# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>MEMBERS</td>
<td>5</td>
</tr>
<tr>
<td>PREFACE</td>
<td>6</td>
</tr>
<tr>
<td>ALBANIA</td>
<td>8</td>
</tr>
<tr>
<td>BOSNIA AND HERZEGOVINA</td>
<td>16</td>
</tr>
<tr>
<td>BULGARIA</td>
<td>24</td>
</tr>
<tr>
<td>CROATIA</td>
<td>36</td>
</tr>
<tr>
<td>GREECE</td>
<td>44</td>
</tr>
<tr>
<td>MONTENEGRO</td>
<td>48</td>
</tr>
<tr>
<td>REPUBLIC OF NORTH MACEDONIA</td>
<td>54</td>
</tr>
<tr>
<td>ROMANIA</td>
<td>66</td>
</tr>
<tr>
<td>SERBIA</td>
<td>78</td>
</tr>
<tr>
<td>SLOVENIA</td>
<td>86</td>
</tr>
<tr>
<td>TURKEY</td>
<td>98</td>
</tr>
<tr>
<td>ABOUT SEE LEGAL</td>
<td>108</td>
</tr>
<tr>
<td>CONTACTS</td>
<td>109</td>
</tr>
</tbody>
</table>
“THE SOUTHEAST EUROPE LEGAL GROUP (SEE Legal) IS AN ORGANISATION OF 10 LEADING NATIONAL LAW FIRMS FROM 12 SOUTH EAST EUROPEAN COUNTRIES AND IS THE LARGEST PROVIDER OF LEGAL SERVICES THROUGH THE SEE REGION. OUR COMMITMENT REMAINS TO BE YOUR LEADING SOURCE FOR BUSINESS SUPPORT IN THE REGION.”
Dear Partners and Friends of SEE Legal,

This is the Southeast Europe Joint Ventures Handbook 2020, a product of the Corporate and M&A Practice Group functioning within the South East Europe Legal Group ("SEE Legal").

Our aim, through this Handbook, is to highlight the basic rules in relation to formation, choice of law, scope of operations, duration and other important aspects investors have to consider and assess when making a decision to set up a JV in Southeast Europe.

We are confident that this edition will prove to be a helpful desk-book resource that will provide international lawyers and GCs of multinational companies with the responses to standard questions and will help you when dealing with JVs in the 12 jurisdictions of Southeast Europe in which our member firms operate. The Joint Ventures Handbook is not meant to be a treatise on any particular country’s JV legislation and is not exhaustive to the point of eliminating the need of professional advice, but its main purpose is to raise readers’ attention as to the legislation that is affecting JVs of each jurisdiction covered by SEE Legal and assist in identifying the issues that might have a significant impact on investment and business development decisions.

Established in 2003, SEE Legal continues as the strongest and longest-standing regional organisation of 10 leading independent national law firms covering 12 jurisdictions of Southeast Europe with a legal force of more than 500 lawyers and an impressive client base of multinational corporations, financial institutions and governmental bodies. Our duty of care to our clients remains at the highest level and we are proud that our achievements in client service continue to distinguish SEE Legal as the leading group of law firms in Southeast Europe according to Chambers Europe and Chambers Global 2019 and 2020 rankings. Our member firms continue to be instructed to work on major investment transactions and they continuously enjoy the highest recognition from their peers and are constantly ranked every year as market champions.

To conclude, the Southeast Europe Joint Ventures Handbook 2020 is a summary of the challenges and topics we and our clients have faced in the last few years during which we witnessed an increased need for formations of JVs, especially in the infrastructure, concession and PPP projects. Hence, the aim of the Handbook is to promote SEE Legal members’ capacity and profile in the region in order to maintain our strong presence in the legal market and is also a statement of our continuing commitment to further assist you in your legal and business matters.

Sincerely,

Vladimir Dašić
Head of Corporate and M&A Practice Group of SEE Legal

Kristijan Polenak
Co-Chair of SEE Legal
1. REGULATION

Are JVs expressly regulated in your jurisdiction?
The term "joint venture" ("JV") is not expressly defined in the Albanian law. The closest legal concept to the joint venture is the simple partnership (in Albanian: shoqëria e thjeshtë), defined as an agreement by which two or more persons (natural or legal persons) agree to perform a commercial activity in order to share profits (Article 1074 of the Civil Code). Simple partnerships (similar to a contractual JV) are considered as a residual category of company, i.e. any company which does not present the characteristics of a commercial company is considered a simple partnership organised and functioning in accordance with rules provided in the Civil Code. A JV may also be organised as a commercial company (corporate JV) in accordance with Law no. 9901 on Entrepreneurs and Commercial Companies ("Company Law").

Special laws, in particular those related to public procurement or PPPs, provide rules on temporary JVs (consortium) during the bidding process. In any case, if the temporary JV is chosen as the successful bidder, it should establish a corporate JV.

2. TYPES OF JVs

2.1 Which types of JVs are allowed?
The Albanian law does not clearly distinguish between contractual JV or corporate JV as, although the contractual JV is initially defined as an “agreement”, it later seems to acquire prerogatives of a legal person. Therefore, the most appropriate distinction under Albanian law should be made between JVs organised and functioning as a simple partnership or as a commercial company. However, for ease of reference, we will refer to JVs organised as simple partnerships as “contractual JV” and to JVs organised as commercial companies as “corporate JV”. There are contradicting court cases if and when a contractual JV acquires legal personality considering that such legal personality is not expressly provided in the Civil Code and Law no. 9723 on the Registration of Business simply states that the registration with the National Business Centre ("NBC") – which is mandatory – is made for declarative purposes only. However, several provisions of the Civil Code reinforce the idea that contractual JVs might have a legal personality as for example, the contributions by the partners are "transferred to" and "acquired" by the JV.

Corporate JVs can take the form of limited liability company (shoqëri me përgjegjësi të kufizuar (SHPK) in Albanian) ("LLC"), joint-stock company (shoqëri aksionare (SHA) in Albanian) ("JSC"), general partnership and limited partnership. In each case, the legal personality is acquired upon registration with the NBC.

Temporary JVs (consortium) may be used in tender procedures related to public procurement or PPPs.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
Corporate JVs, i.e. established as an LLC, JSC, general partnership and limited partnership are subject to corporate law. Considering that general and limited partnerships are rarely used in practice, whereas LLC and JSC are the most frequently used forms of businesses encountered in Albania, only the major characteristics of these two types of companies will be provided below. On the other hand, contractual JVs are subject to rules provided in the Civil Code.

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in a JV’s founding documents (both corporate and contractual)?
Parties may execute founding documents in a foreign language accompanied by a certified translation in Albanian. The Albanian version may be invoked by and prevails in relations with third parties.
3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?
A Notary Public is usually not involved in the procedure of formation of a JV unless the nature of the assets to be contributed (for example, immovable properties) requires the involvement of a notary, or for other specific tasks such as drafting of power of attorneys or certification of documents, if necessary.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?
Both contractual and corporate JVs should be registered with the NBC and obtain specific authorisations/licences from other public bodies in the event they will operate in a regulated sector (banking, telecommunications, etc.). Approval from the Competition Authority may also be required based on the worldwide and national turnovers of the undertakings.

3.4 Are there any other formal requirements for the establishment of JV?
Generally, there are no other formal requirements, however, JVs operating in specific sectors (for example, banking) may need to comply with different minimum capital requirements, obtain prior approval of management boards, etc.

4. PERMITTED MARKETS
Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
The JV can be generally used in every field of the economy with no particular restrictions. However, sector-related specifics may exist, for example, companies that operate in the import and wholesale markets of oil products should be registered as joint-stock companies.

5. PURPOSE
Can the JV be established for any purpose?
JVs can be established for any lawful purpose. A temporary JV is used only in tender procedures of public procurement and PPPs and is converted into a corporate JV if it is later selected as the successful bidder.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
(a) Contractual JV
The contributions to the JV may be of any kind, including services. Regarding the determination of parts, Article 1076 of the Civil Code sets a presumption that the partners have equally contributed to the JV to achieve the purpose of the company unless provided otherwise in the agreement.

(b) Corporate JV
(i) LLCs
The initial capital for an LLC is set at a minimum of ALL 100 (approximately EUR 1). Each shareholder has only one share whose value is equal to the contribution of each shareholder in the capital of the company. The contributions may be in cash or in kind (movable/immovable property or rights) and may be paid up, after the registration of the company, in one or more instalments in accordance with the provisions of the articles of association. The shareholders of the LLC shall evaluate the contributions in kind by mutual agreement and express their values in cash; in case no agreement is reached each shareholder may request to the court to appoint an evaluation expert who shall render a binding decision. Finally, contributions in labour or services are also admitted.

(ii) JSCs
In a JSC, the capital is divided into shares with a nominal value. The required capital contribution is at least ALL 3.5 million (approximately EUR 28,000) for companies with a private offer and ALL 10 million (approximately EUR 80,000) for companies with a public offer. The initial capital must be fully subscribed before the registration of the company. At the same time, at least one-quarter of the nominal value of the shares must be paid and the remaining unpaid capital must be paid in one or more instalments according to the decision of the management organs of the JSC (preemption right of the existing shareholder shall apply in this case). As for the shares contributed in kind, they must be fully subscribed and paid in before the registration with the NBC is carried out. The Company Law explicitly excludes labour or services, because it is considered
too uncertain and prone to abuse if shareholders could make their capital contribution to the company in this way.

Moreover, in a JSC, as long as the capital is raised by contributions in cash, the economic assessment presents no problem. But with every contribution of a non-cash asset (a contribution in kind), a process of valuation is needed to establish whether the economic value of the contribution matches the nominal value plus any premium on the shares to be issued for them. Therefore, the law provides that one or more licensed independent experts appointed by the competent court assesses the valuation made by the shareholders and/or administrators of the company and drafts a report. The expert’s report shall contain a description of each of the assets comprising the contribution as well as of the methods of valuation used and shall state whether the values assessed corresponds at least to the number and nominal value. The report must be submitted to the NBC together with the application for registration.

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
The capital may be indicated in Albanian Lek or in Euro.

7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limits on the duration of a JV which may be established for an indefinite period. Temporary JVs, however, are usually limited during the term of the tender procedures after which a permanent JV will be established.

7.2 Are there statutory limitations on the number of members of the JV?
There are no statutory limitations on the number of members of the JV.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?
Public sector bodies may enter into JV Agreements with private entities provided that specific provisions stipulated in the Concessions/PPP law and other specific laws are observed. To the best of our knowledge, the JVs established for commercial purposes are organised as corporate JVs.

The Law on Concessions/PPP provides that the collaboration between the public body and the private entity can be realised through Concessions Agreements and PPP Agreements. In cases in which the public sector bodies intend to participate in the establishment of a Special Purpose Vehicle, to which the Concession/PPP right is granted, a JV Agreement should be entered with the private entity.

The establishment of a Special Purpose Vehicle with participation of a public sector body is allowed for the following forms of collaboration:
(i) Public Private Partnership – which is a long-term collaboration, regulated through an agreement entered into between the contracting authority and the economic operator which undertakes the obligation to build, renovate, operate a public infrastructure object.

(ii) Concession – an agreement of financial interest which can be a concession of public works, a concession of public services or of a mixed nature in which the majority of the risk in operating the project is transferred to the economic operator.

Another form of collaboration between the public sector bodies and the private entities is in cases of strategic investments. The Law on Strategic Investments in Albania is a form of incentivising and attracting investments in those sectors which are categorised as strategic. The public bodies may p-articipate in a strategic investment in the capacity of a developer of the project and in these cases prior to the granting of the strategic investment status in Albania, a Memorandum of Understanding is signed between the parties. In case the strategic investment status is granted, then a JV Agreement that regulates the collaboration between the public body and the strategic investor is entered into between them.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?
Article 17 of the Company Law establishes a non-compete
obligation and protects the company against competition carried out by shareholders or directors (administrators) of the corporate JV. The statute may provide that the prohibition is restricted or excluded by an extraordinary case by case authorisation decided by the shareholders with a majority of three-quarters. The statute may also provide that prohibition is to remain in force after the loss of the status of shareholder, but for no longer than one year.

On the other side, no explicit non-compete obligations are provided for contractual JVs organised. Non-compete clauses may be drafted in the agreement and/or constituting documents directly.

From the perspective of Competition Law, all agreements the object or effect of which is the restriction, distortion or prevention of competition are prohibited. An important element to be taken into consideration are the market shares of the parties involved. Such agreements are null and void unless individually exempted or benefiting from exemption under the Block Exemption or De minimis Regulation. However, the individual exemption is not mandatory; undertakings should self-assess whether agreements concluded by them and non-compete clauses may be exempted or be justified for the causes in the law (for example, improving production, promotion of technological or economic progress, benefits for consumers, etc.).

11. LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

(a) Contractual JVs
With regard to the determination of parts, Article 1086 of the Civil Code stipulates that parts belonging to the members in profit and loss are presumed according to their contribution, the value of which is determined by the court. Article 1087 of the Civil Code provides that “any agreement which excludes one or more members from participation in profits or losses is null and void”. Therefore, between the partners, the contractual JV does not lose its legal meaning and purpose for which it is entered into, i.e. to perform a commercial activity in order to share profits.

(b) Corporate JVs
The JV Agreement may not provide the participation of a JV member in a corporate JV (JSC or LLC) without bearing any risk, loss or reward. In principle, shareholders in an LLC and JSC are not liable for the commitments of the company and they bear losses only to the extent of any unpaid parts of their contributions in the company. On the other hand, profits are as a rule distributed between the shareholders in proportion to their share capital, however, it may be agreed otherwise in the articles of association of the company or by issuing classes of shares with preferential rights in JSCs.

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) Contractual JVs
The management of a contractual JV can be regulated in the JV Agreement. Its members should adopt decisions by a simple majority determined according to their share in the profits. Unless agreed otherwise, the management belongs to each of the members individually. In such case, each of the other managing members has the right to object to the action of another managing member before it is performed and any disagreement is settled by the members of the contractual JV by a simple majority determined according to their share in the profits. In case the
management is exercised by some members jointly, their unanimous decision is required and may act individually only if faced with urgent cases which may harm the JV. The removal of the management functions of a member can be made for just cause and in accordance with the provisions of the mandate agreement.

(b) Corporate JVs

(i) LLC
The governing bodies of an LLC are the general assembly of shareholders ("General Assembly") which resolves on the most important matters and the managing director(s) (administrator) who is competent to perform the day-to-day management of the company. LLCs have a more flexible organisational structure which can be shaped in accordance with the needs of the shareholders in the JV Agreement and articles of association, provided that they do not restrict the rights and duties provided to the General Assembly by the Company Law.

The managing director(s) may not be appointed for more than five years but its term is renewable. On the other side, the dismissal of the managing director may be decided for any cause and only by ordinary majority (50 per cent plus 1) of the participating shareholders.

The articles of association or the shareholders' agreement, if any, may not set higher majorities for the dismissal of the administrator or the restriction of such right. An administrator of the mother company cannot be appointed as director of its controlled subsidiary at the same time.

The General Assembly may take valid decisions if more than 30 per cent of the shareholders are present (quorum) and decisions are taken with an ordinary majority (50 per cent plus 1) of the participating shareholders (simple majority). Important decisions related to (i) amendment of the articles of association; (ii) increase and decrease of capital; (iii) approval of distribution of profit; (iv) merger, spin-off restriction, dissolution or liquidation, could be validly taken by the General Assembly if more than 50 per cent of the shareholders are present (quorum) and decisions are taken with 75 per cent of the participating shareholders (qualified majority). Noteworthy, some rules for the protection of minority shareholders (at least 5 per cent) may not be excluded by agreement. Such majorities may only be increased (not decreased) by the JV Agreement.

(ii) JSC
The governing bodies of a JSC are the General Assembly and either (a) managing director(s) and a management board as a single organ that comprises both supervisory and management functions (one-tier system) or (b) managing director(s) and a supervisory board (two-tier system), in which case the supervisory and the management functions are divided between these two organs.

In the one-tier system, the managing director usually manages and represents the company for day-to-day activities. As in the LLCs, there may be more than one managing director and their powers may be exercised jointly or individually according to the provisions of the articles of association, whereas, the management board is competent for the supervision of the activity of administrators and takes the most important decisions. The administrators may also be part of the management board under certain conditions.

In the two-tier system, the managing directors, in theory, have more extended powers to manage and represent the company, unless the articles of association provide the right for the supervisory board to approve specific actions of the managing director. In general, however, the supervisory board is usually competent only for the supervision of the managing directors' activity.

The majority required for the dismissal (not appointment) of the members of the management board cannot be higher than the ordinary majority (50+1). Such right may not be restricted in the articles of association or by contract.

Finally, the same majority rules provided for the General Assembly in the LLC and the protection of minority shareholders also apply to the JSC.

13. TERMINATION

13.1 What legal regime applies to the JV termination?
Can a JV be terminated for just cause on the request of one party?

(a) Contractual JV
The contractual JV (simple partnership) is dissolved, upon the expiration of the term, the completion of the object of the JV or the impossibility of its completion, by the will of all its members, for other causes provided in the JV Agreement. The Civil Code also regulates the management and powers of the managing members
after the decision for the termination and the liquidation process. The liquidation is carried out in accordance with the contract or with the decisions of the members who appoint a liquidator. In case of disagreement, the liquidator may be appointed by the court. The liquidators work closely with the managing members to draft the inventory of the assets of the JV and perform all necessary acts of liquidation pursuant to the provisions of the contract or of the Civil Code. A member may withdraw from the contractual JV for any of the causes provided in the JV Agreement or for a just cause.

(b) Corporate JV
The dissolution of a corporate JV is made in accordance with the rules provided in the Company Law. Causes that lead to the dissolution are listed in Articles 99 (for LLC) and 187 (for JSC) of the Company Law and for any other cause decided by the shareholders with a qualified majority. Once the decision for the dissolution has been reached, the JV should undergo a liquidation procedure, appointment of a liquidator, notification of creditors, should prepare the balance sheet and liquidator’s report, etc. The liquidator is the main executive organ of the JV during the liquidation and assumes the place of the legal representative(s)/managing director(s) of the JV.

Any shareholder may withdraw from the corporate JV and such right may not be restricted by the articles of association. The various grounds for withdrawal generally imply that withdrawal should occur for a just cause that makes the continuation of membership unacceptable for the member who wishes to withdraw. Such rules apply, however, only to LLC and not to JSC. It follows, that rules relating to the procedure of withdrawal, evaluation of the share of the member who wishes to withdraw, etc. should be clearly provided in the articles of association of the company.

13.2 Is the termination of a JV subject to governmental or other approval?
The termination of a JV is not subject to governmental or other approval, but if the JV operates in a regulated sector, approvals by and notifications to public authorities might be required.

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?
(a) Choice of law

Please note that under Albanian Private International Law parties are free to choose the governing law of an agreement, however this law provides that where a non-Albanian governing law has been elected and where all other elements relevant to the situation are located in Albania, the choice of law should not prejudice the application of provisions of Albanian law which cannot be derogated by agreement. There is no standard or legal interpretation of what the courts in the Republic of Albania shall consider as provisions of Albanian law the application of which cannot be derogated from (i.e. mandatory terms), nor is there any legally binding case law that can be relied upon.

Albanian law is the law applicable to legal persons (corporate JV) which should be established in accordance with its rules. A contractual JV may, in theory, be governed by foreign law, with the exception of the mandatory provisions of the Albanian law. However, considering the difficulty arising from the unclear status of such JVs under Albanian law (refer to Section 2 above), Albanian law may also be applicable. In any case, JV Agreements between shareholders in both cases (corporate and contractual JVs) may be subject to foreign law.

(b) Jurisdiction
Under the Private International Law, parties to an agreement are free to determine jurisdiction of their choice. However, the Private International Law (Article 72) provides a number of cases where Albanian courts have exclusive jurisdiction. Under this provision, Albanian courts have exclusive jurisdiction in cases of:
(i) ownership and other real rights over immovable property, as well as rent and rights arising from the use of immovable property against a fee, when the immovable property is located in the Republic of Albania;
(ii) matters regarding corporate decisions, when the company has habitual residence in the Republic of Albania;
(iii) matters regarding the establishment, termination of legal entities, as well as claims of the decisions issued from the bodies of the legal entities, when the legal entity is established in the Republic of Albania;
(iv) matters regarding the validity of registration in the public registers of courts or other state authorities;
(v) matters regarding the validity of registration of intellectual property rights, as long as these rights are registered or in process of registration in the Republic of Albania;
(vi) issues related to enforcement of executive titles in the Republic of Albania.
In addition, parties may opt for arbitration instead of choosing a national court. In fact, arbitration not only can be chosen by the parties but would even be the recommended form of dispute resolution since Albania is a signatory party to the 1958 New York Convention and the Geneva Convention of 1961. The ratifying law provides that Albania is committed to recognise and enforce any international arbitration award concerning a dispute relating to foreign investment. Albanian legislation provides for the possibility of entering a clause into a contract indicating the steps to be taken to resolve disputes. If this clause has been inserted, the foreign investor may turn to a court or arbitrator, as required by Albanian law. Disputes concerning unequal treatment or expropriation of foreign investment by the Government of Albania may also be submitted to the International Centre for Settlement of Investment Disputes, as determined by the Convention on the Settlement of Investment Disputes, adopted in Washington in 1965.

Under Albanian law, every international arbitration decision is final and irrevocable for the parties to the dispute. There is a recognition and enforcement procedure to follow for the enforcement of a final award in Albania, but such does not require the discussion of the merits of the dispute, simply procedural issues to be reviewed.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
There are no specific rules related to the nationality of members of a JV. The JV with foreign members will register and function in Albania as any other JV with Albanian members. The legal representative of the JV should be registered with the tax authorities.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?
There are no different rules which apply to this case.

16. ECONOMIC OR FINANCIAL INCENTIVES

16.1 What are the rules relating to economic or financial incentives for foreign direct investments in a JV?
Since 1 October 2015, a new Law on Strategic Investments\(^1\) has been enacted by the Albanian Parliament, the aim of the law being to promote and attract strategic investments both domestic and foreign, in those industries qualified as such, by introducing favourable administrative procedures and setting up support for accelerating and easing services to investors.

According to this law “strategic investments” shall be deemed private, public and public-private investments in those sectors identified as strategic and having a major impact in the economy of Albania such as energy. Strategic sectors or industries include: (i) energy and mining; (ii) transport, electronic communications infrastructure and urban waste; (iii) tourism (tourist structures); (iv) agriculture (large agricultural farms) and fishing; (v) technological and economic development zones; and (vi) areas having priority.

The law aims to offer support to “strategic investors” either through: (i) assisted procedures, in which the public administration coordinates, assists, supervises, and inter alia makes available to the investor state-owned property for the purpose of its investment and/or (ii) special procedures, in which support includes also expropriation and approval of investment agreements by the Albanian Parliament.

The law establishes the Committee of Strategic Investments, a collegial body of the Council of Ministers, which will be headed by the Prime Minister of the Republic of Albania that ultimately approves the status of ‘assisted’ or ‘special’ strategic investment and monitors the performance and the impact of strategic investments, throughout the stages of construction, implementation and operation of the strategic investment.

17. MINIMUM INVESTMENTS/ CONTRIBUTIONS

17.1 Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?
There are no specific mandatory minimum equity investments or contributions in-kind thresholds for foreign JV members.

\(^1\) Law No. 55/2015, dated 28 May 2015 on Strategic Investments in the Republic of Albania.
MARIĆ & Co
BOSNIA AND HERZEGOVINA

1. REGULATION

Are JVs expressly regulated in your jurisdiction?
Before discussing the applicable legal framework for JVs, it is firstly important to emphasize the political set up of Bosnia and Herzegovina – it consists of two entities: Federation of Bosnia and Herzegovina ("FBH") and Republika Srpska ("RS"), and one district: Brčko District (BD). Each of the entities and the district have their own legal framework applicable to the JVs. Although in principle similar, the legal framework contains differences in the applicable regulations – below we have provided a general summary of the entity level laws.

In general, JVs, as commercial projects jointly undertaken by two or more parties, are not specifically regulated under the laws of Bosnia and Herzegovina. Therefore, both the general civil law and the corporate laws apply, fundamental of which are Laws on Obligations and Laws on Companies (the "CA"). In most cases, the parties establish a new legal entity and then share in the revenues, expenses and control of the enterprise. The venture can be set up for a specific project only or a continuing business relationship.

Generally, parties to the JV are free to decide on the type of JV they wish to establish. However, should the JV be established in order to autonomously perform an economic activity on a lasting basis, the parties have to establish a corporate JV in one of the permissible corporate forms set out in the CA. Therefore, provisions of the CA regulating corporate forms, establishment, operations and termination of various corporate forms are of high relevance for corporate JVs.

Should the parties choose to establish a contractual JV, they would not need to register a company in order to commence work towards their common objective.

2. TYPES OF JVs

2.1 Which types of JVs are allowed?
Laws of Bosnia and Herzegovina allow both contractual and corporate JVs.

(a) Contractual JVs
A contractual JV is formed on the basis of a partnership agreement. Although not specifically regulated, under a partnership agreement, two or more persons undertake to endeavour to achieve a common objective permitted by law. Such a partnership is not a legal entity. It may be established for a definite or indefinite period; however, it may in any event not perform economic activities on a lasting basis, as this may be done only by one of the legal entities set out in the CA.

