



# Collaborations Across Borders

Establishing international joint ventures

Virtual Round Table Series  
Commercial Working Group 2018







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## Establishing international joint ventures

Joint ventures can be an efficient and effective way to access new markets, develop new products or explore new industries. They can be operational in nature, or passive if they are used to hold intellectual property or licences.

Their effectiveness has been confirmed by research from Bain & Company which conducted a global survey of 253 companies that have used joint ventures (JVs) to generate growth or optimise their product mix. More than 80 per cent of those firms reported that the deals had met or exceeded their expectations.

The study also found that the value of the joint ventures in question grew, on average, by 20 per cent per annum - that's twice the typical rate for M&A deals.

Why then do more companies not use JVs on a regular basis? The answer is the added complexity and potential risk involved in bringing multiple parties together in such a way, particularly across borders when different cultures and legislation can add to the challenge.

A JV can take many different forms, from an informal contractual arrangement between two parties to an entirely new entity formed by multiple partners complete with equity stakes or shareholder agreements. In between there are hybrid forms, such as the temporary joint venture or UTE popular in Spain, which is used to win large government contracts such as infrastructure build projects.

Having a formalised structure with a new company can be a useful way to record value, hold capital and apportion liability more accurately. It also makes it easier to assign a set of rules and regulations that all partners have to abide by. It may, however, also expose the JV partners to multiple tax legislation, which can be costly and complex to resolve.

An informal, contract-based structure might be better suited to partners who are less familiar with each other and aren't ready to commit capital, time and people to a formal arrangement. In some cases, it may be more difficult to apportion liabilities under these arrangements, but the contract can be drawn up to

include a variety of clauses designed to limit liability, such as defence, indemnification and hold harmless provisions.

Each type has its advantages and disadvantages, depending on the goal of the joint venture and the structuring priorities for each partner. In the following discussion our experts describe some of these differences in more detail, touching on the reasons why certain vehicles are used in particular jurisdictions and the way in which their use can affect the apportionment of liability in case of dispute.

We have a special focus on tax, highlighting how the Trump Administration's new corporation tax code has affected JV structuring in the US and focusing on the importance of transfer pricing legislation and double taxation treaties.

The feature draws on the expertise of IR Global members from ten jurisdictions - including Spain, UK, US, Brazil, Germany, Slovakia, New Zealand, Iceland, Belgium and Cyprus.



## The View from IR

### Thomas Wheeler Founder

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.



BRAZIL

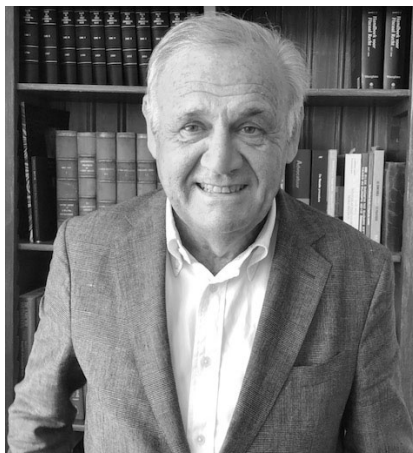
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Adriano Chaves specialises in M&A, corporate law, finance, foreign investments, technology and contracts. He graduated from the University of São Paulo in Brazil (1995) and concluded his LL.M. at Columbia University School of Law in New York (1999), where he was a Harlan Fiske Stone Scholar. Adriano is recommended by reputable publications (Chambers Global, Chambers Latin America, Leaders League, LACCA, Análise Advocacia).

Adriano is co-rapporteur of the task force on B2C General Conditions of the Brazilian Chapter of the Commission on Commercial Law and Practice (CLP) of ICC, and a member of the Commission of Law Firms of the Brazilian Bar Association, São Paulo (OAB/SP).



BELGIUM

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Stéphane Bertouille has a law degree from the University of Louvain, a licence in Economics from the same institution, and a LL.M. in Corporate law from New York University.

He started his own law firm, Bertouille & Partners, in 1991. In 2005 the firm merged with Lawfort and joined Everest in 2007. He is now managing partner of Everest.

Stéphane practises international tax law, tax litigation, corporate due diligence and transactions and corporate finance. He has published on these topics. Stéphane is fluent in French, Dutch, English.

Everest is a law firm specialised in legal services for businesses and corporations. Everest is comprised of a team of lawyers, each highly specialised in those fields of law with which companies are faced on a daily basis.



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Sigurbjorn Thorbergsson graduated from the Law School of the University of Iceland in 1991. He was admitted to the Icelandic Bar Association in 1994 and to the Supreme Court in 2009.

His main areas of practice are international trade, cross-border litigation, and creditor rights. From spring 2003 until spring 2015, Mr. Thorbergsson was elected to various positions within TCM Group International Ltd. To the position of director from 2003 to 2007, of marketing team member from 2004 to 2006, and of managing director from 2009 to 2013.

As recognition for his outstanding contribution to the group and his steadfast promotion of international referrals and trade, Mr. Thorbergsson was appointed Honorary Director of TCM Group in 2015.



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Mark Copeland is a senior New Zealand commercial lawyer. He is the founder and principal director of New Zealand full-service commercial and real estate law firm Mark Copeland Lawyers.

Mark developed his career as a partner in top-level, award-winning corporate, commercial and specialist property law firms in Auckland and Rotorua. He has acted for a wide range of clients, from private individuals to government entities and major international corporations, advising on all aspects of commercial, agri-business and real estate laws.

Mark is a Chartered Member of the NZ Institute of Directors, a member of the Rural Panel of the Arbitrators & Mediators Institute of New Zealand (AMINZ), a director of several companies and a past member of the Advisory Board of the Bank of New Zealand for the Central Plateau Region.

Mark is the Vice Chair of the Legal and Ethics Committee of the International Paralympics Committee based in Bonn, Germany, immediate Past-President and Chairman of Paralympics New Zealand and the Chair of the Sir Edmund Hillary Outdoor Education Centres of New Zealand (Hillary Outdoors).



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Bill Shawn is partner in ShawnCoulson, LLP, a member of the ShawnCoulson international alliance of law firms in Washington, Brussels, and London, where he is the co-managing partner, and represents international and national corporate, governmental, and trade association clients in litigation and commercial matters throughout the U.S.

He is a past participant in the U.S. Federal Government's Attorney Honors Program, holds the "AV Preeminent" peer rating by Martindale Hubbell, and was named a "Top Rated Lawyer in International Law & International Trade" by American Lawyer Media and Martindale Hubbell.

Bill has tried over 100 bench and jury trials and arbitrations in Federal and state courts and agencies throughout the United States on privacy, professional ethics, sanctions, and discovery issues, a number of which are reported in published opinions. He is the co-inventor of US Patent No. 9,621,539, Method and Apparatus for Securing the Privacy of a Computer Network, a secure, algorithmic means of complying with the EU Privacy Directive and its forthcoming Regulation counterpart.



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Dr Markus Steinmetz has worked for Endemann Schmidt since 2014 and was a founding member of the firm.

