



# DOING BUSINESS IN QUEBEC:

Your Gateway to  
North America

 **Lavery**

# ABOUT LAVERY

Any foreign business corporation wishing to do business in Quebec should be able to rely on a reputable law firm to help it get established and give it advice on all provincial and Canadian legal and regulatory matters.

Whether in the area of business law, labour and employment law, tax law, business finance or directors' and officers' liability, the Lavery team can assist you at every stage as you set up your business in Quebec by

providing you with the best advice to help you successfully navigate the Quebec and Canadian legal environments.

Aside from specific legal expertise, Lavery works with a large network of major business partners, such as Investissement Quebec and Montreal International. We can introduce you to them in order to expand your network and ensure the smooth transition of your business to Quebec.

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# THE LEGAL SYSTEM

Canada is a federation with two levels of government, each one sovereign within the limits set out under the Canadian Constitution. For example, the federal government has jurisdiction over banks, intellectual property and criminal law across Canada, while provincial governments have jurisdiction over healthcare, education, trade and commerce and property and civil rights in their respective province.

# CREATING A LEGAL ENTITY IN QUEBEC

Quebec is an exception to the rest of the country, which is governed by legal systems founded on the English common law. Quebec's legal system is much closer to the French civil law system. As such, the province has a civil code and a code of civil procedure.

A business that establishes itself in Quebec must first determine the legal form under which it will operate. A foreign business can decide to operate directly, without creating a new separate legal entity, or as a subsidiary of the parent company in the form of (i) a business corporation or (ii) a partnership (for example, a limited partnership or a general partnership). A number of tax and legal factors should be considered before deciding on the most appropriate legal form, which is why it is important to seek professional advice before establishing any business in Canada.

## **DIRECT OPERATION (BRANCH)**

First, a foreign company can decide to do business in Quebec directly

by registering a branch with the Quebec Enterprise Registrar, rather than creating a new legal vehicle. In such a case, the foreign entity remains liable for the debts and obligations of the branch it operates in Quebec. The foreign company is also subject to the same local legal obligations, with the necessary adaptations.

## **BUSINESS CORPORATION (SUBSIDIARY)**

In Quebec, a business corporation is the legal form of choice for creating a business because of its many advantages. In the eyes of the law, it is a distinct person with full enjoyment of its civil rights and has its own legal obligations.

A business corporation exists forever, and it will continue to exist as long as the shareholders do not decide to dissolve it. Shareholder liability for a business corporation's debts is limited to the value of their shares (which means that their only risk is losing the value of their investment in the business corporation), and the business

corporation itself remains liable for its debts, liabilities and obligations. Shareholders have no ownership rights in the business corporation's property, but can receive dividends from any profits realized as well as the remainder of the value of its assets, should it be liquidated.

In Canada, a business corporation can be incorporated federally under the *Canada Business Corporations Act* (the "CBCA") or provincially under the *Quebec Business Corporations Act* (the "BCA"). Both laws have their distinctive attributes. For example, unlike the CBCA, the BCA does not require that directors be Canadian residents. Under the CBCA, a minimum of 25% of the business corporation's directors must be Canadian residents (or at least one director if there are three or less).

Neither the BCA nor the CBCA require any minimum capitalization or share ownership, as is the case for certain European legal entities, among others.

## **PARTNERSHIP**

The *Civil Code of Quebec* recognizes three types of partnerships:

- General partnership
- Limited partnership
- Undeclared partnership

In the business sector, the most common objective of a contract of partnership, which must be signed between at least two partners (natural or legal persons or other partnerships), is to operate a business. Each partner must personally contribute to the partnership in the form of property, knowledge or activities, and the partners share the profits realized from operating the business. A contract of partnership establishes and governs the rights and obligations of the partners and partnership.

A general partnership is the most common type of partnership in

Quebec. The *Civil Code of Quebec* provisions on general partnership serve as the basic rules governing any partnership.

Liability of partners in a partnership is generally not limited to the amount of their respective contribution, as is the case for business corporation shareholders.

