Private Investment in Public Equity (PIPE) in Canada

MARCH 2021

FASKEN

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Fasken 2020 Canadian PIPE Deal Point Study

This is Fasken's second annual Canadian PIPE Deal Point Study. PIPE transactions are generally faster, more flexible and more cost effective than prospectus offerings. PIPE transactions can be distinguished from a typical private placement through: (i) the number of investors (a PIPE transaction will involve only a single or small group of investors); (ii) the percentage of the public company acquired (in a PIPE transaction, a meaningful percentage of the issuing company's securities will be acquired); and (iii) the presence of certain additional bespoke features (such as negotiated shareholder rights).

This edition focuses on PIPE transactions completed in the 2020 calendar year in Canada, compares the results seen in 2019, and looks ahead to 2021.

2020 Canadian PIPE Deal Point Study

1. Survey Sample and Methods

Fasken conducted a review of the 2020 Canadian PIPE deals having a deal size of greater than $10 million and whose deal details are publicly available.[1] Our usable sample catalogue produced a list of 15 deals (collectively, the "**2020 Sample**"). For each of these deals, documentation regarding the transaction was sourced from SEDAR.[2]

Each of the deals in the 2020 Sample was reviewed for:

1. Basic characteristics of the target, the investor(s) and the deal (including market capitalization of the target, industry and transaction amount);
2. Attributes of the acquired securities; and
3. The investor and issuer rights granted pursuant to the deal.

The following is a list of investor/issuer rights we examined:

Redemption Rights at the Option of the Issuer or the Investor	We examined if the securities issued could be redeemed at the option of the issuer or the investor, including when such securities could be redeemed.
Dilution/ Pre-Emptive Rights	We examined if pre-emptive purchase rights or other types of anti-dilution rights were negotiated. Pre-emptive purchase rights generally include the right to purchase additional securities in order to maintain the investor's pro rata ownership of the company.
Board Rights	We examined whether the investor had any board rights, including if an investor had the right to nominate a director or an observer to the board (and if there were any minimum holding thresholds to retain such rights).
Voting Rights	We examined if negotiated voting rights were included; voting rights that attached to common shares were not included in our review.

1 The PIPE deals we reviewed were sourced from Capital IQ, using the following criteria: transaction type (PIPE), target type (public company), geographic location of the target (Canada), transaction value (greater than $10 million), definitive agreements signed and transaction closing date between January 1, 2020 and December 31, 2020.

2 The documentation that we reviewed included (as applicable and available) subscription agreements, investor rights agreements, registration rights agreements, material change reports, early warning reports, press releases and articles of the company.

Registration Rights	We examined if registration rights were included generally, but specific types of registration rights were not considered.
Standstill	We examined if standstill restrictions were included generally (for example, restrictions on the investor's ability to acquire additional securities of the issuer above a certain percentage, or the investor's ability to engage in certain 'hostile' actions including solicitation of shareholder proxies or launching of a take-over-bid).
Information Rights	We examined if negotiated information rights were included.
Lock-Up	We examined if lock-up or hold periods during which the investor could not sell or otherwise transfer the securities were prescribed.
Other Business Rights	We examined if any additional ancillary business arrangements or agreements were entered into as conditions of the PIPE transaction.

We have compared the 2020 Sample against those deals reviewed in Fasken's first annual Canadian PIPE Guide and 2019 Deal Point Study (the "**2019 Sample**").[3]

2. Summary Findings

The 2020 Sample revealed the following key findings:

- The majority of the deals, approximately 53%, involved common equity.
- The most prevalent rights negotiated were registration rights (approximately 47% of deals surveyed).
- Anti-dilution, information and voting rights were also common (each in approximately 40% of deals surveyed).
- The least common rights granted were redemption rights at the option of the investor, which were only included in approximately 7% of deals surveyed.

3 For more information regarding the 2019 Sample, please refer to Fasken's Canadian PIPE Guide and 2019 Deal Point Study (Spring 2020), online at: https://www.fasken.com/en/knowledge/2020/07/canadian-pipe-guide/. The comparison of trends herein presumes that the number of deals with publicly available information is a similar proportion of the overall deals in each year.

