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LAWP Studio legale e tributario



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Global Practice Guides

Joint Ventures

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2025

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INTRODUCTION

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LAWP Studio Legale e Tributario is a law and tax firm with over 20 years' experience of providing assistance in corporate and commercial transactions (including M&A, financing and joint ventures), and in tax matters, to both private and corporate clients. It successfully operates in civil, commercial and tax law, and its professionals are particularly appreciated

for their handling of complex issues requiring diverse skills and innovative solutions – and for assisting national and international clients in connection with cross-border matters impacting several jurisdictions. LAWP helps clients set up and manage joint ventures, both domestically and internationally, across multiple industries.

Contributing Editors



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Joint ventures (JVs) remain among the most resilient and versatile instruments available to businesses seeking growth, innovation and cross-border collaboration.

In today's increasingly volatile global landscape, companies are compelled to rethink their business models in order to confront novel challenges and seize emerging opportunities.

A JV can provide a nimble platform for reducing risk, securing access to new markets or technologies, and sharing the considerable costs of large-scale projects. Unlike mergers and acquisitions (M&A) – where the emphasis is often on full integration – JVs tend to preserve flexibility, enabling partners to pool resources while maintaining their own identity and strategic independence.

According to a [survey](#) conducted by Boston Consulting Group in 2025, 60% of CEOs and business leaders said that forming JVs and partnerships will be more critical to growth over the next three to five years than pursuing M&A.

In this context, the legal and regulatory dimensions of JVs have been evolving in parallel with broader macroeconomic, geopolitical and technological shifts. In 2025, a JV is no longer a simple contractual arrangement; instead, it is a complex and often delicate partnership that requires careful navigation of international regulatory regimes, market dynamics, cultural differences and environmental, social and governance (ESG) expectations. For executives, investors and legal advisers alike, this increased reliance on JVs highlights the importance of solid governance frame-

works, forward-looking risk assessment and carefully designed contractual provisions.

The Global Context

The operating environment for JVs in 2025 is more complex than at any time in recent memory. Traditional commercial considerations now intersect with geopolitical, economic, technological and social forces.

Geopolitical and regulatory profile

Geopolitical fragmentation has started to reshape investment decisions and, by extension, the structuring of JVs. Regional conflicts, tariffs and renewed political rivalry between major powers have exposed vulnerabilities in global supply chains. Cost-efficiency is no longer the only priority. Resilience, diversification and security of supply are now strategic imperatives. This shift has encouraged companies to establish “friend-shoring” or “ally-shoring” ventures in jurisdictions aligned politically or economically.

Protectionist tendencies are also gaining ground. A growing number of countries have expanded their foreign direct investment (FDI) screening regimes, often linking them explicitly to national security. Even traditionally open economies such as the United States, the United Kingdom, Canada, and several EU member states now subject foreign investors to detailed scrutiny. Legal due diligence must therefore go beyond the financial strength or commercial reputation of a potential partner: it must include a thorough assessment of political and regulatory risks, together with a clear strategy for addressing potential government concerns. In practice, this may mean redesigning the JV's corporate structure, limiting sensitive activities or engaging proactively with regulators at an early stage.

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Adding to this complexity is political volatility. Elections and government transitions in key markets can quickly alter the rules of the game through new tax regimes, changes to climate policies or tighter restrictions on inbound and outbound investment. Legal advisers are expected not only to interpret current frameworks but also to anticipate how they might evolve.

Economic forces

The global economy continues to present challenges. Although inflation has eased in some regions, borrowing costs remain relatively high, putting pressure on financing models. Traditional debt financing is less appealing, and JV parties are turning to more creative and cost-efficient approaches. Liquidity management and capital efficiency are becoming central themes when structuring contributions and profit-sharing arrangements.

In parallel, many businesses are treating JVs as an alternative to M&A. An M&A deal often brings high costs, antitrust complications and cultural integration issues. By contrast, a JV can deliver many of the same benefits – combined assets, access to new markets and risk-sharing – without the burdens of full corporate consolidation.

Recently, JVs have been seen as a way for business leaders to navigate uncertainties generated by tariffs, operating as an instrument to govern strategic decisions regarding supply chains, production locations and market access. To avoid or mitigate the costs of tariffs, companies may choose JVs with structures that localise production within the target market. By manufacturing goods in the country where they will be sold, a JV can bypass import tariffs. JVs might be structured to create more resilient supply chains by diversifying sourcing and production locations. Finally, a JV can serve as a strategic entry point into a new market, especially when that market imposes high tariffs on foreign goods.

Technological developments

Technology has frequently been the driving force for JVs. In many cases, the central asset is no longer physical infrastructure but intellectual property (IP), proprietary technology or strategic datasets. Developments in AI, machine learning and blockchain are

accelerating the trend towards collaborative structures that enable companies to share risk while capturing innovation.

A JV allows partner companies to pool their financial resources and expertise to undertake research and development (R&D) projects. By sharing the costs and risks, the individual partners can pursue ambitious technological goals that might be too expensive or risky to pursue alone. Alternatively, one partner might contribute its core technology, patents or know-how, while the other provides a different technology, a manufacturing process or a distribution network. The JV serves as a legal and operational entity where technologies can be integrated and exploited to create a new product or service.

This makes IP one of the most sensitive points of negotiation. Parties must look beyond simple licensing; they need to address the ownership and exploitation of jointly developed IP, including self-learning technologies and data-driven applications. Questions about who owns training data, or who can use the outputs of AI models once the JV ends, can be difficult to resolve. Cybersecurity adds another layer of concern. The potential for cyber-attacks or the theft of confidential information means that clear contractual safeguards, governance standards and liability provisions are indispensable.

Sustainability and ESG

ESG considerations are no longer secondary; they now sit at the centre of JV structuring. Investors, regulators and consumers expect transparency and concrete commitments to sustainability. ESG due diligence therefore extends well beyond compliance; it encompasses a partner's carbon footprint, labour practices, supply chain resilience and governance culture. These assessments increasingly shape contractual terms. Many JV agreements now embed ESG metrics directly into governance frameworks, with dedicated committees monitoring performance and incentive structures tied to sustainability outcomes.

Sectors aligned with ESG priorities are particularly attractive. JVs in renewable energy, sustainable infrastructure and the circular economy are increasing in number.

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Legal Architecture of JVs

Behind the commercial rationale of any JV lies a complex legal architecture. While the details differ across sectors and jurisdictions, several issues recur.

Choice of structure

The choice between an incorporated entity (corporate JV) and a purely contractual arrangement is fundamental. Incorporated JVs benefit from separate legal personality, limited liability and clear ownership structures. Contractual JVs may be more flexible but often carry higher risks of liability and enforcement challenges.

Governance and control

Governance arrangements are often decisive for a JV's success or failure. The allocation of board seats, voting thresholds, veto rights and reserved matters must strike a balance between efficiency and the protection of minority interests. Cross-border ventures add cultural differences and different legal frameworks into the mix, making it even more important to anticipate how decisions will be made and how deadlocks will be resolved.

Exit strategies

JVs are not intended to last forever, and planning for exit is therefore essential. Mechanisms may include buyout rights, put or call options, IPOs or liquidation. If these provisions are poorly designed, disputes are almost inevitable. The challenge lies in combining flexibility with predictability, ensuring that neither party is unfairly disadvantaged when circumstances change. For this reason, agreeing upfront how the exit can be triggered; what the shareholders' rights are; how valuations, assets and IPs are assigned; and what mechanisms would be employed can all make for a smoother exit.

Dispute resolution

Disputes in JVs tend to be multifaceted, involving not only straightforward contractual claims but also fiduciary duties, shareholder rights and, occasionally, regu-

latory compliance. For this reason, the mechanisms chosen for dispute resolution are of critical importance. Arbitration continues to be the preferred forum for cross-border disputes, offering neutrality and flexibility, but it is rarely the only step in the process. Increasingly, parties adopt multi-tiered clauses that require preliminary negotiation or mediation before escalation to arbitration or litigation, with the aim of preserving the commercial relationship and containing costs.

Equally decisive is the choice of governing law and jurisdiction. In international ventures, parties must carefully determine both the substantive law applicable to their contractual relationship and the procedural framework that will govern the resolution of disputes. These choices have far-reaching implications: they influence the interpretation of key provisions, the enforceability of contractual protections, the scope of available remedies and even the allocation of evidentiary burdens.

Compliance and risk management

Compliance obligations cut across anti-bribery rules, sanctions, competition law, data protection and sector-specific regulation. Failure in any of these areas can undermine the success of the JV. Effective governance therefore requires comprehensive compliance programmes, independent audits and a clear allocation of responsibility between the partners.

Conclusion

JVs in 2025 operate within a multifaceted framework shaped by geopolitical developments, economic dynamics, technological progress and sustainability requirements. They are influenced by regulatory shifts, the cost and structure of capital, the centrality of IP and data, and the increasing relevance of ESG factors. From a legal standpoint, JVs require careful consideration of structural models, governance mechanisms, exit strategies, the dispute resolution framework, compliance assessment and risk management.

GERMANY



Law and Practice

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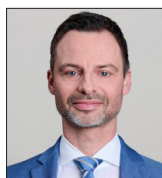
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LPA is an international law firm with 14 offices worldwide, including three in Germany, in Frankfurt am Main, Munich and Hamburg; its Paris headquarters alone is home to more than 150 lawyers. Thanks to the firm's global focus, clients value its high standards, particularly in complex cross-border matters. Its expertise spans all major areas of business law, including corporate, M&A, PE/VC, capital markets, governance, competition/antitrust, litigation, real es-

tate, financial services, IP/IT, banking and finance, renewable energy law, restructuring, employment, non-profit, and tax and audits. By taking an interdisciplinary approach and combining the expertise of lawyers, tax advisers and auditors, LPA provides comprehensive advice and tailored solutions that deliver the best possible economic outcomes for clients.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

Over the past 12 months, there has been an increase in joint ventures (JV) in certain economic sectors, while other (JV-oriented) areas have remained robust. Above all, there has been a particular increase in the pooling of resources and exchange of expertise in the defence, armaments, raw materials and military-related sectors (such as coating and communication), to leverage financial strength and (proprietary) know-how and share risks in development, and also in capital-intensive areas.

It seems reasonable to assume that the geopolitical situation (most notably the wars in Ukraine and Gaza, as well as the US withdrawal) is a key – if not the primary – driver behind the increase in JVs in these sectors in Germany.

Domestically, the shift in policy priorities towards greater security through deterrence, the readiness of Germany's own armed forces and the assumption of greater responsibility within NATO as well as the provision of considerable financial resources by the German government, which are to be invested in the defence industry and infrastructure over the next few years, provide planning security and make business models in these sectors economically more attractive, but also more appealing for private investors as well. As a result, there has been a noticeable increase in available private capital and a strengthening of investment activities (including through the establishment of JVs and the pooling of private equity by setting up investment funds with a clear investment focus

towards these areas, among other methods). This increase will certainly continue and extend into 2026.

1.2 Industry Trends and Emerging Technologies

Certain German industries have been significantly more active in forming JVs – a trend directly attributable to the monumental capital requirements and technological shifts driven by the national and EU-wide digital and sustainable transformation (*Doppelte Transformation*). The automotive sector is highly active due to the urgent need to electrify, exemplified by the long-term JV formed by BMW and Rimac to co-develop high-voltage battery systems. Similarly, the energy sector is a hotspot for partnerships aimed at building the hydrogen economy and decarbonising industry. This surge in JV activity is ultimately down to the strategic necessity of sharing immense risks, pooling resources and combining expertise to navigate profound technological disruption and stringent new regulations.

Emerging technologies are shifting JVs in Germany from simple risk-sharing vehicles into highly regulated structures, making it imperative to integrate critical regulatory frameworks from the outset. The EU AI Act mandates strict compliance and liability for high-risk AI systems, directly impacting a JV's risk profile and operational costs. Simultaneously, the General Data Protection Regulation (GDPR) and data localisation rules dictate cross-border data flows, necessitating built-in governance for how data is shared, particularly with non-EU partners. Furthermore, intellectual property ownership for AI-generated output remains legally uncertain in Germany under the traditional "human

inventor” principle, forcing JV parties to contractually define these rights to mitigate legal risk. Finally, the new EU Product Liability Directive expands strict liability to software and AI, compelling JV parties to pre-allocate financial responsibilities for defects, recalls and monitoring. Ultimately, these regulations require JVs to pre-emptively address novel liability risks and embed rigorous technological compliance into their very foundation to ensure viability.

2. JV Structure and Strategy

2.1 Typical JV Structures

Preferred Legal Forms for Equity Joint Ventures in Germany

Commonly used structures

Equity JVs in Germany are most frequently structured in the following forms:

- a private limited liability company (*Gesellschaft mit beschränkter Haftung* – GmbH), which is the most flexible and widely used form;
- a stock corporation (*Aktiengesellschaft* – AG), which is suited for larger ventures or capital market access;
- a limited partnership with a corporate general partner (GmbH & Co KG), offering a hybrid between partnership and corporate benefits; or
- a European company (*Societas Europaea* – SE), which is typically chosen for cross-border ventures within the EU.

Key factors driving the choice of vehicle

- Commercial objectives: smaller ventures often opt for simpler structures, whereas large-scale or complex projects require more robust governance.
- Liability protection: GmbH, AG and SE all provide limited liability for shareholders.
- Tax efficiency: partnerships (especially GmbH & Co KG) offer a check-the-box tax option and save investors from complicated withholding tax refund procedures.
- Governance and flexibility: a GmbH allows tailor-made governance structures, whereas an AG is more regulated but aligns with capital market standards.

Distinct advantages of each form

- GmbHs are highly flexible, with low minimum capital of EUR25,000 or even less in the form of an *Unternehmergesellschaft (haftungsbeschränkt)*, which can be considered to be a GmbH “light”, and strong shareholder influence over management. They also offer tax exemption for capital gains on disinvestment from corporate subsidiaries.
- GmbH & Co KGs combine limited liability with partnership-style tax treatment and contractual flexibility, and offer less formalism compared to GmbHs, AGs and SEs. They offer a check-the-box tax option and save investors from complicated withholding tax refund procedures.
- AGs are best suited for ventures considering public offerings or requiring a rigid governance framework. They offer a capital gains tax exemption (see GmbHs).
- SEs enhance mobility and harmonisation in cross-border EU contexts. They offer a capital gains tax exemption (see GmbHs).

Other considerations

Sector-specific regulations and the nature of the JV parties (eg, listed companies, foreign investors) can influence the choice of structure.

2.2 Strategic Drivers for JV Structuring

The reasons and motives for establishing a JV are diverse and, in some cases, depend on the industry sector in question. One of the main motives is the pooling of resources or the merging of capital with product and/or service ideas or research initiatives (ie, know-how). However, aspects such as market entry or risk distribution, economies of scale and cost reduction, liability limitations, tax relief, exchange of experience, competitive advantages or certain legal and/or regulatory requirements in a specific market environment may also be reasons for choosing to establish a JV (incorporated or unincorporated).

The planning of a specific exit strategy may be another driving factor for the establishment of a JV. In this way, the JV parties can “carve out” sub-divisions of their undertakings to combine them in a JV for better commercialisation and to achieve synergy effects. After a certain period, the JV can then be sold once it

has successfully positioned itself on the market – an option that would not have been possible (or at least not in this form) if it had remained as a sub-division within the respective undertakings of the JV parties.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

Regulatory Bodies

Key regulatory oversight comes from several authorities, as follows:

- the Federal Cartel Office (*Bundeskartellamt*) enforces merger control and antitrust rules under the German Act against Restraints of Competition (GWB), requiring notification for JVs meeting certain turnover thresholds;
- the Federal Ministry for Economic Affairs and Climate Action (BMWK) screens investments under the German Foreign Trade and Payments Act/Regulation (AWG/AWV) for JVs involving non-EU investors in sensitive sectors such as defence or critical infrastructure;
- Data Protection Authorities (DPAs), led by the Federal Commissioner for Data Protection and Freedom of Information (BfDI), enforce strict compliance with the GDPR and the German Federal Data Protection Act (BDSG), and oversee virtually all JVs that process personal data; and
- sector-specific bodies are also relevant, such as the Federal Financial Supervisory Authority (BaFin) for finance, the Federal Institute for Drugs and Medical Devices (BfArM) for pharma and medical devices, the Federal Office for Motor Vehicles (KBA) for automotive and the Federal Network Agency (BNetzA) for energy and telecommunications.

Legal Framework

Germany's legal framework for JVs is not contained in a single law, but rather is a combination of corporate, competition and regulatory statutes. Beyond those enforced by specific regulators, core statutory foundations include general corporate and commercial law. The German Limited Liability Companies Act (GmbHG) provides the flexible structural basis for most incorporated JV vehicles, governing their for-

mation and governance. For partnership-style JVs, the German Commercial Code (HGB) may serve as the statutory basis. Furthermore, the German Works Constitution Act (BetrVG) mandates employee co-determination through works councils, directly influencing JV governance and operations where employees are present in Germany, even though it lacks a single national enforcement regulator.

3.2 Anti-Money Laundering Compliance

Germany's anti-money laundering (AML) framework is built mainly on the German Money Laundering Act (GwG) and several sector-specific regulations.

General compliance obligations include verifying the identity of customers and their beneficial owners; this includes, for example, checks on whether politically exposed persons are involved. JVs must assess the purpose and intended nature of the business relationship. This information must be continuously monitored and updated, and all available information must be incorporated into a consolidated risk analysis. If the risk of money laundering is increased according to the risk analysis, JVs must observe special due diligence obligations where necessary, such as special justification for maintaining business relationships and closer monitoring.

JVs must establish clear internal responsibility for AML compliance (due to shared ownership in a typical JV), including appointing an AML officer and defining internal reporting lines.

3.3 Sanctions, National Security and Foreign Investment Controls

Restrictions on Co-Operation With Joint Venture Partners in Germany

The German FDI regime only applies to transactions involving the acquisition of shares or assets of a German company. Therefore, only the incorporation of a JV involving the contribution of assets forming the essential operating resources of a German company or a separable part of a German company may fall within the scope of German FDI control. Germany is considering broadening the scope of investment control to cover greenfield investments, including JVs that do not involve the contribution of assets.

For transactions falling within the scope of German FDI control, restrictions on co-operation with JV parties may be imposed, particularly when national security or foreign policy considerations are at stake. The BMWK has the authority to prohibit or impose conditions on a foreign investment if it is deemed to pose a threat to public order or national security. This includes cases where one of the JV parties is linked to a state or entity that is subject to international sanctions.

National Security Regulations and Foreign Investment

Germany has a strict regulatory framework for national security, which also applies to the creation of JVs involving foreign investors. Any acquisition reaching certain thresholds (10%, 20% or 25% of voting rights) must be notified to the BMWK, particularly in sensitive sectors such as defence, cybersecurity or critical infrastructure.

Restrictions on Foreign Participation in Joint Ventures

In certain circumstances, foreign participation in a JV may be subject to restrictions. For instance, restrictions may apply if the threshold of 25% of voting rights is exceeded, or according to specific thresholds (10% or 20%), depending on the sector.

The BMWK also monitors investors established in the EU when they are suspected of circumventing the rules via a European subsidiary controlled by a company from a third country. The BMWK has the authority to approve or decline transactions, including those involving JVs. It may also instigate an ex officio review procedure up to five years after the JV agreement has been signed, even in the absence of prior notification. Notification obligations are the sole responsibility of the investor, including in the case of JVs.

Sectors Subject to Specific Restrictions and Requirements

Sensitive sectors subject to specific requirements in terms of foreign investment control include:

- defence;
- critical infrastructure (energy, telecoms, health, transport);

- sensitive technologies (AI, semiconductors, cloud computing, autonomous vehicles, satellites);
- critical raw materials;
- influential media; and
- large-scale agriculture.

Any JV involving foreign investment in these areas may be subject to a review procedure.

The BMWK is planning to expand the list of sensitive sectors to include cybersecurity and strategic raw materials, while lowering thresholds and strengthening requirements in sensitive cases.

3.4 Competition Law and Antitrust

Antitrust Regulations Applicable to Joint Ventures

German antitrust regulations do not differentiate between full-function and non-full-function JVs. According to Section 37 (4) of the German Act against Restraints on Competition (GWB), any combination of undertakings that enables one or several undertakings to directly or indirectly exercise a material competitive influence on another undertaking is considered a concentration.

In addition, the German merger control regime is applicable to any acquisition of joint control over an existing undertaking. Joint control is defined as the ability for two or more entities to exert significant influence over the operations of a company. This control can be established de jure or de facto through veto rights on strategic business decisions relating to the company under joint control.

German merger control also applies to the acquisition of minority shareholdings of 25% or more of the capital or voting rights of a company, even if such holdings do not confer significant influence over the company.

JVs are subject to a dual regime: merger control and control of anti-competitive agreements. Section 1 of the GWB establishes the rules for evaluating anti-competitive agreements, which are pertinent to the assessment of the collaborative aspects of a JV. The collusive effects of co-ordination between JV parties are particularly emphasised in this regard.

Notification or Approval Requirements

A JV may be subject to prior notification if it constitutes a concentration as defined in Section 37 of the GWB and if the following thresholds are met:

- the combined worldwide turnover of the undertakings concerned exceeds EUR500 million;
- one of the undertakings concerned must have achieved a turnover of more than EUR50 million in Germany; or
- another undertaking concerned must have achieved a turnover of more than EUR17.5 million in Germany.

Even if the EUR17.5 million German threshold is not met, a transaction may be subject to prior notification if it exceeds the EUR400 million transaction value threshold, provided that the target has significant operations in Germany.

However, if a concentration falls within the scope of EU merger control, German merger control does not apply. If the JV has no national effects (ie, no impact on the German market), notification may not be required.

3.5 Listed Companies and Market Disclosure Rules

In Germany, publicly listed companies engaging in JVs must adhere to specific disclosure obligations to ensure transparency and maintain investor confidence. These obligations are primarily governed by the German Securities Trading Act (WpHG), the German Securities Acquisition and Takeover Act, the EU Market Abuse Regulation (MAR) and the German Stock Corporation Act.

Under the WpHG, shareholders of listed companies are required to notify the issuer and BaFin whenever their voting rights reach, exceed or fall below thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. This includes both direct holdings and those held indirectly, such as through financial instruments or derivative positions. The disclosure must be made promptly to the company and BaFin, and at the latest within four trading days. Failure to comply can result in sanctions, including the suspension of voting rights. The issuer must in turn publish these notifications without undue delay.

The German Securities Acquisition and Takeover Act mandates that investors intending to acquire control over a listed company must make a public takeover offer. This requirement ensures that all shareholders have an equal opportunity to participate in the offer and receive fair treatment. In addition, the MAR obliges issuers to immediately disclose any inside information that directly concerns them, which typically includes the formation or material amendment of a JV or JV agreement, unless a temporary delay is justified.

The German Stock Corporation Act further stipulates that any significant changes in shareholding or control structures must be disclosed to the JV and, in some cases, to the public. This is to prevent market manipulation and ensure that all stakeholders are informed of developments that could affect the company's governance or financial stability.

In summary, listed companies in Germany must navigate a complex regulatory landscape when entering into JVs. Adhering to these disclosure requirements is crucial for maintaining legal compliance and upholding market integrity.

3.6 Transparency and Ownership Disclosure

Ownership structures are disclosed by registering the ultimate beneficial owners (UBOs) with the transparency register (*Transparenzregister*), which has been introduced in Germany based on the GwG. The general requirements for the identification and registration of the UBO also apply for JVs, regardless of their respective legal form.

UBOs can only be natural persons and are only considered to be UBOs if they directly or indirectly hold more than 25% of the capital shares or the voting rights in a legal entity, or exercise control in a comparable manner on a legal entity. Since shareholders of a JV are usually at least two legal entities themselves, no direct UBO exists. However, if at least one of those legal entities directly holds more than 25% of the capital or voting rights in the JV, any natural person controlling that legal entity in turn (ie, holding more than 50% of the capital or voting rights in the legal entity being the shareholder of the JV) is considered to be the indirect UBO of the JV and, therefore, must be filed with the transparency register. If no natural person

qualifies as a UBO at all, the managing director(s) of the JV must be filed as the UBO with the transparency register as the so-called fictional UBO.

The name, date of birth, place and country of residence, citizenship, and the type and scope of the economic interest of the UBO must be filed with the transparency register. This information will be accessible to courts and public services. Other so-called “obliged parties” (eg, banks, lawyers) pursuant to the GwG only have access on a case-by-case basis and to the extent required to fulfil their legal obligations under the GwG. Any other third party must prove a legitimate interest.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

During the past three years, German statutory and case law have significantly shaped the structuring and governance of JVs. The most relevant developments can be grouped as follows.

Corporate Reorganisation

The Act implementing the Conversion Directive (UmRUG) now permits cross-border demergers and conversions (eg, a German GmbH into a Dutch B.V. or a Luxembourg S.à r.l.), providing more flexibility for cross-border JV structures.

Partnership Law (Gesetz zur Modernisierung der Personengesellschaftsrecht – MoPeG)

Since January 2024, JVs structured as civil law partnerships (GbR) must register as an “eGbR” in the new Partnership Register to retain legal capacity for holding real estate or company participations.

Deadlock and Governance

In a January 2023 case (II ZR 76/21), the Federal Court of Justice (*Bundesgerichtshof* – BGH) held that even partners barred from voting count towards quorum.

In a July 2024 case (II ZR 71/23 – Hannover 96), the BGH held that shareholder resolutions are not void merely because of third-party voting agreements, pro-

vided the core powers of the shareholders’ meeting are respected.

Exclusion and Exit

In a July 2023 case (II ZR 116/21), the BGH held that the exclusion of a shareholder in two-tier GmbHs takes effect once the judgment is final, irrespective of compensation payment.

Dispute Resolution

In a June 2024 case, the Bavarian Higher Regional Court (BayObLG) held that the law governing an arbitration clause may differ from that used in the main contract.

In a January 2025 case (I ZB 48/24), the BGH reaffirmed the pro-enforcement approach, maintaining arbitration as the most reliable forum for JV disputes.

Financing and Insolvency

In an April 2024 case (IX ZR 129/22), the BGH held that third-party loans may be treated as shareholder loans if contractual rights resemble membership, raising subordination risks.

Competition Law

In a March 2022 case (XXXLutz/Tessner), confirmed by the BGH in 2023, the Higher Regional Court of Düsseldorf (*Oberlandesgericht Düsseldorf*) confirmed a high evidentiary threshold for proving anti-competitive effects, allowing greater leeway for incorporated JVs.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

In the German market, preliminary negotiations for a JV typically involve several standard instruments designed to structure discussions, protect confidential information and set the framework for potential future agreements. A commonly used starting point is a mutual non-disclosure agreement (NDA), which ensures that both parties can exchange sensitive commercial, financial and technical information without risking public disclosure or misuse. NDAs often include standard provisions regarding the definition of

confidential information, permitted use, the duration of confidentiality, and exceptions for legal obligations.

Unlike in some common law markets, a formal Due Diligence Questionnaire is not market standard in Germany; due diligence is usually conducted via a structured data room and Q&A process.

During advanced negotiations, parties typically exchange term sheets, which are non-binding but set out the intended structure, key commercial terms, governance arrangements, equity split, capital and/or other contributions to the JV, and initial operational guidelines for the JV. In Germany, term sheets often include indicative timelines, exclusivity periods and conditions precedent for entering into the definitive JV agreement. Exclusivity is dealt with either in the term sheet itself or in a separate exclusivity agreement, preventing parallel negotiations for a defined period. This secures the investment of time and resources in the transaction and prevents competitive interference.

Market practice also expects preliminary agreements to address regulatory compliance (eg, antitrust filings if the JV exceeds thresholds under the GWB), intellectual property rights and a framework for dispute resolution or escalation procedures during negotiations.

In sum, German JV negotiations are structured around NDAs, term sheets and exclusivity deeds, with market-standard provisions focusing on confidentiality, exclusivity, governance principles, regulatory compliance and dispute management, aligning expectations and providing a disciplined path toward the formal JV agreement.

5.2 Disclosure Obligations

Regulatory Filing Requirements

In Germany, public disclosure is not required at the early negotiation stage or when signing a letter of intent (LOI) or memorandum of understanding (MOU). However, certain regulatory filings must be considered before implementing a JV, including the following.

- Merger control clearance under the GWB is required if the combined turnover of the JV parties exceeds national thresholds. Notifications must be submitted before closing.

- EU-level clearance under the EU Merger Regulation (FKVO) as amended by the Implementing Regulation (EU) 2023/914 applies when EU turnover thresholds are met. The JV cannot be implemented until approval is obtained.
- Assessment of timing and sequencing: filings must be planned carefully to avoid delays in implementing the JV.
- Consideration of national and EU requirements together is particularly relevant in cross-border JVs, to ensure compliance with all applicable jurisdictions.
- The scope of information required in filings includes details on the parties, the JV structure and the projected commercial impact.
- Legal consequences of non-compliance: failure to submit the required filings or obtaining clearance prematurely can lead to fines or restrictions on implementing the JV.

These measures ensure that the JV is legally compliant before operations commence, and help to prevent regulatory risks.

Corporate Disclosure

After incorporation, the JV must be registered with the German Commercial Register, including the registration of:

- the shareholders and managing directors of the JV;
- the articles of association (GmbH and AG), but not the JV agreement (if any) itself; and
- the share capital and legal form.

This information is publicly accessible.

Capital Markets and Ad Hoc Obligations

If a party to the JV is a listed company, disclosure obligations arise under both MAR and the WpHG, as follows:

- inside information affecting share price must be disclosed without undue delay, potentially as early as the signing of binding agreements;
- limited deferral of disclosure is possible under MAR and its delegated/implementing regulations; and
- the EU Listing Act package (Regulation (EU) 2024/2809, Directive (EU) 2024/2810, Directive (EU)

2024/2811) further refines disclosure rules to balance market integrity with capital market access, particularly for smaller issuers.

Non-compliance with these regulations can result in substantial fines and reputational damage.

Other Sector-Specific Notifications

Certain regulated industries may require additional filings or licences, particularly:

- banking and financial services;
- insurance; and
- energy and utilities.

These obligations typically apply prior to or shortly after establishing the JV and must be assessed on a case-by-case basis.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

In Germany, JV agreements typically include conditions precedent (CPs) that must be satisfied before the transaction is closed. These CPs commonly cover regulatory approvals, particularly antitrust clearance under the GWB or notifications to sector-specific authorities if the JV operates in regulated industries. Another frequent CP is corporate approvals, such as board or shareholder resolutions, confirming the parties' internal authorisation to enter into the JV (agreement). Financial CPs, including proof of funding or payment of capital contributions, are also standard. Due diligence findings can serve as a CP, with the parties reserving the right to terminate if material risks or liabilities are identified.

German JV agreements also often address Material Adverse Change (MAC) clauses, allowing a party to withdraw or renegotiate terms if a significant negative event occurs between signing and closing that fundamentally affects the JV's business or value. A MAC typically encompasses events such as substantial financial deterioration, loss of key customers or licences, or significant litigation, but must be narrowly defined to avoid disputes over its applicability and permissibility. Courts in Germany tend to interpret MAC clauses strictly, emphasising that routine business fluctuations do not justify termination.

Force majeure events (ie, unforeseeable and uncontrollable events like natural disasters, war, pandemics or government actions) are usually included in German JV agreements as reasons to suspend obligations, extend deadlines or adjust performance requirements. Force majeure provisions typically specify notice obligations, mitigation duties and the consequences if the event persists, such as termination rights or the renegotiation of terms.

In practice, CPs and MAC and force majeure clauses are critical for balancing risk allocation and providing flexibility in the period between signing and closing. The parties usually negotiate MAC and force majeure clauses carefully, linking them to CPs, financial exposure and governance arrangements, ensuring clarity on rights and remedies in extraordinary circumstances.

5.4 Legal Formation and Capital Requirements

The way a JV is established in Germany depends largely on the specific legal form chosen for the JV, with different forms having different requirements regarding the presence, absence and scope of minimum capital requirements, for example, as well as organisational issues such as the existence and composition of mandatorily required corporate bodies.

However, for all JVs, it must first be examined whether the establishment of a JV is the right form of co-operation for the prospective parties. If so, the essential framework conditions must be clarified – ie, legal form, ownership structure (often preceded by heated discussions about the value of the individual contributions) and spheres of influence and areas of responsibility of the JV parties.

At this stage, it is important to work with experienced advisers who can outline the legally possible framework and identify options for structuring the JV in line with the individual ideas and expectations of the JV parties. This often leads to “good solutions” for the contractual structure and/or corporate governance underlying the JV.

Generally, it is advisable to precede the establishment of a JV with the conclusion of an LOI or MOU in

which the JV parties have already outlined the essential aspects (albeit possibly only in broad terms). It is then customary to regulate the rights and obligations relating to the structure of the co-operation in a separate JV agreement (or shareholders' agreement) in addition to the JV's articles of association and founding documentation. The reason for this is that, unlike the articles of association, a JV agreement or shareholders' agreement is not publicly accessible (see 5.2 Disclosure Obligations).

Finally, if foreign parties are to become shareholders in a JV, provisions of the German Foreign Trade and Payments Act (AWG) and other FDI provisions must also be considered in advance and based on the purpose of the JV.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The documentation of a JV depends on the legal form of the JV, among other matters. In Germany, most corporate JVs are structured as a GmbH, which offers considerable flexibility in governance and liability. Larger or listed JVs may exceptionally use an AG, although this is rare due to its rigid statutory regime and mandatory supervisory board. The GmbH requires notarised articles of association under the GmbHG, addressing statutory matters such as share capital, shareholders, corporate purpose and management. In practice, however, the core arrangements between the JV parties are contained in a separate shareholders' agreement (JV agreement), which complements the articles of association and governs the contractual relationship of the JV parties.

The JV agreement typically defines the scope and business purpose of the JV, and regulates capital and/or other contributions and funding obligations, including equity injections, transfers of assets or intellectual property and future financing commitments. It establishes governance structures by determining:

- the composition and powers of management and boards;
- the allocation of decision-making authority;

- the catalogue of reserved matters requiring unanimous or qualified consent; and
- protections for minority shareholders.

It further sets out financial terms, including budgeting, profit distribution, accounting and audit rights, and it contains detailed provisions on transfer restrictions and exit mechanisms, such as pre-emption rights, tag-along and drag-along rights, or put and call options. Deadlock resolution is usually addressed through escalation procedures and, if necessary, buy-sell mechanisms, while termination and dissolution are dealt with by reference to specific triggers agreed by the JV parties.

In addition, market practice requires clauses on confidentiality, non-compete undertakings, intellectual property ownership, compliance obligations and dispute resolution, often via arbitration consistent with market practice in order to preserve confidentiality. Overall, the documentation integrates mandatory corporate law requirements into a contractual framework that allocates governance, risks and economic rights between the JV parties.

6.2 Governance and Decision-Making

Governance and decision-making within a JV depend on the chosen vehicle but follow consistent principles structured through a combination of shareholder-level and board-level governance mechanisms. In corporate JVs, the management body is responsible for day-to-day business, acting within the limits of statutory law, the articles of association and the JV agreement. To safeguard the shareholders' interests, its powers are typically restricted by a catalogue of reserved matters requiring higher-level consent, such as material acquisitions or disposals, financing exceeding certain pre-defined thresholds, entry into significant contracts or any deviation from the approved business plan. These reserved matters are usually incorporated in rules of procedure for the management or in the respective service agreement concluded with the respective member of the management.

Strategic authority rests with the owners' assembly, whether shareholders' meetings in a GmbH or general meetings in an AG. German law provides that ordinary resolutions in a GmbH require a simple majority of the

votes cast, but it also prescribes qualified majorities for certain fundamental matters. In particular, the following all require a majority of at least three-quarters of the votes cast:

- amendments to the articles of association, including capital increases or reductions;
- transformations such as mergers, demergers or conversions; and
- a resolution to dissolve the company.

JV agreements often go further by contractually requiring supermajority or unanimous consent for additional matters, thereby strengthening minority protection through veto rights on key business issues.

JV parties frequently introduce an advisory or supervisory board to provide an additional governance layer and to act as an intermediate decision-making forum. To mitigate deadlocks, JV agreements commonly provide escalation procedures and, if unresolved, mechanisms such as mediation, expert determination or buyout options. In some cases, a rotating chairperson or weighted voting scheme is used to ensure fairness. This framework ensures operational efficiency while safeguarding minority interests, and remains fully consistent with German corporate law requirements.

6.3 Funding

In Germany, JVs are typically funded through both equity contributions and debt financing (and occasionally also mezzanine financing), particularly those structured as GmbHs. At formation, each JV party usually subscribes to a defined portion of the stated share capital, as reflected in the articles of association, which may include initial cash contributions or, in some cases, contributions in kind such as intellectual property, technology or tangible assets. The initial equity establishes ownership percentages and voting rights.

Beyond initial funding, JV agreements often provide for future funding obligations, either as optional contributions or as pre-agreed mandatory capital calls. Capital increases require a three-quarters majority under the GmbHG and, unless agreed otherwise, all shareholders have statutory pro rata subscription rights to maintain their percentage participation.

The respective provisions in the JV agreements are designed to maintain the JV's financial health while protecting shareholders from disproportionate dilution. Typically, if a shareholder elects not to participate in a capital increase, their ownership is diluted according to the terms set out in the JV agreement. Some agreements include anti-dilution protections or pre-emptive rights – the former designed to prevent the disproportionate dilution of a shareholder, and the latter designed to have certain control over the shareholder structure of the JV.

Debt financing can be arranged either on the JV entity level or via shareholder loans. Shareholder loans are common in German JVs and are usually structured with agreed terms on interest (reflective of the risk taken by the disbursing lender), repayment and subordination, often ranking behind external debt. In some cases, JV agreements include covenants requiring unanimous or supermajority approval for taking on additional debt, particularly if such debt exceeds a threshold or materially affects the balance sheet.

When future equity funding occurs, the JV agreement must clearly define the valuation methodology, the issuance of new shares, and the adjustment of governance rights. This ensures transparency, maintains fairness between shareholders, and avoids deadlocks. Market practice emphasises pre-agreed rules for both voluntary and mandatory funding, ensuring financial flexibility and adequate capitalisation without undermining the strategic balance or minority protections.

6.4 Deadlocks

In German JVs, deadlocks between the board and the JV parties are a critical risk and must be addressed explicitly in the JV agreement to ensure business continuity. Deadlocks typically arise in two contexts:

- disagreements on operational decisions requiring board approval; or
- shareholder-level disputes over strategic or extraordinary matters.

A common approach is to distinguish between day-to-day operational deadlocks and major strategic deadlocks. For operational issues, the JV agreement may provide for pre-agreed escalation procedures, such as

referral to an advisory or supervisory board for recommendation, granting one JV party a casting vote in narrowly defined areas, or elevating the matter to senior executives or parent company boards for further negotiation. In practice, the advisory or supervisory board can act as a mediator without altering the balance of power, by requiring its approval for significant operational measures.

For shareholder-level deadlocks, German market practice often employs “Russian Roulette” or “Texas Shoot-Out” clauses. In a Russian Roulette mechanism, one JV party offers to buy the other’s shares at a defined price, and the other JV party must either sell or buy at that price. A Texas Shoot-Out allows each JV party to submit a sealed bid to buy the other’s shares, with the higher bidder acquiring the stake. These mechanisms are usually reserved for deadlocks over material decisions, such as capital increases, strategic disposals or termination of the JV.

Other solutions include defined pauses in discussions to allow the JV parties to reassess their positions, independent expert valuation, mediation or temporary neutral management appointments. The objective is to provide a clear, enforceable procedure that ensures the JV can continue operating and that the JV parties have defined exit or buyout options without resorting to court intervention.

6.5 Other Documentation

The contractual framework usually extends beyond the articles of association and the JV agreement to include a set of ancillary contracts tailored to the transaction.

A central category consists of intellectual property agreements, in the form of either licences or assignments, which regulate the use of pre-existing rights contributed by the JV parties and define ownership of improvements, scope of use and termination rights.

Asset transfer agreements are equally common, covering the sale or contribution of tangible and intangible assets such as equipment, contracts, customer relationships or know-how. Any liabilities or warranties associated with transferred assets are also typically addressed. Where assets are contributed as consid-

eration for shares in a GmbH, statutory requirements on contributions in kind and notarial formalities must be observed.

Confidentiality is usually addressed through non-disclosure agreements, often signed at the negotiation stage and sometimes reconfirmed at closing to cover ongoing data exchange. In addition, service and supply agreements are frequently put in place if one JV party will continue to provide management support, back-office functions or material inputs. Employment or secondment agreements for key staff are also common, requiring careful alignment with German labour law.

Further ancillary documents may include shareholder loan agreements and intercreditor arrangements, especially if the JV is highly leveraged, as well as regulatory or permit-related agreements in cross-border structures. Where foreign investors are involved, filings under the German foreign trade regime may be required.

Across all categories, the overarching principle of German JV practice is to ensure consistency: provisions on ownership, funding or governance contained in ancillary agreements must align with the JV agreement and the articles of association to avoid conflicts and secure enforceability.

From a tax perspective, it is of particular importance when transferring assets that their valuation and the consideration (in particular the resulting special rights or the number of shares) received by the contributing JV party are properly documented.

6.6 Rights and Obligations of JV Partners

In a German JV structured as a GmbH, the rights and obligations of the JV parties are typically governed by the articles of association, the JV agreement and applicable law. Key rights include:

- participation in profits;
- voting rights in the shareholders’ meeting;
- appointment rights for managing directors and advisory board members;
- access to books, records and operational information; and

- approval rights over major transactions or strategic decisions.

Obligations include:

- the contribution of capital or assets;
- compliance with the articles of association and JV agreement;
- ongoing co-operation in managing the JV; and
- adherence to confidentiality and non-compete clauses as negotiated.

Profit and loss allocation is generally proportional to the JV parties' shareholding, unless agreed otherwise. While the GmbHG allows flexibility in deviating from proportional distribution, the JV agreement must explicitly specify any alternative allocation. It has to be noted that tax law imposes special requirements for the recognition of such a deviating profit distribution. Losses are typically shared in the same proportion as the capital contributions, ensuring that JV parties bear economic risk in line with their ownership. There are no statutory minimum profit distributions, but distributions must respect the provisions of Section 30 of the GmbHG (no distributions if the GmbH's capital is insufficient). In accordance with the concept of transparency, for tax purposes profits and losses from a JV structured as a partnership (GmbH & Co KG) are allocated directly to the partners, regardless of distribution decisions agreed upon by the JV parties or the actual withdrawals.

The liability of JV parties is generally limited to the amount of their subscribed capital in the GmbH. As a separate legal entity, the JV itself is responsible for its debts and obligations, protecting the JV parties' personal assets. Exceptions arise if JV parties act beyond their authority, provide personal guarantees, or commit fraud or gross negligence. In practice, additional contractual indemnities may be agreed to allocate risk for specific obligations, such as contingent liabilities from pre-existing contracts or warranties for asset contributions.

These rights and obligations are critical for ensuring operational clarity, risk allocation and a balanced governance structure in German JV practice.

6.7 Minority Protection and Control Rights

In German JVs, minority protection is a key element to ensure that JV parties with a smaller interest in the JV retain meaningful influence and protect their investment. Statutory rights under the GmbHG already provide certain safeguards, including the requirement of a qualified three-quarters majority for amendments to the articles of association, capital increases or reductions, mergers and transformations, and the dissolution of the company. Minority shareholders are further entitled to request information and access documents, and to convene extraordinary shareholders' meetings, thereby maintaining a minimum level of oversight.

Beyond these statutory rights, market practice relies heavily on contractual protections in the articles of association and the JV agreement. Typical mechanisms include veto or consent rights over reserved matters such as:

- acquisitions and disposals;
- capital expenditures above a threshold;
- the incurrence of material debt;
- related-party transactions;
- dividend policy; and
- the appointment or removal of directors or advisory board members.

In addition, minority shareholders are commonly granted tag-along rights in case of a majority exit, and sometimes anti-dilution protection to preserve their economic position.

In international JVs, minority protections are often reinforced by contractual reporting obligations, audit and inspection rights, and the requirement that key operational decisions – such as approval of budgets or business plans – be jointly agreed. A supervisory or advisory board may provide an institutionalised forum for minority participation. Taken together, statutory and contractual protections secure a balance between effective minority influence and the operational flexibility necessary for the venture's success.

6.8 Applicable Law and Dispute Resolution in International JVs

JV agreements (and explicitly not the JV's articles of association, which are subject to German law) may

be governed by and construed in accordance with foreign substantial law. However, even if the JV agreement is governed by foreign substantial law, it still has to consider mandatory German (corporate law) provisions. For this reason, among others, JV parties often keep German substantial law as the governing law of the JV agreement.

By default, and in the absence of deviating agreements, disputes in JVs are subject to the jurisdiction of German state courts. As an alternative, JV agreements may also be made subject to arbitration clauses.

Germany is a signatory to the Hague Service Convention (1965) and the Hague Evidence Convention (1970). Germany does not allow international pre-trial discovery proceedings within German borders. Germany is also party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Foreign arbitral awards are enforced after the completion of exequatur proceedings. Foreign judgments are recognised on the basis of international agreements. Other than that, German courts grant exequatur to judgments of states in which German judgments are also recognised (principle of reciprocity) but excluding cases where the foreign court asserted a jurisdiction that is considered excessive under German rules.

Germany is also subject to various EU regulations that provide for easements when enforcing judgments from other EU member states, on the service of court documents and regarding the gathering of evidence in other EU member states.

7. The JV Board

7.1 Board Structure

In German JVs organised as a GmbH, management is exercised by one or more managing directors rather than a formal board of directors as in an AG, whereas the managing directors are, by default, appointed by the shareholders of the JV in shareholders' meetings. The articles of association and the JV agreement usually determine the number of managing directors, their appointment and removal rights, their scope of authority and decision-making rules. It is common for

each JV party to have the right to nominate one or more managing directors, thereby ensuring balanced representation. However, it is also possible for each JV party to appoint managing directors in proportion to its respective equity stake. In more complex or highly regulated JVs, the JV parties may appoint independent or neutral managing directors to ensure balanced decision-making and compliance with legal or governance requirements.

In stock corporations, the board of directors is appointed by the stock corporation's supervisory board, which in turn is appointed by the general meeting. Unlike the managing directors of a GmbH, the board members of an AG enjoy extensive freedom in their decisions and are not bound by instructions – ie, they are not obliged to follow instructions from the supervisory board and/or the general meeting.

Regarding the managers or board members themselves, there are generally no nationality or residency restrictions, so foreign individuals may serve as managing directors or board members. In fact, all managing directors may live abroad; German law imposes no residency requirement. The only conditions are that managing directors must be able to properly fulfil their duties and must not be legally excluded from assuming the office of managing director or member of the board of directors.

In practice, however, important tax and corporate considerations arise. While the GmbH's statutory seat must remain in Germany, the place of effective management (*Ort der Geschäftsleitung*) is decisive for tax residence. If all managing directors operate permanently from abroad, the GmbH risks losing its German tax residency, potentially triggering double taxation or immediate taxation of hidden reserves. For this reason, practitioners often recommend appointing at least one managing director with strong ties to Germany and ensuring that key management decisions demonstrably take place in Germany.

The articles of association and JV agreement can also provide for protective measures such as joint decision-making for certain transactions, veto rights or super-majority requirements to safeguard the interests of minority shareholders. This ensures that man-

agement decisions – especially strategic or capital-intensive ones – cannot be taken unilaterally. Such structures are standard in international JVs to balance control and operational flexibility.

7.2 Duties and Functions of JV Boards and Directors

In Germany, managing directors of a GmbH owe fiduciary duties primarily to the JV itself as well as its creditors, and not directly to the shareholders who appointed them. These duties include the duty of care (*Sorgfaltspflicht*) and the duty of loyalty (*Treuepflicht*), requiring managing directors to act in the best interests of the JV, avoid conflicts of interest and exercise proper business judgement. They must ensure compliance with laws, proper accounting and prudent management, and may, as an exception, be held personally liable for violations of these duties, particularly in cases of gross negligence or wilful misconduct. In corporations (*Kapitalgesellschaften*), managing directors are also obliged to ensure that the JV has sufficient capital resources. Principles such as capital raising (*Kapitalaufbringung*) and capital maintenance (*Kapitalerhaltung*), which are intended to prevent a loss of value from the JV that would disadvantage creditors, also address the conduct of the management.

Conflicts can arise if a managing director has obligations toward the appointing JV party. German law generally requires managing directors to prioritise the interests of the JV over the interests of the appointing shareholder, although contractual arrangements can clarify reporting obligations or require consent from the shareholder for certain actions. These arrangements, however, cannot legally override statutory duties towards the JV, and managing directors must avoid transactions that would constitute self-dealing or harm the JV.

Delegation of functions is permissible within the management framework. Day-to-day responsibilities may be allocated to individual directors, subcommittees or, in certain cases, external service providers. However, material matters of strategic, financial and/or corporate structure-related importance are typically reserved to the full board of managing directors and, in many cases, to the shareholders' meeting. The arti-

cles of association and any JV agreement typically define which powers are delegable and which require collective or shareholder approval, ensuring minority protection and alignment with agreed governance structures.

7.3 Conflicts of Interest

Conflicts of interest for managing directors of a JV are managed on the basis that managing directors owe their duties primarily to the JV itself rather than to the shareholder who nominated them. This means that managing directors must exercise independent judgement, act in the best interests of the JV, and avoid favouring the interests of their appointing shareholder or their own personal interests. Conflicts typically arise in situations such as participation in competing businesses or involvement in related-party transactions, or when commercial decisions disproportionately benefit the appointing shareholder.

To manage such situations, good practice requires full disclosure of the conflict to the other managing directors or, where relevant, to the shareholders' meeting. The conflicted managing director may be required to abstain from voting or from participating in discussions on the matter, and certain transactions may need prior shareholder approval. JV agreements often reinforce these principles by including specific conflict-of-interest provisions, setting out disclosure requirements and approval processes to ensure transparency and mitigate risks.

It can be inappropriate for an individual to take a board seat if their position within a JV party creates a structural conflict that makes it impossible for them to act independently in the interests of the JV. For example, if the individual's role within the JV party obliges them to always prioritise that JV party's interests, this would undermine the individual's fiduciary duties toward the JV. While contractual mechanisms such as consent rights or reserved matters can help balance the interests of the shareholders (ie, the JV parties), they cannot replace the requirement for managing directors to act autonomously in the JV's best interests. Accordingly, suitability for board positions should be assessed carefully to ensure that managing directors can genuinely fulfil their duties to the JV.

8. IP and ESG

8.1 Ownership and Use of IP

Key IP Issues

Under German law, there are no specific statutory provisions governing the treatment of IP rights in JVs. JV parties must identify their pre-existing IP that might be relevant for the JV and clearly delineate which IP assets each party contributes into the JV, including specifying ownership and usage rights.

Foreground IP created during the operation of the JV may be owned jointly by all JV parties or assigned to a particular JV party. The JV agreement should define who holds the ownership in the IP rights, and outline the terms of use and commercialisation.

German law on employee inventions provides specific challenges. Inventions made by employees are subject to this legislation, and the employer must file a patent covering Germany, unless agreed otherwise between the employee and the employer. This might cause issues when employees of several JV parties are involved in the creation of foreground IP, particularly where foreign national law requires a first filing in a foreign country.

Key IP Issues in Contractual Collaborations

Fundamentally, JVs involve questions regarding granting access to the JV parties' background IP and the allocation of foreground IP developed during the collaboration.

In addition, JVs often involve the sharing of sensitive information, necessitating stringent confidentiality provisions. These must continue to operate after the termination of the JV, in order to protect proprietary know-how, trade secrets and confidential business strategies.

Upon termination, the JV parties may need to ensure that all confidential material is returned or destroyed, and that any IP arising from the JV's use of this information is appropriately addressed.

Treatment of IP Issues in JV Agreements

The JV agreement should specify how IP rights (both pre-existing and newly created) will be handled during

the JV and upon termination thereof. Such provisions may govern whether:

- licences to use pre-existing IP will survive the termination;
- foreground IP reverts to one or more of the JV parties; and
- JV parties will have a perpetual cross-licence.

JV agreements may also outline whether any joint ownership needs to be dissolved upon termination and how this should be handled. The IP is usually allocated to the JV parties based on their respective field of business.

Foreground IP will typically only be used for the benefit of the JV. However, the JV parties might gain a licence to use the foreground IP for other fields of use on arm's length terms.

Restrictions on how IP generated or used in the JV can be deployed in other, potentially competing ventures after termination may be necessary. These provisions often cover:

- restrictions on using IP to prevent the JV parties from directly competing with each other; or
- limitations on deploying knowledge or technology developed during the JV.

Specific Considerations for Cross-Border IP Transfers

Cross-border issues arise in relation to German employee invention law requirements in particular. When employees of several JV parties are involved in the creation of foreground IP and foreign national law requires a first filing in a foreign country, this conflicts with German law requirements. The JV parties should address such issues in the JV agreement.

8.2 Licensing v Assignment of IP Rights

The choice between the licensing and assignment of IP rights should be determined by strategic considerations, including the JV's objectives and the JV parties' activities outside the JV, as well as the specific nature of the IP rights involved, rather than following a universal one-size-fits-all approach.

Background IP Considerations

Licensing arrangements typically provide optimal flexibility for pre-existing (background) IP, allowing the JV parties to maintain underlying ownership whilst granting necessary usage rights to the JV. This approach preserves each JV parties' fundamental IP assets whilst enabling effective collaboration.

Foreground IP Treatment

Foreground IP created during JV operations permits more varied treatment approaches. Joint ownership or assignment to specific JV parties may prove appropriate based on strategic business considerations. Typically, foreground IP is used only for the benefit of the JV, although the JV parties might obtain a licence to use such IP (eg, for other fields of use). Upon termination of the JV, provisions may determine whether foreground IP reverts to one or more of the JV parties or whether JV parties receive perpetual cross-licences.

Statutory and Cross-Border Considerations

Regardless of whether licensing or assignment is selected, German employment invention law requirements must be satisfied, and cross-border patent filing obligations may influence the optimal structure. Jurisdictional differences in IP protection and filing requirements may favour specific approaches depending on the JV's international scope.

German law's contractual flexibility enables JV agreements to reflect participating JV parties' strategic objectives whilst ensuring operational efficiency and protecting the respective JV parties' interests throughout the JV's life cycle and beyond termination.

8.3 ESG Considerations in JVs

Regulatory Context

ESG has become a central compliance and governance factor for JVs in Germany and the EU, and its importance will continue to grow. ESG is no longer a short-term trend – it has become a fundamental driver of corporate sustainability. Initiatives such as the European Green Deal, the EU Taxonomy Regulation and related measures – including the Sustainable Finance Disclosure Regulation (SFDR) and Corporate Sustainability Reporting Directive (CSRD) – have created a rapidly evolving regulatory environment that is expected to tighten and expand further. Aligning

with ESG principles at an early stage can help avoid significant risks for a JV and capture long-term value.

Why ESG Matters

- Compliance risk: non-compliance can result in substantial fines and reputational damage. While Germany does not recognise corporate criminal liability in the same way as, for example, France, monetary penalties remain a serious concern.
- Value creation: adhering to ESG standards can enhance enterprise value and strengthen a JV's market position.
- Tailored obligations: requirements vary based on the JV's sector and activities.

Key Legal Requirements

National level

- Environmental: regulation is advanced in real estate, with laws such as the German Building Energy Act (GEG), the German Carbon Dioxide Cost Allocation Act (CO2KostAufG) and the German Building Electric Mobility Infrastructure Act (GEIG).
- Social and Governance: the German Supply Chain Due Diligence Act (LkSG) applies to larger enterprises, mandating human rights and environmental standards across supply chains. The German Whistleblower Protection Act (HinSchG) requires internal reporting mechanisms to protect whistleblowers.

European level

EU-wide rules impose additional obligations in certain sectors to ensure responsible sourcing and supply chain due diligence (eg, the Conflict Minerals Regulation).

9. Exit Strategies and Termination

9.1 Termination of a JV

JV agreements in Germany may terminate in several ways:

- automatically upon expiry of a fixed term;
- by mutual agreement of the JV parties; or

- upon the occurrence of specific termination events such as material breach, insolvency or failure to meet critical conditions precedent.

In a corporate JV (for example, a GmbH), termination usually triggers the dissolution and liquidation of the company, unless one JV party acquires the other JV party's shares and continues the business.

Key matters to address upon termination include the following.

- Winding-up and liquidation: the JV agreement should outline the procedures for liquidating assets, settling liabilities and distributing any surplus among the JV parties to ensure an orderly process and creditor protection.
- Exit rights and buyout mechanisms: pre-agreed valuation methods (eg, fair market value, discounted cash flow or expert appraisal) are often used to determine the price for a departing JV party's shares. Put and call options, mandatory buyouts or other exit tools help avoid disputes.
- Allocation of profits and losses: the JV parties should agree how accumulated profits, losses or contingent obligations up to termination are calculated and distributed, including the handling of ongoing contracts and outstanding liabilities.
- Treatment of IP, licences and know-how: the JV agreement should regulate whether intellectual property and technology are transferred, licensed back or withdrawn, ensuring clarity on post-termination use.
- Confidentiality and non-compete obligations: restrictions on the use of confidential information and competitive activities typically survive termination to safeguard business value.
- Dispute resolution: as termination often raises valuation or transfer issues, arbitration or mediation mechanisms are commonly included to provide a binding and efficient resolution process.
- Continuity arrangements: where one JV party continues the business, transitional provisions covering employees, contracts and operations should be clearly set out to avoid disruption.
- Taxation: depending on the legal structure of the JV, capital gains are tax exempt in the case of a GmbH, AG or SE. In the case of a partnership

(GmbH & Co KG), they are taxed at the ordinary tax rate (15.8% for non-domiciled corporate shareholders; up to 45% for individuals based on the progressive tax rate).

Overall, a well-structured termination regime protects both JV parties, ensures compliance with German corporate law, provides clear procedures for asset distribution, liabilities and post-exit obligations, and preserves business value beyond the JV.

9.2 Asset Redistribution and Transfers

When dealing with asset redistribution and transfers in a German JV, careful attention must be paid to the origin, ownership and legal treatment of the assets, and also to the contractual and statutory obligations of the JV.

Assets contributed by JV parties may include cash, equipment, technology or intellectual property contributed at the outset. The JV agreement should specify ownership, valuation and conditions for return or buy-back. Unless title in assets was formally transferred to the JV, ownership often remains with the contributing JV party, although corporate and contractual restrictions may apply. Any retransfer may require valuation mechanisms to avoid disputes and must not undermine creditor protection.

Assets generated by the JV include reserves, newly developed intellectual property, receivables or inventory created in the course of business. Such assets are legally owned by the JV or collectively by the JV parties and cannot be unilaterally withdrawn by a JV party. Their distribution requires compliance with corporate law and the JV agreement, including approval by shareholders or governing bodies, and the observance of capital maintenance rules to safeguard creditors.

Key considerations for any transfer include:

- the valuation methodology (eg, book value, fair market value, discounted cash flow);
- consent and approval requirements at shareholder or board level;
- legal formalities for specific asset classes such as real estate or registered IP;

- the allocation of liabilities associated with the assets; and
- continuity of contracts and employee relationships linked to transferred business units.

Clear distinction between contributed and JV-generated assets is essential to avoid disputes, ensure creditor protection and align with German corporate law requirements.

9.3 Exit Strategy

In Germany, the mechanics of a JV party's exit from a JV are largely matters of contract: JV parties enjoy broad freedom to agree on transfer restrictions, buy-out mechanisms and valuation methods in the JV agreement. However, that contractual freedom is subject to overriding legal constraints and practical limits:

- corporate law imposes capital maintenance and formal procedure requirements;
- certain transactions may require shareholder approvals or changes to the articles of association; and
- regulatory clearances (antitrust, foreign investment review, sectoral licences) or contractual third-party consents can restrict or delay exits.

In practice, JV agreements therefore combine bespoke exit rules with statutory safeguards to ensure enforceability and creditor protection. Typical contractual provisions regulate consent requirements for share transfers, pre-emption arrangements for existing JV parties, valuation formulas or expert appraisal procedures for buyouts, and the circumstances in which put/call rights, redemption or compulsory buyouts may be triggered. Where a JV involves a listed entity, takeover rules and mandatory offer obligations may also be relevant if control changes. Tax, employment and contract-assignment issues (including supplier

and customer consents) should be considered early in the process, since they frequently determine the practical feasibility and timing of any exit. Finally, dispute resolution and valuation processes (often arbitration with a clear valuation mechanism) are commonly built into exit provisions, in order to minimise litigation and preserve confidentiality.

Common exit mechanisms used in German JVs include:

- tag-along and drag-along rights to protect minority holders or enable a co-ordinated sale;
- put and call options granting JV parties the contractual right to force a sale or to require purchase under agreed terms;
- buy-sell/shoot-out mechanisms (eg, Russian Roulette, sealed-bid procedures) to resolve intractable deadlocks;
- rights of first refusal/pre-emption in favour of co-shareholders;
- sale to third parties (trade sale or sale to financial investors);
- co-shareholder buyouts;
- company redemption or structured wind-up; and
- occasionally IPOs for larger JVs.

Exits generally occur through a sale of shares to other JV parties or a third party, redemption or repurchase by the JV itself, or termination of the JV with a proportional or contractually defined distribution of assets. While statutory principles ensure basic fairness and proper corporate procedure, the detailed exit strategy is primarily a matter for contractual design, reflecting the strategic, financial and operational objectives of the JV parties. In any case, an exit is a taxable event, whereby the consequences depend on the legal form of the JV and the peculiarities of the exit scenario.

Trends and Developments

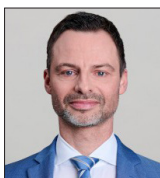
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General Market Observations

Since the outbreak of the war in Ukraine, and now even more so since the outbreak of the war in Gaza, there has been a rethinking and a socio-political change in the perception of the defensive capabilities of the Federal Republic of Germany and the *Bundeswehr* (the German military forces). In addition, considerable financial resources are being made available for military armament and the deterrence associated therewith, as well as for the modernisation of infrastructure (especially roads and railways but also bridges and communication lines) and state administration. This has led to not only public funds but also private capital becoming available to finance companies operating in these economic sectors or at least in sectors complementary to them.

Apart from the provision of capital, however, knowledge transfer is also a significant factor that has led to increased activities in these areas, not at least through the establishment of incorporated and unincorporated joint ventures (JVs). In 2024, for example, German military equipment manufacturer Rheinmetall AG partnered up with Leonardo S.p.A. and established a JV (Leonardo Rheinmetall Military Vehicle) for the manufacturing of a new battle tank with equal representation (both shareholders hold 50% of the voting rights of the JV) and with its headquarters in Rome.

However, it is not only in the military and military-related sectors that an increase in JVs can be observed. Companies in the energy, healthcare, automotive, data processing and digitalisation industries are also pooling their capabilities and resources in JVs or based on collaboration and co-operation agreements. Examples include:

- the establishment of a JV by BMW Group and Tata Technologies for the development of vehicle software in the areas of automated driving, infotainment and digital services;
- the establishment of a JV by Volkswagen Group and Rivian for the development of state-of-the-art software and electronics architecture; and
- the establishment of a JV in the area of the German H2-core network for the construction and financing of pipelines, terminals and import infrastructure

between grid operators and manufacturing companies.

It is therefore apparent that bringing these factors together in a jointly founded company poses a real alternative for market participants, particularly in sectors where innovation and the development of new technologies are very capital-intensive and require a high degree of specialised knowledge. Even though this insight is not groundbreaking, and even though capital-intensive sectors and fields with a high degree of specialisation have always favoured the emergence of JVs, there has been a noticeable increase in partnering up in these areas. There has been a slight increase in the number of JVs being established in high-growth sectors such as health technologies or artificial intelligence) as well.

Finally, due to the increasing pace of innovation, there has also been a notable increase in established companies forming JVs with large corporations on the one hand, and with small, agile and flexible start-ups in highly specialised areas on the other. For start-ups, this means access to sufficient capital and other resources that are usually not available within their own companies, such as research facilities. In addition, partnering up with these corporations provides for better access to networks and an increase in market reputation for their products and brands. For established companies, however, it leads to cost and time savings in developing their own expertise as well as access to specialised, cutting-edge technologies and developments, which are often protected by industrial property rights. From a bird's eye view, therefore, it is a classic win-win situation.

Adapting the Legal Framework

With the increase in cross-border JV formations, the relevant legal framework in Germany and Europe has also become more specific and, in some areas, more stringent. The focus here is particularly on antitrust and competition law, but also on foreign trade law regulations. Of course, there are several other legal and tax provisions that must be observed and complied with, but these are provisions of corporate, contract and tax law that apply indiscriminately and are based less on the fact that it is a JV and more on the chosen legal form or the economic sector in which

the JV operates. Although it is important to take these into account, they are not covered in the following assessment.

In the areas of market surveillance law and merger control, German merger control regulations continue to be strictly applied in the context of (cross-border) JVs, which continue to play a central role. The enforcement powers of the German (antitrust) authorities in this area, however, have been tightened. In certain industrial sectors (eg, steel or telecommunications), increasingly stringent requirements are being imposed on the permissibility of JVs (especially cross-border ones). A prominent example of this was the envisaged JV between Thyssen Krupp and Tata Steel, which ultimately failed due to the exercise of an EU veto.

Legal issues such as compliance, governance and ESG are becoming increasingly important. JVs and JV agreements must therefore include detailed provisions on data processing, IP, exit/deadlock mechanisms, sanctions, whistle-blowing and ESG reporting in order to meet these stricter requirements.

Regarding the accounting guidance of JVs, the accounting principles in Germany have remained independent of International Standards (US GAAP and IAS). Under local GAAP (HGB), both the equity method and, under certain conditions, the proportionate consolidation method can still be applied. This method is, *cum grano salis*, comparable to IAS 31 until 2014. In contrast to US GAAP, for example, which has recently undergone a partial revision and adjustment of the equity method, both options remain eligible under German GAAP.

German export control laws such as the Foreign Trade and Payments Act and the Foreign Trade and Payments Ordinance, as well as special competition laws such as the Foreign Subsidy Regulation (FSR), play an even more important role, particularly for cross-border JVs involving countries outside the EU such as India, UAE, China or the USA. When establishing JVs involving companies from these countries, any consultation usually begins with a detailed FDI and, depending on the “deal size”, FSR analysis.

In this context, it should be noted that the EU initiated several investigation procedures in 2024 and 2025 regarding the participation of Chinese investors in public tenders for wind farm and railway projects. This also affects JVs established in Germany in which the Chinese JV partners contribute capital or technologies. There is a growing concern that this focus on screening procedures involving Chinese investors will increasingly strain existing relations between the EU and China. Unfortunately, however, this focus can also lead to increased tensions between the EU and the national governments of member states, as the EU’s “interference” in national affairs in the context of public procurement affects opportunities for member states.

This is clearly illustrated by the example of Bulgaria’s Transport Ministry’s public tender in the field of electric push-pull trains and related maintenance and training services. Initially, two bidders applied for the project: one Chinese (CRRC, a state-owned train manufacturer) and one Spanish, with the Chinese bidder’s offer being half the amount of that of the Spanish bidder. However, the European Commission had expressed concerns about the remarkably low bid and concluded that it could only have been made possible by (undisclosed) state subsidies. Before a final decision could be made by the European Commission, the Chinese bidder withdrew its bid. In view of the remaining (twice as high) bid, Bulgaria withdrew the tender and initiated a new procedure.

From a tax perspective, a recent development regarding tax breaks for granting shares to employees (stock options) could be of interest to JVs. It is not a prerequisite that these be granted in the company with which the manager has a contractual relationship; a shareholding within the “group” is also possible. This means that granting shares in the holding legal entity is also permissible and even preferable. In the past this was always associated with a dry income issue, but taxation has now been restructured. Nowadays, managers will only have to pay tax when they leave the company or when the sale of the shares generates actual capital gains. This puts the modernised taxation concept closer to what we are familiar with in other industrialised jurisdictions, especially in Anglo-Saxon countries. It significantly increases the attractiveness

of such participation models, which were previously not preferred in Germany.

In view of the steadily growing but also increasingly stringent regulatory framework surrounding the establishment of JVs, legal and tax advice prior to their formation will continue to be of key importance and will become increasingly significant in order to guide the JV parties appropriately through the applicable provisions. Moreover, it will be necessary to anticipate that the establishment of JVs – particularly those with foreign connections to non-EU countries – will require more time for preparatory review. The “signing” and “closing” schedules of the parties involved should be adjusted or calculated accordingly.

Conclusion

While JVs have always been an effective means of pooling financial resources, minimising risks, transferring knowledge, entering new markets and overcoming outdated internal structures, their importance has grown in recent years. This trend is expected to continue, based primarily on two observable developments, as outlined at the outset of this article.

On the one hand, it is becoming increasingly difficult to keep track of and navigate national and supranational regulations, so that it often seems more attractive for international market participants to join forces with an existing local market participant on a permanent or project-related basis, even if only temporarily, in order to benefit from their market experience and market familiarity. In conjunction with this, the regulatory requirements for “traditional” company acquisitions are becoming increasingly comprehensive and complex.

This is also noticeable in the consulting practice. Conducting due diligence is no longer limited to the so-called traditional areas, but now typically and routinely also covers topics such as data protection, FDI, FSR, ESG, sustainability, supply chains, reporting obligations, etc, depending on the parties involved with var-

ying emphasis. As a result, establishing a JV structure is often a real alternative to the “traditional M&A deal”. For this reason, the regulatory landscape favours the establishment of JVs.

However, it should not be forgotten that the regulatory requirements for establishing JVs are also becoming increasingly complex. It remains to be seen whether the increase in requirements for establishing JVs will make traditional transactions more attractive again at some point. At present, this does not appear to be the case.

Secondly, the tasks to be accomplished are becoming increasingly complex and expensive, so that only a few companies, if any, have the financial and technological resources to tackle large projects on their own. The establishment of JVs enables these tasks to be accomplished more efficiently, as the capital required can be allocated among multiple parties, and any lack of expertise, experience or cutting-edge technologies can also be pooled within a JV, thereby allowing for diversification and expansion of the range of services offered.

The capital investment required to establish a JV is also significantly lower. Unlike the acquisition of a company, which usually requires a much higher capital investment, the capital injection for a JV can be homeopathic and occasion related. This generates interest rate advantages, and probably increases the ROI.

To summarise, the increase in JVs has both a legal and an economic component. Joint efforts will probably be essential in order to overcome the social and economic challenges that will arise in the upcoming years, which are increasing in significance, impact and scale. This circumstance is likely to contribute to JVs remaining an effective means for domestic and global players to keep pace and meet these challenges. The “market” for JVs is therefore expected to remain stable or even increase in share.



Law and Practice

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LAWP Studio Legale e Tributario

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1. Market Conditions

1.1 Geopolitical and Economic Factors

In 2025, JV activity in the Italian market and involving Italian entities has been shaped by geopolitical tensions and macroeconomic shifts.

Conflicts in Ukraine and the Middle East favoured partners and markets from stable jurisdictions.

Domestically, Italy's inflation is stabilising (forecast 1.8% for 2025), and the European Central Bank's (ECB's) monetary easing lowers financing costs, supporting JV investment. However, current geopolitical risks and uncertainties over US tariffs led the ECB to pause further rate cuts in 2025.

US tariffs could impact export-focused JVs (eg, agriculture, pharmaceuticals, manufacturing), driving companies to diversify trade via new cross-border JVs.

Looking ahead to late 2025 and 2026, JV activity is expected to grow, particularly in sectors aligned with national priorities like the NRRP and "Made in Italy" initiative (eg, green energy, digital transformation, supply chain resilience).

Private equity's "buy-and-build" strategies will continue to drive the consolidation of fragmented Italian SMEs through JVs. Given the current context of cross-border uncertainties, JV transactions are often seen as a softer way to approach a market and/or an industrial/commercial partner, helping investors to reduce risks and better understand the evolution of market dynamics, and potentially pave the way for

subsequent rounds of acquisitions, especially for entities backed by PE investors.

1.2 Industry Trends and Emerging Technologies

Recent Italian JVs have focused on industrial manufacturing (including defence), the service industry (especially those supporting large multinational conglomerates) healthcare, and technology. These activities are driven by the NRRP and new EU/Italian regulations (eg, the EU AI Act), which are rapidly evolving.

Specifically, the EU AI Act (Regulation (EU) 2024/1689) adopts a risk-based approach, impacting compliance and liability. New liability regimes (revised Product Liability Directive, proposed AI Liability Directive) expand liability for AI system damages. This development requires dynamic JV agreements to allocate responsibility for ongoing liability and cybersecurity risks in line with NIS 2 Directive requirements. As a result, due diligence must place a specific emphasis on liability, data governance, and IP ownership.

Data sharing, localisation, and GDPR compliance are crucial, necessitating legally binding data sharing agreements (DSAs). Italian FDI law (Golden Power) grants the government special powers in strategic sectors, eg, 5G, (see 3.3. **Sanctions, National Security and Foreign Investment Controls**). This, together with the expanding impact of export control regulations, makes JVs with foreign partners geopolitically sensitive and highlights the need for explicit attention on data residency and supply chain sourcing.

2. JV Structure and Strategy

2.1 Typical JV Structures

Within Italian jurisdiction, there are two types of JV.

Contractual JVs

Contractual joint ventures are established through an agreement between the parties, defining roles, obligations, and project duration, without creating a separate legal entity. This structure reduces set-up costs and allows greater flexibility and control. It also facilitates easier exit if the project fails. However, each party remains fully liable for JV-related obligations, and the limited operational integration may reduce synergies and complicate resource allocation, including hiring dedicated personnel.

