



## THE LEGAL INSIDER

of Mr. Alain P. Lecours

### COMMERCIAL LAW

#### The Particularities of Joint Venture Agreements

*One could define a Joint Venture as a temporary strategic commercial association between several businesses (partners), entered in order to jointly reach a commercial objective. The concept of the Joint Venture was created and developed by and under the Common Law regime (English Canadian and American regime). In the Province of Quebec, the concept of Joint Venture has been adapted to comply with Civil Law rules but with the unforeseen consequences set out below. The reader must be aware that Quebec has a peculiar status among other regions of North America because of its civil law regime, which essentially ensues from the "Code civil de Napoléon". It is in this context that we shall analyze the Joint Venture concept and the impact of "Conflict of Laws" rules upon it.*

In recent years, commercial competition unrelentingly pushed businesses to enter such strategic associations in order to meet the market's demands.

Ordinarily, the different businesses entering a joint venture agreement under Common Law each remain independent legal entities. They join their efforts, as well as resources, to further their common goal. This "strategic alliance" allows them to increase their business potential in a way each could hardly attain alone. Under Common Law, relationships of this kind are distinguished from other forms of associations (such as partnerships, corporations, subcontracting, etc.) mainly by their temporary nature (limitation according to duration), and by the liability-sharing between all parties to the joint venture (limitation according to responsibility, determined at the inception of the association). However, Quebec Civil Law, as it stands now, does not allow the partners within a joint venture to limit their individual responsibility in regard to third parties; there lies the problem.

Indeed, the essence of the Common Law joint venture is that each of its members remains a distinct legal entity from the others and each is only held responsible for its own personal faults against third parties. However, the concept of joint venture does not exist as a distinct contract under Quebec Civil Law. Hence, Quebec courts tend to interpret joint venture agreements by likening them to a form of legal association pre-existent in the Quebec Civil Code: the partnership contract. By law, the members of a partnership cannot limit their responsibility toward third parties, thus negating one of the main advantages of a joint venture.

Could the parties wishing to form a joint venture limit the consequences of this interpretation by Quebec Courts? This issue must be resolved through sound strategic planning of the association's legal structure and by quality contract drafting. Those who wish to enter a Joint Venture agreement under Quebec jurisdiction, whether through choice or through the application of conflict of laws rules, should never simply import a Joint Venture contract drafted for a Common Law jurisdiction. Rather, a new contract should be drafted in accordance with Quebec Civil Law. Indeed, such a contract requires different legal means to obtain the desired effects for the Joint Venture.

For those who wish to join their efforts and resources in a joint venture partnership, the determination of the jurisdiction, and hence applicable law, is a priority matter.

If both parties to a joint venture are Quebec corporations, and therefore governed by Quebec Civil Law, the joint venture contract will be drafted in light of the provision of Quebec Civil Law. In fact, in such a joint venture contract involving Quebec corporations, the parties should concentrate their attention on the drafting structure, in order to confer to their contract all the advantages of being partners in a joint venture entity.

Besides, if the parties to a joint venture are governed by the laws of different jurisdictions, then the basic rules of Conflict of Law will apply. The parties should firstly determine the law of which jurisdiction governs their joint venture contract, either by a joint agreement on the choice of said jurisdiction or in having recourse to private international law.

In light of the preceding, it remains that parties to a joint venture agreement must remain alert and conscious of the interpretation issue under Quebec Civil Law. Nevertheless, despite the inconvenience laid out in this article, joint ventures remain useful commercial vehicles in Quebec to make a mark in today's aggressively innovative market, as long as the services and counsels of a judicious attorney are retained.

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