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IBI AUSTRALIA INVESTMENT BANKING INSTITUTE BUSINESS SCHOOL

Understanding Joint Venture Arrangements

IBIBS has prepared this paper to assist you in understanding Joint Venture Arrangements.

A joint venture is a contractual arrangement between yourselves and one or more external parties where there is an agreement to undertake a specific business project together.

We write this letter in order to set out important information about establishing and managing a joint venture.

Types of Joint Venture

There are generally three types of joint venture. These are:

- Jointly Controlled Operations;
- Jointly Controlled Assets; and
- Jointly Controlled Entities

The type of joint venture entered into determines the reporting and disclosure requirements placed on the University and other venturers.

Key Criteria

Whilst not essentially legal in nature from a business perspective there are key criteria to be satisfied if a party is to pursue a joint venture arrangement. These criteria are:

- the power of a party to undertake to undertake a joint venture pursuant to its constituent documents e.g. a company's constitution or a trust's trust deed;
- the joint venture will not expose the party to an unacceptable level of risk that cannot be managed, commensurate to the return and benefits received; and
- the financial return to the party.

Educational Purposes Only

Due Diligence

There are usually compelling reasons for a party's involvement in a joint venture with other organisations. These reasons need to be analysed from administrative, legal and financial perspectives (the due diligence process). Clearly adequate investigation and analysis has to be undertaken in considering the proposal. Professional input helps to ensure that the proposed joint venture will be both commercially and legally sound and has the potential to deliver significant benefits to the party.

As a minimum, four professional areas should be consulted during the due diligence process These are:

• Managerial (i.e. through the Board);

• Financial (Accounting, Taxation and Insurance) – through the finance department

• Legal – through the legal department; and

• Risk Management – through the Risk Management and Audit Assurance department.

The Joint Venture Agreement

The Joint Venture Agreement sets out the contractual arrangements of the joint venture.

As such, it documents the roles, responsibilities and obligations of each venturer and because the control of operations is likely to be an important contributing factor to the success of the joint venture, the management structures and decision-making processes will also be specified in detail.

The relevant officers in your organisation should provide all necessary resources into the development of the Joint Venture Agreement to ensure that your entire interests are properly represented. During the negotiations over the Joint Venture Agreement there will be various trigger points where each venturer may need to take legal and financial advice. Approval of the agreement should be obtained from all relevant departments.

Potential Changes

Changes to the arrangement may be proposed during negotiations with venturers to finalise the Joint Venture Agreement. Only changes which do not significantly or materially impact on the approved business case should be considered.

When the changes proposed are considered significant, a revised business case should be drawn up and submitted to Management for approval.

When negotiations fail and agreement cannot be reached, the decision not to proceed should be also reported to Management.

Details to be Specified in the Joint Venture Agreement

Much of the details to be specified in the Joint Venture Agreement will already have been considered. Each venturer will agree the details of the Joint Venture Agreement and will seek advice from their own organisation's professional areas as necessary.

The Joint Venture Agreement is likely to include details of each of the topics listed in the table below. The table also shows what area of your organisation should be consulted for advice on each topic:

Topic	**Description**	**Consultation**
General		
Reason	the reason for setting up the joint venture	CEO/Board
Objective	the overall objectives of the joint venture	CEO/Board
Scope and Terms	including the conditions under which it will operate	CEO/Board
Roles, Responsibilities and Obligations		CEO/Board
Consequences of default, insolvency or termination	including how penalties will be applied and enforced	Legal
The Board	• functions and responsibilities • frequency of meetings, quorum etc • the arrangements for appointing and replacing Board directors • the venturers' rights to nominate • voting powers • the authority of the Board	Legal
Management Structure	• the appointment and replacement of Joint Venture Manager • the authority of the Venture Manager (e.g. to incur expenditure) • the authority of other officers	Finance
Reporting Arrangements	• reporting to the Board • reporting to the venturers • reporting to external bodies	Finance

