Goodmans LLP Update

Corporate Securities Law

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Quebec Announces Measures to Deter Hostile Take-overs

The Quebec government announced plans to move quickly to propose legislative amendments designed to better position Quebec companies to deter, and protect themselves from, unsolicited take-over bids. The government's announcement, which also included proposed measures intended to increase the attractiveness of locating companies in Quebec, was made in conjunction with a report released by the Task Force on the Protection of Québec Businesses (the "**Task Force**"),[1] which recommended the proposed reforms.

Background

In the spring of 2013, two proposals were made by Canadian securities regulators (see our earlier client update entitled *Canadian Securities Regulators Propose New Regimes for Shareholder Rights Plans*) concerning shareholder rights plans (or "**poison pills**"), a device commonly employed by issuers facing unwanted take-over bids. To replace the current system, where poison pills can effectively only be used to facilitate the target board's efforts to identify alternatives for shareholders to consider (and therefore not to create a durable defence to an unsolicited bid):

i. the Canadian Securities Administrators released proposals for comment that would permit boards to use a shareholder rights plan to "just say no" to a hostile bid, if the boards have formal shareholder support; and

ii. Quebec's securities regulatory authority, the Autorité des marchés financers, went further, proposing that courts would determine the propriety of shareholder rights plans and other defensive tactics as part of their jurisdiction over the discharge of directors' fiduciary duties and that securities regulators would only intervene where a board's actions are abusive of shareholder rights or negatively affect the efficiency of the capital markets.

More generally, Quebec's Parti Québécois government previously announced its intention to enact legislation making it more difficult for foreign buyers to acquire Quebec companies in November 2012 (see our earlier client update entitled *PQ Announces Plans to Change Foreign Take-Over Bid Rules*). In June 2013, the Quebec Finance Minister established the Task Force, chaired by Claude Séguin, senior vice-president of corporate development at Montreal-based information technology firm, CGI Inc., to recommend measures for Quebec firms to better protect themselves from unwanted take-over bids. The Task Force cited the importance to the Quebec economy of having companies with head offices in the province.

The actions of the Quebec government have occurred against the backdrop of several high-profile transactions, including the failed hostile take-over by U.S.-based Lowe's Companies, Inc. of Quebec-based Rona Inc. in 2012, and a current unsolicited take-over bid for Montreal-based Osisko Mining Corp. by Vancouver-based Goldcorp Inc.

Summary of the Proposed Measures

Some of the Task Force's key proposals put forward by the Quebec government include:

- allowing Quebec companies to adopt share structures with variable voting rights that would afford longer term holders proportionately greater votes than short-term investors (in response to a concern raised by the Task Force that the increasing proportion of shares held by

[1] The full text of the Task Force report is available at *http://www.groupes.finances.gouv.qc.ca/GTPEQ/Documents/Rapport_ENG_GTPEQ.pdf*

shareholders with short-term investment horizons and objectives make corporations more vulnerable to take-over bids);

- prohibiting (i) the merger or amalgamation of Quebec companies acquired through take-overs bids not approved by the board of directors ("**unsupported bids**") and (ii) a sale of assets representing 15% or more of the company for five years after the change of control (intended to lessen the attractiveness of unsupported bids by preventing the acquirer from engaging in structuring transactions and/or transactions enabling it to finance the acquisition using the target's assets);
- requiring persons that have acquired shares of Quebec incorporated public companies through unsupported bids to give the company any profits made on the resale of the company's shares in the 24 months following the bid, if those shares were purchased during the 12 months preceding the unsupported bid;
- prohibiting the removal of a director of a Quebec company the control of which has been acquired through an unsupported bid before the end of the director's term (to a maximum of three years)[2];
- prohibiting potential purchasers of Quebec companies from exercising their voting rights in respect of the shares they hold after launching an unsupported bid, until the restoration of their voting rights is approved by two-thirds of the other shareholders (excluding directors and management); and
- implementing certain tax measures to make it more attractive for businesses to locate their head offices in Quebec, including (i) favourable treatment of employee equity purchase plans, (ii) reduced taxation of gains on stock options, and (iii) deferred taxation where ownership of Quebec companies is bequeathed upon the death of a founder or key shareholder to his or her heirs.

As the proposals (other than the proposed tax measures) would only apply to companies incorporated under Quebec law (and not, for example, to federally incorporated companies located in Quebec), the proposals raise the spectre of possible "jurisdiction shopping."

Conclusion

The Quebec government's announcement does not provide any timetable for the proposed reforms, stating only that the government intends to move quickly.

Please contact any member of our Corporate Securities Group to discuss the implications of the proposed measures.

[2] The Quebec corporate statute, like many corporate statutes, permits staggered or classified boards, a structure under which the directors are divided into groups and only the members of one group, and not all directors, are subject to election each year. This proposal would make dissident proxy activity more difficult. Staggered and classified board constructs contravene the Toronto Stock Exchange rules; any publicly-traded issuer adopting that construct would have to list elsewhere.

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