

ACE 2020

ACE CHECKLIST
FOR INTERNATIONAL
COLLABORATION
BETWEEN ARCHITECTS



ARCHITECTS' COUNCIL OF EUROPE
CONSEIL DES ARCHITECTES D'EUROPE



Co-funded by the
Creative Europe Programme
of the European Union



■ Introduction

Following the publication of the *Guide to working internationally*^{*}, the ACE established a checklist to facilitate international collaboration between architects.

If you have decided to work abroad, you might also be looking for a host country partner. Sooner or later you will need some sort of agreement - but before getting to this stage, it is important to make sure that you have the best strategic match.

You can achieve a win-win solution if you find a partner that complements your skills in a way that makes the combined cooperation beneficial for both parties. All too often, we hear about architectural companies teaming up with firms that have the same in-house competences. This may be very human – as we tend to be attracted to firms that look rather like our own - but it is not good for business. And it makes no sense to invite architectural companies from abroad to compete for a tender whose requirements you can meet by your own means.

Therefore, it is recommended that you map out your own competences, giving each a score from 1-10 – and then look for partners that have the opposite scores. You are more likely to gain from this, than spending time working with similar firms, without any positive outcome.

Once you have found the right firm, you still need to make sure that your collaboration runs smoothly.

This document is designed to give you some advice on how to proceed and to highlight some of the pitfalls you may encounter. At the end you will find a draft Memorandum of Understanding that you might wish to use when embarking on any 'joint venture'.

The experience of most European architects offering services abroad, and especially in countries outside the European Union, shows that the **most serious barrier** is not (as one might suppose) local bureaucracy but the **resistance of local architects, wishing to defend themselves against “foreign competition”**. Therefore, for an architect offering cross-border services, in addition to developing good relations with the client, it is crucial to arrange a **correct and friendly relationship with the local community of architects**. As experience shows again, the correct management of relations between a foreign and local architect can be **very beneficial for both parties**, provided that the principles of **reciprocity** are respected, and the **rights and obligations of the parties are set out in an appropriately symmetrical manner**.

Two or more practices (both international and local) may consider **marketing themselves** as a group and may even include engineering or interior design firms to provide “full scope of services” or a “one-stop shop”. Unfortunately, a frequently made mistake is that the “stronger party” may **dominate by imposing its own cultural and technical standards, not necessarily well suited to the local conditions prevailing in the country in which the project is to be implemented**. To be successful in international markets, architects should first keep their **ego under control and learn to listen**. In most instances, cross-border architects team up with local practices to offer project services to clients because such joint proposals are in fact synergetic, i.e. **stronger than either party could provide individually**, whereas each brings its special competences, and simply because one is located closer to the project site than the other.

The intention of this document is to provide a choice between methods of joint operation and to point out to general rules and terms for two (or more parties) to secure their mutual rights and obligations in forming a joint venture.



It is assumed that the joint venture, once established, will enter into agreement(s) with the client(s) to provide professional services. The parties may be either all architects or a combination of architects and engineers, or another combination of professionals.

The basic options available for the mode of operation of a joint venture are:

- A| The **“Division of Profit and Loss”** method that is based on each party performing work and billing the joint venture, **at cost, plus a nominal amount for overheads**. The ultimate profit or loss of the joint venture is divided between or among the parties at completion of the project, **based on their respective share interests**.
- B| The **“Division of Compensation”** method which assumes that the **services provided and the compensation received** will be divided among the parties in the **proportions agreed at the outset of the project**. Each party’s profitability is then dependent on the individual performance of pre-assigned tasks and is **not directly tied to that of the other parties**.
- C| The **“Different Architects for Different Phases”** scenario which assumes that the services provided and the compensation received will be **divided between various architectural entities as the project develops**. Usually such a decision is made by the Client who appoints, directly, an international architect for the conceptual phase and another (local) architect to obtain the mandatory approvals and permits. Once the building permits have been obtained, the client is likely to appoint a building contractor on a Design & Build basis and possibly keep the “concept architect” involved in the site supervision process. However, this scenario practically **excludes collaboration** between the international and the local architect, and so it is not discussed further at this point.
- D| An **agreement between an international architect and a local “consulting architect”**. That is an option for architects wanting to hire another architect to perform a limited scope of service as a “consultant”. That arrangement, however, **may be perceived by the local architect as being too “asymmetrical”**.

It is recommended, therefore, to concentrate on the **options A and B above**.

