Law in Focus: An Introduction to Joint Ventures in the Mining & Resources Sector
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Stone Group Lawyers continues its expansion into Australia's mining and resources sector, advising clients in structuring appropriate joint venture agreements to suit their needs. In this introductory article, we will look at what a joint venture is and how we can help you or your company prosper in Australia's largest industry.

What is a Joint Venture?

'Joint venture' is a term used to describe a group of individuals coming together for a profitable enterprise[1]. Under Australian law, Joint ventures do not have a set legal definition, and in the case of unincorporated ventures, they are not regulated by any legislative instrument. Joint ventures are thus legal relationships governed by mercantile law, and may be created by written instrument, verbally or by conduct[2].

There are 2 types of joint ventures:

1. **Unincorporated Joint Ventures;** and

2. **Incorporated Joint Ventures**.

In an unincorporated joint venture, the participants to the joint venture engage in a business relationship where they hold the properties of the enterprise as tenants in common. In an incorporated joint venture, the participants form a special purpose company which holds the joint venture property and conducts the operations. The rights and obligations of each party are determined by a shareholder's agreement or any other binding agreement.

Joint Venture or Partnership?

Parties may want to distinguish a joint venture relationship from a partnership relation to avoid the rules and regulations contained in the Partnership Act. Joint ventures may be distinguished by their legal characteristics. The key differences between a joint venture and a partnership are as follows:

1. **Profits and income:** Income is divided between joint venture partners according to their TIC holdings. They further receive it as separate entities rather than the one (i.e. partnership).

2. **Business Activities:** In a partnership, the partners carry on the business jointly, while in a joint venture, each participant is responsible for their own activities and carry on their business severally, even if it is towards a mutual goal; and

3. **Liability:** Participants in a joint venture are liable severally and are not responsible for the actions of their fellow participants, while in a partnership, the partners are liable jointly. This is usually entities clearly defined in the joint venture agreement or any agreement with 3rd parties.

4. **Contributions:** The participants to a joint venture may contribute finances, equipment, labour or skill to the enterprise, but their contribution may not necessarily be equal and are defined by a joint venture agreement.

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[1] *United Dominions Corporation Ltd v Brian Pty Ltd* [1985] HCA 49; (1985) 157 CLR 1 (1 August 1985)
[2] Ibid.

These characteristics mean that often joint venture arrangements prove a more attractive option over partnerships when considering the structuring of mining enterprises, including the following:

1. **Liability** – In a partnership, each partner is both jointly and severally liable for the debts of the partnership as well as the actions of their partners done in the course of their partnership. In a joint venture, however, the participants limit liabilities through their contractual agreements;

2. **Tax** – A partnership is taxed jointly, while joint venture participants (in an unincorporated joint venture) are taxed severally which allows them to offset any loss or profit with any other projects they operate;

3. **Fiduciary Relationship** – Joint ventures can avoid fiduciary relationships unlike in a Partnership, where the partners have an imposed fiduciary obligation to each other. The relationship between a joint venture participant to another is strictly contractual.

4. **Structural Flexibility** – As discussed previously, joint ventures are not subject to regulation under a legal instrument and are governed by ordinary law of contracts. This gives greater flexibility in determining the appropriate structure for the enterprise as opposed to partnerships, which are subject to regulation under the Partnership Act.

Joint Ventures in the Australian Mining and Resources Sector

As discussed previously, unincorporated joint venture relationships are governed by contract law, and not regulated by specific legislation like corporations or partnerships. As a result, unincorporated joint venture agreements have a degree of flexibility not found in other business structures. This flexibility allows participants to structure all aspects of the joint venture agreement, such as each participant's rights and responsibilities, entitlement to profits, etc. to suit the circumstances of their particular enterprise. Considering the variety and complexity of the factors involved in mining and resource ventures, including finances, expert skill and specialized equipment, it is easy to see why unincorporated joint ventures are a popular choice for mining and resource enterprises.

Nonetheless, there are also advantages to incorporate joint ventures. While an incorporated joint venture doesn't provide the degree of flexibility as an unincorporated joint venture, there is a clear management structure identifiable as the board of directors. Most importantly, the attraction of incorporating a joint venture lies in the limitation of liability for the participants only to the extent of their shareholdings.

There is no 'perfect' structure to suit the needs of every enterprise. With careful planning and understanding of the different structuring options and circumstances, we can ensure that you choose the right fit for you.