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Doing Business
in Québec

Doing business in Québec

No decision to establish or invest in a business abroad should be made without a basic understanding of the legal framework in which the business operates or will operate. In our publication entitled “Doing Business in Canada”, we provide an overview of the Canadian legal environment, to help potential investors 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 legal issues that should be considered if investing in that province.

The following broad overview of the Québec legal environment will help potential investors become familiar with principal business laws and practices in Québec.

Government and legal system

As mentioned in our publication entitled “Doing Business in Canada,” Canada has a federal system of government and shares legislative competence with its ten provincial governments and three territorial governments.

As with the other provincial governments, the provincial government of Québec delegates legislative authority to local municipal governments and delegates regulatory power to specialized administrative agencies, boards or commissions. Consequently, a business in Québec may well be subject to federal, provincial and municipal legislation, as well as administrative regulation and the common law developed by the courts.

For instance, businesses in the financial sector such as in the areas of insurance, securities, derivatives, deposit institutions (other than banks) and the distribution of financial products and services as well as those who participate in or intend to participate in public tenders are subject to regulation and oversight by the *Autorité des marchés financiers* (the “AMF”).

Civil law jurisdiction

Two legal systems co-exist in Québec: the French civil law system for private law, and the English common law system for public law, including criminal prosecution. This is embodied in the 1867 *British North America Act*, which created the Canadian federation, and is reiterated in the *Constitution Act*, 1982 (the “Canadian Constitution”).

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 adversarial system and not the French inquisitorial one.

Charter of Human Rights and Freedoms

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

In addition to fundamental civil and political rights, the Québec Charter covers social and economic rights, such as the right to free public education, to information, to financial assistance, and to fair and reasonable conditions of employment. The list of prohibited grounds of discrimination is considerably more extensive than in other comparable legislation in America and provides for a total of fourteen prohibited grounds, including race, colour, ethnic or national origin, sex, pregnancy, age, social condition and sexual orientation.

The Québec Charter applies to governmental bodies as well as to private parties. A violation of the Québec 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 Civil Code of Québec

Consistent with the fundamental principles embodied in the Québec Charter, the *Civil Code of Québec* is the foundation of all laws in the province of Québec. Consisting of ten books, the *Civil Code of Québec* provides for general principles of laws governing persons, relations between persons and property. While most of the rules provided for in the *Civil Code of Québec* may be varied by legislation or contract, there are certain rules that are deemed to be of public order and that cannot be contracted out of or varied.

Although Québec’s legal system is unique when compared to the rest of Canada, in practice the majority of the rules that apply to commercial transactions are similar to the rules in force in many 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,

the duty of good faith, secured transactions, and limitations and exclusions of liability (as further discussed below).

Duty of good faith

One of the key tenets at the heart of Québec civil law is the duty to act in good faith in the exercise of all civil rights, including with respect of all contractual dealings. Although the duty of good faith does exist in the common law provinces, its application is narrower than it is in the province of Québec. The key difference between the two approaches when applied to contract law is that the civil law version of good faith applies to both the formation and performance of a contract, whereas the common law version only applies in respect of the performance of a contract.

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 *Civil Code of Québec* 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.

Vehicles for doing business in Québec

Businesses operating in the province of Québec may be formed in the province of Québec or they may be formed in another jurisdiction and registered extra-provincially in the province of Québec. As is the case with the other provinces, businesses in Québec can take the form of a corporation, partnership, joint-venture or branch office.

Corporate laws

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

As with the other Canadian provinces, corporations in Québec can be divided between non-offering corporations (known as private issuers) and public offering corporations. Also, as is the case with the other Canadian provinces, a corporation that is formed in Québec can either be formed through the provincial corporate legislation or the federal corporate legislation known as the *Canada Business Corporations Act* (the “CBCA”).