Corporate JVs

Corporate joint ventures involve the incorporation of a separate legal entity by the co-venturers to carry out a joint project. Ownership can be equally shared or majority-held. Governance is regulated by a shareholders' agreement and reflected in the company's bylaws, which are enforceable against third parties and remain valid even after the agreement expires.

The selection of the legal form to be used to incorporate a corporate JV depends on size, scope and objectives of the venture, as well as the desired level of control and liability among the co-venturers. The legal forms commonly used are:

- the limited liability company (*società a responsabilità limitata*- s.r.l.), which is characterised by a more flexible structure with a minimum share capital of EUR10,000 (although it is also possible to incorporate limited liability companies with lower capital); and
- the joint stock company (*società per azioni*- S.p.A.), which is a more rigid structure, requiring a minimum share capital of EUR50,000.

The corporate JV assumes liability towards third parties, provides a clear legal framework, and allows for pooling of resources, better access to financing, and issuance of equity or debt instruments.

However, incorporation involves higher set-up costs, reduced flexibility in governance changes or exit, and may lead to partial loss of direct control - though this can be mitigated through tailored governance clauses in the shareholders' agreement and bylaws.

Other Legal Structures

Network of enterprises (rete di imprese)

The network of enterprises requires a contractual agreement, established under Article 3 of Legislative Decree 5/2009, which regulates collaboration between two or more independent businesses on specific projects or initiatives, without the need to establish a separate legal entity. This structure allows companies to share resources, expertise and knowledge while maintaining their autonomy and market presence. Implementation requires the adoption of a network programme, which is executed by the network itself.

This type of structure is often used when businesses are interested in monitoring and ensuring standards in the production process, leading to specific certifications (eg, "Made in Italy").

Temporary association of enterprises (associazione temporanea di imprese)

The temporary association of enterprises is an aggregation of two or more companies formed to carry out a specific activity, with a duration limited to the time necessary for its completion. Each company participating in the association gives a collective mandate to one of them, the so-called group leader company, which acts on behalf of the association to achieve the common objective.

The primary purpose of these associations is to participate in public tenders and private contracts. Italian regulations do not provide a comprehensive framework governing them, but set forth sector-specific rules, notably in the context of public procurement projects.

2.2 Strategic Drivers for JV Structuring

The choice between a contractual and corporate JV hinges on several key factors:

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- assess the financial needs of the project and the relevant forms of financing (equity, third-party financing, public grants, etc);
- determine whether the JV will operate under a limited or unlimited liability regime, depending on the risks involved;
- establish the governance structure;
- review the competitive landscape to ensure the JV activities do not conflict with the partners' existing businesses;
- clearly identify and agree upon the contributions (financial, operational, technical, etc) that each co-venturer will bring to the JV; and
- determine the nature and duration of the project - contractual JVs are typically more suitable for short-term projects, whereas corporate JVs are preferred for long-term initiatives.

Moreover, it is crucial to analyse the potential tax implications of the JV to ensure efficiency and compliance with applicable tax laws. The primary consideration is the distinction between a contractual JV and a corporate JV, as their tax treatments differ significantly.

Corporate JVs (eg, S.p.A, S.r.l.) are treated as a separate legal entity for tax purposes and are subject to standard Italian corporate taxes.

- IRES (corporate income tax): the current rate is 24%, applied to the company's profits.
- IRAP (regional tax on productive activities): a regional tax on net production value, with a standard rate of around 3.9%, which can vary by region.
- Dividends distributed by the JV to the co-venturers are subject to taxation at the shareholder level. For corporate shareholders in Italy, a significant portion of the dividend is generally exempt from IRES under the participation exemption regime. For foreign shareholders, tax treaties and EU directives may provide for reduced withholding tax rates.

In contractual JVs, the income pertaining to each JV member constitute its direct taxable income. This structure does not create the "double taxation" effect that can occur in a corporate JV (once at the company level and again on dividends).

Tax Incentives

Italy offers various tax incentives that can be relevant for JVs, especially those in specific sectors or engaged in R&D.

- R&D tax credits: JVs investing in research and development can benefit from tax credits.
- Patent box: this incentive provides a tax exemption on income derived from the use of certain intangible assets, such as patents and trade marks.
- Special economic zones (SEZs): JVs located in certain SEZs in southern Italy may be eligible for tax credits and other financial benefits.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

Main Regulators

The key regulatory authorities are:

- the EU, which establishes the legal framework concerning specific sectors, such as, antitrust and anti-money laundering;
- the Italian Competition Authority, which possesses broad investigative powers in relation to competition within the national market;
- the Italian government, which holds veto power over transactions involving companies engaged in strategic activities or holding assets strategic to the national interest;
- Consob, which regulates and supervises the orderly functioning and integrity of Italian financial markets;
- the Bank of Italy, which oversees regulation and supervision of financial intermediaries and ensures their compliance with applicable laws; and
- the Italian Tax Authority, which ensures tax compliance by overseeing the collection of tax revenues.

Main Statutory Provisions

Contractual JVs lack specific establishment regulations. The JV agreements, as civil law contracts, are regulated by the statutory provisions of the Italian Civil Code on obligations and contracts (Articles 1173 to 1986 of the Italian Civil Code).

For corporate JVs, the main statutory provisions are contained in the Italian Civil Code, Articles 2188 to 2642.

Additionally, depending on the specific industry in which the JV operates, the JV may be governed by specific regulations, such as those applicable to financial institutions, healthcare providers, tech companies and critical infrastructures.

3.2 Anti-Money Laundering Compliance

AML legislation is mainly regulated by the Legislative Decree No 231/2007, which implements the relevant EU legislation and establishes measures to prevent money laundering and terrorism financing.

Key obligations provided by Legislative Decree No 231/2007 include:

- the appointment of an AML officer;
- the reporting of suspicious transactions to the financial intelligence unit (FIU); and
- the adoption of corporate policies to ensure compliance with the regulations and the adoption of internal control systems proportional to the company's risk profile.

Moreover, the EU adopted a new AML package in June 2024. This package includes:

- Directive (EU) 2024/1640 (the “Sixth European AML Directive”), that introduces stricter due diligence requirements, enhanced beneficial ownership transparency, and more robust transaction monitoring;
- Regulation (EU) 2024/1624 (the “Single Rulebook”), aimed at harmonising the implementation of previous AML directives, reducing inconsistencies across member states’ national legislation; and
- Regulation (EU) 2024/1620 (the “AMLA Regulation”), establishing a new EU AML authority (AMLA) to oversee and co-ordinate anti-money laundering efforts across the EU.

The implementation of the AML package began in January 2025.

One of the key innovations introduced by the AMLA Regulations is the launch - effective as of 1 July 2025 - of the AMLA, which will have supervisory power over high-risk financial entities, authority to intervene in cases of malfunctions within national supervisory mechanisms, and responsibility for ensuring the enforcement of targeted financial sanctions.

3.3 Sanctions, National Security and Foreign Investment Controls

Foreign Direct Investments and Golden Power Regulations

Italy’s “golden power” regime (Law Decree No 21/2012) grants the government power to block foreign direct investments and corporate transactions in strategic sectors like defence, national security, and high technology (fintech and insurtech). Foreign investors establishing JVs or investing in Italian companies within these sectors must consider applying under these regulations.

The intervention powers granted to the government are essentially as follows:

- opposition to the acquisition of shareholdings;
- veto on the adoption of corporate resolutions; and
- imposition of specific requirements and conditions.

At the EU level, Regulation (EU) No 2019/452, establishes a framework for screening FDIs across the EU. This Regulation complements the existing Italian legislative framework, and it mandates member states to report FDIs to the European Commission.

Foreign Subsidies Regulation

The Foreign Subsidies Regulation (Regulation (EU) 2022/2560) enables the European Commission to investigate and address foreign subsidies that distort competition within the EU, ensuring a level playing field. Acquisitions, mergers and JVs involving EU targets must be notified to the Commission if they meet specified criteria summarised below:

- EU-wide turnover: the target company or JV EU-wide turnover is equal to at least EUR500 million; and
- foreign financial contributions: the parties to the transaction must have received combined financial

contributions from non-EU countries totalling at least EUR50 million in the past three years - these contributions can include state guarantees, equity, loans, tax benefits, project grants or revenues from sales to state entities.

Italy in Support of Ukraine

In recent years, the EU has frequently imposed sanctions or restrictive measures both independently and in the implementation of binding resolutions of the United Nations Security Council.

In particular, in the current macroeconomic context, the sanctions packages enacted by the EU against Russia and Belarus implies the restriction of business activities with Russian and Belarus partners. The sanction package provides, amongst others, the prohibition of any transactions with a legal person, entity or body established outside the EU whose proprietary rights are directly or indirectly owned for more than 50% by an entity listed as sanctioned, this leading to extensive export control regulations, often requiring specific due diligence and legal assessment on supply/distribution transactions.

3.4 Competition Law and Antitrust

According to Law No 287/1990, establishing a JV - whether through the incorporation of a new company or the acquisition - can result in a concentration, triggering merger control scrutiny by the Italian Antitrust Authority (IAA).

In particular, a corporate JV can be considered a concentration if it operates as an independent economic entity. To determine if a JV qualifies as a “full-function” entity, the following factors should be assessed:

- whether the JV has sufficient resources to operate independently in the market, without excessive reliance on the parent companies;
- if the market relationship between the JV and the parent companies is substantial but limited to an initial start-up period, which should not exceed three years; and
- whether the JV is engaged in activities beyond a single function of the parent companies on a sustained basis.

The creation of a full-function JV requires prior notification to the IAA under the following circumstances:

- the aggregate turnover of the involved companies in Italy exceeds EUR567 million; and
- the aggregate turnover of at least two of the involved companies in Italy exceeds EUR35 million each.

Italian merger control rules transpose into national law the provisions of Council Regulation (EC) No 139/2004. Therefore, they should be interpreted in conjunction with the principles established by the European Commission and EU courts.

Even if a JV does not trigger a merger review, it should still be assessed under the rules concerning anti-competitive agreements.

3.5 Listed Companies and Market Disclosure Rules

Although Italian law does not explicitly regulate listed companies participating in JVs, the general rules applicable to listed companies still apply to such entities, including the rules on market abuse (preventing insider trading by requiring disclosure of price-sensitive information), and, in general, financial information disclosure.

Consequently, with reference to statutory information obligations, listed parties participating in JVs are obliged to disclose relevant information to the public and to Consob to ensure transparency for investors and for the market.

3.6 Transparency and Ownership Disclosure

Italian legislation sets forth disclosure requirements related to the ultimate beneficial owner (UBO).

Under Italian Laws, the UBO of a company is the individual(s) that:

- directly holds more than 25% of the company's corporate capital; or
- indirectly own more than 25% of the company's corporate capital through controlled companies, fiduciary companies, or by an intermediary.

If the ownership structure does not clearly allow the identification of the individual with direct or indirect ownership, the UBO is identified as the individual(s) holding the majority of voting rights at shareholders' meetings or exercising dominant influence over the company through contractual agreements or other mechanisms. Should all reasonable efforts to identify the UBO prove unsuccessful, the legal representative of the company will be considered the UBO.

The Inter Ministerial Decree No 55 of 11 March 2022 provides the establishment of the register of beneficial owners (the "UBO Register") in Italy. According to this Decree, the information relating to the UBOs shall be communicated to the Companies Register Office of the territorially competent Chamber of Commerce by the legal representative of the company, exclusively online. Currently, such obligation has been suspended while a preliminary ruling is pending before the CJEU on the matter.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Significant Recent Decisions

The Italian Court of Cassation's recent ruling (Judgment No 11964/2025) provides clarification on applicable corporate law for cross-border EU companies. In a dispute involving a Luxembourg-based firm with key assets in Italy, the Court overturned an earlier decision that applied Italian law, affirming instead that EU freedom of establishment requires respecting the law of the company's country of incorporation. The ruling underscores that Italian courts must apply foreign corporate law and can independently ascertain it. This decision strengthens legal certainty and uniformity for cross-border business operations within the EU.

Moreover, the local court of Trieste (Decision No 241/2024) ruled that drag-along clauses can be added to company bylaws by simple majority, not unanimity, if: all shares are transferred concurrently; shareholders receive at least statutory fair value; and all shareholders are treated equally.

Regulatory Developments

Law No 21/2024, which introduces measures to enhance capital market competitiveness, includes a provision that allows small and medium-sized S.r.l.s. to issue standardised quotas in book-entry form, voluntarily adopting the dematerialisation regime. For SMEs choosing to dematerialise their quotas, the obligation to maintain a quotaholder register - typically not required for S.r.l.s. - would be reintroduced.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

Establishing a JV requires a structured and multi-stage process. To guide discussions, the co-venturers typically focus on the definition of the following preliminary documents:

- mutual non-disclosure agreement, protecting the confidentiality of the information shared between the co-venturers during negotiations;
- letter of intent, term sheet, head terms or memorandum of understanding (in most cases non-legally binding), setting forth the essential commercial and legal terms the co-venturers have agreed upon during the preliminary negotiations; and
- exclusivity agreement, preventing either co-venturers from engaging in parallel negotiations with other potential partners or buyers for a definite period of time, usually aligning with the negotiation timeline (the exclusivity agreement may be included as a specific clause within one of the primary documents referenced above).

Market Standard Provisions

At the pre-JV agreement stage, it is common for co-venturers to agree on certain key provisions. These typically include the non-binding nature of early-stage documents, a clear definition of the JV's structure, scope, and the role of each party, required due diligence, necessary regulatory approvals, as well as any bridge financing to support the initial phase of the project. The parties often agree to a binding mutual exclusivity to prevent parallel negotiations with third parties and include confidentiality clauses to protect shared sensitive information. Governing law and jurisdiction

are also usually specified early on to avoid future disputes over applicable law or forum.

Moreover, when a corporate JV is established through investment in an existing entity or contribution of businesses or assets of the co-venturers in the JV entity, a full due diligence on the target/assets to be contributed may be carried out before proceeding with the signing of the final agreements.

5.2 Disclosure Obligations

A corporate JV must be registered with the Business Register within 30 days of incorporation, typically on the closing date. Key JV information (name, statute, legal seat, corporate capital, identities of co-venturers and legal representatives) must be submitted and remain publicly available. Registration grants the corporate JV legal personality, allowing it to hold rights and obligations.

No additional disclosure requirements are applicable to JVs under Italian law, unless filings are specifically burdened under FDI regulations (see **3.3 Sanctions, National Security and Foreign Investment Controls**), antitrust legislation (see **3.4 Competition Law and Antitrust**), listed company regulations (see **3.5 Listed Companies and Market Disclosure Rules**) or required under other sector-specific regulations.

For listed companies, a detailed preliminary JV agreement, even if subject to conditions, is typically considered price-sensitive and requires informing authorities and the market.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Conditions Precedent

In Italy, JV agreements commonly include conditions precedent (CPs) that must be satisfied or waived before closing. These are tailored to the specific JV and may include:

- regulatory approvals: mandatory clearances (eg, antitrust or FDI notifications that are generally outside the parties' control;
- third-party consents: required under bylaws, shareholder agreements, or key contracts with

third parties (eg, lenders or suppliers) in the case of ownership changes; and

- contractual conditions: negotiated provisions addressing deal-specific risks, such as successful due diligence or absence of a material adverse change (MAC).

If a CP is not met, the contract does not become effective and the benefiting party cannot claim damages. Under Italian laws, parties must still act in good faith in the timeframe leading to CP satisfaction, to avoid pre-contractual liability.

Material Adverse Change and Force Majeure

MAC clauses, increasingly present in Italian JV agreements, aimed at allocating the risk of unforeseen events occurring between signing and closing that could significantly harm the commercial viability of the transaction.

MAC clauses are typically triggered by adverse changes in the project's business, financials, or operations and often operate as a condition precedent to the execution of the project. In the current global scenario, in cross-border JV agreements, MAC clauses may include reference to specific provisions related to potential negative impact of tariffs, wars/embargos or other force majeure events, which operate not only between signing and closing, but also during the lifetime of the JV, to grant partners for flexibility to adjust the terms of the transactions occurring these specific circumstances.

To be enforceable, MAC clauses must rely on objective and verifiable criteria, such as financial thresholds or defined triggering events, and avoid vague, discretionary language. Italian law (Article 1355 c.c.) considers void any condition precedent solely dependent on one party's discretion.

5.4 Legal Formation and Capital Requirements

The JV agreement constitutes the fundamental legal instrument governing the establishment and operation of the JV.

Contractual JV

A contractual JV is established upon the signing of a JV agreement, setting forth the JV's objectives and the respective rights and obligations of the co-venturers.

Corporate JV

Upon signing the JV agreement and on the closing date, the co-venturers, assuming any relevant conditions precedent have been satisfied, should incorporate the JV. To this end the following activities may be required:

- the holding of a meeting before a notary public to adopt several corporate resolutions, including the adoption of the bylaws and the appointment of the management body;
- the execution of any agreed-upon capital contributions to the JV vehicle, noting that the minimum capital varies depending on the selected company form: (i) S.r.l.: EUR10,000 (or as low as EUR1 for simplified S.r.l.); (ii) S.p.A.: EUR50,000;
- within 30 days of incorporation, the registration of the company with the competent Business Register (see 5.2 Disclosure Obligations); and
- depending on the nature of the business and the industries involved, the obtention of any licence and authorisation necessary to carry out the business.

There are generally no restrictions on foreign entities participating in JVs, provided that reciprocity requirements are met. However, specific sectors may require compliance with additional regulations or approvals.

Once established, the JV can begin operations according to the agreed business plan, while ensuring compliance with applicable laws and regulations.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

Contractual JV

As outlined in 2.1 Typical JV Structures and 5.4 Legal Formation and Capital Requirements, the terms of a contractual JV are documented within the JV agreement entered into between the co-venturers, which typically regulates:

- co-venturer identification;
- scope and roles (clarifying no partnership intent);
- contribution obligations (financial, resources, tech, personnel);
- decision-making procedures;
- profit allocation;
- IP licensing for JV development;
- co-venturer liabilities (inter-se and third-party);
- termination and consequences; and
- applicable law and venue for disputes.

Corporate JV

As described in 2.1 Typical JV Structures and 5.4 Legal Formation and Capital Requirements, the essential terms of a corporate JV are documented within the JV agreement entered into between the co-venturers, which usually includes as annexes:

- a shareholder agreement;
- the draft of the company's by-laws (reflecting, to the maximum extent permitted by the law, the provisions of the shareholders' agreement); and
- any potential commercial agreement to be entered into between the JV and the co-venturers (eg, manufacturing agreements, supply and distribution agreements and management service agreements).

The JV agreement usually regulates the essential terms of the transaction, including, mutatis mutandis, provisions equal to those set out in the contractual JV agreement.

The shareholders' agreement and the JV's by-laws usually regulate all the rights and obligations of each co-venturer as shareholder of the JV, and specifically:

- procedures for securing additional funding and each shareholder's obligation or right to contribute;
- governance structure;
- each co-venturer's rights relating to the management of the company, including appointment rights and attribution of powers;
- the decision-making procedures and voting thresholds for major decisions;
- deadlocks and dispute resolution mechanism(s);
- rules on transfer of shares, including limitations on transfer, right of first refusal, drag-along and tag-along mechanism;

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- exit strategy;
- discipline on distribution of dividends;
- control rights; and
- regulation on the winding-up and liquidation of the JV.

The Italian regulatory framework (including, for instance, the possibility to issue special classes of shares, grant specific rights to each co-venturer, and allocate profits) offers great variety and flexibility in structuring by-laws tailored to the needs of the project.

6.2 Governance and Decision-Making

Contractual JV

Contractual JV decisions are typically made by mutual agreement. The JV agreement may permit independent activities by one co-venturer, provided regular reports are shared for transparent progress tracking.

Corporate JV

Corporate JVs typically involve two levels of decision-making: shareholders and the administrative body. Shareholders, as investors, make key decisions affecting their position via meetings, regardless of the JV's company form.

In particular, the shareholders, while not having a managerial role, may resolve certain approval rights over the following decisions:

- the approval of the financial statements and distribution of profits;
- the appointment of directors and the determination of their consideration;
- the appointment of statutory auditors and the determination of their consideration;
- amendments to the bylaws, including decisions to substantially amend the corporate purpose and introduction or amendment of special rights (ie, *diritti particolari*) or class of shares (ie, *categorie di quote/azioni*) granted to specific shareholders;
- authorisation to proceed with the purchase by the JV, for consideration equal to or greater than one-tenth of the share capital, of assets or receivables from co-venturers or directors within two years of the company's incorporation, (so-called hazardous purchases, ie, *acquisti pericolosi*);

- waiver or settlement of liability claims brought against directors (which, requires the "consent" of a majority of shareholders representing two-thirds of the share capital); and
- reduction of share capital due to losses.

Resolutions generally pass with a majority shareholder vote. However, bylaws/JV agreements can require higher quorums or grant minority shareholders veto power for certain matters. Voting rights can also be allocated disproportionately.

The administrative body exclusively manages the JV's business. The shareholders' meeting can appoint a sole director or a board of directors.

In the case of appointment of a board of directors, as detailed in **7.2 Duties and Functions of JV Boards and Directors**, the decisions are usually taken by majority vote and every director has one vote. The JV's bylaws may provide that a decision on specific relevant matters will be adopted with:

- unanimity of consent;
- an enhanced quorum; or
- the favourable vote of at least one director appointed by the minority shareholder (so called veto power).

In the event of a tie within the board of directors, the chairperson or another member may be granted the right to cast a deciding vote (commonly known as a "casting vote").

6.3 Funding

JVs can be financed via equity (shareholder contributions, typically cash, or non-cash with valuation reports confirming the values of the in-kind contributions made by the members) or debt (loans from financial institutions, lenders, or shareholders).

Shareholder loans under Italian law are typically subordinated and, in certain circumstances, their repayment may be subject to claw-back actions. Depending on the JV's structure, bonds or other debt instruments may also be issued.

Italian laws allow issuance of special classes of shares or the attribution of specific rights to members (as the case may be) with rights which are not proportionate to the contributions made by the members (eg, shares with limited voting rights), so that it is possible for the funding member to provide capital without altering the ownership and voting structure of the company.

6.4 Deadlocks

As referred to in **6.1 Drafting and Structure of the Agreement**, the JV agreement usually sets out specific mechanisms to resolve deadlock situations, which can be generally classified into three different categories.

Deadlock resolution can involve:

- negotiation clauses, such as granting a casting vote or appointing an independent arbitrator;
- buy-sell provisions, facilitating share transfer and leading to a co-venturer's exit. Common buy-sell options include:
 - (a) Russian roulette clauses: one co-venturer proposes a price, the other can accept or counter with the same offer;
 - (b) Texas shootout clauses: co-venturers submit offers to an independent expert, the highest offer buys shares; and
 - (c) put/call options: one co-venturer is obliged to sell or buy shares at a set price.

6.5 Other Documentation

To manage the commercial and operational aspects of the JV, in addition to the JV agreement, one or more of the following ancillary agreements may be executed, depending on the company's activity:

- shareholders' agreements;
- directorship agreements or employment agreements;
- intellectual property assignments or licence agreements;
- asset transfer agreements;
- manufacturing agreements;
- supply and distribution agreements or agency agreements;
- management service agreements or service level agreements;

- real estate lease agreements; and
- loan agreements with shareholders or third parties.

Usually, a draft of these agreements, agreed upon by the co-venturers, is attached as an annex to the executed version of the JV agreement.

6.6 Rights and Obligations of JV Partners

The rights and duties of co-venturers are primarily defined in the JV agreement and typically include the following.

- Profit and loss allocation rules: by default, profits and losses are shared in proportion to each party's contribution. Any agreement that entirely excludes a party from both profits and losses (*pactum leoninum*) is null and void. Co-venturers are free to deviate from the default rule, provided each has some share in both profits and losses.
- Governance and decision-making: this covers each co-venturer's rights on the governance of the company and on decision-making processes.
- Information rights: this refers to the rights attributed to each co-venturer to access information about the JV's activities, financials, and management. For the information rights attributed by Italian law to the parties of a corporate JV, see **6.7 Minority Protection and Control Rights**.
- Non-competition clauses: restrictions on co-venturers from competing with the JV's business and/or with each other's business for a specified period or within a defined geographical area.

Liability for Debts and Obligations

The liability of the JV participants depends on whether they have formed a corporate JV or a contractual JV.

For corporate JVs, the company itself is liable for its debts and obligations. The co-venturers have limited liability, meaning their liability is capped at the value of their subscribed capital.

For contractual JVs, the co-venturers are liable for the obligations pertaining to the activities they perform, with joint and several liability. This can be contractually structured to facilitate relations with third parties demanding, allowing them to secure fulfilment of the obligations by all JV partners jointly.

6.7 Minority Protection and Control Rights

Minority partners in a JV, especially in an international context, can secure various control rights to monitor and protect their investment.

- Veto rights, preventing the majority from making significant changes without the minority's consent: these rights are usually enshrined in the JV's bylaws and/or the JV agreement and apply to a predefined list of "reserved matters," such as amending the bylaws, issuing new shares or altering share capital, approving the business plan, appointing or removing directors, and winding up the JV.
- Information rights: S.r.l. non-managing shareholders have broad information and document examination rights, while S.p.A. shareholders have more limited inspection rights. JV agreements can enhance minority oversight with provisions for comprehensive reports and observer status at board meetings.
- Tag-along rights: this right allows the minority member of a corporate JV to "tag along" on the sale and sell their shares at the same price and on the same terms as the majority, preventing them from being left behind with a new, potentially undesirable partner.
- Exit rights: the JV agreement could also include clear provisions for a minority partner's exit, such as put options, which allow the minority to sell their shares to the majority at a predetermined price or valuation in specific circumstances. These rights provide an escape mechanism if the JV fails to meet its goals or if a dispute arises.

Under Italian law, all of the above rights can be implemented through the issuance of special class of shares or through the attribution of special rights to the minority member (as the case may be, depending on the JV corporate form), fully enforceable against third parties.

6.8 Applicable Law and Dispute Resolution in International JVs

Applicable Law

In the context of international JVs involving Italian parties, assets, or operations, the selection of governing law and dispute resolution mechanisms is a

key aspect of the negotiation process. These choices can have a significant impact on the enforceability of rights, the predictability of outcomes, and the overall stability of the JV arrangement.

It is advisable for JV parties to explicitly choose both a substantive law (which governs the content and interpretation of the agreement) and a procedural law (which applies to the resolution of disputes).

While Italian law may be selected where the JV operates primarily in Italy or touches upon regulated sectors (such as energy, defence, or strategic infrastructure), international JV partners often opt for neutral third-country law. The decision is usually influenced by the location of assets, the domicile of the parties and the territories where the JV performs its main activity. If the JV agreement provides for the incorporation of a foreign entity, it is necessary to ensure consistency and co-ordination between the applicable law chosen by the parties in the JV agreement and the statutory laws governing the JV entity.

Dispute Resolution

When it comes to the choice of forum, Italian courts are rarely selected in cross-border JVs. Most JV agreements involving foreign parties prefer arbitration procedures, typically administered under the rules of institutions such as the ICC, LCIA, or the Milan Chamber of Arbitration.

The absence of a clear agreement on the applicable procedural law or jurisdiction can lead to significant uncertainty. In such cases, courts will apply conflict-of-law rules – for instance, those under the Rome I Regulation (Regulation (EC) No 593/2008) on the law applicable to contractual obligations, or the Brussels I bis Regulation (Regulation (EU) No 1215/2012) on jurisdiction and the recognition and enforcement of judgments within the EU. This can lead to delays, parallel proceedings, and higher enforcement risks, particularly if the JV operates across multiple jurisdictions.

Although Italy does not impose mandatory alternative dispute resolution (ADR) procedures for JV agreements in general, ADR mechanisms (such as mediation, negotiation, or expert determination) are often

included contractually. These are especially common in long-term, operational JVs where the preservation of the business relationship is important. In regulated sectors, specific administrative or regulatory conciliation procedures may apply before formal dispute resolution can be initiated.

Italy is also a party to major international instruments governing dispute resolution, including:

- the Washington Convention (ICSID), ratified by Law No 109/1970, which allows for the resolution of disputes between foreign investors and member states through international arbitration;
- the New York Convention, ratified by Law No 62/1968, which obliges contracting states to recognise and enforce arbitral awards rendered in other signatory countries; and
- the European Convention on International Commercial Arbitration, ratified by Law No 418/1870, which governs commercial arbitration between parties from different countries.

7. The JV Board

7.1 Board Structure

The board of directors is typically appointed by the shareholders' meeting through a majority resolution, except for the first directors, who are appointed in the deed of incorporation.

The company's bylaws can grant each co-venturer the right to appoint one or more directors and may also regulate the appointment of key roles such as the chairperson, vice-chairperson, or managing directors. The bylaws also establish the minimum and maximum number of directors and the duration of their office, which may not exceed three financial years for S.p.A.s.

Directorships are typically held by individuals, but under Italian law, legal entities may also be appointed (though they must designate a permanent representative). There are no nationality or residency restrictions for directors, so foreign individuals can be appointed without limitation, subject to any sector-specific rules and reciprocity criteria being met.

To ensure board control or deadlock resolution, it is common to:

- allocate casting votes to one or more directors on specific matters; and/or
- negotiate voting rights and quorum rules to reflect the JV parties' commercial balance.

Re-election is permitted unless expressly excluded by the bylaws. Directors may also be removed by shareholder resolution; however, removal without just cause entitles the director to compensation for damages.

7.2 Duties and Functions of JV Boards and Directors

The primary duty of the board of directors and its members is to manage the company and to carry out any activities necessary to fulfil the corporate purpose. Specifically, the board of directors is responsible for providing the company with an adequate organisational and accounting structure (also aimed at promptly detecting any signs of insolvency), make strategic decisions, approve the business plan and budgets, and oversee their implementation.

The board of directors may delegate its functions to executive directors or executive subcommittees, which will have the authority and responsibility to manage the company within the scope of the powers granted to them, and to ensure that the organisational, administrative, and accounting structures are appropriate for the nature and size of the business.

The following duties and powers cannot be delegated by the board:

- issuance of convertible bonds and capital increases;
- preparation of the draft annual financial statements;
- actions to be taken in the event of losses eroding the share capital; and
- preparation of merger and demerger plans.

Directors are bound to execute their office in the company's best interest, and to safeguard the company's assets. Therefore, in the case of a conflict of interest between the company's interests and the interests of

the co-venturer appointing them, the directors have to act for the exclusive benefit of the company, as better detailed in **7.3 Conflicts of Interest**.

In addition, the directorship agreements between the JV and the director typically include non-compete clauses designed to prevent the director from engaging in competition with the company. Under Italian law, non-compete clauses shall be limited in terms of scope, timing and territory.

7.3 Conflicts of Interest

Under Italian law, co-venturers are allowed to appoint directors to the JV. However, notwithstanding their appointment by a specific co-venturer, the directors must act in the best interests of the JV.

The Italian Civil Code distinguishes between the regulation of conflicts of interest in S.p.As. and S.r.l.s.

- S.p.A.: directors are required by law to disclose any personal or third-party interests in company transactions to the board of directors and auditors. If a director with such an interest is also a managing director, they must abstain from the transaction and delegate it to the board. If they are the sole director, they must inform the next shareholders' meeting. Decisions must be justified based on the company's best interests.
- S.r.l.: even though a prior information obligation is not required by law, contracts entered into by directors in conflict of interest and third parties may be voided at the company's request if the third party was aware of the conflict.
- S.p.A. and S.r.l.: board resolutions taken with the deciding vote of a director in conflict of interest, resulting in financial harm to the company, may be challenged within 90 days by the other directors or by the statutory auditors (if appointed).

8. IP and ESG

8.1 Ownership and Use of IP

Critical IP issues, such as IP ownership, licensing and protection, should be addressed between the co-venturers before establishing a JV.

Contractual JV

The JV agreement or its ancillary agreements may regulate the terms and conditions of:

- the licensing between the co-venturers of their respective IP rights needed to develop the JV's scope (including trade names, trade marks, technology, patents, know how, trade secrets and list of clients);
- the attribution of ownership of the IP jointly developed by the co-venturers;
- the confidentiality undertakings mutually assumed by the co-venturers; and
- the consequences of the JV termination on IP rights.

Moreover, to protect their respective IP rights, each co-venturer typically agrees to co-operate with the other in preventing IP infringement. This may involve taking legal action against third parties who infringe on the JV's IP rights or the IP rights of individual co-venturers.

Corporate JV

In the case of corporate JVs, the co-venturers may consider and regulate within the JV agreement or the ancillary agreements the following issues:

- definition of the JV name and execution of any licence of use for company names or trade marks needed for this purpose;
- decision on the transfer or licensing of IP rights owned by the co-venturers to the JV;
- rules governing the attribution of the ownership of the new IP developed by the JV;
- consequences of the liquidation or winding up of the JV on the IP rights and licences (if applicable); and
- procedures and rules to prevent IP rights infringement and possible strategies for resolving disputes related to IP rights.

Licence agreements typically include the several key provisions, essential for defining the terms of the relationship between the licensor and licensee:

- royalty clauses, specifying the financial arrangements regarding payments for the use of the intellectual property;
- exclusivity provisions, addressing whether the licensee holds exclusive rights to use the licensed IP rights;
- territorial perimeter, specifying the area in which the licensee could use the IP rights;
- sublicensing rights; and
- duration clauses, outlining the term of the licence.

Transfer of IP

The transfer of IP to or from foreign entities must comply with applicable EU and national regulations, including those on export controls, data protection, foreign direct investments and golden power regulations (see **3.3 Sanctions, National Security and Foreign Investment Controls** and **3.4 Competition Law and Antitrust**). Additionally, cross-border transfers may trigger tax implications, such as transfer pricing rules, which require transactions to be at arm's length.

8.2 Licensing v Assignment of IP Rights

In view of the JV's objectives, the co-venturers should consider whether to assign or to license the use of the IP rights to the JV.

The assignment to the JV of the IP rights that may be executed through capital contribution or sale implies that the JV finally acquires the full ownership of the IP and the right to use it without any limitation. Therefore, following the assignment, the assigning co-venturer relinquishes any control over the IP rights and no longer benefits from any future profits derived from the assigned IP.

On the other hand, the IP rights licence allows the co-venturer to retain ownership and control over the IP rights and to detail the terms and conditions that govern the other party's use of those rights. Furthermore, the IP licence provides the licensor with the right to receive compensation in the form of royalties or other fees for the JV's exploitation of the licensed IP.

The licensor also has the ability to regain full ownership of these rights upon the termination of the JV agreement or in the event of a breach by the JV of the terms outlined in the licence agreement.

Thus, licensing the existing IP is often the most effective solution, subject to any relevant tax implications (for instance, transfer pricing rules on royalties in the case of an international JV).

8.3 ESG Considerations in JVs

The concept of ESG is important because it provides a framework for assessing the sustainability and ethical impact of business, beyond economic profits. This approach has gained importance with the growing awareness that companies' evaluation should also be based on their ESG impact.

Given the growing regulatory landscape on this topic, the co-venturer may conduct in-depth due diligence before establishing a JV to identify potential risks and opportunities in the light of applicable laws and to develop a detailed ESG strategy. Governance structures can also be adapted to support effective ESG implementation. By embedding ESG principles directly into the JV agreement, co-venturers may formalise their commitment to sustainability and take a proactive approach to risk management.

Main ESG Regulations

Italy, as an EU member state, has adopted an extensive regulatory framework on ESG matters, based essentially on EU legislation.

Legislative Decree No 125/2024 implemented into Italian legislation the Corporate Sustainability Reporting Directive (CSRD), introduced by the EU, which strengthens the requirements for sustainability reporting. This Regulation requires an increasing number of companies to adopt a specific sustainability reporting, improving transparency and information on risks and corporate reliability. Specifically, starting from the financial year 2024, the CSRD Regulation requires larger companies to publish a sustainability report in accordance with the European Sustainability Reporting Standards (ESRS).

Moreover, the Corporate Sustainability Due Diligence Directive (CS3D), approved in December 2023 and to be implemented by member states by July 2026, broadens the sustainable governance obligations imposed on companies. It requires a review of internal policies, including those related to the supply chain,

as well as policies addressing human rights and environmental rights.

In addition, under Italian law, companies pursuing objectives beyond the traditional goal of profit maximisation, including social and environmental objectives, may be recognised as “benefit companies”. This designation can have a positive impact by attracting investors and clients committed to social and environmental issues.

9. Exit Strategies and Termination

9.1 Termination of a JV

JVs can have either a fixed or indefinite duration. Contractual JVs, often established for specific projects, have a defined duration set out in the JV agreement. Corporate JVs are often created for a longer duration and their bylaws generally include provisions for withdrawal or exit procedures that co-venturers can activate under specific conditions.

Despite the agreed-upon duration, the JV agreement may allow for early termination under specific circumstances, such as:

- material breach by the other co-venturer of certain provisions of the JV agreement or of the ancillary agreements;
- unsolved deadlock events;
- mutual consent by the co-venturers; and
- change of control of a co-venturer.

In the case of a corporate JV, if the parties mutually decide to liquidate the company, the board of directors shall convene a shareholders’ meeting to resolve on the appointment of the liquidators, conferring any power deemed appropriate, and on the criteria for conducting the liquidation procedure. The liquidators will then carry out the necessary steps to liquidate the company’s assets, pay off creditors, and distribute any remaining assets among shareholders proportionally to their membership interest. After all assets have been liquidated and liabilities settled, the liquidators will call a final shareholders’ meeting to present the liquidation report and seek approval for the conclusion of the liquidation process.

Upon approval of the liquidation report, the liquidators will file for the formal dissolution of the company with the Companies Register, officially marking the end of the corporate entity.

Regardless of the duration of the JV, it is crucial to regulate in detail within the JV agreements the effects of termination, also for the purposes of minimising potential disputes between the co-venturers. Specifically, among others, the JV agreement should regulate:

- the respective rights and liabilities of the co-venturers upon termination;
- to the extent possible, the assignment of the assets owned by the JV;
- the impact of the JV termination on the commercial agreements in place;
- any provisions of the JV agreement that remain in effect after termination (usually confidentiality clauses);
- the allocation of key-employees, if the co-venturers desire to re-hire part of the work-force; and
- the allocation of relevant IP rights developed by the JV.

Alternatively, the co-venturers may also agree on a global exit by transferring all of their interests in the JV to a third party.

9.2 Asset Redistribution and Transfers

Under Italian laws, co-venturers can freely transfer their own assets to each other without involving the JV. However, if the transfer involves assets licensed to or held by the JV, the JV’s interests may be affected.

Therefore, prior to any asset transfer, the transferring co-venturer should conduct a comprehensive review of all relevant agreements with the JV, considering that these agreements may include provisions regarding the transferability of assets and the potential need for the JV’s consent.

In addition, the transfer agreement may also specify how existing agreements between the JV and the transferor will be affected by the transfer, and, potentially, regulate the transfer of these agreements to the transferee.

Transfers of assets from the co-ventures and the JV, if made within 24 months of its incorporation, are subject to approval from the shareholders' meeting and require a sworn appraisal certifying the value of the assets. In any event, in the transfer of assets involving the co-venturers and the JV, it is often advisable to prepare an appraisal to certify the fair value of the sale.

If the JV transfers assets to a co-venturer, potential conflicts of interest may arise, regardless of whether the assets were initially contributed by the co-venturers or developed by the JV. To mitigate these risks, it is essential to establish a fair market value for the assets, ideally supported by an independent auditor's valuation (as mentioned above). Additionally, if the purchasing co-venturer is also a legal representative of the JV, the transaction may be considered self-dealing. In such cases, the conflict-of-interest procedures outlined in **7.3 Conflicts of Interest** should be followed.

As specified in **9.1 Termination of a JV**, in the event of termination of the JV, the assets owned by the company (whether originally contributed to the company by the co-venturers or originating from the JV itself) will be liquidated to pay off the creditors (if any). Any remaining assets will be then distributed among shareholders in proportion to their membership interest in the JV.

Therefore, the transfer of JV assets does not only need to take into account the decisions of the co-venturers, but also the interests of the company's creditors, who may ultimately have claims over those assets, in the event the JV faces financial distress.

9.3 Exit Strategy

Italian law does not impose specific statutory rules on JV exits, but provisions under the Italian Civil Code set the framework within which share transfers must operate.

In S.p.A.s, shareholders may freely transfer their shares unless the bylaws provide otherwise; however, absolute transfer bans are not valid, except for limited timeframes (not exceeding five years) and in so far there are not discretionary. Buy-back clauses are also allowed, though they are subject to strict statutory limits.

In S.r.l.s, transfer restrictions and exit mechanisms can be structured more freely and are commonly embedded in the articles of association. Italian law permits statutory withdrawal by a member in certain cases (eg, transfer restrictions exceeding two years, changes to the corporate purpose, merger, or extension of duration), and contractual withdrawal rights can also be included in the JV agreement.

Overall, exit strategies are primarily subject to negotiation, allowing parties to tailor provisions in the JV agreement to meet commercial objectives. The most common exit clauses typically include one or more of the following:

- rights of first refusal;
- tag-along and drag-along rights;
- put and call options;
- deadlock resolution mechanisms leading to exit (eg, Texas or Russian roulette clauses); and
- IPO exit or third-party global sale procedures.

To ensure enforceability, it is essential that exit clauses are clearly defined, proportionate, and properly reflected in the by-laws and/or in the shareholders' agreement. Furthermore, under Italian laws, if exit clauses force a member to transfer its shareholding upon occurrence of a certain event (eg, in the case of call options, drag-along), the exiting member must be granted fair and equitable consideration for the transfer.



Law and Practice

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Mori Hamada is a premier international law firm headquartered in Japan. It provides full-service legal support for diverse business activities worldwide. The firm has an extensive network in Japan as well as a strong global presence, enabling it to offer seamless cross-border solutions. It understands clients' specific needs and objectives, and tailors solutions to ensure optimal outcomes. The firm's reputation and expertise are built on decades of practical experience and a proven track record. Its mission is to create value for clients, foster professional growth for peo-

ple, and make a positive impact on the community. The firm's M&A practice handles M&A, restructurings, joint ventures and corporate alliances in various industries and sectors, including domestic and cross-border transactions (inbound and outbound); listed company, private equity and venture capital transactions; going-private transactions; MBOs; acquisition finance; and takeover strategies. The firm's M&A teams also work in other key practice areas for M&A involving distressed or insolvent companies, and in M&A or joint venture-related litigation and arbitration.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

There has been no particular trend worth noting in 2025 or expected in 2026 with respect to joint ventures (JVs). Generally speaking, JVs are used in many situations in Japan, when parties wish to combine their resources – such as technology, market access, distribution channels, production capability, human resources and financing resources. In particular, JVs tend to be used where:

- the other party's technology is necessary for the business due to the development of new products or services;
- heavy capital expenditure is required for the business; or
- a foreign company expands its business into Japan.

The authors have not seen any specific impact of recent geopolitical and economic events – such as inflation, interest rate fluctuations, wars in Ukraine and the Middle East, geopolitical challenges and US foreign policies (including tariffs) – on JV activities in Japan.

1.2 Industry Trends and Emerging Technologies

No specific industry or sector has been more active than others with respect to JVs in Japan. Emerging technologies and related regulations – particularly concerning artificial intelligence, intellectual property, data sharing, storage and usage, and liability for new technologies – do not affect JV vehicles in Japan.

2. JV Structure and Strategy

2.1 Typical JV Structures

JVs are not a distinct legal concept under Japanese law, and are generally recognised as a business venture established for a specific purpose by two or more independent parties. Typically, a corporation – especially a stock company (*kabushiki-kaisha*) or a limited liability company (*godo-kaisha*) – is used for JVs in Japan. JVs can also be implemented through contractual arrangements, such as a partnership or a business alliance agreement, in certain situations.

The key advantage of corporate JVs is the limited liability of the JV partners. In corporate JVs, the JV entities are, in principle, managed independently from the JV partners and can own their own assets, rights and liabilities. Taxes are imposed on the JV entities in the case of corporate JVs; whereas in contractual JVs the taxes are imposed on the JV partners.

2.2 Strategic Drivers for JV Structuring

In Japan, a stock company (*kabushiki-kaisha*) is most commonly used as the JV vehicle. As discussed in 2.1 **Typical JV Structures**, a stock company has advantages in terms of limited liability and independence. If a stock company is used, the JV parties can utilise (without setting out detailed rules in the articles of incorporation (Aoi) or JV agreements) the default rules under the Companies Act (CA), which many business people are familiar with since a stock company is the most popular form of corporation in Japan.

If a corporation (stock company or limited liability company) is used, all gains and losses are attributed

to the JV and the JV is subject to taxation. If a partnership is used, all gains and losses are allocated to its partners and the partners are subject to taxation.

For a stock company (*kabushiki-kaisha*), at least one half of the shareholders' contributions must be applied to the stated capital; however, for a limited liability company (*godo-kaisha*), the amount of members' contributions to be applied to the stated capital is not subject to the foregoing restriction. Therefore, a limited liability company may save on registration tax, which is determined based on an amount of stated capital.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

Japan does not have specific primary regulators for JVs, but there are several regulators in relation to setting up JVs, such as:

- the Bank of Japan (BOJ);
- the Ministry of Finance; and
- the Japan Fair Trade Commission (JFTC).

These are discussed further in later sections.

3.2 Anti-Money Laundering Compliance

Under the Act on Prevention of Transfer of Criminal Proceeds (the "Criminal Proceeds Act"), specified business operators such as banks, insurance companies and other financial institutions must:

- conduct customer due diligence;
- keep records of customer information; and
- file suspicious transaction reports with the National Public Safety Commission.

However, JV agreements generally do not contain provisions relating to anti-money laundering (AML) regulations and the Criminal Proceeds Act.

3.3 Sanctions, National Security and Foreign Investment Controls

Foreign direct investment (FDI) in Japan is regulated by the Foreign Exchange and Foreign Trade Act (FEFTA), which provides for restrictions on foreign investors.

Under the FEFTA, a foreign investor is required to make, through the BOJ, a prior notification of its FDI or post facto reporting to Japan's Minister of Finance and to the ministers with jurisdiction over the businesses of the target, if the target is in a sector designated as sensitive to national security, public order, public safety or the smooth management of Japan's economy ("Sensitive Businesses"). Sensitive Businesses include:

- cybersecurity-related businesses;
- the manufacturing of semiconductors;
- electricity;
- gas;
- telecommunications; and
- IT-related industries.

If the following actions are involved in establishing a JV or transferring shares in a JV, and the JV engages in Sensitive Businesses, a prior notification is generally required (with certain exceptions):

- the acquisition of shares of an unlisted JV (no threshold) other than from another foreign investor;
- the acquisition of 1% or more of the shares or voting rights of a listed JV by a foreign investor and its closely related persons; and
- the acquisition of shares by an entity of countries with which Japan does not have existing treaties regarding FDI, such as Iraq and North Korea.

There is a statutory waiting period of 30 days from the date of acceptance of the notification by the BOJ, which may be extended to up to five months if the authority identifies any national security concern. For cases not requiring scrutiny, the waiting period may be shortened. The typical and recommended approach is to contact the relevant ministries in advance of the formal filing and provide them with the required information – such as the foreign investor's capital structure, purpose of the investment, and plans for managing the JV – to avoid any recommendation of changes to the details of the investment or the cancellation of the investment.

Violations of the FEFTA and/or an order made by the government may be subject to criminal sanctions, such as imprisonment and/or fines.

3.4 Competition Law and Antitrust

Japanese merger control regulations may apply to the establishment of JVs. For example, a JV partner is required to submit a filing to the JFTC 30 days before the acquisition and is prohibited from acquiring shares in the JV company within 30 days after the JFTC's receipt of the filing if:

- the JV partner intends to acquire shares in the JV company, and the voting rights that will be held by the JV partner and its group companies after the acquisition will newly exceed 20% or 50% of the total voting rights;
- the total sales in Japan of such JV partner and its group companies exceed JPY20 billion; and
- the total sales in Japan of the JV company and its subsidiaries exceed JPY5 billion.

The JFTC will examine the transaction during such 30-day period, and may shorten or extend the period if necessary. Unlike merger control regimes in some jurisdictions, Japan has not adopted the “joint control” concept with respect to the filing requirements.

The Antimonopoly Act of Japan also prohibits the unreasonable restraint of trade. This may give rise to issues if, in the course of managing or operating the JV, JV partners who are competitors exchange their sensitive information that may affect competition.

3.5 Listed Companies and Market Disclosure Rules

A listed party may be required to make a public announcement under a stock exchange's Securities Listing Regulations and other regulations as well as under the Financial Instruments and Exchange Act (FIEA) when the listed party's decision-making body (typically the board of directors or executive officers) decides to participate in a JV. For further details, see **5.2 Disclosure Obligations**.

3.6 Transparency and Ownership Disclosure

As explained in **3.5 Listed Companies and Market Disclosure Rules**, information relating to the JV may need to be publicly disclosed pursuant to the Securities Listing Regulations if one of the JV partners is a listed company. If a public announcement is required, certain details of the JV company and/or the JV part-

ners – such as its/their name(s) and major shareholders – may need to be publicly disclosed.

In addition, when a JV partner is a foreign investor and the JV company engages in one of the Sensitive Businesses, such foreign JV partner will be required to make a notification to the relevant authorities prior to its investment in the JV company (see **3.3 Sanctions, National Security and Foreign Investment Controls** for further details). In the prior notification, the foreign JV partner is required to disclose information about its ultimate owner. However, the prior notification will not be made public.

If the JV company is a listed company, shareholders holding more than 5% of the shares of the listed company must submit a large shareholding report, which will be publicly disclosed, pursuant to the FIEA. In the large shareholding report, the shareholder must disclose information such as:

- its identity;
- the purpose of the shareholding;
- material agreements relating to the shares; and
- regarding shares held by certain affiliated parties and other shareholders with whom the reporting shareholder has an agreement with respect to the acquisition or disposition of the shares or the exercise of voting rights.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

In 2020, there was a major amendment to the FEFTA, which expanded the scope of Sensitive Businesses (see **3.3 Sanctions, National Security and Foreign Investment Controls**). In addition, over the past several years, the Japanese government has tightened its review of FDI. Against this backdrop, foreign JV partners are recommended to analyse the implications of the FEFTA process at the outset of a potential JV transaction in Japan, especially if the JV partner is from China, Russia or other countries with which Japan has tensions, or if it is funded or otherwise closely related to any foreign government.

Regarding court decisions, there was a lower-court precedent ruling that the specific performance of a voting agreement between shareholders is only available if all shareholders are parties to the voting agreement.

However, in January 2020 the Tokyo High Court ruled that, depending on the intention of the parties to the voting agreement, the specific performance of a voting agreement may be available even if not all shareholders are parties to the voting agreement. At the same time, though, the Tokyo High Court mentioned that courts can revoke a shareholders' resolution that was passed in breach of a voting agreement only if all shareholders were parties to the voting agreement, to avoid any unexpected effect on the other shareholders that are not parties to the voting agreement.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

During negotiations (ie, before executing the definitive agreements), the following steps are usually taken.

- NDA: parties usually enter into a mutual non-disclosure agreement (NDA) before discussing the details of a possible joint venture.
- DD: if a JV is established using an existing entity or if existing businesses or assets of the JV partners will be contributed to the JV entity, the parties usually conduct due diligence (DD) on such entity, businesses or assets.
- MoU: when the parties agree to proceed with their JV discussions, they often execute a memorandum of understanding (MoU) outlining the key terms and conditions of the JV and negotiation details. MoUs are generally not legally binding, but they often include legally binding exclusivity provisions regarding the negotiations.

5.2 Disclosure Obligations

If a JV partner or the JV entity is a listed company and establishing the JV involves a disclosure matter under the Securities Listing Regulations of the relevant stock exchange (eg, a company split, business transfer, asset transfer or issuance of new shares), and if the

transaction is not deemed “insignificant”, the affected party must disclose the required information when it decides to proceed with the JV. Therefore, when the affected party enters into a definitive agreement, it would generally be required to disclose that fact. Also, even the mere execution of an MoU may trigger such disclosure requirements, unless the MoU is just an agreement to proceed with negotiations.

In addition, a company that is required to submit an annual securities report may be required to file an extraordinary report under the FIEA regarding the establishment of a JV.

Also, if the JV entity is a listed company and is a party to a JV agreement with JV investors (ie, its shareholders), certain material agreements must be disclosed in its annual security report or extraordinary report under the FIEA. Such material agreements include:

- an agreement between a listed company and a shareholder on the nomination of candidates for director, restrictions on exercising voting rights and prior consent rights on matters to be resolved at a shareholders' meeting or by the board of directors; and
- an agreement between a listed company and a shareholder who has filed a large-scale shareholding report regarding restrictions on share transfers, standstill on share accumulation, share subscription rights, and the company's call options.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

JV agreements typically provide for conditions precedent to each party's obligation to make a capital contribution or a business/assets transfer to the JV entity, such as no breach of representations and warranties and/or covenants. In particular, if the JV is set up by the transfer of the JV partners' existing businesses, the completion of the carve-out of such businesses – including obtaining third-party consents to contract transfers and taking necessary actions for standalone issues – may be crucial and required as conditions precedent.

In JV agreements, the so-called no-MAC (material adverse change) clause is often provided as a condi-

tion precedent, although a force majeure clause is not that often provided.

5.4 Legal Formation and Capital Requirements

To set up a JV vehicle, JV partners can use an existing company or establish a new company. When an existing company is used as a JV vehicle, the JV partners can acquire the existing company's shares from the existing company's shareholders or subscribe for new shares of the existing company. Under Japanese law, there are no minimum capital contribution requirements for companies.

As a general rule, there are no requirements for the participation of foreign entities in Japanese JV companies. However, as discussed in **3.3 Sanctions, National Security and Foreign Investment Controls**, the FDI regulations under the FEFTA apply to foreign investments. Additionally, there are some restrictions on the shareholding holding by foreign investors in certain businesses – such as airlines and the broadcasting business – under laws regulating those specific business sectors.

As a part of a JV vehicle's setting-up, JV partners often transfer their assets, rights, liabilities, contracts or employees to the JV company. This can be implemented through:

- a business transfer or asset transfer through a contractual buy-sell agreement;
- a statutory company split; or
- a contribution in kind.

Depending on the circumstances (such as the value of the assets to be transferred), the following may be required:

- approval by shareholders' meetings of the transferring or transferee company; and
- with respect to contributions in kind, an investigation by an inspector appointed by the court regarding the value of assets to be contributed.

As discussed in **6.5 Other Documentation**, in some cases the JV partners and the JV company enter into

ancillary agreements in addition to the JV agreement, such as:

- IP licence agreements;
- lease agreements;
- employee secondment agreements;
- supply or distribution agreements; and
- outsourcing agreements.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

As discussed in **2. JV Structure and Strategy**, a stock company (*kabushiki-kaisha*) is often chosen as the legal entity of the JV. In this case, the Aol and the JV agreement are the main documents.

A limited liability company (*godo-kaisha*) is rarely chosen, partly because it is necessary to stipulate in the Aol all the exceptions to the default rules under the CA; otherwise, such exceptions are inapplicable. For example, if the parties agree on certain reserved matters (eg, veto rights), these matters must be stated in the JV agreement and the Aol since the default rule is that, unless otherwise stated in the Aol, business matters are decided by a majority of all members (or a majority of executive members, if appointed in accordance with the Aol), and as an exception, all reserved matters must be stipulated in the Aol.

Therefore, the JV agreement of a stock company (*kabushiki-kaisha*) is discussed here. The main terms that must be covered by the JV agreement are:

- object;
- capitalisation;
- composition of board, management and statutory auditor (JV partners' rights to appoint them);
- reserved matters;
- business plan;
- financing;
- dividend policy;
- covenants of JV partners, including covenants to not compete with the JV's business and to not solicit the JV's management and employees;
- deadlocks;

- restrictions on the transfer of shares in the JV (rights of first refusal (ROFR), tag-along rights, drag-along rights, put/call options); and
- termination and dissolution.

6.2 Governance and Decision-Making

Board of Directors

A JV formed as a stock company (*kabushiki-kaisha*) would typically have a board of directors (BoD), in addition to the shareholders' meeting, as a decision-making body. A BoD is comprised of directors and has the authority to make all decisions regarding the execution of the company's business other than matters to be resolved at a shareholders' meeting pursuant to the CA and the Aol. BoD decisions require a majority vote of the directors present at the meeting (or, if a higher vote or quorum is specified in the Aol, such higher number). A representative director or an executive director conducts the company's business pursuant to the decisions and under the monitoring of the BoD.

Shareholders' Meeting

If the JV company has a BoD, shareholders' meetings can only determine matters stipulated in the CA (examples are listed below) and the Aol.

General matters – such as approval of financial statements, distribution of dividends, appointment and removal of directors, and appointment of statutory auditors – are passed by a simple majority vote of shareholders present at the meeting (quorum requires the attendance of shareholders holding more than half of all the voting rights, unless set out differently in the Aol).

Matters that materially affect the status of shareholders or that require careful judgement – such as Aol amendments, corporate reorganisation including merger, business transfer, company split (*kaisha bunkatsu*), share-to-share transfer (*kabushiki kokan*), share delivery (*kabushiki kofu*), share exchange (*kabushiki iten*), share issuance (if share transfers are subject to company approval under the Aol) and dissolution of the company – are passed by a super-majority vote of shareholders equal to two thirds (or, if a higher shareholding is specified in the Aol, such higher shareholding) of the affirmative votes of shareholders

present at the meeting (quorum requires the attendance of shareholders holding more than half of all the voting rights, unless set out differently in the Aol, but no less than one third).

There are some exceptional matters that must be passed by special resolution of shareholders, requiring more than a super-majority of affirmative votes.

Reserved Matters

In order to protect minority shareholders, JV agreements typically provide for reserved matters (which would otherwise be passed without the vote of the minority shareholder) requiring the prior consent of the minority shareholder to pass as a resolution of the BoD or shareholders' meeting. Such reserved matters may be stated in the Aol, or the JV company may issue class shares with separate voting rights to elect a minimum number of board members or to veto certain material matters. Typical reserved matters include:

- equity financing, including issuance of new shares and stock options;
- corporate reorganisation including merger, business transfer, company split (*kaisha bunkatsu*), share-to-share transfer (*kabushiki kokan*), share delivery (*kabushiki kofu*) and share exchange (*kabushiki iten*);
- amendments to the Aol or other material internal rules and regulations;
- related-party transactions; and
- liquidation, dissolution or otherwise winding-up of business or operations.

Other less important matters are often contractually stipulated as items for prior consultation with the minority shareholder.

6.3 Funding

Initial Funding

Initial funding is usually made by equity investment from JV partners. Moreover, assets necessary for the JV's operation such as IP and facilities are typically transferred to the JV company in exchange for equity issued by the JV company (contribution in kind) or by way of company split (*kaisha bunkatsu*) pursuant to the provisions of the CA.

Further Funding

A JV agreement usually provides that JV partners have no obligation to fund or provide a guaranty; thus, JVs usually rely on loans from third parties such as banks. However, as it may be difficult to secure external financing depending on the financial conditions of the JV company, a JV agreement would likely stipulate that shareholders discuss and agree to provide a guaranty to support the JV company.

Equity financing is usually stipulated as a reserved matter (see **6.2 Governance and Decision-Making**). It is often the case that all the JV partners will be offered the opportunity to subscribe for newly issued shares in proportion to their shareholding in the JV company (a pre-emptive right), rather than minority shareholders having a veto right.

Loans From JV Partners

A loan from JV partners is also an option and is usually a reserved matter. Interest payments to affiliated foreign corporations are subject to thin-capitalisation rules (with a 3:1 debt-equity ratio) and earnings stripping rules (with a 20% threshold of adjusted income) where the excess amount of interest payable would not be tax-deductible.

6.4 Deadlocks

In order to resolve a deadlock, delegates of the JV partners initially discuss the matter for a certain period of time, and the JV partners are usually obliged to ensure that their delegates discuss in good faith. If not resolved at that stage, the matter is escalated to higher-level executives of the JV partners who will continue discussing for a further period of time.

Occasionally, the JV agreement would provide for:

- a put option to sell a JV partner's shares to the other JV partners;
- a call option to acquire the shares of the other JV partners; or
- a right to dissolve the JV, where the right is triggered if the deadlock is not resolved amicably.

6.5 Other Documentation

If assets necessary for the JV's operation such as IP, factories and facilities are transferred to the JV com-

pany in exchange for equity in the JV company (contribution in kind) or through a company split (*kaisha bunkatsu*) pursuant to the CA, the foregoing arrangements will be provided in the JV agreement. If a JV partner licenses rather than transfers the IP to the JV company, a licence agreement between the JV company and the JV partner will be executed (see **8. IP and ESG** for more detail). Also, a JV partner often enters into lease agreements under which offices or factories are leased to the JV company.

If a JV partner second its employees to the JV company, an employee secondment agreement between the JV company and the JV partner will be executed. If products or services are sourced from or provided to a JV partner, relevant agreements – such as supply agreements, distribution agreements and outsourcing agreements with respect to business administration and general affairs – will be executed between the JV company and the JV partner.

6.6 Rights and Obligations of JV Partners

Most JVs in Japan are structured as corporations – particularly as stock companies (*kabushiki-kaisha*). In a stock company, the liability of shareholders is limited to their investment, meaning that they do not share in the company's losses. The profits of the company are distributed as dividends, generally based on the number of shares held by each shareholder. In order to pay dividends, the company must have capital surplus and obtain a shareholders' resolution (which may be delegated to the board of directors under certain conditions). However, it is possible to change the distribution ratio by issuing class shares.

JV agreements often include non-compete clauses, particularly where the JV partners are strategic investors. These clauses restrict the parties from engaging in competing businesses during the JV's term and sometimes for a period after their exit.

Other rights of the JV parties are discussed in **6.7 Minority Protection and Control Rights**.

As a separate entity, JV parties are not liable for the JV's debts and obligations. However, the JV partners may contractually agree to provide security interests, guarantees or indemnities for the JV's obligations.

In contrast, in the case of a partnership, parties are typically jointly and severally liable for the JV's debts and obligations.

6.7 Minority Protection and Control Rights

Board Representation

Regarding board seats, the minority party often secures the right to appoint one or more directors to the JV's board, ensuring direct involvement in strategic decisions. If not, they may seek the right to appoint a board observer.

Reserved Matters/Veto Rights

See 6.2 Governance and Decision-Making.

Information and Audit Rights

Regarding access to information, the minority party may have contractual rights to receive regular financial statements, management reports and other key information.

As regards audit rights, the minority party may have contractual rights to conduct its own audits of the JV's books, records and other documents.

Transfer Restrictions and Anti-Dilution Protections

ROFR and tag-along rights are often negotiated. Pre-emptive rights on share issuances are also negotiated.

Deadlock Resolution Mechanisms

See 6.4 Deadlocks.

6.8 Applicable Law and Dispute Resolution in International JVs

In international JVs where the JV company is incorporated in Japan, the most common option for the governing law of the JV agreement is Japanese law. This is because the CA will apply to matters regarding the JV company (such as incorporation, shares, governance, liabilities of directors and dividend distribution), regardless of the governing law of the JV agreement. However, if the JV is between international parties, parties sometimes choose laws with which they are most familiar.

In international JVs, the parties almost always agree on dispute resolution mechanisms, and it is one of the more important issues negotiated on. The par-

ties are also free to select dispute resolutions mechanisms, such as litigation in courts or arbitration, and the jurisdiction/seat of the dispute resolution. If the JV is incorporated in Japan, one common option is litigation in Japanese courts, given the courts' reliability and familiarity with Japanese law. Another common option is arbitration to ensure confidentiality of the proceedings and enforceability in the jurisdiction in which international parties are domiciled. The seat of the arbitration could be either Japan or a neutral third country (such as Singapore).

Japan is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), and accordingly foreign arbitral awards are generally recognised and enforceable in Japan, unless they fall under specific grounds for refusal (eg, incapacity, invalid arbitration agreement, public policy, etc). The party seeking enforcement must apply to a Japanese court for an enforcement order.

On the other hand, Japan is not a party to any multilateral treaty (such as the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters) regarding the recognition and enforcement of foreign court judgments. Under the Code of Civil Procedure of Japan, a final and binding foreign judgment will be recognised and bind courts in Japan without any process if it meets the following conditions:

- the foreign court had proper jurisdiction;
- the losing party was properly served (or responded without being served);
- the judgment and court procedures do not violate Japanese public policy; and
- there is reciprocity (the foreign country would enforce Japanese judgments under similar circumstances).

However, such foreign judgments that satisfy said conditions will not be automatically enforceable in Japan, and the party seeking enforcement must first file a lawsuit in a Japanese court seeking an enforcement judgment for the foreign judgment.

7. The JV Board

7.1 Board Structure

Typically, the BoD of a corporate JV entity is structured to enable each JV partner to designate directors in proportion to its shareholding ratio in the JV company. The resolution by a shareholders' meeting is required for the appointment or removal of directors. The resolution must be passed by the majority (although the AoI may require a higher threshold) of the votes of shareholders present at the meeting that has a quorum consisting of the majority (although the AoI may require a higher threshold) of the votes of all shareholders. Directors must be individuals, but there are no limitations for foreign individuals being appointed as directors. Since JV partners typically agree on the rights to appoint and remove directors in the JV agreement, weighted voting rights are not usually used.

7.2 Duties and Functions of JV Boards and Directors

The principal duties of directors of Japanese companies are the duty of care and the duty of loyalty to the company.

As a general rule, even if a director is appointed by a JV partner, the director is not exempt from their duties as a director to the JV company and the shareholders as a whole, and may in fact be conflicted regarding their duty to the appointing JV partner. However, there is a seemingly persuasive legal interpretation that such director may act for the interest of the appointing JV partner regardless of their duties of care and loyalty to the JV company, if they act pursuant to the agreement made between all JV partners, including the JV agreement.

The BoD of the JV company may delegate its functions to subcommittees to some extent under the CA. However, JV company boards do not typically delegate their decision-making powers on matters important to the JV company's operations, in order to ensure that the JV partners maintain control over the JV company's operations through the directors appointed by them.

The CA does not specifically provide for any statutory reporting requirements of the JV board to the JV members. However, under the CA, the BoD in general must report business reports and financial statements to its shareholders at the annual shareholders' meeting.

7.3 Conflicts of Interest

Generally, under the CA, if a company intends to carry out any transaction that results in any conflicts of interest between the company and its director, the BoD must approve the transaction. Moreover, if a director of a company intends to carry out, on behalf of themselves or a third party, any transaction in the line of business of the company, the transaction must also be approved by the BoD.

Under the CA, it is not illegal per se for a person to take a seat on the JV company's board even if they hold a position as a JV partner. However, if a JV company director intends to carry out, on behalf of a JV partner, transactions with the JV company or transactions with any person that is in the same business category as the JV company, the transaction must be approved by the BoD of the JV company.

In addition, if a JV company director is a representative director of a JV partner, transactions between the JV company and the JV partner must also be approved by the BoD of the JV company. Further, JV company directors may be liable for a breach of their duties if they deprive the JV company of any business opportunity that could benefit the JV company by taking advantage of their positions as directors.

In practice, since the CA alone may not sufficiently protect JV partners' interests, transactions that result in a conflict of interest between the JV company and a JV partner frequently require the approval of the other JV partners, often as a reserved matter (see 6.2 Governance and Decision-Making).

8. IP and ESG

8.1 Ownership and Use of IP

The key IP issues when setting up a corporate JV entity include:

- whether the JV partners' IP rights should be assigned or licensed to the JV entity (see 8.2 **Licensing v Assignment of IP Rights**);
- ownership of IP rights developed by the JV entity;
- licensing of IP rights between the JV partners and the JV entity; and
- treatment of IP rights upon termination of the JV.

The key IP issues in contractual JVs include:

- ownership of IP rights jointly developed by the JV partners;
- licensing of IP rights between JV partners; and
- treatment of IP rights upon termination of the JV.

Usually, JV partners would license the IP rights owned by them to the JV entity or other JV partners; and IP rights developed by the JV entity or jointly by the JV partners would be owned by the JV entity or jointly by the JV partners. In the licence agreement, the parties would typically agree on terms relating to:

- royalties;
- term of the licence;
- exclusivity;
- sublicensing;
- permitted use and products;
- geographical area; and
- other pertinent details.

When parties transfer IP to or from foreign entities, certain requirements under the FEFTA may apply. For example, when certain IP (including patents, utility model rights, design rights, trade marks and other technologies) relating to “designated technology” (technology in connection with aircraft, weapons, manufacture of firearms, nuclear or space development) is transferred from a “non-resident” to a “resident” party, the resident party must make, through the BOJ, a prior notification or post facto report to Japan's Minister of Finance and to other competent ministers, unless certain exemptions apply. Also, export control rules under the FEFTA may apply if certain non-public technology is transferred from a Japanese party to a foreign party.

8.2 Licensing v Assignment of IP Rights

Generally, an owner of IP rights would choose to license the IP rights to the JV entity if those IP rights are intended to be used in other businesses of the owner. If the IP rights are not intended to be used by the owner, or if the owner wishes to contribute the IP rights into the JV entity instead of making cash contributions, the IP rights may be assigned to the JV entity.

If the IP rights are licensed, the JV entity and the licensing party need to agree on:

- royalties;
- exclusivity;
- scope of the licence;
- term of the licence;
- treatment of third-party infringement; and
- other matters.

If the IP rights are assigned, these matters are usually not relevant.

If the IP rights are assigned to the JV entity, the JV entity can continue using the IP rights even after the termination of the JV agreement. If the IP rights are licensed, usually the JV entity must cease using the IP rights upon the termination of the JV agreement unless otherwise agreed by the parties.

8.3 ESG Considerations in JVs

There have not been any significant court decisions or legal developments relating to ESG and climate change that directly or significantly impact on JV practice in Japan.

However, there is a growing trend of ESG factors becoming important management issues, since such factors may represent business opportunities and risks in light of long-term corporate value. In this regard, under amendments to the Japanese Corporate Governance Code in 2021, listed companies are mandated to take appropriate measures to address ESG concerns. Moreover, the FIEA requires listed companies to disclose certain ESG information, including important strategies to address ESG matters, in annual securities reports.

Because of these regulations, listed companies now need to consider ESG strategies. Since the formation of JVs could provide a pathway for listed companies towards acquiring new technologies that could be of help in finding ESG solutions, ESG is now becoming one of the growing drivers in that regard when forming JVs. Since Japanese regulators have taken international discussions into account when implementing Japanese ESG regulations, international policies and scenarios may impact on Japanese ESG regulations in the future.

9. Exit Strategies and Termination

9.1 Termination of a JV

Typical causes for the termination of a JV arrangement include:

- material breach of the JV agreement by a JV partner;
- insolvency of a JV partner;
- change of control of a JV partner;
- financial difficulties of the JV or the JV's failure to reach certain milestones; and
- a deadlock that cannot be resolved (see 6.4 Deadlocks).

Ideally, the parties should agree beforehand on the treatment of the JV company's shares upon termination of a JV, as well as on distribution and transfer of assets between the JV participants. In many cases, when a JV agreement is terminated, the terminating party may exercise either a call option to purchase the other JV partners' shares in the JV company or a put option to sell the terminating party's shares in the JV company.

The JV agreement would typically provide for a put/call price that is an increased/reduced percentage of the fair market value (eg, 120% or 80% of the fair market value) if the termination is due to the fault of the other party, and simply the fair market value in other cases. The JV agreement may also give the terminating party the right to call for the dissolution of the JV company.

See 9.2 Asset Redistribution and Transfers for distribution and transfer of assets upon termination of the JV.

9.2 Asset Redistribution and Transfers

If a JV is terminated, the redistribution of assets among the parties will be determined in accordance with the parties agreement in the JV agreement. In the absence of such agreement, the assets will continue to be held by the JV company.

If the JV company is liquidated, a liquidator appointed by a shareholders' meeting will determine how the JV company's assets will be distributed to its shareholders if the JV agreement does not provide for the distribution of assets upon liquidation. However, the JV partner that originally contributed those assets to the JV company would usually want a return of the assets.

The JV partners may also wish to co-own the assets originating from the JV company itself, such as IP rights developed by the JV company. Therefore, the JV partners should clearly agree on the treatment and ownership of assets upon termination of a JV in the JV agreement to ensure that the assets will be treated and transferred as they desire.

9.3 Exit Strategy

Under the CA, the Aol may require the approval of the company for share transfers, and practically most JV companies have that requirement in their Aol. In addition, under the CA, a company buy-back of its shares requires that a resolution be passed at a shareholders' meeting, and the amount of the buy-back must be within the amount of the company surplus.

Parties often provide their exit strategies in the JV agreement. For example, the JV agreement may give a JV member put options should it wish to sell its JV shares to the other JV members. The actual JV exit methods vary depending on the circumstances, but the authors typically see the following exit methods:

- sale of JV shares to other JV participants, the JV company or third parties;
- listing on a stock market; and
- dissolution.

Trends and Developments

Contributed by:

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Anderson Mori & Tomotsune (AMT) is one of the largest full-service law firms in Japan, with more than 700 lawyers. It is headquartered in Tokyo, with branch offices in Osaka and Nagoya and overseas offices in Beijing, Shanghai, Singapore, Hanoi, Ho Chi Minh City, Bangkok and Brussels. AMT has also established associated firms in Jakarta, Hong Kong and London. The firm's combined resources and network afford it a rare capacity to advise on some of

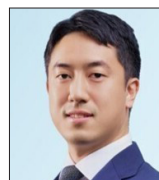
the largest and most complex cross-sector transactions. AMT regularly advises on various joint venture projects, including the setting up, structuring and preparation of relevant agreements, and governance of joint venture companies, as well as advising on investment and exit solutions for venture capital firms. The team also provides counsel on joint venture-related issues such as foreign direct investment and merger control regulations.

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Introduction

This article highlights emerging trends and developments in joint venture law and practice in Japan. In particular, the authors discuss:

- notable recent cases influencing joint venture practices;
- key aspects of joint venture agreements for start-ups; and
- the use of statutory company splits as a mechanism for establishing joint ventures.

