

Joint Venture in Construction Works

Description

By Dagnachew Tesfaye, Partner at DMLF

The Ethiopian Government has come up with a fast and easy formation and exit process to joint ventures in construction works. The joint ventures shall be known for **third parties**. The formation of such joint ventures is for construction projects. The partnership can be between local constructors and consultants or with foreign contractors and consultants. The details of the formation, registration requirements and dissolution of such construction work joint ventures are specified under the Construction Works Joint Venture Directive No 879/2021. The Directive is issued by the Ministry of Urban and Infrastructure Development. The Directive is effective as of March 30/2022.

Formation of Joint Ventures

The partners to form joint ventures are construction companies at various levels, micro and small enterprises, grade 1 foreign construction companies registered in Ethiopia. When the local and foreign companies create a JV, the local company is the **leader** and is known as the leading company. However if the JV is made by the local companies, the one who has better capacity is the leader.

The type and amount of contribution for the JV can be local or foreign currency, inputs that can add value such as construction technology inputs. When the partner is a foreign construction company, the type of contribution can be in the form of building materials, local or foreign currency, construction equipment, vehicles, knowledge and experience. The in-kind contributions shall be valued in local or foreign currency and entered in the JV.

The number of members shall not be less than **2**. The minimum share of members authorized to form a JV shall not be less than **25%**.

When the JV is between local and foreign enterprise, the JV shall be allowed to open a foreign currency bank account in accordance with the relevant banking laws of the country.

The JV needs to organize the following documents: memorandum of understanding, contract agreement to work together in general or for a certain project, a joint venture agreement entered in compliance with domestic law and licenses issued by relevant authorities to engage in construction works.

The JV shall appoint external auditors to audit the JV. Accounting of the JV's books and records shall be done in accordance with accepted basic accounting principles and practices.

Fields of Participation of Joint Venture

The JV may engage in general construction works and services that enhance transfer of knowhow and technology into the country. Another area of participation is for construction works and services provided in accordance with international bidding laws. In the field of work where local companies can

work together to build their capacity and reach the highest level is another area of participation to form a JV. More so construction works and services that can bring capacity building and technology transfer as well as construction input products are encouraged to participate in JV. Counseling, training and teaching activities with the permission of the appropriate institution is also a relevant area of participation that can enhance the construction field in terms of knowledge and experience.

Registration of the JV

For each project, the joint venture must issue a registration certificate stating that they are jointly registered. A registered Joint Venture that meets the requirements shall be issued a certificate of registration upon completion of the payment specified in Article 5 of Regulation No. 478/2013. The certificate may be renewed for an extended period of time, even if the completion period of the project is extended for acceptable reasons.

Bidding and Documentation

The partners of the JV have to first present a commitment letter for competing in the bidding process. If they are successful in the bid, the JV shall submit the following documents: the JV agreement, the name and address of the JV, the business license of each partner of the JV, proof of tax clearance of each partner, for a foreign construction company certificate of competence from the country of origin duly authenticated by the Ethiopian Embassy and the Ministry of Foreign Affairs and certificate of registration of the JV. At least 40% of the participants' capital contribution has to be paid and bank confirmation should be presented as evidence.

Dissolution of the JV

The JV can be dissolved upon expiration of the duration of its establishment objective. The JV can also be dissolved when there is loss for any reason or when partners fail to meet their obligation under the JV or when the JV faces force majeure issues.

Dispute Resolution

Any dispute that arises as a result of the dissolution of the JV has to first be settled by amicable negotiation between the partners. If the negotiations fail, the dispute shall be resolved in accordance with the relevant laws of the country.

Liability

Failure to complete the project on their due date shall cause joint and several liability for the loss incurred, unless the time extension is accepted by the relevant authority. Non performance by the JV in accordance with the contract entered, the partners shall be liable to the extent of their contribution in the JV. In the event that there is disagreement between the partners of the JV before completion of the project, then the **lead contractor** shall continue to operate responsibility. The JV shall guarantee and be liable up to 10 years individually and collectively for damages to construction works completed by the JV.

For your JV legal issues and support, you may contact us at info@dmethiolawyers.com

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Author

dmethiol_admin

Dagnachew & Mahlet Law Firm LLP