

February 2024

## Guide to Doing Business in Québec

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Québec is Canada's largest province by geography and its second most populous province. Québec's strategic location offers unique opportunities to investors and business owners in neighbouring urban centers such as New York, Boston and Toronto.

Foreign entities considering doing business in Québec need to take into consideration its distinct language, culture and legal systems, as well as its diverse forms of business organization. In fact, according to the *Office québécoise de la langue française*, more than 93% of the population speaks French. Québec has various French language requirements, described below, that foreign businesses looking to become established in Québec must adhere to.

Québec, unlike the other provinces of Canada, is a civil law jurisdiction where most relationships between individuals and private entities are ruled by the provisions of the *Civil Code of Québec* (CCQ).

### FORMS OF BUSINESS ORGANIZATION

There are various legal forms to select from to structure a business in Québec, each with its own advantages and disadvantages. To select the most appropriate form, a foreign entity must consider key factors such as its tax implications, the role of investors within the company, and all liability questions regarding obligations contracted for the service or operation of the business.

### BRANCH VERSUS SUBSIDIARY OPERATION

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

Since the use of a branch office exposes the foreign company to provincial (Québec) and federal (Canadian) laws, the creation of a wholly-owned subsidiary in the home jurisdiction of the foreign corporation should be considered. 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, as well as 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. In addition, the business or corporate name under which registration in Québec is 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 this 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.

## INCORPORATION IN QUÉBEC

Entities wishing to incorporate in Québec can choose 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 required, and the company must be registered with various government, tax and other agencies. Although there are tax rules that should be considered, there are no approvals required for the capitalization of a corporation. Regarding the share capital and other financial information about the corporation, this does not have to be publicly disclosed unless the corporation is a publicly listed company (i.e., its shares are available to the public). Regardless of the regime, the corporation must disclose the names and domiciles of the three shareholders controlling the greatest number of votes and identify the shareholder holding an absolute majority. Generally, a Québec corporation has the capacity and the power of a natural person. The corporation may also 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 distinguishes 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. A Québec corporation may therefore 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 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 ways:

- 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.

## REQUIRED DECLARATIONS

According to the *Act respecting the legal publicity of enterprises* (ALPE), any legal person established in Québec, whether constituted in Québec under the QBCA, or if they are domiciled in Québec, carry on activity in Québec under CBCA, or possess an immovable real right (registrant), must update their information contained in the register by filing a declaration generally within 30 days after the date on which any change occurs.

Additionally, once a year, six months after the end date of its taxation year, a registrant must file an updating declaration stating that the information contained in the register is accurate or, as applicable, stating what changes should be made. This obligation begins the year following the year in which the corporation is first registered.

The annual declaration must be filed with the annual registration fee set out in [Schedule 1 of the ALPE](#). This obligation begins the second year following the year in which the corporation is first registered. In other words, there are no fees for the first year after its constitution.

The corporation can file its annual declaration at the same time as its tax return.

## NEW TRANSPARENCY REQUIREMENTS PURSUANT TO BILL 78, ENTITLED AN ACT MAINLY TO IMPROVE THE QUÉBEC TRANSPARENCY OF ENTERPRISES

Since Québec's *An Act mainly to improve the transparency of enterprises* (herein after the *Québec Transparency Act*) came into force on March 31, 2023, the registrants' declaration obligations have increased significantly. Inspired by European practices and regulations, the *Québec Transparency Act* introduces new measures and requirements that improve corporate transparency and reinforces public protection. The changes introduced by the *Québec Transparency Act* are also consistent with international efforts aimed at fighting against fraud and tax evasion, which are some of the Québec government's main priorities. Unlike the corporate transparency initiatives implemented by the federal government and other provinces, the *Québec Transparency Act* applies to all business organizations registered to carry on an activity in Québec, regardless of their jurisdiction of formation or their form of business organization.