Notable Recent Cases Influencing Joint Venture Practices

Remedy for breaching voting agreements

It is common practice for shareholders of closely held companies to include voting agreements in shareholders' agreements, with provisions obligating parties to exercise their voting rights in accordance with the agreement – such as in the appointment of directors.

While it is generally understood that such voting agreements are legally effective, the prevailing view has been that they constitute merely contractual obligations between parties, with breaches giving rise only to liability for damages. However, the Tokyo High Court decision dated 22 January 2020 acknowledged that, as legal effects of breaching voting agreements:

- a court may issue a judgment or provisional injunction compelling performance against the breaching party, requiring that voting rights be exercised according to the agreement; and/or

- a shareholders' resolution passed in breach of such a voting agreement may be subject to annulment, similar to the annulment of a shareholders' resolution violating the articles of incorporation – provided all outstanding shares are held by the parties to the shareholders' agreement to avoid unintended consequences for non-party shareholders.

For these legal effects to be recognised beyond simple contractual obligations, the Tokyo High Court indicated that it must clearly recognise the intention of the parties to the shareholders' agreement to constitute a juridical act, considering factors such as the following:

- whether the shareholders' agreement was concluded between parties with sufficient legal knowledge and corporate governance planning capacity;
- whether all or a substantial majority of issued shares are held by the contracting parties;
- whether the voting agreement is sufficiently specific to enable a clear finding of a breach; and
- whether the purpose and intent of the parties to the voting agreement are clear.

In this case, the legal effect of the voting agreement was not upheld. Nevertheless, this Tokyo High Court decision serves as a guiding precedent for assessing the legal effects of voting agreements. However, under what specific circumstances the aforementioned effects will be recognised remains unclear and will depend on the accumulation of future case law.

In terms of practice, even after this decision, given that a degree of legal uncertainty remains, it is advisable to avoid drafting and implementing shareholders' agreements on the presumption that the aforementioned legal effects will be recognised.

Decisions on matters absent from the shareholders' agreement

In a Tokyo High Court judgment dated 25 April 2024, the following points were made. While these conclusions are generally accepted in relation to contract interpretation, the clear ruling serves as a guideline when drafting shareholders' agreements in similar situations, emphasising the importance of explicitly stipulating the matters that were the object of the ruling.

In this case, a joint venture representative was dismissed, and a shareholder in the joint venture – whose representative director was the dismissed individual – argued that the shareholders' agreement should be terminated and therefore no longer binding.

The shareholders' agreement in this case defined, as “basic matters” of the joint venture, the number of representative directors and the composition of the directors immediately after the capital increase. Meanwhile, the selection and dismissal of a representative director were only stipulated to be determined “in accordance with applicable laws and regulations”. After the board of directors dismissed the joint venture representative, the aforementioned shareholder claimed that this dismissal constituted a breach of the shareholders' agreement since it unilaterally made changes to the “basic matters”. Accordingly, the shareholder asserted that this breach of the shareholders' agreement warranted its termination and that, as a result, they were no longer bound by its terms. The Tokyo High Court rejected this argument, holding that, since the shareholders' agreement only stipulates that the dismissal of a representative director is subject to being “in accordance with applicable laws and regulations”, it could not be interpreted that the dismissal of the representative director is not permitted.

Additionally, although the shareholders' agreement in this case included a deadlock clause for the meetings of the board of directors (ie, a clause permitting

termination of the shareholders' agreement where a board of directors' resolution cannot be passed and the joint venture parties fail to reach agreement through mutual consultation), it did not provide for a deadlock clause for shareholders' meetings. The aforementioned shareholder argued that, because an actual deadlock occurred at the shareholders' meeting, the deadlock clause for the meetings of the board of directors should be applied to the shareholders' meeting *mutatis mutandis*, allowing the shareholders' agreement to be terminated. The Tokyo High Court rejected this argument, holding that in the absence of clear intent to include a deadlock clause for the shareholders' meetings, extending the clause beyond its explicit scope was not consistent with the parties' intentions, and the clause could thus not be applied *mutatis mutandis*.

Key Aspects of Joint Venture Agreements for Start-Ups

The start-up ecosystem and venture investment landscape in Japan

Start-ups are increasingly recognised as engines of innovation in advanced sectors such as artificial intelligence (AI), the internet of things (IoT), fintech, robotics and space exploration. The Japanese government and local municipalities have launched a variety of initiatives to support start-up growth – including grant programmes, tax incentives and the creation of specialised “start-up cities” such as Fukuoka and Tokyo. Collaborative efforts between the public and private sectors are also growing, with universities and corporations establishing incubators and accelerators to nurture new businesses.

Securing funding is a critical driver of the development of start-ups. In addition to public subsidies, capital is commonly provided by venture capital firms, corporate venture arms and angel investors who back promising start-ups. The primary motivation for these investors is to foster innovation and accelerate business growth, usually in return for equity.

Joint venture agreements for venture investments

When an investor puts capital into a start-up, two main agreements are typically established:

- an investment agreement (or share subscription agreement); and
- a joint venture or shareholders' agreement among the investor, the company and its management shareholders.

The investment agreement stipulates the conditions of the investment – such as the amount invested, the type and number of shares issued in exchange, the timing of the investment, the intended use of funds, conditions precedent (if any) and the representations, warranties and covenants made by the company and its managers.

The joint venture agreement, by contrast, centres on the company's governance and operations. It normally covers information and inspection rights for the investor, as well as protocols for the transfer or disposal of shares held by both investors and management.

Investors typically aim to maximise the efficiency of their investment by supervising the company's operations – ensuring management runs the business in the best interests of all shareholders, while also minimising risk. If the business underperforms, investors may seek to sell their shares and recoup their capital.

On the other hand, company management naturally prefers as much operational freedom as possible and wishes to avoid excessive control or direction from investors, while still securing sufficient funding.

Therefore, when drafting a joint venture agreement for a start-up, it is crucial to strike a balance between the investor's desire for safeguards and influence, and the company or founder's need for flexibility in running the business.

Key points in joint venture agreements for start-ups

A joint venture agreement for start-ups is signed by the investors, the company and its management shareholders. Typically, investors are categorised as “major” or “minority” investors, with major investors having committed larger amounts of capital and therefore enjoying greater rights and control compared to minority investors.

Some of the most common provisions found in such agreements include the following.

Governance-related matters

Nomination rights of directors and observers

The major investors are typically granted the right to nominate individuals to serve as company directors or observers, based on their proportionate shareholding. This arrangement allows them to monitor and participate in the company's key decision-making processes. In contrast, minority shareholders generally do not have such nomination rights.

Reserved matters

For certain critical decisions – such as issuing new shares, mergers, corporate reorganisations, major asset disposals, forming business alliances with third parties, business plan approvals or amendments to the articles of incorporation – major investors usually hold veto rights. As a result, management must seek and obtain consent from a specified number of major shareholders before proceeding with these actions.

Notification and reporting requirements/provision of financial documents

It is standard for the company to be required to notify all investors (both major and minority) of significant developments, such as disasters, suspension of operations, insolvency or legal actions that could impact the company's financial position. Additionally, the company must provide investors with annual financial statements shortly after the fiscal year ends, along with quarterly reports, monthly balance sheets and other relevant financial documents within a set period after each reporting cycle.

Inspections and audits

Both major and minority investors are entitled to request reports or documents from the company or management regarding the business or its assets. They may also make direct inquiries, to which the company and management must respond promptly and thoroughly.

Share-related matters

Acquisition rights of investors

If the company issues, sells or grants shares or rights to acquire shares (including stock acquisition rights or

bonds with warrants), each investor is typically entitled to acquire such securities in proportion to their existing fully diluted shareholding and voting ratios. This allows investors to maintain their relative ownership in the company despite new issuances.

Stock options

An exception to the above principle is stock options: if the company issues options to officers or employees within a previously agreed percentage threshold, investors generally do not have the right to acquire these new shares.

Transfer of shares by investors

Investors are usually free to transfer all or part of their shares to a third party, provided they comply with applicable laws and the company's articles of incorporation.

Transfer of shares by management shareholders/tag-along rights/right of first refusal

Management shareholders are generally restricted from transferring their shares to third parties. Should a management shareholder wish to transfer shares, they must notify the investors in advance. Upon receiving such notice, investors have a right of first refusal – to purchase the shares under the same conditions. If investors decline, the management shareholder can proceed with the transfer, but in that case, investors usually have tag-along rights, allowing them to sell their own shares as well under the same terms.

Drag-along rights

If the majority investor decides to sell their shares to a third party, or proposes a major corporate transaction (such as a merger, share transfer, business transfer or company split), they may have the right to require all other investors and management shareholders to sell their shares under the same terms as the majority investor.

Deemed liquidation

If a majority of the company's voting rights are transferred to a third party, the total proceeds from the transaction are treated as the company's residual assets. The company then distributes these assets among shareholders according to the terms set out

in the articles of incorporation, treating all classes of shareholders who receive such consideration as if they were shareholders at the time of liquidation.

Other key provisions

Most favoured nation (MFN) clause

If the company or management enters into an investment agreement with another third-party investor on terms more favourable than those offered to existing investors, the MFN clause ensures that existing investors automatically receive the benefit of these improved terms.

Statutory Company Splits for Establishing Joint Ventures

About company splits

A statutory company split is a legal mechanism under Japan's Companies Act, allowing a company to transfer all or part of its businesses – including assets, debts, contracts, intellectual property and employees – to another party. This process is often used as an efficient way to structure joint ventures.

To complete a company split, a series of statutory procedures are required. These include:

- passing a shareholder resolution approving the split;
- issuing public notices that give creditors an opportunity to object;
- giving notices to shareholders regarding their opportunity to object; and
- making both prior and subsequent disclosures about the transaction.

There are two major types of company splits:

- absorption-type split – the business is transferred to an existing company; and
- incorporation-type split – the business is transferred to a newly established company.

When forming a joint venture, the absorption-type split is most commonly used.

Though similar to a standard business transfer, the company split differs in a key way: all related assets, liabilities, contracts and employees automatically

move to the receiving (successor) company by operation of law. Importantly, this means it is usually not necessary to obtain the consent of the parties to the contracts being transferred, nor from the employees – something that is generally required in a typical business transfer.

Using a company split to establish a joint venture

When setting up a joint venture, companies often need to transfer significant assets, contracts and staff to the new joint venture. In such cases, the company split process is particularly advantageous, as it avoids the burdensome task of seeking consent from every counterparty and employee.

The parties involved enter into a company split agreement, which clearly identifies the assets, debts, contracts and employees to be moved. In return for transferring its business, the transferring company receives shares in the new joint venture at the time the split takes effect. All statutory procedures mentioned above must be followed.

Key provisions in joint venture agreements involving company splits

Joint venture agreements that use a statutory company split will set out key commitments, including:

- execution of the company split agreement;
- transfer of the identified assets, contracts and employees to the joint venture;
- issuance of shares by the joint venture to the contributing party upon completion; and
- fulfilment of all statutory processes required by law.

The agreement will also typically include representations and warranties to confirm that (i) the split was conducted legally and effectively, and (ii) all necessary business components have actually been transferred.

Since a company split requires commercial registration, the agreement also obliges the parties to promptly apply for registration post-completion. If certain assets require additional registrations (eg, intellectual property), these post-closing actions are also addressed in the agreement.

Points to note

If any contract earmarked for transfer contains a clause making company splits a trigger for termination, explicit consent from the counterparty to an agreement containing such a clause is required. The joint venture agreement should set this out as a condition precedent.

When contracts are governed by foreign laws that do not recognise company splits, the consent of the counterparties to such contracts may also be needed.

For transfer-targeted employees not primarily engaged in the transferred business, or if the intention is to leave behind staff who are primarily engaged in the transferred business, such employees have a statutory right to object. If they do so, the respective transfer or leaving behind of said employees is not possible; thus, companies commonly hold pre-transfer meetings to secure these employees' understanding and consent, a process also set as a pre-closing covenant in the joint venture agreement.

Conclusion

Recent legal developments and judicial precedents in Japan have brought greater clarity to the structuring and operation of joint ventures. For start-ups – key engines of innovation in fields such as AI, IoT, fintech and robotics – the need for clear, robust joint venture agreements is especially pressing. These agreements must carefully balance investor protections (such as nomination rights, vetoes on critical matters and information/reporting requirements) with the founders' need for operational flexibility. When a joint venture involves a company split, the process provides a streamlined mechanism for transferring assets, contracts and employees, which is advantageous for start-ups that are scaling rapidly or restructuring. Nevertheless, practitioners must remain vigilant regarding contract clauses and employee objections that could require additional consent. As the start-up ecosystem expands – supported by government initiatives, public and private investment and collaborative incubators – the importance of well-crafted legal agreements and proactive risk management in joint ventures grows. Overall, evolving legal standards reinforce the need for start-ups and their investors to adopt sophisticated, forward-looking practices when forming joint ventures in Japan.



Law and Practice

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Meysan is a modern, progressive law firm that seeks to set itself apart by offering high quality, innovative legal advice delivered by a team of highly experienced multilingual lawyers. With a team of over 130 highly dedicated and committed professionals, including 13 partners and 65 extensively experienced lawyers and paralegals, Meysan is present in six countries with offices in Kuwait, the UAE (Abu Dhabi and Dubai), KSA, Lebanon, Egypt, and the UK (London). The firm

adopts a boutique approach to its practice, limiting the number and types of matters it undertakes, to ensure the highest quality offering for clients. Striving to maintain a ratio of associates to partners significantly below that of other firms in the region, Meysan generally focuses on matters that require the focus and experience of its partners, particularly in relation to cross-border regional transactions and high-stakes commercial litigation.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

While many recent joint-venture agreements do not expressly reference geopolitical or macroeconomic risks, their structure reflects a clear sensitivity to external uncertainty. Capital contributions are frequently phased or conditional on milestones, and reserved matters include broad financial and operational decisions, suggesting a focus on investor protection.

Exit mechanisms, through put-and-call options or default-triggered termination, are consistently embedded, even in equal-share joint ventures, offering flexibility in light of potential market disruption. These trends reflect cautious deal-making, particularly in response to inflation, supply chain volatility, and shifting regional dynamics, though not always explicitly acknowledged in the documentation.

1.2 Industry Trends and Emerging Technologies

Among the most active sectors in recent Kuwaiti joint ventures are retail, logistics, F&B (food and beverage), and entertainment, often tied to mixed-use developments. These ventures typically involve a foreign partner contributing brand, intellectual property (IP), or operational know-how, and a local partner contributing infrastructure or regulatory facilitation.

Several agreements contain detailed IP provisions, including ownership of trade marks and restrictions on use outside the joint venture. While emerging technologies such as AI and data localisation are not yet a

dominant feature, some recent agreements, particularly in the food and entertainment sectors, address data usage, digital platform control, and system ownership.

These provisions reflect early stage responses to the growing commercial role of digital operations, even in the absence of comprehensive regulation.

For 2026, it is expected that joint-venture structuring in Kuwait will evolve further, with more explicit terms governing data, IP, and liability allocation, especially as digital services become more embedded in the operational models of retail and consumer-facing ventures.

2. JV Structure and Strategy

2.1 Typical JV Structures

Corporate Structure

Joint ventures within Kuwait are commonly structured as a with limited liability company (WLL) or as a contractual joint venture formed through a collaboration agreement between the parties without creating a separate legal entity. Although the preferred vehicle is a WLL, a closed shareholding company (CSC) may also be considered. The selection between these preferred structures depends on the commercial objectives, regulatory requirements, and desired level of formality.

Limited liability company

A WLL is established as a separate legal entity, with two or more partners, with liability limited to capital contributions per partner. The Companies Law No 1 of 2016 (“Companies Law”) sets out the legal structure governing how membership interests are managed and how the company is operated, while also permitting some flexibility by allowing these rules to be modified through contractual agreement such as the articles of association.

Under Article 19 of Kuwait Residency Law No 114 of 2024, a WLL must have at least one initial manager who is either a Kuwaiti citizen or holds valid residency. This practice continues to evolve, with the Ministry of Commerce and Industry (MOCI) currently requiring that a Kuwaiti citizen serve as the company’s first manager. The establishment of the WLL is subject to registration in the commercial register, along with other incorporation procedures, which extend the timeline and increase costs payable to the government authorities. The WLL may only carry out activities after procuring the required trading or business licences from the MOCI and other required approvals (if needed).

Closed shareholding company

Although the WLL is the most commonly used vehicle to incorporate a joint venture, a joint venture may also be incorporated as a closed shareholding company.

A CSC requires a minimum capital of KWD10,000 and a minimum of five shareholders, does not attain legal personality but requires proclamation (registration and publication in the official gazette) before starting operations. Pursuant to current practice under Boursa Kuwait, a shareholding company may have its shareholder count fall to two after incorporation.

Contractual Joint Venture

Pursuant to Article 77 of the Companies Law, a contractual joint venture is formed by two or more partners concluding a company contract. Such joint ventures are not recognised as separate legal entities distinct from their participants and are exempt from registration in the companies register. This private agreement is valid, binding and limited in effect to the parties involved.

A contractual joint venture in Kuwait, governed solely by a private agreement between the participants, has the flexibility to contract freely with no incorporation restrictions on matters such as capital requirements, management, formal registration, public disclosure of financials or terms of the company contract, and termination automatically on contractual terms, or project completion, or death of a partner unless agreed otherwise between the parties.

A contractual joint venture lacks the capacity to independently own assets, initiate legal actions, or enter into contracts. Only the individual partners can engage in these activities on behalf of the joint venture, but they must be registered separately in their own names. This limitation stems from the joint venture’s absence of legal personality, preventing it from acting independently in legal or financial contexts. For any activity to be conducted by the joint venture, the partners shall have valid licences and approvals as necessary to be issued by the respective authority for each of the activities.

Also, the contract joint venture operates without a statutory governance or dispute resolution framework; partner relations and conflicts are governed solely by general contract law principles. Critically, partners bear unlimited personal liability for all obligations arising from the joint venture and are jointly liable to third parties for any liabilities incurred in its operations.

2.2 Strategic Drivers for JV Structuring Liability

The main distinction lies in the limitation of liability: in a corporate structure, liability is limited to each party’s proportion of share capital, whereas in a contractual joint venture, all partners are exposed to unlimited, joint liability.

Control, decision-making and management structure

Contractual joint venture

While contractual joint ventures are primarily governed by the company’s contract, the participants have the freedom to determine obligations of each participant and adjudicate independently to determine the capital, distribution of loss and profit accounting procedures, management, termination, liquidation, transformation,

and all other terms and conditions of the joint-venture company, provided that the terms of their agreement are consistent with applicable public policy principles.

However, there is no statutory framework to resolve any disputes between participants except under the Companies Law, governing general contractual matters unless the company contract provides otherwise.

Limited liability company

A WLL is managed by one or more managers, who are appointed either through the company's articles of association or by resolution of the partners at a general meeting. The company is also required to appoint a statutory auditor to examine and provide an independent report on its accounts and financial statements. The partners make decisions during general meetings, which are usually divided into two types depending on what needs to be discussed.

- Ordinary general meetings, which handle routine matters such as approving annual accounts, distributing profits, and appointing or removing managers.
- Extraordinary general meetings, which consider more fundamental changes such as amending the company's articles of association, increasing or reducing capital, or dissolving the company.

Neither meeting may validly transact business unless the statutory quorum is present; while the company's articles of association may increase this threshold, it may never set it below the legal minimum.

Profit sharing

Under the Companies Law, entities are allowed to determine profit-and-loss allocations that differ from each shareholder's or partner's capital contribution; however, no partner or shareholder may be wholly exempted from sharing in profits or losses, and any clause seeking such exemption is void under Article 18 of the Companies Law.

Tax provisions

Kuwait does not impose any tax on wholly owned companies by Kuwaiti or GCC (Gulf Cooperation Council) nationals. However, the introduction of the Domestic Minimum Top-Up Tax (DMTT) Law No 157 of

2024, imposes a 15% tax rate on all companies, subsidiaries or joint ventures that are part of multinational groups (presence in Kuwait and another country) and that declare over EUR750 million in global revenue in consolidated financial statements.

Under Kuwait Tax Law No 2 of 2008, Kuwaiti entities that engage foreign companies or contractors for services must withhold 5% of the payment until the foreign entity obtains a tax clearance certificate from the Kuwait Tax Authority. This is primarily applied as a compliance and enforcement mechanism to ensure that foreign companies operating in Kuwait fulfil their income tax obligations. The 5% retention may be released upon issuance of a No Objection Certificate by the Kuwait Tax Authority confirming tax compliance.

For most joint-venture purposes in Kuwait, an incorporated vehicle, such as a WLL, is preferable: it limits each partner's liability to their share of capital, provides clear governance through statutory managers, and offers built-in dispute-resolution mechanisms.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

Several regulatory authorities oversee joint ventures in Kuwait, depending on the objectives, structure, and parties involved. Although a contractual joint venture in Kuwait does not trigger separate incorporation requirements, it remains subject to a comprehensive regulatory framework that governs the activities and compliance obligations of the participating entities.

Competition Protection Authority

The main authority overseeing this area is the Competition Protection Authority (CPA), which enforces compliance with the Competition Protection Law (Law No 72 of 2020), including provisions governing economic concentrations that also apply to joint ventures, when triggering certain thresholds.

Subject to certain thresholds being met as provided under Resolution No 26 of 2021, a joint venture classifies as an economic concentration under Article 10 (c) of the Competition Protection Law and requires

submission of an application to the CPA by persons involved in economic concentrations within 60 calendar days from signing the joint-venture agreement.

Ministry of Commerce and Industry

While the MOCI plays a key role in company formation, commercial licensing, and maintaining the register which is relevant for WLL and CSC structures, its role is limited for a contractual joint venture as such joint venture does not require registration.

The incorporated companies will be required to follow all formal procedures including the relevant business/trade licences by the MOCI, registration in the Commercial Register and announcement (if applicable).

Boursa Kuwait and Clearing Companies

Boursa Kuwait regulates all aspects of CSC share transfers, including the mechanism, timing, and documentation required.

3.2 Anti-Money Laundering Compliance

Kuwait's framework for anti-money laundering and counter-terrorist financing are primarily established under Law No 106 of 2013. This legislation provides a robust regulatory structure aligned with international standards set by the Financial Action Task Force. It imposes specific obligations on financial institutions and designated non-financial businesses and professions.

This legislation imposes preventative obligations, including customer due diligence for high-risk relationships, suspicious transaction reporting (STR), and also requires record retention for a period of five years. Oversight on such matters is distributed among the Central Bank of Kuwait, the Capital Markets Authority (CMA), the MOCI, and the Kuwait Financial Intelligence Unit which operates as the independent national centre for receiving, analysing, and disseminating STR.

3.3 Sanctions, National Security and Foreign Investment Controls

Restrictions on Business Partners

The restrictions on co-operating with joint-venture partners include the Boycott Law (Law No 21 of 1964) which prohibits any dealings of a commercial nature with the residents or nationals of Israel, and, as a

non-permanent member of the UN Security Council, adherence to its sanctions list may be required. However, apart from these lists, Kuwait does not have a separate or autonomous sanctions list.

Foreign Participation

Joint ventures through foreign direct investment in Kuwait are not subject to any national security review process, although certain strategic sectors such as oil and gas exploration and defence contracting remain reserved for government entities. Foreign direct investment in a joint venture must be structured through a Kuwaiti-incorporated company formed under the Companies Law and established specifically for the joint-venture.

The incorporated Kuwaiti company may attain 100% foreign ownership, as an exception to the 49% (foreign partner) and 51% (Kuwaiti/GCC partner) ratio, if the legal form of the company is a shareholding or WLL as provided under Article 8 of the Ministerial Decision No 502 of 2014 ("Ministerial Decision") and Article 12 of Kuwait Direct Investment Promotion Authority (KDIPA) Law No 116 of 2013.

The foreign investor that participates as a partner in a joint venture and anticipates to hold more than 49% of the company shareholding must secure an investment licence from the KDIPA before it can legally commence operations through the joint venture in Kuwait. The KDIPA licence application must include, in accordance with Article 14 of the Ministerial Decision, an initial project feasibility study detailing the proposed activity, legal form, investment size, financial structure and sources, and any anticipated economic or social impacts.

Restricted Sectors and Industries

Pursuant to the Council of Ministers Decision No 75 of 2015, foreign direct investment is expressly prohibited in sectors classified under the International Standard Industrial Classification, including:

- extraction of crude petroleum and natural gas;
- manufacturing of coke oven products, fertilisers, and nitrogen compounds;
- distribution of gaseous fuels through mains;

- real estate activities (excluding privately developed building projects); and
- security, investigation, and defence services.

3.4 Competition Law and Antitrust Competition Protection Law and CPA

The Competition Protection Law (Law No 72 of 2020), its Executive Regulations, and Resolution No 26 of 2021, provide an effective oversight to regulate economic concentrations, including transactions such as joint ventures. CPA approval must be obtained by the parties involved in the joint venture. The procedure includes an economic concentration application submitted no less than 60 days before executing the draft agreement; however, approval is only required if the transaction satisfies the applicable thresholds.

CPA Approval Thresholds

The following thresholds are based on the most recent audited financial statements. As stipulated under Resolution No 26 of 2021, joint-venture partners must obtain CPA approval if any of the following thresholds are met in Kuwait:

- any individual party's annual sales exceed KWD500,000 (approximately USD1,639,000);
- the combined annual sales of all parties exceed KWD750,000 (approximately USD2,459,400); or
- the total registered assets of all parties exceed KWD2.5 million (approximately USD8,190,000).

3.5 Listed Companies and Market Disclosure Rules

Any listed entity participating in a joint venture in Kuwait is governed primarily by the CMA and Boursa Kuwait. The regulatory framework is set out under Resolution No 72 of 2015, which introduced the executive by-laws for the CMA under Law No 7 of 2010. These executive by-laws are organised into 16 modules that dictate the conduct of listed companies, including any conflict of interest, corporate governance, disclosures, and securities dealings.

Further, the Companies Law requires a shareholding company listed on the Boursa to have a minimum capital of KWD25,000 which must be maintained. Pursuant to the above regulations, a listed company's

activities, including participating, may require disclosure or approval by the CMA or Boursa as applicable.

3.6 Transparency and Ownership Disclosure

Pursuant to Resolution No 4 of 2023 issued by the MOCI, all companies (including joint ventures) registered in Kuwait are required to disclose the ultimate beneficiary owner(s) (UBO). A UBO is defined under Article 5 of the aforementioned resolution, as any individual who directly or indirectly holds 25% or more of a company's share capital, controls 25% or more of its voting rights, or otherwise exercises decisive influence (for example, by appointing or dismissing a majority of the board of directors), and must be recorded as a UBO.

In compliance with Articles 8 and 10 of the Resolution, the joint venture must establish and maintain both an "actual beneficiary register" and a "partner/shareholder register", documenting each UBO's personal data, ownership or voting percentages, and the grounds, duration and circumstances of exercising control. Both registers must be submitted to the MOCI's registry within 60 days of incorporation of the company. The registrar also requires notification of any amendments within 15 days of their occurrence.

These mandated disclosures are exempted for entities regulated by the CMA (listed companies), and wholly owned government entities.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

There have been no significant new laws or regulations specifically addressing joint-venture companies in Kuwait, but a few notable court decisions are worth highlighting.

- In accordance with the Commercial Circuit Decision on appeal by cassation No 1773 of 2021 dated 15 April 2025, the court confirmed that a contractual joint venture lacks legal personality and is governed by general contract principles, so it can be rescinded for breach like any binding contract. It held that seizing the business and diverting

funds justified dissolution and compensation for losses. The amount was calculated for the loss of profits and additional civil compensation.

- A corporate joint venture is solely governed by its contract and dissolves automatically if a partner dies unless continuation is agreed with the heirs, pursuant to commercial circuit session Decision on appeal by cassation No 767 of 2016 dated 11 February 2025. The court held that because no such agreement with the heirs existed (under the corporate joint venture), the venture ended on the partner's death, and the appellant could only claim its share and was not permitted to continue the business.
- Another critical factor distinguishing joint ventures from incorporated companies, as highlighted under Commercial Circuit Decision on appeal by cassation No 3215 of 2021 dated 17 December 2024, is that the restriction provided under the Companies Law for a foreign partner ownership to be limited to 49% does not apply to contractual joint ventures, and due to the lack of a separate legal personality the assets and liabilities are upon the partners directly and are not subject to any corporate liquidation for any debts owned.

In summary, these judgments reaffirm that corporate joint ventures are treated as contractual arrangements rather than separate legal entities, unless incorporated, subject to dissolution, enforcement and remedies like any other contract.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

In Kuwait, joint ventures typically start with the execution of a short, confidential term sheet or heads of terms. This preliminary document outlines the key commercial elements of the transaction – such as the scope of the joint venture, valuation methodology, break fees, and an exclusivity period usually ranging between 30 to 60 days.

It is commonly preceded by a mutual non-disclosure agreement (NDA), often drafted in bilingual Arabic/English format to avoid any translation discrepancies

before local courts. In cases involving sensitive intellectual property or proprietary know-how, particularly in technology, franchising, or similar sectors, the NDA expressly excludes publicly available information and designates the Kuwaiti courts as the competent forum for injunctive or interim relief.

Where the joint venture relates to a regulated industry (eg, telecoms, banking, or oil services), the parties often exchange a regulatory compliance checklist to confirm eligibility for the required sector-specific licences.

5.2 Disclosure Obligations

Other than the disclosure obligations outlined herein, corporate joint ventures in Kuwait are not subject to any formal disclosure obligations. Where the joint venture is incorporated as a legal entity, typically a WLL, its articles of association are registered with the MOCI.

By contrast, any separate contractual arrangements between the shareholders (such as governance frameworks, deadlock resolution mechanisms, or exit provisions) are treated as private agreements. These do not require notarisation or registration and are generally kept confidential unless disclosure is required in the context of a dispute or upon request from a competent authority or regulator.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Conditions Precedent

Under Kuwaiti market practice, a joint-venture agreement does not enter into force until the agreed conditions precedent (CPs) have been satisfied or expressly waived. The CPs most often seen in Kuwaiti joint-venture agreements are as follows.

- Regulatory clearances – a KDIPA foreign-investment licence:
 - (a) when a non-GCC shareholder will hold more than 49%;
 - (b) for any sector-specific approvals (eg, the Central Bank for fintech, the Ministry of Oil for downstream services, and CITRA for telecoms); and
 - (c) when the statutory thresholds are met, resulting in a no-objection certificate from the CPA.

- Funding evidence – documentary evidence that any in-kind assets (land, IP and equipment) have been transferred or are ready for transfer.
- Corporate and third-party consents – board or shareholder resolutions of each venturer together with any waivers or approvals required from lenders, landlords, franchisors or other key counterparties.

Material Adverse Change

A material adverse change (MAC) clause is routinely included either as its own CP (no MAC has occurred between signing and closing) or as a separate walk-away right exercisable after the CPs are met but before the share transfer.

To be actionable, the event must have a disproportionate adverse impact on the venture. Typical triggers cited in Kuwaiti agreements are major currency devaluation, withdrawal of government subsidies, the imposition of sanctions or the outbreak of regional hostilities.

Force Majeure

Force majeure clauses follow Article 215 of the Kuwaiti Civil Code. They list events that are unforeseeable and beyond the parties' control – government measures, epidemics, serious supply-chain disruption, extreme oil-price shocks or natural disasters.

The clause usually suspends the parties' obligations for a short grace period; if the force-majeure event continues for 60–90 days and still prevents closing, either party may terminate the agreement without liability.

5.4 Legal Formation and Capital Requirements

Joint-Venture Vehicles and Legal Set-Up

Joint ventures in Kuwait can be structured either as a purely contractual arrangement or by incorporating a new company to serve as the joint-venture vehicle. In practice, most joint-venture parties prefer to incorporate a Kuwaiti company for their venture – typically a WLL.

The WLL is the most common joint-venture vehicle in Kuwait. It can be formed with up to 50 sharehold-

ers, with each member's liability limited to their capital contribution. A WLL is relatively quick to set up – the articles of association are auto-generated and registered with the MOCI.

The minimum capital for a WLL is very low: the legal floor is KWD100 (about USD330) in nominal capital. In fact, Kuwaiti law fixes a nominal value of KWD100 for each membership interest, so the total stated capital must be a multiple of 100. In practice, however, the MOCI often requires a higher capital commitment (typically approximately KWD1,000 or more) depending on the business activity.

Foreign Ownership Restrictions and Participation

By default, Kuwaiti company law restricts foreign participation in local companies. Traditionally, foreign investors were limited to 49% ownership of a Kuwaiti company, with the remaining 51% held by Kuwaiti nationals (or wholly Kuwaiti-owned entities). In other words, without special approval, any joint-venture vehicle must have a Kuwaiti (or GCC) partner owning at least 51% of the equity. This rule applies to both WLLs and CSCs in most sectors.

Under KDIPA Law, a foreign investor can apply for an investment licence from the KDIPA to own up to 100% of a Kuwaiti company. If the joint venture's activities are in a permitted sector and meet KDIPA's criteria (economic benefit to Kuwait, job creation, technology transfer, etc), the foreign party can be licensed to hold the entire equity. Many sectors such as technology, healthcare, education, logistics and others are open to 100% foreign ownership with a KDIPA licence.

However, activities in oil and gas extraction and other strategic areas are generally off-limits to full foreign ownership, so in those industries a Kuwaiti majority partner is still mandatory.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

In Kuwait, joint-venture agreements are typically structured to address both corporate and contractual aspects, depending on the nature of the joint-venture vehicle. Where the joint venture is incorporated, most

commonly as a WLL, the relevant terms are reflected in both the articles of association and, more substantively, in a detailed joint-venture or shareholders' agreement.

The articles of association, while formally required, are largely system-generated by the MOCI and offer limited flexibility for amendment. As a result, the joint-venture or shareholders' agreement plays a more critical role, governing the relationship between the parties and addressing key commercial, financial, and operational matters. It also serves to fill any gaps left by the articles of association.

In cases where the joint venture does not involve the incorporation of a separate legal entity, the joint-venture agreement itself acts as the principal governing document, setting out the parties' respective rights, obligations, and the governance framework for the venture.

Key elements typically addressed in joint-venture agreements include a clear definition of the joint venture's purpose and business scope, along with the identification of each party's capital contributions.

The agreements set out detailed governance frameworks, including decision-making procedures, quorum requirements, voting thresholds, and a list of reserved matters that require either unanimous or super-majority approval. These agreements also often contain provisions for capital raising and financing, mechanisms to resolve deadlock situations, and the terms governing exit or dissolution of the joint venture by one or more parties.

In addition, most joint-venture agreements provide robust clauses dealing with share transfers, such as pre-emption rights, rights of first refusal, drag-along and tag-along provisions, as well as call-and-put options in certain predefined events such as breach, insolvency, or change of control. Confidentiality undertakings, non-compete clauses, and exclusivity provisions are also frequently included to safeguard the competitive interests of the parties.

In one example, a Kuwaiti shareholders' agreement between a majority investor and a minority strategic

partner contained highly structured terms around business plan approvals, with the parties agreeing to annual strategy sessions to review performance and adjust targets. Key performance milestones were also contractually linked to additional capital calls and management incentive schemes.

6.2 Governance and Decision-Making

The governance structure of joint ventures in Kuwait is generally aligned with the shareholding ratios of the parties, unless a key minority partner is involved. Governance is typically exercised through a board of managers or directors responsible for overseeing the operational and strategic affairs of the joint venture.

Board composition and appointment rights are usually proportionate to each party's equity stake. However, in cases where shareholding is unequal, it is common for minority shareholders to negotiate enhanced governance rights to protect their interests.

In the context of WLL companies, Kuwaiti law does not provide for a board of directors. As such, joint-venture agreements often establish a contractual board of directors, accompanied by a detailed authority matrix, to ensure effective oversight and decision-making outside the statutory framework.

Enhanced governance rights often take the form of veto rights or consent requirements over reserved matters. These typically include approvals for changes to the joint venture's business plan or annual budget, issuance of additional shares, incurrence of significant indebtedness, appointment or removal of senior management, and major capital expenditures.

In some structures, a dedicated Operational Governance Committee (OGC) may also be established alongside the board. Comprised of representatives from each joint-venture partner, the OGC provides an additional layer of oversight and facilitates day-to-day co-ordination. Its responsibilities typically cover operational matters such as execution of the agreed business plan, procurement decisions, technical inputs, and performance monitoring.

This model is particularly effective where one party contributes specific industry know-how, proprietary

technology, or operational capabilities. By separating strategic oversight (reserved to the board or manager) from day-to-day operations (managed by the OGC), this dual-layer governance approach enhances responsiveness, fosters alignment, and reduces decision-making bottlenecks.

In practice, the OGC often meets more frequently than the board and serves as a pragmatic forum for addressing operational challenges in real time, while allowing the board to retain control over higher-level strategic decisions.

Overall, joint-venture governance frameworks in Kuwait are carefully structured to achieve a balanced allocation of authority, ensuring operational autonomy where needed, while preserving strategic oversight. This is particularly critical in joint ventures involving international investors or those operating in regulated sectors, where compliance with local requirements is essential.

6.3 Funding

Funding of joint ventures in Kuwait generally involves a combination of initial equity contributions and shareholder loans. The method and timing of these capital injections are normally specified in the joint-venture agreement, often broken down into tranches linked to specific milestones such as licensing, facility completion, or customer acquisition targets.

Future funding obligations can be structured in a variety of ways. Some agreements require all shareholders to contribute pro rata according to their ownership interests upon receipt of capital calls. Others give shareholders the option, but not the obligation, to contribute to additional capital needs.

In the latter case, mechanisms are often included to address the consequences of a shareholder's decline or inability to participate in future funding. These may include dilution of the non-contributing party's interest, reclassification of unpaid equity into debt, or even triggering buyout rights.

In one Kuwaiti joint venture, a failure to meet capital call obligations within a defined grace period resulted in the loss of certain governance rights, such as voting

on budgetary matters, until the default was cured. This structure incentivised timely compliance with funding obligations while preserving flexibility for the partners.

6.4 Deadlocks

Deadlocks can arise in joint ventures where decision-making authority is shared equally or where critical decisions require unanimity. The manner in which deadlocks are addressed varies depending on the commercial relationship and the desired level of continuity.

A common approach is to adopt a multi-tiered dispute resolution process. This typically begins with good-faith negotiations between senior executives of the joint-venture partners, followed by escalation to each party's designated representatives. If the deadlock remains unresolved, the matter may then be referred to an independent expert or arbitrator, depending on the nature of the dispute.

Other contractual mechanisms used to resolve deadlocks include structured buy-sell arrangements designed to compel a decision between the parties. Under these provisions, one party may offer to purchase the other party's interest at a specified price. The receiving party must then either accept the offer and sell its stake or elect to purchase the offering party's stake at the same price.

These mechanisms are particularly effective in 50:50 joint ventures where there is no majority shareholder, as they create a clear pathway to resolve impasses and potentially exit the venture in a fair and balanced manner.

In one example, a Kuwaiti joint-venture agreement provided that, in the event of a board deadlock persisting beyond three scheduled meetings, the matter would first be referred to a neutral director for determination. If the neutral director failed to render a decision within a prescribed timeframe, or if the parties disputed the scope or enforceability of that decision, the issue could then be submitted to arbitration.

In another case, a joint-venture agreement established a structured, multi-tiered mechanism for resolving deadlocks at both the board and operational com-

mittee levels. In the event of a deadlock at the board level, a formal notice would be issued, and the matter would be escalated to the OGC composed of equal representatives from both shareholders.

If the OGC was unable to resolve the deadlock within a defined timeframe, the matter would then be referred to the shareholders for resolution. In parallel, the shareholders could appoint a third-party expert to provide non-binding advice on the issue, taking into account the nature of the deadlock and the relevant expertise required.

6.5 Other Documentation

Joint-venture arrangements are typically supported by a suite of ancillary documents that complement the main agreement. These documents are essential to implement the transaction and regulate the ongoing relationship between the parties.

Among the most common ancillary agreements are IP licensing arrangements, whereby one or both parties license trade marks, technology, or proprietary know-how to the joint venture. These are especially important in the consumer goods, healthcare, and technology sectors.

Other commonly encountered documents in joint-venture structures include services agreements, particularly where one party is responsible for providing day-to-day operational or management services to the joint venture.

In one example, a detailed services agreement governed the deployment of dedicated personnel, their compensation, and the scope of services to be provided in support of the joint venture's operations.

Additional ancillary documents may include technical support agreements, sublease or premises use agreements (especially where one party contributes office space or facilities), and confidentiality or non-disclosure agreements to safeguard sensitive commercial and technical information.

6.6 Rights and Obligations of JV Partners

The rights and obligations of joint-venture partners are largely driven by the commercial arrangements

agreed upon and the structure of the joint ventures. In most equity-based joint ventures, rights to profits and obligations to bear losses are distributed in proportion to the respective shareholdings, unless otherwise commercially agreed.

Joint-venture partners typically enjoy the rights of access to financial information, board-level participation, and the ability to veto key strategic decisions.

In some agreements, particularly where one party holds a minority interest, enhanced information rights and reporting requirements are included to ensure transparency. In several agreements, the minority partner had the right to appoint internal auditors or receive periodic business performance reports prepared by an independent third party.

On the obligation side, partners are often required to act in good faith and to promote the best interests of the joint venture. Non-compete obligations are frequently included, prohibiting the parties from engaging in competing businesses within the defined territory or market segment.

With respect to liability, in the case of incorporated joint ventures, the partners' exposure is generally limited to their equity participation. However, parties may agree to provide guarantees or bear joint and several liabilities in respect of third-party financing, regulatory compliance, or indemnity undertakings.

Such provisions are typically negotiated in light of the relative bargaining power of the parties and the regulatory environment in which the joint venture operates.

6.7 Minority Protection and Control Rights

Minority shareholders in Kuwaiti joint ventures often seek enhanced protection to ensure their interests are not overridden by the majority partner. These protections may be embedded in the shareholders' agreement and reflected in the company's constitutional documents (to the extent possible).

Typical minority protection mechanisms include veto rights over a defined list of reserved matters, such as amendments to the articles, changes to the business scope, capital increases or reductions, liquidation, or

entry into related-party transactions. These rights help ensure that the minority shareholder has a say in decisions that could materially affect its investment.

Other contractual rights often include information rights, pre-emption rights on new issuances, and tag-along rights in the event of a transfer of shares by the majority partner. In some joint ventures, the minority shareholder is granted a seat on the board or a supervisory committee with the authority to review major operational and financial matters.

In practice, minority protections are sometimes further strengthened by provisions requiring consensus at the operational committee level, thereby embedding mutual oversight and promoting collaboration at all levels of governance.

6.8 Applicable Law and Dispute Resolution in International JVs

The choice of law and dispute resolution forum is a key consideration in cross-border joint ventures involving Kuwaiti entities. While Kuwaiti law is commonly selected when the joint venture operates primarily in Kuwait or involves significant local regulatory interaction, foreign law (most often English law) is sometimes preferred where the investors are based outside the region or where greater predictability and neutrality are desired.

Dispute resolution clauses typically provide for arbitration, often under ICC or LCIA rules, seated in a neutral jurisdiction such as London, Paris, or Dubai. Where Kuwaiti law is selected, parties may choose arbitration within Kuwait or resort to the Kuwaiti courts, depending on the enforceability concerns and procedural requirements.

Kuwait is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“the Convention”), which significantly facilitates the enforcement of foreign arbitral awards in the country. In practice, however, enforcement remains subject to compliance with certain local procedural requirements under Kuwaiti law.

Once these formalities are satisfied, the party seeking enforcement must file a petition before the Kuwaiti

courts for the recognition and enforcement of the award. The court will review the request primarily for procedural compliance but may also consider whether any of the limited grounds for refusal under the New York Convention or public policy under Kuwaiti law apply.

In most cases, the court’s role is not to revisit the merits of the dispute but to ensure that enforcement does not contradict Kuwaiti public order or mandatory rules. The entire process must be conducted in Arabic, and while Kuwait’s accession to the Convention has improved predictability for foreign parties, practical enforcement may still face delays depending on the complexity of the case and the responsiveness of the local judiciary.

7. The JV Board

7.1 Board Structure

As indicated previously in this chapter, the composition and structure of the board in Kuwaiti joint ventures is generally driven by the negotiated balance of power between the shareholders, often reflecting, but not strictly following, their respective equity holdings.

In many cases, including high-profile international joint ventures, the board is structured with equal representation for each party to ensure shared decision-making and governance parity, even where shareholder ratios differ.

The joint-venture agreement typically governs the appointment, removal, and replacement of directors, as well as the frequency of board meetings, quorum rules, and chairmanship. In some arrangements, the chairperson does not hold a casting vote, ensuring that no single party can unilaterally control board decisions. Instead, escalation mechanisms (such as referral to an OGC or the shareholders themselves) are used to resolve deadlocks.

Kuwaiti law does not prohibit the appointment of non-Kuwaiti nationals to the board of a company. However, residency requirements must be satisfied. Additionally, where directors are appointed as managers of the WLL, certain restrictions may apply to non-

Kuwaitis with respect to the scope of their powers. For instance, a non-Kuwaiti national may not, *inter alia*, make donations, sell real estate, or borrow.

While weighted voting rights are not a statutory feature under Kuwaiti corporate law, contractual arrangements may provide for super-majority voting thresholds on key decisions. In practice, some joint ventures require a two-thirds board majority for strategic resolutions. This contractual structuring helps safeguard the interests of minority strategic investors while reinforcing collective governance.

7.2 Duties and Functions of JV Boards and Directors

Directors appointed to the board of a Kuwaiti joint-venture company owe fiduciary duties to the company itself, including duties of loyalty, care, and diligence, irrespective of the fact that they are typically nominated by a specific shareholder. Under Kuwaiti law and prevailing practice, these duties require directors to act in the best interests of the company as a whole, even where this may diverge from the interests of the appointing shareholder.

To address the practical challenge between shareholder nomination and fiduciary responsibility, joint-venture agreements often include detailed conflict-of-interest provisions.

In one example, directors and committee members are expressly required to disclose any actual or potential conflicts and to abstain from voting on matters in which they or their appointing shareholder have a conflicting interest. Where disagreement arises over whether a conflict exists, the matter may be escalated to the OGC or ultimately to the shareholders for resolution, often with the support of independent expert advice.

The board is typically charged with setting the strategic direction of the company, overseeing senior management, and monitoring performance, in accordance with the powers defined in the shareholders' agreement and the accompanying authority matrix.

Day-to-day operational oversight is often delegated to executive management, and in some structures,

an OGC is established to assist the board in reviewing business plans, financials, and operational execution. The OGC's role may be advisory or decision-making, depending on the agreement and authority structure.

Directors are also responsible for ensuring compliance with statutory reporting obligations under Kuwaiti law. These include the preparation and approval of annual financial statements, the convening of general assemblies, and the submission of filings with the Ministry of Commerce and other relevant regulators.

While the legal duties of directors are grounded in statute, joint-venture agreements often expand and clarify these obligations to suit the specific governance and oversight needs of the parties.

7.3 Conflicts of Interest

Conflicts of interest are a recognised risk in joint ventures, particularly where directors are aligned with, or employed by, one of the shareholders. To manage this, well-structured joint-venture agreements often establish formal mechanisms for identifying and resolving conflicts, beyond mere abstention from voting.

In one Kuwaiti joint venture, the agreement sets out a multi-layered process for dealing with potential conflicts at both the board and committee levels. Where a director or committee member is believed to have a conflict, the matter is not left to the individual's discretion.

Instead, a third-party determination process is triggered: if the existence of a conflict is disputed, the issue may be referred to a body within the joint-venture governance structure, such as the OGC, or ultimately escalated to the shareholders for a final decision.

The agreement also allows for the appointment of an external expert to provide non-binding advice on whether a conflict exists, offering an objective check where internal consensus is lacking. This mechanism ensures that allegations of conflict do not paralyse decision-making or devolve into shareholder disputes.

Notably, the shareholders retain the power to remove and replace their nominated directors without cause, which serves as an additional means of ensuring that

conflicts do not undermine governance continuity. The structure promotes transparency while balancing the rights of shareholders with the need to protect the integrity of the board's deliberations.

8. IP and ESG

8.1 Ownership and Use of IP

When setting up a joint venture in Kuwait, each partner typically retains ownership of its pre-existing intellectual property (brands, software, and know-how) and licenses those assets to the joint venture for use in Kuwait. This ensures the original owner (often a foreign partner) keeps control of its core IP while enabling the joint venture to operate locally.

Any new IP created by the joint venture (such as a new trade mark, domain name, or software developed during the collaboration) should have its ownership clearly defined in the joint-venture agreement – either owned by the joint-venture entity or assigned to one of the partners according to agreed rules. It is important to record any exclusive IP licence or assignment with the Kuwaiti IP Office to make it binding on third parties and protect the joint-venture rights.

8.2 Licensing v Assignment of IP Rights

A key decision is whether to license IP to the joint venture or assign it outright. Licensing is often preferred by the contributing partner because it allows the original owner to retain ownership and control.

The downside is that the joint venture (where it takes the form of a registered entity) will not own the IP asset, which could be a concern for investors or lenders if the joint venture's business relies on that IP. By contrast, assigning (transferring) the IP to the joint venture makes it the owner, which strengthens the joint venture's balance sheet and is looked upon favourably by local lenders who see the IP as part of the joint venture's assets.

However, assignment means the original owner gives up direct ownership, which may be undesirable for strategic technology or brands.

8.3 ESG Considerations in JVs

Environmental, social and governance (ESG) compliance is increasingly central to corporate governance in Kuwait, particularly in regulated sectors or where international partners are involved. The key legal frameworks include the following:

- Environment Law No 42/2014 – requires large industrial ventures to file annual environmental impact reports and comply with environmental licensing obligations.
- Module 15 of the CMA Law – encourages listed companies to adopt board-level ESG policies covering transparency, stakeholder rights, risk, and corporate social responsibility.

In practice, joint-venture agreements increasingly include ESG clauses – such as commitments to sustainable operations, anti-bribery policies, and labour rights audits – to align with both regulatory expectations and investor demands. These clauses can help attract bank financing, meet procurement standards, and demonstrate alignment with Kuwait's Vision 2035.

9. Exit Strategies and Termination

9.1 Termination of a JV

A Kuwaiti joint venture can come to an end in one of two ways: (i) normal termination, when the venture reaches its natural end, or (ii) early termination, triggered by specific events set out in the agreement.

Normal Termination

Normal termination covers situations in which the joint venture winds down in accordance with its original design or by unanimous choice, without any party being at fault, including the following:

- Expiry of the agreed term – the joint venture dissolves automatically on the expiry date unless the parties formally extend it.
- Accomplishment of the venture's purpose – once the defined project objective (eg, completion of a plant or an IT rollout) is achieved and accepted, the joint venture will wind up.
- Mutual written agreement – the parties may terminate at any time by unanimous written consent,

after settling inter-company balances and filing deregistration documents with the MOCI.

Early Termination

Early termination arises when a breach, insolvency, regulatory failure, or another contract-specified risk entitles one or both parties to invoke the termination clauses and bring the venture to an end before its agreed expiry date, including the following:

- Uncured material breach – if a shareholder fails to perform a material obligation and does not remedy within a certain remedy period after notice, the non-defaulting party may terminate the joint venture.
- Insolvency or bankruptcy of a shareholder – the shareholders may terminate the joint venture in case one of the shareholders becomes bankrupt or enters into a restructuring procedure.
- Failure to close by the long-stop date – if conditions precedent (regulatory, financing, KDIPA licensing, etc) are not satisfied by the agreed cut-off date, either party can withdraw from the joint venture or request its termination.

9.2 Asset Redistribution and Transfers

Assets originally contributed by shareholders (eg, land and trade marks) revert to the contributor unless expressly sold to the joint venture.

Assets generated or purchased by the joint venture (plant, inventory, and customer lists) are divided according to:

- proportionate shareholding;
- the economic risk bearing pattern; or
- a pre-agreed allocation matrix (common in infrastructure projects where one party takes hard assets and the other intangible rights).

9.3 Exit Strategy

Kuwaiti law gives shareholders considerable freedom to craft exit routes, subject to pre-emption rules in the Companies Law and CMA approval for listed-company disposals.

The Most Common Contractual Exits

Put/call options exercisable after a lock-up or on trigger events

After an agreed lock-up (typically three to five years) or on pre-defined trigger events – such as a change-of-control of a shareholder, a sustained deadlock, or a material breach – either side may force the other to buy (put) or sell (call) its shares.

The price is normally set by an independent valuer using International Valuation Standards or by a formula that escalates over time. The option window is usually 30–60 days from notice, giving the parties enough time to arrange funding and complete the statutory share-transfer registration at the MOCI.

If the purchasing shareholder is foreign, sensitive sectors (telecoms, oil services and security) still require public authority approvals before the transfer is effected.

Drag-along allowing holders to compel a sale to a third party

A drag-along lets holders of a qualified majority – most often 75%, mirroring the articles' super-majority – compel the remaining shareholders to sell if the majority accepts a bona-fide third-party offer. The minority must receive the same price and terms as the majority.

Tag-along for minorities on sales

If a controlling shareholder wishes to sell a significant portion of the company shares, minority holders may tag their shares into the same sale on identical terms. Drafting almost always includes a “same price, same terms” covenant to stop the seller from hiding earn-outs or deferred consideration.

Liquidation

As a last resort, shareholders can vote (usually with the same 75% super-majority) to wind up the company and auction its assets if no buyer emerges through the other exits.

A well-structured Kuwaiti joint-venture often layers these tools: first a drag-along, then a tag-along to protect holdouts, and finally liquidation if neither sale mechanism produces a buyer.

LUXEMBOURG



Law and Practice

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1. Market Conditions

1.1 Geopolitical and Economic Factors

While it would be inaccurate to claim that inflation, interest rate fluctuations, geopolitical tensions like the war in Ukraine, ongoing Middle Eastern conflicts, resurgence of US political unpredictability, or shifting market demands have not impacted Luxembourg-based joint ventures, the jurisdiction remains appealing for JV structuring. This is largely due to its political and economic stability, as well as its reliable, business-friendly, and flexible legal framework.

In recent years, family offices have increasingly invested alongside commercial partners or institutional investors, such as private equity firms, through joint ventures. These JVs are frequently used to acquire assets located outside Luxembourg, with the involved parties often situated internationally. Luxembourg serves as a compromise, a “safe haven”, for incorporating the holding structure that will ultimately own assets across the EU or even globally.

The trend in these segments clearly leans towards controlling and sharing both financial and corporate risks while ensuring the distribution of profits to co-investors. In uncertain times, JVs have proved to be a strategic option for parties to pool resources and expertise, leveraging their combined strengths, funds, and shared risks to pursue specific projects or opportunities.

1.2 Industry Trends and Emerging Technologies

In Luxembourg, several sectors have seen heightened JV activity, notably financial services, renew-

able energy, real estate, healthcare and life sciences, logistics and supply chain, as well as technology and fintech. Luxembourg is a leading financial and tech hub for innovation in financial technology. The country's strategic support for the space technology sector has also attracted numerous private space companies and tech firms.

This increase in JV activity can be attributed to the factors described in **1.1 Geopolitical and Economic Factors**, particularly the stable but very flexible legal environment of the Grand-Duchy of Luxembourg.

2. JV Structure and Strategy

2.1 Typical JV Structures

JVs are not legally defined under Luxembourg laws. A JV is an arrangement between at least two parties reflecting their willingness to share a venture, for either joint commercial or joint investment purposes, by gathering their resources and sharing the risks implied by the project.

While JVs in Luxembourg are not required to take any prescribed legal form, they are generally structured in two ways. The first is the corporate JV – which in most cases involves the incorporation of a separate JV vehicle by the participants (should an operational company not already have been incorporated by one participant in the JV). The second is the contractual JV, which is based on a single contractual arrangement whereby the participants define the scope of their collaboration and their respective rights and obligations.

Contractual JVs are recommended for short-term collaborations focused on a specific project. Under this structure, the participants remain liable for the JV liabilities, but do not have to bear the costs associated with the incorporation and day-to-day management of a common JV vehicle. Although not all aspects of Luxembourg law applicable to agreements can be detailed here, it is worth mentioning that contractual JVs are not subject to compulsory formalities. The joint venture agreement is structured as a private contract executed by the parties thereto. There is no requirement to have it enacted by a notary, to adopt any specific form, and there are no stamp or registration duties. The agreement may be written in English without requiring translation into any of Luxembourg's national languages.

As to the content of the agreement, the principle of freedom of contract largely applies, provided that the terms do not conflict with public policy rules. For any Luxembourg law-governed agreement, an overriding duty of good faith always applies not only to the performance of the provisions of the agreement itself, but also to pre-contractual discussions and any enforcement of the agreement that may be required.

While a corporate JV involves some additional costs and complexity, for instance in compliance and governance, it offers limited liability to participants, an established governance structure, and capital-raising capabilities to support future business growth.

A successful JV requires a high level of collaboration and co-operation, which may explain the dominance of corporate JVs in Luxembourg.

The forms of JV vehicles most commonly adopted for corporate JVs in Luxembourg are:

- private limited liability company (*société à responsabilité limitée* – SARL);
- public limited liability company (*société anonyme* – SA);
- simplified joint stock company (*société par actions simplifiée* – SAS);
- partnership limited by shares (*société en commandite par actions* – SCA); and

- limited or special limited partnership (*société en commandite simple* – SCS, or *société en commandite spéciale* – SCSp).

For the SCA, SCS and SCSp, the JV participants are limited partners with limited liability and the general partner has unlimited liability.

2.2 Strategic Drivers for JV Structuring

In Luxembourg, the choice of the most appropriate legal form for the JV vehicle depends on several factors, notably the possibility of the structure to provide for tailored decision-making arrangements within the JV, management preferences, capital requirements, profit and loss sharing, transfers of shares, and accounting and tax considerations.

If the JV is not established to conduct a regulated activity or to issue securities to the public, then the SARL is typically the preferred vehicle as it offers greater flexibility and is not subject to extensive statutory requirements. As per the law on commercial companies of 10 August 1915, as amended (LCC), the SARL has a share capital of at least EUR12,000, is managed by a single manager or a board of managers, and cannot make public offers of shares or debt securities. Furthermore, the transfer of shares in an SARL to non-shareholders requires the approval of the existing shareholders holding at least 75% of the issued share capital by way of a formal shareholder resolution – though the articles of associations can provide for a lower threshold, provided it is not less than 50%. Given the importance attributed to the individual identity of the shareholders, it is not permissible to adopt such resolutions of approval at the inception of the joint venture without knowing the identity of the proposed future transferees. The JV agreement could, however, include a provision whereby all shareholders at the time of execution of the JV agreement commit to vote in favour of such a resolution. Voting arrangements are, subject to certain conditions, valid under Luxembourg laws. It should also be noted that the identities of the shareholders of an SARL must be mandatorily disclosed in the Trade and Companies Register (*Registre de Commerce et des Sociétés* – RCS).

While often overlooked in practice, the SAS, introduced in Luxembourg in 2016, presents a compelling alternative to the SARL. It provides a high level of confidentiality to shareholders, with their identities and shareholdings remaining undisclosed in the RCS. Moreover, except for mandatory or public order provisions, it permits extensive customisation, particularly concerning management structures, voting features (such as shares with multiple voting rights), and profit and loss sharing through the issuance of preference or ratchet shares.

The SCA, SCS and SCSp legal structures are typically favoured for investment-focused JVs (involving silent investment partners) where some participants prefer not to be as deeply involved in the management decisions as they would be in a different legal structure and, as such, prefer a limited partner position.

From a regulatory perspective, when a JV is established for investment purposes, it must be confirmed that the JV vehicle does not qualify as an alternative investment fund subject to the EU Alternative Investment Fund Managers Directive (AIFMD). If the JV vehicle has characteristics that place it within the scope of alternative investment funds as defined in the AIFMD, the regulatory requirements applicable to the investment vehicle and its manager will be significantly different from those applicable to an unregulated JV vehicle.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

In Luxembourg, the main set of rules applicable to the JV vehicle are derived from Luxembourg civil law and the LCC. However, depending on the nature of the JV and the sectors in which it operates - especially if the JV vehicle qualifies as an investment fund - public authorities will need to be involved, such as the Luxembourg Financial Supervisory Authority (*Commission de Surveillance du Secteur Financier* – CSSF) or the Luxembourg Insurance Commission (*Commissariat aux Assurances*).

If a JV is structured as an alternative investment fund (AIF) in Luxembourg, it falls into the regulatory frame-

work established by the Alternative Investment Fund Managers (AIFM) Law and the AIFMD. This requires, inter alia, seeking authorisation from and registration with the CSSF, and adhering to, inter alia, investment restrictions and transparency requirements.

According to the Law of 2 September 2011, which regulates access to various professions, any economic activity carried out on a regular basis, subject to a few exceptions, requires a prior business permit from the Ministry of Economy. This permit must be held by a natural person on behalf of the relevant company. The individual must satisfy the following conditions:

- professional integrity;
- the necessary professional qualification relevant to the planned activity;
- establishment in Luxembourg - the business permit is only granted if there is a physical presence in Luxembourg that includes infrastructure suitable for the nature and scale of the concerned activity;
- effective and permanent management of the business by the business permit holder, who must:
 - (a) be physically present in the establishment at all times to ensure effective day-to-day management of the business; and
 - (b) be effectively connected to the business (as an owner or legal representative of the business); and
- compliance with tax and business obligations - the permit holder must not have evaded business and tax obligations (including withholding tax) in their previous or current business activities, whether these activities were carried out in their own name or through a company run by said permit holder.

3.2 Anti-Money Laundering Compliance

The key AML legislation applicable in Luxembourg is the Law of 12 November 2004 on the fight against money laundering and terrorist financing (the “AML Law”), as last amended on 29 July 2022.

The AML Law implements the Fourth AML Directive (EU 2015/849) as amended by the Fifth AML Directive (EU 2018/843), and establishes the obligation for entities and individuals listed in Article 2 of the AML Law to:

- implement customer due diligence measures (know your customer – KYC);
- ensure an adequate internal organisation with respect to fighting money laundering and terrorist financing; and
- maintain transactional records as well as report any suspicious transactions or activities to the Luxembourg Financial Intelligence Unit (FIU) (*Cellule de Renseignement Financier*).

A further EU AML package, partly applicable from early 2025, was adopted on 19 June 2024 by the European Parliament. This package includes the introduction of the Sixth AML Directive, a proposed AML regulation introducing stricter due diligence requirements, enhancing beneficial ownership transparency and strengthening the monitoring of transactions. It also provides for the establishment of a new European AML authority, the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA). AMLA, which is a decentralised EU agency, will progressively co-ordinate national authorities to ensure the correct and consistent application of EU AML rules. It is expected to start direct supervision on 1 January 2028.

3.3 Sanctions, National Security and Foreign Investment Controls

In Luxembourg, restrictions on co-operation with JV partners arise from both EU regulations and national legislation. At the EU level, as a member state, Luxembourg is subject to the EU sanctions regulations. At the national level, the Law of 14 July 2023 on Foreign Direct Investment (the “FDI Law”), implementing Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019, establishes a national screening mechanism with respect to foreign direct investments that could impact national security or public order. With some exceptions, the FDI Law requires that direct investments made by foreign investors, ie, natural persons or legal entities residing outside the EEA, seeking to gain control over a Luxembourg entity, be reviewed by the Ministry of the Economy if they involve critical sectors within Luxembourg, such as energy, transport, water, health, communications, data processing and storage, aerospace, defence, finance, media and business, as well as the trade of dual-use goods or which could affect

national security. The FDI Law entered into force on 1 September 2023.

Beyond sanctions and national security considerations, there are additional regulatory and legal frameworks that may impose restrictions on JVs, including sector-specific regulations, competition law and other compliance requirements.

3.4 Competition Law and Antitrust

JVs in Luxembourg are currently not subject to a national ex ante merger control regime. Hence, to date, the antitrust regulation applicable to the setting up of JVs, if the latter qualify as a concentration, is the EU Merger Regulation on the control of concentrations between undertakings (Regulation (EC) No 139/2004) (the “EU Merger Regulation”). The EU Merger Regulation provides for an obligation to notify the European Commission should the thresholds set therein be met by the JV.

At the national level, should the JVs fall outside the scope of the EU Merger Regulation, no mandatory obligation to notify the Luxembourg national competition authority (NCA) currently exists. As per applicable Luxembourg laws, the NCA can only perform an ex post intervention with the aim of ensuring the proper functioning of the EU internal market.

Luxembourg is in the process of reshaping its competition framework, with the proposed enactment of Draft Bill No 8296, which would establish a national ex ante merger control regime. This would require JVs to be notified to the NCA before being created if they could potentially affect competition in Luxembourg. The NCA review will be triggered if the parties involved in the concentration have a combined total turnover generated in Luxembourg of more than EUR60 million and at least two of the parties involved in the concentration have individual turnovers generated in Luxembourg that exceed EUR15 million. The NCA would have the authority to examine a concentration that falls below the above-mentioned thresholds if it considers that such concentration could affect competition in the Luxembourg market. This new regime will undoubtedly impact the timeline for implementing a JV in Luxembourg, adding another layer of regulatory

scrutiny alongside any notifications required under the FDI Law.

3.5 Listed Companies and Market Disclosure Rules

The mere fact that a listed company (ie, whose securities are admitted to trading on a European regulated market), multilateral trading facility (MTF) or organised trading facility (OTF), participates in a JV in Luxembourg, will not lead to the applicability of specific rules in Luxembourg beyond those set out in the EU capital market directives and regulations applicable to listed companies in general.

3.6 Transparency and Ownership Disclosure

Since the entry into force of the Law of 13 January 2019 establishing the Beneficial Owner Register, as amended, (the “RBE Law”), all legal entities registered with the RCS are required to disclose and submit information about their ultimate beneficial owner(s) (UBO(s)) to the Register of Beneficial Owners (*Registre des bénéficiaires effectifs* – RBE). Such information must be updated within one month of any change. To date, the RBE is only accessible by “professionals” as defined in Article 2 of the AML Law for the purposes of fulfilling their AML/KYC obligations, and by entities registered with the RCS with respect to their own information.

Under Luxembourg laws, a UBO is any natural person (more rarely a group of natural persons, as described below) who, ultimately, directly, or indirectly, owns or controls a legal entity (including by means of bearer shares), by a percentage of more than 25% of the shares, voting rights or an interest in the capital, or by other means. If, after all possible means, no UBO can be identified (and there are no grounds for suspicion), the natural person holding the position of principal executive officer of a legal entity is considered the UBO.

In less common cases, a group of natural persons may also be collectively deemed UBOs of an entity if they together control at least 25% of this entity, such control being considered as “by other means”. A control “by other means” exists when (i) members of a same family holding together more than 25% of the voting rights of an entity act in concert at general meetings,

or (ii) if shareholders holding equal voting percentages enter into a shareholders’ agreement whereby they act in concert at general meetings.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Apart from the entry into force of the FDI Law and the ex ante merger control regime proposed by Draft Bill No 8296, there have been no significant court decisions or legal developments in the past three years relating to JVs or business collaborations.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

Setting up a JV entails a multi-phase process for the participants. The negotiating phase of a JV typically involves:

- the completion of a due diligence questionnaire focusing not only on the JV itself, its rationale or commercial goals, but also on the JV participants;
- the execution of a mutual non-disclosure agreement (NDA);
- the execution of a head of terms document, which is crucial as it sets forth the main commercial and legal terms the participants have agreed upon during the negotiation; and
- in most cases, the execution of an exclusivity agreement prohibiting the parties from entering into negotiation with others for a restricted period of time.

At a pre-JV agreement stage, the following provisions are typically contemplated and settled in the terms sheet:

- the purpose and scope of the JV;
- the financial contributions of each participant and further funding opportunities;
- the decision-making structure;
- the management structure;

- the transferability of shares and any restriction rights in relation thereto;
- profit-sharing arrangements;
- contemplated dispute resolution mechanisms;
- exit mechanisms; and
- termination of the JV.

5.2 Disclosure Obligations

Information about the JV will be disclosed between the participants to the JV when the heads of terms are signed. For regulatory requirements regarding disclosure of the JV, please refer to **3.3 Sanctions, National Security and Foreign Investment Controls** and **3.4 Competition Law and Antitrust**.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Conditions precedent provided for in JV agreements are often linked to:

- regulatory approvals (eg, FDI approval);
- achievement of specific milestones or KPIs by a party to the JV agreement; or
- securing funding and achievement of prior transactions (eg, carve-out of certain assets or activities).

Article 1181 of the Luxembourg Civil Code defines a condition precedent as “a future and uncertain event on which the creation of a right depends”. Attention needs to be paid to the drafting of any condition precedent. If the fulfilment of a condition precedent depends solely on the will of one of the parties to the JV agreement, then the underlying obligation is deemed void by law (*c ondition potestative*).

Failure to fulfil the condition precedent renders the agreement ineffective, while fulfilment of the condition precedent triggers its effectiveness. Under Luxembourg Civil Law this effectiveness is retroactive to the date on which the commitment was made, although this retroactive effect may be waived by the parties.

Depending on the type of JV (investment focused or operational JV) material adverse change and force majeure events may also be included as conditions precedent to the entry into force of JV agreements, although they are less common in the negotiation JV agreements.

Material adverse clauses are not specifically regulated and may be freely defined by the parties to the JV agreement. With respect to force majeure, Article 1148 of the Luxembourg Civil Code provides that “No damages shall be due when, as the result of superior force [force majeure] or accident, the debtor has been prevented from delivering or doing what he has bound himself to deliver or to do, or has done what was prohibited”.

The parties to a JV agreement remain free, however, to agree on alternative rules applying to force majeure events and to contractually determine how the force majeure clause shall apply (ie, the parties may narrow down the effect of force majeure effects to specific events or may even completely waive the application of force majeure events).

In the absence of a specific definition of a force majeure event, both legal doctrine and case law establish that three cumulative conditions must be satisfied for an event to be considered as force majeure:

- the event must be external to the debtor;
- it must have been unforeseeable at the time the agreement was executed; and
- it must be insurmountable (*irrésistible*), meaning that it makes the performance of the contractual obligation impossible, rather than merely more difficult or burdensome.

5.4 Legal Formation and Capital Requirements

Setting up a JV under Luxembourg law requires careful planning, and several steps must be complied with, as set out below.

- Drafting the JV agreement: this crucial document will comprehensively outline the rights and obligations of the parties to the JV.
- Drafting the articles of association (or limited partnership agreement) of the JV vehicle: as these documents are publicly available (except for the limited partnership agreements which are only partially published), some parties prefer not to mirror all the provisions of the JV agreement in the articles of association. This is typically negotiated on a case-by-case basis.

- Incorporation of the JV vehicle under the chosen form: generally, the incorporation of a company must be enacted before a Luxembourg notary, except for SCS and SCSp structures, which can also be incorporated under private seal.
- Registration of the newly incorporated JV vehicle: the RCS articles, or an extract of the limited partnership agreement in the case of SCS and SCSp, will be publicly accessible.
- Complying with any regulatory requirements: depending on the nature of the JV's activities, it may be necessary to comply with specific regulatory requirements. These could include merger control regulations, FDI rules, or obtaining relevant business permits, as applicable.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

Regardless of the form of the JV vehicle, the terms the parties agreed upon for the JV will be set out in detail in the JV agreement. In Luxembourg, JV participants can agree that the JV agreement will not be subject to Luxembourg law if the provisions of the chosen foreign law do not contravene public order provisions under Luxembourg law. As is often the case, parties to a JV may be based in different jurisdictions and will prefer to apply a law that is more familiar to them.

The main terms that a JV agreement would be expected to address include:

- scope of the JV, roles and responsibilities of each party;
- share capital modification and related anti-dilution aspects;
- funding obligations of the participants;
- management structure;
- reserved matters;
- deadlocks and dispute resolution mechanism(s);
- restrictions on share transfers, restriction to ensure the maintenance of the share capital and the withdrawal of certain of its shareholders under certain circumstances (drag-along/ tag-along clauses);
- term of the JV;
- termination possibilities;
- plans for future change;

- exit provisions;
- put and/or call options;
- allocation of profits;
- distribution of assets;
- intellectual property rights; and
- confidentiality and non-disclosure obligations.

6.2 Governance and Decision-Making

Structuring the decision-making process within a JV is undeniably one of the most critical aspects to be discussed and carefully considered during its establishment. While the LCC provides a default framework, certain contractual mechanisms can play a vital role in shaping and refining the decision-making process within the JV, ensuring it aligns with the specific needs and objectives of the parties involved.

The following clauses can be inserted in the JV agreement or in its articles (where necessary):

- clauses relating to the allocation of the directors' mandates – such clauses will enable the JV partners to have a certain degree of representation at the management level by ensuring that the former have one or more of their representatives on the board of directors or managers of the JV vehicle;
- clauses allowing different categories of board members to be created – eg, class A and B, with different powers to act on behalf of the JV vehicle;
- a clause allowing the adjustment of the quorum and majority rules in decision-making bodies, enabling stricter rules in this respect than the ones provided for by the LCC (except for public order provisions);
- observer appointment clauses – in some cases, the JV partners will prefer to have an observer appointed instead of a director with voting prerogatives (an observer may receive all the documentation related to a particular meeting of the board and will be able to attend any board meetings); and
- specific consent clauses – in a classic JV vehicle, decisions by the board on strategic matters can require the approval of all, a majority, or a super-majority of the partners of the JV (the so-called reserved matters).

6.3 Funding

The funding of JV vehicles generally involves a blend of equity and debt, depending on the financial resources of the JV participants. The latter will make contributions in cash or in kind directly to the JV share capital or grant shareholders loans to the JV vehicle.

