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Joint Ventures

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2026

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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 in assisting private and corporate clients with corporate and commercial transactions, including in relation to M&A, financing and joint ventures, and tax matters. The firm successfully operates in civil, commercial and tax law, and its professionals are particularly valued for their ability to handle complex issues that require diverse skills and innovative solutions. LAWP advises national and international clients in connection with cross-border matters impacting several jurisdictions. It also supports clients in setting up and managing joint ventures, both domestically and internationally, across multiple industries.

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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 to confront new challenges and seize emerging opportunities. A JV can provide a flexible instrument 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 preserve greater flexibility, enabling partners to pool resources while maintaining their own identity and strategic independence.

According to a survey conducted by Boston Consulting Group (BCG) in 2025, 60% of business leaders said that forming JVs and partnerships would be more critical to growth over the following three to five years than pursuing M&A (BCG, *With Dealmaking Uncertain, Joint Ventures Offer CEOs an Edge*, A Sukri, 22 May 2025). This trend remains relevant in 2026, as companies increasingly use JVs as a means of broadening their markets and creating new value, while sharing ownership, resources and strategic responsibilities with their partners (BCG, *The Board Can Make or Break a Joint Venture*, E Gore-Randall and P Daniel, 29 July 2026).

In this context, the legal and regulatory dimensions of JVs have continued to evolve alongside broader macro-economic, geopolitical and technological shifts. A JV is no longer a simple contractual arrangement but a complex partnership requiring careful navigation of international regulatory regimes, market dynamics, cultural differences, data and IP issues, and evolving sustainability expectations. Recent BCG research also identifies governance as a critical factor in JV performance, particularly where decision-making rights are unclear or the interests of the JV and its parent companies diverge (BCG, *The Board Can Make or Break a Joint Venture*, E Gore-Randall and P Daniel, 29 July 2026). For executives, investors and legal advisers, this reinforces the importance of solid governance frameworks, forward-looking risk assessment and carefully designed contractual provisions.

The Global Context

The operating environment for JVs in 2026 is increasingly complex. Traditional commercial considerations now intersect with geopolitical, economic, technological and social forces against a backdrop of trade fragmentation, geopolitical tensions and rapid technological development.

Geopolitical and regulatory profile

Geopolitical fragmentation continues to reshape investment decisions and the structuring of JVs. Regional conflicts, tariffs, trade restrictions and 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 have become strategic imperatives. This has encouraged companies to reconsider production and sourcing strategies.

At the same time, foreign investment is increasingly viewed through the lens of national and economic security. Many jurisdictions have strengthened their foreign direct investment (FDI) screening regimes, with

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particular attention paid to critical infrastructure, sensitive technologies and strategic assets. This trend is particularly visible in the European Union (EU), where the foreign investment screening framework was further strengthened in 2026 (European Commission, *EU strengthens its foreign investment screening framework*, 26 June 2026).

Legal due diligence must therefore also assess political and regulatory risks, sanctions and export-control exposure and the strategic sensitivity of the assets or technologies involved. This may require adapting the JV structure, limiting access to sensitive information or engaging with regulators at an early stage. Political and regulatory changes may also rapidly affect tariffs, sanctions, taxation, industrial policy and investment restrictions, requiring legal advisers to consider not only existing rules but also how they may evolve.

Economic drivers

While geopolitical tensions continue to create risks for energy prices, supply chains and financial conditions, the cost and availability of capital therefore remain important considerations in JV structuring.

Access to capital and its allocation are increasingly relevant when determining initial contributions, future funding obligations and profit-sharing arrangements among JVs. Parties are paying closer attention to additional capital calls, external financing and mechanisms for addressing potential funding shortfalls.

Businesses also continue to treat JVs as an alternative to M&A. M&A transactions may involve higher costs and a stiffer structure, whereas a JV can offer many of the same strategic benefits – combining assets and capabilities, accessing new markets and sharing risks – without requiring full corporate consolidation.

JVs can also offer businesses a flexible means of navigating tariffs, evolving industrial policies and shifts in global supply chains. They may be used to localise production, diversify sourcing or establish a presence in strategically important markets. Depending on applicable rules of origin and trade regulations, local production may reduce exposure to certain tariffs and import restrictions. A JV may therefore enhance supply-chain resilience while providing a strategic entry point into markets where local participation, manufacturing capacity or distribution networks offer a competitive advantage.

Technological development

Technology has become one of the principal drivers of JVs. Increasingly, their central assets include IP, proprietary technology, computing capacity and strategic datasets. Developments in AI – including generative AI and foundation models – as well as semiconductors, cloud infrastructure and other critical technologies are accelerating collaborative structures through which companies can share investment costs and risks while accessing complementary capabilities.

A JV allows partners to pool financial resources, technology and expertise for research and development (R&D). One partner may contribute patents, proprietary technology or know-how, while another provides complementary technology, manufacturing capabilities, data, infrastructure or distribution networks. The JV becomes the legal and operational structure through which these assets are integrated and exploited to develop new products or services.

IP is consequently one of the most sensitive points of negotiation. Parties must address ownership and exploitation of jointly developed IP, including AI-based and data-driven applications, as well as access to and use of pre-existing technology. Questions concerning training data, algorithms, model outputs and improvements may become particularly difficult when the JV terminates or one party exits.

Cybersecurity and data governance add further concerns. Cyber-attacks, data breaches and unauthorised transfers of confidential information may expose both the JV and its parent companies to substantial risks. Clear contractual safeguards, access controls, governance standards and liability provisions are therefore indispensable, particularly where the JV operates across jurisdictions with different data protection, cybersecurity or technology-transfer regimes.

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.

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Choice of structure

The choice between an incorporated entity (corporate JV) and a contractual arrangement is fundamental. Incorporated JVs benefit from separate legal personality, limited liability and clear ownership structures. Contractual JVs may offer greater flexibility but can raise more complex questions of liability, governance and enforcement. The appropriate structure will depend on the nature and duration of the project, tax and regulatory considerations, financing arrangements and the intended degree of integration between the parties.

Governance and control

Governance arrangements are often decisive for a JV's success or failure. Board representation, voting thresholds, veto rights and reserved matters must balance efficient decision-making with the protection of each party's strategic interests. Cross-border ventures add cultural differences and different legal frameworks, making it particularly important to anticipate how decisions and disagreements will be managed.

Particular attention should be given to budgets and business plans, major investments, financing, senior management, IP and strategic changes. Governance arrangements should also address potential conflicts between the JV and its parent companies. An overly restrictive framework may impair efficient operation, while insufficient protection may expose one party to decisions materially affecting its investment. Clear deadlock mechanisms are therefore essential.

Exit strategies

JVs are not necessarily intended to last forever, making exit planning essential. Mechanisms may include buy-out rights, put and/or call options, transfers to third parties, IPOs or liquidation. Poorly designed exit provisions can become a significant source of disputes.

Parties should therefore agree from the outset how an exit may be triggered, how membership interests will be valued and how assets and IP will be allocated. Exit provisions should also take account of regulatory approvals, foreign investment restrictions and potential changes of control, combining sufficient flexibility with predictability for both parties.

Dispute resolution

JV disputes may involve contractual claims, financing obligations, fiduciary duties, shareholder rights and governance deadlocks. The mechanisms chosen for resolving them are therefore critical.

Arbitration remains widely used for cross-border JV disputes because of its neutrality, confidentiality and procedural flexibility. Parties frequently adopt multi-tiered clauses requiring negotiation or mediation before arbitration or litigation, helping to preserve the commercial relationship and contain costs.

The choice of governing law and jurisdiction is equally important. Parties must carefully determine the substantive law governing their relationship and the procedural framework for resolving disputes, as these choices affect the interpretation and enforceability of contractual protections, available remedies and the effectiveness of any eventual award or judgment.

Furthermore, in a corporate JV, the choice of governing law and jurisdiction/arbitration needs to be carefully addressed as it will be subject to limitations imposed by statutory laws applicable to the JV entity newly incorporated.

Compliance and risk management

Compliance obligations extend across anti-bribery rules, sanctions, competition law, FDI screening, export controls, data protection, cybersecurity and sector-specific regulation. Failure in any of these areas can undermine the JV and expose both the venture and its parent companies to financial and reputational consequences.

Effective governance therefore requires appropriate compliance programmes, monitoring and audit rights, and a clear allocation of responsibility between the partners. In 2026, this increasingly includes economic-security considerations and controls affecting strategic technologies. In the EU, regulatory attention extends beyond inbound investment to potential risks associated with outbound investment in areas such as semiconductors, AI and quantum technologies

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(European Commission, *Investment Screening and Outbound Investment Monitoring*, 2026).

Conclusion

JVs in 2026 continue to operate within a multifaceted framework shaped by geopolitical fragmentation, macro-economic uncertainty and technological development. They are increasingly influenced by foreign investment controls, trade and tariff policies, the cost and availability of capital and the strategic importance of IP, data and critical technologies.

In addition to taking into consideration all of the above, from a legal standpoint, JVs require careful consideration of structural models, governance mechanisms, IP and data arrangements, exit strategies, dispute resolution, compliance and risk management – all as further detailed in the Joint Ventures 2026 Practice Guide.

CHINA

Law and Practice

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1. Market Conditions

1.1 Geopolitical and Economic Factors

Changes in 2025/26

Over the past year, there has been a pronounced surge in Chinese entities forming joint ventures (JVs) with foreign partners outside the People's Republic of China (PRC or China, solely for the purpose of this article, excluding Hong Kong, Macau and Taiwan). This shift is largely a strategic response to domestic overcapacity, escalating tariff barriers, and anti-subsidy regimes, coupled with the global imperative for supply chain localisation. Ultimately, this signals the dawn of a new era: the true globalisation of Chinese enterprises.

In contrast, inbound JV activity into China has slowed down significantly. Macro-economic headwinds, geopolitical tensions, trade barriers, and expanding sanctions have driven a major recalibration of the market. Rather than forming new ventures, many foreign investors are opting to restructure, dilute their equity, or even fully exit their China operations.

There has also been a notable shift in investor composition. While historical Sino-foreign JVs were overwhelmingly driven by industrial/strategic investors seeking technical or market synergies, recent transaction flow features a growing presence of private equity (PE) and financial sponsors. Financial investors are stepping in to provide needed liquidity, operational autonomy, and localised governance, facilitating recapitalisations and strategic realignments where traditional multinational corporations (MNCs) prefer to de-risk or monetise mature assets.

Trends for 2027

Looking ahead to 2027, outbound JV momentum is expected to not only continue but accelerate. Driven by the ongoing need to navigate trade barriers and localise supply chains, Chinese manufacturing and technology enterprises will increasingly form overseas JVs in strategic growth regions, particularly Southeast Asia, Europe, and Latin America. For JVs within China, the optimisation of existing JVs will remain the key theme.

1.2 Industry Trends and Emerging Technologies

Sector-Specific Activities

JV activities, whether outside or within China, have remained concentrated in capital-intensive, policy-supported, and technology-driven sectors. Key active sectors include new energy vehicles (NEVs) and the advanced battery supply chain, biopharmaceuticals and advanced medical technology, AI-driven infrastructure (such as data centres, robotics, semiconductor manufacturing, and advanced chip packaging) and generative AI and big data.

Impact of Merging Technologies and Related Regulations

Emerging technologies and related regulations are fundamentally reshaping how JVs function in China,

creating a landscape where localisation, data governance, and intellectual property protection are not just legal requirements but core operational and strategic considerations. In particular, in the AI and big data sectors, China's stringent "three laws" – the Cybersecurity Law (CSL), Data Security Law (DSL), and Personal Information Protection Law (PIPL) – mandate strict rules on data storage and cross-border transfer. Foreign investors may be compelled to localise their infrastructure and algorithm to comply with mandatory requirements under PRC law such as data local-storage and algorithm filings.

At the same time, strict regulatory frameworks impose additional compliance obligations on JVs, reshaping the transaction process as follows:

- Due Diligence: Data compliance, algorithm filings, app filings and other AI-related regulatory compliance requirements become a "must" in legal due diligence.
- Contract Drafting: Tailored provisions are required in transaction documentation to address data ownership and processing, statutory compliance covenants, and tech-related risk allocation.
- Post-Establishment Operations: Establishment of robust internal data governance frameworks and technical firewalls becomes necessary post-closing to ensure ongoing regulatory compliance.

It is worth noting that the Regulations of Outbound Investment, which came into effect on 1 July 2026, expressly prohibit the cross-border transfer of technologies, services and related data whose export is prohibited or restricted under PRC law through means such as establishing overseas JVs, dispatching technical personnel and/or providing technical guidance to overseas entities. As a result, for Chinese entities' JVs outside China, in particular those involving AI, semiconductors, and advanced manufacturing, comprehensive compliance reviews are now more critical than ever.

2. JV Structure and Strategy

2.1 Typical JV Structures

Limited liability companies, which offer robust corporate limited liability protection and flexible governance arrangements, are the most prevalent structure for JVs in China.

Joint stock companies (JSCs) are primarily utilised in specific heavily regulated sectors (such as financial services or securities) where statutory or regulatory mandates require the JSC form, or when parties envisage a future public listing plan (typically achieved by converting an existing limited liability company into a JSC).

Contractual joint ventures (CJVs) were recognised as a permitted form of foreign-invested enterprise (FIE) under the PRC Sino-Foreign Contractual Joint Ventures Law. It was primarily utilised in industries characterised by short-term, project-based life cycles or where profit distribution needs to be decoupled from capital contribution, such as large-scale infrastructure and construction, oil exploration and mining. However, following the implementation of the PRC Foreign Investment Law in 2020, which replaced the previous FIE regime, CJVs are no longer available as a separate statutory corporate form for registration in China and are instead implemented through contractual arrangements between the venturers.

2.2 Strategic Drivers for JV Structuring

Governance, Liability, and Exit Alignment

Investors evaluate vehicles based on their ability to secure entity-level limited liability, accommodate customised corporate governance, and adapt to contractual exit rights or corporate conversions required for a future IPO. Limited liability companies offer highly flexible governance, easily accommodating customised voting arrangements, veto rights, and contractual exit mechanisms (eg, put/call options, drag-along rights). JSCs, while offering the ultimate exit liquidity via public listing, are burdened by rigid statutory governance requirements that to a certain extent constrain bespoke control arrangements.

Regulatory Certainty and Established Judicial Practice

The limited liability company and JSC are governed by the PRC Company Law (as amended in 2023 and effective from 1 July 2024) (the "2023 PRC Company Law"), which provides a mature, comprehensive statutory framework supported by a vast body of judicial precedent. This offers significant regulatory certainty and predictable dispute resolution. In contrast, the CJV is primarily governed by the PRC Civil Code and contract law principles. While this grants maximum contractual freedom, it carries higher enforcement risks due to the relative lack of specialised judicial interpretation.

Tax Efficiency and Incentives

Tax optimisation and repatriation mechanics are critical drivers. Limited liability companies and JSCs are independent taxpaying entities subject to the standard 25% corporate income tax (CIT) or a 15% reduced rate if qualified as high and new technology enterprises (HNTE). The dividends repatriated to foreign enterprise investors are subject to a 10% withholding tax (WHT), subject to applicable double tax treaty reductions.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

JVs in China are governed by a comprehensive legal framework, primarily comprising the 2023 PRC Company Law and the PRC Foreign Investment Law, alongside sector-specific regulations.

Key Regulatory Bodies

The primary regulatory bodies include the following:

- The State Administration for Market Regulation (SAMR) manages the registration of JVs and oversees corporate compliance, including the filing of articles of association (AoA) and changes to shareholding, and takes charge of merger control filing.
- The National Development and Reform Commission (NDRC) is responsible for project approval and filing, particularly for large-scale investments and projects involving restricted sectors, and plays a leading role in national security reviews.
- The Ministry of Commerce (MOFCOM) oversees foreign investment policies, administers the Negative List, and handles filings and approval for certain cross-border technology transfer or investment transactions.
- The State Administration of Foreign Exchange (SAFE) regulates capital inflows, cross-border profit remittances, foreign debt quotas, and foreign exchange registration for foreign-invested JVs.

Industry-Specific Regulators

Depending on the JV's business scope, sector-specific regulators exercise oversight. For instance, the Ministry of Industry and Information Technology (MIIT) regulates TMT, cloud, and telecommunications sectors; the National Financial Regulatory Administration (NFRA), the People's Bank of China (PBOC) and the China Securities Regulatory Commission (CSRC) oversee financial services and capital market activities; and the Cyberspace Administration of China (CAC) has a say on all cybersecurity and data-compliance matters in any sector.

3.2 Anti-Money Laundering Compliance

AML compliance in China is governed by the PRC Anti-Money Laundering Law, and overseen by the PBOC in co-ordination with financial intelligence units.

While AML statutory obligations apply directly to financial and payment institutions, they exert a strict compliance burden on JVs during banking procedures. Commercial banks enforce stringent KYC and AML verification protocols during capital account opening, registered capital injection, foreign debt registration, cross-border profit remittances, and equity sale proceeds transfers.

3.3 Sanctions, National Security and Foreign Investment Controls

Sanctions Laws

The PRC Anti-Foreign Sanctions Law requires companies operating in China to comply with Chinese laws and prohibits them from executing discriminatory foreign restrictive measures. Multinational JVs are suggested to carefully craft compliance frameworks to navigate conflicting global sanction obligations and domestic compliance mandates.

National Security Review (FDI Control)

Under the Measures for the Security Review of Foreign Investment of the PRC, foreign investments in sensitive areas are subject to National Security Review (NSR) by a working office consisting of the relevant ministries and led by NDRC and MOFCOM. Sensitive areas include: (i) military-related sectors – where any foreign investment would trigger the NSR regardless of investment amount or percentage; and (ii) other important areas – such as critical agricultural products, key infrastructure, key energy, and core technology sectors – where the foreign investor obtaining "actual control" would trigger the NSR. In practice, the number of cases triggering a full national security review remains relatively limited compared to other major jurisdictions, but we are seeing increased scrutiny in sectors involving data and dual-use technologies.

Foreign Participation and Negative List

China operates a "pre-establishment national treatment plus negative list" regime ("Negative List"). If a JV's business falls within the Negative List, foreign participation may be restricted or prohibited; otherwise, it enjoys equal access as domestic capital. Foreign equity ownership is capped, or domestic holding/key representation is required in "restricted" sectors and foreign participation is entirely barred in "prohibited" sectors. The regulatory trend reflects progressive market opening, with successive revisions reducing the total number of restricted and prohibited items on the Negative List.

3.4 Competition Law and Antitrust

The PRC Anti-Monopoly Law requires that transactions (including JVs) constituting a "concentration of undertakings" be notified to SAMR if they meet specific turnover thresholds. Under the 2024 revised thresholds, mandatory prior filing is required in the following circumstances: (i) if the combined global turnover of all parties participating in the concentration exceeds CNY12 billion, and at least two parties participating in the concentration each have a turnover exceeding CNY800 million within China; or (ii) if the combined turnover within China of all parties participating in the concentration exceeds CNY4 billion, and at least two parties participating in the concentration each have a turnover exceeding CNY800 million within China.

In practice, the vast majority of JV merger control filings receive unconditional clearance under SAMR's simplified review procedure. Conditional clearances with behavioural or structural remedies represent a small fraction of cases, usually concentrated in highly consolidated markets such as semiconductors or specialised industrial components.

3.5 Listed Companies and Market Disclosure Rules

When a publicly listed company participates in a JV, it must strictly adhere to the rules set forth by the CSRC and the relevant stock exchanges (eg, Shanghai or Shenzhen Stock Exchange).

Participation in a JV that qualifies as a "major asset restructuring" of the listed company or involves a significant related-party transaction triggers mandatory public disclosure requirement. In such instances, the listed company may be required to convene a shareholders' meeting to obtain approval for the investment. In practice, deal timing and closing conditions must be carefully co-ordinated with these disclosure obligations, often requiring pre-approval procedures and advance planning of the deal timetable.

3.6 Transparency and Ownership Disclosure

MOFCOM and PBOC each have a UBO filing requirement. While the UBO filing with MOFCOM is part of the foreign investment information filing, which mainly serves for foreign investment administration and statistics purposes, PBOC's UBO filing mainly serves for anti-money laundering and counter-terrorism purposes. Hence, the standards for determining UBOs and the information requested to be filed are different in these two systems.

MOFCOM does not have a unified UBO filing system; however, FIEs are required to report their actual controlling parties (together with other information) through the enterprise registration system and the enterprise credit information publicity system. A UBO is defined as the entity (i) holding, directly or indirectly, 50% or more of the equity interest or voting rights of the entity; (ii) having the ability to appoint or secure more than half of the members of the BOD, or to materially influence relevant decisions of the entity; or (iii) controlling the entity's business operations or other

material matters. The UBO should generally be a natural person, but may in exceptional cases be an entity, such as a listed company or a government authority.

PBOC's UBO filing is mainly implemented through SAMR's filing system. Companies are required to file their UBO information upon establishment or 30 days following any changes. A UBO is defined as a natural person who holds, directly or indirectly, 25% or more of the equity interest or voting rights of the entity, ultimately enjoys 25% or more of the entity's economic benefits, or otherwise exercises actual control over the entity. If no UBO is identified pursuant to the foregoing criteria, the natural person responsible for the entity's daily operations and management shall be treated as the UBO for filing purposes. This UBO information is reserved for government regulatory use and is not publicly available.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Implementation of the 2023 PRC Company Law

The 2023 PRC Company Law introduced a mandatory five-year capital contribution deadline, established share forfeiture mechanisms for defaulting shareholders, and removed statutory shareholder consent requirements for third-party equity transfers while preserving rights of first refusal. Crucially, it significantly reformed board dynamics by introducing mandatory director recusal rules for conflict-of-interest transactions while enhancing structural flexibility, allowing certain small companies to forgo a board of directors (BOD) entirely or replace supervisors with an audit committee under the BOD. See also **7.1 Board Structure**.

End of the PRC Foreign Investment Law Transition Period

31 December 2024 marked the end of the five-year transitional window granted under the PRC Foreign Investment Law. Legacy Sino-foreign equity and cooperative joint ventures established under pre-2020 foreign investment laws were required to amend their constitutional documents, transition their supreme governing body from the BOD to the shareholders' meeting, and align corporate governance fully with the 2023 PRC Company Law. This statutory mandate drove extensive shareholder agreement (SHA) renegotiations, shareholder buyouts, and corporate restructurings across 2024 and 2025.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

The negotiation of a JV in China typically progresses through several stages, using the following documents:

- non-disclosure agreements (NDAs);
- term sheets/MoUs (memoranda of understanding) – a non-binding document outlining the key commercial parameters of the JV, including:
  - (a) binding clauses (market standard) – exclusivity, confidentiality, governing law, dispute resolution, and fees/costs; and
  - (b) non-binding clauses – shareholding structure, capital contributions, shareholders' rights, minority shareholder's reserved matters, board seat and voting mechanism, management nomination right, closing conditions, strategic support commitments (eg, technology license, trade mark, production resources, and intra-group services), share transfer rules and exit; and
- due diligence questionnaires (DDQs) – increasingly used in JVs involving PE/financial investors or where one party is acquiring an existing stake.

5.2 Disclosure Obligations

The execution or implementation of a binding SHA requires mandatory notifications, approvals, registration or information disclosures with the following competent regulatory authorities:

- antitrust notification – mandatory pre-closing merger control filings where turnover thresholds are met, as detailed in **3.4 Competition Law and Antitrust**;
- national security review authorities – foreign investment security review filings for qualified transactions in sensitive sectors, as detailed in **3.3 Sanc-**

tions, National Security and Foreign Investment Controls;
- corporate registration and UBO filings – corporate registration for the legal formation of the JV, UBO filing with MOFCOM, and UBO filing with PBOC, as detailed in **3.6 Transparency and Ownership Disclosure** and **5.4 Legal Formation and Capital Requirements**;
- tax registration and SAFE registration – tax registrations along with foreign exchange and capital account registrations with SAFE, as detailed in **3.1 Legal Framework and Regulatory Bodies**; and
- CSRC and stock exchanges – mandatory public disclosures and approval procedures for JVs involving PRC-listed companies, as detailed in **3.5 Listed Companies and Market Disclosure Rules**.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Conditions Precedent (CPs)

Closing in Chinese JV transactions is typically conditional upon satisfying comprehensive CPs, including:

- representations and warranties being true, accurate and complete as of the signing date and closing date;
- fulfilment of all pre-closing obligations and covenants;
- obtaining all regulatory approvals (including antitrust clearance and specific sectoral approvals, if required); and
- execution of all ancillary transaction documents (such as IP licences).

MAC and Force Majeure Events

Material adverse change (MAC) and force majeure clauses are not uncommon in a share purchase agreement or share subscription agreement, in case the JV is formed via acquisition of existing equity interest or subscription of the JV's newly increased registered capital. Nevertheless, it is less common for an SHA to include MAC or force majeure clauses.

While Chinese law recognises force majeure and change of circumstances under the PRC Civil Code, market practice now demands highly specific definitions of trigger events – such as targeted sanctions, material tariff increases, war, or regulatory changes – rather than relying on generic language.

Furthermore, in response to escalating geopolitical tensions and regional conflicts, parties increasingly customise material adverse change (MAC) and force majeure clauses to explicitly encompass wars, military conflicts, international sanctions, sudden legislative changes, and governmental trade bans. Consequently, the practical likelihood of triggering these protective clauses has risen significantly in recent transaction practice.

5.4 Legal Formation and Capital Requirements

Formation Procedure (eg, Limited Liability Companies)

This procedure involves:

- name pre-approval – verification with SAMR to reserve the company name;
- registration with SAMR – submission of the AoA and director appointments; the JV is legally formed on the date the business licence is issued;
- filing with the MOFCOM information system (if foreign investment is involved);
- SAFE registration for capital accounts and cross-border transactions; and
- tax registration with the tax bureau.

Legal Requirements Regarding Foreign Participation

Foreign participation must comply with the requirements of the Negative List, as detailed in **3.3 Sanctions, National Security and Foreign Investment Controls**.

Minimum Capital Contributions

There is no statutory minimum registered capital for most industries. However, under the 2023 PRC Company Law, all shareholders must fully contribute their subscribed capital within five years of the company's establishment. See also **6.3 Funding**.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

As discussed in **2.1 Typical JV Structures**, JVs are normally set up as limited liability companies. Consequently, JV terms are usually documented in a shareholders' agreement (SHA) and the AoA. As a general practice, the SHA is more detailed and tailor-made, while the AoA could be a boilerplate text given that the AoA will generally be made public. The venturers typically include an order of precedence provision to ensure that in the event of any conflict between the SHA and AoA, the SHA will prevail.

If a JV is a JSC, its terms would be documented in the promoters' agreement and the AoA.

Regardless of the different forms of the JV, key terms of the JV agreements typically include:

- setting out the basic arrangements for the establishment of the JV, including the legal form, business scope, and purpose of the co-operation among the venturers;
- specifying the amount, form and timing of capital contributions by each venturer, as well as arrangements for capital increases, shareholder loans and additional funding;
- specifying the shareholding structure, and possible restrictions on changes in ownership;
- establishing the governance structure of the JV, including shareholders' meetings, BOD or sole director, supervisors and management personnel;
- specifying arrangements for profit distribution and allocation of losses;
- IP – specifying the ownership, licensing and use of IP and technology contributed by the venturers, as well as the IP and technology developed by the JV after its establishment;
- restricting venturers and their affiliates from competing with the JV (recent SHAs reflect a trend toward more granular product and geographic arrangements to avoid operational disruption and mitigate antitrust risks);
- specifying mechanisms for resolving deadlocks between the parties;
- specifying the term of the JV agreement, termination events and consequences of termination;
- establishing remedies for contractual default, including liquidated damages and indemnification; driven by the new statutory five-year capital contribution deadline, recent SHAs increasingly incorporate tailored consequences for capital contribution defaults, such as restrictions on voting rights or equity dilution mechanisms; and
- specifying the governing law and dispute resolution mechanism.

6.2 Governance and Decision-Making

With respect to a JV in the form of a limited liability company, the shareholders' meeting serves as the supreme governing body for material corporate matters, while the BOD is responsible for the company's business decisions and management oversight, and senior management (such as the general manager (GM)) oversees the JV's daily business operations. The 2023 PRC Company Law reflects a trend toward strengthening the operational autonomy of a limited liability company by streamlining shareholder powers, strengthening the BOD's power in the company's operations and decision-making, and eliminating the statutory list of powers of the GM, thereby allowing the GM's powers to be stipulated in the AoA or authorised by the BOD.

The list of statutory powers of the shareholders' meeting is further shortened to cover nine items only, including:

- electing directors and supervisor(s);
- approving BOD's report;
- approving board of supervisors' (BOS) reports;
- determining profit/dividend distribution;
- changing the registered capital;
- offering corporate bonds;
- approving the combination, division, dissolution, liquidation of the company and change of form;
- amending the AoA; and
- other powers set out in the AoA.

Unlike the previous law, the 2023 PRC Company Law no longer expressly reserves decisions on business policies, investment plans, or annual budgets and final accounts to the shareholders' meeting. On the other hand, shareholders (venturers, in the case of JVs) enjoy contractual flexibility to customise voting rules,

including veto rights in the AoA and SHA to safeguard minority interests (see also **6.7 Minority Protection and Control Rights**). Shareholders are entitled to vote in shareholders' meetings in proportion to their respective equity-holding percentage.

The BOD serves as the executive and decision-making body of a limited liability company. The statutory powers of the BOD cover major operational matters, including:

- deciding the company's business and investment plans;
- preparing profit distribution and loss recovery plans;
- preparing a proposal for change of registered capital, mergers, divisions, dissolution, or changes in corporate form;
- deciding the company's internal organisational structure;
- appointing/removing senior management; and
- establishing the company's basic management systems.

Shareholders (venturers, in the case of JVs) enjoy contractual flexibility to customise BOD's voting rules, including veto rights of minority shareholders in the AoA and SHA. Each director is entitled to one vote on each BOD decision matter.

The 2023 PRC Company Law made significant changes to the supervision system. Unlike the previous company law under which a BOS or individual supervisor was mandatorily required, the 2023 PRC Company Law allows a company to establish an audit committee within its BOD to exercise the statutory functions of the supervisory board, in which case no BOS or individual supervisor is required. A small-scale limited liability company, or one with few shareholders, may appoint one supervisor instead of establishing a BOS; and with the unanimous consent of all shareholders, such small-scale limited liability company may dispense with supervisors entirely.

6.3 Funding

Unlike the authorised capital regime adopted in many other jurisdictions, China employs a concept of "registered capital". "Registered capital" of a limited liability company must be stipulated in the AoA and registered with the company registration authority; changes to the registered capital are subject to super majority approval at a shareholders' meeting. Subscribed registered capital represents a binding obligation owed by the relevant venturer to the JV and should be fully paid in within the time limit stipulated in the AoA, which shall not exceed a maximum of five years.

Shareholders should be liable to the company for failure to make the capital contribution in time. The 2023 PRC Company Law made a substantial change to liabilities in connection with a shareholder's failure to make the capital contribution, including the following:

- With respect to any equity interest for which the corresponding registered capital has not been paid up, a transfer of the equity interest does not necessarily release or discharge the selling shareholder from its obligation to make the capital contribution if the new shareholder fails to make the contribution in full.
- A shareholder may forfeit its shareholder rights corresponding to the relevant equity interest in the event of a failure to make the required capital contribution and failure to cure the breach after receiving a notice from the board of directors requiring it to make the outstanding contribution ("forfeiture of shareholder right").
- Directors may be personally liable for failing to take timely action to urge shareholders to make their capital contributions.

In principle, other than making the subscribed registered capital contribution, the venturers have no obligation to provide further funding to the JV. However, if a capital increase is approved by the shareholders' meeting, each shareholder is entitled to pre-emptive rights in proportion to its equity holding. Anti-dilution provisions are common in PE/VC investments, but are less common in JV arrangements.

A JV may also obtain funding through onshore or offshore loans. Offshore debt financing is typically subject to strict foreign exchange controls under the macro-prudential management regime (宏观审慎管理), under which a JV's upper limit for long-term offshore financing is dynamically capped by a statutory formula

calculated by reference to its capital or net assets. Certain FIEs may instead apply the cross-border debt quota regime, under which the applicable quota is calculated based on the difference between the total investment amount and registered capital.

6.4 Deadlocks

Governance structure is usually carefully designed to minimise deadlock situations. However, if a deadlock arises, common resolution mechanisms in China include the following:

- Escalation to Senior Management – The disputed issue may be escalated to the senior executives of the venturers for commercial negotiation within a defined cooling-off period.
- Buy-Out – The SHA typically specifies a call option allowing one venturer to acquire the equity interest held by the other venturer, or a put option allowing one venturer to sell the equity interest to the other venturer, upon occurrence of certain triggering events. Deadlock may be one such triggering event, but it is generally not preferred given the uncertainties it may create.
- Judicial Dissolution – As a statutory last resort under PRC law, if a company experiences severe difficulties in its operation and management, and its continued existence will cause material loss to the shareholders' interests, which cannot be resolved through other means, shareholders holding 10% or more of the total voting rights have the statutory right to petition the court to dissolve the company. In practice, courts usually adopt a cautious approach when applying such rules so the threshold for judicial dissolution is practically high.

6.5 Other Documentation

Beyond the SHA and AoA, venturers typically enter into ancillary agreements designed to integrate their respective resources (eg, technology, supply chains, and distribution networks) to support the JV's operations.

- IP/Technology Licence Agreements: Venturers may enter into technology licence agreements and/or trade mark licence agreements to enable the JV to use the venturer's IP rights (such as patents, know-how, trade marks, etc) in its operations. Venturers and the JV may also enter into R&D agreements to set out future R&D arrangements between the parties. See also **8.1 Ownership and Use of IP**.
- Supply and Sales Agreements: Venturers may enter into raw material/component supply agreements and/or product sales agreements with the JV to enable the JV to utilise the venturers' existing supply chains, distribution channels or other commercial networks.
- Consultancy and Services Agreements: Venturers may enter into raw material/component supply agreements and/or product sales agreements with the JV, allowing one party (either a venturer or the JV) to provide administrative, technical, marketing, or management support to the other party (either the JV or a venturer).
- Asset Transfer Agreements: In the case of a venturer making a capital contribution to the JV using tangible assets or IP, an asset transfer agreement should be entered into between such venturer and the JV. It is suggested that the value of such assets should be assessed by a third-party appraisal institution to avoid future disputes. If IP is involved, there should normally be a separate IP transfer agreement.

6.6 Rights and Obligations of JV Partners

Rights and Obligations of Venturers

Among others, key statutory rights and obligations include the following.

Key rights

Venturers are entitled to economic rights, including receiving dividends and other profit distributions, subscribing for additional registered capital or newly issued shares on a pre-emptive basis, and receiving the company's remaining assets after liquidation.

Venturers are entitled to non-economic rights/powers, including: attending shareholders' meetings of the JV and exercising voting rights, nominating directors and supervisor(s), inspecting and accessing the JV's financial information, etc.

Venturers are entitled to vote on shareholder-reserved matters in proportion to their equity-holding percentage.

The 2023 PRC Company Law requires that certain major corporate matters must be approved by shareholders (in the case of a JV, the venturers), such as amendments to the AoA, increases or reductions of registered capital, mergers, divisions, dissolutions, changes in corporate form, etc ("Statutory Reserved Matters"); and in addition to these Statutory Reserved Matters, venturers may set forth more shareholders-reserved matters in the AoA.

Venturers are also entitled to inspect and copy the JV's financial reports and may also request access to the JV's accounting books and accounting vouchers. Notably, the 2023 PRC Company Law has strengthened information rights of shareholders, empowering shareholders to inspect a JV's accounting books and accounting vouchers, as well as those of the JV's wholly-owned subsidiaries, provided that they submit a written request demonstrating a legitimate purpose.

Key obligations

A venturer's major obligations include paying in the subscribed capital on time, complying with the AoA, and refraining from abusing shareholder rights. A venturer is obliged to pay the subscribed capital in full within five years (or a shorter period stipulated in the AoA), except that such capital contribution obligation may be accelerated if the JV is unable to pay its due debts. Notably, a venturer should act in good faith and is prohibited from abusing its shareholder rights or limited liability status to harm the interests of the JV, other minority venturers, or creditors of the JV.

Profit Distribution and Allocation of Losses

Profit distribution

By statutory default, dividends are distributed in proportion to the venturers' paid-in capital contributions. However, venturers may, either in the AoA or via unanimous shareholders' resolutions, agree to distribute profits not in proportion to their paid-in capital contributions, except that as a matter of practice, such non-proportional dividend distribution may be subject to scrutiny by local tax authorities. A JV is not allowed to distribute dividends to venturers until it has paid applicable tax liabilities, offset cumulative historical losses, and allocated the after-tax profits to the reserve fund.

Losses

As a general principle, losses incurred by the JV shall be borne by the JV itself and the liability of venturers is limited to their respective subscribed registered capital.

Liability for JV Debts and Exceptions

As a general principle, a venturer's liability for the debts of the JV is limited to the amount of registered capital it has subscribed for. However, a venturer's liability may extend beyond this limit if the venturer has abused the JV's limited liability status to evade its debts.

6.7 Minority Protection and Control Rights

In a JV case, either a domestic JV or an international JV, a minority venturer may protect its interests through the following approaches:

- Veto Rights – The 2023 PRC Company Law requires that the Statutory Reserved Matters are subject to supermajority votes (more than 2/3 of total voting power) by shareholders. Other than those statutory protections, in the case of a JV, the venturers usually agree to a longer list of matters for which the minority venturer's consent is required, such as annual budgets, significant capital expenditures, major debt incurrence, and related-party transactions.
- Board Seats and Directors' Veto Rights – While the 2023 PRC Company Law provides that directors of a company should be elected by shareholders, in a JV case, the venturers would usually "allocate" the board seats in proportion to their equity holding percentage, and the venturers will usually cooperate with each other to appoint the relevant candidates nominated by the venturers into the BOD. It is also common that the venturers would agree upon a list of matters in respect of which the directors nominated by the minority venturer have a veto.
- Information and Inspection Rights – The right to information is an important vehicle for a minority venturer to monitor its investment. See **6.6 Rights and Obligations of JV Partners** for more information.

A minority venturer may initiate a lawsuit to challenge defective resolutions, request profit distribution, compel access to the JV's books and records, or commence derivative actions on behalf of the JV against directors, executives or other responsible parties who harm the JV's interests. A minority venturer may also seek an exit from the JV (please see **9. Exit Strategies and Termination** for more details).

6.8 Applicable Law and Dispute Resolution in International JVs

Historically, an international JV's SHA must be governed by PRC law. Following the repeal of the Sino-Foreign Equity Joint Venture Law, such statutory requirement was eliminated. However, as a matter of practice, the SHAs of international JVs are generally still governed by PRC law.

For international JVs, the venturers have the following choices for dispute resolutions in connection with the SHA: litigation in China or outside of China, or arbitration in China or outside of China. Given the flexibility and confidentiality of arbitration, as well as the ability to select arbitrators with appropriate expertise and experience relevant to the dispute, international JV venturers generally prefer international arbitration over domestic arbitration and domestic or international court litigation. In order to choose international arbitration as the dispute resolution forum, the venturers must include an arbitration provision in the SHA, with a specific arbitral institution selected. Ambiguous clauses such as "dispute may be solved through either arbitration or court litigation" are deemed invalid under PRC law, which would result in the jurisdiction of dispute defaulting to the court. Commonly selected arbitral institutions include:

- domestic institutions – the China International Economic and Trade Arbitration Commission (CIETAC), the Beijing Arbitration Commission (BAC) and the Shanghai International Economic and Trade Commission (SHIAC); and
- offshore institutions – the Hong Kong International Arbitration Centre (HKIAC) and the Singapore International Arbitration Centre (SIAC).

China is a contracting party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Accordingly, foreign arbitral awards rendered by arbitral institutions in other New York Convention contracting states, such as HKIAC and SIAC, may be recognised and enforced in China through the PRC courts, subject to the limited grounds for refusal prescribed under the Convention.

In China, mediation is encouraged by courts and arbitral institutions and may be conducted voluntarily before or during dispute resolution proceedings, but it is generally not a mandatory precondition to commencing proceedings.

7. The JV Board

7.1 Board Structure

A limited liability company may have either a sole director or a BOD with three or more directors. While the 2023 PRC Company Law provides that directors of a company should be elected by shareholders, in the case of JVs, the venturers would usually "allocate" the board seats in proportion to their equity holding percentage, and the venturers will cooperate with each other to appoint the relevant candidates nominated by the venturers into the BOD.

The 2023 PRC Company Law does not contain legal requirements on who can serve as directors of a company, but stipulates certain negative qualifiers that may disqualify an individual from serving as a director (eg, persons with recent criminal convictions for economic crimes, certain persons who are personally liable for a company's bankruptcy, etc). There are no nationality, residency, or special restrictions imposed on foreign individuals serving as directors of a Chinese JV.

Each director shall have one vote at the meetings of the BOD unless a casting vote mechanism is introduced to resolve tie voting. PRC law does not recognise weighted voting rights at the director level. Consequently, control over the BOD is achieved not through differential director voting power, but by negotiating the allocation of board seats.

7.2 Duties and Functions of JV Boards and Directors

Functions of JV BOD

See also **6.2 Governance and Decision-Making** regarding powers and responsibilities of BOD.

In theory, the 2023 PRC Company Law does not prevent a BOD from delegating its functions to single directors, subcommittees or third parties. However, as a matter of practice, a general delegation of the BOD's statutory powers/responsibility to an individual or entity is usually not acceptable, particularly in connection with governmental applications. Delegation/authorisations are usually granted on a case-by-case basis. The BOD may authorise a director, officer, or subcommittee to take certain actions or sign certain documents on behalf of the company for a specific matter.

Historically, the BOD should report and be responsible to the shareholders' meeting. However, such requirement was removed in the 2023 PRC Company Law. Such amendment indicates a significant change in corporate governance, from "shareholder meeting centralism" to "board centralism", and change in the role of BOD, from an executive organ under the shareholders' meeting to an independent operation and decision-making organ. That being said, however, the BOD is obliged to submit its work report to the shareholders' meeting for approval.

Duties of Directors

The 2023 PRC Company Law provides that directors, supervisors and senior management owe fiduciary duties to the company, including:

- Duty of Loyalty – Directors shall avoid conflicts between their own interests and those of the JV, and shall not exploit their positions to seek improper gains. Directors are prohibited from engaging in self-dealing, taking advantage of affiliation to harm the interests of the JV, usurping corporate commercial opportunities, or operating competing businesses against the JV without reporting to and obtaining approval from the BOD or the shareholders' meeting, and a conflicted director should recuse themselves from voting on the relevant resolution.
- Duty of Diligence – Directors shall, in performing their duties, act in the best interests of the JV and exercise the reasonable care ordinarily expected of a prudent manager. Directors may be personally liable for failing to urge shareholders to make their capital contributions on time, being responsible for a BOD resolution that results in damages to the JV, being responsible for an improper or illegal capital reduction or dividend distribution, failing to perform his/her liquidation obligations, being in violation of law in executing his/her functions and causing damages to the company, etc.

In practice, directors may face a tension between their duty to the JV and their loyalty to the venturer that appointed them. Generally, the director's duty to the JV prevails over any competing instructions from the appointing venturer. As provided by the 2023 PRC Company Law, if a controlling shareholder instructs a director to damage the interests of the company or other shareholders, such controlling shareholder, viewed as a "de facto director", shall bear joint and several liability with that director.

7.3 Conflicts of Interest

Holding a position in the venturer does not inherently make it inappropriate for an individual to sit on the board of the JV. See also **7.2 Duties and Functions of JV Boards and Directors**.

8. IP and ESG

8.1 Ownership and Use of IP

Key IP Issues to Be Considered When Setting up a JV

- IP as Capital Contribution: It is common that venturers may allow the JV to use its IP and technologies in the operations. Nevertheless, unlike in some other jurisdictions, under PRC law, an IP licence (even an exclusive licence) in most cases is not an acceptable form of capital contribution. For a venturer to make a capital contribution to the JV in the form of IP, the ownership/title of the IP in principle should be transferred from the venturer to the JV. It is suggested engaging a third-party assessment institution to confirm the value of the IP contributed to the JV. Further, it is worth noting that a venturer

will be liable to the company in the case of any defects in the property it contributes to the JV.
- IP Protection: Since IP rights are territorial, patents and trademarks not formally registered in China will not enjoy statutory protection under PRC law. By contrast, copyright subsists automatically upon creation of a qualifying work and is protected in China without a registration requirement under the Berne Convention. Know-how and trade secrets are also not dependent on registration, but require the holder to implement reasonable confidentiality measures to maintain protection under the PRC Anti-Unfair Competition Law.
- Pre-Existing IP Licence Arrangement: The IP contributing/licensing venturer should ensure that contributing/licensing to the JV will not be in conflict with any pre-existing IP licence arrangements.
- Export Control: The IP contributing/licensing venturer should ensure that contributing/licensing to the JV is not restricted by export control laws and other applicable laws.

Key IP Issues in Contractual Collaborations

- IP Ownership: It is important to agree upon the IP ownership in any contractual collaborations, including the background IP (ie, the IP of any venturer that are used in the collaborations) and the foreground IP (ie, the IP developed during the collaboration). It is common that the parties would agree that the background IP will continue to be the venturer's proprietary assets, while the foreground IP may be owned by the JV, the contributing/licensing venturer or jointly by the JV and the contributing/licensing venturer.
- Back Licence: It is not uncommon that in case the foreground IP will be owned by the JV, the contributing/licensing venturer may secure a back licence to enable the contributing/licensing venturer to use such foreground IP, either free of royalty or on a royalty basis.
- IP Allocation Upon Exit and Termination: The contributing/licensing venturer may also agree with the JV, either in the SHA or in a separate agreement, upon the allocation of the foreground IP upon such venturer's exit or JV termination, subject to the statutory residual asset distribution requirements (see also **9.2 Asset Redistribution and Transfers**).

Cross-Border IP Transfer

China maintains lists of technologies that are restricted or prohibited from being transferred/licensed to foreign entities, which may be updated by competent government authorities from time to time. For technologies falling within the prohibited technologies list, transfer of such technologies to an international venturer is strictly prohibited; for technologies falling within the restricted technologies list, an international venturer must obtain prior regulatory approval from the authority before conducting any cross-border transfer or licence.

8.2 Licensing v Assignment of IP Rights

In practice, it is more common for venturers to license their IP to the JV, whereas assignment is utilised when the venturers intend to make the IP a capital contribution to the JV. Please see below for a comparison.

- IP licence:
  - (a) ownership – venturer;
  - (b) capital contribution – in most cases not an explicitly recognised form of capital contribution;
  - (c) fees – subject to contractual arrangement, either royalty basis or royalty free.
  - (d) IP protection – the JV may face procedural difficulties or need the licensor to actively join the lawsuit when taking legal action against IP infringers in China; and
  - (e) exit – termination of IP licence agreement(s).
- IP transfer/assignment:
  - (a) ownership – JV;
  - (b) capital contribution – can be used as capital contribution, subject to assessment requirement;
  - (c) fees – the JV, being the IP owner, does not need to pay any further fees;
  - (d) IP protection – the JV, being the IP owner, may take legal action against IP infringers in China; and
  - (e) exit – the IP will remain with the JV unless:
    - (i) the JV transfers the IP back to the contributing venturer; or
    - (ii) the venturer takes back the IP as residual property of the JV in the case of the JV's liquidation, subject to the statutory property distribution sequence.

8.3 ESG Considerations in JVs

Why ESG Is Important

In China, ESG considerations for JVs mainly include environmental protection, work safety and labour compliance. Violations of laws can result in administrative penalties (such as fines and mandatory orders to cease operations), civil liabilities, and in some severe cases (such as severe environmental contamination or fatal workplace safety accidents), criminal liabilities. Key responsible personnel of the JV may face personal liabilities in the event that the JV is subject to any administrative penalties or criminal liabilities.

Recent Legal Developments Relating to ESG

The PRC Ecological and Environmental Code was adopted on 12 March 2026 and will take effect on 15 August 2026, serving as the fundamental law in the environmental protection field. The PRC Ecological and Environmental Code strengthens the environmental protection obligations and specifies a "dual penalty" regime, under which, in the event of environmental pollution or ecological damage, both the JVs and the directly responsible persons may be held liable.

Main ESG Regulations in China

- Environmental Protection: PRC Ecological and Environmental Code imposes environmental protection obligations, including but not limited to ecological conservation, green and low-carbon development, carbon emission management, product life cycle, and supply chain management.
- Production Safety: PRC Work Safety Law and PRC Occupational Disease Prevention Law require JVs to maintain a safe production environment, obtain required operational licences for special equipment, ensure personnel in high-risk or dangerous roles hold mandatory safety certifications, and provide regular occupational health examinations and protective gear for employees.
- Labour Compliance: The Labour Law and Labour Contract Law enforce statutory working hour limits, mandatory contributions to employee social insurance and housing funds, and prohibitions against forced labour and discrimination.

9. Exit Strategies and Termination

9.1 Termination of a JV

A JV arrangement may come to an end if (i) a venturer exits by transferring the JV's equity interest to the other venturer or third party; (ii) a venturer exits via a unilateral capital reduction of the JV; (iii) the shareholders' meeting approves the liquidation and dissolution of the JV; or (iv) the JV enters into a bankruptcy procedure.

Equity Transfer

A venturer may exit by transferring the JV's equity interest to another venturer or a third party, which allows the exiting venturer to cash out while the JV continues to exist and operate as a going concern. In some JV cases, the SHA may contain call option, put option, drag-along or tag-along provisions that enable a venturer to force the other venturer to buy or sell equity interest of the JV, which may result in an end of the JV. Key considerations in such a case include:

- Right of First Refusal (ROFR) – In a limited liability company, if the exiting venturer plans to sell the JV's equity interest to a third party, the other venturer(s) has statutory ROFR to acquire the equity interest at the same price and terms. In practice, venturers usually set forth more detailed provisions in the SHA for the implementation of ROFR.
- National Security Review and Antitrust Filing – Depending on the industrial sector in which the JV carries out business and the nature of the purchaser, an equity transfer may trigger antitrust filings in China (and some other jurisdictions) or even national security review (if a foreign purchaser is to acquire control in certain sensitive sectors), which adds in uncertainty to the closing of the transaction.
- Cross-Border Remittance of Consideration – If the exiting venturer is a foreign entity and the purchaser is a Chinese entity, due to China's foreign exchange legal regime, the purchaser will not be able to remit the purchase price out of China until the JV and the purchaser have completed the relevant governmental formalities in connection with the equity transfer (company registration, tax filing and withholding and foreign exchange registration). The aforesaid formalities may take one to

two months, so usually the exiting venturer and purchaser may set up an escrow account to secure the payment of the purchase price.
- Tax Filing and Payment of Capital Income Tax – In the case of an international venturer's exit, the exiting venturer is obliged to make tax filings with the PRC tax authority for sales of equity interest in a Chinese entity. The capital income tax will then be determined by the tax authority. In the case of a Chinese purchaser, the purchaser is then obliged to withhold such capital income tax on behalf of the exiting international venturer. In the case of an international purchaser, in principle, the purchaser should fulfil the obligation of withholding; however, if the international purchaser fails to fulfil this obligation due to reasons such as absence of PRC tax registration, etc, the exiting venturer needs to independently file and pay capital income tax with the tax authority at the location of the JV whose equity is transferred.
- Termination of Ancillary Agreements – Following the exiting venturer's exit, the ancillary agreements to which the exiting venturer is a party would usually terminate accordingly, and the parties to such agreements would need to settle outstanding receivables, payables and other accrued obligations.

Unilateral Capital Reduction

Normally, in the case of a capital reduction, the JV reduces its registered capital in proportion to the capital contribution by the venturers. As a result, the equity-holding structure of the JV will not change after the capital reduction, and the reduced capital (and premium) will be allocated to venturers in proportion to their capital contribution to the JV. Nevertheless, the 2023 PRC Company Law allows a company to conduct non-proportional capital reduction if all shareholders agree. It then gives a venturer an option to exit via a unilateral capital reduction of the JV under which the JV reduces the registered capital subscribed and paid in by the exiting venturer, and as a result, the exiting venturer takes all the reduced capital (and premium), and its capital contribution to, and equity-holding percentage in, the JV reduces to "0".

Capital reduction is subject to mandatory statutory procedures, including supermajority approval by the shareholders' meeting, notification to creditors and public announcement. In the event of any challenges from creditors, the company needs to either clear debts or provide adequate guarantees upon such creditors' request.

Non-Bankruptcy Dissolution and Liquidation

A JV may be dissolved if the operation period set forth in the AoA expires, the shareholders' meeting adopts a resolution to dissolve, the JV is ordered to close down by the government or court, or other termination events occur as stipulated in the SHA or AoA. In the event of dissolution, the JV should be liquidated; the directors of the JV are the liquidation obligors and should form a liquidation group within 15 days of the dissolution trigger event.

The liquidation group is responsible for ascertaining the JV's property, notifying creditors, settling all outstanding claims and debts, and distributing the residual property. If the JV is solvent, the property of the JV should be distributed in the following statutory property distribution sequence: (i) liquidation expenses; (ii) wages, social insurance, and statutory severance of the employees; (iii) taxes; (iv) debts of the JV; and (v) venturers. The residual property of the JV after completion of (i)–(iv) above in principle should be allocated to the venturers in proportion to their capital contribution to the JV, unless otherwise provided by the AoA or agreed by all venturers.

Bankrupt Liquidation

If the JV is insolvent (unable to clear its due debts and its assets are insufficient to pay all liabilities), it will be liquidated via a court-supervised bankruptcy proceeding. The court takes control and appoints a bankruptcy administrator to take over the management, asset realisation, and property distribution of the bankrupt JV.

9.2 Asset Redistribution and Transfers

A general principle to bear in mind is that, once any assets are contributed to the JV by a venturer, those assets become the property of the JV rather than remaining the property of the venturer. Assets contributed by a venturer are therefore no different from assets originating from or generated by the JV itself.

Venturers are not permitted to withdraw their capital contributions from the JV except following a liquidation process. Please refer to **9.1 Termination of a JV** for further information on the statutory order of distribution of property in a non-bankruptcy liquidation process.

As a general principle, any residual property of the JV will be distributed to the venturers in proportion to their respective capital contributions to the JV. The venturers may, however, agree in the SHA on a mechanism allowing a venturer to take back assets that it contributed to the JV, subject in all cases to the statutory order of distribution of property.

9.3 Exit Strategy

Please refer to **9.1 Termination of a JV**.

Trends and Developments

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DeHeng Law Offices is one of China's largest full-service law firms, providing comprehensive legal services to domestic and international clients. Founded in Beijing in 1993 as China Law Office originally, DeHeng has developed to be a leading Chinese firm with 6,000 legal service professionals globally in a network of 50 domestic offices across most major cities in China and 18 overseas offices. This network strengthens the firm's capabilities, particularly in advising on large and complex transactions, dispute resolution and compliance matters spanning multiple jurisdictions and sectors. The firm regularly advises on, and has a leading practice in, capital markets, mergers and acquisitions, infrastructure and cross-border investment, including outbound investment by Chinese enterprises and inbound foreign direct investment into China.

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Introduction

China remains one of the world's largest destinations for foreign direct investment, supported by its large consumer market, extensive manufacturing base, and ongoing industrial upgrading. In 2025–2026, according to data released by the PRC Ministry of Commerce (MOFCOM), China's foreign investment environment has demonstrated mixed trends: while more foreign-invested enterprises have been established, due to uncertainty in the global economy and Chinese market, the total amount of foreign investment received has declined. From January to June 2026, actual utilised foreign investment decreased by 5% year-on-year to RMB402.14 billion, representing an improvement from the 8.6% year-on-year decline recorded during the first five months of 2026.

At the same time, several developed economies, including the United States, the European Union and Japan, have continued to strengthen investment and technology-related national security measures, which heavily affected investments from these countries into China. Despite such external pressures, the Chinese government continues to promote a high-standard opening-up policy for foreign investments. The Belt and Road Initiative, the "going global" strategy and the Dual Circulation development strategy continue to deepen international economic co-operation and to support outbound and inbound investments. Accordingly, China's regulatory framework for foreign investment has continued to open up. For example, the Industry Negative List for foreign investment has been further updated from the 2024 edition to a revised market-access catalogue taking effect on 1 February 2026. Similarly, MOFCOM and the National Development and Reform Commission jointly issued the 2025 Action Plan for Stabilising Foreign Investment in February 2025 to improve market access and strengthen investment protection.

Alongside efforts to encourage foreign investment, China has continued to modernise the legal and corporate governance framework applicable to foreign-invested enterprises. Under the Foreign Investment Law of China, a five-year transition period was provided for all foreign-invested enterprises (FIEs) established under the Sino-Foreign Equity Joint Venture Enterprise Law, the Sino-Foreign Cooperative Joint Venture Enterprise Law and the Wholly Foreign-Owned Enterprise Law (collectively, the "Three FIE Laws") to adjust their organisational forms and governance structures to comply with the PRC Company Law. The transition period has now expired, and the Three FIE Laws have been abolished.

Since 1 January 2025, Chinese market supervision authorities have ceased processing registration changes or filings for FIEs that failed to complete the required adjustment, with non-compliant enterprises being publicly disclosed. In addition, under the amended Company Law, which came into effect on 1 July 2024, FIEs incorporated before that date must also align their registered capital contribution schedules with the new statutory requirements during the transition period prescribed by the State Council. Consequently, although the governance transition has been completed, many foreign-invested enterprises, including joint ventures, continue to undertake compliance exercises relating to capital structure and corporate governance.

At the same time, China has continued to strengthen the national security framework governing foreign investment. According to the Anti-Foreign Sanctions Law of the PRC, issued on 10 June 2021, where a foreign country adopts discriminatory or restrictive measures against Chinese citizens or organisations or interferes in China's internal affairs, China may adopt corresponding countermeasures. This framework was further strengthened by the Provisions for the Implementation of the Law of the PRC on Countering Foreign Sanctions, which took effect on 23 March 2025 and provide more detailed procedural mechanisms for the implementation of countermeasures. Relevant departments of the State Council may place individuals or organisations involved in formulating, deciding or implementing discriminatory or restrictive measures on the Countermeasures List, with available measures including visa restrictions, asset freezing, restrictions on commercial transactions and other necessary countermeasures.

China has also established a foreign investment security review system under the Foreign Investment Law and the National Security Law through the Measures for Security Review of Foreign Investment. Foreign investments that affect or may affect national security are subject to review and may be prohibited where security risks are identified. In addition, the revised Foreign Trade Law, effective from 1 March 2026, further expands supply-chain compliance obligations and national security scrutiny for transactions involving critical infrastructure, core technologies and data-intensive services.

Overall, China's foreign investment and joint venture regime continues to reflect two parallel policy objectives. On the one hand, the government has continued to encourage foreign investment through a freer market, corporate governance reform and broader opening-up policies. On the other hand, it has increasingly strengthened national security review, sanctions legislation and regulatory compliance requirements applicable to foreign-invested enterprises operating in strategically important sectors.

