Doing Business in Québec

Québec is Canada’s largest province by area and its second most populous province. With forests covering more than 750,000 km² (the size of Norway and Sweden combined), Québec is an important producer of pulp and paper in Canada. Québec’s strategic location offers unique opportunities to investors and business owners in neighbouring urban centres such as New York, Boston and Toronto. Foreign entities considering doing business in Québec will be interested in its distinct language, culture and legal systems, as well as its diverse forms of business organization. According to the Chambre de Commerce du Montréal Métropolitain (Chamber of Commerce of Metropolitan Montreal), 93% of the population speaks French. Foreign businesses getting established in the Québec marketplace must adhere to the province’s French language requirements.

Forms of Business Organization

There are several different forms of business organization for conducting business in Québec, each with its own advantages and disadvantages. In selecting the most appropriate form, a foreign entity should consider key factors including: tax issues, the circumstances of the investor, and the nature of potential liabilities associated with the business to be conducted.

Branch Versus Subsidiary Operation

One of the key initial considerations for establishing a business in Québec is whether the entity will undertake the business directly, as a branch of the foreign organization, or whether it will carry on the business as a separate Québec subsidiary.

Because the use of a branch subjects the foreign corporation to Canadian provincial and federal laws, it may be wise to first create a wholly owned subsidiary in the home jurisdiction of the foreign corporation. That subsidiary would then carry on business in Québec (as well as in other Canadian provinces or territories in which the foreign corporation desires to conduct business) through a branch. Depending on the laws in the home jurisdiction, the foreign parent might then avoid direct liability for actions of the Québec operation. Foreign corporations doing business in Québec through a branch are subject to certain tax obligations in Québec and in Canada, such as producing tax returns. In particular, the foreign corporation would be subject to branch tax and could also be subject to withholding taxes in respect of certain payments that it receives from Canadian taxpayers.
Use of a branch operation in Québec requires registration with Québec’s Registraire des entreprises (Enterprise Registrar) and, if it operates in other Canadian provinces or territories, an application in each of those jurisdictions for extra-provincial registration is required. Some provinces and territories, such as Québec, require that an “agent for service” or “attorney for service” be appointed in that province or territory for registration purposes. In Québec, an attorney for service is required when the corporation applying for registration does not have a head office address or an establishment in the province. The business or corporate name under which the Québec registration is to be granted must be approved by the Registraire des entreprises and comply with the Charter of the French Language (see “The Charter of the French Language,” below).

A foreign corporation may also do business in Québec through a Québec subsidiary. In that case, the Québec subsidiary would be obliged to file both Canadian and Québec tax returns. However, the Québec subsidiary would generally not be subject to withholding taxes in respect of payments received from Canadian taxpayers. Foreign tax considerations could also play a role in the choice to start an enterprise by means of a branch or subsidiary in Québec. It is possible in certain circumstances to transfer the assets of the branch in favour of the Québec subsidiary on a tax-free basis for both Canadian and Québec tax purposes.

Québec Incorporation

Entities wishing to incorporate in Québec have the choice between using the provincial regime, under the Business Corporations Act (Québec) (QBCA), or the federal regime, under the Canada Business Corporations Act (CBCA). Unless otherwise noted, the discussion in this section focuses on QBCA incorporation.

If a foreign entity decides to incorporate a subsidiary in Québec, such incorporation is, generally speaking, a very simple process and does not require any substantive government approvals. A simple filing is necessary and the corporation must be registered with various tax and other government bodies. The capitalization of a corporation is a matter of private choice. No approvals are required, although there are tax rules that should be considered. Share capital and other financial information about the corporation do not have to be publicly disclosed unless the corporation is a publicly-listed company. Generally, a Québec corporation has the capacity and the power of a natural person and may carry on business anywhere in Canada and use its name in any Canadian province or territory.
The QBCA, which came into effect in 2011 and modernized Québec’s corporate laws, applies to all businesses incorporated under Québec law. Its enactment introduced important changes to the way business is done in Québec, which distinguish it from other jurisdictions and demonstrate the province’s commitment to being a business-oriented jurisdiction. The following three points highlight some of the QBCA’s most salient features in terms of flexibility.

