

Building relationships in joint venture projects

Kristine Kalnina, associate with Bin Shabib and Associates (BSA), says joint venture arrangements should be made so that all parties are bound by every legal requirement.

Looking at any of the impressive structures shaping Dubai's skyline, one may see just glass and steel as the main constituent components. But all projects stem from an idea before they become tangible objects and that idea heavily depends on first building successful relationships.

It is on this basis that one popular relationship-building mechanism – the joint venture – came about, often dominating the bidding arena in local projects. Additional capital, required expertise, enhanced credibility or financial considerations – whatever the reason behind seeking a joint venture partner, it is vital that the most productive synergy is achieved in a workable legal framework.

The licencing gauntlet

It is perfectly understandable for joint venture partners to bid for a project that is greater than each party's individual capabilities, so long as the combined qualifications cover all the aspects of the intended works. Very often, however, a joint venture may go for a bigger bite than it can swallow and attempt to undertake a task that none of its partners is licenced to carry out. This is done in the hope that any licencing requirements will be satisfied by one or more wisely chosen sub-contractors.

The trend of "I will subcontract what I am not licenced to do" is alarmingly common in many instances – not just in joint ventures.



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Licensing authorities would of course not tolerate an entity undertaking responsibility for works that it is not itself licenced to carry out. The fact is that insufficient licencing cannot be rectified by subcontracting away the works. Under UAE law the contractor would have to retain the ultimate responsibility for the structure. To do so, the contractor would have to be duly licenced. This responsibility cannot be discharged by delegating the works to somebody else – duly licenced or not. The logic behind this is obvious: if you cannot perform or be perceived to be able to perform a given task yourself you cannot effectively delegate nor supervise its performance to one or more of your subordinates.

The answer given by ambitious parties to the alarm blasted off by legal practitioners is simply "but we see it done all the time." It being done, however, is quite separate from getting caught red-handed. The consequences of breaching licencing regulations could range

from monetary penalties to non-issuance or cancellation of building permits or suspension of the contractor's limited or insufficient licence.

Even in instances where licencing issues have been suitably addressed, joint venture agreements are regularly the subject of careless and haphazard drafting. Like marriages of convenience, they often wrap up a bundle of rights and obligations in a swift attempt to please a given developer. This is usually done without setting out the exact scope of each joint venture member's involvement and by agreeing to jointly distribute the obligations towards the developer in undivided shares. The drawback of this arrangement is that there is no clarity as to who will be performing what, which in turn leads to complications in the joint venture's housekeeping. It would be virtually impossible for the joint venture members to reach an agreement and disentangle the threads once they are locked in a dispute.

Another trait in local joint venture agreements is the tendency to cut and paste clauses familiar to other jurisdictions. One such instance involves inserting clauses that entitle one of the joint venture parties to expel the other if it perceives that a material breach of the contract was committed. Another relates to foreign laws governing any disputes arising from the joint venture agreement. Both on a practical level and on one of pub-

lic policy, it is highly unlikely that any departures from local law and practice would be enforceable or free from complications not initially envisaged by the joint venture partners.

The larger picture

The cause behind the reluctance to depart from standard international wording is partially attributable to a certain degree of inflexibility shown by large international financiers and syndicated lenders. In general, they tend to be more familiar with, say English law, and in view of the negotiating leverage they are able to apply for a given deal to go through, they often exhibit reluctance to adjust to the legal intricacies of a specific jurisdiction. However, there can be little doubt that making certain that what is signed and contracted upon is legally enforceable is ultimately to the benefit of all parties involved: financiers, developers and joint venture partners.

Coordinating the wills and actions of various parties often operating from different jurisdictions and having variant sets of mind can be a daunting and laborious task. Joint ventures are generally a very efficient application of the truth that two brains are better than one. However, despite the flaws within them that a legal practitioner may identify, what matters ultimately is that all is headed towards the right direction, as the road to success is constantly under construction. **CB**