The JV agreement can provide for a future funding obligation to support the JV vehicle, notably with respect to capital requirements, working capital, ongoing operations, or financing of a project. Adjustment clauses addressing default by one partner can help resolve situations where such funding obligations cannot be satisfied by a partner.

Equity funding can lead to a change in the ownership of the JV vehicle and could effectively trigger a dilutive effect on the shareholding of existing participants. Several mechanisms, such as preferential subscription rights, anti-dilution clauses, issuance of instruments such as warrants and options do exist under Luxembourg law to ensure that a JV partner's shareholding is not diluted. Another equity funding option is a contribution to the capital Account 115 of the JV vehicle without issuing new shares. This approach is widely used and allows for quicker (and generally more cost-efficient) capital injections.

6.4 Deadlocks

As mentioned in **6.1 Drafting and Structure of the Agreement**, one of the most essential issues to be addressed in a JV agreement is the resolution of a deadlock situation.

Provisions relating to confiscation or compulsory purchase of shares are generally valid, as long as they do not deprive shareholders of their shares without payment or deprive them of the right to request the dissolution by court of the JV for cause.

Furthermore, several contractual mechanisms can be contemplated to prevent a deadlock, which can be set forth either in the JV agreement or its articles or in both:

- escalation clauses to senior representatives of the involved parties;
- mediation and negotiation clauses;

- dispute resolution mechanisms (international arbitration or expert determination); and
- exit strategies – put and call options in favour of the dissenting partner, exclusions mechanics provided for in the articles of the JV vehicle.

6.5 Other Documentation

The set-up of a JV usually further requires the execution of additional documents, each having a specific role to play with respect to the success of the JV, notably:

- NDAs;
- IP licences covering the use of the IP rights held by one of the partners to the JV by the latter;
- agreements to transfer assets to the JV vehicle as the case may be;
- asset management and service agreements;
- business plan; and
- policies (eg, KYC, conflicts of interests).

6.6 Rights and Obligations of JV Partners

Depending on the corporate form of the JV vehicle, the general rule for profit sharing between the JV partners is that any profit distributed to the JV partners shall be allocated pro rata to their participation in the JV agreement. The same rules apply for loss sharing.

However, Luxembourg law allows tailored shareholding and thus tailored profit and loss sharing mechanics (eg, by multiple classes of shares with different economic rights granted to each class). In terms of distributions, this specific shareholding makes it possible to grant preferential rights. These preferential rights may be structured as a distribution waterfall or on a case-by-case basis, for example, by reference to specific internal rates of return (IRRs) achieved.

Nevertheless, Article 1855 of the Luxembourg Civil Code sets a limit to the parties' freedom as it provides that "an agreement giving one of the partners all the profits is null and void" (*clause léonine*). This prohibition applies to any JV agreement as well as to the articles of association/partnership agreement of a JV vehicle (this legal provision only invalidates the allocation of all profits to a party but does not prevent a significantly disproportionate allocation). Identically to profit sharing, contractual provisions may also provide

for specific allocation of losses, though again within the limits of the above legal provision.

The access to information by the JV partners depends on the form the JV takes, which may provide for the communication of broad information regarding the JV and its business to almost no communication. As a matter of fact, if the JV is implemented under the form of a sole JV agreement, then the terms and conditions of said JV agreement will usually specify the information rights of the JV parties. If the JV partners establish a JV entity in the form of a Luxembourg company, then the JV partners, as stakeholders of the entity, shall (for most Luxembourg corporate forms) have access by law at least once a year to a management report prepared by the management body of the JV vehicle and the annual financial statements of the JV entity.

Finally, when it comes to non-compete, without particular contractual commitment, there is no general rule for non-compete obligations under Luxembourg law between JV partners.

6.7 Minority Protection and Control Rights

There are many ways for minority JV partners to shape control rights to protect their interest, the most common being:

- to ensure access to information through the right to appoint a member to the corporate bodies of the JV vehicle;
- to transfer restriction clauses (such as lock-up clauses, right of approval in the case of a transfer, right of first offer in the case of transfers);
- anti-dilution rights; and
- veto rights on important matters requiring the prior approval of a minority party.

All these rights are usually provided for in the JV agreement and mirrored in the articles/partnership agreement of the JV vehicle (mainly to ensure enforceability towards third parties).

6.8 Applicable Law and Dispute Resolution in International JVs

When selecting the substantial and procedural law governing a JV agreement in an international context, several critical factors must be taken into account to

ensure the agreement is robust, enforceable, and conducive to the objectives of the JV, among others:

- jurisdictional compatibility - ensuring that the chosen law is recognised and enforceable in all relevant countries involved;
- neutrality - selecting a neutral, internationally respected jurisdiction to avoid bias; and
- contractual flexibility - choosing a law that allows tailored agreements and effective dispute resolution (arbitration/litigation).

Albeit a small country, the Grand Duchy of Luxembourg is extensively focusing on international JVs and is attractive to foreign investors because of its stable and predictable legal system. However, JV agreements may also be subject to foreign law and jurisdiction.

When parties to a JV fail to agree on the applicable procedural law, there may be confusion about which country's procedural rules will apply. This can lead to disputes over jurisdiction (forum shopping), the admissibility of evidence, and the conduct of proceedings, causing significant delays in resolving conflicts.

In Luxembourg, there is no general statutory obligation for parties to attempt alternative dispute resolution (ADR) such as mediation or arbitration before initiating court proceedings in civil or commercial matters. Parties are generally free to bring their disputes directly before the courts unless they have contractually agreed to an ADR process (such as a mediation or arbitration clause).

The recognition of a foreign judgment in Luxembourg may require an exequatur procedure in accordance with Article 678 of the Luxembourg New Civil Procedure Code. However, Luxembourg, being an EU member state, it also applies the EU regulations in this domain, such as:

- Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) to which Luxembourg is a party; and
- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and

enforcement of judgments in civil and commercial matters (Brussels Regulation).

Furthermore, Luxembourg is party to several international treaties concerning the choice of forum and the recognition of foreign judgments, such as:

- the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed in Lugano on 30 October 2007 (Lugano Convention); and
- the Hague Convention of 30 June 2005 on Choice of Court Agreements (Hague Convention).

7. The JV Board

7.1 Board Structure

Please refer to **6.2 Governance and Decision-Making** for an overview of governance organisation and notably, the possibility of the shareholders of the JV vehicle being represented at the board by proposing candidates to be appointed as board members of the JV vehicle.

With respect to weighted voting rights, even though the current Luxembourg legal landscape tends to recognise them as a means to ensure board control, they are not commonly used in Luxembourg. The Luxembourg doctrine strongly upholds the principle of “one vote per person”.

7.2 Duties and Functions of JV Boards and Directors

The management body of a JV vehicle is often either the board of managers for an SARL, the board of directors for a one-tier SA, the management board for a two-tier SA, or the president for an SAS (and any director as the case may be). This management body has the broadest powers to take any actions necessary or useful to realise the corporate object of the JV vehicle, except those expressly reserved by the LCC or the articles of association for the shareholders of the JV vehicles.

The members of the management body of the JV vehicle, which can also be legal entities, must:

- act with loyalty and in good faith for the benefit and in the corporate interests of the JV vehicle, exercising their duties with as much diligence and care as a reasonable person acting in the same circumstances;
- represent the JV vehicle in dealings with third parties;
- avoid any conflicts of interests; and
- exercise their mandate in compliance with, inter alia, the LCC and the articles of association of the JV vehicle.

It is possible to include an explicit non-compete obligation of any member of the management body. Should this member be a natural person employed by the JV vehicle, this obligation will need to be compensated financially and be limited in duration and geographic scope in order not to be considered void under applicable laws.

In terms of delegation of functions, the management body of the JV is authorised to delegate certain functions to committees or subcommittees, depending on the legal form chosen for the JV vehicle. When committees or subcommittees are created, it is recommended that each of them adopts a policy, rules of procedure or common charter relating to their functioning and scope of intervention.

The management body can also delegate the day-to-day management of the JV vehicle and the power to represent it in dealings with third parties to one or more persons who are not necessarily members of the management body. These individuals are referred to as day-to-day managers (*délégué à la gestion journalière*). Nonetheless, the liability for these delegated functions remains with the management body of the JV vehicle, which supervises the actions of those in charge of such delegated functions.

7.3 Conflicts of Interest

Pursuant to the LCC, a member of the management body of the JV vehicle having, directly or indirectly, an interest of a financial nature conflicting with those of the JV vehicle, in relation to an operation within the competence of such management body, must disclose such conflict of interest to the other members of the management body and must not participate in the

deliberation of or vote on the conflicted matter. Any conflict of interest must be recorded in the minutes or resolutions of the management body's meeting and a special report in this respect will need to be made to the shareholders of the JV vehicle at the next general meeting of shareholders before any resolution is put to the vote.

As contemplated under **6.2 Governance and Decision-Making**, it is common that a director/manager of a JV participant is appointed as a director/manager of the JV vehicle, as long as they perform their duties in the best interests of the JV vehicle and not in the best interests of the JV participant. According to case law, the mere fact that an individual holds an executive role at a JV participant does not, in itself, establish a conflicting financial interest with the JV vehicle.

8. IP and ESG

8.1 Ownership and Use of IP

Key IP Issues

From an IP perspective, when setting up a JV corporate entity, three main IP issues need to be considered.

Corporate entity

Firstly, the ownership of pre-existing IP that each party brings into the JV should be defined, as well as the terms on which the JV will be allowed to use this IP. Secondly, it is important to determine who will own the IP developed during the course of the JV and who will have the rights to use, license, and commercialise the new IP both during the life of the JV and after its termination. Thirdly, clear terms for the protection of confidential information and trade secrets exchanged between the JV partners are to be established. Finally, the conditions under which the JV can license its IP to third parties, including revenue-sharing arrangements and control over licensing decisions, are to be defined, as well as IP valuation methods, especially in order to assess how IP valuation impacts equity shares in the JV.

Contractual collaboration

When engaging in contractual collaborations, several key IP issues should be carefully considered to ensure that the rights, obligations, and expectations

of all parties are clear and protected. In particular, ownership of pre-existing and newly created IP during the collaboration is to be clearly defined, just as questions of revenue sharing and royalties are to be answered. Liability issues, if the collaboration results in the infringement of third-party IP rights, are to be addressed, along with what happens to the IP after the collaboration ends, including rights to continued use, licensing, and the return or destruction of confidential materials.

JV agreement

IP issues are usually comprehensively addressed in JV agreements. They cover questions regarding the ownership of pre-existing IP and which usage rights are licensed to the JV and to the other party, the ownership of newly created IP and how to commercialise and exploit it, and what happens to the IP if the collaboration ends.

Moreover, in complex JVs, dispute mechanisms should be included to handle any conflicts over IP ownership, usage, or infringement. Strict NDAs ensure that all IP and proprietary information exchanged remains confidential, helping to build and foster trust within the JV.

8.2 Licensing v Assignment of IP Rights

When deciding whether to license or assign IP rights, it is important to conduct a thorough evaluation of the IP owner's long-term objectives, financial requirements, and strategic interests.

Licensing IP rights is ideal when the IP owner wants to retain control over the IP, continue benefiting from the IP, and is interested in long-term revenue streams. Assigning IP rights should be considered when the IP owner seeks immediate capital or wants to transfer the responsibility of managing and exploiting the IP to another party. The assignor, however, loses all control and future revenue potential from the IP.

8.3 ESG Considerations in JVs

ESG Regulations and Developments Affecting JVs

Even if a JV is not classified as a fund, ESG factors still warrant careful attention. Depending on the business activity of the JV and its shareholders, the structure may be subject to varying levels of ESG obliga-

tions and commitments, and the JV contract will, at a minimum, stipulate certain obligations in this respect (mostly to comply with the internal policies of certain shareholders).

ESG issues may also have a greater or lesser impact on customer/supplier relations, on internal governance procedures and risk management (including sustainability risks), depending on the JV's field of activity and where this business is operated. In fact, ESG-focused evaluation criteria are increasingly being used in management incentive packages, further emphasising their growing importance. In summary, JV partners are strongly advised to adopt a comprehensive risk-based approach when establishing and operating a new JV. This entails ensuring appropriate ESG compliance and implementing a robust compliance management system that encompasses the JV, its employees, and shareholders.

If the JV vehicle qualifies as a fund, ESG topics are a must. Indeed, since the entry into force of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (SFDR), the number of ESG and impact funds has been rising. Luxembourg currently stands as the number-one green financial centre in the EU. As a result of pressure from both investors and legislators, it appears certain that sustainable finance products will become a major trend in the investment funds industry in general.

Revision of the EU Disclosure Regulation

Last September, the EU Commission launched a consultation on the review of the SFDR, which ended on 22 December 2023. Some extensive changes could be made to the previous version, which has been in force since March 2021. For example, the disclosure obligations at company level in the SFDR could be removed and replaced by the obligations of Directive (EU) 2022/2464 on sustainability reporting by companies (CSRD), which has not been transposed in Luxembourg yet. Additionally, the current categorisation of financial products into Article 6, 8, or 9 products may be abandoned. Shortcomings in this classification have become apparent in the past, for example from the Article 8-Plus classification created by the market for MiFID marketing. The European Commission is now considering introducing sustainability dis-

closure standards for all financial products. It is also considering switching to a more differentiated classification system for sustainable products.

ESMA Guidelines on ESG Terms in Fund Names

On 14 May 2024, the European Securities and Markets Authority (ESMA) published its final report on the use of ESG or sustainability-related terms in fund names. Accordingly, the use of ESG or sustainability-related terms in fund names is subject to certain conditions. Fund names incorporating ESG or sustainability-related terms are permissible only if at least 80% of the fund's investments consider ESG criteria or pursue sustainability objectives. In addition, it is assumed that the exclusion criteria of the Paris-Aligned Benchmarks (PAB) are taken into account and that a significant proportion is invested in sustainable investments within the meaning of Article 2 (17) of the SFDR in order to reflect the expectations of investors based on the fund name. The Guidelines also address, for the first time, the use of transition-related terms and the combination of different terms.

Funds that are subject to supervision by the CSSF, regardless of whether they qualify as an Article 6, 8 or 9 product, must use fund denominations that are consistent with the respective investment objective and investment policy of the fund and with the ESMA Guidelines. The CSSF also expects that future developments on this topic will be implemented at the European level.

EU Taxonomy Regulation

Since 1 January 2023, non-financial companies have had to provide evidence of the rate of conformity of their business activities with the environmental objectives of the Taxonomy Regulation as part of their reporting. However, this only applies to the environmental objectives of climate protection and adaptation to climate change. From 1 January 2024, the reporting obligation also applies to financial companies when it comes to these two environmental objectives. With regard to the other environmental objectives, however, non-financial companies fall under the reporting requirement as of 1 January 2025 and financial companies as of 1 January 2026. The implementation of the EU Taxonomy is to be facilitated by a communica-

tion on the legal interpretation and implementation of the technical screening criteria.

The Main ESG Regulations in Luxembourg

The ESG regulatory framework in Luxembourg is dominated by directly applicable as well as transposed European legislation. The main references in Luxembourg are the SFDR, the SFDR Regulatory Technical Standards (SFDR RTS) and Regulation (EU) 2020/852 (the “Taxonomy Regulation”). This is in addition to specific guidelines provided by the CSSF.

The CSSF’s current priorities with regard to ESG are essentially focused on:

- the integration of sustainability risks by investment fund managers (AIFMs, management companies and external portfolio managers);
- compliance with existing ESG-related requirements; and
- the consistency of pre-contractual information in offering documents and on websites or as marketing material.

Regarding the consideration of sustainability risks, the CSSF emphasises that the delegation of portfolio management functions has no influence on the investment fund manager’s obligations to disclose the consideration of sustainability risks. This includes the obligation to implement an adequate risk management framework.

The CSSF will increasingly focus on verifying compliance, in particular with the ongoing disclosure obligations under Article 11 of the SFDR in connection with Articles 50 and 58 of the SFDR RTS.

Particular attention is also paid to the increased control of the consistency of ESG-related disclosures made in pre-contractual documents (in particular offering documents with SFDR RTS annexes), websites and marketing materials.

On 19 November 2024, the Council of the European Union formally adopted the new ESG Ratings Regulation, following a proposal from the European Commission on 13 June 2023 and an agreement with the European Parliament at first reading. This Regula-

tion marks a significant step in the European Union’s efforts to regulate ESG rating activities, addressing long-standing concerns over inconsistencies, lack of transparency, and fragmented practices across member states. This Regulation reflects the EU’s continuing commitment to fostering sustainable finance markets, in pursuit of the EU’s Green Deal objectives. It will be published in the EU’s Official Journal and will enter into force 20 days after publication, with its provisions becoming applicable 18 months later, on 2 July 2026.

Gender Parity on the Boards of Listed Companies

The transposition into Luxembourg law of the European Directive (EU) 2022/2381, known as the “Women on Board” directive should have taken place before 28 December 2024. However, the transposition is slightly behind schedule as Project 8519 of the parliament is still under commission. There is no precise date for the law to be voted on and the Directive transposed but Luxembourg politicians are confident that it will proceed.

9. Exit Strategies and Termination

9.1 Termination of a JV

JV arrangements can come to an end in several ways, which should be outlined in the JV agreement. The most common include:

- a deadlock situation that has not been resolved;
- at the expiry of a determined period, unless agreed otherwise between the participants to the JV;
- upon termination of the object of the JV – some JVs are only set up for the completion of a specific purpose and once completed, the JV may be terminated;
- by mutual decision of the participants to the JV;
- by any participant to the JV on contractual grounds thoroughly defined in the JV agreement – eg, breaches of certain provisions of the JV agreement, insolvency of a participant, change of control, violation of an IP licence agreement, failure to meet a funding obligation following an unsuccessful cure period; or
- poor performance of the JV.

A JV vehicle can also be dissolved by the Luxembourg courts in accordance with the LCC.

Contemplating the consequences of the termination of the JV is crucial. The main matters that should be dealt with in this respect concern:

- settlement of liabilities;
- allocation of assets;
- employment issues;
- IP issues;
- survival clauses from the JV agreements; and
- de-registration from the RCS if the JV is a registered entity.

The JV agreement can also stipulate that the termination of the JV does not trigger the termination of the JV vehicle. As a separate legal entity, transfer of shares or liquidation of the JV vehicle should also be contemplated.

9.2 Asset Redistribution and Transfers

When contemplating the transfer of the assets owned by the JV to the JV participants, whether they were originally contributed to the JV vehicle by the JV participants or generated directly by the JV, the following main issues should be addressed.

- Assets valuation: the valuation of the assets to be transferred is generally determined in accordance with the calculation method set out in the JV agreement.
- Contractual restrictions over the assets: depending on the nature of the assets, it must be ensured that the asset to be transferred is free from any encumbrances or third-party rights that could prevent the transfer (eg, mortgages, pledges over shares, limitation to the transferability of IP rights).

- Nature of the assets: fulfilment of legal registration requirements may be triggered by the transfer of certain assets (eg, IP rights, real estate).
- Corporate interest: the management body of the JV vehicle must ensure that the transfer of assets contemplated is in the best interests of the JV, either from a corporate perspective or from a business perspective, when assessing the impact of such transfer on the *modus operandi* of the JV. The decision to transfer assets of the JV to its participants can require the prior approval of an *ad hoc* committee or the shareholders of the JV vehicle.

The transfer of assets from the JV to its participants is a scenario that is worth contemplating in advance and including directly in the JV agreement.

9.3 Exit Strategy

There are no specific Luxembourg corporate law provisions regulating share transfers, except that the shares of an SARL may be transferred *inter vivos* to non-shareholders only with the favourable vote of shareholders representing at least 75% of the share capital (which can be decreased to 50%).

The exit strategy can be freely determined by the JV agreement and typically includes exit through a sale to a third party or a winding-up (or any similar corporate transactions, such as mergers).

A mechanism frequently applied is exit via the redemption of entire classes of shares at a value determined in the JV agreement (and mirrored in the Articles).

Trends and Developments

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GSK Stockmann SA is a leading independent European corporate law firm with more than 250 professionals across offices in Germany, Luxembourg and the UK. It is the law firm of choice for real estate and financial services, and also has deep-rooted expertise in key sectors such as funds, capital markets, public, mobility, energy and healthcare. For international transactions and projects, GSK Stockmann works together with selected reputable law firms

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Introduction

The Grand Duchy of Luxembourg (“Luxembourg”) is widely considered as an attractive jurisdiction to establish a joint venture (JV) for several reasons.

Firstly, from a political and economic perspective, Luxembourg is generally placed amongst the most stable countries in the world, as demonstrated by its long-standing AAA credit ratings.

Secondly, from a cultural perspective, Luxembourg is characterised by a strongly international environment, which offers numerous advantages to those seeking to do business in the Grand Duchy. For example, the administrative languages of Luxembourg are Luxembourgish, French and German, with English being widely used for transaction and corporate documents.

Thirdly, from a legal perspective, Luxembourg law provides flexibilities that have proved to be useful when parties seek to negotiate the allocation of rights and obligations in their joint venture.

Once the potential parties of a JV have decided to establish the JV in Luxembourg, it is recommended to involve Luxembourg counsel during the early stages of negotiation, at which point the parties outline the main aspects of the JV vehicle, including the purpose, the target(s) and a tax-efficient exit strategy. The involvement of a Luxembourg lawyer is recommended in order to tackle the main topics of discussion at an early stage, resulting in smoother implementation of the JV venture.

This article aims to provide a short roadmap highlighting the main points to consider during the negotiation of a JV:

- the shareholding of the JV vehicle;
- the management of the JV vehicle;
- the governing law of the JV agreement;
- the relationship between the JV agreement and the articles of association of the JV vehicle;
- the potential qualification of the JV vehicle as an alternative investment fund; and
- the foreign investment control mechanism applicable in Luxembourg.

It should be noted that any consideration of these aspects will differ depending on the type of company or partnership selected. This article focuses on the private limited liability company in Luxembourg (*société à responsabilité limitée* SARL), which is one of the most commonly used types of entity for JV vehicles, due to the flexibility of its rules.

However, there are several other suitable types of company forms that could be used for a JV vehicle, such as a public limited liability company (*société anonyme* – SA), a simplified joint stock company (*société par actions simplifiée* – SAS) or a common/special limited partnership (*société en commandite simple* – SCS, or *société en commandite spéciale* – SCSp).

The shareholding of the JV vehicle

First and foremost, it is recommended that the parties agree on the characteristics of the investments they plan to make into the JV. This amounts to more than the simple sum of the investments and includes questions such as the proportion of debt and equity to be invested, the number of shares each shareholder will hold, how these shares confer voting rights and influence within the JV, and what each party will contribute to the venture (eg, cash or contribution in kind). These negotiations are crucial, as they define the balance

of power between the shareholders. Luxembourg law offers various possibilities for structuring shareholding arrangements effectively. The focus of this section will be on key potential scenarios concerning (i) the type of financial instruments used; (ii) the nature of contributions made by the parties; and (iii) how these contributions may be allocated.

Type of instruments

The share capital of an SARL is generally divided into shares (*parts sociales*), which may or may not have a nominal value. Holding shares in an SARL entitles the shareholders to economic rights (such as preferred distributions, dividends and liquidation proceeds) as well as non-economic rights (such as voting rights, and observer and board member appointment rights).

As a general rule, these rights are proportional to the number of shares held. However, the balance between shareholders is not always straightforward and more complex structures are often requested to achieve the desired result. A notable example is the additional protections that a minority shareholder may request in order to better safeguard their interests.

Luxembourg law offers several options to create tailored shareholding structures. One option is the use of shares with different share classes (eg, class A and class B shares), with different rights granted to each class. This structure offers flexibility in several aspects, such as distributions and voting rights.

In terms of distributions, this specific shareholding structure offers the possibility of preferential rights in the case of distributions, which may be structured as a waterfall or on a case-by-case basis, for example linked to specific internal rates of return (IRRs) achieved.

In terms of voting rights, this structure may be used together with a list of important matters for the management of the JV vehicle - so-called reserved matters - in order to submit the approval of such matters to specific majorities or the approval of one class of shares, regardless of the total number of shares held. For example, the JV agreement may provide that the majority necessary for the approval of a merger requires the inclusion of the favourable vote of share-

holders representing the majority, or even totality, of the class shares held by the minority shareholder(s).

Beyond shares, Luxembourg law further offers the possibility of issuing beneficiary or profit units (*parts bénéficiaires*). Beneficiary units are instruments that can be issued by the company but do not form part of its share capital. The features of this instrument are therefore highly flexible and can be freely defined in the articles of association of the JV company.

The allocation: share capital, share premium, Account 115

Once the JV partners have decided the types of instruments to use in forming the shareholding of the JV vehicle, the parties will need to decide how to allocate their values. If the shares are subscribed at their nominal value, the contributed value will be fully recorded as the share capital of the JV vehicle.

If one or more shareholders subscribe to shares at a price above their nominal value, the share premium must be recorded in one of the JV vehicle's accounts. If new shares are issued, such additional value will be booked to the company's share premium account. In Luxembourg, however, shareholders have the flexibility to allocate such additional contributions to the capital reserve of the company, known as Account Number 115 of the Luxembourg standard chart of accounts (*apport en capitaux propres non rémunérés par des titres*). Contributions to Account 115 can be made quickly as they do not require the involvement of a notary.

The contributions

Once the structure of the share capital of the JV vehicle is determined, the parties need to consider the form of the contributions to the JV vehicle. Generally, contributions to an SARL are made in cash or in kind (eg, by contributing receivables or shares in other companies). Cash contributions are the easiest way to contribute value, but some practical implications need to be considered. When incorporating an SARL in Luxembourg by means of a cash contribution, the minimum corporate share capital of EUR12,000 must be deposited into a bank account of the company before it is incorporated and can legally exist. This requires opening a bank account for the future com-

pany with a Luxembourg or foreign bank. In some jurisdictions, financial institutions are unable to open bank accounts for future companies, which can complicate the process. The bank on-boarding process must therefore be considered, in particular in terms of timing and the documents to be provided, as this may delay the timeline for setting up a JV vehicle.

The management of the JV vehicle

Once the basis of the shareholding structure has been established, the parties often negotiate and agree upon the management structure of the JV company. Under Luxembourg law, the management of an SARL is generally entrusted to a board of managers, since a sole manager is unusual for JVs. The board of managers considers and approves the actions of the company in accordance with, among other things, its corporate object and its corporate interest.

The appointment of managers

The members of the board of managers are appointed by the shareholders of the company, either in connection with the incorporation of the JV before a Luxembourg notary, at a subsequent general meeting of shareholders, or by means of written shareholder resolutions.

Under Luxembourg law, the individual shareholders only have a nomination right, but not an appointment right. This means that JV parties cannot agree in the JV agreement that a single shareholder can directly appoint, without a shareholders' resolution, one or more manager(s). In practice, the JV parties grant the shareholders the right to nominate a specified number of future managers in the JV agreement. This is coupled with an undertaking in the JV agreement from all other shareholders to appoint the nominated managers by way of a shareholder resolution. For shareholders who do not have the right to nominate a manager, under Luxembourg law it is also possible and common to appoint an "observer" to the meetings of the board of managers. An observer is not a manager and therefore does not have voting rights. However, an observer usually has the right to receive the relevant documentation presented in the board meetings and to attend these meetings.

The majorities

Once the principles governing the composition of the board of managers are agreed, the JV parties normally negotiate the board of managers' quorum and majorities for approvals. As a general rule, the board of managers can validly meet when at least half of the members are present or represented, while board resolutions can be approved with the favourable vote of at least half of the managers attending the meeting.

Luxembourg law offers some flexibility in this respect. A very common structure used in the context of a JV agreement is the organisation of the managers into different classes (eg, class A and class B managers), which is not automatically connected to the potential share-class structure of the shareholding.

Organising the management into classes allows a certain amount of flexibility, eg, in terms of quorum and majorities. For example, the JV agreement may provide that a meeting of the board of managers can only be validly constituted if at least one manager from a certain class is in attendance. Similarly, it is possible that a resolution can only be approved with the favourable vote of at least one manager from each class or that only one class A and one class B manager may jointly represent the company vis-à-vis third parties.

This structure can be particularly useful for minority shareholders, who usually have the right to nominate only one manager. A board of managers divided into different classes may allow the manager nominated by a minority shareholder to have a "veto" right on certain matters or prevent a manager from entering into agreements with third parties without the knowledge of the managers appointed by the other JV parties.

The governing law of the JV agreement

A JV agreement regulating a Luxembourg SARL does not necessarily need to be governed by Luxembourg law. The parties may choose a different governing law based on their preferences, for example, if they are more familiar with the provisions of their home jurisdiction or if the main assets of the JV are located in a different country.

Although the choice of the governing law is generally free, submitting the JV agreement to a law other than

Luxembourg law has several implications. First and foremost, such a choice does not change the fact that the JV vehicle is a Luxembourg-established entity and therefore subject to the applicable rules and regulations of the Grand Duchy of Luxembourg.

As a result, it is essential that the JV agreement, if submitted to another law, is carefully reviewed from a Luxembourg perspective as well, in order to ensure that its provisions fully comply with Luxembourg law.

By way of example, Luxembourg corporate law provides that the shares of an SARL may be transferred inter vivos to non-shareholders only with the favourable vote of shareholders representing at least 75% of the share capital. In practice, a JV agreement submitted to another law may provide for the shares in the JV company to be transferrable in line with the permitted transfer provisions and usual tag-along, drag-along and right-of-first-refusal provisions, potentially omitting this formal requirement.

The relationship between the JV agreement and the articles of incorporation

When assisting with Luxembourg JV transactions, a common point of discussion is to what extent the provisions of the JV agreement should be implemented into the articles of association of the JV vehicle.

The JV agreement is a contract and, in general, is confidential and binding only on the parties that have signed it. However, the notarial deed incorporating an SARL is published in the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés*) and is therefore publicly accessible. Unlike the JV agreement, the articles of association of the company are enforceable against all third parties (the so-called erga omnes effect).

The JV parties therefore need to find a balance between confidentiality and the erga omnes effect, by deciding to what extent the provisions of the JV agreement should be transposed into the articles of association of the JV vehicle. Usually, the articles of association do not reproduce the provisions of the JV agreement in full but are limited to the most important provisions regarding restricted share transferability

(eg, drag-along rights, tag-along rights), the management of the company and distribution rules.

The potential qualification of the JV vehicle as an alternative investment fund

A JV vehicle, if certain requirements are met, may be classified as an alternative investment fund. Consequently, such JV vehicles would need to comply with the provisions of Luxembourg law on alternative investments funds.

In order to clarify the status of the JV vehicle, the parties should carefully assess, with the help of their advisers, whether the JV vehicle is a pure corporate structure or whether it qualifies as an alternative investment fund. This can be the case, for example, where a JV vehicle raises capital from a number of investors with the aim of investing that capital for their benefit in accordance with an investment policy.

The foreign investment control mechanism applicable in Luxembourg

In September 2023, a screening mechanism for foreign direct investments was introduced in the Grand Duchy. If an investment in a company established in Luxembourg meets the relevant criteria, the investor will be required to notify the transaction to the Ministry of Economy (*Ministère de l'Économie*) in Luxembourg, which will evaluate it and grant or deny approval on a case-by-case basis. An investment is subject to this mandatory notification if it is made by a foreign investor – ie, a physical person who is not a national of, or an entity that is not incorporated or established under the laws of, an EU member state or a country which is part of the EEA – when it meets the following conditions:

- the investment is made in a company established under Luxembourg law which operates in certain critical sectors – eg, energy, transportation, health, communication; and
- the investment enables the investor to exercise control over the Luxembourg company, eg, to have more than 25% of the voting rights of such company, to have the majority of the voting rights (also by means of an agreement between shareholders) of such company, to have the right to appoint or remove the majority of the board of managers

(while also being a shareholder of such company), etc.

Therefore, the parties to a JV agreement should analyse the characteristics of their JV carefully, in order to clarify whether there is a need to proceed with the notification to the Luxembourg Ministry of Economy.

Conclusion

This article outlines some of the main aspects that are usually considered and negotiated by the parties when planning a JV involving a JV vehicle established in the Grand Duchy of Luxembourg. This list is not exhaustive, and JV parties need to take into account a number of economic, legal and tax aspects based on the specific project.

While negotiations may seem lengthy and challenging, well-structured and thoroughly negotiated JV agreements are crucial in ensuring the efficient operation of the JV. Luxembourg's legal framework is frequently selected as it provides a favourable environment that supports the smooth functioning of the JV.

MEXICO



Law and Practice

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Aziz & Kaye Business Law is headquartered in Mexico City. The firm serves as a strategic ally and gateway for doing business in Mexico. Its mission is to provide bespoke legal advice, placing clients' businesses at the forefront. The firm's core priority is to deliver value to companies seeking top-tier professionals with strong legal expertise and a business-oriented approach to decision-making. Specialising in corporate, transactional, and antitrust law, the firm adeptly navigates the complex legal and commercial landscapes of its clients. With two partners, one

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1. Market Conditions

1.1 Geopolitical and Economic Factors

Setting up a joint venture (JV) is one of the main strategies for companies seeking to navigate the complexities of the Mexican market while leveraging local expertise. Activities related to JVs have recently been impacted by several factors, such as those outlined below.

Currency Fluctuations

The peso's strong performance has complicated matters for foreign companies seeking cost-efficient participation in JVs. This has made acquisitions and partnerships potentially more expensive for international investors. However, several geopolitical factors (such as US foreign policy) may impact the Mexican currency and cross-border transactions.

Geopolitical Factors

Tensions between the United States and China have played a significant role in companies needing to explore alternative substitute markets, with Mexico emerging as an attractive option. Foreign companies interested in entering the Mexican market are assessing three main approaches:

- establishing a buyer-seller relationship;
- forming a JV; or
- pursuing an acquisition.

However, global relocation activities, such as nearshoring, have been affected by US foreign policy.

US Foreign Policy

The evolving foreign policy of the United States presents challenges for cross-border JVs, creating an environment of uncertainty that may affect investor confidence and complicate long-term strategic planning. Nevertheless, Mexico continues to benefit from its geographic proximity to the US.

For JV partners, this environment requires careful risk assessment and flexible structuring, but Mexico's established manufacturing base, skilled workforce, and evolving regulatory framework for emerging technologies continue to present opportunities for companies seeking to diversify supply chains and access North American markets through strategic partnerships.

1.2 Industry Trends and Emerging Technologies

The artificial intelligence sector represents an area of increased interest, with companies assessing market entry and expansion strategies within Mexico and joint ventures emerging as one of the alternatives for cross-border transactions.

While this trend may not yet translate into broader macroeconomic indicators, it reflects growing momentum in the technology sector driven by Mexico's strategic position and accommodating regulatory environment for emerging technologies. As of September 2025, Mexico has not enacted comprehensive federal legislation specifically regulating artificial intelligence,

despite ongoing legislative proposals in the Mexican Congress.

2. JV Structure and Strategy

2.1 Typical JV Structures

JVs in Mexico are typically established through one of two main structures: a contractual arrangement (contractual JV) or a company (corporate JV).

The choice between these alternatives depends on various factors, which are discussed in **2.2 Strategic Drivers for JV Structuring**.

Contractual JV

In a contractual JV, parties pool their efforts and resources through a formal agreement. This can take the form of a collaboration, co-investment, profit-sharing, trust or any other type of agreement that outlines each party's responsibilities, benefits, and contributions to the project.

For more information on the content of these documents, see **6.1 Drafting and Structure of the Agreement**.

Corporate JV

The parties may choose to become partners or shareholders in a dedicated legal entity. In this case, the rights and obligations of the parties are typically defined in the by-laws of the corporate JV and in a separate shareholders' or partners' agreement.

The most common types of entities used as corporate JVs in Mexico are outlined below.

Corporation

In corporations (*sociedades anonimas*, or SAs), shareholder liability is limited to their share value, and ownership is represented by freely transferable share certificates. Publicly traded corporations can be structured as either stock corporations (SAB) or stock promotion investment corporations (SAPIB), subject to additional regulations.

Promotion investment corporation (SAPI)

Promotion investment corporations blend features of traditional corporations with enhanced flexibility for investors. They offer greater leeway in shareholding agreements and foster stronger corporate governance standards.

Compared to regular corporations, SAPIs typically offer lower thresholds for minority rights, are allowed to acquire their own shares and to restrict profit-sharing with shareholders.

Limited liability company

Limited liability companies (*sociedades de responsabilidad limitada*) can have up to 50 partners. Partner approval is required for admitting new members or transferring equity holdings, except in certain cases, such as inheritance. This type of entity often appeals to US investors due to potential pass-through tax treatment.

2.2 Strategic Drivers for JV Structuring

Choosing the appropriate JV vehicle involves analysing several factors, including the following.

Tax Strategy

Tax consequences often play a decisive role in the choice between setting up a contractual JV or a corporate JV. Key considerations include:

- the potential addition of an extra taxable layer or level when incorporating a corporate JV;
- the possibility that tax authorities may consider (and, therefore, tax) a contractual JV as an implied corporate JV, even without formal incorporation; and
- the overall feasibility and profitability of the project after accounting for tax effects.

It is crucial to have tax experts review any proposed JV structure to assess its implications for all parties involved.

Long-Term Vision

The intended duration and depth of the partnership significantly influence the choice of JV vehicle:

- long-term, deeply integrated partnerships often favour the formation of a corporate JV;
- exploratory or temporary collaborations may be better suited to a contractual JV; and
- the perceived importance of each party's contribution to the project's success can influence the level of commitment and, consequently, the chosen structure.

Decision-Making Processes

When a project requires frequent collaboration, discussion, and agreement between parties on operational decisions, a corporate JV often provides a more structured framework for governance.

A corporate JV is typically preferred when partners anticipate the need for a robust, long-term decision-making framework that can adapt to changing project needs and partner dynamics over time.

While a contractual JV can also include decision-making provisions, it may lack the formal organisational structure that a corporate JV provides. However, certain contractual JVs, such as trust agreements, may include decision-making provisions and bodies in which JV members participate.

Allocation of Profits and Losses

A corporate JV might be more efficient for allocating profits and losses and for maintaining accounting records and tracking income and expenses, especially in projects with intensive operations.

Liability Protection

When selecting a JV vehicle, parties also consider associated risks and liability exposure. The corporate veil offered by a corporate JV typically provides an additional layer of protection for the parties involved. This may also occur in certain contractual JVs, such as trust agreements, where the execution of the agreement results in a legal structure that, through the intervention of a third party (such as the trustee), can carry out certain acts without the JV members directly intervening.

However, in cases where one party primarily contributes funds while the other handles operations and client interactions, a contractual JV might be preferred.

This structure allows for clearer assignment of liability for fronting activities, including regulatory compliance, to the party performing these functions.

Regulations

In some scenarios, industry regulations are the deciding factor when assessing the most suitable JV vehicle. When foreign parties are involved and depending on the activity of the JV, foreign investment regulation should be reviewed to confirm that no provision restricts the participation of foreign shareholders and partners in the corporate JV's capital stock.

Additionally, certain projects, such as those derived from public bidding, may require the formation of a corporate JV to comply with regulatory requirements.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

In Mexico, there is no specific regulation governing JVs. The regulatory framework applicable to a JV transaction depends on the type of vehicle chosen and other factors. If the transaction requires approval by or notification to the National Antitrust Commission, this authority will serve as regulator.

In such cases, the main statutory provisions will be the Federal Economic Competition Law. For more information, see **3.4 Competition Law and Antitrust**.

All JV transactions are subject to general civil and commercial regulations. If the vehicle is a corporate JV, the primary statutory provisions will be the General Law of Business Companies. When a SAPI is involved, the Securities Market Law will also apply.

Regardless of the JV structure, the vehicle will be bound to comply with other regulations, including labour, tax, environmental, financial, intellectual property, and data privacy laws, depending on its activities.

3.2 Anti-Money Laundering Compliance

The main anti-money laundering regulations ("AML Regulations") applicable in Mexico are:

- the Federal Law for the Prevention and Identification of Illicitly Funded Transactions;
- the Regulations to the Federal Law for the Prevention and Identification of Illicitly Funded Transactions; and
- the General Rules issued by the Tax Administration Service.

The AML Regulations provide the framework applicable to individuals and entities (including financial institutions) that carry out economic transactions in Mexico that are deemed prone to illicit funding or to financing organised crime or terrorism. Said economic transactions are therefore considered vulnerable activities.

The Ministry of Finance and Public Credit is the main authority in charge of overseeing and enforcing the AML Regulations. However, depending on the specific nature of each vulnerable activity, it may be subject to additional regulations and oversight from other authorities.

3.3 Sanctions, National Security and Foreign Investment Controls

There are no restrictions on co-operating with JV partners in Mexico as a consequence of sanctions laws, nor are there any specific national security regulations or considerations that apply to the formation of a JV in Mexico.

For corporate JVs, restrictions may apply regarding foreign participation in the company's capital stock, depending on the company's activities. Mexico's Foreign Investment Law sets out three categories of restrictions: activities reserved exclusively to the state, activities reserved exclusively to Mexican individuals or Mexican companies with a foreign investment exclusion clause, and activities with specific limits on foreign ownership, ranging from 10% to 49%.

Additionally, foreign investors are required to obtain approval from the National Commission of Foreign Investments to hold, directly or indirectly, more than 49% of a company's capital stock if the company's assets exceed a value set annually by the authority. The recent threshold was set at approximately

USD1.59 billion (using an exchange rate of MXN18 to USD1).

3.4 Competition Law and Antitrust

The main regulator for antitrust matters in Mexico is the newly created National Antitrust Commission (NAC or "the Commission") which replaced the Federal Economic Competition Commission (FECC) and the Federal Telecommunications Institute.

Under the recently amended Federal Economic Competition Law (FECL), the following practices are prohibited: monopolies, monopolistic practices, unlawful mergers, and barriers that diminish, damage, or hinder competition and free market access.

A JV may qualify as a merger under the FECL, which defines a merger as the acquisition of control or any act resulting in the union or combination of companies, associations, shares, equity interests, trust rights, or assets between economic agents.

The Mexican antitrust authority will not authorise mergers that diminish or damage competition and free market participation for equivalent goods or services. Such mergers may be investigated and sanctioned.

According to the current FECL and subject to certain exceptions outlined in the law, mergers exceeding certain thresholds must be notified to the NAC before becoming effective in Mexico. Said thresholds have been reduced in the revised FECL.

Nonetheless, economic agents involved in transactions that do not meet the newly reduced thresholds may voluntarily notify such mergers to the NAC. It is important to consider that the Commission may investigate transactions in certain cases that do not require prior notification up until three years after their closing. The latter is the case if the NAC considers that there are indications that the transaction may have as its object (purpose) or effect to hinder, reduce, harm, or impede competition or free market access (also defined as unlawful merger).

It is worth noting that certain types of transactions may receive different treatment. For example, in the context of strategic alliances between airlines, the former

competition authority, the FECC, had indicated that even if these alliances do not surpass the notification thresholds, they could still be subject to review. This is due to the potential and significant impact on market dynamics and competition, especially in a market as sensitive as air transportation. The FECC highlighted in a formal opinion that such alliances may lead to co-ordinated practices or market foreclosure effects, thus justifying the need for a thorough examination to prevent any anti-competitive outcomes.

However, it remains uncertain how the newly created NAC will interpret and apply these criteria in practice, as its approach to reviewing such transactions has yet to be defined.

One major change from the previous competition framework to the new FECL is the reduction from 60 to 30 business days for the NAC to issue a resolution, after confirming that the file subject to review is complete and all information requirements have been satisfied by the economic agents, with the possibility of extension only in exceptionally complex cases.

The transaction must not be closed before the authority's approval or deemed approval (no resolution within the applicable term). Non-compliant transactions will be considered null and void, may be subject to increased penalties under the new law and will face increased scrutiny by the NCA.

3.5 Listed Companies and Market Disclosure Rules

Joint ventures in Mexico have no general mandatory disclosure requirements for participants, but specific disclosure obligations may apply when the JV structure involves publicly listed companies.

For instance, key disclosure triggers for publicly listed companies include:

- acquisitions of 10–30% of publicly listed shares requiring disclosure of shareholding details and acquisition intentions;
- group acquisitions requiring individual member holdings disclosure;
- related party transactions involving 5% increases or decreases in ownership stakes; and

- ongoing reporting obligations for holders of 10% or more of publicly listed shares, board members, and relevant officers to notify the National Banking and Securities Commission and, in certain cases, make public disclosures of securities transactions.

3.6 Transparency and Ownership Disclosure

In Mexico, the Federal Tax Code sets forth “ultimate beneficial owner” (UBO) disclosure requirements aimed at enhancing transparency and combating tax evasion.

Tax provisions mandate that all legal entities, including certain contractual arrangements, identify and disclose information about individuals with control or that derive ultimate benefits from their participation in the entity or structure.

Entities are required to collect and maintain updated records of UBOs. This includes detailed information regarding the chain of ownership and control when an indirect structure is involved, as well as the identification and documentation of control exerted through other legal arrangements, such as trusts or fiduciary structures.

Entities are required to maintain their accounting records, including information on UBOs, for the period specified by law. The information must be made available to the tax authority upon request.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

There have been significant legal developments and court decisions recently for corporate JVs.

In October 2023, the General Law of Business Companies was amended to include provisions that allow business companies to use digital platforms and any other real-time technologies to hold remote shareholders', partners', directors' and managers' meetings.

In April 2024, the Supreme Court (SCJN) issued a resolution that substantially redefined the civil liability

regime for directors of Mexican commercial companies. The court determined that shareholders or partners may bring direct civil actions against directors if they suffer direct and personal damage, even if such damage does not derive from harm to the company itself. This decision broadens the potential liability of directors and enhances the protection of minority shareholders and partners in JVs, as it recognises their right to seek judicial remedies for direct damages caused by directors' acts or omissions.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

In the negotiation stage of a JV transaction, parties typically begin by exchanging a mutual non-disclosure agreement (NDA) to facilitate the sharing of sensitive information. If the parties wish to proceed, they often draft a preliminary document outlining their intentions and the basic conditions for closing the transaction.

This preliminary document usually takes the form of a letter of intent (LOI) or a memorandum of understanding (MOU). While the specific contents may vary depending on the nature of the proposed JV, these documents generally include several key elements:

- Identity of the parties – the document first identifies the parties involved in the potential transaction, clarifying the main stakeholders and their roles in the proposed venture.
- Project – it then describes the project or transaction the parties intend to undertake, outlining the JV's core purpose and setting the stage for further negotiations.
- Contributions – the LOI or MOU typically specifies each party's expected contributions, which may include financial investments, intellectual property, technical expertise, or other resources essential to the venture's success.
- Type of vehicle – the intended structure for the JV (either contractual or corporate) is usually specified. If undecided, the document outlines the process or criteria for making this decision.
- Corporate and economic rights – for corporate JVs, the preliminary document delineates the corporate

and economic rights of each party, such as voting rights, approval of major items, appointment of management, and profit distribution.

- Due diligence – if the JV vehicle already exists and a party is considering joining, the document outlines the due diligence process, allowing the incoming party to assess the business before committing.
- Conditions to closing – the document lists conditions required to close the transaction, which may include regulatory approvals, financial benchmarks, or other criteria that must be met before finalising the JV.
- Exclusivity – an exclusivity clause is often included, establishing a period during which parties agree not to negotiate similar projects with third parties, ensuring focused, good-faith negotiations.
- Applicable legislation and jurisdiction – while LOIs and MOUs are generally non-binding, certain provisions (such as exclusivity, confidentiality, notices, and applicable legislation or jurisdiction) are often explicitly made binding to address potential disputes.

5.2 Disclosure Obligations

While there is no general regulatory requirement to disclose a JV transaction in Mexico, specific disclosure obligations may arise depending on various factors.

These factors include the nature and industry of the venture, the transaction value, the parties involved, and their respective market shares.

For instance, compliance with the FECL may be necessary under certain circumstances. If the JV qualifies as a merger under the FECL and exceeds the specified thresholds, the parties would be required to notify the relevant antitrust authorities before the transaction takes effect in Mexico. This notification process effectively serves as a form of disclosure, albeit to regulatory bodies rather than the public. See **3.4 Competition Law and Antitrust**.

Additionally, if any of the parties involved are publicly traded companies, they may be subject to additional transparency requirements mandated by securities laws. These obligations could require pub-

lic announcement of material business transactions, which might include the formation of a JV.

In exceptional cases, foreign investment participation in corporate JVs may require government approval. See **3.3 Sanctions, National Security and Foreign Investment Controls**.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Mexican joint venture agreements typically require satisfaction of conditions precedent before closing, such as obtaining regulatory approvals (notably antitrust), third-party consents, operating licences, shareholder and board approvals, tax clearances, finalised funding, executed transaction documents, and confirmation of no material litigation. If unmet and impossible to be waived, parties may terminate the agreement or delay closing.

Material adverse change (MAC) clauses allow parties to withdraw or renegotiate if significant adverse events occur between signing and closing, with definitions often based on financial thresholds or specific events, and negotiations focusing on scope and carve-outs.

Force majeure clauses protect parties from liability when extraordinary, unforeseeable events (eg, natural disasters, war, epidemics, or government actions) prevent performance. These clauses require direct causation, prompt notification, mitigation efforts, and typically suspend obligations during the event, sometimes allowing renegotiation or termination if disruptions persist. Parties may negotiate carve-outs or require that events be unexpected at signing.

5.4 Legal Formation and Capital Requirements

In a contractual JV, the parties must execute the relevant agreements to bind themselves to the project, in some instances as detailed in the negotiation documents. See **5.1 Preliminary Negotiation Instruments and Practices**.

Typically, collaboration agreements, profit-sharing agreements, or co-investment agreements do not require execution before a public notary. However, the parties may choose to notarise the documents

or have their signatures ratified by a public notary for added legal certainty. Transfer of assets involved in the contractual JV may require notarisation.

For a corporate JV, the parties must first select the type of legal entity that best aligns with the intended rights and obligations of each party. For instance, if profit-sharing restrictions apply to one of the parties, the JV vehicle will likely need to be a SAPI, as this type of entity allows for the exclusion of certain shareholders from revenue sharing. No statutory minimum capital is required to incorporate a company in Mexico, but the capital stock or equity should be set forth in the by-laws.

Once the entity type is chosen and the terms of the corporate JV's by-laws are agreed upon (along with the terms of the shareholders' agreement and any ancillary documents, if required), the parties must incorporate the corporate JV before a public notary. This incorporation process results in the legal existence of the corporate JV, evidenced by an incorporation deed containing the entity's by-laws and the first resolution of the shareholders or partners. The deed must then be registered in the public registry corresponding to the company's corporate domicile as specified in the by-laws.

Typically, the shareholders' agreement and any other transaction documents are executed simultaneously with or immediately following the incorporation of the corporate JV.

If the corporate JV has foreign shareholders or partners, it must also be registered with the National Registry of Foreign Investments and JV parties must consider potential restrictions regarding foreign investment. See **3.3 Sanctions, National Security and Foreign Investment Controls**.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The documentation required for a JV depends on the type of vehicle chosen.

Corporate JV

In a corporate JV, the main documents are the company's by-laws and, often, a shareholders' or partners' agreement.

These typically address:

- major decisions (requiring unanimous or qualified majority approval, such as amending by-laws, dissolving the company, or altering dividend policy);
- share or equity transfer restrictions (preemptive rights, drag-along, and tag-along);
- change of control (preventing indirect ownership transfers);
- deadlock and buy/sell mechanisms (procedures for resolving impasses and exit strategies);
- board and committee appointments (including independent directors and committees modelled after public companies);
- funding commitments (future capital contributions, funding calendars, or milestones);
- dividend policy;
- non-compete obligations (including post-exit terms);
- confidentiality (surviving a party's exit);
- intellectual property (ownership or licensing, see **8.2 Licensing v Assignment of IP Rights**);
- related-party transactions (approval processes);
- exclusivity and territory (operating area and exclusivity rules); and
- dispute resolution (choice of law, venue, and arbitration options).

Contractual JV

In a contractual JV, the collaboration or co-investment agreement will include similar provisions:

- key decision-making processes;
- deadlock resolution;
- funding commitments;
- allocation of expenses and income;
- non-compete obligations;
- related-party transactions;
- exclusivity and territory;
- intellectual property rights; and
- dispute resolution mechanisms.

6.2 Governance and Decision-Making

Decision-making in the JV entity must be clearly defined in the JV document; either in the contractual arrangement for a contractual JV or in the by-laws for a corporate JV (see **2.1 Typical JV Structures**).

In Mexico, corporate JVs follow the rules of the chosen company type, with the shareholders' or partners' meeting as the ultimate governing body responsible for key decisions (eg, balance sheet approval, director appointments, profit distribution, by-law amendments, capital changes, and dissolution).

These meetings generally operate by simple majority unless higher thresholds are required by law or by-laws, and additional reserved matters or special voting requirements can be included in the by-laws. Operational decisions are typically made by the board of directors, also by simple majority unless otherwise specified.

Contractual JVs offer flexibility in designing decision-making rules, such as assigning differentiated roles, specifying voting thresholds for certain issues, and determining decision-making rights based on contributions.

It is essential to clearly allocate decision-making authority, quorum and voting requirements, and deadlock provisions in the JV documents (see **6.4 Deadlocks** for more information).

6.3 Funding

Corporate JV

In a corporate JV, funding is typically accomplished through equity contributions, though debt or a mix of both may also be used.

Initial equity commitments are often modest, with further funding provided as needed by JV members or third parties, either upon creation, according to a funding schedule, or via capital call mechanisms.

To ensure financial certainty, budgets or maximum call amounts are usually set, and capital call provisions may include measures to prevent dilution or unwanted changes in ownership, such as unpaid subscribed shares, subscription premiums, or special rights.

Provisions should address unforeseen funding needs and their impact on ownership. Where debt or related-party transactions are involved, transfer pricing analysis by a tax specialist is essential.

Contractual JV

Funding in a contractual JV is based on tax and accounting assessments to efficiently allocate costs and distribute revenue without a shared legal entity.

Commonly, each party covers its own assigned expenses, which are considered in profit allocation, or one party may charge fees for certain activities. Transaction documents typically include a budget, outline funding commitments, and specify milestones for disbursements.

Debt funding by a party requires careful tax and transfer pricing analysis if members are related parties.

6.4 Deadlocks

A deadlock occurs when the board of directors or JV partners are unable to reach a decision due to an equal number of votes for and against a proposal, or when a unanimous vote is required but not achieved. It may also arise if the board, shareholders', or partners' meeting repeatedly fails to achieve a legal quorum, preventing the body from being officially convened.

To address such situations, JV documents often include deadlock provisions that set out rules to help the board or partners move forward. Common mechanisms to break a deadlock include:

- mediation by a neutral third party or arbitration;
- one partner electing to sell its participation in the JV or buy out the other partners (known as Russian roulette or shotgun terms);
- third-party buyout;
- liquidation or winding-up of the JV as a last resort; or
- if the deadlock occurs at board level, referring the issue to the shareholders' or partners' meeting for resolution.

Despite the availability of these mechanisms, it is advisable to try to prevent deadlocks in the first place, for example, by appointing an odd number of direc-

tors or granting a casting vote to a designated person in the JV documents.

6.5 Other Documentation

A JV structure often necessitates documentation beyond that which establishes the vehicle and outlines the rules governing the relationship between the parties.

For instance, the parties may need to transfer certain assets to the corporate JV, requiring the execution of a contribution agreement or a purchase and sale agreement. In cases where the corporate JV, or one of the parties in a contractual JV, needs to use an asset owned by another JV member or a third party, a lease or bailment agreement may be necessary. For agreements related to intellectual property, see **8.2 Licensing v Assignment of IP Rights**.

Furthermore, in both corporate JV and contractual JV structures, the execution of services, distribution, or supply agreements may be required. These agreements delineate the operational relationships between the JV and its partners or external entities.

When the structure includes debt funding, the transaction documents will also encompass a loan agreement and associated collateral documents.

6.6 Rights and Obligations of JV Partners

While the specific allocation of rights and duties will depend on the JV structure and the negotiated agreement, the following are key considerations.

Rights of JV Partners

Profit sharing and loss allocation

JV partners are typically entitled to share the profits and bear the losses of the JV in proportion to their respective contributions, unless otherwise agreed. In corporate JVs, this is usually set forth in the by-laws or shareholders' agreement; in contractual JVs, it is defined in the JV contract.

Access to information

Partners should have the right to timely and accurate information regarding the JV's operations, financial status, and material developments. In corporate JVs,

statutory minimums apply, but partners may negotiate enhanced information rights.

Participation in governance

Depending on the structure, partners may have rights to appoint board members, participate in key decision-making, and vote on reserved matters. (See **6.2 Governance and Decision-Making** and **6.7 Minority Protection and Control Rights**).

Exit and transfer rights

Rights to transfer interests, exercise tag-along or drag-along rights, or trigger buy-sell mechanisms are often included to provide flexibility and protection.

Protection of minority interests

Minority partners may negotiate veto rights, anti-dilution and other protections. See **6.7 Minority Protection and Control Rights**.

Obligations of JV Partners

Capital and resource contributions

Partners are generally obliged to make agreed capital contributions or provide other resources as specified in the JV agreement or by-laws. Mechanisms for additional funding or capital calls should be clearly defined. See **6.3 Funding**.

Compliance with JV agreements and applicable law

Partners must comply with the terms of the JV agreement, by-laws, and all applicable laws and regulations.

Confidentiality and non-compete

Partners are typically required to maintain confidentiality regarding JV information and may be subject to non-compete obligations during and after their participation in the JV.

Liability for debts and obligations

In corporate JVs, shareholders' liability is generally limited to the amount of capital contributed, unless otherwise agreed, or in cases of fraud or breach of fiduciary duty. In contractual JVs, liability is determined by the terms of the agreement and may be joint and several, or several only.

6.7 Minority Protection and Control Rights

In corporate JVs, minority rights will also depend on the type of legal entity formed or incorporated by the JV parties.

In Mexican corporations (SAs), minority shareholders gain protective rights when they hold certain ownership stakes. Those owning 25% or more of the company can appoint board members or statutory auditors when the board has three or more members. They can also pursue legal action against directors, delay voting on matters, and challenge shareholder meeting decisions in court. Shareholders with at least 33% ownership can request the convening of shareholder meetings.

SAPIs provide more favourable terms for minority investors compared to regular corporations. SAPI shareholders enjoy expanded rights at reduced ownership levels. For instance, they can appoint board members or statutory auditors with 10% ownership, approve liability actions against directors with 15% ownership, and legally oppose shareholders' resolutions with 20% ownership.

Minority investors often request the following control rights, even when the law does not afford them the corresponding right:

- board representation and committee seats;
- reserved-matter vetoes (super-majority or unanimous consent) on sensitive matters such as changes to business scope, annual budget, major capital expenditure (capex), and external debt, among others;
- enhanced information access, beyond the General Business Companies Law baseline;
- anti-dilution protections; and
- exit rights tailored to minority needs, such as tag-along rights.

6.8 Applicable Law and Dispute Resolution in International JVs

When structuring an international joint venture (JV) with Mexican parties or assets, the choice of substantive and procedural law is a critical strategic decision.

In the case of corporate JVs, mandatory matters provided by applicable laws like the General Business Companies Law must be governed by such law, and cannot be derogated by contract, even if a shareholders' agreement or JV contract is governed by foreign law. Such is also the case in agreements governing real estate matters in Mexico.

The Federal Civil Code's conflict-of-laws rule recognises the parties' autonomy to choose a foreign law for contractual obligations that are not caught by mandatory Mexican law, provided the choice does not contravene public policy. This enables parties to subject the shareholders' agreement, JV contract, or related agreements to a neutral law that offers greater predictability.

Mexico is a party to the Hague Choice-of-Court Convention, allowing recognition of designated-court judgments; however, enforcement in Mexico will require an exequatur proceeding, so investors generally prefer arbitration as a faster process. Other international treaties signed by Mexico regarding international disputes include the New York Convention of 1958 and the Panama Convention of 1975.

If no dispute-resolution clause is inserted, jurisdiction defaults to Mexican courts under Mexican procedural law, with the venue determined by the defendant's domicile.

Mexico's legislation on alternative dispute resolution (ADR) mechanisms encourages mediation and conciliation, but there is no general obligation for commercial JV parties to try ADR before suing or arbitrating.

7. The JV Board

7.1 Board Structure

The structure of the board of directors in a corporate JV is a matter of negotiation between the parties and shall be included in the by-laws or partners' agreement; however, specific rules may apply depending on the entity type chosen by the partners:

- Corporation – minority shareholders representing at least 25% of the capital stock have the right to

appoint at least one director, when the board is comprised of three or more members.

- SAPI – every individual shareholder or group of shareholders with voting rights (including limited or restricted voting rights) may appoint one director for every 10% of stock ownership.
- SAB and SAPIB – the board of directors should have a maximum of 21 members, of which at least 25% should be independent.
- Limited liability companies – directors in limited liability companies are called managers. There are no specific rules or considerations applicable to the appointment of managers. If no managers are appointed, all the partners will participate in the management of the company.

Weighted voting in the board of directors is not recognised in Mexico.

7.2 Duties and Functions of JV Boards and Directors

In Mexico, the board of directors oversees the administration of the company. In general, the aim of the board of directors is to protect the interests of the company.

Therefore, the board of directors has fiduciary duties to the company; namely, loyalty and diligence duties in publicly listed companies.

Regardless of any competing duty that the director may have to the JV participant that appointed them, the director shall not act when there is a conflict of interest. See **7.3 Conflicts of Interest**.

Directors are joint obligors with the company in the following matters:

- the veracity of shareholders' or partners' contributions;
- compliance with legal and by-law requirements regarding profit sharing;
- existence and upkeep of accounting, record and information keeping as required by law;
- exact compliance with the resolutions of the partners' meetings; and
- maintenance of the legal reserve.

The company's by-laws may provide for the creation of committees to aid the board in its functions; however, the board's authority may not be delegated. Specific rules apply to the operation of the board in publicly listed companies.

Likewise, appointment as a director is personal and may not be delegated or executed by proxy.

7.3 Conflicts of Interest

For corporate JVs, Mexican law requires board directors to disclose conflicts of interest and abstain from voting on affected matters, with personal liability for company damages if violated. This duty of loyalty applies to both private and publicly listed companies.

Directors must disclose potential conflicts upon appointment and abstain from voting on conflicted transactions. For public companies, conflicted directors cannot participate in discussions and must be absent during deliberations, without affecting board quorum requirements.

There are no statutory requirements for contractual JVs; however, conflict of interest is usually addressed in the transaction documents of the JV structure.

In Mexico, there are no restrictions in place on being a member of the board of directors of a corporate JV and also holding a director's position in a JV participant.

8. IP and ESG

8.1 Ownership and Use of IP

In any JV, the parties must carefully assess the intellectual property (IP) rights required for the project's success. The approach to managing these rights can differ between a corporate JV and a contractual JV.

In a corporate JV structure, the parties may opt to assign or license certain IP rights directly to the company. Conversely, in a contractual JV, the execution of a licence agreement is more common as it allows the original rights holder to maintain ownership while granting usage rights to the JV. See **8.2 Licensing v Assignment of IP Rights**.

A key factor in determining the IP strategy is the importance of using an established and reputable trade mark for the venture. Even when IP rights are not the most critical aspect of the project, it is standard practice for the parties to clearly outline the use of their IP rights by the corporate JV or other JV members. This documentation typically clarifies that any authorised use does not constitute an assignment of rights.

8.2 Licensing v Assignment of IP Rights

The decision between licensing and assigning IP rights is influenced by various factors, including the nature of the project, the significance of those rights to the venture, the long-term vision of the parties, and any existing or prospective contractual arrangements with third parties.

IP rights assignment is more prevalent in corporate JVs, as the JV members retain influence over the use of such rights through their involvement in the company. Additionally, transaction documents for corporate JVs usually include mechanisms to prevent the unauthorised disposition of assets, including IP rights.

Licensing of IP rights is common in both corporate JV and contractual JV structures when the rights holder intends to continue using the IP, or has licensed or plans to license the rights to other third parties. This approach allows the JV to use the IP as needed while maintaining the rights holder's ability to leverage these assets in other contexts.

By carefully considering and structuring the management of IP rights, JV partners can ensure that their intellectual assets are protected while still being effectively utilised to support the venture's objectives.

8.3 ESG Considerations in JVs

Mexico's ESG evolution accelerated with the December 2023 amendment to the Securities Market Law, empowering the Ministry of Finance to issue sustainability guidelines. This led to January 2025 amendments requiring securities issuers to prepare Sustainability Reports following IFRS S1 and S2 standards, starting in 2026 for 2025 data. Additionally, insurance and bonding institutions must now incorporate ESG

criteria into investment decisions and asset management.

These changes create both compliance obligations and strategic opportunities for joint ventures, which must:

- embed ESG into contractual architecture through shareholders' agreements and by-laws;
- clearly allocate responsibility for permits, compliance, and KPIs;
- implement periodic reporting aligned with investor and lender requirements; and
- anticipate convergence with EU and US disclosure regimes for cross-border ventures.

The Ministry of Finance's Sustainable Taxonomy, while non-binding, increasingly influences lenders and regulators. JV structures should embed ESG covenants in funding instruments while balancing flexibility with detailed metrics, ensuring credible commitment alongside adaptability to evolving standards.

9. Exit Strategies and Termination

9.1 Termination of a JV

The ways to terminate a JV, depending on whether it is a contractual JV or corporate JV, are mainly:

- corporate JV – dissolution of the vehicle or transfer of the parties' participation; and
- contractual JV – termination or assignments of rights and obligations of the agreement.

In any case, the main considerations should be liquidation of debt, distribution of profits, assets and losses, as well as tax consequences. It is also possible for a JV to be terminated with respect to only some of its parties, but the same considerations apply.

9.2 Asset Redistribution and Transfers

The transfer of assets between JV participants should be addressed in the shareholders' or partners' agreement or the corresponding contractual arrangement, taking special care to include the value or valuation procedure.

For purposes of transfers, Mexican law does not distinguish between assets that were originally contributed to the JV by a participant and assets originating from the JV's activities.

In practice, the most relevant consideration, in the first case, should be how to replace or continue the legal use of the assets in question if needed by the transferor; for example, by means of a lease or a licence in favour of the transferor or the JV, as applicable. In the second case, the most straightforward way is to set the terms of any applicable transfer between JV participants in the JV documents.

9.3 Exit Strategy

In a contractual JV, an exit typically results in the termination of the agreement. For a corporate JV, planning for the parties' future separation usually requires designing provisions that address the valuation of each party's holding and the acquisition of shares or equity interests. These may include put-and-call options or drag-along and tag-along clauses.

Additional valuation and exit mechanisms may be necessary when assets are transferred to or acquired by the corporate JV.

There are no statutory exit provisions for contractual joint ventures. However, in the case of a corporate JV, exits may be limited by the company's by-laws and applicable law, particularly when member approval is required to transfer ownership interests, as is the case with limited liability companies.

Private share transfer is the most common exit mechanism for corporate JVs. Termination of the contract or assignment of rights and obligations are the typical exit mechanisms in contractual JVs.

SOUTH KOREA



Law and Practice

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Lee & Ko has an M&A team that consists of approximately 150 attorneys. It provides comprehensive legal services for various types of M&A transactions, including those involving private equity, financial institutions, the privatisation of public corporations, tender offers, corporate mergers/spin-offs and restructuring through the conversion of holding companies. Lee & Ko's M&A team has expertise in various industries, and its large team of specialised attorneys has experience and knowledge in the finance, energy, chemicals, automotive, aerospace, food, medi-

cal, broadcasting, technology, entertainment and start-up sectors, among others. By collaborating with other practice groups including tax, labour, anti-competition and regulatory compliance, the firm provides clients with a seamless, one-stop service throughout the entire M&A process. The firm's offices in Beijing, Ho Chi Minh City, Hanoi and Pangyo also provide M&A-related legal services and local support. The M&A team has handled significant deals across all industry sectors, both domestically and internationally.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

Over the past 12 months, macroeconomic and geopolitical developments – including global inflation, the wars in Ukraine and the Middle East, and the evolving US trade policy landscape (eg, the Inflation Reduction Act, CHIPS Act, and export controls on China) – have had a notable impact on the structure and strategic objectives of joint ventures (JVs) involving South Korean companies.

In response to US subsidy regimes and local content requirements, South Korean battery and EV parts manufacturers are increasingly entering into joint-venture transactions with US automakers to establish production facilities in the US. These JVs often involve complex structuring, including phased capital commitments, tax incentives, and joint control mechanisms.

In addition, with India's emergence as a key growth market, there has been an increasing trend of JV transactions between South Korean and Indian companies within India.

1.2 Industry Trends and Emerging Technologies

As of 2025, joint-venture activity has been particularly active in strategic sectors such as EV batteries, semiconductors, hydrogen, and clean energy. The surge in JV activity in these industries is largely attributable to US policy initiatives such as the Inflation Reduction Act (IRA) and the CHIPS Act.

2. JV Structure and Strategy

2.1 Typical JV Structures

A traditional joint-venture company (JVC) in the form of a stock company (*chusik hoesa* in Korean, similar to a corporation in the USA) is the most commonly used form of JV in South Korea. A JVC in the form of a limited liability company (*yuhan hoesa*) is also often used.

Some of the key advantages and disadvantages of using *chusik hoesa* are as follows.

- Advantages:
 - (a) public offering of shares is permitted;
 - (b) issuance of debentures is permitted; and
 - (c) the corporate laws (and cases) around *chusik hoesa* are well established, as it is the most commonly used form of corporate entity in South Korea.
- Disadvantages:
 - (a) rules around management structure are generally more restrictive than for other forms of corporate entities (eg, minimum three directors and one statutory auditor required for companies with paid-in capital of KRW1 billion or more, maximum three-year term for directors, etc); and
 - (b) it is generally subject to more stringent public disclosure requirements.

Some of the key advantages and disadvantages of using *yuhan hoesa* are as follows.

- Advantages:

- (a) a more flexible management structure is permitted (no minimum number of directors required, no board of directors required, no maximum term of directors applicable, etc); and
 - (b) it is generally subject to less stringent public disclosure requirements.
- Disadvantages:
 - (a) public offering of shares is not permitted;
 - (b) issuance of debentures is not permitted; and
 - (c) the corporate laws (and cases) around a *yuhan hoesa* are not as well established as for a *chusik hoesa*.

2.2 Strategic Drivers for JV Structuring

The primary drivers for choosing the form of a JVC are:

- whether the public offering of shares is contemplated;
- funding options (eg, whether issuance of debentures will be necessary); and
- flexibility in management structures.

Both *chusik hoesa* and *yuhan hoesa* are treated as separate legal entities subject to corporate income tax under South Korean tax law. Accordingly, there is no significant difference in the basic corporate tax framework applicable to the two types of entities.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

The primary source of law relating to corporate governance is the Korean Commercial Code (KCC), which applies to both listed and unlisted companies.

For listed companies, additional regulations are contemplated in the Financial Investment Services and Capital Markets Act (“Capital Markets Act”) and relate to (among other things):

- public disclosures;
- the establishment of audit committees and election of outside directors;
- insider trading; and
- prohibition of unfair trade practices.

It is mandatory for listed companies to comply with listing rules, including the Rules on Issuance of Securities and Disclosure (which are derived from the Capital Markets Act) as well as with the applicable listing rules of the Korea Exchange, including:

- the Korea Composite Stock Price Index (KOSPI) Market Listing Rules;
- the Korean Securities Dealers Automated Quotations (KOSDAQ) Market Listing Rules;
- the KOSPI Market Disclosure Rules; and
- the KOSDAQ Market Disclosure Rules.

The Monopoly Regulation and Fair Trade Act (MRFTA) regulates:

- business combination reports;
- certain intra-group transactions such as cross-shareholding and provision of guarantees;
- separation of commerce and financial business; and
- conduct of qualifying/large holding companies.

The Foreign Investment Promotion Act (FIPA) and Foreign Exchange Transactions Act (FETA) apply to any foreign direct investment or overseas direct investment satisfying certain conditions.

The primary regulators pursuant to the main statutory provisions described in the foregoing are:

- the Ministry of Justice (under the KCC);
- the Financial Services Commission (under the Capital Markets Act);
- the Korea Exchange (under the Rules on Issuance of Securities and Disclosure and applicable listing rules of the Korea Exchange);
- the Korea Fair Trade Commission (KFTC – under the MRFTA);
- the Ministry of Finance or the Bank of Korea (under the FETA); and
- the Ministry of Trade, Industry and Energy (MOTIE – under the FIPA).

3.2 Anti-Money Laundering Compliance

The following AML regulations apply in South Korea.

- The Act on Reporting and Using Specified Financial Transaction Information – this act governs the anti-money laundering (AML) obligations of financial institutions in South Korea, such as the obligations regarding suspicious transaction reports, currency transaction reports, know your customer (KYC) and other matters relating to internal control.
- The Act on Regulation and Punishment of Criminal Proceeds Concealment – this act governs matters regarding:
 - (a) concealment of criminal proceeds related to particular crimes; and
 - (b) confiscation of such criminal proceeds.
- The Act on Prohibition Against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction (“CFT/WMD Act”) – this act governs matters relating to:
 - (a) the financing of terrorism against the public; and
 - (b) the financing of proliferation of weapons of mass destruction.
- The Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics – this act governs matters relating to narcotics-related activities and the confiscation of proceeds from such activities.

3.3 Sanctions, National Security and Foreign Investment Controls

Industries subject to certain foreign investment restrictions include the following:

- prohibited industries – nuclear power generation, radio broadcasting, terrestrial television broadcasting and postal services;
- less than 50% foreign ownership permitted – farming of beef cattle, wholesale of meat products, domestic and international passenger and cargo transportation by sea and air, newspaper publication, magazine and periodical publication, etc;
- less than 50% foreign ownership (where a South Korean national is the largest shareholder) permitted – power generation, power grid and electricity sales business;
- 49% or less foreign ownership permitted – programme distribution, cable television networks, satellite and other broadcasting, wired/wireless telecommunications and other telecommunications business; and
- less than 25% foreign ownership permitted – news agency businesses.