Pursuant to one of the key amendments to the ALPE following the coming into force of the *Québec Transparency Act*, a registrant must now disclose certain information relating to its ultimate beneficiaries. According to the ALPE, an ultimate beneficiary is defined as any natural person either (i) having control or hold, even indirectly, or is a beneficiary of, a number of shares or units of the registrant conferring on the person the power to exercise 25% or more of the voting rights attached to the shares or units issued by the registrant, (ii) having control or hold, even indirectly, or is a beneficiary of, a number of shares or units of the registrant, the value of which corresponds to 25% or more of the fair

market value of the shares or units issued by the registrant, (iii) who has any direct or indirect influence that, if exercised, would result in control in fact of the registrant, (iv) is the general partner of the registrant or, if a general partner of the registrant is not a natural person, the person meets one of the conditions described in points 1 and 3 above or is a party to an agreement referred to in the second paragraph of section 0.4. in respect of the general partner, or (v) who is the trustee of the registrant in the case of a trust (the Ultimate Beneficiary). The information required to be disclosed about a registrant's Ultimate Beneficiaries includes their names, domiciles and dates of birth, the type of control they exercise or the percentage of shares or units they hold, as well as the dates on which each Ultimate Beneficiary became and, if applicable, ceased to be one. Certain entities, including but not limited to reporting issuers in the province of Québec, crown corporations, certain financial institutions, banks, trusts and non-profit legal persons, are exempt from disclosing their ultimate beneficiaries.

Additionally, the *Québec Transparency Act* adds the date of birth to the information required to be declared by a registrant about a natural person associated with the registrant (e.g., the three shareholders with the greatest number of votes, each of the registrant's directors, the registrant's president, secretary and chief executive officer, the registrant's partners). A copy of identification issued by a government authority (such as a passport or a driver's license) must also be provided to the registrar for each of the registrant's directors. While most of the new information disclosed pursuant to the amendments to the ALPE imposed by the *Québec Transparency Act* is public, the copies of identification and the natural persons' dates of birth may not be consulted by the public. Furthermore, in the event that a natural person's professional address has also been declared by the registrant, that natural person's domicile disclosed in accordance with the ALPE may not be consulted by the public. Notwithstanding the aforementioned, a court bailiff may consult the information related to a natural person's domicile in the practice of his or her profession.

While these amendments to the ALPE came into force on March 31, 2023, the additional required information and documents mentioned above must be disclosed to the registrar by the registrant's first annual declaration following March 31, 2023. Non-compliance by the registrant with these new requirements is subject to the already existing penalties and sanctions under the ALPE and may result in fines of up to \$25,000 (which can be doubled in the case of subsequent offences), as well as the cancellation of the registrant's Québec registration. More specifically, the amount of the fines applicable varies depending on who committed the offence under the ALPE. For instance, while the fine for natural persons ranges from \$500 to \$5,000, the fine for corporations, directors and officers ranges from \$1,000 to \$10,000. Hence, the fine for shareholders ranges from \$500 to \$10,000, depending on whether the shareholder is a natural person or not. Furthermore, the court may make any appropriate order to remedy the failure constituting the offence.

Another key amendment to the ALPE imposed by the *Québec Transparency Act* will come into force starting March 31, 2024, and will allow the public to search the online register using a natural person's name to identify natural persons associated with a corporation. Notwithstanding this new feature, a search in the register may be conducted using only information that is already accessible by the public



(e.g., not a natural person's date of birth).

## 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. 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 nonresident holds its partnership or joint venture interest through a subsidiary incorporated in Québec, 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 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 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

In Canada, franchising is regulated on a provincial level. 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 as 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. It is also a unique feature of Québec law that courts can read in “implied obligations” into contracts. In one instance, the Courts found that, in the context of a franchise agreement, there is an implied obligation to “protect and enhance the brand”, and that the franchisor can be liable for damages for failing to do so. Our summary of this case, *Bertico Inc. et al. v Dunkin’ Brands Canada Ltd. (Allied Domecq Retailing International (Canada) Ltd.)*, can be found on the [Supreme Court of Canada website](#).