The provincial corporate legislation in Québec is known as the *Québec Business Corporations Act* (the “QBCA”) and came into force on February 14, 2011, replacing Part I and Part IA of the largely obsolete *Québec Companies Act*. This legislation was inspired by the CBCA and provides for a set of rules for both private issuers and public offering corporations (although further legislation also governs public offering corporations).

Similarly to the CBCA, the QBCA includes rights for minority shareholders, directors and officers to have recourse against oppressive or unfairly prejudicial behavior of the majority and permits shareholders to use a unanimous shareholders’ agreement to partially or entirely restrict the directors’ powers to manage the corporation’s business and affairs. Despite this, the QBCA also differs from the CBCA in many respects, including that there is no residency requirement for directors or officers of Québec corporations and that the parent corporation of a wholly owned subsidiary can opt to have no board of directors in the subsidiary, amongst other differences.

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 statute 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 matters.

An 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 carries on an activity in Québec is required to register with the *Registraire des entreprises du Québec* (the “REQ”) and to update its information whenever there is a change to its status (such as a change in name, address, director(s), officer(s) or shareholder(s), etc.) as well as on an annual basis.

In general, an enterprise is considered active in Québec if it:

- possesses an immovable real right (other than a prior claim or hypothec) in Québec;
- operates an enterprise or engages in any profit-making activity in Québec; or
- has an address in Québec or, either directly or through a representative under a general mandate,
 - i. has an establishment or post office box in Québec;
 - ii. has a telephone number 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 when carrying on its activities.

Taxation

As detailed in our publication entitled “Doing Business in Canada”, the foreign investor must carefully consider local tax laws when structuring inbound investments. The federal, provincial and municipal governments of Canada each impose taxes on businesses in Canada.

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, Revenue Québec, which administers and collects tax. As such, taxpayers are required to file two tax returns, one federally and one provincially. Similarly, taxpayers that are required to submit reporting forms, information forms, or payment remittances other than tax returns must generally submit these to both levels of government.

With respect to income tax, Québec sets its own tax rates, and in consideration of Québec’s distinct taxation system there is a reduction of federal tax owing by taxpayers that are individuals who reside in Québec (corporations taxable in Québec should generally be eligible to the federal income tax abatement that is available for all Canadian provinces). However, other than the separate tax rates and various tax incentives particular to Québec through tax deductions and tax credits, the Québec taxation regime is generally harmonized with 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 currently designed to incentivize certain types of 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.

Unlike most provinces, Québec does not impose a harmonized sales tax (HST), but instead imposes its own Québec sales tax (QST), which is added to the federal goods and services tax (GST). Despite being a sales tax, the QST is substantially harmonized with the GST. In fact, Revenue Québec administers the GST on the behalf on the federal government in the province of Québec. The applicable rate of QST is currently 9.975% and is levied on the supply of most goods and services. The GST and QST together impose a tax on most goods and services at a combined rate of 14.975%.

A registered supplier in Québec generally collects GST and QST at the time of a supply of goods and services, as agent on behalf of the applicable tax authorities. Registration must generally be done separately: with the federal government for GST and with Revenue Québec for QST (although for businesses in Québec, the application for both a GST and QST registration is generally done with Revenue Québec).

Certain types of transactions are specifically exempted from GST and QST (e.g., the provision of financial services) or are taxable at a 0% rate, that is, zero-rated (e.g., sales of certain medical devices), such that no GST or QST applies.

GST and QST are intended to be final taxes on consumers, and are not intended to be borne as direct costs for most businesses. The taxes generally apply at each point in the distribution chain. Registered businesses can generally claim input tax credits

("ITCs") on their GST returns to recover GST payable by them on business inputs, except to the extent that they relate to making exempt supplies by the businesses. Similarly, QST registrants can generally claim input tax refunds ("ITRs") on QST payable by them. The ITCs/ITRs are generally credited against GST or QST liabilities (such as taxes collectible/collected) or refunded. Certain large businesses may be subject to ITC/ITR restrictions relating to QST paid on certain goods and services.

