

French language requirements in Quebec

Practical guidelines for foreign investors purchasing or setting-up a business in Quebec

By Diane Bertrand and Guillaume Saliah¹

Canada is a federation of ten provinces and three territories, and the province of Quebec is the most predominantly French-speaking province of Canada. It is thought that approximately 81.5% of its total population speaks French at work.² Like many other distinct socio-cultural groups enclosed within wider national boundaries, it has adopted a number of laws to protect its uniqueness. As a result, French is the official language of the province and this article aims to provide foreign investors with general guidance on how businesses are operated and commercial activities are conducted in the province with respect to the use of French.

1. Name of corporations

Generally, most foreigners purchasing or setting-up a new business in Quebec will choose to incorporate a Canadian subsidiary. An investor can choose to do so either under the *Canada Business Corporations Act* or under the equivalent provincial act³ but many of these laws require at least 25% of the directors of the corporation to be Canadian residents, while the *Business Corporations Act* (Quebec) does not have such a requirement and is thus often the preferred vehicle.

All enterprises conducting business in Quebec must have a French name. If a company incorporated in Quebec is used as a subsidiary, it must have a French corporate name, but it may be useful to adopt both a French and an English corporate name (especially if you intend to conduct business in the rest of Canada or in North America).

The French name of a Quebec-incorporated entity will contain three portions: (i) a generic component, which normally identifies the type of activity conducted by a business, (ii) a specific component, which distinguishes one business from another and (iii) an indication of the legal form of the entity (“Inc.” and “Ltd.” are often used). “Communications Laprise inc.” is a typical example, along with its English version “Laprise Communications Inc.”. A bilingual form such as “Communications Laprise Communications Inc.” will not be accepted.

If a corporation with a foreign name, or a foreign corporation, begins conducting business in Quebec, it will be required to register with Quebec’s Enterprise Registrar and upon such registration, to identify a French “business name” under which it will conduct business in Quebec, i.e. a name which is not its formal corporate name but one it will use while conducting business in the province. A French business name will contain only a generic component and a specific component. For example, a Mexican restaurant chain called “Restaurante Fernandez, S.A.” could register “Restaurant Fernandez” as a French business name in Quebec.

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² OFFICE QUÉBÉCOIS DE LA LANGUE FRANÇAISE, *Rapport sur l'évolution de la situation linguistique au Québec : langue de travail*, Montréal, 2012, p. 14.

³ There is normally no territorial limitation on business conducted by a Quebec or other provincial corporation.

It is possible to use an invented word as a business name, although such a name must contain words and/or syllables belonging to the French language. For example, “Americorp” would not be acceptable as it is a combination of the English words “American” and “Corporation”. “Effibus,” however, would be acceptable because it unites the two French words “efficace” and “autobus”.

Other specific rules and exceptions that may be applicable to the selection of a French name.

2. Day-to-day business

French-language requirements are embodied in an act called the *Charter of the French Language* (the “**Charter**”) which aims to ensure that commerce and business is generally conducted in French in the province.

With regards to day-to-day business operations, requirements to use French vary depending on the nature of the vehicle for communications. The table below summarizes some of the most common forms of commercial communication and the requirements of the Charter:

TYPE OF COMMUNICATION	REQUIREMENT
Displays on large billboards or signs, visible from a public highway	In French, unless located on the company's premises.
Signs, posters, and commercial advertising	In French; other languages possible but French must be “markedly predominant”.
Customer service	Consumers have the right to be informed and served in French.
Inscriptions on products, containers, wrapping materials, or on an accompanying document or object (such as leaflet, brochure or card, including directions for use or warranties)	In French; other languages possible but no translation shall have greater prominence than French.
Websites	In French if the corporation has an establishment in Quebec; other languages possible if French version is at least as available as the other versions.
Commercial publications, such as catalogues or brochures, directories or similar publications	In French; may be in other languages if French version is of no lesser quality and availability than the other versions.
Non-negotiable forms of contracts or provisions	May be drafted in another language if the parties expressly agreed to it, but (i) in the event of a doubt, courts will interpret these contracts in favour of the party who had to accept the non-negotiable form and (ii) additional consumer protection legislation may also apply to such contracts.
Order forms, invoices, receipts and releases	In French.
Computer software and operating systems	Must be available in French if a French version of such software exists; can be made available in other languages if French version with equivalent technical features is available at terms that are no less favourable.

