Charting Your Course: Navigating Quebec’s Language Landscape in Business Transactions

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This article is part of our two-part series on what foreign buyers of, and investors in, business ventures need to know about the Charter of the French language (the “Charter”) in the context of a cross-border transaction involving operations and employees in Quebec. This first instalment will focus on French language matters during the due diligence process. The upcoming second part will address the importance of language compliance during and after the deal-making process.

While much has been said about the impact of the Charter on business operations and commercial activities in Quebec, we are here to tackle the Charter's crucial considerations within the realm of merger and acquisition transactions. This is a direct address to foreign dealmakers, not just those conducting business in Quebec.

Lavery understands that the new Charter requirements may appear daunting and potentially deter prospective foreign dealmakers. Let us help you understand how to address French language issues in the context of a merger and acquisition transaction in this two-part series.

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1. Your First Step: Initiating an Access to Information Request with the Quebec French Language Board

One of the initial steps that should generally be taken is submitting an access to information request to the Quebec French Language Board ("**OQLF**"), which is the administrative body responsible for defining and conducting the province's policy on linguistic matters. This allows for the uncovering of any undisclosed complaints or claims related to language matters that may have been processed by the OQLF.

By making an access to information request to the OQLF, a party can also obtain information about the status of the francization procedures of the target corporation (e.g., whether it has registered with the OQLF, has obtained a francization certificate or is required to implement a francization program). Depending on the size of the workforce of the target corporation in Quebec, Charter obligations will vary. The francization process refers to the steps that must be taken by corporations to comply with Title II, Chapter 5 of the Charter.

For enterprises with a workforce of at least 25 employees in Quebec, registration with the OQLF is mandatory as of June 1, 2025.[1] Following registration, the enterprise must provide an analysis of its linguistic situation within a period of three (3) months. The ultimate objective of the linguistic analysis program is to obtain certification of francization confirming that French is widely used within Quebec operations. If the OQLF deems that the use of French is not widespread, the corporation will be required to develop and adopt a francization program, which may entail, for example, a requirement to translate into French various types of materials applicable to employees or relating to Quebec operations.

For corporations with a small number of employees in Quebec (less than 25), there is no requirement to register with the OQLF or to demonstrate the widespread use of French in Quebec. In such cases, risks associated with language matters usually arise on a complaint basis.

Depending on the scope and materiality threshold of the due diligence, a buyer/investor may elect to focus less on French language matters during the employment due diligence investigation if the corporation has a limited number of employees in Quebec.

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2. Main Compliance Considerations: Employment Agreements and HR Documentation

Among other requirements, the Charterentitles Quebec staff to receive written communications from their employer in French. As such, during due diligence, it is important to revise employment-related policies and documentation and inquire as to whether this documentation has been made available to employees in French.

Particular attention shall also be paid to the language of employment agreements. Further to recent amendments of the Charter, employers must now generally provide employees, since June 1, 2022, with a French version of their employment agreements prior to execution. Employees may agree to be bound by the English version only if, after being provided with a French version, they specifically request to be bound by the English version. If a French version was not provided prior to execution, the enforceability of the employment agreements could be at risk (including any restrictive covenants contained therein, such as non-competition, non-solicitation and intellectual property assignment clauses). Post-closing, steps shall be undertaken to ensure that all template employment agreements that target Quebec employees are translated into French. If the dynamics of the deal allow for it, these steps can also be taken prior to closing during the deal-making process.



3. Contract Checkpoint: Analyze the Target Corporation's Agreements and Understand Its Business Relationships

As a foreign buyer/investor, it is essential to consider the nature of the target corporation's commercial transactions, whether they involve businesses or individual consumers. If such transactions involve the execution of contracts of adhesion, i.e., contracts predetermined by one party that are not negotiable, it is essential to ensure that a French version of these contracts exists. The reason is simple: since June 1, 2023, the Charter mandates that an adhering party must be presented with the French version of a contract of adhesion before the parties can expressly agree to be bound by a version in another language. For example, a standardized service agreement that is not open to negotiation would be subject to such requirement.

