



# Confused about Joint Ventures?

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Major resources projects in the Oil & Gas and mining sectors generally require specific skill sets, large scale coordination and, ideally, experience in similar projects. Often, parties interested in a particular project come together to form a joint venture. Joint ventures enable participants to configure a specialist project team with the requisite skills and technical expertise, and share costs, risks, and financial capabilities, which they may not otherwise be able to offer separately. Joint Venture structures are often used in these projects.

A joint venture (JV) can be structured in two ways - as an unincorporated joint venture (UJV) or an incorporated joint venture (IJV). The fundamental difference between the two is that an IJV creates a separate legal entity and the UJV does not. As an UJV does not create a separate legal entity, the participants usually govern their relationship using the terms of an unincorporated joint venture agreement. Deciding on the appropriate structure for the JV involves consideration of several issues. Key considerations include:

- formation and governance of the JV
- inherent liability issues associated with the form of the JV
- the importance of flexibility
- how joint costs and profits are to be shared
- tax implications, and
- the practical implications of the structure of the JV

Lets look closely at some key differences.

| Unincorporated Joint Venture (UJV) |                                                                                                                                                                                                                                                                                                                       | Incorporated Joint Venture (IJV)                                                                                                                                     |
|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Formation                          | Parties enter into a JV agreement which sets out the objects, term, risk and production allocation and other operational details such as decision-making processes, how the JV is to be managed. There is no corporate form.                                                                                          | Parties enter into a shareholder agreement which sets out their respective interests in the JV. The IJV is an incorporated company which is a separate legal entity. |
| Liability                          | The JV Agreement usually states the parties will be severally liable proportionate to their interest during the JV. However, the parties liability to the public at large is joint and several and unlimited. Accordingly, full recovery can be sought from any one or more of the parties.                           | The parties' liability is limited to the assets held by the IJC.                                                                                                     |
| Flexibility                        | An UJV is more flexible as its structure and operation will depend largely on the negotiated terms of the JV agreement.                                                                                                                                                                                               | A company structure can be relatively inflexible as it governed by with the Corporations Act.                                                                        |
| Profits & Costs                    | <p>The UJV itself makes no profit – each party shares in the 'production' and may market its share to make a profit as it chooses. This may include competing against the other party in the market for sale of the product.</p> <p>Each party is liable for the operating costs proportionate to their interest.</p> | Usually, the parties receive dividends and interest representing the income of the IJV. Operating costs are payable by the IJV.                                      |
| Tax                                | <p>Parties are treated independently for tax purposes.</p> <p>Parties can offset losses from the JV against income from other businesses outside of the JV.</p>                                                                                                                                                       | IJV income is taxed at the company rate before it is received by the parties. Profits and losses cannot be offset losses against other income outside of the IJV.    |

|                  | Unincorporated Joint Venture (UJV)                                                                                                                                                                                                                                                                                                                                                                  | Incorporated Joint Venture (IJV)                                                                                                                                                                                                                                                                                                                                                                  |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Practical issues | <p>All dealings with the UJV must be entered into in the names of all parties or via an appointed agent.</p> <p>Parties generally own the JV assets as tenants in common.</p> <p>Lenders may be deterred from providing finance solely on the security of a party's share in JV assets.</p> <p>There are little to no statutory regulation or requirements. Are more complicated to administer.</p> | <p>An IJV can enter contracts in its own right.</p> <p>The IJV owns all the JV assets.</p> <p>Lenders more likely to provide finance as security can be given over all the JV assets.</p> <p>Relationship and operation governed by statute. Compliance with the legislation can be quite onerous.</p> <p>An IJV has an easily recognised management structure based on a board of directors.</p> |

It is possible to use both an unincorporated Joint Venture and an incorporated Joint Venture for the same project.

## Conclusion

It is essential for JV participants to consider structure before bidding for a project. Determining the most appropriate structure at the outset is critical because it is difficult, costly, and potentially hazardous to change the structure at a later date if problems emerge. Therefore, it is imperative that each participant obtains separate legal, financial and taxation advice on matters including the risk of loss of capital, potential legal liability exposure and taxation consequences. Ultimately, participants need to be comfortable that the advantages of the structure they choose outweigh the disadvantages for their particular project.

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