

JOINT VENTURES

A GLOBAL GUIDE FROM PRACTICAL LAW

Foreword

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FOREWORD

Elena A Berlucchi, Partner, STUDIO BERLUCCHI, former Associate General Counsel, GE OIL & GAS

The Webster Dictionary defines the verb “to venture” as “to go somewhere that is unknown, dangerous; to start to do something new or different that usually involves risk; to do, say, or offer something (such as a guess or an opinion) even though you are not sure about it”. Indeed, cross-border joint ventures (JVs) can often prove to be rather adventurous for the parties involved. This is even more the case when companies, seeking to accelerate growth in emerging markets, turn to partnering arrangements with local operators in order to establish market platforms in foreign jurisdictions. Equity or contractual co-operations in more developed markets also require an attentive focus on the applicable regulatory framework, to avoid or at least minimise difficulties.

This is why this global guide to establishing JVs abroad is so useful. Designed as a practical tool to navigate the intricacies of legal systems generally unknown to the foreign investor, the guide deserves praise for both its high level of accuracy of legal analysis, and for pulling together the findings and best practices developed by authors working on the frontline of professional legal practice.

In my most recent professional career, I mostly advised on minority investments of stakes ranging from 5% to 49%, generally stemming from a greater readiness of my clients to acquire a minority, non-controlling role, and to rely more heavily on their JV partners’ capacity to successfully lead the JV. This approach may be driven by regulatory constraints in emerging markets, where foreign investment is restricted to minority investment levels. It may also reflect the actual need for a prominent local JV partner with an established presence in the market, along with the home ground advantage to operate effectively in the domestic environment. In other cases, it may come about as a recognition that the selected partner has an edge (for example, a technology or product advantage which the foreign investor cannot replicate by acting alone). Even then, it is very rare that the ultimate goal of a minority venture does not go beyond a merely passive equity play.

Therefore, the formation of the target JV is generally inspired by some basic objectives:

- Preserving the value of the foreign partner’s investment. The foreign investor’s counsel must ensure that his client’s interest is not diluted by changes to the company capital which the foreign investor does not consent to and, more generally, that no strategic decisions are made without the minority investor’s approval.
- The minority investor’s contribution creating actual value (for example, areas such as compliance and risk management processes, where a developed market player can typically bring an enhanced expertise, are likely to be those in which the investor is willing to retain control at corporate governance level).

Similarly, if the ownership and licensing of intellectual property (IP) invariably represents a sensitive topic (regardless of the size of the stake in the JV capital), drafting the relevant provisions in a minority JV shareholders’ agreement will generally incline towards ensuring an increased level of control and a fairly tight protection, although obviously the allocation of the IP rights will largely depend on the ultimate objectives underlying the

creation of the investment vehicle. For example, if the main target of the investment is acquiring a steady entry into a foreign market and a minority stake is an introductory step aiming at a future buy-out of the JV company, then favouring a full transfer to the JV of the ownership of IP and possibly an option to purchase IP contributed by other JV partners upon termination or expiration will be the most advisable strategy.

It is true that every JV is unique, and that precedents should be used with caution. However, it can be equally demonstrated that experiences acquired while dealing with issues arising from JV arrangements in emerging markets can be translated to JVs in developed markets.

This guide serves as a central resource, where precision and reliability of information are coupled with easiness and straight-to-the-point exposition and no claim of exhaustiveness. It is an invaluable reference point for an intended audience of in-house counsels, business development professionals and practitioners (who may be assisting a deal team in structuring a JV arrangement). In addition, since culture does matter, the authors offer insights on the best ways to structure a JV in their respective jurisdiction. Such insight is invaluable and widely sought after, as legal research (no matter how deep and thorough) cannot replace knowledge acquired through direct professional experience with a particular legal system.

Elena A Berlucchi
July 2015

BULGARIA

Yordan Naydenov and Dr Nikolay Kolev, BOYANOV & CO



DOMESTIC COMPANY JOINT VENTURES (JVS)

REGULATION

1. ARE JVS EXPRESSLY REGULATED?

The law regulates both contractual JVs (a consortium) and JVs incorporated as commercial companies. A JV is a type of business partnership between two or more parties that undertake an economic activity together, and share the risk arising from this economic activity. In most cases, the parties establish a new legal entity by both contributing equity, and then share in the revenues, expenses and control of the enterprise. The venture can be for a specific project only or a continuing business relationship.

TYPES

2. WHICH TYPES OF JV ARE ALLOWED?

Bulgarian law allows both contractual and corporate JVs.