## **FINANCING**

A business can finance operations in Quebec by way of a loan or issuing shares. In this regard, a number of aspects must be considered, depending on each situation.

Also, to avoid having to comply with the *Securities Act* requirements on issuing and transferring shares, a business corporation (like a limited partnership) must qualify as a "private issuer," meaning it must satisfy the *requirements of Regulation 45-106 respecting Prospectus Exemptions*. Its securities must be subject to

restrictions on transfer as stated in the business corporation's incorporating documents; they cannot be owned by more than 50 persons, not including employees of the corporation or its affiliates, and may only be distributed to certain categories of persons specifically described in the regulation.

## **THE ACT RESPECTING THE LEGAL PUBLICITY OF ENTERPRISES**

Regardless of its legal form, every business operating in Quebec must register with the Enterprise Registrar and declare information that must be updated at least annually.

Moreover, every business must have a French name that complies with the *Charter of the French language* at the time of its registration, and every business with 5 to 49 employees must disclose the proportion of its workforce that is unable to communicate in French to the Quebec Enterprise Registrar.

# CONDUCTING A MERGER/ ACQUISITION IN QUEBEC

In the event you decide, like many European companies, to establish your business in Quebec through a merger or acquisition, know that the success of such a transaction is due to careful planning.

In Quebec and elsewhere in North America, it is common to surround yourself with professional advisors (lawyers, accountants, bankers, etc.) at the outset of discussions. These professionals can maximize your chances of success by limiting any risks and complications. They often participate in developing acquisition/merger strategies, even before a letter of intent has been signed, specifically by taking any tax consequences into account in order to optimize the strategy adopted.

A letter of intent is a generally non-binding agreement in which the parties agree on the outline of the transaction. It is often accompanied by a confidentiality agreement that protects the confidentiality of discussions, and even the very fact that they took place, and the information shared during such discussions.

The next step in the merger/acquisition process is due diligence, which consists in a preliminary investigation of your target company's legal position, its books and registers, commercial agreements, finances and staff, among other things. Depending on the target company's operations, due diligence may also focus on other aspects, such as intellectual property, regulatory requirements, including government permits and approvals, real estate and environmental compliance. While it is very quick in some cases, due diligence can take several weeks depending on the size of the transaction, the target company's industry and the parties involved.

Due diligence allows negotiations to continue on more solid ground. It offers the parties a clearer picture of the situation so that they can negotiate the terms of the transaction accordingly. For example, a lower acquisition price or better conditions can be negotiated where a risk of litigation is discovered, or additional guarantees

can be demanded where the documentation provided does not support projected revenues.

Negotiations are often held while the merger agreement or share or asset purchase agreement is being prepared. The transaction can be completed in a single step, meaning that the agreement is signed and the transaction closed at the same time, or in two steps, meaning that the agreement is signed and the transaction is closed after a number of conditions are met.



# TAX CONSIDERATIONS

In Canada, both the federal and provincial governments have the power to tax. The respective systems of each level of government are, however, largely harmonized.

Four tax aspects are especially relevant to operating a business in Quebec:

- Income tax
- Employer costs
- Consumption taxes (GST and QST)
- Tax incentives

## INCOME TAX

A business's income tax treatment can vary greatly depending on its legal form.

A branch is taxed on business income earned in Canada at the same rate as a business corporation. An additional tax is also payable on any income earned in Canada that is not reinvested (the equivalent of a dividend paid to the parent company if the business was operated through a subsidiary). Once again, the tax rate will normally be the same as the tax rate on dividends

paid to non-resident shareholders of a business corporation.

A business corporation is taxed on its worldwide source income, including its business income earned in Canada. In the case of a Quebec business corporation ultimately controlled by non-residents of Canada, the current combined federal and provincial income tax rate will be 26.5%.

A Quebec resident who holds shares in a Canadian corporation and receives a taxable dividend from that corporation must pay a tax whose maximum combined rate will vary between 40.11% and 48.7%, depending on the type of dividend received. On the other hand, if a shareholder of that same corporation is a foreign parent company, the corporation will be required to withhold and remit tax on the dividend at a rate of 25%<sup>1</sup>.

