
INTERNATIONAL QUESTIONNAIRE FOR JOINT VENTURE AGREEMENTS

Please answer the following questions as briefly as possible, as though you were in a one- or two-hour discussion with an American lawyer having very limited familiarity with your legal system. Your answers are intended to be of a preliminary nature, designed to provide the reader with an overview of the big-picture issues that must be addressed within your jurisdiction.

For purposes of the questionnaire, we ask you to assume that the joint venture will be between a U.S. entity and an entity in your jurisdiction and that the investment by the U.S. entity may result in the holding of a majority interest or a minority interest. The ABA *Model Joint Venture Agreement* (JVA) will form the basis for the joint venture. The local entity will be contributing assets relating to the relevant line of business and will continue with its other activities.

PRELIMINARY ISSUES

1. STRUCTURE OF A JOINT VENTURE

In some jurisdictions, joint ventures must take a certain form. In other jurisdictions, joint ventures may be organized in accordance with a range of different structures. In the United States, the five main joint venture structures are a purely contractual joint venture, a general partnership, a limited partnership, a limited liability company, and an incorporated entity.

- 1.1 What structures are available in your jurisdiction?
- 1.2 What structures are most typically used for joint ventures?
- 1.3 Does your jurisdiction require coventurers to enter into a joint venture as a precondition to doing business in the jurisdiction?
- 1.4 In addition to income tax considerations, what are the major considerations for joint venturers when choosing the structure of a joint venture?
- 1.5 Are there any particular aspects of the legislation governing the formation of joint ventures that create a barrier to ownership of a joint venture by a U.S. entity? Please specify.

- 1.6 Are there any restrictions on foreign nationals being either officers or members of the governing body of a joint venture?
- 1.7 Are there any requirements for worker participation in management?
- 1.8 Are there legal (as opposed to accounting or tax) limitations on the ability of the coventurers to contractually allocate control?

2. TIMING

How much time is typically required to set up a joint venture in your jurisdiction? Can specific major events along this timeline and the point in time when they would be expected to occur typically be identified? If so, please specify.

3. FORM OF DOCUMENTS

In some jurisdictions, a joint venture must employ specific documentations or be duly registered with the tax authorities.

- 3.1 Do the laws, customs, or practices of your country require the entry into a specific or different form of agreement or require additional documents or particular formalities to be followed for the documents to be enforceable? For example, do any of the documents have to be in notarial form, and is it typical or are there good reasons to incorporate some provisions of the joint venture agreement in the charter documents? What are the relevant considerations?
- 3.2 Is it usual to have a confidentiality agreement entered into as a first step? Is it binding?
- 3.3 Is it usual to use a preliminary document such as a letter of intent or a term sheet to set out the material terms of a possible joint venture? Are such documents usually binding or nonbinding?
- 3.4 Can oral discussions be considered binding agreements in your jurisdiction?
- 3.5 Does your jurisdiction require the various forms of joint venture to be registered? If so, which forms?

FORMATION AND MANAGEMENT OF JOINT VENTURE

4. REGULATORY APPROVALS

In the United States and many other jurisdictions, filings must be made with antitrust, competition, or foreign investment review agencies; and, in some instances, agency approval must be obtained before a transaction can be completed.

4.1 Antitrust/Competition Filings

- (a) Describe any antitrust or competition-related filings that might be required in your jurisdiction in connection with a joint venture transaction, including discussion about relevant criteria (financial and other thresholds) for determining whether the transaction would be notifiable and whether the filing is mandatory.
- (b) If notification is not required (for example, because the thresholds are not exceeded), are there other steps/filings that typically are advisable or other considerations that should be addressed in your jurisdiction? Does your antitrust agency have jurisdiction to challenge the joint venture even if it is not notifiable?

4.2 Foreign Investment Review

Does your jurisdiction have legislation of general application that might require notification to or clearance from a government agency if a foreign-owned (or foreign-controlled) company makes an investment in your jurisdiction? If so, please provide a high-level overview of the thresholds, timing, no-close or other waiting periods before closing, and conditions that could be imposed by the approving body.

4.3 Other Approvals

Other than antitrust and foreign investment control filings and reviews, are there other filings or approvals of general application that are likely to apply to a joint venture transaction in your jurisdiction involving a U.S. joint venture partner? If so, please provide a high-level overview of the thresholds, timing, no-close or other waiting periods before closing, and conditions that could be imposed by the approving body.