Furthermore, any investment that may pose a threat to the national security of South Korea (in particular, any investment that might hinder the manufacture/production of defence materials, might pose a risk of leakage of state secrets and/or national core technology, etc) may be prohibited or restricted by the MOTIE upon review of the foreign investment committee. Under the current FIPA, only direct investments by foreign investors are subject to regulatory review. However, the proposed amendment to the FIPA expands the scope of national security review to include cases where the foreign investor controls a South Korean entity through a foreign-invested company.

National Core Technology

In the event that any technology owned by an investee company is deemed a “National Core Technology”, as defined under the Act on Prevention of Leakage and Protection of Industrial Technology, the following applies:

- if the investment target has received any government subsidies for R&D, an approval by the MOTIE prior to closing will be required; and
- if the investment target has not received any such government subsidies, a report to the MOTIE prior to closing will be required.

Technically, the MOTIE is required to notify the applicant within 45 days from the date of receipt of the application. However, this review period is often delayed beyond the 45-day period as the MOTIE can conduct a technology examination if deemed necessary for certain national core technologies, and the examination is not included within the 45-day review period.

Sanctions

South Korea has implemented international economic, financial and trade sanctions as required by the United Nations Security Council Resolutions (UNSCR) and other international treaties to which it is a party. South Korea has also incorporated into its domestic regime

(as it deemed necessary) certain sanctions regimes of its main allies, such as the USA and the EU, with the legislative intent of contributing to the international effort to maintain global peace and security.

A great deal of domestic legislation exists regarding international sanctions applicable to several economic sectors, including the following.

- The Foreign Trade Act is mainly applicable to trade sanctions.
- Economic and financial sanctions are governed mostly by the FETA and the CFT/WMD Act.
- Other types of sanctions such as travel bans, aviation bans and maritime sanctions are governed by:
 - (a) the Immigration Act;
 - (b) the Customs Act;
 - (c) the Coast Guard Affairs Act;
 - (d) the Act on Arrival and Departure of Ships; and
 - (e) the Aviation Safety Act.

3.4 Competition Law and Antitrust

Under the MRFTA, if a company with total assets or revenues of KRW300 billion or more as of the end of the immediately preceding fiscal year and a company with total assets or revenues of KRW30 billion or more as of the end of the immediately preceding fiscal year establish a JV company in South Korea, a business combination report must be filed with the KFTC. The total assets or revenues for the purpose of the foregoing are calculated on a consolidated basis, including assets or revenues of companies worldwide maintaining affiliate status with the constituent companies both before and after the merger. If these thresholds are met, the notification to the KFTC must be made within 30 calendar days after the closing date.

If either of the JV partners is a large company with worldwide assets or annual revenue of KRW2 trillion or more (on a consolidated basis), the transaction is subject to a pre-closing filing, and a notification to the KFTC is required after the date of signing but before the closing date (ie, the registration of the merger with the court registry). The parties cannot implement the transaction without clearance from the KFTC in the case of a pre-closing filing. The party with the largest equity stake in the JV company is responsible for submitting the business combination report filing

(hereinafter, the company required to file the business combination report is referred to as the “Reporting Company”, and the other party is referred to as the “Partner Company”).

In addition, the amendment to the MRFTA in 2021 introduced new thresholds for transactions involving small-sized targets. Under the amended MRFTA, even for a transaction that does not satisfy the thresholds described earlier in this section, a filing can be required when:

- the transaction value is KRW600 billion or more; and
- the Partner Company has had significant business activities in South Korean domestic markets.

“Significant business activities” are those where:

- the Partner Company has sold or provided products or services to at least one million people per month in the South Korean market during the immediately preceding three years; or
- the Partner Company has either leased R&D facilities or used R&D personnel in South Korea and had an annual R&D budget of at least KRW30 billion for the South Korean market during the immediately preceding three years.

The MRFTA was further amended in 2024, and the following four types of transactions will be exempt from the business combination report obligation (effective from 7 August 2024):

- establishment of private equity funds;
- mergers and asset/business transfers between a parent and its subsidiary;
- interlocking directorships involving less than one third of the directors (excluding the interlocking directorships involving the representative director); and
- mergers between affiliates where the total assets or revenues of the merged entity itself are less than KRW30 billion.

3.5 Listed Companies and Market Disclosure Rules

Disclosure Requirements (Korea Exchange Disclosure Regulations)

According to the KRX Disclosure Rules, an investment must be disclosed on the date of the decision to participate in the JV when:

- a KOSPI-listed company, as a participant in a JV, invests an amount exceeding 5% of its equity (or 2.5% for large corporations with total assets of KRW2 trillion or more (“Large Corporations”)); or
- a KOSDAQ-listed company invests an amount exceeding 10% of its equity (5% for Large Corporations).

Additionally, if certain significant events occur in the subsidiary of the listed company (suspension of business operations, commencement of rehabilitation/bankruptcy proceeding, merger, division, significant transfer of business, change in capital, etc), the listed company – which is the parent company of the subsidiary – must also disclose the information about the subsidiary. Therefore, where a JV is a subsidiary of a listed company, any significant event occurring at the level of the JV will need to be disclosed as part of the listed company’s disclosure.

Transactions With Specially Related Parties

According to the KCC, a listed company is generally prohibited from engaging in lending, providing guarantees or extending credit to or for the benefit of its “specially related parties”. Furthermore, a listed company’s transaction with its specially related party must be approved by the board of directors if (i) the value of a single transaction equals or exceeds 1% of the company’s total assets or total sales as of the end of the most recent fiscal year, or (ii) the aggregate amount of transactions with a particular counterparty during the fiscal year, including the relevant transaction, equals or exceeds 5% of the company’s total assets or total sales as of the end of the most recent fiscal year.

3.6 Transparency and Ownership Disclosure

In the case of a company belonging to a business group subject to public disclosure under the MRFTA (ie, with total assets of KRW5 trillion or more), the shareholding of the member by the other members of

the company group must be disclosed. Where a member of such company group participates in a JV, and the JV becomes a member of the company group, the person of significant control (PSC)/ultimate beneficial owner (UBO) of the JV may also need to be disclosed.

Furthermore, although not a public disclosure, the PSC/UBO may be submitted to a foreign investment authority in South Korea as part of the application for foreign investment filings (under the FIPA or FETA, as the case may be).

In addition, the amendment to the Capital Markets Act in 2024 introduced a prior disclosure requirement of share transfers by officers or major shareholders (holder of 10% or more of the total equity securities with voting rights or person who has a de facto influence over management of the company) of a listed company. Per this amendment, major shareholders and officers intending to trade securities issued by a listed company in excess of a certain threshold volume (the aggregate volume and amount of securities traded over the past six months is less than 1% of the total issued and outstanding shares and less than KRW5 billion) are required to disclose relevant information, such as the purpose of trade, price, quantity and transaction period, prior to the expected trade date.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Amendment of the KCC

The key provisions of the KCC amendments passed by the National Assembly in a plenary session on 3 July 2025 and promulgated on 22 July 2025, are as follows:

- Expansion of fiduciary duties of directors (effective from 22 July 2025) – previously, under the KCC, a director owed their fiduciary duties to the company. The recent amendment expands the scope of this duty to the company and its shareholders. As a result, directors of a JV must also take into account the interests of the shareholders – not only those of the shareholder that nominated them.

- Obligation to hold virtual general meetings of shareholders (effective from 1 January 2027) – under the current KCC, the venue for a general meeting of shareholders has been interpreted as requiring a physical location. The amendment introduces specific provisions on electronic shareholder meetings, allowing listed companies to convene such meetings concurrently with in-person meetings held at the designated venue. For listed companies exceeding a certain size threshold, the concurrent holding of electronic shareholder meetings will become mandatory.
- Adoption of independent directors (effective from 23 July 2026) – previously, both non-listed and listed companies could appoint outside directors if necessary. However, (i) in the case of listed companies with total assets less than KRW2 trillion, at least one quarter of the total number of directors had to be outside directors, and (ii) in the case of listed companies with total assets of KRW2 trillion or more, at least three outside directors had to be appointed and outside directors had to constitute the majority of the board of directors. The amendment introduces the concept of “independent directors” in place of outside directors for listed companies, and increases the minimum required proportion of independent directors to at least one third of the total number of directors (currently one quarter is the minimum requirement for listed companies with total assets of less than KRW2 trillion). An “independent director” refers to an outside director who performs their duties independently from inside directors, executive officers, and persons who give instructions regarding the execution of business.
- Expansion of “3% rule” (effective from 23 July 2026) – previously, where the largest shareholder held more than 3% of the issued shares, any voting rights in excess of 3% – including those held by related parties – could not be exercised in the appointment or dismissal of audit committee members who were not outside directors (the so-called “3% rule”). The amendment expands the application of this 3% rule by providing that, regardless of whether an audit committee member is an outside director, the aggregate voting rights of the largest shareholder and its related parties in excess of 3%

cannot be exercised in the appointment or removal of any audit committee member.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

The following documents are used during the negotiating stage of a JV:

- Due diligence questionnaire (DDQ) – although not as widely used in buyout transactions, DDQs are employed when due diligence is required in respect of any particular assets to be contributed by the JV partner and/or the JV partner itself; DDQs are typically used in JV transactions where one partner is contributing assets, IP or know-how, and the other partner is contributing cash.
- Term sheet – this is customarily used in the pre-negotiating stage of a JV.
- Mutual non-disclosure agreement – this is customarily used in the pre-negotiating stage of a JV. It is often combined with the term sheet, where the term sheet sets out the parties’ confidentiality obligations. Where the JV parties are engaged in competing businesses, it is also a common practice to implement a clean team arrangement.
- Exclusivity agreement – this is customarily used in the pre-negotiating stage of a JV. It is often combined with the term sheet, where the term sheet sets out the exclusivity arrangement between the parties as a binding obligation.

The term sheet is often the key document used during the negotiating stage of a JV. The term sheet typically sets out:

- the key commercial terms;
- exclusivity (if any) and/or confidentiality obligations; and
- key corporate matters such as ownership, governance/management, transfer restrictions, exit rights, etc.

5.2 Disclosure Obligations

According to the KRX Disclosure Rule, when a KOSPI-listed company, as a participant in a JV, invests an

amount exceeding 5% of its equity (or 2.5% for Large Corporations), or when a KOSDAQ-listed company invests an amount exceeding 10% of its equity (or 5% for Large Corporations), the company must disclose this investment on the date of the decision to participate in the JV (ie, the board of directors' approval).

Furthermore, when a company that belongs to a business group subject to disclosure requirements (with total assets of KRW5 trillion or more) invests an amount that meets or exceeds the lower of (i) KRW10 billion, or (ii) 5% of the larger of the company's total equity or stated capital (with a minimum threshold of KRW500 million) as a JV participant, it must disclose this investment within seven days (in the case of an unlisted company) or three days (in the case of a listed company) from the date of the decision to participate in the JV.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

The conditions precedent to obligation to subscribe for shares typically envisaged in JV agreements include the following:

- to perform and comply with all covenants, agreements and conditions required by the JV agreements;
- representations and warranties to be true and correct as of the closing date;
- no order, injunction, decision or ruling that disallows, challenges, enjoins, prohibits or imposes any damages, penalties or restrictions on the closing; and
- all required government approvals, authorisations, consents, approvals and waivers have been obtained (this clause is particularly important when there is a foreign JV partner in the transaction).

Generally, the conditions precedent apply to all of the joint-venture parties.

While material adverse change clauses are occasionally discussed, the force majeure clauses are rarely negotiated in JV transactions, except in transactions involving contribution of assets by one JV partner.

5.4 Legal Formation and Capital Requirements

As previously noted, *chusik hoesa* is the most commonly used form of JV vehicle in South Korea; as such, the issues relating to the setting up of a JV vehicle as a *chusik hoesa* are detailed here.

A JV vehicle can be:

- incorporated by one of the JV participants (usually the South Korean participant), with the other JV participants(s) subsequently joining the JV vehicle as shareholder(s), and where the other JV participant(s) – to the extent that they acquire 20% or more of shares in the JV vehicle – will be responsible for the business combination report; or
- incorporated jointly by the JV participants, where the largest shareholder of the JV vehicle will be responsible for the business combination report.

If any JV participant is a large company with worldwide assets or annual revenue of KRW2 trillion or more, the business combination report clearance will be required prior to:

- acquisition of shares in the JV vehicle by that JV participant (in the case of the first point in the earlier part of this section); or
- incorporation of the JV vehicle (in the case of the second point in the earlier part of this section).

For a foreign JV participant to acquire shares in the JV vehicle, it must submit a foreign investment filing before it can make payment of the capital contribution.

Upon receipt of the approval for the foreign investment and certain basic procedures for company incorporation (including the adoption of articles of incorporation, and designation of directors and the representative director), the JV may be established, and the approved amount of foreign investment can be paid into the JV.

After completion of the foregoing, the JV and its officers (ie, the directors, statutory auditor – if any – and representative director) will be registered with the local district court in the jurisdiction where the head office is

located. Upon completion of the court registration, the new company will legally come into existence.

Under the KCC, there is no minimum capital requirement for *chusik hoesa*. However, the par value of a share must be at least KRW100. Accordingly, it is legally permissible to establish a *chusik hoesa* with a capital of KRW100 by issuing a single share with a par value of KRW100.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

A JV vehicle in Korea is, in most cases, incorporated as a joint-stock company (*chusik hoesa*), although a limited liability company (*yuhan hoesa*) is sometimes used for a JV vehicle in limited matters.

The terms of the JV documents for both *chusik hoesa* and *yuhan hoesa* are similar. The JV agreement will include the customary terms regarding the management and operation of the JV (ownership structure, management structure, and consent/veto rights), transfer restrictions (right of first refusal/offer, drag/tag-along, etc), exit rights (eg, call, put right) and other commercial arrangements between the parties, among others.

Some of the terms of the JV are also reflected in the articles of incorporation of the JV vehicle. Such terms include:

- certain matters relating to management structure (eg, number of directors, term of the directors, etc);
- quorum and voting requirements (including board of directors' and shareholders' reserved matters);
- transfer restrictions;
- matters relating to stock options and preferred shares; and
- establishment of sub-committees.

6.2 Governance and Decision-Making

Decision-making is typically split among:

- representative directors;
- the board of directors; and
- shareholders.

The JV agreement will typically set out the matters that can be decided by executive officers, directors and shareholders.

Furthermore, different quorum/voting requirements are typically stipulated in the JV agreement and/or the articles of incorporation of the JV.

Representative Directors' Decision-Making

The representative director is the legal representative of the company, and is given broad authority to represent and legally bind the company in its day-to-day operations.

Board of Directors' Decision-Making

The board of directors is given the authority to decide any material matter pertaining to the company (except for those matters that are, by law or by the articles of incorporation, required to be approved by the shareholders).

The board of directors' decision-making is, in principle, subject to the simple majority vote (ie, the majority of the directors attending the board of directors' meeting plus the majority of the attending directors' affirmative vote). Higher quorum/voting requirements can be required by law or set forth in the articles of incorporation.

"Casting votes" are not permitted under the KCC.

Shareholders' Decision-Making

The KCC sets out applicable voting requirements for certain matters (subject to either "ordinary resolution", "special resolution" or "unanimous resolution" by the shareholders). While JV participants can agree to higher voting requirements than as set out in the KCC, as a matter of law the requirements cannot be relaxed.

"Ordinary resolution" means an affirmative vote (whether in person or by proxy) of a majority of the voting shares represented at such meeting, where the vote shall also account for at least one quarter of the total issued and outstanding voting shares of the company.

“Special resolution” means an affirmative vote (whether in person or by proxy) of at least two thirds of the voting shares represented at such meeting, where the vote shall also account for at least one third of the total issued and outstanding voting shares of the company.

The matter of decision-making in the context of a JV depends largely on the ownership structure (eg, 50:50 or majority:minority shareholders) and other commercial considerations. Within the statutory requirements described in the foregoing, the JV participants may freely negotiate and agree on the decision-making mechanisms for a JV.

6.3 Funding

Funding arrangements for a JV are primarily depend on the JV participants’ commercial needs and understanding. The typical arrangements in South Korea are as follows.

Equity Contribution

This is the most common funding arrangement. The JV participants will make equity contributions to the JV at the onset, with the understanding/agreement that if further funding is necessary, the JV participants will make equity contributions on a pro rata basis. Such future contributions can be made an obligation of the JV participants, or an option (in which case, if a JV participant elects not to make additional capital contributions, its shareholding ratio will be reduced accordingly).

Because of the potential change of shareholding ratios, matters relating to obligations/options for future equity contributions are usually heavily negotiated, including how it will be decided that further funding is in fact necessary. Without a detailed clause on this topic, a JV partner could later find it difficult to force an unwilling JV partner to contribute its pro rata portion, particularly when such unwilling JV partner is wishing to exit the JV and the company needs additional capital injection for future operations.

Mix of Debt and Equity

This arrangement is also quite common. The debt can be shareholders’ loans (including ones made by one or some of the JV participants or by all of the JV participants on a pro rata basis) or third-party financing

(which may also involve a guarantee by the shareholders, usually on a pro rata basis).

6.4 Deadlocks

Deadlocks in South Korea are dealt with in a way that is in line with how they are typically dealt with in global practice – ie, in a way that:

- maintains the JV; or
- terminates the JV.

If the JV is to be maintained in a deadlock situation, the typical process will involve first attempting to amicably resolve the deadlock (eg, escalation to a higher governing body/shareholders). If not resolved:

- such deadlock matter would be presumed disapproved;
- a casting vote would be granted to either JV partner; or
- the deadlock matter would be referred to a third-party mediator.

As a “casting vote” is not permitted as a matter of corporate law, such procedure would have to be implemented as a contractual arrangement where a JV partner is contractually obligated to vote in line with the JV partner that is given the “casting vote”. The authors note that the use of third-party mediators is extremely rare in South Korea.

If the JV is to be terminated, the typical mechanism will involve use of put/call options. The details of such an arrangement (whether either/both JV partner(s) will be granted put/call options, how the put/call price will be determined, etc) will be a matter of commercial negotiation between the JV partners. It is also not uncommon for a continuing deadlock to constitute a ground for dissolution and liquidation of the JV (where there is no put/call arrangement in place, or where there is a deadlock regarding which JV partner will sell – or purchase – the shares of the other JV partner). From a regulatory perspective, put/call options held by foreign investors will require foreign exchange filing with the Bank of Korea unless the agreed put/call price is at or within a certain range of fair market value, and this filing requirement is subject to Bank of Korea practice, which needs to be checked before filing.

6.5 Other Documentation

In addition to the JV agreement, a wide array of documents may be required in connection with a JV transaction.

For typical manufacturing JVs, agreements for providing the necessary resources for manufacturing activities of the JV (such as a licence agreement, technical assistance agreement, supply agreement and secondment agreement) are executed in addition to the JV agreement.

IP licence/assignment agreements are often entered into between one or more of the JV partners and the JV, particularly when IPs of either or both JV partners are necessary or desirable for the purpose of the JV. Trade mark licence agreements are also common, as it is often the case that the JV will use the trade mark of either or both of the JV partners as part of its own trade mark or in connection with its business operations. Transactions involving the transfer of key employees may also involve employment agreements.

For JVs other than manufacturing JVs (financial, IT platform, entertainment, etc), more industry-specific agreements are typically considered. For non-manufacturing JVs, no particular agreement is generally required in South Korea.

6.6 Rights and Obligations of JV Partners

Rights and Obligations of the Joint Venture Parties

Key rights

- board composition (appointment of directors and statutory auditors);
- financial reporting;
- distribution of earnings through dividends;
- right of first refusal/offer; and
- tag-along rights.

Key obligations

- capital contribution;
- transfer restriction;
- non-compete;
- non-solicitation; and
- confidentiality.

Distribution of earnings

Typically, JV agreements explicitly provide that the adoption and amendment of a dividend policy require the board's approval, and earnings of the JV company are distributed to the JV partners based on the dividend policy.

Dividends must be paid within the limits of distributable profits as defined under the KCC. Distributable profits are calculated as the net assets of the company, minus the capital, legal reserves, earned surplus reserves, and unrealised gains. Dividend payment requires approval of the financial statements at the annual general meeting of shareholders. If the financial statements are approved by the board of directors (in cases set forth in the articles of incorporation), payment of dividend requires the board resolution.

An interim dividend refers to a distribution of a portion of profits to shareholders during the fiscal year. Unlike year-end dividends, which are resolved at the general meeting of shareholders, interim dividends are approved by resolution of the board of directors, and are only permitted if the articles of incorporation explicitly authorise such distributions.

Debts and Obligations of the Joint Venture

A *chusik hoesa* is a separate legal entity independent from its shareholders, and as a general rule, shareholders are not personally liable for the company's debts or obligations. A shareholder is only obliged to contribute to the company up to the amount of the shares that the shareholder has subscribed to, and bears no further personal liability. Of course, if a shareholder separately agrees to guarantee the company's obligations, a shareholder may be held liable under such guarantee agreement.

That said, the Korean Supreme Court recognises the doctrine of piercing the corporate veil, and has held the controlling individual personally liable and disregarded a company's separate legal personality in exceptional cases where the company, in substance, is nothing more than a sole proprietorship of the individual behind the corporate entity, or where the corporate form is abusively used as a device to evade legal obligations.

6.7 Minority Protection and Control Rights

Since the governance of a JV company is primarily determined by the shareholding ratio, a minority shareholder with only a limited equity stake may seek to enhance its influence through various structural mechanisms.

Minority shareholders seek to obtain veto rights over key operational decisions. Such veto rights are typically structured to prevent the majority shareholders from exercising certain powers unless consent is obtained from a director nominated by the minority shareholders. In addition to board reserved matters, it is also common to include similar provisions with respect to the shareholders' meetings in order to protect the interests of minority shareholders.

In most JVs, the minority party does not appoint the representative director, and would seek to limit the scope of matters that can be decided by the representative director. Parties can decide that certain specified key matters will be escalated to the board of directors, with veto rights granted to the director(s) nominated by the minority party over critical matters such as the acquisition and disposition of material assets, incurrence of indebtedness in excess of a certain amount, and changes to the governance structure. This approach allows a certain degree of control despite minority ownership.

As the largest shareholder typically retains the right to appoint the representative director and a majority of the board, minority shareholders often seek to ensure adequate oversight by securing the right to appoint a statutory auditor or CFO to monitor the board and financial affairs.

A minority shareholder with limited bargaining power is often in a vulnerable position when seeking to exit from the JV company, particularly in situations involving deteriorating financial performance of the JV company or a breakdown in the relationship with the majority shareholder. To safeguard the ability to recover its investment, certain protective mechanisms may be adopted, including:

- a tag-along right, which entitles the minority shareholder to sell its shares to a third party on the same

terms and conditions if the majority shareholder intends to transfer its stake; or

- a put option, whereby the majority shareholder is contractually obliged to purchase the minority shareholder's stake at a pre-agreed or negotiated price upon exercise of the option.

6.8 Applicable Law and Dispute Resolution in International JVs

Choice of Governing Law and Dispute Resolution

The choice of governing law and dispute resolution mechanism in a JV agreement is typically influenced by the relative bargaining power of the parties. Cost-efficiency and procedural expediency are also key considerations, and parties often designate the law and courts or arbitral institutions of the jurisdiction where the JV company is established.

In South Korea, available alternative dispute resolution (ADR) mechanisms include court-annexed mediation, as well as mediation and arbitration administered by the Korean Commercial Arbitration Board (KCAB). However, there are no mandatory ADR procedures under South Korean law in general. South Korea is a signatory to the 1958 New York Convention, and as such, foreign arbitral awards are generally enforceable by South Korean courts.

Enforceability of Foreign Judgments and Arbitral Awards

Under Article 217 of the Korean Civil Procedure Act, a foreign court judgment may be enforced in South Korea if the following conditions are met:

- the foreign court has international jurisdiction under South Korean law or applicable international treaties;
- the defendant was duly served with the complaint in a manner that afforded sufficient time to prepare a defence;
- recognition of the judgment does not violate South Korean public policy or good morals; and
- there is reciprocity, meaning that the foreign jurisdiction would similarly recognise South Korean court judgments on substantially the same basis.

As a signatory to the 1958 New York Convention, South Korea recognises and enforces foreign arbitral

tral awards rendered in other contracting states in accordance with the Korean Arbitration Act. For arbitral awards rendered in jurisdictions not covered by the New York Convention, enforcement is still possible under South Korean law. In such cases, the general requirements for the recognition of foreign judgments under Article 217 of the Civil Procedure Act would apply, and the award must first be recognised by a South Korean court before it can be enforced through execution proceedings.

7. The JV Board

7.1 Board Structure

The decision-making of a board of directors is, in principle, subject to the simple majority vote (ie, the majority of the directors attending the board of directors' meeting plus the majority of the attending directors' affirmative vote). Higher quorum/voting requirements may be set out in the articles of incorporation and/or joint-venture agreement.

Depending on the shareholding structure, a majority shareholder will often seek the right to designate the majority of the board of directors; whereas a minority shareholder will often seek to ensure that the key decision-making is subject to higher quorum/voting requirements in the articles of incorporation (ie, veto right).

Weighted voting is not recognised in South Korea. However, under the Act on Special Measures for the Promotion of Venture Businesses (Venture Business Act), in cases where the founder's shareholding with voting rights falls below 30%, or where the founder ceases to be the largest shareholder, as a result of external capital raising exceeding a certain threshold, an unlisted venture company may issue dual-class shares granting up to ten voting rights per share to the founder.

Directors may neither participate nor vote at a board of directors' meeting by proxy. However, participation through an audio/video conference is allowed (unless prohibited by the articles of incorporation).

7.2 Duties and Functions of JV Boards and Directors

Under the KCC, a director of a company is considered to be an agent of the company with two primary categories of duties:

- the duties of a good faith caretaker towards the company ("duty of care"); and
- the duty to act in good faith in the interests of the company in compliance with relevant laws and the company's articles of incorporation ("duty of loyalty").

Specifically, the duty of care and duty of loyalty, collectively referred to as the "fiduciary duties", also include following:

- duty of confidentiality;
- duty of non-competition;
- duty against usurpation of corporate opportunities and assets;
- duty against self-dealing;
- duty to prepare financial statements, etc; and
- duty to report (to the statutory auditor any fact that may have a material adverse effect on the company).

Furthermore, South Korean court precedents have adopted the "Business Judgement Rule", where a director is deemed to have discharged their duty of care even if such decision results in loss or damage to the company, if:

- the director has sufficiently, to the extent reasonably available, collected, investigated and examined the necessary and appropriate information;
- the director reasonably believed that the decision was in the best interests of the company;
- the director reached the decision in good faith following due process; and
- the decision itself or the decision-making process was not significantly unreasonable.

7.3 Conflicts of Interest

Other than in specific industries (eg, the financial industry) where a dual role (as an officer of the parent/subsidiary) is prohibited, a person is generally permit-

ted to take a seat on a JV company board while also taking a position as a JV participant.

Notably, where a director/officer of a large company with worldwide assets or annual revenue of KRW2 trillion or more takes a seat on another company's board, a business combination report may be required between the two companies.

From a conflict-of-interests perspective, directors have a duty against self-dealing – ie, a director may not enter into a transaction with the company on their own account or on account of a third party, without the super-majority approval of the board (two thirds or more of all incumbent directors). Under the KCC, the prohibition on self-dealing has been expanded to cover major shareholders (ownership of 10% or more) and certain related parties. As a result, the covered parties are required to notify the board of such transaction and must obtain the super-majority approval of the incumbent directors. In addition, the transaction and its process must be fair and at arm's length. Furthermore, under South Korean case law, if an individual concurrently serves as the representative director of both companies, any transaction between the two companies is deemed to constitute self-dealing. Accordingly, if the representative director of a JV participant also serves as the representative director of the JV, any transaction between the JV and the participant would be subject to the self-dealing requirements.

If a director has a personal conflict of interest in respect of any matter subject to the board of directors' approval (eg, approval of remunerations payable to such director), the director will not be entitled to exercise their voting right in respect of such matter.

8. IP and ESG

8.1 Ownership and Use of IP

Some of the key IP issues that should be considered when setting up a JV and in relation to a contractual collaboration are as follows:

- scope of the IPs to be assigned, licensed or disclosed to the JV;

- scope of the IPs to be disclosed to the other JV partner;
- whether the scope of the IPs to be assigned or licensed must be expanded as the relevant JV partner (who assigned or licensed the relevant IPs) develops similar or improved IPs;
- who will own the derivative IPs (improvements, etc);
- whether the JV and/or relevant JV partner (if not given the ownership of the derivative IPs) will be given a licence to use such IPs;
- whether any warranty will be given in respect of the IPs being licensed/assigned;
- whether the JV partners will be subject to any non-solicitation obligations in respect of the employees of the JV;
- whether the employees of the JV will be subject to any non-compete obligations; and
- work-for-hire clauses, where the JV will be required to appropriately compensate the relevant employee for the inventions.

How IP Issues Are Usually Dealt With in the JV Agreement

There is no “market” practice in relation to how IP issues are dealt with in the JV agreement. Regarding ownership of the derivative IPs, although there are cases where the JV and the relevant JV partner agree on co-ownership of such IPs, it is more typical in practice for such IPs to be owned by the JV. It should be noted that either the JV or the JV partner will be able to freely use the relevant IPs under the co-ownership arrangement, but the other co-owner's consent is required for the relevant IPs to be assigned or licensed to any third party.

The JV partner that has assigned/licensed any IP to the JV may wish to seek a provision that requires, to the extent possible, that the JVC sell or make in-kind distribution of the assigned IPs, derivative IPs and other assets containing the relevant IPs to the JV partner that assigned/licensed the relevant IPs if it wishes to ensure that the IPs are not transferred to any third party.

Specific Considerations for the Transfer of Intellectual Property to or from Foreign Entities

The transfer of intellectual property to foreign entities that may pose a threat to the national security of South Korea (in particular, any investment that might hinder the manufacture/production of defence materials, might pose a risk of leakage of state secrets and/or National Core Technology, etc) may be prohibited or restricted by the MOTIE upon review of the foreign investment committee.

8.2 Licensing v Assignment of IP Rights

From the IP owner's perspective, licensing the IP to the JV is strategically beneficial as assignment of IPs requires registration and recovering IP ownership is often difficult, even with an agreement for purchase-back of the IP rights.

Partial assignment is not recommended, as co-ownership of IPs may restrict certain uses of the relevant IPs (consent is required for any transfer or licensing of the IPs from the assignee).

From the JV's perspective, assignment of IPs is recommended as the licence to use the relevant IPs may be unenforceable in the event that the underlying IPs are assigned/transferred to a third party (unless the third party agrees to and acknowledges the validity of the licence), and the JV should register the licence for the relevant IPs.

8.3 ESG Considerations in JVs

ESG has become a salient issue in South Korea as the country continues to make efforts towards conforming to global standards and improving its presence and influence in global discussions. Furthermore, certain global ESG requirements such as RE100 have rapidly become a real issue for South Korean companies' overseas business operations (particularly in the USA and the EU).

In early 2023, the Ministry of Environment issued a correction order to a South Korean company regarding an allegedly false advertisement, where one of its products was advertised as being carbon-neutral when, in reality, only some of the product's carbon footprint had been neutralised by the carbon emission rights purchased by the company in the market. This

was among the first administrative sanctions imposed on the advertising of petrol products as carbon-neutral products.

In 2021, the Supreme Court ruled that the representative director of a company is liable for damages in connection with their lack of knowledge about the company's concerted behaviour. This is recognised by the market as the South Korean judiciary's steps towards more developed ESG practice.

Furthermore, the Financial Services Commission has announced its plans to require a company group with assets of over KRW2 trillion to issue sustainability reports. While sustainability reporting is conducted on a voluntary basis under the current regulatory scheme, the authors are witnessing a steady increase of companies opting to publish such reports, in recent years.

The South Korean Congress is also contemplating the introduction of various ESG-related laws (requirements for human rights and environment/supply chain due diligence, etc).

Namely, the Carbon Dioxide Capture, Usage and Storage Act (CCUS ACT) was passed on 9 January 2024 and took effect from 7 February 2025. Although CCUS technology is globally recognised as a bridge technology for achieving carbon neutrality by 2050, CCUS-related regulations were dispersed across more than 40 different laws, and captured carbon dioxide was considered as waste under the Waste Management Act. Business entities seeking new business opportunities in the CCUS industry should closely observe the changes in the business landscape following the implementation of the CCUS Act.

Moreover, the Serious Accident Punishment Act (SAPA), which was enforced only against corporations with at least 50 or more employees for the past two-year grace period, has also been expanded to be applicable to small-sized businesses (businesses with five to 49 regular employees) since 27 January 2024. The expansion of scope of SAPA enforcement requires all businesses with fewer than 50 employees to establish and implement SAPA-compliant safety/health management systems.

9. Exit Strategies and Termination

9.1 Termination of a JV

JV arrangements typically start with an indefinite term, and termination of a JV occurs when:

- there is a material breach of the JV agreement(s);
- a deadlock event occurs; or
- a JV partner sells its shares to the other JV partner or to a third-party purchaser.

JV arrangements usually come to an end in one of the following ways:

- the JV entity is dissolved and liquidated, with the residual assets being distributed to the JV partners; or
- a JV partner acquires the shares in the JV held by the other JV partner (either through the exercise of a put/call option, or by mutual agreement).

The following matters should be carefully considered for termination of a JV.

- The scope and duration of the non-compete/non-solicitation obligations.
- Where a put/call arrangement is contemplated in connection with termination of the JV:
 - (a) the applicable exercise price; and
 - (b) if fair market value will be used, whether it will be determined by a third-party appraiser or by mutual agreement, etc.
- Where the JV is being liquidated and if there is any IP assigned to the JV by one of the JV partners, whether the JV partner will be able to acquire back such IP (including any derivative IPs). The same applies if there is any important asset that was leased/transferred to the JV by one of the JV partners.
- Where one JV partner acquires the shares in the JV held by the other JV partner, and if there is any IP assigned/licensed or key assets loaned/transferred to the JV by the exiting JV partner, whether the JV will continue to be able to use such IP or key assets in its business operations (and if so, under what terms).
- Furthermore, where the JV will continue with a JV partner as the sole shareholder, the allocation of

risks regarding liabilities that have or will accrue as a result of the JV's actions prior to its termination.

9.2 Asset Redistribution and Transfers

If a JV participant will contribute assets to the JV by way of in-kind contribution, an appraisal by an independent appraiser (typically an accounting firm or appraisal firm) must be obtained, and the appraisal will be subject to the court's approval.

If the JV will transfer its assets (regardless of whether they are contributed to the JV or originate from the JV) with cash consideration, no such appraisal/court approval (as described in the foregoing) is necessary. However, if the transferee holds at least 10% or more of the total issued and outstanding shares of the JV, the transfer of assets will constitute a "self-dealing" under the KCC, and such transfer will be subject to two-thirds approval of the board of directors.

Particular caution is necessary to ensure that transfer of assets between a JV and JV partners is made under arm's length terms and conditions. If the transfer is carried out at a price (or under the terms and conditions) that is not at arm's length, such transfer could constitute a breach of fiduciary duty issues for directors and/or have tax implications for both the JV and the JV partner.

9.3 Exit Strategy

Share Transfer Restriction

Under the KCC, transfer of shares may only be restricted by requiring prior approval of the board of directors. The company's articles of incorporation must expressly provide for such requirement and any other form of restriction (other than board approval) is not permitted. To ensure the shareholders' ability to recover invested capital, the KCC also provides that if the board refuses to approve a proposed transfer, the shareholder who receives the notice of refusal may demand that the company designate an alternative transferee or purchase the shares.

Restrictions on the transfer of shares may also be agreed upon among shareholders through a JV agreement or shareholders' agreement (rather than through the company's articles of incorporation). A restriction on share transfer imposed under agreements among

the shareholders is binding only among the contracting parties and does not affect third parties. Accordingly, if a share transfer is made in violation of such an agreement, the transfer remains valid in principle, despite any breach of contractual obligations between the parties.

Other than the above, exit strategy is generally a matter that parties can freely determine in the JV agreement.

Most Common JV Exits

A separate agreement between JV partners allowing one party to exit is the most common JV exit strategy in South Korea. Typical exit mechanisms include the following:

- termination by mutual agreement;
- tag-along rights;
- qualified initial public offering; and
- put/call options.

SWEDEN



Law and Practice

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CMS Wistrand

1. Market Conditions

1.1 Geopolitical and Economic Factors

In Sweden, interest in joint ventures (JVs) is growing across most sectors. Although geopolitical challenges, the war in Ukraine, and fluctuations in interest rates continue to influence the Swedish economy, there remains a consistently strong appetite for establishing JV structures in Sweden. One of the main drivers for setting up a JV is to share costs and risks between the parties involved. This can be linked to increasing macroeconomic and political risk, which has made investors more cautious. Another possible reason for the increased interest is that banks and financial institutions have become more restrictive about offering financing, meaning that alternative sources of funding are needed for new companies and collaborations. The increase in JVs can be observed both in traditional industries and in more disruptive, emerging markets.

Given the market trends and the current financial and political landscape, it is anticipated that the interest in JVs will continue to increase over the next year.

1.2 Industry Trends and Emerging Technologies

While JV activity has remained strong across most sectors in Sweden, there has been a notable increase in the use of JV structures within real estate projects. These arrangements are often designed to distribute ownership among developers, property management companies, and tenants. The rise in such structures appears to be driven partly by a growing interest in sharing both risks and financing costs, and partly by the desire to involve and commit all parties at an early stage of the project, while also enabling them to share in the resulting profits.

2. JV Structure and Strategy

2.1 Typical JV Structures

In Sweden, the term “joint venture” lacks a specific legal definition and hence there are no regulatory requirements concerning the structure of the JV as such. As a result, JVs may be structured in a number

of ways and can be tailored based on the needs and intentions of the co-operating partners.

In principle, there are two general methods of structuring a JV: either through a purely contractual partnership or through an entity-based partnership (ie, a corporate vehicle).

The simplest form of establishing a JV is through a contractual partnership by way of a co-operation agreement establishing the scope of the venture, the obligations and commitments of the partners and any other specific terms concerning the partnership. Using this structure, there are no requirements for equity participation and the parties are able to freely tailor the terms of the JV. As no regulatory provisions pertaining to this structure exist under Swedish law, the general principle of freedom of contracts applies. For partners wishing to collaborate on a temporary basis only, for a particular project, and without the need for a specific allocation of assets, a purely contractual partnership may be sufficient. However, should the agreement include a mutual intention of incorporation and oblige the partners to facilitate such intention, the agreement itself could constitute a non-registered partnership in accordance with the Partnership and Non-registered Partnerships Act, which would entail the application of certain statutory provisions to the contractual partnership as a non-registered partnership. A non-registered partnership is not a separate legal entity and may not assume rights and obligations. The partners to the non-registered partnership will be liable for all obligations and debts arising from the JV.

A more prevalent and legally structured approach offering greater predictability is an entity-based partnership utilising any available corporate vehicle that permits co-ownership, such as a limited liability company, a general partnership, a limited partnership, a co-operative association or a non-registered partnership. These entity-based JVs may be more suited to partners intending to engage with each other over longer periods of time and with a need to structure the management, allocation of profits and ownership of assets in a more predictable way. All of the above-mentioned entity-based JVs (with the exception of a non-registered partnership) constitute separate legal entities with legal competence to enter into agree-

ments and undertake rights and obligations, the most common of which is the private limited liability company.

Limited Liability Company

For the purposes of establishing a JV, the most relevant and commonly used structure is the private limited liability company. Hence, factors solely pertaining to public limited liability companies have been excluded from this chapter.

A private limited liability company must have a minimum share capital of SEK25,000 and be registered at the Swedish Companies Registration Office (SCRO) and the Swedish Tax Agency. The most common and efficient method of setting up a JV through a private limited liability company is by purchasing a dormant shelf company and allocating the shares in said company to the partners in proportion to their financial, or other, contribution. One of the main advantages of establishing a JV in this manner is that the shareholders are generally not liable for the company's debts and liabilities. Proceeds may be allocated to the shareholders through dividends in relation to the rights connected with the shares of each shareholder. On the other hand, a limited liability company is obligated to keep accounts and submit (generally audited) annual reports to the SCRO, which become publicly available upon submission.

General Partnership

A general partnership, like the limited liability company, constitutes its own separate legal entity able to enter into agreements, undertake rights and obligations, own property and appear in court. A general partnership does not require any share capital and is not subject to any other requirements regarding the capitalisation of the entity. However, the liability of the general partnership is not limited to its own financials and the partners may therefore be held liable should the entity be unable to pay its debts. The partners' liability in respect of the general partnership is joint and several.

A general partnership is based upon a contractual relationship between the partners with the intention to jointly engage in business, and is formed through the registration of such a partnership with the SCRO

and the Swedish Tax Agency. The partnership is represented by each of the partners unless regulated otherwise in the partnership agreement or through a general power of attorney registered with the SCRO, and, unless the partnership agreement states otherwise, the allocation of proceeds follows the general principle of equal distribution.

This structure for a JV allows for easy incorporation without the express need for the partners to contribute financially, while exposing the partners to a potential financial risk if the partnership were to default on its debts.

Limited Partnership

The limited partnership is similar to the general partnership, and the same general principles as mentioned earlier apply. A fundamental difference, however, is that some of the partners' liability (limited partners) is limited to their financial contributions (which must be at least SEK1), whereas at least one partner (general partner) is liable for all the partnership's debts and liabilities without limitation. The general and limited partners must be registered with the SCRO.

Furthermore, the limited partnership is represented by the general partner and unless the limited partners have a registered power of attorney they may not represent the JV against third parties.

Co-Operative Association

A co-operative association constitutes a legal entity and may enter into agreements, undertake rights and obligations, own property and appear in court. A co-operative association may be founded by at least three operating partners which may be either legal entities or physical persons. A co-operative association is governed by its registered articles of association which also regulate the financial contribution required by each partner. The amount of the financial contribution may be determined by the partners and each partner's liability is limited to their contribution.

The co-operative association is represented by a board of at least three directors appointed by the association meeting. The co-operative association is required to appoint and register an auditor, keep accounting records and submit annual reports. Pro-

ceeds from the association may be allocated to its members through dividends decided by the association meeting.

2.2 Strategic Drivers for JV Structuring

The structure of the JV, and whether to set up a corporate vehicle or not, is dependent on several factors connected to the partners' intentions for and expectations of the JV. If the collaboration between the partners is temporarily limited to a specific purpose and requires no particular asset allocation (eg, a joint production project with limited scope), a contractual partnership with an agreement setting forth each party's rights and obligations may be sufficient.

If the partners intend to engage with one another over a longer period of time and need to structure the management, allocation of profits and ownership of assets in a more predictable manner, the partners may consider setting up a corporate vehicle for the JV.

The typical primary drivers for deciding which corporate vehicle to use when establishing a JV may include, but are not limited to:

- the nature and size of the venture;
- the domicile of the partners;
- the need to limit each party's liability for the JV;
- the number of partners;
- whether each party's financial contribution will be equal or split differently;
- whether the partners are going to be operating or financial partners;
- the duration of the JV;
- the intention of making an exit through a sale or IPO, or by liquidation; and
- tax considerations.

JV Parties (All Parties Limited Liability Companies)

Taxation of capital contributions, dividends and capital gains

Capital contributions to the JV entity are generally tax-neutral for the contributing parties and for the JV entity. However, dividends distributed by the JV to its owners are subject to taxation for individuals (this typically falls under capital income taxation), whereas – for corporate entities – tax exemptions may apply under the Swedish rules for business-related shares

(participation exemption rules). The same applies to capital gains on shares in the JV.

Transfer of value/enrichment of the other party

If one party contributes more funds or assets than proportional to its ownership share, this could result in the other party being indirectly enriched, potentially leading to tax consequences for the enriched party. It is therefore crucial to ensure that contributions of funds or assets are made pro rata to each party's ownership share. In addition, hidden income transfers through profit sharing between the JV parties may, under certain circumstances, be considered salary income for individuals who are enriched or reclassified as taxable business income for the receiving company.

JV Entity (All Parties Limited Liability Companies)

Transfer pricing considerations

Transactions between the JV and its owners must adhere to the arm's length principle, especially in cross-border arrangements, to avoid adjustments and penalties.

Withholding tax on payments

If the JV distributes dividends or makes payments such as royalties or interest to foreign owners, withholding tax obligations may arise under the Coupon Tax Act. This tax is often subject to reduction or exemption under applicable tax treaties or EU directives, but compliance must be ensured.

Interest deduction limitations

If a Swedish JV entity is financed/capitalised through loans from its owners, it is necessary to consider the Swedish interest deduction limitation rules to ensure that interest expenses are deductible for tax purposes.

General Rule Regarding JV Entity (Partnership-Taxed Entity)

In cases where the JV is a partnership-taxed entity, taxation is, as a general rule, applied at the partner level. Specific regulations govern this process.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

As mentioned previously, the term “joint venture” lacks a specific legal definition in Sweden and there are no specific regulatory requirements pertaining to the structure of a JV. Therefore, the structure and type of JV determine the primary regulator and the main statutory provisions.

The most frequently used corporate vehicle for JVs is a private limited liability company. Private limited liability companies need to be registered at the SCRO and the Swedish Tax Agency. Given that a limited liability company is generally obliged to keep accounts and submit audited annual accounts to the SCRO, it can be said that the primary regulators are the SCRO and the Swedish Tax Agency. If the partners to the JV are two limited liability companies, they may have to report the JV to the Swedish Competition Authority (SCA) pre-registration (see **3.4 Competition Law and Antitrust** and **5.2 Disclosure Obligations**). Depending on the business and operations of the JV, other regulators and statutory provisions may be relevant in order to ensure the JV’s compliance in specific business sectors.

3.2 Anti-Money Laundering Compliance

There are two main statutes that regulate money laundering in Sweden. The first is the Money Laundering Act, and the second is the Act on Penalties for Money Laundering Offences. The former aims to prevent financial and other commercial activities from being exploited for money laundering or terrorist financing purposes and is based on the Fifth EU Anti-Money Laundering Directive. The latter contains criminal law provisions relating to money laundering.

In general, the Swedish AML regulations apply to certain types of businesses where the operator is required to gather information about their customers (KYC) and to report suspicions of money laundering or terrorist financing to the authorities. All entities may be required to answer questions and provide information to such business operators in order to comply with the AML regulation when requesting products or services.

3.3 Sanctions, National Security and Foreign Investment Controls

The Swedish Screening of Foreign Direct Investments Act (2023:560) (the “FDI Act”) authorises the Swedish Inspectorate of Strategic Products (ISP) to screen foreign direct investments (FDIs) in activities worthy of protection. The FDI Act stipulates that a particular screening procedure must be undertaken prior to an investment, in which an investor (whether domestic or foreign) acquires a specified level of influence over, or assumes control of, a protected activity. Activities may be considered protection-worthy across most industries and are not limited to any specific type of business. However, such activities must be of national interest and are more common in industries such as infrastructure, energy, finance, healthcare and advanced technologies.

The FDI Act is applicable irrespective of the corporate vehicle used to undertake the protected activity. Any individual or entity intending to invest, either directly or indirectly, in activities that fall under the purview of the FDI Act is required to notify the ISP. The obligation to notify is applicable to all investors, irrespective of nationality or domicile, provided that a certain level of influence has been attained. Conversely, the company subject to the investment must inform potential investors of the aforementioned obligation to notify (if such obligation exists).

The ISP is entitled to either prohibit the FDI or to impose specific conditions in conjunction with the granting of authorisation. Should an investment be prohibited, any legal act forming part of the investment or having the purpose of realising the investment will be rendered invalid. Furthermore, the ISP is entitled to issue penalties of up to SEK100 million for instances of non-compliance.

3.4 Competition Law and Antitrust

Several competition law considerations are relevant for the formation and operation of a JV.

Initially, the establishment of a “full-function” JV must be notified and cleared by the competition authority if certain turnover thresholds are met by the parent company. A JV is normally considered to be full function when it does not merely perform tasks for its par-

ent companies, but, rather, acts independently on the market and has its own management. The competition authority will review whether the creation of the JV may affect the market – by way of dominance of a sector – to such an extent that the creation should be forbidden or mitigated by conditions.

Both the setting-up and operation of a JV are also to be reviewed in line with general competition rules; ie, the prohibition on entering into anti-competitive agreements and abusing a dominant market position. The creation of a JV between competitors may be considered an anti-competitive agreement.

There are guidelines from the European Commission on the formation of JVs and there are many “exemptions” from the above-mentioned prohibitions, for instance, for JVs undertaking certain research activities (which could yield positive outcomes for the broader public).

The competition law aspects should always be considered before the formation but also regularly (if for instance partners are changed) and on a case-by-case basis.

3.5 Listed Companies and Market Disclosure Rules

If a JV partner is a listed company, certain market disclosure regulations should be considered. It should initially be recognised that the JV and the listed JV partner are two separate and distinct legal entities. Thus, as a starting point, the rules for private limited companies apply to the JV irrespective of whether it has a public party or not.

However, as an exception to the above, when a publicly listed company participates in a JV, certain requirements and considerations set it apart from privately held entities, as outlined below.

Disclosure and Transparency

Publicly listed companies are obliged to comply with strict disclosure regulations. Significant events, such as entering into a JV, must be disclosed promptly by the listed company to ensure equal access to material information for shareholders and market participants. This requirement is governed by market rules

and legislation concerning market abuse. Even though the requirement directly applies to the listed company and not the JV, the JV is indirectly affected by the disclosure requirements should any circumstances arise in the JV that are of such a nature that they could constitute material information for shareholders and market participants in relation to the listed company.

Financial Reporting Standards

The listed JV party shall apply specific accounting standards applicable to publicly listed companies. This includes the recognition and valuation of the JV in financial statements, often with heightened scrutiny due to the transparency required in financial reporting for listed entities. In this context, it means that the JV is subject to more stringent reporting requirements with regards to its listed JV partner than would be the case if both partners were private companies. The JV could, as long as the listed JV party presents consolidated group-level accounts according to International Financial Reporting Standards (IFRS), choose to not apply the same IFRS and instead apply K2 or K3 reporting standards; however, this means that the JV's figures need to be restated for inclusion in the group consolidated accounts.

3.6 Transparency and Ownership Disclosure

The majority of Swedish companies, associations, and other legal entities must register beneficial ownership information with the SCRO. A beneficial owner is a natural person who:

- controls more than 25% of the total number of votes in the legal person by virtue of ownership of shares, other equity or membership;
- has the right to appoint or remove more than half of the directors or equivalent officers of the legal person; or
- by virtue of an agreement with the owner, a member or the legal person, or a provision in its statutes, articles of association or similar documents, can exercise the control referred to in the two previous bullet points.

The above-mentioned information must be registered with the SCRO and be provided without delay at the request of an authority. The information must also be made available to an operator upon request, should

the operator be undertaking customer due diligence measures in relation to a transaction or business relationship with the legal entity.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Apart from the recent introduction of the FDI regime in Sweden in 2024, there have not been any substantial legal developments specifically relevant to JVs.

As most JV disputes are subject to arbitration and such arbitration proceedings are generally confidential, there have not been any significant recent court decisions relating specifically to JV matters or business collaborations.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

The negotiation process and instruments at this stage are always tailored to meet the needs and requirements of the potential JV partners and vary greatly from case to case. In the most straightforward process, where the deal value is usually on the low end or if the parties are already familiar with each other, there is no need for pre-agreement documents. In such simple cases, the partners start negotiating and drafting the shareholders' agreement or JV agreement directly.

If the co-operation and potential partners require a more structured process, it is common for the parties to agree on a letter of intent (LOI) setting forth the framework of the negotiation and a mutual non-disclosure agreement (NDA) to be able to freely discuss sensitive information and synergies. The LOI usually contains both binding provisions, such as exclusivity and confidentiality undertakings, and non-binding provisions, such as timelines, general terms and conditions for the JV agreement and structure of the JV organisation.

Other pre-agreement actions and documents may be needed depending on the business and specific

requests from the parties, such as clearances from relevant authorities, restructuring actions prior to the JV or ancillary documentation.

5.2 Disclosure Obligations

Whether the partners to the JV are required to disclose the JV entity to the public depends on whether any of the partners are a listed public company.

There are no regulatory provisions requiring the formation of a JV company to be disclosed to the public if the partners are either individuals or private limited liability companies. The partners to the JV are, however, under certain circumstances, obliged to report the creation of the JV entity to the SCA if the partners exceed certain revenue thresholds. Approval from the SCA of the formation of the JV entity must be obtained before the company is set up. See 3.4 **Competition Law and Antitrust** for more details.

Besides the potential obligation to register the ultimate beneficial owners of the JV, there are no requirements to notify and register the ownership of shares with the public authorities. The ownership of shares in a private limited liability company is registered in the share register of the company, managed and kept by the board of directors.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

What specific conditions need to be met prior to the setting up of the JV is highly dependent on what the JV is intended for and the needs of the parties.

It is common that a JV is formed to own or manage assets from the JV partners in order to create synergies. In such cases, the setting up of the JV will be dependent on such assets being transferred to the JV or the partners agreeing on, for example, management or service agreements with the JV. The formation of the JV could also be dependent on the partners receiving financing from an external creditor on satisfactory terms or approvals from local authorities to engage in the JV. All such potential requirements are usually conditions which need to be fulfilled before entering into a JV agreement.

5.4 Legal Formation and Capital Requirements

Setting up a limited liability company under Swedish law is fairly uncomplicated. The partners to the JV will need to pay a sum of SEK25,000 in share capital and register the company with the SCRO and the Swedish Tax Agency. The most common and efficient way of setting up the JV company is by purchasing a dormant shelf company and allocating the shares in said company to the partners pro rata to their financial, or other, contribution.

Contractual partnerships can be structured purely through a partnership agreement and require no capital contribution.

Regarding participation of foreign entities in the JV company, see 3.3 Sanctions, National Security and Foreign Investment Controls.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The main legal document for a purely contractual partnership is the JV agreement. However, depending on the purpose and nature of the JV, this agreement can take many different forms. In its simplest form, it can be a manufacturing, research and development or construction agreement, etc. The main agreement is often supplemented by several supplemental agreements that further regulate the terms and conditions between the parties. There are no requirements as to the form of an agreement governing a partnership based on a contract; the principle of freedom of contract applies.

For an entity-based partnership established through a limited liability company, the founders will need to file an instrument of incorporation and articles of association with the SCRO. Once the company is registered, the partners usually set out their obligations towards each other in a shareholders' agreement. The shareholders' agreement governs the ownership of shares and the partners' rights and obligations. Typically, the shareholders' agreement contains provisions relating to financing, corporate governance, protection against dilution, transfer restrictions, exit provisions, etc.

6.2 Governance and Decision-Making

The decision-making process in the JV entity would depend on the chosen structure of the JV. For purely contractual partnerships, the parties are able to freely tailor the partnership agreement to their needs. For example, if one partner wishes to have more influence due to a higher financial, or other, contribution to the JV, this can be agreed upon between the partners.

For entity-based JVs, the decision-making body is the general meeting. It is possible for the partners to alter the decision-making process through the issuing of shares with differing voting rights, alterations in the articles of association or through individual shareholder agreements. The board of directors acts as the executive body, responsible for carrying out the decisions made by the general meeting as well as the day-to-day operations of the company, the latter of which is often delegated to a managing director appointed by the board.

6.3 Funding

The typical way of funding a JV is mainly dependent on its size and capital need. Smaller JVs are usually funded directly with equity by the JV partners through shareholders' contributions or through issuances of shares in the JV.

If the size and capital need of the JV is more substantial, we usually see a mix of debt and equity. The creditors may be external or the funding may be provided by shareholder loans or conditional shareholders' contributions. When established parties co-operate through a JV vehicle, there is usually a pre-agreed policy for securing future financing. In general, once the venture is operational, the partners are not obliged to provide additional funding. Instead, they may accept dilution of their ownership or a reduction in influence if they choose not to contribute further. Subsequent financing is often obtained externally through debt arrangements with creditors or by issuing shares or other instruments to investors.

The shareholders' agreement governing the ownership of the JV usually includes a funding mechanism, such as preferential subscription rights, to incentivise funding. However, it also usually includes anti-dilution

clauses or veto rights to prevent a party from squeezing out another party.

6.4 Deadlocks

Irrespective of whether the JV is set up and conducted through a corporate vehicle or not, deadlocks in decision-making are usually resolved through predetermined mechanisms designed to ensure the expedient resolution of deadlocks and the maintenance of operational continuity. Resolving deadlocks in JVs usually involves negotiation and further delegation to higher management levels, where the parties are encouraged to resolve deadlocks in good faith. In the event that negotiations prove unsuccessful, the matter may be referred to a neutral third party, such as a mediator or arbitrator, for resolution. In some agreements, a designated individual, such as the chairperson, may be granted the authority to cast a deciding vote in order to break the deadlock.

If a deadlock arises regarding a technical or financial matter, the parties may refer the issue to an independent expert for resolution. If the deadlock persists, it may result in the dissolution or termination of the JV. Alternatively, the JV agreement may provide for the incorporation of buy-sell mechanisms, whereby one party can purchase the other's interest in the venture at pre-agreed prices or at the highest bid presented by the parties. One example of such a mechanism is the use of put and/or call options, whereby one party can require the other to sell or buy their interest in the JV if the parties cannot resolve the deadlock.

6.5 Other Documentation

When setting up a JV, additional documents besides the JV agreement or shareholders' agreement are usually required. The type of documents needed are highly dependent on the specific project and the objectives of the JV. Additional documents and agreements may be, for example:

- asset transfer agreements for transferring assets to the JV vehicle (carve-in/carve-out);
- asset management agreements or service agreements regarding personnel, knowledge and other services between the JV vehicle and the JV partners or other parties;

- the business plan and instructions to the board of directors regarding the governance of the JV;
- articles of association and other corporate documentation adapted to the preferred share structure, etc;
- IP licence agreements for the transfer or use of IP rights held by any of the JV partners; and
- property development agreements and lease agreements.

6.6 Rights and Obligations of JV Partners

The JV partners' rights and obligations in a JV in the form of a limited liability company are governed by the shareholders' agreement. Such agreement usually contains provisions with regards to activity obligations, non-compete provisions, right to information, restrictions on transfer of shares, etc. Even though the Companies Act provides certain rights and obligations for shareholders in a limited liability company, there is usually a need to enhance or adapt such rights and obligations between the parties.

The distribution of dividends in a limited liability company may only be distributed from distributable profits, which include retained earnings, current-year profits, and any other unrestricted equity as reflected in the most recently adopted balance sheet. The company's restricted equity, such as share capital and statutory reserves, must remain intact. Moreover, the "prudence rule" stipulates that any dividend distribution must not endanger the company's liquidity or financial stability, considering its financial position and prospective obligations. Generally, dividends shall be distributed equally across shares of the same class and pro rata in relation to the number of shares held by each JV partner. If other allocations are desired, it may be beneficial to issue separate classes of preferential shares with other rights to dividends.

As contractual JVs are not carried out through a corporate vehicle, the distribution of profits of the contractual JV is completely contingent upon the terms of the JV agreement.

The JV partners' liability for debts and obligations of the JV is dependent on the choice of JV vehicle as set forth in **2.1 Typical JV Structures**.

6.7 Minority Protection and Control Rights

In general, most resolutions subject to voting during a general meeting require a simple majority to be passed. However, for certain resolutions, the Companies Act allows for several general and more specific mandatory minority protection provisions, mostly in the form of a requirement of a larger majority.

As a point of departure, the Companies Act stipulates that all shares within the same class shall have equal rights. Hence, the general meeting is prohibited from passing a resolution that unduly disadvantages one shareholder to the benefit of another shareholder within the same class of shares.

More specific mandatory minority protection provisions in the Companies Act become available depending on the ownership percentage of the minority shareholder. A minority shareholder holding at least one-third of all available shares has a veto right against certain decisions and may stop resolutions pertaining to, inter alia, a change to the articles of association, issuance of instruments and rights, a decrease of the share capital or engaging in a merger or demerger of the company. Furthermore, a minority shareholder holding at least 10% of all outstanding shares has the right to, inter alia, convene an extraordinary general meeting, delay certain resolutions, invoke a distribution of dividends (subject to certain preconditions and limitations), and refuse the discharge of liability for the board of directors. By contrast, a minority shareholder holding less than 10% of all outstanding shares has limited influence over the company. Furthermore, a majority shareholder holding at least 90% of all outstanding shares may initiate a compulsory buyout of the minority, while the minority shareholder may, conversely, require the majority shareholder to purchase its shares.

It is common for JV partners to seek to implement more enhanced governance provisions in relation to the partnership dynamics and the purpose of the JV. This will be regulated in a shareholders' agreement between the parties and often includes super-majority provisions or veto rights for certain resolutions, rights to nominate a certain number of directors to the board and occasionally restrictions on mandatory minority protections. It should be noted, however, that the

enforceability of restrictions on mandatory minority protections is doubtful and may give rise to disputes.

6.8 Applicable Law and Dispute Resolution in International JVs

The most prevalent mechanism for dispute resolution is arbitration. This is particularly the case when the joint venture is governed or established in accordance with Swedish law. Arbitration is commonly administered by the SCC (Stockholm Chamber of Commerce) Arbitration Institute. Nevertheless, there are no explicit limitations on the parties' selection of dispute resolution mechanism or the applicable governing law. In the event that the joint venture is conducted through a Swedish corporate vehicle, such as a Swedish limited liability company or a general or limited partnership, Swedish law will apply with regard to the corporate vehicle. In such a case, the most appropriate choice of law for a JV agreement or a shareholders' agreement would be Swedish law.

If the JV partners to a Swedish JV fail to agree on the applicable law in the JV agreement, the applicable law shall be determined in accordance with the conflict of laws provisions in the Rome I Regulation. Subject to the circumstances in the individual case, the applicable law will likely be determined by the place of incorporation of the JV vehicle.

7. The JV Board

7.1 Board Structure

Swedish limited liability companies follow a one-tier management system provided by the Swedish Companies Act. The overall management of the company lies with the board of directors, which acts as the executive body and exercises broad powers, while the general meeting is the decision-making body of the company. The general meeting is competent to decide on all matters that do not explicitly fall within the exclusive competence of another corporate body.

Swedish law requires private limited liability companies to appoint at least one director to the board. Normally, directors are appointed by shareholder voting during the general meeting, but Swedish law allows for alternative methods of appointment if explicitly

regulated in the company's articles of association. The parties to the JV may therefore dictate the appointment process depending on the desired structure of the board. Early removal of directors may be initiated by the corporate body or individual who appointed the director, with the only legal requirement being a notice to the board of the removal. Furthermore, Swedish law requires at least half of the ordinary board members, and at least half of the deputy board members, to be residents within the European Economic Area (EEA). However, the SCRO may allow for exemptions to this rule if special circumstances apply.

Each director of the board has equal voting rights, and resolutions are made by simple majority, unless the articles of association provide otherwise. In case of a tied vote, the chairperson has a casting vote. The appointment of directors by the general meeting is also made by simple majority. However, it is common to include in the shareholders' agreement a right for a JV partner to appoint a certain number of directors and a corresponding obligation for the other shareholders to appoint such directors. Further, it is possible to issue classes of shares with weighted votes, up to ten votes per share, to ensure a greater influence over the board composition and other matters at the general meeting.

7.2 Duties and Functions of JV Boards and Directors

The board of directors is the managing and representative body of the limited liability company, and is responsible for multiple aspects of the business. This includes, but is not limited to, the continuous assessment of the company's financial position, ensuring proper control of the bookkeeping, and management of funds and other financial affairs. The day-to-day business of the board may be delegated to the managing director appointed by the board. The board may also appoint an authorised signatory, who may be a single director, a managing director or a third party, to represent the JV against third parties. The board reports to the members of the JV through the publishing of annual reports and the general meeting.

Specific obligations of the board of directors that it is not allowed to delegate may arise in a situation where the company's equity amounts to less than half of

its share capital (critical capital deficit). The board is required to draw up a control balance sheet and, if the deficit is confirmed, convene an extraordinary general meeting to decide whether the company should enter into liquidation or not. Individual directors who ignore such duties may be personally liable for any company debts arising after the time period during which the control balance sheet should have been drawn up has passed.

Notwithstanding any concurrent duties that a director may have to the JV participant, the duties toward the JV entity must be carried out with the JV entity's best interests in mind. Weighing competing duties that a director might have against a JV participant may therefore be a complicated issue, and the director will need to be cautious about participating in matters which may give rise to a potential conflict of interest.

Individual directors may be held liable for damages caused to the JV entity or shareholders due to intentional or negligent conduct while fulfilling their duties. The liability of the directors does not extend to ensuring profitability or making the right business decisions. Personal liability arises only in situations where a director has substantially breached its loyalty commitments to the JV entity and/or the shareholders.

For further information regarding the duties of directors in Sweden, please click [here](#).

7.3 Conflicts of Interest

The Companies Act stipulates that a director may not take part in certain matters where there is a risk of a conflict of interest. Such matters include agreements between the company and the director, agreements between the company and a third party in which the director has a material interest or an agreement between the company and a legal entity controlled by the director.

It is, however, common for individuals to take seats on both the JV company board and the JV participant board. Hence, conflicts of interest may arise and must be resolved on a case-by-case basis.

8. IP and ESG

8.1 Ownership and Use of IP

When setting up a JV there are a few general issues to consider regarding the use of IP rights. Firstly, IP rights required for the JV to conduct its intended business should be clarified. The parties should then specify which IP rights they are bringing to the JV and agree upon the ownership of such pre-existing IP rights. IP rights should then be assigned or licensed to the JV entity for the duration of the collaboration. Finally, to ensure that the JV can be terminated effectively and to minimise the risk of disputes, a clear exit strategy regarding IP rights should be established.

Furthermore, the parties should agree on what will happen to any new IP developed as a result of the JV. This should include who will own the IP and who has a right to use it.

The JV agreement and the shareholders' agreement should include provisions to protect confidential information and trade secrets exchanged between the parties. These provisions shall also define the individuals or entities entitled to access such information, and the circumstances in which it may be used within the JV.

Upon termination of the JV, the partners should also consider what happens to the IP rights of the JV. The pre-existing IP rights could be reverted to their original owners and IP rights resulting from the JV could be transferred to either or all partners. IP rights could also be transferred or assigned to third parties but should be subject to the approval of the other JV partners. It is also important that licensing of IP rights should be subject to the continuity of the JV and that the licence will be terminated if the JV is terminated.

8.2 Licensing v Assignment of IP Rights

The choice between licencing or assigning IP rights to the JV should be determined by the objectives and strategic interests of the owner of the IP rights. If the owner wants to retain control over the IP rights and continue to develop and take profit from the IP rights, it is more beneficial to license the IP rights to the JV. If, however, the owner needs to raise capital or if it is a condition from the JV participants that the JV shall

be the owner of the IP rights, it may be more suitable to assign the rights to the JV.

8.3 ESG Considerations in JVs

ESG factors are no longer just about reputation or investor branding. They are increasingly embedded in binding legislation, affecting how companies report, conduct due diligence, manage supply chains, and even how they structure partnerships such as JVs. Beyond compliance, ESG now drives access to capital, market positioning and risk management. A failure to align with evolving ESG standards can lead to litigation, loss of financing, or regulatory scrutiny – risks that are particularly pronounced in cross-border or shared-ownership structures.

- **Corporate Sustainability Reporting Directive (CSRD, 2022/2464):** This requires large companies and listed SMEs to report in detail on ESG matters, using the new European Sustainability Reporting Standards (ESRS). It applies from 2024, expanding the scope and depth of sustainability reporting obligations.
- **Corporate Sustainability Due Diligence Directive (CSDDD, 2024/1760):** This obliges large companies to identify, prevent and mitigate adverse environmental and human rights impacts across their entire value chains. Significantly, liability can extend to business partners, suppliers and JV structures.
- **EU Taxonomy Regulation (2020/852):** This establishes uniform criteria for what qualifies as an environmentally sustainable economic activity. Companies in scope of CSRD must report on the taxonomy alignment of their revenue, CapEx and OpEx.
- **Sustainable Finance Disclosure Regulation (SFDR, 2019/2088):** This imposes ESG disclosure requirements on financial institutions such as asset managers, banks and pension funds – indirectly influencing investee companies and JV structures that seek capital.
- **EU Regulation on Deforestation-Free Products (2023/1115):** From December 2024, companies placing certain commodities (eg, timber, coffee, soy, cocoa) on the EU market must ensure they are not linked to deforestation. This may apply to

Swedish companies indirectly involved through JV supply chains.

These developments raise important considerations for Swedish companies engaged in JVs. While the JV itself may or may not fall within the direct scope of new EU rules, the legal and reputational exposure of the JV partners is increasing. It is no longer sufficient to manage ESG risks within internal operations – compliance now extends to shared entities and external partners. Swedish JV participants should:

- assess whether the JV meets the thresholds for CSRD or CSDDD obligations;
- clarify which entity or partner bears responsibility for ESG reporting and due diligence;
- allocate ESG risks explicitly in shareholder and JV agreements; and
- align ESG governance frameworks, codes of conduct and grievance mechanisms across JV partners.

9. Exit Strategies and Termination

9.1 Termination of a JV

The JV arrangement may come to an end in a multitude of ways which may be envisaged by the parties or due to disputes or poor performance of the JV. The JV participants usually have an exit strategy regulated in the JV agreement. A few common ways for a JV arrangement to come to an end are outlined below.

- The intended purpose of the JV has been fulfilled and the JV participants agree to sell the JV through a trade sale or IPO.
- One of the JV participants wishes to end the JV while the other participant(s) wishes to continue the business of the JV and redeems the shares.
- A deadlock situation has occurred and has not been resolved.
- The JV is liquidated by mutual decision between the JV participants.
- The JV is compulsorily liquidated or enters into bankruptcy due to poor financial performance.

The matters to be dealt with on termination of the JV depend on the aforesaid reasons for the termina-

tion. However, general issues typically arise, such as allocation of assets and consideration, settlement of debts and liabilities, allocation of IPRs and termination of employees and consultants.

9.2 Asset Redistribution and Transfers

The JV participants are able to freely transfer assets to the JV by way of a shareholder contribution without any consideration from the JV; however, this is subject to tax considerations. If any assets are to be transferred from the JV to the JV participants there are a few issues to consider from a corporate law perspective.

If the JV, being a limited liability company, transfers assets to the JV participants without consideration or with a consideration below fair market value, this may be considered unlawful value transfer. In such cases, the transfer may be considered a distribution of dividends in kind and certain equity protection provisions shall be considered. A distribution of dividends may only be made if there is sufficient unrestricted equity in the JV to cover the value of the distribution and if the distribution is justifiable given the financial health of the JV.

To avoid any disputes between the JV participants upon the termination of the JV it should be clear from the JV agreement whether or not the ownership of assets used in the JV will remain with a JV participant or if it will be owned by the JV. If the JV participants are unable to agree on the distribution of assets of the JV and the JV enters into liquidation, an independent liquidator will be responsible for liquidating the assets and distributing the proceeds to the participants pro rata to their ownership in the JV.

9.3 Exit Strategy

A general principle of the Companies Act is that a shareholder or JV participant will have the right to freely transfer its shares but, at the same time, will not be obligated to transfer its shares. There are a few exceptions to this general principle - for example, a majority shareholder holding at least 90% of all outstanding shares may initiate a compulsory buyout of the minority, and the minority shareholder may, conversely, require the majority shareholder to purchase its shares.

The general principle in the Companies Act is, however, optional, and the JV participants usually agree on an exit strategy in the JV agreement when entering into the JV. Such exit provisions usually contain both transfer restrictions and drag-along rights to be enforced in certain situations or by a certain majority, although it should be noted that overly restrictive transfer restrictions are generally prohibited. In order to avoid deadlocks, the JV agreement may include reciprocal drag- and tag-along rights that may be enforced in a trade sale, IPO or other transfers of the JV or its assets. In order to ensure control over the JV and avoid unwanted new JV participants, the JV agreement usually includes a right of first refusal for the non-transferring party to acquire the shares instead of allowing a new shareholder.

The JV agreement and the exit provisions therein shall always be tailored to suit the needs and intentions of the JV and the JV participants.

Trends and Developments

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CMS Wistrand is one of the leading Nordic full-service law firms, providing expert advice across all areas of corporate law. The firm has particular strengths in the energy and cleantech, technology, manufacturing, infrastructure, real estate and the hotels and leisure sectors. With a dedicated team of 40+ M&A lawyers based in Stockholm and Gothenburg, CMS Wistrand regularly advises on complex local and cross-border transactions and projects. Its clients range from global investment and private equity funds to large

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Introduction

In a market marked by both macroeconomic volatility and structural resilience, joint ventures (JVs) have emerged as a preferred strategic tool for businesses seeking to enter or expand within Sweden. The country's reputation as a global innovation leader, its advanced industrial ecosystem, and its strong commitment to sustainability have made it an attractive destination for collaborative investments. In particular, JVs offer a flexible framework for sharing risks, accessing specialised technologies, and establishing long-term footholds in regulated or capital-intensive sectors.

While Sweden faced economic headwinds in early 2025, including a modest GDP contraction of 0.6% in Q1 and a slower-than-anticipated rebound of 0.4% growth in Q2, the broader outlook is cautiously optimistic. Notably, both imports and exports showed signs of recovery in the second quarter of 2025, with industrial exports regaining momentum after a sluggish 2024. Sweden's diversified industrial base and longstanding trade ties within the EU continue to serve as buffers against global uncertainty.

Further encouragement comes from recent geopolitical developments, including the EU-US customs agreement concluded in mid-2025. The agreement, which aims to ease tariff tensions and establish clearer rules for transatlantic trade, is expected to inject a level of predictability that global markets have sorely lacked. In this context, Sweden's export-heavy economy and its outward-facing industrial policy stand to benefit significantly.

