

## **Book Review: ABA's MODEL JOINT VENTURE AGREEMENT WITH COMMENTARY**

**Reviewed by David B. Porter · Wood & Porter · San Francisco**

Over the last decade, the Joint Venture Task Force of the Negotiated Acquisitions Committee, American Bar Association, Section of Business Law, has compiled an informative "how-to" book that is both useful and insightful: the American Bar Association's MODEL JOINT VENTURE AGREEMENT WITH COMMENTARY (2006 edition). I highly recommend it to anyone who will be drafting or negotiating an agreement to form a joint venture or a partnership type entity.

The book is structured around specific provisions that could be included in a joint venture agreement. The model used as the foundation for the book is a Delaware limited liability company. It presumes that the venture will be composed of a large company and a small company, that they want to form a joint venture to develop the next generation of high-tech equipment and that they will combine their present operations to produce and market the equipment throughout the United States, and eventually, internationally. One company's research strength is in manufacturing systems and miniaturization. The other's is in the development of software for high-tech equipment.

The book first takes us through the preliminary considerations of choosing the right form of entity for the joint venture. Although the chart used in this section of the book goes on for multiple pages, it is easy to use.

### **Who, What, Where & How?**

The majority of the book is centered on a model joint venture agreement. Each provision of the agreement is accompanied by a commentary section explaining the significance of the provision, giving practical information about the benefits of the language or perils and pitfalls the practitioner may encounter.

For example, the commentary on "knowledge" qualifications in the representations section states that "[t]he addition of knowledge qualifications to the representations can significantly limit the non-breaching joint venturer's post-closing indemnification rights by shifting to the non-breaching joint venturer the economic risks of unknown facts."

The commentary states that such qualifications should not affect the "walk rights" if the event becomes known before closing. It also posits that if one joint venturer learns of a fact not already known to the other that is inconsistent with a representation containing a knowledge qualification, the joint venturer should disclose this fact to the other joint venturer. The commentary discusses "sandbagging" and other special considerations related to knowledge.

MODEL JOINT VENTURE AGREEMENT WITH COMMENTARY is a must-read for the new associate who needs to put together a fundamentally sound joint venture agreement. More significantly, this book will be useful to the seasoned veteran who needs to review the significance of specific joint venture or partnership related provisions. The book is available for purchase at [www.abanet.org/abastore](http://www.abanet.org/abastore) or by calling (800) 285-2221, for \$179.95 in paperback and \$189.95 in a loose-leaf binder (both versions include a companion CD-ROM).