



Importance of maintaining the distinction between your joint venture and a partnership business

By Geoffrey E. Odongo



A joint venture (JV) is a business transaction entered into by two or more independent parties with a view to combining their resources to achieve a business objective.

JVs may take two main forms namely:

- I. Contractual JVs which is a strategic collaboration between distinct entities that is reduced into a contract. Such JVs are ideal for short one off projects like where parties come together to bid for a contract.
- II. Entity JVs in which type of collaboration the parties incorporate a jointly owned entity specially formed for the JV. Creating a distinction between the JV and a partnership is particularly important in a contractual JV. To avoid the inference of a partnership it should clearly emerge that each participant to such JV separately controls the operations of its own business and has complete autonomy within its own sphere of operations.

It is worth noting that should the JV be construed to be a partnership then every party to the JV will be considered an agent of the JV. Hence any act of an individual party carried out in the course of the JV business will bind other parties to the JV. Moreover, once a JV is construed as a partnership it becomes

difficult to distinguish between the property of a distinct party to the JV and that of the JV as a whole making each party to the JV liable jointly with the other persons in the JV for all debts and obligations of the JV.

From the foregoing, the following matters should be taken into account in-order to avoid the inference that the JV is a partnership:

1. Use of a joint executive committee should be avoided as it creates the impression that the JV project as a whole is under central control. Instead, a coordination committee may be formed to co-ordinate the way in which the participants' separate businesses work together but not to operate in an executive capacity over a business run jointly (in common). Members on such a committee liaise the broader policy questions that affect the operation of the venture, although when it comes to dealing with day-to-day management, each participant usually appoints a competent project manager to oversee its particular part of the project. Project managers will comply with unanimous decisions of the committee and provide any information that the committee may require. However, the committee should not have any power to change the terms of a joint venture agreement or the terms of an agreement with the third-party client or to make a decision that would ordinarily require the individual consent of one of the participants.
2. Each of the participants to the JV should receive their profits independently of the joint venture and claim their own expenses separately.
3. Any agreement entered into between the parties to a JV should make it clear that each participant acts as principal in carrying out its venture obligations, and has no authority to bind the other participants.