

**THE BUSINESS CORPORATIONS ACTS:
QUEBEC AND CANADA**

By Daniel Frajman

The new Quebec *Business Corporations Act* (the “QBCA”) came into force on February 14, 2011, along with related changes to Quebec’s rules for the registration of corporations, partnerships and sole proprietorships. Just as federal corporate legislation was updated in 1975 when the *Canada Business Corporations Act* (the “CBCA”) came into force, Quebec’s corporate laws are now modernized. Going forward, when deciding whether to incorporate under either the CBCA or the new QBCA, the following may be some of the more important points to consider:

- (a) for corporations with one shareholder, or if there is a unanimous shareholders agreement (“USA”), the QBCA permits directors’ and shareholders’ meetings to be eliminated. However, the QBCA allows creditors of the corporation to examine the USA (the CBCA does not), meaning that QBCA corporations may have an interest in splitting up the USA into two documents (a true USA dealing with restrictions on management of the board of directors relating to matters such as signing of contracts and declaring dividends, and a second agreement dealing with issues such as buy-sell rules relating to the shares, which may not relate to board management and therefore may not be open to examination by creditors);
- (b) when there is a USA (whether for CBCA or QBCA corporations), the existence of the USA and the names of the shareholders must be referred to in the Quebec corporate database.
- (c) both the CBCA and QBCA provide protection to minority shareholders from oppressive or unfairly prejudicial actions of the corporation;

- (d) government fees to incorporate under the QBCA are about \$300 versus about \$500 for incorporations under the CBCA;
- (e) CBCA corporations have an extra corporate annual return to file each year, in addition to the Quebec annual corporate declaration;
- (f) under the CBCA, at least 25% of the directors must be residents of Canada (or at least one director must be Canadian for corporations with less than four directors). The QBCA does not have residency requirements for directors;
- (g) for asset sales by a QBCA corporation, the required two-thirds shareholder vote for a sale of substantially all assets does not extend to non-voting shareholders and may not be required if the corporation continues on with a significant part of its business activity (unlike for CBCA corporations);
- (h) Quebec did not add unlimited liability companies (ULCs, which are sometimes used in cross-border tax planning) to the QBCA. The CBCA also suffers from this absence;
- (i) neither the CBCA nor the QBCA prohibit a subsidiary from providing financial guarantees in support of its parent corporation;
- (j) both the CBCA and QBCA allow corporations to be “imported” to or “exported” from their jurisdiction.

Note that Quebec companies that were governed by old Part IA of the Quebec *Companies Act* were automatically continued under the QBCA. However, old Part I Quebec companies must voluntarily continue under the QBCA over the next five years, otherwise they will be automatically dissolved. As for non-profits and charities incorporated with a Quebec charter, the corporate rules for them are unchanged for now (unlike for non-profits and charities with a federal charter, which will likely have three years to continue under a new federal *Not-for-Profit Corporations Act* that may come into force in Spring 2011). The upcoming changes for federal non-profits/charities will allow federal private foundations to have “unanimous members’ agreements” (akin to USAs) for things such as establishing investment and donation policies in advance.



The above is a brief overview, and you should not hesitate to contact us if you need further information as to which of the CBCA or the QBCA is appropriate for your situation, and as to whether your shareholders' agreements should be re-examined.