1. The board of directors: residency and meetings

There is no residency requirement for directors of a business incorporated under the QBCA. Thus, a Québec corporation may have a board consisting entirely of foreign directors. This permissive regulation contrasts sharply with the CBCA, which requires that at least 25% of a corporation’s directors be Canadian residents.

Both the QBCA and the CBCA allow board meetings to occur anywhere; they therefore need not be conducted in the home jurisdiction of the business. Further, in both jurisdictions, directors may participate in meetings by electronic means and any director doing so is deemed present at the meeting. Finally, a majority of directors in office constitutes a quorum at any meeting of the board, and a quorum of directors may exercise all the powers of the directors. However, it is important to note that the residency requirement under the CBCA extends to quorum – generally speaking, at least 25% of the directors present at a meeting must be Canadian residents for the board to be able to transact any business. Such restrictions do not exist for QBCA corporations.

2. Flexible issuance of shares

The issuance of shares in Québec is flexible in several important regards:

- First, shares may be issued whether or not they are fully paid (when not fully paid, shares will be subject to calls for payment as prescribed in the corporation’s by-laws; if the shareholder fails to make the required payment once called, the board may confiscate the shares in question without further formality).

- Second, a corporation may, by a unanimous resolution of the shareholders, validate any irregular issuance of shares that exceeds the corporation’s authorized share capital.

- Third, a corporation may issue shares by ordinary resolution of the board of directors.

These flexible aspects of the share capital of a Québec corporation are not provided for in the CBCA, which requires shares to be fully paid upon issuance. These properties also distinguish Québec from certain foreign jurisdictions, where any issuance of shares requires both shareholder approval at a duly convened meeting and the blocking of corporate funds with a notary prior to any capital increase. Neither such formality exists in Québec.
3. Continuance

The advent of the QBCA brought with it the possibility of continuance; that is, corporations constituted under foreign laws, such as the CBCA or the corporate statutes of other Canadian provinces or territories, may now be continued as corporations under the QBCA, all with relative ease. The reverse also holds true. This innovation increases Québec’s appeal as a jurisdiction open to corporate reorganizations that include amalgamations, and reinforces its outward-looking orientation.

**Differences of Language Relevant to Business Organizations**

In many ways, Québec occupies a unique position at the intersection between North American business practices and the French language. This can occasionally lead to confusion when the same expressions have different meanings in Québec than in France or the rest of the Francophonie.

For example, the term “president” in the context of corporate governance requires clarification. In Québec, the president of a corporation (président de la société) is an officer position, and is typically an executive within management. Frequently, the president of a corporation is also that organization’s chief executive officer (CEO) (directeur général), though these roles can be held by different people.

The president of a corporation often, but not necessarily, has a seat on that corporation’s board of directors. However, this position is not the same as the chair of the board (président du conseil), which is a board position that need not be, and more frequently is not, held by an officer of the company. (In those cases where a chairperson is also an officer, he or she would typically be called an executive chairperson.)

The CEO is the highest-ranking executive in a corporation, responsible for implementing that corporation’s overarching strategy and making major corporate decisions. The role of president of the corporation varies according to each corporation, but often includes overseeing day-to-day operations and logistics. It is this synergy with the CEO’s functions that often leads these roles to be held by one and the same person. By contrast, the chair of the board is responsible for supervising the board’s process and governance, protecting the interests of all the stakeholders in the corporation, and overseeing the management of the corporation delegated to its officers. A corporation’s shareholders elect its board members, who in turn appoint the chair and the corporation’s officers, including the president of the company.
Partnerships and Joint Ventures

In certain circumstances, the use of a partnership or joint venture, in combination with one or more persons or corporations in Québec, may be an attractive option from a tax perspective, in particular because of their transparency for tax purposes. The option may, however, be unattractive in other circumstances because the existence of a non-Québec partner may cause payments to or from the partnership to be subject to withholding tax. If a non-resident holds its partnership or joint venture interest through a subsidiary incorporated in Québec, the tax considerations noted above for subsidiaries are relevant. Participation of a non-resident in a partnership or joint venture directly (for foreign tax or other reasons) is generally equivalent to operating through a branch in Québec.