Sweden's competitive edge is reinforced by its position as the most innovative country in the European Union, according to the 2025 European Innovation Scoreboard. The country maintains world-leading capabilities in green technology, clean energy, circular economy models, and advanced research and development. Against this backdrop, the joint venture model is increasingly seen as a pragmatic and strategic solution for fostering cross-border innovation, navigating regulatory frameworks, and building long-term value in sectors where Sweden is already leading.

Macroeconomic Drivers for JVs in Sweden

Sweden presents a particularly favourable environment for joint ventures, owing to a combination of innovation leadership, industrial strength and sustainability commitments. These macroeconomic characteristics have positioned Sweden as a natural hub for collaborative business ventures, especially where technology, energy and advanced manufacturing intersect.

Innovation leadership and R&D excellence

Consistently ranked as one of the most innovative countries in the European Union, Sweden benefits from a well-established ecosystem of research institutions, public-private collaboration, and a strong emphasis on intellectual capital. Sweden invests heavily in research and development, with robust protection for intellectual property and a regulatory framework that supports knowledge-sharing. For foreign investors and multinationals, Sweden's innovation-driven economy creates an attractive platform for joint ventures focused on product development, process innovation and high-tech solutions.

Sustainability and energy transition as key catalysts

Sweden is internationally recognised as a pioneer in environmental policy, climate-smart technology, and the circular economy. Sweden's ambitious climate goals – including its target to reach net-zero emissions by 2045 – are reflected in both public sector procurement and private sector investment. With broad political consensus around sustainability and a population that embraces green innovation, the market for renewable energy, low-carbon transport, energy storage and smart grids is expanding rapidly.

Sweden's exceptional access to renewable energy – primarily hydro and wind power – further enhances its suitability for energy-intensive industries and greentech initiatives. As a result, many joint ventures in the Swedish market are oriented towards accelerating the green transition through shared infrastructure, cross-sector innovation, and pooling of technological expertise.

A strong industrial base with global reach

Manufacturing and industrial production remain at the core of the Swedish economy, accounting for approximately 70% of the country's total export value. Key sectors include automotive, heavy machinery, telecommunications, pharmaceuticals and cleantech. The presence of globally active corporations – such as Volvo Group, ABB, Ericsson and SKF – provides fertile ground for collaborative ventures, particularly where smaller or foreign entities seek to gain market access, scale or operational synergies.

JVs are commonly used to bridge competencies in this context: for example, combining industrial manufacturing capabilities with digital or software expertise, or aligning traditional engineering strengths with cutting-edge environmental technologies.

Legal Landscape for JVs in Sweden

Sweden provides a flexible and commercially enabling legal environment for the formation and operation of JVs. While Swedish law does not offer a formal definition of what constitutes a JV, it allows parties to structure their collaboration in a manner that suits the specific commercial needs and duration of the partnership. However, JV structures in Sweden must still navigate a number of important legal considerations, including corporate form, foreign direct investment (FDI) screening and competition law compliance.

Structuring a JV

As Swedish law does not prescribe any mandatory JV structure, parties may opt for either a purely contractual arrangement or an entity-based model.

- Contractual-based JVs rely on co-operation agreements outlining the scope of the project, contributions, responsibilities and governance. These are often used for time-limited projects with no intention of pooling assets or forming a separate legal entity. While there are no specific statutory requirements for such arrangements, they may under certain circumstances fall under the Partnership and Non-registered Partnerships Act if the agreement implies mutual business intentions, thereby triggering specific legal consequences.
- Entity-based JVs, by contrast, involve the creation of a separate legal entity. The most common cor-

porate vehicle is a private limited liability company (*aktiebolag*), which provides limited liability for shareholders and allows for structured governance, profit allocation and asset ownership. Other forms of corporate vehicles include general partnerships, limited partnerships and co-operative associations – each with distinct liability, capital and registration implications.

The private limited liability company remains the most frequently used structure, often established by acquiring a shelf company and allocating shares in proportion to each partner's contribution. While this form offers liability protection, it also entails statutory obligations such as registration, accounting and public reporting requirements.

FDI screening and the Protective Security Act

Since 2023, Sweden has introduced a national security review regime under the Swedish Screening of Foreign Direct Investments Act (2023:560) (the “FDI Act”). The FDI Act grants the Swedish Inspectorate of Strategic Products (ISP) authority to review foreign and domestic investments in activities deemed worthy of protection – typically involving critical infrastructure, sensitive technologies or national security concerns.

The FDI Act applies regardless of the corporate structure used and notification to ISP is mandatory where an investor gains control or material influence over a protected activity. The obligation to notify lies with the investor, although the target company must inform the investor of this requirement where applicable.

The ISP may either prohibit a proposed investment or approve it with conditions. Any transaction completed in violation of the screening requirement may be rendered legally invalid. Notably, the ISP may impose administrative sanctions of up to SEK100 million for non-compliance. Foreign JV partners considering Swedish collaborations in sensitive sectors should therefore conduct early-stage FDI analysis and engage with counsel to avoid potential delays or enforcement risks.

Similar to the FDI Act, but with a narrower scope, is the Swedish Protective Security Act (2018:585) (the “PSA Act”). The screening carried out under the PSA

Act specifically targets activities which are sensitive to national security interests. Partners wishing to conduct business which may fall under the PSA Act (eg, military activity, electrical supply, food and water supply, healthcare, the handling of security-classified information and any other innovation or product that is of key importance to a security-sensitive activity) through a JV must enter into a protective security agreement and consult with the relevant supervisory authority beforehand. Failure to do so, or if the relevant supervisory authority deems that the JV would give rise to the creation of risks that cannot be sufficiently mitigated by the operator (the party responsible for the security-sensitive information/activity), may result in the supervisory authority denying the creation of the partnership altogether.

Both the FDI Act and the PSA Act have added complexity and both monetary and time-related costs for actors already in or looking to enter the Swedish market. It has also become apparent that many investment notifications submitted under the FDI Act are irrelevant for screening purposes and may be exempted from the notification obligation altogether.

Competition law considerations

JVs must also be assessed under both Swedish and EU competition law. A JV may require pre-closing merger control clearance if it qualifies as a “full-function joint venture” – ie, an independent economic entity with sufficient resources and autonomy to operate on a market. If the parent undertakings meet relevant turnover thresholds, the JV must be notified to and cleared by the Swedish Competition Authority (SCA) or the European Commission, depending on jurisdictional scope.

Even where merger control is not triggered, JV arrangements between competitors may still raise concerns under Article 101 of the Treaty on the Functioning of the European Union (TFEU) or Chapter 2 of the Swedish Competition Act, particularly if they involve co-ordination of competitive behaviour. This includes information exchange, price setting or market allocation. However, exemptions may apply – for instance, JVs established for joint R&D activities that generate pro-competitive efficiencies.

The European Commission’s guidelines on horizontal co-operation agreements offer useful guidance on acceptable JV structures and conduct. Legal review should be carried out both at the formation stage and periodically, particularly when the market behaviour or ownership composition of the JV changes.

Gun jumping and transaction timing

A particular risk which foreign investors should be mindful of is gun jumping – ie, the premature implementation of a JV prior to obtaining required merger control or FDI approvals. This may include early integration steps such as joint marketing, strategic alignment or shared control over sensitive assets before the relevant authority has issued a clearance decision. Gun jumping can result in severe penalties and retroactive invalidation of transactions.

To mitigate these risks, parties should incorporate suspensive conditions into their JV agreements and clearly define permitted pre-closing conduct to maintain compliance throughout the transaction timeline.

Reflections and Outlook: JVs as Vehicles of Strategic Innovation

Looking ahead, the landscape of Sweden’s joint ventures is set to evolve in response to global, regulatory and sectoral developments. While macroeconomic indicators during the first half of 2025 reflect modest growth and some lingering volatility across the EU, the Swedish economy has shown resilience, underpinned by high export value from the industrial sector, increasing innovation output, and a growing interest from international investors.

A striking example of Sweden’s strategic relevance is Lyten’s recent acquisition of Northvolt, which has sent strong signals across the cleantech and energy storage industries. The transaction not only highlights Sweden’s growing position in the global battery value chain, but also underscores the potential for foreign capital to enable significant industrial scaling. Northvolt, once a symbol of Swedish energy innovation, is now set to expand its technological footprint under new ownership – a move likely to spur further joint venture activity in associated areas such as green hydrogen, electrified transport and circular manufacturing.

The developments also demonstrate that Sweden continues to offer an attractive, innovation-driven business climate, supported by stable institutions, a liberalised investment regime and a legal environment that enables flexibility in structuring commercial collaborations. As international supply chains are re-evaluated in light of geopolitical uncertainties, Sweden's combination of green energy access, strong R&D capabilities and policy predictability provides a compelling case for both market entry and long-term industrial partnership through JVs.

The recently announced EU–US trade and tariff agreement is also expected to reduce friction for transatlantic JVs, opening the door for a more predictable regulatory and trade environment in advanced manufacturing, tech and defence-related sectors.

Going forward, we expect:

- increased joint venture activity in strategic sectors, including semiconductors, life sciences and defence technologies;
- more hybrid ownership models, especially in public-private partnerships, where infrastructure projects and digital transformation efforts are jointly developed;

- a continued focus on regulatory compliance, especially in FDI screening and competition law, given the expanding jurisdiction of Swedish and EU authorities; and
- a shift towards long-term alliances, particularly in deeptech and ESG-driven sectors, where value creation extends beyond short-term returns.

In summary, the JV concept continues to prove itself as a powerful and adaptable tool for driving investments, innovation and cross-border co-operation in the Swedish market. For foreign and domestic actors alike, it offers a pragmatic pathway to harnessing the strengths of the Swedish market – not just as a consumer base, but as a launchpad for scalable, future-oriented enterprises.

SWITZERLAND



Law and Practice

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MLL Legal has four offices located in the main centres of Switzerland and is recognised for its expertise in joint ventures (JVs). The firm has a proven record of delivering high-quality legal services. Its experienced team not only interprets the law but also contributes to its development, offering insights that inform important regulatory decisions. With a comprehensive

approach that includes areas such as anti-trust, tax, governance, IT and intellectual property, **MLL Legal** provides clients with thorough and reliable legal guidance. The firm is widely regarded as an authority in the field of JVs, supporting clients at each stage of their business initiatives.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

The most significant current geopolitical and economic factor affecting Switzerland is the US administration and its foreign policy, which has a direct impact on the Swiss economy. The Swiss economy is also heavily dependent on developments in Europe. The current economic slowdown in the EU will also have longer-term consequences for the Swiss economy. Additional key market drivers include inflation, interest rates and the ongoing war in Ukraine. As a result of these economic uncertainties, fewer joint ventures (JVs) involving foreign companies have been established, particularly involving large Swiss companies.

However, despite these global challenges, the Swiss JV market demonstrated resilience in 2024. In any case, and for the whole Swiss economy, interest rates remain a key factor, especially in relation to JV financing. Should rates not decrease further, JV parties may increasingly rely on internal funding or adopt structures that are less dependent on liquidity.

1.2 Industry Trends and Emerging Technologies

The construction industry (eg, in relation to building a second road tunnel through the Swiss Alps), industrial projects, research and financing are key for JVs in Switzerland. Industries such as retail and, in recent years, fintech also frequently engage in JVs. Generally, JV structures in Switzerland are chosen in situations where the parties rely on each other's specific (market) knowledge, skills and/or assets to pursue a mid- to long-term business collaboration.

2. JV Structure and Strategy

2.1 Typical JV Structures

Swiss law does not provide for a specific legal definition or set of laws governing JVs, but the concept is legally well recognised, and the general rules for contracts and companies set forth in the Swiss Code of Obligations (CO) apply. This liberal framework allows partners to structure their undertaking according to their needs.

JVs are generally established in two main forms: corporate JVs or contractual JVs.

Corporate JV

In a corporate JV, the parties operate through a separate legal entity, which is typically structured as a Swiss corporation (*Aktiengesellschaft* n (AG) or *sociétés anonymes* (SA)) or, less commonly, as a Swiss limited liability company (*Gesellschaft mit beschränkter Haftung* (GmbH)/*Société à responsabilité limitée* (Sàrl)).

A corporate JV has the following advantages.

- **Separate legal entity:** A corporate JV becomes a separate legal entity under Swiss law. This status enhances the JV's stability and facilitates smoother interactions with third parties. External parties often prefer dealing with a familiar legal structure, which is particularly advantageous for cross-border JVs or when seeking direct financing from banks and lenders.
- **Limited liability:** Each JV party's liability is limited to the amount of capital it has subscribed to the JV company. Swiss courts rarely pierce the corporate veil; liability protection is robust. However, third parties may require JV parties to guarantee the JV company's obligations, particularly in early-stage undertakings. Furthermore, the insolvency of a JV company may still affect the reputation of the JV parties.
- **Enhanced flexibility for change of JV parties/exit:** In a JV company, the transfer of shares to a new owner is a relatively simple process, despite there being specific Swiss formalities to adhere to. The JV company's corporate governance may be set up to allow for a smooth and rapid change of JV parties (including adding additional partners), and also with a view to a full or partial exit.

The disadvantages are as follows.

- **Higher administrative costs:** Establishment costs (drafting of agreements, notarisation and registration) are usually comparable with those of a contractual JV, but operating a corporate JV often involves higher (recurring) administrative costs. This is mainly because of ongoing corporate-related costs, such as those associated with

maintaining a board of directors, annual shareholders' meetings, book-keeping and (if necessary or desired) auditors.

- **Formalities to adjust JV structure:** A JV company must at all times comply with Swiss corporate law's specific minimum legal requirements regarding share capital, organisational structure and governing bodies. Changes to these aspects usually require a formal procedure and may include the amendment of the articles of association and the registration of such changes with the Commercial Register. If the JV entity is eventually to be terminated (not just sold), it must undergo a formal liquidation process.
- **Taxation:** The JV company will be treated as an independent taxable entity, which may have tax implications and may result in additional tax complexities (double taxation). It is subject to corporate income tax and capital tax applicable at its domicile, whereas tax rates vary between municipalities.

Contractual JV

A contractual JV relies on a contractual arrangement between the participating parties, accompanied by a series of ancillary agreements on an as-needed basis. It generally qualifies as a simple partnership (*einfache Gesellschaft/société simpl e*) under Swiss law. Unlike a corporate JV, this is not a distinct legal entity; instead, the JV parties operate collectively as a group directly in the market.

Note that JVs formed as general partnerships (*Kollektivgesellschaft/Société en nom collectif*) are not common in Switzerland. This is mainly because Swiss law prevents legal entities from becoming general partners.

A contractual JV has the following advantages.

- **Simplicity and reduced administrative costs:** Establishing a contractual JV is generally less complex and involves fewer administrative procedures than establishing a separate legal entity. This simplicity can result in cost savings during the start-up phase.
- **Flexibility in structure:** Contractual JVs offer greater flexibility in structuring the partnership. The terms and conditions can be tailored to the specific

needs of the parties involved, allowing for more customised arrangements.

- **Easy termination:** Termination of a contractual JV is often less complicated and more straightforward than the formal liquidation process required for corporate JVs.
- **Confidentiality and control:** Since no separate entity is created, each party may have more control over its proprietary information and intellectual property (IP), making it easier to maintain confidentiality.
- **Shared resources and expertise:** The contractual JV allows the parties to pool their resources and expertise for a specific project or venture while maintaining their autonomy outside of the collaboration.
- **Limited long-term commitment:** Contractual JVs are well suited for projects with limited timeframes or specific objectives, as they allow the parties to work together for a defined period without committing to a long-term relationship.
- **Faster start-up:** Because of its simpler nature, a contractual JV can be established more quickly, allowing the parties to begin their joint activities without significant delay.

The disadvantages are as follows.

- **Lack of a separate legal entity:** A contractual JV does not create a separate legal entity, but usually a simple partnership. This may negatively impact market perception and, in particular, complicate the raising of funds from outside sources, such as banks or investors, because there is no separate legal entity with a track record to present to potential financiers.
- **Limited liability protection:** Unlike a corporate JV, where liability is typically limited to the amount of share capital invested, a contractual JV may not provide the same level of liability protection. In principle, each party remains directly liable for JV debts and may even become jointly liable for debts incurred by the other party on behalf of the JV.
- **Potentially complex governance:** Contractual JVs rely solely on the terms of the agreement between the parties. Without a formal corporate structure, decision-making processes and governance may

be less clear, with a higher risk of disputes or inefficiencies.

- **Reduced long-term stability:** Contractual JVs are typically appropriate for short-term or project-specific collaborations. If the parties intend to enter into a long-term partnership, a corporate JV may provide more stability and permanence.
- **Potential exit challenges:** Even though terminating a contractual JV may in principle be more straightforward, ending the collaboration and resolving any remaining obligations between the parties may be cumbersome (in particular because the items that a partner has contributed to the simple partnership do not automatically revert to the respective partner in an exit; see 8.1 **Ownership and Use of IP**). The exit scenario should therefore be carefully considered and reflected in the JV's contractual framework.
- **Limited transferability of interests:** The transfer of ownership interests or shares is often more complicated than in a corporate JV, where the transfer of shares is often more streamlined.

2.2 Strategic Drivers for JV Structuring

The choice of JV structure depends primarily on the specific requirements of the parties involved. For projects of limited duration and scope, a contractual JV is often preferred due to its ease of establishment and adaptability. On the other hand, for long-term collaborations, in situations where the JV needs to interact directly with external parties or where limited liability is an important consideration, the more formal structure of a corporate JV is typically preferred.

When deciding on the appropriate form of a JV in Switzerland, it is essential to thoroughly evaluate the following aspects:

- **formation and termination** – careful consideration should be given to the procedures for establishing and terminating the JV;
- **liability of the JV partners** – the extent of liability of the JV partner(s) should be clearly understood and assessed;
- **corporate governance structure** – the division of power amongst the JV partners is a key element;
- **confidentiality** – the issue of confidentiality of the JV partners' information and operations requires careful attention;
- **tax implications** – the tax aspects of the JV, including its structure and operations, must be considered, particularly for cross-border JVs; and
- **flexibility** – the degree of flexibility offered by the chosen form of JV should be evaluated to ensure that it is consistent with the project's objectives and potential future developments.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies Competition Commission

Based on the nature of the JV and its potential impact on competition, the Swiss Competition Commission may have a role in reviewing and approving the JV from an antitrust perspective.

Swiss Financial Market Supervisory Authority ("FINMA")

If the JV engages in financial activities such as banking, insurance or securities trading, it may fall under the regulatory oversight of FINMA. FINMA supervises and regulates financial markets and institutions in Switzerland.

Commercial Register Office

The Commercial Register is maintained by the cantonal authorities. A corporate JV must be registered with the competent Commercial Register; otherwise, it may qualify as a contractual JV. The Commercial Register office ensures transparency and (to some extent) compliance with legal requirements. Most of the information to be shared with the Commercial Register for registration purposes will be publicly available.

Main Statutory Provisions Code of Obligations

Various provisions of the CO are relevant when establishing JVs. Key provisions include:

- simple partnership (Articles 530–551);
- corporation (Articles 620–763); and
- limited liability company (Articles 772–827).

Federal Act on Cartels

Key provisions include:

- unlawful agreements affecting competition (Article 5);
- unlawful practices by dominant undertakings and undertakings with relative market power (Article 7); and
- notification thresholds regarding merger control (Article 9).

Financial market regulations

To the extent applicable, key aspects of the financial market are governed by the Swiss Financial Market Infrastructure Act (“FinMIA”) and the Swiss Financial Market Infrastructure Ordinance (“FinMIO”).

3.2 Anti-Money Laundering Compliance

There are no specific rules addressing anti-money laundering (AML) in a JV context. Nevertheless, the obligations in the Swiss Anti-Money Laundering Act (“AML Act”) apply to a JV if it qualifies as a financial intermediary or dealer who hold assets on behalf of others, or who assists in the investment or transfer of assets.

Individuals, including legal entities, who hold assets belonging to others or provide assistance in the management or transfer of such assets fall under the category of “financial intermediaries”, as defined by the AML Act. This includes activities such as credit transactions and electronic transfers. Compliance includes fulfilling due diligence requirements, such as identifying beneficial owners, and belonging to a self-regulatory organisation or being directly supervised by FINMA. The scope of financial intermediaries extends beyond banks and securities dealers to include those providing payment services or managing payment instruments.

3.3 Sanctions, National Security and Foreign Investment Controls

Sanction Laws

Switzerland has a sanction regime in place based on the Federal Act on the Implementation of Sanctions (known as the “Embargo Act”). The State Secretariat for Economic Affairs maintains a publicly available list of sanctioned individuals and entities.

Lex Koller

Lex Koller (officially known as the “Federal Act on the Acquisition of Real Estate by Persons Abroad”) is a Swiss law that regulates the acquisition of real estate properties by foreign individuals and legal entities (companies) in Switzerland. It was enacted to control and limit the extent to which non-resident foreigners can purchase Swiss real estate. The law’s primary aim is to prevent speculative buying and to ensure that Swiss citizens have fair access to their country’s property market.

The law imposes restrictions on the acquisition of certain real estate by foreigners. In general, non-resident individuals and legal entities are subject to limitations/approval requirements when purchasing properties such as residential real estate and vacation homes. Different cantons (Swiss administrative regions) may have varying rules and regulations related to the implementation of Lex Koller. Therefore, if a JV contains real estate assets, a specific review on potential Lex Koller implications should be conducted early in the process. If the real estate is necessary for the JV’s business conduct, a government ruling may be obtained to waive the applicability of this legislation.

Foreign Direct Investment

Foreign direct investment (FDI) makes a significant contribution to Switzerland’s economy; therefore, Switzerland has been very open towards FDI and has not yet introduced a general structured framework for the systematic assessment of FDI. Currently, FDI control only applies to certain industries and sectors, particularly banking/securities and real estate, where prior government approval is required. A number of additional business activities require a licence from the authorities, including in the following fields: aviation, telecommunications, nuclear energy and radio/television. However, in recent years, Switzerland’s open policy has been questioned, and there are political initiatives to implement a more restrictive policy in the future. Government procedures to implement the Swiss Federal Act on the Control of Foreign Investments (the “Investment Control Act”; ICA) started back in 2018, with consultation on the first draft of the new law ending in September 2022. The consultation bill was rejected by most participants, and the Federal Council decided to undertake substantial revisions

to this first draft, which shall be less cumbersome to businesses than the first proposal. The amended proposal was published in December of 2023 and focuses on the investments that are most critical to national security by investors that are directly or indirectly controlled by foreign states. The bill is now being discussed in parliament and is not expected to enter into force before 2026. However, once implemented, the Swiss ICA regulations (in their proposed form) are expected to become part of the typical due diligence process when implementing a Swiss JV. This will become relevant for sectors like defence equipment, electricity transmission and production, water supply, health, telecoms and transport infrastructure.

3.4 Competition Law and Antitrust

Again, from a competition law perspective, one has to distinguish between the main types of JVs, each of which is subject to different competition rules.

Corporate JV

These JVs operate as autonomous economic entities in the long term, performing all necessary functions independently. If the JV is a newly created entity, it often involves a transfer of business activities from at least one of the controlling companies to be subject to merger control. Notification to the Swiss competition authorities is required prior to implementation if both of the following thresholds are met (see Article 9 of the Swiss Federal Act on Cartels):

- the combined worldwide turnover of the undertakings concerned is at least CHF2 billion or the turnover in Switzerland is at least CHF500 million; and
- at least two of the undertakings concerned each have a reported turnover in Switzerland of at least CHF100 million.

Contractual JV

These JVs do not meet the criteria for full-function JVs and are assessed under the rules applicable to horizontal agreements. Transactions involving co-operative JVs may be notified prior to their implementation, pursuant to Article 49a of the Federal Act on Cartels.

3.5 Listed Companies and Market Disclosure Rules

The parties involved in a JV that is listed on a stock exchange must adhere to the relevant listing rules. In Switzerland, for instance, the SIX Swiss Stock Exchange mandates issuers to disclose relevant price-sensitive information (ad hoc publicity), along with other reporting requirements (in particular, financial reporting and regular reporting obligations). Depending on the circumstances, entering into a JV can trigger an ad hoc notification.

Furthermore, specific regulations may govern directors' remuneration. These include prohibitions on certain types of remuneration (eg, "golden parachutes") and the requirement for shareholders to vote on remuneration (say-on-pay).

See 3.6 Transparency and Ownership Disclosure for information on disclosure obligations under Swiss law.

3.6 Transparency and Ownership Disclosure Non-Listed Companies

A Swiss corporation (AG/SA) shall keep an up-to-date share register with information on its shareholders (direct beneficial owners) who have requested registration (note that such registration is not mandatory, but it is necessary for shareholders to effect voting rights at shareholder meetings). This share register is not publicly available.

This is also true for Swiss limited liability entities (GmbH/Sàrl). As a key difference, the quota holders (direct beneficial owners) must also be registered with the Commercial Register, thereby becoming public.

Furthermore, any person who, alone or by agreement with third parties, acquires shares in a Swiss company (corporation or limited liability entity) whose participation rights are not listed on a stock exchange – and thus reaches or exceeds the threshold of 25% of the share capital or right to vote – must within one month give notice to the company of the first name, surname and address of the natural person for whom it is ultimately acting (the ultimate beneficial owner; UBO). Based on such information, the board is obliged to keep a register of UBOs of the company. The register is not made public.

In May 2024, as part of the proposed new AML measures, the federal government proposed a new federal transparency register, in which companies need to enter information regarding their UBO. The register will not be publicly available. The bill is now being presented to parliament and is not expected to enter into force until 2026 at the earliest.

Listed Companies

If the JV company or a Swiss JV party is listed on a stock exchange, its shareholders must disclose a relevant participation as soon as such exceeds the 3% threshold (with further thresholds at 5%, 10%, 15%, 20%, 25%, 33.3%, 50% and 66.6%). This disclosure notification shall include the UBO and, if different, the direct shareholder. The information on significant shareholders is publicly available (for SIX Swiss Exchange listed entities, see the SIX Exchange Regulation's [website](#)).

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

The reformed Swiss company law came into force on 1 January 2023. The main changes are greater flexibility in share capital and capital distributions, strengthening of shareholders' rights to improve corporate governance and the digitalisation of shareholders' meetings. From a corporate JV perspective, the following changes allow for greater structuring flexibility and facilitate the handling thereof:

- the allowance of interim dividend payments;
- share capital in certain foreign currency is permissible (USD, GBP, EUR and JPY) – note that accounting and financial reporting must then be done in the same currency as the share capital;
- the implementation of the capital band concept, which allows greater flexibility for capital increases and decreases within a predefined range during a maximum period of five years; and
- shareholders' meetings may now be held:
 - (a) in one or more different meeting venues;
 - (b) by electronic means without a physical meeting venue ("virtual shareholder meeting");
 - (c) in a physical and virtual venue ("hybrid share-

- holder meeting");
- (d) in a meeting venue abroad; and
- (e) in written circular form (on paper or in electronic form).

With effect from 1 January 2025, amendments to the Swiss CO and the Commercial Register Ordinance ("HRegV") came into force, introducing changes to Swiss corporate law. In addition to amending certain bankruptcy and criminal law provisions, the legislator has taken up case law of the Swiss Federal Supreme Court on shell companies, rendering null and void any transfer of shares and quotas if the company is inactive and overindebted, and limiting the possibility of "opting out" (ie, waiving the requirement for a limited audit) only to future years.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

Negotiating JV agreements can be a rather time-consuming and complex process, depending on the complexity of the envisaged structure. As a result, parties often outline key commercial terms in a term sheet or letter of intent. Those may include general directives on the parties' envisaged structuring of a JV, including corporate governance principles.

While these terms are often non-binding with respect to the specifics of the JV, others are binding to govern the negotiation and diligence process. Examples of such binding rules include exclusivity, confidentiality obligations, cost sharing, the choice of applicable law and jurisdiction or a commitment to resolve disputes through arbitration.

5.2 Disclosure Obligations

If no listed entities are involved, there is in principle no legal obligation to disclose a JV. Nevertheless, parties often decide to provide such market information on a voluntary basis, mainly for marketing purposes (eg, by way of a press release previously aligned amongst parties).

If either of the JV parties or the JV itself is listed, the relevant listing rules apply. Under Swiss law, it is often

permissible for a listed entity to inform the market upon signing/closing – ie, after the term sheet/letter of intent stage. This would need to be assessed on a case-by-case basis.

Obtaining necessary authority approval (eg, related to merger control) is usually necessary prior to establishing the JV.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Conditions Precedent

Under Swiss law, JV agreements typically provide for a number of conditions precedent (CPs) that must be fulfilled (or waived) prior to closing. These CPs are generally tailored to the specific transaction but commonly include:

- corporate approvals – internal approvals by the boards or shareholders of the JV partners;
- regulatory clearances – particularly competition law approvals (eg, from the Swiss Competition Commission) or, if applicable, sector-specific licences (eg, in banking, insurance or telecoms).
- third-party consents – such as change of control consents under material contracts, lease agreements or financing arrangements;
- contribution-related formalities – completion of any asset or share transfers to the JV vehicle, including notarisation or registration where required; and
- capital contributions – payment or transfer of initial capital (in cash or in kind) by the JV partners.

The satisfaction of these CPs can have a material impact on the timeline and feasibility of closing. Parties typically agree on a “long stop date” by which all CPs must be fulfilled.

Material Adverse Change

Material adverse change (MAC) clauses are quite sector-specific and less commonly used in JVs under Swiss law, as the legal framework allows significant contractual freedom in structuring the JV and allocating risks. However, as a direct consequence of COVID-19, MAC clauses have become more frequent and more heavily negotiated in Swiss JV agreements.

Force Majeure

Swiss law itself does not have a statutory definition of force majeure, but the concept is well recognised in Swiss case law as extraordinary, external events beyond the parties’ control that prevent or delay contractual performance and cannot be prevented by due care. Examples include natural disasters, war, civil unrest and other unforeseeable events.

Under Swiss contract law, parties have broad freedom to define what constitutes force majeure in their contract and to specify the consequences of such events, including the suspension or termination of obligations. Because of this contractual freedom, force majeure clauses are often tailored and explicitly included in JV agreements to allocate risks related to extraordinary events that could impact the venture’s operations or performance.

Common features in Swiss force majeure clauses include detailed definitions of events qualifying as force majeure, notification obligations and potential remedies like suspension of obligations or termination rights if the force majeure event continues for a specified period.

In practice, including a force majeure clause in Swiss JV agreements is prudent due to the potential operational risks the JV might face from unforeseeable external events. The clauses provide a clear framework for risk allocation and performance relief in case such events occur.

5.4 Legal Formation and Capital Requirements

In Switzerland, JVs are most commonly structured as contractual JVs in the form of a simple partnership. This flexible and unregulated structure is widely used – especially in construction projects and temporary collaborations (commonly referred to as “ARGE” (*Arbeitsgemeinschaft*) in practice) – as it allows the parties to define their relationship contractually without the need for incorporation or capital requirements.

Alternatively, parties may choose an incorporated JV, typically using a stock corporation (AG/SA) or, less frequently, a limited liability company (GmbH/Sàrl),

depending on the intended governance structure, liability regime and commercial purpose.

Concerning capital requirements, (i) a simple partnership does not require registration, a minimum capital contribution or a specific form, but it also lacks legal personality and subjects the partners to joint and several liability; (ii) a GmbH requires a minimum share capital of CHF20,000, fully paid in; and (iii) an AG requires a minimum share capital of CHF100,000, with at least CHF50,000 paid in at incorporation.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The documentation of a JV under Swiss law depends on the legal form chosen for the JV vehicle.

Contractual JVs

In the case of a contractual JV (eg, a simple partnership), the terms of the co-operation are typically set out in a JV agreement. This agreement governs the parties' rights and obligations, profit and loss allocation, governance, contributions, confidentiality, non-compete clauses, dispute resolution and termination. Since no separate legal entity is formed, the JV agreement is the central and binding document.

Corporate JVs

Where a corporate JV is established (eg, as a Swiss stock corporation (AG/SA) or limited liability company (GmbH/Sàrl)), the relationship is documented in multiple layers:

- Articles of association (*Statuten/statutes*) – these are public and govern the fundamental corporate structure, including share capital, share classes, shareholder rights, general meeting procedures and board composition.
- Shareholders' agreement/JV agreement – this is a private agreement between the JV parties that regulates their relationship beyond what is covered in the articles, and it typically contains detailed provisions on:
 - (a) governance and control – board composition, quorum and voting rights, reserved matters and appointment rights;

- (b) capital contributions and future funding obligations;
- (c) profit distribution – dividend policy and preference rights (if any);
- (d) transfer restrictions – lock-up periods, rights of first refusal, tag-along and drag-along rights;
- (e) exit provisions – call/put options, IPOs or buy-out mechanisms;
- (f) deadlock resolution mechanisms;
- (g) non-compete, confidentiality and IP arrangements; and
- (h) dispute resolution and governing law.
- Organisational regulations/board rules – optional internal documents that define the delegation of duties within the company and clarify the responsibilities between the board and management.

In all forms, the documentation must be carefully aligned with the chosen legal structure to ensure enforceability and consistency with mandatory Swiss corporate law.

6.2 Governance and Decision-Making

Generally, the main objective when setting up the decision-making aspects of a JV entity is to duly reflect and balance the partners' interests, level of participation and even the know-how they bring to the JV. This is usually done by way of specific regulations at the level of both the shareholders' meeting and the board of directors. The potential for a deadlock situation and routes to avoid/handle such events shall be considered.

Shareholders' Meeting

Since JV companies typically have a small number of shareholders, their meetings are commonly referred to as universal meetings – ie, all shareholders are present/represented. The unique feature of universal meetings is that shareholders can deliberate and make decisions on any agenda item without needing to fulfil the formal convening requirements that are typical of larger corporate meetings, such as an invitation period of 20 days.

Generally, the shareholder's meeting passes resolutions with the majority of voting rights represented at the meeting, unless a higher quorum is provided for in the articles of association. By law, certain important

matters require a majority vote with two-thirds of the present voting rights and the majority of the present nominal value of shares. Those important matters include:

- an amendment of the corporation's purpose;
- the consolidation of shares, unless the consent of all the shareholders concerned is required;
- a capital increase subscribed from own capital, by contribution in kind or by setting-off claims, and the granting of special privileges;
- the creation of conditional contingent share capital, reserve capital or a capital band (authorised capital);
- the conversion of participation certificates into shares;
- any restriction on the transferability of shares;
- limitations on or cancellation of subscription rights;
- the introduction of preferential voting shares;
- a change of currency of share capital;
- the introduction of a casting vote for the chairperson at the shareholders' meeting;
- provision of the articles of association on holding the general meeting abroad;
- the delisting of the equity securities of the corporation;
- merger, demerger, transformation or dissolution;
- the relocation of the registered seat;
- the introduction of an arbitration clause in the articles of association; and
- dispensing with the designation of an independent voting representative for conducting a virtual general meeting in the case of companies whose shares are not listed on a stock exchange.

In the interest of safeguarding the JV parties, the JV agreement may also incorporate provisions that ensure shareholders' meetings are appropriately constituted only when all shareholders (ie, JV parties) are present. In addition, specific decisions deemed to be of critical importance (eg, dividend, liquidation, merger or changes to the capital structure) might require an elevated quorum, as stipulated in the agreement. The introduction of preferred voting shares is another option, but this is less common in Switzerland; generally, each share has one vote.

Board of Directors

Besides the shareholders' meeting, the governance at board level is of importance. To strike the envisaged balance between the JV parties, the number of board representatives (each having one vote), the designation of the chairperson (potentially accompanied by a casting vote) and the quorum requirements for board resolutions are key factors. Often, certain important matters require an enhanced quorum or even unanimous resolutions.

Furthermore, JV companies encounter distinct governance challenges compared to public companies. While public companies may prioritise the prevention of self-dealing, the primary objective of a JV is to strike a balance between the goals of the JV itself and the individual objectives of its partners. This equilibrium may pose difficulties, especially when the JV's founders have representatives on the board of directors who advocate for the founders' interests. To address this, the implementation of independent committees and codes of conduct could help align and equalise the interests involved. Moreover, specialised committees can prove beneficial, particularly for JVs operating in the technology or manufacturing sectors, enabling them to focus on technical matters and efficiently resolve disputes pertaining to such issues.

6.3 Funding Corporate JV

Once the corporate JV meets the minimum capital requirements and has sufficient assets to cover its share capital and statutory reserves, the JV parties have the flexibility to finance the venture with debt. Decisions to strike the right balance between equity and debt financing, as well as the determination of interest rates, are often influenced by tax considerations.

In scenarios where a thriving JV company evolves into a corporate group, it gains the ability to internally self-finance through strategic cash management. Such cash management involves the efficient utilisation and optimisation of funds owned by the group. Within the corporate group, specific companies may enjoy significant profitability and possess cash surpluses, while others may encounter liquidity challenges. Through cash pooling mechanisms, surplus funds from cer-

tain group companies can be transferred to aid those within the group facing liquidity issues. This facilitates a co-ordinated approach to managing the financial resources of the group and supports companies with varying liquidity needs.

A JV company has various financing options available, with traditional bank borrowings being a popular choice, but also considering capital market instruments, venture capital and project finance. In certain cases, provisions in the articles of association (for limited liability companies) or the shareholders' agreement may require equity partners to offer additional funding or provide guaranteed bank loans. While these guarantees enhance capital access, they also increase personal financial exposure and diminish the protection provided by the corporate veil. In comparison, corporate JVs typically enjoy more favourable standing when seeking bank loans compared to contractual JVs. Regarding taxation, JV companies in Switzerland are subject to the same tax regulations as other local companies.

Besides a share capital increase by cash contribution, shares may be issued in exchange for contributions in kind to the JV's share capital. These contributions can be in the form of transferable assets that can be capitalised on the balance sheet of the JV company, such as certain IP rights, assets or shares. Alternatively, the share capital may be paid by offsetting claims against the JV company. It is important to note that obligations of third parties to provide services to the JV company are usually not considered as transferable assets. It is crucial to exercise caution and conduct a thorough review of contributions in kind, particularly those involving cross-border transactions, to understand and address the potential tax implications.

Contractual JV

The financing of a contractual JV is usually conducted directly from financial resources provided by the JV partners. External debt funding directly to the JV is often not available.

6.4 Deadlocks

JV agreements typically encompass a range of dispute-resolution mechanisms, with mediation and arbitration being the primary methods, and with state

court proceedings being resorted to on exceptional occasions. In addition, to proactively address potential deadlock scenarios, the agreement often outlines an internal escalation scheme or the involvement of a mediator as an initial step.

If a deadlock scenario cannot be resolved, it is usually helpful to predefine the route to proceed, which may include:

- alternating decision-making rights for specific matters, such as appointing a chairperson with a casting vote;
- appointing independent directors;
- implementing reciprocal share call or put options;
- using buy-sell structures like Russian roulette or Texas shoot-out clauses; and
- implementing the right to request the dissolution of the JV company.

The more intricate buy-sell devices may introduce an element of chance when taking relevant business decisions. The same may apply in cases where reciprocal share call or put options at pre-agreed price formulas are introduced. A right to request dissolution can serve as the last resort where a JV becomes de facto unable to manoeuvre over a longer period of time.

6.5 Other Documentation

Asset transfers, leases, loans or licences for IP can be made through additional agreements established by the partners. These specific arrangements are further detailed and outlined in the JV agreement (and usually form an annex thereto). They may include agreements on:

- asset purchase or transfer, IP rights, contracts or business;
- the supply of goods and services;
- the licensing of IP;
- employee secondment; and
- marketing and distribution agreements.

To ensure a comprehensive approach, the JV parties should carefully consider incorporating provisions in both the JV agreement and the ancillary agreements, outlining the impact that terminating an ancillary

agreement would have on the JV agreement and vice versa.

6.6 Rights and Obligations of JV Partners

The rights and obligations of JV parties in Switzerland largely depend on the legal form of the JV – contractual JV (eg, simple partnership) versus corporate JV (eg, a Swiss stock corporation or limited liability company).

Contractual JVs

In a contractual JV, the parties enjoy broad contractual freedom to define the terms of their co-operation. This includes:

- profit and loss allocation – the parties may freely agree on how profits and losses are shared and, in the absence of a specific agreement, Swiss law provides for equal sharing;
- access to information – each party generally has the right to access the books and records of the JV;
- non-compete obligations – these can be contractually agreed to restrict parties from engaging in competing activities during the JV term; and
- liability – the parties are jointly and severally liable for the debts and obligations of the JV vis-à-vis third parties.

Corporate JVs

In a corporate JV, the rights and obligations of the parties are governed by the statutory rules applicable to the chosen corporate form – typically a Swiss corporation (AG/SA) or, less frequently, a limited liability company (GmbH/Sàrl). Key aspects include:

- profit sharing – profits are distributed as dividends based on shareholding. Unless preferred shares are issued with different economic rights, dividends must be paid out equally in proportion to the nominal value of the shares held;
- loss allocation – losses are generally not allocated directly to shareholders but reduce the company's equity, and shareholders are not personally liable beyond their capital contributions;
- access to information – shareholders have access rights as provided by law, which may be extended through the shareholders' agreement;

- non-compete clauses – restrictions on competition by shareholders or directors must be expressly agreed in the shareholders' agreement or employment/mandate contracts; and
- liability – shareholders are generally not liable for the debts of the JV company, although directors may incur personal liability in case of breaches of fiduciary duties or violations of statutory obligations.

6.7 Minority Protection and Control Rights

In Swiss JVs, minority protection is typically achieved through contractual arrangements, most commonly in a shareholders' agreement or JV agreement. While Swiss corporate law provides certain statutory rights to minority shareholders, effective protection in the context of a JV – especially an international one – requires tailored contractual provisions.

Statutory Rights

Under Swiss law, shareholders holding at least 10% of the share capital or votes have the right to request the convening of a shareholders' meeting and a special audit under certain conditions. Only 5% shareholding is needed to request items to be placed on the agenda.

These rights provide a minimum level of oversight but are generally insufficient to ensure meaningful influence in a JV context.

Contractual Protections

To ensure greater control and transparency, minority shareholders often negotiate the following rights:

- board representation – a contractual right to appoint at least one member to the board of directors provides direct access to the JV's strategic decisions and internal information;
- reserved matters/veto rights – the shareholders' agreement may require the consent of the minority shareholder for certain key decisions (eg, changes to the business plan, capital increases, M&A transactions);
- quorum requirements – specific quorum thresholds for shareholders' or board meetings may be set to require the presence or affirmative vote of the minority shareholder;

- tag-along rights – these allow the minority shareholder to sell its stake on the same terms if the majority sells its shares;
- drag-along rights – while typically protecting the majority, drag-along provisions can be balanced to ensure that minority shareholders participate in exit scenarios; and
- information rights – contractual rights to receive periodic reports, financial statements or other relevant information beyond statutory disclosure requirements.

These tools are especially important in international JVs, where parties may come from different legal cultures and rely heavily on the contract to define governance and protections.

6.8 Applicable Law and Dispute Resolution in International JVs

Governing Law and Jurisdiction

In international JVs involving a Swiss party or Swiss JV vehicle, the choice of substantive and procedural law is a critical element of the JV agreement. Parties are generally free to choose the governing law and dispute resolution forum. Swiss law is frequently selected due to its neutrality, predictability and business-friendly environment.

When the JV vehicle is incorporated in Switzerland, it is common for the parties to choose Swiss substantive law to ensure alignment with the applicable corporate and regulatory framework. However, in international JVs, one of the parties' home laws may also be selected as a compromise, especially when the vehicle is not incorporated in Switzerland.

Dispute Resolution Forums

Disputes arising from JV agreements are typically resolved through either:

- state courts, often in Switzerland, if the JV has strong ties to the country; or
- arbitration, which is preferred in many cross-border JVs for its confidentiality, neutrality and international enforceability.

Switzerland is a widely accepted venue for international arbitration, and many JV agreements provide

for arbitration under the Swiss Rules of International Arbitration or other institutional rules (eg, ICC, LCIA).

Consequences of Failing to Agree on Procedural Law

If the parties fail to agree on a governing law or dispute resolution forum, the applicable law will be determined by conflict of law rules (eg, the Swiss Federal Act on Private International Law). This can lead to uncertainty and increase the complexity and cost of dispute resolution. Similarly, in the absence of a clear forum, jurisdictional disputes may arise, delaying enforcement and litigation.

Mandatory ADR Procedures

Swiss law does not impose mandatory alternative dispute resolution (ADR) mechanisms for commercial disputes. However, ADR clauses – such as mediation or escalation procedures – can be freely agreed upon by the parties in the JV agreement.

International Treaties and Enforcement

Switzerland is a signatory to several important international treaties governing dispute resolution.

Enforcement in Switzerland

Foreign judgments are enforceable in Switzerland if issued by a competent court and subject to reciprocity, public policy and procedural fairness standards. Foreign arbitral awards are readily enforceable under the New York Convention, and Swiss courts are known for their arbitration-friendly stance and limited grounds for refusing enforcement.

7. The JV Board

7.1 Board Structure

In a Swiss corporate JV, the board of directors is typically structured to reflect the relative ownership or strategic interests of the JV participants. The shareholders' agreement or the investment agreement between the shareholders, which acts as the JV agreement, commonly includes provisions on the appointment and removal of directors, including the designation of the chairperson and vice-chairperson, quorum requirements and whether the chairperson holds a casting vote in the event of a tie. These provi-

sions may also be reflected in the articles of association and internal business regulations.

Under Swiss law, only natural persons may serve as members of the board of directors; legal entities cannot be appointed as directors but may be represented by individuals. Each JV party generally appoints its own representatives to the board, and the inclusion of one or more independent directors may also be agreed upon to provide balance or neutrality.

Swiss corporate law requires that at least one person with sole signatory power, or two persons with joint signatory power, be resident in Switzerland. While internal regulations can limit these powers internally, third parties acting in good faith may rely on the official signature authority as recorded in the Commercial Register.

7.2 Duties and Functions of JV Boards and Directors

Under Swiss law, the board of directors is responsible for the overall management and supervision of the company. While certain duties are non-transferable and must be exercised by the board as a whole, all other powers may be delegated to individual directors, executive board members or third parties. This flexibility allows the creation of a structure similar to a two-tier governance system.

The non-transferable and inalienable duties of the board include:

- ultimate supervision of management and issuance of management directives;
- determining the company's organisational structure;
- organising the accounting system, financial controls and financial planning;
- appointing, supervising and, if necessary, dismissing individuals responsible for management and representation;
- preparing the annual financial statements and convening shareholders' meetings; and
- filing for a debt restructuring moratorium or notifying the court in case of over-indebtedness.

Board members must fulfil their duties with due care and in good faith, and are bound by the fiduciary duties of loyalty and care. This means that they must act in the best interest of the JV company. Where a conflict arises between the interests of the JV company and the JV participant that appointed the director, the director must prioritise the interests of the JV company to avoid personal liability. A breach of fiduciary duties – such as favouring the appointing party at the expense of the JV – can result in personal liability for any resulting damage.

The board may also establish subcommittees (eg, audit, remuneration, risk management or nomination committees) to prepare decisions, supervise specific business areas or execute delegated tasks. While this can enhance board efficiency, it may also lead to information asymmetries among board members, which should be carefully managed through appropriate governance processes.

There are no statutory reporting obligations of the board to the JV participants outside of those owed to the shareholders under general corporate law. However, the JV agreement may include additional information rights or reporting duties to align with the parties' expectations and governance framework.

7.3 Conflicts of Interest

Under Swiss law, directors are required to immediately disclose any actual or potential conflicts of interest to the board of directors. Upon disclosure, the board must take appropriate measures to safeguard the interests of the JV company. These measures may include requiring the conflicted director to refrain from participating in discussions and voting on the matter or, in certain cases, escalating the decision to the shareholders' meeting.

Generally, transactions between the JV company and a member of its board of directors must be concluded in writing, unless the value of the transaction does not exceed CHF1,000, and must be conducted on arm's length terms.

Board members appointed by a JV participant are typically permitted to act in the interests of that participant. However, where the interests of the appoint-

ing party conflict with the interests of the JV company, the director must prioritise the JV company's interests. Failure to do so may result in personal liability for breach of fiduciary duty.

In certain circumstances, it may be inappropriate for an individual closely tied to a JV participant to serve on the board – particularly if persistent or unresolvable conflicts of interest would prevent them from acting independently and in the best interest of the JV company.

8. IP and ESG

8.1 Ownership and Use of IP

Corporate JVs

In a corporate JV, IP may be transferred to the JV company, making it the legal owner of the relevant rights. If a contributing party wishes to continue using the IP for its own business purposes, it must typically enter into a separate licence agreement with the JV company. While an in-kind contribution of IP is possible under Swiss law, this approach may present valuation and liability challenges, particularly in the event of insolvency or a shareholder exit. An inaccurate valuation at the time of contribution could expose the contributing party, the JV company or its shareholders to potential creditor claims. To mitigate such risks, parties often prefer to license IP to the JV rather than transfer ownership.

It is important to note that termination of the shareholders' agreement does not affect the JV company's ownership of its IP. In the event of liquidation, all JV assets, including IP, will be subject to liquidation. To address this, JV agreements often include fall-back provisions granting parties usage or purchase rights for IP in such scenarios or where further development is planned.

Contractual JVs

In contractual JVs (eg, simple partnerships), contributed assets, including IP, are typically not transferred to a separate legal entity, but are held jointly by the parties. To avoid the legal and practical complexities associated with joint ownership of IP (eg, the need for mutual consent for any use, assignment or licens-

ing), IP is usually licensed to the JV under contractual arrangements, with each party retaining ownership.

In cases where a party contributes IP that is itself subject to a third-party licence, the terms of the primary licence must be reviewed to ensure that sublicensing to or use by the JV is permitted. Restrictions in upstream licence agreements can otherwise limit the JV's ability to exploit the IP.

Cross-Border IP Transfers

When transferring IP to or from foreign entities, additional considerations arise. These include compliance with local registration and formalities, potential tax implications (eg, withholding tax on royalties) and export control or data protection regulations.

Furthermore, enforcement of IP rights across jurisdictions should be taken into account when determining the governing law and dispute resolution mechanism in the JV agreement.

8.2 Licensing v Assignment of IP Rights

In contractual JVs, licensing of IP is generally preferred, while both licensing and assignment are common in corporate JV structures. Where a JV participant continues to use or further develop the IP independently, it will typically seek to retain ownership in order to preserve control and avoid complications in the event of JV termination or dissolution (see 8.1 Ownership and Use of IP).

The choice between licensing and assignment ultimately depends on the role and strategic value of the IP within the JV. If the JV's primary objective is the joint development or commercialisation of IP, an assignment to the JV may be more appropriate, particularly if a future sale or exit is anticipated. In such cases, ownership by the JV can enhance the attractiveness and valuation of the venture, whereas the absence of IP ownership may hinder a clean divestment.

Accordingly, the structure should be carefully aligned with the intended use of the IP, the commercial goals of the JV and potential exit scenarios.

8.3 ESG Considerations in JVs

Under Swiss law, public companies, banks and insurance companies that employ at least 500 people and either exceed CHF20 million in total assets or generate more than CHF40 million in annual turnover (ie, large undertakings) are required to publicly report on non-financial and sustainability matters. This reporting must address environmental concerns (particularly CO₂ targets), social and employee-related issues, human rights and anti-corruption measures. The report must include the information necessary to understand the company's development, performance and position, and the impact of its activities on these issues. Specifically, it must include/cover:

- a description of the business model;
- the company's policies and due diligence processes relating to ESG matters;
- the measures implemented and an assessment of their effectiveness;
- the principal risks associated with ESG matters, including those arising from the company's operations, business relationships, products or services; and
- key performance indicators relevant to these issues.

Since 1 January 2024, the Federal Ordinance on Mandatory Climate Disclosures for Large Companies has been in force. This ordinance mandates climate-related reporting in accordance with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), thereby aligning Swiss standards with international best practices.

For Swiss JVs, these requirements are unlikely to apply directly, as the thresholds are relatively high and typically not met by JV vehicles. However, an indirect impact is certainly possible. For example, where a JV participant holds a substantial interest in the JV, it may be required to consolidate the JV into its group reporting and request ESG-relevant data from the JV.

Moreover, Swiss JVs may also become subject to EU ESG regulations, particularly under the Corporate Sustainability Reporting Directive (CSRD), which will be phased in between 2024 and 2028. Unlike Swiss law, the CSRD applies to both listed and non-listed

large companies and sets a lower employee threshold (250 employees). A Swiss JV may fall within the scope of the CSRD if it has an EU subsidiary that meets the relevant criteria.

Notably, beginning in 2029 (for the 2028 financial year), non-EU entities will also be subject to CSRD obligations if they generate at least EUR150 million in turnover within the EU and have either an EU subsidiary meeting CSRD thresholds or an EU branch with at least EUR40 million in sales. Consequently, Swiss corporate JVs meeting these thresholds may become subject to EU reporting obligations, and these obligations may extend to their non-EU subsidiaries.

Given these developments, JV participants – particularly those with international operations – should assess whether their JV structures or activities may trigger ESG reporting obligations under Swiss or EU law. Even where formal reporting duties do not apply, it is advisable to implement appropriate ESG policies and internal data collection processes to ensure readiness for future regulatory developments and stakeholder expectations.

9. Exit Strategies and Termination

9.1 Termination of a JV

Corporate JV

Under Swiss law, corporations (AG/SA) are typically established for an indefinite duration. As such, the termination of the JV agreement does not, in principle, affect the legal existence of the JV vehicle itself. However, the articles of association may include provisions stipulating that the company will be dissolved upon termination of the JV agreement. Alternatively, the shareholders may resolve to dissolve the company at a general meeting, in accordance with the applicable corporate law requirements.

Contractual JV

Contractual JVs, such as simple partnerships (*einfache Gesellschaft/société simple*), are governed by the provisions of the CO. Where such a JV is formed for an indefinite period or linked to the lifetime of a partner, any partner may unilaterally terminate the JV by giving six months' notice. To ensure commercial

predictability, parties often agree on a fixed term with automatic renewal, unless the agreement is terminated before the end of the term. The JV agreement may also provide for specific termination events (eg, breach, insolvency) or termination for good cause.

General Termination Matters

Regardless of the JV structure, key matters to be addressed upon termination include:

- allocation or disposal of JV assets and liabilities;
- unwinding of shared contracts or licences;
- settlement of outstanding obligations;
- handling of employees and ongoing operations;
- protection and continued use of IP; and
- exit arrangements and post-termination non-compete or confidentiality obligations.

It is advisable to address these issues comprehensively in the JV agreement to avoid disputes and ensure a smooth wind-down of the JV relationship.

9.2 Asset Redistribution and Transfers

JV arrangements typically come to an end upon the completion of the underlying project or the expiry of the JV term, or based on termination provisions set out in the JV agreement. On termination, the handling of assets and liabilities becomes a central issue.

A direct transfer of assets between JV participants is generally not affected by the JV arrangement unless the asset in question is of material relevance to the JV itself. For example, IP licensed to the JV by one party and subsequently transferred to another party may require that the new owner continue to license the IP to the JV – ideally on the same terms as the original licensor.

The situation is different where assets were initially transferred to the JV and are then transferred from

the JV to one of its participants. In such cases, the parties involved in the transfer differ (ie, the JV company and a JV participant, rather than participants among themselves), and any proceeds from the transfer belong to the JV. As a result, all JV participants are indirectly affected and may share in the financial consequences. To avoid disputes, the JV agreement should ideally address the valuation of such assets, potential conflicts of interest and the implications for the JV's ongoing operations (eg, continued access or use of the asset).

When assets originating from the JV itself are transferred to a participant, the key concern is that the other JV parties will no longer benefit from any future income these assets may generate – such as dividends. Here again, accurate valuation is critical, and any tax implications for the JV company should also be taken into account. In practice, JV structures often require that the transfer of significant assets be subject to approval by all participants, or at least those holding a substantial interest.

9.3 Exit Strategy

In Switzerland, there are generally no statutory provisions specifically regulating the exit of members from a JV. Exit strategies, such as share transfer restrictions or buy-back clauses, are largely a matter of contractual freedom and can be freely negotiated and defined in the JV agreement. In practice, the most common exit scenario arises upon completion of the underlying project, particularly in contractual JVs established for a limited purpose. In corporate JVs that are not tied to a specific project, it is common to include call or put options that allow the dominant party to acquire the other party's shares upon the occurrence of certain predefined conditions, such as the achievement of financial targets or the lapse of a specific time period.



Law and Practice

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Lee and Li Attorneys-at-Law is a leading law firm in Taiwan and excels at crafting customised legal solutions for clients. It currently employs around 200 attorneys, as well as many patent attorneys, patent agents and trade mark attorneys, and over 100 professionals with backgrounds in technology and other fields. Specialisations include banking and finance, capital markets, corporate matters and investment, litigation and dispute resolution, patents and tech-

nology, trade marks and copyrights. The firm has represented both the government and industries, facilitating government-industry co-operation. It has helped local businesses to grow internationally while assisting with foreign investors' direct investment into Taiwan. The team regularly advises government agencies, and has contributed to the development of landmark economic and social policies and legislative initiatives.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

In the past year, Taiwan has seen a notable increase in outbound JV activity, particularly in the semiconductor sector. This trend reflects a strategic response to global geopolitical uncertainties, supply chain restructuring and the push for technological collaboration. Taiwanese companies have launched high-profile JVs in Singapore, France, Japan and South Korea, among other countries, focusing on advanced manufacturing, packaging technologies and materials innovation. These initiatives align with Taiwan's "In Taiwan, Out to the World" policy and demonstrate a shift from being a manufacturing hub to a global strategic partner.

Meanwhile, in the retail sector, Japanese investors have recalibrated their JV positions in Taiwan, driven by geopolitical risk assessments and shareholder pressure. Transactions such as Itochu's divestment from Taipei 101 and Isetan Mitsukoshi's exit from Shin Kong Mitsukoshi Department Store were executed smoothly, supported by well-structured JV frameworks. Looking ahead to 2026, Taiwan's JV landscape is expected to continue evolving towards cross-border industrial integration, localised production and flexible deal structures that support long-term resilience and market expansion.

1.2 Industry Trends and Emerging Technologies

Certain sectors in Taiwan have been notably more active in JV formation, particularly semiconductors, renewable energy and AI. The semiconductor industry continues to lead outbound JV activity, driven by

supply chain diversification and international collaboration.

Additionally, Taiwan's renewable energy sector saw a major development with the formation of Taiwan Intelligent Energy Co (TIEC) – a government-facilitated JV with participation from both government-owned and private entities designed to address structural challenges in green energy procurement and support broader access to renewable power. This reflects how policy and carbon regulation are directly shaping JV structures to meet evolving market needs.

In parallel, emerging technologies – especially AI – are influencing JV activity through regulatory and funding frameworks. Taiwan's updated AI Startup Investment Enhancement Guidelines have created new incentives for public-private JV vehicles, particularly those aligned with national digital economy goals.

These policies not only encourage co-investment but also impose clear requirements around data governance, IP protection and transparency. As a result, JV vehicles in Taiwan are increasingly structured to accommodate regulatory compliance in said areas regarding new technology.

2. JV Structure and Strategy

2.1 Typical JV Structures

JVs can be formed as traditional companies (either a company limited by shares or a limited company – JVC). JVCs in the form of a closed-end company allow for restrictions on the transfer of shares. The

LLP structure is not available under Taiwan's regulatory regime. The partnership structure is only available to individual partners – ie, not to entity/corporate partners. The LP structure is typically used for venture capital and is not a preferred option among institutional investors in the context of JV activities.

The traditional JVC has long been the most popular option for JVs in Taiwan. Nevertheless, establishing a closed-end JVC is also widely considered as it provides flexibility, allowing corporate governance arrangements in shareholders' voting rights, in-kind contributions and simplified shareholder meeting procedures.

2.2 Strategic Drivers for JV Structuring

In Taiwan, JV parties typically consider corporate governance issues as the key factor, among other factors such as controllership, voting rights, restrictions on share transfers and repatriation, when determining the JV structure.

For tax-related considerations and incentives, the Statute for Industrial Innovation (SII) provides incentives, applicable from 1 January 2025 to 31 December 2029, including the following tax benefits among others.

- Investment tax credits: Up to 5% of expenditure in areas like smart machinery, 5G, cybersecurity, AI, energy conservation and carbon reduction can be credited against current-year corporate income tax (CIT). Alternatively, 3% of expenditure can be credited over a three-year period. The total credit is capped at 30% of the current year's CIT plus profit retention tax.
- R&D tax credits: Up to 15% of qualified R&D expenses, capped at 30% of tax payable. Small and medium-sized enterprises (SMEs) can choose between – (i) 15% credit for the current year only, and (ii) 10% credit carried forward for two years pursuant to the Act for Development of Small and Medium Enterprises.

Additionally, Taiwan has extended tax incentives for start-ups from two to five years and lowered capital thresholds for venture capital participation, and it now allows angel investor benefits for investments starting

from TWD500,000. Companies operating in science parks, export processing zones and free-trade zones may qualify for additional tax benefits.

The Ministry of Culture (MOC) has also implemented tax benefits and incentive policies specifically to promote cultural and creative industries. These are designed to attract foreign investment and JV activities in Taiwan's cultural sector.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

The Ministry of Economic Affairs (MOEA) is the primary regulator, and the Company Act is the main statutory law, for JV companies in Taiwan. If there are foreign investments involved in JV activities, a foreign investor should obtain inbound foreign investment approval (FIA) from the Department of Investment Review of the MOEA (DIR) before making the investment.

3.2 Anti-Money Laundering Compliance

The primary AML-related law is the Money Laundering Control Act, and the main regulator is the Department of Justice. If the JV activities occur in the financial sector or other sectors specified in the Money Laundering Control Act, the Regulations Governing the Anti-Money Laundering of Financial Institutions will also apply, and such enterprises will be supervised by the Financial Supervisory Commission. For cross-border investments where foreign exchange conversions are involved, the Central Bank will also be involved in AML control.

3.3 Sanctions, National Security and Foreign Investment Controls

National Security Considerations and Sanction List

Under the Counter-Terrorism Financing Act in Taiwan, the Ministry of Justice has the discretion to put any person or entity considered to be engaging in activities relating to terrorism or intending to cause harm or threat to the public on the terrorist financial sanction list. Entities on the sanction list are prohibited from transferring their properties at will, so will not be able to engage in JV activities as a partner/investor.

In addition, to ensure the development and competitiveness of Taiwan's hi-tech industries, the National Science and Technology Council (NSTC) released the Regulations on the Designation of National Core Critical Technologies on 26 April 2023, which were updated on 31 December 2024, to specify the scope of national core critical technologies. The NSTC also set up the Review Committee of National Core Critical Technologies (the "Review Committee"), which is in charge of designation, alternation and other matters regarding critical national technologies, and the Office of National Core Critical Technologies to track the development and research of relevant technologies and put forward associated proposals. The Review Committee looks at the critical technologies under its jurisdiction annually, and assists the relevant industries in clarifying the scope and application thereof.

FDI Regime and PRC Investment

According to the Statute for Investment by Foreign Nationals, all direct investments by foreign entities/nationals require approval from the DIR (except for certain investments in listed securities). Furthermore, any investment in Taiwan by a Taiwan entity in which a foreign investor holds over one third of the shares or capital requires the approval of the DIR.

Without such approval, the investor may be prohibited from expatriating profits out of Taiwan or may be requested to divest. In practice, without the approval of the DIR, an investor will not be able to complete the incorporation registration nor convert its investment fund into New Taiwan dollars after the fund is wired to Taiwan. The DIR will review the proposed investment to assess whether it is against national security, public order, good customs and practices, and national health, and whether it contravenes any of the relevant laws and regulations.

Specifically, the Executive Yuan has issued a "negative list" of prohibited and restricted industries for foreign investors (other than PRC investors) to invest in, due to national security concerns.

Furthermore, as the geo-national tension between China and Taiwan rises, PRC investments in Taiwan are subject to greater scrutiny. "PRC investor" refers to a PRC entity/national and any non-PRC entity in

which a PRC entity/national holds more than 30% of the shares or capital, directly or indirectly, or is controlled by a PRC entity/national. PRC investors are only allowed to invest in certain limited sectors listed on the "positive list" issued by the DIR.

To prevent and deter PRC investors from illegal investment in Taiwan via nominee or other similar arrangements, the Act Governing Relations between the People of the Taiwan Area and the Mainland Area prohibits Taiwanese individuals from offering their names to, or allowing the use thereof by, PRC investors to circumvent the relevant restriction on PRC investments. Both the PRC investor and the Taiwanese nominee would be subject to a fine of between TWD120,000 and TWD25 million for violation of this rule. In addition, the DIR may order the investor to cease or withdraw such investment, or to rectify it within a specified time limit, and it may suspend the investor's shareholder rights if necessary.

3.4 Competition Law and Antitrust

The Fair Trade Act (FTA) is the primary regulation for antitrust and merger control in Taiwan. If the formation of a JV constitutes a "combination" with a certain market share (as a result of the combination, the parties will jointly acquire a market share of at least one third, or one of the parties will hold a market share of at least one quarter before the combination) or turnover thresholds in the preceding fiscal year under the FTA, clearance from the Fair Trade Commission (FTC) must be obtained before its formation. In this respect, "combination" refers to the following, among other things:

- the holding or acquisition of at least one third of the voting shares of or interest in another enterprise;
- having an arrangement with another enterprise for joint operation on a regular, ongoing basis, or the management of another enterprise's business based on a contract of entrustment; or
- having direct or indirect control over the operation or personnel of another enterprise.

Prior to June 2023, the FTC would exercise jurisdiction over foreign-to-foreign combinations only if the

transaction had a local effect on the Taiwanese market.

In June 2023, the FTC further relaxed the FTA to exclude notification requirements from those combinations where foreign enterprises establish or operate a JV outside Taiwan that does not engage in “economic activities” within Taiwan. Economic activities are defined as those involving the supply and demand of goods or services in Taiwan. Additionally, the FTC abolished the Guidelines on Handling Extraterritorial Combinations in June 2023 as a supplementary measure to the amendment of the FTA, to the effect that any extraterritorial combination meeting the filing thresholds must be notified with the exception of the newly defined non-notifiable type, as noted in the foregoing.

The FTC also amended the FTC Disposal Directions (Guidelines) on Handling Merger Filings, specifying that the simplified procedure now applies to combinations where:

- the transaction value is below TWD2.5 billion;
- in horizontal combinations, the combined Taiwan revenue of relevant products or services does not reach TWD200 million;
- in vertical combinations, none of the participating parties generate TWD200 million or more in Taiwan for the relevant products or services; or
- the enterprise being combined generates no Taiwan revenue.

3.5 Listed Companies and Market Disclosure Rules

If a JV participant is a listed company in Taiwan, it will be subject to the rules issued by the Taiwan Securities Exchange or the Taipei Exchange, as applicable, which mainly include the obligation to disclose the material information of the JV project, corporate decision procedural requirements and investing amount limitations to engage in such investments.

3.6 Transparency and Ownership Disclosure Disclosure Requirements Under the Company Act

Under the Company Act, companies are required to make an annual report containing the information of directors, supervisors, managerial officers and share-

holders holding more than 10% of the total shares, including their names, nationalities, shareholding, date of birth (for individuals) or the date of incorporation (for entities), and other items required by the competent authority.

To promote full and timely disclosure of any significant changes in a public company's shareholding structure, Taiwan recently announced amendments to the Securities and Exchange Act. The threshold for a public company to report and disclose a substantial shareholding that any person acquires, either individually or jointly with others, has been lowered from 10% to 5%. The new SEA amendments took effect on 10 May 2024.

Additional Disclosure Requirements Under the FDI Regime and AML Requirements

The DIR also generally requires the applicant to disclose information it holds on the major shareholders and ultimate beneficial owner (UBO) for the purpose of the DIR's foreign direct investment review, and to ascertain any PRC involvement.

Moreover, financial institutions in Taiwan are obliged to identify the UBO of their clients when conducting the customer due diligence process, according to the Regulations Governing Anti-Money Laundering of Financial Institutions.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

There have been several noteworthy court decisions in Taiwan over the past three years relating to JVs, particularly clarifying the interpretation of non-compete clauses in JV agreements.

In Taiwan High Court 113-Shang-Zi No 141, the court interpreted a non-compete clause in a JV agreement between two parties who co-founded a biotech company. The clause prohibited either party from engaging in competing business for two years post-termination. The court held that the restriction only applied to business activities that the JV company was legally permitted to conduct. Since the defendant's post-ter-

mination activities did not fall within that scope, the defendant's activities did not violate the non-compete obligation, and no damages were awarded. This judgment clarified the enforceability of post-termination non-compete clauses in JV contexts by emphasising alignment with the JV's lawful business scope.

In Taiwan High Court 113-Shang-Zi No 239, the court examined a non-compete clause in a JV agreement that allowed a JV partner to continue its existing business operations with prior disclosure and good-faith discussion among the JV partners. The plaintiff argued that the JV partner may only continue to accept orders from its existing clients and is prohibited from accepting orders from new clients. However, the court held that the non-complete provision clearly permits the partner to continue its existing business operations and should not be reinterpreted to impose stricter obligations in the absence of explicit language in the JV agreement. The court reaffirmed that contractual interpretation of JV agreements must respect the parties' expressed intent and commercial context.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

The JV parties typically enter into non-disclosure agreements, accompanied by a memorandum of undertaking (MoU) and/or a letter of intent (LoI). In Taiwan, investors generally include exclusivity provisions in the MoU or LoI.

At the pre-JV agreement stage, the MoU or LoI is typically expected to cover elements relevant to high-level commercial consensus, such as investment structure, expected paid-in capital, shareholder rights (including the right of first refusal) and management rights and governance (but not the details thereof); sometimes, the MoU or LoI also covers additional arrangements such as earn-outs, exit rights, the distribution waterfall, the deadlock resolution mechanism and other issues of major concern to the investors in the project.

5.2 Disclosure Obligations

In Taiwan, listed companies are obliged to disclose significant JV projects when they have a degree of

certainty and materiality, according to the Securities and Exchange Act. Under the Regulations Governing the Scope of Material Information and the Means of its Public Disclosure, such timing could, depending on the specific nature of a given project, be the closing day, negotiation day, execution day or resolution day of the board of directors (whichever is earliest).

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

In Taiwan, JV agreements typically include conditions precedent such as regulatory approvals, corporate authorisations, completion of due diligence and confirmation of capital contributions. These conditions must be satisfied or waived before closing and are often tied to the legal and operational readiness of the JV.

Material adverse change (MAC) and force majeure clauses are commonly negotiated, especially in cross-border or high-value deals for JV activities. MAC clauses allocate pre-closing risk and are often narrowly defined to reflect specific commercial concerns, while force majeure provisions, grounded in both the spirits of contracts and Article 227-2 of Taiwan's Civil Code, address unforeseeable events that hinder performance, often with tailored notice and mitigation requirements.

5.4 Legal Formation and Capital Requirements

There are two common approaches to setting up a JV vehicle in Taiwan:

- one of the JV participants first establishes a local entity, which will issue new shares for other JV participants to subscribe for; or
- the JV participants convene a promoters' meeting and establish the JV entity together.

In practice, the first option is preferred by investors because the procedure is more straightforward.

Participation by foreign entities requires FIA from the DIR. The DIR reviews the proposed shareholding structure and business scope to ensure compliance with the Statute for Investment by Foreign Nationals of Taiwan. Investments are generally permitted unless

they fall within industries listed on the government's negative list, which includes sectors such as military-related chemicals, firearms, energy supply, telecommunications and mass media, or may cause concern with respect to national security.

While Taiwan does not impose a general minimum capital requirement for JV formation, certain regulated industries do require special licences or minimum capital injections under applicable laws. Examples include, among others:

- financial institutions (eg, banks, insurance companies) – subject to strict licensing and capital adequacy requirements under financial supervisory regulations;
- freight forwarding and logistics – require registration with the Ministry of Transportation and Communications, often with minimum capital thresholds;
- telecommunications and broadcasting – require licensing and compliance with ownership restrictions and capital requirements; and
- medical and biotech sectors – may require approval from the Ministry of Health and Welfare, with minimum capital tied to the scope of operations.

These requirements must be carefully assessed during the structuring phase, as they directly impact the feasibility and timeline of the consummation of the JV transaction.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

In Taiwan, a JV is typically established as a company. The terms are documented in a JV agreement, although some of the terms are also stipulated in the articles of incorporation of the JV entity.

A corporate JV agreement typically covers the parties, investment structure, capital call schedule, corporate governance, management and board composition, reporting and information rights, audit procedure, dispute resolution mechanism, confidentiality, non-compete/non-solicitation, breaches and indemnity, transfer restrictions (such as right of first refusal put/

call options, drag-along and tag-along provisions), termination rights, distribution waterfall, and costs and expenses.

6.2 Governance and Decision-Making

The JV entity's directors or board of directors constitute the managing body. The board may also delegate different committees to aid the decision-making process and/or form a steering committee. It is also worth noting that Taiwan adopts a system of "supervisors" for companies having two or more shareholders. If there are two JV participants, each will normally nominate one supervisor for the JVC.

6.3 Funding

In practice, JV entities can be funded by equity or a mix of debt and equity. Depending on the provisions agreed by the parties, the JV participants may be required to increase investment by equity or loan when receiving a drawdown notice. Alternatively, there can be a right to purchase more shares and increase the investments in the JV entity. To avoid future equity funding diluting the original controlling power of certain JV participants, the parties may also include a right of first refusal provision in the JV agreement; the Taiwan Company Act also gives shareholders a statutory pre-emptive right when the JV entity issues new shares.

6.4 Deadlocks

Taiwan JVCs typically have an odd number of directors on the board to avoid a deadlock. In some cases, such as a 50–50 JV where each party appoints the same number of directors, or where the minority JV participant has certain veto rights at either board or shareholder level, an escalation process can be included in the JV agreement to resolve potential deadlocks.

