

Types of Businesses

Partnerships, Associations or Joint Ventures

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The role of a corporate attorney is to assist his client who wants to start a business to choose the type of business that best meets his needs.

The determination of whether to carry on business as a partnership, an association or a joint venture will be driven by the intention of the parties as well as the contract binding them.¹

Partnerships

A partnership is formed by way of an agreement, whether in writing or verbal, between two or more persons. These persons may be individuals or companies.

Article 2186 (1) of the Civil Code of Quebec (C.C.Q.) defines a partnership as follows:

“A contract of partnership is a contract by which the parties, in a spirit of cooperation, agree to carry on an activity, including the operation of an enterprise, to contribute thereto by combining property, knowledge or activities and to share any resulting pecuniary profits.”

To draw up a partnership agreement, one should be familiar with the general rules applicable to all three types of partnerships (art. 2186 to 2197 C.C.Q.) and the specific rules applicable to each type: general partnership (art. 2198 to 2235

C.C.Q.), limited partnership (art. 2236 to 2249 C.C.Q.) and undeclared partnership (art. 2250 to 2266 C.C.Q.).

Associations

Article 2186 (2) C.C.Q. states: “A contract of association is a contract by which the parties agree to pursue a common goal other than the making of pecuniary profits to be shared by the members of the association.”

The main difference between an association and a partnership is obvious. If the object of the business is non-profit, it is an association. If the business is formed for the purpose of making a profit, it qualifies as a partnership. The rules governing an association are found in articles 2267 to 2279 C.C.Q.

Joint Ventures

A joint venture is an agreement by which two or more independent entities join together for a limited time to pursue a specific project or common goal. These entities carry on their own business activities besides the common activity of the joint venture. Whether it is for the construction of a building or the making of a film, joint ventures are more and more prevalent today in the business world.²

Joint ventures may be used where the joint and several liability of partnerships is not desirable or where the entities do not wish to concentrate all their efforts entirely in a partnership. There may also be tax considerations. Whatever the reason, their intention must be clearly stated in a *sui generis* contract.

The existence of a joint venture is often left up to the courts. Simply naming your agreement “Joint Venture” or mentioning

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Types of Businesses (cont'd)

in it that the parties do not wish to form a partnership, is not enough for the courts to conclude to the existence of a joint venture.³ Notwithstanding the parties' desire to form a joint venture, a court may rule on the existence of a partnership based on the actions of the parties.

Conclusion

To distinguish between an agreement of partnership, of association or of joint venture, it is the intention of the parties that will be key factor. Your drafting skills may be put to the test in reflecting that intention accurately in a contract.

- 1 Me Michelle Thériault, "L'entreprise contractuelle", Collection de droit 2002-2003, Volume 9, Droit des affaires, faillite et insolvabilité, Éditions Yvon Blais, 35.
- 2 Pierre A. Cossette, "Les groupements momentanés d'entreprises (joint ventures): nature juridique en droit civil et en common law" (1984) 44 R. du B. 463, 465.
- 3 Idem, p.473

Turnaround Schedule for Corporate Services as of October 1st, 2003

SERVICES	PROVINCIAL	FEDERAL
TaxExpress™ (GST / QST / QDAS)	5 days	3 - 5 days
Name search with reservation	*24 hours	2 - 6 hours
Name search without reservation	3 hours	—
Certificate of incorporation (paper filing)	*2 - 3 days	2 days
Certificate of incorporation (IncoWeb™ electronic filing)	*2 - 3 days	24 hours 4 - 6 hrs if numeric
Certificate of amendment	*7 - 8 days	2 days
Certificate of continuation, of continuance or of amalgamation	*1 week	3 - 6 days
Certificate of dissolution	4 - 5 weeks	6 days
Notice of change (federal) or amending declaration (Quebec)	3 weeks	4 - 5 days
Letters patent for non-profit corporation	*1 week	25 days
Attestation / Certificate of good standing and certificate of compliance	*24 hours	48 hours
Revival	—	8 - 10 days
Initial declaration	1 - 2 weeks	—
Declaration of registration	*1 - 2 weeks	—
Annual declaration	*1 - 2 weeks	—
Revocation of striking-off (s. 54 L.P. Act)	*1 week	—

The turnaround times may vary slightly according to each file (*) = Priority service available.

FOOD FOR THOUGHT

"Peace cannot be kept by force. It can only be achieved by understanding."

Albert Einstein

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Convention**

C.R.A.C. is proud to be a sponsor of the convention being held by the “Chambre des notaires du Québec” on October 9, 10 and 11, 2003. It will take place at the “Centre des congrès” in Quebec City.

We wish the organizers as well as those who will attend a successful convention.

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Efforts made by the examiners at the Canadian Intellectual Property Office (CIPO) have come to fruition. We have noticed that the administrative delay for the examination of a trade-mark application has dropped from 18 months to 11. This is definitely an improvement and will have a positive effect on the registration process of a trade-mark.