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 are separate from the franchise agreement itself and 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. Finally, as of June 1, 2023, all contracts of adhesion must be systematically provided to the other party at least in French, failing which they could be declared null by the courts on request on that basis alone.

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 them 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.

The government of Québec recently adopted numerous amendments under Bill 96 to the current Charter, most of which became effective as of June 1, 2022. These changes include:

- broader requirements for all businesses to communicate with their Québec employees in French, and in particular a new requirement for all businesses with Québec employees to provide written training materials in French
- stricter requirements in respect of the publication of job offers in French, by requiring businesses to publish the French version of job offers for Québec positions in a comparable manner to the publication of the English version
- new limits on the ability of businesses to require the knowledge of a language other than French for Québec positions: businesses now will be required to carry out an assessment of the actual language needs associated with the duties of the position, examine whether existing employees who already have knowledge of the other language could perform those duties that require knowledge of the other language, and generally concentrate the duties requiring knowledge of another language in the fewest possible number of positions
- as new requirement for all businesses to inform and serve their Québec clients (both consumers and non-consumers) in French
- requiring, as a condition of validity, that all adhesion contracts (contracts that are non-negotiable) and consumer contracts be systematically provided in French to counterparties in Québec
- limiting the use of trademarks that contain text in a language other than French in commercial advertising and on products, by requiring that such trademarks be registered under the *Trademarks Act* in order to be used in Québec
- this effectively puts an end to the ability of businesses to use common law (i.e., unregistered) trademarks containing text in a language other than French in their commercial advertising and on



products in Québec

- modifying signage standards for premises by requiring that the French text that accompanies a trademark containing text in a language that is not in French be “markedly predominant” in relation to the non-French text. This essentially requires the size of the French signage that must already accompany any non-French trademark on premises to be increased to twice the size of the non-French trademark
- reducing the threshold at which businesses become subject to the obligation to undergo a “francization program”, seeking to generalize the use of French within the businesses’ Québec operations from 50 to 25 employees in Québec
- increasing the enforcement powers of the regulator charged with the application of the Charter, the OQLF, including broader inspection powers, new order-making powers, and the standing to seek the assistance of the courts directly for the enforcement of the Charter
- instituting a new private right of action for all Québec residents to seek injunctive relief, damages and punitive damages for violations of the provisions of the Charter

## CORPORATION NAME IN FRENCH

The ALPE, the QBCA and the Charter require companies carrying on business in Québec to have a corporation name in French. A corporation’s name should not be confused with its trademark; the latter is not required to have a French version, as long as it is registered under the federal *Trademarks Act*, if the trademark is to be used in commercial advertising and on products. An example helps to illustrate this distinction: imagine a retailer doing business under the trademark “English.” This retailer would have to register a French company name, such as “*Magasins English inc.*” (“Magasins” meaning “stores” in French); however, in that retailer’s public signage, packaging and publicity, it would be allowed to use its trademark (English) alone, provided it was registered under the federal Trademarks Act. With respect to signage, though, new measures have been adopted that require “marked predominance 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.

Under Bill 96, employers will be required to publish in French any offer of employment, transfer, promotion, employment application form, documents relating to conditions of employment and training documents produced for the staff. In addition, any individual employment contract the employer enters into in writing has to be drawn up in French, unless the employee prefers English. However, where the employment agreement is non-negotiable, a French version must be systematically provided to the employee, even when the employee prefers an English version. Provided a French version was given to the employee, the contract can be concluded in English if that is the employee's preference.

These proposed changes to the Charter will increase the regulatory burden in respect of hiring and maintaining employees in Québec. Before requiring knowledge of English as a condition of employment, businesses will have to conduct an assessment as to why that condition is required and document it. More attention will have to be given to communications and materials provided to Québec employees generally, as the scope of what has to be in French will increase. Practically speaking, businesses may want to consider what is truly required for their Québec operations in terms of written materials and only provide to Québec employees what is strictly required, as a way of reducing the translation burden.

