



# Joint Venture Toolkit

## Checklists: Assessing a Potential Joint Venture Partner



**This document has been prepared by Jackson McDonald in collaboration with the Waalitj Hub and is funded by the National Indigenous Australians Agency.**

This document is intended to provide a limited summary and overview of certain information to assist in the establishment of a joint venture or other commercial arrangement. This document has been put together having regard to the typical interests of Indigenous businesses but does not take into account any particular persons interests or circumstances and it is not intended to be comprehensive.

This document is not legal advice and must not be relied on as legal advice or as a substitute for legal advice. It is recommended that a person seeks professional legal, financial, tax and commercial advice in relation to their specific situation and circumstances. The law and other relevant circumstances may change, and no representation is made that this document is complete, accurate or up-to-date.



For more information, visit  
[www.wf.org.au/jv-project](http://www.wf.org.au/jv-project)

## Background

There are some critical commercial, legal and financial questions that an Indigenous business intending to enter into a joint venture should consider about the proposed joint venture.

 ***It is essential that these questions are carefully considered and fully explored before entering into any arrangement, or any documents are drafted.***

Perfect legal documents will not always address, or help to resolve, issues that may arise from a lack of alignment or relationship issues in a joint venture. The person that you thought you were entering into business with might end up being entirely different once the JV is underway, or when challenging issues arise.

These checklists are designed to assist Indigenous businesses considering entering into a joint venture arrangement. The questions address a number of different aspects including the JV opportunity, due diligence on potential JV partners and critical commercial, legal and financial matters considerations.

These checklists serve as a risk mitigation tool by assisting Indigenous businesses to identify potential risks and to ensure proper alignment of expectations. Addressing these matters at the outset will allow the JV parties to establish a good understanding of the expectations of all parties and ensure that there is alignment on key aspects of the JV relationship and opportunity.

The answer to these questions may inform the type of JV you wish to enter, the terms on which you do so, or whether you want to purpose a joint venture at all.

### The three checklists are:



**Checklist 1:** Business Evaluation and Capacity Building



**Checklist 2:** Joint Venture Partner Suitability Checklist



**Checklist 3:** Incorporated Joint Venture – Assessing the suitability of the terms of the Shareholders' Agreement

# Checklist 1:

## Business Evaluation and Capacity Building

When considering a joint venture arrangement, your Indigenous business should evaluate its own capacity and resources. Your business should also identify what type of capacity building it wishes to pursue through the joint venture, and whether entering into a joint venture would support these objectives.

Item	Question	Response/Notes
<b>Resources and Capabilities</b>		
1	What is the current capacity and expertise of your business? What areas or skills are lacking or need improvement?	
2	What is the current financial position of your business? Are there sufficient funds to support the joint venture ( <b>JV</b> )? Have budgets been prepared?	
3	How will the financial contributions and responsibilities be shared between your business and the JV partner?	
4	Does your business have the necessary skilled workforce to contribute to the JV?	
5	Does your business possess the infrastructure and facilities required for the JV?	
6	Does your business have a good understanding of the legal and compliance obligations in the relevant industry or sector?	

Item	Question	Response/Notes
<b>Capacity Building</b>		
7	<p>What types of expertise, employment or business opportunities does your business want to pursue? Which sectors or industries is your business interested in? Does the joint venture help you achieve those goals?</p>	
8	<p>To pursue the desired expertise, employment or business opportunities, what training or apprenticeships are necessary? Can a JV partner offer or fund the required training? If not, how can your business secure and finance the necessary training?</p>	



## Checklist 2: Joint Venture Partner Suitability Checklist

Once a potential joint venture partner has been identified, your Indigenous business should evaluate whether the opportunity aligns with the desired outcomes and goals of your business.

Item	Question	Response/Notes
<b>Alignment of interests</b>		
1	What does your gut say? Do you feel like you can trust them?	
2	What is your long-term vision for the business?	
3	Does the potential joint venture align with the long-term vision and goals of your business?	
4	How does the joint venture align with the strategic priorities of your business?	
5	<p>What track record does the joint venture partner have, and does it demonstrate alignment with your objectives and values?</p> <p>Can they provide examples of successful Indigenous JVs in which they have been involved?</p> <p>Can they provide examples of profitable JV relationships where capacity building and participation goals were achieved?</p> <p>Can they provide references? What does your network say about the JV partner?</p>	
6	Who will be the person responsible for managing the JV once it is formed? Have you met this person? Can you (and others in your organisation) have a successful working relationship with them?	



