

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
Technical Support Office

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**NPM No. 04-2005**

January 19, 2005

**HON. NORMA L. LIPANA**  
Assistant Commissioner  
Financial and Administrative Service  
OIC – Resource Management Group  
Bureau of Internal Revenue

**Re : Application of Republic Act 9184 (R.A. 9184) and its  
Implementing Rules and Regulations Part A (IRR-A)**

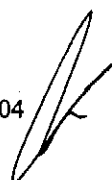
Dear Assistant Commissioner Lipana:

This refers to your letter dated 23 November 2004,<sup>1</sup> addressed to the Honorable Secretary Emilia T. Boncodin of the Department of Budget and Management (DBM), as Chairperson of the Government Procurement Policy Board (GPPB), requesting for clarification on Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) with the following substantive issues for resolution:

1. Whether or not there is a necessity for registration with the Securities and Exchange Commission (SEC) and other regulatory agencies for the validity of Joint Venture Agreement (JVA) in light of R.A. 9184; and
2. Whether or not it is sufficient for the procuring entity to accept delivery receipts, sales invoices and official receipts issued by the lead entity of the Joint Venture (JV).

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<sup>1</sup> Letter received by GPPB-TSO on November 26, 2004



## Nature of Joint Venture

Before we answer the issues presented to us, it is relevant to discuss first the nature of JV as a legal concept vis-à-vis the legislative and jurisprudential treatment of such arrangement in Philippine jurisdiction.

It must be understood that joint ventures are of recent origin in commercial law. It has no precise category as a legal entity under the Philippine legal parlance, considering that such is not specifically defined under our civil and commercial statutes. However, it has been generally understood to mean an organization formed for some temporary purpose.<sup>2</sup>

In the case of *Kilosbayan, Inc. et. al. v. Guingona et. al.*,<sup>3</sup> 232 SCRA 110 (May 5, 1994), the Supreme Court has adopted Black's definition of joint venture, when it held:

A careful analysis and evaluation of the provisions of the contract and a consideration of the contemporaneous acts of the PCSO and PGMC indubitably disclose that the contract is not in reality a contract of lease under which PGMC is merely an independent contractor for a piece of work, but one where the statutorily proscribed collaboration or association, in the least, or joint venture, at the most, exists between the contracting parties. Collaboration is defined as the acts of working together in a joint project. Association means the act of a number of persons in uniting together for some special purpose or business. **Joint venture is defined as an association of persons or companies jointly undertaking some commercial enterprise; generally all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy connected therewith, and duty, which may be altered by agreement to share both in profit and losses**<sup>4</sup> [citing Black's Law Dictionary] (supra, p. 143-144).

Culled from the above jurisprudential tenet, a JV is said to exist when the following general characteristics are present:

1. An association of persons or companies is established to undertake jointly some commercial enterprise or to achieve a common purpose or objective.
2. These persons or companies contribute money, property, industry, knowledge, skill or some other identifiable asset.

<sup>2</sup> *Gates v. Megargel*, 266 Fed. 811 [1920]

<sup>3</sup> See also *information Technology Foundation of the Philippines, et.al, vs. COMELEC, et.al.*, G.R. No. 159139 (January 13, 2004)

<sup>4</sup> Emphasis supplied.

3. These parties have: (i) a community of interest in the performance of the subject matter; (ii) a right to direct and govern management; and (iii) an agreement, express or implied, to share in the profits, risks and losses.

As adverted to earlier, a JV is basically a legal entity in the nature of a partnership engaged in the joint prosecution of a particular transaction for mutual profit. It is an association of persons with intent, by way of contract, express/implied, to engage in and carry out a single business venture for joint profit, for which purpose they combine their efforts, property, money, skill and knowledge, without creating a partnership or a corporation pursuant to an agreement that there shall be a community of interest among them as to the purpose of the undertaking and that each joint venturer shall stand in the relation of principal, as well as agent, as to each of the other co-venturers, with an equal right of control of the means employed to carry out the common purpose of the venture.<sup>5</sup>

As it is treated as a mere association for some temporary business purpose devoid of any juridical personality, it follows that corporations or entities forming a joint venture retain their respective individual legal personalities. Further, considering that the specie of JVs is generally contractual,<sup>6</sup> their relations, rights and liabilities as among themselves and in respect of third parties, are principally governed by contract or agreement.

### **Necessity of Registration with the Securities and Exchange Commission**

Section 23.6.2, IRR-A, R.A. 9184 on Eligibility Checking for the Procurement of Goods and Infrastructure Projects explicitly provides:

Class "B" Documents –

- a) Valid joint venture agreement, in case of a joint venture; and
  - b) Letter authorizing the BAC or its duly constituted authority representative/s to verify any or all of the documents submitted for the eligibility check.
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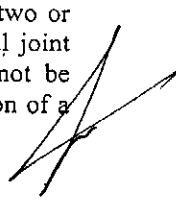
While it is necessary to register a would be corporate entity with the SEC, it is clear from the provision that what is mandated under the procurement law is the validity of the JVA between persons or companies and not the establishment or creation of a new entity. Hence, once the validity of the agreement of the JV partners is established, the requirement under the aforementioned law is deemed satisfied.

Unlike in a corporation or partnership existence, no other formal requirement other than a JVA is necessary before individuals and/or entities can establish a JV

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<sup>5</sup> 46 American Jurisprudence. 2d, p.21

<sup>6</sup> In Securities and Exchange Commission (SEC) Opinion [April 29, 1985], it was ruled that two or more corporations may enter into a joint venture through a contract or agreement (contractual joint venture) if the nature of the venture is authorized by their charters, which contract need not be registered with the SEC; provided, however that the joint venture will not result in the formation of a new partnership or corporation.



among themselves. What is essential is that a contract embodying the agreement of partnership of the co-venturers and defining their rights and obligations under such agreement is submitted. In other words, mere submission of the valid joint venture agreement of the parties is sufficient compliance of the requirement under R.A. 9184. Hence, the requirement for registration from the SEC is not necessary to make a JV valid in light of R.A. 9184.

For the purpose of complying with the requirements of R.A. 9184 and its IRR-A, no standard form is prescribed nor specific terms and conditions should be spelled out in the joint venture agreement in order that it be valid. However, all JVAs are required to be notarized in order to be considered valid and binding to third persons, such as the procuring entity.

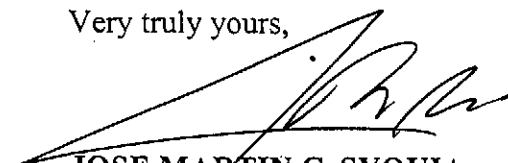
**Delivery Receipts, Sales Invoices and Official Receipts issued by the Lead Entity of the JV and the sufficiency of acceptance thereof by the Procuring Entity**

In view of the above discussion, the acceptance by the procuring entity of delivery receipts, sales invoices and official receipts of the lead entity alone would suffice. Such acceptance is valid for as long as the lead entity or representative of the concerned JV has been clearly identified in the agreement among the co-venturers. In addition, it is advised that the JVA should specifically state therein the name of the person who is appointed as the lawful attorney-in-fact of the JV to sign the contract, if awarded.

However, it is to be noted that for purposes of compliance with R.A. 9184 and its IRR-A, the participating entities entering a JVA are to be treated as a single entity and the persons/entities forming themselves into a joint venture, expectedly intend themselves to be jointly and severally responsible or liable for the obligations and civil liabilities actually incurred by the particular JV.

With the foregoing elucidations, we trust that our opinion has clarified the aforesaid issues.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director III

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