

Joint Venture Agreement questionnaire

[last updated October 2015]

Introduction

Before starting on preparation of an agreement for a joint venture, it will be useful for you to consider all of the aspects of the business you want to create. You may already be familiar with the concept of looking at what you have now, what you want to have achieved in one, two and five years, and what steps you need to take to get there, and who will be responsible for the different things that need to be done.

Some things you might like to consider are:

- product development
- product delivery/ fulfilment
- revenue stream
- marketing
- sales
- technology
- bookkeeping
- customer service

The following questionnaire is designed to help you identify what you believe will be important, and what is not part of the venture. You do not need to be clear on everything that needs to be done right now. However, you will find the proposed joint venture agreement more useful if you can clearly identify the contributions that each party is bringing to the venture, and who takes responsibility for the different aspects of the venture.

1. Parties

- a) What are the full names and preferred contact details for each party to the venture? Each party may be an individual, company or trust. Please provide details such as ABN where relevant.
- b) If any party is not an individual, please provide the full name of the person or people responsible for that entity.

2. Term of Agreement

- a) From what date do you want the venture to start? You can specify a date before or after the date that an agreement will be ready for your signatures.
- b) More often than not, joint ventures are entered into for a specific purpose, and once the purpose is achieved, or to be abandoned, the venture is dissolved. A venture may also be intended to be carried out only for a specific period of time. This may be a period after which point it is intended to incorporate or otherwise change the legal structure of the venture.
- c) Please provide an indication and to what must happen for the object of the joint venture to have been achieved, and therefore come to an end.
- d) Is there a minimum period of commitment required of the joint venture participants?

3. Purpose of the venture

- a) What is the working title for the business that you intend to create as a result of this venture?
- b) How would you describe the business that you intend to create as a result of this venture?
- c) What are the tasks that will have been completed and the goals that you plan to achieve through this venture?
- d) Are there any particular stages to the joint venture, and if so, are there specified timeframes around those stages. Is there any flexibility around those timeframes? What happens if the timeframes are not met?

4. Skills and Attributes being contributed

- a) What are the unique skills and attributes being contributed by each party?
- b) Is there any pre-existing intellectual property, real property or other assets being contributed to the venture?
- c) What rights will the venture have in pre-existing intellectual property, and any intellectual property developed during the course of the venture.
- d) How are contributions to be valued? For example, where one party makes a financial contribution and another party contributes knowledge and skills, the parties may agree on a percentage of the interests in the venture to ascribe a value to that contribution. Another example is where the parties agree that a knowledge and skills contribution has a particular dollar value.

5. Duties and responsibilities

The point at which some ventures fall apart is where either nobody was responsible for a key duty within the business (like bookkeeping), or everybody was responsible for a key duty (like product development). By allocating particular responsibilities to parties, someone is accountable and jobs get done.

- a) What are the essential roles and responsibilities within the venture? Consider the following: planning, preparing budgets, authorising payments, signing cheques and contracts, deciding separately or unanimously, accounting records, motor vehicle and other expenses, insurance, control of staff/outsourcing.
- b) Is it intended to appoint a manager of the joint venture? If so, on what basis (employee/consultant/joint venture participant etc)?
- c) Who is responsible for ensuring that each role or responsibility is completed?
- d) Which roles and responsibilities are joint responsibilities?
- e) If there are shared roles or responsibilities, what is the process for resolving stalemates?
- f) What process do the parties agree to participate in if roles and responsibilities are not fulfilled within any timeframes specified whilst conducting the venture? An example may be that the work is outsourced at a particular cost to one party, rather than as a cost to the venture.

6. Funding contribution

- a) Will a separate bank account be established for the joint venture, and who will be the signatories?
- b) How will the venture be funded?
- c) Who will make a financial contribution, and how much?
- d) Is an ongoing financial contribution expected? In what circumstances and how is the amount of the contribution to be calculated?
- e) Looking forward, if any party is unable to make a financial contribution when required, what is the alternative?

7. Expenses

- a) How will the expenses of the venture be paid?
- b) What will something be identified as an expense of the venture, rather than a party?
- c) Will the parties be paid fees?
- d) Will there be an allocation of expenses to different parties, and if so, how and in what proportions?

8. Profits

- a) At what point will profits be paid to the parties instead of being re-invested in the venture?
- b) What is the profit share? For example, equal shares, unequal but identified shares or a system of payment tied to indicators or events?
- c) What happens to profits in the venture when it comes to an end, either by transition into another entity, or otherwise?

9. Business premises

- a) Where will the business be conducted?
- b) Who will be responsible for that venue?
- c) How will the costs of the venue be valued and paid?

10. Business assets

Joint ventures are sometimes started with each party initially using their own assets (computers, software, office furniture, vehicles, etc), or with one party providing all the resources, or by the venture purchasing the assets required to conduct the venture.

- a) What assets are required in the venture?
- b) Who is responsible for supplying the assets?

- c) If any of the parties are using their own assets, will there come a point where the venture agrees to pay a fee for the use of those assets? If so, how will it be calculated?
- d) What do you want to happen to the assets, no matter how contributed, when or if the venture comes to an end? For example, a party using their own assets will retain those assets. Assets developed by or purchased by the venture will be transferred to the new entity, sold, or divided between the parties in a particular way.

11. Incoming parties

- a) If, during the course of the venture, another party is identified as a valuable contributor and invited to join, what value would then need to add to be invited, and how would that be calculated? The calculation could take into account any goodwill already developed by that time or expenses incurred, or another method.
- b) Would each of the existing parties to the venture have their share affected equally?
- c) What would the protocol be for considering and admitting new venture partners?

12. Outgoing parties

- a) If a party is no longer able to contribute, can they be removed from the venture, and how?
- b) How much notice does a party have to give if they want to exit the venture?
- c) If a party dies unexpectedly, how is their share valued and what happens to it?
- d) If a party wants to transfer their interest in the venture, what is the protocol?
- e) How will an outgoing party's contribution be valued and paid?
- f) Will the venture take out insurance cover over the parties?

13. Restrictive covenant

What restrictions, if any, do the parties face on exiting the venture? Eg, not operate a directly competing business for a period of time. Note, any period must be reasonable and can not be indefinite.

14. Disputes

How will disputes be resolved? The starting of litigation can be delayed, requiring the parties to negotiate and participate in alternative dispute resolution prior to commencing legal action.

End.