The “markedly predominant” criterion is regulated; it refers to the requirement that French text must have a greater visual impact. Some very specific rules on letter size and on the number and size of the signs may be applicable. Also, whenever the legislation allows for the use of another language, the French text must always be as prominent as such text in another language. Note that there are a number of more specific obligations or exceptions that may apply to some products, types of communications or locations.

3. Employment

Requirements pertaining to the use of French also exist with regards to the work-place. Employees have the right to work and receive written communications from their employer in French. However, where the nature of the duties requires knowledge of a language other than French, it is possible to use another language in such communications. Additionally, offers of employment, employment application forms, offers of promotion and collective agreements must be drawn up in French.

In the management of its personnel, a corporation cannot require the knowledge of a language other than French as a condition of obtaining an employment, unless the nature of the duties requires such knowledge; similarly, an employer may not dismiss, lay off, demote or transfer employees solely due to a lack of proficiency in a language other than French, unless the nature of the duties requires such proficiency.

4. Francization Certification

Francization certificate

If, during a period of at least six months, a corporation has fifty or more employees in Quebec, its linguistic situation will need to be assessed by the *Office québécois de la langue française* (“Office”), the administrative body responsible for the application and enforcement of the Charter. Following that six-month period, the corporation has six additional months to register with the Office. It must then provide an analysis of its linguistic situation within six months of its registration.

If, after examining the above-mentioned analysis, the Office concludes that the use of French is generalized at all levels of the corporation, it will issue a francization certificate, attesting that the corporation’s complies with its obligations under the Charter.

Francization program

If, following its analysis of its linguistic situation, the Office concludes that the use of French is not generalized at all levels of the corporation, the corporation will have to adopt a francization program which is intended to generalize the use of French at all levels of the corporation.

Every three years, the corporation will need to submit to the Office a report regarding the progression of the use of French in the corporation.

Francization committee

If, during a period of at least six months, a corporation has hundred or more employees in Quebec, it must form a francization committee responsible for the generalization of the use of French at all levels of the corporation.

5. Penalties

If the Office finds that there is a violation of a requirement imposed by the Charter, it can refer the matter to the Director of Criminal and Penal Prosecutions who has the authority to institute appropriate penal proceedings.

The fine for a single violation varies from \$600 to \$6,000 in the case of an individual, and from \$1,500 to \$20,000 in the case of an entity. This amount may be doubled in the case of a subsequent violation.

It is important to note that, if a given product is found to be in violation of the Charter, each version or model of that product may be considered as a distinct violation, potentially giving rise to separate fines.

In addition, the tribunal may impose an additional penalty equal to the financial gain generated or derived from the offence, even if the fine imposed for that violation was of the maximum amount.

6. Now the practical perspective...

Although the framework established by the Charter can initially seem intimidating from the perspective of a foreign investor, there are many thousands of foreign corporations thriving in Quebec. From a practical perspective, all of these requirements have generally been well-known and complied with for many years. If you are planning on purchasing a Quebec-based enterprise, these practices will, in all likelihood, already be established. Although you may need to invest some time to familiarize yourself with this framework, it is not a substantial hurdle to conducting business and your new investment can continue to contribute to the presence of a vibrant French-speaking culture within North America.

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Diane Bertrand primarily practices business law, more particularly in mergers and acquisition of private companies and business assets. She has worked with food processing and food distribution businesses, software companies, manufacturing enterprises, as well as in the forestry, finance, insurance, engineering and in the accommodation and health care sectors.

Diane has years of experience with cooperatives and is therefore familiar with issues that are specific to their operations, including their governance. She has worked on significant equity financings of major Québec cooperatives by institutional investors and on multi-jurisdictional mergers of cooperatives.

Diane accompanies growing businesses and institutional investors in the implementation of debt and equity financings. In that respect, she was recently involved in many initiatives supporting female entrepreneurship.

Diane is an active member of the International Bar Association as officer of the Closely Held and Growing Business Enterprises Committee. She regularly represents foreign investors coming to Canada, and has implemented complex corporate restructurings affecting many jurisdictions simultaneously.

Within the firm, Diane Bertrand spearheads the group of lawyers specializing in private transactions in Québec and coordinates the firm's national efforts involving cooperatives and mutuals.

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Guillaume's practice is focused mainly on mergers, acquisitions, securities, corporate law and business law. Since joining Fasken Martineau's Corporate/Commercial practice group, he has specialized in the purchase, sale and restructuring of both public and private companies. He advises both private and institutional investors. He represents securities issuers and brokers during initial public offerings and other securities distributions by way of prospectus or private placements.

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