6.5 Other Documentation

In addition to the aforementioned documents, services agreements, IP transfer agreements, licensing agreements and co-operative development agreements may be required, depending on the case.

6.6 Rights and Obligations of JV Partners

In Taiwan, the rights and obligations of JV parties are primarily governed by contracts, as there is no spe-

cific statute regulating JVs. JV parties typically agree on the following key rights and obligations:

- profit sharing and loss allocation, usually in proportion to their capital contributions unless otherwise stipulated;
- governance and management rights, including board representation, veto rights on reserved matters and participation in key decisions;
- access to information including financial reports, operational updates and board materials, often reinforced through shareholder agreements or information rights clauses; and
- non-compete and non-solicitation obligations, which preclude parties from engaging in competing businesses during, and sometimes after, the JV term, subject to reasonableness and enforceability under Taiwan law.

Profits and losses are generally distributed in accordance with the parties' equity stakes, unless the JV agreement provides otherwise. There are no general statutory restrictions on how profits and losses must be allocated, but the arrangement must be clearly documented to avoid disputes. Courts may uphold alternative arrangements if they reflect the parties' true intent and are not contrary to laws and public policy.

Regarding liabilities arising from JV activities in Taiwan, if the JV company is structured as a company limited by shares or a limited company, each party's liability is limited to its capital contribution. If the JV is structured as a limited partnership, the general partner is jointly and severally liable for the JV's debts and obligations, while the limited partners' liabilities remain limited to their respective capital contributions. However, if the JV is structured as a contractual or unincorporated JV and the arrangement resembles a partnership, the parties may be held jointly and severally liable for the JV's debts and obligations under the principle of partnership liability.

6.7 Minority Protection and Control Rights

In Taiwan, minority members of a JV typically protect their interests through a combination of contractual rights and structural safeguards in the JV agreement and constitutional documents. These protections are

especially critical in international JVs, where asymmetries in control and barriers to information access may arise. Common key mechanisms under JV agreements include the following.

- Board representation and voting rights: Minority parties often negotiate for board seats and veto rights over reserved matters, such as changes to the business scope or capital structure, or the transfer of key assets, to ensure participation in major decisions and prevent unilateral actions by majority shareholders.
- Information and audit rights: Minority investors typically secure access to financial statements, operational reports and inspection rights. These provisions are essential for monitoring performance and fostering transparency.
- Non-compete and exclusivity provisions: To safeguard the JV's commercial value, minority parties may require non-compete obligations from other shareholders and exclusivity in certain markets or technologies.
- Exit and transfer rights: Tag-along rights, put options and pre-emptive rights are commonly used to protect minority interests in exit scenarios or changes in ownership. These rights help ensure that minority parties are not left behind or diluted without recourse.

6.8 Applicable Law and Dispute Resolution in International JVs

In international JVs involving Taiwan, the selection of substantive and procedural law is a foundational aspect of legal structuring. Where the JV's core activities are mostly conducted in Taiwan, it is generally advisable to adopt Taiwan law as the governing substantive and procedure law. This ensures consistency with local regulatory frameworks and facilitates enforcement by Taiwan courts.

While Taiwan courts are competent and accessible, JV parties – particularly in cross-border arrangements – often prefer alternative dispute resolution (ADR) mechanisms outside Taiwan. Arbitration is commonly selected for its neutrality and efficiency. For example, the Singapore International Arbitration Centre (SIAC) is frequently chosen for JVs involving Asian entities, while the International Centre for Dispute Resolution

of the American Arbitration Association may be preferred in JVs involving US parties. The choice of venue typically reflects the nationality and commercial interests of the JV participants.

Failure to agree on forum and arbitral rules can result in jurisdictional uncertainty, increased litigation risk and potential delays in enforcement. In such cases, the rules of the arbitration association, which may not align with the parties' commercial expectations or the nature of the JV, may apply. It is therefore essential to clearly specify both substantive and procedural law in the JV agreement to avoid ambiguity and ensure predictability.

Taiwan does not mandate ADR procedures for commercial disputes. However, arbitration and mediation are widely accepted and often encouraged, particularly in JV and contractual disputes. Parties are free to designate arbitration institutions and rules in their agreements, and Taiwan courts generally uphold such clauses.

Taiwan is not a signatory to the New York Convention or other major international treaties on dispute resolution due to its unique international status. Nonetheless, Taiwan has developed a robust domestic legal framework for recognising and enforcing foreign arbitral awards under the Arbitration Act of Taiwan, provided the award satisfies reciprocity and procedural fairness standards.

Foreign court judgments may be enforced in Taiwan under the Code of Civil Procedure of Taiwan, subject to conditions including reciprocity, finality, and consistency with public policy. Foreign arbitral awards may also be enforceable through Taiwan's courts, provided they meet the statutory requirements and do not conflict with public order or good morals.

7. The JV Board

7.1 Board Structure

The board of directors is usually elected by the participants through cumulative voting. In some cases, the participants will add a voting agreement to ensure

execution of the pre-arrangement with respect to the number of seats on the board.

Depending on the corporate structure and its purpose, the parties can include a provision regarding weighted voting rights in different classes of shares in their agreements. For closed-end companies, Article 356-9 of the Company Act stipulates that shareholders can freely reach a voting or voting trust agreement. In addition, according to Article 10 of the Business Mergers and Acquisitions Act (BMAA), the shareholders can reach a voting agreement for the purpose of M&A as well. However, beyond these two scenarios, the courts hold diverse views on whether shareholders or stakeholders can reach a valid voting agreement, as a voting agreement may affect the implementation of corporate governance. For example, in 2022, the Supreme Court ruled that the voting agreement under which shareholders are obliged to vote for the director and supervisor candidates proposed by the outgoing (selling) shareholder for the target company, to guarantee payment of the share purchase price in instalments, was unenforceable because the agreement violated the principle of corporate governance and public customs (Supreme Court Civil Judgment 109-Tai-Shang-Zi No 2482 (2022)).

7.2 Duties and Functions of JV Boards and Directors

Article 23 of the Company Act generally requires a director to maintain loyalty to the company and exercise the due care of a good administrator in conducting the business operations of the company. It is therefore generally understood that the director holds a duty of loyalty and a duty of care to the company, as recognised in a recent court judgment in Taiwan (Supreme Court Civil Judgment 110-Tai-Shang-Zi No 117 (2021)). Separately, when the JV participant is a legal person, it can appoint an individual to serve as a director of the JV company under the "mandate relationship" according to the Company Act and the Civil Code. Consequently, the appointee bears a duty of care and a duty of loyalty to both the JV company and the JV participant.

Under the Company Act, directors are subject to certain restrictions on voting on matters with conflicts of interest (see **7.3 Conflicts of Interest**). Furthermore,

directors are prohibited from engaging in self-dealing with the JV entity without disclosing the nature of such transactions to, and receiving approval from, the meeting of shareholders (Articles 206 and 209 of the Company Act). In Taiwan, the board of directors is allowed to delegate its functions to committees such as audit, compensation, nomination and independent committees.

7.3 Conflicts of Interest

In the event of a shareholder having conflicts of interest in a specific matter that may harm the interest of the company, the Company Act requires that the shareholder cannot participate in voting nor act as proxy for another shareholder. Similarly, a director who has a conflict of interest has to explain the material content thereof and cannot participate in voting if such conflict could harm the interest of the company.

8. IP and ESG

8.1 Ownership and Use of IP

JV participants are advised to consider the necessity of licensing agreements or IP/technology transfer agreements as early as possible before launching a JV project. The ownership of new IP developed in and out of the JV entity's business scope is one of the key areas of consideration.

It is essential to clarify the contract purpose and scope to determine IP ownership under contractual collaborations. Depending on the industry, JV participants often have to deal with the use, development and transfer of IP, such as patents, trade marks, copyrights, trade secrets or know-how, in JV agreements. IP can be a valuable asset and may be considered as a capital contribution.

IP clauses are sometimes included in JV agreements, but they are more often separately addressed in an IP assignment and/or licensing agreement between the JV entity and one or more JV participants.

8.2 Licensing v Assignment of IP Rights

In many cases, licensing IP rights to facilitate the JV entity's operation is preferred, because assigning IP

rights tends to be more complex and time-consuming than reaching a licensing agreement.

8.3 ESG Considerations in JVs

Investors are increasingly interested in ESG projects as customers have more awareness of ESG issues now. In addition, a JV project that follows ESG principles or addresses ESG issues will likely achieve better long-term performance, as shown by recent studies in Asia.

The Financial Supervisory Commission in Taiwan is promoting new policies requiring public companies to disclose their ESG efforts by submitting ESG reports. As one of the Taiwan government's initiatives to respond to climate change, the National Development Council published the key strategies for "Taiwan's Pathways to Net-Zero Emissions in 2050" in 2022, which aims to reach the target of net-zero greenhouse gas emissions by 2050.

In general, JV entities are not subject to mandatory obligations to take action on aspects of ESG if they are not public companies or financial institutions. However, enterprises in Taiwan are encouraged to incorporate ESG guidelines into their business strategies and management systems.

Currently, the "Action Plan for Sustainable Development of Listed Companies" and the "Climate Change Response Act" are the primary ESG-related regulations in Taiwan. Whether the recent announcement/enactment of this legislation will affect JV arrangements in Taiwan will be closely monitored over the coming years.

9. Exit Strategies and Termination

9.1 Termination of a JV

From a contractual perspective, the parties to a JV arrangement usually include a put option and/or a call option provision to buy out each other's shares in the JV agreement as part of the exit arrangements. If the JV party decides to exercise the put/call option, the participants might need to negotiate the value of each share of the JV entity if the calculation is not pre-agreed in the JV agreement.

The JV participants can also proceed, under the Company Act, with liquidation and dissolution procedures to wind up the company. The key actions for the liquidation process include issuing a public announcement for the creditors to report any debts, settling the outstanding debts and taxes, making up for any losses and repaying the debts of the JV entity before distributing the profits, if the JV entity decides to wind up. Moreover, when there is a foreign participant, the DIR's approval regarding the dismissal of a foreign investment is required before a foreign JV participant can remit the residual overseas upon the conclusion of liquidation proceedings.

9.2 Asset Redistribution and Transfers

Tax incentives may be one consideration when transferring JV assets. Under the BMAA, if the company acquires assets amounting to more than 65% of the compensation of the share purchase, it will be exempted from stamp tax, deed tax and securities exchange tax.

Depending on the value and percentage of the JV's total assets, the transfer of assets will be subject to certain statutory procedural requirements. For example, the transfer of assets requires the majority vote of the shareholder's meeting for the transfer to have a material impact on the JV company's operation.

For foreign JV participants, it is pivotal to also take the withholding tax issue into consideration. When the JV entity declares dividends and repatriates dividends offshore to foreign JV participants, it will be subject to a withholding tax of 21%. If the foreign JV participant is incorporated in a country that has signed a tax treaty with Taiwan, a lower withholding tax rate may apply.

9.3 Exit Strategy

Freedom to Determine the Exit Strategy

Generally, JV parties may freely negotiate and incorporate mechanisms such as put and call options, tag-along and drag-along rights, deadlock-triggered buyouts and pre-emptive rights. These provisions are generally enforceable under Taiwan law, so long as they are clearly drafted and do not contravene mandatory legal norms or public policy.

Common Exit Mechanisms in Taiwan

Frequently used JV exit strategies in Taiwan JVs include:

- sale of shares – subject to any agreed restrictions, this is the most straightforward and flexible method;
- dissolution and liquidation – used when the JV has fulfilled its purpose or when the parties cannot resolve a deadlock;
- M&A – a strategic exit route, particularly where one party seeks to consolidate control or monetise its investment; and
- initial public offering (IPO) – less common but viable for JVs with scalable operations and long-term growth potential.

Each exit route should be aligned with the JV's commercial objectives, governance structure and regulatory obligations.

Trends and Developments

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Lee and Li Attorneys-at-Law is a leading firm in Taiwan and excels at crafting customised legal solutions for clients. It currently employs around 200 attorneys, as well as many patent attorneys, patent agents and trade mark attorneys, and over 100 professionals with backgrounds in technology and other fields. Specialisations cover banking and finance, capital markets, corporate matters and investment, litigation and dispute resolution, patents and technology, trademarks

and copyrights. The firm has represented both the government and industries, facilitating government-industry co-operation. It has helped local businesses to grow internationally while assisting with foreign investors' direct investment into Taiwan. The team regularly advises government agencies, and has contributed to the development of landmark economic and social policies and legislative initiatives.

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Introduction

This article explores recent developments in Taiwan's joint venture (JV) landscape across key industries. It highlights new opportunities in the renewable energy sector driven by supportive policies, the growing role of AI-focused JVs and the expansion of outbound JV activities within the semiconductor industry. Additionally, it examines realignments in Taiwan's retail sector as signs of market maturity and increasing investment sophistication. The discussion also covers recent court decisions impacting JV-related disputes, providing a comprehensive overview of the evolving JV environment in Taiwan.

New JV Developments in Taiwan's Renewable Energy Industry

In 2025, Taiwan's offshore wind sector entered a new phase of development with the launch of Taiwan Intelligent Energy Co (TIEC), a JV formed by six leading corporations across a number of government-owned enterprises and private companies.

Government-led initiative

TIEC is the first JV of its kind in Taiwan led by a government agency, the Ministry of Economic Affairs (MOEA). The MOEA initiated and facilitated the formation of TIEC to accelerate offshore wind development and enhance the flexibility of green energy procurement in Taiwan.

Strategic role and market function

TIEC, often referred to as the "Costco of green power", is designed to act as a centralised platform for the bulk purchase and flexible resale of offshore wind

electricity, particularly from the phase 3-1 and 3-2 offshore wind farms in Taiwan. Its goals include:

- improving access to renewable energy for small and medium-sized enterprises;
- supporting wind farm developers by aggregating demand from creditworthy buyers, improving financing prospects; and
- enhancing procurement flexibility in Taiwan's renewable energy market.

Addressing CPPA-related challenges

Starting from phase 3 of offshore wind development in Taiwan, and with substantial development since 2024, projects no longer rely on feed-in tariffs. Instead, projects depend on corporate power purchase agreements (CPPAs) for revenue and financing. However, CPPAs typically involve long-term commitments, large purchase volumes and high credit rating requirements, making them inaccessible to many companies.

To address this issue, TIEC was established specifically to overcome these barriers by offering shorter-term, smaller-scale purchasing options, thereby broadening access to offshore wind power and supporting a more inclusive energy transition.

Regulatory approval and market impact

On 3 July 2025, Taiwan's competition authority, the Fair Trade Commission (FTC), approved the JV, confirming that it would not restrict market competition. Key rationales of the FTC include the following:

- TIEC has not yet begun operations and will initially focus solely on offshore wind energy;
- the electricity purchased will primarily be used by the shareholder companies, with limited market volume;
- the existing market structure and buyer eligibility rules remain unchanged, ensuring continued access for other electricity users;
- TIEC will operate in a competitive environment alongside other electricity retailers; and
- Taiwan's renewable energy market remains diverse, with solar and other green energy sources being available, preventing monopolistic behaviour.

Carbon policy driving demand

At the beginning of 2025, Taiwan's Ministry of Environment introduced carbon fees and expanded carbon inventory requirements, which is estimated to affect approximately 500 companies and 20,000 retail outlets, including those in the department store, wholesale and transportation sectors.

As a result, Taiwanese companies, especially those not yet part of global initiatives like RE100, will face increased pressure to manage carbon emissions. This is expected to drive steady growth in demand for renewable energy, making platforms like TIEC crucial for enabling broader participation in Taiwan's green transition.

Other new JVs formed to boost Taiwan's solar energy sector

A number of local and international energy players also established new JV platforms to pursue renewable energy development in Taiwan. For example, on 4 June 2025, Green Rock Energy (ticker: 7833) announced its partnership with Delta Energy and Chuanshi Energy in order to establish a new JV platform. This new JV platform is designed to integrate capabilities across solar power plant development, engineering and operations management, and green electricity trading, with the goal of building a comprehensive investment platform focused on Taiwan's renewable energy market.

As the lead investor, Green Rock Energy will lead the JV platform, focusing on investing in high-potential domestic renewable energy projects and govern-

ment tenders. The JV plans to expand its solar asset portfolio rapidly through both acquisitions and self-developed projects. The new JV platform also aims to support corporate sustainability by facilitating CPPAs, helping large electricity users secure stable, long-term renewable energy supply with flexible pricing options. This JV has positioned itself as a key player in Taiwan's growing green electricity trading market, aligning with national carbon reduction goals and increasing the corporate use of renewable energy.

Policy-Driven Opportunities for AI-Focused JVs in Taiwan

On 14 April 2025, Taiwan's Ministry of Digital Affairs updated its existing initiative of promoting AI investment via the "AI Startup Investment Enhancement Guidelines", introducing more flexible co-investment terms to encourage private sector participation in the country's growing AI ecosystem. Under the revised framework, private investors seeking to co-invest with the government must match or exceed the government's investment amount. In certain cases, this requirement may be relaxed to 50%, subject to eligibility criteria. This development is part of a TWD10 billion national initiative aimed at accelerating the development of domestic AI and digital economy start-ups through a "private-led, government-backed" investment model.

For foreign companies considering utilising these policy incentives in the AI industry, forming a JV vehicle with other private co-investors and the government presents a strategic entry point into Taiwan's local AI market.

The guidelines prioritise investments in private domestic start-ups, with restrictions on Chinese-funded entities and caps on government contributions (TWD150 million per invested entity, TWD100 million per investment round). Applications must include detailed business plans, financial disclosures and performance metrics, ensuring transparency and accountability.

This policy relaxation signals Taiwan's commitment to fostering innovation through structured public-private partnerships, making it an attractive jurisdiction for AI-focused JV activities – especially for companies seeking to align with government funding, access local

talent and participate in a regulated, growth-oriented tech environment.

Expansion of Outbound JV Activities in Taiwan's Semiconductor Industry

Taiwan's semiconductor industry continues to experience a marked increase in outbound JVs, reflecting a strategic push towards internationalisation, technology integration and market diversification. These new JV initiatives encompass Japan, South Korea, Singapore and France, among other countries, and highlight Taiwan's leading role as a global collaborator in the semiconductor supply chain. Below are several examples of recent high-profile cases.

Vanguard International Semiconductor and NXP's JV in Singapore

On 4 September 2024, Taiwan's Vanguard International Semiconductor Corporation announced the establishment of a JV company, VisionPower Semiconductor Manufacturing Company (VSMC), in Singapore, in partnership with NXP Semiconductors. This manufacturing-focused JV aims to serve global automotive and industrial clients, leveraging Singapore's strategic location and talent pool to expand Taiwan's foundry capabilities beyond its borders.

Foxconn, Thales and Radiall's JV in France

In May 2025, Foxconn Technology Group, a leading Taiwan semiconductor player, signed a tripartite memorandum of understanding (MoU) with France's Thales SA and Radiall SA to establish a new JV company in France dedicated to advanced outsourced semiconductor assembly and test (OSAT). The JV will initially target the European market, serving industries such as automotive, aerospace, 6G communications and national defence.

Additionally, the facility of this French JV will primarily focus on fan-out wafer-level packaging (FOWLP) technology and will become the first advanced OSAT plant of its kind in Europe. This development represents a significant milestone for Foxconn and marks the beginning of a new phase in its endeavours to enhance the resilience of the global semiconductor supply chain.

MIC and Sumitomo's JV in Japan

On 26 June 2025, Taiwan's Marketech International Corp (MIC) and Japan's Sumitomo Shoji Machinex Co Ltd ("Sumitomo") entered into a formal JV agreement to establish Marketech SC Semiconductor Co, Ltd in Japan. The JV will combine MIC's decades-long expertise in high-tech plant engineering and equipment integration with Sumitomo's strengths in materials, industrial systems and precision manufacturing.

This Japanese JV project is aligned with the MOEA's "In Taiwan, Out to the World" policy, which encourages cross-border industrial co-operation. It will seek to combine Taiwan's flexibility and efficiency with Japan's precision and organisational discipline, establishing a collaborative model that supports mutual growth and market expansion. In light of ongoing global supply chain restructuring and heightened focus on national security, this co-operation reflects a proactive strategy to enhance supply chain stability to boost both companies' presence in Japan, Taiwan and international markets.

Youngbo Chemical and DCT Material's JV in Taiwan

Also in June 2025, Taiwan's Youngbo Chemical Co, Ltd announced a JV initiative with South Korea's DCT Material Co in order to establish a new JV company in Taiwan focused on advanced lithography materials for semiconductor manufacturing. The Taiwanese JV aims to co-develop and commercialise photo-resist technologies for both domestic and international markets, addressing critical industry needs in advanced chip production.

Implications of the market expansion

These outbound JVs reflect Taiwan's evolving semiconductor policies and strategy, led by both public and private sectors, which can be summarised as follows:

- geographic diversification to mitigate geopolitical risks and access new markets;
- technology collaboration to strengthen capabilities in materials, packaging ("OSAT") and manufacturing; and
- supply chain resilience through international partnerships and localised production.

Together, these trends and developments underscore Taiwan's evolution from a manufacturing hub to a strategic global partner in the semiconductor industry, actively shaping its future through cross-border collaboration.

Realignments in Taiwan's Retail Sector: Indicators of Market Maturity and Investment Sophistication

In 2025, Taiwan's retail and department store sectors have witnessed significant portfolio adjustments by their long-standing Japanese investors. It is generally understood that these moves reflect not a withdrawal, but a strategic recalibration aligned with evolving global investment priorities. Two recent transactions, namely Itochu Corporation's partial divestment from Taipei 101 and Isetan Mitsukoshi's share sale in Shin Kong Mitsukoshi Department Store, demonstrate how well-structured JV and deal frameworks can facilitate smooth transitions while preserving asset performance and market confidence.

Itochu Corporation's share transfer in Taipei 101

In early 2025, Japan's Itochu Corporation reduced its stake in Taipei 101 from 32.14% to 17.27%, transferring shares to a consortium of six Taiwanese state-backed financial institutions. The TWD9.45 billion transaction significantly increased domestic institutional ownership, with public sector entities now holding approximately 70% of the landmark asset. The divestment was executed against a backdrop of record financial performance, with TWD23 billion in retail revenue and TWD2.57 billion in net profit in 2024, signalling the strength of the underlying asset and the effectiveness of the transaction structure in enabling a seamless ownership transition.

Isetan Mitsukoshi's share sale in Shin Kong Mitsukoshi Department Store

In June 2025, Japan's Isetan Mitsukoshi Holdings sold over 20% of its stake in Taiwan's Shin Kong Mitsukoshi Department Store, its largest overseas retail investment. The decision was generally understood to have been influenced by several factors:

- recently heightened geopolitical risk assessments related to Taiwan;

- pressure from foreign shareholders to rebalance exposure to high-return but higher-risk markets; and
- a desire to step back from internal governance disputes within the Shin Kong Group.

At the same time, a weaker yen has amplified foreign investors' influence in Japan, prompting calls for capital redeployment. Despite Shin Kong Mitsukoshi Department Store's strong profitability (over TWD2 billion annually), the divestment allowed Isetan Mitsukoshi to realise a fourfold return while simplifying its regional exposure. Overall, the divestment proceeded smoothly, supported by well-structured JV arrangements that enabled a clean and dispute-free exit.

Key observation for international investors and advisers

These recent developments in Taiwan's retail sector exemplify a sophisticated evolution in foreign investment strategy. For international market players, these trends highlight the value of flexible structuring, strong local partnerships and long-term strategic alignment in navigating one of Asia's most resilient and dynamic markets.

Recent Court Decisions on JV-Related Disputes

The following summaries highlight a few recent key judgments by the Taiwan High Court concerning JV agreements, focusing on the interpretation and enforceability of non-compete clauses and the principle of contractual privity, such as how JV agreements are applied – particularly regarding post-termination restrictions, pre-existing business carve-outs and the binding nature of agreements on non-signatory parties.

Taiwan High Court 113-Shang-Zi No 141

The court interpreted a non-compete clause in a JV agreement between two parties who co-founded a biotech company. The clause prohibited either party from engaging in competing business for two years post-termination. The court held that the restriction only applied to business activities that the JV company was legally permitted to conduct. Since the defendant's post-termination activities did not fall within that scope, the defendant's activities did not violate the non-compete obligation, and no damages

were awarded. This judgment clarified the enforceability of post-termination non-compete clauses in JV contexts, by emphasising alignment with the JV's lawful business scope.

Taiwan High Court 113-Shang-Zi No 239

The court examined a non-compete clause in a JV agreement that allowed a JV partner to continue its existing business operations with prior disclosure and good-faith discussion among the JV partners. The plaintiff argued that the JV partner may only continue to accept orders from its existing clients and is prohibited from accepting orders from new clients. However, the court held that the non-complete provision clearly permits the partner to continue its existing business operations and should not be reinterpreted to impose stricter obligations absent explicit language in the JV agreement. The court reaffirmed that contractual interpretation of JV agreements must respect the parties' expressed intent and commercial context.

Taiwan High Court 111-Chong-Shang-Zi No 362

The court dismissed the claim that an individual should be bound by a JV agreement that they signed on behalf of a JV party. The court found that the JV agreement was not incorporated by reference and therefore had no binding effect to a third party. This decision affirmed that the principle of privity of contract applies to JV agreements – ie, only the parties to such agreements may derive rights or bear obligations under them – and signified the importance of clearly incorporating related agreements to ensure the enforceability of JV arrangements.



Law and Practice

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cuses on transparency and long-term partnerships that go beyond legal advice to empower clients to grow, innovate, and succeed with confidence in a dynamic business landscape. The firm is recognised for advising on tender offers, amalgamations, takeovers, entire business transfers, and conducting due diligence. The firm's recent engagements include advising a broad range of clients on cross-border transactions, compliance with stock-market regulations, and providing strategic counsel on foreign direct investment.

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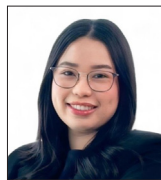
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1. Market Conditions

1.1 Geopolitical and Economic Factors

In 2025, Thailand has had a drastic change in terms of tax perspectives by enacting the Emergency Decree on Top-up Tax, B.E. 2567 (2024) (the “Decree”). The Decree, which shall be applied to large multinational enterprises (MNEs) with consolidated financial statement revenues of at least EUR750 million, may promote long-term investment and prompt a reassessment of investment in Thailand, including joint ventures (JVs) or alternative arrangements, since the top-up tax will be levied in accordance with the global minimum rate. From the foreign investors’ perspective, the Decree also resolves the issue in relation to cross-border tax competition.

Apart from the tax perspective, given the current economic downturn in Thailand, businesses across various sectors are facing financial difficulties and challenges in achieving their operational targets. This has led to many companies seeking partnerships to strengthen their position, enhance competitiveness, share resources, and manage costs more efficiently by pooling expertise and capabilities.

At the same time, financially strong companies may take this opportunity to acquire or enter into joint ventures with struggling businesses, anticipating future growth or recovery. As the share prices of many companies have significantly declined, financially capable

buyers can acquire businesses at lower-than-usual prices or purchase larger equity stakes, thereby increasing their ownership or control.

Consequently, mergers and acquisitions (M&A) have become a notable trend in recent work, whether in the form of share acquisitions, asset purchases, business mergers, or joint ventures, with an increasing focus on combining technical know-how, market access, and operational expertise to create stronger, more resilient business structures.

1.2 Industry Trends and Emerging Technologies

The manufacture of electric vehicles (EVs) has, with a strong sense of sustainable growth, significantly become a booming industry to watch in Thailand. This momentum is largely being driven by government initiatives that include both tax and non-tax incentives designed to lower manufacturing costs, leading to the fact that Thailand is an attractive destination for foreign investors to set up manufacturing facilities in relation to EVs.

Recent figures highlight this positive trajectory. Between January and June 2025, registrations of new battery-powered electric vehicles (BEVs) totalled at 57,289 units, a 52.4% increase compared with the same period a year earlier, representing 15% of all newly registered passenger cars. By the end of May

2025, the total number of BEVs on the road reached 280,600 units, up 60.1% year-on-year.

Emerging Technologies

Emerging technologies such as artificial intelligence (AI) and data management systems play a vital role in advancing and enhancing efficiency within the electric vehicle industry. For instance, AI is increasingly used in controlling the manufacture, analysing data from sensors installed in electric cars as well as managing supply chains.

For JVs formed to operate in the electric vehicle sector, it is essential to carefully consider and clearly agree on the type and structure of the JV. Particular attention should be given to intellectual property rights related to the technologies and software used in the electric vehicles as well as the responsibilities of partners in the case where AI or automated systems malfunction such as failures in driver's assistance systems or battery management.

Currently, Thailand is in the legislative process of creating an AI Act aimed at raising ethical standards for AI use, ensuring respect for rights and promoting accountability.

2. JV Structure and Strategy

2.1 Typical JV Structures

Thailand does not have specific legislation governing joint ventures. However, joint ventures can generally be classified into two main types:

- Unincorporated Joint Venture (UJV) – a contractual arrangement without separated legal entity under the Thai Civil and Commercial Code (CCC), although recognised as a tax unit under the Thai Revenue Code.
- Incorporated Joint Venture (IJV) – a separate legal entity distinct from its participants. In Thailand, this is most established as a private limited company under the CCC.

Both JV types have advantages and disadvantages depending on factors such as tax treatment, legal

liability, regulatory compliance, and other considerations, which will be discussed further.

2.2 Strategic Drivers for JV Structuring

The choice between UJV and IJV in Thailand is influenced by several key factors:

- The purpose of the JV – for example, if the JV is incorporated to be participating in government tenders, such JV shall be an incorporated joint venture (juristic person) under the laws of Thailand.
- The commercial terms and structure agreed between the JV participants and whether they align better with a contractual arrangement or a separate legal entity.
- The intended duration of the JV.
- Available tax benefits or incentives.
- The legal status of the JV and the corresponding liability structure.

Risk sharing is generally the primary consideration in selecting an appropriate JV vehicle. From a liability standpoint, a UJV, while treated as a separate tax unit, lacks separate legal entity, meaning its participants are jointly and unlimitedly liable (ie, jointly and severally liable) to third parties, including for any tax liabilities. In contrast, an IJV, typically established as a private limited company, is also treated as a separate tax unit from the JV participants and provides limited liability protection, restricting participants' exposure to the amount of their unpaid capital. This structure is generally more advantageous for managing external claims and liabilities, in particular the potential tax debts.

Tax Considerations

For income tax purposes, both a UJV and IJV are treated as separate tax units with similar tax obligations. The key differences affecting the choice of JV vehicles in the tax treatment of profit distribution are the distribution of the dividend and of the profit sharing.

An IJV distributes its profits through dividends. A Thai-incorporated corporate shareholder that holds at least 25% of the IJV's shares for a minimum period of three months before and after the dividend payment, and without any cross-shareholding, is exempt

from corporate income tax on such dividends. Foreign shareholders are subject to a 10% withholding tax; however, the rate of withholding tax may lower when there is a double taxation agreement.

A UJV distributes its profits through profit sharing. Profit shares paid to Thai-incorporated companies or to foreign companies, which conduct any other business in Thailand and participate in the JV, are fully exempt from income tax, regardless of the investment proportion or holding period.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

There is no specific primary regulator for UJVs. JV parties have contractual freedom to determine management arrangements. However, a UJV is treated as a tax unit under the Revenue Code, which means that the UJV itself is required to register with the tax authorities and comply with all applicable tax laws and obligations.

An IJV is primarily regulated by the Department of Business Development, Ministry of Commerce (DBD). In addition, the management and governance must comply with the CCC, along with any applicable sector-specific regulations.

3.2 Anti-Money Laundering Compliance

Thailand's anti-money laundering (AML) framework is governed by the Anti-Money Laundering Act B.E. 2542 (1999), along with regulations on customer due diligence (CDD) and know your customer (KYC) procedures. The Anti-Money Laundering Office (AMLO) serves as the primary regulatory authority, overseeing enforcement, investigations, and compliance guidance. AML obligations apply to both financial institutions and designated non-financial businesses such as real estate agents, gold traders, and digital asset providers, all of which are required to verify customers, identify ultimate beneficial owners (UBOs), and report suspicious or large-value transactions to the AMLO.

3.3 Sanctions, National Security and Foreign Investment Controls

In terms of national security, Thailand does not maintain a dedicated domestic sanctions regime. However, Thailand has acted in compliance with the UN Sanctions List. In addition, Thai financial institutions shall refuse to engage with sanctioned individuals or entities to avoid compliance and reputational risks.

Both IJVs and UJVs are under the Foreign Business Act B.E. 2542 (1999) (the FBA). The FBA serves as the primary legal framework restricting certain business activities that foreigners are, in principle, prohibited from conducting. The FBA sets out the procedures in case foreigners wish to operate such businesses provided that such foreigners fulfil the requirements and act in compliance with the procedures under the FBA.

In addition to the FBA, certain business sectors are subject to shareholding restrictions under other relevant laws. For example, the banking and non-life insurance industries require at least 75% Thai ownership. However, this 75% ownership requirement may be subject to exemptions or relaxations granted by the respective regulatory authorities on a case-by-case basis.

3.4 Competition Law and Antitrust

Thailand's Trade Competition Act B.E. 2560 (2017) (the TCA), enforced by the Office of Trade Competition Commission (OTCC), may apply to joint ventures depending on their structures and purposes. If a JV's formations or operations significantly reduce market competition, create a monopoly, or result in market dominance, the JV participants must comply with the requirements under the TCA. Certain JV formations that could substantially lessen trade competition must be notified to the OTCC within seven days of such completed formation, while those creating a monopoly or market dominance require prior approval before proceeding. Non-compliance can lead to severe consequences, including fines, invalidation of the transaction, and other enforcement actions.

3.5 Listed Companies and Market Disclosure Rules

When the JV participant that is a listed company makes an investment in a joint venture, the listed company

is obligated to disclose such transaction in accordance with the regulations of the Stock Exchange of Thailand (SET), as the investment constitutes a material transaction that may have an impact on the listed company's share price.

Furthermore, such investment may be considered an acquisition of assets by the listed company and/or may be regarded as a connected transaction if it involves transactions with persons connected to the listed company. In such cases, disclosure obligations and/or other actions prescribed by the rules of the SET must be complied with.

3.6 Transparency and Ownership Disclosure

Ultimate beneficial owner-related (UBO-related) disclosures are a core part of the country's anti-money laundering (AML) and Bank of Thailand (BOT) regulatory framework. Under the Ministerial Regulation on Customer Due Diligence 2020 and the Anti-Money Laundering Office (AMLO) guidelines issued pursuant to the Anti-Money Laundering Act B.E. 2542, financial institutions must identify and verify both the customer and the UBO before entering into a business relationship or carrying out certain transactions.

This requirement applies not only when opening a bank account but also when engaging in qualifying transactions with a bank, such as significant fund transfers, financing arrangements, or other activities that trigger customer due diligence obligations. The process includes assessing the customer's risk profile and determining the appropriate level of verification based on that risk. The rule applies to both IJVs and UJVs, ensuring transparency in ownership and control, mitigating financial crime risk, and aligning Thailand's financial sector with international AML standards.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

In Thailand, UJVs are not governed by specific legislation; however, the precedent case has characterised them as unregistered partnerships, holding that UJV participants are jointly liable as joint debtors.

In 2025, the Supreme Administrative Court issued Order No 318/2568 (2025), offering another perspective on UJV litigation rights by affirming that each UJV participant retains the independent right to bring legal lawsuits. In that case, the three UJV participants had entered into a UJV to share profits from a joint business without registering as a partnership or company. They jointly filed a lawsuit, but one participant later terminated the JV agreement and withdrew from the case. The Court held that this withdrawal did not affect the rights of the remaining two UJV participants to pursue the claim individually.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

During the pre-JV agreement stage, the JV participants commonly enter into documents at the negotiation stage, such as the following.

- Memorandum of understanding (MOU) to outline the preliminary understanding and commercial framework.
- Non-disclosure agreement (NDA) to protect confidential information exchanged between JV participants during discussions.
- Letter of intent (LOI) to record the JV participants' intentions and key commercial terms.

At the pre-JV stage the common market-standard provisions commonly include:

- a clear statement of the JV's objectives and intended scope;
- confidentiality obligations;
- exclusivity rights for a defined period; and
- the governing law and dispute resolution framework.

5.2 Disclosure Obligations

In Thailand, the disclosure of a JV depends on the status of the company (ie, whether it is a listed company) and the nature of the transaction. For a listed company, disclosure may be required once the transaction is confirmed. In practice, a listed company should disclose the transaction when board approval

is granted (if required) and upon entering into a binding agreement.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

In Thailand, the conditions precedent in JV agreements typically include:

- obtaining required regulatory approvals (eg, the licensing requirements under specific laws, or BOI (board of investment) approvals);
- execution of ancillary agreements (eg, IP licences, asset transfer agreements, and service agreements);
- fulfilment of capital contribution requirements or other agreed funding arrangements; and
- clearance of any existing encumbrances on assets to be contributed to the JV.

The satisfaction of these conditions is usually a mutual obligation, but specific items may be allocated to one party.

Material adverse change and force majeure clauses usually permit the following:

- a material adverse change clause generally allows a party to terminate or delay closing if a significant negative change occurs in the other party's financial condition, business operations, or the JV's target business before completion; and
- force majeure clauses typically excuse delays or non-performance caused by events beyond the parties' control, such as natural disasters, war, pandemics, or government actions – in JV agreements, force majeure clauses can also be linked to extensions of long-stop dates or temporary suspension of obligations.

5.4 Legal Formation and Capital Requirements

In Thailand, there is no specific legislation governing UJVs, and therefore no minimum capital requirement applies. For IJVs incorporated as private limited companies, there is similarly no minimum capital requirement; however, under the CCC, at least two shareholders are required, the minimum par value per share is THB5, and each shareholder may hold any

number of shares. If a foreign shareholder is involved, the minimum capital requirement under the FBA is THB3 million.

Activity-specific capital requirements must also be considered, as certain regulated activities impose their own minimum paid-up capital thresholds; for example, a cryptocurrency or digital token exchange centre must have at least THB100 million in paid-up capital, while a non-life insurance business must have at least THB300 million in paid-up capital.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

In Thailand, the primary governing document for UJVs is the joint-venture agreement, which sets out the JV participants' rights and obligations, capital or asset contributions, profit-sharing arrangements, management structure, and dispute resolution mechanisms.

For IJVs, in addition to the joint-venture agreement, the articles of association (AOA) and a shareholders' agreement are typically executed to govern matters such as the relationship between shareholders, board composition, procedures for the appointment and removal of directors, share transfer restrictions, and exit mechanisms.

The key terms commonly addressed in a joint-venture agreement are:

- objectives and business activities;
- shareholding structure;
- board composition;
- appointment and removal of directors;
- voting rights;
- management authority and reserved matters;
- profit, loss, and dividend allocation;
- share transfer restrictions;
- exit mechanisms;
- confidentiality obligations;
- non-compete undertakings;
- dispute resolution procedures; and
- governing law and jurisdiction.

6.2 Governance and Decision-Making

In UJVs, decision-making is governed solely by the joint-venture agreement, which outlines the management structure, decision-making procedures, and voting rights of each participant, and since there is no statutory framework regulating these matters, it is essential that the agreement be drafted comprehensively to address all potential scenarios that may arise.

In IJVs, decision-making is governed by the company's constitutional documents, including the AOA and any shareholders' agreement, and for matters not covered in these documents, the applicable procedures under the CCC will apply.

6.3 Funding

In Thailand, a UJV is typically funded directly by the JV participants through capital contributions or partner loans in agreed ratios. All initial and future funding obligations are purely contractual, set out in the joint-venture agreement. As a UJV is not a separate legal entity and has no share capital, ownership and control are determined solely by the contractual terms.

IJVs, generally formed as private limited companies, are funded through capital increase and/or shareholder loans. The shareholders may also agree to raise additional capital through mechanisms permitted by Thai law, such as issuing bonds.

Under the CCC, capital increases are generally required to be offered to all shareholders in proportion with their existing shareholdings, so that if all shareholders exercise their rights to subscribe for the new shares, the shareholding proportions will remain unchanged. However, if the JV participants have agreed in the joint-venture agreement on a mechanism for future equity funding, such agreement will be binding on them. Where such funding leads to changes in the participants' shareholding proportions, the joint-venture agreement should clearly set out how related provisions, such as those concerning the right to appoint directors, will be amended to reflect the adjusted ownership structure.

6.4 Deadlocks

Deadlocks in joint ventures in Thailand are typically resolved through mechanisms pre-agreed in the joint-

venture agreement. Deadlocks occurring at the board level (or similar level) of both IJVs and UJVs are usually addressed by similar approaches, such as exercising the casting vote, referring the matter to a shareholders' meeting (or similar level) for consideration and resolution, or appointing a neutral third party (mediator) to facilitate negotiations and help reach a settlement.

However, deadlocks arising between JV participants in IJVs and UJVs tend to be resolved differently. UJVs commonly rely on frequently used deadlock resolution methods such as third-party conflict resolution, buy-sell mechanisms, forced buy-outs, or voluntary winding up. In contrast, UJVs may not be able to utilise all these methods due to their status as non-legal entities. Therefore, deadlock resolution in UJVs primarily focuses on the joint-venture agreement, specifying how to manage the rights and obligations arising within the joint venture if the partners fail to reach an agreement.

6.5 Other Documentation

The specific documentation required depends on the terms of the investment. In some cases, a JV participant may contribute intellectual property, tangible assets, or rights in such assets as part of its capital contribution.

For IJVs, Thai law permits share subscriptions to be paid in kind, including with assets or intellectual property, subject to valuation and compliance requirements. Common ancillary documents include intellectual property licence agreements, asset transfer agreements, and technology transfer contracts.

6.6 Rights and Obligations of JV Partners

Key Rights and Obligations of JV Participants

The principal rights and obligations of JV participants typically include the following.

- Profit sharing and loss allocation in accordance with the JV agreement or governing law.
- Access to information, including financial records and operational data, to ensure transparency and oversight.
- Non-compete and non-solicitation undertakings, restricting participants from engaging in compet-

ing activities or soliciting employees, customers, or suppliers.

- Obligation to contribute capital, assets, or services as agreed in the JV agreement.

Profit and Loss Distribution

UJV

- Profits are distributed as profit shares and losses allocated according to the JV agreement.
- There are no statutory requirements governing the allocation, giving parties contractual flexibility.

IJV

- Profits are distributed as dividends in proportion with shareholdings unless otherwise specified in company's AOA.
- Losses are borne in proportion with shareholding.
- The CCC prescribes that shareholder returns are made through dividends, capital reductions, or distribution upon dissolution.

Liabilities for Debts and Obligations

UJV

- Thai court precedent treats UJVs as unregistered partnerships, meaning participants are jointly and unlimitedly liable for the debts and obligations of the JV, including tax liabilities, regardless of internal allocation arrangements.

IJV

- Shareholders' liability is generally limited to unpaid capital.

6.7 Minority Protection and Control Rights

The typical ways for a minority member of the JV to protect their interests include the following.

UJV

- Protections depend entirely on the JV agreement, as there is no statutory framework.
- Common provisions include reserved matters requiring unanimous or majority consent for key business decisions.

IJV

Minority shareholders benefit from both statutory rights and contractual protections as follows.

- Statutory rights under the CCC, such as the ability of shareholders holding at least 10% of shares to call a shareholders' meeting.
- Contractual rights typically agreed in the shareholders' agreement or AOA, which may include:
 - (a) tag-along rights, allowing minority shareholders to sell their shares on the same terms if a majority shareholder sells its stake;
 - (b) share transfer restrictions, requiring consent or rights of first reversals before shares are sold to third parties; or
 - (c) reserved matters, requiring super-majority or unanimous approval for significant corporate actions.

6.8 Applicable Law and Dispute Resolution in International JVs

International Joint Ventures

In Thailand, JV participants may choose a foreign governing law under the JVA (joint-venture agreement) provided it does not conflict with Thai public order or mandatory provisions, such as restrictions on land ownership or labour laws. However, the IJV registered in Thailand remains subject to Thai corporate law regardless of the chosen governing law. If a dispute is litigated before a Thai court, the party relying on foreign law bears the burden of proving its content to the court's satisfaction.

Courts as a Venue for Resolving Disputes

Foreign JV members rarely select Thai courts due to the fact that proceedings are conducted solely in Thai and often consume a large period of time. The primary exception arises when the counterparty holds assets in Thailand, allowing for direct enforcement of a Thai court judgment against those assets.

Failure to Agree on the Applicable Procedural Law

A Thai court cannot apply any procedural law other than Thai procedural law; parties therefore cannot agree to use a different procedural law for court proceedings in Thailand. In arbitration, if the parties fail to agree on the applicable procedural law and the seat of arbitration is in Thailand, the arbitral tribunal will apply the Thai Arbitration Act B.E. 2545 (2002). This Act is based on the UNCITRAL Model Law, although Thailand is not a contracting state to that instrument.

Alternative Dispute Resolution (ADR) Procedures

Thailand does not have a statutory requirement mandating ADR before commencing court proceedings or arbitration, and there is no legal requirement to mediate prior to arbitration. However, Thai law encourages mediation, and government agencies actively promote its adoption to achieve more efficient dispute resolution.

International Treaties Regarding Dispute Resolution

Thailand is a signatory to the New York Convention (1958), which allows for the recognition and enforcement of foreign arbitral awards. Thailand is also party to multiple bilateral investment treaties (BITs), free trade agreements (FTAs), and ASEAN dispute settlement mechanisms, many of which provide for arbitration in investor–state disputes.

Enforcement of Foreign Judgments or Arbitral Awards

Foreign court judgments are not directly enforceable in Thailand; they may only be introduced as evidence in fresh legal proceedings before a Thai court. By contrast, foreign arbitral awards are recognised and enforceable under the New York Convention and the Thai Arbitration Act B.E. 2545 (2002). To enforce an arbitral award, an application must be filed within three years of the award becoming binding, accompanied by certified copies of the award and arbitration agreement with Thai translations. The applicant must also show that no statutory grounds for refusal exist, such as an invalid arbitration agreement, lack of proper notice, excess of scope, procedural defects, or violation of Thai public policy.

7. The JV Board

7.1 Board Structure

The board structure is typically determined by the JV agreement and the company's AOA. It is common for each JV participant to have the right to nominate directors in proportion to its shareholding or as otherwise agreed between the parties.

The appointment and removal of directors must comply with the CCC unless otherwise provided under sector-specific laws, the AOA, or the JV agreement.

Under the CCC, weighted voting rights may be applied by granting the chairperson of the board a casting vote in the event of a tie. However, JV participants are free to agree otherwise by expressly providing different voting arrangements in the JV agreement and AOA.

7.2 Duties and Functions of JV Boards and Directors

In the case of an IJV, the board of directors has the power and duty to manage the company in accordance with its stated objectives, its AOA, and the resolutions of the shareholders' meeting.

Where a director also holds a position or owes duties to the JV participant that appointed them, Thai law requires the director to act in the best interests of the company rather than in the interests of the appointing shareholder. In situations of conflict, the director's fiduciary duty to the company takes precedence, and decisions must be made in good faith, with care and loyalty to the JV entity.

Under the CCC, the board may delegate certain functions to individual directors or subcommittees. However, court precedents have clarified that attendance at board meetings is a personal duty of each director and cannot be delegated or performed by another person on the director's behalf.

Regarding reporting obligations, under the CCC the board must prepare and present the financial statements at the shareholders' meeting.

For UJVs, the duties of the board and the reporting requirements to the participants should be clearly set out in the joint-venture agreement, which is normally modelled on or reflects the principles under the CCC.

7.3 Conflicts of Interest

Under the CCC, directors are prohibited from engaging in any business of the same nature as, and in competition with, the company's business, unless such

conduct is expressly approved by the shareholders' meeting.

In the event of competing business activities, mechanisms to manage conflicts of interest (COI) may be implemented, such as entering into a non-compete agreement, clearly delineating the scope of each party's business operations, and establishing measures to prevent the use of inside information for personal benefit.

8. IP and ESG

8.1 Ownership and Use of IP

Key IP Issues That Should Be Considered When Setting Up a JV Corporate Entity

When setting up an IJV, the JV participants should clearly define important terms that align with the IJV's goals and the nature of its business activities. The key issues that the JV participants need to agree on should include at least the following.

- Capital contributions involving intellectual property (IP), where JV participants may contribute IP rights as part of their investment by transferring ownership or licensing the IP to the IJV.
- Management and protection of IP, including defining who is responsible for registering, enforcing, and defending the IP rights.
- Ownership of existing IP brought into the JV, as well as any new IP created during the JV's operation.
- How IP will be handled if the JV ends, such as agreeing on independent valuation methods to fairly divide IP and avoid disputes after termination.

Key IP Issues That Should Be Considered in Contractual Collaborations

For a UJV, the JV participants should agree on key IP issues similarly to an IJV. Since a UJV does not have a corporate entity to hold IP rights, the ownership of the IP can be agreed to belong to any one of the JV participants or to all of them jointly. If the IP is owned jointly by all JV participants, all JV participants shall have co-use, and if there is any dispute it will be considered and interpreted under the principle of ownership.

Dealing With IP Issues in the JV Agreement

The parties shall expressly agree on the ownership, usage rights, and management of IP. In the event of any dispute or issue arising, the enforcement shall be governed by the terms mutually agreed upon by the parties regarding IP management, dispute resolution, and the governing law. In the absence of such agreement, the matter shall be governed by the relevant laws applicable to the subject matter.

Specific Considerations for the Transfer of Intellectual Property to or From Foreign Entities

Thai intellectual property law permits the free transfer of IP rights between foreign and domestic entities, provided that such IP remains within the term of protection prescribed by law. IP registered in a foreign jurisdiction will not be protected under Thai law unless it has been registered with the Department of Intellectual Property (DIP) of Thailand.

However, in recognition of the importance of trade mark protection and registration, Thailand has acceded to the Madrid Protocol. As a result, trade marks registered in Thailand are protected in other member countries, and trade marks registered in member countries are likewise protected in Thailand, provided that registration is carried out in accordance with the Madrid Protocol.

8.2 Licensing v Assignment of IP Rights

Under Thai intellectual property law, IP such as patents and trade marks may be assigned in ownership as prescribed by law, or the rights therein may be granted for use to another party.

An assignment means the complete transfer of ownership in the IP from the original owner to another person. Once the transfer is completed, the original owner no longer retains any rights over such IP.

A licence means that the rights-holder grants permission to another person to use the IP while ownership remains with the rights-holder. Such permission may stipulate the scope of use, duration, and territorial limits. Unless it is specified as an exclusive licence, the rights-holder may grant the same rights to multiple parties.

The decision between assignment and licensing is often determined by the parties' intention to maintain long-term control, generate ongoing revenue, or transfer the IP entirely as part of a capital contribution to a joint venture or as part of an exit strategy.

8.3 ESG Considerations in JVs

The Importance of ESG

ESG stands for environmental, social and governance. Nowadays, society places great importance on, and is highly aware of, ESG because it helps organisations adapt and compete rapidly in the market, enhances confidence among consumers and investors both domestically and internationally, and promotes long-term sustainability for businesses through efficient resource use and fair, equitable human resource management.

Recent Significant Court Decisions or Legal Developments Relating to ESG/Climate Change

Labour rights are a key part of the social dimension within the ESG framework, reflecting a strong commitment to social responsibility and sustainable business practices. Thai labour laws have been steadily evolving to improve worker protections and promote fairness in the workplace. For instance:

- In 2023, amid the COVID-19 pandemic, Thai labour law was updated to address work-from-home arrangements by granting employees the “right to disconnect”, allowing them to refuse work-related communications from their employers after working hours or once their tasks are completed. This change supports employee wellbeing and helps maintain a healthy work-life balance, which is a vital aspect of social sustainability.
- More recently, the House of Representatives approved a new draft of the Thai labour law that extends maternity leave for female employees from 98 days to 120 days. The legislation also permits spouses to take up to 15 days of leave to support their partner after childbirth. These measures encourage shared family responsibilities and foster a more inclusive workplace culture.

These developments highlight how reforms in labour law align with ESG principles by promoting a fair, supportive and sustainable working environment.

Implementing Measures in Connection With ESG

JV participants and the JV entity should take careful and proactive steps to implement ESG-related measures. The scope and nature of these measures depend on the type of business and applicable legal requirements. For example, JVs operating in sectors such as mining or power generation are often legally required to conduct environmental impact assessments (EIAs) or environmental health impact assessments (EHIAs) to evaluate and mitigate environmental risks.

In addition, JV participants and the JV entity may need to comply with ESG principles even if such requirements are not explicitly mandated by local law. For instance, JVs exporting certain finished products to the European Union must adhere to due diligence obligations, including providing certifications that their products are not linked to deforestation or forest degradation. Failure to comply with these requirements may result in legal penalties or export restrictions under the EU Deforestation Regulation.

The Main ESG Regulations in Thailand and the Impact of International Policies and Scenarios

At present, Thailand does not have dedicated legislation specifically addressing ESG. However, ESG concepts are integrated into several existing laws, including labour regulations that establish minimum employee rights, and environmental laws requiring permits, impact assessments, and public hearings for activities that affect the environment. However, the Securities and Exchange Commission (SEC) and SET supervise listed companies, issuing guidelines encouraging transparent ESG reporting and responsible business practices.

On the global stage, Thailand's ESG framework is shaped by internationally recognised standards like the Task Force on Climate-related Financial Disclosures (TCFD) and the Global Reporting Initiative (GRI), as well as growing pressure from responsible investors. This drives Thai companies to enhance their ESG reporting and management practices to remain competitive and attract investment.

9. Exit Strategies and Termination

9.1 Termination of a JV

UJV

A UJV terminates in accordance with the conditions specified in the JV agreement. Upon termination, the JV must notify the Area Revenue Office or Branch Area Revenue Office within 15 days from the date of cessation of operations, prepare final accounts, and distribute any remaining profits to the JV participants.

IJV

An IJV may terminate as stipulated in the JV agreement or under the CCC. For a private limited company, termination may occur when:

- the company was incorporated for a fixed term and that term has expired;
- the company was formed for a single specific purpose and that purpose has been achieved;
- shareholders pass a special resolution to dissolve;
- the company becomes bankrupt; or
- the court orders its dissolution upon the occurrence of a specific circumstance such as when the company has a sole shareholder.

9.2 Asset Redistribution and Transfers

UJV

Key considerations in transferring assets between JV participants include ensuring clear legal ownership and title, determining a fair valuation of the assets, assessing all relevant tax implications, obtaining necessary regulatory approvals, and addressing any other applicable legal or contractual requirements.

In addition, since contributing assets to a UJV may create encumbrances or obligations over those assets during its operation, it is important to address how such encumbrances will be managed or discharged upon the dissolution of the UJV.

IJV

Key considerations in transferring assets between JV participants in an IJV are similar to those applicable to a UJV. However, all assets, whether originally contributed to the IJV or generated by the IJV itself, shall remain the sole property of the IJV.

Differences between assets originally contributed to the JV by participants and assets generated by the JV itself are that the assets originally contributed to the UJV remain the separate property of each JV participant, whereas assets generated by the UJV are jointly owned by the participants in proportion with their respective ownership interests.

9.3 Exit Strategy

Statutory Provisions Impacting on the Exit of Members

For the exit of a UJV's participants, there is no specific legislation governing such exit. Exit terms are determined entirely by the JV agreement or by the operation of law upon the dissolution or loss of legal capacity of a JV participant.

During the exit of an IJV's participants, the share transfers are subject to the CCC and the company's AOA. Restrictions on share transfers are permitted if specified in the AOA.

The share buy-back mechanism under Thai law is permitted only for public limited companies and is subject to the conditions prescribed by law. The JV participants are generally free to agree on exit mechanisms in the JV agreement, provided these do not conflict with mandatory provisions of Thai law.

The most common JV exits in Thailand for UJVs include termination clauses under the JV agreement, negotiated withdrawals, and compensation payments, as there are no shares to transfer. For IJVs, common exit methods include share transfers to existing or new shareholders, put and call options, drag-along and tag-along rights, or sales to third parties.

Trends and Developments

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Introduction

One of the most suitable ways to describe the trends and developments in joint ventures (JVs) in Thailand is by comparing JVs to other forms of available business units and other approaches of forming businesses in Thailand, eg, consortiums and mergers and acquisitions.

In Thailand, a JV has always been a popular choice because it offers both legal and tax incentives (as the authors will explain throughout this article).

In recent years, a JV has been a form of business chosen by the Bank of Thailand to solve issues concerning non-performing assets following the COVID-19 pandemic by facilitating banks and asset management companies (AMCs) as parties to JV companies.

Why Choose Joint Ventures Over Other Business Models?

The following aspects must be considered prior to singling out the best business models that will suit your commercial and legal needs. Here are some examples.

Model A – consortium

If your business objective is to form a business unit without creating a new single entity, where the parties' rights, obligations and liabilities are separate (or joint, in certain agreed circumstances) and based mainly on a contract, you may consider forming a "consortium".

Model B – mergers and acquisitions

Autonomy and control may be key considerations when the management decides to "acquire" another business to expand their existing one. If two companies decide that it would benefit their businesses best when their resources and profiles are combined, a "merger" could be an option.

Model C – joint venture

Two or more companies may want to keep their main operations while creating a new business unit where only selected resources, eg, funds, labour or know-how, from each party are combined for a specific purpose or market. Certain tax incentives are provided to facilitate this form of business venture, as detailed below.

Forms of Joint Venture in Thailand

A joint venture may be an "unincorporated" joint venture (UJV) or an "incorporated" joint venture (IJV). These are treated differently both on legal and tax aspects.

Unincorporated joint venture (UJV)

A UJV is a joint venture where the JV parties do not incorporate a new JV company. Relationships of the parties are, therefore, based on the joint-venture agreement (JVA).

UJV agreement

Since the UJV is not a limited company, provisions relating to the governance of a company under Thai-

land's company laws do not automatically apply to the UJV. A UJV agreement, therefore, shall be carefully drafted to elaborate full details of how the UJV parties manage their relationships in terms of each party's rights, obligations and liabilities between themselves and towards any third party.

Pitfall of a UJV

Though a UJV agreement may separate each party's liabilities towards any third party, the UJV parties may jointly be liable to the third party because the Supreme Court of Thailand ruled in 1988 that a UJV was considered an "ordinary partnership" which is a form of business unit under Thailand's Civil and Commercial Code; therefore, the partners were jointly liable to the injured party in a tort claim.

Likewise, if the UJV wishes to start a claim against any person, it is the JV parties who must file a claim to the court because, though a UJV is a tax entity under the Revenue Code, it does not have a legal personality, and therefore does not have the legal capacity to start a claim.

It is, therefore, wise for the UJV agreement to provide a right to an innocent JV party to have recourse against a guilty JV party.

Tax exposure of a UJV

The Revenue Department's ruling number 0702/8592, dated 2015, ruled that a UJV that possesses the following characteristics shall be considered a "joint venture under the Revenue Code", which consequently is a tax entity separate from its JV parties.

A joint venture is a tax entity under the Revenue Code when it is a joint venture that operates in a commercial or profitable manner, between a company or juristic partnership on one hand, and companies, juristic partnerships, individuals, non-juristic body of persons, and ordinary partnerships on the other hand, which undertakes any of the following activities.

- The JV parties agree to pool resources, eg, money, assets, labour or technology, or agree to share profit or loss arising from any contract made with a third party.

- A contract is entered into with a third party, where the contract specifies that it is a joint venture.
- A contract is made with a third party, where the contract states that the JV parties are jointly liable for the whole or parts of its work under such contract, and the JV parties will jointly receive the payment under the contract from the counterparty without any provision that separates their obligations and payments among themselves.

Such UJV, therefore, is required to apply for its own tax identification number; prepare its own financial statements; file its own tax returns and pay taxes from the taxable income generated by the UJV itself.

Tax incentives of a UJV

"Section 5 bis of the Royal Decree No. 10 issued under the Revenue Code regarding tax exemption" exempts income tax on the share of profits that (i) a "company and juristic partnership" incorporated under Thai law, or (ii) a "company and juristic partnership" incorporated under foreign law and carrying on business in Thailand receives from a joint venture (in this case, a UJV).

A "company and juristic partnership" refers to the type of entity under the Revenue Code that is subject to Thai corporate tax.

The above exemption does not apply to the party to the UJV that is a natural person. Any share of profits from a UJV paid to a natural person will be subject to personal income tax.

Incorporated joint venture (IJV)

An IJV is a joint venture where the JV parties incorporate a separate legal entity, normally a private company, as a JV company. The JV parties will become shareholders of the JV company after its incorporation.

IJV agreement

Since an IJV is a limited company (public or private), Thai company laws apply to it. The parties to the IJV agreement may include only the provisions that they would like to be legally different from the company laws in the IJV agreement, so that the IJV can be managed as agreed as opposed to as statutorily required.

Any matters omitted in the IJV agreement will be governed by the company laws, by default.

IJV as a private or public company – what to choose

It is advisable that an IJV is first incorporated as a private company because it is more convenient for the JV parties to manage. A public company is more heavily regulated on both legal and financial aspects.

If, however, the IJV parties would like to do an initial public offering or an IPO for the JV company, the private JV company can be converted to a public company at any time, subject to its shareholders' approval, once it is IPO-ready.

Currently, there is no legislation available to convert a public company to a private company, though there have been discussions of the matter. Therefore, it is wise for the JV to carry itself as a private company first and be converted to a public company only when it is necessary.

Pitfall of an IJV agreement

In Thailand, it used to be normal for a JV agreement or a shareholders' agreement to include the JV company as a party to have certain obligations regarding the company's management, including when the company breached any of its obligations, the company itself would be liable to the other parties of the agreement, aka the shareholders of the company.

Supreme Court Decision No 3402/2548 later ruled that any payments from the company to its shareholders must be paid in accordance with the company laws, and the company's liability to pay its shareholders due to a certain breach of the shareholders' agreement was not statutorily allowed in the company laws. The court added that such a provision would affect the company's stakeholders and, therefore, was void.

An IJV as a separate entity from the IJV parties

Unlike a UJV, an IJV is usually formed as a limited company where the IJV parties become the company's shareholders.

An IJV has its own capacity to perform legal acts as well as to be liable for any breach it may constitute. It can start a claim against any person as well as being

claimed against as a legal entity, while its shareholders' liability is limited to the unpaid amount of share capital, if any. Liability of UJV parties, however, is unlimited.

Tax exposure of an IJV and its shareholders

Like a UJV, an IJV is a tax entity separate from the JV parties and it has the same tax exposure as a limited company. Unlike a UJV, any dividends paid to its shareholders in Thailand or to non-resident shareholders will be subject to Thai tax.

An exemption of dividend tax is given to a Thai corporate shareholder if it (i) holds at least 25% of voting rights of the dividend-paying company's shares, and (ii) holds such shares for at least three months before and after the receipt of the dividend (accrual basis).

If, however, the corporate shareholder is a listed company, the percentage of shares held in the dividend-paying company is irrelevant. Only the condition of "holding of shares for at least three months before and after the receipt of dividend (accrual basis)" is required to be met for the listed company to enjoy dividend tax exemption.

Other differences between UJVs and IJVs

Fund raising

Since a UJV is not a legal entity, any sources of funding that require the fund raiser to be a limited company (private or public) will not be available to it. A UJV's ability to raise funds depends mainly on the JV parties' profiles or its capability to source its own funding.

Sources of funding for an IJV are vastly available. From term loans from banks, issuing debt instruments, aka debentures or BE, to an IPO, an IJV can freely decide what would be the best fit for its business growth.

Business expansion

This topic discusses inorganic growth which depends on external resources for business expansion, as opposed to organic growth where the JV's growth is from its internal resources.

Mergers, amalgamation and entire business transfer (a form of acquisition), if undertaken according to the Thai Revenue Department's regulation regarding tax

exemption will be exempted from income tax, VAT and stamp duty, subject to certain conditions. These tax incentives are available for mergers, amalgamation and entire business transfer between limited companies (private or public). Currently in Thailand, however, mergers where one merging entity survives while the other ceases to exist is not an available choice if one merging party is a public company.

There are no such tax incentives for business expansion or integration as mentioned above for a UJV. This is because a UJV cannot be a party to a merger or an amalgamation because it is neither a private nor a public company. A UJV cannot acquire its own assets, but it can be acquired by another entity if a JV party agrees to sell its stake in the UJV. Either way, no tax incentives, as previously mentioned, are provided.

Exit strategy

An IJV party may consider selling its shares in the JV company to any third party, subject to the terms of the JV agreement. The share transfer process in Thailand is simple where only a share transfer instrument is duly made and executed. The existing IJV agreement may be revised to suit the needs of the new shareholder. It is normal for an IJV agreement, aka a shareholders' agreement, to include an "accession" clause from the outset, stating that the leaving party is obliged to have the new shareholder duly entered into the existing shareholders' agreement prior to its exit.

Since a UJV is basically an agreement between two or more parties, the exit of an existing UJV party means an exit from a JV agreement. The exiting party needs to comply with the exit clause of the agreement, if any, in order for the UJV to welcome a new party. A new UJV may need to be prepared and re-negotiated if there is a change of a UJV party, which can be a time-consuming process.

Summary

Currently in Thailand, the authors can see that IJVs and UJVs are both popular choices for different reasons.

An IJV is a good option due to reasons of business continuity, expansion, growth, reputation, and other aspects of a similar nature.

UJVs are usually adopted by Thai and/or international corporations for construction projects that last for a certain period of time, and such projects require the expertise of each of the parties. The parties may also form a "consortium" if this would suit their risk profiles better.



Law and Practice

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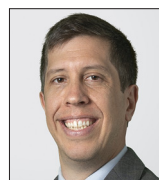
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1. Market Conditions

1.1 Geopolitical and Economic Factors

With high interest rates and tightening credit, joint ventures (JVs) have become an important and frequent source of financing for capital intensive businesses in multiple industries, including real estate and healthcare. Given the reduced access to capital (both equity and debt), capital partners in JVs in the current market garner more influence and have stronger negotiation leverage, often demanding more favourable economic and governance terms. Venturers are also seeking greater flexibility to exit a JV that is deadlocked or is not performing up to expectations. This is likely driven in large part by the current uncertain economic environment.

In addition, the overall regulatory environment has become more intense. From wider antitrust enforcement to increased scrutiny (where there are non-US investors) by the Committee on Foreign Investment in the United States (CFIUS), JVs are grappling with complex and increased regulatory considerations.

1.2 Industry Trends and Emerging Technologies

The following industries have been active in the JV arena.

- **Real estate:** JVs have been and remain crucial for real estate projects, where developers and operators frequently seek investors to fund the majority of capital needs, although the financing environment has introduced more friction into the deal-

making process. JVs for developing data centres also have been active recently.

- **Healthcare:** Many healthcare providers are pursuing JVs through which resources and experience may be combined or shared, all while managing antitrust risk.
- **Media:** The changing media landscape has forced many media companies to look for strategic partnerships (eg, Disney/WarnerBros, Vice Media/Savage Venturers).
- **Financial services:** The number of private credit and financing source JVs, structured to share risk, is exploding.

2. JV Structure and Strategy

2.1 Typical JV Structures

Oxford Languages defines a "joint venture" as "a commercial enterprise undertaken jointly by two or more parties which otherwise retain their distinct identities". While the term "joint ventures" is sometimes limited to enterprises for a discreet, specific project, for the purpose of this chapter, JVs are not as limited. Each party to a JV – whether a member of a limited liability company (LLC), a partner of a general partnership, a limited or general partner of a limited partnership (LP), a shareholder of a corporation or a party to a contractual JV – is referred to in this chapter as a "venturer". The following vehicles are frequently used.

LLCs

LLCs continue to be the vehicle of choice for most JVs because, subject to certain exceptions, the mem-

bers and managers of an LLC are not personally liable for its liabilities. LLCs are flexible and allow wide latitude to the venturers to define their JV relationship. There are no restrictions on the types of owners: they can be natural persons or any type of entity. Governance, economics and risk sharing can be tailored to the vVenturers' needs. Unless they elect to be taxed as a corporation, LLCs are pass-through entities taxed as partnerships for income tax purposes. This means the venturers are allocated their shares of the income, gain or loss of the LLC with no tax at the LLC level, thus avoiding the double taxation that is typical for corporations. In cross-border transactions, caution should be taken before using an LLC, as certain non-US tax laws do recognise or treat an LLC as a partnership, instead viewing it as a corporation subject to double taxation. With current corporate rates at 21% and Internal Revenue Code (IRC) Section 199A, which, subject to certain exceptions, allows non-corporate venturers in an LLC, partnership or S corporation (S-Corp) to deduct up to 20% of their qualified business income from their taxable income, a tax advisor needs to determine whether a particular JV would save taxes as an LLC (or partnership) versus as a corporation.

LPs

LPs are another relatively common type of entity for many of the same reasons that LLCs are favoured. They provide limited liability to the limited partners, allow flexibility in defining the partners' relationship and, unless they elect otherwise, have pass-through taxation. LPs often are used in lieu of an LLC for non-US tax purposes where there are non-US partners from certain jurisdictions. LPs require at least one general partner, each of whom has unlimited personal liability for the obligations of the partnership. This concern is commonly addressed by:

- having a general partner that is an LLC or a corporation that is a single-purpose entity (SPE) with no assets, other than its interest in, and possibly any fees or distributions it receives from, the LP; and
- giving the general partner no economic interest (if permitted in the jurisdiction of formation) or a nominal economic interest (0.1% to 1%) in the LP – alternatively, in many jurisdictions, an LP may elect to be a limited liability limited partnership (LLLP).

LLLPs

In certain jurisdictions, including Delaware, an LP may file with the secretary of state or similar body (the "secretary of state") to become an LLLP. This status provides the general partner with the same protection against the liabilities of the LP that is afforded to its limited partners. Caution should be taken to ascertain whether the jurisdiction of formation authorises LLLPs, and whether each jurisdiction in which the LLLP conducts its business recognises LLLP status (and the limitation of liability) for an LLLP formed elsewhere.

General Partnerships

Although prevalent historically, general partnerships are now less common because each partner is a general partner with joint and several unlimited personal liability for the obligations and liabilities of the partnership.

LLPs

While general partnerships do not register with any secretary of state, many states permit the partnership to register to become a limited liability partnership (LLP), which limits the liability of each general partner to that of a limited partner. Where there is shared management by the partners and an LLC cannot be used, an LLP may be a desirable form of JV entity, provided it is authorised in the jurisdiction of formation and recognised in all other jurisdictions in which the JV conducts business.

Corporations

Corporations are less common JV entities due to double taxation – a corporation, other than a subchapter S-Corp, is subject to income tax on its income, and its shareholders are taxed on distributions paid to them by the corporation. Certain corporate formalities must be followed in order to shield the shareholders from the liabilities of the corporation, including adopting by-laws, appointing directors and officers and holding and documenting annual shareholders' and directors' meetings. Corporations are also more rigid structures than LLCs with respect to capital calls and distributions. Additionally, the officers and directors of a corporation owe a fiduciary duty to the corporation and its shareholders that cannot be waived or limited, as may be permitted by state laws for LLCs and partnerships. One advantage of corporations (including S-Corps) is

the greater ability to minimise self-employment tax on the earnings of the corporation.

S-Corps

Unlike a standard corporation, but similar to an LLC or a partnership, S-Corps generally have pass-through taxation. They lack the flexibility of an LLC or an LP because there can only be one class of stock, with each shareholder having the same economic rights to receive dividends that are proportional to its ownership interest. Unlike an LLC or a partnership, ownership of an S-Corp is limited to no more than 100 shareholders. In addition, each shareholder must be a citizen or legal resident of the United States, and an individual (or certain trusts and estates or tax-exempt entities). An S-Corp may be beneficial for a smaller, simple JV where the type and number of owners is not restricted and there are pro rata distributions, or where self-employment tax minimisation is desired. An S-Corp lacks a certain degree of flexibility with respect to tax considerations in connection with restructurings or the recapitalisation of its investments, and a JV that loses its S-Corp status because of impermissible actions may face severe tax penalties.

Contractual JVs

A contractual JV is a JV among two or more venturers that is solely set forth in a contractual arrangement without forming a separate entity that is owned by the venturers. These arrangements are often effective when there is a specific strategic rationale driving the relationship. For example, a contractual JV may be appropriate for certain industries – such as the airline industry – where the venturers often are not making a capital investment into a common enterprise but rather are creating a strategic contractual alliance in their operations and profit sharing. Typically, these arrangements are easier to exit as there's no sale of assets or dissolution of the JV entity. Instead, the venturers part ways and terminate the alliance.

Another common example of a contractual JV is a profit participation agreement. In this structure, the profit participant (eg, the seller of real property) is provided the contractual right to receive a negotiated portion of the profits or cash flow of the buyer entity rather than becoming an owner of that entity. This structure is desirable to the buyer because, except

as negotiated in the profit participation agreement, the profit participant does not receive the statutory, common law and operating agreement protections that are afforded to an owner of a JV, including rights to inspect the books and records of the entity.

2.2 Strategic Drivers for JV Structuring

The primary drivers for choosing a type of vehicle or a contractual JV are typically the following:

- limitation of liability to all of the venturers;
- flexibility to determine and implement economic terms;
- tax structuring considerations and efficiency;
- governance structure; and
- exit rights.

In most cases, unless there is a special need to have a partnership, a corporation or contractual JV, an LLC likely will be the preferred choice for a JV.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

In addition to the federal, state and local laws that govern a particular business conducted by the JV, the following are some key regulatory considerations affecting JVs.

State Entity Law

Regardless of where it will conduct business, a JV entity may be formed under the laws of the particular US state ("jurisdiction") of its choosing or the District of Columbia.