He studied law at the universities of Trier and Munich, achieving his MBA from the FernUniversität in Hagen. He was awarded a scholarship by the German National Merit Foundation (Studienstiftung des deutschen Volkes) and is an Assistant Professor at LMU Munich (Prof. Dr. Lorenz Fastrich).

He began his legal career with Linklaters, working as an attorney in Shanghai and Munich, before moving to SEUFERT RECHTSANWÄLTE. He became a partner with Endemann Schmidt in 2017.

He is a licensed specialist for corporate and commercial law, focusing on M&A, Commercial and Corporate Law, Private Equity, Venture Capital, Bankruptcy and Liquidation and Labour Law, specifically Works Council Constitution.



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Soteris Flourentzos is the founder and managing director of Soteris Flourentzos & Associates LLC. Soteris has 14+ years of broad corporate and financial law experience, including nearly nine years at two prominent Cyprus law firms, where he represented major multinational corporations, financial institutions and private equity firms in contentious and non-contentious corporate and financial law cases of great magnitude and scale.

Before executing his vision of building his own law firm with a new, innovative business model to accommodate the needs of international equity firms, entrepreneurs and family offices, Soteris was a partner at Soteris Pittas & Co.

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Bosco graduated in law from the University of Barcelona in 1998 after studying for a year at Università degli studi di Bologna. He joined the bar of Barcelona in 2001, and, after working for a few months in Scottish Legal Firms, he joined Grupo Gispert in 2000, finally becoming a partner of the firm in 2014.

He works mainly on Commercial and Litigation affairs and has played a determining part in major bankruptcy cases (Spanair, Clínica Sant Jordi, Cromosoma, Joventut de Barcelona), in addition to his interventions in various debt restructuring cases.

In terms of corporate law, he has dealt with cases involving M&A, due diligence, competition, partner separations and conflicts in corporations, both in court cases and settlements.

He is a member of the Barcelona Court of Arbitration and the Madrid Chamber of Arbitration.



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Alex specialises in co-ordinating, structuring and advising on corporate transactions and regularly advises clients based in both the United Kingdom and internationally on mergers and acquisitions, joint ventures, restructurings and corporate re-organisations.

A solicitor qualified admitted to the Supreme Court of England & Wales, Alex offers pragmatic and commercial solutions to clients both looking to invest in the United Kingdom or to export their services or expand into new territories around the globe.

Recent work includes, advising on an investment of in excess of GBP 5,000,000 in a private renewable energy initiative, negotiating favourable secured protections for a junior lender.

Advising senior stakeholders on the issue of further loan note securities to raise finance for a major acquisition in the financial services sector.

Advising banks and private lenders on structured and tiered debt solution, and drafting and negotiating inter-creditor arrangements and deed of priority/subordination.



SLOVAKIA

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Andrea Vasilova was admitted to the Slovak Bar Association in 2003, following graduation in commercial law and traffic policing at the Police Academy of Bratislava.

She began her legal career in 1999, working as an in-house lawyer for IPEC Management Ltd, one of the biggest property developers in the Slovak Republic.

She was as associate lawyer with business consultancy ES Partners for two years, before joining Vasil & Partners in 2004. VASIL & Partners is a unique Slovak law firm as, in addition to Slovak and Czech law the firm deals with English law.

Andrea graduated from the Economic University in Bratislava in the faculty of General Economics, specialising in finance, banking and investments.



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Donald Looper is a tax lawyer whose practice focuses on project finance, project development, and structuring partnership, corporate, and international transactions.

His skills for structuring and managing international business transactions have resulted in his being selected by clients to manage international projects negotiated in 36 foreign countries and across the United States.

U.S. clients utilise his tax and project management skills to navigate treaty issues and manage acquisitions in foreign countries, including supervision of local lawyers and accountants, tax reporting, and contracting.

Among his areas of experience are U.S. and U.N. regulatory sanctions against foreign jurisdictions and designated nationals. The 1994 case of *Looper v. Morgan*, upholding his measures to protect client privileged work product and communications, stemmed from Don's legal role managing an international refinery and marketing acquisition while complying with international sanctions against Libya.

Don enjoys a close working relationship with executives and GCs, representing public and privately held companies and private equity funds in a variety of industries. In addition to his representation of upstream and midstream energy companies.



## QUESTION 1 – STRUCTURING JVS ACROSS BORDERS

# What are the most common ways to structure an international joint venture involving your jurisdiction? Any important challenges or opportunities that should be highlighted?

**Spain – Bosco de Gispert Segura (BDG)** There are three ways to structure a JV in Spain and choosing one of them will depend on the purpose of the JV. The first involves creating a new company. If two companies are willing to start a business together, they create a third company in Spain and this company is owned by the others in a 50/50 or any other agreed arrangement. This company is the one that performs the business and there are tax implications and contractual issues to be dealt with in Spain. It normally requires a shareholder's agreement to regulate the rights and obligations of each party.

The second way is participation in business between two companies by means of a contract. Both companies put forward capital or knowledge towards the success of the business, but they do that without the need to set up a new structure in Spain. It is essential to set up the relationships between the parties and to try to foresee and prevent all possible situations to avoid future conflicts.

The third way is most common when it comes to public contracts. In Spain there is a special purpose vehicle called the Unión Temporal de Empresas (UTE), which is a temporary union of companies.

For some public contracts, you need to fulfil very specific requirements, which can be difficult to accomplish. Governmental bodies want contractors for work such as building motorways, airports or train stations to meet certain criteria, such as previous experience, specific numbers of workers and revenue thresholds. Individual companies don't always

fulfil these requirements, but by uniting two companies this is often easier to achieve. Companies joined together under this UTE umbrella receive special treatment under Spanish law, so it is a common way to set up a JV when working with public authorities in Spain.

Another option would be the so called AIE (Agrupaciones de Interés Económico), a temporary union for the private sector.

**England – Alex Canham (AC)** In the UK, one of the main questions I ask when looking at international joint ventures (JVs) is what is the purpose? Is it a management JV designed to share information, or an output JV designed to deliver a product or service based on skill sets the parties want to bring together? That will dictate the type and structure of JV that the parties end up using.

There are a variety of different models available for use in the UK. There is a formal JV which uses a limited liability company (Ltd), or a traditional unincorporated partnership (LLP) as the vehicle. There are also collaboration JVs, which are more informal with no central entity, and are really about people coming together with a series of contracts to work together and provide an output through their existing business structure. This is more of a knowledge sharing arrangement, rather than a centralised business, and involves a collaboration agreement or a contract which agrees that particular information, skills or knowledge will be shared or used in a particular way. In some cases this forms the basis of an unincorporated partnership, depending on the terms.

At the other end of the scale you can create a new vehicle to house a JV, with equity stakes taken by each party. You have a separate body with rules and regulations and compliance. It allows parties to hold assets centrally in the form of stock, IP, equipment, or staff and they can run it as a separate business function that is perhaps not part of the day-to-day business of its owners.

