

Types of joint ventures law commercial essay

[Law](#)



Evaluate this statement making reference to relevant legal authority in support of your evaluation. A joint venture between architectural firms that

Types of Joint Ventures:

Between two practises equal sharing of works
Between two practises, one designs the other supervision and certifies
Between two or more practises - separate expertise
Another important time where Joint Venture would be used is for international Work, i. e. an Irish architectural company would joint venture with a polish architect if working on a project in Poland [in the first instance and then might develop a permanent presence if they won more projects there]
New procedures for the Suitability Assessment and Appointment of Consultants posted 3rd January 2013. These procedures will come into effect on the Monday 4th February 2013 - See more at:
[http://www.education.](http://www.education.ie/en/School-Design/Appointment-of-Consultants/#sthash.vXeT3yLV.dpuf)

[ie/en/School-Design/Appointment-of-Consultants/#sthash.vXeT3yLV.dpuf](http://www.education.ie/en/School-Design/Appointment-of-Consultants/#sthash.vXeT3yLV.dpuf)
When a joint venture make an application to the Department of Education and Skills , whilst filling in the Suitability Assessment Questionnaire they are required to fill this out for each member of that Joint Venture which are combined and submitted as a single application. These in turn are then evaluated and marked as a single application
It is these very type of applications that would see the formation of Joint Ventures in order to gain a higher marking return on their submission. The current DoES suitability assessment declaration 2013 makes reference to JV within their questionnaire, for example within section 2 applicant's details the nature of the applicant is asked - this can vary from a sole trader , partnership, private limited company , public limited company or a JV
Where there is a JV

<https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

application being made the name and address of all company members needs to be supplied -This same questionnaire refers to JV application [amongst other types of applications] under Evidence of the applicants personal - and once they receive confirmation of these grounds the JV is honk dory in proceeding wit the application : The current DoES suitability assessment declaration 2013 make reference to Joint Ventures within their questionnaire- for example within Section 2 - ' Applicants Details' the nature of the applicant is requested, where this could be a partnership, sole trader, private limited company, public limited company or Joint Venture. Following on if a Joint Venture are filling in the questionnaire , they are required to to give confirmation of their personal situation : Evidence of applicants personal situation - here confirmation is required that none of the grounds as specified in Article 45 and 51 see belowIf any one of the grounds specified in Article 45 and 51 of Directive 2004/18/EC (and Regulation 53 of SI No. 329 of 2006) apply to the applicant or any member of the applicant Consortium or Joint Venture or their parent companies, the applicant may be excluded from this competition. This is confirmation firstly of article 45 of DIRECTIVE 2004/18/EC : Criteria for qualitative selectionArticle 45

Personal situation of the candidate or tenderer

Article 45

Generally this covers the personal situation of the tenderer[s] , items such as do they have a criminal background ? Have they been involved with fraud, corruption or money laundering? Or were ever part of a criminal organisation? This also covers areas of a financial background where the tenderer must also give confirmation of no involvement , are they bankrupt or in administration ? do they owe monies to or fail on payments regarding social security contributions ?

Have they failed on payment of their taxes ? If any one of the above [they cannot meet] they will be naturally excluded from the competition , Like wise regarding Article 51, hereArticle 51

Additional documentation and information

The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 45 to 50. Regulation 53 of SI No. 329 of 2006

REVIEW BELOW AND INCLUDE IN FINAL REFERENCE

CHAPTER 2Criteria for qualitative selection

Exclusion of certain persons from being considered for awards of public contracts

53. (1) In considering whether or not to award a public contract, a contracting authority shall exclude from consideration any person who, to the knowledge of the authority, has been convicted of an offence involving—

<https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

- (a) participation in a prescribed criminal organisation, or
 - (b) corruption, or
 - (c) fraud, or
 - (d) money laundering.
- (2) In order to give effect to paragraph (1), the contracting authority—
- (a) shall, whenever appropriate, ask a candidate or tenderer to supply the documents referred to in paragraph (6), and
 - (b) may, if it has doubts concerning the personal situation of the candidate or tenderer, also seek information that it considers relevant from an appropriate competent administrative or judicial authority.
- (3) If the information referred to in paragraph (2)(b) concerns a candidate or tenderer established in another Member State, the contracting authority may request the co-operation of the competent authority of that other State. Such a request may extend to any agent of the person and, in the case of a body (whether incorporated or unincorporated), extend to any person who is concerned in the direction or management of the body.
- (4) In considering whether to award a public contract, a contracting authority may exclude from consideration any person—
- (a) who is subject to a bankruptcy or insolvency procedure or process of a kind specified in paragraph (5), or
 - (b) who has been found guilty of professional misconduct by a competent authority that is authorised by law to hear and determine allegations of professional misconduct against persons that include the operator, or
- <https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