A partnership is a transparent entity for income tax purposes, and its partners will be personally taxed on their share of the partnership income, at their applicable personal rate.

1. The withholding tax rate may be lower depending on the applicable tax treaty, and certain specific rules may apply.



## EMPLOYER COSTS

A business that has employees in Canada, regardless of its legal form, must register as an employer for the purpose of source deductions, withholding tax and contributions to various programs.

In Quebec, employer costs amount to approximately 13%<sup>2</sup> of the employee's gross salary.

## CONSUMPTION TAXES

Whether it operates as a branch or a subsidiary, a business must register for taxes, collect taxes from clients for "taxable supplies" sold, and remit them to the tax authorities. Each province is free to enact its own provincial tax, to which is added a set federal tax. As a result, the combined sales tax applicable in each province varies from 5% to 15%. The combined rate in Quebec is 14.975%.

A business can generally ask for a refund of taxes paid to purchase goods and services needed to operate.

## TAX INCENTIVES

There are a number of tax measures related to investment and employment creation available in Quebec. As a general rule, any business that operates in Quebec, including foreign corporate subsidiaries and branches, can take advantage of these tax measures; only some provisions are reserved exclusively for Canadian-controlled corporations.

Tax incentives are available for the following industries:

- Scientific research and experimental development
- Manufacturing
- Natural resources
- E-business development
- Cultural industry and multimedia
- Financial services
- Mining
- Cleantech and clean energy



# LABOUR AND IMMIGRATION

In Quebec, the field of labour relations is largely governed by the provincial government under the *Civil Code of Quebec* and various related laws.

## EMPLOYMENT CONTRACTS

Under the *Civil Code of Quebec*, any employment relationship gives rise to a contractual relationship between an employer and an employee. An employment contract may be tacit or formal, and its term is presumed to be indefinite.

Under such a contract, the employer is required, in particular, to (i) allow the performance of the work, (ii) pay the remuneration fixed and (iii) take appropriate measures to protect the employee's health, safety and dignity. The parties may specify the terms in writing and add, for example, non-competition and non-solicitation undertakings, as well as undertakings to protect the personal information held by that employer in the course of activities.

## MINIMUM RIGHTS GUARANTEED

The *Act respecting labour standards* (the "ALS") establishes the minimum requirements from which no employment contract may derogate. These standards apply to all workers other than senior executives and stipulate the following, in particular:

- A worker is entitled to a minimum wage of \$15.25 per hour (revised annually).
- The standard work week is 40 hours, after which each hour of overtime must be paid at a higher rate.
- A worker accumulates the right to a minimum annual leave ranging from one day to three weeks and the right to an annual leave indemnity equivalent to 4% or 6% of his or her gross wages during the year, determined on the basis of months or years of service with the employer.
- A worker is entitled to maternity, paternity, parental or adoption leave, as well as to absences owing to sickness.



- A worker is entitled to a workplace free from psychological harassment (including sexual harassment), with an obligation on the employer to prevent and put a stop to any such behaviour.

Similarly, the ALS provides that an employer must give an employee written notice prior to terminating their employment contract or laying them off after six months following the date of hire. The notice can be one to eight weeks' notice (unless compensation in lieu of notice is paid), depending on the employee's years of service with the employer. The *Civil Code of Quebec* likewise states that notice of termination of an employment contract (or compensation in lieu of notice) must be given to the employee "in reasonable time," unless the contract is terminated for a serious reason.

### **INDEMNITY FOR INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES**

The *Act respecting industrial accidents and occupational*

*diseases* (the "AIAOD") establishes a mandatory set of rules for all employers. The AIAOD defines what constitutes industrial accidents and occupational diseases subject to the Act, as well as the income replacement indemnity payable, the terms and conditions of medical assistance, compensation, rehabilitation and return to work, and the various possible remedies.

These rules are administered by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) and financed by contributions collected from employers according to their respective classification, as established by the activities they perform.