The more common approach in international projects is more formal, because people like having a central vehicle in which they have an equity stake and a set of rules and regulations that govern the project.

With an informal arrangement, it might just be a revenue stream, but a centralised vehicle allows both parties to record the profits / revenues from the project, the funding received and the apportionment of liabilities and risk. It also ring-fences it from the rest of the business, meaning a specific value can be more easily proscribed, helping any potential future sale.

What we tend to see on the international side of things, is a lot more projects designed to generate a capital value. Both parties come together with skills and experience and services to run as a standalone business, and doing this on an informal basis makes apportionment of value harder.

**Germany – Markus Steinmetz (MS)** I can underline a lot of what Alex already said. With regard to structures, it will depend on who the JV partners are. As an example, in the case of the pharmaceutical industry, when a new drug



is established they need a partner to execute clinical studies in several countries.

The pharma company will often create a formal JV with a provider who executes the studies. This is because the pharma company needs a lot of confidence in the other party, since they are from a different industry with different standards around issues like confidentiality.

A lot of highly confidential information about subjects is provided to this firm, which engages university hospitals for trials, and leaks could be very damaging.

Another example of this is engineering companies, particularly suppliers to the automotive industry. Foreign companies from China, the US or Canada who are engaged in the same area, will form JVs with German firms. This happens a lot with electric cars and battery technology.

Formal JVs makes sense to share mutual knowledge to help each other. We often find that a foreign company will buy shares in a German entity and vice versa, to enhance the mutual participation.

**England – AC** The concept of holding shares is a significant one, particularly if the party investing is a junior partner. It allows them to feel they have a tangible direct interest in the project, rather than just handing over IP, funds or information. They have something in exchange for all that knowledge, effort or resource they are providing.

Also, in regulated sectors like pharma, having that centralised JV allows apportionment of risk and liability and clarifies which party is responsible for dealing with regulatory and compliance issues.

If you have a JV in those sectors, we find that, unless you are going to seek a direct authorisation for the JV, you are relying on one of the parties providing a regulatory umbrella.

**Washington D.C. – William Shawn (WS)** I think one of the real critical questions to ask, as we have heard, is what's the purpose of the JV? Until we understand that, it's really difficult to determine the choice of the proper entity and, for that

matter, the terms and conditions of the JV. An IP JV, used for passive licensing, is different to a manufacturing JV, which is an operational entity.

There are also some circumstances under which a JV will not work. In an IP relationship, it may be that a cross-licensing arrangement would work better than a complicated or expensive entity created to house the IP in a joint venture.

Another question would be, what are the rights of the joint parties, and do they want a public or private vehicle? Special purpose vehicles (SPVs) are established to accomplish specific things.

The most common private entity is a C corporation, which is particularly attractive given new tax legislation. From there we can go to a partnership or a limited partnership depending on the number of parties involved in the JV.

The choice of entity is driven by what the clients are trying to achieve and what the best means are for achieving that. In China, for example, statutory structures mean there are a number of things mandated by law.

There is limited flexibility and often 51 per cent Chinese ownership. If a US firm wants to penetrate that market they need a JV partner, and that's been a point of contention with the Trump Administration. It is not clear whether or not IP has to be handed over to the senior Chinese partner in the joint venture.

This is also the case in Iraq, where there are statutory requirements for a local partner. You better pick the right one though, since there are all kinds of money laundering and corruption issues there that need to be closely watched.

A JV is a lot like a marriage, there is excitement at first, but it has to make sense to last over the long-term.

**Brazil – Adriano Chaves (ADC)** Generally speaking, it is possible to establish a joint venture in Brazil through the opening of a new entity (NewCo) or through agreements, including by means of a 'consortium agreement', a specific

type of contract which is appropriate for specific projects, with a definite term of duration.

To define the best structure, it is important to understand the purpose of the project and what is to be developed. We need to know what the parties want to achieve, their respective contributions and their rights.

However, it would be fair to say that, if the project is to be developed in Brazil, cross-border joint ventures commonly involve the creation of a NewCo. Among the reasons for favouring this choice of structure is the fact that Brazil has strict currency exchange and import controls, and a complex taxation system, and a NewCo makes it easier to address those challenges.

Among the disadvantages of a NewCo are the more complex shareholding and corporate governance structure, the need for more elaborate exit strategies, and a more complex approach to the intellectual property of each group involved.

NewCos are more commonly established as corporations or limited companies – sociedades limitadas. Corporations tend to be adequate vehicles to implement complex joint ventures, as they have features that can better accommodate the interests of joint venture partners or minority shareholders and allow more sophisticated funding strategies. Despite this, sociedades limitadas present the advantage of being simpler, less expensive to maintain and, to a certain extent, more confidential with regard to company information.

As regards contractual joint ventures, they tend to be easier to implement and terminate, but they may not be apt to address some of the challenges of the Brazilian legal environment. To illustrate, a "silent partnership" (sociedade em conta de participação) between a foreign entity and a Brazilian entity will not be able to register the foreign investment with the Brazilian Central Bank, thus making it impossible for the Brazilian entity to remit dividends or repatriate funds abroad. A solution to this would

be to establish a local subsidiary of the foreign entity, which would then establish the silent partnership with the Brazilian entity.

A 'consortium agreement' is available for specific projects and can be very helpful, particularly if the customer accepts to pay each party to the consortium separately and directly (for their respective contribution). It is typically used for the supply of services and goods in case of large projects that have a definite period of duration, including infrastructure and other governmental projects.

It is also common to see a combination of the different structures, in which case a NewCo could have several intercompany arrangements with its shareholders and their affiliates.

**Iceland – Sigurbjorn Thorbergsson (ST)** Joint venture can be set up in Iceland in almost any form of corporate structure, but most commonly the parties involved prefer to use a limited company or private limited company to formalise their cooperation and risk control. Joint ventures are subject to merger control and need to be reported to the competition authority when of a larger scale. Iceland's corporate income tax is one of the lowest in Europe.

**Belgium – Stéphane Bertouille (SB)** Joint Ventures in Belgium can take various forms, depending on the option of the parties and the purpose of the JV, which can be either purely contractual or in the form of a corporate entity.

The corporate entity is often a separate legal entity with limited liability for its partners. The most common forms are the public company (Société anonyme / Naamloze vennootschap) and the private company with limited liability (SPRL/ BVBA). It can also be a company with no limited liability for its members, which does not constitute a separate legal identity with a legal personality.

Other forms of JV include the general partnership (société de droit commun/ maatschap), which is the most common

form of unincorporated contractual JV, and applies if no specific choice has been made by the parties.

The temporary company (société momentanée/ tijdelijke vennootschap) is used for specific projects in the building industry or for research purposes in the context of bidding or tender processes for the time required to complete the project.

The corporate form with limited liability is often preferred over a purely contractual arrangement or the choice of a company in which one or more JV partners have unlimited liability. However, these limited companies are subject to publication requirements such as annual balance sheets, articles of association and notarial deeds, which add extra cost.