Contractual JV

Contractual JVs are regulated under Articles 275 and 276 of section I “Consortium”, Chapter 18 “Alliances” of the Bulgarian Commerce Act (State Gazette, Issue No.48/1991, as amended and supplemented) (CA). A contractual JV is a contractual alliance between merchants for the purposes of performing a particular activity. The JV does not have legal personality and the agreement for its formation does not lead to the creation of a new legal entity. Therefore, the parties to the JV agreement, not the JV, are parties to the agreements and commercial relations entered in the name of the JV with third parties. The JV participants can take any form, for example:

- Sole proprietor.
- General partnership.
- Limited partnership.
- Limited liability company (LLC).
- Joint stock company (JSC).
- Partnership limited by shares.
- State-owned and municipal enterprises.

Under Bulgarian law, a contractual JV is considered to be a type of civil partnership. On this ground, its legal status is also regulated by the provisions on civil partnerships under Articles 357 to 364 of the Obligations and Contracts Act (State Gazette, Issue No.275/1950, effective 1 January 1950, as amended and supplemented) (OCA). Profits and losses are divided between the partners proportionally to their contributions, provided that the agreement does not stipulate otherwise. Each participant must make the contributions needed for the activity of the JV (unless the JV agreement provides otherwise). The contributions cannot be taken back, except on termination of the JV, or where a participant who has contributed the asset(s) in questions leaves the consortium.

Corporate JV

Corporate JVs can be established in the form of a commercial company. Under the CA, the types of commercial companies are:

- General partnerships.
- Limited partnerships.
- LLCs.
- JSCs.
- Partnerships limited by shares.

In practice, the most common legal forms chosen by JV parties are LLCs and JSCs.

The general partnership, limited partnership and the LLC are in principle more appropriate for small-size business operations or where the costs of incorporation should be kept to a minimum. They are normally not suitable for larger projects, which require more significant funding or the attraction of new investors. The main differences between the general partnership, limited partnership and the LLC, on the one hand, and the JSC, on the other hand, are as follows:

- The costs for incorporation of general partnerships, limited partnerships and LLCs (including minimum capital requirements for LLCs) are lower compared with the costs for incorporation of a JSC. There are no minimum capital requirements for general partnerships and limited partnerships.
- The procedure for the transfer of shares of general partnerships, limited partnerships and LLCs is more complicated. To be effective, the transfer of shares must be made by way of an agreement with notarised signatures and registered with the Commercial Register. The transfer of registered shares of a JSC is made by way of endorsement of the shares and registration in a privately held company's shareholders' book (a simple procedure not requiring registration with public registries). The transfer of dematerialised shares of a JSC must be registered with the centralised registrar of dematerialised securities (Central Depository AD).
- General partnerships, limited partnerships and LLCs do not provide for the flexibility to attract funds through various instruments such as corporate bonds, convertible shares, privileged shares, non-voting shares, and so on. Such instruments are available in JSCs.
- Only shareholders of an LLC (not JSC) can make additional monetary contributions (AMCs). This allows the sole owner of the LLC to grant interest-free loans to the company.
- The establishment of a pledge over the shares of a general partnership, limited partnership and LLC must be effected by way of a notarised agreement and registration of the pledge with the Commercial Register. The establishment of a pledge over the shares in a JSC must be effected by way of pledge endorsement over the shares and their delivery to the creditor.

- The management of a general partnership, limited partnership and LLC can be carried out by one or more managers. If there are several managers, they do not act as a management body but as independent company's officers. The JSC is managed by a board of directors or management and supervisory boards consisting of minimum members, which allows for a more structured management.

In addition to the incorporation of a legal entity, the parties to a corporate JV (in the form of an LLC or JSC) normally enter into a JV agreement or shareholders' agreement, which is binding and is effective between them only. The shareholders' agreement is not public and does not have to be registered, filed with, or disclosed to any authority. It usually sets out in more details the relations between the parties, including:

- Financial obligations.
- Management of the legal entity to be established.
- Deadlock resolution mechanisms.
- Call and put options.
- Distributions of shares and capital contributions.
- Steps for registration of the JV with the Commercial Register.
- Drag along and tag along rights.
- Rights of first refusal.
- Exit provisions.

Finally, the parties to a corporate JV must comply with the provisions of the:

- CA regarding the incorporation of the legal entity.
- Protection of Competition Act (PCA), which prohibits agreements that may lead to the prevention, restriction or distortion of competition within the relevant market (*See Question 6*).

3. ARE CORPORATE JVS SUBJECT TO THE CORPORATE LAW?

Corporate JVs are regulated by the rules of the Bulgarian Commerce Act (CA) (*see Question 2, Corporate JV*).

