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MAJOR REFORM TO QUEBEC CORPORATE LAW

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On October 7, 2009, the Minister of Finance of Quebec tabled Bill 63 entitled the *Business Corporations Act* (the "**Bill**"). The Bill was assented to on December 4, 2009 by the National Assembly and will come into force some time in 2011. The main objective of this Bill is to modernize the legal system regulating companies now covered by parts I and IA of the *Companies Act* (Quebec) ("**LCQ**") and streamline Quebec corporate law. This reform was inspired in large measure by the *Canada Business Corporations Act* ("**Federal Act**"), but also by legislation in other Canadian provinces, the Model Business Corporation Act and the Delaware General Corporation Law. The Quebec Bar has said it is satisfied that the particular elements relevant for Quebec have been taken into account in this Bill. It mentioned in its submission that "the greater flexibility of the proposed regulations will allow for a better response to the needs of Quebec companies and match up more closely to the reality of SMEs."

The most important changes brought about by this reform aim to (i) develop a general framework regulating the duties and obligations incumbent upon directors and managers; (ii) confer new rights and remedies in favour of shareholders particularly, minority shareholders; (iii) facilitate the administrative obligations of corporations; and (iv) adapt to new technologies.

DUTIES AND OBLIGATIONS INCUMBENT UPON DIRECTORS AND MANAGERS

The new *Business Corporations Act of Quebec* ("**LSAQ**") will codify the duties of prudence, diligence, honesty and loyalty of directors. Directors will be able to present a defence of reasonable diligence with regard to acts carried out in good faith in the performance of their functions.

The LSAQ also provides for an interest disclosure plan for directors and managers in relation to any contract or operation in which they or the corporation take part, which will allow corporations to more easily identify and manage conflicts of interest.

RIGHTS AND REMEDIES OF SHAREHOLDERS

The LSAQ will also modify the rights and remedies of shareholders in order to introduce a remedy similar to the oppression remedy provided for in the Federal Act, thus allowing security holders, directors and managers to address the courts with a view to obtaining an order for relief in cases of abuse of power or iniquity perpetrated by the corporation or its affiliates. The courts will have greater powers in the case of unjust or predatory behaviour on the part of the corporation or its directors; among others, it may make nominations to the Board of Directors, either to replace all the directors or certain members only, direct the corporation or any other person to purchase the securities of a holder, rectify any information suppressed or omitted in a supposedly accidental manner, and even order the liquidation and dissolution of the corporation.

In addition, in certain situations, the LSAQ will give minority shareholders the right to demand the repurchase of their shares at fair value if they object to any major changes in the legal structure or business activity of the corporation, particularly in cases in which the corporation proposes to modify its articles in order to add, modify or remove a restriction to its activities or on the transfer of shares of its capital, in cases of merger, continuation of the corporation under the laws of another jurisdiction, or any disposition of assets likely to result in the cessation of a significant part of its activities. This new right of repurchase is similar in many ways to the right to dissent provided for in the Federal Act.

FACILITATING THE ADMINISTRATIVE OBLIGATIONS OF CORPORATIONS

The provisions of the LSAQ will substantially reduce the burden of administrative obligations for corporations. For example:

a) The sole shareholder of a corporation may decide to not to form a Board of Directors or to eliminate certain formalities, including the holding of annual meetings.

b) The provisions of the LSAQ relating to unanimous shareholder agreements will be similar to those in the Federal

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Act, allowing the powers of directors to be withdrawn or limited in favour of shareholders or third parties. It should be noted that under the LSAQ, a corporation must declare the existence and termination of such an agreement to the Enterprise Registrar (the "**Registrar**").

c) A company incorporated in another jurisdiction will be able to continue under the laws of Quebec, and vice versa.

d) The regulations related to granting financial assistance to shareholders will be revoked.

MODERNIZATION AND NEW TECHNOLOGIES

As with the Federal Act, the LSAQ allows the Registrar to make certain technological improvements, which will lead to shorter processing delays. Among other things, it will allow online incorporation of corporations, electronic filing of articles and other documents with the Registrar, participation and voting at shareholders' meetings or board meetings using new technologies, and the issue of shares with or without a certificate.

TRANSITIONAL PROVISIONS

Companies incorporated, continued or amalgamated under Part IA of the LCQ will become, as and when it comes into force, incorporated corporations governed by the LSAQ. Such companies will not have to do anything in particular in order to be governed by the new law. For companies incorporated under Part I of the LCQ, there will be a five-year period in which they must file articles of continuance with the Registrar in conformity with the LSAQ, failing which they will be dissolved.

CONCLUSION

The LSAQ will bring important changes in the corporate laws regulating Quebec SMEs. This summary is intended to provide a summary of certain amendments made to the LCQ; it does not cover all the amendments to be made to the LCQ and gives no details concerning the different possible situations in which they may be applied. We will follow the developments of this new Act for you and keep you informed in future publications so that you will be completely up to date when it comes into force in 2011.

CONTESTING PROPERTY ASSESSMENT

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February is the month when municipal taxes are mailed out. It is also an occasion for certain municipalities to send their taxpayers the assessment notices on which their property tax assessment will be based for the next three years.

