



JOINT VENTURE OR PARTNERSHIP?

The case law in Ontario is not completely clear about the distinction between the joint venture and the partnership. One common attribute is that partnerships and joint ventures both comprise two or more parties. One agreed upon difference is the potential application of fiduciary duties. Unlike for partnerships, where the fiduciary duties are automatic, a number of joint venture cases ruled that fiduciary duties do not automatically apply to a joint venture. One common ground that both a partnership and a joint venture have is that neither is a distinct legal form. According to scholars, they both constitute a relationship between persons, which has legal consequences, however neither is a distinct legal form. Some joint ventures may also conduct activities that constitute a partnership.

For commercial transactions, the accepted term for a joint venture is “an association of two or more corporations formed for the purpose of completing a specific project or a series of projects or type of project”. Such an association would therefore generally speaking meet the definition of a partnership, which makes it in essence a form of partnership. Accordingly, if a joint venture meets the definition of a partnership, it is deemed to be a partnership and this implies a fiduciary duty on the “joint venturer” or “partners”. If the business or activity is undertaken with a view to make a profit, but does not fit with one of the three standard forms of business: the sole proprietorship, the partnership and the corporation, the term joint venture has been used to describe such commercial activity. When negotiating a contract, it is important to determine the type of entity that is entering into the contract to ensure that the contract is binding on that party.

Pursuant to section 240 of the Excise Tax Act, only persons are permitted to register for GST/HST. According to subsection 123(1) of such Act, a partnership is a “person” for GST/HST purposes whereas a joint venture is not, unless it takes the form of a corporation, a partnership or a trust. This means that the participants of the joint venture may register for GST/HST in respect of the joint venture activities, but the joint venture itself may not. Section 273 of the Act has simplified reporting requirements by allowing the participants of the joint venture to designate one of the parties to the joint venture (normally the operator of the joint venture) to account for the GST/HST owned by the joint venture on behalf of all of the participants to the joint venture.

Usually, joint venturers agree to combine their money, property, knowledge, skills, experience, time, or other resources for some common purpose. The joint venturers also agree to share the profits and losses from the venture, and each has some degree of control over it. A distinct feature of a joint venture is that it is an arrangement set up for a limited time, for a limited purpose, or for both. For some joint ventures, they will be partnerships, but for others, one or more of the elements of a partnership may be lacking. That being said, a joint venture can become a *de facto* partnership even if there is a written joint venture agreement that provides that the intentions of the parties are to form a joint venture and not a partnership.

If you and/or your business partner(s) require legal advice regarding existing or contemplated joint ventures or partnerships, please contact Stephanie M. Ruta at sruta@srlaw.ca.