### **TRADE UNION RELATIONS**

In Quebec, the *Labour Code* protects the right of workers to associate in order to form negotiating groups. This law governs the period for negotiating collective agreements and limits the use of the right to strike or lockout during bargaining periods. Employer

representatives, such as managers, superintendents and foremen, are not considered to be "workers" within the meaning of the law.

### **IMMIGRATION CONSIDERATIONS**

The right to work in Canada is restricted for workers who are neither citizens nor permanent residents. As such, a Canadian business that wants to temporarily employ a foreign national generally must obtain a positive Labour Market Impact Assessment (LMIA) before the worker can apply for a temporary Canadian work permit.

The purpose of the LMIA is to confirm the need for a temporary foreign worker and to demonstrate that no Canadian citizen or permanent resident is available to do the job. Note that a foreign national who wants to work in Quebec must

also obtain a Quebec Acceptance Certificate (CAQ) for temporary work before they can apply for a work permit.

There are, however, exemptions to the LMIA and CAQ requirement, particularly for intra-company transferees (executives, senior management or specialized knowledge workers), specific professionals and French-speaking applicants who want to settle in a province or territory other than Quebec.

In most cases, married and *de facto* spouses of temporary foreign workers with a valid Canadian work permit of six months or longer can also obtain a valid open work permit for the same period as their spouse, and their children can attend primary or secondary school in Canada.

# INTELLECTUAL PROPERTY

In Canada, intellectual property protection is administered by the federal government through the Canadian Intellectual Property Office (CIPO), an agency responsible for enforcing the *Patent Act*, the *Trademarks Act*, the *Copyright Act* and the *Industrial Design Act*. It is also administered by the Canadian Food Inspection Agency (CFIA), which enforces the *Plant Breeders' Rights Act*.

Given that the legislation governing the various forms of intellectual property falls under federal jurisdiction, registering intellectual property with CIPO expands protection to each of the Canadian provinces. Moreover, Canadian law confers protection on certain forms of intellectual property without registration. Though not mandatory, registration is still advantageous.

The various forms of intellectual property that can be protected in Canada include:

- **Trademarks:** They protect the combination of letters, words, sounds, symbols and other

non-traditional trademark types that distinguish the products or services of one company from those of another, for renewable periods of 10 years. Provincial laws also provide protection for trademarks that are used but not registered. This protection is very limited geographically and depends on the ability to demonstrate proof of use. It is prudent not to rely on this type of protection and to register trademarks.

- **Patents:** They give inventors and their beneficiaries the right to prevent unauthorized third parties from practising (making, using or selling) an invention (a new and useful process, machine, manufacture or composition of matter) for a period of 20 years from the date the patent application is filled.
- **Copyrights:** They protect in particular the right to produce, publish or perform an original work of a literary, artistic, dramatic or musical nature for the life of

the author and for a period of 70 years following their death.

- **Industrial designs:** They protect the visual characteristics of a defined article with a distinctive appearance for a period of either 10 years from the date of registration or 15 years from the date the industrial design application is filed, whichever is longest.
- **Plant breeders' rights:** They protect the right to produce, reproduce, condition, sell, export and stock propagating material of a new plant variety for a period of 20 or 25 years from the grant of plant breeders' rights, depending on the plant species.

- **Trade secrets:** Trade secrets may be protected to a certain extent through contract law. The agreement that legally binds the signatories to such obligations will set out the terms and conditions.

Canada is also a signatory to various multilateral agreements related to intellectual property, including the *Paris Convention for the Protection of Intellectual Property*, the *Patent Cooperation Treaty*, the *Patent Law Treaty*, the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* and the *Hague Agreement Concerning the International Registration of Industrial Designs*.



# OTHER BUSINESS CONSIDERATIONS

In addition to the above-mentioned legal aspects, an entrepreneur who wants to operate a business in Quebec must take into account the following legal considerations:

## **FRENCH LANGUAGE**

The *Charter of the French language* (the “Charter”) makes French the official language of Quebec. It protects the right of every consumer to be served and informed in French and that of every employee to work in that language. It also provides that the French on any commercial sign is “markedly predominant” and that specific contracts must be drafted in French. The Office québécois de la langue française (“OQLF”) is responsible for its enforcement.