Latest Chinese Policy and Regulatory Framework for Foreign Investment

Amid the restructuring of global industrial chains, Sino-foreign joint ventures operating in China are undergoing a period of transformation where investors respond to a rapidly changing market. Likewise, China continues to enhance its foreign investment environment and strengthen domestic industrial capabilities. China's foreign investment regulatory framework provides a relatively consistent and predictable foundation for foreign investors to adjust their China-focused strategies and implement medium- and long-term investment plans.

In 2025–2026, China continues to advance its opening-up policies. Through a series of policy measures and ongoing reforms, China has sought to further improve its foreign investment environment, including through the following initiatives:

The 15th Five-Year Plan covers a pivotal transitional period, identifying institutional opening-up as an important component of China's economic development strategy. It sets out measures to further enhance foreign investment participation, with these measures such as broadening market access primarily in the service sector, continuously shortening the Negative List for Foreign Investment Access, introducing sector-specific opening-up pilot programmes, refining policies governing cross-border investment and financing, cross-border data flows and facilitation for overseas talents. The Plan also highlights the development of regulatory frameworks aligned with international economic and trade practices, including improvements in intellectual property protection, environmental regulation and government procurement, specifically in the internationalisation of the renminbi. At the regional level, China continues to promote opening-up initiatives through platforms such as the Hainan Free Trade Port and Pilot Free Trade zones, with the aim of strengthening connections between domestic and international markets, encouraging innovation, and supporting a more integrated land-sea, two-way opening-up pattern connecting the eastern and western regions.

- The 2025 Action Plan for Stabilising Foreign Investment serves as an annual implementation policy,

unveiling twenty targeted measures centring on expanding opening-up, boosting investment, strengthening opening-up platforms and upgrading government services. It fully liberalises foreign investment access in the manufacturing industry, launches pilot opening programmes in telecommunications, medical care and biomedicine, and optimises policies on foreign capital mergers and acquisitions, equity investment and regional headquarters development. The plan embodies an "Invest in China" brand, strengthening guarantees for foreign-funded projects and fully implementing national treatment, so as to bolster foreign investors' confidence.

- The 2025 Catalogue of Encouraged Industries for Foreign Investment, which took effect in February 2026, further directs foreign investment towards priority sectors, including advanced manufacturing, high technology, modern services, energy conservation and environmental protection. It also increases investment incentives for regions including central and western China, Northeast China and Hainan. Eligible foreign-invested projects may benefit from preferential measures, including import equipment duty exemptions, land-use incentives and regional tax benefits.

Taken together, these measures reflect a broader evolution of China's foreign investment framework across five core areas: broader market access, enhanced investment facilitation, refined investment promotion mechanisms, improved service safeguards for foreign-invested enterprises, and optimised ex-ante, interim and ex-post supervision of foreign investment.

Restructuring of foreign investors' China footprint

Shifting cost structures and ongoing industrial upgrading have led to adjustments in how foreign investors allocate capital in China, creating a clear divergence between different sectors: while labour-intensive and lower-value-added industries are experiencing increasing pressure, mid-to-high-end sectors continue to attract foreign investment and strategic restructuring by multinational enterprises.

In one respect, labour-intensive and traditional manufacturing segments, including conventional electronics OEM production and fuel-powered automobile manufacturing, are facing growing pressure from rising labour costs, stricter environmental compliance requirements and declining profit margins. These factors have encouraged some foreign investors to relocate production capacity or reconsider their operations in China. Reduced foreign investment within these sectors generally takes two forms: equity transfers, which are often preferred due to simpler procedures and faster separation of operational risks; or asset sales followed by dissolution and liquidation, which typically involve more complex processes such as real estate transfers, workforce arrangements and tax clearance, as well as longer statutory liquidation periods.

In practice, some enterprises encounter difficulties during liquidation due to unresolved employee arrangements, outstanding debts or other operational issues, which may give rise to further disputes, including shareholder representative litigation.

Conversely, leading multinational enterprises are not necessarily withdrawing from China. Instead, many have pursued strategic restructuring by divesting non-core assets, introducing domestic strategic investors and separating specific business segments. Through these measures, companies are able to reduce exposure to underperforming operations while focusing resources on innovation-driven areas and future growth opportunities.

Several market examples illustrate this trend. Starbucks transferred a 60% equity stake in its China retail business to Boyu Capital to leverage domestic capital and expand its presence in lower-tier cities; Burger King China transferred controlling ownership to a CPE Source to accelerate domestic expansion; and a decade-long equity dispute between Carlsberg and Lhasa Breweries was resolved after the Chinese shareholder exercised pre-emptive purchase rights to obtain full ownership.

Such large-scale equity restructurings and business adjustments are subject to multiple compliance considerations, including merger control review under the Anti-Monopoly Law and foreign investment security review. In addition, key transaction arrangements, including transaction structure, intellectual property

ownership, employee settlement plans and consideration payment schedules, must comply with requirements under the Company Law and Foreign Investment Law. Legal compliance has therefore become an essential consideration in strategic restructuring by foreign investors in China.

Restructuring of existing joint ventures and disputes

As China's economy enters a period of structural adjustment, rising costs of land, labour, raw materials and other production factors have reduced the cost advantages that previous traditional joint ventures were granted. For certain legacy joint ventures, this has resulted in declining profitability and increased pressure from parent multinational groups.

Alongside shifts in the original commercial rationale for co-operation, these factors have contributed to a rise in disputes between Chinese and foreign shareholders, which generally fall into the following five categories of commercial disputes.

- Disputes Over Corporate Governance and Control Right: These remain among the most common joint venture disputes, typically involving equity control, allocation of operational decision-making authority, appointment and removal of directors, and senior management arrangements. Such disputes often arise from differences between the governance structures preferred by foreign shareholders and the operational practices adopted by Chinese shareholders.
- Disputes Involving Prejudice to Creditors' Legitimate Interest: These disputes commonly arise from issues including false capital contributions, withdrawal of subscribed capital, non-compliant capital contributions, improper transfer of corporate assets and unauthorised disposal of core corporate property. Such conduct may affect the company's solvency and infringe upon the legitimate rights of external creditors.
- Disputes Arising From Related-Party Transactions: These disputes often involve transactions that appear compliant on the surface but may result in an imbalance of economic interests, including service fees, royalty payments and cross-border procurement arrangements. Common issues include loss of operational control, breach of fiduciary duties by directors, supervisors and senior management, improper transfer of corporate benefits and infringement of the rights of the company or other shareholders. Such cases often present challenges in evidence collection and factual determination.
- Equity-Related Disputes: This category encompasses a broad range of scenarios, namely transfers of equity between Chinese and foreign parties that violate other shareholders' pre-emptive purchase rights, capital contribution defects (including sham capital contributions, withdrawal of subscribed capital and non-compliant forms of capital injection), disagreements over equity valuation, equity holding by nominee parties, and illegal nominee holdings involving foreign capital. These disputes are subject to overlapping regulatory regimes governing foreign investment compliance, state-owned asset supervision and cross-border equity transactions.
- Miscellaneous Comprehensive Disputes: These primarily include deadlocks over shareholder profit distribution, corporate dissolution and liquidation arising from operation difficulties, and disputes over the allocation of remaining assets following termination of the enterprise.

Resolving joint venture disputes requires more than the application of statutory provisions alone; it requires solutions that consider both legal and commercial objectives. During pre-litigation negotiations, practitioners must assess the relationship between shareholder agreements, articles of association and joint venture contracts, resolve inconsistencies between contractual arrangements and identify the underlying commercial disagreements between foreign and Chinese shareholders. In litigation or arbitration proceedings, counsel must consider factors including jurisdiction, applicable law and evidence availability, while avoiding outcomes in which a party achieves legal success but suffers commercial losses. In related-party transaction disputes, legal analysis must be supported by financial assessment, damages calculations and a comprehensive evidentiary framework.

Trends of the Chinese Joint Venture Market

Drawing on practical experience covering the incorporation, operation, reorganisation and dispute resolution of joint ventures in recent years, compounded by capital market cycles, and tightened state-owned asset supervision, five features characterise the current landscape for Sino-foreign joint ventures in China.

M&A as the primary exit channel

Today, Sino-foreign joint ventures are driven by two distinctly different sets of commercial rationales. In the short term, amid industrial slump cycles, multinationals gravitate toward streamlined joint venture structures to spread sectoral risks and reduce their standalone capital investment exposure. When considering the long run, counter-cyclical swings in capital markets accelerate consolidation of legacy joint venture assets. Compared with dissolution and closure – which can lead to the loss of business permits, weakened sales networks and brand value decline – share-to-share equity purchases or buyouts of one party's equity stake by the other have become the optimal exit route for shareholders to refresh legacy assets.

From a transaction practice perspective, shareholders generally adopt equity transfer as the exit method for tax planning and operational convenience, while asset transfer is comparatively seldom used. In recent years, several regions represented by Shanghai have issued regulatory policies to tighten control over equity changes at land-related enterprises and optimise the safeguard mechanism for industrial land use. Such policies stipulate that land-related enterprises must obtain prior approval from competent authorities, including natural resources and planning departments, prior to carrying out equity transfers. The aforesaid regulatory rules raise the threshold for implementing such equity transactions and impose pre-approval obligations on both parties with respect to equity closing arrangements.

In terms of transaction motives, industrial M&A has gradually overtaken financial M&A motivated by arbitrage. On the one hand, regulators have tightened review standards, eliminated arbitrage channels via price-locked private placements, and strengthened supervision over goodwill and performance commitments. Along with market valuations returning to enterprises' fundamental performance, the M&A model of boosting share prices through concept speculation is no longer sustainable. Traditional financial M&A have deviated from core businesses to pursue short-term market value, which readily gave rise to risks of massive goodwill impairment. In contrast, current prevailing industrial M&As centre on integrating industrial chain resources and resolving technological shortcomings around core operations, with representative completed deals in technology, securities, consumer goods and medical sectors. In the long run, the capital market will keep guiding capital to serve the real economy, industrial concentration across all sectors will rise steadily, and state-owned capital empowerment and technological integration will constitute the two mainstream trends in the M&A market.

Additionally, the boom in counter-cyclical mergers and acquisitions has generated a wide range of emerging commercial disputes across the entire transaction life cycle: disagreements over equity transaction valuation, breaches of performance commitments and valuation adjustment mechanisms, defects in intellectual property and technology handover, cross-border foreign exchange and tax compliance risks, post-closing governance conflicts and workforce resettlement disputes. This underscores that embedding dispute resolution thinking into commercial negotiations and transaction framework design at the outset effectively mitigates downstream legal hazards and ensures seamless deal execution.

Capital shifts towards hard technology sectors

Capital allocation priorities continue to pivot toward hard technology and real economy sectors, with mergers and acquisitions serving as the principal exit avenue for joint venture shareholders. Against this backdrop, sustainable operation and post-acquisition integration of high-quality joint venture assets hinge on two indispensable pillars: industrial operators with deep niche-sector expertise, and professional execution teams equipped with cross-border compliance, state-owned asset governance and dispute resolution.

Hard technology sectors derive core competitiveness from technological barriers, which demand mature

professional management teams for long-term sustainable corporate operation. Meanwhile, equity buyouts of legacy joint ventures, resolution of historical shareholder disputes and post-closing operational integration all demand specialist institutions familiar with industry-valuation norms, foreign investment filing procedures and state-owned asset supervision frameworks. These professionals can bridge valuation gaps between Chinese and foreign shareholders to defuse governance conflicts and ensure smooth equity transfer and project delivery.

Tightened state-owned capital investment review

A review of equity-transaction and dispute-resolution case law for Sino-foreign joint ventures with state-owned-capital participation shows that regulatory scrutiny thresholds for these projects have risen considerably. For newly incorporated joint ventures with state-owned capital subscription or equity acquisitions of existing joint ventures by state-owned entities, project approval rates fall significantly, and review timelines extend substantially if the state-owned investor fails to secure actual operational control and core governance rights post-closing.

This shift in regulatory orientation has transformed the investment approach of state-owned entities to Sino-foreign co-operation: moving beyond passive financial investment and exploratory minority stakes towards industrial-focused investment and controlling-stake holdings. The state-owned investor's ability to exert discourse and control within the joint venture has become a core evaluation metric for project approval authorities.

Corporate governance reforms under the New Company Law

The Company Law of the People's Republic of China was revised and adopted on 29 December 2023, and entered into force on 1 July 2024. The newly revised Company Law introduces multiple substantive amendments covering optimisation of corporate governance structures, stricter liability for shareholders' capital contributions, and enhanced performance obligations for directors, supervisors and senior management. Such provisions apply equally to foreign-invested enterprises and will exert far-reaching impacts on the operation of foreign market participants.

All foreign-invested enterprises, regardless of whether their organisational frameworks have been restructured under the former Company Law, shall clarify the applicable transitional rules between the old and new statutes. Enterprises shall conduct compliance assessments on a case-by-case basis to distinguish between two scenarios: adjustments that merely entail technical revisions to constitutional documents such as the articles of association, and substantive overhauls to pre-existing commercial arrangements including board composition and capital contribution schedules. For the latter category, enterprises shall promptly resume commercial negotiations with their co-operative counterparts.

Meanwhile, eligible foreign-invested enterprises shall attach high priority to mandatory statutory requirements under the revised law, including the five-year timeframe for full paid-in capital contributions, mandatory employee directors, and special regulatory provisions applicable to state-capital-controlled corporations. They shall evaluate the repercussions of such rules on corporate governance frameworks and medium-to-long-term capital injection plans, and keep abreast of subsequent supporting interpretative documents issued by regulatory authorities as well as differentiated transitional arrangements for newly established and existing enterprises.

Additional compliance risks for joint venture shareholders

Historically, joint venture shareholders mainly focused on traditional compliance matters, including foreign exchange administration, taxation, foreign investment security review and anti-monopoly regulation. Following the rollout of regulatory rules governing data security, algorithm governance and artificial intelligence ethics, shareholders are now required to guard against a wide range of newly emerging risks. Data and algorithms have evolved into core intangible assets; joint venture documents should specify the rights and liabilities over data control and cross-border transmission, as well as clarify mechanisms for allocating compliance costs and liability attribution. Tensions frequently arise between domestic and overseas data governing legislative regimes, creating compliance barriers when foreign shareholders seek offshore access to domestic data. Specialised data-

compliance due diligence must be incorporated into equity M&A and greenfield investment project reviews. Restrictions on foreign shareholding apply to sensitive sectors involving data, and all shareholders may face penalties stemming from any data compliance violations.

Opportunities for the Chinese Joint Venture Market

Notwithstanding heightened uncertainty in global investment climates and the structural overhaul of traditional joint venture models, the Sino-foreign joint venture market is well positioned to capture new structural opportunities, underpinned by China's solid economic fundamentals, continued opening-up policies and dividends from industrial upgrading. Foreign investors are expanding both the scope and depth of their participation in China's industrial development.

Foreign capital integration into industrial chains

Against persistent risks of global supply-chain fragmentation, China's complete industrial ecosystem, vast domestic consumption market and stable business environment serve as a critical risk buffer for multinationals worldwide. Foreign investors are no longer confined to deploying capital in conventional manufacturing and service sectors; they are embedding themselves deeply within the industrial and innovation chains of core verticals including energy, semiconductors, high-end infrastructure and artificial intelligence. By leveraging China's market scale to drive technological iteration and business expansion, multinationals establish a stable foundational base for their global footprint.

New productive forces and JV opportunities

The 15th Five-Year Plan places strong emphasis on technology-driven development and cultivation of new productive forces, encouraging deep integration of artificial intelligence, digital intelligence technologies and the real economy. These strategic priorities are expected to support development across core sectors, including healthcare, new energy, advanced manufacturing and consumer services, while upgrading supporting sectors, including finance and professional services.

For multinational corporations, the current period presents an opportunity to deepen their participation in the China market and engage in high-end global collaboration. Fuelled by national policies fostering new productive forces, Sino-foreign joint ventures will break entirely free from low-end factor-based collaboration models, advancing into a high-value co-operation phase centred on technological synergy, co-innovation and global resource integration – unlocking fresh development space for both the restructuring of legacy projects and the launching of new joint venture initiatives.

Conclusion

Overall, China's Sino-foreign joint venture market has moved beyond the traditional growth model based primarily on "market-for-technology" arrangements and entered a period characterised by business restructuring, strategic adjustment and enhanced compliance requirements.

At the macro level, global supply chain adjustments, capital market changes and evolving approaches to state-owned capital investment have contributed to greater differentiation among foreign investors' China strategies. Joint venture co-operation is increasingly shifting from traditional factor-based advantages towards value creation in advanced technology and emerging industrial sectors, with restructuring of existing assets, M&A transactions and high-value industrial co-operation becoming increasingly important models.

From a compliance perspective, requirements relating to cross-border investment review, foreign investment regulation and state-owned capital approval have become increasingly significant. Supervision of cross-border transactions and related-party transactions has also strengthened. Legal considerations involving corporate governance, equity transfers, taxation and foreign exchange arrangements, anti-monopoly review and national security review have become important factors affecting the establishment, operation and restructuring of joint ventures in China.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

The geopolitical context in Côte d'Ivoire is marked by subregional jihadist threats as well as tensions in Eastern Europe and the Middle East. Côte d'Ivoire has strengthened its security measures to combat jihadism. However, tensions in the Middle East and Eastern Europe have kept shipping costs volatile.

In addition, targeted tariffs (ranging from 10% to 21%) on certain exports and uncertainties around the African Growth and Opportunity Act (AGOA) have affected key sectors such as cashews, rubber and cocoa.

In response to these tougher conditions in the US market, Ivorian exporters and the government are focusing their efforts on two main areas:

- incentives for local processing – increasing local value-added to offset the impact of customs duties on profit margins; and
- diversification of export markets – strengthening trade with the intra-African market through the African Continental Free Trade Area (AfCFTA) and with Asian and European markets.

Despite this geopolitical context, Côte d'Ivoire's inflation rate over the past 12 months has been remarkably stable, remaining well below the 3.0% threshold set by UEMOA.

1.2 Industry Trends and Emerging Technologies

The sectors that have been most active over the past 12 months are:

- the extractive sector;
- the agro-industrial sector;
- civil engineering and construction;
- fintech; and
- energy transition.

These sectors have been more dynamic due to decisions by political authorities and a favourable global context, characterised by a large young population.

Regulations Related to Emerging Technologies Affect the Structure of JVs

Regarding data storage and use: Law No 2013-450 of 19 June 2013, on the protection of personal data requires that data be hosted locally and data transfers may be considered only with the prior authorisation of the Telecommunications and ICT Regulatory Authority of Côte d'Ivoire ("ARTCI"). In practice, joint ventures either set up local data centres or engage hosting providers licensed in Côte d'Ivoire.

Regarding intellectual property, the applicable legislation is Law No 2016-555 of 26 July 2016, on copyright and related rights and the Bangui Agreement on Intellectual Property. National law primarily protects copyright or patents subject to human intervention, creating numerous grey areas around property rights when a partner contributes an algorithm or AI. Therefore, the joint-venture agreement must clearly specify

the contributions, their origin and the rules governing ownership transfer.

2. JV Structure and Strategy

2.1 Typical JV Structures

The two main types of joint ventures generally used in Côte d'Ivoire under OHADA law are as follows.

Institutional Joint Venture

The partners decide to establish a new business entity with its own legal personality.

The types of companies established have been outlined below.

- Limited liability company ("SARL") – a simple partnership due to its single management body: the manager. In this partnership, the partners are liable for the partnership's debts only up to the amount of their contributions.
- Simplified joint-stock company ("SAS") – highly sought after because of the flexibility of these rules. In fact, the partners decide how the company will operate in the articles of incorporation.
- Public limited company ("SA") – a hierarchical society in which each body has its own powers and the institutional nature is very pronounced. Contributions in kind are prohibited and the minimum share capital is CFA10 million.

Contractual Joint Venture

The partners decide to carry out a project together without creating a separate legal entity. Its forms have been outlined below.

- Joint venture – a company not registered in the trade register, without legal personality, very flexible for one-off projects.
- Economic interest grouping – an entity whose purpose is to implement a project for a fixed period. This registered company is intended to facilitate or develop the economic activity of its members, to improve or increase the results of this activity.
- Partnership contract – contractual cooperation by which two or more independent companies decide to combine their resources, skills and technical or financial means to jointly respond to a specific project for a limited period of time. The relationship between the partners is governed by contract law.

2.2 Strategic Drivers for JV Structuring

From a tax perspective, incentives depend on the type of business activity and the tax regime.

The company's legal form has no significant impact on its tax treatment.

In Côte d'Ivoire, small and medium-sized enterprises (SMEs) benefit from a more flexible tax system.

SMEs are defined as companies with annual revenue (excluding taxes) of less than CFA1 billion.

For example, they are exempt from the business license tax for a period of five years.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

In Côte d'Ivoire, no single regulator is dedicated exclusively to joint ventures. The regulation of a JV depends on its legal form, the way in which it was set up and, above all, its sector of activity.

For company incorporation and registration, the operational authority is the Centre for the Promotion of Investments in Côte d'Ivoire (CEPICI); the judicial authority is the Registry of the Commercial Court of Abidjan.

As far as the sectors of activity are concerned, the different regulators are:

- telecoms, tech and personal data protection: Telecommunications/ICT Regulatory Authority (ARTCI);
- energy and power: National Electricity Sector Regulatory Authority ("ANARE-CI") & Ministry of Energy;
- hydrocarbons and petroleum: Directorate General of Hydrocarbons (DGH);
- mines and gold: General Directorate of Mines of the Ministry of Mines; and

- public procurement and construction: National Authority for the Regulation of Public Procurement ("ANRMP").

3.2 Anti-Money Laundering Compliance

The following standards govern the anti-money laundering sector:

- at the community level – the Uniform Law on the Fight against Money Laundering, the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction in the Member States of the West African Monetary Union (WAMU) and its various directives; and
- at the national level – Ordinance No 2023-875 of 23 November 2023 on the fight against money laundering, the financing of terrorism and the proliferation of weapons of mass destruction.

The national monitoring body for compliance with the rules imposed by this legislation is the National Financial Information Processing Unit of Côte d'Ivoire ("CENTIF-CI").

Côte d'Ivoire does not impose any particular obligations on joint ventures. Indeed, they are subject to the same obligations as institutional companies.

The four major obligations of companies are:

- implementation of KYC questionnaires allowing the identification of its customers, subcontractors and beneficial owners;
- implement formalised procedures and control measures including customer due diligence, transaction monitoring, document retention, internal control, data protection, recruitment, continuous training, information and staff awareness;
- appointment of one or more persons responsible for compliance with anti-money laundering procedures; and
- report suspicion to the CENTIF in the event of a transaction of CFA15 million in cash set by the Central Bank of West African States ("BCEAO").

3.3 Sanctions, National Security and Foreign Investment Controls

The restrictions on joint venture partners in Côte d'Ivoire are as follows.

- Obligations relating to business relationships with a politically exposed person:
  (a) obtain the authorisation of senior management before entering into a business relationship or carrying out a transaction with or on behalf of a politically exposed person;
  (b) establish the origin of the assets and the origin of the funds of the politically exposed and ensure continuous and reinforced monitoring of the business relationship; and
  (c) constant vigilance on the transactions carried out by the politically exposed person in order to ensure that they are in accordance with what is known to that person.
- Obligations relating to business relationships with a person domiciled in a higher-risk country: companies and joint ventures are required to apply enhanced due diligence measures, proportionate to the risks, in their business relationships and transactions with natural and legal persons, including financial institutions as well as legal arrangements in countries for which the FATF calls for doing so.

With regard to foreign participation in joint ventures, it is important to know the origin of the partners' funds. In addition, any foreign investment in an Ivorian joint venture must be subject to an administrative declaration to the Ministry of Finance for statistical purposes.

In Côte d'Ivoire, there are no restrictions on the formation of JVs based on national security concerns. Indeed, the Ivorian Investment Code establishes the fundamental principle of freedom of investment and equal treatment between domestic and foreign investors. However, strict sector-specific regulations and prior authorisation requirements reflect economic sovereignty and national security.

3.4 Competition Law and Antitrust

Competition regulations in Côte d'Ivoire are set out in Ordinance No 2013-662 of 20 September 2013 on competition.

The regulatory body for this sector is the *Commission de la Concurrence et de la Lutte contre la Vie Chère*.

The main prohibitions provided for by this regulation are the following:

- prohibition of anti-competitive agreements, in particular when they relate to:
  - (a) agreements restricting access to the market or the free exercise of competition by other undertakings;
  - (b) agreements aimed at directly or indirectly fixing the price, controlling the selling price and in general, hindering the setting of prices by the free play of the market by artificially encouraging their rise or fall; in particular agreements between undertakings at different levels of production or distribution aimed at fixing the resale price;
  - (c) the allocation of markets to the sources of supply, in particular agreements between production and distribution companies relating to absolute territorial protection;
  - (d) limitations or controls on production, markets, technical development or investment;
  - (e) discrimination between business partners by means of unequal conditions for equivalent services;
  - (f) the subordination of the conclusion of contracts to the acceptance, by the partners, of additional services, which, by their nature or according to commercial usage, are unrelated to the subject matter of these contracts; and
  - (g) prohibition of abuse of dominant position: the fact that one or more companies abuse a dominant position on the market or in a significant part of it; and
- prohibition of unfair competition practices, including:
  - (a) any facts whatsoever having the object or effect of disrupting all or a substantial part of a market or likely to create confusion or deception by any means, such as the imitation of distinctive signs, names, appellations, denominations, signs, emblems, trademarks, industrial designs of a product, service or industrial or commercial activity of a competitor; and
  - (b) false allegations in the course of trade that bring the establishment, goods, services or industrial or commercial activity of a competitor into disrepute.

The following are authorised to carry out economic investigations and to establish infringements of these prohibitions:

- the agents of the Directorate in charge of Competition Control;
- agents of the Directorate in charge of Competition Control, when they fall under category A and are specially authorised by the Minister in charge of Trade;
- judicial police officers; and
- the Rapporteurs of the Committee on Competition and the Fight Against the Cost of Living, for the cases referred to it.

It is important to specify that any person who opposes in any way the exercise of the functions entrusted to these agents is punishable by imprisonment of two to six months and a fine of five hundred thousand to CFA50 million or by one of these two penalties only.

Public proceedings are brought before the court, which may pronounce, in addition to the prison sentence and financial penalties, on a temporary or permanent basis, the closure of the convicted person's shops, offices or factories.

3.5 Listed Companies and Market Disclosure Rules

When a listed company participates in a joint venture, the applicable rules are those of OHADA and the regional financial law set by the AMF-WAMU (WAMU Financial Markets Authority).

The following obligations must be respected.

Obligation to Inform

The listed company must publish a press release providing information on the regional financial market (via the BRVM bulletin and approved media) as soon as the agreement is concluded. The press release must detail the purpose of the JV, the distribution of the

capital, the amount of the planned contributions and the strategic role assigned to each partner.

Prior Approval of the Board of Directors

Any agreement entered into directly or through an intermediary between the listed company and the joint venture (or between the listed company and one of its directors/shareholders holding more than 10% of the votes and involved in the joint venture) must obtain the prior approval of the Board.

Accounting Obligations

Compliance with SYSCOHADA's accounting rules.

3.6 Transparency and Ownership Disclosure

Law No 2024-362 of 11 June 2024 creating the Register of Beneficial Owners requires the legal representative of any legal person or legal arrangement created or operating in Côte d'Ivoire to declare their beneficial owners in the register dedicated to it located at the registry of the Court in the jurisdiction of their registered office, by means of a print designed for this purpose.

The legal representative who violates this obligation shall be liable to a prison sentence of one to six months and a fine of between CFA100,000 and CFA1 million or both. The same penalty applies in the event of a delay in amending the declaration. Indeed, any modification, rectification or additional declaration must be made within one month of the occurrence of the event.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Notable legal developments regarding joint ventures include:

- toughening of the courts in the event of mismanagement by company directors;
- flexibility regarding the holding of boards of directors and general meetings, which can be held by videoconference;
- increasing use of arbitration; and
- strengthening anti-money laundering regulations, the obligation to declare beneficial ownership and KYC questionnaires.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

During the negotiation phase of a joint venture, the following documents are being prepared:

- the confidentiality agreement;
- the exclusivity act; and
- the KYC due diligence questionnaire.

The standard clauses that should be expected to be included are:

- the compliance clause with the legislation on the protection of personal data;
- the clause of compliance with anti-corruption rules and compliance with foreign exchange regulations in the WAEMU zone;
- the non-solicitation clause of staff; and
- the applicable law clause and dispute resolution.

5.2 Disclosure Obligations

Regarding the joint venture's disclosure requirements, the approach is characterised by contractual confidentiality; signing the agreement triggers disclosure obligations to obtain authorisation, depending on the nature of the business and closing triggers mandatory legal disclosure requirements to the general public.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

The conditions precedent that generally influence the creation of a joint venture are as follows:

- the absence of a ban on company directors;
- obtaining the necessary authorisations and approvals depending on the sector of activity; and
- the actual subscription to the contributions.

OHADA law allows significant contractual flexibility when drafting these clauses. To prevent financial

imbalance, parties can add a material adverse change clause with a defined numerical threshold.

During negotiations, parties consider unforeseeable events, such as force majeure or acts of state. They may be listed in addition to the force majeure definition and/or provide a period to renegotiate the contract if such an event persists and/or has a lasting effect on the performance of an obligation.

5.4 Legal Formation and Capital Requirements

Based on our experience, we will structure the joint venture as an institutional entity in the form of an SAS. This offers advantages because its operating framework is flexible; the SAS allows the partners to tailor the company's operations directly in the articles of incorporation. Furthermore, there is no minimum capital requirement.

Côte d'Ivoire applies the general principle of openness to foreign direct investment, as enshrined in the Investment Code, which guarantees equal treatment for both domestic and foreign investments.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

In Côte d'Ivoire, corporate joint ventures are often structured through the SAS, introduced by the revised OHADA Uniform Act on Commercial Companies (AUSCGIE, Articles 853-1 to 853-23). The SAS allows founders to organise the company's governance almost entirely by contract, subject only to a limited set of mandatory rules, making it far better suited to joint ventures than the more rigid SA or SARL.

Practitioners typically document a corporate JV through two layers: the company's articles of association (*statuts*), which are filed with the trade register and binding on third parties and a separate shareholders' agreement (*pacte d'actionnaires*), which remains confidential and governs matters the parties do not wish to disclose publicly. Since the 2014 reform, a breach of the *statuts* can trigger nullity of the relevant corporate decision rather than a mere damages claim (AUSCGIE, Article 853-11), which has increased the appeal of incorporating key JV terms directly into the *statuts* rather than relying solely on a side letter.

A corporate JV agreement typically addresses:

- the purpose and scope of the venture;
- the parties' respective contributions and resulting shareholding;
- governance and reserved matters;
- funding mechanisms and further capital calls;
- transfer restrictions and pre-emption;
- deadlock resolution;
- non-compete and exclusivity undertakings;
- IP;
- confidentiality;
- representations and warranties; and
- termination and exit mechanics.

For purely contractual collaborations that do not involve creating a distinct legal entity, parties may instead use a *société en participation* (an unincorporated, non-registered vehicle with no legal personality, AUSCGIE Articles 854-864) or rely on a straightforward cooperation agreement.

6.2 Governance and Decision-Making

The SAS regime allows the parties to design a governance structure tailored to the venture. The articles of association must designate a president, who is vested with the broadest powers to represent the company towards third parties, including for acts falling outside the corporate purpose (AUSCGIE, Article 853-8); any statutory limitation on the president's powers is unopposable to third parties. The articles of association may also create additional bodies (such as a steering committee, a director general, a deputy director general) and freely allocate powers between them.

Day-to-day management decisions are usually delegated to the president or an operating committee, while a defined list of reserved matters – typically including the annual business plan, material contracts, indebtedness above a threshold and changes to the JV's activities – requires prior approval of the shareholders, often by unanimity or supermajority. Certain matters (capital increases, mergers, dissolution, transformation, appointment of auditors, approval of annual accounts) must in any event be exercised collectively

by the shareholders and cannot be delegated (Article 853-11, Paragraph 2); a decision taken in breach of this rule is void.

6.3 Funding

Under the AUSCGIE, contributions to a company may take the form of cash (*apport en numéraire*), contributions in kind (*apport en nature*), or contributions in industry, ie, know-how or services (*apport en industrie*) (Articles 37 and 40). The SAS is the only vehicle that can issue inalienable shares in consideration of an *apport en industrie*, with terms freely set by the articles of association (Article 853-5), a flexibility not available to an SA or SARL, where such contributions do not form part of the share capital.

In practice, Ivorian JVs are funded through a combination of equity and shareholder debt (*comptes courants d'associés*), the latter being attractive for its flexibility and tax treatment. JV agreements typically specify whether shareholders must fund pro rata to future cash calls or whether funding is discretionary and they address the consequences of a shareholder's failure to fund. As any subsequent capital increase or transformation decision generally requires unanimity or a qualified majority set out in the articles of association, JV agreements should align the funding mechanism with the applicable voting threshold to avoid a shareholder blocking future funding rounds.

6.4 Deadlocks

The AUSCGIE does not provide for a statutory deadlock mechanism and deadlock resolution is left entirely to the JV agreement.

Ivorian JV agreements commonly provide an escalation process (first to senior representatives of each shareholder, then to mediation or expert determination) followed, if the deadlock persists, by a buy-sell mechanism (put/call option, Russian roulette, or Texas shootout clause) allowing one party to acquire the other's interest.

JV agreements may provide for an escalation process (first to senior representatives of each shareholder, then to mediation or expert determination, followed, if the deadlock persists, by a buy-sell mechanism allowing one party to acquire the other's interest).

Such forced-transfer mechanisms are now expressly validated for the SAS: the articles of association may stipulate that a shareholder can be compelled to sell its shares in defined circumstances, with the price set by agreement or, failing that, by an expert (AUSCGIE, Articles 853-19, 853-21).

As a last resort, a shareholder may apply to the competent court for early dissolution on legitimate grounds, expressly including "*mésentente entre associés empêchant le fonctionnement normal de la société*" (disagreement between shareholders preventing normal operation of the company) (Article 200-5°), which is a remedy that in practice destroys value for both parties and is generally treated as a mechanism of last resort rather than a primary deadlock-breaking tool.

6.5 Other Documentation

Beyond the JV agreement and articles of association, Ivorian JVs will typically be supported by ancillary agreements, such as:

- a technology or trademark license agreement (where one party contributes IP);
- a supply, distribution or services agreement governing the JV's ongoing commercial relationship with its shareholders;
- a secondment agreement where a shareholder provides personnel to the JV;
- a non-disclosure agreement covering the negotiation/the operation of the venture; and, where applicable
- a put/call option agreement documenting the deadlock or exit mechanism as referred to above.

6.6 Rights and Obligations of JV Partners

Under the AUSCGIE's general provisions applicable to all company forms, shares confer on their holder a right to profits when distribution is decided, a right to net assets on dissolution or capital reduction, an obligation to contribute to losses and voting rights (Article 53). Unless the articles of association provide otherwise, these rights and obligations are proportional to each shareholder's contribution (Article 54, Paragraph 1). The same article expressly voids any clause that would give one shareholder the entirety of the profits or exempt it entirely from losses, or that

would exclude a shareholder entirely from profits or impose on it the entirety of the losses.

As for liability, shareholders of an SAS are liable for the company's debts only up to the amount of their contributions (Article 853-1); the JV agreement will typically go further and specify each party's exposure under guarantees, indemnities and non-compete undertakings given in connection with the venture. Access-to-information rights (board reporting, audited accounts, inspection rights) are generally addressed contractually, in addition to the statutory rights attached to shares.

6.7 Minority Protection and Control Rights

A minority JV partner's protection in an Ivorian SAS rests primarily on the articles of association, given the AUSCGIE's broad freedom of contract for this type of company. Typical protections include:

- a list of reserved matters requiring the minority's consent (veto rights) regardless of its shareholding;
- enhanced information and audit rights; and
- representation on the board or steering committee irrespective of shareholding percentage.

Transfer restrictions are also a key minority-protection tool: the articles of association may make any transfer of shares subject to prior approval (*agrément*) and a right of pre-emption (Article 853-18), may render shares temporarily inalienable for up to ten years (Article 853-17) and may provide for tag-along rights protecting the minority if the majority sells its stake. Such mechanisms are validly implemented through the general freedom left to the articles of association.

Any transfer made in breach of these statutory clauses is void (Article 853-19-1). Clauses of this kind may be adopted or amended only by unanimous shareholder vote (Article 853-22), which protects a minority against dilution of its contractual protections by majority vote.

6.8 Applicable Law and Dispute Resolution in International JVs

The AUSCGIE applies mandatorily to the JV vehicle itself, regardless of any choice of law in the JV agreement. For the JV agreement between the shareholders, parties may derogate from territorial jurisdiction rules by express or tacit agreement, subject to limited public-policy exceptions.

Where a JV agreement is silent on procedural law, the court seized applies its own procedural rules regardless of the substantive law chosen by the parties.

There is no general requirement to attempt conciliation or mediation before bringing a commercial claim, save where a specific law provides otherwise. Conciliation before a judge remains available voluntarily at any stage.

Côte d'Ivoire is subject to the Uniform Act on Arbitration, under which parties may submit disputes to arbitration seated in any OHADA member state. Recourse against an award is limited to annulment on a closed list of grounds, reviewable only by the CCJA and enforcement requires an exequatur order that can be refused only for breach of international public policy.

Separately, Côte d'Ivoire is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which governs recognition and enforcement of awards seated outside the OHADA zone.

Foreign court judgments are enforced through a separate exequatur procedure before the Ivorian court of the defendant's domicile or, failing that, the place of enforcement. Exequatur requires, among other conditions, that the foreign court was competent, that the judgment is final and enforceable in its country of origin, that the defendant was properly summoned and able to defend itself, that the matter was not one of exclusive Ivorian jurisdiction, that the judgment does not conflict with an existing Ivorian judgment on the same matter and that it is not contrary to Ivorian public policy; enforcement is further conditional on reciprocity, ie, that Ivorian judgments can obtain exequatur in the country where the foreign judgment was rendered.

7. The JV Board

7.1 Board Structure

The AUSCGIE leaves the board structure of an SAS almost entirely to the articles of association, which

set the conditions under which the company is managed (Article 853-7). The only mandatory organ is the president, who represents the company towards third parties with the broadest powers, exercised within the limits of the corporate purpose in third-party dealings (Article 853-8); the articles of association may add a director general, a deputy director general, or a steering committee/board and allocate powers between them. Shareholders may also organise board composition and the relations between them through an extra-statutory shareholders' agreement, expressly permitted by the AUSCGIE, provided it does not contradict the articles of association or mandatory provisions.

The AUSCGIE does not impose any nationality restriction on directors or the president.

Weighted or multiple voting rights are not addressed for the SAS as such, since the SAS is not required to use one-share-one-vote at board level and the articles of association are free to allocate governance rights as the shareholders see fit; each share does, however, carry at least one vote in collective shareholder decisions (Article 853-12).

7.2 Duties and Functions of JV Boards and Directors

The AUSCGIE does not set out a distinct list of directors' duties for the SAS; the liability rules applicable to members of an SA board of directors apply to the president and directors of an SAS (Article 853-10). Delegation of the president's powers to a director general, deputy director general, or other person designated by the articles of association is expressly permitted (Article 853-8); any statutory limitation on these delegated powers remains unopposable to third parties.

On reporting, the president (or equivalent governing body) must prepare an annual management report covering the company's situation over the past financial year, its foreseeable development and material events since the financial year-end, addressed to the auditors at least 45 days before the annual general meeting and then presented to that meeting (Articles 138 and 140). This obligation applies to SAS as much as to SA.

7.3 Conflicts of Interest

Agreements entered into directly between the company and its president, one of its directors, or a shareholder holding more than 10% of the voting rights (or the controlling company of a corporate shareholder) must be reported to the shareholders, who resolve on them; the interested person cannot vote and their shares are disregarded for quorum and majority purposes (Article 853-14). Agreements entered into via an interposed person, or in which such a person has an indirect interest, are subject to the same rule. Ordinary-course agreements on normal terms are exempted (Article 853-15).

Separately, the president and directors (and their spouses, ascendants, descendants and interposed persons) are prohibited, on pain of nullity, from borrowing from the company, obtaining overdraft facilities from it, or having the company guarantee their personal commitments to third parties (Article 853-16). This prohibition does not apply where the management is a legal entity.

8. IP and ESG

8.1 Ownership and Use of IP

At the incorporation of a corporate JV, the key IP issue is determining whether pre-existing IP contributed by a partner is transferred to the JV entity (assignment) or merely made available to it (licence), as the Accord de Bangui treats these as distinct, formally separate acts: any transfer of ownership, licence, or pledge relating to a patent, trademark, or design must be in writing, on pain of nullity and takes effect against third parties only once recorded on OAPI's special register and published in its official bulletin. The parties should also address, from the outset, ownership of IP created by the JV during its operation (background vs foreground IP) and register the JV entity itself, rather than an individual shareholder, as titleholder where new IP is developed jointly.

In purely contractual collaborations (no JV entity), the same registration and opposability rules apply to any license or assignment agreed between the parties and the collaboration agreement should clearly allocate ownership of IP created jointly during the collabora-

tion, as the Accord de Bangui does not itself resolve joint-ownership questions beyond what the parties agree.

JV agreements typically deal with IP through:

- a schedule listing contributed/background IP and its owner;
- a license (rather than an outright assignment) of that background IP to the JV for the duration of the venture, often reverting to the contributing partner on termination;
- provisions on ownership of foreground IP generated by the JV; and
- confidentiality/use restrictions.

For transfers of IP to or from foreign entities, a further consideration is the UEMOA foreign exchange framework: royalty payments under a license are treated as "*opérations courantes*" and are freely executed through an authorised intermediary bank on presentation of supporting documents, without prior authorisation (Règlement 06/2024/CM/UEMOA).

An outright assignment of IP, by contrast, falls within "*opérations en capital*", which expressly include acquisitions of non-financial, non-produced intangible assets; an assignment to a foreign non-resident acquiring CIV-based IP is treated as inward foreign direct investment and is free, whereas a Côte d'Ivoire-resident acquiring IP abroad (outward investment) requires prior authorisation from the Minister of Finance and is subject to a 75% external-financing requirement.

8.2 Licensing v Assignment of IP Rights

Whether to licence or assign depends on how much control the contributing partner wants to retain. Under the Accord de Bangui, an assignment is a transfer of ownership, definitive and (subject to any territorial split for licences) not limited in scope. In contrast, a licence contract cannot exceed the duration of the underlying registration, must be recorded on the OAPI register to be enforceable against third parties and (unless the licence is exclusive or the contract says otherwise) does not prevent the licensor from granting further licences or continuing to exploit the IP itself. A licence is also not assignable and does not entitle the licensee to grant sub-licences, unless the licence contract expressly provides otherwise.

Practically, licensing allows the contributing partner to retain IP ownership, making it easier to use the IP outside the JV or reclaim it upon exit, without the need for a formal title transfer. Assignment, by contrast, gives the JV entity full ownership, which is preferred if the JV will operate and enforce the IP independently. Both options require written contracts and OAPI registration to be effective against third parties; without registration, the rights are valid only between the parties, not against third parties.

Under the Accord de Bangui, clauses in a licence contract that amount to anticompetitive practices, or that impose restrictions on the licensee going beyond what is needed to protect the IP right itself, are void.

8.3 ESG Considerations in JVs

Côte d'Ivoire's Environment Code sets out general principles applicable to any JV activity with an environmental footprint, including the precautionary principle, the polluter-pays principle and a right to information and public participation in decisions likely to affect the environment. Any significant project likely to have an environmental impact must undergo a prior Environmental Impact Study (EIE) covering, at minimum, a description of the project and affected environment, alternatives considered, likely direct, indirect and cumulative effects, mitigation measures, monitoring arrangements and a costed estimate of mitigation and monitoring measures. Authorities cannot approve or authorise a listed project without an EIE, or the approval will be null and void. Certain installations are also classified as subject to prior authorisation or declaration, depending on the hazards or nuisances they present and heavily polluting enterprises may be required to undergo an ecological audit at the promoter's expense. The *Agence Nationale de l'Environnement* (ANDE), a public body seated in Abidjan, reviews EIEs and administers this regime.

For a JV entity, this means environmental compliance (EIE, classified-installation authorisations, ongoing monitoring) should be allocated as a governance responsibility and budget line from the outset, particularly for JVs in extractive, industrial, or infrastructure

sectors. Beyond the environmental strand, JV partners (particularly where one is a listed or internationally regulated entity) are keen to build ESG reporting, supply-chain and human-rights due diligence obligations into the JV agreement, even though Ivorian law does not impose a general corporate due-diligence or non-financial reporting duty.

9. Exit Strategies and Termination

9.1 Termination of a JV

A JV structured as an SAS ends on one of the grounds listed by the AUSCGIE: expiry of its term, completion or extinction of its corporate purpose, annulment of the company contract, a shareholder decision taken under the conditions required to amend the articles of association, judicial dissolution for just cause (including a shareholder's failure to perform its obligations or a disagreement between shareholders preventing normal operation of the company), a court judgment ordering liquidation of the company's assets, or any other cause set out in the articles of association (Article 200). Beyond these statutory grounds, JV agreements typically also provide for termination by mutual consent, on a material breach by a party, or following exercise of a buy-sell/exit mechanism.

Dissolution only takes effect against third parties once published and automatically places a multi-shareholder company into liquidation; the company's legal personality subsists for the purposes of the liquidation until it is closed (Article 201).

General matters to address on termination of a JV agreement include winding down or continuing the underlying business, allocating shared costs, treating ongoing contracts with third parties, employee transfers, confidentiality and non-compete obligations surviving termination and the asset-distribution and exit mechanics addressed at **9.2 Asset Redistribution and Transfers** and **9.3 Exit Strategy**.

9.2 Asset Redistribution and Transfers

Absent a specific provision in the articles of association or JV agreement, net assets remaining after liquidation (once the nominal value of shares has been repaid) are distributed among shareholders in proportion to their share of the capital (Article 237). The AUSCGIE does not provide a specific statutory mechanism entitling a shareholder to reclaim the actual asset it contributed in kind; if the parties want a contributor to recover its original contribution (eg, land, equipment, IP) rather than its proportional share of the liquidation proceeds, this needs to be expressly built into the articles of association or JV agreement.

This distinction matters in practice: assets originally contributed by a specific participant (and specifically identifiable, eg, real property or IP) raise different questions (valuation at contribution, any conditions attached to the contribution, potential reversion rights) than assets generated by the JV itself during its operation (goodwill, receivables, contracts, developed IP), which the parties will more commonly share pro rata or allocate by negotiation on exit, since the default statutory rule only addresses the latter category by default.

9.3 Exit Strategy

Exit is largely a matter of contractual freedom for an SAS, within limits set by the AUSCGIE. The articles of association may render shares temporarily inalienable for up to ten years (Article 853-17), make any transfer subject to prior approval and pre-emption rights (Article 853-18) and provide for forced transfer of a shareholder's shares in defined circumstances, with the price set by agreement or by an expert failing agreement (Article 853-19). Any transfer made in breach of these statutory clauses is void (Article 853-19-1). Shareholders may adopt or amend these clauses only by unanimous decision (Article 853-22).

At company level, the AUSCGIE also permits a company to buy back its own shares in connection with a capital reduction, with the repurchased shares then cancelled. Beyond these statutory tools, the JV agreement determines whether a JV exit occurs through a share transfer to the other partner, a third-party sale, a buy-sell/put-call mechanism, or liquidation.

Trends and Developments

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Houda Law Firm

Houda Law Firm supports companies, public and private institutions, investment funds and governments by delivering high-value legal services across a broad range of practice areas. Operating throughout the West African Economic and Monetary Union (WAEMU) and the Organisation for the Harmonisation of Business Law in Africa (OHADA) regions, the firm combines deep local insight with strong regional reach to help clients navigate complex legal and regulatory environments with confidence. In a rapidly changing world, Houda Law Firm embraces innovation, excellence and commitment to provide pragmatic, forward-thinking solutions to today's most strategic legal challenges. The firm's experienced, multidisciplinary teams work in close partnership with clients to anticipate risks, unlock opportunities and support informed decision-making. Guided by strong ethical values and a results-oriented mindset, Houda Law Firm positions itself as a trusted legal partner dedicated to creating lasting value.

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Choosing the Right Joint Venture Structure in Côte d'Ivoire: A Strategic, Not Just Legal, Decision

Introduction

Joint ventures have become one of the most common vehicles for foreign investors entering Côte d'Ivoire, particularly in infrastructure, energy, real estate and mining. Once a foreign partner and a local partner (or two foreign partners) decide to work together, the first practical question is often whether to create a company or sign a contract to organise their collaboration.

This choice is often treated as a technical, almost administrative, decision to be resolved once the commercial terms are agreed. In practice, it is one of the most consequential decisions of the whole transaction. It shapes how the venture is governed, how much each party is exposed if things go wrong, how easy it is to raise financing and how the parties eventually exit. This article looks beyond the legal comparison between vehicles and focuses on what drives the choice on the ground in Côte d'Ivoire today and the market trends currently shaping that choice.

Beyond the legal form: what actually drives the choice

Clients often arrive at the negotiating table already convinced they want "a joint venture company", without having thought through why. In our experience advising international clients entering the Ivorian market, the decision is genuinely driven by a handful of practical factors, not by legal preference in the abstract.

- Duration and scale of the project – a one-off construction contract or a single tender response calls for a different structure than a twenty-year concession.
- Need for third-party financing – lenders and development finance institutions generally want to see a single, identifiable borrower with its own balance sheet, not a bundle of contractual promises between two separate companies.
- Level of trust and prior relationship between the partners – partners who have worked together before or who trust each other's financial standing, are often comfortable with a lighter contractual arrangement.
- Sector-specific requirements – certain regulated activities effectively require a locally incorporated entity to hold a license, contract with the state or be eligible for local content credit.
- The exit the parties have in mind from day one – a structure that is easy to set up can be surprisingly difficult to unwind if the parties have not planned for separation at the outset.

Getting this analysis right before drafting begins saves considerable time and cost later; converting a contractual arrangement into a company midway through a project is far more difficult – and often more expensive – than making the right choice from the start.

When a corporate joint venture makes strategic sense

A corporate joint venture, most commonly structured in Côte d'Ivoire today as a "*Société par Actions Simplifiée*" (SAS), makes the most sense where the ven-

ture is intended to operate as a genuine, standalone business over a meaningful period.

Long-term infrastructure, energy and real estate projects are the clearest examples. These projects typically require the venture to enter into numerous contracts with third parties: construction contractors, offtake purchasers, insurers and often government counterparties. Having a single corporate entity sign these contracts, rather than each partner separately, avoids constant questions about which partner is actually bound and to what extent.

Bankability is another major driver. Lenders financing an Ivorian project, whether local banks or international development finance institutions, generally require a dedicated borrowing entity whose assets and cash flows they can look to and, where relevant, take security over. A loose contractual arrangement between two companies rarely satisfies this requirement, as the lender has no single balance sheet to assess or against which to register security.

A corporate structure also suits ventures where the parties want a clean, well-understood exit route. Selling shares in a company is a comparatively straightforward transaction, governed by well-established rules on share transfers, pre-emption and valuation. It also allows a partner to bring in a new investor or to be bought out entirely, without having to unwind a web of separate contracts.

Finally, certain regulated sectors in practice expect, even where not strictly required by statute, a locally incorporated vehicle; this can:

- simplify obtaining sector permits;
- opening local bank accounts;
- employing staff directly; and
- qualifying for local content credit under Ivorian local content rules, which increasingly matter in the energy and extractive sectors.

When a contractual joint venture makes strategic sense

A contractual joint venture, where the parties organise their collaboration entirely through an agreement rather than creating a new company, remains a genuinely useful tool in a narrower but still significant set of situations.

Consortium bids for public tenders and EPC (engineering, procurement and construction) contracts are the most common example we see in Côte d'Ivoire. Where two contractors want to bid jointly for a single project, without any intention of building a long-term business together, a contractual arrangement lets them combine their technical capacity and share the risk for that specific project without the cost and formality of incorporating a new company.

Speed and simplicity are also genuine advantages. A contractual joint venture can be put in place quickly, without the formalities of incorporation, registration with the *Registre du Commerce et du Crédit Mobilier* (RCCM) or notarisation of constitutional documents, all of which take time even where the process runs smoothly. This matters where a tender deadline is imminent or where a pilot project needs to start before a full corporate structure could realistically be in place.

Partners who want to preserve their own separate identity, brand and balance sheet often prefer this route too. Each party continues to invoice, employ staff and report financial results independently, which can matter for accounting, tax or internal governance reasons within a multinational group.

Confidentiality is a further, sometimes underestimated, consideration. A company's articles of association become part of the public record once filed with the RCCM. A purely contractual joint venture, by contrast, remains a private arrangement between the parties, which can matter where the partners do not want the existence or terms of their collaboration to be publicly visible.

The trade-off is real, however. A contractual joint venture generally cannot itself contract with third parties, hold assets in its own name or borrow money as a single entity; each partner remains separately liable and separately identifiable to the outside world, which can complicate matters considerably if a dispute arises with a third party or if the venture needs external financing.

Market trends shaping the choice in Côte d'Ivoire

The balance between these two options has shifted noticeably over the past decade and understanding why helps explain what we now see in practice.

The 2014 reform of the OHADA Uniform Act on Commercial Companies, which introduced the SAS to the region, was a genuine turning point. Before this reform, incorporating a company in Côte d'Ivoire for a joint venture generally meant a *société anonyme*, with a comparatively rigid governance structure poorly suited to the give-and-take of a genuine partnership between two independent groups. The SAS changed that by allowing the partners to design governance, transfer restrictions and exit mechanisms directly in the articles of association, closely mirroring what a separate shareholders' agreement would otherwise need to achieve. This flexibility is a significant reason why the corporate route has become the default choice for substantial, long-term projects in Côte d'Ivoire today.

Regional trade integration is reinforcing this shift towards formalised, standalone JV vehicles. Ivorian business federations have actively encouraged local companies to enter joint ventures with partners from other African markets as a route into the African Continental Free Trade Area, rather than exporting or operating alone. This regional dimension increasingly shapes how JVs are structured in Côte d'Ivoire, as a venture intended to serve several African markets, not just the domestic one, is more likely to need a properly capitalised, standalone entity from the outset.

A recent transaction in the agri-food sector illustrates how flexible the corporate route has become in practice. In 2026, a Spanish confectionery group agreed to take a minority stake in an Ivorian cocoa-processing joint venture through a reserved capital increase, combining a cash contribution with the conversion of existing debt into equity and including share warrants exercisable over several years to allow the foreign partner's stake to increase progressively as the venture develops. This flexible, multi-instrument entry approach – challenging to achieve with a purely contractual arrangement – is exactly the kind of adaptability that has established the SAS as the preferred structure for corporate joint ventures in Côte d'Ivoire.

Simultaneously, the rise of public-private partnerships and energy initiatives has further cemented this shift, as such projects typically demand a bankable, dedicated project company from the outset, often before a single shovel is in the ground.

Contractual joint ventures nonetheless remain very much alive in construction and public procurement, where consortium bidding remains standard practice, including for groupings involving Asian and Ivorian contractors working together on infrastructure tenders. In this segment, the flexibility and speed of a contractual arrangement continue to outweigh the benefits of incorporation, precisely because the collaboration is tied to a specific, time-limited project rather than an ongoing business.

Practical risk flags regardless of structure chosen

One misconception worth correcting is that choosing a contractual joint venture means the parties can avoid documenting the difficult issues a corporate joint venture agreement would otherwise cover.

Governance, decision-making authority, funding obligations, deadlock resolution, IP ownership and even basic environmental and social responsibilities all still need to be addressed contractually, whether or not the parties incorporate a company together. The absence of a company does not remove these risks; it simply means they must be managed entirely through contract law rather than partly through company law, statutory default rules and, ultimately, the protections that OHADA company law affords to shareholders.

Parties choosing the contractual route for speed or confidentiality should, if anything, expect their collaboration agreement to be more detailed and carefully drafted than a typical company's articles of association, precisely because there is no statutory fallback to rely on if the agreement is silent on a given point.

Designing the exit before designing the entry

Ivorian and regional practice increasingly shows that joint ventures that plan for separation from the outset tend to survive longer and separate more cleanly than those that treat exit as an afterthought. Partners who know from day one how a separation would unfold and on what terms, tend to negotiate more calmly dur-

ing the life of the venture, precisely because neither side feels trapped.

A few design choices matter more than parties typically expect at the outset. International arbitration, while a sound default for larger ventures, can be disproportionately expensive relative to the value of a smaller joint venture, to the point where the clause intended to resolve disputes ends up discouraging either party from using it at all; parties should size their dispute resolution mechanism to the actual value of the venture, not adopt a standard clause by default. Independent-expert valuation clauses, though common, often prove slow and contested in practice; simpler, pre-agreed valuation formulas, even if less precise in theory, tend to produce faster and less disputed outcomes on exit. Buy-sell mechanisms also work best when they build in a cooling-off period, such as a short negotiation window followed by mediation, before any forced-transfer mechanism is triggered, because this preserves the commercial relationship and improves the odds of a negotiated outcome rather than an adversarial one.

How a separation is handled also matters as much as the financial terms in practice. A partner who wins a dispute but alienates suppliers, local authorities or the local market in the process may find the legal victory has little commercial value. Provisions addressing joint communication on the reasons for separation, an orderly transition period and appropriately, rather than excessively, calibrated non-compete and penalty clauses all help preserve each party's ability to keep operating in the market afterwards.

Conclusion

There is no single right answer to whether a joint venture in Côte d'Ivoire should be structured as a company or as a contract. The right answer depends on the project's duration, whether external financing is needed, the sector involved and how the parties envisage exiting the arrangement.

The most important factor is making this decision proactively and early, with sound legal advice, rather than choosing the structure that feels most familiar or comfortable to either party. Getting it right from the outset is considerably easier and cheaper, than trying to restructure a joint venture once it is already up and running.

CYPRUS

Law and Practice

Contributed by:
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LLPO Law Firm is a Cyprus-based full-service law firm with a strong corporate and commercial practice. The firm advises local and international clients, including international investors and businesses establishing or expanding operations in Cyprus, on complex transactions and corporate matters, including mergers and acquisitions, joint ventures, shareholder arrangements, corporate reorganisations and restructurings. Its transactional work also includes private equity investments, venture financing, demergers and cross-border group reorganisations, alongside corporate governance and regulatory matters. LLPO acts for clients across sectors including financial services, technology, energy, real estate, fintech, iGaming and crypto-assets, including regulated businesses and investment structures. The firm is regularly engaged by leading international law firms to provide Cyprus law advice on cross-border transactions and, through its international network memberships, works alongside counsel in multiple jurisdictions to provide co-ordinated advice on matters extending beyond Cyprus.

