



Structures: Canada: International Joint Ventures

Philip Mohtadi and Sue-Anne Fox
Torys LLP

www.practicallaw.com/8-503-6660

1. What are the most common legal structures for joint ventures?

The most common legal structures for joint ventures in Canada are:

- Corporations.
- Partnerships.
- Contractual arrangements.

2. Are there different forms of corporate entity? If so, which form is most likely to be used for a joint venture?

The two most common forms of corporate entity in Canada are the public company (generally involving a stock exchange listing) and the private company (generally closely held). Joint ventures are typically structured as private companies.

3. Are there any minimum/maximum capital requirements?

There are no minimum or maximum capital requirements for companies or other entities under either federal or provincial business corporations law.

4. Can shares be issued in consideration for the contribution of assets or services (present or future)? Are any formalities required if shares are issued for non-cash consideration?

Shares can be issued in consideration for cash, property (but not a promissory note) or past services. Shares cannot be issued in consideration for future services. Where shares are issued in consideration for property or past services, the directors of a company must determine:

- The amount of money the company would have received if it had issued the shares for money.
- The value of the property or past services, or that the property or past services has a value not less than the amount the company would have received if it had issued the shares for money.

5. Are there any specific restrictions on the form of management structure?

Under the Canada Business Corporations Act (CBCA), a private company must have at least one director and a public company

must have at least three directors, at least two of whom cannot be officers or employees of the company or its affiliates. Directors are charged with the power and duty to manage, or supervise the management of, the business and affairs of a company. In circumstances where a unanimous shareholders' agreement exists, that agreement may modify the general duties of the directors to manage or supervise management.

Subject to a company's articles, bye-laws or unanimous shareholders' agreement, the directors can designate the offices of the company, appoint officers, specify their duties and delegate to them powers to manage the business and affairs of the company.

6. Are there any restrictions on the age, nationality or identity of directors or managers?

To qualify to serve as a director, an individual must be at least 18 years old, be of sound mind and cannot have the status of bankrupt.

At least 25% of the directors of a company must be resident Canadians but, if a company has less than four directors, at least one director must be a resident Canadian. Residency requirements apply under most provincial business corporations legislation; exceptions include New Brunswick and Nova Scotia business corporations.

At least one-third of the directors of a public company cannot be officers or employees of the company or its affiliates.

7. Do employees or shareholders have the right to appoint a certain number of directors?

Only the shareholders of a company, by ordinary resolution (approval by at least 50% of the votes cast by the shareholders entitled to vote on the resolution), can elect the directors.

There are no specific rights for employees to appoint directors.

8. What formalities are required for the establishment of a partnership?

A general partnership is formed when two or more persons, whether individuals or corporations, agree to carry on business together with a view to profit. There is no requirement to register a general partnership for one to be established. The agreement between the parties need not be set out in a written agreement; the parties can have an oral agreement or their agreement can be evidenced from their conduct.



Partnerships are regulated by the laws of the province in which they are formed and the partnership agreement, if any.

In Ontario, the Business Names Act requires that where a partnership will operate under a business name, that name must be registered by all of the partners, unless there are more than ten partners, in which case the partners can select a designated partner to register the name. Similar requirements apply under the partnership laws of other provinces.

9. Are there any restrictions on the age, identity or number of partners?

There are generally no restrictions on the age, identity or number of partners in a partnership under provincial partnership laws; one exception is the Partnership Act (Saskatchewan), which provides that where a partner is an individual, that individual must be at least 18 years old.

10. What is the extent of each partner's potential liability in respect of the partnership business?

A general partnership is not a legal entity separate from its partners. Each partner of a general partnership is an agent of the partnership. In addition, each partner is liable jointly with the other partners for all debts and obligations of the partnership incurred while a partner.

11. In what circumstances is a partnership structure more likely to be used than a company for a commercial joint venture?

One of the main reasons that a partnership structure may be a preferable structure for a commercial joint venture is that a partnership is tax transparent, meaning that the partnership itself is not a taxable entity. Instead, each partner is taxed on its share of the income or loss of the business carried on by the partnership. In addition, there are fewer formalities required to establish and operate a partnership.

12. Are there any circumstances in which a contractual joint venture could be categorised as a partnership (and the parties therefore become jointly liable in relation to the substance of the contract)?

A partnership is formed when two or more persons agree to carry on business together with a view to profit (see *Question 8*). Even if the parties to a contractual joint venture do not intend to form a partnership, their conduct may be considered to have established one, with the result that all parties to the joint venture would be jointly and severally liable for its debts and obligations.

13. Is it possible to have a limited partnership in your jurisdiction? If so, what are the main characteristics of a limited partnership?

Yes. All provinces recognise the establishment of a limited partnership.

In Ontario, a limited partnership is created by complying with the relevant provisions of the Limited Partnerships Act. A limited partnership must consist of at least one general partner (whose liability for the partnership's debts and obligations is unlimited) and at least one limited partner (whose liability is limited to its investment in the partnership). To retain their limited liability, limited partners must remain passive investors and not take part in the operation of the limited partnership. The limited partners share in the profits of the limited partnership in proportion to their contributions, unless otherwise specified by the partnership agreement.

14. What formalities are required for establishing a limited partnership?

In Ontario, a limited partnership is formed when a declaration is filed with the Registrar of Partnerships in accordance with the Limited Partnerships Act. The declaration must be signed by all the general partners and must include:

- The firm name under which the limited partnership is conducted.
- The general nature of the business of the limited partnership.
- The address of the limited partnership's principal place of business in Ontario.

Similar requirements apply under the partnership laws of other provinces.

15. Are there any restrictions on the identity of partners or their role in a limited partnership?

Under provincial partnership laws, a limited partnership must have at least one general partner and at least one limited partner (see *Question 13*). The limited partners must remain passive investors and must not take part in the operation of the limited partnership.

16. In what circumstances is a limited partnership structure more likely to be used than a company for a commercial joint venture?

A limited partnership may be the preferable structure for a commercial joint venture because it is tax transparent and investors have the benefit of limited liability. It also may be preferred in circumstances where one party is financing the venture but does not want to get involved with the day-to-day management of the venture, or where a passive investor wants to limit its risk associated with the venture.