

Joint Venture Agreements



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STRABAG HAUS, Donau-City, Vienna

1. Company Description - Key Facts and Figures

- Headquartered in Austria
with over 25 STRABAG offices, 500+ sites in over 15 countries
- Consolidated group
turnover for 2007 of ca. 10.75 billion Euros and 61,000 employees
- In the Russian Federation since 1991
currently with ca. 2,000 Employees and 36-month forward looking backlog of over 2 billion Euros.
- Focus on Moscow and St. Petersburg; offices in Sochi and Yekatrinnburg
- New projects and sectors include industrial construction, cement and aggregate facilities as well as development of infrastructure (PPP) models.
- Aim is to have a well balanced portfolio for all construction-related activities.

2a. Reasons for Joint Ventures

- **Combination and Synergies of Expertise and Experience**
 - >> local firms and local conditions: > domestic law, permits, authorities, claims
- **Resource Constraints and Optimization**
 - >> manpower, financial (incl. bonding), equipment
- **Risk Sharing**
 - >> spread the risk/ mitigate overexposure
- **Market Entry**
- **Explore/ Test Further Cooperation Possibilities**

2b. ...and reasons speaking against Joint Ventures

- **Upside/ Profits are to be shared**
- **Transfer of Knowledge**
- **Future “cannibal” effects of today’s partner**
- **No sole decision making authority**
- **Legal constraints**

2c. Re: Types of Joint Ventures *(non-exhaustive)*

(together with some illustrative characteristics)

- **Integrated**
 - Single “EPC umbrella” interface
 - Pooling of resources and “pot” as profit and loss center
 - Each party is jointly and severally liable
 - Often, but not always, effectuated via an established/ incorporated “JV Company”

- **Non-Integrated/ “Consortium”**
 - Multiple Interfaces, with each party undertaking specific portion of works
 - Liability of each party limited accordingly

- **Hybrid Models**
 - Each party is liable on the basis of J/S, although only undertakes a specific works scope.

******The type of JV will depend on a number of slightly overlapping factors – inter alia: nature of project and “inseparable” nature of components, requirements of client and financiers, contracting partners themselves (financial strength, capabilities, past experiences), tax and accounting treatment, and legal regime.***

3a. JV Agreements (Key Elements) -- Tender Phase

- Purpose > usually project-specific
- Exclusivity (including duration)
- Preparation of Tender (who is doing what/ scope and task splits)
- Budget and Expenses
- Decision-making
 - Leadership and Bid Management
 - Agreement on Price (including risk provisions) and Schedule
 - Also with respect to negotiations with Client
- Confidentiality and Intellectual Property
- Miscellaneous (dispute resolution, withdrawal, etc.)
- Subsequent agreement

3b. JV Agreements (Key Elements) -- Execution Phase

- **Organization**
 - **Resources > alignment as to how the work will be built & by whom (splits)**
 - **Management**
 - **Leadership (price tags for key persons)**
 - **Controlling, contracts management (incl. claims and change orders)**
 - **Safety, environment**
 - **Interfaces with subcontractors (i.e. designers) and key suppliers**
 - **Decision-making structures, including dead-lock relief**
 - **Accounts and Bookkeeping, Tax Issues**
 - **Payments, Profit (Losses) Sharing/ Distribution (Cash Settlements)**
 - **Obligations with respect to:**
 - **Liabilities: bonding, guarantees, insurances**
 - **Performance for Package X**
 - **Cross-indemnity**
 - **Default and “Rescue”**
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5. Some Lessons Learned / Key Enhancement Measures

- **Agreement as to ABC (Activity Based Costing)**
- **Aim to converge on viewpoints as to risk**
- **Adequate resource contribution**
- **Management skills and adequate work preparation**
- **Proper performance, plus that of own subcontractors**
- **Contingency planning, empowered counterparts for quick resolution “on site”**
- **Personalities and Chemistry do matter!**

Further Information/ Contact

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