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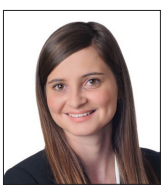

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1. Market Conditions

1.1 Geopolitical and Economic Factors

The external environment has become a more significant factor in the structuring of Cyprus joint ventures (JVs) over the past year. Geopolitical uncertainty, financing conditions and increased regulatory scrutiny of cross-border investment have placed greater emphasis on risk allocation, funding commitments, conditions precedent and exit arrangements at the structuring stage. Against this background, JV activity remains particularly relevant to capital-intensive and cross-border projects, including in real estate, infrastructure, energy and technology-related sectors. The continuing conflicts in Ukraine and the Middle East have also increased the importance of geopolitical and supply-chain risk in transactions with a cross-border element. For JVs, this is reflected less in the choice of vehicle itself and more in the contractual allocation of risk, including funding obligations, project delays, force majeure, sanctions compliance and termination rights.

Financing conditions have likewise remained relevant, particularly for capital-intensive real estate, infrastructure and energy projects. Where financing costs or lender requirements materially affect project economics, JV participants may place greater emphasis on phased equity commitments, shareholder funding arrangements, security packages and mechanisms dealing with funding default.

Regulatory scrutiny of foreign investment has also become a more immediate transaction-planning issue following the entry into force of Cyprus's foreign direct investment (FDI) screening regime on 2 April 2026. For transactions within its scope, parties must now consider the screening process at an early stage, including its potential impact on transaction timetables, conditions precedent and completion mechanics. Looking towards 2027, we expect these developments to result in greater front-loading of regulatory and transaction-risk analysis. JVs should nevertheless remain an attractive structure for investments requiring significant capital, complementary expertise or risk-sharing, particularly in infrastructure, energy, real estate and technology-related projects.

1.2 Industry Trends and Emerging Technologies

JV activity in Cyprus remains particularly visible in project-based and capital-intensive sectors, including real estate, construction, energy and infrastructure. The use of JVs in these areas is often driven by the need to pool financing capacity, technical expertise and project-specific resources, including in public procurement and large development projects. Technology-focused collaborations are also becoming increasingly relevant, particularly where participants bring different combinations of technology, IP, funding and regulatory expertise.

For technology-focused JVs, emerging regulation increasingly affects the allocation of rights and responsibilities between the participants. Where AI systems,

datasets, software or other technology are contributed to or developed by the JV, the parties need to determine who owns existing and newly developed IP, who may access and use relevant data, and which participant bears responsibility for regulatory compliance and technology-related claims.

The EU Artificial Intelligence Act, the General Data Protection Regulation (GDPR) and the EU Data Act form an important part of this framework. Depending on the activities of the JV, these regimes may influence data access and sharing arrangements, governance of AI systems, contractual arrangements with technology providers and the allocation of compliance responsibilities between the JV entity and its participants.

Cyprus does not generally impose a standalone data-localisation requirement merely because a JV is established in Cyprus; however, cross-border data transfers and the processing of personal or regulated data must comply with applicable EU and sector-specific requirements.

The evolving EU product liability framework, including the revised Product Liability Directive, is also relevant where a JV develops or supplies software or AI-enabled products, increasing the importance of contractual allocation of product, technology and compliance risk.

As a result, technology-focused JVs increasingly require more detailed provisions on background and foreground IP, data access, sharing, storage and permitted use, cybersecurity, regulatory responsibility, liability allocation and the consequences of regulatory change. These matters may also influence whether technology is transferred to the JV entity itself or retained by a participant and licensed to the venture.

2. JV Structure and Strategy

2.1 Typical JV Structures

Cyprus does not prescribe a single legal form for JVs. Depending on the nature and objectives of the collaboration, parties typically use a contractual arrangement, a general or limited partnership, a Cyprus company or, less commonly, a European Economic Interest Grouping (EEIG).

Contractual Joint Ventures

A contractual JV is created through agreement between the participants without incorporating or registering a separate JV entity. This structure is particularly suited to project-specific or time-limited collaborations where the parties wish to retain their existing legal identities and design the governance, funding and termination arrangements contractually.

Its principal advantages are flexibility, relative speed of implementation, and lower establishment and ongoing administrative requirements. The principal disadvantage is the absence of separate legal personality: the venture cannot itself own assets or assume obligations independently of the participants, and dealings with third parties must therefore be structured through one or more of the parties. Careful drafting is also required to allocate responsibility, liability and decision-making authority and to avoid unintended legal consequences arising from the parties' relationship.

Partnership Joint Ventures

A JV may also be structured as a general or limited partnership under Cyprus partnership law. In a general partnership, the partners are personally liable for the debts and obligations of the partnership. A limited partnership must include at least one general partner with unlimited liability, while the liability of a limited partner is generally limited to its agreed contribution, subject to the applicable statutory conditions.

Partnerships can offer a comparatively straightforward and flexible framework for participants carrying on business together and may also provide tax transparency. They can operate and transact under the partnership name despite not having separate legal personality. Their disadvantages include the unlimited liability attaching to general partners and the potential for partners to bind the partnership, making clearly defined management and authority arrangements important.

Corporate Joint Ventures

For equity JVs, the most commonly used structure is a Cyprus private company limited by shares incor-

porated under the Companies Law, Cap. 113. The JV company has legal personality separate from its shareholders and can own assets, enter into contracts, employ personnel, borrow and grant security in its own name. The participants' relationship is typically regulated through the company's memorandum and articles of association together with a shareholders' agreement.

The principal advantages are limited liability, continuity independent of changes in ownership, and an established framework for governance, investment, financing and transfer of interests. A corporate structure can also facilitate external financing and provides a recognisable vehicle for dealing with third parties. The trade-off is greater formality, including incorporation, corporate governance, accounting, filing and other ongoing compliance requirements, together with associated administrative costs.

European Economic Interest Groupings

An EEIG is an EU-law vehicle established under Council Regulation (EEC) No 2137/85 and, in Cyprus, the European Economic Interest Grouping (Implementing Provisions) Law of 2012 (L. 161 (I)/2012). It is designed to facilitate or develop the economic activities of its members rather than operate as an independent profit-making business. It may therefore be useful for cross-border collaboration between qualifying participants established or carrying on activities within the EU.

Its advantages include its cross-border EU character and flexibility as a co-operation vehicle. However, its permitted purpose is more limited than that of an ordinary commercial company, and its members are subject to unlimited joint and several liability for the grouping's debts and other liabilities, although creditors must generally first seek payment from the grouping itself.

2.2 Strategic Drivers for JV Structuring

There is no single preferred JV structure in Cyprus. The appropriate structure will depend on a combination of legal, commercial, financing and tax considerations and, in particular, on how the parties intend the venture to operate, allocate risk, raise funding and ultimately terminate or exit the relationship.

Separate Legal Personality and Risk Allocation

A threshold consideration is whether the venture needs to operate independently of its participants. Where the JV is expected to own assets, employ personnel, enter into contracts or raise financing in its own name, an incorporated vehicle will often be the natural choice. A Cyprus company provides separate legal personality and generally limits the shareholders' exposure to their investment and any additional obligations which they have expressly assumed.

Unincorporated structures may be attractive where the collaboration is limited in scope or duration and the parties place greater emphasis on contractual flexibility. They do not, however, provide the same separation between the venture and its participants. Liability considerations are particularly important in partnership structures: general partners may have unlimited liability, while members of an EEIG are generally jointly and severally liable for the grouping's obligations.

Governance and Decision-Making

The degree of integration and control required by the participants is another important consideration. A corporate JV provides an established governance framework through shareholder and board decision-making, which can be supplemented by negotiated board appointment rights, reserved matters, veto rights and deadlock procedures.

In contractual and other unincorporated JVs, governance arrangements are primarily determined by agreement between the parties. This can provide greater flexibility, particularly for project-specific ventures, but requires the parties to define carefully their respective management powers, decision-making procedures and authority to bind the venture or each other.

Funding and Economic Participation

The anticipated funding requirements may materially influence the choice of vehicle. A corporate JV can raise equity, incur borrowing and enter into financing arrangements in its own name. It may also grant security over its assets, although lenders may additionally require shareholder guarantees or other credit support.

The parties should also consider how initial and future funding obligations, profits and losses, distributions and entitlements to assets or revenue are to be allocated. Contractual and partnership structures may offer greater flexibility in allocating economic participation between the parties but may be less suitable where substantial external financing is contemplated.

Assets and Dealings With Third Parties

Where the JV is expected to hold material assets, acquire IP, employ personnel or enter into substantial third-party contracts, a corporate vehicle may provide a clearer separation between the venture and the participants.

By contrast, where speed of establishment and flexibility are more important – for example, in a tender-driven or single-project collaboration – a contractual JV may be more appropriate, as it can generally be established with fewer formalities and without incorporating a separate entity.

Tax Considerations

Tax treatment can be an important structuring consideration. A Cyprus corporate JV is a separate taxable person and is generally subject to corporate income tax on its taxable profits at the standard rate of 15%.

By contrast, partnerships are generally treated as tax-transparent, with profits and losses attributed to the partners and taxed at participant level according to their respective tax status and profit-sharing arrangements. Similarly, the tax consequences of a purely contractual JV will generally arise at participant level rather than through a separately incorporated JV entity.

The appropriate structure should therefore be assessed having regard to the tax residence and profile of the participants, the proposed funding arrangements, the manner in which returns are expected to be extracted and the availability of any applicable exemptions or double tax treaty relief. Where relevant, the Cyprus participation exemption regime and other available corporate tax incentives may also affect the choice of structure.

Duration and Exit

The expected duration of the relationship and the intended exit route should also be considered from the outset. A project-specific contractual JV may terminate naturally once its purpose has been achieved.

A corporate JV, by contrast, permits a participant to exit without necessarily terminating the underlying business. Shareholders' agreements commonly regulate transfers and provide mechanisms such as pre-emption rights, tag-along and drag-along rights, buy-out arrangements and other agreed exit procedures.

Regulatory Considerations

Finally, sector-specific regulation may affect both the choice and ownership structure of the JV vehicle. Depending on the activities and participants involved, licensing requirements, merger control, foreign investment screening and other regulatory approvals may influence the vehicle selected, its ownership and governance arrangements, and the timetable for implementation.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

Cyprus does not have a standalone statutory regime governing JVs, nor is there a single regulatory authority responsible for their supervision. The applicable legal and regulatory framework depends principally on the legal form of the JV, the activities it carries on and, where relevant, the nature of the transaction through which it is established.

For corporate JVs, the principal legislation is the Companies Law, Cap. 113, with incorporation and corporate filings administered by the Department of Registrar of Companies and Intellectual Property. Partnership JVs are principally governed by the General and Limited Partnership and Business Names Law, Cap. 116, while contractual JVs are governed primarily by their contractual arrangements and the general principles of Cyprus contract law, including the Contract Law, Cap. 149. EEIGs are governed by Council Regulation (EEC) No 2137/85, together with the European Economic Interest Grouping (Implementing Provisions) Law of 2012 (L. 161 (I)/2012).

Additional regulatory regimes may apply depending on the JV's ownership, transaction structure and activities. The Commission for the Protection of Competition (CPC) is relevant where the establishment of a JV constitutes a concentration or otherwise raises competition law issues. The Ministry of Finance is the competent authority under Cyprus's FDI screening regime. The Cyprus Securities and Exchange Commission (CySEC) and the Central Bank of Cyprus may also be relevant where the JV carries on regulated financial services activities, while data protection matters fall within the remit of the Commissioner for Personal Data Protection.

Sector-specific licensing and regulatory requirements may also apply, depending on the activities of the JV.

3.2 Anti-Money Laundering Compliance

The principal anti-money laundering (AML) legislation in Cyprus is the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 (L.188 (I)/2007), as amended. The AML framework applies to specified obliged entities, including credit and financial institutions, auditors, external accountants, lawyers in respect of specified activities, and certain trust and corporate service providers.

Obliged entities are subject to requirements including customer due diligence, identification and verification of beneficial ownership, assessment of the purpose and intended nature of the business relationship, ongoing monitoring and the reporting of suspicious transactions or activities. Enhanced due diligence may be required where higher money-laundering or terrorist-financing risks are identified.

In the context of establishing or investing in a JV, relevant obliged entities involved in the establishment or investment process will generally be required to conduct appropriate due diligence on the JV participants, their ownership and control structures, and their ultimate beneficial owners. The extent of the due diligence required will depend on the circumstances and the applicable risk assessment.

3.3 Sanctions, National Security and Foreign Investment Controls

As an EU member state, Cyprus applies EU restrictive measures, as well as applicable UN and national sanctions. Cyprus has also strengthened its domestic sanctions enforcement framework through the Law on the Definition of Criminal Offences and Penalties for Violating the Union's Restrictive Measures (L.149 (I)/2025), and the Law on the Establishment of the National Sanctions Implementation Unit and the Implementation of Restrictive Measures and National Sanctions in the Republic of 2025 (L.150 (I)/2025), with the National Sanctions Implementation Unit operating within the Ministry of Finance as the central authority for the implementation and supervision of economic sanctions.

For JV transactions, sanctions considerations may affect the identity of the proposed participants, their ownership and control structures, the source and movement of funds, and the activities which the JV may undertake. Sanctions due diligence should therefore be undertaken at an early stage, particularly for cross-border ventures, and appropriate contractual protections may be required where sanctions exposure is identified.

Foreign investment may also be subject to screening under the Establishment of a Framework for the Screening of Foreign Direct Investments Law of 2025 (L.194 (I)/2025), which has applied since 2 April 2026. The Ministry of Finance is the competent screening authority. Under the principal mandatory notification test, notification is required where the investment results in the acquisition of a qualifying participation of at least 25% of the share capital or voting rights, or an equivalent ability to exercise decisive influence, the investment value is at least EUR2 million, and the investment concerns an undertaking of strategic importance. The Law also contains specific notification rules for subsequent increases in qualifying participations, including where an investor's holding crosses the 25% or 50% threshold.

The regime is relevant to undertakings operating in strategically sensitive areas, including critical infrastructure and technologies. Where a proposed JV falls within its scope, FDI analysis should be under-

taken early in the transaction process because prior approval may be required before the investment can proceed. The parties may therefore need to address FDI clearance through conditions precedent, regulatory co-operation obligations, long-stop dates and completion mechanics. The Ministry of Finance also retains statutory powers to review certain investments outside the mandatory notification regime where there are reasonable grounds to consider that security or public order may be affected.

There is no general prohibition on foreign participation in Cyprus JVs. However, the FDI regime and sector-specific legislation may impose additional approval, licensing, ownership or suitability requirements depending on the identity of the investor and the activities of the JV. These issues are particularly relevant where the JV will operate in a regulated or strategically sensitive sector.

3.4 Competition Law and Antitrust

Cyprus competition law affects JVs in two principal ways: through merger control where the establishment of the JV constitutes a concentration, and through the rules governing anti-competitive agreements and conduct.

Under the Control of Concentrations Between Undertakings Law of 2014 (L. 83 (I)/2014), as amended, the creation of a JV constitutes a concentration where it performs, on a lasting basis, all the functions of an autonomous economic entity. Where such a JV is a concentration of major importance, it is subject to mandatory notification to the CPC and may not be implemented before clearance has been obtained or the concentration is otherwise deemed compatible under the statutory regime.

Under the current thresholds, a concentration is of major importance where, cumulatively, at least two participating undertakings each have aggregate turnover exceeding EUR3.5 million, at least two participating undertakings generate turnover in Cyprus, and at least EUR3.5 million of the aggregate turnover of all participating undertakings is generated in Cyprus. A concentration falling below those thresholds may also become subject to the regime where it is declared to be of major importance in accordance with the Law.

JVs falling outside merger control must still be structured and operated consistently with applicable competition rules. Depending on the circumstances, arrangements between the JV participants concerning matters such as pricing, market or customer allocation, output, information exchange or restrictions on competing activities may require competition-law assessment. Where trade between EU member states may be affected, Articles 101 and 102 of the Treaty on the Functioning of the European Union are also relevant.

Competition-law analysis should therefore be undertaken at an early stage of the JV process. Where merger clearance is required, the transaction documents will ordinarily need to accommodate the filing and clearance process through appropriate conditions precedent and completion mechanics.

3.5 Listed Companies and Market Disclosure Rules

A listed company participating in a JV must consider whether the formation, negotiation or subsequent operation of the venture engages its obligations as an issuer. The relevant requirements depend on the market on which its securities are admitted to trading and the nature and materiality of the proposed JV.

A key consideration during negotiations is the treatment of inside information under Regulation (EU) No 596/2014 on market abuse (MAR), which is directly applicable in Cyprus and operates alongside the domestic framework, including the Market Abuse Law of 2016 (L. 102 (I)/2016). Information concerning a proposed JV may constitute inside information depending on the circumstances. Where this is the case, the listed participant must comply with the applicable requirements concerning the handling and disclosure of inside information, including any conditions applicable to delaying public disclosure. Appropriate confidentiality procedures and controls over access to transaction information are therefore particularly important during negotiations.

Once established, a material JV may also affect the listed participant's continuing reporting and disclosure obligations. Issuers whose securities are admitted to trading on a regulated market are subject to the Trans-

parency Requirements (Securities Admitted to Trading on a Regulated Market) Law of 2007 (L.190 (I)/2007), as amended, including applicable annual and half-yearly financial reporting requirements. The rules of the Cyprus Stock Exchange (CSE) may impose additional announcement and disclosure requirements depending on the circumstances.

Governance considerations may also arise where the listed participant is subject to the CSE Corporate Governance Code. Matters such as board oversight, conflicts of interest, internal controls and related-party considerations may therefore need to be addressed when approving and monitoring the JV, particularly where directors or significant shareholders have interests connected with the other JV participant or the transaction.

Accordingly, listed participants should assess disclosure, market-abuse and governance requirements early in the JV process, rather than treating them solely as post-signing compliance matters.

3.6 Transparency and Ownership Disclosure

Cyprus does not operate a separate persons-with-significant-control regime equivalent to the UK PSC register. Beneficial ownership disclosure is instead addressed through the Register of Beneficial Owners maintained by the Department of Registrar of Companies and Intellectual Property under the Cyprus AML framework.

Companies and other organisations falling within the applicable regime, including partnerships, are required to submit and maintain information concerning their ultimate beneficial owners. For corporate entities, a beneficial owner is generally the natural person who ultimately owns or controls the entity, whether through direct or indirect ownership or through other means of control. Ownership of 25% plus one share, or an ownership interest exceeding 25%, is an indication of beneficial ownership, although the analysis is not limited to shareholding percentages.

For a JV, the beneficial ownership analysis should therefore look through the immediate participants and any intermediate holding entities to identify the relevant natural persons exercising ultimate ownership or control. Changes to the ownership or control structure of the JV may consequently trigger an obligation to update the information recorded in the Beneficial Ownership Register.

Access to beneficial ownership information is not generally open to the public following the relevant CJEU judgment. The current Cyprus system provides access principally to competent and supervisory authorities and, subject to the applicable procedure, obliged entities. The Beneficial Ownership Register is separate from the ordinary Companies Register.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Foreign Direct Investment Screening

One of the most significant recent developments affecting the structuring of cross-border JVs in Cyprus is the introduction of the Establishment of a Framework for the Screening of Foreign Direct Investments Law of 2025 (L.194 (I)/2025), which came into force on 2 April 2026. The Law introduced a prior screening mechanism for qualifying foreign investments that may affect security or public order. For JVs falling within its scope, regulatory clearance has therefore become an additional consideration in transaction planning, including the structuring of conditions precedent and completion timetables. The regime is discussed further in **3.3 Sanctions, National Security and Foreign Investment Controls**.

Cross-Border Corporate Mobility

The Companies Law (Amending Law) (No 3) of 2024 (L. 26 (I)/2024), which transposed Directive (EU) 2019/2121, introduced new rules for cross-border conversions and divisions and revised the existing framework for cross-border mergers within the EU. The reforms provide corporate JVs with additional restructuring options, including the possibility, where the statutory requirements are satisfied, of carrying out a cross-border conversion while retaining legal personality rather than liquidating the existing company and establishing a new vehicle in another EU member state. The framework also contains protections

for shareholders, creditors and employees affected by qualifying cross-border operations.

Proposed Merger Control Reform

A further development to monitor is the proposed reform of the Control of Concentrations Between Undertakings Law of 2014 (L. 83 (I)/2014). Among the proposed changes is a revised Cyprus turnover nexus under which at least two participating undertakings would each be required to generate turnover exceeding EUR200,000 in Cyprus, alongside the applicable worldwide turnover requirement. If enacted, the reform could alter the range of JV transactions falling within the Cyprus merger-control regime. As at the date of writing, the proposed amendments have not been enacted.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

The preliminary documentation used in negotiating a JV will depend on the nature and complexity of the transaction. Commonly used documents include:

- **letters of intent, memoranda of understanding or heads of terms**, recording the principal commercial and legal terms of the proposed JV and typically identifying which provisions are intended to be binding and which remain subject to contract;
- **exclusivity agreements or provisions**, restricting negotiations with third parties for an agreed period; and
- **mutual non-disclosure or confidentiality agreements**, governing the use and disclosure of information exchanged during negotiations.

Due diligence will generally be undertaken before the definitive JV documentation is concluded, commonly through a due diligence questionnaire or information request list and, where appropriate, a virtual data room. Its scope will depend on the proposed structure and activities of the JV and any business, assets, technology or other rights to be contributed.

At the preliminary stage, the parties would typically address the proposed structure, ownership and contributions, funding, governance and reserved matters, conditions precedent and regulatory approvals, as well as confidentiality, exclusivity and the timetable for negotiating the definitive documentation.

5.2 Disclosure Obligations

There is no general requirement under Cyprus law to disclose a proposed JV when negotiations commence or when heads of terms, a letter of intent or memorandum of understanding are signed. A contractual JV does not require a public filing merely because the parties enter into the JV agreement.

For a corporate JV, public disclosure of certain corporate information arises through the incorporation and subsequent filing requirements with the Registrar of Companies. Publicly available information includes key corporate particulars and filed documents relating to matters such as the registered office, directors, shareholders and share capital. The JV agreement itself is not generally required to be publicly filed. A partnership must be registered with the Registrar within one month of its establishment, while an EEIG established in Cyprus is subject to its applicable registration requirements.

Separate notification or approval requirements may arise before implementation. A qualifying FDI requires prior notification and approval, while a JV constituting a notifiable concentration is subject to the applicable merger-control process before implementation. Disclosure may arise earlier where a listed participant is required to disclose inside information. Sector-specific notification, approval or licensing requirements may also apply.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Conditions precedent in a JV agreement typically include obtaining required regulatory approvals and third-party consents, obtaining corporate approvals from the parties, securing agreed financing or funding commitments and, where relevant, obtaining permits, licences or other approvals required for the proposed business or project.

Where signing and closing do not occur simultaneously, the parties may require the representations and

warranties to remain true and accurate at closing and the business or project to continue to be operated in the ordinary course during the interim period.

Material adverse change clauses may also be negotiated as a condition to closing. These clauses may cover events such as a significant adverse change in the financial position or operations of the business or project, the loss of a key customer or licence, significant litigation, or other events materially affecting the relevant business, project or proposed JV. The clause may give a party the right not to proceed with closing if a specified material adverse change occurs, with the parties generally defining the relevant circumstances and any exclusions.

Force majeure provisions are particularly relevant to project-based or long-term JVs. Cyprus law does not provide a general force majeure regime applying automatically to contracts, and the parties therefore commonly regulate such events expressly. In the absence of an applicable contractual provision, Section 56 of Cap. 149 may apply where subsequent performance becomes impossible or unlawful. Force majeure clauses typically address events beyond the parties' reasonable control, such as natural disasters, war, governmental action or strikes, and may provide for suspension or extension of affected obligations and, where the event continues for an agreed period, termination.

5.4 Legal Formation and Capital Requirements

Contractual JVs may be established through the execution of a JV agreement between the parties and do not require the creation or registration of a separate legal entity. The agreement will generally set out the parties' respective contributions, rights and obligations and the terms governing the operation of the JV.

Partnership JVs are established under the General and Limited Partnership and Business Names Law, Cap. 116, and require registration with the Registrar of Companies. The partnership agreement will generally regulate the partners' respective contributions, rights and obligations and the management of the partnership.

Corporate JVs require incorporation under the Companies Law, Cap. 113, including the filing of the memorandum and articles of association and the prescribed incorporation documents with the Registrar. The participants will also typically enter into a shareholders' agreement. A private company limited by shares, the vehicle most commonly used for corporate JVs, is not subject to a statutory minimum share capital requirement. A public company is subject to a minimum capital requirement of EUR25,629.

EEIGs are established by registration under the applicable EU and national framework and do not require share capital. The formation contract regulates the grouping and the rights and obligations of its members.

There is no general restriction preventing foreign entities from participating in Cyprus JVs. However, sector-specific approval, licensing or ownership requirements may apply. Foreign investments falling within the Cyprus FDI screening regime may also require prior screening and approval, as discussed in **3.3 Sanctions, National Security and Foreign Investment Controls**.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

In a contractual JV, the JV agreement is the principal document defining the parties' relationship. It would typically address the scope and purpose of the venture, the parties' contributions and responsibilities, governance and decision-making, funding, allocation of profits and losses, liability, IP where relevant, and termination. Careful drafting is also important to avoid unintended consequences arising from the legal characterisation of the parties' relationship.

For a partnership JV, the partnership agreement is the principal document governing the relationship between the partners and will generally regulate their respective rights and obligations, contributions, management arrangements, profit sharing, and exit or dissolution.

A corporate JV is constituted under its memorandum and articles of association, with the articles providing the principal internal governance rules. The participants will also typically enter into a shareholders' agreement. Its principal terms commonly include the JV's business and scope, ownership and contributions, board composition and appointment rights, governance and reserved matters, funding and further capital requirements, dividend policy, transfer restrictions, minority protections, deadlock mechanisms, exit and termination.

For an EEIG, the principal governing document is the formation contract, which contains the prescribed particulars relating to the grouping and its members and may further regulate voting, contributions, and other rights and obligations of the members.

6.2 Governance and Decision-Making

Decision-making arrangements in a Cyprus JV depend on the legal form adopted and are typically regulated through the relevant constitutional and contractual documents.

In a contractual JV, there is no separate management body. The JV agreement therefore allocates management responsibilities and decision-making authority between the parties and establishes the voting or approval requirements applicable to key decisions.

In a general partnership, each partner is generally entitled to participate in management, subject to the partnership agreement. Ordinary matters may generally be decided by a majority, while changes to the nature of the business require unanimity. In a limited partnership, management rests with the general partners; limited partners must not participate in management or bind the partnership.

In a corporate JV, the board is generally responsible for management, while certain matters are reserved to shareholders under Cap. 113 or the constitutional and contractual arrangements. The articles and shareholders' agreement would typically regulate board composition and appointment rights, quorum, voting thresholds and reserved matters requiring enhanced or unanimous approval. In 50:50 or other jointly controlled JVs, carefully drafted deadlock mechanisms are also important.

For an EEIG, management is entrusted to one or more managers. The formation contract may establish additional decision-making arrangements and regulate the powers and voting rights of its members.

6.3 Funding

The manner in which a JV is funded depends on the structure adopted and whether the venture has separate legal personality.

In a contractual JV, the absence of separate legal personality means that financing is typically provided directly by the parties through agreed contributions, cost-sharing or other contractual funding arrangements. The JV agreement should therefore define the parties' initial and future funding obligations and the consequences of any failure to contribute.

In a partnership JV, financing is commonly provided by the partners in accordance with the partnership agreement, which may regulate capital contributions, additional funding requirements and the consequences of a funding default. In the absence of agreement, Cap. 116 contains default rules concerning contributions and advances by partners.

Corporate JVs are commonly funded through a combination of equity, shareholder loans and third-party debt. The shareholders' agreement would typically establish whether future funding is required, the form and proportion in which it must be provided, and the consequences of a shareholder failing to participate. Further equity may be offered pro rata so that existing ownership proportions are maintained. Alternatively, the parties may agree that a non-participating shareholder is diluted, subject to the applicable corporate requirements, or that additional funding is provided through shareholder debt without altering equity ownership.

An EEIG is generally funded through member contributions, with the formation contract regulating the members' respective funding obligations.

6.4 Deadlocks

Deadlock mechanisms are particularly important in 50:50 or other jointly controlled JVs and should be tailored to distinguish between ordinary disagreement and matters sufficiently significant to constitute a formal deadlock.

A corporate JV agreement will commonly establish a staged process. The matter may first be reconsidered by the board after a specified period and, if unresolved, escalated to nominated senior representatives of the JV partners. During that process, the agreement may preserve the status quo or regulate how the business is to continue pending resolution.

Different mechanisms may be appropriate depending on the nature of the disagreement. Technical, accounting or valuation issues may be referred to an independent expert, while mediation may assist where a negotiated solution remains possible. Arbitration is generally more appropriate for disputes concerning contractual rights or obligations than for determining a purely commercial disagreement. A casting vote may be used in some structures, although it is less suitable where the parties intend to preserve equal control.

For a persistent deadlock on a fundamental matter, the agreement may ultimately trigger an exit mechanism. Depending on the commercial balance agreed between the parties, this may involve a negotiated buyout, a structured buy-sell procedure, a sale to a third party or, as a last resort, termination or winding-up arrangements. The agreement should clearly define the events constituting a deadlock, the escalation timetable and when any exit mechanism becomes available.

6.5 Other Documentation

In addition to the principal JV agreement and, for a corporate JV, the constitutional documents, a range of ancillary agreements may be required depending on the assets, rights and activities contributed to the venture and the continuing relationship between the participants and the JV. These commonly include:

- IP assignment or licence agreements;
- asset or business transfer and contribution agreements;
- employment or employee-transfer documentation;
- supply, distribution or manufacturing agreements;
- management, consultancy or services agreements;
- shareholder or third-party loan and other funding agreements; and
- confidentiality or non-disclosure agreements.

Depending on the transaction, transitional services arrangements or other agreements governing the continued provision of personnel, premises, technology or operational support by a participant may also be required.

6.6 Rights and Obligations of JV Partners

The key rights and obligations of JV parties depend on the structure adopted and the terms agreed between them. These commonly include rights to participate in profits, management and decision-making, access to information and exercise agreed minority or control rights, together with obligations relating to contributions and future funding, co-operation, confidentiality and compliance with the arrangements governing the JV.

In contractual JVs, profit and loss allocation is principally contractual. In partnerships, the partnership agreement will normally regulate allocation, subject to the statutory default rules applying in the absence of agreement. In a corporate JV, distributions are subject to the applicable requirements of Cap. 113 and the articles of association, including the principle that dividends are paid from profits rather than capital. For EEIGs, profits are treated as profits of the members and allocated in accordance with the formation contract or, absent provision, in equal shares.

Liability also depends on the vehicle. A corporate JV has separate legal personality, and shareholders are generally exposed only to their agreed investment and any additional obligations, guarantees or security they assume. General partners have unlimited joint and several liability for partnership debts, while limited partners are generally liable up to their contributions, subject to the statutory rules governing their participation in management. Members of an EEIG have unlimited joint and several liability for its debts, subject to the applicable rules on recourse against members.

Non-compete and non-solicitation obligations must be considered in light of Section 27 of Cap. 149 and applicable competition law. They should therefore be carefully tailored to the JV relationship, taking account of the statutory rules and exceptions applicable to restraints of trade.

6.7 Minority Protection and Control Rights

Minority shareholders in corporate JVs may protect their interests through a combination of statutory remedies under the Cyprus Companies Law, Cap. 113, and contractual and constitutional protections agreed between the JV parties.

Under Section 202 of Cap. 113, a member may seek relief where the affairs of the company are being conducted in a manner oppressive to some part of its members. Where the statutory requirements are satisfied, the court has broad powers, including to regulate the future conduct of the company's affairs or order the purchase of shares. In appropriate circumstances, a minority shareholder may also seek winding up on "just and equitable" grounds or pursue a derivative action where a wrong has been committed against the company and those controlling it prevent the company from acting.

In practice, minority protection is principally addressed through the shareholders' agreement and articles. Typical protections include reserved matters requiring enhanced approval, director appointment or board observer rights, access to financial and other information, approval rights over budgets and business plans, protections against dilution and controls over related-party transactions. Transfer protections, including pre-emption and tag-along rights, may also protect the minority against changes in ownership or an involuntary loss of its economic position.

6.8 Applicable Law and Dispute Resolution in International JVs

In international JVs involving Cyprus, the parties generally have broad autonomy to choose the governing law of the JV agreement and the dispute resolution mechanism. A foreign governing law may therefore be selected, although mandatory Cyprus law will continue to apply where relevant, particularly to the constitution and operation of a Cyprus-incorporated JV entity.

Disputes may be submitted to the Cyprus courts or arbitration. International JVs frequently provide for arbitration, particularly where neutrality, confidentiality or cross-border enforcement are important. Domestic arbitration is governed by the Arbitration Law, Cap. 4, while international commercial arbitration is governed by the International Commercial Arbitration Law of 1987 (L. 101/1987), as amended. The parties may agree the applicable arbitral rules and procedure; failing agreement, the tribunal may determine the procedure in accordance with the Law.

There is no general mandatory ADR procedure applicable specifically to JV disputes, although the parties may agree contractual escalation, mediation or other ADR mechanisms. Cyprus has a statutory framework for mediation in civil and commercial matters under the Certain Aspects of Mediation in Civil Matters Law of 2012 (L. 159 (I)/2012).

Cyprus is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, facilitating recognition and enforcement of foreign arbitral awards. Foreign court judgments are recognised and enforced under the applicable regime: judgments from EU member states are principally governed by the relevant EU framework, while judgments from other jurisdictions may be enforceable under applicable conventions, bilateral treaties or domestic law.

7. The JV Board

7.1 Board Structure

In a Cyprus corporate JV, the board is typically structured to reflect the commercial balance agreed between the participants. The articles of association and shareholders' agreement will generally determine the number of directors and each participant's appointment rights. Depending on the ownership structure, participants may have equal representation or appointment rights proportionate to their shareholding or investment, with additional governance protections addressed through quorum and reserved-matter provisions.

Under the Companies Law, Cap. 113, a private company must have at least one director, while a public company must have at least two. A director may be removed by ordinary resolution under Section 178, notwithstanding anything in the articles or any agreement, subject to the statutory procedure, including special notice and the director's right to be heard. There is no general nationality or residency requirement for directors of an ordinary Cyprus company, although sector-specific regulatory requirements may apply.

Board voting arrangements may be tailored through the company's articles. In practice, however, control in a corporate JV is more commonly structured through board appointment rights, quorum requirements, reserved matters and enhanced voting thresholds rather than weighted director voting. Where weighted or casting-vote arrangements are used, they should be expressly reflected in the constitutional arrangements and carefully considered against the intended balance of control between the JV participants.

7.2 Duties and Functions of JV Boards and Directors

In a corporate JV structured as a Cyprus company, directors owe their duties to the JV company itself. Their duties arise under Cap. 113 and applicable common-law fiduciary principles and include duties to act in good faith in the interests of the company, exercise powers for proper purposes and exercise independent judgement. A director nominated by a particular JV participant must therefore continue to discharge their duties to the company and cannot simply act on the instructions or exclusively in the interests of the appointing participant.

Directors must also manage conflicts of interest appropriately and comply with applicable disclosure requirements. In particular, Section 191 of Cap. 113 requires a director who is directly or indirectly interested in a contract or proposed contract with the company to disclose the nature of that interest to the board. Directors are also subject to duties of care, skill and diligence.

The board ordinarily exercises its powers collectively but, subject to Cap. 113 and the articles, specified functions may be delegated to individual directors, committees, officers or third parties. The scope and limits of any delegation should be clearly defined, particularly for matters reserved to the board or shareholders.

There is no separate statutory reporting regime applying specifically to JV boards. A Cyprus JV company remains subject to the ordinary reporting requirements under Cap. 113, including the preparation and presentation of financial statements and applicable directors' reports. Additional reporting to JV participants, such as management accounts, budgets, business plans and operational information, is commonly addressed through the shareholders' agreement.

7.3 Conflicts of Interest

As discussed in **7.2 Duties and Functions of JV Boards and Directors**, directors are subject to statutory and fiduciary duties concerning conflicts of interest. These include applicable disclosure requirements and the duty to exercise independent judgement in the interests of the JV company. In practice, the shareholders' agreement and articles may establish additional mechanisms for managing conflicts, including procedures for related-party transactions and, where appropriate, restrictions on a conflicted director participating or voting on the relevant matter.

A person's role within a JV participant does not, of itself, prevent that person from serving on the board of the JV company. However, particular care is required where that person's responsibilities to the appointing participant create a recurring or material conflict with their duties as a director of the JV company. In such circumstances, appropriate governance arrangements may be required, and, in more serious cases, an alternative board representative may be preferable.

8. IP and ESG

8.1 Ownership and Use of IP

In a corporate JV, the parties should determine at the outset which IP each participant will make available to the venture and whether it will be assigned to the JV company or retained by the participant and licensed for agreed purposes. Particular attention should

be given to the distinction between pre-existing IP (background IP) and IP developed through the activities of the JV (foreground IP), including ownership of improvements and derivative rights.

Ownership of IP created by employees, contractors or other contributors should also be addressed expressly, taking account of the statutory rules applicable to the relevant IP right. The JV arrangements should regulate permitted use, licensing, protection and enforcement of IP, access to know-how and confidential information, and the parties' rights following termination or exit.

Similar considerations apply to contractual collaborations, although the absence of a separate JV entity makes it particularly important to identify which participant owns newly developed IP and the rights granted to the other participants. For partnership JVs, the partnership agreement should similarly address the ownership and use of IP contributed to or acquired for the purposes of the partnership.

There is no general prohibition on transferring or licensing IP between Cyprus and foreign entities. The parties should nevertheless consider the formalities applicable to the particular IP right, the governing law and territorial scope of the transfer or licence, tax and transfer-pricing implications and, where relevant, sanctions or regulatory restrictions. Any assignment or licence should be documented clearly to establish ownership and the scope of permitted use.

8.2 Licensing v Assignment of IP Rights

There is no single preferred approach between licensing and assignment; the appropriate structure will depend principally on the nature of the IP and the intended relationship between the participant and the JV.

Licensing is often appropriate for pre-existing or background IP where a participant wishes to retain ownership while permitting the JV to use the IP for its business. The licence should clearly address scope, duration, territory, exclusivity, permitted use, sublicensing and termination, as well as any royalties or other consideration.

Assignment may be more appropriate for IP developed specifically for the JV where the parties intend the JV to own, exploit and enforce that IP independently. The assigning participant relinquishes ownership of the rights transferred and should therefore retain any required rights of use expressly.

The parties should also consider applicable formalities and registration requirements for the relevant IP rights and address what happens to licensed or assigned IP on termination, exit or disposal of the JV.

8.3 ESG Considerations in JVs

ESG considerations are increasingly relevant to Cyprus JVs, particularly where the venture operates in a regulated or environmentally sensitive sector, seeks external financing or forms part of the participants' wider supply chains. ESG requirements may affect regulatory compliance, access to finance, investor expectations, reporting obligations and the allocation of operational and reputational risk.

Cyprus completed the transposition of the Corporate Sustainability Reporting Directive (CSRD) into national law in 2025. At EU level, the CSRD framework has subsequently been amended through the Omnibus I reforms, which narrowed its scope to companies exceeding 1,000 employees and EUR450 million in net annual turnover. The amendments also provide transitional relief for certain companies that commenced reporting for the 2024 financial year but fall outside the revised scope for 2025 and 2026.

A significant domestic development was the Nineteenth Amendment to the Constitution Law of 2024 (L. 171 (I)/2024), which introduced Article 7A and expressly recognises the right to a safe, clean, healthy and sustainable environment, together with rights concerning access to environmental information, justice and effective remedies.

For a JV, the appropriate measures will depend on its size, sector and activities. Participants should consider at the structuring stage which ESG requirements apply to the JV and establish appropriate governance, policies, reporting responsibilities and contractual allocation of compliance obligations. Even where the JV falls outside mandatory sustainability reporting

requirements, its participants, lenders or commercial counterparties may require relevant ESG information or standards.

The Cyprus ESG framework is substantially influenced by EU legislation, including the CSRD framework, the EU Taxonomy Regulation (Regulation (EU) 2020/852) and, where applicable, the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088). The CSE Corporate Governance Code also encourages listed companies to integrate ESG considerations into their activities and governance reporting.

9. Exit Strategies and Termination

9.1 Termination of a JV

The circumstances in which a JV comes to an end depend on its legal form and commercial purpose. A project-specific or fixed-term JV may terminate upon completion of the relevant project or expiry of the agreed term, while the parties may also provide for early termination following specified events such as material breach, insolvency, illegality or prolonged failure to resolve a deadlock. Termination by mutual agreement may also be permitted.

In a corporate JV, the exit of a participant should be distinguished from termination of the JV itself. A shareholder may exit through an agreed transfer or buyout mechanism while the JV company and its business continue under the remaining or new ownership. Transfer restrictions, pre-emption rights and agreed valuation procedures are therefore commonly relevant to the exit process.

Where the JV itself is to terminate, the agreement should establish an orderly process for unwinding the parties' relationship. This will ordinarily include dealing with outstanding liabilities, assets and ongoing contracts, employee arrangements, final accounts and distributions, and the ownership or continued use of IP, confidential information and other rights contributed to or developed through the JV. The agreement should also identify provisions intended to survive termination, including confidentiality, dispute resolution and any enforceable restrictive obligations.

Where the JV operates through a Cyprus company, termination of the commercial relationship does not itself dissolve the company. If the vehicle is also to be brought to an end, the applicable winding-up and dissolution procedures under Cap. 113 must be followed. Partnership JVs are similarly subject to the applicable dissolution provisions of Cap. 116 in addition to the parties' contractual arrangements.

9.2 Asset Redistribution and Transfers

Assets made available to a JV may include cash, real estate, equipment, IP, contractual rights or other assets required for its activities. A key consideration is whether ownership of a contributed asset has been transferred to the JV or retained by the contributing participant, with the JV receiving only a licence, lease or other right of use.

This distinction becomes particularly important on exit or termination. Where ownership was transferred to a corporate JV, the asset belongs to the JV company and the original contributor has no automatic right to its return, unless the JV arrangements provide an agreed transfer or buy-back mechanism. Assets subsequently acquired or developed by the JV will likewise ordinarily belong to the JV rather than to any individual participant. By contrast, where ownership was retained by a participant, the relevant arrangements should determine when the JV's right to use the asset terminates and any arrangements for its return or continued use.

Transfers between the JV and its participants should address valuation, associated liabilities, third-party rights and any required contractual, corporate or regulatory consents. Particular assets may also require specific transfer or registration formalities, including real estate and registered IP rights. Transfers involving connected parties should additionally be considered from a tax and transfer-pricing perspective, including the applicable arm's-length requirements.

Where a corporate JV is being wound up, its assets are applied first towards its liabilities, with any surplus distributed among its members in accordance with their respective rights, subject to the company's articles and Cap. 113.

9.3 Exit Strategy

The parties have substantial freedom to determine the exit arrangements for a corporate JV, subject to the mandatory provisions of the Companies Law, Cap. 113, and the company's articles of association. In particular, the articles of a Cyprus private company must restrict the right to transfer its shares. Any mechanism contemplating the acquisition by the JV company of its own shares must also comply with the applicable statutory requirements under Cap. 113.

Exit arrangements are therefore commonly addressed in both the shareholders' agreement and, where appropriate, the articles. They may include pre-emption or rights of first refusal on proposed transfers, tag-along and drag-along provisions, and restrictions or conditions governing transfers to third parties.

Put and call options may also be agreed, allowing one participant to require the acquisition of its interest or to acquire another participant's interest following specified events. Buyout mechanisms are particularly relevant following an unresolved deadlock, material default or other agreed exit trigger. The parties will commonly establish the applicable valuation methodology and, where necessary, a procedure for independent valuation.

In practice, an individual participant will most commonly exit through a transfer to another participant or a third party, or through an agreed buyout or option mechanism. Where the participants instead intend to terminate the JV as a whole, the termination and dissolution considerations discussed in **9.1 Termination of a JV** will apply.

GERMANY

Law and Practice

Contributed by:
Leif Gösta Gerling, Matthias Krämer, Anna Reuber and Jiabao Gerling-Li
LPA

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LPA is an international law firm with 15 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 estate, 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, joint venture (JV) activity in Germany has intensified in the defence, security, dual-use technology and critical raw materials sectors, while remaining resilient across other industries. Companies continue to pool financial resources, (proprietary) know-how and expertise to share risks in development, and to fund capital-intensive projects.

Geopolitical developments have reinforced this trend. The ongoing war in Ukraine, continued instability in the Middle East and increasing concerns over Europe's strategic autonomy have increased demand for strategic partnerships, particularly in defence and related industries. At the same time, Germany's commitment to higher defence expenditure and long-term investment in the *Bundeswehr* (the German military forces) has provided greater planning certainty and encouraged both strategic and financial investors to pursue collaborative investment structures.

Macroeconomic conditions remain challenging. Persistent inflationary pressures and tighter financing conditions following the ECB's recent interest rate increase have increased the cost of capital-intensive investments, reinforcing the importance of careful transaction structuring. However, these developments have not materially reduced JV activity in strategic sectors, where JVs continue to offer an effective means of sharing investment costs and commercial risks.

At the same time, evolving US trade policy (including tariff uncertainty), heightened foreign investment scrutiny and the growing emphasis on resilient supply chains have further encouraged companies to use JVs to diversify operations, localise production and secure access to strategic technologies and markets.

Looking ahead to 2027, this trend is expected to continue, particularly in defence, AI, digital infrastructure, energy transition and critical raw materials, where JVs remain an attractive vehicle for combining capital, technology and expertise in an increasingly uncertain geopolitical environment.

1.2 Industry Trends and Emerging Technologies

Certain German industries have remained particularly active in forming JVs – a trend directly attributable to the monumental capital requirements and technological shifts driven by digitalisation, decarbonisation and Europe's increasing focus on strategic autonomy. While the automotive sector continues to rely on JVs to accelerate electrification, software development and autonomous driving technologies, there has been particularly strong growth in defence, dual-use technologies, digital infrastructure, energy transition and critical raw materials. 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 still mandates strict compliance and liability for high-

risk AI systems, impacting a JV's risk profile and costs, although the June 2026 Digital Omnibus has deferred most high-risk obligations to December 2027/August 2028, easing near-term pressure without removing it. The General Data Protection Regulation (GDPR) and data localisation rules dictate cross-border data flows, necessitating built-in governance for data-sharing 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 in order to mitigate legal risk. Finally, the EU Product Liability Directive expands strict liability to software and AI, compelling JV parties to pre-allocate responsibilities for defects, recalls and monitoring. These regulations require JVs to pre-emptively address liability risks and embed rigorous technological compliance into their very foundation.

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 environ-

ment 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 formation 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 Ger-

man 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 has achieved a turnover of more than EUR50 million in Germany; or
- another undertaking concerned has 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 in order to ensure transparency and maintain investor confidence. These obligations are governed primarily 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. In turn, the issuer must 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 with the transparency register as the so-called fictional UBO.

The name, date of birth, place and country of residence, and citizenship of the UBO, and the type and scope of their economic interest, 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 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, provided 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.

In a February 2026 case (*II ZR 71/24*), the BGH confirmed free exclusion clauses remain generally void as immoral, except where they are objectively justified.

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.

In a March 2026 case (*C-43/25 – SML Maschinengesellschaft*), the ECJ confirmed shareholder loan subordination applies in German insolvency regardless of foreign choice of law, closing off a structuring route previously relied on by some JV lenders.

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 are also standard, including proof of funding or payment of capital contributions. 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 the 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 predefined 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 consideration 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), and is also party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Germany does not allow international pre-trial discovery proceedings within German borders. 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 Ger-

many 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 management 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 articles 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 direc-

tors 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 party's 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 (CSDR) – 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 (eg, 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 buyback. 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, buyout 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

Contributed by:
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LPA

LPA is an international law firm with 15 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 estate, 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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Joint Ventures in Germany: an Introduction

General market observations

Since the outbreak of the war in Ukraine, and reinforced by the continued instability in the Middle East and the broader geopolitical environment, 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). At both German and European level, strategic autonomy, defence capabilities and resilient infrastructure have become key policy priorities. 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 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 also been a significant increase in the number of JVs being established in high-growth sectors such as artificial intelligence, digital infrastructure, health technologies and critical raw materials.

Another factor that has become increasingly relevant over the past 12 months is the growing uncertainty surrounding international trade policies, including the introduction and threatened expansion of tariffs as well as broader efforts to strengthen regional supply chains. In response, companies are increasingly using JVs to diversify production, localise operations, secure access to strategic technologies and raw materials, and share geopolitical and commercial risks.

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 E, such as India, the UAE, China or the USA. In practice, export controls, sanctions compliance and FDI screening have increasingly become integral parts of transaction planning and due diligence at an early stage, particularly where strategic industries, sensitive technologies or non-EU investors are involved. 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. While Chinese investments continue to receive particular regulatory attention, investment screening has increasingly become part of a broader European strategy aimed at protecting critical infrastructure, sensitive technologies and strategic industries, irrespective of the investor's jurisdiction. 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 bid, which was twice as high, 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 for these to 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. At the same time, continuing geopolitical uncertainty, increasing supply chain resilience requirements and evolving international trade policies have further strengthened the commercial rationale for choosing JV structures over traditional acquisition models in suitable cases.

This is also noticeable in 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 varying 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.

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.

ITALY

Law and Practice

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LAWP Studio Legale e Tributario is a law and tax firm with over 20 years' experience assisting private and corporate clients in corporate and commercial transactions, including in relation to M&A, financing and joint ventures, and tax matters. The firm successfully operates in civil, commercial and tax law, and its professionals are particularly valued for their ability to handle complex issues that require diverse skills and innovative solutions. LAWP advises national and international clients in connection with cross-border matters impacting several jurisdictions. It also supports clients in setting up and managing joint ventures, both domestically and internationally, across multiple industries.

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LAW·P
STUDIO LEGALE E TRIBUTARIO

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1. Market Conditions

1.1 Geopolitical and Economic Factors

In 2026, joint venture (JV) activity in the Italian market and involving Italian companies continues to be shaped by geopolitical tensions and macroeconomic shifts.

The conflicts in Ukraine and the Middle East, together with increasing trade tensions and US tariffs, have encouraged investors to favour politically stable jurisdictions and to diversify markets and supply chains through cross-border JVs, particularly in export-oriented sectors such as agriculture, pharmaceuticals and manufacturing.

Following the European Central Bank's monetary policy leading to a rise in interest rates in June 2026 in response to renewed inflationary pressures linked primarily to higher energy prices, financing conditions remain volatile and continue to favour selective investment and risk-sharing structures.

Against this backdrop, JVs continue to provide an effective means of sharing investment costs and execution risks, accessing complementary technologies and local expertise, and facilitating market entry while preserving strategic flexibility. Private equity-led buy-and-build strategies are also expected to continue driving the consolidation of fragmented Italian SMEs through JVs.

Looking ahead to late 2026 and 2027, JV activity is expected to remain robust, particularly in sectors aligned with national priorities such as the National Recovery and Resilience Plan (NRRP) and the "Made in Italy" initiative, including energy and infrastructure, AI, digital infrastructure, defence, advanced manufacturing and supply-chain resilience. JV activity is also seen as a way to open new markets and support the export needs of Italian manufacturing companies.

1.2 Industry Trends and Emerging Technologies

Recent Italian JVs have focused on industrial manufacturing (including defence), the service industries (especially those supporting large multinational conglomerates), healthcare and technology.

Development trends include government-controlled industries (such as defence and aerospace) where the needs of relevant certifications and approvals (also from third-party suppliers) have to be taken in due consideration.

There has been a specific focus on establishing JVs for the development of AI data centre campuses and infrastructures. These activities are driven by the NRRP and new EU/Italian regulations (eg, the EU AI Act), which are rapidly evolving.

Following the EU AI Act (Regulation (EU) 2024/1689), JVs involved in the development or deployment of AI should clearly allocate regulatory roles and compliance responsibilities relating to AI governance, technical documentation, conformity assessment and post-market monitoring.

Furthermore, the revised EU product liability regime increases the relevance of contractual allocations concerning defective software, AI-enabled products, technical documentation, data access, insurance and claims management.

Technology JVs should also assess the GDPR, the Data Act, the Cyber Resilience Act and, where applicable, NIS2 or DORA. JV and ancillary agreements should therefore allocate responsibilities for data access, cybersecurity, incident management, regulatory reporting and product compliance.

Data sharing, localisation and GDPR compliance are crucial, necessitating legally binding data sharing agreements. Italian foreign direct investment (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 to pay explicit attention to data residency and supply chain sourcing.

2. JV Structure and Strategy

2.1 Typical JV Structures

Within the Italian jurisdiction, there are two types of JV, as described below.

Contractual JVs

A contractual JV is established through an agreement between the parties, defining the parties' roles, their obligations and the project's 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 the hiring of dedicated personnel.

Corporate JVs

A corporate JV involves 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 by-laws, 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 the 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 where all shareholders are natural persons); 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.

Another legal form that may be used in structuring JV transactions is the partnership limited by shares (*società in accomandita per azioni* – S.a.p.A.), which combines features of partnerships and joint stock companies. It requires a minimum share capital of EUR50,000, at least one general partner with unlimited liability who is responsible for the management of the company, and one or more limited shareholders whose liability is limited to their capital contribution (as further specified under 'Regulatory Developments' in **4.1 Notable Recent Decisions or Statutory Developments**).

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 and 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 by-laws.

Other Legal Structures

Network of enterprises

A network of enterprises (*rete di imprese*) 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

A temporary association of enterprises (*associazione temporanea di imprese*) 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:

- assessing the financial needs of the project and the relevant forms of financing (equity, third-party financing, public grants, etc);
- determining whether the JV will operate under a limited or unlimited liability regime, depending on the risks involved;
- establishing the governance structure;
- reviewing the competitive landscape to ensure the JV activities do not conflict with the partners' existing businesses;
- clearly identifying and agreeing upon the contributions (financial, operational, technical, etc) that each co-venturer will bring to the JV; and
- determining 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 treatment differs significantly.

Corporate JVs (eg, S.p.A., S.r.l. and S.a.p.A.) are treated as separate legal entities 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 dividend 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 constitutes 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 certain areas of 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 areas, such as antitrust and anti-money laundering (AML);
- the Italian Antitrust 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 the 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).

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 or 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; 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.

The EU AML package adopted in 2024 is progressively becoming operational. In particular, the Anti-Money Laundering Authority (AMLA), established under Regulation (EU) 2024/1620, will progressively assume supervisory functions over high-risk financial entities and co-ordinate the application of the new EU AML framework.

In February 2026, AMLA published its first Single Programming Document for 2026–2028, setting out the roadmap towards its full operational capacity. The document identifies five priorities for 2026, including the implementation of the new EU AML framework, the development of AMLA's supervisory functions and the enhancement of its risk analysis capabilities.

Furthermore, by 2027, the first entities subject to AMLA's direct supervision are expected to be selected.

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 FDIs and corporate transactions concerning assets or activities in strategically relevant sectors, including defence, national security, energy, communications, transport, health, data, financial infrastructure and critical technologies. Accordingly, the establishment of a JV or the acquisition of joint control over a company holding strategic assets may require a filing, even in the absence of an acquisition of sole control.

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.

Recent developments include the introduction of a pre-notification mechanism, enabling parties to obtain a preliminary assessment of whether a transaction falls within the scope of the Golden Power regime before making a formal filing. This mechanism is intended to reduce interpretative uncertainty and facilitate transaction planning.

The regime continues to be actively enforced, with a slight increase in the exercise of the government's special powers during the last year (see **4.1 Notable Recent Decisions or Statutory Developments**).

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 EU 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

The EU has adopted extensive sanctions and restrictive measures, both autonomously and in implementation of UN Security Council resolutions.

In particular, the sanctions imposed against Russia and Belarus continue to restrict transactions with sanctioned persons and entities, including certain entities owned or controlled by designated persons. These measures are complemented by extensive export control rules, making sanctions and export control due diligence an essential aspect of cross-border JV 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 through acquisition – can result in a concentration, triggering merger control scrutiny by the Italian Antitrust Authority (IAA). A corporate JV qualifies as a concentration where it operates as a full-function undertaking; ie, it has sufficient resources, operational autonomy and a lasting market presence.

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 EUR595 million; and
- the aggregate turnover of at least two of the involved companies in Italy exceeds EUR36 million each.

The IAA may also require notification of certain below-threshold transactions within six months of completion where the statutory conditions are met and concrete competition concerns arise.

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, a contractual or corporate JV may still need an assessment under the rules concerning anti-competitive agreements to exclude clashes with applicable regulations.

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) who:

- directly hold(s) more than 25% of the company's corporate capital; or
- indirectly own(s) more than 25% of the company's corporate capital through controlled companies, fiduciary companies or 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.

Inter Ministerial Decree No 55 of 11 March 2022 provides for 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.

Following litigation concerning the implementing framework and a ruling by the Court of Justice of the European Union (see **4.1 Notable Recent Decisions or Statutory Developments**), Legislative Decree No 210/2025 revised the framework governing access to the UBO Register. However, the mandatory filing regime has not yet been fully implemented, and the relevant filing obligations remain suspended. Under the revised framework, access by private parties is subject to the existence of a specific legal interest and to showing that access is necessary to pursue or defend a legally protected interest.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Significant Recent Decisions

A significant recent decision concerns the UBO Register. In joined Cases C-684/24 and C-685/24, 21 May 2026, the Court of Justice of the European Union clarified the conditions under which EU member states may restrict access to beneficial ownership information, confirming that access may be limited to persons with a legitimate interest provided that effective judicial protection is ensured. The judgment has led to further adjustments to the Italian regime, although the mandatory filing obligations have not yet been activated (see **3.6 Transparency and Ownership Disclosure**).

Moreover, the Italian Court of Cassation (Judgment No 11964/2025) clarified the corporate law applicable to EU companies operating across borders. Relying on the Court of Justice's interpretation of the freedom of establishment, the Court held that Article 25 of Law No 218/1995 cannot be construed as subjecting a company incorporated in another EU member state to Italian corporate law solely because its administrative seat or principal business is located in Italy. The judgment confirms that Italian courts must apply the corporate law of the state of incorporation, strengthening legal certainty for cross-border businesses within the EU.

The Italian Council of State (Judgment No 2180 of 16 March 2026) confirmed the broad scope and cross-border reach of the government's powers under the Golden Power regime by upholding the veto on a proposed JV between an Italian start-up and a Chinese company. The JV was intended to develop and commercialise in China an innovative civil aircraft prototype based on technology developed by the Italian company. The Court held that the veto was justified to protect strategic technological know-how, notwithstanding the civilian nature of the project, given its potential military applications.

Regulatory Developments

A significant recent legislative development is the introduction of the partnership company (*società di*

partenariato) under Legislative Decree No 47 of 27 March 2026, implementing the Capital Markets Law as part of a broader reform of the Consolidated Law on Finance (*Testo Unico della Finanza* – TUF).

The new vehicle is intended to facilitate private capital investment in Italian businesses, particularly SMEs and start-ups, through a structure specifically designed for private equity and venture capital. Said investment vehicle must be incorporated as a partnership limited by shares (*società in accomandita per azioni* – S.a.p.A.) and grants separation between investment management, entrusted to one or more general partners with unlimited liability, and investors, whose liability is limited to their capital contributions. Inspired by international limited partnership structures, the new vehicle may, generally speaking, serve as an instrument to raise private capital from investors, which in turn could be deployed to fund JV initiatives.