FORMATION AND REGISTRATION

4. IS THE USE OF FOREIGN LANGUAGE IN A JV'S FOUNDING DOCUMENTS (BOTH CORPORATE AND CONTRACTUAL) RESTRICTED?

Contractual JV

There is no restriction on the use of foreign language in the founding documents of a contractual JV. However, a contractual JV must be registered with the BULSTAT Register maintained by the Registry Agency of the Bulgarian Ministry of Justice. The completion of this registration requires submission of a notarised copy of the written JV agreement. If the JV agreement is signed in a foreign language, it must be submitted together with an official translation into Bulgarian made by a sworn translator.

If a Bulgarian court is competent to solve a dispute between the parties to a contractual JV, and such parties must present their JV agreement, they will need to file both the original text of the agreement and a Bulgarian translation.

Corporate JV

There is no restriction on the use of foreign language in the founding documents of a corporate JV. However, the corporate JV must be registered with the Commercial Register maintained by the Registry Agency. The founding documents (for example, protocol of the foundation meeting, articles of association, and so on) must be submitted together with the application for registration. If the founding documents are signed in a foreign language, they must be submitted together with an official translation into Bulgarian made by a sworn translator.

If a Bulgarian court is competent to solve a dispute between the parties to a JV agreement/shareholders' agreement, the parties must present a Bulgarian translation of the agreement to the court.

5. ARE PUBLIC OFFICERS (FOR EXAMPLE, PUBLIC NOTARIES) INVOLVED IN A JV'S FORMATION PROCEDURE?

Contractual JV

The JV agreement can be signed in a simple written form. Completion of the registration with the BULSTAT Register requires the submission of a notarised copy of the JV agreement.

Corporate JV

The articles of association of a JV in the form of a general partnership and limited partnership must have notarised signatures. The individuals who will be registered with the commercial register as representatives of the JV must present a notarised example of their signatures. The managers of a limited liability company (LLC) and the board members of a joint stock company (JSC) must also present a notarised declaration that they consent to be appointed as such. If any of the participants in the JV make a contribution in kind to the JSC, such persons must provide written consent with a notarised signature.

6. ARE JVS REGISTERED WITH ANY LOCAL REGISTRIES? ARE PUBLIC SECTOR BODIES' AUTHORISATIONS REQUIRED FOR A JV'S ESTABLISHMENT?

Local registries

A contractual JV must be registered with the BULSTAT Register, and a corporate JV with the Commercial Register. When a contribution in kind involves the transfer of an asset that is subject to special registration, such a contribution must be entered in the relevant registry, for example:

- For real estate: Land Registry.
- For trade marks: Registry of the Patent Office.

- For motor vehicles: Registry of the Traffic Police.
- For aircrafts: Registry of the Civil Aviation Authority.

Public sector bodies

The formation of the JV may be interpreted as a concentration of economic activity. In that case, if (and depending on which) merger control thresholds are met, the JV may be subject to mandatory merger control at the Bulgarian or European Union levels. Under the Protection of Competition Act (State Gazette, Issue No.102/2008, as amended) (PCA), competition clearance by the Bulgarian Commission on Protection of Competition (CPC) is required if both:

- The aggregate turnover of all participating undertakings exceeds BGN25 million for the previous financial year.
- The turnover of at least two of the participating undertakings on the Bulgarian territory exceeds BGN3 million during the previous financial year.

The companies participating in the concentration must notify the CPC after the agreement is concluded, but before taking any concrete steps towards performing the transaction.

Depending on the JV's registered activity, the applicable law may require the issuance of specific authorisations/licences by the regulatory authorities (for example, for banking institutions, insurance companies, investment intermediaries and so on). All approvals are mandatory and cannot be avoided in any way.

7. WHAT OTHER FORMAL REQUIREMENTS MUST BE COMPLIED WITH TO VALIDLY CONSTITUTE A JV?

See *Question 6*.

PERMITTED MARKETS

8. CAN THE JV INSTRUMENT BE USED IN EVERY MARKET? ARE THERE ANY RESTRICTIONS TO BE CONSIDERED AND CAREFULLY ASSESSED BEFORE INVESTING?

Generally, there are no specific restrictions on the economic field in which a JV can operate. However, as mentioned in *Question 6*, there are certain economic sectors that are strongly regulated, including:

- Banking.
- Insurance.
- Financial services.
- Pharmaceuticals.
- Energy.

There are specific legal requirements regarding the corporate form and status of companies operating in these sectors (for example, amount of share capital, qualification of the board members, and so on).

PURPOSE

9. CAN A JV BE ESTABLISHED WITH ANY PURPOSE?

There are no specific restrictions on the purpose of both contractual and corporate JVs. They can be registered for the completion of a specific project or for the performance of long-term objectives. JV companies incorporated in the form of a joint stock company (JSC) and operating in certain sectors (for example, banking, insurance and financial services) can only carry out transactions within their scope of activity (or directly related to it).