(b) Corporate JVs
Corporate JVs can be established in the form of a commercial company. Under the CA, the types of commercial companies are the following: general partnership, limited partnership, LLC and JSC. In practice, the most common legal forms chosen by the parties are LLC and JSC.

The higher level of freedom of the parties in regulating their relations, limited shareholder liability and lower costs of incorporation often make the LLC the preferred choice when establishing a corporate JV.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
Yes, corporate JVs are subject to corporate law and can be established in any form of a company. Laws of Bosnia and Herzegovina regulate four types of companies, as outlined in Section 2.1 above.

---


In practice, corporate JVs are usually established either in the form of LLC or JSC, therefore, some of the main differences between them are outlined below. Corporate forms with unlimited liability of partners are very rarely established.

Some of the main differences between the LLC and JSC are:

(a) depending on the location of the JSC (RS or FBH), a JSC is managed under a three-tier management system (management, supervisory board and shareholders assembly (FBH)) or two-tier management system (management/management board and shareholders assembly (RS)) and the CA contains several mandatory corporate governance rules, whereby establishment of a supervisory board in an LLC is not always mandatory;

(b) the process of transfer of shareholdings in LLC is different than the transfer of shares in JSC: for the transfer of shares in LLC, a share transfer agreement has to be concluded in the required form (depending on the location of the JV), and the share transfer has to be registered with the appropriate Court Register (“Court Register”). On the other hand, the transfer of shares in a JSC is achieved through the involvement of a broker and registration of the holder’s transfer order with the centralised register of dematerialised securities, i.e. the competent Securities Registry;

(c) corporate governance rules are stricter for the JSCs than they are for the LLCs;

(d) the costs of establishment of a company in the form of LLC are lower than the costs of establishment of a company in the form of JSC. The minimal registered capital required for LLC is approximately EUR 500 (or approximately EUR 0.50 in RS), whereas the minimal registered capital required for JSC is much higher, as it amounts to approximately EUR 25,000 (or approximately EUR 10,000 in RS, for closed joint-stock companies);

(e) certain instruments are available only to JSCs, e.g. preference shares, convertible shares, etc.; LLCs may not issue securities as evidence of shareholdings;

(f) the establishment of a pledge of the business shares in LLC is more complicated than the establishment of a pledge of the shares in JSC.

In practice, parties of a corporate JV often conclude shareholders’ agreements in addition to founding documents of the JV, in which they usually regulate more specifically the rights and obligations between the shareholders (e.g. call and put options, drag along and tag along rights, deadlock provisions, exit provisions, etc.). The shareholders’ agreements are not binding upon the JV itself, but only among the shareholders; they are also not publicly available and do not have to be disclosed to the Court Register. However, in specific sectors, such as with respect to financial institutions, insurance companies and investment firms, the relevant regulators may need to be notified about, or even approve, the conclusion of a shareholders’ agreement.

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in a JV’s founding documents (both corporate and contractual)?

(a) Contractual JV
The contractual JV is formed when two or more persons conclude an agreement in which they undertake to endeavour to reach a legal common objective. There are no restrictions on the use of foreign language in a contractual JV’s founding documents. Additionally, the contractual JVs are not registered, so there is also no need to have the founding documents translated for registration purposes.

Should the courts of Bosnia and Herzegovina be competent to solve a dispute between the parties to the JV Agreement, a translation of the JV Agreement into one of the local languages would need to be presented, and the same is true if the contractual JV needs to be disclosed to any local authorities.

(b) Corporate JV
Corporate JV must be registered with the competent Court Register. The registration procedure requires that the founding documents, including the articles of association, be submitted together with the application for registration. As the founding documents have to be of the required form (depending on the seat), they have to be prepared and executed in the local language.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?

(a) Contractual JV
There is no required form for a contractual JV.
(b) Corporate JV
This is dependent on the location of the corporate JV – all founding documents of corporate JVs in RS must be made in the form of a notarial deed, whereas in FBH – either a certification of signatures or notarial form is required. All individuals who will be registered with the Court Register as representatives of the JV must present a notarised sample of their signatures, along with certified copies of their passports. The managers of LLC and the board members in JSC must also present a notarised declaration that they consent to be appointed as such. If any of the participants in the JV contributes real estate rights or any other rights that can only be transferred by a notarised instrument to the capital of the JV, they must provide written consent with a notarised signature.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?
The contractual JV does not need to be registered. The corporate JV is registered with the appropriate Court Register. When a contribution in-kind involves (or if the merger results in) the transfer of an asset that is subject to special registration, such a contribution (or transfer) must be entered in the relevant registry (e.g. for real estate - Land Registry; for trademarks – Institute for Intellectual Property; motor vehicles - Registry of the Traffic Police; aircraft - Registry of the Civil Aviation Authority, etc.).

Depending on the scope of activity of the JV and especially in the cases of regulated activity (such as banking, insurance, etc.), there may be mandatory requirements for obtaining specific authorisations/licences by the regulatory authorities.

If the JV formation is a concentration of business activity and the merger control thresholds are met, then the JV formation may be subject to mandatory merger control on the level of Bosnia and Herzegovina. Under the Competition Act³, competition clearance by the Bosnian Competition Council (“CC”) is required if the aggregate turnover of all participating undertakings exceeds BAM 100 million (approximately EUR 51,129) for the previous financial year and the turnover of at least two of the participating undertakings on the Bosnian territory exceeds BAM 8 million (approximately EUR 4,090) for the previous financial year.

The partners participating in the concentration must notify the CC after the JV, shareholders’ or merger agreement (as applicable) is concluded, but before taking any concrete steps towards completing the transaction. The participants in the JV can self-assess whether the abovementioned thresholds will be met or exceeded and determine whether to make a filing or not. However, if the assessment is incorrect, the CC can impose penalties and sanctions provided by the law.

3.4 Are there any other formal requirements for the establishment of JV?
There are no other general requirements, however in some sectors, like banking and finance, and insurance, there are sector-specific requirements that must be observed by the JV (e.g. specific minimum capital requirements, etc.).

4. PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
In general, there are no specific restrictions as to the economic field where the JV shall have its main activity. However, as mentioned in Section 3, there are certain economic sectors that are strongly regulated such as banking, insurance, financial services, pharmaceutical, energy, etc. and the law introduces specific legal requirements with respect to the corporate form and status (for instance, minimum amount of share capital, qualification of the board members, etc.) of the companies operating in these economic sectors.

5. PURPOSE

Can the JV be established for any purpose?
There are no specific restrictions as to the purpose of activity of both the contractual and corporate JV as long as the subject of activity does not violate any law or is contrary to the good morals. JVs could be registered for the completion of a specific project or for the performance of long-lasting objectives.

Certain JV companies incorporated in the form of a JSC and operating in the field of, for instance, banking, insurance, financial

³ State Gazette of Bosnia and Herzegovina, Issue No. 48/05, 76/07 and 80/09, as amended.
services, may perform only transactions falling within their scope of activity or directly related thereto. It is worth mentioning that contractual 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, yet corporate JVs can be formed for any other purpose.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?

(a) Contractual JV
The contributions in a contractual JVs are not explicitly regulated. There are no minimum requirements for contributions, however, they should be in such amount that allows achieving the determined common objective.

(b) Corporate JV
The minimal registered capital required for an LLC is approximately EUR 500 in FBH and approximately EUR 0.50 in RS. The minimal registered capital required for JSC amounts to approximately EUR 25,000 (with the exception of closed joint-stock companies in RS, for which this is approximately EUR 10,000). Minimum capital contributions must be provided in cash, whereas the additional capital may be provided in-kind (things and rights). Monetary contributions have to be deposited on the bank account for registration purposes, and the bank should confirm that the funds were deposited for this purpose. In-kind contributions also have to be provided prior to the application for registration of the JV in the Court Register and have their value determined based on the valuation accepted by all shareholders.

There is no minimal registered capital requirement for the establishment of a general partnership and limited partnership. Contributions may be provided in cash, things, rights or services. The value of each non-monetary contribution has to be mutually evaluated by all shareholders.

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
No, the corporate share capital cannot be indicated through reference to a foreign currency. The share capital has to be indicated in BAM.

7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limitations as to the duration of the contractual and corporate JV. Both types of JVs may be incorporated for a fixed period or for an indefinite period of time.

7.2 Are there statutory limitations on the number of members of the JV?
For contractual and corporate JVs, the minimum number of participating members is two. There are no limitations as to the maximum number of participating members.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?
The legal framework of Bosnia and Herzegovina is still undeveloped in relation to PPP, as the Law on PPP has only been adopted in RS, without any practical application to this date, while the FBH, as well as the state of Bosnia and Herzegovina still don’t have their respective laws on PPP. Consequently, there is virtually no legal framework or practice regulating the entering of a public body into a JV together with a private partner.

Having said the above, it is important to note that a public company may enter into a JV, but only by establishing a JV company, subject to the general requirements and restrictions of the Company Law, as well as the special restrictions and conditions imposed by particular laws regulating public companies and their respective statutory documents.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?
The Bosnian competition authority would apply a different set of rules when considering a JV, taking into account whether its creation would constitute a concentration or not.
If the JV performs on a lasting basis all the functions of an autonomous economic entity (a concentrative type JV), then non-compete obligation between the JV partners and a JV is likely to be considered by the Commission on Protection of Competition as directly related and necessary to the implementation of the concentration where such obligation covers:

(i) products and services constituting the economic activity of the JV, including such that were not yet offered by the partners, but were in an advanced stage of preparation;

(ii) territories covered by the JV Agreement or its by-laws. The non-compete obligation should be limited to the area in which the parties offered the relevant products or services before establishing the JV, including such territories that the parties were planning to enter and have already invested in.

The non-competition obligations between the JV partners 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 by-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. After the termination of the JV, the non-compete obligations must cease.

For JVs that are not concentrations, the Commission on Protection of Competition, when applying both EU and national competition law, generally follows the European Commission’s Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union (TFEU) to horizontal co-operation agreements. EU competition law is directly applicable in the country and Bosnian national competition law closely reflects the relevant EU law provisions.

**10. DE FACTO COMPANIES/PARTNERSHIPS**

Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?

The concept of ‘de facto company/partnership’ is not recognised under the laws of Bosnia and Herzegovina. Contractual JVs are not legal entities. Pursuant to the laws of Bosnia and Herzegovina, legal entities are only entities which are established in one of the forms stipulated by CA (numerus clausus rule) and a contractual JV as a civil law partnership is not one of the forms of legal entities.

**11. LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV**

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

Unless provided otherwise in the partnership agreement, each party is entitled to a part of the benefits. In addition, each party to the partnership agreement is obliged to bear a part of the losses. If not agreed otherwise with the partnership agreement, the parties are entitled to profits and/or must bear losses proportionately to their contributions. A relationship in which a certain party only receives benefits, without having an obligation to ensure a contribution, would not be considered a partnership agreement under the laws of Bosnia and Herzegovina.

(a) **Contractual JV**  
A contractual JV is not a legal entity, hence, the parties to the partnership agreement are liable for the obligations of the JV.

(b) **Corporate JV**  
If not agreed otherwise in the articles of association of an LLC, profits are distributed to the shareholders proportionally to the value of their business shares. Generally, shareholders of LLCs and JSCs are not liable for the JV’s obligations in excess of the amount of their contributions.

Partners in a general partnership are subsidiary and severally liable towards the creditors of the general partnership. They shall agree on distribution of profits in the partnership agreement.

For liabilities of a limited partnership, general partners are liable with all their assets, whereas limited partners are liable only up to the amount of their respective capital shares and outstanding contributions. Partners shall agree on distribution of profits in the partnership agreement.
Shareholders of a JSC are not liable for the liabilities of the JV in excess of the amount of their contributions. One of the main rights deriving from being a holder of ordinary shares is the right to participate in the profits (dividend).

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) Contractual JV
The partners in the contractual JV are entirely free to determine all aspects of the JV, as long as the JV Agreement does not contradict the mandatory legal provisions and good morals.

(b) Corporate JV
Each form of a company is regulated differently under the CA: some are regulated more strictly than others.

(i) LLC
Unless the law or the articles of association stipulate otherwise, the shareholders in an LLC adopt decisions at the general meeting, with a majority of votes cast. A majority of all shareholders have to be present for the general meeting to adopt decisions.

A two-third majority of votes is required for certain matters, including amendment of the articles of association, share capital increase and decrease and similar. In RS, the law required unanimous agreement of all shareholders for certain decisions, unless the founding acts of the company stipulate lower majority.

The number of votes a shareholder has is proportionate to its share capital.