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:

- a non-disclosure agreement protecting confidential information;
- non-binding heads of terms recording the principal commercial and legal terms; and
- exclusivity arrangements preventing parallel negotiations.

Market-Standard Provisions

At the preliminary stage, the parties usually agree on a clear definition of the JV's structure, its scope and the role of each party, the required due diligence and 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 they 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 the contribution of businesses or assets of the co-venturers to 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 Companies 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 required 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 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 the following:

- Regulatory approvals – mandatory clearances (eg, antitrust or FDI notifications that are generally outside the parties' control).
- Third-party consents – required under by-laws, shareholders' agreements, or key contracts with

third parties (eg, lenders or suppliers) in the case of ownership changes.
- 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, are 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 CP to the execution of the project. In the current scenario, in cross-border JV agreements, MAC clauses may address provisions related to 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 in 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 of the Italian Civil Code) considers void any CP 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

Once the CPs have been satisfied, the co-venturers incorporate the JV through the following steps:

- the holding of a meeting before a notary public to adopt several corporate resolutions, including the adoption of the by-laws 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 a simplified S.r.l.); or (ii) S.p.A. and S.a.p.A. (also known as a partnership company): EUR50,000;
- within 30 days of incorporation, the registration of the company with the Companies Register (see **5.2 Disclosure Obligations**); and
- depending on the nature of the business and the industries involved, the obtaining 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 JV agreement sets out the main terms of the transaction and usually includes the following annexes:

- a shareholders' agreement;
- a 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 JV agreement sets out the main terms of the transaction and usually includes the following annexes:

- 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;
- 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 that regular reports are shared for transparent progress tracking.

Corporate JV

Corporate JVs generally have two decision-making levels: the shareholders' meeting and the management body. In particular, the shareholders, while not having a managerial role, have 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 by-laws, including decisions to substantially amend the corporate purpose and the introduction or amendment of special rights (*diritti particolari*) or classes of shares (*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, *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, by-laws/JV agreements can require higher quorums or grant minority shareholders veto power for certain matters. Voting rights can also be allocated disproportionately.

The management 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 by-laws 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 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 the following:
  - (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.
  - (c) Put/call options – one co-venturer is obliged to sell or buy shares at a set price.

6.5 Other Documentation

Depending on the JV's business, the following ancillary agreements may also be entered into:

- shareholders' agreements;
- directorship agreements or employment agreements;
- IP 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 that each has some share in both profits and losses.
- Governance and decision-making – This covers each co-venturer's rights regarding the governance of the company and regarding 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 – These are 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, allowing them to secure the fulfilment of obligations by all JV partners jointly.

6.7 Minority Protection and Control Rights

Minority investors may negotiate the following protection rights:

- Veto rights, preventing the majority from making significant changes without the minority's consent – These rights are usually enshrined in the JV's by-laws and/or the JV agreement and apply to a predefined list of "reserved matters" (eg, amending the by-laws, issuing new shares or altering the share capital, approving the business plan).
- 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 may further strengthen minority oversight through enhanced reporting and board observer rights.
- Tag-along right – This right allows the minority members 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 classes of shares or through the attribution of special rights to minority members (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, the 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 418/1970, 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 by-laws 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 by-laws 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 by-laws. 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 board manages the company, approves the business plan and budgets, oversees implementation and

ensures that the company's organisational structure is adequate.

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 the directors, 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 a director typically include non-compete clauses designed to prevent the director from engaging in competition with the company. Under Italian law, non-compete clauses must 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.A.s and S.r.l.s.

- S.p.A. and S.a.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., S.a.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 ancillary agreements generally regulate:

- 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 lists 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's 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 that 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 relating to IP rights.

Licence agreements typically address:

- royalty clauses, specifying the financial arrangements regarding payments for the use of the IP;
- 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.

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, an IP 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 growing importance of ESG and the evolving regulatory framework require co-venturers to assess ESG-related risks and opportunities at the outset of a JV.

Appropriate governance arrangements and contractual ESG provisions can support compliance, sustainability objectives and effective 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.

Italy has implemented the principal EU sustainability legislation into its domestic legal framework.

Legislative Decree No 125/2024 implemented the Corporate Sustainability Reporting Directive (CSRD) in Italy. The CSRD was subsequently amended by

Directive (EU) 2026/470, which significantly narrowed the scope of mandatory sustainability reporting and revised the implementation timetable. Accordingly, companies should assess whether they fall within the revised reporting perimeter and comply with the applicable European Sustainability Reporting Standards.

Directive (EU) 2026/470 also amended the Corporate Sustainability Due Diligence Directive (CS3D), recalibrating companies' due diligence obligations while maintaining the requirement for in-scope undertakings to identify, prevent and address adverse human rights and environmental impacts throughout their operations and, where applicable, their value chains.

On the social side, the EU Pay Transparency Directive (2023/970) entered into force in Italy on 7 June 2026, implemented through a specific legislative decree. It mandates equal pay for work of equal value, bans employers from asking candidates about their salary history, and introduces gender pay gap reporting duties.

In addition, Italian law recognises *società benefit* (benefit companies), which pursue one or more public benefit purposes alongside profit-making objectives. This status may enhance a company's attractiveness to investors and commercial partners with a strong sustainability focus.

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 by-laws 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 rehire part of the workforce; 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-venturers 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 then be distributed among shareholders in proportion to their membership interest in the JV.

Therefore, the transfer of JV assets needs to take into account not only 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 by-laws provide otherwise; however, absolute transfer bans are not valid, except for limited timeframes (not exceeding five years) and in so far as they 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 shootout 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.

JAPAN

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 people, 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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MORI HAMADA

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 those involved in:

- cybersecurity;
- manufacturing semiconductors;
- supplying electricity;
- supplying 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, although there is a subset which is designated as "core business sectors" for which exceptions are more limited):

- 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, including its ultimate parent company, 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.

A FEFTA amendment promulgated on 5 June 2026, which will take effect on a date within one year of promulgation to be specified by Cabinet Order, will broaden the screening regime once its relevant provisions come into force. It will cover indirect investments where a foreign investor acquires control of a foreign entity that holds shares or voting rights in a Japanese company which is carrying out a Sensitive Business. Under the proposed implementing framework, the relevant aggregate holding in the Japanese company would generally need to be 50% or more; however, if the indirect investor is not eligible for a prior-notification exemption, the threshold would be 1% for a listed Japanese company, while there is no de minimis threshold for an unlisted Japanese company.

The amendment will also treat as a foreign investor a domestic investor that is under the control or strong influence of a high-risk foreign person (such as a foreign government or state-owned enterprise that cannot use a prior-notification exemption) and makes an investment for that foreign person's benefit.

In addition, where a high-risk foreign investor acquires 10% or more of a Japanese company that is conducting only non-designated businesses, the authorities may require an additional report if a national security risk materialises within five years after the investment, and may then issue recommendations or orders relating to the risk to the extent necessary.

Proposed implementing revisions released for public consultation in July 2026 rationalise the scope of Sensitive Businesses. For non-core software services, prior notification would be limited to specified services, including those relating to critical infrastructure or essential goods under the Economic Security Promotion Act and those handling large volumes of personal data or technological information managed as trade secrets. The revisions would apply the treatment relevant to core business sectors to companies holding technologies subject to FEFTA export controls, add the manufacture of magnetic sensors and ship hulls and large-scale electricity and gas retailing as core business sectors, and also add the manufacture of essential medicines for stable supply to the list of Sensitive Businesses.

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 partners – 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

Over the past few years, the Japanese government has tightened its review of FDI, including through amendments promulgated in 2026 (see **3.3 Sanctions, National Security and Foreign Investment Controls**). 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 condition 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 AoI 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 AoI 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 AoI since the default rule is that, unless otherwise stated in the AoI, business matters are decided by a majority of all members (or a majority of executive members, if appointed in accordance with the AoI), and as an exception, all reserved matters must be stipulated in the AoI.

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 AoI. BoD decisions require a majority vote of the directors present at the meeting (or, if a higher vote or quorum is specified in the AoI, 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 AoI.

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 AoI.

Matters that materially affect the status of shareholders or that require careful judgement – such as AoI 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 AoI) 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 AoI, 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 AoI, 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 AoI, 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 AoI 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 company 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 seconds 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. Preemptive 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 parties 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 the Japanese Corporate Governance Code, 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 terminat-

ing 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 AoI may require the approval of the company for share transfers, and practically most JV companies have that requirement in their AoI. 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:
Takao Shojima, Naohiro Nomura and Taiki Hirono
Anderson Mori & Tomotsune

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, London and Paris. 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, preparation of relevant agreements, and governance of joint venture companies, as well as advising on investment and exit solutions for venture capital firms. Its team also provides counsel on joint venture-related issues such as foreign direct investment and merger control regulations.

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

- key aspects of joint venture agreements for start-ups;
- the use of statutory company splits as a mechanism for establishing joint ventures;
- notable recent cases influencing joint venture practices; and
- recent revisions to Japan's foreign investment control regime.

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 usually 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.

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 and may only have board observation 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 enquiries, to which the company and management must respond promptly and thoroughly.

Share-related matters

i) 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.

ii) 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.

iii) 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. If the company's articles of incorporation require approval for a share transfer, the transfer must be approved by a resolution at a shareholders' meeting or, in the case of a company with a board of directors, by a resolution of the board, unless the articles of incorporation provide otherwise. The shareholders' agreement typically provides that the investors,

or their designated directors, must take the necessary steps to obtain this approval.

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

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.

v) 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.

vi) 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.

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: the assets, liabilities, contracts and employees specified in the company split agreement or plan automatically move to the succeeding 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. 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.

Company split procedures

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 may receive shares in the succeeding company (the new joint venture) at the time the split takes effect.

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

- passing a shareholder resolution approving the company 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.

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.

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 had 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 the Court must be able to clearly recognise the intention of the parties to the shareholders' agreement to confer legal effect beyond the right to seek damages for breach of the agreement, 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, the specific circumstances under which the aforementioned effects will be recognised remain unclear and will depend on the development of future case law.

In terms of practice, even after this decision, given that a degree of legal uncertainty endures, it is advisable to draft and implement shareholders' agreements while taking into account the possibility that their legal effect beyond the right to seek damages for breaches of the agreement may not be recognised by the Courts.

Decisions on matters absent from the shareholders' agreement

In a case that went before the Tokyo High Court judgment dated 25 April 2024, 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 the number of representative directors and the composition of the directors immediately after the capital increase as "basic matters" of the joint venture. 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 that the clause could thus not be applied mutatis mutandis.

While these conclusions are generally accepted under established principles of contractual interpretation, the judgment provides useful guidance when drafting shareholders' agreements in similar situations by emphasising the matters addressed in the judgment.

Recent Revision to Japan's Foreign Investment Control Regime

On 29 May 2026, the Diet passed a bill to amend the Foreign Exchange and Foreign Trade Act (Act No 228 of 1949, as amended; the FEFTA) in order to revise Japan's foreign investment control regime. The law was promulgated on 5 June 2026.

Among the amendments, it should be noted that the following may have a particular impact on joint venture practice in Japan:

- introducing post-transaction intervention measures for investments in non-designated businesses; and
- establishing a Japan-style CFIUS regime.

Most of the amendments are scheduled to take effect on a date set by Cabinet Order within one year from the date of promulgation (5 June 2026), while the establishment of the Japan-style CFIUS regime took effect on the promulgation date.

Post-transaction intervention measures

Under the FEFTA current regime, investments in Japanese companies engaged only in non-designated businesses are generally not subject to prior notification. In this context, the term "designated businesses" means certain businesses deemed sensitive from the standpoint of national security, public order, public safety, or the smooth management of Japan's economy. The amendment would introduce a post-transaction intervention regime for certain such investments, allowing authorities to request reports and, if necessary, order the disposal of shares or take other measures against foreign investors.

The regime would apply only to limited transactions deemed high-risk under the relevant Cabinet Order, the details regarding which are yet to be finalised, and reporting requests would be limited to five years from the date of investment. In practice, the main impact is expected to fall on high-risk foreign investors, while the effect on others should be limited.

Japan-style CFIUS regime

Under the current FEFTA regime, foreign investment screening is primarily conducted by the Ministry of Finance and competent ministries. The amendment would expand the screening framework by requiring the relevant ministries, where necessary, to seek the views of the Ministry for Foreign Affairs and other government authorities, including the National Security Secretariat, the Ministry of Defense and the Ministry of Economy, Trade and Industry. As of 29 June 2026, the Japan Foreign Investment Committee (JFIC) has been established within the Ministry of Finance as the Japan-style CFIUS-like screening committee. Although it may not immediately and significantly change practice, it could lead to stricter screening in the future.

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. In addition, recent revisions to Japan's foreign investment control regime, including post-transaction intervention measures and a Japan-style CFIUS regime, may affect joint venture investments going forward. 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.

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 conflicts such as the war in Ukraine and those ongoing in the Middle East, the resurgence of US political unpredictability or shifting market demands have not impacted joint ventures (JVs) based in the Grand Duchy of Luxembourg, the jurisdiction remains appealing for the structuring of JVs. 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 JVs. These JVs are frequently used to acquire assets located outside Luxembourg, with the parties involved often situated internationally. Luxembourg serves as a compromise jurisdiction and 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 proven to be a strategic option for parties to pool resources and expertise, leveraging their combined strengths and funds, and sharing risks, in order 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, renewable energy, real estate, healthcare and life sciences, logistics and supply chain management, as well as technology and fintech. Luxembourg is a leader in both the finance and tech sectors, making it a 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 Luxembourg's stable but very flexible legal environment.

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 entailed by the project.

While JVs in Luxembourg are not required to take any prescribed legal form, they are generally structured in one of 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 that are focused on a specific project. Under this structure, the participants remain liable for the JV's 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 any compulsory formality. The JV agreement is structured as a private contract executed by the parties thereto. There is no requirement to have it enacted by a notary or for it 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 administrative 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 provisions. For any agreement governed by Luxembourg law, 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 regard to 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 vehicle most commonly adopted for corporate JVs in Luxembourg are:

- private limited liability company (*société à responsabilité limitée* – S.à r.l.);
- 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 a general partner with 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 S.à r.l. is typically the preferred legal form as it offers greater flexibility and is not subject to extensive statutory requirements. As per the Law of 10 August 1915 on commercial companies, as amended (LCC), the S.à r.l. must have a share capital of at least EUR12,000, must be managed by a single manager or a board of managers, and may not make public offers of shares or debt securities.

Until May 2026, when incorporating an S.à r.l. in Luxembourg by means of a cash contribution, the minimum corporate share capital of EUR12,000 had to be transferred to a bank account opened in the name of the company before its incorporation. In some jurisdictions, financial institutions are unable to open bank accounts for future companies, which could result in a lengthier process.

The Luxembourg Parliament provided a solution to this problem by approving the Law of 18 May 2026 amending the LCC, which introduced the possibility to incorporate an S.à r.l. deferring the payment of the minimum share capital by up to 12 months as of the incorporation. The Law provides several exceptions:

- any portion of the share capital exceeding the minimum amount of EUR12,000 must be entirely paid at incorporation;
- the mechanism of deferred payment cannot be applied in the event of a contribution in kind;
- any portion of the share premium (*prime d'émission*) must be fully paid at the time of incorporation; and
- any shares issued in connection with an increase of the share capital following the incorporation must be fully paid up at the time of the capital increase.

Once the S.à r.l. is incorporated, the transfer of its shares to non-shareholders requires in principle 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 association 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 JV 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 S.à r.l. must be 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 S.à r.l. 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 with respect to 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 (AIF) subject to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (the "Alternative Investment Fund Managers Directive", or AIFMD). If the JV vehicle has characteristics that place it within the scope of AIFs 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 is 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 may 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 AIF in Luxembourg, it falls into the regulatory framework established by the Law of 12 July 2013 on alternative investment fund managers and the AIFMD. This requires, among other things, seeking authorisation from and registration with the CSSF, and adhering to, among other things, investment restrictions and transparency requirements.

According to the Law of 2 September 2011 regulating the access to the professions of craftsman, merchant, manufacturer and certain liberal 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 (*Ministère de l'Économie*). In order to gain a permit, among other things, the relevant company must meet the following requirements:

- having an establishment in Luxembourg – a physical presence in Luxembourg that includes infrastructure suitable for the nature and scale of the concerned activity; and
- effective and permanent management of the business by an individual appointed as manager (*dirigeant*), who must, among other things:
  - (a) meet the requirements of good standing and professional qualifications;
  - (b) effectively manage the day-to-day operations of the relevant company by means of physical presence in the establishment of the relevant company;
  - (c) have a genuine connection with the relevant company (eg, as an owner or legal representative of the business); and
  - (d) be compliant with tax and social security obligations – the individual must not have evaded tax and social 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 individual.

3.2 Anti-Money Laundering Compliance

The key anti-money laundering (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 16 July 2026.

The AML Law implements the Fourth AML Directive (2015/849/EU) as amended by the Fifth AML Directive (2018/843/EU), and establishes the obligation for the 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 AML and countering the financing of terrorism; and
- maintain transactional records as well as report any suspicious transactions or activities to the Luxembourg Financial Intelligence Unit (*Cellule de Renseignement Financier*).

A further EU AML package, partly applicable from early 2025, was adopted on 31 May 2024 by the European Parliament. This package includes, among other things:

- Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "Sixth AML Directive"), to be transposed by EU member states into their national law by 10 July 2027;
- Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "2024 AML Regulation"), directly applicable as of 10 July 2027; and
- Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024, establishing a new European AML authority, the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA), a decentralised EU agency that will progressively co-ordinate national authorities to ensure the correct and consistent application of EU AML rules, which 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 an EU 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 provides that if an investment in a company established in Luxembourg meets the relevant criteria, the investor is required to notify the transaction to the Ministry of Economy in Luxembourg. Under the FDI Law, an investment is subject to such mandatory notification if:

- it is made by a foreign investor (ie, a natural person who is not a national of, or an entity that is not incorporated/established under the laws of, an EU member state or a country which is part of the EEA);
- it is made in a company established under Luxembourg law which operates in certain critical sectors – eg, energy, transportation, health, communication; and
- it 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 of such company (while also being a shareholder of such company), etc.

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

In accordance with applicable EU provisions and in particular with Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the "Merger Regulation"), if the JV qualifies as a "concentration" (as defined in Article 3 of the Merger Regulation) and meets certain requirements provided in the Merger Regulation (eg, having a "Community dimension", as defined in Article 2 of the Merger Regulation), it needs to be notified to the European Commission.

At national level, JVs in Luxembourg are currently not subject to a national ex ante merger control regime. Should the JVs fall outside the scope of the Merger Regulation, no mandatory obligation to notify the Luxembourg Competition Authority (*Autorité de concurrence*) currently exists. As per applicable Luxembourg laws, the Competition Authority can only perform an ex post intervention with the aim of ensuring the proper functioning of the EU internal market.

In August 2023, a draft bill of law (Projet de loi n. 8296) was presented in the Luxembourg Parliament in order to reshape its competition framework. The purpose of such bill of law was to introduce a national ex ante merger control regime entailing a mandatory notification to the Competition Authority once certain thresholds are reached. However, due to the opposing opinion of the Council of State (*Conseil d'État*), a Luxembourg institution responsible for providing an opinion on all bills of law and draft regulation, the bill of law was withdrawn in February 2026, and it will be replaced by a new bill of law, whose introduction is currently scheduled after summer 2026.

3.5 Listed Companies and Market Disclosure Rules

The mere fact that a listed company (ie, one whose securities are admitted to trading on a European regulated market, multilateral trading facility or organised trading facility) 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

In accordance with the Law of 13 January 2019 establishing the register of beneficial owners, as amended, all legal entities established in Luxembourg and 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).

Following the landmark judgment of the Court of Justice of the European Union of 22 November 2022 in the joined cases C-37/20 and C-601/20, the RBE has been amended so that access to the RBE is granted only to "professionals" (as defined in Article 2 of the AML Law), for the purposes of fulfilling their AML/KYC obligations, and to entities registered with the RCS with respect to their own information.

Under Luxembourg laws, a UBO is any natural person (or, 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". Control "by other means" exists when (i) members of the same family together holding more than 25% of the voting rights of an entity act in concert at general meetings or (ii) shareholders enter into a shareholders' agreement whereby they shall act in concert at general meetings.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

As addressed elsewhere in this article, several recent decisions and statutory developments have shaped

the Luxembourg regulations in relation to JVs, including:

- the issuance of an order on 29 May 2026 by the *tribunal d'arrondissement de Luxembourg* referring several questions to the Court of Justice of the European Union for a preliminary ruling on, among other things, the interpretation of the Sixth AML Directive in connection with the access to the RBE (see **3.6 Transparency and Ownership Disclosure**);
- the envisaged introduction of a new bill of law with respect to the introduction of an ex ante merger control regime in Luxembourg, following the withdrawal in February 2026 of bill of law n. 8296 (see **3.4 Competition Law and Antitrust**);
- the approval of the Law of 18 May 2026, which introduced the possibility to incorporate an S.à r.l. deferring the payment of the minimum share capital of EUR12,000 (see **2.2 Strategic Drivers for JV Structuring**);
- the commencement of the applicability of the ESG Ratings Regulation, enhancing the transparency and reliability of ESG Ratings (see **8.3 ESG Considerations in JVs**, subsection "The Main ESG Regulations in Luxembourg"); and
- the approval of the Law of 19 December 2025, transposing in Luxembourg Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (see **8.3 ESG Considerations in JVs**, subsection "Gender Parity on the Boards of Listed Companies").

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 see **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 milestone or KPI 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 provides that an obligation under a condition precedent is an obligation that depends either on a future and uncertain event or on an event that has already occurred

but is unknown to the parties. 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 null and void by law (*condition potestative*).

Failure to fulfil the conditions precedent renders the agreement ineffective, while fulfilment of the conditions 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), 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 JV agreements.

Material adverse change 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 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, meaning that it must have been beyond their control;
- it must have been unforeseeable at the time the agreement was executed; and
- it must be insurmountable (*irrésistible*), meaning that it must make 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 – 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 in the chosen legal 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 – Articles of association are entirely publicly available, while limited partnership agreements are only partially published.
- 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 and transposed in the articles of association, where necessary or desirable:

- 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, classes 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 supermajority of the partners of the JV (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 JV participants 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 the 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 and 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 Luxembourg standard chart of accounts (*apport en capitaux propres non rémunérés par des titres*) (the so-called "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, in the articles of association 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 association 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 other;
- agreements to transfer assets to the JV vehicle;
- asset management and service agreements;
- business plan; and
- policies (eg, KYC, conflicts of interest).

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 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 entity used as 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 of association/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. These include, 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).

Though a small country, 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, 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; 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.

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);
- the Hague Convention of 30 June 2005 on Choice of Court Agreements; and
- the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

7. The JV Board

7.1 Board Structure

Please see **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 candidate(s) to be appointed as board member(s) 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 person, one vote".

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 S.à r.l., 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 interest; and
- exercise their mandate in compliance with, among other things, 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 a 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 shall supervise 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 in **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

From an intellectual property (IP) perspective, when setting up a JV corporate entity, three main IP issues need to be considered, as described below.

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 resolution 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 and 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, environmental, social and governance (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 obligations 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 its 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 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR), the number of ESG and impact funds has been ris-

ing. 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 fund industry in general.

Revision of the EU Disclosure Regulation

In 2022, the European Commission announced an assessment of the SFDR. The assessment included various instruments, including two consultations (one public and one targeted), the review of several studies and an impact assessment. On the basis of the data collected, in November 2025 the European Commission issued a proposal for a regulation of the European Parliament and of the Council amending the SFDR Regulation, Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) and repealing Commission Delegated Regulation (EU) 2022/1288. European institutions are currently amending the proposal of the European Commission, and an agreement on the final text is expected to be reached by the end of 2026 or the first part of 2027. The purpose of the amendment proposal is to provide less burdensome disclosure obligations and to provide more clear categories of product.

It should be noted that Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) no 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EC, as regards corporate sustainability reporting (CSRD) is still to be implemented in Luxembourg, with the bill of law (Projet de loi n. 8370) still to be approved by the Luxembourg Parliament.

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 Guidelines for 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 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 ESMA 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 also 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 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (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 for sustainable activities is to be facilitated by a communication 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 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 supporting a transparent and coherent transition of the financial sector towards long-term sustainability objectives, including, among other things:

- supervision of reporting made by credit institutions and investment firms in accordance with SFDR;
- review of risk integration by credit institutions in relation to the management of risks connected to nature;
- monitoring of investment fund managers in relation to the integration of sustainability risks and compliance with the disclosure obligations provided under the SFDR and the Taxonomy Regulation; and
- support for issuers that intend to voluntarily publish their sustainability statements.

As of 2 July 2026, Regulation (EU) 2024/3005 of the European Parliament and of the Council of 27 November 2024 on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities, and amending Regulations (EU) 2019/2088 and (EU) 2023/2859 (the "ESG Ratings Regulation") became applicable. The purpose of this Regulation is to enhance the transparency and reliability of ESG ratings in the market. Pursuant to the Regulation, any provider of ESG ratings based in the EU shall:

- be authorised by ESMA;
- ensure the avoidance of conflicts of interest; and
- disclose the methodology used.

Gender Parity on the Boards of Listed Companies

The Law of 19 December 2025 transposed in Luxembourg Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.

The law aims at improving the balance of genders in the management boards of listed companies, with specific thresholds of balance provided on the basis of the number of board members.

The law is applicable only to companies that have their registered office in Luxembourg and have their shares listed on a regulated market in the EU. The law expressly excludes from its scope small and medium-sized enterprises that meet certain employee and balance sheet thresholds.

In particular, it provides the obligation for companies to select board candidates in a fair and transparent manner. Companies will need to report annually to the CSSF the composition of the boards, unless those companies are able to explain the reasons why they are not compliant.

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; and
- 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:

- Asset 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 any asset to be transferred is free from any encumbrances or third-party rights that could prevent its 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 may 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 S.à r.l. 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%, see **2.2 Strategic Drivers for JV Structuring**).

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 transaction, such as a merger).

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 of association).

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 abroad. In Luxembourg, it is the trusted adviser of leading financial institutions, asset managers, private equity houses, insurance companies, corporates and fintech companies, with both a local and international reach. The firm's lawyers advise domestic and international clients in relation to banking and finance, capital markets, corporate/M&A and private equity, investment funds, real estate, regulatory and insurance matters, as well as tax.

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Introduction

The Grand Duchy of Luxembourg is widely considered to be an attractive jurisdiction to establish a joint venture (JV) for several reasons.

Firstly, from a political and economic perspective, Luxembourg is generally placed among 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 JV.

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.

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 private limited liability companies in Luxembourg (*sociétés à responsabilité limitée* – S.à r.l.), 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 public limited liability companies (*sociétés anonymes*), simplified stock companies (*sociétés par actions simplifiées*) or common/special limited partnerships (*sociétés en commandite simple/spéciale*).

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 types of financial instruments used; (ii) the nature of the contributions made by the parties; and (iii) how these contributions may be allocated.

Types of instruments

The share capital of an S.à r.l. is generally divided into shares (*parts sociales*), which may or may not have a nominal value. Holding shares in a S.à r.l. entitles the shareholders to economic rights (such as preferred distributions, dividends and liquidation proceeds) as well as non-economic rights (such as voting rights as well as 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 its 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 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 shareholders representing the majority, or even totality, of the class of 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 equity instruments to use, 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 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 S.à r.l. are made in cash or in kind (eg, by contributing receivables or shares in other companies).

Since May 2026, under Luxembourg law it has been possible to incorporate an S.à r.l. by deferring the payment in cash of the minimum share capital up to

12 months as of the incorporation. The law provides several exceptions to this possibility:

- any portion of the share capital exceeding the minimum amount of EUR12,000 must be entirely paid at incorporation;
- the mechanism of deferred payment cannot be applied in the event of a contribution in kind;
- any portion of the share premium (*prime d'émission*) must be fully paid at the time of incorporation; and
- any shares issued in connection with an increase of the share capital following the incorporation must be fully paid up at the time of the capital increase.

The Management of the JV Vehicle

Once the basis of the shareholding structure of the JV company has been established, the parties often negotiate and agree upon its management structure. Under Luxembourg law, the management of an S.à r.l. 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 the 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, 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 that 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 S.à r.l. 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 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 S.à r.l. 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 transferable 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 Association

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 S.à r.l. 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 investment funds.

In order to clarify the status of the JV vehicle, the parties should carefully assess whether the JV vehicle is a pure corporate structure or whether it qualifies as an alternative investment fund, with the help of their advisers. 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, pursuant to the Law of 14 July 2023 on foreign direct investments (the "FDI Law"), a screening mechanism for foreign direct investments was introduced in the Grand Duchy of Luxembourg. 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 natural person who is not a national of, or an entity that is not incorporated/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 of such company (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 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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1. Market Conditions

1.1 Geopolitical and Economic Factors

Setting up a joint venture (JV) is a main strategy for companies seeking to navigate the complexities of the Mexican market while leveraging local expertise. JV activities have been impacted by several factors.

Currency Fluctuations

The peso's strong performance has complicated matters for foreign companies seeking cost-efficient JV participation, making acquisitions and partnerships potentially more expensive. However, 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 driven companies to explore alternative 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 joint ventures, creating an environment of uncertainty that may affect investor confidence and complicate long-term strategic planning. The 2026 military escalation involving the United States and Iran has contributed to volatility in global energy prices and financial markets, factors that JV partners should consider when projecting operational costs.

Additionally, at the mandatory 2026 joint review, the United States declined to confirm the extension of the United States–Mexico–Canada Agreement (USMCA), triggering annual reviews. While the Agreement remains in force through 2036, this creates recurring regulatory uncertainty for ventures relying on preferential North American market access. 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 manufacturing base, skilled workforce and evolving regulatory framework continue to present opportunities for companies seeking to diversify supply chains and access North American markets.

1.2 Industry Trends and Emerging Technologies

The artificial intelligence (AI) sector represents an area of increased interest, with companies assessing mar-

ket entry and expansion strategies within Mexico and joint ventures emerging as an alternative for cross-border transactions.

As of mid-2026, Mexico has still not enacted comprehensive federal legislation specifically regulating AI, despite ongoing legislative proposals in the Mexican Congress. A Senate-led initiative for a General AI Law remains under discussion in committee, alongside a parallel proposal to amend Article 73 of the Constitution to expressly empower Congress to legislate on AI; neither has been approved to date, and analysts consider approval in its current form uncertain given the scope of the proposed regulatory agency.

The only regulatory and binding AI-related development so far has been a May 2026 amendment to the Federal Labour Law and the Federal Copyright Law addressing AI-related issues in those specific areas.

2. JV Structure and Strategy

2.1 Typical JV Structures

JVs in Mexico are typically established through a contractual arrangement (contractual JV) or a company (corporate JV).

The choice between these alternatives depends on various factors, discussed in **2.2 Strategic Drivers for JV Structuring**.

Contractual JV

In a contractual JV, parties pool efforts and resources through a formal agreement. This can take the form of a collaboration, co-investment, profit-sharing, trust or other agreement outlining each party's responsibilities, benefits and contributions.

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*), shareholder liability is limited to their share value, and ownership is represented by freely transferable share certificates. Publicly traded corporations can be structured as 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, offering greater leeway in shareholding agreements and fostering stronger corporate governance standards.

Compared to regular corporations, SAPIs typically offer lower thresholds for minority rights, and 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.

Tax Strategy

Tax consequences often play a decisive role in choosing 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.

Long-Term Vision

The intended duration and depth of the partnership significantly influence the JV vehicle choice.

- 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.
- 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 on operational decisions, a corporate JV often provides a more structured governance framework.

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 over time.

While a contractual JV can also include decision-making provisions, it may lack the formal organisational structure of a corporate JV. 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 maintaining accounting records, 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. This may also occur in certain contractual JVs, such as trust agreements, where execution results in a legal structure that, through a trustee's intervention, can carry out certain acts without the JV members directly intervening.

However, when one party primarily contributes funds while the other handles operations and client interactions, a contractual JV might be preferred. This structure allows 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 JV's activity, foreign investment regulation should be reviewed to confirm no provision restricts foreign shareholder and partner participation 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. Under certain scenarios, a JV may be considered a merger under Mexican antitrust law and, if the applicable statutory thresholds are met, may require prior authorisation from the National Antitrust Commission (*Comisión Nacional Antimonopolio*, or CNA) before its execution.

In such cases, the main applicable statute 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 (the "AML Regulations") applicable in Mexico are:

- the Federal Law for the Prevention and Identification of Illicitly Funded Transactions (LFPIORPI);
- the Regulations to the Federal Law for the Prevention and Identification of Illicitly Funded Transactions;
- the General Rules issued by the Ministry of Finance and Public Credit, with the Tax Administration Service acting as the operational channel for registrations and filings; and
- the Federal Criminal Code, which establishes the criminal offence of operations with resources of illicit origin (commonly referred to as money laundering (Article 400 bis) and terrorism financing (Article 139 quater and 139 quinquies).

As at the date of this guide (15 September 2026), all instruments remain in force. The LFPIORPI was most recently amended in July 2025 and its regulations were most recently amended in November 2025 and March 2026. The General Rules were updated on 7 August 2026 to implement the July 2025 reform and the March 2026 amendment to the regulations. The amended General Rules generally take effect on 30 November 2026, with certain provisions phased in from 1 March 2027.

The AML Regulations provide the framework applicable to individuals and entities (including financial institutions) that carry out economic transactions in Mexico deemed prone to illicit funding or financing organised crime or terrorism. Such transactions are considered vulnerable activities.

The Ministry of Finance and Public Credit is the main authority 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.

Beyond the domestic AML Regulations described above, JV parties should also account for the extraterritorial reach of certain international anti-money laundering and sanctions regime. For example, United States AML Regulations are increasingly relevant to JVs with any nexus to the US, whether through counterparties, supply chains or payments. Following the designation of certain Mexico-based criminal organisations as Foreign Terrorist Organisations and Specially Designated Global Terrorists, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) has increased sanctions designations against individuals and entities with links to unlawful activities connected to Mexico, and US authorities have signalled a sustained enforcement focus in this area.

OFAC's sanctions regime operates on a strict-liability basis, meaning that exposure can arise irrespective of a party's knowledge or intent. As a matter of compliance, JV parties should consider incorporating periodic screening of counterparties and certain third parties against OFAC's lists, together with documented procedures for managing and escalating potential matches.

Given that payments made to, or received from, third parties in connection with a JV's operations can give rise to sanctions or AML exposure even where the JV itself has no direct relationship with a sanctioned person, JVs should also address ongoing due diligence and reporting obligations, monitoring of transactions for suspicious activity, and contractual mechanisms such as representations and warranties, audit and termination rights, that facilitate a prompt response to AML risk.

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 forth 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 current threshold, updated annually based on Mexico's GDP growth and published via a General Resolution of the National Foreign Investment Commission (CNIE), stands at approximately MXN28.6 billion (equivalent to approximately USD1.6 billion at current exchange rates).

3.4 Competition Law and Antitrust

The main authority for antitrust matters in Mexico is the CNA, which formally began operations in October 2025, replacing the Federal Economic Competition Commission (FECC) and assuming the competition-related powers previously exercised by the Federal Telecommunications Institute in the telecommunications and broadcasting sectors.

Under the Federal Economic Competition Law (FECL), amended in July 2025, the following practices are prohibited: (i) monopolistic practices (cartels and abuse of dominance); and (ii) unlawful mergers.

A contractual or corporate 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 former FECC's merger notification guide indicates that the relevant factors for determining whether a collaboration constitutes a merger under the FECL and, if the applicable thresholds are met, is subject to prior authorisation, include its duration, the functional and operational independence of the JV, and the scope of the collaboration. Long-term or indefinite arrangements, the creation of an autonomous economic agent, and the integration or joint use of assets may support the treatment of a JV as a merger for Mexican antitrust purposes.

Where the participants are actual or potential competitors, they should maintain their competitive independence outside the scope of the JV and limit any exchange of competitively sensitive information to what is necessary for its operation. The treatment or authorisation of a JV as a merger does not exempt its participants from liability if the arrangement constitutes cartel conduct.

The CNA will not authorise or will investigate and sanction mergers that diminish or damage competition and free market participation.

According to the current FECL and subject to certain exceptions outlined in the law, mergers exceeding certain thresholds must be notified to the CNA before their effects take place in Mexico. Said thresholds have been reduced in the revised FECL.

It is important to mention that failure to notify a merger when there is an obligation to do so may result in the imposition of a fine of up to 8% of the economic agents' turnover.

Nonetheless, economic agents may also voluntarily notify such mergers to the CNA, particularly where the structures of potential competitive effects merit closer assessment.

It is important to consider that the CNA may investigate transactions in certain cases that do not require prior notification up until three years after their closing, if it 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, 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.

Having completed its first full quarter of operations in early 2026, the CNA has already resolved 118 merger filings across sectors including:

- pharmaceuticals;
- aircraft leasing;
- auto parts;
- manufacturing;
- financial services;
- transportation; and
- commerce.

Also, the CNA has signalled that the following will be priority sectors for scrutiny:

- financial;
- agri-food;
- energy;
- health;
- telecommunications and broadcasting;
- transportation; and
- logistics services.

Nonetheless, its interpretative approach to borderline cases – such as the airline alliance scenario discussed above – is still developing.

One major change from the previous competition framework to the new FECL is the reduction from 60 to 30 business days for the CNA 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 an extension of 20 business days 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 FECL and will face increased scrutiny by the CNA.

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, including detailed information regarding the chain of ownership and control when

an indirect structure is involved, as well as identification and documentation of control exerted through other legal arrangements, such as trusts or fiduciary structures.

Entities are required to maintain accounting records, including UBO information, 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.

Additionally, a constitutional reform of the judiciary took effect in 2024, leading to the popular election of federal judges, including Supreme Court justices. While the reform did not amend substantive rules on commercial arbitration, it is widely regarded by practitioners as having reduced the predictability of ordinary commercial litigation, given the initial lack of specialised commercial experience among newly elected judges. JV parties should factor this into their choice of dispute resolution mechanism (see **6.8 Applicable Law and Dispute Resolution in International JVs**).

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 sharing sensitive information. If the parties wish to proceed, they often draft a preliminary document outlining their intentions and basic conditions for closing.

This preliminary document usually takes the form of a letter of intent (LOI) or a memorandum of understanding (MOU). While contents may vary depending on the proposed JV's nature, 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 public announcement of material business transactions, which might include the formation of a JV.

In exceptional cases, foreign investment participation in corporate JVs may require governmental approval. See **3.3 Sanctions, National Security and Foreign Investment Controls**.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Mexican JV agreements typically require satisfaction of conditions precedent before closing, such as obtaining the following:

- 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 waive, parties may terminate 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, profit-sharing or co-investment agreements do not require execution before a public notary. However, parties may choose to notarise documents or have signatures ratified by a public notary for added legal certainty. Transfer of assets 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 (pre-emptive 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 directors 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 establishing the vehicle and outlining the rules governing the relationship between the parties.

For instance, parties may need to transfer certain assets to the corporate JV, requiring a contribution or purchase and sale agreement. If the corporate JV, or a party in a contractual JV, needs to use an asset owned by another JV member or 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

Key rights are as follows:

- Profit sharing and loss allocation – JV partners are typically entitled to share the profits and bear 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

Key obligations are as follows:

- Capital and resource contributions – Partners are generally obligated 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 (SA), 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 convening 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 capex (capital expenditure) and external debt, among others;
- enhanced information access, beyond the General Business Companies 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 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 of agreements governing real estate matters located 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 Panama Convention of 1975. Since the 2024 judicial reform introduced popularly elected judges and a new Supreme Court (in office since September 2025), this preference for arbitration has become more pronounced, as parties seek to avoid the unpredictability of a judiciary still building a track record.

If no dispute resolution clause is inserted, jurisdiction defaults to Mexican courts under Mexican procedural law, with 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 for the operation of the board in publicly listed companies.

Likewise, the 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 annual Sustainability Reports aligned with IFRS S1 and S2, an obligation now in effect: 2026 is the first mandatory reporting cycle, covering fiscal year 2025 data, with issuers permitted to limit initial disclosures to climate-related risks and forgo external assurance for this first cycle. Limited assurance will be required starting with the 2026 fiscal year report (filed in 2027), moving to reasonable assurance thereafter. Separately, the Mexican Financial Reporting Standards Council (CINIF) has issued Sustainability Reporting Standards (NIS) aligned with IFRS S1/S2; while these standards apply to entities preparing *Normas de Información Financiera* (NIF)-based financial statements, their mandatory scope for non-listed entities, including private JV vehicles, may depend on specific contractual, audit or investor requirements rather than a general regulatory mandate.

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

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 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 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, for 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 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 is the typical exit mechanism in contractual JVs.

PORTUGAL

Law and Practice

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PARES Dynamic Legal Advisors was founded in 2011 and is a full-service Portuguese law firm based in Lisbon, providing multidisciplinary, fully personalised legal advice at every stage of a matter. The firm has 65 lawyers, including a 20-strong Commercial and Corporate Law team that works alongside its Banking and Financial, Tax, and Competition and European Law practices to advise domestic and international clients on joint ventures, M&A, corporate restructuring and cross-border transactions, including matters involving private equity, investment and venture capital funds, real estate and infrastructure. The team regularly advises clients across these sectors on structuring and negotiating joint ventures with domestic and international partners, recently advising Sevenair Academy on its Airbus-backed pilot-training partnership. PARES negotiates in English, French and Spanish, supporting clients with cross-border operations, and combines experienced and younger practitioners in a close, hands-on approach to client relationships, continuing to invest in legal knowledge and technology to meet increasingly complex commercial demands.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

Over the past year in Portugal, joint venture (JV) activity has been influenced by the same global political and economic issues affecting the rest of the eurozone. However, the interest in forming JVs has stayed strong. The ongoing uncertainty from conflicts in Ukraine and the Middle East, along with unpredictable US trade policies, has led Portuguese companies to seek partners and markets in more stable regions. They are also opting for structures that spread out risk instead of concentrating it.

Domestically, inflation went down for most of 2025 but started rising again in 2026 due to higher energy prices. The European Central Bank, after cutting rates for a while, stopped and then started increasing them again because of new political pressures. This has made getting bank loans less reliable, making JVs more attractive for pooling money and sharing financial risks between partners instead of relying on just one company's finances.

US tariffs on European goods, even after being limited, have directly impacted export-focused industries like wine and footwear. This will likely encourage some Portuguese businesses to form international JVs to diversify their markets and distribution channels, rather than just trying to cover the extra costs themselves. Private equity firms are still using JVs to combine smaller, scattered Portuguese businesses. Additionally, Portugal's Recovery and Resilience Plan is creating new pressures and opportunities, especially in areas like energy, digital upgrades and infrastructure projects that fit its goals. Given all this, JVs are increasingly being used as a less risky way to enter the Portuguese market or test a potential partnership. This often serves as a step before a full takeover, once both sides have a better grasp of each other and the market conditions, particularly when private equity is involved.

Looking ahead to 2027, we anticipate that JVs will continue to be a favoured way to enter the Portuguese market, especially in sectors related to the country's energy and digital transformation goals. Companies will likely keep preferring structures that share risk over immediately buying out partners.

1.2 Industry Trends and Emerging Technologies

Lately, Portuguese JVs have mostly focused on renewable energy, aviation, healthcare and technology. Renewable energy has been especially busy. Portugal is getting ready for its first offshore wind licensing round and is also working on its green hydrogen goals. An example of this is the WindFloat Atlantic pilot project, developed by Ocean Winds, a JV between EDP Renewables and Engie. It shows how big energy companies are already using JVs to share the costs and risks of developing new technologies.

Partnerships have also been common in aviation and healthcare. Usually, a Portuguese company teams up with an international one. This helps them get access to technology, training or funding faster than they could on their own.

These partnerships are increasingly influenced by rules from the EU and Portugal. The EU AI Act (Regulation (EU) 2024/1689), for example, applies direct-

ly in Portugal. It has a system based on risk levels and includes new rules about liability, meaning more responsibility for damage caused by AI systems. JV agreements that involve AI now need to clearly state how liability will be shared between the partners, instead of figuring it out later.

Who owns the IP is another common problem, especially in JVs for technology and AI. The partners need to decide from the start how ownership of jointly developed technology and data will be divided, rather than waiting until the venture is already running.

How data is shared, where it is stored, and compliance with GDPR are still key parts of due diligence. It is now standard practice to have binding agreements for data sharing, particularly when a JV involves partners from both the EU and countries outside the EU.

2. JV Structure and Strategy

2.1 Typical JV Structures

The standard JV route under Portuguese law and market practice is the incorporation of a special purpose vehicle under the form of a private limited liability company (*sociedade por quotas* – Lda.) or, in larger ventures, of a public limited liability company (*sociedade anónima* – S.A.). Its main advantages lie in the shareholders' limited liability, clear governance rules via shareholders' agreements (SHAs) (*acordos parassociais*), and the ease of raising third-party financing, given its familiarity to lenders and other stakeholders. Its principal disadvantages, when compared with other JV structures, are the potential double taxation exposure on distributed profits and the formalities involved in exit or liquidation.

Beyond corporate JVs, another commonly used structure is the silent partnership (*associação em participação*), under which a third party commits to invest in an existing company without acquiring shareholding rights, obligations or liabilities, in exchange for a share in the profits of a specific project (with the possibility of excluding that party from sharing in losses). This structure is useful for passive investment or real estate JVs seeking discretion, although it offers weaker governance rights and no asset separation.

Consortiums (*consórcios*) are a common JV structure in construction and public tenders, offering no incorporation costs or formalities, flexible profit-sharing and tax transparency. Their principal drawback is exposure to joint and several liability, which tends to make them less attractive to lenders financing the venture itself.

2.2 Strategic Drivers for JV Structuring

The choice of JV vehicle in Portugal is generally driven by liability exposure, tax treatment, and the parties' need for control over assets and decision-making, with tax considerations frequently determining the structure before governance issues are even addressed.

The need for control and decision-making is often the first filter applied, particularly where partners intend to take an active role in management or, even where they do not, wish to retain voting rights – whether as shareholders and/or within the management body – and to secure clear exit routes, such as drag-along, tag-along and shotgun provisions, allowing them to take over the project, or exit it, should matters depart from the projected business plan. The corporate JV route is generally better suited to accommodating these mechanisms than the alternatives available.

Tax treatment is a further significant factor. While non-corporate JVs such as silent partnerships and consortiums are fiscally transparent, avoiding double taxation – at vehicle level (corporate income tax – IRC) and upon distribution of profits – the Participation Exemption Regime, introduced in 2014 in the Portuguese Corporate Income Tax Code, arguably offers an even more favourable outcome for corporate JVs: under this regime, national corporate shareholders holding at least 10% of the share capital or voting rights of a company, for a minimum period of 12 months, are exempt from taxation not only on dividend distributions but also on capital gains arising from the sale of those shares – allowing shareholders to exit the project company entirely tax-free, an advantage not available to non-corporate structures.

Although the Participation Exemption Regime applies only to national corporate shareholders, the effect is not equivalent for non-Portuguese shareholders, as

dividends and capital gains taxation follows the rules of the shareholder's place of residence – although, depending on the applicable double tax treaty and domestic regime, this may nonetheless prove favourable where the place of residence does not tax such income, or taxes it at a lower rate than would otherwise apply in Portugal. Partly for this reason, foreign shareholders frequently interpose a Portuguese holding company as shareholder of the project JV company, so as to benefit from the Participation Exemption Regime and to reinvest profits within Portugal.

The silent partnership is typically used in JVs of a different nature, where the silent partner commits capital alone in exchange for a share of profits. This structure allows the investment to be collateralised against the company's assets – an option unavailable to corporate JVs – while the silent partner retains a quasi-shareholder position in terms of information rights and project tracking, without taking an active role in shareholder or management decisions.

For the reasons outlined above and given that corporate JVs remain the structure of choice in the vast majority of Portuguese transactions, this article will focus principally on corporate JVs. References to non-corporate structures, such as the silent partnership and the consortium, are made where relevant for comparison, but the analysis that follows should be read with the corporate JV as its primary frame of reference.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

Corporate JVs are governed principally by the Portuguese Companies Code (*Código das Sociedades Comerciais*) (CSC), which regulates corporate vehicles and sets out the main limitations concerning decision-making, share transfers, profit distribution, liquidation, redemption and exclusion. Many of these provisions are mandatory and cannot be freely derogated from in the articles of association (*estatutos*), particularly those protecting minority shareholders from forced dilution, unfair exclusion and asset dissipation – for instance, pre-emption rights on capital increases, the right to a proportionate share of liquidation proceeds, and the qualified majorities required for amendments to the articles of association or for capital reductions.

The regulator responsible for the registration of the relevant corporate acts is the Companies Registry Office (*Conservatória do Registo Comercial*), which verifies that incorporation documents, share transfers, capital changes and dissolution filings comply with these legal requirements before granting registration – registration being, for most corporate acts, a condition of their enforceability against third parties.

Sector-specific JVs may additionally be subject to specialised regulators, namely, among many others, the Bank of Portugal (BdP), the Securities Market Commission (CMVM), the Insurance and Pension Funds Supervisory Authority (ASF), the Energy Services Regulatory Authority (ERSE) and the Competition Authority (AdC).

Municipal licensing authorities – rather than the Institute of Public Markets, Real Estate and Construction (IMPIC) – frequently serve as the primary regulator for real estate and construction JVs.

3.2 Anti-Money Laundering Compliance

JV formation in Portugal is subject to the anti-money laundering (AML) framework established by Law 83/2017, transposing the EU's Fourth and Fifth Anti-Money Laundering Directives, the core legislative act establishing preventive and punitive measures for AML and countering the financing of terrorism, transposing EU rules and setting rigorous Know Your Customer (KYC) due diligence, and risk-management obligations for designated obligated entities. In particular, lawyers acting in JV incorporation qualify as obligated entities and must carry out customer due diligence, identifying and verifying the JV partners and, critically, their ultimate beneficial owners (UBOs) before engaging in any services.

Enhanced due diligence applies where a partner is a politically exposed person or is based in a high-risk third country, or where the ownership structure is unusually complex or opaque – a recurring issue in multi-jurisdictional JVs. Obligated entities are also required to report suspicious transactions.

For JVs involving foreign capital contributions, banks implementing capital calls or shareholder loans will additionally apply their own AML controls under the Bank of Portugal's supervision, often requiring source-of-funds documentation beyond what company law itself demands. Material inaccuracies in the declared beneficial ownership chain can delay financial institutions' onboarding of the JV vehicle and, in serious cases, expose obligated entities and JV representatives to administrative sanctions.

Depending on the area of business, JVs may additionally be subject to sector-specific regulations (in particular those in the banking and finance, capital markets, real estate and construction sectors, and virtual asset service providers).

3.3 Sanctions, National Security and Foreign Investment Controls

Under Law 97/2017 and EU sanctions regulations, co-operating with a JV partner that is subject to EU/UN sanctions is prohibited, and Portuguese banks routinely screen JV parties against consolidated sanctions lists before onboarding. Having a sanctioned partner will, in practice, block the transaction regardless of the JV's commercial merit.

On national security, Decree-Law 138/2014 empowers the Council of Ministers to oppose, on public security grounds, acquisitions of control over strategic assets – ie, infrastructure tied to national defence, energy, transport and communications – by non-EU/EEA persons.

In practice, this power is rarely used. Despite being in force for over a decade, there are no publicly known instances of the Council of Ministers vetoing a transaction on these grounds, consistent with the pro-investment stance successive Portuguese governments have taken since the 2010–14 financial crisis.

There is no general restriction on foreign participation in Portuguese JVs: foreign shareholders may hold up to 100% of the capital of a JV vehicle, and no minimum Portuguese shareholding is required as a matter of company law. Restrictions instead arise on a sector-specific basis. Banking and financial services, insurance, energy, telecommunications, media and defence-related activities each carry separate authorisation, regardless of the nationality of the JV's shareholders. These sectoral regimes frequently go beyond a simple licensing filing, sometimes requiring local management experience or fit-and-proper assessments extending to indirect beneficial owners.

3.4 Competition Law and Antitrust

JVs in Portugal are subject to Law 19/2012 (the Competition Act), enforced by the Competition Authority, and, where the JV meets EU thresholds, to Regulation (EC) 139/2004. A "full-function" JV – ie, one operating on a lasting basis and performing all the functions of an autonomous economic entity – is treated as a concentration and is subject to the same merger control regime as an acquisition.

Notification to the Competition Authority is mandatory where:

- the JV creates or reinforces a market share of 50% or more in the relevant national market;
- the JV creates or reinforces a market share between 30% and 50%, provided at least two of the parties individually achieved turnover exceeding EUR5 million in Portugal in the preceding financial year; or
- the parties' combined Portuguese turnover exceeded EUR100 million in the preceding financial year, again provided two parties individually exceeded EUR5 million.

Where thresholds are met, completion is prohibited until clearance is obtained, and gun-jumping is sanctionable with fines of up to 10% of the infringing party's turnover.

Non-full-function JVs, and co-operation between parent companies falling short of a concentration, remain subject to the general prohibition on restrictive agreements under Article 9 of the Competition Act, mirroring Article 101 of the Treaty on the Functioning of the European Union, requiring careful drafting of any information-sharing, non-compete or exclusivity provisions in the JV agreement.

3.5 Listed Companies and Market Disclosure Rules

When a JV partner is listed on Euronext Lisbon – the Portuguese stock exchange – its participation triggers strict transparency, approval and governance mandates under the Portuguese Securities Code and the Securities Market Commission regulations.

First, listed participants face immediate market disclosure obligations, by having to publicly disclose any strategic partnership agreements that influence voting rights or corporate control, or constitute inside information. Furthermore, if the JV alters share ownership, any crossing of major statutory thresholds starting at 5% must be reported to the regulator and the market.

Second, the listed party must assess whether the transaction qualifies as a related-party transaction, which is particularly critical when the JV involves entities connected to directors, controlling shareholders or group companies, thereby triggering mandatory independent board approvals, specialised auditing and public disclosure to mitigate conflicts of interest.

Finally, listed corporate participants must adhere to strict corporate governance codes. This framework ensures that all subsequent transactions within the JV undergo transparent auditing and rigorous supervisory board reviews to maintain market integrity.

3.6 Transparency and Ownership Disclosure

Corporate JVs incorporated in Portugal are strictly subject to UBO disclosure mandates managed by the Central Registry of Beneficial Owners (*Registo Central do Beneficiário Efetivo* – RCBE), originally established by Law 89/2017.

This mandatory filing requires the identification of any natural persons who ultimately own or control the corporate entity, either by holding a direct or indirect shareholding of more than 25% of the share capital or voting rights or, if ownership cannot be established through capital percentages, by effective control through contractual arrangements, veto rights or, as a last resort, the top managing directors being deemed as UBOs.

The initial registration must be completed within 30 days of the legal entity's incorporation or tax allocation. Furthermore, corporate vehicles must continuously maintain accuracy by reporting any mid-year ownership modifications within 30 days of the change. To remain in good standing, an annual validation of the data must be submitted by 31 December.

Failing to maintain a valid RCBE filing triggers significant structural restrictions and financial penalties ranging from EUR1,000 to EUR50,000, in addition to the prohibitions set out in Article 37 of Law 89/2017. Specifically, non-compliant entities are legally prohibited from distributing profits, disqualified from public procurement and state bidding participation, not allowed to launch public offerings, excluded from support from European structural, investment and public funds, and forbidden from carrying out real estate transactions, while additionally facing the operational blocking of their banking transactions, operations and financial accounts until full compliance is restored.

Contractual JVs, such as consortiums and silent partnerships, lack independent legal personality and generally fall outside direct standalone RCBE registration requirements. However, this does not bypass transparency requirements, as each individual company participating in the JV is obliged to maintain its own updated RCBE profile, this obligation extending explicitly to foreign corporate entities acting in Portugal through a non-corporate structure, as long as they carry out economic activity or execute legal transactions that require a Portuguese taxpayer identification number or operate via a local permanent representation.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Portuguese JV practice has seen no significant court decisions in the past three years genuinely worth flagging. The legal environment and prevailing case law on SHAs, corporate governance and deadlock enforcement have remained stable, with courts continuing to apply well-settled principles rather than departing from them.

On the statutory side, the most notable development in the past three years has been the Start-up and Scale-up Law (Law 21/2023), which, while not JV-specific, introduced a formal legal basis for stock option and stock ownership plans within Portuguese non-listed companies, including a favourable tax regime for gains realised on qualifying options. It is now more common for JV SHAs to set up a dedicated option pool from the start, with vesting, leaver and dilution terms agreed between the partners at signing, rather than worked out later once the venture is already running. The regime has also made it easier to bring a JV's management incentive structure in line with market practice in venture-backed and scale-up deals, an area Portuguese company law had previously left with little statutory support.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

When an underlying business exists, JV negotiations typically begin with a mutual non-disclosure agreement, followed by a light due diligence questionnaire covering the most important matters (financial statements, debt, licences and litigation) to form the basis for an offer. The parties then commonly execute a heads of terms, memorandum of understanding or letter of intent to establish core commercial terms. While these documents are generally non-binding, they include binding clauses on confidentiality and governing law. An exclusivity provision is often included to protect parties investing significant resources in due diligence.

For new ventures, an investment term sheet frequently initiates the process to model the commercial, financial and tax architecture.

At this pre-agreement stage, parties outline the standard provisions that will govern the JV vehicle, namely its nature, governance structure, management appointment rights, reserved matters requiring qualified majorities, funding mechanics, deadlock resolution mechanisms, transfer restrictions, exit mechanisms (including drag-along, tag-along and put/call options), and non-compete and non-circumvention undertakings. When investing in existing businesses, conditions precedent – particularly regulatory or competition clearance – and satisfactory due diligence results are also typically outlined at this pre-JV agreement stage.

Crucially, under Article 227 of the Portuguese Civil Code, all preliminary negotiations are bound by a statutory principle of good faith: even under non-binding terms, an unjustified or sudden rupture of negotiations can trigger pre-contractual liability, obliging the defaulting party to indemnify the counterparty for wasted due diligence costs and expenses.

5.2 Disclosure Obligations

Portuguese law does not impose a general public disclosure requirement on the formation of a JV as such, as disclosure obligations arise instead from the status of the parties or the nature of the transaction, rather than from the JV structure itself.

Under the EU Market Abuse Regulation, listed companies face an immediate disclosure trigger, as disclosure to the market is required as soon as a concrete decision to proceed is made and the project qualifies as inside information. In practice, this threshold is frequently crossed at the heads of terms stage (rather than at signing or closing) provided the core terms are sufficiently precise and price-sensitive.

If the JV must be notified to the Competition Authority, the regulatory filing is required after the conclusion of the agreement (signing) but must occur prior to implementation (closing). The transaction cannot close until formal clearance is granted, making merger clearance a standard condition precedent.

For non-listed, non-regulated JVs, and for those not subject to competition clearance, disclosure is essentially a matter of commercial registry filing following incorporation or capital changes, which becomes publicly searchable but does not require an affirmative announcement.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

In Portuguese JV agreements, closing is frequently conditional upon satisfying standard conditions prec-

edent, which primarily focus on regulatory, corporate and operational clearances. Parties typically agree that the transaction cannot close without obtaining merger control clearance from the Competition Authority if statutory thresholds are met, alongside any required sector-specific approvals from regulators in sectors such as energy, banking, telecommunications or insurance.

