Joint Ventures in Construction 2
Contract, governance, performance and risk

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Joint Ventures in Construction 2: Contract, Governance, Performance and Risk

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CONTENTS

Acknowledgements vii
Dedication viii
The Editors ix
Contributors’ Biographies x
List of Tables xiv
List of Figures xvi
List of Appendices xviii
List of Abbreviations xix

INTRODUCTION xxiii

Part 1: Contract

1 Terms and Conditions Agreed on by Parties in Construction Work Joint Ventures
   KHAIRUDDIN Abdul Rashid 1

2 Construction Joint Ventures in the Project Coalition: A Conceptual Framework
   Graham M. WINCH 17

3 Design of Administrative Structures for Construction Joint Ventures
   PRASITSOM and Veerasak LIKHITRUANGSILP 29

4 The Application of the Environmentally Conscious Contract Law to a PFI Project (Japan Case)
   Katsuji ISHIHARA and Sufang WENG 41

5 The Application of Build, Operate, Transfer (BOT) Contract as a Mode of Financing in Developing Waqf Land: Malaysian Experience
   AZMAN Mohd Noor and SAIDATOLAKMA Mohd Yunus 49

Part 2: Governance

6 Foreign Equity Investment in India: Trends, Policy Priorities and the ‘Legitimacy Capital’
   Gautam RAY 67

7 Reflexive Capability Maturity Assessment for Firm Management of Multi-partner International Projects
   LONDON and Jessica SIVA 83

8 Strategic Implementation of International Joint Venture in Taiwan: A Case Study on THSRC
   Tsung-Chieh TSAI, Hung-Chi CHEN and Min-Lan YANG 97
Using Alternative Dispute Resolution for Effective Management of Disputes in Joint Venture Construction Projects in Malaysia
Ainul Jaria Maidin

The Mechanism of Dispute Arising in Construction Contracts
Masamitsu Onishi, Toshihiko Omoto and Kiyoshi Kobayashi

Why Do Contractors Sub-Contract Works to Sub-Contractors?
Khairuddin Abdul Rashid

Corruption in Construction Projects and Deterrence Policies in Developing Countries
Lei Shi, Taisuke Miyao and Kiyoshi Kobayashi

Key Factors of Successful Joint Ventures in Korea – Two Different Case Scenarios
Myungsik Do and Sang Hyuk Lee

Application of Target Cost Contracts and Guaranteed Maximum Price Contracts in the Construction Industry of Hong Kong
Joseph H.L. Chan, Daniel W.M. Chan and Patrick T.I. Lam

The Effect of Performance-based Contracting in Public-Private Partnerships – The Japanese Case
Masamitsu Onishi, Yasuhiro Shoji and Kiyoshi Kobayashi

Private Finance Initiative Project Payment Deductions
Katsuji Ishihara

Moral Hazard Issues in PPP Projects
Lei Shi, Masamitsu Onishi and Kiyoshi Kobayashi

International Labor Movement and Welfare Effects: Malaysia as a Case Study
Sharina Farihah Hasan, Kakuya Matsushima and Kiyoshi Kobayashi

Index
Chapter 1

Terms and Conditions Agreed on by Parties in Construction Work Joint Ventures

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Introduction

In the context of construction work, when two or more parties agree to become partners in a joint venture to execute a project, they may either (i) combine their resources and co-operate during the bidding and the construction processes, jointly sharing the risks and profits of the joint venture according to the resources each has brought to the joint venture; or (ii) enter a bid together but confine their responsibilities, profits, and losses only to the part of the work they undertake individually. Of these two types of joint venture, the former arrangement is known as 'integrated' and the latter as 'separate' [1].

In addition, joint ventures may be in the form of either (i) unincorporated, or (ii) incorporated. Briefly, an unincorporated joint venture does not involve any structural changes, and the parties retain their own independence, basing their co-operation entirely upon the contract. Such a joint venture may be viewed as a project-based venture, which is terminated once the construction project is complete and all obligations among the parties settled. Each party is liable with regard to its own losses and share of profits. An incorporated joint venture involves structural changes and is akin to a legal partnership involving shareholders' agreement or a corporate joint venture [2].

In a joint venture for construction work, the joint venture agreement is of paramount importance, as it spells out aspects including equity, joint-control, liability for losses, risks, profit sharing, etc., relating to each party to the joint venture.

However, unlike in construction projects where standard forms of contract are almost always readily available, parties to a joint venture for construction work, usually contractors, rely on a joint venture agreement that is normally custom-made, or on an in-house contract drafted by the parties themselves. Up to now, some joint ventures may have been established on an ad-hoc or possibly incomplete basis, or even entirely orally. The key question therefore is what are the terms and conditions parties agree on in a joint venture?

There is a dearth of literature related to joint venture for construction work addressing the subject of joint venture agreements. For example, in past conferences on construction joint ventures organized by Kyoto University in Japan, International Islamic University Malaysia, and their partners, the aspects of joint venture most frequently addressed include critical success factors, the role of government, public-private-partnership, and culture, but there has been no examination of the terms and conditions of the joint venture agreement itself.