It should be noted that for buildings with a property value of over $1M or business establishments with a rental value of more than $100,000, assessment notices are sent out separately within sixty (60) days of the tabling of the roll.

By virtue of Article 14 of the *Loi sur la fiscalité municipale* (An Act respecting Municipal taxation), the municipal department responsible for property valuation must have an assessment roll prepared by its assessor every three years.

The City of Montreal is an exception, having obtained authorization to prolong its last roll for an additional year, so that it will end on December 31, 2010.

When a new roll is tabled and assessment notices sent out, taxpayers have an opportunity to apply for a review of the value of their assessment unit. When assessment notices are sent out in conformity with the law, that is prior to March 1 following the coming into force of the roll, the taxpayer must file an application for review prior to the following May 1. This short time limit is justified by a desire on the part of the legislator to ensure the stability of municipal finances.

Prior to the creation of the *Tribunal administratif du Québec*, a taxpayer dissatisfied with the valuation filed a complaint with the *Bureau de révision d'évaluation foncière du Québec*. Since the creation of the *Tribunal administratif du Québec*, that body has taken over the responsibility of adjudicating on the value on which property tax assessments are based, from the Bureau.

Since the *Tribunal administratif du Québec* is a review tribunal, it was necessary to create a "tribunal of first instance," as it were. The legislator confided this responsibility to the municipal assessor, which is why it is now necessary, prior to addressing the Tribunal, to ask the assessor to review the decision taken when making up the roll.

The application for review must be made using an appropriate form which must be filed, either in person or by registered mail, with the municipal department responsible for the assessment, accompanied by a payment the amount of which may vary, depending on the municipality and the value of the assessment unit being contested.

This information appears on the back of the assessment notice thanks to a government regulation obliging towns and municipalities to provide this minimal amount of information on tax accounts and assessment notices.

Article 124 of the *Loi sur la fiscalité municipale* provides that an application for review may be filed by any person with an interest, and states that the person responsible for paying the tax is recognized as having such an interest.

The jurisprudence states that any mortgage creditor, buyer under contract, building owner and taxpayer of a municipality may apply for a review of an assessment unit located in this municipality.

The application for review must succinctly outline the motives on which it is based. As a general rule, the principal motive invoked by taxpayers is that the property assessment is too high or, that part or all of the building is exempt from taxation under the law.

The assessor must verify whether the contestation is well-founded and, if necessary, make a written proposal of modification, or inform the taxpayer that no modification is to be made, explaining the motives behind the decision.

The assessor is required to respond to the taxpayer before September 1 following filing of the application for review, but this date may be delayed, even as late as the following April 1.

If the taxpayer fails to obtain satisfaction from the municipal assessor, he may address the *Tribunal administratif du Québec* within 31 days of the date on which the assessor's response was sent.

There is, however, an exception: if the assessor decides to apply the provisions of the law relative to single-use immovables of an industrial or institutional nature, he

must, before September 1 of the 2nd quarter preceding the first of that for which the property assessment roll has been created, advise the taxpayer that he considers his building to be a single-use immovable of an industrial or institutional nature and that he will use the assessment method provided for in the regulations. Subsequent to this notice, he must, before the following February 15, notify the proprietor of the replacement cost as set out in the regulation provided by law, as well as any depreciation that he subtracts from this cost. The taxpayer then has until the following June 1 to notify the assessor of his disagreement with the assessment provided.

This process is intended to limit an eventual debate prior to the tabling of the roll, since the assessor may not use a higher value or a depreciation lower than that communicated to the proprietor, whilst the proprietor may not use a lower value or a higher depreciation to that mentioned in his notice of disagreement.

By virtue of Article 174 of the *Loi sur la fiscalité municipale*, the assessor is obliged to amend the assessment roll whenever certain specific events occur as mentioned in the said article. For example, a reduction in value may occur due to a fire or the partial demolition of a building. If the assessor amends the roll in consequence, he is obliged to send a notice of amendment to the taxpayer, and the taxpayer may contest this amendment in the same way as described above, within sixty (60) days of receiving the notice.

It may also happen that the assessor decides not to amend the roll following one of these events; the taxpayer may then, by filing an application for review, ask the assessor to amend the roll, and this may be done at any time during the fiscal year in which the event occurred or the following fiscal period.

The *Loi sur la fiscalité municipale* replaced the *Loi sur l'évaluation foncière* in 1979. Although the Act is more than thirty years old and that the various courts have had to give judgment on a variety of subjects concerning property assessment, some gray zones remain. In case of doubt, the taxpayer would be advised to consult an accredited appraiser or a lawyer in order to ensure that the assessment unit is assessed in conformity with the law and following the principles guiding the science of property assessment, as interpreted by the courts.

BASIC NOTIONS ABOUT FOREIGN WORKERS OR BUSINESS IMMIGRATION 101

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The increasing importance of foreign workers in the labour market forces many corporate managers to deal with this reality, regardless of how well prepared they are to do so. The following text provides a brief overview of some of the basic issues involved when it comes to hiring foreign workers. Set out under seven main headings, this is what every HR manager should be aware in today's realty.

