COMMENT & ANALYSIS

B.C. ruling makes poison pills a little more potent

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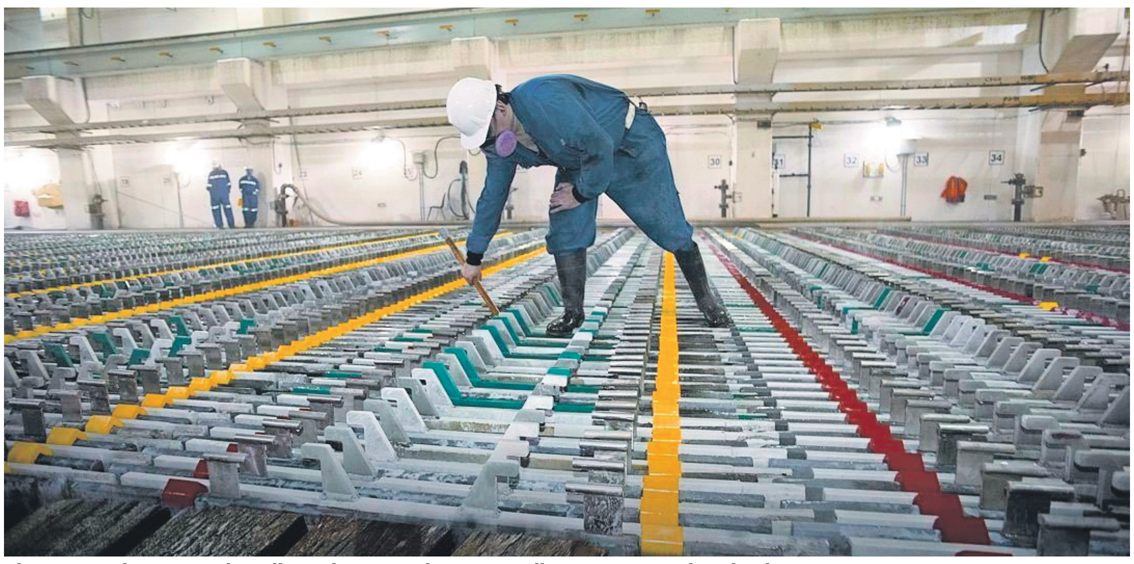
Making a hostile bid for a Canadian company just got a little bit harder.

Canada's securities regulators are steadily giving corporate boards more room to breathe in hostile takeover situations, an evolution that will please critics who have long said that it's too easy to put Canada's companies in play with unsolicited bids. And it's happening in the absence of national reform on the issue, which has stalled because of a standoff between Quebec and the rest of Canada on the amount of power that companies should have to shun hostile bids.

Unlike the United States, where boards of directors can simply say no thank you to a hostile bid, in Canada a bid has more often than not led to a sale just a few months later. That's because the anti-takeover defences erected in the form of shareholder rights plans (better known as poison pills) have historically been viewed very skeptically by regulators. Pills can be complicated affairs, but the upshot is that they make it very difficult for a hostile bid to succeed so long as they are in place.



The BCSC ruling on Friday allowed Augusta's poison pill to remain until mid-July. BRIAN PIETERS/THE CANADIAN PRESS

However, they aren't in place very long. Provincial securities watchdogs have generally tossed out the defences six to nine weeks after a hostile bid is made. The mantra has been to let shareholders decide whether they want to sell.

Now, shareholders are still deciding in some key situations, but in a different manner. Over the past few years, regulators have been increasingly open to letting shareholders vote to keep their pills in place.

First in Ontario and Alberta, securities commissions allowed pills to remain so long as shareholders had recently voted on them and approved them with strong support in the face of a bid. The British Columbia Securities Commission, which until now had not done so, came some way to the same conclusion in a case decided Friday that will be closely studied by all in the mergers and acquisitions field.

The BCSC said Friday that it would allow **Augusta Resource Corp.'s** pill to remain in place to mid-July, giving Augusta more time to seek alternatives to a hostile bid from **HudBay Minerals Inc.** That means that it will be more than five months from the time the bid was announced in February to when shareholders will be allowed to tender, an eternity in Canadian hostile takeovers.

The key in the BCSC situation appears to be that Augusta shareholders just voted 94 per cent in favour of keeping the pill, and the company argued it needed a few more weeks to suss out the full range of possible alternatives, and to get key permits for the copper mine it wants to build.

The decision means securities commissions in three key provinces are largely in step. It's not the hoped-for national rule, but it's something.

The commissions are "very much more aligned," said Kevin Thomson, a lawyer at Davies, Ward, Phillips & Vineberg LLP who acted for Augusta. "This decision moves B.C. quite a bit further down the path. It's a very, very helpful decision, from the point of view of regulatory continuity in Canada."