- (c) who has committed grave professional misconduct provable by means that the authority can demonstrate, or
 - (d) who has not fulfilled an obligation to pay a social security contribution as required by a law of the country or territory—
 - (i) where the person ordinarily resides or carries on business, or
 - (ii) where the authority is established, or
 - (e) who has not fulfilled an obligation to pay a tax or levy imposed by or under a law of the country or territory—
 - (i) where the person ordinarily resides or carries on business, or
 - (ii) where the authority is established, or
 - (f) who has provided a statement or information to the authority or another contracting authority knowing it to be false or misleading, or has failed to provide to the authority or another such authority a statement or information that is reasonably required by the authority for the purpose of awarding the public contract concerned.
- (5) A person is subject to a bankruptcy or insolvency procedure or process for the purpose of paragraph (4) if —
- (a) the person is bankrupt or the subject of a bankruptcy petition, or
 - (b) the person, being a body corporate, is being wound up or the subject of proceedings for compulsory winding up, or

(c) the person's affairs are being administered by a court, or the person is the subject of proceedings in which it is sought to have the person's affairs so administered, or

(d) the person has entered into an arrangement with creditors, or

(e) the person has suspended business activities, or

(f) the person is, in the opinion of the contracting authority concerned, in any situation analogous to any of those mentioned in subparagraphs (a) to (e) under a law of the State, another Member State or a third country relating to bankruptcy or insolvency.

(6) A contracting authority shall accept as sufficient evidence that a person is not liable to be excluded under paragraph (1) or under subparagraph (a), (b), (d) or (e) of paragraph (4)—

(a) a copy of the relevant judicial record, or

(b) in the absence of such a copy, a certificate issued by a competent judicial or administrative authority in the country or territory where the person ordinarily resides or carries on business, or the authority is established,

showing that the particular subparagraph does not apply to the person.

(7) Without limiting paragraph (6), a contracting authority shall accept as sufficient evidence that a person is not liable to be excluded under subparagraph (d) or (e) of paragraph (4) a certificate issued by the Collector General of the Office of the Irish Revenue Commissioners showing that the relevant subparagraph does not apply to the person.

(8) If a question arises as to whether paragraph (1), or subparagraph (a) or (b) of paragraph (4), applies to a person and either—

(a) the relevant judicial or administrative or competent authority in the country or territory in question does not issue documents of the kind referred to in paragraph (6), or (7), or

(b) although it issues documents of that kind, they do not cover the case in question,

the contracting authority concerned shall accept instead a declaration made by the person on oath or, in the case of a Member State where there is no provision for making a declaration on oath, a solemn declaration made by the person before a person authorised for the purpose under a law of that Member State.

(9) The following are authorised authorities for the purposes of paragraph (8):

(a) a competent judicial or administrative authority of the country or territory where the person ordinarily resides or carries on business or where the contracting authority is established;

(b) a notary or a competent professional or trade body located in that country or territory.

Point that is being made is JV are deemed to be acceptable by the government - expand

[insert the marking system page 11 of the questionnaire]

The very formation of JV - resulting very possibly from our current economic would reasonEnough for architects to consider forming a JV. The days of <https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

being on a School Board , or the local architect or friend of the principal or having a history in designing previous works for a school are over .

Nowadays Architects, just like contractors have to apply for any government / public works [check is this the case with private] by firstly submitting a suitability questionnaire to see if they are capable to carrying out the works required . Being capable would require the following criteria on the applicanrs personal situation which they would be marked :

Get an example from aaron of an actual submission

ApplicantThe DoES introduced ' New procedures for the Suitability Assessment and Appointment of Consultants posted 3rd January 2013. These procedures will come into effect on the Monday 4th February 2013. - See more at: <http://www.education.ie/en/School-Design/Appointment-of-Consultants/#sthash.H6eVE8C2.dpuf>Through my research, I could not find a Joint Venture agreement in Ireland. I wrote to the RIAI and the RIBA in relation to this enquiring about the provision of architectural services in relation to two architectural practises combining to become engaged in a special project. Also enquiring if there are any institute guidelines that would be of assistance to me, highlighting I was aware that a separate company may have to be formed with separate professional indemnity , however any advice on set procedures that are available would be of assistance. The RIBA replied informing me there was a draft paper produced a few years back on joint ventures with a draft agreement , however they advised you would need to take specific legal advice , however the paper may form a basis for beginning the process [see attached]Further to my research I was looking for any examples of Joint Venture in Ireland where they may have infringed on