■ **“Division of Profit and Loss”** Option A

This is the most “classical model” of joint business co-operation based on the same general terms as **any other legal entity**. In most European (and even non-European) legal systems, the term “joint venture” does not have a precise legal meaning; it could be a **new partnership or corporation** or just a simple **association of existing legal entities**. Unless a new partnership or corporation is set up for the joint venture with a new Certificate of Practice, the actual names of **each individual firm must be maintained and kept intact**.

Because there is no precise legal definition for a joint venture, setting out the **terms and sharing of fees and services in a written agreement** between the parties is absolutely essential to **avoid future disputes**. In practice it is only reasonable to establish such a formalised joint venture where a long-term cooperation (not limited to a single project) is intended by the parties. Two or more practices may also want to set up a ‘formal’ joint venture for a large project, however, with the expectation that the joint venture will dissolve once the project is completed. Whatever the reason, the method described as “formal” is suitable for firms wishing to establish a new separate practice with a new name via a new Certificate of Practice.



Standard procedures for setting up the new architectural practice in any country include, among other things:

- application to the local Chamber/Registrar for the license (Certificate of Practice),
- obtaining insurance(s) in proper proportion to the scale of the planned operation,
- organising accounting, banking and other vital business arrangements.

It is very important to draw up a Memorandum of Understanding (MOU) or agreement of “joint venture”, at the outset, to document the division of responsibilities and compensation. The agreement should state:

- who is in charge,
- who is the principle architect, (or the applicable proportion of shares),
- how the production of project documents and contract administration will be divided,
- how the copyrights of parties will be protected,
- who will do the accounting etc.

There are a number of potential hazards attached to this model, such as the method of calculating the operational expenses of the parties that often might be rooted in quite different economic environments. **Therefore, trust, transparency and mutual accountability are essential to a successful joint venture relationship.** In most cases creation of such a formalised “joint venture” company should be **preceded by temporary cooperation** of the parties based on a less-formal arrangement, such as for example:

■ “Division of Compensation” Option B

Under this scenario there is **definitely no need to establish a new formal (legal) entity**. The arrangement may be of a “semi-formal” or “informal” nature. Such an agreement is most often attached to a single, clearly described project (or a group of projects). What differentiates the “semi-formal” from “informal” is that the client/architect contract names the Architect as “A-Architects and B-Architects Inc. in Joint Venture”, and both architects sign the contract. Both practices are responsible for the services and both are liable to the client and others (joint and several responsibility). It is **sometimes advisable to discuss with the client the choice** of having one practice in the “joint venture” being the “prime consultant” and signing the contract (informal) or having both sign the contract (semi-formal). Some clients may prefer to have one firm identified as being in charge; others may wish the alternative. Also, clients may ask to have information on the roles and responsibilities of each firm set down in the client/ architect contract so that they too know who will be doing what and who is in charge. Under this scenario the parties should mutually agree to a **“Matrix of Responsibility”**, in other words, a “Schedule of Deliverables” that precisely defines:

- The elements of the Project to be elaborated (Deliverables);
- Accountable Parties assigned thereto;
- The Time Schedule for providing the aforesaid Deliverables;
- The Project Fees attached to the Deliverables.

In fact, the “Matrix of Responsibility” constitutes **the most essential attachment to an informal or semi-formal joint venture agreement**. It is the responsibility of the “prevailing party” to ensure that the “Matrix” is completed (i.e. properly addressing all aspects of the Project).

The suggested mode of offering services, to minimise complications contractually, is for one practice to be the “prime consultant” and the other(s) to be associated as [a] **sub-consultant(s)**. This informal arrangement can still be called a “joint venture” because as noted, a joint venture is simply a statement that firms are associating. The prime consultant would sign the contract with the client on behalf of the joint venture. An agreement of joint venture or MOU is **still extremely important to avoid disputes later on**.



Various invoicing scenarios are conceivable. It is either possible for each party to **charge the Client directly** (in such cases the joint venture agreement should be “trilateral”) or that the “prevailing party” (in that case most likely the “international architect”) will solely make a direct contract with the client and **sub-contract the “local architect”**. Usually the latter scenario applies, when one of the parties has an evidently prevailing position and another party generally accepts this.

The attached “Joint Venture (Preliminary) Agreement Template” has been designed specifically for architects wanting to join forces with another professional entity and eventually form a separate partnership. The JVAT provides the first legal vehicle for firms wishing to join forces, even for a limited period of time or for a specific project. The template has been prepared in MS Word, hence providing its users with the option of adapting, modifying, personalising and using it on multiple projects.

