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SHAREHOLDER AND JOINT VENTURE AGREEMENTS

A PRACTICAL GUIDE

A joint venture is a business relationship between parties with a view to mutual profit or benefit.

It is widely used in projects where the parties can provide different skills for the purpose of an intended outcome, such as:

1. mining ventures – exploration licences, capital and mining skills;
2. manufacturing - factory and raw materials;
3. distribution – manufacturer, retail or wholesale.

Often, the outcome of a successful Joint Venture Agreement can take years and involve a substantial amount of capital (money) invested by the parties, particularly for mining operations.

The Joint Venture Agreement spreads the risk, as opposed to one entity bearing all of the liabilities/risk of failure, and as such has tax advantages compared to partnership or corporate structures.

Parties cannot bind other parties to liabilities incurred in a Joint Venture Agreement, unless by way of agreement. This can be contrasted to a company or partnership structure, where one party's actions usually bind all.

A Joint Venture Agreement should expressly state that the agreement is not a partnership. Liabilities incurred pursuant to Joint Venture Agreements are incurred individually and not jointly or as agents for each participant. They are parties with a common purpose, but not in a partnership where each party incurs joint and several liability.

The transfer of rights or benefits under the Joint Venture Agreement is usually subject to pre-emptive rights as agreed between the parties. That is, the existing parties are provided with the first right to purchase the existing parties' benefits prior to sale to a third party.

A joint venture is not regulated by any laws and is based on a contractual relationship. As such, the rights and obligations are agreed between the parties.

A Shareholders Agreement is required for an incorporated Joint Venture Agreement. That is, a company is registered to own the joint venture property.

The alternative is an unincorporated joint venture agreement, where the parties themselves own the joint venture property as tenants in common – that is by way of agreed percentages. Joint ventures are flexible arrangements, not constrained by regulations relating to corporations or partnerships.

Please contact SRM Lawyers to answer any enquiry you have relating to your business, proposed joint venture or shareholder agreements.

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