Joint Ventures

Legal information for community organisations

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Not-for-profit Law

This fact sheet covers:

- what is a joint venture?
- when is a joint venture appropriate? and
- what are my obligations under a joint venture agreement?

This fact sheet explains some of the main features that characterise a joint venture, and when this kind of agreement may be suitable for a not-for-profit community organisation.

What is a joint venture?

Joint ventures are generally created by agreement (**a Joint Venture Agreement**) between two or more organisations wanting to undertake a project together where, at the end of the project, the organisations will share in the project outputs.

A Joint Venture Agreement is a legally binding agreement which is enforceable like the terms of any other contract. A joint venture is usually established for a specific project, such as two organisations putting on a one-off street festival together, and not to manage an ongoing relationship.

A joint venture is different from:

- **a merger:** community organisation's merge when they agree to join forces permanently to become one legal entity. In a joint venture arrangement, the organisations remain separate legal entities and combine their resources for a particular (often temporary) project.
- **a 'fee-for-service' arrangement:** in a fee-for-service arrangement one organisation provides a service or product to the other for a fee. In a joint venture arrangement the organisations agree to work on a project together, and then to share in the product or benefits when it is completed.
- **a partnership arrangement:** although the term 'partnership' is often used loosely in the community sector, it has a technical legal meaning. In particular, in a partnership the two organisations have joint interests in the project and are jointly and separately liable for the expenses of the project (that is, they are both liable for the expenses together but can also be liable separately for the entire amount of the expenses if the other party, for some reason cannot pay). In a joint venture, the organisations usually have defined interests and are usually liable only for their own debts, which they incur individually. Joint ventures do not give rise to partnerships unless the organisations involved can be seen to have clearly intended to enter into a partnership arrangement.

When is a joint venture appropriate?

A community organisation may use a Joint Venture Agreement to work with other organisations for the purposes of fundraising, service delivery or advocacy. However, given that there is no settled definition of a joint venture, and a Joint Venture Agreement may cover many arrangements, we suggest you seek legal advice about whether a joint venture is a suitable arrangement for a particular project you wish to work on with another organisation or organisations.

TIP

If you are an income tax exempt organisation, you should seek legal advice before entering into a joint venture arrangement. Depending on the nature of the activities involved, becoming a party to a Joint Venture Agreement may jeopardise your income tax-exempt status, your status as a deductible gift recipient or any tax concessions you are entitled to. Depending on the circumstances, you may be advised not to enter into a joint venture arrangement, or that the arrangement will be appropriate provided the Joint Venture Agreement is drafted in a way which complies with various tax and other laws.

What are my obligations under a Joint Venture Agreement?

If, after obtaining advice, you decide that a joint venture arrangement is appropriate for your circumstances, your obligations will arise from two main sources. Firstly, you will have obligations under the Joint Venture Agreement itself and secondly, you will have more general (common law) obligations towards the other organisation(s) in the joint venture.

Specific obligations

A Joint Venture Agreement is a legally binding contract. Your obligations under the Joint Venture Agreement are likely to be relatively clear and mechanical. The Joint Venture Agreement will typically set out such things as:

- what each organisation will initially contribute to the joint venture
- the acts each organisation will perform throughout the duration of the joint venture
- each organisation's reporting obligations to the other parties to the agreement
- governance, decision making and control of the joint venture including who is responsible for day-to-day management
- the dispute resolution process that the parties will follow if there is a disagreement or dispute, and
- what happens at the end of the joint venture.

The details of these obligations will depend on the particular terms of the Joint Venture Agreement.

General obligations

Organisations involved in a joint venture owe each other the duties and obligations described in the Joint Venture Agreement, however, they are also expected to exercise their rights and powers in good faith to benefit the joint venture.

General obligations towards the other organisation(s) in the joint venture may not be as obvious as those included in the agreement. These obligations can arise from common law and the special nature of the relationship between those in the joint venture. An inadequately drafted Joint Venture Agreement can create a special relationship of trust and confidence (known as a fiduciary relationship) so it is important to ensure that the Joint Venture Agreement is carefully worded in order to exclude this type of relationship, while maintaining contractual obligations, otherwise both will arise. Additional duties can include a duty to act for the common good – one organisation should not put themselves in a position of conflict without the other organisation's consent (i.e. enter into business in competition to the partnership).

These duties may arise before you enter into a formal Joint Venture Agreement, and continue after the agreement ends. Whether these duties arise may depend on the form of the joint venture (for example, its significance and length) and the obligations you agree to.

EXAMPLE

Organisation A and Organisation B entered into a joint venture to purchase a property. The joint venture broke down and came to an end. Organisation A used the information they gained from the joint venture to acquire a property.

This scenario occurred in the case of *Disctronics Ltd v Edmonds; Kongston Links Country Club Pty Ltd v Distronics Ltd* [2002] VSC 454. The court considered Organisation A breached its fiduciary obligation to Organisation B, and Organisation A was required to pay compensation to Organisation B.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has further resources on the following topics:

- Working with others – www.nfplaw.org.au/workingwithothers
- Auspicing – www.nfplaw.org.au/auspicing