

AON

CESA Practice Notes

Webinar

Risk Management

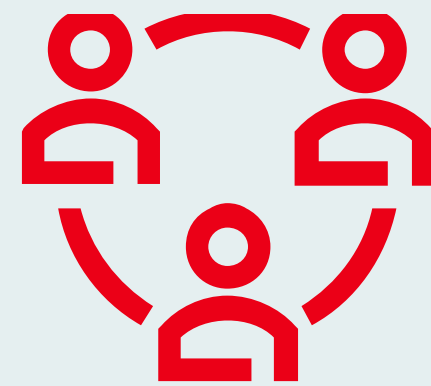
October 2021



Agenda

What's Inside

The following topics to be discussed at this meeting



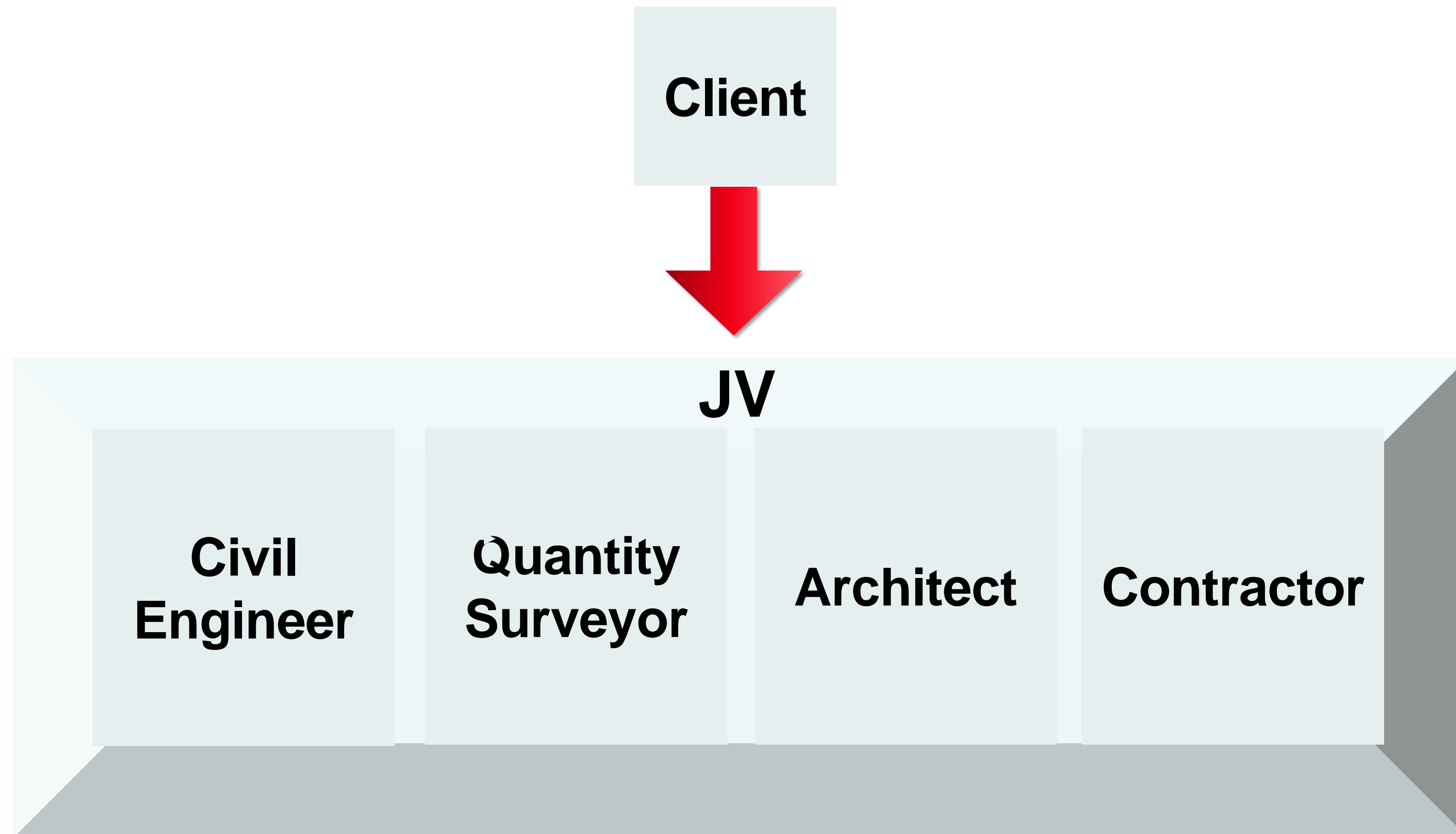
**Joint
Ventures
PN03**



**Insurance –
Professional
Indemnity and Public
Liability – PN04**

Understanding Joint Ventures

The notion of joint and several liability – liability for the errors of others



Risks Associated with Joint Ventures

- 1 Joint and Several Liability**
When you enter into an agreement in the form of the Joint Venture. JV Members will incur certain rights and obligations in terms of the joint venture agreement, namely joint and several liability.
- 2 Understanding Joint and Several Liability**
When parties enter into a JV/Consortium Agreement, the parties become jointly and severally liable for any claims. This means that should there be a claim against a party the claimant may direct its entire claim at any one party of the JV/Consortium or all the parties together.
- 3 Exercise right of Recourse**
If a claimant successfully claims from one party of the JV/Consortium and that party is not responsible or only proportionally responsible for the damage/claim, then that party has a right to claim against the other party for their proportional share of the claim. i.e. exercise his/her right of recourse against the party that was responsible for the claim /damage caused (Members in default clauses in agreements).

Two Types of Joint Ventures

An incorporated JV/Consortium is a new entity that is formed by the parties.

The new entity will have to be registered under the companies act. It is the act of bringing a new company into existence. This new company is totally separate from your existing company/firm. Separate PI insurance for this new entity can be obtained.

An unincorporated JV/Consortium occurs when the JV/Consortium has a new name

JV/Consortium is not a separate entity since it is not registered in terms of the company's act.

The parties should also clearly define the services that they are to perform so that there is no confusion as to who is liable for the services



Understanding Joint Ventures



The Insurance Implications

- The JV/Consortium may consider taking out PI cover in the name of the JV/Consortium so that the individual insurance portfolios are not affected should there be a claim. By doing this the JV/Consortium will be ring fenced and the consultants would not have to fear a claim arising against an individual consultant who does not have adequate cover