Structurally, these conditions precedent also include obtaining necessary corporate approvals from the JV members' internal boards, securing third-party waivers from existing lenders to prevent cross-defaults, ensuring the accuracy of fundamental warranties at closing, and completing any mandatory pre-closing corporate carve-outs or asset transfers.

Material adverse change (MAC) clauses are also standard, acting as a contractual mechanism that allows a party to withdraw from the transaction if an event severely degrades the target's financial condition. In Portuguese practice, MAC clauses are heavily negotiated to explicitly define materiality thresholds – often tied to EBITDA or turnover decline, or loss of a material licence or contract.

5.4 Legal Formation and Capital Requirements

Setting up a corporate JV vehicle in Portugal involves choosing between two primary structures under the CSC: a private limited liability company (*sociedade por quotas*) or a public limited liability company (*sociedade anónima*). For a non-listed and non-regulated JV, the vehicle of choice is the *sociedade por quotas*, which can be incorporated with a minimum share capital of just EUR1 per shareholder. Because it does not mandate the appointment of a statutory auditor until certain high thresholds are met for two consecutive financial years, this structure proves highly capital-light to establish.

Conversely, if the JV business lies in a regulated area – such as insurance companies, credit institutions, investment firms, financial intermediaries, fund managers or payment institutions, among others – the *sociedade anónima* form is generally required by sector-specific regulations. This structure requires a minimum of five shareholders or a single corporate shareholder, a mandatory statutory auditor and, depending on the sector, a board of directors with regulator-vetted members. Furthermore, a *sociedade anónima* requires a minimum share capital of EUR50,000, although sector-specific regulations often raise this minimum threshold significantly higher.

Portuguese legislation imposes no legal restrictions on foreign ownership or foreign equity participation in local corporate entities, and there are no statutory nationality requirements for members of a company's board of directors. Foreign corporate participants face the same structural rules and incorporation procedures as domestic investors, while having to complete specific administrative requirements, such as obtaining a Portuguese taxpayer identification number (NIF, for individuals) or foreign entity number (NIPC, for corporate shareholders) before execution.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The documentation of a JV in Portugal depends heavily on whether the parties select a corporate vehicle or a contractual framework.

For corporate JVs, the terms are set out across two separate instruments. The articles of association are a public document, filed with the Companies Registry Office and enforceable against third parties, and primarily govern the company's external corporate capacity, its basic capital structure and the standard functioning of its corporate bodies. The SHA, by contrast, is a private, confidential contract regulating the internal relationship between the shareholders. Under Portuguese corporate law, the articles of association bind the company itself, whereas the SHA binds only the signing shareholders, and its breach – while enforceable as between shareholders, including through penalty clauses or specific performance – does not, by itself, invalidate a corporate resolution passed in violation of it.

For contractual JVs lacking independent legal personality, such as consortiums and silent partnerships, the entire venture is governed by a single, comprehensive private contract detailing operational management,

cost-sharing allocations, liability distribution and profit-splitting mechanics, since there is no underlying corporate structure or statutory default framework to fall back on.

A corporate JV's documentation would typically divide as follows:

- the articles of association would cover the corporate name, registered office, corporate purpose, capital structure, corporate bodies and, where permitted, share transfer restrictions capable of being embedded at statutory level, such as company consent requirements and pre-emption rights; and
- the SHA would then cover special rights, reserved matters, voting restrictions, veto rights, deadlock resolution mechanisms, more detailed share transfer restrictions and mechanisms (including tag-along and drag-along rights), dividend distribution policy, funding obligations, non-compete and non-circumvention undertakings, and confidentiality provisions.

6.2 Governance and Decision-Making

Governance in a Portuguese corporate JV operates on two tiers, and achieving a balance between shareholders without compromising operational decision-making is often the most heavily negotiated part of an SHA, though varying considerably according to the power dynamics and shareholding percentages of each shareholder.

At the corporate level, the CSC establishes default decision-making rules by reference to the general meeting and the management body, with ordinary resolutions generally passed by simple majority and structural matters – eg, amendments to the articles of association, mergers, dissolution, capital increases involving pre-emption waivers – requiring qualified majorities of two-thirds or, in some cases, three-quarters of the votes present. These statutory majorities cannot be lowered below their legal floor, although the articles of association may raise them.

A customised governance framework is then built into the SHA on top of these statutory defaults, typically including a defined list of reserved matters requiring enhanced consent – eg, material capital expenditure, related-party transactions, changes to business plan, additional indebtedness, appointment of key management, issuance of new shares – together with board composition rights proportionate to shareholding. In Portuguese practice, the SHA serves as the primary mechanism whereby the parties enforce specific rights that may not be set forth in the articles of association, including regarding decision-making. Consequently, while breach of the SHA might not constitute an infringement of the articles of association or the law, it establishes a direct breach of contract under the SHA, triggering liability of the defaulting shareholder.

6.3 Funding

Portuguese corporate JVs are typically funded through a mix of equity and shareholder debt, rather than pure equity, since shareholder loans offer significant flexibility that equity contributions do not: they generally do not require shareholders' approval, are reimbursable by the management without net situation limitations, and their remuneration terms are freely negotiable.

Initial capitalisation is usually set at a modest statutory minimum – EUR1,000 to EUR10,000 for private limited liability companies (*sociedades por quotas*) and EUR50,000 for public limited liability companies (*sociedades anónimas*) – leaving most of the funding requirement to be met through shareholder loans (*suprimentos*) or staged supplementary capital contributions (*prestações suplementares*) aligned with the JV's actual cash flow needs.

Where the JV entity intends to seek bank financing, shareholders tend to favour supplementary capital contributions (*prestações suplementares*) over both share capital increases and shareholder loans. Their advantage lies in being treated as equity for accounting purposes – since their reimbursement is conditional on the company retaining positive net equity – while remaining considerably more flexible than a share capital increase, which typically requires an enhanced general meeting majority and involves deeper formalities and tighter restrictions on any future reduction. Shareholder loans, by contrast, are booked as debt and therefore affect the company's financial profile and leverage ratios, which can weigh against the JV's borrowing capacity or covenant headroom precisely

when bank financing is being sought. The SHA will typically set out an initial funding plan under which contributions are made proportionally to each JV member's percentage of the share capital.

As for future funding, three approaches are typically seen:

- a contractual obligation to provide proportional additional funding via capital calls, coupled with default mechanisms – such as forced redemption of shares or dilution clauses – applying to JV members that fail to follow a call;
- funding through shareholder loans or supplementary capital contributions; or
- no obligation to provide future funding at all, leaving each shareholder free to decide whether to participate in subsequent funding rounds, in which case non-participation triggers proportional dilution rather than a breach of the agreement.

Where funding is provided through new equity, existing shareholders will generally benefit from statutory or contractual pre-emption rights allowing them to maintain their percentage of the share capital, regardless of which of the above funding routes is used.

6.4 Deadlocks

Portuguese company law provides no statutory deadlock resolution mechanism for JVs, leaving the matter to be addressed contractually in the SHA.

The choice of deadlock resolution mechanism is heavily influenced by the ownership split, whether 50:50 or majority:minority, and is essential where the JV is structured on a 50:50 basis and each shareholder holds equal decision-making power at both general meeting and management levels, ensuring the venture is not permanently paralysed by an irreconcilable disagreement between the shareholders or the directors they appoint.

Common mechanisms, escalating from least to most drastic, include:

- a casting vote for the chairperson where the board has an even number of members;
- referral to an independent expert or mediator for specific technical or valuation disputes;
- Russian roulette or shotgun clauses, under which one party offers to buy or sell at a stated price and the other must elect to buy or sell on those terms;
- put/call options at fair market value, typically determined by an independent valuer; and
- as a last resort where the deadlock touches fundamental strategic matters and no buyout mechanism has been agreed, voluntary winding-up of the JV.

Unlike many common-law systems, where such mechanisms are typically enforced only through damages, several of these provisions are capable of specific performance (*execução específica*) under Portuguese law where a party fails to comply, giving them real teeth and the ability to deliver a definitive resolution to the deadlock.

6.5 Other Documentation

Beyond the SHA and articles of association, a corporate JV typically requires a further layer of documentation, falling into several distinct categories.

Contribution-related documentation varies according to what each JV member is bringing into the venture: asset transfer or contribution agreements where a partner assigns real estate, equipment or a going concern to the JV; and IP licence agreements where a partner contributes technology, trade marks or know-how without assigning title, as opposed to an IP assignment agreement where ownership itself transfers.

Financing documentation typically includes shareholder loan agreements and, where applicable, bank financing agreements or term sheets, together with any security package required by the lender over the JV's assets or the shareholders' shares.

Operational agreements between the JV and its parent companies commonly include management services agreements, technical assistance agreements and supply agreements governing the ongoing relationship once the venture is operational, alongside non-compete and non-circumvention agreements protect-

ing the JV's business from competition by the parents themselves.

HR-related documentation covers employment agreements for JV staff and, where personnel are seconded from a parent company, secondment agreements.

Finally, financing support documentation – eg, parent company guarantees or comfort letters – is often required by lenders or key counterparties to backstop the JV's obligations, particularly during its early stages before it has an independent financial track record.

6.6 Rights and Obligations of JV Partners

Key rights and obligations of shareholders/partners in corporate JV, typically include:

- proportional (or otherwise agreed) profit sharing, generally reflecting each partner's equity, unless the agreement provides for a different allocation;
- information rights, including access to accounts, board minutes and periodic reporting;
- non-compete undertakings, restricting partners from competing with the JV's business during the relationship (and sometimes for a limited period after exit); and
- board representation rights proportional to shareholding.

Under the CSC, profits and losses are distributed according to shareholding percentage as a default rule, unless the articles of association or an SHA provide otherwise. Such deviations are permitted, subject to certain mandatory limits – most notably the prohibition on entirely excluding a shareholder from profits, a prohibited arrangement known in Portugal as the "*pacto leonino*".

As to liability for JV debts, in a corporate JV, liability is limited to the company's own assets, and shareholders are only liable up to their capital contribution (save in cases of abuse of legal personality or specific statutory exceptions). This limited-liability shield is one of the principal reasons parties choose a corporate JV with an incorporated structure over a purely contractual JV, where liability rules are more complex and can expose members to joint liability towards third parties. However, notice that directors/managers in a corporate JV are jointly and severally liable for debts to the Portuguese Tax Authority and Social Security.

6.7 Minority Protection and Control Rights

Minority partners in a Portuguese JV typically protect their position through a combination of contractual and, to a lesser extent, statutory mechanisms.

At contractual level, the SHA is the primary vehicle for protection and would typically include:

- reserved matters or veto rights over specified strategic decisions, regardless of shareholding percentage;
- board representation rights, guaranteeing at least one appointed director even where the shareholding is below what would ordinarily secure a board seat;
- enhanced information and audit rights, going beyond the statutory minimum;
- anti-dilution protections in future funding rounds;
- tag-along rights, allowing the minority shareholder to join a sale by the majority JV partner on the same terms; and
- exit mechanisms – put options exercisable against the majority partner or buy-sell/Russian roulette clauses – providing a route out should the relationship break down.

The CSC also affords certain statutory minority protections, independently of the SHA: minimum shareholding thresholds (typically 5% or 10%, depending on the right) that trigger the ability to convene a general meeting, request specific information from management or challenge shareholder resolutions taken in breach of the law or the articles of association, as well as the right to bring a liability action against directors on the company's behalf. In practice, however, these statutory rights are relatively limited tools in a JV context, and contractual protections in the SHA remain the primary and more effective safeguard, particularly for minority partners seeking meaningful, enforceable control rather than the residual protections the law provides to all minority shareholders generally.

6.8 Applicable Law and Dispute Resolution in International JVs

Portuguese private international law respects party autonomy, so parties can choose a foreign law for the SHA. However, matters of Portuguese company law, such as validity of the articles of association, share transfer formalities, governance, directors' duties and minority protection, remain mandatorily governed by Portuguese law, since the JV entity is incorporated in Portugal. Therefore, parties could and should expect a degree of legal bifurcation, with a foreign-law SHA sitting alongside Portuguese-law incorporation documents, and should ensure the two are drafted consistently to avoid conflicts.

When a JV involves a Portuguese and a foreign partner, the foreign partner may prefer a neutral third-country law to avoid a perceived "home advantage", particularly in JVs with partners from multiple jurisdictions. Therefore, parties do not necessarily choose Portuguese courts – these are natural for matters intrinsic to Portuguese company law, but for broader commercial disputes, international arbitration (often seated in Lisbon, London, Paris or Geneva) is common, for confidentiality, neutrality and enforceability.

If the SHA is silent on jurisdiction, the default rules of the Brussels I bis Regulation (for disputes involving EU-domiciled defendants) or, failing that, Portuguese domestic rules of jurisdiction will apply, generally directing disputes to the courts of the defendant's domicile or the place of performance of the obligation in question. This can result in fragmented litigation across multiple jurisdictions which is precisely why well-drafted SHAs should invariably include an express jurisdiction or arbitration clause.

Portuguese law does not impose mandatory arbitration or mediation for commercial JV disputes generally. However, it is common, and good practice, for SHAs to include a tiered dispute resolution clause, requiring good-faith negotiation between the parties, sometimes followed by expert determination for specific technical or valuation disputes before either party may commence arbitration or litigation.

Portugal is a signatory to the 1958 New York Convention and the Brussels I bis Regulation, and has bilateral treaties with countries in the Community of Portuguese Language Countries (CPLP).

As regards enforcement, for arbitral awards, Portugal is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which provides a streamlined framework for the recognition and enforcement of foreign arbitral awards. For foreign court judgments, the applicable regime depends on the country of origin:

- EU member states – Judgments are generally recognised and enforced under the Brussels I bis Regulation.
- Non-EU states – The recognition and enforcement of judgments are governed by the Portuguese Code of Civil Procedure, unless an applicable bilateral or multilateral treaty provides otherwise and they must undergo a recognition procedure before the Portuguese courts prior to being enforceable.

7. The JV Board

7.1 Board Structure

Portuguese law does not prescribe a specific JV board model, leaving the parties to structure governance through whichever corporate form they choose: a public limited liability company (*sociedade anónima*) or a private limited liability company (*sociedade por quotas*). The former is more common for larger ventures, typically featuring a board of directors (*conselho de administração*) alongside a supervisory board or statutory auditor (*conselho fiscal* or *fiscal único*, respectively), while the latter is managed by one or more directors (*gerentes*) without a mandatory supervisory body.

JV boards usually allocate seats in proportion to shareholding, either through the articles of association – typically via a special right of appointment granted to one or more shareholders or share classes – or through the SHA, granting each party the right to appoint directors (and to replace and dismiss those it has appointed) in proportion to its stake. This proportional logic is a matter of contractual choice rather than statutory default: in the absence of such provision, directors are simply elected by ordinary major-

ity at general meeting, which would allow a majority shareholder to fill the entire board.

On appointment and removal, directors of a *sociedade anónima* are subject to a maximum term of four years unless otherwise provided, whereas no express statutory limit applies to directors of a *sociedade por quotas*. Directors are appointed by the general shareholders' meeting, or co-opted to fill vacancies subject to subsequent ratification, and may be removed at any time by simple majority, with or without cause, although removal without just cause can give rise to a compensation claim – a risk JV agreements typically address by requiring the removing shareholder to indemnify the JV or the other partner for any resulting liability.

There is no nationality or residency restriction on directors: foreign individuals may serve freely, subject only to obtaining a Portuguese taxpayer identification number and, where applicable, appointing a tax representative.

Weighted board votes are not available under Portuguese law, since each director or manager holds a single vote regardless of who appointed them or how much capital that shareholder holds. Board control is instead engineered contractually, through seat allocation, casting votes, veto rights, and reserved-matter or qualified-majority clauses, rather than through the voting weight of individual board members.

7.2 Duties and Functions of JV Boards and Directors

Directors are responsible for managing and representing the company or JV structure and owe duties of care and loyalty: they must act as a diligent, informed director, in the company's interest, having regard to shareholders' long-term interests and those of other important stakeholders, and must also avoid conflicts of interest and disclose any personal interest in matters coming before the management body.

Directors' duties are owed to the company itself, not to the shareholder who appointed them, and a director who favours the appointing shareholder's instructions over the company's interest risks personal liability. JV agreements can manage this tension contractually, through consultation mechanisms and reserved matters, but such contractual arrangements cannot override the director's statutory duty to the JV company – a director cannot be validly instructed to act against the company's interest, no matter how explicitly that instruction is set out in the SHA.

In public limited liability companies (*sociedades anónimas*), the board of directors may delegate day-to-day management to one or more delegated directors, or appoint an executive committee, provided the articles of association allow for this. Structural matters – eg, approval of accounts, mergers, capital changes and similar resolutions – cannot be delegated in this way. Delegation to third parties is more limited still, restricted to powers of attorney for specific acts, which does not amount to proper board delegation and does not relieve the board of its underlying management responsibility.

On reporting, the law requires directors to prepare an annual management report and accounts for shareholder approval within three months of financial year-end, and shareholders separately hold a general statutory right to information regarding the company's affairs. JV agreements typically build on this statutory floor with more extensive contractual reporting obligations, such as monthly management accounts, budget variance reports, or standing information rights for a shareholder's appointed observer.

7.3 Conflicts of Interest

Portuguese law addresses conflicts of interest through disclosure and abstention rules rather than outright prohibition: when directors have a personal interest in a matter under board discussion, they must disclose it and are barred from voting on that resolution. If the conflicted director nevertheless votes despite this restriction, and their vote proves decisive to the formation of the majority, the resolution in question may be voided.

Related-party transactions between the company and a director, or an entity connected to them, require prior board or general meeting approval and, in some cases, a favourable report from the supervisory body. Separately, the CSC imposes an express non-compete restriction on directors: except if authorised by

the general meeting, a director may not, on their own or a third party's behalf, engage in an activity competing with the company, nor hold a position in a competing company. Breach of this restriction triggers liability and can justify removal for just cause – a rule of particular relevance where the appointing shareholder operates in the same or an adjacent market to the JV.

Portuguese law does not disqualify someone merely for holding a role within a JV member. However, a person's position can become problematic where it creates structural, recurring conflicts – for instance, where their day-to-day role gives them ongoing access to competitively sensitive JV information or places them on the board of a competing business – rather than an isolated, transaction-specific one addressable through disclosure and abstention alone. In such cases, parties typically address the issue contractually, through the appointment of independent directors for sensitive matters or, where the conflict is more fundamental, by requiring the appointing shareholder to nominate an alternative individual altogether.

8. IP and ESG

8.1 Ownership and Use of IP

One of the key issues regarding IP in a corporate JV is whether the IP should be assigned to the entity, merely licensed, or retained by the contributing partner/shareholder – which will be assessed in **8.2 Licensing v Assignment of IP Rights**.

A central distinction is between background IP (pre-existing IP that each party brings in), which is usually retained and merely licensed, and foreground IP (IP developed by the JV going forward), whose ownership must be expressly allocated to avoid default joint-ownership rules producing unclear outcomes.

These distinctions also apply to contractual collaborations, with added focus on licence scope (exclusivity, territory, etc), what happens to licensed IP on termination, and cost-sharing for prosecution and enforcement in the absence of a single entity to hold rights.

IP issues are usually dealt within the JV through IP licence agreements, foreground IP ownership/licence-back provisions, confidentiality obligations, and exit mechanisms governing IP on termination or a partner's departure.

When IP is transferred to or from a foreign entity, additional factors come into play such as parallel registration formalities in the relevant foreign jurisdictions, withholding tax and transfer pricing implications on royalty payments between related parties, and potential export control.

8.2 Licensing v Assignment of IP Rights

The choice of whether IP rights should be licensed or assigned depends on how central the IP is to the contributing partner/shareholder's own business outside the JV.

Licensing is generally preferred when the IP is core to the shareholder's wider operations, such as when it is proprietary technology, a brand or a platform used beyond the JV. Licensing allows the shareholder to retain ownership and control, recover the IP cleanly on exit, and still monetise it through royalties. In Portugal, licences and their agreements should be recorded with the National Institute of Industrial Property (INPI).

Assignment is more suitable where the IP is specific to the JV's business with little standalone value to the shareholder, since this gives the JV freedom to exploit the licence onward or use the IP as security and is generally more attractive to third parties providing finance or to a future buyer, since a JV dependent on licensed IP is a weaker asset on exit. The trade-off is that the shareholder permanently loses ownership.

Also, the assignment of IP to a corporate JV entity as an in-kind contribution requires an independent valuation from a statutory auditor, and the tax treatment differs since there are capital gains on assignment and ongoing royalty income, potentially subject to withholding tax cross-border in licensing.

8.3 ESG Considerations in JVs

Environmental, social and governance (ESG) has become a genuine legal and commercial risk factor rather than a merely reputational add-on. ESG affects access to financing (banks and investors increasingly price ESG performance into lending terms), talent

retention, and exposure to litigation and regulatory enforcement. For JVs specifically, ESG failures by one partner can create reputational and legal consequences for the other partners and the JV entity itself.

JVs should build ESG proportionate to actual exposure and assess whether size/turnover thresholds bring the JV entity within the scope of ESG legislation. ESG reporting and due-diligence responsibilities should also be foreseen in the JV agreement's ESG representations/warranties and termination triggers for serious ESG breaches by a shareholder.

Portugal's ESG framework is almost entirely EU-driven, since there is no major standalone Portuguese ESG legislation. The key instruments are the following:

- CSRD (sustainability reporting) is the main framework governing corporate sustainability disclosures;
- CSDDD (supply-chain due diligence) is a directive which must still be transposed to national law;
- EU Taxonomy Regulation (classifying sustainable activities), being a regulation, has direct and mandatory application; and
- SFDR (for financial market participants), being a regulation, has direct and mandatory application.

Portugal does not yet have domestic case law on ESG/climate change matters in its courts. Its only points of contact with this type of litigation have been: (i) on the one hand, proceedings before the European Court of Human Rights, in which the application was declared inadmissible, without any substantive ruling on the case; and (ii) on the other hand, the European Commission's enforcement action concerning Portugal's failure to comply with EU directives.

9. Exit Strategies and Termination

9.1 Termination of a JV

Portuguese JVs typically end through the expiry of the agreed term or completion of the project purpose, mutual agreement to dissolve the JV entity, a triggering event under the JV agreement, the exercise of a put/call or drag/tag, or the sale of the JV entity/business to a third party.

Regarding general matters to address on termination, the JV agreement should pre-define the triggering events and the resulting exit mechanism (rather than leaving parties to negotiate under pressure) as well as the valuation methodology for buyouts, the allocation/distribution of assets (such as foreground IP) and of contingent liabilities, indemnities post-termination, non-compete and non-solicitation obligations surviving termination, confidentiality, IP licence termination or survival, and dispute resolution for any termination-related disagreement.

9.2 Asset Redistribution and Transfers

Key considerations when transferring assets between JV shareholders/partners include:

- proper valuation (arm's-length pricing, particularly important for related-party transfers to avoid transfer-pricing and tax challenges);
- formalities of transfer specific to the asset type (for example, real estate requires public deed and Land Registry Office registration, and IP assignments should be recorded with INPI);
- tax treatment of the transfer; and
- whether existing security interests or third-party consents restrict the transfer.

A critical distinction is between assets originally contributed by a shareholder and assets generated by the JV itself is that contributed assets often carry residual expectations of return to the contributing partner on exit or termination, particularly background IP, which is typically licensed rather than assigned precisely so it can revert cleanly. Regarding assets that are contributed as share capital, there is no automatic right to have the same asset returned, and the contributing partner instead holds equity value. Assets generated by the JV (typically foreground IP, goodwill, contracts won by the JV, business developed, etc) belong to the JV entity, and their disposal or distribution to a departing partner requires either a negotiated buyout, a distribution in kind approved as a capital reduction/dissolution matter, or a sale to the continuing partner.

9.3 Exit Strategy

Portuguese law addresses exit from a JV entity in the same way it addresses exits from any commercial company, primarily through default rules that parties

are free to shape contractually, rather than through rigid mandatory restrictions.

Portuguese statutory law provides some baseline protections affecting exit. For a public limited liability company (*sociedade anónima*), shares are, in principle, freely transferable, but the articles of association may impose pre-emption rights, consent requirements or lock-up periods. For a private limited liability company (*sociedade por quotas*), by contrast, the transfer of shares (quotas) to third parties requires the company's consent unless the articles of association provide otherwise, which means that *sociedades por quotas* carry a built-in restriction that *sociedades anónimas* lack.

Beyond these default rules, exit mechanics are largely a matter of contractual freedom. Parties can, and routinely do, customise pre-emption rights, tag-along/drag-along rights, put/call options and deadlock-triggered buy-sell mechanisms in the SHA, provided these do not contravene mandatory statutory provisions.

The most common exits in Portuguese JV practice are a negotiated buyout of one partner's stake by the other (often at a pre-agreed valuation formula) or the sale of the entire JV entity to a third party. Other than that, deadlock-triggered buy-sell mechanisms are also standard as a fallback exit route.

PUERTO RICO

Law and Practice

Contributed by:
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Maceira Zayas advises domestic and international clients on joint ventures, mergers and acquisitions, corporate governance and commercial transactions from its principal office in San Juan, with Washington, DC support for federal and cross-border matters. The corporate and commercial team of four attorneys structures both contractual collaborations and entity-based ventures, and handles the regulatory, government affairs and litigation questions that those transactions raise. The firm also advises on state and US federal tax matters which frequently shape the structuring of cross-border ventures in Puerto Rico, USA. Its position at the Puerto Rico and US federal interface lets it guide investors who use the Island as a platform for United States market access. Recent work includes establishing energy-sector joint ventures for US-based and international clients, forming a teaming joint venture to pursue US Army Corps of Engineers disaster-recovery contracts, and negotiating a joint venture agreement for a US Department of Defense contractor.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

Over the last 12 months, macro-economic pressures and shifting geopolitical landscapes have forced a distinct operational pivot in how joint ventures (JVs) are structured and deployed, particularly within unique jurisdictions like Puerto Rico (PR). Persistent global inflation and central bank interest rate fluctuations have effectively increased the cost of traditional capital, making debt-heavy domestic ventures less attractive. This reality, combined with compounding geopolitical instability, ranging from the ongoing wars in Ukraine and the Middle East to escalating trade frictions and unpredictable tariff policies, has driven corporate actors to look beyond traditional, heavily regulated Western economies. Instead, there is a visible, surging trend towards establishing cross-border JVs and strategic operations in non-traditional spaces, specifically targeting developing economies, decentralised financial frameworks (such as tokenised digital assets and cryptocurrency ventures), and jurisdictions offering aggressive, legal offshore tax insulation. Companies and high net worth investors are no longer hesitant to venture out; they are actively seeking structured, tax-advantaged safe harbours to protect their margins from domestic fiscal squeeze.

This global search for capital efficiency has turned sophisticated tax planning from a secondary corporate consideration into a primary driver for JV structuring. Beyond looking for simple zero-tax havens, modern investors actively pursue cross-border joint ventures to gain access to comprehensive corporate tax incentives, such as reduced preferential corporate income tax rates, generous research and development tax credits, and exemptions on foreign-sourced dividends or capital gains. Furthermore, the rapid democratisation of cross-border tax planning information, alongside the rise of specialised global compliance networks, has stripped away the historical intimidation of setting up offshore operations. JV participants are now highly equipped with real-time data, enabling them to execute hyper-precise, compliant and multi-layered entity structures that legally maximise local tax decrees while seamlessly shielding global corporate margins from domestic fiscal drag.

1.2 Industry Trends and Emerging Technologies

The technology and fintech sectors have experienced rapid growth in recent years, particularly in artificial intelligence (AI), which has elevated data analytics and security to critical priorities that must be managed within a fast-paced development environment. Simultaneously, the real estate development sector has seen a notable increase in joint venture activity as both foreign individuals and legal entities flock to Puerto Rico to develop new business areas and infrastructure. These technological shifts are significantly affecting joint venture vehicles by necessitating robust contractual frameworks to address evolving regulations regarding data privacy, storage and cross-border data sharing. As emerging technologies integrate into operations, joint ventures must increasingly incorporate specific provisions addressing AI accountability, intellectual property ownership of algorithmic outputs

and strict liability protocols for data usage to remain compliant in an ever-changing regulatory landscape.

2. JV Structure and Strategy

2.1 Typical JV Structures

While many initial collaborations begin through contractual obligations, often structured as collaboration or cooperation agreements, these are frequently, and subsequently, paired with the formation of a separate legal entity, most commonly a limited liability company (LLC). The LLC has emerged as the preferred vehicle primarily due to the significant degree of "private ordering" permitted under the Puerto Rico General Corporations Act. This legislative framework grants members extensive flexibility to dictate internal management, voting rights and profit participation through a custom Operating Agreement, which stands in stark contrast to the more rigid governance requirements of traditional corporations. Furthermore, because the LLC provides a robust structure for external business dealings while simultaneously offering the benefits of limited liability and highly adaptable tax elections, allowing participants to choose between pass-through or corporate-level taxation, it effectively serves as the most versatile instrument for navigating the complex commercial and regulatory landscape of the island. By leveraging these statutory provisions, legal professionals can create bespoke governance structures that address specific venture needs, while maintaining a clear, protected legal barrier between the joint venture's operations and the members' independent business interests.

2.2 Strategic Drivers for JV Structuring

Selecting a joint venture vehicle requires aligning the operational and financial goals of the partners and/or entities with short, medium and long-term objectives. Key drivers include management control, which is often most flexible under an LLC, and the ability to isolate liabilities through structured risk sharing, and corporate assets. Furthermore, tax treatment is essential to determine corporate strategy and governance, as well as any possible tax incentives or preferential tax treatment, eg, under Act 60-2019.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

Joint ventures in Puerto Rico, USA sit under two sets of regulators at once: local agencies, and US federal agencies that have direct jurisdiction because Puerto Rico is US territory.

The main statutory provisions begin with the entity law: a joint venture organised as a company formed under the Puerto Rico General Corporations Act (Act 164-2009), which is modelled on Delaware law; a purely contractual venture rests on the Puerto Rico Civil Code. Tax sits under the Internal Revenue Code of Puerto Rico (Act 1-2011) and, where the structure reaches US-source income or US persons, the federal Internal Revenue Code.

On the local side, the primary regulators are:

- the Department of State (State) Department of Economic Development and Commerce (DDEC), which administers the Incentives Code (Act 60-2019) and the Permits Office;
- the Office of the Commissioner of Financial Institutions (OCIF), which oversees banks, mortgage lenders and money transmitters;
- the Department of the Treasury (Hacienda), which enforces local tax;
- the Office of the Commissioner of Insurance (OCS); and
- the Public Corporation for the Supervision and Insurance of Cooperatives (COSSEC).

The federal layer carries equal weight:

- federal securities laws and the Securities and Exchange Commission apply to capital-raising and investor arrangements;
- the Federal Trade Commission and the Department of Justice enforce the antitrust rules that can reach a joint venture (see **3.4 Competition Law and Antitrust**);
- OFAC sanctions and CFIUS national-security review apply as they do nationwide (see **3.3 Sanctions, National Security and Foreign Investment Controls**); and

- the federal banking regulators, the Federal Communications Commission and other sector agencies govern regulated industries.

The Internal Revenue Service and federal labour authorities also reach activity on the island. The practical point for counsel is that a Puerto Rico venture answers to Washington as directly as it answers to San Juan.

3.2 Anti-Money Laundering Compliance

In Puerto Rico, anti-money laundering (AML) and compliance regulations usually operate under a strict, dual-layered framework combining federal US statutes and local laws. At the federal level, enforcement is driven mainly by the US Department of Justice (DOJ) and the Financial Crimes Enforcement Network (FinCEN) under the foundational authority of the Bank Secrecy Act (BSA) and the USA PATRIOT Act. These mandates require institutions to implement comprehensive protocols and Suspicious Activity Reports (SARs). Additionally, recent federal updates under the Anti-Money Laundering Act of 2020 (AMLA) and the Corporate Transparency Act (CTA) enforce safety and transparency provisions to better enable AML structures.

Locally, this federal framework is reinforced by Puerto Rico's own regulatory bodies, criminal statutes and civil codes to ensure bulletproof corporate compliance. The Office of the Commissioner of Financial Institutions (OCIF) serves as the primary local watchdog, auditing financial entities and money service businesses to ensure they mirror both local regulations and federal FinCEN standards. On the punitive side, the Puerto Rico Penal Code specifically criminalises money laundering as a severe felony, penalising anyone who knowingly facilitates, transports or conceals illicit assets. Furthermore, the Puerto Rico Civil Code serves as a powerful civil shield; under its provisions regarding illicit cause, any contract or corporate transaction structured with laundered funds is deemed null and void ab initio. The Civil Code also imposes strict tort liability under its extra-contractual damage doctrines, allowing third parties to sue corporations or their directors for damages if a failure in corporate due diligence or compliance oversight allows financial fraud or money laundering to occur.

3.3 Sanctions, National Security and Foreign Investment Controls

Two layers of law govern this question, and both apply at once. Puerto Rico sets the local rules on entity formation and licensed activity. US federal law applies on the island in full, because Puerto Rico is US territory, so the analysis cannot stop at local statutes.

Foreign participation is generally permitted. A foreign entity must be authorised to do business in Puerto Rico, and no statute bars foreign ownership of a joint venture as such.

Sanctions are the first federal control. The programmes administered by the US Treasury's Office of Foreign Assets Control (OFAC) reach a Puerto Rico venture just as they reach one formed in any US state. Before forming a venture or admitting a partner or investor, the parties should screen each counterparty, its owners and its ultimate beneficial owners (UBOs) against OFAC's Specially Designated Nationals (SDN) List and the applicable country programmes. Under OFAC's 50% rule, an entity owned 50% or more by one or more blocked persons is itself treated as blocked, so the review must follow the full ownership chain. Exposure follows a counterparty's status rather than its nationality.

National security review is the second. A venture that gives a foreign person control of, or certain rights in, a US business can be a covered transaction before the Committee on Foreign Investment in the United States (CFIUS), which reviews deals wherever in the United States the business operates. Some filings are mandatory and others voluntary, and CFIUS can impose conditions or recommend that the President block or unwind a transaction.

Specific industries carry added requirements. Joint ventures in Puerto Rico are governed generally by the Civil Code of Puerto Rico and industry relevant local statutes, which dictate the rights and obligations of parties in the absence of specialised acts. Financial services answer to the Office of the Commissioner of Financial Institutions and federal regulators; insurance to the Office of the Commissioner of Insurance; communications to the Federal Communications Commission; and maritime transport to federal cabotage rules

under the Jones Act. Parties should confirm sector licensing before they commit.

3.4 Competition Law and Antitrust

Antitrust matters in Puerto Rico are governed concurrently by federal laws, such as the Sherman and Clayton Acts, and the local Antitrust Act of Puerto Rico (Law No 77 of 1964). The regulatory landscape is supervised primarily by the Puerto Rico Department of Justice's Office of Anti-Trust Affairs, which handles issues ranging from monopolisation and price-fixing to merger controls. Additionally, the Department of Consumer Affairs (DACO for its Spanish acronym) holds inherent interest in these practices, particularly concerning consumer protection and unfair competition. Regarding notification and approval requirements, the necessity to seek clearance depends on the specific market and the nature of the transaction. Under the PR Antitrust Act, certain mergers or acquisitions are prohibited if their effect is to substantially reduce competition or create a monopoly. Parties may proactively request an opinion from the Secretary of Justice regarding the legality of a proposed acquisition prior to its consummation, which provides immunity from state action if the opinion is favourable and the parties adhere to the disclosed facts and conditions.

3.5 Listed Companies and Market Disclosure Rules

When a publicly traded corporation enters into a JV within this jurisdiction, compliance operates on a combination of federal market transparency, local statutory frameworks and internal corporate gatekeeping. At the federal level, the listed party must satisfy, among other things, Securities and Exchange Commission (SEC) regulations and standard GAAP principles. Locally, if the venture is structured as a new corporate entity or a multi-member LLC, it falls under the Puerto Rico General Corporations Act (Act 164-2009), which governs operational parameters and provides protocols. Furthermore, if the JV entails the contribution, leasing or financing of commercial assets, equipment or accounts receivable, the parties must comply with the Puerto Rico Commercial Transactions Act (Act 208-1995, as amended). This statutory groundwork is bound together by the overarching principles of the Puerto Rico Civil Code, which also enforces the fiduciary duty of the participants to act as "prudent administrators" and invokes direct civil liability for damages if wilful misconduct or gross negligence harms the JV. Finally, the transaction must pass the listed company's internal institutional gatekeeping. This requires strict adherence to its internal corporate governance rules, ensuring that the JV explicitly meets the specific board voting thresholds and follows rigid internal standard operating procedures (SOPs), which mandate a comprehensive legal audit and a formal compliance committee risk-assessment clearance before an authorised executive can executionally bind the listed entity to the agreement.

3.6 Transparency and Ownership Disclosure

As a general rule, a corporation or LLC registered with the Puerto Rico Department of State must file a Beneficial Ownership Information (BOI) report with FinCEN, identifying individuals who own at least 25% of the entity or exercise substantial control over its decisions. Conversely, local Puerto Rico corporate law does not maintain an independent UBO registry, limiting its requirements to tracking standard officers and directors through annual Department of State filings.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

In Puerto Rico, there are no recent statutory changes or Supreme Court opinions that alter the fundamental structural definition of a JV, which continues to be governed by traditional corporate and contractual frameworks. However, major legal developments over the past three years have significantly impacted the commercial baseline under which JVs negotiate, operate and structure assignments on the island. Chief among these is the Puerto Rico Supreme Court's landmark decision in *MCG Therapy Group LLC v Maestre Rivera*, which evaluated for the first time the validity and third-party efficacy of assigning contracts containing non-compete clauses within independent contractor and professional services relationships. The Court ruled that contract assignments are fully compatible with the local legal system, validating non-compete agreements provided that their temporal, geographical and material restrictions are reasonable, protect the legiti-

mate interests of the contracting party, do not impose disproportionate burdens on the professional and do not harm the public interest, through a case-by-case analysis. Given that many JVs operate contractually or rely heavily on third-party independent contractors to execute operational workflows, this decision outlines exactly how a venture must narrow its non-compete restrictions to safeguard goodwill and prevent partners from unfairly capitalising on assigned corporate structures.

Concurrently, JVs operating in professional and corporate advisory services must adapt to a major regulatory shift approved by the Puerto Rico Supreme Court regarding the local Rules of Professional Conduct. This regulatory amendment dismantles ethical barriers, opening the door for cross-disciplinary corporate joint ventures between legal professionals and alternative commercial entities in Puerto Rico, a structure that was previously prohibited by local ethics rules. Taken together, these judicial developments provide joint ventures in Puerto Rico with much broader latitude to execute strategic corporate assignments and cross-industry partnerships, provided they embed clear metrics of reasonableness and internal regulatory compliance within their operating agreements.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

Negotiations typically begin with an informal compatibility check followed by a mutual Non-Disclosure Agreement (NDA) to protect sensitive information. Parties then formalise the deal's structure and commercial terms using a Letter of Intent (LOI), while utilising a Due Diligence Questionnaire (DDQ) to verify financial and legal standing when deemed necessary. An exclusivity deed may be employed to focus negotiations during this phase, whereas non-compete provisions are generally reserved for the final agreement to protect the venture's purpose. These pre-agreement stages are critical for defining governance, capital commitments and exit strategies as well to ensure all partners remain aligned.

5.2 Disclosure Obligations

In Puerto Rico, there is no general statutory requirement to publicly disclose a private, contract-based JV at any stage. However, the timing and obligation to disclose may be triggered if a participant is a publicly traded company subject to SEC rules; if the JV is structured by forming a new legal entity (like a PR LLC or Corporation), the disclosure occurs at closing when the organisation documents are filed with the Puerto Rico Department of State; and/or if the JV crosses specific market concentration thresholds, a notification must be filed with the Office of Monopolistic Affairs of the PR Department of Justice prior to closing. If none of these conditions apply, the JV remains an entirely private contractual matter.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Regarding conditions precedent, the parties typically establish specific milestones that must be met before the transaction closes, such as:

- obtaining necessary regulatory licences;
- ensuring compliance with industry-specific statutory requirements;
- securing initial capital funding; and
- verifying the availability of a specialised workforce or necessary technology.

These conditions are tailored to the joint venture's specific industry and are essential for ensuring the entity is legally and operationally ready to launch.

Regarding any material adverse change (MAC) and force majeure, these provisions are standard negotiation points addressed during the drafting stage to protect parties against significant, unforeseen disruptions. A MAC clause allows parties to address substantive negative shifts in the other partner's business or financial status, while force majeure covers uncontrollable events, such as natural disasters or civil disturbances, that could render performance impossible. If these events occur, they can lead to the suspension, renegotiation or termination of the deal, which is why parties must meticulously define the triggers and consequences of these clauses before the final agreement is signed.

5.4 Legal Formation and Capital Requirements

Setting up a joint venture in Puerto Rico usually begins with one of two choices: (i) a purely contractual arrangement, or (ii) a dedicated legal entity. Where the parties want a separate vehicle, the limited liability company is the most common option. It is formed by filing a certificate of formation with the Puerto Rico Department of State under the General Corporations Act (Act 164-2009) and is governed by a negotiated operating agreement. Corporations are available under the same statute. A contractual joint venture requires no public filing and takes effect on the terms the parties agree.

Puerto Rico law sets no minimum capital requirement for an LLC or a corporation, although a best practice is to include a nominal capital contribution upon formation. The parties fix capital contributions, their timing and the consequences of a failure to fund in the operating or joint venture agreement.

Foreign participation faces no general ownership restriction. Non-residents may hold up to 100% of a Puerto Rico LLC or corporation and may serve as directors or officers. A foreign entity that transacts business on the island must obtain authorisation to do business from the Department of State and maintain a resident agent there; the registered-agent requirement sits at 14 LPRA Section 3810 for foreign corporations and Section 4023 for foreign limited liability companies. A foreign entity that does business without that authorisation cannot bring suit in the Puerto Rico courts until it qualifies. Sector-specific approvals can apply in regulated industries. US federal sanctions apply in Puerto Rico, so foreign participants should also be screened for OFAC exposure before admission (see **3.3 Sanctions, National Security and Foreign Investment Controls**).

A different path applies when the venture targets a government project under the Public-Private Partnerships Act (Act 29-2009, codified at 27 LPRA Section 2601 et seq). The Act lets parties bid as a consortium without first forming a registered Puerto Rico entity, and the consortium is qualified on the combined capabilities of its members (Article 9 (d); Authority's 2017 procurement regulation, Section 5, Qualification of Proponents). At that stage the participants register with the Public-Private Partnerships Authority as prospective proponents; the procurement does not run through the Department of State. Registration with the Department of State is the ordinary step of qualifying a vehicle to do business under the General Corporations Act (Act 164-2009), and it matters only if the consortium is selected and organises an entity to execute and perform the partnership contract. That sequence lets bidders pursue a procurement before they stand up and capitalise a formal entity.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

Documenting a JV is fundamentally a business decision that must be codified into a legally sound structure, with the specific form often determined by the industry and the nature of the relationship. While a JV can be structured as a simple contractual agreement between parties, it is also standard practice to create a new, distinct legal entity, typically an LLC, to house the joint enterprise. Regardless of the chosen vehicle, the terms must be commercially acceptable to ensure long-term operational alignment. A comprehensive corporate JV agreement should explicitly cover, among other things:

- the specific or general purpose and objectives of the venture to ensure all parties remain aligned;
- the established duration of the relationship or the entity's existence, as applicable; and
- the specific roles and responsibilities of each party, clearly delineating who bears accountability for distinct operational functions.

Furthermore, the agreement must include:

- robust exit strategies and buyout provisions to address potential dissolutions; and
- transfer clauses, such as "piggyback" (tag-along) rights, that govern how and when ownership interests may be sold or assigned to third parties, and/or prohibitions for such transfers.

6.2 Governance and Decision-Making

Decision-making within a JV entity is typically structured based on the scale and complexity of the operation, generally utilising a tiered governance framework. For smaller or less complex JVs, decision-making is often streamlined through direct management by members or managers, where voting is conducted based on established percentages or board consensus. In larger-scale operations, day-to-day operational issues and routine administrative tasks are delegated to managers, administrators or executive officers, while material or strategic decisions are escalated to a board vote or member-level approval to ensure proper oversight of significant business risks.

6.3 Funding

Joint ventures are typically funded through a hybrid approach combining initial equity contributions from the members and third-party debt sourced from financial institutions, investment funds or accredited investors. To manage the JV's capital requirements over time, agreements often include "capital call" provisions that mandate additional contributions from partners, while detailing the consequences of non-payment, such as the dilution of the defaulting partner's ownership interest. To address future equity funding and potential shifts in control, pre-emptive rights are incorporated, as well as rights of first refusal, which allow existing partners to maintain their pro-rata ownership by purchasing new equity before it is offered to external parties. These contractual frameworks are essential to maintain the JV's stability and investor sentiment, ensuring that ownership changes are handled transparently through updated operating agreements without triggering operational or debt-covenant compliance issues.

6.4 Deadlocks

Crucially, a professional-grade governance framework must include robust deadlock resolution mechanisms to address impasses, particularly in balanced or 50/50 ownership structures. These mechanisms often include mandatory mediation or arbitration by a neutral third party, or contractual "buy-sell" provisions, which force a partner to either buy out the other or sell their own interest at a specified price. Incorporating these provisions ensures that the venture remains functional during disputes, preventing the operational paralysis that can otherwise arise when stakeholders are unable to reach a consensus on critical business matters.

6.5 Other Documentation

Although the JV agreement establishes the principal commercial and governance framework, it is rarely sufficient on its own. Experience has shown that the supporting documentation depends on the nature of the business and the assets each party contributes. In addition to the JV entity's constitutional documents, parties frequently execute separate agreements addressing IP, asset transfers, financing, employment, confidentiality and regulatory compliance. This approach permits greater precision regarding ownership, permitted use, improvements, sublicensing, maintenance obligations and post-termination rights.

Similarly, if tangible or intangible assets are transferred into the JV entity, separate contribution or assignment agreements should clearly identify the transferred assets, establish valuation methodologies, allocate pre-closing liabilities and confirm that all required third-party consents have been obtained. On the other hand, cross-border JVs frequently require additional documentation addressing export controls, data privacy, transfer pricing and tax matters.

6.6 Rights and Obligations of JV Partners

The JV parties' rights and obligations are determined primarily by contract. Since Puerto Rico lacks a dedicated joint venture statute, the parties enjoy broad freedom under the Puerto Rico Civil Code to define their respective economic interests, governance rights, management responsibilities and allocation of business risks, provided their agreement does not contravene mandatory law or public policy. JV agreements typically establish each party's obligations, economic rights and right to receive financial information concerning the venture's performance.

Accordingly, Puerto Rico law generally permits participants to determine how profits and losses will be allocated. While distributions frequently align with ownership interests, sophisticated transactions often adopt more complex economic arrangements reflecting unequal capital contributions, preferred returns, performance incentives or staged investment struc-

tures. Access to financial and operational information is fundamental to effective JV governance. Accordingly, JV agreements commonly require:

- the preparation and delivery of audited annual financial statements;
- quarterly management reports;
- approved budgets;
- compliance certifications;
- litigation updates; and
- notices of material adverse developments.

The parties' liability depends principally upon the legal structure selected for the venture. Where the JV operates through an LLC or corporation, parties generally benefit from limited liability and are not personally responsible for the entity's debts or obligations beyond their agreed capital commitments, absent fraud, abuse of the corporate form, personal guarantees, or other exceptional circumstances warranting disregard of the entity's separate legal existence. When the parties elect to operate through a contractual arrangement without forming a separate legal entity, liability may be significantly broader.

6.7 Minority Protection and Control Rights

Although the Puerto Rico General Corporations Act provides certain statutory rights to shareholders and members, sophisticated JVs generally supplement those protections through detailed governance provisions negotiated at the outset of the relationship. The principal objective is to ensure that minority participants retain meaningful oversight without impairing the venture's efficient operation. Accordingly, JV agreements commonly distinguish between ordinary operational decisions, which management may handle, and fundamental corporate actions that require enhanced approval rights.

Puerto Rico law generally enforces these contractual governance arrangements, reflecting the strong policy favouring freedom of contract embodied in both the Puerto Rico Civil Code and the Puerto Rico General Corporations Act. Particularly in LLCs, the Puerto Rico General Corporations Act permits members to tailor governance arrangements with considerable flexibility, making the operating agreement the principal instrument for protecting minority interests.

6.8 Applicable Law and Dispute Resolution in International JVs

Puerto Rico is an attractive jurisdiction for international JV's because it combines a US legal framework with a civil law tradition. The governing law selected by the parties should reflect the transaction's nature, the assets' location, the regulatory environment, and the jurisdictions where they operate.

Where the JV entity is organised under Puerto Rico law, parties commonly designate Puerto Rico law as the substantive law governing the venture's corporate and contractual aspects. Puerto Rico courts generally recognise and enforce contractual choice-of-law provisions, provided they bear a reasonable relationship to the transaction and do not contravene Puerto Rico public policy or mandatory statutory provisions. For cross-border transactions, parties should also evaluate the interaction between Puerto Rico law, applicable federal law and the laws of other jurisdictions implicated by the venture.

The applicable law and any dispute resolution selection are matters negotiated and agreed upon in the contract. Although parties may submit disputes to the courts of the Commonwealth of Puerto Rico or the United States District Court for the District of Puerto Rico where jurisdiction exists, sophisticated commercial transactions increasingly favour arbitration because of its confidentiality, procedural flexibility and relative efficiency in resolving complex business disputes. Multi-tiered dispute resolution clauses – requiring negotiation, executive escalation, mediation and finally binding arbitration – have become common market practice.

Puerto Rico has adopted the Arbitration Act (Act 147-2024) as controlling in matters involving arbitration agreements. Depending on the transaction, parties often select arbitration rules administered by the American Arbitration Association (AAA) or the International Chamber of Commerce (ICC), particularly when foreign participants are involved. Careful drafting of these provisions substantially reduces jurisdictional disputes and provides greater predictability for international investors, lenders and strategic business partners.

7. The JV Board

7.1 Board Structure

When a JV is organised as a corporation under the Puerto Rico General Corporations Act, management is generally vested in a board of directors. Otherwise, when the JV is structured as an LLC the parties enjoy substantially greater flexibility. This flexibility has made the LLC the preferred vehicle for most private joint ventures in Puerto Rico.

In practice, the parties negotiate and agree on the composition of the board of directors. Each party commonly receives the right to appoint one or more directors proportionate to its ownership interest, although equal representation is frequently negotiated in strategic alliances or 50/50 ventures irrespective of capital contributions. The governing agreement generally distinguishes between ordinary business decisions, which a simple majority may approve, and reserved matters, which require unanimous approval or a super-majority vote.

The Puerto Rico General Corporations Act establishes relatively few restrictions regarding director qualifications. Unless the by-laws state otherwise, directors are not required to be residents or citizens of Puerto Rico, allowing foreign individuals to serve on the boards of Puerto Rico entities. Puerto Rico law strongly embraces the principle of contractual freedom; accordingly, sophisticated JV agreements frequently allocate enhanced governance rights through reserved matters, veto rights, class voting arrangements, appointment rights or shareholder agreements rather than through disproportionate voting power at the board level. The parties should carefully negotiate board composition at the outset of the relationship, ensuring that governance mechanisms strike an appropriate balance between operational efficiency and minority investor protection.

7.2 Duties and Functions of JV Boards and Directors

Directors of a corporation organised under Puerto Rico law owe fiduciary duties to the corporation and its shareholders. The Puerto Rico General Corporations Act expressly recognises the duty of care and the duty of loyalty, both of which also apply to officers, managing members, managers of LLCs, and, in certain circumstances, controlling shareholders. These duties require directors to act in good faith, on an informed basis, in the best interests of the entity, while avoiding conflicts between personal interests and corporate interests.

Accordingly, JV governance structures frequently establish specialised committees responsible for audit, compliance or other matters. The Puerto Rico General Corporations Act does not impose comprehensive periodic reporting obligations comparable to those applicable to publicly traded companies. Instead, reporting obligations are generally established through the by-laws, operating agreement, shareholders' agreement or financing arrangements. In practice, JV agreements commonly require management to provide periodic financial statements and compliance certifications.

7.3 Conflicts of Interest

Conflicts of interest represent one of the most significant governance risks in a JV because directors frequently maintain ongoing business relationships with their appointing parties. In Puerto Rico, these dual roles are common and not prohibited. Instead, the Puerto Rico General Corporations Act establishes procedural safeguards designed to ensure that conflicted transactions are reviewed and approved fairly and in the corporation's best interests. Interested-director transactions are not automatically void or voidable merely because of the conflict; rather, their validity generally depends on appropriate disclosure, approval by disinterested decision-makers where applicable, or a demonstration that the transaction is fair to the corporation. Accordingly, JV agreements frequently supplement statutory requirements by establishing detailed conflict-management procedures, including mandatory disclosure of actual or potential conflicts. While the parties enjoy substantial freedom to design governance structures that reflect their commercial expectations, directors remain subject to the duties of care and loyalty. Directors may incur liability if they fail to act in the entity's best interests or if they engage in unfair self-dealing.

8. IP and ESG

8.1 Ownership and Use of IP

Intellectual property (IP) is frequently among the most valuable assets contributed to or developed by a JV, particularly in Puerto Rico, where companies benefit from tax incentives under Act 60-2019, PR Incentives Code. Given that Puerto Rico does not have a separate statutory regime governing IP ownership, its ownership right is determined principally by contract, subject to applicable federal IP laws and general principles of Puerto Rico contract law. Puerto Rico protects trade secrets primarily through the Industrial and Trade Secret Protection Act of Puerto Rico (Act No 80-2011), which is closely modelled on the Uniform Trade Secrets Act (UTSA). Moreover, because Puerto Rico is a United States jurisdiction, patents, trade marks and copyrights are governed primarily by federal law, along with Puerto Rico's general contractual and tort principles.

From a corporate perspective, parties should negotiate and identify at the outset whether each IP asset constitutes pre-existing IP contributed by a party or new IP developed through the JV. Where the JV is established through a separate legal entity, usually an LLC, the parties must determine whether contributed IP will be assigned to the JV entity or merely licensed for the duration of the collaboration. In the PR jurisdiction, it is common practice for many contributors to prefer licensing over assignment to preserve ownership of proprietary technology while granting the JV sufficient rights to achieve its commercial objectives. Therefore, the JV agreement should clearly address ownership of pre-existing IP, any improvements and derivative works, trade marks, copyrights and trade secrets developed during the collaboration, and confidentiality obligations, allocation of revenues and rights upon termination of the JV.

When foreign investors participate in a Puerto Rico JV, it is important to consider the territorial scope of IP registrations. Ownership should be co-ordinated with tax planning and transfer pricing considerations to avoid unintended consequences in cross-border operations. In practice, it is recommended to prepare an IP schedule identifying the following before execution of the JV agreement:

- all contributed assets;
- registration numbers;
- pending applications;
- software;
- databases;
- trade secrets;
- proprietary know-how; and
- existing licences.

This approach significantly reduces ownership disputes and facilitates future financing, due diligence exercises, mergers or exits.

Puerto Rico's legal framework affords considerable flexibility in structuring LLC operating agreements and shareholders' agreements. This enables parties to tailor the following to the venture's commercial objectives:

- allocation of ownership;
- management;
- voting rights;
- economic benefits; and
- commercialisation authority.

Likewise, the Puerto Rico Civil Code recognises the autonomy of contracting parties, allowing sophisticated commercial entities broad latitude to determine their respective rights and obligations, provided such agreements do not contravene law, public policy or mandatory legal provisions.

8.2 Licensing v Assignment of IP Rights

The choice between licensing and assigning IP rights to a JV vehicle requires careful balancing of legal, commercial and tax considerations. It depends on the commercial objectives of the venture and the parties' negotiations. In Puerto Rico, there is no statutory preference for either structure, and parties generally have broad contractual freedom to determine the most appropriate allocation of ownership. Nonetheless, in most commercial transactions, licensing is the preferred approach because it allows a party to retain ownership while granting the JV the necessary rights to use the technology. Licensing also allows the contributor to continue exploiting the same assets outside the JV, subject to any agreed exclusivity restrictions. By contrast, assignments are typically reserved for

IP created exclusively by the JV or when centralised ownership is essential for investment. Special attention should be given to jointly developed IP since disputes frequently arise regarding licensing authority, enforcement rights, revenue sharing and future commercialisation. Accordingly, in Puerto Rico it is common practice to expressly recommend that parties explicitly identify whether jointly developed IP will be owned jointly, assigned to the JV entity or allocated according to each party's contribution.

8.3 ESG Considerations in JVs

In Puerto Rico, due to its political relationship with the United States, location and economic position, ESG considerations have become an increasingly important component of JV planning. On the environmental front, Puerto Rico's Energy Public Policy Act (Act 17-2019) establishes a statutory commitment to achieve 100% renewable energy by 2050 and has materially affected the energy sector JV landscape as utilities, independent power producers and community energy groups form JV to develop solar, wind and battery storage projects. Significant energy development projects require environmental permitting from the Puerto Rico Department of Natural and Environmental Resources (DRNA) and approvals from the Puerto Rico Energy Bureau. Compliance with these requirements is now routinely addressed in JV representations and covenants.

On the other hand, the PR General Corporations Act (Act 164-2009) provides a vehicle for socially oriented JVs through its Social Purpose LLC provisions, which combine commercial activity with the advancement of one or more charitable purposes. For JVs with international or institutional investors, ESG due diligence has become a standard component of the pre-closing process. JV agreements now routinely include ESG representations and covenants requiring compliance with applicable environmental laws, anti-corruption standards, human rights due diligence, and financial disclosures. Puerto Rico's active role in federal disaster recovery programmes following Hurricanes Maria and Fiona has heightened awareness of climate risk as a material ESG factor for JV assets located on the island, and investors now regularly conduct climate resilience assessments as part of JV due diligence.

9. Exit Strategies and Termination

9.1 Termination of a JV

Unlike certain jurisdictions, Puerto Rico lacks a statutory framework specifically governing the dissolution or termination of JVs. Instead, termination depends on the contractual arrangements negotiated by the parties and, if the JV is a separate legal entity, the applicable provisions of the Puerto Rico General Corporations Act and the Puerto Rico Civil Code.

As a matter of practice, sophisticated JV agreements identify both the events giving rise to termination and the procedures that will govern the winding-up process. Where the JV operates through a Puerto Rico LLC, the operating agreement typically governs dissolution and liquidation. As previously mentioned, the Puerto Rico General Corporations Act affords members substantial contractual flexibility to determine dissolution events, liquidation procedures, voting thresholds, and the distribution of remaining assets. This principle of "private ordering" is a principal reason why LLCs have become the preferred vehicle for joint ventures in Puerto Rico.

If the JV is organised as a corporation, dissolution generally follows the procedures established in the Puerto Rico General Corporations Act, including:

- board and shareholder approval where required;
- filing a certificate of dissolution with the Puerto Rico Department of State;
- satisfying creditors' claims; and
- distributing remaining assets after paying corporate liabilities.