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If the target corporation has not complied with the above-described requirement, the adhering party may request the annulment of the agreement under the provisions of the Charter. As a consequence, the risks associated with the enforceability of contracts of adhesion must be taken into account during the due diligence process. Further, if the due diligence investigation reveals that the target corporation has not prepared a French version of its contracts of adhesion, the buyer or investor may request that such versions be prepared as part of the closing deliverables of the merger and acquisition transaction.

As part of the due diligence process, a prudent foreign buyer/investor shall also carefully consider the language in which real estate agreements are drafted as well as the language of registrations made in the Quebec register of personal and movable real rights ("**RPMRR**") and the Quebec land register ("**Land Register**"). As of June 1, 2022, contracts for the sale or exchange of residential properties—particularly those with fewer than five dwelling units or the contracts for the sale or exchange of a fraction of an immovable held in co-ownership must be drafted in French. This requirement extends to promises to contract and preliminary agreements made between the buyer (if the buyer is a natural person) and the builder or developer.

While parties do have the option to draft these documents in another language if they explicitly choose to do so, if such contracts are intended for registration in the Land Register, they must be accompanied by a certified French translation. This would be the case, for instance, if they were originally drafted and signed in English. Since September 1, 2022, the Charter provides that all applications for registration in the RPMRR and the Land Register must be drawn up exclusively in French. Applications for registration in the RPMRR are made using a prescribed form. As such, only the information required by the form (e.g., description of the property covered by a movable hypothec) needs to be translated into French. The rule applies differently for registration in the Land Register as the entire deed, in which case a summary or extract thereof must be submitted. Given this context, it is imperative to analyze the target corporation's real estate contracts to identify any documents that may require translation.



4. Trademark Compliance Check

Before the publication of the *Regulation to amend mainly the Regulation respecting the language of commerce and business* in its final form on June 26, 2024 (the "**Regulation**"), there was considerable concern regarding the use of unregistered trademarks in a language other than French.

The Regulation has reintroduced the exception for "recognized" trademarks, which includes trademarks that are registered with the Canadian Intellectual Property Office and common law marks. For more information on the French language rules applicable to the use of trademarks in a language other than French as a result of the adoption of the Regulation, we invite you to refer to the following article [include hyperlink] written by our intellectual property experts.

In this context, the due diligence process regarding trademarks remains unchanged. Registration of trademarks within a transactional framework remains of critical importance to protect an owner's rights. Although the exception provided by the Charter for common law trademarks can be relied upon, it is highly recommended to proceed with the registration of such trademarks to prevent any debates as to whether a trademark qualifies as a common law mark. Post-closing, any of the target corporation's trademarks should ideally be registered.

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5. On Website Watch: Review of Target's Commercial Documentation and Website

A cautious buyer/investor will want to request that the target corporation provide all commercial publications that it makes available to the public (whether in a paper or electronic format). In accordance with the Charter, any catalogues, brochures, commercial directories, order forms and any other documents of the same nature that are available to the public must be available in French**.** Moreover, such documents must be equally accessible to their counterparts in another language.

During the due diligence investigation, it is crucial for a buyer/investor to thoroughly review the target corporation's website to ensure compliance with the Charter. The buyer/investor shall examine if all commercial publications and relevant documents of a commercial nature are available in French. In practice, a buyer/investor may decide to completely translate the target corporation's website.

A cautious buyer/investor will also carefully analyze the French version of the target's commercial documentation to ensure that it meets the same standards of accessibility and quality as the version in the other language.

Conclusion

Understanding and prioritizing compliance with the Charter is essential for foreign buyers and investors engaging in business transactions involving operations and employees in the province of Quebec. By proactively addressing the linguistic considerations outlined in the Charter, dealmakers can navigate potential challenges and ensure a smoother entry into the Quebec market. From initiating access to information requests with the OQLF to reviewing employment agreements, contracts, and commercial documentation, thorough due diligence is key to mitigating risks and demonstrating a commitment to linguistic compliance. Join us for part two of this article to learn about Charter considerations at the closing and post-closing stages.

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1. Currently, registration with the OQLF is mandatory for enterprises with 50 employees or more working in Quebec.

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