## **PUBLIC SIGNS, POSTERS AND COMMERCIAL ADVERTISING**

Public signs, posters and commercial advertising may also be bilingual, provided that the French translation is "markedly predominant." Under Bill 96, a trademark may be drawn up, even partially, only in a language other than French, provided the trademark is registered within the meaning of the Trademarks Act and no corresponding French version appears in the register kept according to that Act. However, on public signs and posters visible from outside premises, French must be markedly predominant where such a trademark appears in a language other than French. In certain situations, such as large billboards or signs that are visible from any part of a public highway, and advertising on public transportation vehicles, such as buses and subways, signage must be exclusively in French.

## **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 corporation's Canadian website be equivalent.

## **TRADEMARKS**

Previously, any "recognized" trademark within the meaning of the Canadian *Trademarks Act* (which includes both registered and unregistered marks) enjoyed an exception to the bilingual requirement in a business's catalogues, brochures, public signs, posters and commercial advertising, provided that a French version of such trademark had not been registered.

Several years ago, the OQLF advanced a more restrictive interpretation of its regulation regarding this exception by claiming that a trademark 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 trademark 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 trademarks in English, provided that a French version has not been registered. However, a trademark 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 trademark.

This is a flexible requirement. For example, an English trademark 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.

However, with Bill 96, the requirements are again changing, effective June 1, 2025. First, only trademarks that are registered under the *Trademarks Act* can be used on signage if they contain text in a language other than French. Recognized, but unregistered trademarks (often referred to as common law marks) will no longer be allowed at all if they contain text in a language other than French. Moreover, the display of a registered trademark that contains text in a language other than French outside premises will only be allowed if it is accompanied by French text that takes up twice the surface area occupied by the text in another language, and the font of the French text must be twice the size of the font of any text in another language.

## LANGUAGE AS A CONDITION OF EMPLOYMENT

Employers are prohibited from dismissing, laying off, demoting or transferring a staff member for the sole reason that they are exclusively French-speaking or have 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.

The amendments adopted under Bill 96 make it so that an employer is deemed not to have taken all reasonable means to avoid requiring knowledge or a specific level of knowledge of a language other than the official language if, before requiring such knowledge or such a level of knowledge, one of the following conditions is not met: (1) the employer assessed the actual language needs associated with the duties to be performed; (2) the employer made sure that the language knowledge already required from other staff members was insufficient for the performance of those duties; or (3) the employer restricted

as much as possible the number of positions involving duties whose performance requires knowledge or a specific level of knowledge of a language other than the official language.

## FRANCIZATION PROGRAMS

An enterprise in Québec that employs more than 50 employees in Québec must register with the OQLF. Under Bill 96, this threshold will be lowered to 25 employees, as of June 1, 2025. 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 \$3,000 to \$30,000. The fines are doubled for a second offence and tripled for subsequent offences. 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 and grant injunctive relief to have the violation cease.

Bill 96 also introduces a private right of action in favour of all Québec residents, whereby they can seek damages, including punitive damages, and injunctive relief in respect of Charter violations. In certain circumstances, Québec clients can ask the court to annul contracts that were not provided to them in French.

## PUBLIC CONTRACTS

In certain instances, businesses operating in Québec are required to obtain authorization from the *Autorité des marchés publics* (AMP) to be eligible to compete in a public call for tenders or award process to enter into contracts with a Québec government department or agency. In addition, an enterprise that wishes to enter into a contract with a public body involving an expenditure, including an expenditure resulting from an option provided in the contract, equal to or greater than the amount determined by the government, must obtain an authorization for that purpose from the AMP. The amount may vary according to the category of contract. The word "must" has been misplaced. According to the Act respecting contracting by public bodies, it is placed before "obtain". The provincial

threshold is set at \$5 million for construction contracts and subcontracts or public-private partnership agreements, and \$1 million for service contracts and subcontracts entered into pursuant to a call for tenders or by mutual agreement. The threshold includes, if applicable, the amount of the expenditure that would be incurred if all renewal options were exercised.