Corporate JVs are most often formed in connection with public procurement tenders where the parties need to put together their capabilities and experience to meet the criteria of the tender. Contractual JVs can be formed for any other purpose.

SHARE CAPITAL AND PARTICIPATION

10. WHAT POSSIBLE FORMS OF PARTICIPATION ARE THERE IN A JV'S SHARE CAPITAL? HOW CAN A JV MEMBER CONTRIBUTE AND ARE THERE STATUTORY LIMITS ON THE POSSIBILITY TO MAKE CONTRIBUTIONS IN KIND?

Forms of participation

The Bulgarian Commerce Act (CA) provides for two types of contributions in the share capital of a corporate JV, monetary contributions and contributions in kind.

Under the CA, only limited liability companies (LLCs) and joint stock companies (JSCs) have a share capital. The capital of a limited liability company cannot be less than BGN2 (*Article 117 paragraph 1, CA*). The minimum share capital of a joint stock company is BGN50,000 (*Article 161 paragraph 2, CA*).

Contributions

Contributions in kind can include ownership and real rights over:

- Movables and real estate.
- Receivables.
- Immaterial assets (for example intellectual property rights).
- Securities.
- Shares in companies.
- Ongoing concern.

Any contribution in kind in capital companies (LLCs, JSCs and partnerships limited by shares) must be evaluated by three experts of the Commercial Register. The value of the contribution in kind specified in the JV's incorporation documents cannot exceed the value determined by the experts. The total nominal value of the shares subscribed against the contribution in kind cannot exceed its value specified in the incorporation documents. Contributions in kind cannot include future work or services.

When the contribution in kind is in the form of receivables, the debtor must be notified. The contribution in kind must also be described in the bye-laws of the JV and registered with the Commercial Register.

Depending on whether the object of the contribution in kind is subject to special registration requirements, further registrations may be needed (for example, real estate is registered with the Land Registry, motor vehicles with the Registry of the Traffic Police, trade marks with the Registry of the Patent Office, aircraft with the Registry of the Civil Aviation Authority, and so on).

11. CAN A CORPORATE JV'S SHARE CAPITAL BE INDICATED BY MAKING REFERENCE TO A FOREIGN CURRENCY?

The share capital of a corporate JV must always be indicated in Bulgarian lev.

DURATION AND LIMITS ON MEMBERSHIP

12. ARE THERE STATUTORY LIMITS ON A JV'S DURATION?

There are no statutory limits on the duration of a contractual or corporate JV.

13. ARE THERE STATUTORY LIMITS ON THE NUMBER OF MEMBERS PARTICIPATING IN A JV?

For contractual and corporate JVs, the minimum number of participating members is two. There are no limitations on the maximum number of participating members.

PUBLIC SECTOR BODIES

14. CAN A PUBLIC SECTOR BODY ENTER INTO A JV AGREEMENT? SUBJECT TO WHAT CONDITIONS? IN PARTICULAR, DO PUBLIC PRIVATE PARTNERSHIPS (PPP) LAWS AND REGULATIONS APPLY?

A public sector body can participate in a contractual JV through state-owned or municipal-owned enterprises. The participants in a contractual JV must be registered as merchants as defined in the Bulgarian Commerce Act (CA).

The Bulgarian State represented by the state bodies can enter into civil, commercial and corporate relations. In particular, it can participate in corporate JVs structured as limited liability companies (LLCs) and joint stock companies (JSCs). The Agency for Privatisation and Post-Privatisation Control must approve both the:

- Reorganisation and termination of companies with more than 50% state participation (unless the company is in insolvency procedure).
- Decrease of the share capital of companies with 34% or more state participation.

The acceptance of new shareholders in companies with more than 50% state participation is subject to a special tender procedure.

Under the Bulgarian Constitution, the municipalities are legal entities and, as such, can participate in corporate JVs. The participation of the municipality in corporate JVs is governed by regulations adopted by each Municipal Council.

The Public Private Partnership Act (State Gazette, Issue No.45/2012, effective 1 January 2013) (PPPA) aims to regulate the co-operation between public sector bodies and private bodies for the purposes of performing certain activities of general interest. The PPPA allows the signing of PPP agreements and, in some cases, the setting up of public-private companies. The structures used under the PPPA are very similar to contractual and corporate JVs.

NON-COMPETITION AND ANTI-TRUST CLAUSES

15. ARE THERE STATUTORY CONSTRAINTS ON THE USE OF NON-COMPETITION OR ANTI-TRUST CLAUSES IN A JV AGREEMENT?

During period of effectiveness

The Bulgarian Commission on Protection of Competition (CPC) apply different rules when considering a JV, depending on whether its creation constitutes a concentration or not.

