Room 7.01. TMS Building, 172 Hai Ba Trung St., Dakao Ward, Dist. 1, HCMC.

(84-28) 3636 5486

info@cdlaf.vn

Newsletter:
Business Cooperation Agreement: Legal Risks You Should Know

Author
Nguyen Thi Hoa
Managing Partner
(+84) 974 682 139
hoa.nguyen@cdlaf.vn

✎ In Brief

Business collaborations often stem from preexisting relationships built on familiarity and trust. As a result, these partnerships are initially characterized by strong, amicable relations, with minimal conflicts arising since the tasks outlined in the cooperation agreement have yet to be executed. However, once the implementation phase begins, various challenges may emerge that hinder consensus. Such difficulties typically occur when one party fails to honor its commitments, particularly in the absence of enforceable mechanisms or binding contractual terms. These circumstances frequently lead to the deterioration of the once-solid cooperative relationship. In this context, several common factors can be identified as contributing causes.

✎ Key Takeaways

1. The objectives of the business cooperation are not clearly defined

In some agreements, these objectives are recorded in vague or incomplete terms, failing to capture the full expectations and goals of each party. Consequently, when conflicts arise, the parties often refer back to their original intentions to reach a mutual understanding. This process encourages goodwill and facilitates the resolution of any disagreements.

2. The contributions of each party are not clearly defined

In business cooperation agreements, the failure to clearly define each party's contributions—whether in the form of assets, capital, effort, technology, or other resources—is a primary cause of disputes and operational disruptions. When a contract does not explicitly outline these obligations, misunderstandings regarding responsibilities can occur, making it challenging to resolve conflicts and undermining the feasibility of the planned activities.

Moreover, neglecting to establish a timeline for contributions is critical. Without clearly defined deadlines and progress milestones, delays by one party can directly hinder the progress of the joint project, potentially resulting in financial losses or other disruptions for the other parties.

Additionally, a lack of stipulated penalties for non-compliance further weakens the contract. Without enforcement mechanisms to address delays or failures in fulfilling contribution obligations, the rights of the other parties remain unprotected, creating an imbalance in the cooperative relationship.

To mitigate these risks, the contract should explicitly detail each party’s contributions, specifying the form (e.g., cash, assets, technology, human resources) and measurable values. It should also set forth clear deadlines and milestones to ensure timely contributions. Furthermore, the contract must include robust penalty provisions—such as financial penalties, adjustments to profit shares or benefits, or even the right to unilaterally terminate the agreement—to enforce compliance and protect all parties involved.

3. Unclear Definition of Management and Operational Roles

Business cooperation agreements often encounter significant management and operational risks when roles and responsibilities are not clearly and transparently defined. One major issue is the ambiguous delegation of authority, which can lead to power struggles or a lack of accountability, ultimately reducing overall business effectiveness. Moreover, differences in management styles—especially when parties come from diverse cultural or business backgrounds—can create tension and delay decision-making.

Another common concern is the potential for abuse of power. One party might exploit its authority to make decisions that disadvantage the other, thereby undermining the cooperative relationship. Additionally, insufficient transparency—such as concealing information or failing to fully disclose details about activities and finances—can erode trust and result in unresolved disputes.

To mitigate these risks, the contract should clearly define the roles, responsibilities, and powers of each party. It should also establish mechanisms for mutual oversight and ensure transparency through regular meetings. This approach not only strengthens trust but also aligns management operations, contributing to the development of a sustainable and effective cooperative relationship.

4.Lack of Financial Transparency and Control Mechanisms

Financial risks represent a major challenge in business cooperation agreements, particularly when transparency and effective management controls are lacking. Without clear and independent financial reporting and auditing processes, parties may harbor doubts about the integrity of the financial data, undermining trust. Moreover, delays or failures in fulfilling capital commitments can disrupt joint business activities and compromise the overall progress and effectiveness of the project.

Ineffective debt management further exacerbates these risks, especially when cooperation involves borrowing or incurring debt. In the absence of stringent control measures, financial pressure can directly threaten the stability and sustainability of the joint venture.

To address these issues, contracts should incorporate detailed provisions that clearly define each party's financial obligations, establish independent auditing and transparent reporting mechanisms, and set forth measures to address financial non-compliance. Additionally, establishing a contingency fund to cover unexpected costs can help safeguard the project's stability, ensuring greater transparency, enhanced trust, and sustained operational success.

5. Undefined Profit Distribution Method
Profit distribution is a particularly sensitive aspect of business cooperation agreements that can lead to disputes if not clearly defined. Disagreements over profit-sharing methods are common, especially when parties have divergent views on the basis for calculation. For instance, while some may advocate for allocation based on capital contributions, others might emphasize the importance of effort or non-financial inputs, potentially leading to conflict.

Furthermore, ambiguities regarding profit allocation priorities can further complicate matters. If the contract does not explicitly detail how profits will be allocated—whether through reinvestment, debt repayment, or direct distribution—the process may be delayed or become contentious. This is especially problematic if one party believes that their profit share does not accurately reflect their level of investment or effort.

To mitigate these risks, the agreement should clearly outline the calculation method, profit-sharing ratio, priority order for profit allocation, and specific payment deadlines. Additionally, incorporating a robust dispute resolution mechanism is essential for addressing any disagreements swiftly and fairly.

✎ Conclusion

Overall, managing risks related to contribution obligations, profit distribution, operational management, and dispute resolution is crucial for the success and sustainability of any business cooperation. A well-drafted, transparent, and comprehensive contract not only minimizes potential conflicts but also provides a solid legal foundation to navigate fluctuations in the business environment.

This article provides general information for reference. If you wish to receive legal advice regarding any issues you are facing, please contact our Lawyers at info@cdlaf.vn.