**New Zealand – Mark Copeland (MC)** Until quite recently international JVs in New Zealand were routinely structured as either incorporated or unincorporated ventures. However, in 2007, in response to calls from international investors for a more flexible and tax-efficient option, the New Zealand Government introduced limited partnerships as a further JV structuring option.

These three structures remain by far the most commonly used JV arrangements in New Zealand.

An incorporated JV involves registering a limited liability company (JVCo). The JV parties are the shareholders, appoint the JVCo directors, and will often enter into a shareholders' or formal JV agreement. With a separate legal personality, the JVCo can own assets, enter into contracts, incur obligations and liabilities, make profits and suffer losses.

A clear advantage of an incorporated JV is that, generally, liability for the JVCo's debts and obligations is limited to the JVCo. A JVCo also provides flexibility of ownership, as JVCo shareholders can generally easily transfer or acquire shares without disrupting the business.

With an unincorporated JV (UJV), the JV parties make different contributions through their existing structures to create

a business venture or achieve a common objective, and typically have a formal agreement detailing their rights and obligations with respect to each other and third parties. Profits and losses flow through to the JV parties themselves, and are treated according to the relevant JV party's tax status.

An unincorporated JV can be attractive to lenders, who can maximise their tax deductions and who may have concerns about a JVCo's ability to pay dividends. Another key and beneficial difference is that UJV partnerships are not subject to the taxation loss limitation rules that apply to LPs, permitting the UJV parties to claim full deductions for all tax losses attributed from the UJV partnership in an income year.

A Limited Partnership (LP) is a separate legal entity which must have at least one general partner (GP) responsible for management, at least one limited partner, and a private partnership agreement. Commonly, each JV party will be a limited partner, contribute capital to the LP and hold shares in the limited liability company GP in proportion to their respective interests.

A Limited Partnership affords more privacy to the offshore investor parties than a JVCo. The Limited Partnership Agreement and details of the limited partners' respective investments may be kept private (although the details of the GP will be public). Probably the key benefit of an LP is that, while governed like a company, it is taxed in a similar way to an ordinary partnership.

LPs are treated as transparent for New Zealand income tax purposes, generally allowing income, gains and losses of the LP to flow directly to the limited partners, whose personal tax status will govern how they are taxed. Limited partners that are not tax resident in New Zealand may be able to receive a credit in their home jurisdiction for any tax paid in New Zealand on income derived from the LP.

**Texas – Don Looper (DL)** Things have changed a lot for the US with the new tax code enacted in Dec 2017. What char-

acterised the structuring of US companies doing business abroad before that date, was the extremely high corporate tax rate in the US - one of the highest in the world.

The business of structuring businesses abroad was focused on deferring the repatriation of income back into the US to avoid the high tax.

Companies would try to keep a lot of that income overseas, so if they did have to invest in new ventures abroad, that money would not come from the US. The change in tax law, especially with C corporations, has made it more attractive to do business from the US. If a US C corporation is engaged in activities such as selling services abroad, it can now be taxed as low as 13.25 per cent. This means we are looking to structure deals directly from the US, while before, we would look to set up a JV company with a branch or subsidiary of the US parent in the country where they were doing business and then have the income parked in an offshore company.

The new tax law has served its purpose, but some European countries have been up in arms that this tax code is an effective export subsidy for US c-corps. We'll see how that works out.

Sharing in the structure of the ownership of a JV will often depend on the different classes of stock, and the skill is in the determination of the rights of preferred stock. When we do business with companies in the Middle East, there is a strict partnership with local entities, so the way we devise shareholder agreements is key. Even though you give the nominal amount of ownership required by statute, you need to make sure the realities of that ownership reflect the actual investment and participation of the partner.

**Germany – MS** It is interesting working with German companies investing in China. Chinese regulations are tough and you need a JV for a Chinese investment. They are reforming this law from 2022, but for the time being you need a Chinese JV to start a project.

**Slovakia – Andrea Vasilova – (AV)** In Slovakia we also use either a contractual or corporate JV. Corporate JVs are most common, either in a form of a joint stock company or limited liability company. An LLP may be used too, but the most popular is the joint stock company. JVs are used mainly in start-ups, or when a partner is looking for an investor to fund a particular project.

My clients usually prefer a corporate JV rather than contractual because it is more formal, and if they hold the shares, they can make sure they participate. Contractual JVs are often used like a kind of a letter of intent, in that they start the process, but may end up as a corporate JV eventually.

For example, we have a client developing a new technology. The client was looking for equity investment to set up a corporate JV with a foreign investor, but still wanted to keep more than 50 per cent of the shares. Because the client did not want to relinquish any more shares, he funded the project via grants, euro funds and other strategic partners. The client recently found four million euros of extra investment, but not via a JV because he didn't want to lose control of the company.

**Germany – MS** Often, with start-up companies, it's just business angels interested in the financing part of the company, but not in the knowledge or development of the ideas.

When the start-up becomes established, then the big strategic players in the market become interested, and a JV can make that work. It also allows the seed investors to exit.

**England – AC** are there minimal capital requirements for a JV in other jurisdictions?

In the UK, public-limited companies have a £50,000 minimum requirement, but not a private limited company.

**Germany – MS** There is a minimum share capital requirement of EUR 25,000 euros in Germany.

**Slovakia – AV** In Slovakia we have a minimum registered capital requirement of EUR 5,000 for a limited liability company and EUR 25,000 for a joint stock company. Since 2017, we have had a new type of joint stock company called the Simple Joint Stock Company, where just 1 euro of share capital is needed.

**Germany – MS** We do have that in Germany, but it is not allowed to pay out profits until the company has EUR 25,000 of capital.

**Slovakia – AV** The Simple Joint Stock Company was established mainly for start-ups, because EUR 25,000 can be difficult to raise at the beginning.

**England – AC** We often see parties loaning money into a JV. They put a pound in each of actual capital and loan the balance, taking security of the assets in the company. This reduces financial commitments, if a company doesn't want to sign up to a high level of share capital.

**Cyprus – Soteris Flourentzos (SF)** No specific statute governing joint ventures exists in Cyprus, however, in practice, there are four ways to structure international joint ventures (JVs).

Corporate JVs usually use a private limited company, separate from the participants, set up under the provisions of the Cyprus Companies Law, Cap. 11. Its operations are specified by its Memorandum and Articles of Association, supplemented by a shareholders' agreement, and any other necessary collateral agreements with regards to, inter alia, the use of intellectual property rights owned by the participants.

This structure is usually more appropriate where it is aimed to establish and conduct a new separate business involving contractual interaction with third parties for profit-making purposes, due to the limited liability benefits.

The partnership is an unincorporated form of cooperation subsisting between not more than 20 natural or legal persons, carrying on business in common according to the provisions





Andrea Vasilova pictured at the 2018 IR 'On the Road' Conference in Toronto

of the partnership agreement drawn between them. It can either take the form of a limited or a general partnership, and its form determines the liability of each partner.