5. EMPLOYMENT MATTERS

In certain jurisdictions, employment agreements remain in force and binding on the buyer of, or successor to, all or part of the assets after an acquisition or contribution transaction. In other jurisdictions, employment agreements can be terminated if the seller sells assets, or at least the buyer will not be bound. As you answer the following questions about employment matters in your jurisdiction, please note that in the joint venture proposed, the local entity will be contributing assets to the joint venture, which may be comparable to an asset acquisition.

- 5.1 Do employees of the local coventurer automatically become employees of the joint venture as a consequence of the contribution of the assets?

- 5.2 Is the joint venture required to offer such employees employment on the same terms and conditions as their previous employment with the coventurer, including pension plans and retirement, health, or other benefits?
- 5.3 After the consummation of the contribution of assets, can the joint venture change the terms of employment of employees who are transferred to it as a result of the contribution of assets?
- 5.4 Is it permissible to require the local coventurer to terminate some employees as a condition of closing the transaction without imposing severance liability on the U.S. coventurer or the joint venture?
- 5.5 Is it legally enforceable to allocate responsibility between the local coventurer and the joint venture for severance payment obligations?
- 5.6 What are the severance obligations of the joint venture stemming from the termination of an employee after the joint venture has been established?
- 5.7 Will a joint venture that includes a contribution of local assets be subject to notification to, consultation with, or authorization from any works council, labor union, or other similar body?
- 5.8 Are there any laws governing pay equity or affirmative action hiring?
- 5.9 What is the best form of structure for dealing with employment issues?

6. CAPITAL REQUIREMENTS AND DISTRIBUTION

- 6.1 Are there any minimum capital requirements to establish a joint venture in your jurisdiction?
- 6.2 Are there any restrictions of the incurrence of debt in your jurisdiction?
- 6.3 Are there any restrictions on distributing profits out of the joint venture?
- 6.4 Are there currency controls in your jurisdiction that restrict the repatriation of capital; the repayment of debt; the payment of distributions or royalties, or other payments to the U.S. coventurer?
- 6.5 Can assets (including intellectual property) be used as consideration for the issuance of ownership interests in the joint venture? If so, please briefly describe the relevant requirements.

7. CONTRIBUTION OF ASSETS

Issues will arise in connection with contributions of assets. In certain jurisdictions, a buyer of or successor to assets may be held responsible, under successor liability theories, for environmental liabilities, product liability claims, warranty claims, and/or

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fulfillment of outstanding purchase orders existing before the date of the contribution of assets.

- 7.1 Will an audit of the assets to be contributed be needed to objectively establish value?
- 7.2 Does the local government monitor the valuation or the transfer?
- 7.3 To the extent that the local coventurer in your jurisdiction is contributing assets to the joint venture, in what circumstances (if any) could the nonnational coventurer or the joint venture be responsible for any liabilities of the conveyor/contributor?

8. ASSIGNMENT OF CONTRACTS

In certain jurisdictions, some contracts, such as insurance contracts, can transfer from a seller to a buyer of assets by operation of law without the need for prior consent from the counterparty.

- 8.1 In your jurisdiction, are any contracts (with the exception of employment agreements, such as discussed above) transferred automatically when assets are transferred into the joint venture?
- 8.2 If contracts are not assigned by operation of law, are there any special requirements, other than obtaining consent if required under the terms of the contract?

9. INTELLECTUAL PROPERTY, DATA PROTECTION, AND PRIVACY

9.1 Use of Corporate or Trade Name

In certain jurisdictions, the use of the corporate or trade name of a joint venturer as (or as part of) the corporate or trade name of the joint venture company can result in the joint venture company assuming all or part of the liabilities of the joint venture partner, or vice versa.

- (a) In your jurisdiction, is it permitted for the joint venture company to use the corporate or trade name of a joint venturer in its own corporate or trade name?
- (b) In your jurisdiction, if the corporate or trade name of a joint venturer is used by the joint venture company, can such use result in additional liabilities for the joint venture company or for the joint venturer? If applicable, please briefly describe the possible liabilities.

9.2 Share Capital or Units

In your jurisdiction, can intellectual property serve as a means to pay up newly issued share capital or units of the joint venture company/partnership? If so, what are the relevant requirements (including any specific form of contribution)? If not, what would be the most usual way to have the joint venture company use the intellectual property owned by one of the coventurers?

9.3 Granting Back of Rights

During the life of the joint venture and/or on termination and/or exit of one of the coventurers, are there any restrictions (including with respect to any noncompete to which the coventurers may have agreed) on the granting back of rights to improvements to the intellectual property originally contributed to the joint venture either directly or by way of a license, for example?

9.4 Data Protection and Privacy

Do data protection and privacy laws in your jurisdiction impact the formation and operation of a joint venture company? If applicable, please briefly describe the impact.

