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## JOINT VENTURE AGREEMENT IN THE CONSTRUCTION INDUSTRY

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### ABSTRACT

In the present times, Joint ventures have become a standard way of doing business across all industries. But the most rapid growth of the joint ventures has been seen in the construction industry. These projects require a lot of capital and are pretty risky. It is not possible every time for one single company to join this business. There are high chances that they might lose the business to existing big firms. In order to survive in the industry, the most common way is to form a JV agreement. But what is a JV agreement, why do we form, and how do we form it is taken in this paper.

*Keywords: Joint Venture, Construction, JV Agreement, Contractor Parties, Express Common Understanding*

### INTRODUCTION

Across the world, the construction industry is an industry that faces a lot of problems. All the projects are highly costly and risky. One might not be able to deal with a project alone. A struggling company or a newly formed company can use the benefits of JV to form a new company. But whenever two or other companies work together, there are high chances of people getting in a conflict. But this conflict can be mitigated and solved by the way often a joint venture agreement. This agreement deals in detail with the duties and rights of each and every partner or member of the joint venture. Also, it is relatively easy to form a JV. They can be made with just the intention of fulfilling one project, or they can be made for fulfilling an extended business plan. It is in advance that one signs and forms the closure details and the way in which the assets will be distributed. One will not be in any problem if they can sort the problems in advance.

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This paper/article deals with the issue of JV agreements in the construction industry. The paper first deals with what a joint venture is and then how the JV agreement is formed. In the end, the paper talks about the benefits of forming one JV agreement.

### WHAT ARE JOINT VENTURES?

A joint venture can be defined as an arrangement in which two parties work together in order to run a business or to achieve any other commercial objective. This co-operation might be of various ways, and these ways give the joint ventures their different types. The Joint venture may be for a long-term basis or on a time-limited basis which is made with the aim of fulfilling certain business opportunities. The joint ventures may have parties that are completely new, or they might have well-established businesses as their parties. The whole concept of the joint venture is very flexible, and hence business companies find it very useful for entering into a business with other companies. The nature or properties of the joint venture will depend a lot on the company's understanding of the existing situations and characteristics of the resources that they have with them. In a summarized or concise manner, one can define a joint venture as "*a JV may be summarized as a symbiotic business alliance between two or more companies whereby the complementary resources of the partners are mutually shared and put to use.*"<sup>2</sup>

It won't be wrong to say that the joint ventures have proved to be an effective business strategy across the nations for enhancing marketing, client acquisition, and positioning. A joint venture may be born out of an express contract that two parties may have signed or out of a common understanding that they might have created between themselves. A few of the important characteristics of the joint venture are:

- The contributions made by partners in terms of money, property, knowledge, or any other assets for the common undertaking.
- A joint interest regarding property in the subject matter of the venture.
- There is a right of mutual control or management of the resultant enterprise.
- There must be the right to share the property.

A joint venture agreement is a legal document that ties two or more legal entities together or combines them to help them in doing any business or an economic activity together. The parties agree to create the new entity by way of contributing equity and sharing the revenues and expenses, and controlling the enterprise's management in the proportion of their contribution to

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<sup>2</sup> JNew Horizons Limited v. Union of India (UOI) and Ors (1995) 1 SCC 478

total capital. The venture may have been formed for any one specific project, or it can be for any continuing business relationship.

### **WHAT IS THE PURPOSE OF MAKING A JOINT VENTURE AGREEMENT?**

The joint venture agreement for construction works on the basis on which the parties or the venture capital will be cooperating. It is made to cover the general duties of the parties, the structure of the management, principles regulating joint bidding for tenders, and the issues relating to liability issues and financial arrangements.

There are a few important issues that need to be tackled by the use of a joint venture agreement.

These are:

- **Formation and name:** The parties which want to form the new joint venture need to set out their general objectives before forming the joint venture. The joint venture agreement deals with the duration of the joint venture.
- **Tenders and Contracts:** There is a need to talk about the procedure of going into the tenders and how the management board will work in the beginning only. If this is not done, then there are many chances of conflicts happening in the new enterprise. Also, a new project director is needed to be appointed usually for run the joint venture project.
- **Management:** There is always the management that deals with the decisions that will decide the future of the project. It is their duty to make the rules that will govern the functioning of the project and provide the direction in which the said project is about to move. Now, it is really important for the original enterprises to take control of the business so that they can control the functioning of the business. There are usually equal voting rights for all the members of the management.
- **Financial:** Every business is run by the use of money. Without adequate finance and the source of financing, there will be major chaos. So, the agreement needs to deal in advance about who and how will the financing of the whole joint venture will be done.
- **Termination of the Joint Venture:** Even though the project may have been done with some pre-planned idea about the purpose, there are many things that one needs to deal with before closing the joint venture. There is a time extent that may determine the time when a said venture is to be closed down. The agreement should also set a process that all the members of the joint venture will have to follow in order to wind up the JV. Topics or

problems related to the distribution of assets and who will control the distribution are to be decided in advance.

