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What To Do When Equipment Finance Language is not in French

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On June 1, 2022, *An Act respecting French, the official and common language of Quebec* (the “**Act**”) was adopted as law by Quebec’s National Assembly. One of the articulated purposes of the Act is to affirm that French is the only official and common language of Quebec. To that effect, the Act makes many amendments to various laws, including the *Charter of the French Language* (the “**Charter**”), the *Consumer Protection Act* and the *Civil Code of Quebec* (the “**CCQ**”). The Act represents a comprehensive reform to the previously existing French language legislation, invokes such clauses of the Canadian Constitution as to ostensibly permit it to override the *Canadian Charter of Rights and Freedoms*, and is expressly intended to affect the interpretation of every other piece of provincial legislation applicable in the Province of Quebec in that each such other piece of legislation “must be interpreted in a manner respectful of the rights intended to protect the French language that are conferred by [the] Act.”

Although the Act impacts many aspects of doing business in Quebec, this article canvasses the impacts of the Act on equipment financing in particular, and provides suggestions on how to plan for a smooth transition using a practical approach to the new requirements. Note that the regulations to the Charter, as amended, and to those other pieces of legislation impacted by the Act, have yet to be amended or supplemented to deal with amended or new regimes and requirements. Those regulations may impact the content of this article.

1. Registration of Ownership Interests and Security

Based on the amendments to the CCQ implemented by the Act, applications for registration of various rights, whether at the Register of Personal and Movable Real Rights (the “**RPMRR**” (Quebec’s PPSR/UCC registry)) or in the Land Register, must be drawn up exclusively in French. As such, in particular, the collateral description in an English general or specific security agreement (known in Quebec as a hypothec), or in a document giving rise to a title retention mechanism (such as an equipment lease), shall be included in an RPMRR registration only in its French version. Accordingly, equipment lessors should be working with their local Quebec counsel or their translation professionals to prepare, in advance of this requirement coming into force, appropriate standard form French language collateral descriptions with which they are comfortable. Ideally, this French language version of the collateral description would be included directly in equipment lease or equipment finance documents so that it is agreed to by both parties, rather than representing a unilateral translation of text otherwise drafted in English.

As these requirements are imperative and arguably of public order, the RPMRR is not permitted to accept for registration any notice that is not in compliance with the foregoing. Accordingly, we anticipate that non-compliant registrations will be refused, which could impact perfection (known in Quebec as opposability) of an equipment finance company's rights, particularly in circumstances where a non-compliant notice is submitted for registration close to the deadline within which an equipment lessor must register its interest in equipment in order to benefit from the priorities that it would expect without the need to seek out subordinations from other creditors.

Coming into Force of this Requirement: September 1, 2022

2. Language of Contracts

2.1 Adhesion Contracts and Consumer Contracts

Adhesion contracts are contracts in which the essential provisions are imposed by one of the parties on the other(s) and are not negotiable. Though a factual determination, franchising contracts, collective agreements and, yes, small and medium ticket equipment financing agreements, may often be characterized as adhesion contracts.

Consumer contracts, as one would expect, are contracts in which a merchant provides products or services to a consumer, including through a sale, financing or lease. While beyond the scope of this article, remember that, in Quebec, the only bright line test of whether a merchant is dealing with a consumer is that an incorporated entity is not a consumer. Beyond that, if dealing with individuals, partnerships, associations, etc., a contextual and fact-based analysis becomes required to determine whether a merchant is doing business with a "consumer".

The Charter, as amended by the Act, requires that all adhesion and consumer contracts must be first provided to the adhering co-contracting party in French, and that this requirement must be satisfied prior to such adhering party acquiring the right to consent to entering into such contract in a language other than French. This goes much further than the standard language to which most who now do business in Quebec are accustomed, to the effect that "*The parties have required that this contract be drafted in the English language/Les parties ont exigé que ce contrat soit rédigé en langue anglaise*".

As such, an equipment lease or other equipment finance document that is an adhesion contract or that is with a consumer must be made available to the lessee in French before the latter can validly sign an English version thereof. Again, equipment lessors should be working with their local Quebec counsel or their translation professionals to prepare, in advance of this requirement coming into force, appropriate French language versions of their contract documentation which could be impacted by the foregoing requirement.

There are also specific rules when entering into contracts with the State or its agencies. These can be explained in further detail should such a situation arise.

2.2 Certain Exemptions

2.2.1 Loan Contracts

Some adhesion contracts (but not consumer contracts) are exempt from the foregoing, including certain contracts involving currency exchange or sophisticated cross-border financial instruments. In those contracts, the adhering party would nonetheless need to indicate its willingness to enter into the contract in English (i.e., typically using the abovementioned language, to which most who now do business in Quebec are accustomed).

“Loan contracts” that are not consumer contracts are also not subject to the foregoing. However, the definition of loan contract is nowhere yet to be found, and it is too early to say whether an actual equipment lease would fall within the exemption. We believe, though, that it is unlikely that an equipment lease would fall within the “loan contract” exemption. Moreover, in consumer contracts, the exemption is not available.

2.2.2 Contracts used in relations outside Quebec

Adhesion contracts (but not consumer contracts) used in “relations outside Quebec” are also not subject to the rule set forth in paragraph 2.1. We would welcome clarification from the legislator and its applicable agencies as to how this expression will be interpreted, as at the moment it is quite generic. Unless the regulations to the amended Charter shed further light on this, we will likely only begin to learn what this really means when industry players push the envelope (intentionally or unintentionally) and the courts are called upon to weigh in on the interpretation of the phrase. Some have suggested that the expression should, or could, be interpreted to the effect that businesses with no establishment in Quebec are not subject to the rule set forth in paragraph 2.1. There would seem to be an even better argument that that the exemption should apply to a relationship between two non-Quebec-based entities for equipment that, as it happens, will be located in Quebec. Again, this exemption mitigates the new requirement for a French version of a contract to be delivered first, but not the requirement for the co-contracting party to nonetheless consent, even with the exemption, to the contract being in a language other than French (to the extent such requirement applies in the situation).

Coming Into Force of this Requirement and the Related Exemptions: June 1, 2023

2.3 Sanctions

With respect to adhesion and consumer contracts, if a party does not adhere to the foregoing requirements and such non-compliance causes prejudice to the adhering party or consumer, as the case may be, the latter can claim damages. There is also a right for the adhering party or the consumer to ask that the contract be declared null and void without the need to demonstrate that a prejudice has been suffered. The other party, though, could defeat the action if it can establish that the adhering party or the consumer suffered no injury arising from the non-compliance.

Non-compliance can also entail fines and orders for compliance by the *Office Québécois de la langue française* (the “OQLF”) and by the Consumer Protection Office, which can range, for legal persons, from \$1,000 to \$80,000 in consumer matters and \$3,000 to \$90,000 under the Charter (albeit only after failing to comply with an order issued by the OQLF).

Coming Into Force as concerns the Requirements Described in this Section 2: June 1, 2023

Key Takeaways

In light of the significant amendments to existing law brought about by the Act, practitioners are meeting regularly and working closely with the relevant authorities to advance practical ways to ensure a smooth and practical implementation of the requirements thereof. In the interim, businesses involved in equipment leasing and financing should take steps to implement the relevant processes, procedures and safeguards in order to mitigate risk going forward. Our specialized team can assist with this process in order to guide businesses as they update and aim to administer the applicable measures.

The information and commentary set forth herein are for the general information of the reader, are current as at June 20, 2022, and are not intended as legal advice or as an opinion to be relied upon in relation to any particular circumstances.