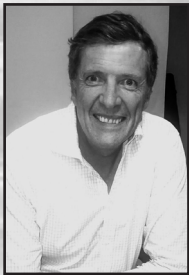


UNINCORPORATED JOINT VENTURES

THE RIGHT BALANCE DETERMINES SUCCESS



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Hilton Johnson is the Chief Executive Officer of Compliance Hub Consulting which was founded in 2011. He is supported by a proficient team of professionals who develop compliance strategies in the areas of OHS Procurement, Employment Equity, Human Resources, Ownership Modules and Skills Development. Hilton has successfully developed and implemented ethical, practical and proven methodologies across all sectors.

Over the past decade, Unincorporated Joint Ventures (UJVs) in South Africa have been used as a tool to drive B-BBEE compliance. The proposed amendments to statement 000 as outlined in Gazette 41546 address the duration and application, as well as the impact on a B-BBEE Scorecard. Essentially, a UJV may form part of an organisation's B-BBEE Strategy to address Skills Development, Enterprise Development or Supplier Development identified explicitly through Preferential Procurement sub-measurements.

A UJV is a collaboration between two or more partners who are affected by an agreement with no incorporation. In other words, a contract entered into by two or more parties with no form of equity capital, whereby all partners pool their resources and expertise to execute the requirements of a particular project. A UJV must be embarked upon in a meaningful, fair and equitable manner for all partners, taking into consideration the overall control, project management, day-to-day operations and risk factors, in addition to profit and loss predictions. The lead partner has both a moral obligation and vested interest to ensure emerging partners are treated reasonably and equitably in terms of a sound, written agreement.

This is a viable universal solution which allows organisations to contribute their skills, resources and abilities in a specified short-term agreement. Generally there are few, if any, regulations that specifically apply to UJVs, which makes it essential for a contract to outline as many contingencies as possible.

The success of a UJV is based on quantifiable research and analysis of the objectives of all partners. Paramount is concise communication and clear guidelines to remove any areas of uncertainty which may result in conflict further down the line. Although some areas of a UJV may be flexible to a degree, any rigid elements must be so defined.

It is common practice for a UJV agreement to limit the outside activities of participants while a project is in progress. This being the case, each partner must sign an exclusivity or non-compete agreement that affects the UJV obligations at hand. Such arrangements are intended to reduce the potential for 'conflicts of interest' between UJV partners, allowing full focus on the project at hand. It is important to bear in mind that, although contractual limitations expire, having them in place during the project has the potential to impede on one or all of the partners' core business operations.

All areas of the UJV must be incorporated into the agreement, taking into account the collective expertise, capital, intellectual property, skills, infrastructure and knowledge necessary to execute the requirements of an identified project. It is critical that remuneration, set deliverables, accountability, penalties for non-delivery, duration of association and an exit strategy be specified to secure a mutually beneficial outcome. In terms of public sector procurement, a UJV agreement must align with the PPPFA.

Although a UJV is a short-term commitment by all partners, an agreement must include conflict resolution and a pre-determined mediation process. Conflict more often than not stems from limited co-operation, communication or lack of integration by one or all partners. There must be a mediation process in place that does not cause undue hardship or favour one partner over another. Having the inability to address conflict as it arises could have a detrimental impact on the overall roll-out of a project at hand and cause reputational damage.

As in any partnership, whether it be a marriage or a business one, the foundation is not based on an adverse outcome, but a rosy one. However, we must bear in mind that the unique human factor drives UJVs. Areas that pose a risk of conflict are imbalances in expertise, assets, investment and remuneration; therefore each must be categorised upfront in an agreement.

Impact of Proposed Amendments on UJVs

A UJV answering a call for tender will more than likely be required to present the UJV agreement, plus a SANAS accredited UJV Certificate as part of the tender application process. A UJV Certificate, issued in line with the proposed amendments to statement 000 may only be valid for a 12-month period and will only apply to one specific project.

A consolidated SANAS accredited UJV Certificate must include the verified compliance data of partners party to the agreement. The score of each partner is weighted according to its proportionate share in the UJV based on the agreement. All scores are then added together for a combined score out of 100. There are specific provisions in place that allocate scores to deal with Exempt Micro Enterprises (EMEs) and enhanced Qualifying Small Enterprises (QSEs) that form part of UJVs as outlined below:

Type of Entity	Score Allocated
EME - less than 51% 'Black'-owned.	85
EME and QSE - more than 51% 'Black'-owned.	95
EME and QSE - 100% 'Black'-owned.	100
Large Enterprises and QSEs - less than 51% 'Black'-owned.	The score achieved on current B-BBEE Certificate.

The following UJV Ownership scenario incorporates a Large Enterprise with a Status Level 5, a QSE Status Level 2 and an EME with a Status Level 2:

JV Partner	Entity Type	BO	BWO	Score Allocated	Participation in UJV (%)	Recognition		
						Points	BO	BWO
A	QSE	51%	0%	95	30%	28.50	15.3%	0%
B	Large Enterprise	0%	0%	76.5	50%	38.25	0%	0%
C	EME	20%	20%	85	20%	17.00	4%	4%
Consolidated Information					100%	83.75	19.3%	4%

* (BO) 'Black'-owned | (BWO) 'Black' Women-owned

The results of the scenario incorporating compliance data from all three partners:

- > Status Level 4 with a consolidated participative score of 83.75 points;
- > Unified participative 'Black' Ownership score of 19.30%; and
- > Consolidated participative 'Black' Woman Ownership score of 4%.

Although the Large Enterprise reflected no 'Black' Ownership, the consolidated 'Black' Ownership of the other UJV partners enhanced the Large Enterprise's status level from a Status Level 5 with 76.50 points to a Status Level 4 with 83.75 points.

In conclusion, a UJV platform, if properly incorporated, presents a magnitude of opportunities that can drive meaningful transformation initiatives. In most cases, a UJV provides unique benefits when entering into new markets by offering increased capacity, as well as specialised or scarce skills and capital.