The Puerto Rico Civil Code further supplements these statutory rules by recognising the binding nature of contractual obligations and the autonomy of contracting parties to establish the causes and consequences of termination, provided such provisions do not violate mandatory law or public policy. Consequently, carefully drafted termination provisions significantly reduce litigation risk by providing certainty regarding post-termination rights and obligations.

9.2 Asset Redistribution and Transfers

The redistribution of assets upon termination frequently represents one of the most heavily negotiated aspects of a JV. Puerto Rico law largely defers to the contractual allocation negotiated by the participants, subject to creditors' rights and mandatory corporate law provisions applicable during liquidation.

A distinction should be made between assets originally contributed by a party and assets acquired or developed by the JV. Assets contributed by a party may either remain the contributing party's property under a licence arrangement or become the JV entity's property through assignment. The agreement should expressly determine whether contributed assets automatically revert to the original owner upon termination, remain with the entity for liquidation, or are subject to purchase by another party. On the other hand, assets acquired or generated during the operation of the JV are generally treated as assets of the JV entity. Unless otherwise agreed, these assets are liquidated or distributed after the venture's liabilities are paid and in accordance with the ownership interests or distribution waterfall established by the governing agreement (operating agreement, by-laws or JV agreement). Likewise, assigning contractual rights under financing agreements, permits, government contracts or commercial leases may require consent from the lender, landlord or government entity.

9.3 Exit Strategy

Generally, Puerto Rico law affords parties broad contractual freedom to determine how they may exit a JV. Accordingly, most exit mechanisms are governed primarily by the JV agreement, operating agreement, shareholders' agreement or buy-sell agreement rather than by mandatory statutory provisions. The Puerto Rico General Corporations Act expressly embraces contractual flexibility, particularly for LLCs, allowing members to regulate transfer restrictions and buyout mechanisms with considerable latitude. Although statutory requirements govern certain corporate actions, shareholders' agreements remain an important mechanism for regulating share transfers, voting arrangements and exit rights.

The most common exit mechanisms used in Puerto Rico include:

- negotiated buyouts among existing parties;
- rights of first refusal;
- tag-along (co-sale) rights;
- drag-along rights;
- mandatory buy-sell provisions;
- third-party sales and mergers or acquisitions involving the JV; and
- voluntary dissolution and liquidation.

Exit provisions frequently become particularly important in 50/50 JV's where governance deadlocks may prevent effective management. For this reason, in the PR jurisdiction it is common to incorporate mandatory mediation, arbitration or contractual buy-sell procedures designed to avoid prolonged operational paralysis while preserving enterprise value.

Transfer restrictions are equally significant because participants often select their business partners based upon strategic expertise, financial capacity, reputation, qualifications or capabilities. Accordingly, JV agreements commonly prohibit transfers to third parties without prior approval or require existing participants to receive a right of first refusal before any proposed transfer occurs. From a practical standpoint, an effective exit strategy should also address:

- a valuation methodology;
- payment timing;
- financing;
- assumption of liabilities;
- confidentiality obligations; and
- ongoing indemnification responsibilities.

Trends and Developments

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Puerto Rico as a Strategic Platform for Cross-Border Joint Ventures

The current economic landscape, coupled with increasing geopolitical tensions among the world's principal commercial powers, has positioned Puerto Rico as a uniquely attractive jurisdiction for the structuring of cross-border joint ventures. The island offers a distinctive combination of legal, tax and strategic advantages that few jurisdictions can replicate, unrestricted access to the United States market, participation in the US federal system, a tax incentive regime unparalleled, and a legal framework that harmonises civil law traditions with the principles of common law.

This hybrid legal structure is not an anomaly, but rather a competitive advantage. For international investors seeking access to the US market, Puerto Rico serves as a gateway operating under US federal law while simultaneously benefiting from the regulatory flexibility of a jurisdiction that has deliberately modernised its corporate and economic development laws to attract international capital.

Corporate legal framework and the legal nature of joint ventures in Puerto Rico

The legal framework governing the formation and operation of entities through which joint ventures are structured in Puerto Rico is primarily found in Act No 164 of 16 December 2009, as amended, known as the Puerto Rico General Corporations Act (the "Corporations Act"). The Corporations Act was modelled after the Delaware General Corporation Act, which is widely regarded as the gold standard of corporate law in the United States and serves as a benchmark for sophisticated transactional practice worldwide.

The adoption of the Delaware model was not merely formal. The Supreme Court of Puerto Rico has consistently recognised that decisions issued by the Delaware Court of Chancery and the Delaware Supreme Court constitute highly persuasive authority when interpreting analogous provisions of Puerto Rico's corporate statutes. See *DACO v Alturas Fl. Dev. Corp.*, 132 D.P.R. 905, 915–16 (1993). As a result, Puerto Rico's corporate legal framework benefits from a highly developed body of jurisprudence that provides a level of predictability and legal certainty comparable to that available in the most sophisticated commercial jurisdictions.

Unlike corporations or limited liability companies, joint ventures are not independently codified under Puerto Rico law. Rather, their existence, defining characteristics and legal effects have been developed primarily through case law, largely influenced by common and civil law contractual principles.

The Puerto Rico Court of Appeals, in *Lloréns v Arribas*, 2008 PR App. LEXIS 4042, relying on Delaware jurisprudence, has defined a joint venture as an enterprise in which the participants possess an equal degree of control over the business and has identified the following essential elements:

- a community of interest in pursuing a common purpose;
- joint control or a joint right of control;
- a joint proprietary interest in the subject matter of the enterprise;
- a right to share in profits; and
- an obligation to share in losses.

This framework confirms the fundamentally contractual nature of joint ventures in Puerto Rico. In the absence of comprehensive statutory provisions governing such arrangements, the parties retain broad discretion to structure and regulate their common enterprise through contract. This flexibility is one of the principal features that makes Puerto Rico particularly attractive to sophisticated investors seeking to tailor governance, economic arrangements and risk allocation to the unique circumstances of a transaction, industry or commercial relationship.

This contractual flexibility is complemented by a robust statutory incentive framework. Among the most significant statutes are Act No 60 of 1 July 2019, known as the Puerto Rico Incentives Code (Act 60-2019), which consolidates and modernises Puerto Rico's tax incentive regime for eligible business activities, and Act No 29 of 8 June 2009, known as the Puerto Rico Public-Private Partnerships Act (Act 29-2009), which establishes the legal framework governing collaboration between the public and private sectors in infrastructure and public-service projects. Together, these statutes provide additional legal certainty and economic incentives that further enhance Puerto Rico's attractiveness as a jurisdiction for cross-border investment structures.

Governance, capital formation and exit strategies

The structuring of a joint venture under Puerto Rico law is, fundamentally, the result of a sophisticated negotiation process through which the parties seek to align interests, allocate risks, define their respective responsibilities, and establish the rules that will govern both the operation and eventual termination of the enterprise.

A joint venture may be structured through a standalone contractual arrangement, a limited liability company operating agreement, a shareholders' agreement, or another organisational structure selected by the parties. Regardless of the vehicle employed, the governing agreement will serve as the principal document regulating the relationship among the participants and will typically supplement, modify or expand upon the default provisions otherwise applicable under the Corporations Act and the Puerto Rico Civil Code.

In recent years, Puerto Rico has experienced an increased implementation of joint venture structures across a variety of industries. This trend is largely attributable to the considerable contractual freedom available to parties when designing governance arrangements tailored to their needs. Such provisions frequently address matters including:

- board composition and operation;
- voting thresholds;
- veto rights; and
- related-party transactions.

These considerations have become particularly significant in renewable energy joint ventures, where projects often involve multiple investors, developers, lenders and governmental stakeholders.

From a financial perspective, capital structure remains one of the most complex and commercially significant aspects of any joint venture negotiation. This complexity is further amplified when the venture operates pursuant to a tax exemption decree granted under Act 60-2019. In such circumstances, the parties must carefully consider compliance with the conditions imposed by the decree, which may include minimum investment requirements, job creation obligations, and the maintenance of substantial business operations within Puerto Rico. Failure to satisfy these requirements may result in the loss or revocation of valuable tax benefits previously granted by the government of Puerto Rico.

A well-drafted joint venture agreement must also address, with specificity, the mechanisms through which the parties may ultimately unwind their relationship. Among the exit mechanisms most commonly utilised in Puerto Rico are buy-sell provisions, drag-along rights, tag-along rights, and orderly liquidation provisions governing the dissolution of the enterprise and the distribution of liquidation proceeds in accordance with the priority structure agreed upon by the parties.

Puerto Rico courts have also addressed the legal consequences of deadlock situations within joint ventures. In *Lloréns v Arribas*, discussed above, the Court of Appeals held that judicial dissolution of a corpora-

tion operating as a joint venture may be appropriate under Section 9.03 of the Corporations Act where:

- the corporation is organised under the laws of Puerto Rico;
- it has only two shareholders, each holding a 50% ownership interest;
- the entity constitutes a joint venture; and
- an irreconcilable deadlock prevents the shareholders from agreeing on the continuation of the business or the disposition of its assets.

In reaching its decision, the court rejected the notion that a joint venture must be limited to a single transaction or specific project, recognising instead that a joint venture may encompass corporations formed to conduct ongoing business operations. Consequently, where two participants possessing equal control become unable to make fundamental decisions regarding the operation or termination of the enterprise, judicial dissolution may serve as an appropriate remedy to resolve the impasse and facilitate the orderly liquidation of the entity's assets.

The combination of contractual flexibility, complete corporate legislation, access to US markets, and a favourable investment environment makes Puerto Rico a particularly attractive jurisdiction for the formation of complex joint ventures and cross-border investment structures. As global economic conditions continue to evolve, joint ventures are expected to play an increasingly significant role as vehicles for foreign direct investment, strategic partnerships and economic development initiatives throughout Puerto Rico.

Joint ventures formed to compete for public-private partnerships

Some of Puerto Rico's largest joint ventures exist to let private parties compete jointly for, and then perform, a public-private partnership with the government. The Public-Private Partnerships Act (Act 29-2009, codified at 27 LPRA Section 2601 et seq) governs infrastructure and public-service projects in which a government entity contracts with private capital. The joint venture sits on the private side. Developers, investors and contractors team up to qualify, bid and deliver, and the government is the counterparty to the resulting partnership contract rather than a member of the venture.

The Act expressly allows this teaming. Under Article 9 (d), prospective proponents may submit a proposal jointly as a consortium, and the Public-Private Partnerships Authority qualifies the consortium on the combined financial and technical capabilities of its members. How those members share cost, risk, scope, control and upside is governed by their joint venture agreement, the same instrument that drives any private joint venture. What changes is the orientation: the venture is built to win and perform a government contract, so its terms must track the procurement and the partnership contract that follow.

The procurement shapes the venture's timeline. A project moves from a Study of Desirability and Convenience to a Request for Qualifications, a Request for Proposals, evaluation and selection, negotiation and award. A consortium that intends to bid has to form early enough to qualify, and its members must commit to a structure before they know whether they will prevail. The Act also recognises unsolicited proposals, which let a private team originate a project and bring it to the Authority. The 30-year concession to redevelop the San Juan Bay cruise piers, for example, began as an unsolicited proposal before proceeding through the competitive process to award. That route rewards ventures able to package financing and technical capability ahead of any government tender.

If the consortium prevails, it organises the contracting vehicle that signs and performs the partnership contract. That contract may take the form of a concession, a management or operation agreement, or a long-term lease, and the Act caps its term so that the public retains ultimate control of the asset. The agreements that make up the partnership become part of the public record, so the venture's members should expect their arrangement to face a level of disclosure that a purely private joint venture avoids.

Two features make these ventures central to the cross-border story, and both turn on Puerto Rico's place in the US federal system. First, the Act contemplates the use of federal and local funds, and many of the island's largest projects, in energy, water, transporta-

tion and post-disaster reconstruction, draw heavily on federal dollars. That funding layers federal procurement, environmental and oversight requirements onto the local process, and it shapes what the consortium must be able to deliver. Second, approval of a partnership contract climbs to the Governor. A venture whose members understand both the local approval chain and the federal funding conditions competes from a stronger position than one that treats the project as a purely local matter.

The energy transition shows the pattern. Renewable-generation and grid projects pull together developers, lenders and equity investors, and they increasingly reach the market as consortium joint ventures bidding into a government-led process. LUMA Energy, the operator of the island's electricity transmission and distribution system, is itself such a venture: a joint venture of Quanta Services and ATCO selected by the Authority for a 15-year operation-and-maintenance agreement. In these deals, the joint venture agreement does double duty: it aligns the private members with one another and positions the group to meet both the Authority's qualification standards and the obligations of the partnership contract.

The practical takeaway is that a joint venture aimed at a public-private partnership needs a longer and more disciplined runway than a private deal. Members commit capital and accept confidentiality and procurement constraints before the outcome is known. The reward is access to assets and revenue streams that are otherwise closed to private capital, under a contract backed by statute, which is why this remains one of the most consequential settings for joint venture activity on the island.

What to watch

Puerto Rico's partnership framework is not static. The Legislature amended Act 29-2009 twice in the last 18 months through Act 181-2025 and Act 66-2026. The change that matters most to bidders is the certification added by Act 66-2026, which requires a proponent to certify that it will not subcontract the agreement's goods or services to its shareholders, partners, related entities and others. For a consortium, whose members and their affiliates often expect to perform work, that certification has to be mapped against the intended subcontracting structure from the outset. A partnership procurement can run for years, and the rules in force at award may differ from the rules that applied when the process began.

Three themes are likely to shape joint venture activity over the next cycle.

- Energy and grid modernisation will remain the most active arena.
- Unsolicited proposals reward private parties that can originate well-structured projects, especially teams that can package financing and technical capability before government tender and move early on the qualification process.
- The federal interface will keep separating the prepared from the unprepared. Companies who plan early for federal funding conditions, sanctions screening and national-security review move faster than those who treat Puerto Rico as a purely local jurisdiction.

Puerto Rico is a US jurisdiction that rewards partners who treat the regulatory process as part of the deal rather than a formality that follows after. For cross-border investors weighing where to place capital, the island's combination of a statutory partnership regime, a modern corporate law and direct access to the US market keeps the joint venture at the centre of the investment cycle ahead.

ROMANIA

Law and Practice

Contributed by:
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Vlăsceanu & Partners (VLP) is recognised as a leading independent Romanian law firm in M&A transactions, having advised on some of the most consequential renewable energy transactions in Romania over the past decade. The firm's rigorous and methodical approach to transactional practice encompasses all stages of corporate and M&A mandates, from due diligence conducted in close collaboration with sector-specific advisory teams, transaction structuring and negotiation, to execution and post-closing implementation. VLP's particular strength lies in regulated industries (such as energy and related infrastructure) where successful deal execution requires the seamless integration of permitting, grid connection, bankability and regulatory compliance considerations into the transactional framework. The firm provides its corporate clients with integrated legal assistance across financing, employment, regulatory and permitting, information technology and competition law. VLP is an active member of ROPEA, AmCham Romania, RPIA and Ally Law, an international legal network fostering cross-border collaboration.

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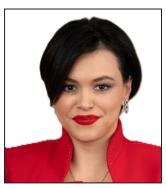

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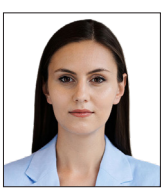

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1. Market Conditions

1.1 Geopolitical and Economic Factors

The past 12 months have been defined by several global and domestic fluctuations, which may drive future transactional activity in Romania in both the short and medium terms.

In the context of Romania's commitments under the National Plan for Recovery and Resilience and its overall tax collection objectives, several key changes have been implemented with a practical impact on future transaction structuring, among which are the following:

- the tax on dividends was increased from 10% to 16% for dividends distributed as of 1 January 2026, following the earlier increase from 8% to 10% applicable to distributions made from 1 January 2025;
- the tax on capital gains from securities executed through intermediaries was increased from 1% to 3% for assets held more than 365 days, and from 3% to 6% for assets held less than 365 days, and the tax on capital gains from securities executed without intermediaries was increased from 10% to 16%, in each case for transactions carried out from 1 January 2026;
- the standard value-added tax (VAT) rate was increased from 19% to 21% as of August 2025, while the previously applicable reduced VAT rates of 9% and 5% were consolidated into a single reduced rate of 11%; and
- the inclusion of minimum share capital thresholds for limited liability companies and a tax notification and guarantee mechanism on transfers of shares in such companies, both of which are addressed in **4.1 Notable Recent Decisions or Statutory Developments**.

The war in Ukraine, together with the EU's energy transition commitments, have given more importance to domestic energy production in an already expanding energy market. In this context, transaction activity in the energy market has accelerated, showing the expanding appetite of both domestic and foreign players across the full spectrum of greenfield investments, acquisitions and reorganisations. Renewable energy and energy storage have been particularly active segments of the market.

1.2 Industry Trends and Emerging Technologies

The energy sector – and particularly, renewable energy – has been one of the most active areas for joint venture (JV) activity in Romania.

The digital infrastructure sector has been following the upward trajectory of the renewable energy sector, emerging as a recently highly active area, particularly for data centres and cloud services which are attracting investors' interest.

The growing use of artificial intelligence (AI), together with other highly digitalised processes, is reshaping the regulatory landscape and consequently the course of JV vehicles (eg, AI regulation and cybersecurity leg-

islation require parties to address their responsibilities in the event of potential incidents).

From a foreign investment perspective, certain active sectors (energy, transport, data processing and storage, etc) remain subject to the screening process, thus shaping the timeline and structure of JV deals.

2. JV Structure and Strategy

2.1 Typical JV Structures

Romanian law does not provide a dedicated "joint venture" legal form. Instead, parties choose from among existing legal structures depending on the size of the venture, the number of participants, governance preferences and capital requirements.

Romanian law offers two fundamentally different paths: contractual JVs and corporate JVs.

Contractual JVs are known under Romanian law as "*asocieri în participatie*" and are governed by Law No 287/2009 regarding the Civil Code (the "Civil Code").

A contractual JV does not acquire legal personality (ie, the associates do not establish a new legal entity as a result of the agreement) and does not constitute, vis-à-vis third parties, a person distinct from the person of the associates. Accordingly, rights and obligations vis-à-vis third parties arise solely through the associate acting in its own name. A third party is bound only vis-à-vis the associate with whom it has contracted. The contractual allocation of liability between the associates under the JV agreement governs their internal relationship but does not, of itself, affect the rights of third parties. Each associate retains ownership of the assets it contributes unless otherwise agreed, written form is required only for evidentiary purposes rather than validity, and the arrangement is fiscally transparent, with each associate taxed individually on its share of the result.

Corporate JVs are typically implemented through two types of entity, namely:

- Limited liability company (SRL) – The share capital of an SRL is divided into equal social parts (shares). This type of corporate JV is highly flexible, with a low minimum required share capital at incorporation of RON500 (approximately EUR96.15 on the basis of an exchange rate of EUR1 = RON5.2 at the time of writing), subject to a higher capital requirement applicable to companies meeting the statutory turnover criterion, with the applicable statutory timing and transitional rules. The shareholders are liable only up to the amount of their subscribed share capital. For corporate JVs with a limited number of shareholders that do not require access to capital markets, these advantages make the SRL the more suitable and cost-effective choice.
- Joint stock company (SA) – In contrast to an SRL, an SA is the preferred vehicle for larger-scale corporate JVs, particularly where capital-raising, listing, complex share structures (eg, multiple classes of shares or preference shares) or the ability to issue bonds are anticipated. The SA's convening process is considerably more formalistic and time-consuming than the SRL's. This structure comes with a heavier governance and reporting framework, alongside a higher minimum required share capital and less flexibility regarding the procedures for convening a general meeting of shareholders (GMS).

2.2 Strategic Drivers for JV Structuring

In practice, corporate JVs are in their majority incorporated as SRLs (rather than SAs), considering their simpler incorporation requirements and more flexible corporate governance rules, for instance:

- The minimum required share capital for an SRL is RON500 (approximately EUR96.15), and RON5,000 (approximately EUR962) for an SRL with a net annual turnover exceeding RON400,000 (approximately EUR77,000). The minimum share capital for an SA is RON90,000 (approximately EUR17,310).
- SRLs may be incorporated by and operate with a sole shareholder, whereas SAs require a minimum of two shareholders. If an SA operates in breach of the minimum number of shareholders for a period exceeding nine months, any interested party may request the dissolution of the company. This is particularly relevant in view of regulating the exit

mechanisms by means of a shareholders' agreement (SHA).
- In terms of convening a GMS, for an SRL, the convening formalities are left to be regulated by its articles of association. If no rule is provided in its articles of association, then the director/board of directors must convene the GMS at least ten days prior to the meeting, by registered letter. Under Companies Law No. 31/1990 (the "Companies Law"), a GMS of an SA may be convened by the board of directors at least 30 days prior to the meeting, by publication of the convening notice in the Official Gazette and in one of the widely circulated newspapers in the locality where the company's registered office is situated, or in the nearest locality.

Notwithstanding the above, choosing the legal form of the JV vehicle also depends on the industry sector. Certain regulated activities – eg, banking, insurance or investment fund management – are subject to specific requirements, including:

- companies must be incorporated as SAs; and
- higher share capital requirements are imposed under the regulations and/or supervisory standards imposed by National Bank of Romania (BNR) or the Financial Supervisory Authority (ASF). For instance, non-bank financial institutions are required to keep a minimum share capital of EUR200,000, or EUR3 million for non-bank financial institutions that grant mortgage credit.

In such cases, the choice of vehicle is no longer a commercial decision, but a legal requirement for carrying out the activity at all.

Both types of entity (SRL and SA) allow flexible profit-sharing arrangements via SHAs and/or the articles of association. SAs are preferred when (i) the investors anticipate raising external investment by pursuing an eventual IPO or listing on the Bucharest Stock Exchange (BVB) or (ii) the JV partners require a more sophisticated profit allocation mechanism, due to the complexity of share classes.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

The general framework of contractual and corporate JVs includes the Civil Code and the Companies Law.

Establishing a JV may trigger, if all statutory requisites are met, the foreign direct investment (FDI) screening framework. In Romania, the FDI regime was established by Emergency Ordinance No. 46/2022 on the measures for the implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, as well as for the amendment and supplementation of Competition Law No. 21/1996 (the "FDI Law"). The FDI Law was substantially adjusted in March 2026, including:

- the FDI notification threshold was raised from EUR2 million to EUR5 million; and
- restructuring or reorganisation operations were exempted from the FDI notification requirement, if carried out by an EU investor, or by an investor from a state that has adhered to the OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations (the "OECD Codes"), and provided that: (i) the operation does not generate any change in effective control or in the ultimate beneficial owner (UBO); and (ii) the source of financing is intra-group or comes exclusively from the EU or from states that have adhered to the OECD Codes.

Regulatory oversight comes from a number of authorities:

- the Competition Council (RCC) and the Commission for the Examination of Foreign Direct Investments (CEISD) – regulatory bodies relevant for merger control and foreign direct investments, if relevant in the context of the transaction relating to the JV; and
- depending on the sector in which the JV vehicle operates, a regulatory body such as the Financial Supervisory Authority (ASF), the National Bank of Romania (BNR) or the National Energy Regulatory Authority (ANRE). Other regulated sectors (eg, tel-

ecommunications, insurance) may similarly trigger their own sector-specific regulators, and this list should not be treated as exhaustive.

The authority relevant for incorporation of a corporate JV is the National Trade Register Office (ONRC), which also administers the Register of Beneficial Owners. If the JV structure raises money-laundering risks, this must be reported to the National Office for the Prevention and Control of Money Laundering (ONPCSB), Romania's financial intelligence unit.

3.2 Anti-Money Laundering Compliance

The key anti-money laundering (AML) legislation applicable in Romania is Law No. 129/2019 on preventing and combating money laundering and terrorist financing (the "AML Law").

Under the AML Law, the main obligations incumbent upon a "reporting entity", if qualified as such, encompass:

- implementing customer due diligence measures, including identification and verification of the client and of the client's UBO; and
- reporting suspicious transactions to the ONPCSB.

All Romanian legal entities are required to obtain, hold and maintain up-to-date information on their UBO, and to declare it to the competent authority to be registered in the Register of Beneficial Owners, regardless of reporting-entity status.

As of May 2025, public access to the Register of Beneficial Owners is restricted. An interested party may obtain information as to the UBO of a company only if it can demonstrate a "legitimate interest".

3.3 Sanctions, National Security and Foreign Investment Controls

The applicable framework is Emergency Ordinance No 202/2008 on the implementation of international sanctions, which governs the national implementation of international sanctions established by UN Security Council resolutions and EU legal instruments. As a consequence, designated persons and entities are subject to a freeze of funds – a term expressly defined to include securities, shares, and equity interests in funds or economic resources – meaning that any restrictive measure set by the UN or EU preventing the circulation of such assets, their transfer, their use, access to such assets, or transactions involving such assets is mandatory.

Under the FDI Law, the Romanian regime is broader than those in many EU member states, because it applies to Romanian, other EU and non-EU investors alike. Screening is triggered where the investment:

- falls within a sensitive sector (eg, critical infrastructure, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, etc); and
- has a value exceeding EUR5 million.

Investments below that figure may still be examined where they could affect national security, public order or projects of EU interest, and interdependent transactions between the same parties within a one-year period may be aggregated to reach that figure.

Following the 2026 revision, the regime also expressly covers acquisitions of tangible or intangible assets in sensitive sectors, not only acquisitions of shares or control, subject to the conditions and thresholds set out in the FDI Ordinance as amended. The examination fee was reduced from EUR10,000 to EUR5,000, and the statutory review period was shortened. Clearance is a suspensive condition: the investment may not be implemented before such clearance is obtained (standstill obligation), and closing without clearance exposes the parties to administrative sanctions, including fines, and to the risk that the transaction will be unwound by order of CEISD.

Romanian law does not impose any special restriction on foreign investors setting up a new business in Romania or acquiring shares in a Romanian entity, beyond the prior approval requirements, as they may be applicable depending on the specific details of each transaction. However, there are restrictions in terms of acquiring ownership rights over land in Romania that are applicable to third-country nationals, stateless persons and legal entities belonging to non-EU/non-EEA states.

3.4 Competition Law and Antitrust

Romanian competition law (ie, Competition Law No 21/1996, hereinafter referred to as the "Competition Law") is triggered where establishing a JV meets the statutory requirements of an economic concentration.

Under the Competition Law, the following operations fall under the concept of economic concentration:

- the creation of a JV that sustainably performs all the functions of an autonomous economic entity (or full-function operation). Such criterion is deemed to be fulfilled where the JV operates in a market and performs the functions that would normally be carried out by any other undertaking in the same market – eg, the JV has a management dedicated to day-to-day operations, sufficient assets, personnel and financial resources. A JV that simply takes specific functions to the benefit of the parent company will not be deemed a full-function entity; and
- the acquisition of joint control over an existing undertaking (thus creating a JV), irrespective of whether the said undertaking fulfils the full-function operation criterion described above.

Where the transaction falls under the concept of economic concentration, the parties must notify the RCC in advance and may not implement the concentration before obtaining clearance (standstill obligation), provided that:

- the combined turnover of the undertakings involved in the concentration exceeds EUR10 million; and
- at least two of the undertakings involved have each individually achieved, in Romania, a turnover exceeding EUR4 million.

When determining whether the relevant threshold is met: (i) the turnover of each involved party includes the turnover generated by its entire group; and (ii) the target turnover includes solely the turnover generated by the target undertaking/target assets.

The approval procedure under the Competition Law is subject to separate rules and, as a matter of principle, is independent from the FDI screening procedure. However, such procedures may be interconnected – for instance, if CEISD notifies the RCC that an economic concentration (also notified under the FDI procedure) poses a national security risk, the screening procedure before the RCC is suspended until CEISD issues its opinion.

3.5 Listed Companies and Market Disclosure Rules

Only an SA may be admitted to trading on a regulated market. This should not, however, be construed as an absolute impediment to a public listing for a JV vehicle incorporated as an SRL, since the shareholders may decide to change the legal form of the company into an SA, prior to initiating the listing procedure.

Romanian listed companies must comply with the ongoing disclosure obligations under Law No. 24/2017 on issuers of financial instruments and market operations and with different regulations established by the BVB and ASF. These obligations include reporting of related-party transactions and significant transactions above defined thresholds, disclosure of inside information, and notification of major shareholding changes to the market and to the ASF.

This framework is designed to protect market integrity and minority shareholders. Therefore, a listed JV structure requires closer co-ordination between the corporate and capital markets teams and involves a longer process for different approvals and public announcements than non-listed JVs.

3.6 Transparency and Ownership Disclosure

Once a JV vehicle is incorporated in Romania, it falls under Law No. 129/2019 on preventing money laundering and terrorist financing, which requires disclosure of the UBO. Romanian law does not have a separate "persons with significant control" concept, just that of UBO.

Key aspects include:

- In principle, a UBO is any natural person who ultimately owns or controls the company, directly or indirectly, through shares, voting rights or other means. The ownership threshold is 25% of shares plus one share, or over 25% of equity. If no such

person can be identified, senior management may be declared as the UBO.
- The legal representative of the company is required to register a UBO-related statement upon incorporation with ONRC. Any change to the UBO's details must be reported within 15 days, as required under the AML Law. Failure to comply with such obligations entitles ONRC to apply before the court for dissolution of the company; such failure is curable up until final judgment of the court.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Key legal developments impacting JVs have been adopted in Romania, in the context of strengthening financial stability, via Law No. 239/2025 on establishing measures for the recovery and optimisation of public resources, and for amending and supplementing certain normative acts (the "Fiscal Package II Law"), as further amended by Emergency Ordinance No. 13/2026 on amending and supplementing certain normative acts in fiscal and budgetary matters.

Under the Fiscal Package II Law:

- any share transfer in a company incorporated as an SRL is subject to notification to the fiscal authority (ANAF) within 15 days of such transfer. In case of failure to comply with the notification obligations, ONRC will not admit registration of the share transfer with the trade register; thus, the respective transfer will not be opposable to third parties;
- if the net assets of a company fall below the statutory threshold (half of the subscribed share capital), the company is prohibited from repayment of shareholder loans and from distributing dividends. If no remedial measures to restore the ratio of net assets to share capital are implemented within two years after the end of the financial year in which the insufficient net assets were identified, the shareholders are obliged to convert any shareholder loans into equity; and
- the minimum required share capital of a newly incorporated SRL is RON500 (approximately EUR96.15), and companies reporting net turnover above RON400,000 (approximately EUR77,000) in their annual financial statements must hold a minimum share capital of RON5,000 (approximately EUR962).

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

Before committing to the full legal and commercial framework of the venture, the parties typically negotiate and execute a series of preliminary instruments designed to record their mutual intentions, allocate negotiating risk and provide a roadmap for the definitive documentation.

The most common documents used at the negotiation stage are the following:

- non-disclosure agreements: these remain the market-standard starting point even though the Civil Code already imposes a default statutory duty of confidentiality on both sides during negotiations, whether or not the negotiations lead to a contract, breach of which gives rise to civil liability independently of any signed document;
- due diligence reports; and
- term sheets/memorandum of understanding: parties usually use term sheets in order to set out the key commercial aspects, the structure and the operational guidelines.

Market practice in Romania also expects preliminary agreements to address regulatory compliance, and to set out a framework for resolving disagreements during the negotiation itself. Preliminary agreements usually flag allocated responsibility (and cost) for preparing the filing, and address what happens to the parties' obligations if the review is escalated to an in-depth investigation or results in a prohibition. Where either party is a non-EU investor, or the JV's activities touch a sensitive sector, a preliminary agreement should separately flag the FDI screening carried out by CEISD.

5.2 Disclosure Obligations

During the negotiation stages, no filing or public disclosure obligation is triggered. However, if the parties involved in negotiation are competitors, exchanging sensitive information (pricing, output, customer terms) during this stage can itself constitute a standalone infringement of the prohibition on anti-competitive agreements under the Competition Law – independent of, and prior to, any merger control question.

At the term sheet stage, no filings are mandatory as a matter of principle. However, in the interest of time, partners may sometimes choose to file for FDI/merger control screening based on the term sheet (if binding).

At the signing of the transaction documentation (and the SHA), the parties are usually required – if they have not done so already – to apply for FDI screening, merger clearance and any other regulatory approvals. Details on FDI and merger approvals are further detailed in **3.3 Sanctions, National Security and Foreign Investment Controls** and **3.4 Competition Law and Antitrust**. Sector-specific regulatory approvals are typically triggered at signing of the transaction documentation – eg, BNR for the banking sector, ASF for insurance/financial services.

At closing, corporate formalities generate certain disclosure events, such as:

- the JV vehicle must be registered with the trade registry; respectively, where the JV is formed by an investor acquiring shares in the company, the resulting changes of shareholding structure must be registered with ONRC; and
- UBO information must be declared to ONRC. As a rule, UBO information must be declared at incorporation of the company and thereafter updated where applicable.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Typically, in Romania, the JV agreement includes a set of conditions precedent which are tailored to the nature of the project around which the JV is structured.

A particularly relevant condition precedent in the current Romanian legal context is FDI screening clearance. Investors are required to obtain CEISD approval before acquiring control or a significant stake in a Romanian JV operating in regulated sensitive sectors.

Besides the regulatory approvals, the JV agreement usually includes conditions precedent that are tied to the specifics of the project or business that must be fulfilled prior to closing. For instance, in the renewable energy sector, a potential investor may specify in the SHA that the project must reach the ready-to-build stage from the permitting, regulatory and technical perspectives.

Other commonly used conditions precedent include the completion of satisfactory due diligence or the obtaining of different third-party consents (eg, approvals from the financing banks).

We should also mention two drafting points that are particular to civil-law jurisdictions, including Romania. First, a condition whose satisfaction depends purely on the will of the party that owes the obligation is void, so conditions precedent should be framed by reference to objectively verifiable events rather than to a party's unilateral satisfaction. Second, as material adverse change (MAC) is not a statutory concept, under Romanian law, the closest domestic analogue is hardship, which allows a court to adapt or terminate a contract where performance becomes excessively onerous due to an exceptional change of circumstances. MAC clauses therefore need to be drafted as self-contained, objectively measurable triggers if they are to operate as intended.

Force majeure provisions may also sometimes be included in JV agreements, but in general, partners wish to exclude such provisions. Force majeure is defined in the Civil Code as "an external, absolutely unforeseeable and insurmountable event"; thus, the triggering event must be entirely beyond the parties' control, wholly unforeseeable and impossible to overcome through any reasonable means. The COVID-19 pandemic and the military conflict in Ukraine have brought force majeure clauses into sharp focus in negotiations, given Romania's geographic proximity to the conflict zone. In practice, a party invoking force

majeure will usually seek a certificate from the Chamber of Commerce and Industry of Romania, which constitutes persuasive but not conclusive evidence before the courts.

5.4 Legal Formation and Capital Requirements

Both types of corporate JV (SRL/SA) must be registered with ONRC.

The minimum capital for an SRL is RON500 (approximately EUR96.15) for a newly incorporated company, rising to a mandatory RON5,000 (approximately EUR962) once the net turnover exceeds RON400,000 (approximately EUR77,000). The share capital must be subscribed as follows:

- 30% of the subscribed capital must be paid within three months of registration and before the company begins operations; and
- the remaining balance is due within 12 months for cash contributions or two years for in-kind contributions.

For an SRL, the number of shareholders must not exceed 50, but it may be validly incorporated and operate with a sole shareholder.

As for an SA, the minimum capital is RON90,000 (approximately EUR17,310). The number of shareholders must not be fewer than two for a period exceeding nine months; otherwise, any interested party may request before the court dissolution of the company.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The JV documentation is determined by the commercial decisions of the parties, whether they have decided to collaborate solely contractually (contractual JVs) or to set up or enter into a company (corporate JVs).

Contractual JVs are a commonly used tool for existing independent entities undertaking a specific task or activity by combining their resources, without the intention to create a separate legal entity. In this context, the JV agreement is used as an instrument to define the relationship of the parties, the scope of the venture, and allocation of risks and profits. Under the general regime governed by the Civil Code, the JV agreement should specify, at a minimum:

- the participation of each associated entity in the profits and losses of the operations undertaken under the JV agreement;
- in terms of assets contributed by the associated entities for the envisaged task, whether those contributed assets become common property of the associates or a right in rem (usufruct, superficies) is granted to the other associates over the contributed asset; and
- the associate authorised to act, in its own name, vis-à-vis third parties (sometimes referred to as the “principal associate” or “managing associate”). A provision to this extent is a requirement under the JV agreement as the resulting venture does not acquire legal personality and therefore cannot assume rights and obligations in its own name. In the course of the venture’s operations, the designated associate will represent the venture vis-à-vis third parties, with the rights and obligations assumed thereof being shared between the associates of the venture, in the quotas established by the JV agreement.

Considering the associates’ full exposure to liability due to the lack of a separate legal entity, the contractual JV is less commonly used in practice than the corporate JV.

By contrast, corporate JVs tend to be used as an instrument in the context of raising financing or expanding an already existing business of an established company (SRL/SA). In this context, the shareholders (either existing or brought in for expansion purposes) conclude an agreement (SHA) to establish a set of rules for managing the company and conduct the business thereof. SHAs typically address matters such as the appointment and removal of directors, deadlock resolution mechanisms, rules of protection for minority shareholders (eg, reserved matters) and share transfer restrictions (eg, right of first refusal, right of first offer).

In terms of SHA governing law, parties may choose laws pertaining to other jurisdictions than Romania (English law tends to be one of the most, if not the most, frequently used governing laws in cross-border JVs), provided that the rules of the foreign governing law do not contravene public order provisions.

Corporate JVs generate two interlocking layers of documentation:

- the SHA, concluded between all or part of the company's shareholders, binding only upon its signatories; and
- the articles of association, governing the organisation of the company, binding upon all shareholders and opposable to third parties.

Given this double-layered documentation structure, entering into an SHA in respect of a Romanian company often raises the question of which SHA provisions should be transposed into the articles of association, in an effort to reach a balance between having the SHA provisions binding upon all shareholders and not disclosing certain provisions to the public.

6.2 Governance and Decision-Making

One of the most challenging aspects in establishing a JV is designing the decision-making process, tailored for (i) the balance of control between the JV participants and (ii) their desired level of day-to-day involvement.

Under the Companies Law, significant corporate matters are decided by the GMS (and, for an SA, in certain cases, the extraordinary meeting of shareholders) – eg, the legal form of the company (SRL/SA), its object of activity, capital increases and decreases, mergers and divisions, etc. Day-to-day management and third-party representation are entrusted to the board of directors, elected by the GMS.

SHAs typically include arrangements deviating from the common regime under the Companies Law, such as:

- Structure of the board of directors – the SHA commonly provides that each JV partner may appoint a specified number of directors – eg, one director for a shareholding of up to 20%. The SHA may provide different categories of directors (eg, classes A and B) with distinct powers and/or an obligation to act jointly.
- Reserved matter clauses – a catalogue of reserved matters is typically included in the SHA to protect the minority shareholder(s).

6.3 Funding

In terms of funding corporate JVs, both equity and debt instruments are used, as follows:

- At incorporation, each JV partner is obliged to subscribe an equity contribution, at least to reach the minimum share capital requirements under the Companies Law. The initial equity contribution may consist of cash (mandatory at incorporation), in-kind contributions and, subject to certain restrictions depending on the company form, contributions in receivables.
- After incorporation, the most frequent type of funding is through shareholder loans, as they offer a greater level of flexibility in terms of repayment and are considered a more tax-efficient way of funding the company versus equity contributions.
- Debt financing is preferred over equity contributions after incorporation, considering the GMS approval requirements for share capital increases – ie, two-thirds majority for an SA or a double absolute majority of both the number of shareholders and the shares in an SRL, unless the articles of association provide otherwise for the SRL, or unless higher thresholds are provided by the SHA/articles of association.
- From a transaction structuring perspective, debt instruments are used as a mechanism for the potential investor to condition its investment on certain milestones being reached by the company. If the conditions precedent/interim obligations are not met, the investor is entitled to loan repayment plus accrued interest. If all conditions precedent and interim obligations have been met, a debt-to-equity swap is performed whereby the investor becomes a shareholder in the company.

Equity contributions may also become mandatory after incorporation. Where net assets fall below half of the subscribed share capital and no remedial

measure is implemented within two years of the end of the financial year in which the shortfall was identified, shareholder loans must be converted into share capital. Related restrictions on repaying shareholder loans and distributing dividends in that situation are described in **4.1 Notable Recent Decisions or Statutory Developments**.

6.4 Deadlocks

Romanian law does not provide statutory mechanisms for resolving deadlocks.

Exceptionally, the Companies Law requires, for SRLs, that the articles of association provide a solution for deadlock – ie, the articles are required to specify the regime of adopting the shareholders' decision where an absolute majority cannot be established due to equal participation in the share capital.

While a unitary approach has not been established in the Romanian market in terms of deadlock mechanism, JV partners typically agree upon deadlock resolution mechanisms via the SHA and/or the articles of association, usually in the following order:

- escalation – the deadlock is referred to the senior management of the shareholders, who are required to negotiate and use their best efforts in reaching a mutual solution;
- mediation – if the deadlock remains unsolved after escalation, the shareholders submit the deadlocked matter to a mediation process before a mediator; and
- buyout – if the deadlock remains unsolved after mediation, either party may trigger a buyout mechanism by serving the other a notice stating a valuation price per share at which it will sell its shares and exit the company. Within a specified period, the notified party may either (i) acquire the shares at the price offered by the notifying party or (ii) sell its shares at the same price.

6.5 Other Documentation

Beyond the SHA governing the relation of the JV partners, ancillary documentation is frequently required for establishing a corporate JV, such as:

- articles of association – articles of association are commonly negotiated and annexed to the SHA, allowing the JV partners to determine ex ante which SHA provisions will be reflected therein. This is particularly relevant as the articles of association are binding upon all shareholders and registered with ONRC and published in the Official Gazette, being opposable to third parties;
- loan agreements and related documentation – where the company is funded via debt rather than equity, loan agreements are required to set out the terms of draw-down (if the case), interest rate, maturity, pledges and repayment. If a debt-to-equity swap is envisaged in the transaction structure, ancillary documents pertaining to the loan are negotiated beforehand – eg, conversion notice;
- services agreements – for instance, where the pre-existing shareholder of the company contributes services for the venture;
- a business plan; and
- an intellectual property licence agreement.

6.6 Rights and Obligations of JV Partners

In terms of profit and loss allocation, the general rule under the Civil Code and the Companies Law (and generally reflected in market-standard SHAs) is that each JV partner participates in profits and losses pro rata to its contribution to the share capital. Parties may deviate from said general rule. However, a clause providing that a shareholder is entirely excluded from profits or exempted from losses (leonine clause) is deemed "unwritten" (*nescrisă*), ie, void under the law, and would therefore be unenforceable against the SHA signatories.

While the Companies Law grants a standard set of rights and obligations to shareholders, they are typically extended and/or tailored in the context of the SHA:

- Information rights – SHAs usually expand the statutory information rights to expressly cover access to financial statements, management reports, company contracts, etc.
- Voting-related provisions – rights to convene the GMS and to be given minimum notice for board meetings or the GMS are expressly provided for in the SHA, considering convening terms and meth-

ods suitable for the shareholders (eg, convening notice via email, board meetings to be held electronically). SHAs may require shareholders to vote in the GMS and instruct their nominated directors to vote in the board meetings in accordance with the scope of the SHA.
- Non-compete, non-solicitation and confidentiality obligations – these do not arise automatically under the law and must be expressly agreed under the SHA. For such clauses to be valid and enforceable, the scope of the "business" and time period must be clearly defined.

6.7 Minority Protection and Control Rights

The most frequently used mechanisms for securing protection of the minority JV partner are the following:

- right to information, inspection and audit – provisions granting certain express and extended information rights are typically included to enhance the oversight of the minority shareholder(s). In practice, they may materialise as (i) an obligation for the company to periodically communicate basic financial information, (ii) a management obligation to provide periodic reports on the company's operation, or (iii) an obligation to prepare annual audited accounts, even where the company would not be required to do so;
- reserved matter clauses – depending on the parties' negotiation and the intention of the minority shareholder(s) to take part in day-to-day operation, the catalogue of reserved matters may range from issuance of new shares or share capital operations to execution of material contracts by the company;
- tag-along rights are not regulated by Romanian law and must be expressly agreed upon in the SHA/articles of association, to allow a minority shareholder to transfer its shares together with the majority shareholder, in the event that the latter receives an offer to sell its shares; and
- right to appoint a board member/observer.

6.8 Applicable Law and Dispute Resolution in International JVs

Parties to SHAs enjoy the freedom to choose the governing law of the agreement and related ancillary documents. However, where the JV vehicle is incorporated as a Romanian company, the company incorporation documents (including the articles of association) will be governed by Romanian law. This is particularly relevant as the articles of association typically mirror the SHA provisions. Where parties choose a foreign law as the governing law of the SHA, they should consider:

- any mandatory provisions of Romanian law that will continue to apply regardless of the chosen law; and
- potential conflicts between the SHA and the articles of association arising from the interplay of two distinct legal systems – usually mitigated by including a supremacy clause in the SHA whereby the SHA prevails over the articles of association in case of inconsistencies or conflicts.

In general, where the JV vehicle is a Romanian entity, parties tend to opt for:

- arbitration, with disputes being referred to the ICC International Court of Arbitration, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, etc;
- a foreign court jurisdiction; or
- in domestic cases, a specific seat of the Romanian courts.

If parties do not agree via the SHA on a jurisdiction of choice, any disputes will default to the jurisdiction of the Romanian courts, which will apply the Romanian procedural laws.

In terms of international treaties/rules applicable in Romania, the applicable framework includes:

- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations;
- 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;
- the Convention for Settlement of Investment Disputes between States and Nationals of Other

States (ICSID Convention), ratified by Romania by Decree No 62/30.05.1975; and
- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), ratified by Romania by Decree No 186/24.07.1961.

7. The JV Board

7.1 Board Structure

As described in **6.2 Governance and Decision-Making**, in the case of corporate JVs, partners are entitled to appoint a director in the company. Under Romanian law, the statutory structure of the management depends on the legal form of the company:

- Companies incorporated as SRLs are managed by one or more directors appointed in accordance with the Companies Law and the articles of association. While the Companies Law does not expressly provide for a board of directors in the case of an SRL, additional governance arrangements (such as the allocation of responsibilities among multiple directors or the specification of matters requiring joint action) may be reflected in the articles of association and/or contractually agreed among the shareholders, to the extent permitted by law.
- Companies incorporated as SAs may be governed under one of two models:
  (a) a one-tier system – the company is managed by one director or a board of directors with at least three members. If the company meets the criteria for having its financial statements audited, having a board of directors is mandatory under the Companies Law. Day-to-day management may be delegated to one or more managers; or
  (b) a two-tier system – the governance is separated between:
    (i) the supervisory board, with three to 11 members, appointed by the GMS. The supervisory board exercises oversight over the management board and does not participate in the actual management of the company; and
    (ii) the management board, with one or more members (always of odd number), appointed by the supervisory board. The management board deals with the day-to-day management of the company and has representation powers before third parties.

The SHA may provide that the directors/the members of the board of directors are divided into (i) executive and non-executive directors or (ii) different classes of directors (eg, class A, class B), with specific powers for each class.

Weighted voting is not available at board level: each director carries one vote. At shareholder level, the general rule is likewise one share, one vote; preference shares carrying a preferential dividend but no voting rights may be issued.

There are no restrictions on foreign citizens acting as directors.

7.2 Duties and Functions of JV Boards and Directors

Under the Companies Law, directors have full representation powers, within the restrictions set forth by the articles of association, the decisions of the shareholder(s) and the powers of the sole shareholder/GMS.

In the context of corporate JVs, the responsibilities and powers of the board of directors may be extended via the SHA, for example:

- discussing and approving accounting policies and the financial control system;
- appointment and dismissal of managers and control of their activity;
- discussing and approving the catalogue of reserved matters (as negotiated and defined under the SHA); and
- exercising the company's rights as shareholder in any subsidiaries.

Although a director may be nominated by a certain shareholder as per the SHA, under Romanian law, the director's duties are owed exclusively to the company, not to the appointing shareholder. This is a direct consequence of the directors being obliged to act in the interest of the company.

The primary source of directors' duties is the Companies Law, under which a director must act with the prudence and diligence of a good administrator, in the informed and good-faith belief that the decision is in the company's interest, and must act loyally, keeping confidential the information received in that capacity. The general rules on mandate in the Civil Code apply as a supplementary regime: a director appointed under a remunerated mandate is assessed against the standard of a diligent owner, which is stricter than the standard applicable to an unremunerated mandate.

7.3 Conflicts of Interest

Under the Companies Law, if a director has, in a given transaction, an interest contrary to that of the company, that director may not participate in any deliberation or decision regarding such transaction. Breach of such obligation may give rise to the director's liability towards the company, including the obligation to fully indemnify the company for any loss.

Further to the statutory provisions, the SHA may provide:

- that directors are in breach of essential duties in case of failure to fulfil the obligation to act in the company's best interest and/or avoid conflicts of interest;
- the most sensitive matters to be included as reserved matters for the GMS, rather than for the board of directors; and
- a board of directors' structure including one independent member that is not affiliated with any of the JV partners.

8. IP and ESG

8.1 Ownership and Use of IP

Specific rules should be provided where any of the shareholders holds intellectual property (IP) rights or where the company may develop IP in the course of its business.

For instance, the SHA should regulate (i) the transfer or licensing of the pre-existing IP rights, (ii) ownership of the IP developed by the company, and (iii) confidentiality obligations. Confidentiality obligations are, as a rule, applicable during the term of the SHA, but survive a period post-termination.

Under Romanian law, IP assignment/transfer is limited to the patrimonial rights, as moral rights are inalienable. Should the partner contribute its IP to the company, the assignment agreement should expressly specify the transferred rights, permitted methods of use, term, territorial scope and remuneration.

8.2 Licensing v Assignment of IP Rights

As referred to in **8.1 Ownership and Use of IP**, assignment is limited to the patrimonial rights.

Assignment may be exclusive (in which case the assignor cannot use or further transfer the work during the term of the assignment) or non-exclusive. Assignment of all future works is null under Romanian law.

Licensing allows the JV partner to retain ownership while granting the company defined usage rights. Non-exclusive licensees may not sub-license without the licensor's express consent. This is particularly relevant in case the company intends to sub-license contributed IP to subsidiaries or commercial partners.

8.3 ESG Considerations in JVs

Environmental, social and governance (ESG) information has experienced increasing demand from investors, especially for foreign investors and financial institutions. ESG compliance is one of the material aspects in recent transactions, particularly where the ESG aspects depend on fulfilment of statutory environmental and employment obligations. When the JV vehicle is a public listed company, compliance with ESG becomes a requirement under the regulations of the BVB.

Companies in Romania are subject to ESG reporting requirements under Order of the Ministry of Finance No. 85/2024 regulating certain aspects of sustainability reporting ("OMF 85/2024"), transposing into national legislation the EU's Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and

Directive 2013/34/EU, as regards corporate sustainability reporting).

The number and type of entities included in the scope of reporting obligations under OMF 85/2024 are phased, as follows:

- As of 1 January 2025, medium-sized and large entities (as defined in OMF 85/2024) are subject to reporting obligations. For this purpose, medium-sized and large entities are companies exceeding (i) total assets of RON17.5 million (approximately EUR3.36 million), net turnover of RON35 million (approximately EUR6.7 million) or an average of 50 employees during the financial year. The EUR equivalents in this paragraph are approximate values calculated at the exchange rate applicable at the time of writing.
- As of 1 January 2026, entities listed on regulated markets that do not meet the criteria of medium-sized and large entities are also subject to reporting obligations, subject to the applicable transitional provisions.
- As of 1 January 2028, Romanian branches or subsidiaries of third-country parent companies will be subject to reporting obligations, subject to fulfilment of size criteria.

9. Exit Strategies and Termination

9.1 Termination of a JV

Contractual JVs are concluded for a specific activity and typically have a definite duration. Corporate JVs are generally concluded for longer or indefinite durations (except, for instance, for temporary JV structures envisaged for multiple-closing transactions). Besides reaching the agreed term, corporate JVs may terminate:

- due to unresolved deadlock;
- due to breach of JV partners' undertakings under the SHA, resulting in exercise of the call option rights by the non-defaulting shareholder(s) – eg, material breach, insolvency, bankruptcy or failure to meet funding obligations; or
- by mutual consent of the JV partners.

In the context of termination, SHAs should regulate all consequences thereof, including settlement of liabilities, asset allocation, and survival of key obligations such as confidentiality and non-compete provisions.

9.2 Asset Redistribution and Transfers

Transfer of assets from the company to JV partners should observe certain requirements, irrespective of the origins of the assets. As a rule, once the asset is contributed to the share capital of the company, it becomes the company's property. Consequently, the below requirements do not depend on whether the assets were contributed by the partner or originated from the company:

- Under Romanian law, related-party transactions (such as a transfer between the company and a shareholder) should comply with the transfer pricing rule.
- For companies incorporated as SAs, transfer of assets requires prior approval of an extraordinary meeting of shareholders, where the value of the assets concerned will exceed 50% of the book value of the company's total assets on the date of the transaction.
- Transfer of certain assets (eg, immovable properties) requires certain formalities for validity (eg, the agreement must be concluded in authentic form) or for opposability to third parties (eg, transfer agreement is opposable only upon registration with the Land Book).

The position differs in a contractual JV. There, each associate remains the owner of the assets it contributed unless the agreement provides that they become common property or that a right in rem is granted, so on termination those assets simply revert to the contributing associate. Assets acquired in the course of the venture are allocated according to the quotas agreed in the JV agreement, which is why that allocation should be expressly regulated at the outset.

9.3 Exit Strategy

Romanian law contains no dedicated regime for JV exits, but several statutory provisions constrain how an exit can be implemented, and some create exit rights that the agreement cannot displace:

- for companies incorporated as SRLs, transfer of shares to third parties requires approval of shareholders holding at least 75% of the share capital, if the articles of association do not provide otherwise;
- for companies incorporated as SAs, the shares are transferred upon registration of the transfer with the shareholders' registry;
- a shareholder of an SRL may withdraw in the cases provided by the articles of association, with the agreement of all other shareholders, or for good cause with court approval, and may be excluded by the court in the cases set out in the Companies Law; and
- a shareholder of an SA that votes against certain fundamental resolutions, including a change of the company's object of activity, legal form or seat abroad, or a merger or division, has a statutory right to withdraw and to be bought out.

Except for specific rules relating to share transfer, exit strategy is otherwise subject to free negotiation between the JV partners. Exit mechanisms may include buyouts, IPOs and recapitalisation.

In the case of a JV structured as a joint-lead investment (ie, one equally held by the partners), any exit would require the consent of both parties (irrespective of statutory provisions), consent that must not be unreasonably withheld after a certain period. Collaboration obligations should be included for the non-selling shareholder – eg, co-operation to provide the relevant information for the antitrust filing(s).

Where the JV is led by the majority shareholder, the SHA typically entitles such leading partner to trigger the exit alone and to drag the minority participant's share via the drag-along mechanism.

SOUTH KOREA

Law and Practice

Contributed by:
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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, medical, 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, changes in global trade and industrial policies have formed an important backdrop to cross-border investment by South Korean companies. Transactions during this period included investments in overseas projects involving local manufacturing, access to critical resources and expansion into overseas markets.

In the battery and EV sectors, certain existing US joint ventures (JVs) were reassessed or restructured amid slower-than-expected EV demand and changes in the US policy and incentive environment. South Korean companies also announced large-scale overseas JV projects in steel and critical minerals.

1.2 Industry Trends and Emerging Technologies

Trends regarding JVs involving South Korean companies have spanned energy and infrastructure, steel, critical minerals, batteries and automotive supply chains, and digital commerce.

AI, semiconductors, data centres, robotics, shipbuilding and defence also attracted investment and commercial collaboration. In addition to certain proposed JVs, publicly announced transactions in these sectors included supply agreements, joint development arrangements, minority investments and strategic partnerships.

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 and Economy or the Bank of Korea (under the FETA); and
- the Ministry of Trade, Industry and Resources (MOTIR – 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 MOTIR 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 MOTIR prior to closing will be required; and
- if the investment target has not received any such government subsidies, a report to the MOTIR prior to closing will be required.

Technically, the MOTIR 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 MOTIR 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. 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 maintained or utilised R&D facilities or personnel in South Korea during the immediately preceding three years, and its annual expenditure on such R&D facilities and personnel in South Korea amounted to at least KRW30 billion in any one of those 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 are as follows:

- 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 physical shareholder meetings held at the designated venue. For listed companies exceeding a certain size thresh-

old, 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 specially related persons prescribed under the KCC – 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.
- Mandatory Adoption of Cumulative Voting for Large Listed Companies (effective from 10 September 2026) – where two or more directors are to be elected, cumulative voting entitles each shareholder to a number of votes equal to the number of voting shares held multiplied by the number of directors to be elected. Shareholders may allocate or concentrate these votes on a single candidate or distribute them among multiple candidates. Candidates who receive the highest number of votes are elected as directors in descending order of votes received. Unlike the ordinary voting system, cumulative voting increases the likelihood that candidates supported by minority shareholders may be elected to the board. Under the current KCC, shareholders holding 3% or more of the issued shares (or 1% or more in the case of a listed company with total assets of KRW2 trillion or more) have the right to request the adoption of cumulative voting for the election of directors. However, because the current KCC allows companies to opt to exclude cumulative voting through their articles of incorporation, effectively nullifying such rights of minority shareholders, such adoption of cumulative voting has been rarely implemented. A recent amendment of the KCC addresses this issue by providing that listed companies with total assets of KRW2 trillion or more as of the end of the most recent fiscal year may not exclude cumulative voting through their articles of incorporation.
- Expansion of Separate Election of Audit Committee Members (effective from 10 September 2026) – the 2020 amendment to the KCC introduced the so-called "separate election system for audit committee members". Under the current KCC, (i) large listed companies with total assets of KRW2 trillion or more and (ii) listed companies with total assets of KRW100 billion or more that have established an audit committee in lieu of a standing statutory auditor are required to appoint audit committee members from among the directors elected at the shareholders' meeting (the so-called "collective election"). However, at least one member of the audit committee must be elected separately from the other directors as a director who will serve as an audit committee member (the so-called "separate election"). Compared to the collective election, it becomes more difficult for the controlling shareholder to have its preferred candidate elected as a director who will serve as a member of the audit committee under the separate election. As audit committees of listed companies are typically composed of three members, this system has been subject of criticism that requiring the separate election of only one member is insufficient. Recently, the KCC was amended to require that at least two

audit committee members (who are directors) must be elected through separate election.
- Mandatory Cancellation and Disposal of Treasury Shares (effective from 6 March 2026) – under the current KCC, companies are allowed to acquire treasury shares under certain conditions. Under this system, treasury shares can be misused for the purpose of distorting the corporate governance of companies. The recent amendment introduced several measures to strengthen the regulation of treasury shares. In particular: (i) the issuance of bonds exchangeable for or redeemable with treasury shares and the creation of pledges over treasury shares are prohibited; (ii) the allocation of new shares to treasury shares in connection with a merger or corporate split is prohibited; and (iii) treasury shares must, in principle, be cancelled within one year from the date of acquisition (with respect to treasury shares previously acquired directly by the company, an additional six-month grace period is afforded from the effective date of the amendment). In exceptional circumstances, a company may retain or dispose of treasury shares pursuant to a treasury share retention and disposal plan prepared by the company (signed by all directors) and approved annually by the shareholders' meeting.