In Québec, general partnerships allow all partners to participate equally in the management of the partnership, but they must also share in any liabilities the partnership may incur. By contrast, limited partnerships have two tiers of partner: at least one general partner who manages the business and is liable for the totality of the limited partnership’s debts and obligations, and limited (or “special”) partners, who do not participate in management duties and whose liability is limited to the extent of their respective investments in the limited partnership. For this reason, limited partnerships can be an attractive option for investors.

A detailed partnership agreement is customary in the case of a partnership, in part to avoid certain legislative provisions that would otherwise apply. Limited partnerships are commonly used for investment purposes to allow limited partners to benefit from the transparency of the partnership for tax purposes and to benefit indirectly from tax deductions, all while retaining their limited liability. Structuring the partnership so that the general partner (with unlimited liability) is a corporation preserves all of the limited liability aspects of the corporate form.

The provisions of the Civil Code of Québec (CCQ) with respect to limited partnerships are similar to comparable statutes in other Canadian provinces and in various states in the U.S. In Québec, however, partnerships have certain legal characteristics that differentiate them from partnerships in many common law jurisdictions by virtue of the fact that they have separate patrimonies from those of their partners. In Québec, every person (natural and legal) has a patrimony, which is that person’s universality of rights and obligations having a pecuniary value, in which the rights guarantee the obligations. Because Québec partnerships have a patrimony, they have the capacity, even though they are not legal persons, to own their own assets, incur their own liabilities and appear in court in their own right, among other things.
Limited partnerships should not be confused with limited liability partnerships (LLPs). LLPs are typically formed by professionals such as accountants and lawyers, and indeed they derive from a combination of the rules governing general partnerships in the CCQ and specific rules found in Québec’s *Professional Code*. As a result of this hybrid formation, LLPs do not have general partners and individual partners retain liability for their respective acts and omissions.

True joint ventures or co-ownership arrangements, commonly involving one or more corporations, avoid the unlimited joint and several liability applicable to partners. They also permit the venturers or co-owners to regulate their tax deductions without being forced to do so on the same basis as other co-venturers. (This would not be possible in the case of a partnership.) A joint venture agreement must be carefully drafted to ensure that the venture is not considered a partnership.

**Franchising Law**

Unlike certain other provinces, Québec has no franchise-specific legislation. However, this form of business organization is not unregulated; the general provisions of the CCQ and the *Charter of the French Language* (Charter) apply. This section will focus on three important considerations under the CCQ; for the impact of the Charter, see “The *Charter of the French Language*,” below.

First, the CCQ imposes a duty of good faith, which is broader than the duty of fair dealing found in many common law jurisdictions, including other Canadian provinces. In Québec, the duty of good faith applies not only to the performance and enforcement of franchise agreements, but also to their negotiation. Further, the duty of good faith often requires one party, for instance the franchisor, to disclose material facts to the other, the franchisee, when it would otherwise not be in its interest to do so. Finally, the duty of good faith precludes a party from exercising its contractual rights in an excessive and unreasonable manner or with the intent of injuring the other.

Second, the CCQ governs franchising through its provisions relating to “contracts of adhesion.” A contract of adhesion is a contract in which the essential stipulations were imposed or drafted by one of the parties and were non-negotiable. To the extent that franchise agreements fit this definition, they are subject to certain legislative checks imposed to protect the adhering party, in this case the franchisee. Thus, such agreements must be drafted in clear language and any ambiguity will be interpreted in favour of the franchisee. Further, external clauses that were not expressly brought to the attention of the franchisee before signing risk being found null in Québec courts. But clarity and express mention are not enough: clauses that are found to be “abusive” or excessively onerous may also be found null, or see their obligations reduced by the courts.
Third, in the context of the sale of goods, the CCQ obliges manufacturers, distributors and suppliers to warrant the quality and ownership of the goods in the same manner as the seller. As a result, it is possible for the franchisor who, for instance, is also a manufacturer, to be held liable for defective goods sold by its franchisee. Such responsibility can arise either indirectly, by the franchisee holding the franchisor responsible in warranty after being sued by the consumer, or directly, by the consumer pursuing the franchisor even though there is no contractual relationship between them. The CCQ limits the franchisor’s ability to disclaim such warranties with respect to both the franchisee and the consumer, and the Consumer Protection Act (Québec) adds additional protections for the latter.