Finally, Québec has specific legislation establishing a number of other types of taxes such as mining duties and other business taxes which may apply in particular circumstances.

Provincial land transfer tax

In Québec, municipalities collect land transfer duties, commonly referred to as the "Welcome Tax", upon the "transfer" of ownership of real property interests in accordance with *An Act respecting duties on transfers of immovables*.

The basis for the tax will be the greater of the amount of the consideration given for the transfer of the immovable (excluding GST and QST), the amount of the consideration stipulated for the transfer of the immovable and the amount of the market value (as defined under the Act) of the immovable at the time of the transfer.

Unless the property is located in Montréal, where additional values are applicable, this basis is used to calculate the applicable duties, as follows:

1. on that part of the basis of imposition which does not exceed \$50,000: 0.5%;
2. on that part of the basis of imposition which is in excess of \$50,000 but does not exceed \$250,000: 1%; and
3. on that part of the basis of imposition which exceeds \$250,000: 1.5%.

The above rates are in effect for 2017. These rates are indexed annually. They are increased by a percentage corresponding to the rate of increase of the all-items Consumer Price Index for Quebec.

As for the properties located within the territory of the City of Montréal, the current applicable rates are as follows:

- i. a rate of 1.5% is applicable to the basis imposition which is in excess of \$250,000 but lower than \$500,000;
- ii. a rate of 2% is applicable to the basis of imposition between \$500,000 and one million dollars; and
- iii. a rate of 2.5% is applicable on the basis of imposition which exceeds one million dollars.

GST and QST is also payable on new residential property, property subject to major renovations at the time of the transfer and commercial real estate.

Labour and employment law considerations

Legislative authority over labour relations and employment law is divided between the federal and provincial governments. Federal law governs employment in federal works, undertakings and businesses such as aeronautics, banking, and communications. The vast majority of employment relationships in Canada are governed by provincial law.

Minimum standards

As mentioned in our publication "Doing Business in Canada," all Canadian jurisdictions have enacted minimum standards for the basic terms and conditions of employment. Such legislation may include minimum standards for matters such as minimum wage, hours of work, overtime pay, statutory holidays, vacation, certain leaves of absence, individual and mass/group terminations and layoffs. Neither employers nor employees are free to avoid or "contract out" of the minimum standards by individual contract. Of particular note, there is no such thing as "at will" employment in Canada - all employees are entitled to reasonable notice of termination (or compensation in lieu thereof) absent just cause.

In Québec, minimum employment standards are provided for in *An Act Respecting Labour Standards* (the "LSA"), which, for the most part, applies to all employees other than members of senior management. At the time of drafting this publication, the normal work week was set at 40 hours for most occupations and the minimum wage at C\$ 11.25 an hour (C\$9.45 for employees receiving gratuities or tips). The LSA mandates a process for reinstatement 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 LSA). 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 *Civil Code of Québec* contains provisions governing the contract of employment, which apply in addition to the provisions of the LSA. 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 LSA. 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, the employee's age, and whether the employee has left a position for the employment that is being terminated.

Trade unions and labour relations

Federal and provincial legislation also governs labour relations. Québec has enacted the *Labour Code*, which protects the right of association of Québec workers and which sets a legal framework for the exercise of such right.

As is the case in Canada and in the other Canadian provinces, a trade union may be certified as the exclusive bargaining agent for an appropriate group of employees, known as the bargaining unit. Managers and other employees in a position of confidence concerning labour relations are usually excluded from the bargaining unit. Once the union is certified, the employer must bargain with the union in good faith and attempt to reach a collective agreement. A strike or lockout can be called lawfully only after certain conditions are met. Legislation also prohibits any strike or lockout during the term of the collective bargaining agreement. Any disputes arising from or subject to the agreement must be resolved through grievance and arbitration procedures.

