doing business in Québec
In our publication entitled “Doing Business in Canada”, we provide an overview of the Canadian legal environment, to help US and other potential investors to become familiar with significant business laws and practices in Canada. The province of Québec has a unique legal system within Canada which gives rise to some distinct issues that should be considered if investing in that Province. The principal points of consideration are discussed below. Of course, the summary is but an introduction to the issues and does not provide an exhaustive analysis of the many statutes, regulations and conventions relevant to doing business in Québec. Accordingly, the prudent investor should discuss any potential investment with Québec legal counsel.

**Civil Law Jurisdiction**

When the territory that is now the Province of Québec was conquered by the British in 1759, one of the conditions of capitulation of the French army was that property and civil rights in the Province of Québec would remain subject to the civil law system. The British Parliament passed the Québec Act in 1774 to formally adopt the French civil law for private law, while keeping and reserving English common law for public law, including criminal prosecution. As a result, two legal systems co-exist in Québec. This historical fact was embodied in the 1867 British North America Act, which created the Canadian federation, and reiterated in the Constitution Act, 1982.

It is important to note that, contrary to popular belief, all of Québec’s public laws, as well as the organization of its court system and rules of civil procedure, are derived from the British system. One consequence is that Québec criminal courts function under the accusatory system and not the French inquisitorial one. Until the late sixties, there were still jury trials in civil and commercial matters in Québec, although they have now been abolished. Jury trials are still available for serious criminal offences.

**Charter of Human Rights and Freedoms**

The *Charter of Human Rights and Freedoms* (the “Charter”) came into force in June 1976. The Charter is the most important quasi-constitutional Québec law (another one being the *Charter of the French Language*, discussed below). It has precedence over all the other laws and regulations and is at the heart of Québec’s legal system and institutions. Only the Constitution of Canada, which includes the Canadian Charter of Rights and Freedoms, has precedence over the Charter.

The Charter is inspired by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In addition to fundamental civil and political rights, the Charter covers social and economic rights, such as the right to free public education, to information, to financial assistance, to fair and reasonable conditions of employment and to a healthy environment, among others. Also,
the list of prohibited grounds of discrimination is considerably more extensive than in other comparable legislation in America; a total of fourteen prohibited grounds are enumerated, including race, colour, ethnic or national origin, sex, pregnancy, age, social condition and sexual orientation.

The Charter applies to governmental bodies as well as to private parties. A violation of the Charter may give rise to a cease-and-desist order and to monetary compensation for damages. Punitive damages may be awarded in cases of an intentional violation.

the Québec Civil Code

The Civil Code of Lower Canada, the precursor of the Québec Civil Code, was enacted in 1866 following an exercise of codification of the Coutume de Paris, which was the law in force in the Province at the time. It was largely influenced by the Napoleonic Code, in force in France since 1804. It is worth noting that the codification of 1866 also imported some principles of British law, particularly with respect to the commercial law rules. In 1955, the government of Québec initiated an exercise to update and revise the Civil Code of Lower Canada and established the Civil Code Revision Office. The exercise went on from 1955 until January 1, 1994, when the current Québec Civil Code came into force.

Although Québec has a different legal system, in practice the majority of the rules that apply to commercial transactions are similar to rules in force in common law jurisdictions. There are, however, some important distinctions in some specific areas, which can have an impact on the day to day operations of a business, such as, for example, secured transactions, and limitations and exclusions of liability.

secured transactions

The civil law system recognizes two types of property – movable property, which is the equivalent of personal property in common law – and immovable property, which is the equivalent of real property in common law.

The term "security interest" is foreign to the civil law system. In Québec, the civil law recognizes hypothecs, which are real rights on immovable or movable property made liable for the performance of an obligation. A hypothec gives the creditor the right to follow the property into whoever’s hands it may fall, and to exercise hypothecary recourses, which include taking of payment or judicial sale of the property. The hypothecary creditor has a preference on the proceeds of sale of the property affected by its hypothec.

The ranking of hypothecs is generally determined by the date and time of registration, although in some cases, hypothecs have legally prescribed ranking, regardless of registration. The Québec Civil Code also creates priorities of payment and ranking prior to hypothecs, protecting, among other things, legal costs, the unpaid purchase price of a movable property sold to a consumer, claims of the government for amounts owed under fiscal laws and claims of municipalities and school boards for unpaid property taxes.

limitations and exclusions of liability

Limitations and exclusions of liability are allowed under Québec laws, subject to restrictions. One cannot limit or exclude its liability for bodily and moral injury. In addition, one cannot limit or exclude its liability for material injury caused through an intentional or gross fault. It is also worth mentioning that
manufacturers, wholesalers and retailers of movable property cannot exclude or limit their liability for damages caused by reason of a safety defect affecting the property sold.

corporate laws

There are several sources of Québec corporate law. The Québec Civil Code contains provisions governing legal persons (which includes corporations), the exercise of their rights, their representation and administration.

On February 14, 2011, the Québec Business Corporations Act came into force and replaced the largely obsolete Québec Companies Act. This legislation was inspired by the Canada Business Corporations Act and also innovates in many respects, including:

- there is no residency requirement for directors or officers of Québec corporations;
- the parent corporation of a wholly owned subsidiary can opt to have no board of directors in the subsidiary; and
- minority shareholders, directors and officers have recourse against oppressive or unfairly prejudicial behavior of the majority, similar to the oppression remedy under the Canada Business Corporations Act.

The Securities Act governs the public offering and issuance of securities by public issuers. In that respect, Québec has adopted regulations largely similar to those in force in the other provinces of Canada.

