

JOINT VENTURE AGREEMENT IN CONSTRUCTION INDUSTRY

CHAN NAM ONN

A project report submitted in partial fulfillment of the
Requirement for the award of the degree of
Master of Science (Construction Contract Management)

Faculty of Built Environment
Universiti Teknologi Malaysia

JANUARY 2012

"I declare that this project report entitled "*Joint Venture Agreement in Construction Industry*" is the result of my own research except as cited in the references. The project report has not been accepted for any degree and is not concurrently submitted in candidature of any other degree."

Signature : _____
Name : CHAN NAM ONN
Date : _____

DEDICATION

I would like to acknowledge the ceaseless support and encouragement from my wife, Serene See and two children, Zhi Qing and Chong Zheng as they have suffered much to enable me to complete this dissertation.

ACKNOWLEDGEMENTS

Special thanks to my supervisor, Encik Norazam Bin Othman for his wisdom, guidance, valuable advice, encouragement and coaching throughout every stage of my research and writing.

My heartfelt thanks also goes to Encik Jamaludin Bin Yaakob for his invaluable help in gathering necessary information during this whole study.

Finally, my warmest thanks to many people who have directly or indirectly helped me with comments, ideas and feedback on how to develop this dissertation.

ABSTRACT

The term Joint Venture (JV) is one which is heard with increasing frequency and popularity in construction industry. Nowadays, it is widely practiced for large-scaled multi-disciplinary infrastructure projects as a means to share risks and resources by partners. To run a joint venture effectively and without conflict has proven impossible. It is of great importance that the parties' objectives and contributions to the venture are properly and clearly described in the joint venture documents. In view of the fact that the implementation of the Standard or Model Form of Joint Venture Agreement (JVA) is new to the Malaysian construction industry, the purpose of this research is to investigate the needs of forming a legally binding joint venture agreement, to examine the problems encountered and to attempt to develop a model form which will, at the very least, provide introductory reports as to what joint venture agreements are all about and how these can satisfactorily safeguard the interests of the joint venture parties. The methodology of this research adopts from literature review on JVA as well as analysis of the cases law findings on what needs to be incorporated in the model JVA. As a conclusion with this research, the lack of specific legislature, regulations and governing/regulatory body/authority overseeing the formation of JVs has left organizations to resort to their own devices in formulating JVs. This has given rise to, among others, bespoke agreements which have resulted in abuse and unfairness to numerous parties to JVs. Malaysia should seriously consider setting up a formal structure of governance over this form of business relationship. There should also be a standard JV Model Agreement to be used as reference and serve as guidelines during negotiations by the prospective parties to JVs

ABSTRAK

Usahasama merupakan satu terma yang makin sering didengar dan popular dalam industri pembinaan. Ia merupakan kaedah yang seringkali digunapakai oleh rakan kongsi dalam projek mega yang merangkumi pelbagai disiplin pembinaan sebagai salah satu cara untuk berkongsi risiko dan sumber-sumber perniagaan. Usahasama terbukti mustahil dapat dijalankan tanpa konflik. Oleh kerana itu penting sekali untuk segala objektif dan sumbangan dari setiap rakankongsi usahasama ditulis dengan jelas dan terperinci didalam dokumen-dokumen usahasama. Tujuan kajian ini adalah untuk mengumpul maklumat dan juga masalah-masalah yang dihadapi oleh mereka yang telah menjalankan urusaniaga secara usahasama di Malaysia dan bertujuan untuk menghasilkan satu rangka atau model Perjanjian Usahasama yang sah memandangkan masih belum ada sesuatu seumpamanya untuk industri pembinaan di Malaysia sehingga kini. Kajian ini sekurang-kurangnya akan dapat menjelaskan tentang perjanjian usahasama dan cara-cara ianya dapat menjamin kepentingan setiap pihak yang bergabung dalam sesuatu usahasama. Metodologi kajian ini mengamalkan kajian literatur pada perjanjian usahasama serta analisis penemuan kes undang-undang mengenai apa yang perlu dimasukkan di dalam model perjanjian usahasama. Sebagai kesimpulannya, kekurangan badan perundangan khusus, peraturan-peraturan dan mentadbir / badan kawal selia / pihak berkuasa yang menyelia pembentukan usahasama telah meninggalkan organisasi untuk menggunakan sesuka mereka dalam merumuskan usahasama. Ini telah menimbulkan antara lain, perjanjian yang pesan lebih dahulu yang telah menyebabkan penderaan dan ketidakadilan kepada mana-mana pihak usahasama. Malaysia hendaklah serius mempertimbangkan untuk menubuhkan struktur formal tadbir urus ke atas hubungan perniagaan seumpama ini. Seharusnya terdapat juga standard atau model perjanjian usahasama yang digunakan sebagai rujukan dan garis panduan semasa rundingan oleh pihak-pihak yang bakal untuk menjalankan usahasama