the other shareholders the first opportunity to purchase shares offered by a shareholder to a third party on the same terms and conditions as are set out in the third party offer. If the company or other shareholders do not exercise their rights, then the other, i.e. the shareholders or the company depending upon who had first rights, will have a second opportunity. Alternatively, the provisions might be designed to favour the rights, and protect the interests of, a VC investor by stipulating that founders shares may not be offered to a third party unless first offered to the VC.

A shareholders agreement will also provide that certain transfers are exempt from the rights of first offer. These are particularly important to a VC, which might want to transfer the investment from a corporation to a limited partnership fund, or split the investment between two co-investing funds. Similarly, a founder might be entitled to transfer shares to a corporation which is controlled at all times by the founder. Neither of these transfers would trigger any rights of first offer of the other shareholders.

(iii) Pre-emptive Rights

If the company is a British Columbia company, the governing corporate statute (the *Company Act*) requires that all shareholders have a right, which cannot be generally waived, to exercise a pre-emptive right on the issuance of treasury shares. When shares are issued, it is common practice to have all shareholders execute and deliver to the company a waiver of their rights. This can be a cumbersome provision when there are a number of shareholders.

Regardless of the jurisdiction of incorporation, however, a pre-emptive right is often contained in a shareholders agreement. This right might be modified slightly in jurisdictions which do not have a statutory pre-emptive right to grant the right to purchase shares only to those shareholders holding a particular class or only to those shareholders holding more than a particular percentage on a converted basis at the time of issuance. The right can also be structured such that if a shareholder who has a right to a further issuance of shares under the pre-emptive rights provisions does not exercise that right, the shareholder loses its pre-emptive right in future offerings.

(iv) Co-Sale Rights

The VC's ultimate goal with its investment is to reach a liquidity event. A VC will want to ensure that if a founder is approached for sale of his or her shares, then the VC's shares will also be included in the sale, in part because the founder or founders may have been instrumental to the investment rationale of the VC in the first place. Similarly, if the VC wishes to sell its shares, then it will want a mechanism to compel the sale of shares by the other shareholders of the company. Typically, this right is triggered when a sale is proposed which would result in the transfer of "control" as defined by corporate law

statute, namely, a transfer of that number of shares which will allow a holder or holders to exercise fifty percent plus one of the voting power on a fully diluted basis. The price per share for the preferred shares will be computed on the basis that the preferred shares have been converted to common shares. In addition to co-sale rights triggered on a change of control, the term sheet might also include a "piggy-back" provision where an investor is entitled to include a percentage (typically pro rata) of their shares in a sale of shares which represent more than, for example, ten percent, of the fully diluted shares of the company.

(c) *Additional Rights and Restrictions Contained in a Term Sheet*

(i) Exclusivity

The VC may request that, for a period of time following execution of a Term Sheet, the company refrain from engaging in discussions with, or soliciting investments from, other parties. A VC may, however agree to add additional investors with its consent.

(ii) Reimbursement of Expenses

The VC will spend a certain amount of funds following execution of the term sheet in conducting its due diligence and drafting, negotiating and completing the financing and will often look to the company to reimburse all or a portion of such expenses. The amount of reimbursement is typically capped at a negotiated level. Where a VC investment is made on a cross-border basis, or there is more than one VC involved, each with its own counsel, a company should budget on the "high" side of expenses. Again, if the company is particularly organized and its contracts in order, then, in addition to creating greater certainty that the due diligence process will result in a favourable outcome, the costs might also be better contained.

(iii) Jurisdiction

Very occasionally, a VC will request that a company continue out of BC or another Canadian provincial jurisdiction and into an American, (typically Delaware) jurisdiction. This request will generally only be made with respect to companies in the earliest stages of development. The reason for the request is centred on the VC's belief that future financings are unlikely to come from Canada and that a US investor will be better able to understand and a company incorporated under US law.

(iv) Prospectus Qualification

Even if a corporation is Canadian, it is not always a given that an IPO exit strategy will occur on a Canadian exchange. Certainly, if you ask any early-stage technology company what its preferred IPO route is, you will find that they respond – NASDAQ. As a result, VC's will often ensure that language which deals with the registration and

qualification of the VC's shares is drafted to cover both US and Canadian securities laws. Piggy-back rights are the most common, granting to the VC the right to have its shares qualified for distribution under a prospectus or registration statement, subject to the company's and underwriters' rights to reduce the amount included based on market conditions. If a US exchange is contemplated, then demand rights might also be included.