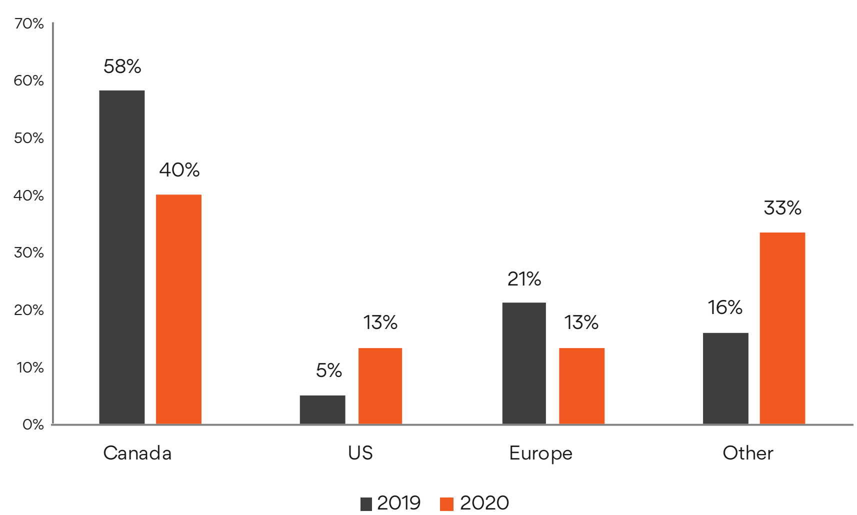
- The average market capitalization of target companies in the 2020 Sample was $1.82 billion, which was approximately 250% larger than the 2019 Sample. The average transaction size was $104.1 million, which was approximately 21% larger than the 2019 Sample. However, on average, deals in the 2019 Sample included more shareholder rights than the 2020 Sample.

3. Market Survey Results

(i) Characteristics of the Deal, Investor and the Company

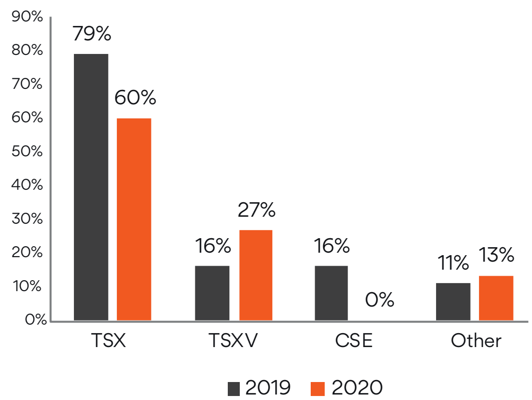
Investor Characteristics: The characteristics of the investor considered were (i) country of residence, and (ii) whether the investor was a strategic or financial investor.

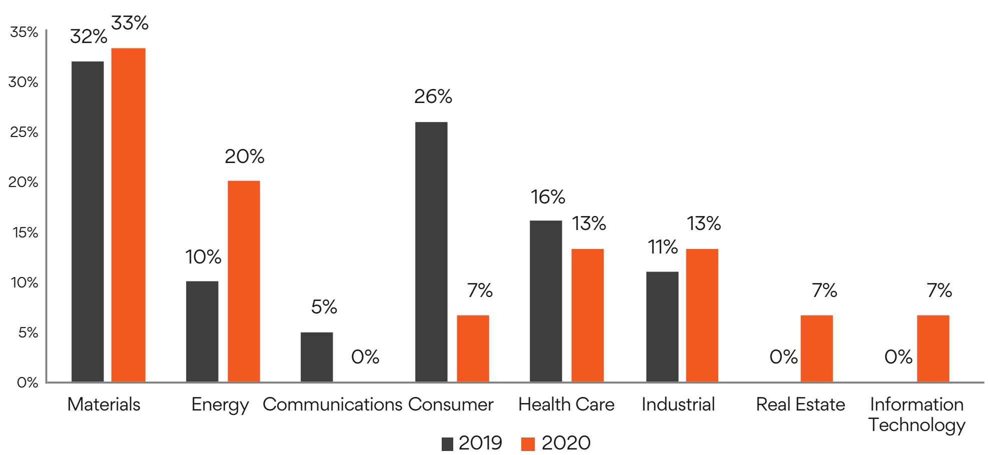
Of the 2020 Sample, 40% involved investors from Canada, 13% involved investors from the United States and 13% involved investors from the Cayman Islands. The remaining deals involved investors from the Netherlands, Hong Kong, England and the United Arab Emirates.



One third of investors were strategic investors. These investors already operated in the same, or in an adjacent, industry sector. The remaining investors were financial investors.