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 as follows.

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 South 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 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 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 require-

ments 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").

The recent amendment expanded the directors' duty of loyalty to a company's shareholders (effective from 22 July 2025). As a result, directors of a JV must also take into account the general interests of the shareholders, and not only those of the shareholder that nominated them.

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 permitted 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 MOTIR 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

On 25 February 2026, the Financial Services Commission announced a proposed roadmap under which mandatory sustainability disclosure would commence in 2028 for KOSPI-listed companies with consolidated total assets of at least KRW30 trillion, subject to the finalisation of the relevant standards and implementation measures.

The Serious Accidents Punishment Act generally applies to businesses or workplaces with at least five regular employees. It imposes statutory duties on the business owner or responsible management personnel of the entity operating the relevant business or workplace, and criminal liability may arise where a serious industrial accident results from a breach of those duties.

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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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 the Middle East, 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, such as unpredictable tariffs and fluctuating cost of raw materials, 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.

There has also been increased interest in investments in data centres across the Nordic region, mainly due to its stable political climate, highly developed digital infrastructure, and commitment to sustainability.

Emerging technologies, such as AI, give rise to new legal questions, and the legal landscape is constantly changing to keep up with the developments. The EU AI Act entered into force on 1 August 2024 and is subject to partial implementations and revisions that may be affect technology-focused JVs.

2. JV Structure and Strategy

2.1 Typical JV Structures

In Sweden, the term “joint venture” lacks a specific legal definition and, consequently, there are no regulatory requirements governing the structure of a JV as such. As a result, JVs may be structured in a number of ways and can be tailored to the needs and objectives 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. Under 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 only on a temporary basis, 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. This would result in 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 agreements 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 accordance with the rights attached to the shares of each shareholder. On the other hand, a limited liability company is required to keep accounts and submit annual reports, which are generally audited, to the SCRO. Such reports become publicly available upon submission.

General Partnership

A general partnership, like a limited liability company, constitutes a 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 capitalisation requirements. However, the liability of the general partnership is not limited to its own assets, 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 otherwise provided in the partnership agreement or through a general power of attorney registered with the SCRO. Unless the partnership agreement states otherwise, the allocation of proceeds follows the general principle of equal distribution.

This structure of a JV allows for its easy establishment without the express need for the partners to contribute financially, while exposing the partners to potential financial risk if the partnership were to default on its debts.

Limited Partnership

The limited partnership is similar to a general partnership, and the same general principles outlined above 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 in relation to 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 from 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. Proceeds from the association may be distributed 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, 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 out 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 or capitalised through loans from its owners, it is necessary to con-

sider 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 in **2.1 Typical JV Structures**, 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, the SCRO and the Swedish Tax Agency can be considered the primary regulators. 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 Money Laundering Act, which aims to prevent financial and commercial activities from being exploited for money laundering or terrorist financing; and the Act on Penalties for Money Laundering Offences, which contains criminal law provisions. The Swedish framework implements the EU Anti-Money Laundering Regulation (AMLR), the Sixth AML Directive (AMLD6) and the AMLA Regulation establishing the EU Anti-Money Laundering Authority (AMLA).

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. *Finansinspektionen* is the primary supervisory authority for financial-sector entities. All entities may be required to answer questions and provide information to obliged business operators in order to comply with the AML regulations 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"), which entered into force on 1 December 2023, 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. The same requirements apply to any change of ownership or control in an existing JV.

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.

Compliance with the FDI Act should be ensured at an early stage, prior to setting up the JV, to avoid any gun-jumping. The screening requirement may be applicable as early as the acquisition of a dormant shelf company if the intention is to conduct a protected activity at a later stage.

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 parent 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. Accordingly, as a starting point, the rules for private limited companies apply to the JV, irrespective of whether it has a listed partner.

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 must 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. Accordingly, the JV may be 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 may, 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 consolidated group 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 introduction of the FDI regime, which entered into force on 1 December 2023 and remains highly relevant to transaction structuring in protected sectors, 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 transactions, where the deal value is usually at the lower end or where the parties are already familiar with each other, there is no need for pre-agreement documents. In such simple cases, the partners can 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 out 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, the general terms and conditions of the JV agreement and the 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.

Apart from 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, which is managed and kept by the board of directors.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

The specific conditions that need to be met prior to the setting up of the JV depend mainly on the purpose of the JV and the needs of the parties.

It is common for a JV to be 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 will usually constitute conditions 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 relatively straightforward. 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 contributions.

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 issuance of shares with different voting rights, amendments to 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 depends on its size and capital need. Smaller JVs are usually funded directly through equity contributions by the JV partners, either through shareholders' contributions or the issuance of shares in the JV.

If the size and capital need of the JV is more substantial, there is usually 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 are 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 out 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 starting point, the Companies Act stipulates that all shares within the same class shall have equal rights. Accordingly, 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 JV 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' choice of dispute resolution mechanism or the applicable governing law. In the event that the JV 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 will 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 with respect to third parties. The board reports to the members of the JV through the publishing of annual reports and the general meeting.

Specific duties of the board of directors that may not be delegated may arise 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. 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. Accordingly, 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 should 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 any licensing of IP rights is subject to the continuity of the JV and that the licence terminates upon the termination of the JV.

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 the JV participants require the JV to own 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.

From an EU law perspective, JV parties should also monitor the EU Omnibus I process. In 2025, the European Commission proposed sustainability-related simplifications affecting, among other instruments, the CSRD, CSDDD/CS3D, the EU Taxonomy Regulation and the Carbon Border Adjustment Mechanism (CBAM). Certain timing changes have already been addressed through the so-called "Stop-the-clock" Directive, including postponed application dates for some CSRD and CSDDD requirements. As the broader Omnibus I package remains subject to EU and national implementation processes, Swedish JV parties should avoid assuming that all proposed simplifications are final, but should take the process into account when allocating reporting, due diligence and information-sharing obligations in JV documentation.

- EU Taxonomy Regulation (2020/852): this establishes uniform criteria for what qualifies as an environmentally sustainable economic activity. Companies within the scope of the 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 30 December 2026, companies placing certain commodities (eg, timber, coffee, soy, cocoa) on the EU market must ensure they are not linked to deforestation, with micro and small enterprises subject to these requirements from 30 June 2027. 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 be 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 exit the JV, while the other participant(s) wish to continue the JV's business and redeem 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 termination. 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 the ownership of assets used in the JV will remain with a JV participant or whether such assets will be owned by the JV. If the JV participants are unable to agree on the distribution of the JV's assets 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 and most active Nordic full-service law firms, advising on all aspects of business law. Its corporate/M&A practice comprises more than 40 qualified lawyers in Stockholm and Gothenburg. The team advises corporates, private equity and infrastructure funds, venture capital investors and family offices on domestic and cross-border private and public M&A. Its sector experience includes industrials, technology, life sciences, infrastructure, energy, real estate, automotive, transport, media and hospitality. The firm's recent work includes advising SBB on its SEK32 billion transaction with Public Property Invest, Alkane Resources on its merger with Mandalay Resources, Vertiseit on its acquisition of Scala, Viga CAP on its acquisition of a residential property portfolio and establishment of a joint venture platform, Wienerberger on its acquisition of wastewater infrastructure assets in Sweden, and Latour Industries on the divestment of two European mobility technology companies.

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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. The ongoing war in the Middle East and the volatile situation around the Strait of Hormuz have affected the global and Swedish economy and entail an increased uncertainty for investors.

Sweden's central bank, Riksbanken, raised interest rates sharply during 2022 and 2023 before embarking on a series of cuts. The Riksbank lowered the policy rate by a cumulative 75 basis points to 1.75% during 2025 and has held it at that level since September 2025. At its June 2026 meeting, it again left the rate unchanged, but revised its policy-rate forecast upwards and signalled an increased probability of a rise later in 2026, with market pricing pointing to a 25 basis point increase by year-end. The easing cycle has nevertheless materially improved financing conditions: bank lending rates have declined across all major segments, corporate bond spreads have tightened alongside higher issuance volumes, and access to bond markets has improved – all of which support JV formation and the financing of capital-intensive partnership projects.

Geopolitics remains the dominant source of uncertainty. The war in the Middle East, which escalated at the end of February 2026, has disrupted oil supply through the Strait of Hormuz for several months. A framework agreement to end hostilities was announced on 15 June 2026, but it remains unclear how quickly supply will normalise. On the trade side, official forecasts assume that import tariffs between the United States and the EU remain at approximately their current level, which offers a steadier planning baseline for transatlantic industrial collaboration than the tariff volatility of 2025.

Sweden maintains world-leading capabilities in green technology, clean energy, circular economy models, and advanced research and development. The innovation theme has broadened over the past year, with public policy increasingly emphasising applied AI and digital infrastructure. Against this backdrop, the JV 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 JVs, 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 JVs focused on product development, process innovation and high-tech solutions.

In 2026, this innovation profile has become increasingly linked to applied AI, advanced digitalisation and secure data infrastructure. These areas are particularly well suited to JV structures, where complementary industrial data, domain expertise and technology capabilities often need to be combined under clear governance and IP-allocation arrangements. They also attract regulatory attention: notifications to the Swedish Inspectorate of Strategic Products (ISP) concerning information and communication activities almost quadrupled between 2024 and 2025, from 69 to 273.

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 JVs in the Swedish market are oriented towards accelerating the green transition through shared infrastructure, cross-sector innovation, and pooling of technological expertise.

The past year has also highlighted the extent to which energy transition projects are exposed to execution, financing and supply-chain risk. Rather than reducing the relevance of JVs, this has made robust partner selection, milestone-based funding, technology validation, exit rights and governance deadlock mechanisms even more important in capital-intensive Swedish cleantech and industrial projects.

A Strong Industrial Base With Global Reach

Manufacturing and industrial production remain at the core of the Swedish economy. 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.

More recently, defence, security-related technologies and resilient infrastructure have also become more prominent in strategic industrial collaboration. Sweden has committed to meeting NATO's defence spending target of 3.5% of GDP by 2030, up from 2.5% in 2025. The regulatory footprint is following these developments: notifications to ISP on military equipment grounds rose by 125% between 2024 and 2025, and cases in the defence sector involving investors domiciled outside the EU tripled over the same period. Parties considering collaborations in dual-use, critical-infrastructure or security-sensitive areas should expect more intensive front-end diligence on ownership, data access, supply-chain dependencies and regulatory approvals.

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 corporate 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.

For technology-heavy JVs, the structuring exercise is increasingly also a data and IP governance exercise. Parties should address at the outset whether training data, operational data, AI outputs, improvements to jointly developed technology and cybersecurity responsibilities sit with the JV, one parent, or are shared under defined access and use rights.

FDI screening and the Protective Security Act

Since 1 December 2023, Sweden has operated a national security review regime under the Swedish Screening of Foreign Direct Investments Act (2023:560) (the "FDI Act"). Under the implementing ordinance (2023:624), the ISP is designated as the screening 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 is mandatory where an investor gains a certain level of control over a protected activity, regardless of the JV structure. Two features are particularly relevant to JVs. First, the regime is not limited to non-EU investors: an investor with a purely Swedish or intra-EU connection is equally obliged to notify, even though only investments with an EU-external connection can ultimately be prohibited. Second, and unusually by international comparison, the Swedish regime captures greenfield establishments, so the incorporation of a new JV company that will carry on protected activity is itself notifiable.

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.

The volume of filings is now substantial and still growing. In its March 2026 report to the government, the ISP disclosed that notifications rose by almost 60% in 2025, from 1,261 to 1,987, and that 1,942 notifications were closed with no further action. Interventions remain rare: ISP opened 20 in-depth reviews in 2025, granting eight approvals, one approval subject to conditions and two prohibitions. Across 2023 to 2025, in-depth reviews were opened in only 46 cases, some 1.3% of all notifications received. ISP attributes the fall in in-depth reviews in part to greater familiarity with the legislation, which has led investors to exercise more care in selecting counterparties and structuring investments.

On 8 June 2026, the EU Council cleared the adoption of the EU's new Foreign Investment Screening Regu-

lation, which will reshape the framework for reviewing foreign investments. Published as Regulation (EU) 2026/1386, it will fully replace the FDI Screening Regulation (EU) 2019/452 from 17 January 2028.

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.

For data-driven and AI-enabled JVs, competition analysis should also consider whether data pooling, shared analytics tools, common technical standards or jointly developed platforms could facilitate inappropriate information exchange or co-ordination between parent companies. These issues are not unique to Sweden, but they are increasingly relevant in Swedish industrial collaborations where digitalisation and AI are central to the commercial rationale.

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.

Where a JV requires both merger control and FDI or protective security analysis, transaction timetables should also build in sufficient time for parallel regulatory tracks, information requests and potential mitigation discussions. This is particularly relevant for collaborations involving critical infrastructure, defence-related technology, cybersecurity, advanced manufacturing or sensitive data.

Cybersecurity, data resilience and operational continuity

Cybersecurity and digital operational resilience have become more important in the structuring and operation of Swedish JVs, particularly where the collaboration involves critical infrastructure, financial services, advanced manufacturing, connected products or shared digital platforms. Sweden implemented the NIS2 Directive through the Cybersecurity Act (2025:1506), issued on 11 December 2025 and in force from 15 January 2026. The Act imposes risk-management, incident-reporting and registration obligations on essential and important entities across the NIS2 sectors, backed by supervision and enforcement powers, with the Swedish Armed Forces Radio Establishment acting as the single point of contact and CSIRT and sector regulators exercising supervision.

For many JVs, the practical issue is not only legal compliance but operational continuity: the parties need to know who controls key systems, who bears the cost of remediation, how incidents are escalated, and whether one parent's systems or suppliers create vulnerabilities for the JV as a whole. These questions should be addressed in governance documents, technology-sharing arrangements and service-level

agreements, rather than left to general co-operation obligations.

Reflections and Outlook: JVs as Vehicles of Strategic Innovation

Looking ahead, the landscape of Sweden's JVs is set to evolve in response to global, regulatory and sectoral developments. The picture as of mid-2026 is one of recovery rather than boom. Factors such as domestic demand, rising real incomes and expansionary fiscal policy are expected to drive growth for the next year.

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 EU–US trade and tariff agreement announced last year 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. However, parties should remain cautious in translating trade-policy developments into transaction assumptions, as tariff implementation, sectoral exceptions and geopolitical responses can continue to affect timing, sourcing and investment decisions.

Going forward, the following are expected:

- increased JV activity in strategic sectors, including semiconductors, life sciences and defence technologies;
- greater use of JVs and strategic alliances to combine industrial data, applied AI, cybersecurity capabilities and sector-specific know-how, particularly in manufacturing, transport, energy, health and critical infrastructure;
- 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, with the new EU screening regulation expected to take effect in late 2027 or early 2028 and a national review of the FDI Act under discussion, as well as an increasing need to integrate cyber-resilience, data governance and operational-continuity obligations into JV documentation following the entry into force of the Cybersecurity Act; 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.

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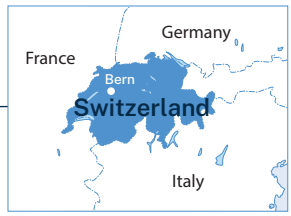

Law and Practice

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MLL Legal has four offices located in Switzerland's main centres as well as offices in London and Madrid 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. Throughout last year the US tariffs have been introduced and implemented in an incoherent geographical and temporal framework leading to unpredictable market conditions and increasing business costs within the international market.

Additional key market drivers include the ongoing war in Ukraine and the Middle East war, which has driven up the oil price leading to a general cost increase for many businesses.

Against this difficult economic background, which hit European markets hard, the Swiss joint ventures (JVs) market recorded substantial growth in 2025.

The stability of the Swiss market and the Swiss National Bank's policy of keeping the interest rate near to 0% increased the appetite of JVs to rely on debt capital to leverage their investments.

1.2 Industry Trends and Emerging Technologies

The technology and internet industries are key for JVs in Switzerland, supporting the hardware and software environment and the rapid growth of artificial intelligence (eg, the semiconductor industry). Such industry requires a highly specialised and sophisticated know-how and specific assets investment leading to synergies in JV structures. Furthermore, last year marked an increased appetite for biotech investments, among others in relation with weight-loss drugs and peptides. Finally, another relevant industry trends relates to clean energy and sustainable infrastructure.

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. However, 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 (*Aktiengesellschaften* (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 regis-

tration) 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 simple*) 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: due to 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: although 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.
- 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. In the case of a corporation, the anonymity of the shareholders is in principle granted in relation to third parties.

Main Statutory Provisions

Code of Obligations (CO)

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 (the "AML Act") apply to a JV if it qualifies as a financial intermediary or dealer that holds assets on behalf of others or 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.

In September 2025, the Swiss Parliament passed the Federal Act on the Transparency of Legal Persons and the Identification of Beneficial Owners (TJPG), which entered into force on 1 October 2026. The TJPG established a non-public transparency register containing information on beneficial owners – meaning natural persons who directly or indirectly control the company holding more than 25% of the capital or of the voting rights or controlling it in another way (for example, having sole decision ownership based on contractual agreements). The company itself must identify the beneficial owner and inform the Federal Office of Justice, otherwise it could face monetary sanctions. It should be noted that simple partnerships are not subject to such duty, and accordingly contractual JVs will not be covered. The transparency register is only accessible to specific authorities.

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 or qualifies as a real estate company (*Immobiliengesellschaft*) because the company purpose consists in the acquisition, holding, management or sale of real estate properties, 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 cantonal ruling of the competent authority 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.

On 19 December 2025, the Swiss Parliament passed the new Investment Screening Act (ISA), which will enter into force in 2027 at the earliest. According to the ISA state-affiliated foreign investors – ie, investors which are directly or indirectly controlled by foreign states – will be required to obtain an authorisation from the State Secretariat for Economic Affairs when acquiring a Swiss JV operating in specific sectors (such as defence, energy supply or healthcare sector for example). On the contrary, neither the simple founding of a new JV nor private foreign investors are covered by the scope of the ISA. For this reason, the ISA regulations will become part of the typical due diligence process when implementing Swiss JV.

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) must 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.

The same applies to 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.

As part of the new AML measures, the Swiss Parliament passed in September 2025 the TJPG which establishes a new federal transparency register and will enter into force on 1 October 2026 (see **3.2 Anti-Money Laundering Compliance**). The register will not be publicly available.

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 of JVs:

- 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 shareholder 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 codified 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 clauses ("MAC Clauses"), ie, clauses allowing a party to terminate the participation in a JV in the event of severe and unforeseen modification of the circumstances, 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 opera-

tional risks the JV might face from unforeseeable external events. The clauses provide a clear framework for risk allocation and performance relief in the event that such events occur.

5.4 Legal Formation and Capital Requirements

In Switzerland, JVs can be 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 corporation (AG/SA) or, less frequently, a limited liability company (GmbH/Sàrl), depending on the intended governance structure, liability regime and commercial purpose.

The capital requirements for different JV structures are as follows:

- 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;
- a GmbH requires a minimum share capital of CHF20,000, fully paid in; and
- an AG requires a minimum share capital of CHF100,000, with at least 20% of the nominal value of each share and in all cases 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 corporation (AG/SA) or limited liability company (GmbH/Sàrl)), the relationship is documented at multiple levels.

- 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 must 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 shareholders' 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. This is regulated in the respective (not mandatory but recommended) Board of Directors' Regulations.

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 certain 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 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 the following.

- In the event that parties are organised as a simple partnership, Swiss law provides that each partner must make a contribution, which may consist of, for example, money, objects, claims, labour or even the assumption of unlimited personal liability.
- 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. Please note, however, that in the case of a simple partnership, participation in losses is in principle mandatory, with an exception made for partners who contribute by way of labour.
- 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.
- 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 the following.

- 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.
- 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 investigation under certain conditions. Only a 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) or grant the minority shareholder's board representative such veto rights in decisions of the board of directors.
- 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.
- 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, time-efficiency 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, the International Chamber of Commerce, London Court of International Arbitration).

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 party to several important international treaties governing dispute resolution (eg, the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

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 provisions 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.

The transferable duties of the board may be delegated to executives (ie management directors). Such delegation – if not explicitly excluded in the articles of association – requires that it be established in written organisation regulations and that the shareholders are informed accordingly.

Board members must fulfil their duties with due care and in good faith, and are bound by the fiduciary duties of loyalty and care (as well as their duties under the mandate or employment contract). 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. Furthermore, such breach could also qualify as a contractual breach towards the JV, resulting in contractual liability and eventually representing a ground for (immediate) termination.

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 appointing 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 and represent a contractual breach.

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 licensing), 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 CO_2 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:

- 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. The company may even be dissolved by court judgement if at least 10% of the shareholders file a request based on a good cause (eg, in the event that a controlling shareholder continuously blocks decisions undermining the management of the company).

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.

In particular, a continuation clause (*Fortsetzungsklausel*) must be included in the JV agreement to avoid the dissolution of the simple partnership upon the withdrawal of a partner.

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 or a JV contribution. 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.

TAIWAN

Law and Practice

Contributed by:
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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, 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

Taiwan's joint venture (JV) market is increasingly shaped by geopolitical considerations, particularly the global emphasis on supply chain resilience, technology security, and the diversification of critical industries. As geopolitical tensions and concerns over supply chain concentration continue to influence investment strategies, companies are seeking partnerships that reduce reliance on a single jurisdiction while preserving access to advanced technologies, manufacturing capabilities, and key markets. Taiwan's leading position in semiconductors and AI-related supply chains has consequently made it an attractive destination for strategic alliances and JVs. Recent examples include the Nanya and Etron joint venture focused on high-bandwidth memory solutions in 2025, the Winmate and U-Leam joint venture for low Earth orbit satellites in 2026, and the TSMC and Sony joint venture for the next generation of image sensors in 2026, all of which illustrate efforts to combine complementary technological capabilities while strengthening supply chains that support the growing demand for AI applications. Continued investment in AI-related infrastructure, including data centres and advanced computing facilities, further demonstrates how geopolitical and technological priorities are driving cross-border collaboration involving Taiwanese companies.

Many business sectors attracting investment in Taiwan, including offshore wind, semiconductors, AI infrastructure, and major infrastructure projects, require substantial capital commitments, long development timelines, and highly specialised expertise. Joint ventures enable market players to share development costs and mitigate risks while combining complementary strengths and creating synergies in technology, manufacturing capabilities, operational know-how, and market access. These advantages are relevant to both inbound investments into Taiwan and outbound investments by Taiwan companies. In the offshore wind sector, for example, JV activity has expanded beyond the development of generation assets to include the localisation of critical supply chain components, such as offshore service vessels and power cable manufacturing facilities.

1.2 Industry Trends and Emerging Technologies

Taiwan remains one of Asia's active markets for joint ventures, supported by its strategic role in global supply chains, strong manufacturing base, and government support for key industries. While offshore wind has been one of the primary sources of cross-border JV activity in the past few years, JVs are increasingly being used across a broader range of sectors, including biotechnology, medical technology, artificial intelligence (AI), and infrastructure. Companies are leveraging JV structures not only to invest in projects, but also to localise supply chains, combine complementary technologies, facilitate technology transfer, expand into new markets, and share development risks.

Recent transactions illustrate this trend. In offshore wind, JVs have expanded beyond power generation to supporting infrastructure such as service vessels and offshore power cable manufacturing. In biotechnology and med-tech, Taiwanese companies are partnering with US, Japanese, and Hong Kong investors

to strengthen manufacturing capacity, access overseas markets, commercialise innovative therapies, and diversify geopolitical risks. In the AI sector, growing demand for semiconductors, memory solutions, and data-centre infrastructure has led companies to form JVs that combine technological expertise, manufacturing capabilities, and market access, supporting the rapid expansion of AI-related industries.

At the same time, Taiwan continues to improve its investment environment through regulatory reforms. The Department of Investment Review (DIR) has digitalised and expanded its foreign investment filing platform, reducing administrative burdens and facilitating cross-border transactions. Amendments to regulations governing insurance company investments are expected to increase institutional capital available for infrastructure and policy-supported projects, creating additional opportunities for JV formation due to the special shareholding limitation imposed on the insurance companies.

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:
  (a) 15% credit for the current year only; and
  (b) 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 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. The Legislative Yuan released 42 items as the national core critical technologies on 13 February 2026.

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 shareholders 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, the threshold for a public company to report and disclose a substantial shareholding that any person acquires, either individually or jointly with others, was lowered from 10% to 5% in 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.

Taiwan High Court 113-Shang-Zi No 141

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-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 the context of JVs by emphasising alignment with the JV's lawful business scope.

Taiwan High Court 113-Shang-Zi No 239

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.

Taipei District Court 114-Zhong-Su-Zi No 889

In Taipei District Court 114-Zhong-Su-Zi No 889, the court examined a joint-venture arrangement documented in a "Shareholders' Joint Investment and Business Operation Agreement" under which the parties agreed to contribute capital to, establish, and jointly operate a restaurant business, by looking beyond the text of a JV agreement. One party sought to rescind the agreement and recover its investment contribution, arguing that the agreed ownership structure and management arrangements had not been fully implemented because it had not been registered as a shareholder and legal representative of the JV company. However, the court held that the agreement was an innominate contract analogous to a partnership, under which the parties' obligations should be assessed in light of their overall commercial collaboration rather than solely through the lens of corporate formalities.

Since the JV company had been established, the business had commenced operations, and the parties had substantially performed their agreed commercial objectives, the court declined to permit rescission of the agreement or repayment of the investment contribution. At the same time, the court found that the failure to register the claimant as a shareholder and director constituted a breach of specific contractual obligations expressly set out in the JV agreement and therefore enforced the agreed liquidated damages provision. The court reaffirmed that, while the performance of a JV arrangement may be assessed on a substance-over-form basis, clearly drafted governance and ownership commitments remain independently enforceable according to their contractual terms.

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 specific 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, pro-

vided 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, as 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, 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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Joint Ventures in the Offshore Wind, Biotech and Med-Tech, AI Infrastructure, and Insurance Industries in Taiwan

Introduction

Taiwan continues to be one of Asia's active markets for joint venture (JV) transactions, driven by the country's strategic position in global supply chains, strong manufacturing base and government support for key industries. While renewable energy – particularly offshore wind – continues to be one of the primary sources of JV activity involving foreign investors in recent years, recent developments suggest that JV structures are increasingly being deployed across a broader range of sectors, including biotechnology, medical technology, artificial intelligence infrastructure and public infrastructure projects.

At the same time, the nature of JV transactions in Taiwan is becoming increasingly sophisticated. Rather than focusing solely on the development of core operating assets, market participants are increasingly utilising JV structures to develop supporting infrastructure, localise supply chains, combine complementary technologies and share development risks. Recent transactions in the offshore wind, biotech and AI sectors demonstrate that JV arrangements are being used not only as investment vehicles, but also as strategic platforms for technology transfer, market expansion and long-term operational collaboration.

In parallel with these market developments, Taiwan has continued to modernise its investment and regulatory framework. The Department of Investment Review's (the Ministry of Economic Affairs) (DIR) expansion of digital filing services is expected to reduce administrative burdens associated with foreign investment approvals. Recent relaxation introduced by the Financial Supervisory Commission (FSC) of relevant rules relating to insurance company investments may broaden the pool of institutional capital available for infrastructure and other policy-supported projects. Furthermore, a recent Taiwan court decision provides useful judicial guidance on how JV agreements may be characterised and interpreted under Taiwan law, highlighting the importance of careful drafting of governance, ownership and management provisions.

Latest JV developments in Taiwan's offshore wind industry

Taiwan's renewable energy sector remains one of the most active markets for cross-border joint ventures in Asia. Offshore wind projects in particular continue to be developed through consortium structures combining international developers, local industrial partners, financial investors and infrastructure funds. Recent transactions in the offshore wind sector appear to reflect an evolution in the focus of JV activities, from the development and construction of core generation infrastructure to a broader range of assets spanning the offshore wind value chain. In particular, JV arrangements are increasingly being used to develop ancillary and enabling infrastructure that supports the operation, maintenance and transmission of electricity generated by offshore wind projects.

For example:

- In October 2025, Purus (Singapore) and U-Ming Marine Offshore (Taiwan), a subsidiary of the Far Eastern Group, established a joint venture under

which Commissioning Service Operation Vessels (CSOVs) will be commissioned and deployed in Taiwan to support offshore wind farm operations by providing transportation, accommodation and maintenance support for offshore wind technicians.
- Similarly, in December 2025, Walsin Lihwa (Taiwan) and NKT (Denmark) inaugurated their joint venture to establish Taiwan's first offshore power cable manufacturing facility in Kaohsiung, representing a significant investment in the localisation of critical transmission infrastructure required to connect offshore wind power generation assets to the electricity grid.

Taken together, these transactions suggest that, as Taiwan's offshore wind sector matures, JV activity is increasingly directed not only towards the development of generation capacity itself, but also towards the supporting operational, maintenance and transmission infrastructure necessary to sustain the sector's long-term growth.

Growing JV projects in Taiwan's biotech and medtech fields

Taiwan's biotechnology sector has seen increasing cross-border collaborations involving biologics manufacturing, pharmaceutical supply chains and international market expansion. While licensing arrangements and strategic partnerships remain the predominant collaboration models, Taiwanese biotech companies have become a strong presence in joint ventures and cross-border acquisitions to strengthen manufacturing capacity, access overseas markets and diversify geopolitical risks.

The followings are several recent transactions illustrating this trend.

- In the pharmaceutical manufacturing sector, in March 2026, BioDuro (US) and Cenra's subsidiary for API solutions, CCSB (Taiwan), established a joint venture under which CCSB's active pharmaceutical ingredient manufacturing facilities in Taiwan were integrated into BioDuro's global manufacturing network. The joint venture combines CCSB's established GMP manufacturing facilities and regulatory compliance capabilities in Taiwan with BioDuro's drug-development expertise and global customer network, creating an integrated platform that supports customers from early-stage development through commercial-scale API manufacturing. The transaction also enabled BioDuro to expand and diversify its production footprint beyond mainland China while leveraging Taiwan's pharmaceutical manufacturing capabilities
- Similarly, in November 2025, Mycenax Biotech Inc., a Taiwan-based biologics CDMO, entered into a joint venture with three Japanese partners to establish Alfenax Biologics Corporation in Japan. The joint venture is formed to develop a biologics manufacturing base dedicated to the production of biosimilar drug substances and drug products for the Japanese market. The project also aligns with Japanese government initiatives promoting domestic biosimilar production and supply chain resilience. Mycenax and Japan's leading pharmaceutical distributor Alfresa each hold a 45% stake in the venture, reflecting a long-term strategic commitment by both parties to the Japanese biologics market.
- A further example was in May 2026, with AP Biosciences' (Taiwan) collaboration with Delos Capital (Hong Kong), under which the parties are reportedly planning to establish a JV focusing on the development of innovative biologics for autoimmune diseases. The proposed JV seeks to leverage AP Biosciences' bispecific antibody platform and development capabilities together with Delos Capital's expertise in product strategy, clinical development and global commercialisation. The initiative reflects a broader trend among Taiwanese biotechnology companies of forming strategic partnerships to accelerate product development, facilitate international market access and enhance the commercialisation potential of innovative therapies.

JV trends in the booming AI infrastructure developments

The continued expansion of artificial intelligence application is increasing demand for semiconductors, advanced packaging, memory solutions and digital infrastructure. As AI-related projects become increasingly capital-intensive and technologically complex, domestic and foreign market participants are increasingly exploring JV structures to combine

complementary technologies, manufacturing expertise and market access.

For example:

- In May 2026, Taiwan Semiconductor Manufacturing Company (TSMC) (Taiwan) and Sony Semiconductor Solutions Corporation (Japan) announced plans to establish a joint venture in Kumamoto, Japan, to develop and manufacture next-generation image sensors. The proposed venture is intended to combine Sony's expertise in image sensor design with TSMC's semiconductor manufacturing capabilities and is expected to support emerging AI-related applications, including robotics and automotive technologies.
- In April 2026, Winmate Inc. and U-Leam Inc. formed U-M Inc. to manufacture the products for the low Earth orbit satellite business.
- In August 2025, Nanya Technology Corporation (Taiwan) and Etron Technology, Inc. (Taiwan) established a joint venture to develop customised high-bandwidth memory (HBM) solutions for edge AI applications. The transaction demonstrates how AI-driven demand is extending beyond computing hardware into supporting memory technologies and semiconductor infrastructure, prompting companies to pool technological capabilities through joint venture arrangements.
- AI-related growth has also accelerated investment in digital infrastructure. In October 2024, Keppel Data Centre Fund II (Singapore) and Digital Decarbonization Solutions Platform (DDSP) (Singapore) formed a 50:50 joint venture to develop an 80MW data-centre campus in Taiwan. The parties expressly cited opportunities arising from Taiwan's growing AI and semiconductor sectors as a key driver for the investment, reflecting increasing use of joint venture structures in large-scale infrastructure projects supporting AI deployment.

Digitalisation of the foreign investment review by the DIR

The regulatory authorities in Taiwan, in particular the DIR, have continued their efforts to streamline Taiwan's foreign investment review regime through the digitalisation of application procedures. To further simplify the investment review process and advance the Taiwan government's broader digital transformation agenda, the DIR launched a new online application platform for foreign and overseas Chinese investments. The upgraded system significantly expands the scope of applications that may be submitted electronically, increasing the number of available filing categories from two to eleven.

In addition to new investment applications, the system now accommodates a wide range of post-investment filings, including:

- capital reductions;
- verification of approved investment amounts;
- changes to the name or business scope of the Taiwan investee company;
- changes to investor information, offshore mergers, and domestic reinvestments;
- amendments to approved investment plans;
- changes in organisational form;
- applications or filings relating to disposals of shares through public markets; and
- extension applications.

The DIR has emphasised that the new platform is designed to provide a more user-friendly filing experience through guided application functions, real-time application status tracking and reduced reliance on paper-based submissions. To strengthen user authentication and system security, the DIR has also introduced dedicated digital certificates for use with the platform.

From a transaction perspective, these developments are expected to reduce administrative costs and procedural complexity associated with foreign investment filings, improve transparency throughout the review process and shorten the time required for both initial approvals and subsequent compliance filings. For cross-border JVs, where foreign investment approvals often constitute a key closing condition and post-closing corporate changes frequently require additional regulatory filings, the enhanced digital platform should facilitate transaction execution and ongoing compliance management, thereby reducing friction for foreign investors participating in Taiwan's JV market.

Expansion of insurance companies' JV opportunities

Taiwan's insurance industry has long been an important source of capital for infrastructure and strategic investment projects. Under Article 146-5 of the Insurance Act, insurance companies may deploy insurance funds in approved special projects, public welfare enterprises and social welfare enterprises, subject to the approval and supervision of the FSC. Pursuant to the Regulations Governing the Use of Insurance Funds in Special Projects, Public Welfare and Social Welfare Investments, such investments are subject to various ownership, governance and regulatory requirements. In particular, insurance companies are generally prohibited from holding more than 45% of the issued shares or contributed capital of an investee enterprise in public welfare or social welfare projects unless otherwise approved by the competent authority.

These ownership restrictions have historically made consortium and JV structures particularly attractive to insurance companies. Rather than acquiring controlling stakes in investment projects, insurers frequently participate alongside developers, industrial sponsors, infrastructure funds and other strategic investors through JV arrangements that enable them to deploy capital while remaining within applicable regulatory thresholds.

Recent regulatory amendments announced in October 2025 may further expand the scope of JV opportunities available to insurance companies. The FSC has revised the Regulations Governing the Use of Insurance Funds in Special Projects, Public Welfare and Social Welfare Investments (保險業資金辦理專案運用公共及社會福利事業投資管理辦法) (the "Use of Insurance Funds Regulation") to broaden the categories of eligible public investments. In particular, the amended regulations now expressly permit investments by insurance companies in public construction projects implemented under the Act for Promotion of Private Participation in Infrastructure Projects (促進民間參與公共建設法), as well as public construction projects carried out under other laws, provided that the competent authority formally recognises the project as a policy-driven public investment. The amendments also revise the catch-all category of eligible investments from "public utilities promoted and developed by government policy" to the broader concept of "public construction projects supporting government policies".

This change significantly enlarges the range of assets that may qualify for insurance-fund investment. To date, the following categories of business have been recognised as possessing public infrastructure characteristics:

- logistics and warehousing facilities;
- electric vehicle charging infrastructure; and
- energy service company (ESCO) projects that assist public enterprises or facilities serving public interests, such as hospitals and public transportation hubs, in achieving energy-efficiency objectives.

As insurance companies remain subject to ownership concentration limits and other regulatory requirements, many of these newly eligible investment opportunities are likely to be pursued through consortium and JV structures. Accordingly, the recent amendments are expected to facilitate greater insurer participation in logistics, energy transition, transportation, social infrastructure and other policy-supported projects, potentially making insurance companies an increasingly important JV partner for developers, infrastructure sponsors and strategic investors in Taiwan.

Recent court judgment on the interpretation of JV agreements

A recent decision of the Taipei District Court (114-Zhong-Su-Zi No 889) provides useful guidance on how Taiwanese courts may potentially interpret and enforce joint venture arrangements by looking beyond the text of a JV agreement. The case arose from a "Shareholders' Joint Investment and Business Operation Agreement" pursuant to which the parties agreed to contribute capital for the establishment and operation of a restaurant business. Following a dispute regarding the implementation of the agreed ownership structure and management arrangements, one party sought to rescind the agreement and recover its investment contribution on the basis that the agreed JV structure had not been fully implemented.

In analysing the parties' rights and obligations, the court first considered the legal nature of the agreement. Rather than treating the arrangement solely as a corporate relationship governed by company law, the court characterised the agreement as an innominate contract analogous to a partnership, emphasising that the parties had agreed to make contributions, jointly operate a business and share profits. The court further held that, to the extent the agreement did not expressly address a particular issue, partnership principles under the Civil Code could be applied mutatis mutandis.

More importantly from a transactional perspective, the court adopted a substance-over-form approach when interpreting the JV agreement. Although the plaintiff argued that the defendant had failed to perform certain corporate registration obligations, including registering the claimant as a shareholder and legal representative of the JV company, the court took into account the parties' broader contractual arrangements and actual course of performance. In particular, the court examined whether the JV company had been established, whether the business had commenced operations, and whether the parties had in fact contributed capital and resources towards the agreed business undertaking. Because substantial performance of the JV's commercial objectives had already occurred, the court declined to permit rescission of the agreement and repayment of the investment contribution.

At the same time, the court separately held that the failure to register the plaintiff as a shareholder and director constituted a breach of specific contractual obligations expressly set out in the JV agreement. As a result, the court enforced a contractual penalty provision requiring payment of a substantial liquidated damages amount. Significantly, the court found that the defaulting party could not rely on broad arguments regarding the overall operation of the business to excuse non-compliance with clearly drafted governance and ownership commitments.

The authors would like to note several highlights in this decision for JV participants in Taiwan.

- Firstly, Taiwan courts may look beyond the corporate structure adopted by the parties and analyse the underlying JV agreement as a contractual collaboration resembling a partnership.
- Secondly, courts are likely to assess performance of JV obligations in a holistic manner, considering the parties' actual conduct and commercial implementation rather than focusing exclusively on individual corporate formalities.
- Finally, where governance rights, equity ownership arrangements, board appointments or management roles are intended to be legally enforceable, parties should ensure that such rights are stated in clear and unequivocal terms in the JV agreement, as Taiwan courts may be willing to enforce those obligations independently from the overall success or failure of the JV business.

UAE

Law and Practice

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1. Market Conditions

1.1 Geopolitical and Economic Factors

Despite conflict in the Middle East, joint venture (JV) activity in the UAE has remained strong. JV parties have, however, become more cautious: some now prefer outright acquisitions for the speed and control they offer. At the same time, joint ventures remain attractive where parties wish to share risk and invest in stages. Furthermore, geopolitical events have generally delayed transactions and extended approval periods.

Nonetheless, the UAE continues to benefit from a growing network of economic partnership agreements. Looking ahead to 2027, the authors expect further investment and consolidation in strategic sectors, with joint ventures continuing to support domestic growth and foreign investment into the UAE.

1.2 Industry Trends and Emerging Technologies

Technology and energy have generated significant joint venture activity in the UAE. Growth in artificial intelligence, cloud services and data centres has been supported by the UAE's digital strategy and investment in computing capacity. Renewable energy, infrastructure, advanced manufacturing and real estate have also remained active because of continued economic diversification, population growth and major development projects.

Emerging technology affects both the structure of the venture and the matters covered by its agreements. Data is increasingly treated as a key contribution alongside capital and intellectual property. The parties must therefore specify who may collect, access, use and share data; whether it may be used to train AI systems; where it will be stored; and how cross-border transfers will be managed under the federal, the Dubai International Financial Center (the DIFC) or the Abu Dhabi Global Market (the ADGM) data-protection regime. The documents should also distinguish intellectual property contributed by each party from technology developed by the venture and allocate ownership of AI-generated outputs.

2. JV Structure and Strategy

2.1 Typical JV Structures

Joint ventures in the UAE may be structured as equity-based or contractual arrangements, depending on the parties' objectives. An equity joint venture involves establishing a separate legal entity owned by the partners. It is generally suited to long-term collaboration or where a standalone corporate identity, licence or regulated vehicle is required. The limited liability company is the most common vehicle, whose liability is generally limited to their capital contributions. Full foreign ownership is permitted in most sectors, subject to restrictions on activities with strategic impact. ADGM and DIFC private companies are also popular

where the parties prefer a common law governance framework.

A contractual joint venture does not require a separate entity. The parties remain independent and operate under an agreement setting out their respective roles, contributions and profit-sharing arrangements. This structure is generally used for specific projects or short-term collaborations, or where establishing and licensing a separate entity would be impractical. Its main advantage is flexibility, while its principal disadvantage is the absence of a corporate liability shield, requiring liability and risk to be managed contractually.

2.2 Strategic Drivers for JV Structuring

The main factors regarding JV structuring are the parties' identity and jurisdiction, whether the venture is privately or government-backed, its sector and where it will operate. For mainland UAE-based equity joint ventures, licensing requirements, foreign ownership restrictions on activities with strategic impact and the number and complexity of shareholders influence the choice of vehicle. DIFC or ADGM entities may be preferred where common law governance or free zone regulation is important, although separate approvals may be required to operate in mainland UAE. For contractual joint ventures, the key issue is whether the proposed activities may be undertaken without a separately incorporated and licensed entity. The parties should also consider profit and loss allocation, rights to assets and revenue, risk-sharing, governance, control and accounting treatment.

Tax is also a central consideration. A mainland UAE-incorporated joint venture is a separate taxable person and is generally subject to corporate tax at 9% on taxable income exceeding AED375,000. DIFC and ADGM entities also fall within the federal corporate tax regime. A qualifying free zone person may benefit from the 0% rate on qualifying income only if the applicable substance, de minimis, transfer pricing and audited financial statement requirements are met. An unincorporated joint venture is generally tax-transparent, with each partner accounting for its share, but may apply for Federal Tax Authority approval to be treated as a taxable person. Transactions with related parties must be conducted on an arm's length basis.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

The principal legislation governing UAE mainland-incorporated joint ventures is the Commercial Companies Law, Federal Decree-Law No 32 of 2021, as amended by Federal Decree-Law No 20 of 2025, which regulates their formation, governance and dissolution. Contractual joint ventures are governed by their agreements and Federal Decree-Law No 25 of 2025 Promulgating the Civil Transactions Law and Federal Decree-Law No 50 of 2022 Promulgating the Commercial Transactions Law. Competition matters fall under Federal Decree-Law No 36 of 2023 Regulating Competition. Incorporated joint ventures in the DIFC are governed by the Companies Law, DIFC Law No 5 of 2018, as amended, while those in the ADGM are governed by the ADGM Companies Regulations 2020, as amended.

3.2 Anti-Money Laundering Compliance

The UAE's anti-money laundering framework is set out in Federal Decree-Law No 10 of 2025 regarding Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Financing and Cabinet Resolution No 134 of 2025 issuing its Executive Regulations. It applies across the mainland and the commercial and financial free zones. In the DIFC, it is supplemented by the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the Dubai Financial Services Authority (the DFSA) Rulebook and the DIFC Ultimate Beneficial Ownership Regulations 2018. In the ADGM, the corresponding instruments are the Financial Services Regulatory Authority (the FSRA) Anti-Money Laundering and Sanctions Rules and Guidance and the ADGM Beneficial Ownership and Control Regulations 2022.

3.3 Sanctions, National Security and Foreign Investment Controls

Federal Decree-Law No 10 of 2025 regarding Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Financing and Cabinet Decision No 74 of 2020 require compliance with UAE and United Nations sanctions. Relevant DIFC and ADGM entities are also subject, respectively, to the DFSA Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module and FSRA Anti-

Money Laundering and Sanctions Rules and Guidance. Parties should screen their partners, ultimate beneficial owners and funding sources.

Competitors must limit information-sharing and co-operation to what is necessary for the venture under Federal Decree-Law No 36 of 2023 Regulating Competition. A jointly controlled venture may also require merger clearance.

The UAE has no general cross-sector foreign investment screening regime. Foreign investors may own 100% of most mainland companies, but strategic-impact activities under Cabinet Resolution No 55 of 2021 may be subject to national ownership, board or approval requirements. These include defence, financial services, telecommunications, currency printing, specified religious services and fisheries.

The DIFC and ADGM generally permit 100% foreign ownership, although regulated financial services require DFSA or FSRA approval. Separate licensing may be required for mainland operations.

3.4 Competition Law and Antitrust

Federal Decree-Law No 36 of 2023 Regulating Competition, Cabinet Resolution No 59 of 2026 and Cabinet Decision No 3 of 2025 prohibit horizontal and vertical restrictive agreements, including price-fixing, output restrictions, market or customer allocation and bid-rigging, and abuse of dominance. A market share above 40% establishes dominance, but broader market-power factors are also assessed.

A jointly controlled JV may constitute an economic concentration. Notification is required where combined annual sales in the relevant UAE market exceed AED300 million or combined market share exceeds 40%. Filing must occur at least 90 days before completion, and closing of the transaction is suspended pending clearance; parties should think of including a clearance condition and realistic long-stop date in applicable JV establishment documents.

3.5 Listed Companies and Market Disclosure Rules

Where a joint-venture party is listed, no additional requirements attach to the joint venture itself, but the listed party must continue to observe the securities laws, continuous disclosure obligations and corporate governance standards applicable to listed companies. A material transaction may therefore need to be disclosed to the market and, depending on its size relative to the company, may require shareholder approval.

3.6 Transparency and Ownership Disclosure

Under UAE federal regulations, disclosure of ultimate beneficial ownership is mandatory under Cabinet Resolution No 109 of 2023, which regulates the beneficial owner procedures and applies to all mainland entities and entities in the economic free zones. Certain entities must maintain a register of beneficial owners, file the information with the licensing authority and update it when circumstances change. A beneficial owner is an individual who ultimately owns or controls at least 25% of the shares or voting rights, or who otherwise exercises control over management. In the DIFC, the Ultimate Beneficial Ownership Regulations 2018 require entities to maintain a UBO register, file particulars with the Registrar and report changes within 30 days. A UBO includes a natural person holding at least 25% of shares or voting rights, entitled to appoint or remove a majority of directors, or otherwise exercising significant control.

In the ADGM, the Beneficial Ownership and Control Regulations 2022, as amended, apply to entities other than branches of foreign companies or partnerships. They require records of beneficial owners and controllers and notification of changes to the Registration Authority within 15 days. The ADGM applies a similar ownership threshold as the DIFC.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

The defining development of the last three years is the amendment of the Commercial Companies Law by Federal Decree-Law No 20 of 2025, which has materially improved the UAE's federal regime for joint ventures. Companies may now issue multiple classes of shares carrying different rights, so that preferred returns, weighted or non-voting quotas and liquida-

tion preferences can be built directly into the capital structure of a mainland limited liability company. Drag-along and tag-along rights, together with succession and deadlock mechanisms, may now be included in the constitutional documents, giving them enforceability against the company and third parties rather than existing only as contractual agreement between shareholders. The reforms also permit corporate re-domiciliation, extend the law's reach to foreign companies with a UAE presence and to free zone companies conducting onshore activities. The practical effect is that complex joint venture arrangements which were previously pushed into free zones or offshore holding structures can now be implemented onshore.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

Negotiations usually begin with a mutual non-disclosure agreement to protect information exchanged during due diligence, followed by heads of terms or a memorandum of understanding recording the key commercial points on a non-binding basis. Where one party contributes a unique asset or opportunity, an exclusivity or lock-out arrangement is common. At this stage the parties usually agree on the intended ownership split and capital contributions, the governance principles including board composition and veto rights, the scope of the venture's business, the funding and profit-distribution mechanics, the conditions to be satisfied before completion, and the governing law and dispute resolution forum.

5.2 Disclosure Obligations

There is no general obligation to make a joint venture public at the negotiation stage. Disclosure obligations arise in specific circumstances where the venture meets the merger-control thresholds and must be notified to the competition authority before completion; where a party is listed and the transaction is material enough to require market disclosure or shareholder approval; where the venture operates in a regulated sector requiring prior approval and therefore disclosure to the relevant regulator; and, on formation of the entity, where beneficial ownership information must be filed with the licensing authority.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Joint venture agreements usually include conditions precedent revolving around obtaining any required sector approvals, securing competition clearance where required, executing the ancillary agreements, completing the licensing authority's KYC checks, delivering the necessary corporate authorisations and legal opinions, and the absence of any material adverse change. Material adverse change clauses are negotiated, and in the current geo-political and economic climate a higher focus is placed on them, particularly around regional conflict, sanctions and commodity price movements. Force majeure is a recognised concept under UAE law, excusing performance where an event beyond a party's control renders performance impossible rather than merely more onerous, and it has become a focal point of negotiation given regional instability, with parties defining triggering events carefully and specifying whether the consequence is suspension, renegotiation or termination.

5.4 Legal Formation and Capital Requirements

Establishing a UAE mainland limited liability company involves reserving the trade name, preparing and notarising the constitutional documents, obtaining initial approvals from the economic department and any sector regulator, completing the anti-money laundering and KYC requirements, contributing the share capital and obtaining the trade licence. The timeline ranges from a few days to several weeks depending on the complexity of the venture and the jurisdiction. There is no fixed minimum capital for a limited liability company established in the mainland UAE beyond the requirement that it be adequate to the company's purpose, and free zone entities are subject to the capital requirements of the relevant authority.

In the DIFC, incorporation proceeds through the Registrar of Companies under DIFC Companies Law No 5 of 2018. The application includes the name and activities, articles, corporate approvals, ownership and UBO/KYC details, and evidence of a registered office. Regulated financial activities require prior DFSA approval.

In the ADGM, incorporation proceeds through the Registration Authority under the ADGM Companies Regulations 2020. Similar constitutional, ownership, KYC and premises information is required, although notarisation is unnecessary unless requested. FSRA approval is required for regulated financial activities.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

For an equity joint venture the documentation comprises the joint-venture or shareholders' agreement, which governs the relationship between the parties as owners, the constitutional documents filed with the licensing authority, and a suite of ancillary agreements such as intellectual property licences, services and secondment agreements, supply or offtake arrangements and parent guarantees. At the federal level, the reforms to the commercial companies law introduced by Federal Decree-Law No 20 of 2025 Amending Certain Provisions of Federal Decree-Law No 32 of 2021 on Commercial Companies have shifted the balance between the shareholders' agreement and the company's constitutional documents, since protective terms that once were incorporated only in the shareholders' agreement can now be included in the constitutional documents of the company and thereby made enforceable against the company itself. For a contractual joint venture a single collaboration agreement can include all of these functions, defining each party's scope of work, cost allocation, profit and loss sharing, liability, intellectual property ownership and termination.

6.2 Governance and Decision-Making

Certain fundamental decisions are reserved to the shareholders and typically require a supermajority or unanimity, including amendments to the constitution, changes to capital or share classes, approval of the annual budget and business plan, material related-party transactions and borrowing, changes to the venture's scope, and dissolution. The board or management committee takes strategic and operational decisions within the parameters the shareholders set, with seats generally allocated in proportion to shareholding, although weighted voting is now available following the recognition of differentiated share classes. Day-to-day operations are delegated to the appointed managers, and the JV entity's shareholder agreement and constitutional documents should mark a clear difference between management authority and matters requiring board or shareholder approval.

6.3 Funding

JV entities are typically funded through a combination of equity contributions made on incorporation, shareholder loans, and third-party debt supported where necessary. The agreement should address whether the parties are obliged to meet future funding calls and the consequences of a failure to do so, which may include dilution, default or a forced transfer of the defaulting party's interest, together with any anti-dilution protection and pre-emption rights on new issues. Where future funding alters the ownership balance, the agreement should specify whether board representation and reserved-matter thresholds are to be recalculated.

6.4 Deadlocks

Deadlock is addressed through a series of mechanisms, starting with referral to the senior executives of each party for a defined negotiation period, followed where necessary by mediation, and then by a structured buy-out such as a put or call option, a mechanism under which one party's offer to buy compels the other either to sell or to buy at the same price. Winding up the venture and, ultimately, recourse to the courts remain the options of last resort.

6.5 Other Documentation

Depending on the sector, the arrangement is commonly supported by intellectual property and technology licences, services and management agreements, secondment or employment arrangements for key personnel, supply and offtake contracts, asset transfer agreements, lease assignments and parent company guarantees or comfort letters, alongside continuing confidentiality undertakings.

6.6 Rights and Obligations of JV Partners

In an incorporated venture profits are distributed in accordance with the constitutional documents, and the parties may agree profit-sharing ratios that differ from their equity percentages, subject to the requirement to set aside a statutory reserve. In a contrac-

tual venture profit and loss allocation is a matter of agreement. Non-compete and non-solicitation obligations are enforceable provided they are limited in purpose, duration and territory and are proportionate to the interest protected, and including consideration for adherence strengthens enforceability. Liability for the venture's debts is limited to capital contributions in an incorporated structure, whereas in a contractual venture liability turns on the terms of the agreement and the nature of the underlying obligations.

6.7 Minority Protection and Control Rights

Minority shareholders benefit from a combination of statutory and contractual protection. Federal Decree-Law No 20 of 2025 Amending Certain Provisions of Federal Decree-Law No 32 of 2021 on Commercial Companies confers pre-emption rights on share transfers, the right to vote in proportion to ownership, the right of shareholders holding at least a tenth of the capital to convene a general meeting, rights to inspect the company's records and protection against resolutions that unfairly prejudice minority interests. These are supplemented contractually by reserved matters requiring enhanced consent, guaranteed board representation, information and audit rights, tag-along rights, anti-dilution protection and put options exercisable on specified default events.

The DIFC Companies Law No 5 of 2018 and the ADGM Companies Regulations 2020 provide similar safeguards, including statutory pre-emption on new share issues, rights to receive accounts and inspect specified records, protections for class rights, meeting-requisition rights and court remedies for unfairly prejudicial conduct. In both jurisdictions, issue-pre-emption rights may be excluded or disapplied only as permitted by the applicable legislation.

6.8 Applicable Law and Dispute Resolution in International JVs

Parties are free to choose the governing law of their agreement, and while the constitution of a mainland entity must comply with the Commercial Companies Law, the shareholders' agreement itself is frequently governed by English, ADGM or DIFC law in international ventures, with UAE law more common for domestic mainland arrangements. On dispute resolution, arbitration is the usual choice for cross-border ventures, whether seated at one of the UAE's arbitration centres or under international rules, while the DIFC and ADGM courts are increasingly selected for their common law procedure and English-language proceedings, and the onshore courts remain appropriate for domestic ventures. As a signatory to the New York Convention, the UAE enforces foreign arbitral awards through a streamlined application to the execution judge, and domestic arbitration is governed by the Federal Law No 6 of 2018 Concerning Arbitration, as amended by Federal Decree-Law No 15 of 2023 Amending Certain Provisions of Federal Law No 6 of 2018 Concerning Arbitration as amended.

7. The JV Board

7.1 Board Structure

The board of an equity joint venture is generally structured to mirror the ownership split, so that in an evenly held venture each party appoints an equal number of directors and a casting vote or independent chair is provided to break ties, while in a majority-minority structure the majority appoints most of the directors with the minority guaranteed at least one seat. There are no nationality restrictions on the managers of a mainland limited liability company.

7.2 Duties and Functions of JV Boards and Directors

Under Federal Decree-Law No 32 of 2021 on Commercial Companies, as amended, directors and managers of mainland companies must act within their powers, exercise due care, protect the company's interests, avoid misuse of office and disclose conflicts, abstaining from voting where required. Their duties are owed to the company.

The DIFC Companies Law, DIFC Law No 5 of 2018, and the ADGM Companies Regulations 2020 impose similar duties, including promoting the company's success for shareholders as a whole, exercising reasonable care, skill and diligence, avoiding conflicts and declaring interests. A board may delegate functions to individual directors, committees or third parties where permitted by the regulations and the constitutional documents. Matters reserved to the board

or shareholders cannot be delegated, and directors remain responsible for supervising any delegate.

The board must ensure that annual financial statements and any required reports are prepared, audited where applicable, circulated to shareholders and filed or presented for approval. JV documents commonly require additional reporting, including management accounts, budgets and business plans.

7.3 Conflicts of Interest

For companies incorporated in the UAE mainland jurisdiction, Federal Decree-Law No 32 of 2021 on Commercial Companies, as amended, requires a director to disclose any direct or indirect conflict before the relevant matter is considered. A conflicted director must not participate in the discussion or vote, and the disclosure and decision should be recorded in the minutes. Appointment by, or employment with, a joint venture partner does not automatically disqualify the director, but transactions involving that partner may require additional board or shareholder approval.

In the DIFC and ADGM, directors must avoid conflicts and disclose the nature and extent of any interest under the DIFC Companies Law No 5 of 2018 and the ADGM Companies Regulations 2020. A conflict may be authorised by the non-conflicted directors or shareholders where permitted by the applicable law and articles. Whether the interested director may participate or vote will depend on those provisions and the terms of the authorisation.

8. IP and ESG

8.1 Ownership and Use of IP

At the outset, the parties should identify the intellectual property each party will contribute to the joint venture ("Background IP") and clearly record its ownership. Background IP is generally licensed, rather than assigned, to the joint venture. This allows the joint venture to use the IP while ownership remains with the contributing party and the licence can be terminated when that party exits or the joint venture ends.

The parties should also agree who will own any intellectual property created by the joint venture ("Foreground IP"), including any developments or improvements to the Background IP. Where the joint venture will use a party's brand or trade marks, the parties should enter into a trade mark licence addressing matters such as permitted use, quality control, territory, duration and termination.

The same considerations apply to a contractual joint venture, although the parties' rights will be governed entirely by the joint-venture agreement. Clear drafting is therefore important to avoid disputes over ownership and use. Assignments and licences of registered trade marks and patents should also be recorded with the UAE Ministry of Economy where required to be effective against third parties. Cross-border licensing arrangements must comply with applicable transfer pricing requirements and may have tax consequences in the licensor's jurisdiction.