Additionally, all such businesses must have an *Attestation de Revenu Québec*, which can be obtained online at [My Account for businesses](#). Businesses that wish to enter into a public contract must comply with all other conditions and obligations under the *Act respecting contracting by public bodies*.

## PRIVACY

An enterprise in Québec that collects, holds, uses or communicates any personal information, meaning any information which relates to a natural person and allows that person to be identified, is subject to the *Act respecting the protection of personal information in the private sector*, R.S.Q., c.P-39.1 (Québec Privacy Act).

On September 22, 2021, the Act to modernize legislative provisions as regards the protection of personal information was adopted. It significantly amends the Québec Privacy Act over a three-year time frame. As briefly discussed below, new rules include severe monetary penalties, a security incident reporting regime, new statutory rights and compliance obligations, and a range of other amendments affecting private sector organizations.

The new requirements and individual rights are similar to those in force in the European Union pursuant to the General Data Protection Regulation (GDPR). However, in many instances, Québec's requirements are more stringent or otherwise distinct from those set out under the GDPR. As such, enterprises subject to the Québec Privacy Act must properly adapt their policies, procedures, and practices to comply with this Act and its unfolding amendments.

## NEW IN 2022

As of September 22, 2022, the person exercising the highest authority within the enterprise, such as the CEO, shall formally be responsible for ensuring the Québec Privacy Act is implemented and complied with. This person may, however, delegate, in writing, all or part of this responsibility to another person.

In addition, an enterprise which has cause to believe that a confidentiality incident involving personal information has occurred must take reasonable measures to reduce the risk of injury and to prevent new incidents of the same nature. If the incident presents a risk of serious injury, the enterprise must promptly notify the *Commission d'accès à l'information* (Commission), Québec's monitoring body. Importantly, the enterprise must also notify any person whose personal information is affected by the incident, failing which the Commission may order it to do so.

Also starting in 2022, an exception to the consent requirement to share personal information will come into force for sharing when necessary for a "commercial transaction", such as the sale of an enterprise or



its assets and obtaining financing.

## NEW IN 2023

As of September 22, 2023, an enterprise must establish and implement formal governance policies and practices regarding personal information. Such policies and practices must, in particular, provide a framework for the keeping and destruction of the information, define the roles and responsibilities of the members of its personnel throughout the life cycle of the information, and provide a process for dealing with complaints. The policies and practices must be proportionate to the nature and scope of the enterprise's activities and be approved by the person in charge of the protection of personal information, as described above.

The title and contact information of the person in charge of the protection of personal information, as well as the aforementioned policies, must be published on the enterprise's website.

Any project involving the use of personal information must be subject to a privacy impact assessment, with the same requirement for any transfer of personal information outside Québec. As well, the use of any profiling and automated decision-making technology must be disclosed, technological products must offer the highest confidentiality setting by default, and individuals will have a right to de-indexing in certain circumstances. In addition, subject to limited exceptions, a seven-year maximum retention period will come into force for personal information.

Also starting in 2023, an enterprise that commits an offence to the Québec Privacy Act, such as collecting, holding, communicating to third persons, or using personal information in contravention of this Act, will face more onerous financial penalties as of September 22, 2023. Specifically, the Commission will be able to levy administrative monetary penalties of up to \$10 million, or if greater, the amount corresponding to 2% of the enterprise's worldwide turnover for the preceding fiscal year. In addition, the Commission will have the ability to seek the imposition of fines of up to C\$25 million, or if greater, the amount corresponding to 4% of worldwide turnover for the preceding fiscal year, for certain offences.

Of note, further changes relating to data portability will come into force in September 2024.

## 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.

As an example, while benefits derived from a group sickness or accident insurance plan offered to

employees in the course of their employment is not a taxable benefit for federal income tax purposes, any benefit derived from those would be included in the employees' income for Québec income tax purposes, and employer's payroll tax obligations will be determined taking into account such benefit in their total payroll subject to Québec payroll taxes. Another example relates to the application of the general anti-avoidance rule under the QTA. The Quebec Revenue Agency could, in addition to the tax assessed under the general anti-avoidance rule, impose a penalty of 50% of the amount of tax assessed under the Québec general anti-avoidance rule. In addition, when a penalty has been assessed under the Québec general anti-avoidance rule and is maintained following all rights of objection and appeal have been exhausted, the taxpayer could be included on a public list of entities and persons that are banned from entering into public contracts for a period of five years.

