Farming Joint Ventures

Andrea V. Argue

March 3, 2021

Outline

1. Characteristics of Joint Ventures

2. Use of Joint Ventures in the Farm Growth Phase and Farm Transition Phase

3. Setting up Joint Ventures from a Legal Perspective

1. Characteristics of Joint Ventures

Characteristics

The decision *Central Mortgage & Housing Corp v Graham* (1973), 43 DLR (3d) 686 (NSSC(TD)) is still considered instructive regarding the characteristics of a joint venture:

"Besides the requirement that a joint venture must have a contractual basis, the courts have laid down certain additional requisites deemed essential for the existence of a joint venture. Although its existence depends on the facts and circumstances of each particular case, and while no definite rules have been promulgated which will apply generally to all situations, the decisions are in substantial agreement that the following factors must be present:
(a) A contribution by the parties of money, property, effort, knowledge, skill or other asset to a common undertaking;
(b) A joint property interest in the subject matter of the venture;
(c) A right of mutual control or management of the enterprise;
(d) Expectation of profit, or the presence of "adventure", as it is sometimes called;
(e) A right to participate in the profits;
(f) Most usually, limitation of the objective to a single undertaking or ad hoc enterprise."

Characteristics

- Equipment, labour and resources are pooled to reduce production costs, promote efficiency and profitability, and minimize losses
- Not a separate entity – doesn’t own its own property
- Dissolved more easily* than either a partnership or a corporation and often designed only for a specific term (*it depends)
- Profits and losses are allocated to “venturers” as opposed to any general assumption of equal participation
- Note distinction from partnership – juridical entity, owns assets and has liabilities (see *Woronuk v Woronuk* 2015 ABQB 116)

Characteristics

- Different levels of formality exist
- Joint venture agreements create legally binding obligations

2. Use of Joint Ventures in the Farm Growth Phase and Farm Transition Phase

KANUKA

Operations/Growth

- Sharing of capital assets may allow fixed costs to be spread over a larger base, lowering production costs and maximizing overall profitability
- May be used in family business arrangements, or among arm’s length parties
- Allows for control over a specific *business undertaking* while remaining as separate *business entities*
- Allows farm income to be maintained and tax deferrals preserved

KANUKA

Succession

- A joint venture may be the bridge to ultimate farm succession
- A way to transition financial and management responsibilities

3. Setting up Joint Ventures from a Legal Perspective

Joint Venture Agreement Terms

1. Designate parties
2. Outline the objective(s), scope, and purpose
3. Contributions
4. Consider attributes of the joint venturers
5. Management responsibility
6. Signing authority
7. Consider ancillary documents

Joint Venture Agreement Terms

8. Determine place of business, records, and bank accounts
9. Other essential considerations:
   a) What it is <u>not</u>
   b) Insurance
   c) Restrictions on assignment of interests
   d) Division of profits and losses
   e) Tax considerations
   f) Mutual obligations
   g) Exit provisions
   h) Third party liability issues

Conclusion

- Consider formalizing your joint venture

KANUKA

Questions?

Thank you for your attention.

Presented by:
Andrea V. Argue, LL.B.

Kanuka Thuringer LLP
302-350 Cheadle Street West
Swift Current SK, S9H 4G3
306-773-4800