The Charter of the French Language

The Charter establishes French as the official language of Québec and governs the use of the French language in a broad range of activities. In particular, it sets forth the fundamental right of every person to have all firms doing business in Québec communicate with him or her in French. The Office québécois de la langue française (OQLF) is the provincial authority that oversees the use of French in commerce and business. The OQLF considers that a firm maintaining an address in Québec or conducting business in Québec by soliciting Québec residents is carrying on business in Québec and, therefore, is subject to the Charter.

Firm Name in French

The Act respecting the legal publicity of enterprises and the Charter require companies carrying on business in Québec to have a firm name in French. A firm’s name should not be confused with a firm’s trade-mark; the latter is not required to have a French version. An example helps to illustrate this distinction: imagine a retailer doing business under the trade-mark “English.” This retailer would have to register a French firm name, such as “Magasins English inc.”; however, in that retailer’s public signage, packaging and publicity, it would be allowed to use its trade-mark (“English”) alone. With respect to signage, though, new measures have been adopted that require “sufficient presence of French.” These measures are explained in further detail below.
Common Business Applications in French

PRODUCT LABELLING
Every inscription on a product, its container or wrapping, or on a leaflet, brochure or card supplied with it, including the directions for use and warranty certificate, must be drafted in French. This requirement extends to labels containing, for example, washing instructions and sizes. The French text can be accompanied by text in another language, so long as the text in the other language is not more prominent than the French text.

EMPLOYMENT FORMS, ORDER FORMS, INVOICES, ETC.
Employment application forms, order forms, invoices, receipts, catalogues, brochures and other similar, consumer-facing documents must be produced in French or in a bilingual version.

PUBLIC SIGNS, POSTERS AND COMMERCIAL ADVERTISING
Public signs, posters and commercial advertising may also be bilingual, provided that the French translation is “markedly predominant.” However, large billboards or signs that are visible from any part of a public highway must be exclusively in French, unless they are displayed on the firm’s premises. Likewise, signs on public transportation vehicles, such as buses and subways, must be exclusively in French, unless they are used regularly to transport passengers or merchandise across Québec’s borders, in which case the signs may be bilingual.

WEBSITES
Commercial advertising posted on a website must also be in French. Alternatively, it may be bilingual, provided that the French version is displayed at least as prominently as the English version. In practice, the OQLF requires that the French and English versions of a firm’s Canadian website be equivalent.

TRADE-MARKS
Previously, any “recognized” trade-mark within the meaning of the Canadian Trade-marks Act (which includes both registered and unregistered marks) enjoyed an exception to the bilingual requirement in a business firm’s catalogues, brochures, public signs, posters and commercial advertising, provided that a French version of such trade-mark had not been registered.

Several years ago, the OQLF advanced a more restrictive interpretation of its regulation regarding this exception by claiming that a trade-mark name needed to be accompanied by a generic descriptive in French (e.g., Les magasins Best Buy). On April 9, 2014, in Magasins Best Buy Ltée v. Québec (Procureur général), the Québec Superior Court found that the broader interpretation of the exception should prevail and that a trade-mark name can be used alone. This decision was subsequently confirmed by the Court of Appeal.
In light of these judgments, the OQLF made regulatory amendments that came into force on November 24, 2016. Under the amendments, businesses are still able to use and display recognized trade-marks in English, provided that a French version has not been registered. However, a trade-mark displayed in English only “outside an immovable” (i.e., real property) – including outside a store in an indoor shopping mall – must be accompanied by a “sufficient presence of French.” This can be in the form of: (i) a generic term or a description of the products or services concerned, (ii) a slogan or (iii) any other term or indication deemed sufficient. The “sufficient presence of French” must also have permanent visibility and legibility in the same visual field as the English trade-mark.

This is a flexible requirement. For example, an English trade-mark can be used without a French description if there is a permanent display in French of information on the products or services offered – this could include a simple storefront window display.