Legal Requirements		
Legal Name		Legal
Business Registration	GST and ABN registration is required for joint ventures which constitute a "partnership" PAYG registration is required if officers of the joint venture are its employees	Finance
Activities	its principle activities in achieving its objective(s)	Legal
Where it operates	its primary place of residence and/ or country of incorporation	Legal
Who the venturers are	the venturers' details	Legal
Confidentiality	any confidentiality agreements	Legal
Disputes	how disputes between the venturers will be resolved	Legal
Conflicts of Interest	how conflicts of interest will be resolved	Legal
Intellectual Property	the ownership of intellectual property arising from the joint venture and when it will be vested in the venturer(s)	Legal
Licences and Patents		Legal
Legal requirements of external bodies	any legal requirements placed on the joint venture by external bodies. For example the Government may impose legal requirements as a result of grants provided to the joint venture	Legal

<table>
<tr><td></td><td></td><td></td></tr>
<tr><td colspan="3">Financial Requirements</td></tr>
<tr><td>Cash or In-Kind Contributions</td><td>the contributions that each of the venturers makes by way of cash or in-kind contributions</td><td>Finance</td></tr>
<tr><td>Assets</td><td>the contribution that each of the venturers makes by way of assets and:
the ownership of joint venture assets;
the arrangements for transfer and disposal of assets:
how use and depletion of assets will be measured and recorded;
how assets will be secured, maintained and repaired; and
the assessment of net return to the organisation</td><td>Finance</td></tr>
<tr><td>Equity</td><td>the contribution that each of the venturers makes by way of equity and:
how venturers will contribute to the initial equity of the joint venture
how additional equity will be brought into the joint venture, either by current joint venturers or new joint venturers
how transfer of equity between joint venturers or to outside parties is to be effected, including the return on capital contributions; any restrictions or special requirements for financing the equity of the joint venture
the amount of investment required
the sources of funding and what terms/conditions apply</td><td>Finance</td></tr>
</table>

Set up Costs	the set up costs in establishing the joint venture and how venturers contribute to these costs	Finance
On-going Costs	the ongoing costs of the joint venture and how these cost will be apportioned between the venturers	Finance
Profit and Loss	how the profits or losses of the joint venture will be shared between the venturers	Finance

Your Contribution to the Joint Venture

As a venturer in the joint venture, you will in some way contribute resources to the joint venture in accordance with the Joint Venture Agreement. These may include:

- Cash contributions;
- In-kind contributions
- Assets;
- Equity; and
- Cost contributions.

In-kind (non-cash) contributions may include:

• **Your staff** involved as Manager and/or officers of the joint venture;
• **payroll administration costs** incurred in paying joint venture employees;
• **infrastructure** used for the joint venture operation;
• **utility costs**; and
• where your organisation is the Joint Venture Manager; costs involved in the preparation of the joint venture's financial statements.

It is therefore vital that both the direct and indirect costs of your organisation's involvement in the joint venture are properly considered.

The relevant department should consider ways to mitigate problems arising out of indirect costs of involvement in the joint venture, or additional costs implied, but not explicitly allowed for in the Joint Venture Agreement. These problems might include:

• difficulty with management of **workloads**;

• **remuneration** or staff benefits issues (e.g. due to overtime worked); and

• **appointment or recruitment implications**.

The Employee Relations area of Human Resources should be consulted for guidance on industrial relations matters.

Monitoring And Reporting On Your Interests

Joint Venture Project Budget

A budget should be prepared by your organization for its interests in the joint venture following normal budget guidelines issued by the Financial Controller.

This should include:

• expected **contributions** to the joint venture;

• the **expenditure** expected to be incurred on the joint venture; and

• the expected share of the joint venture's **profit or loss**.

Allocating the Costs of the Joint Venture

All costs incurred by any department of your organisation in connection with the joint venture should be recorded to the joint venture project code in your accounting system as the costs are incurred.

Where expenses are apportioned between the joint venture activity and another part of the a departmental operation, the joint venture share is allocated by means of a journal to the joint venture project code.

All in-kind (non-cash) contributions should be recorded by means of journals to the joint venture project code.