If the JV performs on a lasting basis all the functions of an autonomous economic entity (concentration), a non-competition obligation between the JV members and a JV is likely to be considered by the CPC as directly related and necessary to the implementation of the concentration where such obligation covers the:

- Products and services constituting the economic activity of the JV, including those that have not been offered yet by the members, but are in an advanced stage of preparation.
- Territories covered by the JV agreement or its bye-laws. The non-competition obligation must be limited to the area in which the parties offered the relevant products or services before establishing the JV, including territories that the parties were planning to enter and have already invested in.

The non-competition obligations between the JV parties and a JV can be regarded as directly related and necessary to the implementation of the concentration for the duration of the JV.

If the JV is set up to enter a new market, reference will be made to the products, services and territories in which it is to operate under the JV agreement or bye-laws. However, there is a presumption that one party's interest in the JV does not need to be protected against competition from the other party in markets other than those in which the JV will be active from the outset.

Following termination

Following termination of the JV, the non-compete obligations must cease.

For JVs that are not concentrations, the CPC, when applying both EU and national competition law, generally follow the European Commission's Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. EU competition law is directly applicable in the country and Bulgarian national competition law closely reflects the relevant EU law provisions.

DE FACTO COMPANY/PARTNERSHIP

16. MUST THE CONTRACTUAL JV SATISFY ANY CONDITIONS TO AVOID FALLING WITHIN THE DEFINITION OF DE FACTO COMPANY/PARTNERSHIP?

Bulgarian law has not introduced the concept of “de facto company/ partnership”. The strict principle is that a company can be treated as a legal entity only on the grounds of a special normative provision. A contractual JV is not a legal entity. In the case of agreements with third parties, the partners act on their own behalf and on behalf of their partners, and are therefore personally responsible towards third parties for any obligations undertaken in the course of activity of the JV.

However, for tax purposes (especially VAT and corporate tax), contractual JVs must be treated as legal entities. This is a mandatory rule of the Bulgarian Tax and Social Security Procedure Code aimed at preventing tax evasion. The partners participating in the contractual JV are jointly liable for the collection and payment of any due taxes and social security instalments. In addition, a contractual JV must have its own accounting books and keep them as if it was a separate legal entity.

Despite the lack of legal personality, a contractual JV can also hire personnel in compliance with the provisions of the Bulgarian Labour Code. This Code contains a very broad definition of employer, allowing employees to be hired directly by a contractual JV rather than one of the partners (who would then have to redistribute the labour expenses among all the other partners).

LIMITING MEMBER LIABILITY

17. CAN A JV AGREEMENT PROVIDE THAT A JV MEMBER CAN PARTICIPATE WITHOUT INCURRING ANY RISK, LOSS OR REWARD?

Contractual JV

Unless otherwise provided in the JV agreement, profits and losses are distributed in proportion to individual contributions. Profits and/or losses may be distributed in different ratios. However, the law expressly states that a clause in a JV agreement under which a JV party will not participate in the profits and/or losses is null and void.

A contractual JV does not have a legal personality. Its members are therefore themselves party to the agreements entered into through the JV, and are liable for performance of the obligations under such agreements.

Corporate JV

There is no specific legal provision on the allocation of risk, loss and reward in general partnerships and limited partnerships. However, it may be argued that the position for contractual JVs applies by analogy. This means that clauses in the articles of incorporation under which certain partners will not participate in the distribution of the profits/losses are null and void.

General partnerships and limited partnerships are legal entities and, as such, are liable towards their creditors. However, all partners in a general partnership and unlimited

partners in a limited partnership are also liable towards the partnership's creditors. Creditors can bring a claim against both such partners and the partnership. When the claim is justified, the compulsory execution procedure must first be initiated against the company. The creditor can only bring collection actions against the partners if its debt is not satisfied through its action against the partnership. Limited partners in a limited partnership have the same status as shareholders of a limited liability company (LLC) and are not liable for the company's obligations once their contribution to the company is fully paid (before then, they can be held liable up to the unpaid amount of such contribution).

Where the JV takes the form of an LLC or joint stock company (JSC), the shareholders are liable for the company's obligations up to their respective contributions. The shareholders are not otherwise liable for the obligations of the company.

The general rule is that all shareholders of an LLC have a right to participate in the profits and to receive liquidation quota following termination of the company, in proportion to the amount of their contributions. However, the articles of association can provide that certain shareholders will receive larger portions of the profits or liquidation quota, provided that no shareholder is excluded from receiving a portion of the profits or liquidation estate.