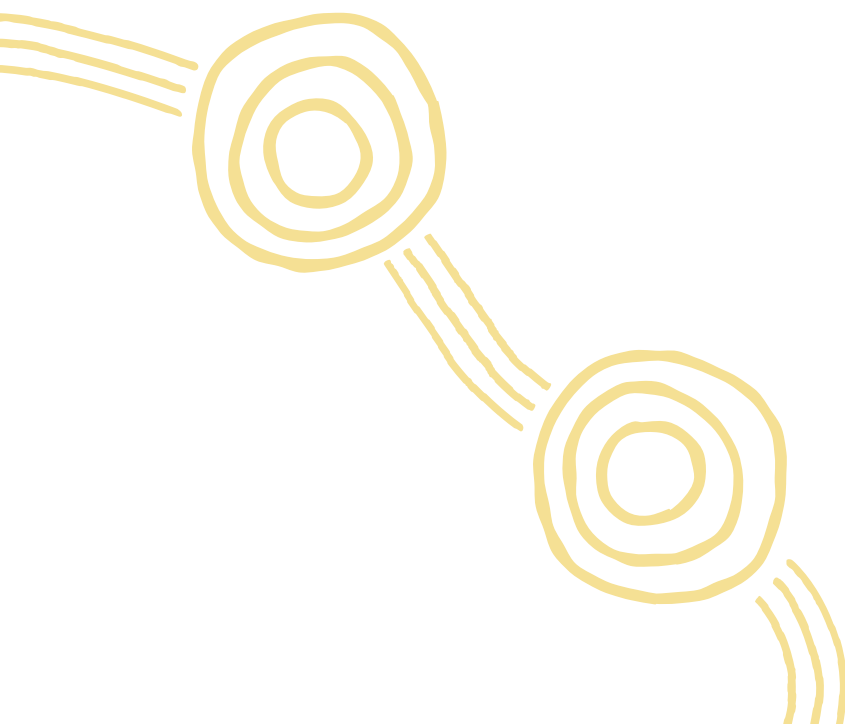
Item	Question	Response/Notes
<b>Capacity Building</b>		
7	Does the opportunity align with the capacity building, employment and training objectives of your business? Will it generate sustainable jobs and develop the required skills? Can the JV partner deliver what you need? Have they committed to this in writing?	
8	Will the project employ individuals directly or through labour hire from the business? How secure will their positions be, and does it justify a significant investment of time and finances in training?	
9	Are there appropriate plans and objectives in place for training programs and employment support to be provided under the JV arrangement? Have these been agreed and documented?	
10	Can the JV party provide a comprehensive list of employment opportunities within the JV's business, including roles, salaries and expected capabilities? If not, what assurances are there that jobs will become available?	
<b>Financial considerations (internal)</b>		
11	Will sufficient funding be allocated to enable both parties to secure the relevant jobs and training?	
12	What are the potential financial risks and rewards of the joint venture? Does your business have the capacity to bear those risks?	
<b>Legal and Regulatory considerations</b>		
13	Has the joint venture partner required you to make an exclusivity commitment? If so, does it apply to both parties?  <b>!</b> <i>Note: This should be resisted until you have completed your due diligence.</i>	

Item	Question	Response/Notes
14	Are there any legal or regulatory requirements that need to be met before entering into a joint venture?	
15	If the business is intended to be Supply Nation Certified or Registered, will the terms of the proposed JV satisfy the Registration / Certification criteria?	
16	Does your business have any financial or legal liabilities under the joint venture proposal? If so, does the potential reward outweigh the potential risks? If not, what modifications are required in the legal documents?	
<b>Governance and dispute resolution</b>		
17	How will the joint venture be governed, and what role will your business have in decision-making processes? Is it intended that you will have an equal say in how the JV business is run?  <b>! Note: Ideally you will have a controlling interest in the joint venture (i.e. own more than 50% of the shares and have a say on every decision that's made)</b>	
18	What is your exit strategy if the joint venture does not meet expectations?	
19	Are there clear communication channels and dispute resolution mechanisms in place to address any conflicts that may arise during the joint venture?	
20	How transparent is the JV partner about how they will price the goods and services it will provide to the joint venture?  <b>! Note: This is a critical question.</b>	