Any business assets and intellectual property contributed by any party, unless otherwise specified, becomes the property of the partnership.

Partnership JVs are usually best suited for cases where two or more parties wish to conduct a business on a lasting basis and in close cooperation; thus, they are usually set up amongst professionals rather than for large-scale commercial operations.

A contractual JV is an unincorporated form of cooperation with no separate legal personality, materialised through a contractual agreement amongst the participants. Such JVs do not involve the conduct of business in common and the participants remain autonomous, with distinct roles, as these are clearly set out in the agreement, which must be comprehensive and detailed.

The venture may acquire rights and liabilities as a single entity. However, unless otherwise agreed, any business assets and intellectual property remain the property of the participant who contributed or developed them.

Contractual JVs are usually used in the contexts of tenders, both public and private. Specifically, in Cyprus, such JVs have been widely used for large construction projects where apparent costs and risks are high.

European Economic Interest Groups (EEIG) are established by Council Regulation Number 2137/1985, this structure is defined through a contract made between the participants, who have unlimited joint liability for the debts and liabilities of the EEIG, unless expressly excluded, and appoint the managers of the EEIG.

A duly registered EEIG may acquire, in its own name, obligations and rights of all kinds. However, unless it has legal personality, it cannot have assets and liabilities separate from those of its participants. EEIGs are usually used by smaller-scale specialised sector companies and professionals wishing to generate a larger international market profile.

**Belgium – SB** The minimum share capital required to establish a JV by way of a company with a legal personality in Belgium, depends on the form.

A private limited liability company requires EUR18,550, of which EUR6,200 needs to be paid immediately at the constitution of the company. However, it

is expected that a new Belgian Company Code will enter into force on the 1st of January 2019, designed to abolish this minimum share capital requirement.

The minimum share capital to establish a JV by way of a public company is set at EUR61,500.

Second, there is a withholding tax applied to foreign investors that is generally calculated on the gross sales proceeds if the foreign person sells the property. The withholding tax is also applied to rents received. Withholding tax is imposed at the federal level and sometimes at the state level.

Third, there is an inheritance tax if a foreign individual dies while holding US property. Real estate and interests in US entities holding real property are considered as part of the US tax estate of a foreign individual, which is taxed at a rate of 40 per cent of the value over USD60,000.

The fourth tax, is an annual property tax applied on the state and local level, not the federal level. In California, this is 1 per cent of the assessed value based on the value at date the property was acquired or improved. In other states, the assessed value is often adjusted annually. Typically, this tax is passed on to the tenants as a component of rent.

## How are specific joint venture liabilities and disputes dealt with in your jurisdiction? Any examples?

**England – AC** On the liabilities front, the central JV company is a great tool for apportionment of risk and liability because all the risk of the JV is taken through the vehicle. Each party provides resources or staff to that company and it is taking the risk.

If the JV fails or incurs a liability, in the absence of parent or cross-guarantees, the liability is with the JV vehicle. Everyone likes it, because they are not directly liable for something they are not fully in control of. If the JV has a direct liability to a third party, then it is apportioned between the various JV partners, according to clauses within the articles of association.

If you have three partners with a share in the JV, you can contractually say that each will be responsible for a certain amount of risk. On the informal side of things, in a contractual relationship, there is a direct liability to the main trading business.

JVs are about exploitation of a piece of knowledge or equipment, or something novel and untested. There is risk associated with that, so having a central company is really useful.

**Germany – MS** Regarding liability, it's a bit simpler if you have a JV company established for the JV project. It is important to clarify which liabilities this vehicle will take on, so it's then only a question of financing for the shareholders or partners. If you don't have your own entity to execute the JV project, then it can be very complicated to define the exact liabilities assigned to the project and those assigned to the JV partners.

**England – AC** That follows for establishing profit and loss, rather than money flowing directly into the existing company and causing problems around extrapolation of that data.

**Slovakia – AV** If you have a corporate JV, you follow the law. If there is a liability towards a third party, the shareholders/partners of the limited liability company are liable only within the unpaid contributions which are registered in a commercial registry. The shareholders of joint stock company do not bear any liability for the obligations of the company. The limited liability company and the joint stock company are both liable with their entire property for any breach of their obligations. On the other hand, there is liability among the parties, which is why we have contractual freedom in joint stock contracts or corporate documents.

**England – AC** Does a particular party take a lead on the liability?

**Slovakia – AV** The laws of Slovak republic provide contractual freedom on this. There is a liability regulated by the commercial code, but among the partners there is a lot of contractual freedom applicable, since, there is no specific legislation regulating joint ventures in Slovakia. The legal terminology from corporate law does not define such terms explicitly.

**England – AC** That's helpful from a JV perspective, because no two are the same. International or domestic JVs are all designed on different terms. It depends on what exactly the project is, the attitude to risk, who's providing the funding, and who's providing the services or the balance of that between the two, three, four, five or six parties that are involved.

We have got a very flexible legal framework that is recognised in the same way as the Companies Act in the UK. A JV is a limited company that happens to have multiple shareholders doing a project together, so there are no restrictions around obligations or liabilities.

**Slovakia – AV** In a partnership agreement you can agree a ratio of distribution for project liability. It doesn't matter if the other partner has less shares.

**England – AC** That goes further than we go in the UK, since the profits from a limited company would typically flow by reference to shares unless you have a different class of shares.

**Germany – MS** It's always difficult for JV partners, if one is interested in the knowledge of the other, then it's clear that the partner providing knowledge will not have to provide such a significant financial investment. In Germany there are often provisions in the JV agreement allocating profits and finance, based on different commitments.

**Spain – BDG** Liabilities will depend on the activities of the joint venture or the new company. In Spain, we have a strong and restrictive legislation around labour accidents with regard to the liability of members of the board.

If the company is involved in a risky activity where a labour accident might happen (e.g. construction), they need to be aware that the liability may skip from the company to the members of the board.

One of the things I recommend in a JV is an insurance policy to cover the liability of members of the boards, since, in some cases, the liability could be criminal.

As far as other liabilities are concerned, the JV has a limited liability, except when it is a temporary union (UTE) or an AIE. In that instance, all the partners are liable for all the debts of the company. The general rule is limited liability for a company with the partners and board members only liable when they neglect labour accidents or some other specific cases.

Arbitration is the most common form of dispute resolution between members of the JV, particularly when some of the members are foreign. The arbitration will normally take place in a neutral country, being Paris or London the most common arbitration courts.

**Washington, D.C. – WS** From the US perspective, I think we first have to consider what the purpose of the entity is. If we are dealing in a high liability area, such as offshore oil drilling that's one issue that may have a lot of labour liability or exposure. Once we know that, the first order of business is in structuring the allocation of responsibilities and liability, to include defence, indemnification and hold harmless provisions between the parties. If one makes a mistake, the other is defended from the consequences of that mistake. Once we structure something well from a legal standpoint to insulate the liability, then insurance comes in as an important ingredient.