It may be agreed with the articles of association, when a shareholder may exit and/or be expelled from the company. In each case, a shareholder may exit the company for justifiable grounds, in particular if other shareholders or management are causing damage to the shareholder, if the company or the shareholders obstruct or disable the execution of shareholder’s right to exit, if the shareholder is obstructed at executing his rights, arising from the law or articles of association, or if the general meeting or management gives him disproportionate obligations.

A shareholder may be expelled from the company, provided there are reasonable grounds, and that this is stipulated by the founding acts of the company.

Generally, the JV parties can finance the activities of the JV by granting loans or providing equity capital. The shareholders in an LLC may request the convocation of a general meeting and add items on the agenda of the general meeting. They may also convene the general meeting or include an item on the agenda by themselves if their request to convoking the general meeting has not been accepted, or if persons to whom the request was addressed have been absent.

(ii) JSC
Unless otherwise foreseen in the law or the articles of association, the shareholders in a JSC adopt decisions at the general meeting, with a majority of votes cast. Quorum is set at 30 per cent of all shareholders in FBH, or 50 per cent in RS unless differently stipulated by foundation acts.

In general, the general meeting adopts decisions with a simple majority of the votes cast, unless the articles of association provide otherwise. A higher majority is required for certain, material matters. The voting rights of shareholders are exercised in accordance with the proportion of share capital that their shares represent. Each ordinary share generally carries one vote, whereby voting rights may be restricted in the articles of association.

Following a takeover offer, a squeeze-out process is possible in a JSC in FBH: any shareholder holding at least 95 per cent of the share capital may, within three months following the takeover, submit a request to the Securities Registry for transfer of shares of minority shareholders.

In RS, there is no condition of takeover – any shareholder holding at least 90 per cent of the share capital may propose adoption of a decision at the general meeting on the transfer of the shares of the remaining shareholders against payment of appropriate compensation. The reverse process is also possible: if there is a shareholder holding at least 90 per cent of the share capital, each of the remaining shareholders may ask to be squeezed-out against payment of appropriate compensation.

In both entities, the applicable Takeover Act stipulates a threshold of shareholding of 25 per cent of the share capital in order to trigger the mandatory takeover bid.
13. TERMINATION

13.1 What legal regime applies to the JV termination?
Can a JV be terminated for just cause on the request of one party?

(a) Contractual JV
A contractual JV for a definite term terminates when this term expires. Termination of a contractual JV established for unlimited duration can be done pursuant to the provisions of the agreement or general rules for termination of contracts.

(b) Corporate JV
The grounds for termination of LLCs and JSCs are stipulated by the applicable CAs and defined by the founding documents of the companies. In principle, the reasons for termination of the corporate JVs are (i) the term determined under the articles of association has expired; (ii) if the purpose of the legal entity has been achieved or such purpose has become impossible to achieve; (iii) a decision on liquidation by the shareholders meeting was adopted; (iv) an event of insolvency occurs; (v) the relevant court decides on the entities’ termination, etc.

After the termination of the corporate JV, a liquidation/bankruptcy procedure shall be started.

13.2 Is the termination of a JV subject to governmental or other approval?
In general, the termination of both types of JV would not be subject to approval. 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.

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?
In a contractual JV, the parties may choose a foreign law as the applicable law, if there is a foreign element to a JV.

In a corporate JV, the governing law of all formal corporate documents will be the laws of Bosnia and Herzegovina. If the parties enter into a separate JV Agreement or shareholders’ agreement, it can be governed by a foreign law unless it is contrary to the local law in relation to certain elements, such as company registration formalities, the competence of the general meeting of the shareholders, the right of the shareholders to receive portions of the profit and so on. The choice of a foreign jurisdiction is also generally admissible. However, there are certain cases that fall within the exclusive jurisdiction of the local courts, for example, disputes between the JV partners relating to rights over real estate, challenging the decisions of corporate JVs’ bodies and other.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
JVs with foreign members are allowed in Bosnia and Herzegovina. There is no requirement for a minimum/maximum number of local parties in such a JV, i.e. two or more foreign partners can set up a JV to do business in Bosnia and Herzegovina without any local partners.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?
JVs with members incorporated under, or governed by, the laws of a foreign jurisdiction and JVs with members incorporated under the local law are with equal rights and obligations.

16. ECONOMIC OR FINANCIAL INCENTIVES

Are there economic or financial incentives for foreign direct investments in a JV?
Certain economic and financial incentives exist for foreign investments, and they are dependent on the location of the JV. Such incentives relate to tax and customs incentives, as well as guaranteeing equal treatment of foreign investors in Bosnia and Herzegovina.

17. MINIMUM INVESTMENTS/CONTRIBUTIONS

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?
No, there are no minimum equity investment and/or in-kind contributions thresholds required for a foreign JV member – i.e. the same rules as for local JV members apply.
BULGARIA

1. REGULATION

Are JVs expressly regulated in your jurisdiction?
The JVs, as commercial projects jointly undertaken by two or more parties, are not specifically regulated under Bulgarian law. Therefore, both the general civil law and the corporate laws apply, fundamental of which are Obligations and Contracts Act¹ (the “OCA”) and Commerce Act² (the “CA”).

In most cases, the parties establish a new legal entity and then share in the revenues, expenses and control of the enterprise. The venture can be set up for a specific project only or a continuing business relationship.

From a practical point of view, corporate JVs are more suitable for the establishment of long-lasting relationships or for specific projects. Contractual JVs, in the form of general partnerships, are more suitable for JVs with a specific purpose that can be achieved in a shorter period of time.

A JV can be also created as a result of a merger between two existing entities. In this case, there will be both contractual elements (such as a merger agreement, which is a mandatory element of this procedure) and corporate elements (the merger decision itself and its registration).

2. TYPES OF JVs

2.1 Which types of JVs are allowed?
Bulgarian law allows both contractual and corporate JVs.

(a) Contractual JVs
The contractual type of JV is regulated in Articles 275 and 276 of the CA. The contractual JV is an undertaking established between merchants for the purposes of performing a particular activity or achieving a specific result, most frequently for participation in a public procurement procedure. Since the contractual consortium is not a legal entity, from a legal perspective, it is not the consortium but the parties under the consortium agreement that are parties under the agreements and commercial relations entered into in the name of the consortium with third parties. At the same time, the JV is treated as a separate entity for corporate tax and VAT purposes, and it has its own separate tax registration number and employer capacity. This dual legal treatment of contractual JVs can lead to practical issues and problems. The participants in the consortium can be merchants incorporated in any form: sole proprietor, general partnership, limited partnership, limited liability company ("LLC"), joint-stock company ("JSC"), partnership limited by shares and state-owned and municipal enterprises.

The consortium under Bulgarian law is considered to be a type of civil partnership and its legal status is also regulated by the provisions for the civil partnership under Articles 357-364 of the OCA. Unless the consortium agreement provides otherwise, each participant has to make monetary or in-kind contributions needed for the activity of the consortium and the profits and losses are divided between the partners in the consortium proportionally to their contributions. The contributions cannot be taken back prior to termination of the consortium or in case the participant who has contributed the respective asset leaves the consortium. A partner may not assign its right to participation in the partnership without the consent of the other partners.

(b) Corporate JV
Corporate JVs can be established in the form of a commercial company. Under the CA, the types of commercial companies are the following: general partnership, limited partnership, LLC, JSC and partnership limited by shares. In practice, the most common legal forms chosen by the parties are LLC and JSC.

¹ State Gazette of Republic of Bulgaria, Issue No. 275/1950, effective 1 January 1950, as amended.
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 attraction of new investors.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
Yes, corporate JVs are subject to corporate law and can be established in the form of a commercial company. As stated in section 2.1, under Bulgarian law there are five different types of commercial companies, each of which has specificities and advantages depending on the business operations that will be carried out.

The main differences between the general partnership, limited partnership and the LLC, on one hand, and the JSC, on the other hand, are the following:

(a) the costs for incorporation of general partnerships, limited partnerships and LLCs (the minimum capital requirements for LLCs included) are lower compared with the costs for the incorporation of a JSC. The minimum registered capital requirement for LLCs is BGN 2 (approximately equal to EUR 1) and the general partnership and limited partnership have no minimum capital requirements;

(b) the procedure for transfer of shares in general partnerships, limited partnerships and LLCs is more complicated in comparison to the transfer of shares in JSCs - the transfer of shares is made by way of an agreement with notarised signatures and content, and is subject to registration with the Commercial Register and Register of Non-Profit Legal Entities maintained by the Registry Agency (Commercial Register) in order to become effective; in comparison, the transfer of registered shares of a JSC is made by way of endorsement of the shares and registration with a privately held Shareholders’ Book of the company - a simple procedure not requiring registration with public registries. In the cases of dematerialised shares in a JSC, the transfer has to be registered with the centralised registrar of dematerialised securities - the Central Depository AD;

(c) the general partnership, limited partnership and LLC do not have 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 to JSCs;

(d) Additional Monetary Contributions (”AMCs”) can be made in LLC only. The AMCs allow the shareholders/the sole owner of an LLC to grant non-interest-bearing loans to the company;

(e) the establishment of pledge over the shares of general partnership, limited partnership and LLC shall be effected by way of a notarised agreement and registration of the pledge with the Commercial Register while the establishment of pledge over the shares in JSC shall be effected by way of pledge endorsement over the shares and their delivery to the creditor. The pledge of shares in JSC is also subject to registration in the privately held Shareholders’ Book of the company; and

(f) the management of the general partnership, limited partnership and LLC shall be carried out by one or more managers. Even if more than one manager is appointed, they do not act as a collective management body but as independent company officers. The JSC is managed either under a one-tier management system (board of directors) or under two-tier management system – a management board and supervisory board, which allows for more structured management.

The partnership limited by shares can also be a suitable JV form if some of the investors prefer to take a passive role (i.e. only to make an investment), while the others make an investment and also assume the management role in the JV. Currently, this type of entity is not very popular in Bulgaria.

Besides incorporation of a legal entity, the parties in a corporate JV (in the form of LLC or JSC) would normally enter into a JV Agreement or shareholders’ agreement. Such an agreement is binding and has an effect only between the parties. The shareholders’ agreement is not public and does not have to be registered, filed with or disclosed to any authority and usually sets out more thoroughly the relations between the parties in terms of financial obligations, management of the legal entity to be established, resolving of dead-lock situations, call and put options, the distributions of the shares and the capital contributions, the steps for registration of the JV with the Commercial Register, drag along and tag along rights, rights of first refusal, exit provisions, etc.

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in the JV’s founding documents (both corporate and contractual)?
Bulgarian law does not provide for specific restrictions for the use of foreign language in both types of JVs, however there are some specific requirements that have to be observed.

(a) Contractual JV
The contractual JV needs to be registered with the BULSTAT Register which is maintained by the Registry Agency to the Bulgarian Ministry of Justice. The completion of this registration requires the submission of a certified copy of the written JV Agreement. In case the JV Agreement is signed in a foreign language, it has to be submitted together with an official translation in Bulgarian made by a sworn translator. In most cases involving foreign partners, the founding documents are executed in a bilingual format (in Bulgarian and in the respective foreign language).

The JV Agreement can be executed in a foreign language. If a Bulgarian court is competent to solve a dispute between the parties to this agreement, the agreement must be presented in the original language, together with a Bulgarian translation.

(b) 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 registration procedure requires that the founding documents, including the articles of association, be submitted together with the application for registration. If the founding documents are executed in a foreign language, they must be presented together with an official translation in Bulgarian made by a sworn translator.

Should the parties to the JV Agreement/shareholders’ agreement enter into a dispute and should the settlement of this dispute require the involvement of the Bulgarian court, the parties would need to present a Bulgarian translation of the document to the court.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?
(a) Contractual JV
The JV Agreement may be signed in simple written form. The completion of the registration with the BULSTAT Register requires the submission of a certified copy of the JV Agreement.

(b) Corporate JV
The JV’s articles of association in the form of general partnership and limited partnership must have notarised signatures. All individuals who will be registered with the Commercial Register as representatives of the JV must present a notarised sample of their signatures. The managers of LLC and the board members in JSC must also present a notarised declaration that they consent to be appointed as such. If any of the participants in the JV contributes real estate rights or any other rights that can only be transferred by a notarised instrument (such as ongoing concerns) to the capital of the JV, they must provide written consent with a notarised signature. Notarisation of the signatures is also required for the merger agreement for establishing a JV resulting from a merger.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?
The contractual JV has to be registered with the BULSTAT Register and the corporate JV with the Commercial Register. When a contribution in-kind involves (or if the merger results in) the transfer of an asset that is subject to special registration, such a contribution (or transfer) must be entered in the relevant registry (e.g. for real estate - Land Registry; for trademarks – the Trademark Registry of the Patent Office; motor vehicles - Registry of the Traffic Police; aircraft - Registry of the Civil Aviation Authority, etc.).

