

Impact of Quebec Laws and Regulations on E-Commerce for soft-drinks

General scope:

Boissons Gazeuses Environnement “BGE”: BGE is a non-profit organisation created by the soft-drink industry to administer the deposit system for non-refillable soft-drink containers and ensure adherence to the related Law, Regulations and Agreement.

The sale and distribution of beer and soft drinks in non-returnable containers is governed by an “Act respecting the sale and distribution of beer and soft drinks in non-returnable containers.”(The Act).

Under this Act, *“Except in the case of a retail sale or a delivery made following such sale, no person may sell or deliver beer or soft drinks in non- returnable containers unless he holds a permit issued for that purpose by the Minister of the Environment and Wildlife;*

*No permit may be issued unless the applicant is party to an agreement (“**Agreement**”) in conformity with the prescriptions of the regulations made under this Act, entered into with the Minister and the Société québécoise de récupération et de recyclage incorporated under the Act respecting the Société québécoise de récupération et de recyclage or unless he complies with the regulations adopted pursuant to section 70 of the Environment Quality Act (chapter Q 2) and respecting non- returnable containers for beer or soft drinks.”*

According to the **Act**, *“no person may, as part of a retail sales operation, offer for sale or sell beer or soft drinks in non-returnable containers, or distribute beer or soft drinks free of charge in non-returnable containers, unless the containers are marked as required under an agreement or the regulations ; and*

Every person who, as part of a retail sales operation, offers for sale or sells beer or soft drinks in non-returnable containers, or distributes beer or soft drinks free of charge in non-returnable containers, must accept the return of empty containers that are marked as required under an agreement or the regulations, and refund the refundable portion of the deposit.”

According to the **Agreement** dated January 1, 2016, *“A Registrant shall collect from any person to whom it sells, delivers or donates in Quebec or for resale in Quebec Soft Drinks in non-refillable containers a deposit of \$0.05 for each container sold, delivered or given. A Registrant shall also collect from any person to whom it sells, delivers or donates outside Quebec Soft Drinks in non-refillable containers, a deposit of \$0.05 for each container that bears an inscription identical to or similar to that provided for in Schedule D, or any other inscription which could lead someone to believe that the container is returnable in Quebec for refund of the deposit under the terms of the Agreement.”*

When product is transferred from one provincial jurisdiction to another, it is the responsibility of the distributor importing the product into a given province (first distributor) to remit the applicable deposits to the provincial authority managing the deposit system where the product is ultimately sold at retail.

The above would preclude anyone from selling product marked “*consigné Québec-5¢ Refund*” anywhere but in Québec, unless to a province where the deposit is greater to or equal to that of the Québec deposit (Agreement, section 4.2.4 (a)).

Registrant: all those that are party to the Agreement.

Under this Agreement, a Registrant must be able to recover those empty containers that are returned for a deposit refund (**Recoverer**) (Agreement 3.2), unless it complies to section 3.3 of the Agreement (**non-recoverer**).

Possible scenarios:

1. *The Bottler ships product directly to a Quebec retailer of the retail chain, who ultimately sells directly to the consumer (Direct Sales Delivery)-*

This scenario is not different from the current business model. Therefore no change is required. The retailer is still required to ship “*consigné Québec-5¢ Refund*” marked containers to the consumer, and charge the mandatory deposit.

2. *The Bottler ships to the retail chain’s Quebec warehouse, who ships to the retailer who ultimately sells to the consumer (Warehouse Delivery model)–*

Under this scenario, the bottler must sell “*consigné Québec-5¢ Refund*” marked containers to the Québec warehouse, charge the mandatory deposit, and remit same to BGE. The individual retailer must charge the mandatory deposit to the consumer. The retailer must also refund the deposit to the consumer when the empty containers are returned.

The bottler is required to recover the empty containers from all retail locations, and refund the deposit to the retailer (refer to Agreement 4.1; 5.1; 5.2.4; 5.4).

3. *The Bottler ships to the retail chain’s Ontario warehouse who then sells directly to the consumer –*

Under this scenario, as the client (Ontario warehouse) brings the containers into Québec, he must be registered as a Registrant, and as a non-recoverer (Agreement 3.3). When the product is intended for the Québec market, the warehouse can only ship “*consigné Québec-5¢ Refund*” marked containers into Québec.

The bottler must sell only “*consigné Québec-5¢ Refund*” marked containers, collect the mandatory deposit and remit this amount to BGE. The bottler is required to recover the empty containers from all retail locations in Québec and refund the deposit to the retailer (Refer to Agreement 4.1; 5.1; 5.2.4; 5.4).

According to the Agreement, section 4.2.4 a), the Ontario warehouse is permitted to sell “*consigné Québec-5¢ Refund*” marked containers to customers in another province where the deposit is greater to or equal to that of the Québec deposit. Under this scenario, the warehouse must still remit the mandatory deposit on all “*consigné Québec-5¢ Refund*” containers purchased. When the warehouse has provided sufficient proof of the quantity of these containers sold to another province, the bottler will request a credit from BGE for the relevant deposit amount, and then will credit the warehouse for this same amount.

4. *Importing of product from outside Québec -*

Should a product sold in Québec that is imported by a distributor, whether he is located in Québec or outside of Québec, directly from a non-Registrant (i.e. from outside Québec) the product must bear the “*consigné Québec-5¢ Refund*” marking. As the first importer, the distributor must also remit the mandatory deposit to BGE for all purchases of “*consigné Québec-5¢ Refund*” containers.