In general, the statute of the jurisdiction governing the specific type of JV entity will regulate that entity, except to the extent, if any, that the statute allows the governing documents of the JV to modify the statutory provisions. LLC and LP statutes provide default rules for the relationship of the venturers and the formation, governance, operation and dissolution of the entity that apply where the governing documents are silent on a specific topic. Each LLC and LP statute, however, provides for certain enumerated "non-waivable" provisions that cannot be varied by contract. The non-waivable provisions provide a baseline of statutory

protection for the owners. Through expansive non-waivable provisions, many jurisdictions take a paternalistic approach to protect unsophisticated investors from fraud or grossly unfair operating agreement provisions. The scope of the non-waivable provisions varies from jurisdiction to jurisdiction. Corporate statutes are binding on corporate JVs, except for provisions that are expressly permitted to be modified through the corporation's governance documents.

If the JV conducts business in any jurisdiction other than its jurisdiction of formation, it will usually need to register with the secretary of state in each such jurisdiction as a "foreign" entity. Certain affairs of the JV will be governed by its jurisdiction of formation and each jurisdiction in which the JV is registered to do business. As there is an annual fee and reporting requirements for registering to conduct business in a foreign jurisdiction, the venturers may desire to form the JV in the jurisdiction in which it will conduct business. This is often the case for smaller, less sophisticated JVs doing business in a single jurisdiction.

To choose the jurisdiction of formation, the venturers should have a good understanding of the applicable statutory provisions governing the JV, including the non-waivable provisions, and evaluate whether the applicable statutes are attractive for the particular JV.

For most sophisticated JVs, Delaware generally is the jurisdiction of choice for formation, regardless of where the JV will do business. For LLCs and LPs, the Delaware entity statutes expressly recognise the venturers' right to contract as they please, with very few non-waivable provisions. It is one of the only states that permits the complete waiver of fiduciary duties, other than the implied contractual covenants of good faith and fair dealing.

To compete with Delaware and attract business formations, on 1 September 2024, Texas opened its first "business court", becoming the 32nd state to have a specialised court to handle complex business litigation. With no state income tax and state business statutes that offer similar protections to businesses formed in Delaware, Texas, Nevada, Wyoming and Florida are vying to be attractive alternatives as JV jurisdictions of formation.

Securities and Exchange Commission (SEC) and State Securities Laws

An equity interest in a JV may be considered a security under federal and/or state securities laws. Accordingly, the structuring of any JV needs to consider applicable federal securities laws (and any applicable exemptions), as well as the state security statutes in the jurisdiction in which each of the venturers reside. If a JV is making investments, rules governing investment companies and investment advisers may also be implicated. Applicable federal securities statutes include, without limitation, the Securities Act of 1933 and Regulation D thereunder, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The application of securities laws to JVs can be nuanced and depends highly on the structure of the transaction and the governance of the vehicle.

FinCEN

The CTA, promulgated by the Financial Crimes Enforcement Network (FinCEN), went into effect on 1 January 2024 and, subject to certain exemptions, was originally applicable to most entities formed both in the USA ("domestic" entities) and those formed outside of the USA that are registered to do business therein ("foreign" entities). On 21 March 2025, FinCEN issued an interim final rule that exempted domestic entities (including JVs) and made the CTA solely applicable to foreign entities (including JVs).

FTC

The Federal Trade Commission (FTC) and the Department of Justice (DOJ) have the authority to review certain JV transactions and may enforce competition laws against the venturers and the JV if they are engaged in certain anti-competitive practices.

3.2 Anti-Money Laundering Compliance

The AML regulations applicable in the USA include:

- the Foreign Corrupt Practices Act of 1977, as amended;
- the USA Patriot Act, as amended, and various executive orders thereunder;
- the US Department of the Treasury's Office of Foreign Assets Control (OFAC), including the Specially Designated Nationals and Blocked Persons List and Sectoral Sanctions Identification List;

- the Entity, Denied Persons and Unverified List maintained by the US Department of Commerce; and
- the Corporate Transparency Act.

3.3 Sanctions, National Security and Foreign Investment Controls

CFIUS allows the US government to review non-US investments in US businesses for national security concerns, and the President can block risky transactions. Its application is more common today across multiple industries, including real estate. No statute of limitations applies to CFIUS reviews, unless previously approved

OFAC administers the US sanctions programmes, which preclude JVs from doing business with certain blocked non-US venturers or venturers from embargoed countries

In addition to federal laws, many states also have regulations to address national security issues, including the following.

- In May 2023, Florida enacted Chapter 692, Florida Statutes, which restricts, with limited exceptions, certain "foreign countries of concern" from directly or indirectly owning, having a controlling interest in or acquiring any interest in real property in Florida. Foreign countries of concern include China, Russia, Iran, North Korea, Cuba, Venezuela and Syria. Similarly, Texas passed the Lone Star Infrastructure Protection Act, prohibiting certain investments from countries of concern that would affect critical infrastructure.
- Other states are in the process of restricting ownership of real property by China and certain other countries. The existing and proposed laws of each jurisdiction in which the JV conducts business must be analysed where there are Chinese (or other specified non-US) venturers.

3.4 Competition Law and Antitrust

Venturers need to consider applicable US antitrust regulations, which include the following:

- the Sherman Act – prohibits certain anti-competitive practices, such as price-fixing, market allocation and customer allocation;
- the Clayton Act – regulates activities that lessen competition and lead to monopolies;
- the Federal Trade Commission Act – prohibits unfair competition and deceptive practices;
- the Hart-Scott-Rodino Act – may require a filing with the FTC and DOJ before entering into certain JV formations and transactions; and
- state laws – most states have their own unfair competition laws, and healthcare-related JV transactions may be subject to review and filing requirements under applicable state statutes.

In general, where antitrust challenges are at issue, the JV must have a legitimate pro-competitive purpose, such as new product creation, a reduction in price for customers and market efficiencies. This is measured against venturers' market power through the JV that would not otherwise exist. Restricting the venturers' ability to compete outside of the JV and other anti-competitive conduct can raise antitrust scrutiny.

3.5 Listed Companies and Market Disclosure Rules

There is no applicable information in this jurisdiction.

3.6 Transparency and Ownership Disclosure Corporate Transparency Act

Original CTA

Effective 1 January 1, 2024, with certain exceptions, each US legal entity that was created by a filing with a secretary of state ("domestic" entity) and each entity formed outside of the US that qualified to do business through a secretary of state filing ("foreign" entity) was considered a "reporting company" that must file a "CTA report" with FinCEN.

Revised CTA

After a flurry of activity in late 2024 and early 2025 by FinCEN and a number of federal courts, as well as a new administration, on 21 March 2025 FinCEN promulgated an interim final rule that exempted domestic entities from having to file CTA reports. It also excludes US persons (defined in the IRC), including individual citizens and residents who meet certain residency requirements and domestic entities that are beneficial

owners of foreign reporting companies. Accordingly, only foreign entities are now reporting companies, and only non-US persons must report as beneficial owners. FinCEN stated that it will consider post-issuance comments on the interim final rule before it issues the rule. The interim final rule exempts more than 32 million existing domestic entities, and the CTA now only applies to foreign JVs (of which there are approximately 20,000).

State Transparency Acts

States beneficial ownership reporting laws are in a state of flux after the promulgation of the CTA interim final rule.

The New York LLC Transparency Act, as amended on 1 March 2024, goes into effect on 1 January 2026 and is based on the CTA (as originally enacted) but only applies to LLCs. Unlike the CTA, it requires a filing to claim an exemption. It applies to both domestic and foreign LLCs that are formed or registered to do business in New York, and unlike the interim final rule, it includes domestic entities.

Whether other states, such as California and Maryland, that previously were considering adopting their own transparency legislation will do so after the promulgation of the interim final rule is unclear.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Since its adoption, the CTA has been fraught with interpretive issues. FinCEN promulgated regulations, FAQs and other guidance and offers a virtual portal to submit inquiries. JVs and their counsel, however, struggled with numerous questions that have were not addressed by FinCEN. FinCEN's adoption of the interim final rule on 21 March 2025, exempting domestic entities and US persons from CTA reporting, greatly reduced the number of JVs that have filing requirements, but issues still remain for foreign JVs that must file CTA reports.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

NDA

A confidentiality or nondisclosure agreement (NDA) is critical any time that prospective venturers are sharing confidential information. It should be entered into prior to negotiating the terms of the JV and a venturer providing sensitive information regarding any other venturer. A customary NDA will typically restrict a party or its representatives from disclosing the existence of the JV negotiations and the confidential information of the other party, and from using the other party's confidential information other than in furtherance of the evaluation and negotiation of the potential transaction.

Term Sheet

Most JVs must be contractually tailored to the needs of the venturers. Negotiating a detailed term sheet, letter of intent or memorandum of understanding (each a "term sheet") is often advisable at the outset of negotiations to facilitate alignment between the venturers. A term sheet is much shorter, with less detail, than a JV agreement. Accordingly, a term sheet setting the material terms of the JV will save substantial time and resources in negotiating and preparing the JV agreement, as well as setting the parties' expectations. Most term sheets will address equity ownership, capital funding requirements, distributions, governance, and transfer and exit provisions. Term sheets are usually legally non-binding, except for certain binding provisions such as the allocation of expenses to negotiate and prepare the term sheet and other deal documents, confidentiality, governing law and, if applicable, an exclusivity period during which the prospective venturers are obligated to negotiate exclusively with each other. The scope of each term sheet and which material issues are included (versus negotiating them in the JV agreement) is a question of strategy and negotiation leverage. In some cases, it may be better to save a problematic issue for the JV agreement after the venturers have signed the term sheet and are more invested in the JV rather than risking killing the deal at the term sheet stage. In other cases, bringing these difficult issues up at the term sheet stage may ensure that the parties are in fact aligned on these issues.

5.2 Disclosure Obligations

Certain basic information regarding each JV that is an LLC, LP or corporation (such as the entity type, name, address and registered agent) is filed with the secretary of state of its jurisdiction of formation and, if applicable, in every other jurisdiction in which it is qualified to do business as a foreign JV. In addition, an annual report is also required to be filed with the secretary of state of such jurisdictions, which, depending on the jurisdiction, usually includes the identity of at least one JV manager. This filed information is of public record. Additional information, including the fact that an entity may be a JV, the identity of the venturers and the scope, terms, business and operations of the JV, is not required to be disclosed through these filings and remains confidential. General partnerships do not file with a jurisdiction in order to come into existence and similarly do not file annual reports. The same is true for contractual JVs as there is no JV entity that needs to file.

The extent to which additional details regarding the JV may need to be disclosed depends on the characteristics of the JV and its venturers.

- The Corporate Transparency Act requires foreign JVs to file certain JV and beneficial owner information with FinCEN. This information is not publicly available.
- A public company is required to disclose to the SEC when it has entered into a material agreement or transaction. Depending on the nature of the JV and its materiality to the public company, the JV agreement and its terms may require disclosure.

If a JV is not required to disclose its status as a JV pursuant to SEC or other legal requirements, this fact may remain hidden from the public, unless and until the venturers desire to make such disclosure. The ability of a venturer to disclose non-public confidential information regarding the JV or any other venturer is often restricted by an NDA, a term sheet or a confidentiality provision in the JV agreement.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Conditions precedent to closing a JV transaction are most likely to be relevant if the JV parties are contrib-

uting, selling or otherwise transferring assets to the JV. Before the JV parties are willing to transfer assets to a JV, they will seek assurances that the other parties are ready to perform their obligations. This may include depositing funds and documents into escrow arrangements and receiving certificates from executive officers that representations made in the transaction documents are true and correct. In addition, if regulatory approvals (such as antitrust approvals) or other third-party consents are required, the JV parties may agree that the JV transaction will not close unless such required approvals and consents have been obtained within a certain period of time. If these conditions have not been satisfied before an agreed-upon outside date, the parties may be excused from continuing to seek to close the JV transaction.

5.4 Legal Formation and Capital Requirements

A JV that is an entity is set up by filing an appropriate formation document with the secretary of state in its jurisdiction of formation. For example, in the State of Delaware, an LLC is formed by filing with the secretary of state of Delaware a "certificate of formation" signed by an authorised person. The venturers would enter into a JV agreement (which is not filed) to govern their relationship with the JV.

A JV that will conduct business activities in a jurisdiction other than its jurisdiction of formation will likely be required to register in the applicable jurisdiction to do business as a foreign entity. If the JV will file a federal tax return or other tax-related documents, it will need to obtain a federal tax identification number for the JV by filing a Form SS-4 with the Internal Revenue Service.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The venturers of a JV that is an LP or an LLC would execute an operating agreement ("JV agreement") in the form of an LP agreement (LPA) or limited liability company agreement (LLCA). If the JV is a corporation, it would file a certificate of incorporation and adopt by-laws, and the shareholders may enter into one or more shareholder agreements. The shareholders

would elect or appoint directors who would in turn appoint officers of the corporation. A "close corporation" under certain state statutes may be managed by the shareholders without a board of directors.

Regardless of the type of JV entity or its industry, JV agreements are likely to cover the following topics.

- **Governance:** A JV may be (i) co-managed by the unanimous decision of the ventures; (ii) managed by a managing venturer (or its affiliate), with the other venturers having consent rights over certain major decisions; (iii) managed by an executive committee or board of managers, directors or venturers appointed by the venturers to collectively manage the JV; and/or (iv) managed via the appointment of officers of the JV.
- **Capital contributions (for LLCs and LPs):** Here, topics include how capital contributions are made (in cash or in kind), future capital contribution requirements (capped or unlimited) and who can call capital (see also **6.3 Funding**). For corporate JVs, shareholders fund capital by acquiring more shares and may want pre-emptive rights (rights to participate in any share offering) to avoid dilution (reduction in its percentage ownership interest).
- **Distributions (for LLCs and LPs):** At issue here is whether cash distributions are made pro rata among venturers or whether a distribution waterfall provides an order of priority and/or a performance incentive for a managing venturer. Corporate JVs require that all shareholders of the same class receive the same per-share distributions.
- **Allocations and other tax provisions:** For LLCs and partnerships, IRC Section 704 and the complex Treasury Regulations thereunder allocate income, loss, gain and the components thereof among the venturers. Each LLC or partnership must appoint a venturer or third party as the "partnership representative" with the authority to represent the JV and the venturers in IRS audits. A partnership representative that is an entity must include an individual designee. A tax attorney well versed in partnership taxation should prepare or approve all tax provisions in each JV agreement.
- **Affiliate transactions:** These authorise transactions between the JV and any venturer or its affiliate, and the terms thereof.

- **Indemnification:** This pertains to exculpation and indemnification provisions with respect to the venturers as well as fiduciary duties (the required standard of care and the ability to compete with the JV) of the ventures and managers.
- **Major decisions:** typically, each venturer that is not managing the JV will have certain negotiated major decision rights to approve certain actions by the JV.
- **Deadlock resolution process:** This dictates what happens if the venturers cannot agree on a JV course of action, resulting in deadlock. See also **6.4 Deadlocks**.
- **Transfers and other exits:** This relates to whether a lock-out period exists before any exit, the transfer rights of each venturer (to affiliates and non-affiliates), the rights of first refusal or first offer, and drag-along and tag-along rights;
- **Confidentiality:** This pertains to the information each venturer is prohibited from disclosing.

6.2 Governance and Decision-Making

Decision-making depends on the management structure of the JV. For an LLC or LP, the following applies.

- If a venturer or its affiliate, such a manager or managing member of an LLC or a general partner of a partnership (a "manager"), manages the JV, day-to-day decisions would usually be made by the manager, with certain major decisions requiring the approval of one or more non-managing venturers.
- A board comprising individual representatives of each venturer (or manager if more than one), acting similarly to the board of directors of a corporation, could be responsible for managing the JV or voting on major decisions, with day-to-day functions carried out by officers of the JV (if any) or delegated to a manager or venturer.
- Officers of a corporate JV manage under the oversight of the board of directors. See also **7.2 Duties and Functions of JV Boards and Directors**.

See **6.4 Deadlocks** with regard to resolving deadlocks.

6.3 Funding

JVs are typically funded by equity capital contributed by the venturers but may also incorporate in kind contributions and/or debt from venturers or third parties.

- Initial capital contributions: The venturers typically fund capital to the JV for initial start-up activities.
- Additional capital contributions: (i) These may be mandatory or optional – or mandatory under certain circumstances (such as up to a specific capped amount) and optional otherwise – and are generally funded on a pro rata basis based on the venturers' ownership percentages of the JV. (ii) Capital contributions that are mandatory would typically follow an approved budget/business plan or other specific circumstances described in the JV agreement, such as emergency or non-discretionary expenses (eg, debt service, taxes and other mandatory payments). (iii) The managing venturer may be required to fund certain cost overruns in excess of the budget/business plan.
- Default: If a capital contribution is mandatory, the JV agreement will typically include punitive consequences for a venturer who fails to fund. These may include punitive (non-pro rata) dilution, default loans by the non-defaulting venturer(s) at escalated interest rates, the ability by the non-defaulting venturer(s) to buy the defaulting venturer's interest at a discount, lost voting rights and/or, if applicable, removal as the manager. Mandatory capital contributions may also be guaranteed by a deep-pocket affiliate of a venturer.
- Debt: JVs may also incur debt (by venturers or third parties) to fund the business, which is often a major decision. A venturer (or its affiliate) may provide guaranties to the lender, and the JV agreement should address how liability is allocated among the venturers if a guaranty is triggered.

6.4 Deadlocks

How deadlocks are resolved is highly negotiated and specific to each JV. There is no single approach, and common ways to resolve deadlocks include the following.

Status Quo Prevails

It may be appropriate for certain deadlocked decisions to result in nothing happening if the Venturers

cannot agree. For example, if the Venturers cannot agree on a new budget, then the old budget may continue to apply to the JV until the deadlock is resolved.

Escalation to Senior Management

Escalation to senior management is a process where the deadlocked issue is escalated to the upper management of each venturer to resolve the issue.

Arbitration or Mediation

In certain industries and/or for certain issues, binding arbitration or non-binding mediation may work better than in others. The JV agreement may designate which deadlocks are mediated or arbitrated and which deadlocks would trigger other resolution mechanisms, as well as who is the arbitrator or mediator.

Buy/Sell

This refers to the case where one venturer buys the ownership interest of the other venturer(s), thereby breaking the deadlock. In common "shotgun" buy/sell, one venture offers to buy the other venture(s) at a certain price, and each venturer that receives the offer can choose to either:

- sell its interest to the offering venturer; or
- purchase the interest of the offering venture at a price based on a valuation of the JV determined from the purchase price in the offer.

Often, there is a lockout period at the start of the JV during which the venturers cannot exercise their buy/sell rights. This gives the JV a chance to ramp up its operations and appreciate in value. A buy/sell may not be a fair deadlock resolution procedure, however, when one venturer lacks the same financial ability to buy the other venturer(s).

Forced Sale

One or more venturers may have the right (which may follow a lockout period) to force the marketing and sale of the JV or its assets to a third party. If a forced sale is triggered, the venturer(s) that do not trigger the forced sale may have a right of first refusal or first offer to acquire the JV or its assets.

Dissolution

The JV could be forced to liquidate its assets and dissolve.

6.5 Other Documentation

Any number of agreements may be appropriate depending on the type of JV.

- **Contribution agreements:** If a venturer will contribute assets to the JV (such as real estate, equipment or IP), a contribution agreement may be appropriate; this provides the terms by which a venturer contributes the property to the JV in exchange for equity interests in the JV.
- **IP licences:** If one of the venturers has IP that the JV needs in its business, such venturer may want to retain ownership and license the IP to the JV (rather than contributing it) by means of an IP licence. See also **8.1 Ownership and Use of IP**.
- **Guarantees:** A guaranty from a credit-worthy affiliate may be appropriate if the venturer lacks the financial ability to satisfy its monetary obligations under the JV, such as mandatory capital contributions and/or indemnification obligations.
- **Services agreements:** If a venturer or its affiliate will be providing services to the JV, then an agreement providing the terms relating to the services and any compensation therefor may be appropriate.

6.6 Rights and Obligations of JV Partners

Typically, the rights and obligations of the venturers are negotiated in the JV agreement (topics are discussed in **6.1 Drafting and Structure of the Agreement**). No specific legal requirements exist for distributions and allocations of profits or losses (other than the tax-related requirements set forth in **6.1 Drafting and Structure of the Agreement**), and they are negotiated by the venturers. The distributions are often made on a pro rata basis in accordance with the percentage interests of the venturers. Where a venturer may be providing services to the JV, it may receive incentive distributions with respect to such services. The venturers' liabilities for the debts and obligations of the JV depend on the type of JV entity (as further discussed in **2.1 Typical JV Structures**).

6.7 Minority Protection and Control Rights

In a JV where one of the venturers has managerial control of the JV either through majority ownership or negotiated terms (such as being the manager or general partner of a JV), the non-managing venturer will usually have rights to approve certain actions to be taken by the JV, such as mergers or other sales of the JV or its assets, the admission of new venturers, transfers of interests in the JV by the other venturers, approval of the budget and business plan, instituting or settling litigation and incurring debt. These "major decision" rights are highly negotiated and may be very detailed.

6.8 Applicable Law and Dispute Resolution in International JVs

In international JVs, neither side wants disputes to be resolved through litigation in the other venturer's home court and under its substantive and procedural laws. The venturers will want substantive law that favours neither party and has well-established commercial law. Procedurally, the process needs to be mutually fair and timely, and to have decisions enforceable in the jurisdiction of each venturer.

Most sophisticated international JV agreements provide for mandatory international arbitration rather than litigation. The largest international arbitration organisations for JV disputes include:

- the International Chamber of Commerce, with millions of members in over 100 countries;
- the International Center for Dispute Resolution (the international branch of the American Arbitration Association);
- the London Court of International Arbitration (for complex and financial sector disputes); and
- the Singapore International Arbitration Centre.

Each organisation has its own procedural rules unless the JV agreement amends those rules. Examples of possible rule changes include the scope of disclosure, manner of selecting arbitrators, review of awards and providing for interim relief. Each forum has a different mechanism to review awards and manage the selection of arbitrators. The chosen seat for international arbitration is often in major financial centres such as Paris, London, Singapore or Geneva. In the United

States, New York is the most frequently chosen arbitral seat, followed by Miami, Washington, DC and Houston. The selected situs is important because it determines the procedural law and the courts that parties may need to rely on to compel arbitration and enforce their rights. Federal law has a strong public policy favouring arbitration, and awards are generally enforced.

The chosen arbitral institution plays an important part in the management of cases and ensuring parties are afforded an efficient process. The court or arbitration body generally applies its own procedural rules, which may materially differ from each venturer's expectations, create uncertainty and adversely affect enforceability, the timing of the resolution, discovery, confidentiality, evidentiary matters and the right to appeal. This could lead to forum shopping by each venturer, in turn leading to differing, conflicting rulings and additional litigation to resolve.

International arbitration awards are enforced in the USA under one of two treaties, depending on the jurisdiction of the foreign venturer(s):

- the 1975 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), which is a UN treaty for its 172 state members; or
- the Inter-American Convention on International Commercial Arbitration (the "Panama Convention"), which has 19 member states throughout the Americas.

Because international arbitral awards are enforced through these treaties, arbitration is favoured to ensure JV obligations can be enforced in a foreign jurisdiction. The United States is not a party, however, to any international treaty to enforce foreign court judgments. While no federal law applies, state law governs the enforcement of foreign judgments, often pursuant to the Uniform Foreign-Country Money Judgments Recognition Act or its predecessor, the Uniform Foreign Money Judgments Recognition Act. Courts in the United States will generally enforce foreign judgments, but procedural and due process defences may be raised and hinder the enforcement of foreign judgments.

7. The JV Board

7.1 Board Structure

Unless it is a "close corporation" that elects otherwise, a JV that is a corporation must have a board of directors. The rights of the venturers to elect or appoint board members would be subject to significant negotiation by the venturers. Unless otherwise provided in the certificate of incorporation, each shareholder will have one vote per share, and board members are elected by a majority of the votes. Different classes of stock, such as preferred versus common equity, may have different voting rights.

Directors of a corporation may have different voting rights, but those rights need to be set forth in the certificate of incorporation in accordance with applicable statutes.

If the corporate JV has multiple classes of stock, one class may have greater approval rights per share than another (which may be non-voting or have limited voting rights). Shareholders may enter into a shareholder or voting agreement that provides each shareholder with rights to appoint members to the board of directors or approve certain matters.

Because of formalities that must be observed with respect to corporate entities, venturers more commonly elect to form a JV as an LLC or LP, which provide more contractual and governance flexibility. These entities may be also structured with a governing board but without all the statutory requirements applicable to corporations.

7.2 Duties and Functions of JV Boards and Directors

The directors of a corporate entity owe fiduciary duties to the corporation and its shareholders, comprised of a duty of care and a duty of loyalty. These duties cannot be waived. In a corporate JV, these duties must be exercised by a director notwithstanding that a director may also have a duty to the venturer who appointed him/her or to other parties. To avoid liability, a director who has competing duties should carefully consider in what capacity he/she is acting when making a decision with respect to the JV.

A corporate board may create committees and sub-committees to which it would delegate certain managerial functions.

For LLC or LP JVs, the manager will have certain fiduciary duties under the applicable statute or case law. The JV agreement, however, can modify or eliminate those duties (to the extent permitted by applicable law), and the venturers have flexibility to create bespoke mechanisms for making decisions and resolving conflicts.

7.3 Conflicts of Interest

In the corporate context, a director who has a conflict of interest must disclose that conflict of interest to the entire board and recuse themselves from the applicable decision.

For LLCs and LPs, conflicts of interest should be addressed in the JV agreement. Most LLC statutes provide the default rule that such conflicts must be approved by the non-conflicted venturer(s), and this is generally an appropriate JV agreement provision. Conflicted transactions may also be required to be on arms-length market terms. The JV agreement should provide that rights on behalf of a JV under an affiliated agreement are exercised solely by the non-affiliated venturer. Otherwise, the affiliated venturer could vote against the JV, enforcing the agreement against it or its affiliate.

In some cases, venturers may elect to waive the fiduciary duty of loyalty so that each venturer can make JV decisions in their own best interest. If not waived or limited in the JV agreement, the default duty of loyalty (which generally prohibits competing against the JV) under the laws of the applicable jurisdiction would apply to the manager, and possibly the venturers.

8. IP and ESG

8.1 Ownership and Use of IP

Each JV must have the right to use the IP it needs to conduct its business, which may include rights to use the names, marks or other IP owned by one of the venturers. IP can either be contributed in kind to the JV via an IP assignment or licensed to the JV. If a ven-

turer is licensing the IP, the other venturers will want to make sure the licence is available for as long as the JV operates and address what happens if the licensor leaves the JV. The licensing party will want to specifically set out applicable usage restrictions and fields of use that govern the JV's use of any licensed IP.

With respect to any IP that the JV develops, the JV agreement should address who owns it and who has a right to use it. In general, if the JV develops IP using its own employees or contractors, the JV will likely have rights to such IP. The JV agreement should delineate each venturer's IP rights, including use by each venturer, licensing to third parties and enforcement of the JV's rights against third parties. Each venturer may have the exclusive right to use the IP within a specified field of use.

The JV agreement should address how IP developed by the JV will be owned and used upon the JV's termination if a venturer leaves the JV. The venturers could jointly own the IP, with a separate agreement outlining their respective uses. Alternatively, one venturer could own the IP and license it to the other, subject to usage restrictions. If there are pending patent applications, an issue is who controls and pays for their prosecution.

8.2 Licensing v Assignment of IP Rights

In general, if a venturer has valuable IP, it will want to keep ownership of the IP, in which case it would provide a licence to the JV to use it for specific purposes. The licensing venturer needs to balance the need to maintain ownership of valuable IP while still granting the JV a licence that is sufficient to enable the JV to independently operate. Also, the licensor should consider the JV's right to assign any licence to a third party.

An important issue with any licence or assignment is protection of the IP. For instance, if a JV is only licensing IP material to its business, the licence should contain terms ensuring the owner will take sufficient steps to stop third-party infringers.

A licensor of IP will also want to consider whether it will receive royalty payments for the licence or whether the licence will be royalty-free.

Contributing ownership of IP to the JV through an assignment is less common because the assignor would cease to directly own the IP. One way to address this issue is for the JV to obtain ownership of the IP but then enter into a broad "licence back" to the contributing venturer.

8.3 ESG Considerations in JVs

Outside of public company context, there are no unified federal ESG regulations. However, many states have ESG-related regulations applicable to the entities formed or operating within such state. Caution should be taken to review state regulatory requirements before the formation of a JV to ascertain that the JV will be able to comply with such requirements.

ESG Materiality

A party considering entering into a JV should first consider whether ESG will be material to the transaction. Certain industries, such as oil and gas, may be subject to more ESG-related concerns, which may require evaluating how ESG may impact the JV.

ESG Goals

If one venturer has ESG-related goals, there should be discussions at the outset by the venturers as to how ESG will affect the JV's business and operations. Careful due diligence on such venturer and its goals would be needed in negotiating the JV agreement.

ESG-Related JV Provisions

The JV agreement will need to set out desired ESG reporting requirements and monitoring functions, require the adoption of ESG-related policies and targets, and provide for approval or blocking rights related to certain activities that implicate ESG.

9. Exit Strategies and Termination

9.1 Termination of a JV

Venturers should carefully consider at the outset when and how a JV may be terminated. Many JVs are intended for a specific purpose. For example, a real estate development JV may have the purpose of developing land, constructing buildings thereon and selling the buildings upon completion. Other JVs are created to operate a business without a specific

planned termination. Many JV agreements provide that the JV has a term that is perpetual pending an express termination event. Others will set forth a termination date.

Dissolution and Exit

For JVs that are LLCs or partnerships, the applicable entity statute of the jurisdiction of its formation will set forth certain default events for dissolution of the JV. These need to be carefully reviewed, as the statute may permit some or all of these events to be waived or changed by the venturers in the JV agreement. The dissolution events for JVs often include:

- the disposition of substantially all of the JVs' assets;
- the decision of venturers owning a requisite percentage of ownership interests; and
- a case where there are no ventures.

Most JVs are illiquid investments. Accordingly, in addition to the dissolution provisions, the JV agreement should address the ways in which a venturer may exit the JV. Depending on the relationships of the venturers and their goals, one or more of the following rights may be appropriate.

- Buy/sell or put or call rights: Under specified circumstances, these give one or more venturers the right to acquire or sell ownership interests from or to the other venturers.
- Rights to transfer ownership interests: Generally, each venturer would prefer to have unlimited rights to transfer its ownership interest, or as few restrictions as feasible, so it can exit the venture when desired. On the other hand, each venturer would want to restrict the other venturer's transfer rights to ensure the transferee is an appropriate venturer. Accordingly, many JVs restrict transfer rights other than to affiliates of the venturer.
- Forced sale rights: These permit one or more venturers, after any applicable lock-out period, to cause the marketing and sale of the assets of the JV to third parties, often combined with the right of first offer to the other venturer(s).
- Registration rights: These are used to register and sell a venturer's ownership if the JV has an initial public offering of its equity interests.

Post-Termination Asset Distribution

If a JV is terminated, the venturers need to consider what happens to its assets. In many cases, it may be appropriate to liquidate the assets and distribute the proceeds to the venturers. If, however, they do not want to liquidate certain assets, such as newly developed IP, the venturers will need to determine how the ownership and use of these assets can be shared among or allocated to one or more venturers.

A terminating JV will need to wind down its business by liquidating its assets, terminating or transferring existing contracts, terminating licences or registrations and paying off creditors. In addition, as required by its entity statute, the JV will need to reserve funds or make provision to pay for any future known or contingent liabilities (eg, indemnities related to a sale of an asset) and file final tax returns, if applicable.

The distribution of the liquidated proceeds will also need to be carefully considered, particularly if there is a waterfall that requires distributions in a particular order of priority. If a venturer has the right to receive distributions based on performance, it may be entitled at liquidation to receive additional proceeds. If the JV has not been successful, or if at the end of the venture a venturer has received more distributions than it was otherwise entitled to, there may be a required "claw-back" (ie, repayment) of certain distributions it previously received. Claw-backs are often guaranteed by a deep-pocket guarantor affiliate of the applicable venturer.

9.2 Asset Redistribution and Transfers

The distribution of assets in kind is often a major decision for the venturers. When making in-kind distributions, the JV agreement should provide a valuation mechanism for the assets to ensure they are distributed consistent with the distribution provisions and the economic arrangements of the venturers. If the venturers cannot agree on a value, they may need a third-party appraisal.

If a venturer contributes in-kind assets to the JV, it may want the right to receive them back through distributions, at an appraised or an agreed-upon value, when the JV terminates or that venturer exits.

If assets have been created or developed by the JV, the venturers need to decide how to share or allocate ownership of those assets when the JV terminates. For example, the rights and responsibilities of the venturers related to jointly developed IP should be carefully spelled out to avoid potential conflict.

9.3 Exit Strategy

Exit rights should be thoughtfully considered and carefully drafted into the JV agreement. In most common forms of JVs, such as LLCs, the venturers are generally granted wide latitude under applicable law to agree upon exit rights (common exit rights are described in **9.1 Termination of a JV**).

A common issue related to exit rights is how to value the JV, particularly if one of the venturers will buy out the other venturer's JV interest. The venturers should set forth in the JV agreement how value will be determined, such as through an independent third-party appraiser or through a buy/sell mechanism. Many ways exist to measure a JV's value, and it may be appropriate to engage a sophisticated financial advisor to help determine the most appropriate valuation methodology at the time the JV is formed.

Trends and Developments

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Holland & Knight LLP was founded in 1889 and is now a global law firm with more than 2,200 lawyers and other professionals in 35 offices throughout the world. The firm’s lawyers provide representation in litigation, business, real estate and governmental law. Interdisciplinary practice groups and industry-based teams provide clients with efficient access to attorneys throughout the firm. To address clients’ needs as effectively and efficiently as possible, the lawyers work collaboratively, drawing upon their depth and breadth of legal experience and industry knowledge.

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There are several market trends and recent developments that impact US joint ventures.

On 21 March 2025, the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued an interim final rule that significantly narrowed the scope of the Corporate Transparency Act (CTA). Hybrid capitalisation structures such as joint venture preferred equity, co-investment joint ventures (CJVs) and club joint ventures ("club JVs") have continued to flourish in today's environment of higher US interest rates and the reduced availability of debt. The use of programmatic joint ventures (PJVs) has also continued to expand because of the need for speed, efficiency and cost effectiveness due to increased competition for investment opportunities.

The following is a brief description and analysis of these trends and recent developments.

Corporate Transparency Act

The CTA requires reporting companies to make certain filings regarding themselves, their company applicant and their beneficial owners with FinCEN, which is a part of the United States Department of the Treasury. Many US joint ventures were previously considered to be reporting companies and were required to make filings with FinCEN.

FinCEN issued an interim final rule on 21 March 2025 that limited the CTA's beneficial ownership information (BOI) reporting requirements. This interim final rule exempted domestic companies from CTA reporting in an effort to reduce regulatory burdens.

Joint venture entities formed under the laws of a US state are now exempt from all BOI reporting obligations. This rule change removed millions of domestic companies from the reporting scope.

The interim final rule was issued without prior notice to avoid immediate compliance burdens, while inviting public comments within 60 days for a finalised rule later in 2025. The interim final rule has not been finalised as of the date of this article.

The rationale given for the rule change was a determination by the Treasury Department Secretary that

domestic company reporting did not serve the public interest sufficiently and that existing bank customer due diligence mitigated illicit finance risks. FinCEN also concluded that the cost savings from reduced reporting requirements outweighed the benefits of broader BOI data collection because of the marginal value of the excluded information.

Preferred Equity Investments

A typical capital stack for a US joint venture investment is usually comprised of a combination of debt and equity, with the debt portion comprising 40% to 80% of the capital structure and the equity portion making up the balance. High interest rates, increased regulatory restrictions and economic headwinds have resulted in a reduced availability of debt and an increased need for joint venture sponsor equity.

Because a joint venture sponsor may be under-capitalised, and a common equity investment may involve a high degree of risk and an uncertain return, there is often a funding gap that needs to be satisfied. A preferred equity investment (PEI) into a joint venture entity is increasingly being used by joint venture investors and joint venture sponsors to satisfy the funding gap.

PEIs can be attractive to investors because they create an opportunity for the PEI investor to achieve a better risk-adjusted return, with greater governance controls, than a typical debt investment and more security than a typical common equity investment. A PEI investor can achieve a higher return because the PEI is subordinated to the repayment of debt, while reducing risk because the common equity is subordinated to the repayment of the PEI. PEIs can also be attractive to joint venture sponsors because they permit greater leverage (and potentially higher returns) than might otherwise be available in today's economic environment while preserving more of the upside for the joint venture sponsor if the underlying investment is successful.

PEIs made through a US joint venture can be structured as an equity investment with features similar to a mezzanine loan, or as an equity investment with features similar to a common equity investment – or somewhere in between.

A PEI that has more debt-like features will frequently entitle the PEI investor to the right to receive regular payments of a preferred return on the PEI (similar to the interest payments on a mezzanine loan) and the priority repayment of the PEI by a specified date (similar to a mezzanine loan repayment at the maturity of the mezzanine loan).

In the more debt-like PEI joint venture structure, the joint venture's common equity distributions will typically be subordinated until the PEI (including any preferred return thereon) has been paid in full. The repayment obligation may be secured by a pledge of the ownership interests in the joint venture (or a guaranty by the owners of the joint venture or their affiliates). If the joint venture has a loan, the PEI investor and the lender may enter into a recognition agreement, which may contain provisions that acknowledge the PEI investor's economics, governance rights and remedies but may require the PEI investor to make certain concessions to the lender, such as offering replacement guarantees.

In the more equity-like PEI joint venture structure, the PEI investor will typically be entitled to receive a return on (and a return of) the PEI on a priority basis, and the joint venture's distributions to the common equity will be subordinated until the PEI (which may also include any accrued preferred return thereon) has been paid. The preferred return on the more equity-like PEI will often accrue if the joint venture's cash flow is insufficient to pay the preferred return on a current basis (similar to a common equity investment), and the PEI will not typically be required to be redeemed until a specified date (similar to a common equity investment). In addition, the more equity-like PEI will often not be secured but may allow the PEI investor to take over control of the joint venture. If the joint venture has a loan, the loan documents will sometimes contain provisions that acknowledge the PEI investor's governance rights and rights to receive priority distributions.

A PEI in a US joint venture is not without risks. A joint venture sponsor may be required to give up more control to a PEI investor than to a common equity investor or a standard lender. The PEI may not be secured, and a PEI investor may need to be prepared to take over

control of the joint venture. If the joint venture's underlying investment is successful, then the PEI investor may achieve a lower return than they would have otherwise achieved with a common equity investment in the joint venture.

Both the PEI investor and the joint venture sponsor will likely incur additional costs to negotiate and document the PEI and address the PEI investor's and joint venture sponsor's respective control, governance, repayment, transfer and exits rights. PEIs made through a US joint venture structure may subject both the PEI investor and the joint venture sponsor to additional litigation risks and the risk of tax recharacterisation.

Co-Investment Joint Ventures and Club Joint Ventures

A CJV is typically a US joint venture (in the form of a corporation, limited partnership or limited liability company) where one or two institutional investors (eg, pension funds, investment funds or family offices) invest non-controlling equity in an investment opportunity alongside a sponsor. CJVs are often entered into when the sponsor of a private fund or another joint venture needs additional capital to acquire or fund an attractive investment opportunity. CJVs are also sometimes used to recapitalise investments in cases where one or more of the sponsor's existing investors need exit liquidity.

In CJV structures that involve the acquisition of a new investment, the CJV sponsor (and the CJV sponsor's existing investors) and the CJV investor will typically each contribute equity capital to a newly formed CJV that will utilise the equity capital and debt to acquire the investment opportunity. In CJV structures that involve a recapitalisation transaction, the CJV sponsor's existing private fund or joint venture will contribute some or all of the existing private fund's or joint venture's assets to a newly formed CJV, and the CJV investor will contribute equity capital to the CJV. The CJV will then distribute some or all of the CJV contributed equity capital to the departing investors in the existing private fund or joint venture.

A club JV is a US joint venture where multiple institutional investors (pension funds, investment funds, family offices, etc) invest together on a collective basis

to acquire control of an investment opportunity that any one of them would not typically acquire on an individual basis. Club JVs are frequently used in cases where the club JV investors desire to acquire control of an attractive existing operating business or provide new equity capital to a talented existing management team to keep the management team together so that they can pursue new investment opportunities.

In most club JV structures, the club JV investors will form a new US entity together, the only owners of which will be the club JV investors. In some cases, the club JV investors will hire a jointly selected management team and then delegate day-to-day management control of the club JV's operations to the management team subject to a management committee or board comprised of the club JV investors.

There are many reasons why CJVs and club JVs have become increasingly attractive to both investors and sponsors.

Many institutional investors desire greater control over their investments and less risk. CJVs and club JVs offer such investors the potential for more control than they might otherwise have when investing in a blind pool investment fund and less concentration risk than they might have when investing in a standard two-party joint venture. In addition, as transaction sizes continue to grow larger and larger, many institutional investors have investment concentration limitations that may require them to invest with other institutional investors to access larger investment opportunities.

CJV and club JV structures also have the potential to create better alignment between institutional investors and sponsors because CJVs and club JVs can be flexible and designed to address the needs of each group better than their respective needs can be addressed through traditional investment structures. CJVs and club JVs can allow both institutional investors and sponsors access to a larger number and wider variety of potential transactions and investment opportunities than each would otherwise be able to access on their own.

CJV and club JV structures typically offer institutional investors more governance control than other invest-

ment structures with multiple institutional investors. This greater governance control has the potential to provide institutional investors with more flexibility to adapt to changing market and regulatory conditions and investment requirements.

CJV and club JV structures frequently offer sponsors better or additional compensation than they would otherwise receive. The larger equity capital commitments will often result in greater fees (investment management fees, asset management fees, transaction fees, etc), and the larger transaction sizes will frequently create an opportunity for the sponsor to generate additional returns and carried interest.

CJVs and club JV structures are not without risk. The transaction documentation for a CJV or club JV will typically be more complex than for a standard joint venture, and the transaction documentation may take longer to negotiate. The greater number of investors involved in a CJV or club JV can result in more regulatory hurdles (eg, tax, Employee Retirement Income Security Act (ERISA), Investment Adviser Act, Investment Company Act, broker-dealer regulations and anti-trust regulations) that will need to be addressed and a divergence of investor requirements and goals (eg, investment limitations, debt limitations and return expectations) that will need to be reconciled.

Programmatic Joint Ventures

A PJV typically consists of either a US joint venture formed for the purpose of making multiple underlying investments or a series of US joint ventures formed by the same joint venture sponsor and investor for the purpose of making a series of underlying investments. PJVs have become increasingly attractive to both investors and sponsors because the PJV structure provides an efficient and cost-effective way to deploy a large amount of capital in multiple investments.

Utilising a PJV can make investors and sponsors more competitive in today's market environment because the equity capital has been identified and is available, and the parties can focus on identifying and underwriting investment opportunities rather than negotiating the terms of one or more new joint ventures. The PJV structure is also very flexible, and can take various forms and be utilised at any level of the capital stack.

In a holding company PJV structure ("HoldCo PJV"), the PJV investor and PJV sponsor will frequently enter into a single joint venture formed for the purpose of making and holding multiple investments. The PJV investor typically makes a commitment to provide the required equity, and the PJV sponsor agrees to provide the HoldCo PJV with priority access to the PJV sponsor's applicable investment opportunities. A HoldCo PJV may be the sole equity investor in each underlying investment, or it might invest in multiple underlying investments through joint ventures with other capital partners.

In a platform PJV structure, the PJV investor and PJV will often form a co-general partner PJV ("co-GP PJV"), or an operating company JPV ("OpCo PJV"). In the case of a co-GP PJV, the PJV investor provides most or all of the co-investment equity that a PJV sponsor will invest into joint ventures on behalf of the co-GP PJV with other capital partners. A co-GP investor will frequently have the right to participate in carried interest distributions paid to the co-GP PJV.

In the case of an OpCo PJV, the PJV investor provides the PJV sponsor with the capital required to expand the PJV sponsor's organisation or investment platform so that the PJV sponsor will have the resources to hire new employees, expand into new markets, pursue additional investment opportunities or manage a larger investment portfolio. An OpCo PJV investor will frequently have the right to participate in the fees paid to the OpCo PJV, as well as carried interest.

There are a number of differences between a traditional joint venture and a PJV. In a PJV, the PJV investor is frequently motivated by the desire to have priority (or exclusive) access to the PJV sponsor's investment opportunities. Many PJV sponsors are unwilling to restrict their access to other investors without appropriate compensation in the form of additional fees or access to pursuit cost capital.

The PJV investor and PJV sponsor will frequently agree upon a business plan that describes the types of investment opportunities that will be pursued for a defined investment period, the required equity capital amounts that will be invested, and the investment returns that will be targeted. Additional negotiating points frequently include the right of the PJV sponsor to pursue investment opportunities outside of the PJV, the scope of the PJV sponsor's investment discretion, the aggregation (ie, a single distribution waterfall for the whole PJV) or non-aggregation (ie, an individual distribution waterfall for each investment) of investment returns for multiple investments and the calculation of the PJV sponsor's "promote", the provision of guarantees and other credit enhancements, and the timing of the liquidation of the PJV's underlying investments.

Because the anticipated term of a PJV may be significantly longer than that of a traditional joint venture, the documentation of a PJV often requires additional terms and provisions that seek to align the interests of the PJV investor and PJV sponsor during the life of the PJV. Examples of such additional terms and provisions include promote crossing provisions when distributions are made on an investment-by-investment basis, expanded key person provisions that address changes in the PJV sponsor's organisation, additional transfer and liquidity provisions that provide both the PJV investor and the PJV sponsor with expanded transfer and liquidity rights, and termination provisions that will allow the PJV investor or the PJV sponsor to terminate the PJV if the relationship is not working.

UZBEKISTAN



Law and Practice

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GRATA International law firm has a branch in Uzbekistan which is located in the capital city of Tashkent. Its team of lawyers consists of over 35 predominantly western-educated legal advisers with the average work experience exceeding 10–15 years. All lawyers at the firm are fluent in all three regional languages (Uzbek, Russian and English). Senior-level lawyers are highly ranked by primary international ranking institutions. GRATA International has active offices in all

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1. Market Conditions

1.1 Geopolitical and Economic Factors

The economic and legal system of Uzbekistan has been very stable and, as confirmed by various international institutions, including the World Bank, it has been showing steady growth since 2017 despite geopolitical turbulence surrounding the region. The situation in Ukraine and the Middle East has not negatively impacted the country and traditional sources of investment continued expanding their presence in Uzbekistan by means of establishing solely owned enterprises or making joint ventures (JVs) with other international investors and local partners. The government of Uzbekistan continued to show commitment to strengthening business and investment in the country and new legislative reforms are planned to be carried out in 2025–2026. Furthermore, several international events in the oil and gas, mining, and energy industries have gathered quite a lot of interest in the country.

1.2 Industry Trends and Emerging Technologies

The 2025–2026 period has so far seen an increase in the number of enterprises solely owned by foreign investors as well as an increased number of joint ventures in the energy, infrastructure, and automobile industries in addition to the IT and banking and financial sectors. Special economic zones, such as IT Park, have reported a significantly increased turnover in 2024–2025 and aim to double the number of private companies and private investments in the IT industry by 2030.

2. JV Structure and Strategy

2.1 Typical JV Structures

Traditionally, there are two options for investors intending to set up a legal entity in Uzbekistan. These include a limited liability company (LLC) and a joint-stock company (JSC). Each of these forms has an underlying legislative document regulating the main principles of establishment and operation of the company:

- the Law on Limited Liability Companies; and

- the Law on Joint-Stock Companies and Protection of Shareholders' Rights.

Partnerships, for example, have not gained popularity in Uzbekistan in the light of investment interests and aims, but partnerships or various kinds of consortiums are frequently employed mainly in one-off, single projects.

When choosing between an LLC or a JSC, investors, in the vast majority of cases, tend to opt for an LLC as it is significantly easier and cheaper to establish and maintain its activities. The law allows use of an LLC in almost all kinds of business operations. Whereas JSCs have a lot more procedures to comply with at all stages of their operations due to the composition of share capital of a JSC. Share capital of a JSC consists of shares – ie, equity which requires compliance with special issuance, registration, circulation and storage requirements. In some industries, setting up a legal entity in the form of a JSC is compulsory, for example, when establishing banks, certain financial institutions, insurance companies, commodity and stock exchanges, and energy market operators. In some instances, using the form of JSC is forbidden, for example, auditing companies, tax consulting companies, and ecological inspection companies cannot be set up in the form of a JSC.

Despite a JSC being a more complex and financially burdensome form of business in Uzbekistan, in 2025, the authors have seen a growing number of investors converting their businesses to JSCs on a voluntary basis due to various tax benefits and the possibility to raise funds by means of issuing privileged, non-voting shares. Tax benefits applicable to shareholders of JSCs under Article 16 of the Law on the Equities (Securities) Market include full exemption from payment of corporate and individual income taxes in respect of profits/income received by sellers of shares through the stock exchange.

2.2 Strategic Drivers for JV Structuring

The final decision on the legal form of business should be made by taking into consideration the following factors.

- Is there any statutory requirement to use JSC only? If, there is, shareholders do not have any choice.
- Will shareholders sell their shares in the future? If they will, shareholders should construct their business model by exploring perspectives of tax benefits offered by Article 16 of the Law on the Equities Market previously described.
- Will shareholders issue bonds or other kinds of securities? If so, then the form of JSC might be more suitable as it is easier and there are less regulatory restrictions to issue securities through JSC.
- Are there more than 50 shareholders? If so, then there is no choice and shareholders are obliged by law to set up a company in the form of JSC.
- Will shareholders use the mechanism of pledging shares? If so, then the form of JSC is a better option as there is a technical possibility to enforce the pledge by means of registering bans through the depository. This option is not available to LLCs and there is no practically enforceable mechanism for pledges and bans on LLC shares to be registered at any instance which would prevent the owner from alienating the shares unilaterally.
- In practically all other cases, the LLC seems to be a better option as it is much easier and far cheaper in terms of procedure for registration, management, operation, restructuring and liquidation.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

The primary regulators for the establishment of companies are as follows.

- The Ministry of Justice and Public Service Agencies under the Ministry of Justice – these state bodies implement state policy in the area of corporate operation, and register legal entities, their reorganisations and liquidations. All filings are made to regional Public Service Agencies or through online portals.
- National Agency for Prospective Projects – this authority is an authorised state body for implementing state policy in the securities market and is the main regulator for the operation of JSCs.

3.2 Anti-Money Laundering Compliance

AML laws are regulated by the Law on Fighting Legalisation of Profits Generated from Criminal Activity, Financing Terrorism and Financing the Distribution of Weapons of Mass Destruction. The Law sets major principles for conducting AML compliance by designated legal entities and general AML principles, such as:

- AML control exercised by a special state agency;
- internal control;
- taking measures to audit the clients; and
- taking measures for identification, evaluation and reduction of risks.

The following categories of enterprises are obliged by the Law (Article 12) to conduct AML compliance on a mandatory basis:

- banks and credit institutions;
- professional participants of the securities market;
- members of all kinds of exchanges;
- insurance companies;
- leasing companies;
- payment companies;
- pawnshops;
- organisers of lotteries and gambling;
- traders of precious metals and precious stones;
- real estate agents;
- notaries, advocates and auditing organisations; and
- cryptocurrency operators.

3.3 Sanctions, National Security and Foreign Investment Controls

Uzbekistan legislation does not have any restrictions for shareholders originating from particular countries to set up a legal entity. Setting up a fully foreign-owned legal entity in Uzbekistan is allowed and is not restricted apart from only a very short list of exclusions in such sectors as mass-media (no more than 30% foreign participation is allowed), banks (no more than 50% foreign private investors are allowed), hydro-electric power plants and hydro-electric power storage systems (no more than 75% foreign participation is allowed).

3.4 Competition Law and Antitrust

Uzbekistan's antitrust regulations shall apply in situations described in Article 26 of the Law on Competition. These include the following kinds of corporate transactions:

- reorganisation of a company registered in Uzbekistan in the form of accession or a merger;
- acquisition of at least 25% of shares from the total share capital of a JSC registered in Uzbekistan; or
- acquisition of at least 1/3 of shares from the total share capital of an LLC registered in Uzbekistan.

In the above transactions, antitrust clearance in the form of acquiring preliminary consent from the anti-monopoly agency for economic concentration shall be required if one of the below criteria is fully satisfied:

- cost of assets or annual turnover resulting from the sale of goods/services of one of the participating persons exceeds 250,000 basic calculation units (roughly USD8 million); or
- aggregate cost of assets or annual turnover resulting from the sale of goods/services by all persons participating in the transaction exceeds 500,000 basic calculation units (roughly USD16 million).

It has also been frequently noted and confirmed by the national anti-monopoly agency that based on Article 3 of the Law on Competition, foreign-to-foreign transactions capable of influencing Uzbekistani commodity and financial markets may also require antitrust clearance prior to execution of such transactions.

3.5 Listed Companies and Market Disclosure Rules

Concerning JSCs that have issued shares and such shares have been listed on a stock exchange, they need a formal web-page and must follow mandatory disclosure requirements on the stock exchange through the [unified corporate information portal](#) and through their own formal web-page. A listed JSC has to publish information and make it accessible to any interested person in:

- the prospectus of shares to be issued – no later than two weeks prior to issuance of shares (except for private subscription);

- annual reports – no later than two weeks from the date the general meeting of shareholders or other executive body has been held;
- quarterly reports – no later than a month following the reported period;
- the announcement of significant facts or circumstances – no later than two working days from the date the significant fact or circumstance has occurred; and
- the announcement of a transaction with affiliated persons – no later than 72 hours from the moment it has been executed.

All obligations applied to listed companies which have been described above are not applicable to LLCs.

3.6 Transparency and Ownership Disclosure

Article 47 of the Law on the Equities Market establishes the following disclosure obligations applicable to persons who have acquired shares issued by an Uzbek JSC.

- If a buyer has acquired 35% or more of any kind of security issued by a JSC then no later than five days from the acquisition the buyer has an obligation to disclose this information to the issuer – ie, the JSC which has issued such security. This information, in turn, must be disclosed by the issuer through the unified portal of corporate information and their own web-page no later than two days from receiving the information.
- If a buyer acting itself or together with its affiliated persons has acquired 20% shares issued by a JSC, or more as a result of one or a series of deals, then no later than five days from the acquisition the buyer has an obligation to disclose this information to the issuer – ie, the JSC which has issued these shares. This information must be disclosed by the issuer through the unified portal of corporate information and their own web-page no later than two days from receiving the information.
- If a buyer has acquired 50% shares issued by a JSC, or more, then no later than 30 days from the acquisition the buyer has an obligation to announce an offer to all remaining shareholders through mass media to sell their shares to the buyer at market price as well as inform the issuer of this fact. This information, in turn, must be dis-

closed by the issuer through the unified portal of corporate information and their own web-page no later than two days from receiving the information.

All obligations which have been described above are not applicable to LLCs and shareholders of LLCs.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Although corporate practice is quite rich and there are multiple corporate disputes over title to shares and challenging transfer of shares to third persons, Uzbek judicial practice does not yet have any outstanding or significant benchmarking cases arising from complex shareholder agreements, privatisation or enforcement of various kinds of option agreements.

A very significant improvement in legislation has been introduced in 2025 when the Parliament of Uzbekistan implemented the concept of corporate agreements to the Civil Code of Uzbekistan, thus strengthening the investors' and shareholders' legal capacity to execute and enforce corporate agreements, including shareholders' agreements, various option agreements, and others.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

As a rule, at the stage of setting up and establishing a JV, the parties tend to sign the following documents:

- non-disclosure agreements, restricting every party and their counsels and other consultants to disclose any information to third persons;
- term-sheets, which serve as a preliminary agreement establishing major terms and conditions agreed by the parties to reflect the subsequent project documentation;
- protocols of discussions, which in some cases may provide interpretation or amendment of a term-sheet;

- draft shareholder's agreement or joint-venture agreement, the main document establishing all terms and conditions for setting up, management and operation of the JV;
- draft option agreements (put, call, tag-along, and drag-along), providing specific rights and obligations for shareholders;
- draft articles of association, also named "charter", of a JV, which serves as the JV's formal constituent document – as a rule, this document reflects all terms and conditions approved in the shareholders' agreement; and
- depending on the project and who the counter-parties are, the parties usually also discuss and approve other drafts such as mandatory off-take agreements, mandatory lease agreements, financing documents and other documents before the JV is established.

5.2 Disclosure Obligations

Uzbekistan law does not contain any obligations for disclosure of the establishment of a JV after preliminary and initial-stage documents have been signed. However, if one of the signatories is a JSC listed on the Uzbekistan stock exchange and any of the documents signed raises obligations for this JSC and constitutes a significant fact then, as previously described, this JSC will have to make a formal disclosure through the unified corporate information portal and through its own web-page.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

As a rule, the discussing partners usually name the following as conditions precedent (CPs) in JV agreements:

- receipt of antitrust clearance, if the transaction is subject to such a clearance;
- receipt of a particular permit or licence, for example, a work permit for a particular specialist, or a licence for conducting a particular activity;
- reorganisation of a company to a particular form, for example, turning an LLC into a JSC;
- receipt of the right to use land, although this kind of CP is usually used in large industrial and infrastructure projects;

- receipt of financing or settling financial obligations by any of the shareholders or the target company; and
- any other contractual arrangement which may be requested by partners depending on the situation.

Uzbekistan corporate law and contract law are quite liberal in terms of negotiation and approval of contractual agreements. Article 354 of the Civil Code, for example, approves the principle of freedom of contract, which is also reaffirmed by the Law on Guarantees of Freedom of Entrepreneurial Activity. Therefore, negotiating parties frequently employ various legal instruments, including material adverse change and force majeure not only in business and commercial contracts, but also in corporate agreements.

5.4 Legal Formation and Capital Requirements

As a general rule, no minimum capital contribution requirements exist to establish an LLC or a JSC in Uzbekistan. Although, specific documents regulating issuance of particular licences may require minimal amounts of share capital or minimal amounts of capital contributions to be made by shareholders, for example, shareholders of private universities must form a share capital equal to USD2 million.

Uzbekistan law introduces the concept of an enterprise with foreign investments. This kind of enterprise has additional fiscal and administrative benefits. In order to acquire the status of an enterprise with foreign investments, a JV should have at least 15% of shares owned by a foreign legal entity or an individual and have share capital in the amount exceeding UZS400 million (roughly USD30,000).

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

As mentioned, Article 354 of the Civil Code and the Law on Guarantees of Freedom of Entrepreneurial Activities provide quite a wide range for freedom of contract which is also applicable to joint-venture agreements (JVAs). With the introduction of Article 358-1 of the Civil Code, the legislator has allowed shareholders to execute corporate agreements and

approve the establishment of JVs, including management and operation rules. Regardless of its legal form, any typical JVA would usually be expected to cover the following issues:

- list of shareholders;
- CP for entry into force;
- procedure for change of shareholders (exit, entry, and unilateral withdrawal);
- amount of share capital and forms of contribution;
- additional financing;
- audit of an enterprise;
- option arrangements and agreements;
- approval of business plans;
- approval of transactions;
- appointment of managers;
- resolving deadlock situations;
- reorganisation of the JV;
- liquidation of the JV; and
- dispute resolution.

Depending on the project, JVAs may also contain any other provisions which the shareholders consider necessary to agree upon.

6.2 Governance and Decision-Making

Assuming that the form of LLC is the most popular form for JVs in Uzbekistan, below is a list of three statutory regimes for making decisions by shareholders in an LLC, which can be made stricter in the articles of association, but not less-strict.

Decisions Unanimously Adopted by the General Meeting of Shareholders

- Decision to approve the charter of the company, as well as the monetary assessment of the contributions made by the shareholders of the company (Article 10).
- Decision to limit the maximum size of shares of a shareholder of the company, as well as to change the ration of shares of shareholders in the company (Article 14).
- Decision to approve the monetary valuation of non-monetary contributions to the charter capital of the company made by the shareholders of the company and accepted by the third parties into the company (Article 15).

- Decision to increase the charter capital of the company based on the application/s of the company's shareholder/s for making additional contributions, and/or if it is not prohibited by the constituent documents of the company, application/s by one or more third parties, with contributions made on acceptance of such party/parties to the company (Article 18).
- Decision to introduce, amend or exclude the provisions establishing the exercise of the pre-emptive right to purchase a share (or part of a share) disproportionately to the size of shares of the company's shareholders (Article 20).
- Decision to approve the sale of a share of the company to the shareholders of the company, as a result of which the size of the shares of its shareholders is changed, or the sale of the share to third parties, as well as the introduction of changes related to the sale of the share in the constituent documents of the company (Article 23).
- Decision to make a payment of the real value of the share (or part of the share) of the company's participant, the property of which is foreclosed, to creditors by the other company's shareholders in proportion to their shares in the charter capital of the company, provided that another procedure for distributing the amount of the payment is not provided for by the charter of the company or by the decision of the general meeting of shareholders of the company (Article 24).
- Decision to appoint the liquidator and approve the liquidation balance sheets (Article 30).
- Decision to establish a different procedure for determining the number of votes of the company (Article 34).
- Decision to incorporate other legal entities, representative offices and branches.

Decisions Adopted by Two-Thirds of the Votes of the General Meeting of Shareholders

- Decision to increase the charter capital of the company (Article 16).
- Decision to determine the main activities of the company, as well as on participation in other associations of commercial organisations and on other matters established by the charter of the company (Articles 30 and 34).

Decisions Adopted by a Simple Majority (50% + 1 vote) of the Votes of the General Meeting of Shareholders

- Decision to decrease the size of the charter capital of the company (Article 30).
- Decision to introduce amendments and additions to the charter of the company (Article 30).
- Decision to form the management bodies of the company and terminate their powers (Article 30).
- Decision to appoint the audit commission (auditor) of the company and terminate its powers (Article 30).
- Decision to appoint the supervisory board of the company and terminate its powers (Article 30).
- Decision to approve the annual reports and annual balance sheets (Article 30).
- Decision on distribution of the company's net profit among shareholders of the company (Article 30).
- Decision to approve (adopt) documents regulating the activities of company bodies (Article 30).
- Decision on conducting an audit, determining the audit organisation and the maximum amount of payment for its services (Article 30).
- Decision on the reorganisation or liquidation of the company (Article 30).
- Decision to approve the pledge of shares of one shareholder of the company in the charter capital of the company to another shareholder of the company or, if it is not prohibited by the charter of the company, to a third party with the consent of the company (Article 21).
- Decision to complete an interested-party transaction by the company (Article 43).
- Decision on other issues provided for by the charter of the company.

6.3 Funding

As a rule, a JV may be funded by making shareholders' contributions to share capital. This is the quickest and easiest way which does not trigger any tax consequences if made in the form of money. Pursuant to Article 304 of the Tax Code, the shareholders may also agree to make contributions to share capital in amounts exceeding the nominal value of each share. However, this right is available only upon initial issuance of shares (both in LLCs and JSCs), for example, when a new JV is being registered or when share capital is being increased.

The JV may also be funded by loans, financial assistance from shareholders and third parties or through any other contractual arrangements, however, these arrangements may lead to some tax or regulatory actions, for example, receipt of a loan from any foreign entity must be registered with the Central Bank of Uzbekistan. Tax consequences may arise in the form of reduced right to deduct particular interests paid under loan agreements with affiliated persons or additional taxes to be paid in respect of interest-free loans received within Uzbekistan.

6.4 Deadlocks

Except standard voting and decision-making procedures, both of the laws regulating activities of LLCs and JSCs do not provide any detailed or explicit solutions for deadlock situations among shareholders. Therefore, in many instances shareholders are free to agree on resolution of deadlock situations by means of executing corporate agreements and adding special provisions regulating this kind of situation.

6.5 Other Documentation

Depending on the project, the shareholders may agree on any kinds of additional documents to be executed between the parties or the JV itself. In order for these arrangements to be effective and legally binding, they must be included in the JVA or the articles of association of the JV.

6.6 Rights and Obligations of JV Partners

Article 8 of the Law on LLCs establishes the following basic rights for shareholders of an LLC.

- Participation in managing the JV within powers established by the Law and corporate documentation. As a rule, this means management through participation in the general meeting of shareholders.
- Receive information regarding the JV's activity and become acquainted with the financial books of the JV and other JV documents.
- Participate in distribution of profits.
- Sell or assign own share/s to other shareholders or third persons.
- Exit the JV at any time regardless of consent of other shareholders.

- Receive part of the property remaining after liquidation of the JV.
- Any other rights stipulated in any corporate agreement signed by the shareholders.

A very similar set of rights is provided to JSC shareholders under the law regulating activities of joint-stock companies.

6.7 Minority Protection and Control Rights

Minority shareholders in LLCs are entitled to exercise all rights provided to shareholders as described in 6.6 Rights and Obligations of JV Partners.

The law does not provide minority shareholders any additional rights, however, in specific situations minority shareholders in both LLCs and JSCs may force any new buyer of 50% or more shares to buy minority shareholders' shares at market price.

6.8 Applicable Law and Dispute Resolution in International JVs

As a general rule, Article 1191 of the Civil Code stipulates that an agreement for establishment of a legal entity with foreign participation should be governed by legislation of the country where such legal entity is established. Therefore, all JVAs should be governed by Uzbekistan law.

The Economic Procedural Code of Uzbekistan establishes that all corporate disputes as defined in Article 30 should be referred to the economic courts of Uzbekistan. However, Article 240 of the same Economic Procedural Code of Uzbekistan approves the list of disputes which are subject to exclusive competence of Uzbek economic courts, which include only two kinds of disputes.

- Disputes over a property owned by the state which is located in Uzbekistan.
- Disputes over a real estate property located within Uzbekistan.

There are two groups of lawyers in Uzbekistan who believe that:

- the mentioned Articles 30 and 240 contradict each other and, therefore, there is ambiguity; or

- there is no contradiction as Article 240 of the Economic Procedural Code does not list corporate disputes as a type of dispute which is subject to resolution exclusively by Uzbek economic courts and, therefore, this kind of dispute can be resolved outside of Uzbekistan, including by arbitration courts.

In the course of preparing this publication, the author has addressed the Supreme Court of Uzbekistan on provision of any information on judicial precedents or interpretation of the mentioned articles. The Supreme Court of Uzbekistan has informed the author that the matter has been accepted for analysis and legal review proposals to amend current legislation may be initiated.

Currently, the majority of Uzbekistan lawyers recommend:

- to indicate Uzbekistan economic courts generally as the dispute resolution authority and Uzbekistan law as the governing law in corporate agreements; or
- provide a solution in the form of a hybrid provision indicating that all matters which constitute a corporate dispute shall be passed to Uzbekistan economic courts under Uzbekistan law and matters constituting commercial disputes can be resolved elsewhere under any foreign law.

7. The JV Board

7.1 Board Structure

Shareholders of LLCs and JSCs may decide to get their JV managed by a sole executive body, for example, a director, a president, or collegial executive body such as a board of directors. In addition to executive bodies, shareholders may also establish and appoint a supervisory board. The difference between the board of directors and the supervisory board is that the members of the board of directors are employed by the JV and are treated as employees of the JV. Members of the supervisory board are not employed by the JV but are appointed by shareholders to supervise activities of the JV from time to time and approve or make specific transactions and decisions, for exam-

ple, large-scale transactions or deals with affiliated persons. Therefore, members of the supervisory board are not treated as employees of the JV.

Supervisory boards are usually appointed when there are several shareholders. Any foreign national may be appointed as a director, member of the executive board, or member of the supervisory board. If a foreign national is appointed, a work permit is required to be received by each foreign employee. No work permit is required for foreign nationals appointed as members of the supervisory board as these persons are not treated as employees of a JV.

Both in the board of directors (executive branch) and the supervisory board, members of the boards vote equally, each member having one vote. In the event of equal voting, the chairperson's vote shall be decisive.

7.2 Duties and Functions of JV Boards and Directors

Day-to-day management of a JV is conducted by either a sole executive body – ie, a director or president – or collegial executive body – ie, a board of directors.

Shareholders are free to choose either option at their own discretion. If a sole executive body is appointed, the JV is managed by this individual who can act on behalf of the company without any power of attorney, manage all bank accounts and property of the company, and execute deals and transactions on behalf of the company. A director's rights can be limited by corresponding internal policies, an employment contract, provisions of the articles of association, JVA and other corporate documentation. Laws regulating the operation of LLCs and JSCs also contain limitations to directors' powers in cases of agreements with affiliated transactions or large-scale agreements being signed. In these cases, the director will have to receive preliminary approval of the supervisory board or the approval of shareholders before this kind of deal can be executed.

When a collegial executive body is created, shareholders establish the board of directors, where powers and competence of each director are described and approved in internal corporate documentation;

ie, regulations of the board of directors, employment agreements, articles of association, and others.

For the purposes of monitoring the executive body (individual or collegial), shareholders may also establish a supervisory board. The supervisory board is a team of shareholders' representatives who gather regularly to exercise control over directors' or the board of directors' activities, and to authorise specific kinds of deals. If a supervisory board is established, the hierarchy of the decision-making process in the JV shall be as follows.

- Shareholders, through a general meeting of shareholders (GMS), shall be treated as the supreme governing authority in a JV.
- The supervisory board shall be subordinated to the GSM and responsible for the exercise of regular control, monitoring and co-ordinating activities of the executive body.
- The executive body – director or board of directors – shall be responsible for daily management of the JV subordinated to both the supervisory board and GSM.

7.3 Conflicts of Interest

Both laws regulating LLCs and JSCs contain provisions identifying a strict procedure for appointment of members to the supervisory board and making transactions with affiliated parties.

All shareholders are treated as members of the general meeting of shareholders and have the right to participate in and vote on all issues discussed at the meetings.

As a rule, members of the supervisory board are appointed proportionately to holding shares in share capital of the company. Shareholders are free to discuss and approve the structure of the supervisory board in the corporate agreement or the articles of association. The law only forbids employees of a JV to become members of the supervisory board. Under general rules, shareholders are free to nominate and appoint any person, including themselves, as a member of the collegial executive body – ie, a member of the board of directors – or as a sole executive body – ie, a director. There is no legislative restriction on this.

8. IP and ESG

8.1 Ownership and Use of IP

Following the mentioned freedom-of-contract principle, IP issues can be part of any corporate agreement and regulated in detail. Nevertheless, any corresponding licence agreement leading to provision of a right to use specific IP objects should be additionally signed with the JV as it may require registration with a local intellectual property agency of Uzbekistan.

8.2 Licensing v Assignment of IP Rights

Licensing or assigning IP rights is purely a business decision as there are different legal consequences. If the shareholders do not wish to lose control over the object of IP, then licensing the IP rights may seem to be the most effective option. In assignment of IP rights, the JV shall acquire the title and become the sole owner.

In terms of contributions to share capital, IP rights can be used as the object of contribution by means of evaluating the right to use IP rights over an agreed period of time and contributing the right to use the IP object over this time at an agreed value. In this case, the shareholder that has contributed the right to use the IP object to the share capital will have to withdraw from the JV once the term has expired and such a shareholder shall be vulnerable to the risk of not agreeing with other shareholders to remain in the JV for an additional period of time.

8.3 ESG Considerations in JVs

Although Uzbekistan law regulating the protection of the environment, safety of employees and corporate governance is detailed enough, the concept of ESG (environment, social and governance) and related considerations are not yet sufficiently developed in Uzbek legislation. Having said that, the vast majority of projects financed by international, and many domestic, financial institutions tend to require the introduction of ESG principles and policies in the JV companies prior to approving facility agreements. Compliance with ESG principles also earns more points during public procurement tenders, including receiving formal rankings (especially for engineering design and construction companies).

9. Exit Strategies and Termination

9.1 Termination of a JV

Voluntary liquidation of the JV can be initiated by the shareholders at any time. Liquidation can also be initiated by following internal corporate agreements and arrangements, for example, if the JV has been established for a specific reason, such as a PPP project, or the JV has been established for a specific period of time.

In order to initiate voluntary liquidation of the JV, the shareholders should make a decision on liquidation and appoint a liquidator.

As a rule, the liquidator conducts an audit and inventory of the company to prepare the company for liquidation and approves a liquidation plan that describes liquidation stages, which usually include:

- filing for liquidation to the Public Service Centre (taxes stop being accrued);
- inventory of contracts with customers;
- inventory of contracts with suppliers;
- termination of employment agreements;
- termination of contracts with customers and suppliers;
- settling accounts payable and receivable;
- organising a tax audit;
- settlement of disputes and debts with tax authorities;
- collection of confirmation of absence of debt from tax authorities, customs authorities and the bureau for enforcement of judicial decisions;
- distributing all documents, remaining property and money among shareholders;
- submission of all mandatory documents to the state archive;
- closing bank accounts; and
- submission of final documents to the Public Service Centre and receipt of confirmation of liquidation.

Uzbek law prescribes the entire liquidation procedure to be finished no later than within six calendar months, however, this term is hardly ever complied with due to difficulties in organising a tax audit on time.

9.2 Asset Redistribution and Transfers

In accordance with the laws regulating the activities of LLCs and JSCs, all property remaining in the course of liquidation after all debts of the JV have been paid should be distributed among shareholders proportionately to their shares in the share capital. In specific situations, shareholders may agree on special terms of distribution of any remaining property in corporate agreements.

9.3 Exit Strategy

Article 8 of the Law on LLCs establishes a guaranteed right of every shareholder to exit a JV at any time regardless of other shareholders' consent. The Law also indicates that the exit shall be made in a manner as established by the Law on LLCs and by internal corporate arrangements – ie, provisions of corporate agreements and constituent documents. The general rule for exit from an LLC if no internal procedure is approved is that any shareholder may file for exit and receive the actual cost of their share/s within one calendar year from the date of exit.

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