

October 2009



Bill 63: Substantive Reform of the Companies Act (Quebec)

[Lisa Cunningham](#)
[Luke Sawicki](#)

On October 7, 2009, Quebec's Finance Minister, Raymond Bachand, tabled draft legislation (Bill 63) entitled the *Business Corporations Act* (the "QBCA") in the National Assembly of Quebec, which aims to modernize, streamline and simplify the legislative framework applicable to Quebec companies by replacing Parts I and IA of the *Companies Act* (Quebec) (the "Companies Act"). The proposed reform of the Companies Act, which has not been significantly updated since 1981, follows a broad consultation initiated in December 2007 to collect comments from various stakeholder groups and organizations. The QBCA will come into force in 2011, at a date yet to be set by the Finance Minister.

Many of the QBCA's provisions are inspired by the *Canada Business Corporations Act* (the "CBCA") and corporate legislation in several other Canadian provinces. Major changes introduced by the QBCA include provisions that will add flexibility to the rules relating to the maintenance of share capital, including the abolishment of certain financial tests that a Quebec company must meet to grant upstream financial assistance, such as loans, guarantees or security to its shareholders or a person purchasing its shares.

The Companies Act currently imposes liability on directors who authorize certain transactions contrary to the financial assistance provisions contained therein. The financial assistance provisions under the Companies Act provide that, except in certain limited circumstances, a company is prohibited from granting a loan, giving security or furnishing any other form of financial assistance to a shareholder, a shareholder of its parent company or a person to assist such person in purchasing shares of the company where there are reasonable grounds to

believe that, as a consequence, (i) the company could not pay its liabilities when due ("the solvency test"), or (ii) the book value of the company's assets would be less than the sum of its liabilities and its issued and paid-up share capital account ("the accounting test").

The QBCA proposes to eliminate the solvency test and the accounting test that a Quebec company must currently meet under the Companies Act in order to grant upstream financial assistance to its shareholders or persons purchasing its shares. Consequently, under the QBCA, directors will no longer be statutorily liable for sums involved and not yet recovered when a corporation grants financial assistance. This proposed change will harmonize this aspect of Quebec's corporate legislation with the majority of other corporate legislation in Canada, including the CBCA. Once the QBCA becomes law and the solvency test and the accounting test in connection with the granting of financial assistance are eliminated, the granting of financial assistance to shareholders and persons purchasing shares of a Quebec company may be effected more readily and any barriers to potential financing structures of transactions involving Quebec companies will be significantly removed.

This update is intended as a summary only and should not be regarded or relied upon as advice to any specific client or regarding any specific situation.

If you would like further information regarding the issues discussed in this update or if you wish to discuss any aspect of this commentary, please feel free to contact us.

Wildeboer Dellelce LLP

Wildeboer Dellelce Place
365 Bay Street, Suite 800
Toronto, ON M5H 2V1
Phone: (416) 361-3121
Fax: (416) 361-1790

72 Victoria Street South, Suite 401
Kitchener, Ontario N2G 4Y9
Phone: (519) 741-8708
Fax: (519) 741-9576