<https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

competition law. This I found difficult as all the documentation I came across as discussed earlier had all the bases covered - if one could make an application as a joint venture to a government body [as long as you adhered to their conditions] the transparency of it all etc.....the allowance of these types of applications for such works would appear to be ok - even from the competition law infringement reference. Anyway further research on the Competition Authority website , brought me to the Group 91 architects, an influential consortium of eight practises responsible for the Temple Bar Architectural framework plan. Temple bar properties had a mission to develop Temple bar as Dublin's Cultural quarter, so they commissioned an Architectural framework plan, the first public agency to do so. A competition followed with the winner being Group 91 Architects, consisting of Rachael Chidlow, Shay Cleary, Yvonne Farrell, Paul Keogh, Niall McCullough, Shelley McNamara, Michael McGarry, Valerie Mulvin, Siobhan Ní Eanaigh, Sheila O'Donnell, Shane O'Toole, John Tuomey, and Derek Tynan. -Further research resulted in the finding of the Competition Authorities decision of the 20th October 1995 relating to a proceeding under section 4 of the competition act 1991. The case refers to Group 91 architects requesting a certificate from the Competition Authority in respect of a shareholders agreement-A joint venture company should also prepare a shareholder's agreement, a contractual agreement between the parties involved that sets out the ownership and management details of the newly formed company This joint venture was formed for the particular purpose to provide architectural services for the framework Plan competition—as none of the eight companies would have the expertise or knowledge to apply for this solo. The reason behind the shareholders agreement was to regulate and ----- the <https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

standing of each member of this JV' Competition Law' by Richard Whish it is noted ' Joint Ventures' and its reference to article 81[1] ' does not apply to full function joint ventures , which are dealt with under the provision on merger control'Competition Authorities refer to unfair methods where businesses may engage in anti - competitive competition given examples as cartels, bid rigging, areas where evidence of such unfair

Area where Joint Ventures are forbidden: Refer to Regulation 53 of SI No. 329 of 2006

[I think this comes from DoES] DoES-QC1 Suitability Assessment Declaration 2013Irish Competition Law : The Competition Authority has responsibility for enforcing Irish competition law. We are also responsible for enforcing European competition law (see European competition law).

The Competition Act 2002 contains two main prohibitions:

1. Section 4(1) prohibits and renders void " all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State". The Act lists some specific types of behaviour which are expressly prohibited. These include agreements which: fix priceslimit or control production or marketshare markets or sources of supplyapply dissimilar conditions to equivalent transactions with other trading parties orattach supplementary obligations to a commercial contract which have nothing to do with the subject of the contract (e. g. tying). 2. Section 5 prohibits the abuse of a dominant position. It is important to recognise that it does not prohibit a dominant position - only its abuse. Generally a firm is

considered to be dominant if it is able to act without taking account of the reaction of its customers or its rivals, e. g. a firm which can increase its prices unilaterally because it knows that its customers have few, if any, satisfactory alternative sources of supply and therefore little choice but to pay the higher price. The Act is not breached when a firm's vigorous competition takes sales away from less efficient rivals, since this is competition working properly. Section 6 and 7, respectively, make these prohibitions an offence. Penalties for breaching section 4 or 5 are set out in section 8. The Competition (Amendment) Act 2012

On 3 July 2012, the Minister for Jobs, Enterprise and Innovation commenced the Competition (Amendment) Act 2012. The Act is intended to strengthen the enforcement of competition law and help battle white-collar crime in Ireland, ultimately helping to reduce costs across the economy and create jobs. The main provisions of the Act include: an increase from 5 to 10 years of the maximum prison sentence for conviction of an offence relating to anti-competitive agreements, decisions and concerted practices; increases in fines that can be imposed for competition offences from €4 million to €5 million; a body convicted of competition offences may have to pay the costs of investigation and court proceedings for the first time; the courts can now disqualify a person from being a director of a company in summary criminal and in civil proceedings; a person convicted of certain competition offences will not be eligible for probation; commitments given to the Competition Authority can be made rules of court; it will be easier for private individuals affected by anti-competitive practices to prove an action for damages against a cartel; once public enforcement proceedings have successfully been taken

The Minister also signed an order to commence section 10 of the Competition Act

<https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

2002 which provides measures to assist juries in considering complex financial and economic evidence during trials for breaches of competition law.

Mergers & Acquisitions

Mergers are a mechanism used by businesses to restructure in order to compete and prosper. However, some mergers can have a negative effect on consumer welfare by, for example, leading to an increase in price or a reduction in output. That is, they substantially lessen competition and consumers (including businesses) suffer. Mergers over a certain financial threshold must be notified to the Competition Authority for review. The Competition Authority aims at all times to make sure that mergers are reviewed in a timely manner so that good mergers are not held up. At the same time, the Competition Authority actively protects the interests of consumers and has the power to block mergers where it finds that it will lead to a "substantial lessening of competition". Another reason to follow procurement rules is that by following an open, transparent and non-discriminatory competition the most suitable partner and the most favourable terms and conditions will be obtained by the local authority. The above would refer to - By following or applying to the likes of government application competitions - such as 'DoES-QC1 Suitability Assessment Declaration 2013' And following all the criteria that one must - how could any joint venture be deemed to 'infringe on competition law' when all is transparent ?!! Here again - is it not the responsibility of those seeking tenders to make every effort to : Every effort should be made to ensure adequate competition, and the contracting authority should aim to receive at

least three realistic tenders in each case. In evaluating the tenders, the contracting authority may decide which bid to accept based on either the lowest suitable tender or the most economically advantageous tender.