8.2 Licensing v Assignment of IP Rights

Licensing is generally more suitable for a joint venture because it allows the contributing party to retain ownership of its intellectual property and continue using it in its own business. A licence can also be limited by purpose, territory and duration and terminated when the joint venture ends or the contributing party exits. Licence fees should be determined on an arm's length basis in accordance with applicable transfer pricing requirements.

An assignment may be appropriate where the intellectual property has been developed exclusively for the joint venture and has no separate value to the contributing party. It may also be required where the joint venture needs full ownership to enforce the rights, grant sub-licences or facilitate a future sale of the business.

An assignment permanently transfers ownership of the relevant rights, subject to any agreed reversion provisions. A licence only grants the joint venture defined rights to use the intellectual property. The licence should therefore specify whether it is exclusive, the permitted scope of use and what happens to the licensed rights when the joint venture terminates.

8.3 ESG Considerations in JVs

Environmental, social and governance (ESG) matters are becoming increasingly important when structuring joint ventures in the UAE. This reflects the UAE's Net Zero 2050 strategy, federal climate change legislation and the sustainability reporting obligations or expectations applicable to listed companies. International investors, lenders and other counterparties also commonly impose ESG requirements as a condition of their participation.

Joint venture agreements increasingly include ESG standards, reporting and audit obligations, board-level oversight and a clear allocation of responsibility for environmental compliance and emissions. They may also provide for remedial action or termination following a serious environmental or governance breach.

ESG performance may affect a joint venture's access to financing, insurance and government contracts. It should therefore be addressed as a substantive part of the joint venture's governance and risk allocation arrangements.

9. Exit Strategies and Termination

9.1 Termination of a JV

An incorporated joint venture may be dissolved on the expiry of its agreed term, the achievement of its purpose, a resolution of its shareholders, insolvency or liquidation, or a court order following an unresolved dispute or deadlock.

A contractual joint venture will generally terminate when the relevant project is completed, its agreed term expires, the parties agree to terminate it, a party commits a material breach, a force majeure event makes performance impossible, or a party becomes insolvent.

The joint-venture agreement should set out the consequences of termination. These normally include settling outstanding liabilities and third-party obligations, dealing with the joint venture's assets, terminating intellectual property licences and returning Background IP, addressing employees, preserving confidentiality and any continuing restrictive covenants, and completing any required tax and regulatory procedures. For an incorporated joint venture, the parties may also need to liquidate and deregister the entity, cancel its licences and notify the relevant authorities.

9.2 Asset Redistribution and Transfers

The treatment of assets on termination depends on how they were originally contributed. Where a party retains ownership and only licenses or makes an asset available to the joint venture, the asset should generally return to that party. The joint-venture agreement should specify the applicable value, valuation procedure and treatment of depreciation, improvements, liabilities and tax.

Where ownership of an asset has been transferred to an incorporated joint venture, the asset belongs to the joint venture and will not automatically return to the contributing party. On liquidation, the asset may be sold or distributed only after the joint venture's liabilities have been settled and in accordance with applicable law and the constitutional documents.

Assets created or acquired by the joint venture, including intellectual property, customer relationships and goodwill, should be dealt with in the manner agreed by the parties. The parties should also consider whether third-party consent is required to assign contracts, whether change-of-control provisions may be triggered and whether licences or permits can be transferred. Employees will generally need to be terminated and rehired because UAE law does not provide for their automatic transfer. Transfers of real property may also require registration and payment of the applicable fees.

9.3 Exit Strategy

The parties have broad freedom to agree the circumstances and procedures for exiting a joint venture, subject to the applicable commercial companies law and the constitutional documents of the joint-venture entity. Federal Decree-Law No 20 of 2025 Amending Certain Provisions of Federal Decree-Law No 32 of 2021 on Commercial Companies has increased the flexibility available to shareholders when structuring governance and economic rights of an entity incorporated in mainland UAE, including the ability to

include tag-along and drag-along rights in the constitutional documents. The constitutional documents of DIFC and ADGM companies which are governed separately by the DIFC Companies Law No 5 of 2018 and the ADGM Companies Regulations 2020, may contain bespoke share classes, transfer restrictions, tag-along, drag-along and other exit rights.

Share transfers must nevertheless comply with applicable statutory pre-emption rights and the company's constitutional documents. Federal Decree-Law No 32 of 2021 on Commercial Companies also provides a procedure for dealing with a shareholder's interest following death, including valuation by agreement or, where the parties cannot agree, by the court. Any distribution from profits must also take account of the applicable statutory reserve requirements.

Common exit arrangements include lock-up periods, put and call options, negotiated buy-outs and trade sales supported by tag-along and drag-along rights. Successful joint ventures may also convert into public joint-stock companies and proceed to an initial public offering. In practice, a negotiated buy-out at fair market value is the most common exit route, while liquidation is generally used only where no viable alternative is available.

Trends and Developments

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Matouk Bassiouny is a leading full-service MENA law firm with over 270 lawyers operating out of its offices in Cairo, Egypt (Matouk Bassiouny & Hennawy), Abu Dhabi, United Arab Emirates (Matouk Bassiouny), Khartoum, Sudan (Matouk Bassiouny in association with AIH Law Firm), and Algiers, Algeria (Matouk Bassiouny). Matouk Bassiouny's MENA offices are supplemented by a New York satellite office dedicated to enhancing the firm's international dispute resolution services in addition to two country desks covering Libya and South Korea. Trained locally and internationally in both civil and common law systems, the firm's attorneys are fully conversant in English, Arabic, French, and Korean. Matouk Bassiouny is ideally placed to advise multinationals, corporations, financial institutions, and governmental entities on all legal aspects of investing and doing business in the region.

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The 50/50 Joint Venture in the UAE

Introduction

The 50/50 joint venture (50/50 JV) is, at once, the most intuitive expression of partnership – two parties contributing equally, sharing equally, and governing equally – and at the same time is the most structurally challenging corporate arrangement available. It promises both partners that they matter equally and that neither is subordinate, and for a time, sometimes a long time, that promise holds.

Yet, the very symmetry that makes the 50/50 JV attractive is also what makes it challenging and sometimes dangerous. A budget that one party considers aggressive and the other considers essential. A hire that one partner views as essential and the other views as irrelevant. A contract renewal that sits unsigned on a desk for weeks, then months, because neither party will approve it. The company does not collapse, but it simply slows down. In a market as fast-paced as the UAE, a company that slows down could eventually fall behind.

This article examines those fault lines. It is written for the partner who is about to sign a 50/50 JV agreement and wants to understand what lies ahead, and for the partner who signed one year ago and is now living with the consequences. It addresses the structural weaknesses of the model, the specific complications introduced by UAE law, the legislative reforms that have begun to address them, and the contractual tools that remain indispensable for any venture that intends to survive its own governance.

Practically speaking, the UAE has procedurally been introducing greater flexibility for mainland companies incorporated in the UAE under the federal system. Whereas the UAE financial free zones, being the Abu Dhabi Global Market (the ADGM) and the Dubai International Financial Centre (the DIFC), already offer considerable flexibility in structuring governance and economic rights.

The anatomy of a 50/50 JV

Before examining what goes wrong, it is worth understanding what a 50/50 JV is designed to achieve. The structure is most commonly deployed where two strategic partners bring complementary but roughly equivalent contributions to a shared company. One partner may contribute technology, intellectual property, or international market access and the other may bring local market knowledge, regulatory relationships, or operational infrastructure. The logic is that neither contribution is subordinate to the other, and therefore neither party should be subordinate in governance.

In the UAE, the most common vehicle for such arrangements is the limited liability company, whether incorporated on the mainland, within an economic freezone, or within a financial free zone such as the ADGM or the DIFC.

The governance of a 50/50 LLC typically mirrors the ownership split. Each partner most likely appoints an equal number of directors or managers. Reserved matters, those decisions deemed sufficiently material to require more than a simple majority, effectively require unanimity, not merely because equal ownership demands it, but because neither partner entered the venture expecting to be subordinate to the other. The business plan, the annual budget, capital expenditure above a threshold, the appointment or removal of senior management, entry into related-party transactions, and any amendment to the constitutional documents: all of these, in a well-drafted joint-venture agreement, require both parties to agree. The result is a structure in which the company cannot act unless both partners consent. This is not a defect; it is the agreement between the parties. The question is what happens when consent is withheld.

Types of joint ventures

Not all 50/50 JVs are alike. The disputes they generate, the governance pressures they face, and the exit dynamics they produce depend heavily on the commercial relationship between the partners and the scope of the venture's activities. Three models dominate the UAE market, and each carries its own structural fault lines.

The complementary-contribution model

This is the classic model: one partner contributes one category of value such as technology, intellectual property, product development, or international networks, and the other contributes a different category such as local market infrastructure, regulatory access, distribution capability, or operational expertise. Both contributions are essential to the venture's success, and both are difficult to replicate. The structure works well at inception because the partners occupy distinct roles and depend on each other to reach a market neither could access alone.

The challenge emerges over time. It is not about one contribution being worth more than the other but it is about visibility and measurement. Neither partner is contributing less, but each may perceive the other's contribution differently as the venture matures. This perception gap drives disputes over dividend policy, reinvestment strategy, and whether the venture's scope should expand into areas where one partner's expertise is more relevant than the other's. The underlying tension is not inequality of contribution, but it is the difficulty of measuring fundamentally different contributions against a single metric over time.

The same-industry model

This is the most complex model, and the one that generates the most intractable governance disputes. Here, both partners operate in the same sector. They may be competitors who have agreed to collaborate on a specific project, a geographic market, or a service line that neither wishes to pursue alone. Both bring deep industry knowledge. Both understand the market. Both have existing operations, client relationships, and commercial strategies that predate the venture and will continue alongside it.

The difficulty is not that the partners fail to understand each other, but it is that they understand each other too well. Each knows precisely what the other stands to gain or lose from any given decision, because each will analyse that decision identically if it arises in their own business.

The financially-strategic model

Here, one partner is a financial investor and the other is an operational or strategic partner responsible for managing and growing the business. Both bring indispensable value, capital and governance discipline on one side, and execution capability and sector expertise on the other.

The challenge lies not in the quality of either partner's contribution but in the structure of their incentives over time. The financial partner's return is tied to an exit event within a defined investment horizon. The strategic partner's return may be tied to long-term market position, recurring revenue, or the venture's role within a broader group strategy. These objectives are not contradictory at inception, but they become increasingly difficult to reconcile as the financial partner's target exit date approaches. Disputes in this model centre on timing, valuation methodology, and the terms on which a third-party buyer is acceptable.

Where you incorporate makes a difference

The UAE is not a single corporate law jurisdiction. It is a layered system, having mainland, economic free zones, and financial free zones. For a 50/50 JV, the choice of incorporation determines, where there is deadlock, whether the partners have the tools to resolve or whether they are left to largely resort to litigation, or dissolution. Thus, the choice of incorporation determines not only the governance tools available at formation but the remedies available when things go wrong.

Mainland LLCs

For a 50/50 JV, previously, the law had a particular set of constraints that compound the deadlock problem. Share transfers must have been and still have to be notarised before a licensed notary public, and the notary requires both shareholders to attend and approve the transaction regardless of what the joint-venture agreement provides. A partner who refuses to appear at the notary can block any transfer indefinitely. UAE courts have generally not granted specific performance compelling a party to attend the notary, with relief typically limited to damages for breach of contract. They will award damages for breach of contract, but the shares will not be transferred. The memorandum of association, not the shareholders' agreement, is the governing constitutional document, and where the two conflict, the memorandum of association prevails. A reserved matter applicable in the shareholders' agreement but absent from the memorandum may be unenforceable against the company itself. The contractual architecture of a 50/50 JV can be beneficial on paper but structurally unenforceable in practice when needed.

Economic free zones

Entities incorporated in economic free zones such as JAFZA, DMCC, and DAFZA are governed by the company regulations issued by their respective free zone authorities. Some closely mirror the Commercial Companies Law in structure and limitation. Others offer greater flexibility that would be difficult to implement on the mainland. However, economic free zone companies generally remain subject to UAE civil law principles in the event of a dispute, and their disputes are typically resolved before UAE mainland courts or through arbitration.

Financial free zones

ADGM and DIFC

The financial free zones, ADGM and the DIFC, largely operate as common law jurisdictions within the UAE. The ADGM directly applies English common law. English case law is directly binding on ADGM courts, and ADGM common law evolves automatically as English case law develops. The DIFC, by contrast, has enacted its own codified body of civil and commercial laws. While these are modelled on English common law principles, they stand as the DIFC's own statutes. Both permit multiple share classes with differentiated voting rights, weighted governance structures, and class-specific mechanisms. Both have their own court systems that apply common law principles, grant specific performance and injunctive relief, and have developed a body of precedent on shareholder disputes.

The practical implication is straightforward. A 50/50 JV structured through ADGM or the DIFC has access to a fundamentally different and more predictable set of laws than one structured on the mainland or in an economic free zone. The partners can be compelled to act, not merely compensated for the other's refusal to act. For ventures involving sophisticated governance mechanisms, international partners, or significant capital, this difference is not marginal; it is decisive.

Contractual solutions

Legislative reform provides the framework, but it does not address the specific commercial dynamics of any particular joint venture. The partners are obliged to make sure the specific commercial dynamics are reflected in a joint-venture agreement, and within it, the deadlock clause is one of the most important provisions. A venture without a deadlock clause is a bet that the partners will always agree. That bet most likely loses eventually.

The tiered escalation structure

A well-drafted deadlock clause must begin with a structured attempt to resolve the disagreement within the relationship, before the relationship itself becomes the dispute. The first tier is escalation. The matter is referred to a designated decision maker who is given a defined period to resolve the issue amicably. The

second tier is mediation. The dispute is referred to an independent mediator, agreed upon by both parties or appointed under institutional rules, who facilitates a structured negotiation within a defined timeframe. During the mediation period, neither party may take unilateral action, and the company continues to operate under the last approved budget and business plan. The purpose is not to impose a solution but to introduce a neutral perspective, and to preserve the status quo while that conversation takes place. Only if mediation fails does the resolution mechanism engage. The choice of mechanism depends on the nature of the venture, the relative financial strength of the partners, and the degree to which the venture's value is tied to one partner's ongoing involvement.

The independent director or chairperson with the casting vote

An increasingly common contractual tool, particularly for operational deadlocks that do not rise to the level of a full governance crisis, is the appointment of an independent director or chairperson with a casting vote on defined matters. This mechanism works best for day-to-day operational decisions where paralysis is commercially damaging but the underlying disagreement does not go to the heart of the venture's strategy.

Governing law and dispute resolution

In the UAE context, enforceability is the overriding consideration. Mechanisms that require specific performance, compelling a party to buy or sell shares at a determined price, are more reliably enforced in ADGM and DIFC courts and in arbitration rather than in mainland courts. For this reason, many practitioners recommend that the joint-venture agreement be governed by the ADGM or DIFC law and that disputes be referred to arbitration under institutional rules, even where the operating entity is a mainland or economic free zone LLC. Nonetheless, practitioners should be aware that while an ADGM or DIFC-governed joint-venture agreement is enforceable between the parties, a mainland LLC remains subject to the Commercial Companies Law. Orders directed at the company's constitutional documents or share register may still require mainland court or notary co-operation.

Conflicts of interest and scope

Beyond deadlock, the joint-venture agreement must address the ongoing management of conflicts. Mandatory disclosure obligations, restrictions on related-party transactions without independent approval, clearly defined non-compete boundaries, and a mechanism for allocating corporate opportunities between the venture and the partners individually are not optional provisions. They are significant and prevent the slow accumulation of disagreements that eventually trigger the deadlock clause in the first place. A well-drafted agreement specifies which partner has the lead in negotiating transactions where the other has a conflict, provides for independent valuation of related-party dealings, and establishes clear criteria for determining whether a new opportunity belongs to the venture or to a partner individually.

Structuring for survival

The 50/50 JV is not a structure that tolerates ambiguity. It does not give room to vague scope definitions, under-developed exit mechanics, or the assumption that goodwill will bridge the gaps that drafting left open. Every element of governance architecture must be well thought of, because in a structure where neither party can act alone, every gap becomes a potential point of disagreement.

Jurisdiction matters not as an afterthought but as the most significant decision. If the venture involves sophisticated governance mechanisms, international partners, or significant capital, the holding entity should be incorporated in the ADGM or DIFC, with a mainland or economic/financial free zone operating subsidiary where required for licensing purposes.

Scope must be defined with precision. The venture's permitted business activities, geographic territory, and the boundaries of each partner's activities outside the venture must be agreed at the outset and revisited periodically. Ambiguity in scope is the single greatest source of conflict in same-industry joint ventures, and it compounds over time as markets evolve and opportunities arise that were not contemplated at formation.

The exit must be built into the structure from day one. Lock-in periods, valuation methodologies, buy–sell triggers (Russian Roulette, Texas Shootout),

the mechanics of share transfer, and the interaction between exit rights and pre-emption regimes should all be agreed before incorporation, not negotiated under the pressure of a live dispute. The partners who cannot agree on how to leave will eventually pay lawyers to determine it for them, at far greater cost and with far worse outcomes.

And above all, the partners must resist the temptation to rely on goodwill. The partners who are negotiating a joint-venture agreement are, by definition, in a period of maximum alignment. They share a vision, they trust each other, and they cannot imagine a future in which they disagree. That future will arrive. The purpose of the joint-venture agreement is not to govern the relationship when things are going well but it is to govern the relationship when things go wrong. The quality of the agreement is measured not by how it reads at signing, but by how it performs under disagreement.

Conclusion

The 50/50 JV in the UAE is not inherently flawed. It remains the appropriate structure for partnerships where contributions are genuinely equal and where neither party should have unilateral control. However, it is a structure that demands more; more precision in drafting, more sophistication in governance design, more honesty about the conflicts that will inevitably arise, and more willingness to invest in the legal architecture that will manage those conflicts when they do arise.

Procedural implementation in the UAE has evolved considerably, introducing new tools such as multiple share classes, and statutory exit rights that were previously available only in the financial free zones. The ADGM and DIFC continue to offer the most predictable enforcement environment for complex governance mechanisms.

The question for clients and their counsels is not whether these tools are necessary. They are. The question is whether they will be deployed proactively, at the point of incorporation, when alignment is high and cost is low, or reactively, in the context of a dispute, when alignment has been reduced and cost is measured not only in legal fees but in commercial value.

The partners who build the exit into the structure, who define the scope before it becomes contested, who choose their jurisdiction with enforcement in mind, and who draft for disagreement rather than harmony; those are the partners whose ventures survive. The rest will learn the same lesson that every 50/50 JV eventually teaches: that equality without clear alignment is not a partnership. It is deadlock.

UZBEKISTAN

Law and Practice

Contributed by:
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GRATA International

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GRATA International 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 countries of the CIS (Commonwealth of Independent States) region, as well as in the PRC and Turkiye, with representative offices in the UK, the USA and Switzerland. The firm has advised international public and private clients and assisted in set up, reorganisation, privatisation, and joint ventures and wholly owned companies in Uzbekistan, in telecoms, automobile, oil and gas, energy, textiles, pharmaceuticals and many other industries.

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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 Russia–Ukraine military conflict and conflict in the Middle East including the Iran military conflict have 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 2026–2027. 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 author saw 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 the 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.
- 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 a 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 a 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 was 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.

The Law on Limited Liability Companies has been renewed and put into force in July 2026. The new law has improved regulation of making deals with affiliated parties, identified and clarified the status and rights of minority and majority shareholders, allowed registration of participatory interests with the Central Depository – a measure which has significantly improved protection of creditors' rights – introduced measures to resolve deadlock situations by mediation and arbitration, clarified rules for compulsory expulsion of shareholders from the LLC, and introduced many other corporate provisions.

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 counterparties 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% + One 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. The new LLC law introduces a mechanism for resolution of deadlock situations by means of mediation and arbitration.

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 Law and Practice section, 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 example, 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 GMS 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 GMS.

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.

ZIMBABWE

Law and Practice

Contributed by:
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MawereSibanda Commercial Lawyers is a full-service law firm founded in 2001, which specialises in commercial law, with offices in Harare's central business district and a regional presence in Gaborone, Botswana practising under the style of Makuyana Legal Practice. The firm's clients benefit from a globally connected legal practice that understands the demands of an increasingly interconnected business environment. Clients engaging in cross-border commercial transactions within the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) benefit from the firm's extensive regional experience and commercial insight. Its areas of expertise include corporate/commercial and M&A; banking, finance and capital markets; real estate and property development; infrastructure projects, mining and energy; litigation and alternative dispute resolution; trade, regulatory and cross-border advisory; employment law and workplace advisory; intellectual property, technology and data.

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1. Market Conditions

1.1 Geopolitical and Economic Factors

The last 12 months have seen a marked improvement in Zimbabwe's macroeconomic stability. Annual inflation in the nation's official currency (Zimbabwe Gold or ZWG) peaked at close to 96% in July 2025 before falling sharply, moving into single digits by January 2026 and holding in the region of 4% to 5% through the first half of 2026, supported by tighter monetary policy and gold and foreign currency backing for the reserve. The Reserve Bank of Zimbabwe reduced its benchmark policy rate from 35% to 30% in June 2026, its first cut since 2024, and the government has secured a staff-monitored programme with the International Monetary Fund, all of which has meaningfully improved sentiment among prospective joint venture (JV) partners after a long history of currency instability.

Geopolitical developments beyond Zimbabwe's borders have had a more indirect but still material effect. The continuing conflict in Ukraine and the Middle East, together with a general reordering of global supply chains, has accelerated Western and Chinese competition for access to African critical minerals, a dynamic in which Zimbabwe, as a major lithium producer, is now a direct participant.

The clearest trend through 2025 and into 2026 has been the government's decisive push toward mineral beneficiation (the process of adding value to raw minerals through processing and refining before export), culminating in the February 2026 ban on the export of all unprocessed minerals, including lithium concentrate, platinum group metals, coal and chrome.

This has reshaped JV activity in the resources sector, with foreign investors increasingly required to structure joint ventures around local processing and refining capacity rather than simple offtake of raw ore, and several Chinese-backed JVs have already committed hundreds of millions of dollars to build sulphate and refinery capacity domestically.

1.2 Industry Trends and Emerging Technologies

Mining, Agriculture and Energy

Mining, in particular, has been by far the most active sector for JV activity over the past year, driven by Zimbabwe's position as Africa's leading lithium producer and by the government's beneficiation policy, which is pushing existing offtake-style arrangements toward deeper, capital-intensive processing joint ventures.

Agriculture has also rebounded strongly following a weather-related contraction in 2024, supporting renewed JV interest in irrigation, storage and agro-processing projects. The decision by the government of Zimbabwe to offer title deeds to holders of offer letters has brought a resolution to the question of land tenure. This positive development has seen landowners increasingly entering into joint ventures for export crop production with multinational agricultural corporations.

The energy sector, particularly renewable generation, continues to also attract joint ventures aimed at addressing Zimbabwe's persistent generation constraints.

Emerging Technologies

Zimbabwe has moved quickly to build a regulatory framework around data and artificial intelligence, and this is beginning to influence how technology-related JVs are structured. The Cyber and Data Protection Act [Chapter 12:07] requires data controllers processing the personal data of 50 or more individuals to be licensed by the Postal and Telecommunications Regulatory Authority of Zimbabwe, which has direct implications for JVs handling customer or user data, including cross-border transfer restrictions that JV participants sharing data with an offshore parent need to navigate carefully. JV participants deploying AI tools should expect scrutiny to be applied through the existing Cyber and Data Protection Act.

The government also launched its National Artificial Intelligence Strategy 2026–2030 earlier this year, signalling an intention to build a system-classification and risk-based regulatory framework for AI.

For JV vehicles more generally, these developments mean that data governance, IP ownership over AI-assisted outputs, and allocation of liability for errors or harm caused by AI systems are increasingly being addressed as bespoke provisions in JV and technology collaboration agreements, rather than left to general contract principles.

2. JV Structure and Strategy

2.1 Typical JV Structures

Public-Private Partnerships

Where a JV involves the State or a State entity, this is governed by the legal framework provided for in the Zimbabwe Investment and Development Agency Act [Chapter 14:38], which governs public-private partnerships (PPPs) and major government-linked investment projects through the Zimbabwe Investment and Development Agency's One Stop Investment Services Centre. The framework has been amplified by the recently published Public Private Partnership Guideline (March 2026). The most common structure for these type of JV is a collaboration or co-operation agreement and these take various forms such as concession agreements and build-operate-transfer (BOT) models. Whilst the legal framework brings certainty to the process, it also has the disadvantage of being overly too elaborate because these arrangements typically require Cabinet-level approval and carry a distinct procurement and governance overlay not applicable to purely private JVs.

Incorporated JV Company

The most commonly used vehicle between private players is a traditional JV company (JVC) in the form of a private limited company incorporated under the Companies and Other Business Entities Act [Chapter 24:31] (the "COBE Act"). Participants hold shares in proportion to their agreed interests and capital contributions, benefit from limited liability, and can rely on a familiar corporate governance structure of shareholders, directors and a company secretary. The principal disadvantage is that the JVC is subject to corporate income tax in its own right, creating an additional layer of tax leakage when profits are distributed. Further, incorporation, statutory filings and governance formalities add administrative costs compared to unincorporated alternatives.

2.2 Strategic Drivers for JV Structuring

The choice of vehicle is generally driven by how the participants wish to share profits, losses and underlying assets, the degree of control and management influence each wishes to retain, and their appetite for liability exposure. Participants seeking to explore complex and high-end transactions tend to lean more towards the traditional JVC with limited liability and its own legal personality, while those prioritising simplicity, tax transparency and the ability to unwind the arrangement quickly tend towards a contractual or partnership structure.

Control and decision-making considerations also weigh heavily, since an incorporated JVC allows for sophisticated board-level governance, voting rights and "reserved-matter" protections, whereas contractual JVs rely more heavily on the terms of the underlying agreement itself, with no separate corporate governance layer to fall back on. Entitlement to revenue and assets is correspondingly more flexible in a contractual JV, since participants can agree bespoke sharing ratios that need not mirror shareholding, whereas a JVC's distributions are generally tied to shareholding and the COBE Act's distribution rules.

Tax Treatment and Incentives

Zimbabwe applies a source-based tax system, with the standard corporate income tax rate presently in the region of 24.72% to 25.75% depending on the applicable levy, so a JVC is taxed as a separate entity on its own profits, creating a further layer of taxation when those profits are distributed to participants. Partnerships and purely contractual joint ventures are, by contrast, generally treated as tax-transparent, with each participant taxed directly on its share of income, which is often the deciding factor for participants seeking to avoid double taxation on distributed profits.

Special Economic Zone status, where available, offers a five-year corporate tax exemption followed by a reduced rate thereafter, and remains a relevant incentive for JVs locating qualifying operations, including mineral beneficiation projects, within a designated zone.

BOT and build-own-operate-transfer (BOOT) JV structures used in infrastructure projects benefit from a five-year tax exemption followed by a reduced rate, reflecting government policy to encourage private investment in infrastructure delivery; and sector-specific incentives also apply to priority sectors such as tourism and industrial parks, typically in the form of duty exemptions on capital equipment and reduced corporate tax rates for an initial period.

Participants should also factor in withholding taxes on dividends, interest and royalties paid to foreign shareholders, and rates that are periodically revised.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

JV formation and operation in Zimbabwe is not governed by a single statute, but by a number of sector-specific regimes overseen by several regulators. In terms of the COBE Act, the Registrar of Companies and Other Business Entities administers incorporation, corporate governance and the beneficial ownership register applicable to any JVC. Separately, the Zimbabwe Investment and Development Agency (ZIDA), established under the Zimbabwe Investment and Development Agency Act [Chapter 14:38], serves as the country's primary investment promotion and facilitation agency. Through its One Stop Investment Services Centre, ZIDA co-ordinates the registration and approval of investments involving foreign investors and administers PPP projects and incentives available within Special Economic Zones.

Other key regulators include:

- the Reserve Bank of Zimbabwe, the nation's central bank, which oversees exchange control approvals and cross-border payments, as well as dividend and investment repatriation issues relevant to any JV with a foreign participant;
- the Competition and Tariff Commission under the Competition Act [Chapter 14:28]; and
- the Securities and Exchange Commission of Zimbabwe, which regulates the Zimbabwe Stock Exchange and, through the Victoria Falls International Financial Services Centre, the Victoria Falls Stock Exchange.

Sectoral regulators become relevant depending on the JV's industry, including the Ministry of Mines and Mining Development and the Mining Affairs Board for mining JVs, the Zimbabwe Energy Regulatory Authority for energy projects, the Postal and Telecommunications Regulatory Authority of Zimbabwe for telecommunications and data matters, and the Environmental Management Agency for environmental compliance issues.

3.2 Anti-Money Laundering Compliance

Zimbabwe maintains a comprehensive anti-money laundering and counter-terrorism financing framework that applies to both domestic and foreign investors.

Zimbabwe's primary AML statute is the Money Laundering and Proceeds of Crime Act [Chapter 9:24], supervised by the Financial Intelligence Unit housed within the Reserve Bank of Zimbabwe. Guidelines and directives are issued from time to time in terms of that Act to address specific issues. Sectoral regulators such as the Reserve Bank of Zimbabwe, the Securities and Exchange Commission of Zimbabwe and the Insurance and Pensions Commission provide risk-based supervision of financial and insurance

institutions. Zimbabwe is a member of the Eastern and Southern Africa Anti-Money Laundering Group and successfully exited the Financial Action Task Force (FATF) grey list in March 2022, following which enforcement has intensified.

A National Anti-Money Laundering Strategy for 2025 to 2029 has since been adopted, with a stated objective of amending the COBE Act to align further with revised FATF recommendations and improving the transparency of corporate structures. For JV participants, the practical implications are standard customer due diligence and source-of-funds verification by banks and professional advisers at formation, ongoing beneficial ownership disclosure obligations for the JVC itself, and, where the JV operates in a higher-risk sector such as mining or virtual assets, an elevated level of scrutiny from counterparties and financiers. Banks, legal professionals, asset managers, and designated non-financial businesses also have a continuing obligation to flag and report any suspicious transactions.

3.3 Sanctions, National Security and Foreign Investment Controls

The sanctions position affecting Zimbabwe has eased considerably in recent years but has not been fully resolved. There are currently no UN sanctions on Zimbabwe. The European Union no longer maintains targeted financial sanctions on anyone under its Zimbabwe sanctions regime as of February 2025 although the EU arms embargo on Zimbabwe remains. The United Kingdom removed the last remaining individuals and entities from its Zimbabwe sanctions list in May 2025. The United States revoked its country-specific Zimbabwe sanctions programme in March 2024 but re-designated certain individuals under its Global Magnitsky corruption and human rights sanctions regime and continues to apply the Zimbabwe Democracy and Economic Recovery Act, which restricts US support for Zimbabwe's access to IMF and World Bank financing. A bill to repeal that Act has passed a US House committee vote but remains under legislative consideration as at mid-2026.

For JV participants, the practical relevance of this sanctions regime lies in the need for careful counterparty screening where a prospective JV partner, or an entity in its ownership chain, may appear on a designated persons list, together with continued caution around US dollar-denominated payment flows that may transit US correspondent banking relationships.

National Security Regulations

Zimbabwe does not operate a dedicated national security or foreign direct investment screening regime of the kind found in many developed markets. Instead, foreign participation is channeled through the Zimbabwe Investment and Development Agency's registration and approval process, which serves an investment-facilitation rather than a security-screening function for most sectors, though the Agency retains discretion over reserved and restricted sectors. In addition, the Reserve Bank of Zimbabwe, through its Exchange Control Department, typically requires detailed information regarding foreign investors before approving foreign investment in local entities. This process is intended, among other things, to verify the identity, legal standing and bona fides of the foreign participant and ensure compliance with applicable exchange control requirements.

Reserved Sectors

Formal indigenisation requirements applicable to most sectors were relaxed some years ago, and the government has reaffirmed that strategic minerals such as diamonds and platinum will not be subject to indigenisation, although joint ventures remain the encouraged route for foreign participation in those minerals. In December 2025, the Indigenisation and Economic Empowerment (Foreign Participation in Reserved Sectors) Regulations, Statutory Instrument 215 of 2025 were issued in terms of the Indigenisation and Economic Empowerment Act [Chapter 14:33], which provides for the reservation of certain sectors of the economy in Zimbabwe for its citizens. Sectors that are fully reserved exclusively for Zimbabwean citizens include barber shops, estate agencies, employment agencies, advertising agencies, artisanal mining, granite mining, quarrying, and pharmaceutical retailing, among others. Foreign participation may be permitted in certain reserved sectors – such as the haulage and logistics industry, shipping and forwarding, retail and wholesale – where an investor demonstrates compliance with prescribed economic contribution requirements. These include compliance with

minimum capital investment thresholds, the creation of a prescribed number of full-time local jobs, and a demonstration of skills and technology transfer.

3.4 Competition Law and Antitrust

Joint ventures that constitute a notifiable merger for the purposes of the Competition Act [Chapter 14:28] are subject to mandatory notification to the Competition and Tariff Commission (CTC). Zimbabwean law adopts a broad definition of merger, which can capture the creation of a JVC. A merger is defined as the direct or indirect acquisition of, or establishment of a controlling interest by one or more persons in, the whole or part of the business of another, where a controlling interest in relation to any undertaking means any interest that enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the undertaking. The definition is therefore a "catch all" one intended to cover all transactions subject only to the prescribed notification threshold.

The current notification threshold is met where the parties' combined annual turnover in or from Zimbabwe, or their combined assets in Zimbabwe, is valued at or above USD1.2 million.

A notifiable merger must be notified to the CTC in writing within 30 days of conclusion of the merger agreement or the acquisition of a controlling interest, and completion and implementation of the merger before obtaining approval exposes the parties to liability for a penalty of up to the merged parties' annual turnover.

The Commission's assessment of mergers is not purely a competition analysis, since public interest factors, particularly employment protection, support for local industry and, in mining transactions, alignment with beneficiation policy, are expressly weighed alongside market concentration effects, and conditions such as staff retention commitments or local procurement requirements are commonly imposed as a requirement for clearance.

3.5 Listed Companies and Market Disclosure Rules

Where a JV participant is listed on the Zimbabwe Stock Exchange or the Victoria Falls Stock Exchange, the applicable listing requirements impose size-based categorisation of transactions, so that a JV investment or contribution exceeding prescribed percentage ratios relative to the listed participant's market capitalisation or assets triggers escalating disclosure obligations, up to circulars and shareholder approval for the largest category of transaction. Separately, dedicated related party transaction rules apply where any JV counterparty is a related party of the listed entity, typically requiring an independent fairness opinion and shareholder approval regardless of transaction size.

The Zimbabwe Stock Exchange is regulated by the Securities and Exchange Commission of Zimbabwe, while the Victoria Falls Stock Exchange has, since March 2025, been regulated by the Victoria Falls International Financial Services Centre, and listed JV participants should confirm which regime and continuing obligations apply to their specific listing.

3.6 Transparency and Ownership Disclosure

The COBE Act imposes a mandatory beneficial ownership disclosure regime under Zimbabwe's company law. Every company, including a JVC, must maintain an up-to-date register of ultimate beneficial owners, defined as natural persons who directly or indirectly hold more than 20% of the company's shares or voting rights, hold the right to appoint or remove a majority of directors, or otherwise exercise significant influence or control, and must nominate a Zimbabwe-resident person responsible for maintaining that register. A prescribed form must also be lodged and maintained with the Registrar of Companies documenting the names of the relevant persons of significant control (PSCs)/ultimate beneficial owners (UBOS).

Nominee shareholdings exceeding 20% on behalf of an undisclosed beneficial owner are restricted, and beneficial ownership information held by the company or the Registrar must be made available to the Financial Intelligence Unit and law enforcement agencies in connection with investigations under the Money Laundering and Proceeds of Crime Act. Non-compliance carries civil penalties, and the Registrar may refuse registration of an entity whose beneficial owners are not properly identified, so JV participants structuring ownership through offshore holding vehicles should

factor this disclosure obligation into their structuring from the outset.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

There is not much litigation around joint ventures in the jurisdiction because parties invariably opt for arbitration as their form of dispute resolution. As result, disputes are generally resolved privately away from the public glare except where the dispute ends up in court for interim measures or enforcement purposes. That notwithstanding, there have been one or two decision relating to joint ventures which are highlighted below.

In *Jimbata* (*Private*) *Limited v Zimbabwe Mining Development Corporation and Kamativi Tin Mines* (*Private*) *Limited* SC 2/2023, decided by the Supreme Court in January 2023, the parties had entered into a JV agreement to incorporate a joint venture company to process a lithium tailings dump, but the arrangement failed when conditions precedent were not fulfilled. The Supreme Court held that where the underlying JV agreement is found to be null and void, an arbitration clause embedded within it is equally a nullity, since an arbitration agreement generally cannot survive the invalidity of the contract that contains it. This is a decision that has invited widespread criticism as it fails to appreciate the doctrine of separability by conflating the arbitration agreement and the underlying contract and is based on an erroneous interpretation of Article 8.1 of the Model Law. It is highly likely that a different Supreme Court bench will arrive at a different conclusion.

The Necessity of Written JV Agreements

A June 2026 Bulawayo High Court judgment between Agrivi Open Mining (Private) Limited and the holder of a mining special grant reinforced that informally documented joint venture arrangements over mining rights are a significant source of downstream litigation risk. The court's emphasis on the primacy of a properly documented agreement over the parties' recollection of an informal arrangement is a useful reminder, particularly in the artisanal and small-scale mining space where JV-style arrangements are still sometimes concluded on a handshake basis.

Recent Legislative Developments

The recently Public Private Partnership Guideline, March 2026, is meant to provide a framework for the government and the private sector to collaborate on infrastructure projects, public services or other PPP initiatives. The Guideline provides a detailed framework for the lifecycle of a PPP with provisions for such things as the classification of PPPs, inception, feasibility studies, procurement, government participation, project approvals and exiting arrangements. The Guideline also prescribes a minimum 30% shareholding in the project by the public sector contracting party.

See **3.3 Sanctions, National Security and Foreign Investment Controls** for discussion of recently passed indigenisation requirements.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

During the negotiation stage of a joint venture, parties use non-disclosure agreements, non-circumvention agreements, heads of terms, exclusivity deeds and due diligence questionnaires. The process begins with a non-disclosure and non-circumvention agreement to protect sensitive corporate information. Next, heads of terms and exclusivity deeds finalise the commercial baseline and secure a dedicated negotiation window. A due diligence questionnaire is then issued to investigate the prospective partner's financial, legal, and operational status. Together, these instruments establish the protective framework and governance structures necessary to safely progress the transaction.

5.2 Disclosure Obligations

Joint venture negotiations remain private initially, but if statutory thresholds under the Competition Act are met, parties must notify the Competition and Tariff Commission (CTC) within 30 days of the agreement. Furthermore, companies listed on local stock exchanges must immediately issue caution-

ary announcements upon executing price-sensitive terms. Crucially, the Competition Act prohibits parties from closing the transaction or integrating business operations until receiving formal regulatory clearance.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Joint venture agreements make closing conditional upon the satisfaction of specific conditions precedent and these include statutory and regulatory approvals, corporate authorisations, and completed due diligence. The most common usually involve each JV party obtaining the requisite board and shareholder authorisation to enter into the transaction, and if one of the parties is a foreign entity, then exchange-control approval and an investment licence from the Zimbabwe Investment and Development Agency are also typical conditions precedent. To prevent indefinite delays, parties typically establish a long-stop date that allows for transaction termination if these conditions remain unmet.

In Zimbabwean joint venture transactions, material adverse change (MAC) and force majeure event (FME) provisions are generally addressed through contractual risk allocation between the parties.

For MAC provisions, parties typically agree at the negotiation stage on the key assumptions underpinning the investment, including the value of the business, assets, projected performance and other commercial fundamentals. The JV agreement may then provide that a material deterioration in these factors between signing and completion (or between agreed investment milestones) triggers specific remedies, such as a right to renegotiate terms, defer completion, adjust the investment contribution or, in certain circumstances, terminate the transaction. In private JVs, this is often supported by valuation exercises, including pre-investment and completion valuations, to determine whether a material adverse change has occurred. For listed entities, changes in market capitalisation or share price performance may be considered as an indicator of a material adverse change, although parties usually agree the relevant thresholds and exclusions contractually.

FMEs are typically addressed by carefully defining events beyond the reasonable control of the parties and allocating the consequences of such events. While traditional FMEs may include events such as natural disasters, political instability or other extraordinary events, parties often take a more tailored approach given Zimbabwe's operating environment. As such, events such as changes to currency laws, exchange control measures, regulatory changes and economic disruptions may be specifically addressed in the JV agreement, either by expressly including them as FMEs, excluding them as assumed commercial risks, or providing separate mechanisms for dealing with their impact.

5.4 Legal Formation and Capital Requirements

Joint ventures are established through a private company limited by shares, providing a separate legal entity with flexible governance. Foreign investors can participate in most sectors, subject to industry-specific licensing, regulatory, or local participation requirements. Because there is no general minimum capital requirement, funding is driven entirely by the venture's commercial needs. Consequently, partners can fulfil capital contributions using cash, physical assets, technology, or other agreed resources.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The documentation of JVs depends on the type of the JV and whether or it is a PPP or joint venture between private parties. The most common type of PPP agreement is the concession agreement. The agreement specifies the rights, responsibilities, obligations, recourses, dispute resolution mechanisms, and other aspects of the contractual framework. Other critical terms relate to the risks involved and the attendant mitigation measures, joint implementation and monitoring mechanisms, and any exit or winding up arrangements.

For private joint ventures, parties document their JV using an investment agreement which can take the form of a subscription agreement. They typically record their rights and obligations in a shareholders'

agreement/relationship agreement supported by the company's constitutional documents. This agreement establishes the ownership structure, governance framework, and respective partner contributions. It also regulates ongoing funding obligations, profit-sharing mechanisms, and corporate decision-making procedures. Additionally, the contract outlines share transfer restrictions, deadlock resolution protocols, dispute resolution mechanisms, and exit arrangements to secure long-term stability amongst the JV parties.

6.2 Governance and Decision-Making

Decision-making is structured through a board of directors and shareholder approval mechanisms that reflect ownership interests. While management handles day-to-day operations, significant strategic decisions are strictly reserved for shareholder approval. To protect each party, the agreement identifies specific reserved matters, such as major capital expenditures, borrowing, or admitting new investors, that require enhanced voting thresholds such as special resolutions or unanimous consent. This balanced approach successfully maintains operational efficiency while safeguarding each partner's strategic interests.

6.3 Funding

Joint ventures are funded through a combination of equity contributions and shareholder or third-party debt based on commercial requirements. The agreement typically outlines each party's initial funding obligations as seed capital for the business and establishes a clear framework for future capital needs. To avoid dilution, existing participants generally hold the right to contribute to additional equity rounds in proportion to their shareholdings. If a participant chooses not to contribute, the agreement typically permits the dilution of their interest or grants the funding party additional economic rights.

6.4 Deadlocks

Joint venture agreements minimise deadlocks by clearly allocating decision-making authority and setting enhanced approval thresholds for critical matters. Usually, the parties also agree on a minimum and maximum board composition structure that consists of odd instead of even numbers to minimise deadlocks. When a deadlock does arise at board level, the first mechanism is to evaluate whether the chairperson has a casting vote. If not, then the deadlocked issue is escalated to shareholders for approval. If internal negotiations fail amongst the shareholders, the issue typically triggers external mediation, expert determination, or other dispute resolution mechanisms. For persistent or severe deadlocks, the contract provides exit mechanisms such as buy-out rights or separation procedures to either sustain the venture or to facilitate an orderly unwinding.

6.5 Other Documentation

Parties commonly enter into various ancillary documents to support the establishment and operation of a joint venture. These secondary contracts frequently include intellectual property licences, asset transfers, management services agreements, and non-disclosure agreements. Depending on the specific industry, the venture may also require technology transfer, supply, off-take, or financing agreements. Ultimately, this specific suite of documentation is tailored to directly reflect the unique assets, know-how, and funding contributed by each participant.

6.6 Rights and Obligations of JV Partners

Joint venture participants hold rights to information, management participation, and profit-sharing, alongside obligations for funding, confidentiality, and operational compliance. Profits and losses are typically allocated according to the contract, or in the case of a duly incorporated company, in accordance with each party's ownership interest. In corporate structures, these financial distributions are made through dividends declared under the company's governing documents and applicable laws. Crucially, partner liability is strictly limited to their initial investment and contractual commitments, unless they have explicitly guaranteed external obligations.

6.7 Minority Protection and Control Rights

Minority joint venture participants protect their investments through negotiated contractual rights rather than relying on shareholding percentages. These protections commonly include negotiating board representation and direct access to financial and operational information. The most common way of protecting minority interests in incorporated joint ventures is the reserved matter provision. This is implemented by

developing and adopting an extensive list of reserved matters, which require unanimous consent or a percentage that permits the minority participant to block the resolution from being approved. These safeguards are frequently supplemented by pre-emption rights, anti-dilution provisions, enhanced reporting obligations, and dedicated dispute resolution mechanisms.

In addition, the COBE Act incorporates minority protection mechanisms by allowing minority shareholders to apply to the courts where they consider that the affairs of a company are being, or have been, conducted in a manner that is oppressive or unfairly prejudicial to the interests of one or more members, including the applicant. This provides an important safeguard against the abuse of majority control and ensures that minority interests are afforded judicial protection.

6.8 Applicable Law and Dispute Resolution in International JVs

In international joint ventures, when parties select a governing law and dispute resolution mechanism they are often guided by the need to ensure commercial certainty, neutrality, and ease of enforcement. International arbitration is the preferred dispute resolution mechanism for the majority of cross-border deals involving foreign investors though a few sometimes elect the Zimbabwean Courts especially the Commercial Court, which is a specialist division of the High Court of Zimbabwe.

The applicable law is often a contested issue. Whilst a few may select Zimbabwean law where the venture's assets and operations are entirely local, in most instances involving a foreign party, the parties settle for English Law as it is well-established and widely accepted.

Zimbabwe is party to a number of dispute resolution treaties. Firstly, the Zimbabwe has adopted the Model Law on arbitration as developed by the United Nations Commission on International Trade Law (UNCITRAL). Zimbabwe is also party to the Agreement establishing the African Continental Free Trade Area, which has a dispute resolution framework for addressing intellectual property disputes. In addition, Zimbabwe is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, meaning it generally recognises and enforces foreign arbitral awards and qualifying foreign judgments.

Foreign arbitral awards are recognised as binding upon application to the High Court of Zimbabwe. The process is very simple and it entails submission of a duly authenticated original award or duly certified copy thereof together with the original arbitration agreement or duly certified copy thereof. Both documents must be in English and, if in a different language, the party seeking enforcement must supply certified English translations of the documents. If the application is granted by the court, then the award is be enforced as a judgment of the Zimbabwean courts, subject to compliance with the applicable Rules of the High Court.

7. The JV Board

7.1 Board Structure

Board Composition

Participants commonly negotiate proportional board representation, so that a 50/50 venture has an equal number of nominee directors from each side, and the parties usually permit a third director to be appointed by their board appointees to avoid deadlock situations. Unequal ventures allocate seats in proportion to shareholding or according to the functions each participant contributes, such as technical, financial or local market expertise.

In terms of Zimbabwean company law, a private limited company must have a minimum of two directors, and a private business corporation may operate with a single director, giving participants flexibility in structuring smaller ventures. It is common practice for the JV agreement, rather than the constitutive documents alone, to record each participant's nomination and removal rights, casting vote arrangements for deadlock situations, and the rules for appointing a board chairperson.

Appointment and Removal

Directors are formally appointed and may be removed by an ordinary resolution of shareholders in a general meeting, and this statutory mechanism cannot be

excluded by the company's constitutive documents. Where a JV agreement grants a participant the contractual right to nominate and withdraw a director, that right operates alongside, and is given effect through, the shareholders' voting power rather than displacing the statutory removal procedure.

Foreign Directors

There are no restrictions or limitations on foreign nationals being appointed as directors of a Zimbabwean JV company provided that at least one director of the company must be ordinarily resident in Zimbabwe.

Foreign JV participants therefore typically ensure that at least one of their nominees, or an independent local director, satisfies this residency requirement, and foreign directors must provide passport and identification details as part of the statutory filings.

Weighted Voting

Weighted or class voting rights are recognised in Zimbabwe and are commonly used to preserve a participant's influence over specified reserved matters, notwithstanding a minority shareholding. These arrangements are usually implemented through the company's constitutive documents, differential share classes, and consent rights in the JV agreement covering matters such as changes to the business plan, related-party transactions, borrowing above set thresholds and amendments to the constitutive documents. With respect to directors, the Chairperson will have a casting vote in the event of a deadlock unless the articles of association of the company provide otherwise.

7.2 Duties and Functions of JV Boards and Directors

Principal Duties of Directors

Directors are responsible for decisions on all matters of the company except those reserved to the shareholders by the COBE Act or by the company's constitutive documents. These responsibilities include:

- determining and directing the overall business performance and strategy for the company;
- ensuring that the financial records, financial statements and external audit are kept and maintained; and
- the appointment, removal, compensation and performance of officers and oversight of management of the company.

In addition, the COBE Act has codified the fiduciary duties of directors previously governed largely by common law. Every director has a duty to act in good faith and in the best interests of the company, and to exercise the care, skill and attention that a reasonably diligent business person would exercise in the same circumstances, together with a statutory business judgment rule protecting properly informed decisions taken in good faith.

Directors additionally owe a duty of loyalty to the company, requiring disclosure of personal interests and avoidance of undisclosed conflicts. These duties may not be excluded or diminished by the company's constitutive documents, meaning a nominee director cannot lawfully be instructed to subordinate the company's interests to those of the appointing participant.

Competing Loyalties

In practice, tension between a nominee director's duty to the JV company and loyalty to the appointing participant is managed contractually rather than by diluting the statutory duty. JV agreements commonly deal with this through carefully drafted reserved-matter and information-sharing provisions, protocols restricting the disclosure of company confidential information to the nominating participant, and recusal procedures where a director's dual role gives rise to an actual or potential conflict on a specific resolution.

Delegation

A JV board may delegate specified functions to individual directors, board committees or third-party managers, subject to any restrictions in the constitutive documents or JV agreement. Delegation does not relieve the board of ultimate responsibility for the company's affairs, and reserved matters requiring full board or shareholder approval are typically carved out of any delegation.

Reporting Requirements

Statutory reporting obligations include maintaining proper accounting records, preparing financial statements, and, for larger or listed entities, more extensive disclosure and audit obligations. JV agreements usually cater for these for requirements with fixed duties for each participant, such as monthly management accounts, budget variance reports and access to books and records.

7.3 Conflicts of Interest

Conflicts of interest are primarily managed through the statutory duty of loyalty, which requires a director to disclose any personal or third-party interest in a matter before the board and, depending on the nature of the conflict, to abstain from voting or even from being present during deliberation. JV agreements typically reinforce this with contractual conflict-management protocols, related-party transaction approval thresholds, and independent director or chairperson casting-vote mechanisms for deadlock situations involving a conflicted nominee.

A person's dual role within a JV participant and on the JV board can become inappropriate where that role gives the individual access to competitively sensitive information about the JV company that could be used to the advantage of the participant, or where the individual is required to negotiate against the JV company on behalf of the participant, for example in relation to related-party supply or service contracts. In such cases, participants often appoint a separate, more independent nominee for that specific matter, rather than relying on the conflicted person to navigate the position alone.

8. IP and ESG

8.1 Ownership and Use of IP

JV Corporate Entities

Where a JV is structured as a corporate entity, the participants must decide at the outset whether background intellectual property contributed by a participant is licensed to the JV company for use, or assigned outright, and whether intellectual property generated by the JV company during its operation vests in the company itself or reverts to a contributing participant.

Registrable rights such as trade marks, patents and industrial designs are administered by the Zimbabwe Intellectual Property Office, and Zimbabwe is also a member of the African Regional Intellectual Property Organisation, so participants should consider whether protection is sought nationally, regionally, or both.

Contractual Collaborations

In purely contractual joint ventures, without a separate legal vehicle, the parties must be even more precise in the collaboration agreement about ownership of pre-existing IP, IP created jointly during the collaboration, and the scope of any cross-licences granted between the parties for the duration and after termination of the arrangement.

Treatment in the JV Agreement

The JV agreement is typically the primary document dealing with IP. Well-drafted JV agreements set out a schedule of background IP contributed by each participant, the licence or assignment terms applicable to it, and ownership of foreground IP created during the venture.

Foreign Transfers

Transfers of intellectual property to or from foreign entities generally follow the ordinary registration, assignment and recordal procedures under the relevant statute, together with any applicable exchange control and cross-border payment requirements where royalties or licence fees are payable offshore. Participants bringing in foreign-owned IP should also confirm whether any underlying international registration, such as a Madrid Protocol trade mark or Patent Cooperation Treaty application designating Zimbabwe, needs to be recorded locally to be enforceable.

8.2 Licensing v Assignment of IP Rights

Whether IP should be licensed or assigned to the JV company depends on the commercial relationship the contributing participant wishes to preserve with the asset. Licensing allows the contributing participant to retain underlying ownership, use the IP outside the JV, and recover it cleanly on termination, which is generally the preferred route where the IP is core to the contributor's wider business or is to be used in other ventures.

Assignment, by contrast, gives the JV company full ownership and control, which can be commercially attractive where the JV is intended to build long-term value in the IP as a standalone asset, or where lenders or investors require the JV company to hold clean title.

The trade-off is that the contributing participant loses the ability to unilaterally exploit the asset elsewhere and must negotiate a buy-back or reassignment mechanism if the JV is later terminated or that participant exits.

Parties may also employ a hybrid approach, whereby core, venture-specific IP is assigned to the JV company, while more general or multi-use background IP is merely licensed on a royalty-bearing or royalty-free basis for the duration of the venture.

8.3 ESG Considerations in JVs

ESG considerations have become material to Zimbabwean JVs because access to international capital, offtake arrangements and reputable partners increasingly depends on demonstrable environmental, social and governance performance.

Recent Developments

Zimbabwe has been actively developing its climate and sustainability regulatory framework. The Zimbabwe Stock Exchange and Victoria Falls Stock Exchange adopted Global Reporting Initiative-aligned sustainability reporting requirements for listed entities with financial years commencing on or after 1 January 2024, and the country launched carbon market regulations and a national carbon registry in 2025.

Practical Measures for JV Participants

JV participants and JV entities are increasingly expected to take proactive steps rather than wait for these obligations to crystallise into binding law across all sectors. These can be achieved through the following:

- building ESG governance into the JV agreement itself, including reporting obligations, board or committee oversight of ESG matters, and audit rights for participants;
- aligning management accounts and disclosures with recognised international frameworks, given the direction of travel toward standards such as IFRS S1 and S2;
- assessing environmental compliance obligations under the Environmental Management Act [Chapter 20:27], including any licensing, environmental impact assessment or pollution prevention requirements administered by the Environmental Management Agency; and
- considering participation in the emerging carbon market framework where the JV's activities are capable of generating registrable carbon credits.

Regulatory Landscape and International Influence

The principal ESG-related regulator remains the Environmental Management Agency, supplemented by sectoral regulators such as the Reserve Bank of Zimbabwe, which has issued climate risk guidance for the banking sector, and the securities exchanges' listing rules. Zimbabwe's framework is also shaped by international commitments, including the Sustainable Development Goals and the African Union's Agenda 2063, and by the practical reality that JV participants seeking finance from international capital markets must satisfy lender and investor ESG expectations that often exceed the current strict domestic legal minimum.

9. Exit Strategies and Termination

9.1 Termination of a JV

A Zimbabwean JV typically comes to an end through expiry of an agreed term; mutual agreement between the participants; or occurrence of a trigger event specified in the JV agreement such as an unresolved deadlock, material breach, change of control of a participant, or insolvency of a participant or of the JV company itself. Where the JV is a corporate entity, formal termination of the underlying business is achieved through voluntary liquidation under the Insolvency Act [Chapter 6:07], while a purely contractual JV simply ends in accordance with its own termination provisions.

General Matters To Be Dealt With Upon termination

Generally, upon termination the following must be considered:

- valuation methodology and process for any buy-out, sale or wind-down of the business;
- treatment of outstanding liabilities, guarantees and intercompany funding between the participants and the JV entity;
- continuation, assignment or termination of shared contracts, leases and licences, including any IP licences granted between the parties;
- restrictive covenants applicable to former participants, such as non-compete and non-solicitation obligations, and their duration; and
- confidentiality obligations surviving termination and the return or destruction of confidential information.

9.2 Asset Redistribution and Transfers

Transfers of assets between JV participants, or between a participant and the JV entity, require consideration of transfer taxes, stamp duty, exchange control approval where a foreign participant is involved, and any sector-specific regulatory consents, for example in mining or telecommunications. Where the JV entity holds registered assets such as immovable property, mining rights or registered IP, the formalities for transferring title, including deed registration or IP recordal, must also be factored into transaction timelines.

A key distinction exists between assets originally contributed to the JV by a participant and assets subsequently generated by the JV itself. Contributed assets are usually addressed by pre-agreed return, buy-back or fair value purchase mechanisms recorded in the JV agreement at the outset, reflecting that the contributing participant retained an economic interest in that specific asset.

Assets generated by the JV during its operation, by contrast, are ordinarily treated as JV property in which all participants have an interest proportionate to their shareholding, and their distribution on exit is governed typically by the wind-down and asset-realisation provisions of the JV agreement, rather than by a right of return to a single participant.

9.3 Exit Strategy

Statutory Provisions

Zimbabwean company law does not impose a mandatory exit regime specific to joint ventures, and participants are generally free to determine their own exit mechanics within the JV agreement and the company's constitutive documents, provided these do not contravene any statute or other applicable law. Shareholders in a private limited company enjoy statutory pre-emption rights in relation to new share issues, and constitutive documents commonly incorporate additional share transfer restrictions, rights of first refusal and consent requirements for transfers to third parties, which are enforceable as a matter of Zimbabwean company and contract law.

Where the exiting party is a foreign investor, the proposed transfer of its shares must generally be submitted to the Reserve Bank of Zimbabwe, through its Exchange Control Department, for approval before the transfer can be effected, irrespective of whether the shares are being transferred to the local joint venture partner or to another foreign investor.

Freedom of Contract

Beyond these baseline statutory protections, the exit strategy is very much a matter parties can freely determine in the JV agreement. It is standard practice for JV agreements to contain a dedicated exit clause addressing voluntary exit, forced exit on breach or insolvency, and deadlock-driven exit.

Common Exit Mechanisms

Common exit mechanisms include the following:

- rights of first refusal or pre-emption rights in favour of the remaining participant before any sale to a third party;
- put and call options, allowing one participant to require the other to buy or sell its interest at an agreed or independently determined valuation;
- drag-along and tag-along rights, protecting a majority participant's ability to sell the whole venture, and a minority participant's ability to participate in such a sale on the same terms; and
- liquidation or winding up of the JV entity under the Insolvency Act, generally reserved as a mechanism of last resort where a negotiated buy-out cannot be achieved.

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