## **EMPLOYMENT AND LABOUR LAW**

While Québec's employment laws share many similarities with those of other Canadian provinces in areas such as employment standards, occupational health and safety and workers' compensation, there are many distinctive features. Québec is also considered one of the most pro-employee provinces in Canada and has the second-highest unionization rate in the country.

Three major pieces of legislation govern employment relations in Québec.

### ***CIVIL CODE OF QUÉBEC***

The CCQ applies to employment contracts. Many provisions of the CCQ are considered to be of "public order", which effectively prevents parties from contracting out of certain rights provided for under the CCQ. For example, while the CCQ confirms the right of the parties to include a non-competition clause in an employment contract, it sets strict limits on the scope of such provisions in terms of (i) duration; (ii) geographic scope; and (iii) type of prohibited activities. In addition, an employer cannot avail itself of a non-competition covenant if it has terminated the employment contract without a serious reason (i.e., cause). The parties to an employment contract in Québec cannot contract out of these limitations and the courts will refuse to enforce restrictive covenants that do not comply with these limitations.

Another example is employers are required to provide employees with notice of termination, or pay in lieu of notice, if employment is terminated without serious reason. There is no set formula to assess what constitutes reasonable notice of termination from a civil law perspective. The length must be decided in each case with reference to a number of factors, including age, the length of service and the type of employment/responsibilities. Case law suggests that a reasonable notice should not exceed 24 months, although there are some exceptional cases that can go to 26 or 27 months. Once again, the parties cannot exclude this requirement through their employment contract. An employee remains entitled to make a claim for "reasonable" notice (or compensation in lieu) despite the terms of the employment contract providing for a less generous termination entitlement.

## QUÉBEC LABOUR CODE

The *Canada Labour Code* deals with labour relations matters for federally regulated employers, while each province has its own legislation governing labour relations matters for provincially regulated organizations within that province. In Québec, labour relations for provincially regulated employers are subject to the *Québec Labour Code*.

## LABOUR STANDARDS ACT

Québec has adopted employment standards legislation, the *Act respecting labour standards* (Québec), that sets minimum requirements for certain terms and conditions of employment, including minimum wage, hours of work and overtime, vacation, holidays, pregnancy, parental leave, and notice of termination. Once again, it is not possible to contract out of these minimum standards by contract.

## SIGNIFICANT PROVISIONS

The legislation contains a number of significant employment standards provisions:

- Minimum wage is \$15.25 as of May 1, 2023, and is generally revised annually. (See the [\*Regulation respecting labour standards\*](#).)
- 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 three 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 incidents 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 disciplinary actions.
- 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 10 years; and eight weeks for an employee who has worked 10 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.” If the *Tribunal administratif du travail* finds that an employee was terminated without good and sufficient cause, it may order a reinstatement of the employee and/or order the employer to pay to the employee an indemnity up to a maximum equivalent to the wages they would normally have

earned had they not been dismissed.

## RETIREMENT SAVINGS

There are several government-sponsored pension and benefit programs in Québec (e.g., Québec Pension Plan, Old Age Security program, employment insurance program, workers compensation program, etc.). These plans are administered by government agencies and an employer's obligations under such plans are prescribed by statute (e.g., payroll deductions). Québec also provides basic universal health care for all residents.

There is generally no legal requirement for employers to provide employee benefits to supplement the basic government programs. However, employers with at least 10 employees in Québec must either offer a form of pension or retirement savings arrangement (such as a group retirement savings plan (RRSP)) or join one of the "voluntary retirement savings plans" (or VRSPs) maintained by a financial institution. Employees must be allowed to contribute to the retirement arrangement by way of payroll deduction, but employers are not required to contribute.



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