Target Characteristics: The characteristics of the target considered were (i) exchanges on which it was listed, (ii) market capitalization on the day prior to the announcement of the PIPE transaction and (iii) the target's industry.





PIPE deals in the 2020 Sample were more diverse, and included deals in the real estate and information technology sectors, as well as a larger percentage in the energy sector. By comparison, transactions in the 2019 Sample were focused heavily on consumer goods. Consistently, the majority of PIPE deals seen are in the materials sector.

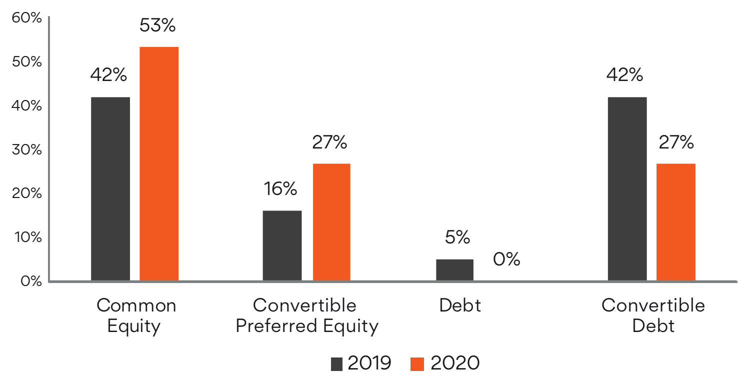
The average market capitalization of the targets in the 2020 Sample was $1.82 billion, the smallest market capitalization surveyed in the 2020 Sample was $24.86 million and the largest was $9.45 billion. The 2020 Sample market capitalization data was on average larger than the 2019 Sample, where the average market capitalization was only $519.59 million.

Transaction Amount: The average transaction size in the 2020 Sample was $104.1 million, the smallest was $12.5 million and the largest was $795.2 million. The transaction size for the 2020 Sample is also on average larger than the 2019 Sample, where the average transaction size was $85.9 million. This may be illustrative of the volatility and intensity of the current market, and the fact that PIPE transactions allow keen investors to acquire a large stake of a company in a relatively quick and simple manner.

Percentage of Target Acquired:[4] In the 2020 Sample we observed that the percentage of the equity of the target acquired by the investors ranged from approximately 1.4% to approximately 32.6% of the issued and outstanding common shares of the company, which resulted in a post-acquisition position ranging from approximately 3.2% to approximately 70.9%.

(ii) Security Features

The 2020 Sample involved the issuance of common equity, convertible preferred equity, and convertible debt, or a combination of the proceeding securities. The different types of securities were each issued in the following percentage of deals:



Secured Debt: Debt was secured in 75% of the transactions surveyed that involved convertible debt. By comparison, only 22% of the debt in the 2019 Sample was secured. This, combined with the fact that the 2020 Sample included notably less debt overall, may signal an increasingly cautious attitude towards debt, given the current economic climate in light of the COVID-19 pandemic.

Warrants: Common share purchase warrants were issued in one third of the deals reviewed. The primary security issued in these deals was common equity (60% of the time), followed by convertible preferred shares and convertible debt (20% of the time for each).

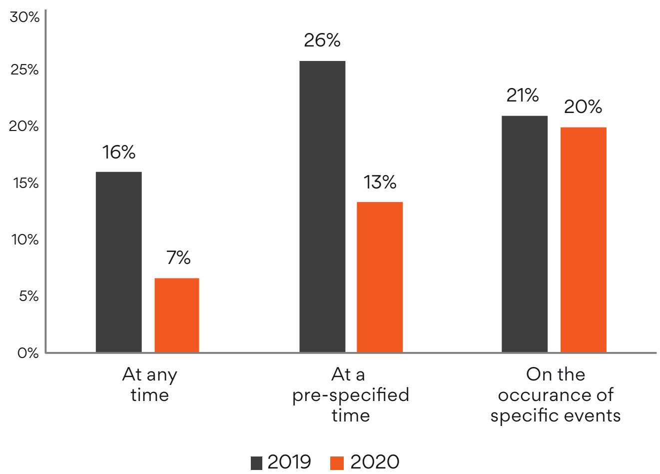
Convertible Securities: 53% of the deals surveyed included convertible securities. 87.5% of the convertible securities could be converted into common shares, 12.5% could be converted into debt and 12.5% could be converted into subordinated voting shares.