The Bulgarian Commerce Act (CA) allows JSCs to issue preferred shares with guaranteed or additional rights to a dividend and/or a liquidation quota. The bye-laws may provide that the preferred shares have no voting rights, which must be specified for the respective share. It is not possible to deprive a shareholder from its right to dividends.

ANTI-TRUST

18. DO ANY ANTI-TRUST RULES, GUIDELINES OR POLICIES APPLY TO A JV AGREEMENT?

A JV is caught by the merger control and anti-trust legislation provided that it performs all the functions of an independent economic entity on a lasting basis. In that case, if and depending on which merger control thresholds are met, the JV may be subject to mandatory merger control at the Bulgarian or European Union levels (*see Questions 6 and 15*).

If a JV is not caught by the Bulgarian or EU merger rules and is not considered a concentration, it may still be examined as an anti-competitive agreement and reviewed under Article 15 of the Protection of Competition Act (PCA) and Article 101 of the Treaty on the Functioning of the European Union (TFEU).

As outlined in *Question 15*, the Bulgarian competition authorities generally follow the European Commission's Guidelines on the applicability of Article 101 TFEU to horizontal co-operation agreements.

Specific agreements can benefit from special block exemptions, including the:

- Regulation (EU) 1218/2010 on the application of Article 101(3) of the TFEU to certain categories of specialisation agreements, for joint production, joint distribution and specialisation agreements.
- Regulation (EU) 1217/2010 on the application of Article 101(3) of the TFEU to certain categories of research and development agreements (Research and Development Block Exemption), for research and development agreements.

These block exemptions apply in Bulgaria to both:

- Agreements that have an effect on trade between EU member states.

- Agreements regulated entirely under national competition law (as EU block exemptions are incorporated by reference in the Bulgarian consolidated block exemption).

GOVERNANCE AND LIMITS ON DIRECTORS

19. CAN THE PARTIES TO A JV FREELY REGULATE THE JV OR ARE THEY SUBJECT TO CERTAIN RESTRICTIONS?

Contractual JV

The parties to a contractual JV are free to regulate all the aspects of the JV, provided that the JV agreement does not contradict imperative legal provisions (for example, the exclusion of certain partners from participation in the profits and/or losses is prohibited) and good morals (*boni mores*).

Corporate JV

The incorporation documents of a corporate JV cannot contradict imperative legal provisions. These mandatory rules vary depending on the type of corporate form used for the JV. Such rules are related to:

- Ownership and acquisition of shares (for example, the expulsion of shareholders, compulsory cancellation of shares and procedure for the transfer of shares in a limited liability company (LLC)).
- Participation of the shareholders in the management of the company.
- Increase or decrease of the share capital.
- Transformation of the company.
- Competence and procedure for decision-making by the corporate bodies (such as the procedure for convocation of meetings, minimum quorum and majority requirements, appeals of decisions before the court, and so on).

The following decisions of the general meeting of shareholders of an LLC must be adopted by a majority of shareholders representing more than three-quarters of the company's share capital:

- Amendment of the articles of association.
- Admission and expulsion of shareholders.
- Transfer of an interest to a new shareholder.
- Additional monetary contributions (AMCs) (*see below*).

Resolutions for the increase or decrease of the registered share capital must be adopted unanimously. All other decisions are adopted by a simple majority of the capital. The articles of association of the LLC may provide for higher thresholds.

In addition, the grounds for expelling a shareholder in an LLC are exhaustively enumerated by the Commerce Act (CA) and include the:

- Shareholder's failure to perform its obligations regarding capital contributions or for providing assistance for the company's activities.
- Shareholder's failure to comply with the resolutions of the general meeting.
- Shareholder's actions against the interests of the company or failure to make any AMC

(if relevant).

Some restrictions also apply to the decisions of the shareholders' general meeting of JSCs. For example, the following decisions require a majority vote of at least two-thirds of the voting shares represented at the meeting:

- Amendment of the company's statutes.
- Increase or decrease of the share capital.
- Dissolution of the company.
- Exclusion of the preferential right of existing shareholders to subscribe new shares.
- Authorisation of the board of directors/managing board to increase the share capital.

The following decisions require a majority vote of three-quarters of the voting shares represented at the meeting:

- Capitalisation of profits.
- Reorganisation or transformation of the company.
- Resuming the company's activities after it has been placed in liquidation.

