

Chapter 4

Financing Joint Ventures

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[4.1] Introduction

In 1880, Brett LJ, in the decision of *Smith v Anderson*,¹ said:

I confess I have some difficulty in seeing how there could be an association for the purpose of carrying on a business which would be neither a company nor a partnership, but I should hesitate to say that, by the ingenuity of men of business, there might not some day be formed a relation among ... persons which, without being strictly either a company or a partnership, might yet be an association.

Brett LJ's observations, although made more than a century ago, were certainly prophetic for the structural vacuum to which he referred has now been filled, especially in recent years, by the prolific use of joint ventures.

The term 'joint venture' covers a variety of forms of co-operation and is vague enough to include all situations in which two or more persons or companies join forces to achieve some common goals. The concept of 'joint venture', although defined or referred to in various legislation (for example, in s 4J of the *Competition and Consumer Act 2010* (Cth);² s 128A(1) of the *Income Tax Assessment Act 1936* (Cth); s 3 of the *Defence Housing Authority Act 1987* (Cth); s 4 of the *Energy Efficiency Opportunities Act 2006* (Cth); s 7 of the *National Greenhouse and Energy Reporting Act 2007* (Cth); s 60 of the *Housing Act 2001* (NSW); and ss 107 and 112 of the *Export Market Development Grants Act 1997* (Cth)), is not the subject of any specific legislative regulation. Although the term is often used to indicate an association of limited tenure for the purpose of achieving a specific goal, in contradistinction to the more permanent and intimate association involved in the concept of partnership, the term has also been applied particularly to joint participation by two or more separate enterprises in the organisation or construction

¹ (1880) 15 Ch D 247 at 277.

² This section defines 'joint venture' for the purpose of an exception to the cartel provisions found in ss 44ZZRO and 44ZZRP of the *Competition and Consumer Act 2010* (Cth).

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