Effective February 1st, 2009, Québec enacted the Act respecting the transfer of securities and the establishment of security entitlements. The purpose of this Act is to establish a legal framework for the transfer of securities and the establishment of security entitlements to financial assets, as part of an effort by the Canadian provinces and territories to harmonize their laws on these subjects.

the act respecting the legal publicity of enterprises

Regardless of its legal status (whether it be a federal or provincial corporation, a partnership or any other entity formed or created under Québec, Canadian or foreign law), any enterprise which is active in Québec is required to register with the Registraire des entreprises du Québec (REQ). In general, an enterprise is considered active in Québec if it:

- has an address in Québec or, either directly or through a representative under a general mandate,
- has an establishment or post office box in Québec;
- has a telephone number in Québec; or
- engages in any profit-making activity in Québec.

Furthermore, every registrant whose name is in a language other than French must identify and register the French version of its name used in Québec in carrying on its activities.
Charter of the French Language

The Charter of the French Language, also known as Bill 101, establishes French as the official language of Québec and frames certain language rights for everyone in the province. The Charter makes French the language of Government and the law, as well as the normal and everyday language of work, instruction, communication, commerce and business.

The language Charter has significant practical impacts when it comes to doing business in Québec, such as the following:

- French is mandatory on the labeling of all products sold in Québec. English or any other language can be used along with French on product labeling, provided that the size of the French text is at least equal to that of the other language(s).

- Commercial documentation distributed in Québec, such as catalogues, pamphlets, brochures and commercial directories, must be in French. One or several other languages may also be used along with French, provided that the French text is of equivalent size to any other.

- Promotional signs and displays, when used in business locations in Québec, also have to be in French. If English or any other language is used along with French, the French inscriptions must be markedly predominant, which means that they must have a much greater visual impact.

- Software products, including gameware, must be readily available in French in Québec, unless a French version of the product does not exist anywhere in the world. If a French version does not exist elsewhere, the English version may be offered as long as it is in compliance with the foregoing requirements regarding labeling, commercial documentation and commercial signs in the world. If the software exists in a French version, the English version can only be offered for sale if the French version is also available under equal conditions.

tax considerations

Individuals, businesses and other taxable entities residing in the Province of Québec (or otherwise subject to taxation in Québec) are subject to two levels of taxation: the federal (Canadian) tax regime and the Québec tax regime. (The federal regime is discussed more fully in our publication entitled “Doing Business in Canada”.)

Québec has its own tax legislation, the Taxation Act, and tax authority, Revenu Québec, which administers and collects tax. As such, taxpayers are required to file two tax returns, one federal and the other provincial. Similarly, taxpayers required to submit reporting forms, information forms, or payment remittances other than tax returns must submit these to both levels of government.

With respect to income tax, Québec sets its own rates of taxation, and in consideration of Québec’s distinct system there is a reduction of federal tax owing by Québec taxpayers. However, other than the separate tax rates and various tax incentives particular to Québec through tax deductions and tax credits, the Québec taxation regime generally mirrors the federal regime.

Some of the more notable Québec-specific tax incentives relate directly to the nature of Québec’s primary industries and the tax system is designed to incentivize businesses to set up in the province. Examples of such incentives include tax credits in the mining and forestry sector, electronic commerce industry, entertainment industry including film and video production, and certain sectors of the financial industry.
Québec also has its own sales tax (QST), which is added to the federal sales tax (GST) and is levied on most retail goods and services; finally Québec has specific legislation establishing a number of other types of taxes such as immovable property transfer tax, mining duties and other business taxes which may apply in particular circumstances.

**employment and labour law**

Minimum employment standards are provided for in the *Act Respecting Labour Standards*, which, for the most part, applies to all employees other than members of senior management. At the time of drafting this bulletin, the normal work week was set at 40 hours and the minimum wage at C$9.65 an hour (C$8.35 for employees receiving gratuities or tips). The *Act Respecting Labour Standards* mandates a process for reintegration of employees into his or her original functions in cases of unjust dismissal or termination for unlawful reasons (for example, the employee being on a sick leave, pregnant or exercising rights under the Act). These are extraordinary recourses exercised before an administrative tribunal, which places the burden on the employer to prove that the employee has not in fact been unjustly dismissed or terminated for unlawful reasons (the employer must prove good and sufficient cause). This recourse also allows for the indemnification of the employee for lost remuneration.

The *Québec Civil Code* contains provisions governing the contract of employment, which apply in addition to the provisions of the *Act Respecting Labour Standards*. For example, in cases of termination without cause, an employee is entitled to reasonable notice of termination, in addition to the notice prescribed by the *Labour Standards Act*. The length of this reasonable notice is not precisely prescribed anywhere and it depends on the facts of each situation, including the length of the employment relationship, the seniority of the employee and whether the employee has left a position for the employment that is being terminated.

Finally, Québec also has enacted the *Labour Code*, which protects the right of association of the Québec workers and which sets a legal frame for the exercise of such right.

**Consumer Protection Act**

In addition to provisions of the *Québec Civil Code* relating to consumer sales, the Québec government also has enacted the *Consumer Protection Act*, which specifically governs contracts between merchants and consumers. Among other things, this statute implies a basic guarantee (i.e. warranty) on all goods and services; specific protection for certain types of contracts, such as credit, door-to-door sales, mail order sales, automobile sale and repair and long-term leasing; determines fields of commercial activity requiring permits; supervises advertising targeted at children under the age of 14; and prohibits merchants from employing misleading or deceitful practices.

**a cautionary note**

The foregoing provides a summary of aspects of Québec law that may interest investors considering doing business in the province of Québec. A group of McMillan lawyers prepared this information, which is accurate at the time of writing. Readers are cautioned against making decisions based on this material alone. Rather, any proposal to do business in Québec should most definitely be discussed with qualified professional advisers.

(The information in this brochure is current to September, 2011).