We also look to see if the JV should be onshore or offshore. As Mark indicated, the new tax legislation has made it attractive to bring the JV onshore, but if we have concerns around issues like anti-trust or consumer liability, we may want to keep the JV offshore to insulate it through distributorship and other means, to avoid liability. We can then keep lawsuits out of the US and force claimants to go abroad.

Insurance depends on the client's budget and the risk factors, but it is one of the first things we look at, to see if there is coverage and what the price might be. We don't have quite the same type of exposure for officers and director and individual liability as in Europe, but, as a public company, we have a duty to shareholders and the best insurance coverage is a first step to establishing a good JV.

**Spain – BDG** I have to say that these contractual clauses between JV partners are now more common in Spain, because of the influence of US and UK lawyers. It only covers liability internally though, not with a third party.

**Brazil – ADC** If a NewCo is created, in principle the liabilities relating to the implementation of the project would be first attributed to the NewCo. Corporations and sociedades limitadas afford the limited liability protection to shareholders, but there are several exceptions provided by law, particularly environmental, anti-trust, anti-bribery and consumer laws and labour case law, in which shareholders may be personally liable. This should be analysed on a case-by-case basis, in light of several factors, such as the field of activity. To address such risks at the NewCo level, the parties usually resort to insurance, corporate governance measures and compliance policies.

A contractual joint venture allows the segregation of liabilities in a more straightforward manner, but this does not necessarily prevent the involvement of one party in liabilities or litigation originated by the other party.

Therefore, in both cases, it is crucial to have clear indemnification provisions and a good dispute resolution system. There is a tendency for parties to choose arbitration over judicial courts, as the court system in Brazil is subject to a lot of red tape, the conclusion of lawsuits may take years, and many judges may not have the specific expertise required for the technical resolution of certain disputes. However, the fact that arbitration tends to be much more expensive and does not allow the parties to appeal leads some companies to opt for the court system. This analysis should be made on a case-by-case basis, in light of the complexity of the joint venture and of the amounts involved.

More recently, mediation is becoming a new trend, to be exploited prior to the beginning of an arbitration or judicial lawsuit.

In any event, if the JV project is to be developed in Brazil, we usually recommend the parties to elect Brazilian law as the governing law and a city in Brazil to be the venue for arbitration or court resolution, as this is more efficient from an enforcement perspective.

**New Zealand – MC** Under an incorporated JV arrangement, shareholders in the JVCo do not owe fiduciary obligations to one another, although a shareholders' agreement can impose fiduciary-like contractual obligations. Again, liability for the JVCo's debts and obligations is generally limited to the JVCo, protecting offshore shareholders and directors (and their assets).

Although shareholders may be asked to guarantee the JVCo (for example to secure funding) which can reduce the limited liability protection provided by the JVCo, in our experience this rarely outweighs the benefits of using a JVCo.

In a Limited Partnership the GP's liability is unlimited and joint and several with the limited partners - but usually residual after the LP's assets have been exhausted. Given this exposure, a GP is usually a limited liability company with nominal share capital. Limited partners enjoy limited liability provided that they do not take part in the management of the LP (subject to certain exceptions allowing strategic control), which can be particularly attractive to offshore and/or passive investors.

In an unincorporated JV that is not a partnership (see above), the JV parties keep their respective businesses separate - although they may, for example, jointly use assets and facilities - and share costs up to the stage of production or output. For tax purposes, a UJV which is a partnership is broadly similar to that of LPs as discussed above, with UJV partnerships treated as transparent for liability and tax purposes. Unless agreed otherwise, each JV party collects profits for its own separate account and retains ownership of its property.

No matter which kind of JV structure is used, where a JV is formed in New Zealand its actions will typically be subject to the laws of New Zealand where a dispute between the JV parties arises. However, JV parties are also generally free to agree a different dispute resolution place and process (e.g. arbitration in Singapore) if this is considered



more appropriate, and this is becoming much more common in JV agreements with international reach.

**Texas – DL** A lot of the issues identified are issues we face in the US as well. Going back to the new regime of international structuring of businesses through the US, the ability to do business directly from the US, means that a lot of the work done abroad in JVs are via contracts. Before the changes, it was done through ownership and partnership abroad, in a foreign jurisdiction that was tax favourable.

When you have common ownership, there is certain unavoidable exposure to liability from the activities of the JV, that will extend up the chain to the ultimate parent in the US. The owners can allocate risk and liability between each other, but that doesn't change the exposure of the entity itself.

By using contracts, you can insulate yourself a lot better, having forum selection clauses in the contract obligating the parties to litigate in certain courts and jurisdictions, indemnification clauses and representations and warranties. The fact it is at arm's length, means you can regulate that risk much better.

Marcia mentioned arbitration and it would be interesting to get William's take on this, because 15 years ago almost everybody began to use arbitration to resolve disputes.

Most firms that I know, other than the really large ones, have reverted to relying on jurisdictions in the US to go to court, rather than arbitration clauses, because it's cheaper. Three panel arbitrations have become a business and are now a USD2 million expense, rather than USD200,000. We advise clients to go with jurisdictions in the US, because the courts are reliable and much less expensive. It may take time to get there, but it is a known process with rights to appeal.

In arbitrations you can end up with a split result, while the legal and arbitration fees can end up being three or four times as much as they would be in court. On the other hand, most clients dealing in inter-

national contracts do typically go with arbitration rather than select a jurisdiction and judicial process outside the US.

This is always a major issue in a JV.

**Belgium – SB** If the JV is structured by way of a corporate separate legal entity with limited liability, the liability of the JV towards third parties is limited to the assets of the JV. Creditors of the JV are not creditors of the shareholders. Therefore, they cannot reach the personal assets of the shareholders.

A JV agreement may not provide that a shareholder can participate without incurring any risk or loss. Such a clause in a contract is deemed null and void. The basic feature of companies is that the members participate in the profits and the losses.

If the JV is structured by way of contract, the partners have direct liability, but it can be limited vis-à-vis third parties by specific agreement with them.

Subscribing an insurance policy could partly resolve the liability issue, but there is a cost, and often a portion of the risk is not covered. Liability implying criminal offences are not covered.

**Washington, D.C. – WS** I agree with Don, the real problem we see with arbitration is the expense. We had an arbitration in London for a JV, and within one month, the legal fees were USD250,000 for just getting the case underway. Many American companies are worried about the expense of arbitration.

We often provide for arbitration under the rules of an entity like the American Arbitration Association (AAA), but not under its auspices. The parties follow the rules and select an arbitration, but don't pay the substantial administration costs. For those entities that do want to select a US jurisdiction, we favour Delaware because it has Chancery Courts devoted to business disputes and usually you have pretty knowledgeable judges who understand business and focus on business.

The trend is to go to litigation and, as a matter of fact, many of the courts in the US have very substantial court-annexed

arbitration and mediation service that gives the benefit of arbitration without the costs.

**Texas – DL** The courts will often mandate arbitration and mediation, but operated through the court system it is far less expensive.