Depending on the scope of activity of the JV and especially in the cases of regulated activity (such as banking, insurance, etc.), there may be mandatory requirements for obtaining specific authorisations/licences by the regulatory authorities.

If the JV formation is a concentration of business activity and the merger control thresholds are met, then the JV formation may be subject to mandatory merger control on the Bulgarian or EU level. Under the Protection of Competition Act3 (“PCA”), competition clearance by the Bulgarian Commission on Protection of Competition (“CPC”) is required if the aggregate turnover of all participating undertakings exceeds BGN 25 million (approximately EUR 12,782,297) for the previous financial year and the turnover of at least two of the participating undertakings on the Bulgarian territory exceeds BGN 3 million (approximately EUR 1,533,875) for the previous financial year.

---

The partners participating in the concentration must notify the CPC after the JV, shareholders’ or merger agreement (as applicable) is concluded, but before taking any concrete steps towards completing the transaction. The participants in the JV can self-assess whether the above-mentioned thresholds will be met or exceeded and determine whether to make a filing or not. However, if the assessment is incorrect, the CPC can impose penalties and sanctions provided by the law.

3.4 Are there any other formal requirements for the establishment of JV?
There are no other general requirements, however in some sectors, like banking and finance, and insurance, there are sector-specific requirements that must be observed by the JV (e.g. specific minimum capital requirements, etc.).

4.  PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
In general, there are no specific restrictions as to the economic field where the JV shall have its main activity. However, as mentioned in Section 3, there are certain economic sectors that are strongly regulated such as banking, insurance, financial services, the pharmaceutical sector, energy, etc. and the law introduces specific legal requirements with respect to the corporate form and status (for instance, minimum amount of share capital, qualification of the board members, etc.) of the companies operating in these economic sectors.

5.  PURPOSE

Can the JV be established for any purpose?
There are no specific restrictions as to the purpose of activity of both the contractual and corporate JV as long as the subject of activity does not violate any law or is contrary to the good morals. JVs could be registered for the completion of a specific project or for the performance of long-lasting objectives.

Certain JV companies incorporated in the form of a JSC and operating in the field of, for instance, banking, insurance, financial services, may perform only transactions falling within their scope of activity or directly related thereto.

It is worth mentioning that contractual 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, yet corporate JVs can be formed for any other purpose.

6.  SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
(a) Contractual JV
The OCA provides that for achieving the common objective, the partners may agree to contributions in cash or other assets (in-kind). The contributions cannot be taken back until termination of the partnership or in case the participant who has contributed the respective asset leaves the partnership. Everything acquired by the partnership shall be joint ownership of the partners and unless otherwise agreed the shares of the partners shall be equal. A partner may not assign its right to participation in the partnership without the consent of the other partners.

(b) Corporate JV
The CA provides two types of contributions in the share capital of the corporate JV - monetary (cash) contributions and contributions in-kind.

Cash must be deposited with a bank. It can be in local currency (BGN) or in foreign currency, but the certificate of payment for the cash contribution (that is necessary to incorporate and register the JV) must always specify the amount in BGN.

Contributions in kind can include ownership and limited rights over any type of assets with commercial value including real estates, receivables, intangible assets (e.g., intellectual property rights), securities, shares in companies, ongoing concern. Any in-kind contribution in capital companies (LLC, JSC and partnerships limited by shares) shall be evaluated by three experts appointed by the Commercial Register. The value of the in-kind contribution specified in the JVs incorporation documents cannot exceed the value determined by the experts. The total nominal value of the shares subscribed against the in-kind contribution may not exceed its value specified in the incorporation documents. The subject of the in-kind contribution may not include future work or services.
When the contribution in-kind is receivable, the debtor has to be notified about the change of creditor. The in-kind contribution has to be described in the by-laws of the JV and has to be registered with the Commercial Register. Depending on whether the object of the in-kind contribution is subject to special registration requirements, further registrations might be needed (e.g., the real estate is registered with the Land Registry, trademarks - with the Registry of the Patent Office, aircrafts - with the Registry of the Civil Aviation Authority, etc.).

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
In accordance with the mandatory statutory provisions, the share capital must always be indicated in BGN.

7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limitations as to the duration of the contractual and corporate JV. Both types of JVs may be incorporated for a fixed period or for an indefinite period of time.

7.2 Are there statutory limitations on the number of members of the JV?
For contractual and corporate JVs, the minimum number of participating members is two. There are no limitations as to the maximum number of participating members.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?
The participants in the contractual JV (consortium) have to be registered as merchants as defined by the CA. The public sector body can participate in the consortium by using state-owned or municipal-owned enterprises.

The Bulgarian State represented by the state bodies is recognised to be subject to civil, commercial and corporate relations. In particular, it may participate in corporate JVs organised in the form of LLC and JSC. The re-organisation and termination of companies with more than 50 per cent state participation (unless the company is in insolvency procedure) and decrease of the share capital of the company with state participation is subject to approval by the Agency for Privatisation and Post-Privatisation Control. The acceptance of new shareholders in companies with more than 50 per cent state participation is subject to a special procedure.

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

The Concessions Act¹ and other sector-specific acts aim to regulate the cooperation between public sector bodies and private bodies for the purposes of performing certain activities of general interests. These acts provide for the signing of public-private partnership agreements and/or setting up of public-private companies (LLC, JSC and partnership limited by shares only).

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?
The Bulgarian competition authorities would apply a different set of rules when considering a JV, taking into account whether its creation would constitute a concentration or not.

If the JV performs on a lasting basis all the functions of an autonomous economic entity (a concentrative type JV), then non-compete obligation between the JV partners 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:

(i) products and services constituting the economic activity of the JV, including such that were not yet offered by the partners, but were in an advanced stage of preparation;

(ii) territories covered by the JV Agreement or its by-laws. The non-compete obligation should be limited to the area in which the parties offered the relevant products or services before establishing the JV, including such territories that the parties were planning to enter and have already invested in.

¹ State Gazette of Republic of Bulgaria, Issue No. 96/2017, effective 1 January 2018, as amended.
The non-competition obligations between the JV partners 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 by-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.

After the 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 follows the European Commission’s Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) 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.

10. DE FACTO COMPANIES/PARTNERSHIPS

Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?

Bulgarian law does not recognise 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 statutory provision. The 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 contractual JV.

It is important to outline that for tax purposes (especially for the purposes of the VAT and the corporate tax), the contractual JVs are treated in the same way 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 shall be jointly liable for the collection and payment of the due taxes and social security instalments. The contractual JV, despite the lack of legal personality, could also employ personnel in compliance with the provisions of the Bulgarian Labour Code. The said Code contains a very broad definition of an employer, which allows in the case of a contractual JV the employees to be employed directly by the JV instead of one of the JV partners (who would have then to redistribute the labour expenses to all other JV partners).

The contractual JV is also obligated to have its own accounting books and to keep them as if it was a separate legal entity. Again, this is a mandatory requirement of the law which is related closely to the tax treatment of the contractual JV (see above).

11. LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

(a) Contractual JV

As a rule, profits and losses are distributed in proportion to the individual contributions made by the JV partners but the parties can contractually agree to distribute them differently. The OCA expressly provides that a clause in a JV Agreement under which a JV party will not participate in the profits and/or losses shall be null and void.

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

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 shall be null and void.

(b) Corporate JV

The legal regulation of the general partnership and limited partnership does not contain a special provision on these matters but it may be argued that the provisions for the contractual JV are applicable by analogy. This means that the clauses in the articles of incorporation according to which certain partners will not participate in the distribution of the profits/losses, are null and void.

The general partnership and the limited partnership are legal entities and as such, they are liable towards their creditors. However, all partners in the general partnership and the unlimited partners in the limited partnership are also liable towards the company’s creditors. Each creditor may file a claim against the company and the partners specified above.

When the claim is justified, the compulsory execution procedure is to be initiated against the company and only if the creditor is not satisfied, he may direct the enforcement against the partners in the general partnership and the unlimited partners in the limited partnership. The limited partners in the limited partnership have the same status as the shareholders in the LLC and are not liable for the company’s obligations.

Where the JV takes the form of an LLC or JSC, the shareholders will be liable for the company’s obligations up to their respective contributions. Once fully paid to the company, the shareholders may not be held liable for the obligations of the company in any way.

The general rule is that all shareholders in the LLC have the right to participate in the profits and upon termination of the company - to receive liquidation quota proportional to the amount of their contributions. However, the articles of association may provide that certain shareholders will receive a larger portion of the profits or of the liquidation estate, provided however that none can be excluded from receiving a portion of the profits or of the liquidation estate.

The CA allows the JSC to issue preferred shares with a guaranteed or additional dividend and shares with additional or guaranteed liquidation quota. The statutes of the JSC may provide that the preferred shares have no voting rights which should be specified on the respective share. It is not possible to deprive a shareholder of participation in the distribution of dividends in the JSC.

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) Contractual JV

The partners in the contractual JV are entirely free to determine all aspects of the JV, as long as the JV Agreement does not contradict the mandatory legal provisions (for example, the exclusion of certain partners from participation in the profits and/or losses is prohibited) and the good morals.

(b) Corporate JV

The incorporation documents of a corporate JV should not be in contradiction to mandatory legal provisions. The mandatory rules that have to be observed vary depending on the corporate form used for the JV. Broadly speaking, they are related to the rules for raising capital, its increase and decrease; rights of the partners to participate in the management of the JV, to receive information and vote at the general meeting; procedures for expulsion of shareholders if they breach their obligations; transformation and dissolution of the JV; powers of the management bodies, procedures for taking resolutions, quorum requirements, minority shareholders’ rights, etc.

As a rule, the resolutions of the general meeting of LLC can be passed with a simple majority (50 per cent of the capital plus one vote). The articles of association may provide for a higher majority. For certain resolutions, however, the CA requires a higher majority. Thus, a majority of three quarters of the company’s share capital is required for approval of changes in the articles of association; admission and expulsion of shareholders; transferring an interest to a new shareholder and AMCs. Resolutions for increase or decrease of the registered
capital must be adopted unanimously. The possibility to expel a shareholder in an LLC should be always taken into consideration when participating in a corporate JV in the form of LLC. The grounds for expelling a shareholder in an LLC are exhaustively set out in the CA and include the following cases:

(i) shareholder’s failure to perform its obligations regarding capital contributions or for providing assistance for the company’s activities;
(ii) shareholder’s failure to perform the resolutions of the general meeting;
(iii) the shareholder acts against the interests of the company or fails to make any AMC (if relevant).

The rules applicable to JSCs allow for more flexibility, but there are also many mandatory requirements that have to be taken into consideration and observed. For example, the following decisions require a majority vote of at least two-thirds of the voting shares represented at the meeting (in contrast to the more common simple majority of the votes present): 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 in a capital increase; 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 may provide that certain material transactions require prior approval of 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 after they are approved by the general meeting of shareholders, or with a unanimous decision of the board of directors or management board (if this is allowed by the statutes), including: transfer or granting the use of the entire going concern of the JSC; 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 grant veto rights to certain partners/shareholders. The shares of the JSC may also provide veto rights to their holders. In this case, these shares form a separate class of shares and the voting rights under these 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 equity capital. Shareholders in an LLC have the additional option to grant AMCs to the LLC. The purpose of AMCs is to cover losses or 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 provided in the resolution of the general meeting. A shareholder who has voted against the AMC, has the right to leave the company.

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 per cent) and cannot be excluded or varied in the JSC’s statutes or the JV Agreement.
These rights include:

- a right to request the convocation of a general meeting of shareholders;
- a right to add items on the agenda of the general meeting of shareholders and to suggest draft resolutions after an invitation for the convocation of the general meeting of shareholders is announced in the Commercial Register or is served to the shareholders;
- a right to claim damages on behalf of the company from members of the company’s board of directors (managing board and/or supervisory board);
- a right to request the appointment of a controller;
- a right to request the appointment or dismissal of a liquidator by the District Court;
- a 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 per cent of the shares of the merging company.

13. TERMINATION

13.1 What legal regime applies to the JV termination? Can a JV be terminated for just cause on the request of one party?

(a) Contractual JV
A contractual JV for a definite term terminates when this term expires. A contractual JV established for unlimited duration can be dissolved by one of the partners by serving notice to the other partners provided that such notice is made in good faith and duly served, and the agreement does not provide that the partnership will continue to exist even if one of the partners leaves. The partners may agree in the JV agreement that the JV could be terminated for just cause by one or more of the partners.