Language as a Condition of Employment

Employers are prohibited from dismissing, laying off, demoting or transferring a staff member for the sole reason that he or she is exclusively French-speaking or has insufficient knowledge of the English language. An employer is prohibited from making knowledge of the English language a condition of obtaining employment, unless the nature of the duties requires such knowledge.

Francization Programs

An enterprise in Québec which employs more than 50 employees must register with the OQLF. If the OQLF considers that the use of French is not generalized at all levels of the enterprise, the enterprise will have to adopt a francization program. The francization program includes managerial staff and the OQLF considers the total number of employees who are located in Québec, even those who may be located at different locations within the province. It is important to note, however, that these measures and requirements do not have to be met on day one. They may be implemented gradually, over a certain period of time.

An enterprise employing 100 or more persons must form a francization committee. Where necessary, the committee will have to devise a francization program and supervise its implementation. Certificates of francization will be issued in each case where the OQLF is satisfied with the enterprise’s linguistic situation.
Penalties for Non-Compliance

Any entity that contravenes the Charter is liable for each offence to a fine of $1,500 to $20,000. The fines are doubled for a subsequent offence. Liability extends to those distributing, selling by retail trade, renting, offering for sale or rental, or otherwise marketing a product, a computer software, or a publication not in compliance with the Charter. A judge may also, upon request, impose an additional fine equal to the financial gain realized.

Québec Tax Considerations

Several tax considerations are relevant to Canadian corporations seeking to do business in Québec. Québec’s income tax regime for businesses is governed by the Taxation Act (Québec) (QTA) and its regulations, and its sales tax regime is established under the Act respecting the Québec sales tax (AQST) and other laws of the province of Québec. While the AQST and the QTA contain provisions that are similar to their corresponding federal tax statutes, they give rise to unique income tax, sales tax and payroll tax considerations.

Employment and Labour Law

While Québec’s employment laws share many similarities with those of other Canadian provinces in areas such as occupational health and safety, workers’ compensation and pay equity, they do contain some unique provisions. Three major pieces of legislation govern employment in Québec.

Employment and the Civil Code of Québec

In general, employment contracts are governed by the CCQ, which provides that the employer has to take measures consistent with the nature of the work to protect the health, safety and dignity of the employee. The CCQ also confirms the right of parties to include a non-competition clause in a contract, provided it is limited as to (i) duration, (ii) geographic scope and (iii) type of employment, to what is necessary for the protection of the legitimate interests of the employer. Because non-competition covenants restrict the right of employees to earn a living, they are narrowly construed by Québec courts. In addition, an employer cannot avail itself of a non-competition covenant if it has terminated the employment contract without a serious reason.

The CCQ also provides that a sale of the business or any change in its legal structure by way of amalgamation or otherwise will not terminate an employment contract, which will remain binding on any successor employer.

Under the CCQ, either party to an employment contract with an indeterminate term may terminate the contract, subject to reasonable prior notice. One of the parties can always terminate the contract, without prior notice, for a serious
reason. However, the Québec legislature extended job protection measures to employees with two or more years of uninterrupted service. As explained below, Québec employers cannot easily terminate employees with more than two years of service because the Act respecting labour standards (Québec) provides for the possibility of reinstatement in cases of dismissal not made for good and sufficient cause (or constructive dismissal).

The employee’s duty of loyalty is the major implied term in an employment contract, even after termination of the employment.

The CCQ also provides that a “choice of law” clause in an employment contract may be unenforceable if it ends up depriving the worker of the protection to which he or she is entitled under the mandatory provisions of the law of the country where the worker habitually carries on his or her work. “Choice of law” cannot be forced upon a worker. Article 3149 of the CCQ also provides as follows:

Québec authorities also have jurisdiction to hear an action based on a consumer contract or a contract of employment if the consumer or worker has his domicile or residence in Québec; the waiver of such jurisdiction by the consumer or worker may not be set up against him.

In general, new businesses are advised to hire all employees under written employment contracts that contain provisions dealing with entitlements and obligations when employment is terminated.

Québec Labour Code

Unionized employees are governed by the Québec Labour Code. Although the Canada Labour Code and the Québec Labour Code are essentially similar, the scope of the federal legislation is broader. The Québec Code includes issues that are dealt with in Québec under other legislation, such as An Act respecting labour standards (Québec) or An Act respecting occupational health and safety (Québec). There are no anti-scab measures in the Canada Labour Code, a distinction that may be important.