I would add that the really large law firms have created somewhat of a monopoly on the international arbitration process by being the participants in the organisations that select the panel of arbitrators. They are picked on a system of points, so if the country of Spain is selecting counsel or arbitrators, they go through this points process, which always goes back to people from very large law firms being picked. They have a business model for this, with prices designed to gather USD2 million in legal fees by the time it is over.

**Iceland – ST** There is no special way of handling disputes and ascertaining liability for JV in the Icelandic legislation, and disputes not resolved by contract usually end up in the court system. Arbitration is, in general, not frequently used in Iceland as a means for dispute resolution, but when a JV partner with a major stake comes from a jurisdiction where it's a common practice, it's likely there would be an arbitration clause in the partners' memorandum of understanding. One risk factor previously mentioned is the aspect of competition law, merger control and obligation to report a major JV to the competition authority.

**Cyprus – SF** For any dispute that may arise involving any structure established in Cyprus, the District Courts of Cyprus are the competent authority to act, unless another jurisdiction is explicitly stated in the agreement made between the participants or the venture and any third party for a specific transaction. However, the parties involved are free to choose the use of arbitration as an alternative dispute resolution path, avoiding the long, time consuming and expensive judicial proceedings.



Alex Canham pictured at the 2015 IR Annual Conference in London

It should though be noted that for the case of the Corporation Joint Ventures, where constitutional documents must be submitted, if the parties desire to follow the path of arbitral proceedings for any potential dispute resolution, then this must be specifically stated in such constitutional documents.

Generally, liability for each of the four different structures that may be established in Cyprus may arise in different circumstances.

The participants of a corporate joint venture only bear limited liability and the corporate joint venture will be held liable separately from its participants for any breach. The corporate joint venture will be responsible for any taxes due or any creditors of the venture or for the obligations and duties arising under any potential contract in which the venture has entered. The venture can sue and be sued in its own name.

The liability in partnerships depends upon whether this is a general partnership or a limited partnership. In both cases though there must be a general partner who bears unlimited liability with the other partners for all the debts and liabilities of the venture.

The liabilities of contractual ventures depend on the wording of the contract forming the basis of the venture. As no legal personality is created, the participants will bear any liability may arise according to what is specified in the contract. Therefore, it is vital to have explicit and clearly written contracts setting out in detail the duties, obligations and liabilities of the participants.

Under an EEIG structure, the participants will bear unlimited joint liability for any debt or liability. This is the biggest disadvantage of these types of ventures as the participants are at greater risk. However,

such risks might be mitigated if specific agreements excluding particular liability are reached.

**Belgium – SB** Dispute resolution by arbitration is of course possible under Belgian Law but we tend to recommend jurisdictional recourse, as use of the judicial system is much cheaper than arbitration. Furthermore, in contrast to arbitration, appeal of judicial decisions is possible without delaying the matter, as decisions in first instance are immediately enforceable notwithstanding appeal.

However, for international disputes, arbitration offers the added advantage that the parties can choose the language of the proceedings, as opposed to judicial procedures in which the language of the proceedings is determined by the location of the court.

## What are some of the major tax implications that international JVs need to be aware of in your jurisdiction?

**Texas – DL** We have done a lot of work on tax recently. The stated intent of the new tax code was to pull money back into the US and stop US companies from going abroad. This is 100 per cent diametrically opposed to the new tariff proposals, which are driving companies out of the country.

The tax law created a one-time repatriation tax which is very complicated. We have just finished working through one with a Brazilian company. If you are Exxon, it's very easy to understand, but if you are a small company with JV partners, it's a very weird and complex set of rules.

The GILTI tax is another new tax on all controlled foreign corporations (CFCs). If you have a foreign company in any country, operating solely in that other country, the US has changed its forever structure by imposing this new GILTI tax, which is a 10.5 per cent tax on current income, even if the operations are solely and exclusively in another country.

The C-corporation tax that Mark mentioned means that US companies doing business abroad do benefit from a reduction in tax which results in an ultimate tax of 13.125 per cent. The bizarre part of that is the incentive to move outside of the US. A company can provide a service in the US and pay 21 per cent tax, but can provide that service outside the US via JV and reduce that to 13.125 per cent. There is a lot of corporate structuring going on right now, as a result of the new tax act.

**Washington, D.C. – WS** The tax issue doesn't drive the decision making, if a party had a really good business rationale, but it is always an early item on the checklist. The reforms have made

things more advantageous internationally for moving JV entities onshore into the US.

**Spain – BDG** In Spain there are no general rules, just a case-by-case basis to see which structure is better. The general rule is that corporate income tax is 25 per cent of the profit with some benefits for the early years of the company. There are some interesting tax benefits when the JV develops IP or IT, the so called "patent box".

One thing to say is that, in this temporary union of companies (UTE), both the companies involved pay taxes, as if the JV didn't exist. To decide the best approach on tax terms should imply to review the tax treatment of the foreign company in its home country and the double taxation treaties that may apply.

**New Zealand – MC** For Incorporated JVs, transferring shares in the JVCo can have adverse tax consequences impacting on the JVCo's ability to carry forward tax losses and to retain valuable imputation credits for shareholders.

Another significant disadvantage of a JVCo is that any capital gains generally cannot be distributed tax free to New Zealand tax resident shareholders during the JVCo's life, and cannot be distributed tax free to international (non-resident) shareholders at all.

Other tax consequences can arise from the transfer of assets by the JV parties into the JVCo – for example, an asset which has increased in value since it was acquired by the relevant shareholder, which is then transferred to the JVCo (perhaps in exchange for shares on incorporation), may bring about a tax liability for the JV party. Tax conse-

quences may also arise if shareholders deal with the JVCo on non-arm's length terms.

There are also a number of tax limitations on the use of Limited Partnerships. From a commercial perspective, income, gains and losses can be attributed to limited partners in agreed proportions, however, from a tax perspective, partners are instead treated as receiving a share of all amounts in proportion to their partnership share.

Also, while LPs are relatively flexible in terms of further investment (as additional limited partners can easily be added to an LP), introducing new limited partners and selling existing partnership shares to new partners can give rise to unexpected tax consequences. Finally, there may also be limits imposed by the 'loss limitation rules' on the amount of deductions that a limited partner can claim.

For an unincorporated JV (UJV), deciding whether or not a legal partnership is created by a UJV requires a detailed assessment of all the facts and relevant law. Expert tax and legal advice, and a well-drafted UJV agreement are critical to ensure that the wrong UJV structure is not inadvertently adopted.

**Brazil – ADC** Brazil is known for having a large number of different taxes and a complex taxation system. Therefore, it is important to have a good understanding of the possible taxes that will impact the joint venture in different scenarios before structuring it.

First, it is important to stress that the importation of services by a Brazilian customer from a foreign entity may trigger taxes reaching almost 50 per cent of the price of the services,





depending on the nature of the services, the existence, or not, of a double taxation treaty and whether the payment is grossed-up for withholding taxes. This high tax burden is an incentive for one to avoid a contractual joint venture where one of the parties provides services from abroad to Brazilian customers. In other words, it is an incentive for the creation of a NewCo in Brazil with the resources and capability to provide services to Brazilian customers.