### **PHASES TO THE FORMATION OF JV**

There are a few phases that a project may go through before reaching the final JV agreement. The beginning stage deals with the principal idea of forming one joint venture. There is a unification of two or more contractors that the parties have mutually agreed for starting their work on a particular project. The main task in this phase is to deal with the problems relating to investment and selection of the partners that one wants to form the JV. Every construction contractor first needs to finish deep research in order to decide what kind of contractor would be best for their project.

Then comes the next phase. It is called the formation phase. Once the parties have finalized their partners, it is time to form the JV agreement. Here the construction companies need to also finalize the administrative structure that their joint venture will have. Usually, there are four types of JV administrative structures that a company may form. These administrative structures are:

- Collaborative
- Separated-work
- Mixed type
- Single-operator type

Then it is the time for the operation phase. The JV project consists of two administration tasks: the construction project and the JV organization<sup>3</sup>. And then comes the last step, which is called the termination phase. It is in this phase, that the joint venture is to be closed as they might have achieved the objective that they wanted to.

### **CONSTRUCTING THE JOINT VENTURE AGREEMENTS**

A joint venture agreement in the construction industry is a contract that stipulates the legal rights and liabilities of the members or partners of the contract. Before any formal agreement is made, there are two types of JV that the members need to join or sing. These are called the Memorandum of understanding and the pre-bid JV agreement.

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<sup>3</sup> Veerasak Likhitrungsilp, “*Construction Joint Venture Contracting*”,  
<https://www.irbnet.de/daten/iconda/CIB14511.pdf>

The MOU is sometimes called the “starting of the JV agreement.” It is the first time that an agreement is used by the contractors to informally constitute a construction JV. Usually, this agreement is made with a term of reference provided by the owners that the contractors want to obtain the bidding documents. Since the existing contractors may not have enough time here to prepare any formal JV agreement at this point in time, this type of agreement favors the need of the contractors. The main provisions that the JV must include are the name of the JV, the name of partners, objectives, and responsibilities of the partners on expenses.

The next step is the pre-bid agreement. It is a contractor made among the JV partners to stipulate general information about the joint venture, especially the scope of work, and deal with the task of all the partners during the contract bidding process. This type of agreement is usually required by the owners of the JVs as part of any JV’s bid proposal to guarantee that the bidder is in the form of business the owner expects.

### **BENEFITS OF THE JV AGREEMENT IN THE CONSTRUCTION INDUSTRY**

The JV agreement helps to formalize a strong joint venture. One can say that this agreement is similar to what one calls partnership deeds. We have already dealt in detail with the contents of the agreement. One can find that the JV agreement gives a stable joint venture. It already solves the problem relating to what the capital investment is to be, who will be dealing with the management, and who will be controlling the management. This acts as the guide which will help the joint venture will pass through the time of the problem. A joint venture is really helpful for real estate start-ups. As a new company in this industry, there are many difficulties in getting high-budgeted projects. However, busiwhen business come together, and contribute their part of capital they can reach the high amount of capital easily. These start-ups get the opportunity to show their capability and their strong profile.

### **CONCLUSION**

Joint Ventures usually offer a range of benefits to the potential members of the construction industry. But these benefits do come with a certain number of liabilities. For the sake and benefit of all the parties to a joint venture, every party needs to be identified and discussed in advance. By carefully planning the JV agreement the parties can create their agreement in a way that their needs, goals, and risks are dealt with in advance.

When we talk about the construction industry, the projects that are involved are very costly. There are cases when a single entity will not be able to bear the whole cost of the project. It is in these conditions that partnership and joint ventures come in handy. A joint venture enables the parties to initially plan all the problems that one single entity might face in their life. A good joint venture agreement helps in deleting the problems that may arise in future while completing the project.