(b) Corporate JV
The general partnership may be terminated by a unilateral decision of all partners; the limited partnership by unilateral decision of all unlimited partners; the LLC by resolution of the general meeting of shareholders adopted with a majority of at least three quarters of the capital (unless the articles of association provide for a higher majority); and the JSC and the partnership limited by shares by a resolution of the general meeting of shareholders adopted with a majority of at least two-thirds of the capital (unless the statutes provide for a higher majority).

After the termination of the corporate JV, a liquidation procedure shall be started.

13.2 Is the termination of a JV subject to governmental or other approval?
In general, the termination of both types of JV would not be subject to approval. 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). Termination of companies with more than 50 per cent state participation (unless the company is in insolvency procedure) is subject to approval by the Agency for Privatisation and Post-Privatisation Control.

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?
In a contractual JV, the parties may choose a foreign law as the applicable law. However, the choice of foreign law cannot derogate from any mandatory provisions of Bulgarian law if all elements of the JV Agreement are connected with the territory of Bulgaria.

In a corporate JV, the governing law of all formal corporate documents will be Bulgarian law. If the parties enter into a separate JV Agreement or shareholders’ agreement, it can be governed by a foreign law unless it is contrary to Bulgarian law in relation to certain elements, such as company registration formalities, the competence of the general meeting of the shareholders, the right of the shareholders to receive portions of the profit and so on.

The choice of a foreign jurisdiction is also generally admissible. However, there are certain cases that fall within the exclusive jurisdiction of the Bulgarian courts, for example, disputes between the JV partners relating to rights over real estate or disputes over IP rights registered in Bulgaria, challenging the decisions of corporate JVs’ bodies and other.
15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
JVs with foreign members are allowed in Bulgaria. There is no requirement for a minimum/maximum number of local parties in such a JV, i.e. two or more foreign partners can set up a JV to do business in Bulgaria without any Bulgarian partners.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?
JVs with members incorporated under, or governed by, the laws of foreign jurisdiction and JVs with members incorporated under the Bulgarian law are with equal rights and obligations. However, Bulgaria has introduced certain restrictions on and specific requirements for foreign participation in companies owning agricultural land.

There are also certain statutory restrictions on the business activities of entities (including JVs) with partners from jurisdictions with preferential tax treatment (off-shore jurisdictions). Such entities are prohibited to acquire more than 10 per cent of the capital of banks or other credit institutions, insurance companies, radio and TV operators, sport clubs and so on. These entities also cannot apply for various licences or concessions, participate in public procurement procedures, own land from the forestry fund. The law also sets out ways to avoid these restrictions, such as disclosure and registration with the Commercial Registry of the ultimate beneficial owners of the off-shore companies.

16. ECONOMIC OR FINANCIAL INCENTIVES

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, irrespective of the nationality or place of registration of the partners. 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), etc.

17. MINIMUM INVESTMENTS/ CONTRIBUTIONS

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?
No, there are no minimum equity investment and/or in-kind contributions thresholds required for a foreign JV member. However, for certain types of regulated activity there are minimum capital requirements set forth in the legislation (e.g. for non-bank financial institutions the minimum capital required under the law is BGN 1 million, or approximately EUR 511,292).
CROATIA

1. REGULATION

Are JVs expressly regulated in your jurisdiction?

To JVs, as commercial projects jointly undertaken by two or more parties, both the general civil law and the corporate law apply, fundamental of which are Obligations Act\(^1\) (“OA”) and Companies Act\(^2\) (“CA”). Besides those acts, which set the general and fundamental basis for a JV, the JV is regulated in other acts related to specific legal fields such as the Croatian Competition Act and Public Procurement Act.

In most cases, the parties establish a new legal entity and then share in the revenues, expenses and control of the enterprise. The venture can be set up for a specific project only or a continuing business relationship.

2. TYPES OF JVs

2.1 Which types of JVs are allowed?

Under Croatian law, JVs are usually divided as per their legal form (named below under (a)). JVs can be divided under many other criteria as well, some of which are listed hereto. However, all the JV types named under (b) to (g) hereto are either contractual or corporate JVs.

(a) In relation to the legal form - contractual and corporate JVs

(i) Contractual JVs

The contractual JV is regulated by the OA under provisions regulating partnership\(^3\). By the virtue of the partnership agreement, the partners undertake to make contributions (in work and/or in money and/or in-kind) for the purpose of achieving the mutual goal. Under such an agreement, no legal entity is established. Instead, partners agree on mutual rights and obligations with the aim of reaching the mutual goal/interest and their venture has only contractual basis. The partners’ contributions remain the property of the partner who invested them in the JV. The JVs assets are consisted of the partners’ contributions and the assets gained by the partnership’s operations, and those are the mutual property of all partners.

(ii) Corporate JVs

Incorporated joint ventures imply capital linkage of two or more companies, whereas the continuity of business is their dominant characteristic. Corporate JVs are established in the form of a commercial company. The types of commercial companies are the following: limited liability company (“LLC”), joint-stock company (“JSC”), public company, limited company and economic interest association.

In practice, the most common legal forms chosen by the parties are LLC and JSC and therefore, those two types will be thoroughly explained hereunder.

(b) In relation to the identity of parties - JVs with active members and JVs with secret (covert) members

If the members of the JV are secret, then it is usually the financiers who, for various reasons, do not want their identities to be revealed. Covert members are more likely to be found in risky capital investments than in JVs, but theoretically, it is possible to have it in JVs too.

(c) In relation to the partner’s headquarters - domestic and international JVs

Joint ventures consisted of two or more companies from different countries are called international joint ventures (IJVs). They are significantly more complex than domestic joint ventures due to regulatory, political and cultural differences. Because international joint ventures are often formed between companies from different continents, in such cases, they are also called overseas joint ventures.

(d) In relation to the type of contribution - JVs with monetary investments and JVs with in-kind investments

By the type of contribution, JVs are divided into those in which partners invest cash (monetary investments), in which a fixed and movable property (monetary investments JVs), a right, knowledge,

---


\(^3\) Cro. ortaštvo.
skills or know-how are invested (in-kind investments JVs) and those with combined investments, which are the most common in practice.

(e) In relation to the private/public ownership of the partner - to private-private, public-private and public-public JVs
The JVs’ partners can be either from the public or private sector.

(f) In relation to the similarity of business activities of partners - horizontal and vertical JVs
Vertical JVs (linked JVs) stand for linking partners’ activities along the value chain, that is, linking companies operating at different levels of the production or distribution chain. Horizontal JVs (scale JVs) refer to bringing together the same or very similar activities of the partners in the chain, usually to reduce costs. A mixture of horizontal and vertical joint ventures is known by the name of a conglomerate.

(g) In relation to the type of activity - JVs in banking, telecommunications, biochemical and petroleum industries, construction, etc.
JVs of a certain type of activity usually imply scope of operations and activities specific for the industry to which they belong. For example, ventures in banking, telecommunications, biochemical and oil industry or construction differ among each other.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
Corporate JVs are subject to corporate law and can be established in one of the forms of a commercial company. As stated in Section 2.1 above, Croatian law recognises five different types of commercial companies, each with different advantages, depending on the business operations that will be carried out. As stated in Section 2.1 paragraph (a) (iii), in practice, the most common legal forms of JVs chosen by the parties are LLC and JSC. The minimum registered capital requirement for the LLCs is HRK 20,000 (approximately equal to EUR 2,500) and for the JSCs HRK 200,000 (approximately equal to EUR 25,000).

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in a JV’s founding documents (both corporate and contractual)?
(a) Contractual JV
If a contractual JV is subject to certification as to its contents (in Croatian Solemnizacija) by a Notary Public, the agreement must be presented in Croatian language only or in a bilingual form containing Croatian language. Otherwise, there are no restrictions regarding the language in a contractual JV.

(b) Corporate JV
The corporate JVs must be registered with the Court Registry of the commercial courts. The registration procedure requires that the founding documents, including the articles of association, are submitted together with the application for registration. Since the articles of association must be adopted before the Notary Public in the form that implies certification as to its content, Croatian language is required.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?
(a) Contractual JV
In this type of JVs, there is no requirement for the Notary Public’s involvement in the procedure of formation. However, it is common practice that such agreements are made in written form with the signatures of the partners certified by the Notary Public or in the form of a notarial deed, where the content of the agreement is certified.

(b) Corporate JV
In Croatian law, the Notary Public is involved with the procedure of formation of commercial companies as it follows:
(i) In relation to JSC, the founders’ statements on the adoption of the Statute of the company must be made before the Notary Public in the form of a notarial deed or a private document certified as to its content by the Notary Public (in Croatian Solemnizacija).
(ii) In relation to LLC, the company is founded based on the articles of association entered into by the founders. The articles of association must be adopted by all founders in the form of a notarial deed or a private document certified as to its content by the Notary Public. If the company is founded by one founder, the articles of association are replaced by the Deed of Establishment that also must be in the same form as the articles of association.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are
the conditions for that?
If the establishment of a JV provokes a concentration of business activities, parties are obliged to notify the Competition Protection Agency on the intention of concentration in case the following conditions are fulfilled:

(a) the total annual consolidated revenue of all undertakings of a party to a concentration achieved by the sale of goods and/or services (total revenue) on the world market is at least HRK 1 billion (approximately EUR 133 million) in accordance with the financial statements for the financial year preceding the concentration, if at least one party to the concentration has its headquarters and/or branch in the Republic of Croatia;
(b) the total income of each of at least two parties to the concentration in the Republic of Croatia, in accordance with the financial statements, amounts to at least HRK 100 million (approximately EUR 13 million) in the financial year preceding the concentration.

In addition, in some industries, e.g. banking and finance, insurance, alternative investment funds or games of chance, JVs must obtain authorisations/licences by the regulatory authorities (e.g. Croatian National Bank, Ministry of Finance, Croatian Financial Services Supervisory Agency).

3.4 Are there any other formal requirements for the establishment of JV?
There are no other general requirements, however in some sectors, like banking and finance or insurance there are sector-specific requirements that must be fulfilled by the JV (e.g. specific minimum capital requirements, etc.).

4. PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
In relation to the economic fields, there are no specific restrictions for JVs. However, there are certain economic sectors that are strongly regulated (such as banking) and in which the law introduces specific legal requirements with respect to the corporate form and status (for example, a minimum amount of share capital) of the companies operating in those economic sectors.

5. PURPOSE

Can the JV be established for any purpose?
With respect to the purpose of either contractual or corporate JVs, there are no specific restrictions, but, in general, a JV shall not violate the Constitution of the Republic of Croatia, mandatory legal provisions or morals of society, since such actions are null and void.

In practice, the contractual JVs are often formed in connection with public procurement tenders where the parties need to put together their capabilities, knowledge and experience to meet the criteria of the tender. On the other hand, corporate JVs are formed for various purposes.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
(a) Contractual JV
The OA provides that for achieving the common objective, the partners may agree to monetary (cash) contributions or in-kind contributions (rights, work, other goods).

If a partner contributes all his property, it shall include only current, already existing, property. On the other hand, if the agreement on partnership includes future property, it shall mean only acquired property, but not inherited property, unless both are expressly contracted. As well, it is important to stress out that the agreements relating to the investment of only current or only future assets shall not be valid without a list and description of the property’s components forming it. A partner who is investing only his work is entitled to a share in the profit, but not to a share in the equity of the partnership, unless the value of his work, estimated in cash, is included in the equity. A partner is not obliged to subsequently increase the contracted contribution, but if, due to changed circumstances, a common goal cannot be achieved without an increase of the contributions, the partner who does not agree with the increase may either withdraw from the partnership or may be excluded from the partnership.
All partners, as a rule, are required to participate equally in pursuing a common goal, regardless of the nature of their roles or the size of their investments.

(b) Corporate JV
The CA provides two types of contributions in the share capital of the corporate JV - monetary (cash) contributions and contributions in-kind (rights, work, other goods).

(i) JSC
Contributions for the shares in JSC can be made in cash or in-kind. If the shareholders contribute to the share capital with in-kind contributions (in things or property rights), the Statute must specify such thing or property right, the person or legal entity who made the contribution and the total nominal amount of the shares issued for it with their individual nominal amounts, or, if the shares are issued without a nominal amount, the number of such shares that should be issued for the investment.

Only things or property rights for which the economic value could be determined can be invested or acquired by the company. The obligation to provide services cannot be subject to investment or acquisition of property or rights.

If contributions are made in cash, payments for the shares are to be made to the bank account of a joint-stock company held within a credit institution seated in the Republic of Croatia. At least one-quarter of the minimum amount for which that share can be issued must be paid before the company is registered in the Court Registry. If the share is issued for the amount greater than the nominal amount of the share, the entire amount exceeding the nominal amount must be paid. The minimal nominal amount for which the share can be issued under CA is HRK 10 (approximately EUR 1.30).

