



Stein Monast
L.L.P. ATTORNEYS

Business in Canada and Quebec
the Legal Environment





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Introducing Canadian and Quebec Legal Systems



■ Dual System

- Canada and provinces: **Common Law** – body of court decisions (similar to U.S.)
- Province of Quebec: **Civil Law** (written *Civil Code* as in France)
- **Superior/Trial** and **Appeal** courts in each province
- One Court to rule them all: **Supreme Court of Canada**



▪ Quebec Courts

- Court of Quebec

- Jurisdiction on matters under 85 000 \$
- Judges appointed by Quebec

- Superior Court

- Original general jurisdiction / corporate matters
- Judges appointed by Canada

- Quebec Court of Appeal

- General appellate court



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Various Types of Business Entities



- **Federal Level**

- **Business Corporations** (legal persons)
 - Governed by *Canada Business Corporations Act*
 - Preferred form for carrying out business in more than one province and in foreign countries
 - **Canadian residency requirements** for directors (min. 25% or at least one)



- **Provincial Level - Quebec**
 - **Business Corporations** (legal persons)
 - Governed by *Business Corporations Act* (Quebec) – in effect since 2011
 - Advantages
 - No **residency requirements** for directors
 - Simplified procedure for **sole proprietorship**
 - Flexibility with **technology**: electronic transmissions, uncertificated shares, etc.
 - Issuance of **unpaid stock capital**



- **Provincial Level - Quebec**

- **Civil Code Partnerships**

- **General Partnership**

- **Partners** in ownership and management
 - Unlimited liability

- **Limited Partnership**

- **General Partner**: management of the business
 - **Special Partner**: capital contribution (limited liability)

- **Undeclared Partnership**



- **Provincial Level - Quebec**

- **General Statutory Requirements**

- Corporate name

- *Charter of French Language – French Language*
- Names that are too general or misleading : *Act respecting the legal publicity of enterprises*

- Registration requirements

- Declaration under an *Act respecting the legal publicity of enterprises*
- Mandatory for **all businesses** carrying activities in Quebec, including partnerships



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Financing a Business

Equity / Debt





- **Equity Financing**

- **Private Issuer** (closely held corporations – not more than 50 owners)
 - Prospectus **exemption** under *Securities Act* and *Regulation 45-106 / NI 45-106*
 - Issuance limited to certain persons
 - Directors, officers, employees, spouse, parent, close friends/associates
 - Accredited Investors



- **Equity Financing**

- Accredited Investor

- Prospectus **exemption** under *Securities Act* and *Regulation 45-106 / NI 45-106*

- Financially savvy investor

- Net financial assets over \$1M
- Net income of \$200K
- Trust, Investment Fund or Bank



- **Equity Financing**

- Public issuance : **IPO**
 - Prospectus **requirement** under *Securities Act* – Process taking 3 to 6 months in Canada
 - Quebec regulators / autoregulators
 - IIROC (Canada)
 - Securities Commissions / Autorité des marchés financiers (Quebec)
 - Toronto Stock Exchange (min. issuance \$10M)
 - TSX Venture



- **Equity Financing**

- **Prospectus Filing**

- *Regulation 41-101 / NI 41-101 :*
prospectus content

- *Regulation 43-101 / NI 43-101 :*
technical disclosure for **mining projects**
(TSX : first exchange in the world for
mining / About 50% mining sector)



- **Equity Financing**

- Continuous disclosure

- *Regulation 51-102 / NI 51-102* : disclosure requirements (**information circulars**, financial statements, annual information forms)
- *Regulation 55-104 / NI 55-104* : **SEDI** reports and Insider transactions (10% threshold)



- **Equity Financing**

- Takeover bids

- 20 % threshold for offer (of any class of issued and outstanding voting or « equity » shares)
- Circular requirement / Director's Circular
- *Regulation 62-104 / NI 62-104*



- **Equity Financing**

- Quebec filing

- French language requirement imposed by AMF
- Requires filings and communications with shareholders in both languages



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- **Debt Financing**

- **Secured Lending**

- *Bank Act and Interest Act* (federal jurisdiction)
- Priorities / hypothecary creditors rights and obligations, including in case of default : *Civil Code of Quebec*
- **Real estate** financing in Quebec:
Notarized deeds of hypothec – Land Register



- **Debt Financing**

- **Airplane Financing**

- *Cape Town Convention on International Interests in Mobile Equipment*
- International **Registry of Mobile Assets** based in Ireland
- Ratified by **Canada** in December 2012



- **Debt Financing**

- **Insolvency** Proceedings

- *Companies' Creditors Arrangement Act:* principal statute for reorganization of + **C\$5M** of claims
- *Bankruptcy and Insolvency Act:* facilitates liquidation and reorganization of insolvent debtors



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Intellectual Property



- **Patent Protection**

- *Patent Act* (federal jurisdiction)
- *Paris Convention, General Agreement on Tariffs and Trade* and *NAFTA* signed by Canada
- Examination by CIPO prior to grant
- Grant = in force for **20 years**



- **Trade-mark Protection**

- *Trade-marks Act* (federal jurisdiction)
- *Paris Convention, General Agreement on Tariffs and Trade* and *NAFTA* signed by Canada
- Examination by CIPO prior to grant
- « Use » or « made-known » in Canada sufficient / grant for **15 years**



- **Copyright Protection**

- *Copyright Act* (federal jurisdiction)
- *Berne Convention, Universal Copyright Convention, Rome Convention* signed by Canada
- No registration required
- Life of author + **50 years**



- **Industrial Design Protection**

- *Industrial Design Act* (federal jurisdiction)
- *Paris Convention, General Agreement on Tariffs and Trade* and *NAFTA* signed by Canada
- Examination by CIPO prior to grant
- Grant = in force for **10 years**