In addition, the statutes of the JSC can provide that certain material transactions require permission from the supervisory board, or a unanimous decision of the board of directors. Such restrictions can also be imposed by a decision of the supervisory board or the board of directors. Finally, certain transactions can only be entered into by the general meeting of shareholders, or a unanimous decision of the board of directors or management board, including:

- Transfer or provision of the use of the entire going concern.
- Disposal of assets the total value of which exceeds, in the current year, half of the value of the company's assets according to its most recent audited annual financial statements.
- Assumption of liability or provision of collateral to one person or related parties, the amount of which exceeds, in the current year, half of the value of the company's assets according to its most recent audited annual financial statements.

The articles of association of a general partnership, limited partnership and LLC may give veto rights to certain partners/shareholders. The shares of the JSC may also provide veto rights to their holder(s) in which case such shares form a separate class of shares, and the voting rights under such shares must be exercised at a separate general meeting of shareholders.

Generally, the JV parties can finance the activities of the JV by granting loans (at normal market interest rates) or providing capital. Shareholders in an LLC have the additional option to grant an AMC to the LLC. The purpose of the AMC is to cover losses and to satisfy a temporary shortage of cash. All shareholders must provide an AMC following a decision of the general meeting approving such AMC. The AMC is returned after a fixed period. The amount of the AMC must be in proportion to the shareholders' respective interests in the share capital, unless otherwise determined in the decision of the general meeting. Any shareholder that voted against the AMC has the right to leave the company either:

- Within one month from the date of the general meeting (if the shareholder attended or was duly invited for the general meeting).
- Within one month from the date of service of written notice of the decision (for all other shareholders).

The main advantage of AMCs is that the company is not required to pay interest on them (and the company will therefore not be obliged to withhold taxes from the interest paid).

Another type of financing source which is only available to JSCs is the issue of corporate bonds. These are issued on the grounds of a decision of the general meeting of shareholders or a decision of the management bodies (board of directors or management board) provided that they are authorised by the general meeting to adopt such a decision. The bonds may include the option to be converted into shares of a certain nominal value (convertible bonds). In addition, the bonds can be offered to the public, including through the stock exchange. Therefore, a JSC has access to a much wider range of potential creditors.

Minority shareholders' rights are an important part of the corporate structure. These rights are provided to shareholders who individually or collectively represent certain minimum percentages of the share capital (5% or 10%) and cannot be excluded or varied in the JSC's statutes or the JV agreement. These rights include the:

- Right to request the convocation of a general meeting of shareholders.
- Right to add items on the agenda of the general meeting of shareholders and to suggest draft decisions after an invitation for the convocation of the general meeting of shareholders is announced in the Commercial Register, or is served to the shareholders.
- Right to claim damages on behalf of the company from members of the company's board of directors (managing board and/or supervisory board).
- Right to request the appointment of a comptroller.
- Right to request the appointment or dismissal of a liquidator by the District Court.
- Right to request the holding of a shareholders' general meeting of the surviving company, in the case of an upstream merger, where the surviving company holds more than 90% of the shares of the merging company.

20. ARE THERE LIMITS OR RESTRICTIONS ON THE ELIGIBILITY OF AN INDIVIDUAL AS A MEMBER OF THE BOARD OF DIRECTORS/STATUTORY AUDITOR?

A person cannot be elected as manager of a limited liability company (LLC) or member of the board of directors of a joint stock company (JSC) if he/she has been a member of a managing or controlling body of a company dissolved on the grounds of bankruptcy in the last two years preceding the date of declaration of the bankruptcy and there are unsatisfied creditors. Additional requirements for the board members may be included in the articles of association/statutes.

The special regulations that apply to certain companies (for example, banks, insurance companies, investment intermediaries, and so on) contain various specific requirements relating to board members. In addition, the law requires the election of independent board members. For example, at least one-third of the board members or members of the supervisory board of an insurance company must be comprised of independent directors.

Statutory auditors can be:

- Bulgarian citizens who are registered as auditors under Bulgarian law.
- Foreign citizens who have acquired their auditor capacity in the EU/EEA. They must be entered in the Bulgarian Register of auditors after completion of several exams.
- Foreign citizens who are registered as auditors in a country outside the EU/EEA. They will be registered as auditors in Bulgaria following completion of significantly stricter procedures.

TERMINATION

21. WHAT LEGAL REGIME APPLIES TO A JV'S TERMINATION? CAN A JV BE TERMINATED FOR JUST CAUSE ON REQUEST OF ONE PARTY?

Contractual JV

A contractual JV for an indefinite term can be dissolved on prior notice by one of the partners provided that such notice is made in good faith and appropriately. The partners can agree in the JV agreement that the JV can be terminated for just cause by one or more of the partners.