9.5 Intellectual Property Requirements and Restrictions

Are there any other legal requirements or restrictions relating to intellectual property that impact the formation or operation of a joint venture in your jurisdiction? If applicable, please describe briefly.

9.6 Other Limitations

What laws or other governmental rules or regulations could overrule or modify or otherwise affect any agreement of the parties with respect to intellectual property contributed to, or developed by, the joint venture company or owned by the coventurers and used in the joint venture company? Please describe briefly.

10. CONTROL AND CORPORATE GOVERNANCE

10.1 In your jurisdiction, do all stockholder/director/manager decisions require an absolute majority of votes, or do certain decisions (please describe) require a qualified majority (either in terms of quorum requirements or strengthened voting requirements)? Can such majorities be changed by contract? In your answer, please distinguish between the various entities available in your jurisdiction that are commonly used as joint venture companies.

10.2 The governance regime proposed in the ABA Model JVA provides for each party to have two managers with one party's nominees having a negative veto over certain decisions. Is such a rule of governance allowed in your jurisdiction?

10.3 Please briefly describe the management and supervision structure in your jurisdiction (one-tier versus two-tier board structure), distinguishing (if relevant) the various entities available in your jurisdiction that are commonly used as joint venture companies.

10.4 In certain jurisdictions, it is common practice for joint venturers to agree on management regulations to form part of the corporate governance rules applying to the joint venture company or to supplement such (statutory) rules. Is this common practice in your jurisdiction? If so, please briefly describe the scope of these rules and their relation to the bylaws of the joint venture company.

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- 10.5 In certain jurisdictions, corporate governance codes or similar codes of conduct apply or have been introduced dealing with the corporate governance rules of the specific jurisdiction. Are similar codes of conduct applicable in your jurisdiction? If so, please briefly describe their scope. Please indicate whether such codes of conduct have a statutory basis and/or are otherwise enforceable.
- 10.6 What approach to resolving a deadlock is typically used in your jurisdiction, assuming that no party to the joint venture is in breach? Are there other mechanisms (such as a buy-sell approach) often used in your jurisdiction to resolve deadlocks?
- 10.7 Are there extracontractual theories that may broaden the duties owed by a coventurer under a joint venture covenant, for example, fiduciary duties and the corporate opportunity doctrine? If they exist, can the parties limit the application of such requirements?

11. LIABILITY OF COVENTURERS

- 11.1 Under what circumstances (if any) is a coventurer itself responsible for any of the liabilities, acts, or omissions of the joint venture? (Please do not consider the effects of any guaranty of payment or performance.) If any such actual or potential responsibility exists, what structural, contractual, or other legal mechanism will avoid or limit this liability? Please describe briefly.
- 11.2 Under what circumstances (if any) is a coventurer responsible for the liabilities, acts, or omissions of any other coventurer? (Please do not consider the effects of any guaranty of payment or performance.) If any such actual or potential responsibility exists, what structural, contractual, or other legal mechanism will avoid or limit this liability? Please describe briefly.

TERMINATION OF JOINT VENTURE

12. CHOICE OF LAW, JURISDICTION, AND DISPUTE RESOLUTION

In certain jurisdictions, it is customary to include clauses regarding choice of law, jurisdiction/venue, and dispute resolution in asset acquisition or contribution agreements.

12.1 Restrictions

In your jurisdiction, are there any restrictions relevant to asset acquisitions/contributions by foreign parties or business relationships between a local party and a foreign party regarding.

- (a) the choice of applicable law?
- (b) the geographical area in which the action may be brought?
- (c) the court in which the action may be brought?

12.2 Dispute Resolutions

What forms of dispute resolution mechanisms are usual?

12.3 Arbitration

Is arbitration (national and international) possible? If so, is the award final and enforceable in your jurisdiction, or is it subject to reexamination by a judicial body?

13. TERMINATION

13.1 Does your jurisdiction provide for special treatment of assets upon the termination of a joint venture?

13.2 Are there any barriers to the effectiveness of contractual termination provisions in a joint venture agreement?

13.3 Are there any tracing liabilities after termination (that is, where liabilities are first identified or qualified on a final basis after termination) for which the exiting joint venturer can be held liable?

14. OTHER ISSUES

14.1 Is there a legal obligation in your jurisdiction to negotiate in good faith?

14.2 To the extent not covered by your previous answers, are there other significant issues—legal issues, form of documents, business issues, or cultural issues—of which the U.S. coventurer should be made aware?

14.3 Are contracts (including transfer documents) that are drawn up in English (if English is not the operative language in your jurisdiction) binding? If the contract is drawn up in the local language as a courtesy and in English, will the parties' specification of which one is the operational document be upheld?