Workers' compensation and occupational health and safety

Québec's *An Act respecting industrial accidents and occupational diseases* (the "ARIA") sets out a no-fault statutory system of compensation to address the claims of workers injured on the job or stricken with an occupational disease. All employers with an establishment in Québec are required to register with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (the "CNESST"), the regulatory body charged with overseeing the promotion of employment rights and obligations, and to pay into a mandatory insurance fund created pursuant to the ARIA and maintained by the CNESST.

The ARIA, together with Québec's *An Act respecting occupational health and safety*, legislates preventative measures where occupational health and safety is concerned by requiring employers to report workplace accidents and take preventive measures to prevent workplace injuries and accidents.

To ensure compliance with occupational health and safety legislation, government inspectors may be called upon to investigate safety violations or may do so on their own volition without notice. Inspectors are given broad discretion to make whatever recommendations they deem necessary to rectify the violation and to issue fines.

Statutory withholdings and employer contributions

Québec employers are required to make source deductions from an employee's remuneration on account of income tax and the employee's contributions to certain social programs (including the federal Employment Insurance Program ("EI"), the Québec Pension Plan ("QPP") and the Québec Parental Insurance Plan ("QPIP")) and to remit such amounts to the tax authorities on behalf of their employees. Québec employers are also required to contribute, for the benefit of their employees, to certain social programs (including EI, QPP, QPIP and the Health Services Fund, but also in certain circumstances to other programs such as the Workforce Skills Development Recognition Fund). Contributions may then generally be deducted as a business expense for income tax purposes. Generally, all deductions and contributions described above must be remitted to Revenue Québec in monthly installments on or before the 15th day of the month following the month in which the remuneration to which such deductions and contributions relate was paid.

Pay equity

Québec has enacted pay equity legislation mandating "equal pay for equal work". Such legislation was initially designed to redress gender discrimination in the wages paid to female employees. Québec's *Pay Equity Act* applies to all employers who employ at least 10 employees and provides for different obligations depending on the number of employees. The rules regarding pay equity are complex and require a detailed review of relevant workers and wages. All employers in Québec who employ 10 employees or more must file an annual online report indicating its compliance with the *Pay Equity Act*. The CNESST is the body charged with overseeing that an employer is compliant with and maintains compliance with the *Pay Equity Act*.

Human rights

The Québec Charter, together with employment legislation, prohibits discrimination and harassment in employment on the basis of certain characteristics (e.g. gender, age, race, ancestry, place of origin, family or marital status, religion, disability, sexual orientation, gender identity, etc.). Employers are required to accommodate employees with such characteristics up to the point of "undue hardship" and employment legislation protects employees who make complaints regarding discrimination or harassment by prohibiting reprisals of any kind against such complainants.

Furthermore, the *Charter of the French Language* provides employees with certain rights regarding the use of French in the workplace.

Pensions

In addition to the mandatory Québec Pension Plan, employers in Québec may voluntarily offer private pension plans which may be subject to federal or provincial legislation or both. Such legislation sets out requirements and restrictions applicable to certain types of pension plans. Depending on the number of employees, an employer may also have a legal obligation to provide a Voluntary Retirement Savings Plan (VRSRP) to its employees. Specifically, an employer that does not offer its employees a group retirement savings plan may be obliged to set up a VRSRP for its employees. However, the employer will not be obliged to contribute.

Public health care

As with the other Canadian provinces, Québec has a public health care system providing its residents with universal access to medical care in the province. The system is financed by provincial revenues and through an employer health tax.

Intellectual property

Intellectual property is regulated at the federal level, to the exception of trade secrets, which are usually protected through contractual arrangements. Private contracts (including the assignment or license of registered and unregistered intellectual property rights, franchise agreements etc.), as well as their enforcement, are subject to provincial law. Québec law therefore applies to the validity, interpretation and enforcement of contracts related to intellectual property rights. Further, Québec courts have jurisdiction over all intellectual property matters, to the exception of title and registration of patent, industrial designs and trademarks, for which the Federal Court has exclusive jurisdiction.