That's especially helpful given that an attempt by regulators to harmonize their guidelines and explicitly give more weight to shareholder votes on pills has hit a snag because Quebec has a different idea. Ontario Securities Commission head Howard Wetston said in March that its unlikely a national rule will "will be achievable in the short term."

To be clear, Canada is not moving to the U.S. "just say no" standard, by which boards can keep pills up indefinitely to fend off acquirers. (That's one of the reasons that hostile and unsolicited bids are about five times more prevalent here, according to figures prepared for The Globe and Mail by Thomson Reuters.)

"A vote on a pill in the face of a hostile bid and a decision whether to tender to a bid are tantamount to the same thing," said Jamie Scarlett, a merger lawyer at Torys LLP. "Shareholders are having their say."

But companies now have one more option to try to keep acquirers at bay. Expect to see more votes now on poison pills when companies face a hostile bid and believe they can make the case to their shareholders strong enough to get a big vote of approval.

"This has to go on the list now of topics for discussion when boards are sitting there saying, 'What do we do in the face of a hostile bid?' " Mr. Thomson said.

ECONOMY LAB

For the biggest bang in foreign aid, small and targeted is the best strategy

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In 1969, Prime Minister Lester Pearson recommended that rich countries commit 0.7 per cent of their national income to foreign aid, or Official Development Assistance (ODA). The next year, this commitment was formally adopted by the United Nations and has been reaffirmed by the rich countries many times since.

Canada and most other rich countries have never come close to achieving this commitment. Last year, Canada's total spending on ODA, most of which is controlled by the Canadian International Development Agency (CIDA), was just more than $5-billion – about 0.3 per cent of our gross domestic product.

We haven't achieved Mr. Pearson's target for several reasons. First, CIDA has long been an easy target for governments needing to trim spending, especially since the recipients of foreign aid do not vote in Canadian elections. Second, whether or not it is accurate, CIDA has a reputation of being overly bureaucratic and fiscally ineffective. It is no surprise that finance ministers find it difficult to inject more funds into a department already seen to be unmanageable. Third, experts who study ODA hotly debate its effectiveness, and this reduces politicians' desire to invest.

The debate over ODA is as fascinating as the process of economic development. At one end of the spectrum is Jeffrey Sachs, who argues in *The End of Poverty* that the single biggest problem with foreign aid is that the rich countries have not done enough. While recognizing some problems with delivery, he believes that if we ramped up our ODA budgets, more countries would be able to get onto the bottom rung of the development ladder and from there lift themselves out of poverty.

At the other end of the spectrum is Dambisa Moyo, who argues in *Dead Aid* that foreign aid does more harm than good and that we should shut down the CIDAs of the world altogether. She contends that the level of corruption in developing countries is a primary obstacle to growth, and that much of the ODA resources are captured and used to fuel this corruption.

Somewhere in the middle is William Easterly. In *The White Man's Burden,* he rejects Mr. Sachs' advocacy of "Big Aid" on the grounds that much of it simply does not work, largely because the recipient countries have not yet developed the required, home-grown political and economic institutions. But he is not as pessimistic as Ms. Moyo; he sees a constructive role for small, targeted projects that are relatively simple to implement and evaluate.

Despite this debate, there is agreement about some of the key aspects of economic development. Over the past 20 years, there has been growing recognition of the crucial role to be played by girls and women, if only they're given a chance. Educated girls are more likely to marry later and have fewer children, thus slowing the enormous pressures created by rapid population growth. Married women who are employed are more likely to control the household finances, resulting in less money being spent on alcohol and other wasteful male distractions and more being spent on children's education and health. In poor countries, as in richer ones, education and health are keys to future success.

This brings us to 60 Million Girls, a Montreal-based charity I have recently come to know, which is named for the millions of girls currently denied schooling in the developing world. Since 2006, a small group of dynamic women has been raising money by the bucketful to support educational projects in Sierra Leone, Kenya, Afghanistan and many other countries. The projects include school construction, teacher training, provision of equipment and the support of activities to increase girls' access to school.

The 60 Million Girls foundation focuses on a crucial problem, carefully screens projects for those with the biggest chance of success, selects partners with a proven track record, follows up to assess the projects' performance, and is operated entirely by volunteers. There are no salaries or overhead: Only 1 per cent of the money they raise is spent on administration. How many charities can make this claim?

Many people might lament the gap between Canadian government spending on ODA and Mr. Pearson's recommended target. But if Mr. Easterly is correct that small and targeted projects are the most effective way to promote economic development, then maybe we should see the work of groups such as 60 Million Girls as a superior alternative. This is charity at its best.

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