Corporate

Burges Salmon Guide to joint ventures

Introduction

This Guide provides an overview of the most common legal structures used in joint venture arrangements in the UK. It assumes that the venture itself, its operations and participants are all UK-based.

What is a joint venture?

A joint venture is a commercial arrangement between two or more participants who agree to co-operate to achieve a particular objective. Joint ventures cover a wide range of collaborative business arrangements which involve differing degrees of integration and which may be for a fixed or indefinite duration.

Why enter into a joint venture?

There are many reasons why a business may seek a joint venture partner. It may wish to expand, develop new products or markets or grow returns from existing ones. It may be looking to tap into a partner's greater or more specialised expertise or resources – financial, technical, marketing or employee-related. It may wish to share the costs and risks associated with developing new markets or technologies.

The potential benefits may be easy for those involved to see but will be difficult to achieve without a clear-cut strategy, mutually understood objectives, thorough documentation and plenty of commitment from all involved.

What are the structuring options?

There is no distinct legal form for a joint venture in the UK, allowing each joint venture relationship to take the form which is best suited to its own circumstances and specific purpose. Over the following pages we look at the most commonly used structures, their key features and the advantages and disadvantages associated with each.

Company limited by shares

Key features:

Separate entity ☑

Limited liability ☑

Public filings ☑

Tax transparent ☒

Advantages:

- Familiar, universally recognised structure with a clear corporate identity and established corporate governance regime.
- Can own its own assets, sue and be sued and enter into contracts in its own right.
- Liability is limited to the amount each party contributes by way of share capital.
- Comprehensive legislative framework supports the contractual arrangements between the JV parties.
- Tailored share rights can reflect the size, contributions and motivations of the JV parties.
- Permits employee share incentive schemes.
- Realising an interest by way of a sale of shares will not disrupt the legal ownership of the underlying business.

Disadvantages:

- Potential for double taxation – tax will be applied at the JV company level and possibly again on the JV parties directly when they take profits out of the JV company or realise their investment in it. This lack of tax transparency is, however, not always a disadvantage in practice and the tax position will depend on the nature of the JV parties themselves (e.g., where the JV parties are also limited companies, dividends received should be tax free).
- Comprehensive legislative framework can restrict flexibility.
- Reporting and compliance requirements bring increased administration and public disclosure of information.
- Limited liability may be undermined in practice by guarantees and security required to support external financing and third party contracts.

Contractual venture

Key features:

Separate entity ☒

Limited liability ☒

Public filings ☒

Tax transparent ☑

Advantages:

- Flexible option – can be quick to set up and easy to dismantle as no separate entity is created. Useful for strategic alliances or short term, single-goal ventures.
- JV parties retain ownership of their own assets.
- JV party is not normally liable for the debts of the other JV party but they may share liability on specific contracts with third parties.
- Each JV party will be taxed directly on its share of the profits and losses of the venture.

Disadvantages:

- Lacks a separate legal identity – can suffer from a lack of clear structure and identity which may affect both internal operation and dealings with third parties.
- Risk of creating a partnership, giving rise to unlimited joint and several liability where each of the JV parties is liable for all losses of the venture.
- Potentially difficult to raise external loan finance as not a legal entity and does not own assets – it cannot grant a floating charge as security for financing.

Limited liability partnership

Key features:

Separate entity ☑

Limited liability ☑

Public filings ☑

Tax transparent ☑

Advantages:

- Treated as a partnership for tax purposes – fiscal transparency means that each JV party will be taxed directly on its share of the profits and losses of the venture. The LLP itself is not taxed on its profits (provided it is carrying on a trade or business with a view to profit).
- Limited liability of members.
- Increasingly common vehicle for commercial ventures (no longer used solely for professional partnerships).
- Legislative framework for LLPs is not as comprehensive as for limited companies allowing greater flexibility (e.g., strict rules on distributions/dividends do not apply).
- Separate legal identity – benefits from a clear corporate identity both internally, in terms of a dedicated management and workforce, and to the outside world.

Disadvantages:

- The roles and responsibilities of LLP members are not as familiar as the defined roles of directors and shareholders in limited companies.
- Public filing requirements exist, in particular in relation to accounts, but these are not as extensive as for limited companies.
- Limited liability may be undermined in practice by guarantees and security required to support external financing and third party contracts.

General partnership or limited partnership

Key features:

Separate entity ☒

Limited liability ☑
(for limited partners of a limited partnership only)

Public filings ☒

Tax transparent ☑

Advantages:

- Flexible – governed by the agreement made between the members and not restrained by a rigid legislative regime.
- Fiscal transparency means that the individual JV parties will be taxed directly. The partnership is not taxed on its profits.
- Sensitive details of the venture can remain completely private between the JV parties.
- Limited partnership – popular as investment vehicles (where the majority of participants are passive investors) but not suitable for commercial joint ventures as limited partners must not be involved in the management of the venture.

Disadvantages:

- General partnership – liability is unlimited and each JV party is liable for the whole of the liabilities of the venture (although JV parties can themselves be corporate entities).
- Limited partnership – general partner manages the JV and has unlimited liability. Limited partners have limited liability but must be passive and play no part in the day to day management of the company – otherwise the benefits of limited liability are lost.
- Potentially difficult to raise external loan finance as lacks a separate legal identity and does not own assets – it cannot grant a floating charge as security for financing.
- Any change to identity of JV parties will entail a new partnership arrangement which can be an expensive and time-consuming process.

Key contacts

If you would like any further information on this subject please speak to your usual contact at Burges Salmon or:

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