



The Structuring of Acquisitions and Joint Ventures

Governing Aspects

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1. Preliminary Remarks

- Why Joint Ventures ?
- Disregarding the legal form of the specific joint venture company, Parties normally agree how to structure, organize and manage the company (i.e. „joint control“ – also for the purpose of merger control)
- Parties usually reflect joint control not only in the JV Agreement (contractual basis) but also in the articles of associations / by-laws (corporate basis) – all these rules are highly flexible and tailor-made

2. Legal Entities

- In practice: 3 legal entities Corporation, Limited Liability Company and Partnership
- The most common legal form of international joint ventures in Europe are stock companies or limited liability companies
- What do you have to consider in selecting the tailor-made entity?

	Stock Corporation	Limited liability company (LLC)	Partnership
Time / Costs to Set up	Slightly higher	low	Only contract
Minimum Capital	EUR 30-120 K	EUR 12-35 K	no
Typical Joint Venture Obligations	No (SHA required)	Yes	Yes
Governance	Two tier/one tier	One tier	One tier
Liability	limited	limited	personal
Publicity of shareholders	No	Yes	No
Exit	Easy	Burdensome	No
Taxation	Double taxation	Double taxation	Flow through



3. Elements of JV Governance

➤ Shareholder level

- 2 alternatives: Either freedom to vote of either party or obligation to vote jointly and in the best interest of the JV

➤ Board level

- Each party may nominate ist director(s)
- If it is a 50:50 JV: Often there are independent directors to decide ultimately
- In General: Board members are free to vote

➤ Management Level

- Management to be nominated by the Board
- Sometimes rules to avoid that top management is nominated by one party

4. Decision making and deadlocks

- **Decision making: Staggered approach**
 - Unanimousity (basic decisions; example: new shareholder)
 - Special quorum (important decision, example: investment over certain threshold)
 - Simple majority (day-to-day decisions, example: budget)
- **To overcome deadlocks**
 - Escalation mechanism (e.g. second vote, meeting of CEOs of shareholders of the JV)
 - If there is no solution by way of consent there are various methods in practice to overcome such deadlocks: (i) liquidation of JV (ii) mutual put and call options with pricing mechanism (e.g. “Texas shoot out” “Russian Roulette” etc.)

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