(iv) Conditions Precedent including Due Diligence

Almost always, the VC will require that the closing of the investment is subject to satisfactory due diligence. If the company is still at a relatively early stage, without organized books of account and financial statements, it may be a pre-requisite that the company prepare and deliver to the VC financial statements which have been reviewed by an accounting firm as well as a budget or forecast for the ensuing fiscal year. In circumstances where the founder or founders are key to the success of the organization's plans, then the purchase of key man insurance may also be required. Depending upon the nature and investment mandate or restrictions of the VC, there may be a requirement for an opinion that the investment is an "eligible investment". For example, in Canada, the labour sponsored venture capital funds are required by statute to make only certain types of investments. The execution and delivery by all parties of definitive agreements (outlined below) together with any other ancillary documentation will also be required before the investment is completed.

4. Basis of Investment

Generally, VC's purchase securities in an investee company as principal where the securities acquired have an aggregate acquisition cost of at least $150,000. As a result, an exemption from the registration and prospectus requirements exists in all jurisdictions in Canada. The amount of $150,000 represents the highest prescribed amount under provincial securities legislation in Canada for the exemption to be available. In British Columbia, the prescribed amount is $97,000. Certain VC's that are subsidiaries of banks or other financial institutions would also have available to them other prospectus exemptions.

5. Agreements

As outlined above, VC investments begin with a Term Sheet that outlines the primary terms of the proposed investment and that typically states that it is intended by the parties to be a non-binding expression of intent only, subject to completion of a number of matters including the preparation and settlement of definitive agreements. There may be certain binding provisions of the Term Sheet, but these will generally be restricted to confidentiality provisions (if a separate non-disclosure agreement has not already been entered into), and exclusivity provisions, if negotiated by the VC. Following the completion of due diligence and assuming that the

investment is proceeding, the following documents will likely be entered into for the purposes of closing the investment:

(i) Subscription Agreement

A subscription agreement contains the basic information governing the investment by the VC in the company including the amount paid and the issuance of shares but will also contain certain representations and warranties of the company which form the basis of the investment, as well as covenants that the company will undertake certain matters. In addition, depending upon the prospectus exemption relied upon by the company in issuing the shares, the subscription agreement will also likely include certain representations and warranties concerning the investor and its acknowledgement of the basis of the investment, its residency, and/or its qualification (e.g. as a "sophisticated investor").

(ii) Shareholders Agreement

A number of the provisions that are outlined above in this paper will be contained in the Shareholders Agreement. These include provisions which deal with: (a) appointments to the board, the conduct of meetings, reporting requirements and other matters dealing with management of the company's affairs; (b) matters which must come before the shareholders and/or directors and other provisions regarding significant issues for the company; and (c) share rights, share transfers and similar matters prescribing the rights and restrictions associated with the holding of the common and preferred shares. The shareholders agreement may also contain the rights of the preferred shareholders to the qualification for distribution of the common shares issued on conversion of the preferred shares. If there is a possibility that the company may file a registration statement or prospectus in the United States or Canada, then the VC will also require registration or prospectus qualification rights. In some cases, these last provisions are contained in a "registration rights" or "investor rights" agreement instead of, or in addition to, a shareholders agreement.

If the company is a British Columbia company, the governing corporate legislation does not contemplate the transfer of decision making from the directors of the company to the shareholders. Unlike the federal corporate law statute (upon which many of the other provincial corporate law statutes are modelled) which recognizes unanimous shareholders agreements, the British Columbia statute states that the directors' discretion may not be fettered. Therefore, many of the provisions which VC's might require in a shareholders agreement may not be recognized as valid under British Columbia law.

(iii) Employment Agreement(s)

VC's may also require that key employees, typically the founders, enter into agreements with the company if they have not already done so. If they have done so, then the VC may require some further "time and devotion" clauses than may already exist in the employment relationship between the founder and the company. Such clauses contractually oblige the founder or founders to devote sufficient time to the enterprise to provide reasonable comfort to the VC that the founder is committed to the success of the company and will be dedicated to driving the company to its ultimate goal of exit strategy. It is also important to ensure that all employees have agreements which cover non-disclosure and assignment of intellectual property rights provisions in them.

(iv) Confirmation of amendment to Articles to create new class of shares.

Often, the constating documents of the company will have to be amended to create the class of shares with the negotiated rights and restrictions that will be issued to the VC. To effect these rights for a British Columbia company, the company will have to file with the Registrar of Companies a copy of the special resolution passed by the shareholders of the company approving the amendment to its memorandum and articles. The shares are not created until the Registrar has accepted the special resolution for filing. Therefore, evidence that the Registrar has accepted the filed documentation will be required at closing.

V. CONCLUSION

The Canadian venture capital market is very similar to the United States. Canadian VC's tend to monitor the US venture capital and industry markets and investments are quite often similarly structured. There are certainly differences in corporate statutes, securities laws and tax laws between Canada the US which might result in additional considerations by a US investor in a Canadian investee company, but the business terms of the investment itself are typically not materially affected. This paper has addressed those provisions which a Canadian VC will typically negotiate in a potential financing, particularly in connection with a technology based business.

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