Joint Venture Agreements

Although it has been some time since the economy could be described as buoyant there appears to be increased interest in new ventures. A practical way to involve varied expertise, increased capital and reduced risk in a venture is to enter a joint venture agreement with one or more other parties who can provide particular expertise or capital requirements for the venture.

It is extremely important to enter into a formal joint venture agreement to ensure that the parties to the joint venture fully understand their commitment, obligations and responsibilities as well as apportionment of profit and losses, should the venture ultimately prove unprofitable. There are many possible joint venture arrangements and therefore a joint venture agreement will vary according to the particular requirements and circumstances of the venture, and it is important to avoid using a simple form of agreement which may have been used for quite another transaction in the past.

The key provisions of the usual forms of joint venture agreement are as follows:

- An unincorporated joint venture must avoid the construction of a partnership both for taxation and wider liability implications.
- Clear delineation of responsibility of the respective venturers which is usually governed by the decisions of a management committee or a project manager.
- It is important that the decision making process be clearly defined as to which decisions the management committee could make without reference to all joint venturers and the process in decision making should be quick and binding on the venturers.
- Management flexibility in unforeseen situations as a project unfolds is also important and for this reason a certain amount of discretion should be granted to the management committee.
- A clearly defined method of dispute resolution should be set out both for disputes which may arise between the venturers as to the administration of the joint venture and also as to the manner in which disputes with third parties will be handled by the joint venture.
- Provisions should cover increased capital contribution requirements of the venture and also deal with unforeseen termination of the venture on a fair and equitable basis for all venturers.

The Trade Practices Act also has implications for joint ventures, particularly joint ventures between competitors. It is important for venturers who have a degree of market power to seek legal advice in this regard prior to embarking on a venture which may be construed in breach of the Trade Practices Act, as the Trade Practices Commission is empowered to impose considerable fines for breaches of the Act.

Careful thought should be applied to the structure of a joint venture because there are a number of options available as well as many variations thereof. Legal advice should be sought in respect of the most practical and appropriate structure for a proposed joint venture to ensure that returns are maximised and risk is minimised. There can also be important taxation implications for the venturers which can be addressed by adopting the appropriate structure for the joint venture.

In summary, a joint venture can be an ideal way to bring together expertise and capital in projects which may not be possible for an individual venturer to do on its own.

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Editorial Note:
Detailed articles on joint ventures appear in the Newsletter in Issues #7, 8, 11 and 13. ❑