Corporate Securities Law

November 26, 2012

PQ Announces Plans to Change Foreign Take-Over Bid Rules

The newly-elected Parti Québécois government has announced its intention to enact legislation making it more difficult for foreign buyers to acquire Québec companies by way of hostile take-over bid.

Highlights of the proposed legislation include:

- providing boards of directors of publicly traded companies with the authority to examine the impact of take-over bids not only on shareholders, but also on stakeholders such as employees, retirees, suppliers and affected communities;
- allowing boards of directors to deny shareholders the opportunity to vote on a proposed take-over bid if the board is of the view that the bid is inadequate and would have a negative impact on the company; and
- insulating companies from potential legal actions stemming from their refusal to accept a foreign take-over bid.

While not uncommon in the United States, where certain states have adopted "anti-takeover legislation", the proposed legislation represents a uniquely "made in Québec" phenomenon in Canada.

Review of foreign take-overs in Canada is overseen by the federal government under the *Investment Canada Act*, which is focused on whether transactions proposed would be of "net benefit" to Canada. The PQ announcement comes at a time of meaningful uncertainty about foreign investment review in Canada, with continuing uncertainty concerning the "net benefit" test. In the wake of several high-profile cases, including the rejection of BHP Billiton's acquisition of Potash Inc. in 2010, the federal government has indicated that it is working to provide increased clarity on the regime, in particular as it relates to takeovers by state-owned entities. In the meantime, significant transactions, such as the proposed purchase of Nexen Inc. by a division of China National Offshore Oil Corp., and the offer by Malaysian Petronas to purchase Progress Energy Resources Corp., are working their way through the process.

The PQ proposal also comes at a time when securities regulators are reconsidering how to regulate shareholder rights plans and other tools available to Canadian boards facing unsolicited take-over bids. The fate of the PQ proposal itself is uncertain, in that the PQ leads a minority government and the other provincial parties have not echoed the party's public complaints about foreign take-over activity in Québec.

The only certainty in the mix is that international parties considering acquisitions in Canada will have to focus carefully on, and plan in detail for, their regulatory strategy.

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