1. Foreign workers and work in Canada - definitions

A foreign worker is someone who is not a citizen or permanent resident of Canada. Those whose Social Insurance Number (SIN) starts with 9 are temporary residents of Canada. These temporary SINs have an expiry date that is the same as that of the work permit. Therefore, to find out whether or not you have any foreign workers within your company, you simply have to verify the SIN numbers.

For a foreign worker to require a work permit, his activities in Canada must result in the payment of wages or a commission, or be in direct competition with Canadians in the labour market in Canada. Therefore, either there is remuneration or penetration of the labour market. In most cases, both elements are present. However, the existence of only one makes it necessary for a permit to be obtained.

2. Due diligence of employers and required documents

Under section 124(1) c) of the *Immigration and Refugee Protection Act* (Canada), every person who employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed commits an offence. On conviction, a person committing such an offence is liable to a fine of not more than $50,000 or to imprisonment of not more that two years.

Employers are therefore well-advised to ensure that they act in conformity with this law. In addition, paragraph two (2) of the same section imposes a duty of due diligence on employers, stating that a person who employs a foreign national unauthorized to be employed in Canada without having taken steps to ascertain his situation is deemed to know that the employee in question was not authorized to be employed.

Before hiring a foreign worker, his identity must be proven by means of an official document such as a passport, and a copy of the work permit must be obtained and kept in the employer's file. The original must remain in the worker's possession. It is also necessary to verify the conditions of the permit, such as those concerning the employer, the profession and the place of employment, as well as any other conditions imposed by the issuing authorities. These conditions must be respected. Whenever a worker requests a change to the conditions of the permit, it will only come into force once approved and after the new permit is issued. In the meantime, it is important that the conditions outlined on the existing permit continue to be respected.

3. Procedure for hiring a foreign worker

An employer who wishes to hire a foreign worker must obtain a Labour Market Opinion (LMO) from Human Resources and Skills Development Canada (HRSDC). Under this process, it must be demonstrated that the planned hiring will have no negative effect on the local labour market. Since last year, HRSDC requires that employers demonstrate that they have made minimum recruitment efforts. Standards vary depending on the province of employment and the profession involved.

In Quebec, the job offer must be validated by the *Ministère de l'Immigration et des Communautés culturelles*. The worker must also obtain a Quebec Certificate of Acceptance (CAQ) from the ministry by demonstrating that he possesses the skills required for the job being offered.

Numerous exemptions apply to both the LMO process and the obtaining of a CAQ. Therefore, before getting involved in the often lengthy process, it is advisable to ensure that none of the exemptions apply in your case.

4. Termination of employment prior to the end of the work permit

The usual rules concerning termination of employment are applicable to foreign workers as they are to Canadian workers.

A worker who loses his job is not forced to leave Canada immediately, since his status remains valid as long as his permit has not expired. He must continue to respect the conditions on his work permit, especially that of not working for any other employer apart from the one indicated on the permit, unless he obtains an amended permit. The problem does not exist for a worker who has an open work permit, meaning a permit that allows him to work for any employer whatsoever.

5. Renewing a work permit

The delay for renewing a work permit in Canada can be very lengthy; it may take more than three months from the time the application is submitted until the decision is reached. It is therefore a good idea to plan well ahead.

Nevertheless, the legislation provides for an implied status for the person who has made an application to have a permit renewed before its expiry and on which a decision has not yet been rendered. In effect, the foreign worker may continue to work while the renewal application is being processed under the same conditions as those appearing on his recently expired work permit. In this case, a prudent employer will make sure to obtain proof of the fact that the application has been duly received by the Canadian authorities in Vegreville, Alberta, and that the processing fees have been duly paid, unless the worker is subject to an exemption.

6. Upcoming modifications

Last fall, the Federal government tabled a proposed regulation modifying the *Immigration and Refugee Protection Regulations*, which contains several amendments to the Temporary Foreign Worker Program. Although the text is not yet definitive and the date on which it will come into force has not yet been decided, the Legislator has clearly identified certain problems that it wishes to address. One should therefore remain alert, as these modifications will have a major impact on all employers, whether it concerns a multinational, an SME or a private individual wishing to hire a live-in caregiver.

7. From temporary to permanent status

Federal and provincial authorities have multiplied their efforts during the last few years to facilitate the change from the status of temporary worker to that of permanent resident. In this context, Quebec has recently implemented its "Quebec Experience Class." In effect, since February 14, 2010, a person working in Quebec in a profession at level 0, A or B on the National Occupational Classification for at least 12 of the last 24 months and who possesses a knowledge of oral French at the intermediate level (Level B1 of the Common European Framework of Reference for Languages) or higher, may obtain a Quebec Selection Certificate and apply for permanent residency. This program also includes a stream for foreign students who have obtained or are in the process of obtaining a degree or diploma from a Quebec university or recognized educational institution.

The process is therefore greatly facilitated and accelerated for this target clientele and allows resources to be retained over the long term.

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