Interest/Dividends: 47% of the deals reviewed involved debt or preferred shares. 43% of these deals paid dividends on the securities and the remaining 57% paid interest. These payments were primarily paid in cash (57% of these deals). 29% were paid-in-kind and 14% could be either paid in cash or paid-in-kind.

4 The percentage of the target acquired and the percentage held post-acquisition was not reported in all of the deals reviewed in the 2020 Sample. The results noted herein are based on a subset of the 2020 Sample for which the percentages were available.

(iii) Securityholder Rights

Redemption Rights at the Option of the Issuer: In one third of deals reviewed, the issuer had the right to redeem the securities at any time, at a pre-specified time and/or on the occurrence of certain specified events. Of the deals we reviewed that included such rights, 80% were convertible debt deals and the remaining 20% involved convertible preferred shares or common equity. The timing of the redemption right in those deals providing for such a right is illustrated in the following chart:



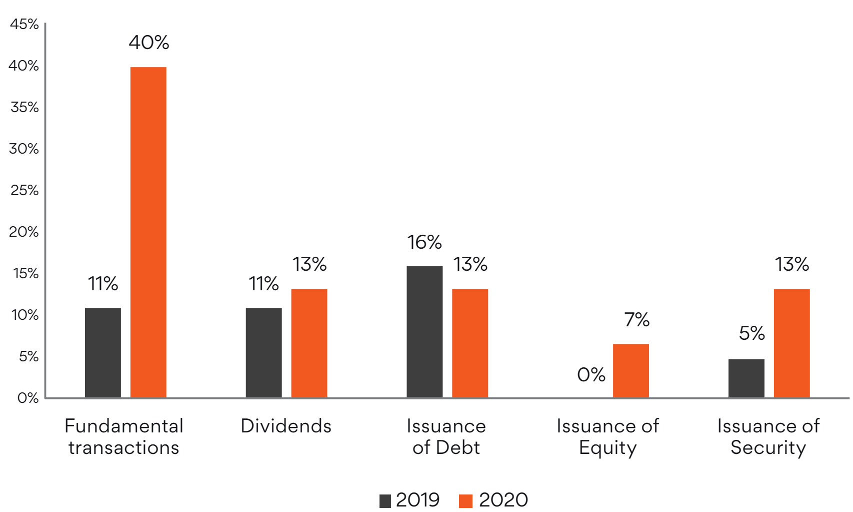
Redemption Rights at the Option of the Investor: In only one of the deals reviewed did the investor have the right to redeem the securities. In this deal, the investor had the right to be paid out a certain specified amount for the securities in the event of the liquidation, dissolution or winding up of the company, in priority to holders of common shares. This is drastically lower as compared to the 2019 Sample, where 58% of deals reviewed included redemption rights at the option of the investor.

Dilution Protection: 27% of deals reviewed included pre-emptive purchase rights and 13% included other anti-dilution protections, including adjustments made to the number of common shares to be issued pursuant to warrants acquired in connection with the PIPE transaction or adjustments made to the price of those securities to account for subsequent common share issuances.

Board Rights: One third of the deals reviewed included a board nomination right. The number of board members which investors had the right to nominate, as well as the security holding percentage required to maintain this right varied across the deals surveyed. 60% of deals which included board nomination rights included the right to nominate a single board member, and 40% included the right to nominate a certain number of board members based on different security holding thresholds. One deal allowed the nomination of two or three board members (with thresholds of 10% and 20%, respectively); and one deal allowed the nomination of one, two or three board members (with thresholds of 10%, 20% and 30%, respectively). 13% of the 2020 Sample included rights to nominate an observer to the board.

This is a notable change from the 2019 Sample, where approximately 74% of deals included board rights.

Voting Rights: 40% of the deals reviewed provided the investor voting rights regarding approval of certain fundamental transactions, an issuance of debt, an issuance of equity, an issuance of security and/or the declaration of dividends. Notably, more deals included the right to vote on fundamental transactions in the 2020 Sample as compared to the 2019 Sample. The percentage of the deals surveyed having each of these specific voting rights was as follows:



Registration Rights: 47% of the deals included registration rights.

Standstill: 27% of the deals surveyed included a standstill. In one such deal, the standstill lasted 12 months after the Investor no longer had an observer on the target company's board, and in the remaining deals the length of the standstill was dependant on the occurrence of certain events, such as whether the investor's shareholdings remained above 5% or whether certain related debentures had been converted.