Labour Standards Act

An Act respecting labour standards (Québec) applies to employees regardless of where they work. It encompasses employees who perform work both within and outside of Québec for an employer whose undertaking is in Québec. The Commission des normes, de l’équité, de la santé et de la sécurité du travail supervises the implementation and application of labour standards. Any employer who remunerates an employee must also pay a contribution to the Minister of Revenue and file an annual statement. An employer’s contribution is equal to the product obtained by multiplying the rate fixed by regulation by the remuneration, subject to the contribution paid by the employer during the year.
SIGNIFICANT PROVISIONS
The legislation contains a number of significant employment standards provisions:

- Minimum wage, determined by regulation, is generally revised annually. It increased to $11.25 on May 1, 2017 and is expected to continue to rise as follows: $11.75 in 2018, $12.10 in 2019, and $12.45 in 2020.

- Employees must be paid at intervals that do not exceed 16 days.

- Equal rates or wages have to be paid for the same tasks. This rule does not apply to an employee remunerated at a rate of pay which is more than twice the rate of the minimum wage.

- The regular work week is 40 hours. A premium of 50% is added to the prevailing hourly wage for overtime work. Special rules exist for certain industries.

- Minimum annual leave with pay is two weeks after one year of uninterrupted service and three weeks after five years.

- Employers are required to provide their employees with an environment that is free of psychological harassment. Though employers cannot guarantee that there will never be episodes of psychological harassment within their enterprise, they must (i) prevent any situation of psychological harassment through reasonable means and (ii) act to put an end to any psychological harassment as soon as they are made aware of it, by applying the appropriate measures, including any necessary sanctions.

- Prior written notice of termination or layoff of one week is required if the employee has worked for more than three months but less than one year. The notice period is two weeks for an employee who has worked between one and five years; four weeks for an employee who has worked between five and ten years; and eight weeks for an employee who has worked ten years or more.

- Prior written notice of collective dismissal is required when an employer terminates or lays off 10 employees or more. The notice period is eight weeks when the number of employees concerned is between 10 and 99, 12 weeks for 100 to 299 employees, and 16 weeks for 300 employees and over.
After two years of service, an employer cannot terminate the employee without “good and sufficient cause.” In the event of such a dismissal, or of a constructive dismissal, the Tribunal administratif du travail may

- order the employer to reinstate the employee
- order the employer to pay to the employee an indemnity up to a maximum equivalent to the wages he or she would normally have earned had he or she not been dismissed
- render any other decision it believes to be fair and reasonable, taking into account all the circumstances of the matter

However, some employees are excluded (senior managerial personnel for example) and cannot benefit from these remedies.

Sale or concession of the whole or part of a business does not invalidate a claim arising from the application of the Act; the former employer and new employer are bound solidarily (i.e., jointly and severally).

Work performed by children under the age of 14 is prohibited.

Labour standards contained in the Labour Standards Act and its regulations are mandatory.

Fines between $600 and $6,000 may be levied, depending on the offence. Fines of $1,500 per week may be imposed in case of a collective dismissal for technological or economic reasons without the appropriate notice to the Minister of Employment and Social Solidarity.

**Retirement Savings**

Québec has recently introduced an employment standard relating to retirement savings. Employers in Canada are not required by law to provide their employees with pension and group insurance benefits. One exception to this principle is that employers with 20 or more employees in Québec who have at least one year of continuous service and who do not have access to a registered pension plan, group retirement savings plan or group tax-free savings account are now required to enroll these employees in a “voluntary retirement savings plan” (VRSP). Effective January 1, 2018, this requirement will also apply to employers with 10 to 19 employees in Québec. Fines ranging from $500 to $10,000 may be imposed on an employer who fails to comply with this requirement.
VRSPs are essentially defined contribution arrangements administered by a financial institution. Employers may contribute to a VRSP, but are not required to do so. Employees must be allowed to contribute to their VRSP by payroll deductions.

Osler’s Montréal office offers fully integrated and seamless legal advice in both French and English, providing exceptional service to companies doing business in Québec.