Item	Question	Response/Notes
<b>The joint venture project</b>		
21	<p>How secure is the contract with the project's head contractor or principal? Is the opportunity real?</p> <p>Can contracts be terminated at their convenience?</p> <p>Is the head contractor/principal satisfied with the JV parties' past or current performance?</p>	
<b>Due Diligence</b>		
22	<p>Do you need to undertake a financial due diligence on the proposed joint venture partner? Are they profitable, solvent, and do they have the available assets to properly conduct the JV?</p>	
23	<p>What information is in the public domain about the JV partner?</p> <p>If the JV partner is a public company that is listed on the ASX (or a subsidiary of one), have you reviewed its annual report?</p>	
24	<p>How well is the joint venture partner known, and what is their track record? What level of due diligence has been conducted on the JV party?</p> <p><b>For example:</b></p> <ul style="list-style-type: none"> <li>Who have they previously worked with, and how might this impact the terms or operation of the JV?</li> <li>Who are the shareholders and directors?</li> <li>Are they financially stable with adequate resources and capability to fulfill their commitments?</li> <li>What are their drivers and core values, and do they align with those of your business?</li> </ul>	
25	<p>Have you undertaken some basic searches to identify who owns and controls the JV partner?</p> <p><b>For example:</b></p> <ul style="list-style-type: none"> <li>ASIC Company Search</li> <li>Director Personal Name Search</li> <li>Insolvency Search</li> <li>PPSR Search</li> </ul>	

Item	Question	Response/Notes
<b>Community Engagement and Cultural Compatibility</b>		
26	How will the joint venture impact the local community, and are there mechanisms in place to ensure community engagement and benefit?	
27	Are there any specific cultural requirements or sensitivities that need to be addressed within the JV? Does the JV partner appreciate an understand the importance of these issues?	
28	How will cultural protocols and traditional knowledge be respected and integrated into the joint venture?	



## Checklist 3: Incorporated Joint Venture – Assessing the suitability of the terms of the Shareholders Deed

After deciding to pursue an incorporated joint venture arrangement with a suitable partner, it is essential for your Indigenous business to carefully review and ensure that the terms outlined in the Shareholders' Agreement are suitable for the parties and the project at hand. Your business must have a comprehensive understanding of these terms. Please also see "Guidance Note: Common terms in incorporated joint ventures".

Item	Question	Response/Notes
<b>Board of Directors – Composition</b>		
1	What is the maximum number of directors ( <b>Directors</b> ) that the company will have?	
2	What is the minimum number of Directors?	
3	Who will be the Directors at the start of the joint venture?	
4	Is there a requirement that a majority of the Directors are Indigenous people?	
<b>Board of Directors – Chair</b>		
5	Who will be the chairperson of the Company's board of Directors ( <b>Board</b> ) at the start of the joint venture?	
6	Who will elect or appoint the chairperson?	



Item	Question	Response/Notes
7	Will the chairperson have a second and casting vote when decisions of the Board are deadlocked?	
8	Is there a requirement that the chairperson is an Indigenous person?	
<b>Board of Directors – Managing Director</b>		
9	Will the Company have a Managing Director?	
10	If the Company has a Managing Director, who will be the managing Director at the start of the joint venture?	
11	Who will elect or appoint the Managing Director?	
<b>Shareholder decision making – Resolution requirements</b>		
12	Will general resolutions of Shareholders be passed by a simple majority (i.e. more than 50% approval)? If not, how will a resolution be passed?	

Item	Question	Response/Notes
<b>Shareholder decision making – Restricted decisions</b>		
<b>13</b>	Will any of the following matters require a special resolution or other higher approval requirement:	<b>i</b> Please tick the appropriate box
	<ul style="list-style-type: none"> <li>alteration of share capital (e.g. consolidation)</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>issuing loan capital in the company</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>borrowing any money</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>making any loan</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>changing the banking arrangements</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>getting listed on the Australian Securities Exchange</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>forming a subsidiary</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>merging with another business</li> </ul>	<input type="checkbox"/>



Item	Question	Response/Notes
13	<ul style="list-style-type: none"> <li>• granting a security interest over the business or the assets</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• appointment and removal of executives, agents or other intermediaries</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• entering a contract that's outside of normal business</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• terminating a material contract</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• granting rights over intellectual property</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• assigning the book debts of the company</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• changing the auditors</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• changing accounting policies</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• adopting or amending dividend policy</li> </ul>	<input type="checkbox"/>

Item	Question	Response/Notes
	<ul style="list-style-type: none"> <li>• dismissing staff</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• approving bonuses</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• changing or ceasing the business of the Company</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• amending the Company's constitution</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• approving or changing the remuneration of Directors or executives</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• issuing securities</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• voluntarily winding up the Company</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• changing the Company name</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>• changing the Company's registered office</li> </ul>	<input type="checkbox"/>

Item	Question	Response/Notes
13	<ul style="list-style-type: none"> <li>acquiring or disposing of part of the Company's business or assets</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>entering into a related party contract</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>providing financial benefit to a related party</li> </ul>	<input type="checkbox"/>
	<ul style="list-style-type: none"> <li>institute legal proceedings</li> </ul>	<input type="checkbox"/>