Privacy

Privacy and the protection of personal information in Québec is subject to provincial statutes – applicable to private entities and public bodies. The *Act respecting the protection of personal information in the private sector* which regulates the use, collection and disclosure of personal information in the private sector, has been recognized as substantially similar to the federal *Personal Information Protection and Electronic Documents Act* (“PIPEDA”) and therefore, this legislation operates in place of PIPEDA in Québec for intra-provincial matters.

Some of the key privacy law requirements applicable to the private sector in Québec include the following:

- obtaining an individual’s consent when the business collects, uses or discloses the individual’s personal information;

- minimizing collection of personal information to only what is necessary in the circumstances;
- collecting, using and disclosing personal information only for reasonable purposes that are disclosed in advance;
- collecting personal information by fair and lawful means;
- limiting disclosures of personal information (including of employees) when engaging in commercial transactions such as mergers and acquisitions;
- implementing personal information policies that are clear, understandable and readily available; and
- implementing technological, organizational and physical safeguards that are appropriate based upon the sensitivity of the personal information.

It is important to note that Québec’s privacy legislation is more restrictive than that of most of the other provinces where it comes to nominative lists (lists consisting of personally identifying information such as names, addresses, telephone numbers, etc.). Particularly, in the context of commercial transactions such as mergers and acquisitions, nominative information with respect to employees, clients and members may not be disclosed by an enterprise unless prior consent had been sought.

In addition, Québec privacy and data protection are protected by the following laws:

- the Québec Charter, which provides for an entrenched right to private life;
- the *Civil Code of Québec*, which provides for the right of every person to the respect of his reputation and privacy;
- *An Act to Establish a Legal Framework for Information Technology*, which regulates confidential information in technology-based documents and the use, collection and disclosure of electronic data; and
- *An Act respecting Access to documents held by public bodies and the Protection of personal information*, which regulates the use, collection and disclosure of personal information by public bodies.

Other considerations

Marketing and consumer protection

The *Act respecting lotteries, publicity contests and amusement machines* applies to publicity contests aimed at Québec residents. Publicity contests which total prize value exceeds \$100 must file certain forms prior to the commencement of the contest and pay the applicable fees to the *Régie des alcools, des courses et des jeux*.

In addition to provisions of the *Civil Code of Québec* relating to consumer sales, the *Québec Consumer Protection Act*, 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 sales and repair, and long-term leasing; determines fields of commercial activity requiring permits; supervises advertising targeted at children under the age of 13; regulates the characteristics of prepaid cards and prohibits merchants from employing misleading or deceitful practices.

Québec has also enacted other forms of legislation with the goal of protecting consumers in specific sectors in which they may find themselves in vulnerable such as the financial sector, the real estate sector and the travel sector, amongst others.

French language requirements

Québec is the largest Canadian province by land mass and second largest by population. French is the primary language of roughly 80% of Québec's population and it is the only province in Canada where French is the official language. In Québec, the use of French in business is governed by the *Charter of the French Language* which places some requirements on businesses not present anywhere else in Canada.

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 of the French Language* 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 *Charter of the French Language* has significant practical impacts when it comes to doing business in Québec, such as the following:

- A business operating in Québec must have a French name even if it is not formed or created in the province of Québec.
- 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 prominence (i.e. size, font, etc.) 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 equal prominence to any other language that is used.

- Subject to limited exceptions, 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.
- Contracts pre-determined by one party such as consumer contracts, contracts containing printed standard clauses and related documents such as billing statements, invoices and receipts must be drafted in French unless they are drafted in both French and another language (with the French being of equal prominence) or is drafted exclusively in another language at the express wish of the parties.
- Software products, including game ware, must be readily available in French in Québec, unless a French version of the product does not exist. 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. If a French version of the software exists, the English version can only be offered for sale if the French version is also available under equal conditions.
- A business cannot make knowledge of the English language a requirement for employment, or lay off an employee solely because they are exclusively French speaking. Written communications to staff must be drawn up in French (or French and another language).
- Businesses which employ 50 or more employees in Québec may be required to establish a francization program to generalize the use of French at all levels of the business and those that employ 100 or more employees in Québec are required to establish a francization committee.