*NOTE: The information contained in JVAT document is by no means an alternative to taking advice from a professional legal services provider. All specific questions about legal matters should be **addressed with a professional legal services provider acting within the governing law**. Never fail to seek legal advice; never delay seeking legal advice; never commence or discontinue any legal action because of information contained in this JVAT document!*

■ Suggested steps

This Practice Tip is intended as guidance for joint ventures between architectural practices:

- 1| Determine if a ‘formal’ setup with a new Certificate of Practice is indeed desired. If so, follow the appropriate procedures.
- 2| If a formal setup is not required, decide on the type of joint venture to be arranged. Use the current firm names with the addition of “in joint venture” or “in association with”.
- 3| Prepare an agreement of joint venture and/or the “Matrix” documenting the split of work and compensation, responsibilities in each of the phases, the principal(s) in charge, the lead designer(s), the address of record and other vital matters.
- 4| Divide the services into as many pieces as is practical and assign responsibility for each party to avoid a duplication of efforts or gaps in services. It can be more effective to have an uneven split for various portions of the work. Doing everything 50:50 can lead to duplication where it is not needed (!).
- 5| Careful and transparent internal accounting is required to keep a tally of all costs, billings, payments received from the client and distribution of funds. One firm should be designated for the accounting role. In certain cases, an independent audit may be necessary from time to time.
- 6| Decide how you intend to sign the client/architect contract - one firm or both - discuss with the client and be consistent with the MOU/joint venture agreement.
- 7| Review the insurance policies of each firm. Determine what is appropriate including the possibility of a single project insurance policy or whether top-up is required to balance coverage
- 8| Consult your legal adviser, accountant and insurance advisors.

■ Joint Venture Agreement Template [example]

MEMORANDUM OF UNDERSTANDING (TERMS OF BILATERAL J-V AGREEMENT)

This agreement is made on the [enter day] day of the [enter month] month of the [enter year] year, in [enter city], [enter country], between:

- [enter name and address of the Architect "A"] represented by Mr/Ms. [enter name of the representing person], the [enter its function],

and

- [enter name and address of the Architect "B"] represented by Mr/Ms. [enter name of the representing person], the [enter its function].

A| Under this agreement both architectural firms shall establish a joint-venture operation to be located in [enter city], [enter country] with the primary purpose of providing project development and project management consulting services in the field of architecture and building engineering.

B| The future collaboration between Parties shall comply with the ACE European Deontological Code (revised version) adopted on the 22 April 2016.

C| This preliminary agreement shall be followed by the legal steps required under the [enter governing law] to form a company, under the name hereinafter named "joint-venture".

D| The parties amicably agree that [enter name and address of the Architect "A"] shall possess ..% of the joint-venture shares whilst [enter name and address of the Architect "B"] shall possess ..% of the joint-venture shares.

E| The joint-venture shall be established primarily in order to provide the above mentioned services to [enter name of client] in development of its [enter name and location of the project].

F| The agreed scope of co-operation shall be as follows:

1. The joint-venture shall endeavour to obtain an appointment (contract) from [enter name of client] as the architectural and engineering consulting office for the [enter name and location of the project].
2. At the first stage of the co-operation, in order to effectively carry out works, the joint-venture shall use the presently existing offices (and staff) of [enter name and address of the Architect "A"] and [enter name and address of the Architect "B"].
3. In the second stage of the co-operation it is foreseen to arrange, (upon separately agreed conditions), a sufficient office facility for the operation of joint-venture in [enter city], [enter country].
4. The future office of the joint-venture shall be managed by [enter name of the designated person], shall employ qualified staff and shall be furnished with all necessary hardware/software and communication equipment in order to ensure efficient operation. The aforementioned equipment shall be provided by both parties, in fair proportion to their shares in the joint-venture, based on a separate agreement.
5. [enter name and address of the Architect "B"] shall provide all necessary local expertise to ensure the compliance of all design works with the [enter name of country] Building Codes and Regulations, as well as with any specific local requirements;
6. The parties to the joint-venture undertake to make every effort to provide highest quality and timely services to the Client(s).
7. The actual scope/split of work shall be agreed separately on the project basis. However, it is generally understood that [enter name and address of the Architect "B"] shall be primarily responsible for the compliance with the [enter name of country] Codes & Regulations whilst [enter name and address of the Architect "A"] shall be primarily responsible for compliance with the corporate standards of the Client(s).
8. The parties to the joint-venture confirm their mutual willingness and ability to commence the operation immediately upon receipt of the contract and technical guidelines from the Client(s);
9. This preliminary document shall constitute the agreement between [enter name and address of the Architect "A"] and [enter name and address of the Architect "B"] until the joint-venture is formalised.
- 10.

For [enter name and address of the Architect "A"]:

For [enter name and address of the Architect "B"]:

