STRUCTURING JOINT VENTURES IN THE SUPPLY CHAIN

Words:
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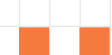

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Recent coverage continues to highlight the importance of joint ventures in the nuclear industry. These include high-profile projects like the new Box Encapsulation Plant at Sellafield. The joint venture (or partnering) model is also very familiar from the NDA competition process, with the Babcock Dounreay Partnership bringing together Babcock, CH2M HILL and URS and the Cavendish Fluor Partnership responsible for Magnox and RSRL.

Joint ventures are not solely for major projects however and are an important part of the toolkit for all participants in the supply chain. Reasons to partner can include cost savings and risk sharing, as well as access to markets and expertise. Typically a joint venture can be attractive where the skill set of one participant is not enough on its own to make a compelling case to a potential counterparty. A joint venture may enable the participants to pool knowledge, experience and resources in the most effective way to fit their offering to their intended client.

Joint ventures can be particularly attractive where a new entrant to the market lacks hands-on experience of the procurement process and wants to harness the bid capability of an incumbent.

A joint venture is likely to be less risky than an acquisition of a new subsidiary and may also give the participants more control than a distribution or sub-contracting agreement. All of this reflects messages from key players in the nuclear industry. The NDA in particular recognises that partnering can plug skills or knowledge gaps and bring new entrants to the market.

But what does the joint venture tag mean in practice and what are some of the advantages and disadvantages of the various options which are available?

One key consideration is what form the joint venture will take from a legal perspective – will it involve the use of a company (often referred to as a corporate joint venture) or will one or both parties contract directly in their own names with the end customer (a contractual joint venture)?

Typically, corporate joint ventures are used where there is a longer-term requirement for a separate entity to act as the delivery vehicle, whilst contractual joint ventures are often viewed as more suitable for bid processes and R&D projects. There are advantages and disadvantages to each (see Tables 1 and 2).

With the benefits come risks, of course. Participants in a joint venture risk loss of control when compared with a direct contracting arrangement.

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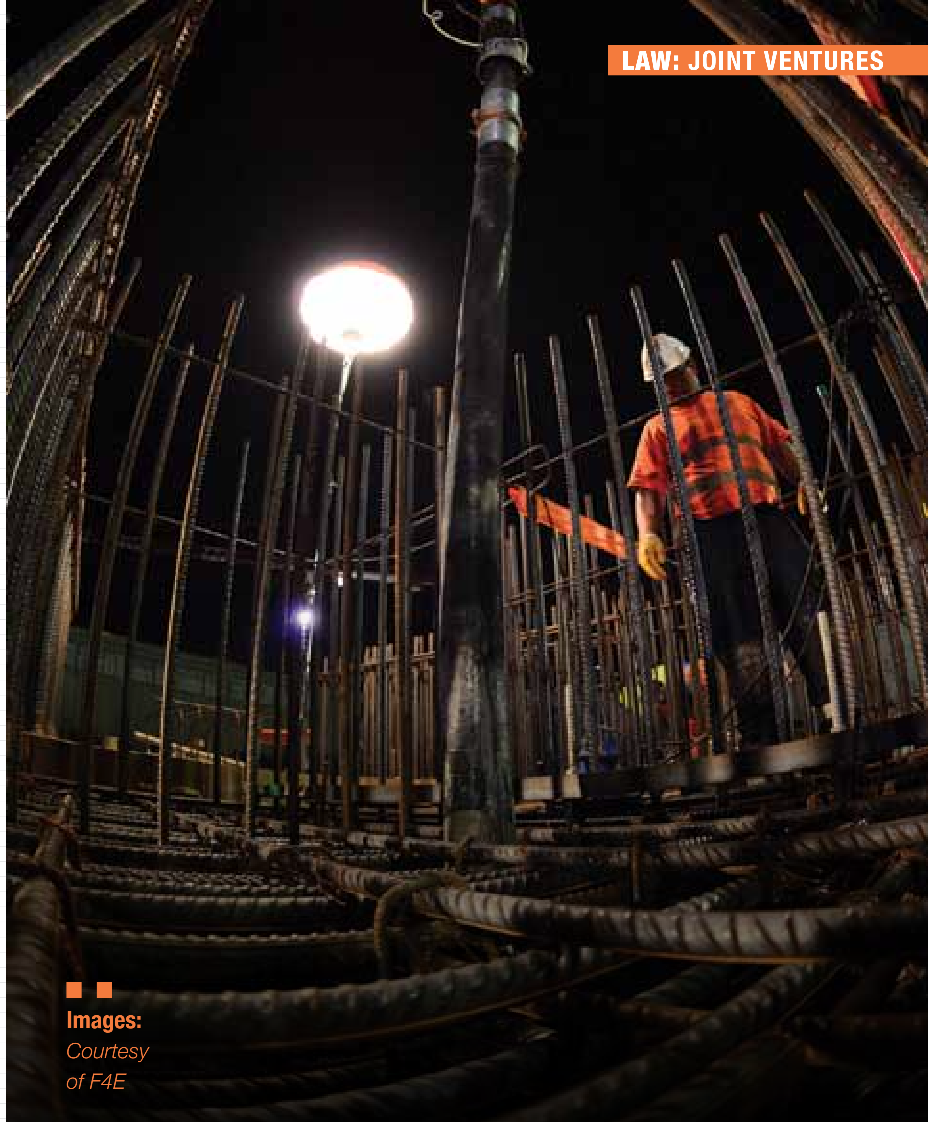

Images: *Courtesy of F4E*

Depending on the quality of the business case for the joint venture there may also be an increased risk of failure and loss of reputation.

To mitigate the risks participants may find it helpful to remember that there is no 'one size fits all' and that the arrangements for their joint venture will have to reflect the particular circumstances of those concerned. This is likely to involve identifying key risks and opportunities and focusing the practicalities of control, particularly if one partner will have day-to-day responsibility for the conduct of the project. Depending on the circumstances there may need to be a mechanism to apportion work which could be undertaken by the joint venture or by one or both of the participants. Putting in place practical solutions for managing disagreements can also be invaluable.

When assessing the options the emphasis should be on the function of the joint venture throughout its lifecycle, including how and when it is intended to extract profits and what the tax consequences of any proposed structure will be.

If this article raises any issues you would like to discuss then please contact: Nick Graves, Partner, Burges Salmon: tel 0117 939 2200; email nick.graves@burges-salmon.com or Edward Barratt, Senior Associate, Burges Salmon: tel 0117 939 2253; email edward.barratt@burges-salmon.com

Table 1. Advantages/disadvantages: Corporate joint venture

Advantages	Disadvantages
Limited liability: But potentially shareholder guarantees	Tax at the company level
Separate legal entity: Can own assets	Compliance requirements
Familiar structure: Tried and tested	Public reporting requirements
Directors' duties: Established corporate governance/directors' duties regime	Rules on payment of distributions/ dividends

Table 2. Advantages/disadvantages: Contractual joint venture

Advantages	Disadvantages
Informal: Parties can agree terms and conditions	No separate legal entity
Flexible: No company law issues affecting operations/management	Lack of clear structure/commitment
Simple to unwind: No separate legal entity to strike off/wind up	No background of company/ partnership law to support terms of alliance or actions of management/ participants
Speed: In certain situations, can be established very quickly (e.g. consortium agreements on bids)	Risk a legal partnership may be created