Under the Charter, all employees in Quebec have the right to work in French. In this regard, employers are required in particular to draw up employment contracts in French for Quebec employees and to use French in written communications to employees. The Charter also calls for caution when advertising positions in Quebec that require the incumbent to speak a language

other than French. In fact, employers must critically assess the need for such a requirement.

The Charter requires that certain commercial materials and specific communication media be drawn up and available in French, particularly invoices, receipts, catalogues, brochures, websites and social media content. Employers should especially be mindful of contracts of adhesion, which must be written in French unless specifically required otherwise.

Depending on their number of employees, some companies are subject to additional francization obligations. These companies are closely monitored by the OQLF and must ensure that the use of French is generalized at all levels of the business in order to obtain or keep their francization certificate.

## **TRADEMARKS**

Subject to certain exceptions, only trademarks in another language with no registered French version are allowed as an exception to the general rule that trademarks must be translated into French.

Any inscription on a product, its packaging or documents and objects that come with this product must be written in French.

Public signs and posters and commercial advertising must be in French. They may also be both in French and in another language provided that French is markedly predominant.

### **AMENDMENTS CONCERNING TRADEMARK USE STARTING ON JUNE 1, 2025**

Only trademarks containing text in another language that are registered without a corresponding registered French version will be accepted.

No inscription in a language other than French on products or their packaging may be given greater prominence than that in French or be available under more favourable terms. Moreover, trademarks registered in another language without an official French version will be required to include a French translation of generic terms and descriptions.

On public signs and posters visible from outside premises, the Charter will require that (i) French be markedly predominant and that (ii) the trademark in another language with no registered French version be a registered trademark.

### **CONSUMER PROTECTION**

The *Consumer Protection Act* applies to contracts entered into between merchants and consumers and provides certain basic warranties and protections in favour of consumers. It sets out specific provisions governing various situations such as credit offers, distance contracts, advertising, loyalty programs and prepaid cards.

The law also provides that merchants must hold a permit to conduct business in specific areas, such as operating a travel agency, road vehicle dealership, money lending establishment or physical fitness studio.



### **PROTECTION OF PERSONAL INFORMATION**

The *Quebec Act respecting the Protection of Personal Information* and its federal counterpart protect the collection, use and disclosure of personal information by businesses. Personal information is that which relates to a natural person and may be used to identify that person, directly or indirectly. Added to these legal obligations are those in the *Civil Code of Quebec* and the *Charter of Human Rights and Freedoms*, among others.

### **CANADA'S ANTI-SPAM LEGISLATION**

*Canada's anti-spam legislation* restricts the ability of businesses to solicit participation in a commercial activity or to promote sales to consumers using electronic messages without first having obtained their express consent. While certain provisions only apply to electronic messages, the law also circumscribes the use of several other forms of telecommunications, including emails, text messages, instant messaging, social media, etc.



# ABOUT LAVERY

With a team of over 200 professionals, including lawyers, notaries, trademark agents, patent agents and paralegals, Lavery is committed to delivering a one-stop legal shop in the province of Québec—also known as our 360° approach—by offering personalized and innovative solutions in various fields of law: Corporate Law, Labour and Employment, Litigation and Conflict Resolution, Public and Administrative Law, and Intellectual Property.

Lavery has been named the **Quebec Law Firm of the Year** by several editions of the Canadian Law Awards and ranks **1<sup>st</sup> among Québec's leading independent law firms** according to the Top 10 Quebec Regional Law Firms by Canadian Lawyer magazine.

Lavery is an active member of the World Services Group (WSG), an international network of law firms and other professional service providers in more than 150 jurisdictions around the world.

If you have any questions, please write to [info@lavery.ca](mailto:info@lavery.ca) or call **514 871-1522**.

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