When you are Joint Venture Manager

You should ensure that each venturer is provided with instructions as to what and when they are required to report to the Joint Venture Manager. This will include:

• cash contributions by the venturer; and
• in-kind (non-cash) contributions by the venturer;
• expenses incurred in relation to the joint venture including copies of invoices, delivery dockets and payments made etc

The relevant department should request copies of any outstanding invoices relating to the joint venture.

Accounting and Reporting

Australian Accounting Standard AASB 131 sets out the accounting and reporting requirements for each type of joint venture. The Financial Accounting Manager, Finance and Business Services Centre should be consulted on all matters relating to the accounting and reporting on joint ventures.

Jointly Controlled Operations

Any jointly controlled operation in which you are a venturer should be accounted for in the financial statements of your organisation by recognising the following:

• the assets that you control and the liabilities that you incurs in relation to the joint venture; &

• the expenses that your organization incure and its share of the income that it earns from the sale of goods or services by the joint venture.

Jointly Controlled Assets

Any joint venture in which you are a venturer where this involves jointly controlled assets should be accounted for in the financial statements of your organisation by recognising the following:

• your share of jointly controlled assets, classified according to the nature of the assets;

• any liabilities that you have incurred;

• your share of any liabilities incurred jointly with the other venturers in relation to the joint venture;

• any income from the sale or use of your share of the output of the joint venture, together with its share of any expenses incurred by the joint venture; and

• any expenses that you have incurred in respect of your interest in the joint venture.

Jointly Controlled Entities

Any joint venture in which you are a venturer that is classified as a jointly controlled entity should be accounted for in the financial statements of your organisation by using the equity method. This involves the following (in accordance with AASB 128 - Investment in Associates):

• your share (investment) in a jointly controlled entity is initially recognised at cost and the carrying amount is increased or decreased to recognise its share of the profit or loss of the jointly controlled entity;

• your share of the profit or loss of a joint venture is recognised in its profit and loss before income tax;

• your share of the joint venture’s income tax expense;

• distributions received from a jointly controlled entity reduce the carrying amount of your investment in that entity; and

• adjustments to the carrying amounts may also be necessary for changes in your proportionate interest in a jointly controlled entity arising from changes from that jointly controlled entity’s equity that have not been recorded in its profit or loss. Your share of those changes is recognised directly in its equity.

Disclosure Requirements

Your interest in joint ventures are required to be disclosed in your financial statements in accordance with AASB 131.

Jointly Controlled Operations and Jointly Controlled Assets

The disclosures requirements for interests in jointly controlled operations and jointly controlled assets are as follows:

- the name and principal activities of each significant jointly controlled operation or asset;
- its percentage interest in the output of each significant jointly controlled operation or asset during the annual reporting period; and
- for each category of assets, the aggregate amount employed in jointly controlled operations.

Jointly Controlled Entities

The disclosure requirements for interests in jointly controlled entities are as follows:

- its name, principle activities and the country of incorporation or residence;
- your ownership interest as at the jointly controlled entity's reporting date and, if different, at your usual reporting date;
- the proportion of voting power held in the jointly controlled entity where different from the proportion of ownership interest held;
- the fair value of interests in jointly controlled entities for which there are published price quotations.
- where the equity method is applied to interests in jointly controlled entities, summarised financial information of jointly controlled entities, including the aggregate amounts of each of the current assets, long-term assets, current liabilities, long-term liabilities, income and expenses; and
- summarised financial information of jointly controlled entities, either individually or in groups, which are not accounted for using the equity method, including the amounts of total assets, total liabilities, revenues, and profit or loss.

Interests in jointly controlled entities accounted for using the equity method shall be classified as non-current assets. your share of the profit or loss of such entities, and the carrying amount of those interests, shall be disclosed separately.

Your share of changes recognised directly in the jointly controlled entity's equity should be recognised directly in equity by you and shshould be disclosed in the statement of changes in equity as required by AASB 101.

Joint Venture Review and Record-Keeping

The Board is ultimately responsible for all record-keeping in relation to the joint venture arrangement.

We trust the above has been useful for you and should you require clarification or further information please call IBIBS