

Québec government announces strategy to keep head offices in Québec

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In this Update

- On February 21, 2017, the Government of Québec (the Government) released a *Plan to Strengthen the Québec Economy as an Executive-Driven Economy* (the Plan).
- The Plan puts forward measures intended both to assist with the growth of Québec-based companies with head offices in the province and to ensure that Québec-based interests are as well positioned as possible to participate in change of control transactions.
- Several measures are of particular relevance to parties considering M&A opportunities in Québec, most notably:
 - The Plan announces the creation of a Financial Initiatives Group designed both to monitor developments that could affect the ownership of Québec companies and to guide the Government in its efforts to ensure that the capital needs of Québec's growing companies are met in a way that helps foster the emergence of more large Québec-based businesses with head offices in the province.
 - The Plan makes clear that the Government does not intend to amend the existing legal framework governing hostile takeover bids and defensive tactics, but instead, intends to work to enhance the understanding that boards and executives in the province have of the existing legal framework and the way it can be used to reduce the risk of being on the receiving end of a hostile bid.
- The Plan also contains a number of fiscal measures designed to harmonize the treatment of stock options with the approach taken in other Canadian provinces and to facilitate intergenerational transfers of businesses.

Reacting to concerns expressed for some time in Québec that too many of the province's flagship companies are being acquired by interests outside the province, on February 21, 2017, the Government of Québec (the Government) released a *Plan to Strengthen the Québec Economy as an Executive-Driven Economy* (the Plan).^[1] The Government initially notes that in

the last 15 years Québec companies purchased twice as many foreign companies as the number of Québec companies that were sold to foreign interests and that, between 2000 and 2014, 171 Québec companies joined the ranks of corporations with gross annual revenues of over \$1 billion while 75 fell off that list. Nevertheless, the Government has been under sustained political pressure to respond to critics calling on it to do more to preserve head offices and to prevent strategic corporate jobs from being moved out of Québec.

The Plan puts forward a package of measures that seek to achieve a balance between, on the one hand, ensuring that the market for corporate control in Québec is free from heavy-handed governmental intervention, and, on the other hand, fostering initiatives intended both to assist with the growth of Québec-based companies and to ensure that Québec-based interests are as well positioned as possible to participate in change of control transactions. The Plan contains a number of measures of particular relevance to parties considering M&A opportunities in Québec.

First, the Plan announces the creation of a Financial Initiatives Group. Composed of representatives from financial institutions in Québec (including Investissement Québec, local institutional funds, and the banking and cooperative sectors), the Financial Initiatives Group will have as its primary mandate to monitor developments that could affect the ownership of Québec companies and ensuing head office relocations. The Financial Initiatives Group will also be asked to guide the Government in its efforts to ensure that the capital needs of Québec's growing companies are met in a way that helps foster the emergence of more large Québec-based businesses with head offices in the province. It remains to be seen what role, if any, the Financial Initiatives Group will be expected to play when a significant M&A transaction is initiated that could result in control of a significant Québec company being transferred to non-Québec interests.

Turning next to the spectre of hostile takeovers, the Plan is noteworthy in that it reflects a clear statement from the Government that in its view this threat is often exaggerated and that in practice it is extremely rare for control of a Québec-based business to be lost to a hostile bidder from outside the province. Accordingly, the Government has decided not to act on proposals made in recent years to adopt new measures designed to protect Québec companies from hostile bids. Indeed, the Government has concluded that securities regulation in Québec currently strikes an appropriate balance between the rights of investors to sell their securities and the objective of encouraging Québec-based ownership of Québec's listed companies. Especially notable in light of recent debate in Canada concerning the regulation of defensive tactics, the Plan makes clear that the Government does not intend to amend the existing legal framework governing hostile takeover bids and defensive tactics.

The Government also announced that it will work to enhance the understanding that boards and executives in the province have of the existing legal framework and the way it can be used to reduce the risk of being on the receiving end of a hostile bid. Notwithstanding the reluctance of a number of pension funds and institutional investors to invest in companies with dual class share structures, the Government goes out of its way to note that it plans to raise corporate awareness of the role that multiple-voting share structures can play in insulating a company from unwanted suitors. The Government also plans to raise awareness of other legal means available to companies to reduce the risk of unwarranted change of control transactions. For example, the Government signals its intention to have Investissement Québec play an active part in advising Québec companies on arrangements that reduce financial incentives for management to initiate change of control transactions (e.g., by decreasing the financial benefits to management or directors that might be derived from such transactions).

The Plan also contains a number of fiscal measures. These are designed to harmonize the treatment of stock options with the approach taken in other Canadian provinces (and thereby to remove an incentive for executives to relocate) and to facilitate intergenerational

transfers of businesses (rather than having generational change serve as a catalyst for a change of control transaction).

The Plan is unlikely to end debate about the role that the Government should play to avoid the loss of flagship companies with head offices in Québec. But it does make clear that for the time being this Government does not propose to introduce legislative amendments that would see Québec-based companies given tools to thwart unsolicited bids that are not otherwise available to companies in the rest of Canada.

[1]

http://www.finances.gouv.qc.ca/documents/Autres/en/AUTEN_PlanSiegesSociaux.pdf [PDF]