Information Rights: 40% of the deals surveyed granted the investor rights to certain information over and above regular disclosure required to be made to security holders, such as rights to review monthly financial statements and operational reports, the right to receive notice of certain transactions, and rights to visit and inspect certain facilities.

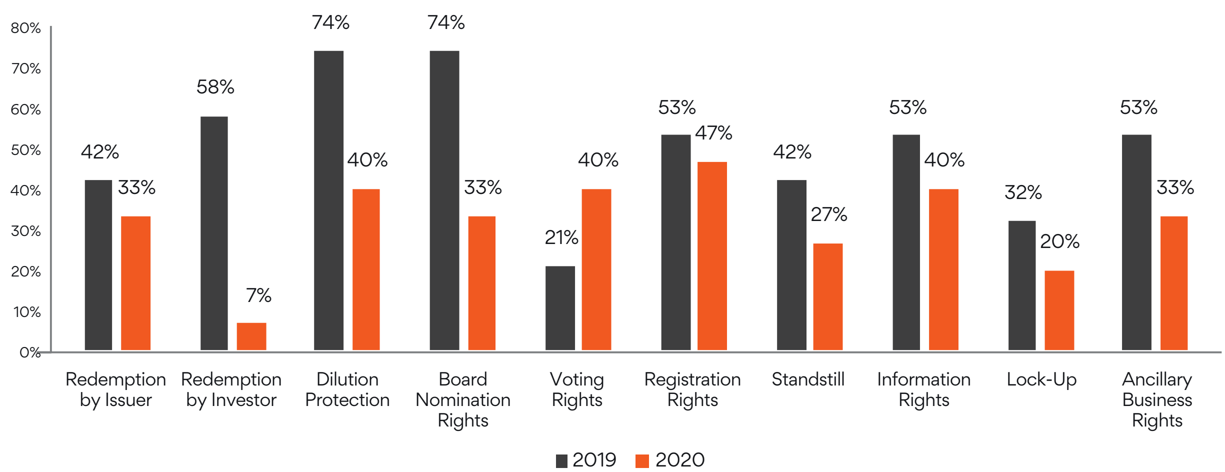
Lock-Up: 20% of the deals included lock-ups on the sale of investor shares (not including those securities subject only to a four-month re-sale restriction mandated by securities laws). The average lock-up period was 7.5 months.[5]

Other Business Rights: One third of the deals included ancillary business rights or arrangements. Some such business rights included: an off-take agreement pursuant to which the investor is granted 18.5% of the company's refined gold produced from a certain facility; the right to appoint persons to a technical committee; the right to restrict the transfer of specific assets; rights of first refusal regarding the sale of certain assets, projects, subsidiaries or intellectual property; and agreements regarding future capital commitments.

Notably, in comparison to the 2019 Sample, the 2020 Sample included less shareholder rights across the board, with the exception of voting rights. The most drastic changes were the drop in redemption rights at the option of the investor, dilution protection and board nomination rights. Overall, this shows 2020 PIPE investors as having less control and less protection. This is particularly interesting when considered in the context that, as noted above, on average PIPE transactions in the 2020 Sample were 21% larger than those in the 2019 Sample. It is also surprising that terms were more "issuer friendly" in light of the economic disruption and hardship that COVID-19 imposed on markets.

5 Information regarding the length of the lock-up in one deal was not available.

Also of note is the decrease in ancillary business rights. This, combined with the overall reduction in rights, the increase in transaction size, and the large proportion of investors that were financial investors, may suggest that in 2020 PIPE transactions were used more as a company-driven means of obtaining financing, or a simple way for keen investors to take advantage of a volatile market, and used less as a strategic business development tool.



Outlook for 2021

With COVID-19 creating continued uncertainty in the economy, capital markets are expected to continue to be volatile well into 2021. We expect to see PIPE volumes remaining robust. From the perspective of an investor, a PIPE can provide downside protection, an effective say in the business and upside gains. For issuers, a PIPE can act as an effective financing while securing a strategic partner, and in the case of those issuers facing tough times, allows for the raising of significant capital without selling the entire business at a depressed value.

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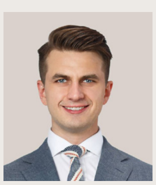

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