In the case of a NewCo, the foreign party should know the taxation on the funding of the NewCo and on the disposal of the investment. In a nutshell, funding through capital increases would ensure minimal taxation, where only a tax levied on the foreign exchange transaction would apply on the remittance of the capital at the rate of 0.38 per cent.

The payment of dividends abroad is exempt from taxes, at the moment. The repatriation of capital – by virtue of a capital reduction or dissolution – will be subject to capital gain tax at progressive rates ranging from 15 per cent to 22.5 per cent on the difference between the amount of the capital invested and the amount remitted. The sale of the shares by the foreign party will also be subject to capital gain tax. The definition of

the location of NewCo in Brazil should consider the applicable State and Municipal taxes. Prior studies are required.

If the joint venture is established within an existing Brazilian company, due diligence, particularly in connection with tax matters, is extremely relevant, in view of the complexity of the system and of the hefty penalties applicable in case of violation of tax laws.

The intercompany agreements between the NewCo and its shareholders will, in principle, be subject to the transfer pricing rules applicable in Brazil and in the jurisdiction(s) of the shareholders.

On the other hand, a consortium arrangement or a contractual joint venture allow each party to provide its goods and services separately, thus segregating its invoices and tax liabilities.

In any event, if there is one piece of advice that we deem relevant in connection with taxes in Brazil, it is that the parties should analyse the scenarios and plan in advance, as it is not simple to undo or fix structures that create undesired tax liabilities.

**Iceland – ST** The corporate income tax is 20 per cent of commercial profit and the VAT on sale of goods and services

is 24 per cent, with few lower exemptions. It is important to register the corporate structure as a VAT company right after its incorporation in order to get all accrued VAT back. VAT accrued prior to the VAT registration is not refunded, and VAT registration is a simple procedure. Iceland's local currency is Krona (ISK) and corporate accounts are to be filed in the local currency.

It is possible to apply for exemption and be allowed to register the annual accounts of a company in foreign currency. It is usually allowed when the major income and costs are in a foreign currency. Withholding tax on dividends is subject to bilateral tax agreements for each country and the corporate form of the JV partner.

**Belgium – SB** A JV established by way of a corporation (separate legal entity) is subject to corporate tax in Belgium. For large companies, the corporate tax rate is reduced from 33.99 per cent to 29.58 per cent as from assessment year 2019, and will be 25 per cent (abolishment of crisis contribution) starting in assessment year 2021.

For SMEs, the rate goes down to 20.4 per cent (including crisis contribution of 2 per cent) on the first bracket of

EUR100,000 of net taxable income as from assessment year 2019 and will be 20 per cent (abolishment of crisis contribution) starting in assessment year 2021. This small and medium enterprise (SME) rate will only apply if a minimum salary of at least EUR 45,000 is paid to a company director (individual).

A purely contractual JV is subject to tax transparency, but if the JV is deemed to have a permanent establishment (i.e. if the tax authorities identify the JV as a permanent establishment taxable as a separate entity), the JV will have to pay the corporate tax on its profits.

Transfer pricing between the JV and the partners should be scrutinised carefully, as it could lead to taxation if the transfer pricing is not at arm's length.

**Germany – MS** Tax treatment depends on each project and influences the way it is structured. Taxes in Germany are quite high, so if you have a JV partner in a foreign company, it is best to use tax treaties between those countries.

**England – AC** In the UK, if you have a centralised JV vehicle, it is treated in the same way as many normal companies in the UK. From a tax perspective, the JV will be responsible for tax in the same way as a corporate registered in England and Wales. It will be responsible for tax on profits and VAT, it will also need to deal with employment tax, income tax and national insurance that may be due for members of staff working in the JV.

We would also highlight transfer pricing in the context of a JV. The key thing we find is that providing the JV with goods, services, resources or support and access to facilities can be subject to transfer pricing regulations and that must be considered carefully.

This is particularly true when there is an international dimension to the JV. Various regulations will apply in the home country of the JV partners, as well as in the UK, if the JV is incorporated here.

If you had a French company and a UK company in a JV, or two overseas companies entering a JV in the UK, there are potentially three or four sets of tax laws that could apply, depending on how

they were being treated, so looking at transfer pricing and tax treaties is crucial for tax efficiency.

There is a common intention of everyone in a JV to make some profit and extract that through dividend or capital distribution. Careful thought needs to be given in order to avoid withholding tax or double taxation.

**Slovakia – AV** Yes, indeed, according to applicable Slovak legislation, the clients have to consider income tax regulations, impact of double taxation treaties and their transfer pricing strategies, which all depend on the business model and the structure of the JV in order to avoid any unexpected issues in their future.

**Cyprus – SF** The Cyprus tax regime is regarded as one of the most favourable and advantageous tax regimes for business in Europe. However, each structure, depending on its nature, has some specific attributes with regards to the taxation regime applicable.

The taxation of income in a Cypriot corporate vehicle occurs at the level of the company. The participants are not taxed on dividends in Cyprus unless they are tax residents here or are companies, for which the corporation tax is in the region of 12.5 per cent.

With such a low percentage, and taking into account that Cyprus has a wide network of double tax treaties, there is clearly the potential of tax optimisation for an international client choosing to use a corporate joint venture. It should further be noted that, for a company to be taxed in Cyprus, its management and control will need to be exercised in the Republic.

Interest received in the course of the main business activity of a corporate joint venture or closely connected with it, less the costs of earning the interest, is subject to income tax at 12.5 per cent.

Interest payable by a corporate joint venture to a non-resident shareholder is not subject to withholding tax. Generally, interest expenses payable by a Cyprus corporate joint venture are fully deductible, provided that it can be shown that the respective loans are at arm's length.

Where an excessive interest rate exists, this will be disallowed for tax deduction purposes.

Profits realised from the disposal of securities are exempt from taxation, unless they are gains from the sale of shares of a corporate joint venture that owns immovable property in Cyprus. These are subject to capital gains tax to the extent that they relate to the property. The Income Tax Law, as amended, provides group relief by allowing resident companies of a group to offset losses against taxable profits.

Taxation for partnership joint ventures occurs at the level of the participants and any profits or losses accrue to them. Each partner is responsible for filing its own tax return dealing with its share of the profit. Tax transparency can be unwelcome when profits increase, because the attribution to the partners is automatic, potentially hindering effective tax planning.

With contractual JVs, taxation occurs at the level of the participants and any profits and losses accrue to them. This may be considered as one of the most important downsides of a contractual joint venture, although there is a possibility of independent tax planning for each partner, with regard to the losses incurred and the profits earned, mitigating the negative effects of tax transparency.

EEIGs are also tax transparent, meaning profits and losses are taxable at the hands of the participants and not at the level of the European Economic Interest Grouping. National laws regulate substantive issues regarding, inter alia, the exact tax rate and generally the applicable tax procedures.

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