Packaging and labelling

In addition to the requirements imposed by the federal *Consumer Packaging and Labelling Act* (the "CPLA"), the *Charter of the French Language* requires that, subject to certain exceptions, "Every inscription on a product, on its container or on its wrapping, or on a document or object supplied with it, including the directions for use and the warranty certificates, must be drafted in French." An inscription may appear in French and another language but the French inscription must be of equal or greater prominence than that of the other language.

Directors' and officers' liability

Directors of businesses incorporated federally or provincially, including in the province of Québec (with the exception of the provinces of Nova Scotia and PEI) have a duty of care and a fiduciary duty to the corporation. The fiduciary duty requires

a director to act honestly and in good faith with a view to the best interests of the corporation. This includes the disclosure of any conflicts of interest and not taking personal advantage of any opportunities which are being pursued by the corporation. On the other hand, the duty of care requires directors to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Directors' decisions are examined based on whether or not they acted reasonably in light of what they knew or ought to have known at the time when the decision was made. A breach of either duty can result in personal liability for directors in addition to corporate liability.

Personal liability can also extend to directors in other situations. For example, directors can be liable for unpaid wages of employees, unpaid corporate taxes after winding up, and for breaches by the corporation of environmental legislation if the director participated in or acquiesced to the breach. Directors looking to protect themselves from personal liability may be able to do so through directors and officers insurance or corporate indemnification depending on the situation.

Electronic documents and signatures

In Québec, subject to certain exceptions, electronic documents can be used in place of written documents and electronic signatures will be recognized as long as they meet the parameters specified in *An Act to establish a legal framework for information technology*. Despite this, certain documents must still be drafted in writing such as wills, insurance policies and some consumer contracts such as automobile purchase contracts or consumer loan contracts. Furthermore, some documents will only be considered valid when actually signed such as wills, mandates (or powers of attorney) and certain other contracts.

Environmental legislation

Federal and provincial governments, and to some extent municipal governments, regulate environmental matters in Canada. At the federal level, there is general legislation dealing with environmental protection as well as specific regulatory schemes dealing with matters such as fisheries and protection of fish habitat, transportation and handling of dangerous goods, import/export of hazardous wastes, and identification and monitoring of new chemical and biological substances. Provincial legislation deals with waste management, waste reduction and recycling, spills and spill reporting, emission allowances and reporting, contaminated sites and clean up, and environmental assessment and review. Municipal regulations also play a role in regulating environmental matters. An example of municipal regulation is found in Montréal, Québec where the regulation of industrial air pollution is done by the regional municipal government in conjunction with

the provincial government. Provincial regulation tends to be more comprehensive than its federal counterpart which is more concentrated in the specific areas of regulation such as those noted above. However, there is some degree of overlap and depending on the location and the nature of the activities, a business may face compliance with applicable legislation from all three levels of government.

The *Environment Quality Act* is Québec's main environmental statute and provides for *inter alia*, a framework for managing contamination, rules and regulations for the granting of certain environmental permits and a framework for conducting assessments and granting authorizations to carry out certain projects. In addition to the *Environment Quality Act*, Québec has enacted various legislation providing for regulation in the sectors of air pollution and emissions into the atmosphere, water withdrawal, handling of dangerous or hazardous wastes, the gas and petroleum industries, conservation and development of natural resources.

A cautionary note

The foregoing provides a summary of aspects of Canadian law that may interest investors considering doing business in Canada. 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 Canada should most definitely be discussed with qualified professional advisers.

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About McMillan

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