- The professional indemnity policy with Aon provides cover for a consultant's participation in a joint venture
 - You must ensure that all the JV/Consortium members that you enter into the Joint Venture will have sufficient cover to satisfy a potential claim
 - It is important to note that the members cannot pool together their insurances and presume that this would be sufficient. For example, if the client requires a R100m cover in place (for the work that the JC conducts) each member of the JV will need to have R100m cover in place, each member can't each have R20m each and add those amounts to cumulate to R100m.
 - This is suggested as a result of the joint and several liability – discussed above – you can be sued for a claim that you did not cause, and you would then have to seek right of recourse against the actual negligent party.

Consultants will have to ensure that the members of the **JV / Consortium** are suitably qualified and that you maintain your right of recourse against them in terms of the policy.

An understanding of insurance

Professional Indemnity and public liability Insurance

Both the Professional indemnity and public liability policies are third party liability policies:

- The difference between **Public Liability** and **Professional Indemnity insurance** is that **Public Liability** is tailored for claims by members of the public for injury, death, illness or damage caused by negligence in the general course of their business NOT arising from their professional services, while **Professional Indemnity** covers claims by clients for professional mistakes or negligence”
- The essential difference is that PI triggers arising out of professional services and public liability **triggered by acts or omissions not arising from professional services.**



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Aon plc (NYSE: AON) exists to shape decisions for the better — to protect and enrich the lives of people around the world. Our colleagues provide our clients in over 120 countries with advice and solutions that give them the clarity and confidence to make better decisions to protect and grow their business.

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Thank You

Questions