Corporate JV

Corporate JVs can be terminated as follows:

- General partnerships can be terminated by a unilateral decision of all partners.
- Limited partnerships can be terminated by a unilateral decision of all unlimited partners.
- Limited liability companies (LLCs) can be terminated by resolution of the general meeting of shareholders adopted with a majority representing at least three-quarters of the share capital (unless the articles of association provide for a higher majority).
- Joint stock companies (JSCs) and partnerships limited by shares can be terminated by a resolution of the general meeting of shareholders adopted with a majority representing at least two-thirds of the share capital (unless the statutes provide for a higher majority).

Following termination of a corporate JV, the liquidation procedure must be started.

22. IS THE TERMINATION OF A JV AGREEMENT SUBJECT TO ANY PUBLIC SECTOR BODY'S APPROVAL?

JVs that are not subject to special regulations are not subject to prior approval from any public sector bodies. JVs operating in regulated industries (such as banks, insurance companies, energy companies, and so on) may require special permission before going into voluntary termination and liquidation (for example, banks will need the permission of the Bulgarian National Bank).

CHOICE OF LAW AND JURISDICTION

23. ARE THERE CONSTRAINTS ON THE CHOICE OF THE LAW AND THE JURISDICTION APPLICABLE TO A JV?

JV parties may choose a foreign law as the applicable law. However, if all elements of the JV agreement are connected with the territory of Bulgaria, the choice of foreign law cannot derogate from the application of the imperative provisions of Bulgarian law.

The choice of a foreign jurisdiction is also generally enforceable. However, there are certain cases that fall within the exclusive jurisdiction of the Bulgarian courts, for example disputes relating to real rights over real estate or disputes over IP rights registered in Bulgaria.

JVS WITH FOREIGN MEMBERS

VALIDITY AND AUTHORISATION

24. WHAT ARE THE RULES RELATING TO VALIDITY AND AUTHORISATION OF JVS WITH FOREIGN PARTIES?

Validity

JVs with foreign parties are allowed in Bulgaria.

Limits

There is no requirement for a minimum/maximum number of local parties to a JV.

Authorisation

No specific authorisation is required for JVs with foreign parties.

EFFECT OF FOREIGN MEMBERSHIP

25. ARE ANY OF THE RULES RELATING TO DOMESTIC COMPANY JVS (*SEE QUESTIONS 1 TO 23*) DIFFERENT FOR JVS WITH MEMBERS INCORPORATED UNDER, OR GOVERNED BY, THE LAWS OF A FOREIGN COUNTRY?

There are no differences between the rules relating to a domestic company JV and those applying to JVs with members incorporated under, or governed by, the laws of a foreign country.

ECONOMIC OR FINANCIAL INCENTIVES

26. ARE THERE ECONOMIC OR FINANCIAL INCENTIVES FOR FOREIGN DIRECT INVESTMENTS IN A JV?

There are no specific economic or financial incentives for foreign direct investments in a JV. There is a set of specific measures aimed at encouraging investment activities in Bulgaria, which applies equally to all JVs. The scope of the specific incentives depends on the amount of investment. The incentives can include faster administrative procedures, residence permits for the managers of the JV (which is more relevant to JVs with foreign parties), and so on.

MINIMUM INVESTMENTS/CONTRIBUTIONS

27. ARE THERE MANDATORY MINIMUM EQUITY INVESTMENTS OR CONTRIBUTIONS IN KIND THRESHOLDS FOR A FOREIGN JV MEMBER?

There are no minimum equity investment and/or contributions in kind thresholds required for a foreign JV member.

 THE REGULATORY AUTHORITIES

BULSTAT REGISTER MAINTAINED BY THE REGISTRY AGENCY

Main activities. The Registry Agency maintains the BULSTAT Register as a uniform national administrative register for the registration of JV agreements, representative offices, non-profit legal entities and so on.

W www.registryagency.bg/bg/services/registr-bulstat/

COMMERCIAL REGISTER MAINTAINED BY THE REGISTRY AGENCY

Main activities. The Registry Agency maintains the Commercial Register for the mandatory registration of all commercial companies seated in Bulgaria.

W <http://brra.bg/>

COMMISSION ON PROTECTION OF COMPETITION (CPC)

Main activities. The CPC is the national authority responsible for the application of EU competition law in Bulgaria.

W www.cpc.bg/

 ONLINE RESOURCES

OBLIGATIONS AND CONTRACTS ACT AND COMMERCE ACT

W <http://lex.bg/laws/ldoc/2121934337> (Obligations and Contracts Act)

<http://lex.bg/laws/ldoc/-14917630> (Commerce Act)

Description. This website is maintained by a private entity (LEX.BG AD) and provides up-to-date texts of the Bulgarian legislation in their original language. There are no official websites providing English translations. There are some unofficial websites containing English translations that do not contain full and up-to-date legislation (such versions are not binding).

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