Competition Rules Regardless of its classification, the newly formed Joint Venture is likely to partake in commercial or economic activities and be seen as an "undertaking", and therefore is subject to EU and Irish Competition law. EU law will apply when trade is potentially affected between Member States while Irish law will apply when trade is affected within Ireland. In Ireland the Competition Act, 2002 has replaced the Merger and Takeovers (Control) Acts 1978-1996 and the Competition Acts 1991-1996. This Act consolidates and modernizes the existing statutory arrangements for competition and mergers.

Anti-Competitive Arrangements This practice is dealt with in Section 4 of the Competition Act, 2002 and Article 81 of the EC treaty. It is unlawful to have an arrangement between two or more operators in the market where the object of the arrangement is to prevent, restrict or distort competition in Ireland. An example of anti-competitive arrangements includes price-fixing, market sharing and imposing minimum resale prices.

Anti-Competitive Arrangements This practice is dealt with in Section 4 of the Competition Act, 2002 and Article 81 of the EC treaty. It is unlawful to have an arrangement between two or more operators in the market where the object of the arrangement is to prevent, restrict or distort competition in Ireland. An example of anti-competitive arrangements includes price-fixing, market sharing and imposing minimum resale prices. However this guidance focuses on Irish law only and assumes that JVCo will be governed by the Irish legal system.

A joint venture company goes a step further in setting up a company in order to procure the

<https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

project Another reason to follow procurement rules is that by following an open, transparent and non-discriminatory competition the most suitable partner and the most favourable terms and conditions will be obtained by the local authority. Regardless of its classification, the newly formed Joint Venture is likely to partake in commercial or economic activities and be seen as an "undertaking", and therefore is subject to EU and Irish Competition law. EU law will apply when trade is potentially affected between Member States while Irish law will apply when trade is affected within Ireland. In Ireland the Competition Act, 2002 has replaced the Merger and Takeovers (Control) Acts 1978-1996 and the Competition Acts 1991-1996. This Act consolidates and modernizes the existing statutory arrangements for competition and mergers.

Anti-Competitive Arrangements This practice is dealt with in Section 4 of the Competition Act, 2002 and Article 81 of the EC treaty. It is unlawful to have an arrangement between two or more operators in the market where the object of the arrangement is to prevent, restrict or distort competition in Ireland. An example of anti-competitive arrangements includes price-fixing, market sharing and imposing minimum resale prices.

Abuse of a Dominant Position This practice is dealt with in Section 5 of the Competition Act, 2002 and Article 82 of the EC treaty. Assuming there are no exemptions in place, if an undertaking is in a dominant position in Ireland or in a substantial part of Ireland, it may not abuse its dominance. It is important to note that this prohibition only refers to the abuse of a dominant position rather than the holding of a dominant position.

Mergers and Acquisitions From 1 January 2003 the merger control function transferred from the Minister of Enterprise, Trade & Employment to the Competition Authority. The Authority is now responsible for examining and deciding upon

<https://assignbuster.com/types-of-joint-ventures-law-commercial-essay/>

any mergers, with the one exception of a merger or takeover involving a media business, where the Minister retains a role. The turnover (the annual turnover of each of the two or more of the enterprises involved) threshold that triggers the requirement to notify a merger has been increased to €40 million and the gross assets threshold has been abolished under the 2003 regime. The EC Merger Regulation (4064/89 as amended) is applicable to large-scale mergers or acquisitions, which have a "community dimension" as defined by the Regulation. The Regulation specifically applies to "full function" joint ventures where the parties concerned exceed the relevant EU financial thresholds. While these thresholds are somewhat complex, essentially the Regulation applies to large-scale transactions which impact across the EU. Transactions that are subject to regulatory clearance by the EU Commission under the Merger Regulation do not require clearance under national merger law. Legal form There are three legal documents that will govern the legal form and operation of JVCo. These are: o Memorandum of Association, o Articles of Association, and o Shareholders Agreement, A joint venture company should also prepare a shareholder's agreement, a contractual agreement between the parties involved that sets out the ownership and management details of the newly formed company. Unlike the Memorandum and Article of Association the Shareholder's agreement is confidential and its contents do not need to be made public - it is not delivered to the Registrar of Companies for registration.