

Blakes Bulletin

Business Law

Business Corporations Act (Quebec) – Enactment of the Act

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Bill 63, the *Business Corporations Act* (Quebec) (the Act), was adopted by the Parliament of Quebec on December 1st, 2009 and enacted on December 4th. It is now Chapter 52 of the 2009 Quebec Statutes. The Act will come into force on a date to be set by the government, which is expected to be around January 2011.

At that time, more than 300,000 companies currently governed by Part IA of the *Companies Act* (Quebec) will automatically become business corporations governed by the Act. As for the 3,000 or so companies still subject to Part I of the *Companies Act*, they will have a grace period of five years after the date of coming into force of the Act to file articles of continuance in accordance with the Act. Those that fail to do so, will be dissolved at the end of this grace period.

The Act was enacted extremely expeditiously, with very few and minor amendments to the original provisions of Bill 63.

The Act brings about an in-depth reform of the *Companies Act*. The most recent reforms of the *Companies Act* date back to 1979, when Part IA was added, and 1980, when Part IA was substantially amended. The Act replaces both Part I and Part IA of the existing *Companies Act* with an ultramodern and user-friendly new Act that was designed to rival the *Canada Business Corporations Act* and the corporate statutes of all the other provinces and territories.

The following are some of the major innovations introduced in the Act:

For *directors*:

- their duties have been clarified;
- the grounds of defence available to them and their indemnification have been enhanced; and
- they will no longer be statutorily liable when financial assistance is granted to shareholders.

For *shareholders*:

- many rights have been added, including the right to vote by class, the right to have their shares redeemed (right of dissent) and the right to submit proposals at annual meetings; and
- a series of new statutory recourses have been added, including the application for investigation, the derivative action, the oppression remedy and the application seeking an order for compliance with the Act, the articles or by-laws of the corporation, or a unanimous shareholders' agreement.

With respect to *governance*, a clear and comprehensive set of rules have been introduced regarding:

- the delegation of powers to officers and to board committees;
- directors who have an interest in a contract entered into with the corporation;
- unanimous shareholders' agreements; and
- the alienation of the corporation's property which results in the cessation of a significant part of its business activity.

For Small and Medium Enterprises, a simplified set of rules has been established for:

- corporations with a sole shareholder; and
- corporations in which the shareholders have withdrawn all the powers of the board of directors.

On the *technical side*, the following clarifications and innovations, among others, have been introduced with respect to:

- the electronic transmission of documents to the enterprise registrar;
- share capital – unpaid shares, fractional shares, uncertificated shares;
- the correction, consolidation and cancellation of the corporation's articles;
- short-form amalgamations;
- voluntary dissolution and winding-up;

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- reconstitution;
- arrangements; and
- reorganizations;

and, in particular, *interjurisdictional continuance – importation and exportation continuance* provisions have been added to the statute. It will now be possible for Quebec corporations to be continued in other jurisdictions, and conversely, for non-Quebec corporations to be continued under the Act.

Not only does the Act overcome the shortcomings of Quebec's current *Companies Act* as compared to the *Canada Business Corporations Act* (the "pluses" of the new Act), it surpasses the federal statute in many respects (the "super pluses"), by drawing on selected progressive provisions in the statutes of certain provinces such as Ontario, New Brunswick, Alberta and British Columbia, as well as in the Delaware statute and in the U.S. *Model Business Corporations Act*. At Blakes, we have identified no less than 250 "pluses" and 115 "super pluses" in the Act.

Blakes takes pride in having been instrumental in this important development for corporate law in Canada, by providing the services of Paul Martel as the sole external consultant for the conception and drafting of the Act, as well as the physical space of its Montréal office to host many of the working sessions among government drafters.

Our microsite will provide you with all pertinent information about the new Quebec *Business Corporations Act*, including the full text of the Act and a link to the section-by-section explanatory document published by the Quebec Minister of Finance. To view our microsite, click [here](#).

For further information, please contact:

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