

RESOURCESLAW INTERNATIONAL

A COMPARISON OF JOINT VENTURE (JV) STRUCTURES

JOINT VENTURE COMPANIES	UNINCORPORATED JOINT VENTURES
LEGAL BASIS	
The JV participants are shareholders in a JV company (JVCo), which is a legal entity distinct from its shareholders.	The JV participants are contractually bound by a JV agreement (JVA).
FUNDING	
The JVCo is self-funding. All equity and debt must be raised by the JVCo.	The JV is not self-funding. The participants must continually provide the JV with funds for capital and operating costs.
INCOME	
Income is received by the JVCo. The JVCo pays dividends to the shareholders when its income exceeds expenses.	Income is received separately by each participant. No income is earned by the JV itself.
ACCOUNTS	
The JVCo produces the normal accounts required by company law. These include a profit and loss account and a balance sheet showing assets and liabilities.	The JV produces accounts which show the net costs of production and the cost of assets.
INCOME TAX	
The JVCo lodges an income tax return and pays company tax. Each shareholder who receives a dividend lodges its own return in which it must include the dividend. Losses are carried forward by the company and are not "distributed" to the shareholders.	The JV does not lodge an income tax return. Each participant lodges its own return showing its own trading profit minus its share of the JV operating costs.
OWNERSHIP OF ASSETS	
The JVCo owns all assets. Shareholders have no right to assets except on a winding up (when shareholders receive their proportion of the surplus assets that remain after payment of liabilities).	The JV owns no assets. The participants are the legal owners (as tenants in common) of the assets that are acquired by or contributed to the JV.
CHARGING OF ASSETS	
The JVCo may charge its assets. Shareholders may charge their shares in the JVCo but cannot charge the JVCo assets.	Participants may separately charge their respective interest in the assets of the JV (unless this is prohibited by the JVA).
MANAGEMENT	
Company law requires the directors to act as the centralised management authority on behalf of the JVCo. The shareholders have no right to interfere with day to day management unless there is special provision in the articles of association.	By a management agreement, the participants must appoint a manager or operator (who may be one of the participants). The manager has day to day control of the JV.
INVESTORS' LIABILITY TO THIRD PARTIES	
Under company law, shareholders are not liable for obligations of the JVCo except where there is an amount remaining unpaid on their shares. The directors can be personally liable if they allow the JVCo to trade whilst it is insolvent.	Each participant is legally liable for all acts within the authority of the other participants or the manager. This liability is joint and several. The participants may agree between themselves to share liabilities in a specified proportion but this does not bind any third parties unless they agree.
TERMINATION	
The JVCo is a separate legal entity. It may be wound up by the court, eg, if it is unable to pay debts, or it can be wound up voluntarily by the shareholders.	A JVA cannot be terminated by the court. If it is for no fixed term, the JV may be terminated by a participant when his obligations under the JVA have been performed. If it is for a fixed term, the JVA cannot be terminated before the expiry date. Special procedures must be included in the JVA to provide for resolution of all differences during the life of the JV.