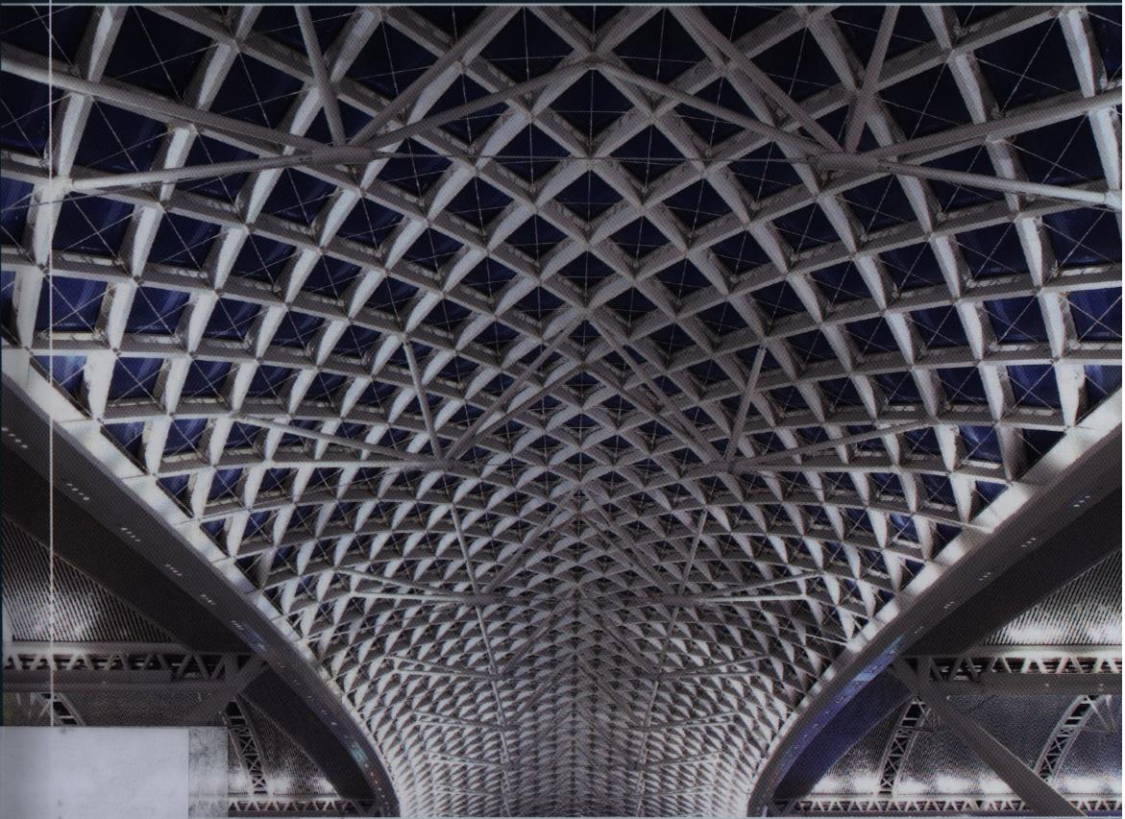


Joint Ventures in Construction 2

Contract, governance, performance
and risk



Edited by
Masamitsu Kobayashi,
Khairuddin Abdul Rashid,
Masamitsu Onishi and
Sharina Fariah Hasan

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

Edited by **Kiyoshi Kobayashi, Khairuddin Abdul Rashid,
Masamitsu Onishi and Sharina Fariyah Hasan**

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Kerry LONDON and Jessica SWEET



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Chapter 1

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

Khairuddin Abdul Rashid, International Islamic University Malaysia

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 partners¹, 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.