If contributions are made partly in money and partly in things or rights, the investment paid in money must be fully paid before the company is registered in the Court Registry.

Before the company is registered in the Court Registry, the in-kind contributions must be entirely entered into the company. If the investment in things and rights consists of an undertaking of the obligation to transfer a thing to the company, this action must be completed within five years as of the date of registration of the company in the Court Registry. The value of the thing, or the rights to be invested, must correspond to the amount for which the share is issued.

(ii) LLC
Contributions for business shares can be made in cash or in-kind (by investing things or rights).

The in-kind contribution must be fully entered before the company is registered within the Court Registry. In case those contributions are made in cash, prior to the registration of the company in the Court Registry, each shareholder must pay at least one-quarter of the business shares, provided that the total amount of all contributions in cash cannot be less than one-quarter of the share capital, unless otherwise provided by law.

The contributions in cash must be fully paid within one year from the date of the company’s registration in the Court Registry. The shareholder who has not paid for the business share shall be liable for the obligations of the company personally and jointly with all other shareholders who have not paid for the business shares, up to the amount of the unpaid share capital. The minimal nominal amount of the business share under CA is HRK 200 (approximately EUR 26.80).

Contributions in cash must be paid to the company’s bank account held within a credit institution with a seat in the Republic of Croatia. This institution issues a certificate stating that the company will be free to dispose of the amount paid once it has entered in the Court Registry.

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
In accordance with the mandatory statutory provisions, the share capital must always be indicated in HRK.

7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limitations on the duration of the JVs prescribed by Croatian law. Both contractual and corporate JVs may be set for a fixed period of time or for an indefinite period. As an exception, please see Section 8.

7.2 Are there statutory limitations on the number of members of the JV?
For contractual JVs and corporate JVs, the minimum of participating members is two. There are no limitations as to the maximum number of participating members.


8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?

A public sector body can enter into a JV Agreement. It is most common to find a public sector body as a party to a Public Private Partnerships ("PPP"), governed by the Act on Public Private Partnership ("APPP"). For the purposes of the APPP, a PPP is a long-term contractual relationship between a public and a private partner, regarding the construction and/or reconstruction and maintenance of a public building, for the purpose of providing public services within the competence of a public partner. For the purpose of implementing the PPP project, the public and private partners enter into a PPP agreement governing their mutual rights and obligations. The PPP contract must be entered into in writing, for a fixed period which may not be shorter than three years and shall not exceed 40 years, unless a longer period is stipulated by a special law.

PPPs can be international, national and regional/local. The PPP is most commonly represented at the regional or local level.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?

The Croatian competition authorities would apply a different set of rules, considering whether the establishment of a JV would constitute a concentration or not. Please see Sections 3.3 and 3.4.

10. DE FACTO COMPANIES/PARTNERSHIPS

Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?

Not applicable.

11. LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

(a) Contractual JV

As a rule, all partners are obliged to participate equally in the achievement of the common goal. Each partner is responsible for the material and legal defects of his investment. A partner who invests only his work and is not included in the principal participates in the decision-making process, but without the right to vote.

Unless otherwise specified in the partnership agreement, the partnership’s claims belong to all partners together. Therefore, it is possible to agree that a certain claim will not belong to a particular JV member. Furthermore, unless otherwise agreed with the creditor, all partners are jointly and severally liable for the obligations of the partnership, and in that sense, the exclusion of JVs’ member liability can as well be agreed.

If the partner’s share in the profit and loss is not determined by the partnership agreement, each partner, regardless of the type and size of its contribution, has an equal share in the profit and loss. If only a partner’s share in the profit or loss is determined, such stipulation should apply, in case of a doubt, for profit and loss. In that sense, provided that the partnership agreement is silent on this matter, there is a legal obstacle to determine that the share of a particular JV member in the profit or loss is equal to zero. In any case, the partner shall be liable for the damage caused to the partnership, unless it proves that the damage was done without its fault.

(b) Corporate JV

In corporate JVs, partners are not personally liable for the company’s obligations, except in the case of piercing of the corporate veil. In JSC or LLC, the partners are liable for the company’s obligations up to the value of their contributions.

In respect of the distribution of profits, the partners are, in general, entitled to participate in the company’s profit proportionally with the value of their contributions, however, in LLC, the partners are allowed to stipulate that the profit shall be distributed on the other criteria.

As stated below under Section 12(b), that partners in an LLC have more freedom than partners in a JSC in the regulation of their relationship since they are allowed to regulate the relationship differently than prescribed by CA unless explicitly prohibited.

---

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) Contractual JV
The partners in the contractual JV are free to determine all aspects of the JV within the mandatory provision of the OA regulating partnership. Also, as a general rule in any contractual relationship, the JV cannot be regulated contrary to the Constitution of the Republic of Croatia, mandatory legal provisions and morals of society.

(b) Corporate JV
The CA, as the act regulating corporate JVs, has more mandatory provisions in comparison to OA, especially regarding the JSC. Under the CA, shareholders in JSC are allowed to freely regulate their relationship only in case CA explicitly prescribes such possibility, while on the other side, shareholders in an LLC are allowed to freely regulate their relationship whenever the CA does not explicitly prohibit them to do so.

In addition, as already stated above, regarding mandatory legal provisions, all the incorporation documents prescribed by CA must be submitted to the Court Registry in the form prescribed by CA.

13. TERMINATION

13.1 What legal regime applies to the JV termination?
Can a JV be terminated for just cause on the request of one party?

(a) Contractual JV
A contractual JV is terminated in the following cases:

(i) by the accomplishment of the goal of the partnership, or if its realisation becomes impossible;
(ii) if the agreement is entered into for a fixed period, with the expiration of that period;
(iii) by the collapse of mutual property;
(iv) by the agreement of the partners;
(v) in case of death, that is, the termination of existence and the departure and exclusion of the partners, if the partnership consists of two partners;
(vi) by a court decision in the event of termination of the partnership for an important reason.

(b) Corporate JV

(i) The JSC can be terminated for the following reasons:
- the expiration of the time specified by the Statute, if the company was established for a fixed term;
- a resolution of the general assembly adopted with votes representing at least three-quarters of the share capital represented at the general assembly of the company at the time of the resolution, if the Statute does not prescribe for a larger majority or fulfilment of additional assumptions;
- a final decision of the registration court ordering the deletion of the company ex officio;
- in case of merger of a company to or with another company, division of a company by separation;
- opening of bankruptcy proceedings;
- the nullity of the company;
- the annulment of the company;
- the decision of the registration court upon a proposal of the competent tax administration or ex officio in case a company has no assets; or it fails to comply with the legal obligation to publish its annual financial statements with the prescribed documentation for three consecutive years when the obligation to publish these reports is prescribed by law, or to submit them to that court within six months after the court announces the intention of deleting the company from the Court Registry and the company does not prove likelihood of owning the assets within that period.

The Statute may also specify other cases of termination of a corporate JV.

(ii) The LLC can be terminated for the following reasons:
- the expiry of the time determined by the articles of association;
- resolution of the shareholders;
- a merger of a company to or with another company, division of a company by separation;
- the final decision of the registration court ordering the termination of the company ex officio;
- opening of the bankruptcy proceedings;
- the decision of the registration court upon a proposal of the competent tax administration or ex officio in case a company has no assets; or it fails to comply with the legal obligation to publish its annual financial statements with the prescribed documentation for three consecutive years when the obligation to publish these reports is prescribed by law, or to submit them to that court within six months after the court announces the intention of deleting the company from the Court Registry and the company does not prove likelihood of
owning the assets within that period;
• the nullity of the company;
• the annulment of the company;
• a final judgment of the court.

13.2 Is the termination of a JV subject to governmental or other approval?
In general, the termination of both types of JV is not subject to any governmental or other approval. However, JVs operating in regulated industries (such as banks) may require special permission before going into voluntary termination and liquidation (for example, banks will need the permission of the Croatian National Bank).

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?
(a) Contractual JV
In a contractual JV, the parties may choose a foreign law as the applicable law. The choice must be made either explicitly or it must be clear from the contractual provisions or circumstances of the case. The parties may agree that the chosen law governs the contract as a whole or only part of the contract. If all parties to contractual JV are Croatian (natural or legal) entities, the choice of the foreign law will be limited by the mandatory provisions of the Croatian law. Also, a chosen foreign law should never apply if the effect of its application would be contrary to the public policy in Croatia.

(b) Corporate JV
In a corporate JV, the governing law for all corporate documents must be Croatian law.

If the parties enter into a separate JV Agreement or shareholders’ agreement, it can be governed by foreign law, partly or entirely. However, same as above under (a), if all parties to such agreement are Croatian (natural or legal) entities, the chosen foreign law will be applicable within the mandatory provisions of the Croatian law. Also, a chosen foreign law should never apply if the effect of its application would be contrary to the public policy in Croatia.

The choice of a foreign jurisdiction or arbitration is generally admissible for both types of JVs. However, there are certain cases that fall within the exclusive jurisdiction of the Croatian courts, for example, disputes between the JV partners relating to rights over real estate in Croatian territory.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
JVs with foreign members are allowed in Croatia. There are no requirements for a minimum or a maximum number of local parties in such a JV. Foreign partners can set up a JV to carry out business in Croatia without any Croatian partners.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?
JVs with members incorporated under, or governed by, the laws of a foreign jurisdiction and JVs with members incorporated under the Croatian law are with equal rights and obligations.

16. ECONOMIC OR FINANCIAL INCENTIVES

Are there economic or financial incentives for foreign direct investments in a JV?
A foreign investor, on the condition of reciprocity (which is assumed), when establishing or participating in the establishment of companies in the Republic of Croatia acquires rights, assumes obligations and holds the same position under the same conditions as a domestic person. The reciprocity condition shall not apply to a foreign investor who is domiciled or permanently resides in a Member State of the World Trade Organization or is a national of it.

17. MINIMUM INVESTMENTS/ CONTRIBUTIONS

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?
There are no special minimum equity investment and/or in-kind contributions regarding a foreign JV member. For obligations regarding contributions, please see Section 6.
GREECE

1. REGULATION

Are JVs expressly regulated in your jurisdiction?
In Greece, a Joint Venture (in Greek: Koinopraxia) is regarded as an association of two or more natural persons or legal entities, domestic or foreign, aiming to achieve a common purpose (generally for profit-making purposes). Article 293 of Law 4072/2012 makes a significant effort to frame the legal definition by defining the term Joint Venture and by subsuming it to other provisions of the Greek company law, depending on their formation. The above Article defines the JV as an entity without a legal personality. However, if a JV is registered with the General Commercial Registry ("GEMI") or appears before third parties, its legal and insolvency capacity is acknowledged. A JV is obliged to be registered with the GEMI when it has a commercial business purpose which is different than the individual purpose of its members. There are also special law provisions that regulate certain specific forms of co-operation:
• Law 4412/2016: regulating JVs for public procurements; and
• Law 4384/2016: regulating JVs between agricultural associations.

2. TYPES OF JVs

2.1 Which types of JVs are allowed?
Article 293 of Law 4072/2012 makes the following distinctions:
(a) A genuine JV, being an association of independent entities associated to carry out a project. Such JV’s role is the coordination, organisation and management of the commercial and economic activity of its members. Such JV is subject to the provisions which apply to civil companies that are regulated by the Greek Civil Code.
(b) A non-genuine JV, being an association exercising its own commercial activity and aiming to achieve a commercial purpose, registered with GEMI. Where such a joint venture has a specific corporate form, it is regulated by the respective provisions for such forms. If not, such JV is considered as a de facto general partnership and is subject to the provisions regulating general partnerships.
(c) A JV which has neither constituent document nor has it complied with the publicity formalities. Such joint venture is treated as a silent partnership without legal personality.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
JVs can be subject to our jurisdiction’s corporate law only in case the JV has a corporate form (non-genuine JV).

3. FORMATION AND REGISTRATION

3.1 Is there any restriction in the use of foreign language in the JV’s founding documents (both corporate and contractual)?
In the case of a JV formed via a private agreement, the language of such agreement is in the absolute discretion of the parties. In the case of a JV formed via a notarial deed, such notarial deed must be in Greek. Generally, for the registration of a JV with GEMI, all documents must be filed either in Greek or if in any other foreign language, accompanied by an official Greek translation.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?
A Notary Public is involved only in the case that a JV is formed via a notarial deed.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?
All applicable corporate formalities must be followed where a JV is formed as a corporate entity exercising commercial activity:
(i) as per Civil Law Partnerships, these must be registered with the local court;
(ii) as per other corporate forms, these must be registered with GEMI;
(iii) all corporate JVs should be registered with the pertinent tax authority and obtain a Tax Identification Number (TIN).
3.4 Are there any other formal requirements for the establishment of a JV?
There are no other formal requirements for the establishment of a JV.

4. PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
The JV can be used in every field of the economy without any restrictions.

5. PURPOSE

Can the JV be established for any purpose?
JVs can be established for any purpose. Usually, JVs are established for major construction projects, whether in the private or in the public sector.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
There is no legal requirement for a JV to have share capital. The members of a JV are free to determine whether they will contribute in cash and/or in kind for the achievement of the JV’s purpose.

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
References to cash contributions in the JV should be in Euro or the equivalent in Euro of foreign currency.

7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limits on the duration of a JV, however, it is common practice that the duration of a JV ends upon fulfilment of the purpose for which it was formed.

7.2 Are there statutory limitations on the number of members of the JV?
There are no statutory limitations on the number of members of the JV.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?
Public Private Partnerships are regulated through Law 3389/2005 (as amended and in force). In Greece, PPPs are contractual agreements (long-term, in general) between a public entity (being the contracting authority) and a private entity for the execution of a project and/or the supply of a service. In such partnership, the private entity undertakes the partnership objective’s implementation costs as well as a significant part of its financial, construction and availability risks or risks linked to the demand of the partnership’s objective, whereas the public entity determines the specifications and requirements which are necessary for the design, construction and operation of such objective.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?
To the extent that the creation of a JV has as its object or effect the coordination of the competitive behaviour of undertakings remaining independent, this coordination and any agreements remain subject to the provisions of the Law on the Protection of Free Competition\(^1\) in relation to agreements between undertakings and should be assessed as such\(^2\).

If the JV is formed for the purposes of a merger or acquisition, the respective merger control rules and agreements will apply. However, if a JV is established for the coordination, organisation and management of the commercial and economic activity of its independent members, the guidelines and policies to be applied will be subject to the restrictive agreements and practices established by the Greek and EU competition law.

---

\(^1\) Law 3959/2011

\(^2\) Article 1 para 1 and para 3, Article 7 para 3 of Law 3959/2011.
10. **DE FACTO COMPANIES/PARTNERSHIPS**

Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?

Please refer to the answer to Section 2.

11. **LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV**

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

All JV members are liable according to their participation. There may be internal agreements regarding the limitation or extent of a member’s liability, however, such agreements are not binding towards third parties. As per the JVs which are formed as Silent Companies, the silent (unseen) partner is not liable towards third parties, it will, however, be liable towards the other members of the JV.

12. **GOVERNANCE OF THE JV**

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

The parties to a JV Agreement can freely regulate their relations as members of the JV. If a JV operates under a particular company form, the applicable laws governing such company forms should be taken into account.

13. **TERMINATION**

13.1 What legal regime applies to the JV termination? Can a JV be terminated for just cause on the request of one party?

As mentioned in Section 12, there are no statutory limits on the duration of a JV. It is common practice however, that a JV’s duration is terminated after the completion/realisation of its objective or after its objective has become unattainable. JVs which have been formed for a definite period of time, are terminated upon expiration of such period. A JV can be terminated on the request of one party, only if such a request is based on serious grounds (i.e., breach of contract, substantial change of circumstances, etc.).

13.2 Is the termination of a JV subject to governmental or other approval?

The termination of a JV is not subject to governmental or other approval.

14. **CHOICE OF LAW AND JURISDICTION**

Are there constraints on the choice of law and choice of forum applicable to a JV?

The JV members are free to choose the law and forum applicable to the JV.

15. **VALIDITY AND AUTHORISATION**

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?

The only requirement for a foreign party to become a member of a Greek JV is that it should be tax registered in Greece and obtain a Greek TIN from the competent Tax Office.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?

The same rules apply.

16. **ECONOMIC OR FINANCIAL INCENTIVES**

Are there economic or financial incentives for foreign direct investments in a JV?

To promote foreign investments in Greece, the Government offers investment incentives largely in the form of tax advantages but also including interest rate subsidies and grants. These incentives are available on the same conditions for investment proposals from both local and foreign investors.

17. **MINIMUM INVESTMENTS/CONTRIBUTIONS**

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?

There are no mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member.
1. REGULATION

Are JVs expressly regulated in your jurisdiction?
No, the general rules of corporate and commercial law apply to both contractual JVs (where the parties do not establish a separate legal entity) and corporate JVs (involving establishment of a legal entity).

2. TYPES OF JVs

2.1 Which types of JVs are allowed?
(a) the contractual JVs (not resulting in the establishment of a separate legal entity) which establishment is based on an agreement and is usually referred in the practice as consortium; or
(b) the corporate JVs (resulting in the incorporation of a legal entity) which are established in accordance with the rules on incorporation of a legal entity and function based on the founding acts of the respective legal entity.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
The establishment and corporate governance of corporate JVs are primarily regulated by the Companies Act \(^1\) (“Montenegrin Companies Act”).

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in the JV’s founding documents (both corporate and contractual)?
The agreement on establishment of a corporate JV, as the founding act of a new legal entity, is subject to submission for registration before the Montenegrin Central Registry of Commercial Entities and must be executed in Montenegrin (or in bilingual form).

In relation to the contractual JVs, there are no general restrictions regarding the language of the agreement, but bilingual form is preferred in case the agreement has to be presented to the local authorities.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?
(a) Corporate JV
In relation to corporate JVs, since the agreement on corporate JVs represents the founding act of the company, parties need to execute such agreement before a Notary Public (in Montenegrin ovjera potpisa). The role of the Notary Public is limited to confirmation of the identity of the signatories to the agreement. For more detailed analysis, please see the response under Section 6 below.

(b) Contractual JV
In relation to the contractual JVs, there are no general rules which would require participation of the Notary Public. In some specific cases, however, the agreements on contractual JVs must be executed before a Notary Public (in Montenegrin ovjera potpisa, solemnizacija), e.g. if the parties intend to transfer ownership on real estate or stake/share in the company.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?
(a) Registration requirements
(i) registration before the Montenegrin Central Registry of Commercial Entities
The corporate JV is established as of the date of its registration

---

\(^1\) Zakon o privrednim društvima, Official Gazette of the Republic of Montenegro No. 006/02, Official Gazette of the Republic of Montenegro, No. 017/07, 080/08, 040/10, 036/11 and 040/11.
before the Montenegrin Central Registry of Commercial Entities, following the submission of a specific application and the founding documents. In case of performance of business activities that are subject to special authorisations (e.g. healthcare, banking, etc.), specific authorisations need to be obtained prior to initiation of performance of the specific activity.

(ii) tax registration
(1) for corporate JVs, tax registration is performed together with the registration with the Montenegrin Central Registry of Commercial Entities; registration for VAT purposes can be performed together with the registration with the Montenegrin Central Registry of Commercial Entities or separately (2) as contractual JVs do not have the separate legal personality, they are not considered as taxpayers in Montenegro.

(b) Authorisations, licences or other governmental permits
(i) Merger control clearance
Corporate JVs (resulting in the creation of legal entity which operates on the market independently on a lasting basis) require prior concentration (merger) approval by the Montenegrin Competition Agency if either of the following two turnover thresholds is exceeded:
• the aggregate combined annual turnover of the JV partners generated in the Montenegrin market exceeds EUR 5 million in the financial year preceding the concentration; or
• the aggregate combined annual turnover of JV partners generated worldwide exceeds EUR 20 million in the financial year preceding the concentration, if at least one of the JV partners generated a turnover in the Montenegrin market of at least EUR 1 million, in that same period.
(ii) Licences/authorisations in relation to regulated activities
For JVs active in the regulated fields, additional prior authorisations by the competent regulatory bodies may be required.

3.4 Are there any other formal requirements for the establishment of a JV?
No.

4. PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?

In general, the corporate JV structure may be used in every field of the economy, subject to obtaining specific authorisations, licences and/or other permits where required.

For contractual JV, while there are no express prohibitions, an analysis on a case-by-case basis needs to be performed in order to confirm the compatibility with specific regulatory requirements.

5. PURPOSE

Can the JV be established for any purpose?
As long as the purpose is not illegal or contrary to public policy, the JV may be established for any purpose subject to comments under Section 4.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
Corporate JVs can be established in the form of a joint-stock company (“JSC”) (in Montenegrin akcionarsko društvo, a.d.) or in the form of a limited liability company (“LLC”) (in Montenegrin društvo sa ograničenom odgovornošću, d.o.o.).

Shareholders’ quotas are calculated in the proportion to their contribution to the share capital. The prescribed minimum share capital for a JSC is EUR 25,000 and the prescribed minimum share capital for an LLC is EUR 1.

The contributions can be in the form of:
(a) monetary contributions; and
(b) non-monetary contributions (which can consist of assets and rights).

Labour and services cannot represent shareholders’ contributions. Shareholders’ contribution to the share capital of a company must be paid or entered in before the establishment of the JV company.

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
The share capital must be indicated in EUR currency.
7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limits on the duration of JVs save in case of concessions which are further elaborated under Section 8.

7.2 Are there statutory limitations on the number of members of the JV?
(a) Corporate JV
In case of a JSC, there are no statutory limitations on the number of members of the JV. In case of an LLC, the maximum number of members is 30.

(b) Contractual JV
There are no statutory limits on the number of members for contractual JVs.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?
According to the Concessions Act², a concession is established based on a Concession Agreement between a grantor and a concessionaire, whereas the Concession Agreement has to be executed in written form and for a predefined period of time. Under the Concessions Act, a grantor can be: (i) the Parliament of Montenegro; (ii) the Government of Montenegro; (iii) a local government; (iv) the Capital City; and (v) the Capital (Priestonica).
On the other hand, a concessionaire is defined as a local or foreign company or other legal entity, sole trader or individual that has acquired the right to a concession, a consortium or other forms of business relationships with contractually regulated rights and obligations.

The concession granting procedure is initiated via a concessioning act, executed by one of the grantors, or through the initiative of an interested party. After the Government of Montenegro adopts the concessioning act, the concession is granted via a public call.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?
The Competition Protection Act¹ ("Competition Act") prohibits agreements having as their object or effect prevention, restriction or distortion of competition, in line with Article 101 of the Treaty on the Functioning of the European Union. Non-compete obligations generally constitute anti-competitive restrictive agreements which are prohibited under the Competition Act. However, non-compete obligations may sometimes be necessary in the context of mergers and acquisitions in order to prevent vendors to undermine transactions by competing with their old business. In the contexts of JVs, non-compete obligation serve the purpose to prevent the shareholders in the JV from competing with the newly created entity on the market. These types of restrictions, called ancillary restraints, may therefore be allowed in JVs and will not be scrutinised by the Montenegrin Competition Agency, provided that they are (i) directly related to the transaction in question; (ii) objectively necessary, and (iii) proportionate in the context of the transaction in terms of their subject-matter, duration and territorial scope.

The Montenegrin Competition Agency or any other state authority did not render any specific anti-trust rules, guidelines or policies which are applicable to the JV Agreements - only the general anti-trust rules apply.

10. DE FACTO COMPANIES/PARTNERSHIPS

Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?
There are no such rules.

---

¹ Zakon o koncesijama, Official Gazette of the Republic of Montenegro, No. 008/09.
² Zakon o zaštiti konkurencije, Official Gazette of the Republic of Montenegro, No. 044/12 and 013/18.
11. LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

(a) Contractual JV
Parties to a contractual JV are free to regulate their relationship as they find fit, including the limitation of their liabilities. These limitations, however, would be enforceable only between the JV members and could not affect potential third party’s claims. Furthermore, the liability limitations cannot apply in the case of wilful misconduct and gross negligence.

(b) Corporate JV
In the case of corporate JV, the members of the JV, i.e. the shareholders, there is a statutory limitation of liability for the JV’s (company’s) obligations, in that the shareholder’s risk/liability is limited to their contribution to the company’s share capital.

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) Contractual JVs - there are no provisions relating to the decision-making process (for example, quorum, voting rights or partners decision-making). Consequently, the parties are free to mutually agree on such aspects based on the JV Agreement. Please see comments under Section 11.

(b) Corporate JV – there are particular rules pertaining to the governance of every type of company as listed below.

(i) Joint-stock company:
A JSC is obliged to have several mandatory corporate bodies, as stated below:
- shareholders’ assembly – which is the highest corporate body in a JSC;
- board of directors – which is responsible for the management, must have at least three members, while the number of members must always be odd;
- executive director and secretary – which are responsible for the execution of the decisions of the board of directors; additionally, the same person can be appointed at both of these positions;
- independent auditor – who is responsible for the auditing of the JSC’s financial statements; and in some cases
- board of auditors – which oversees the auditing procedure.

(ii) Limited liability company:
The only mandatory corporate bodies of an LLC are:
- executive director – who is responsible for the performance of the day-to-day business and execution of the decisions of the shareholders; and in some cases
- board of auditors.

While the shareholders’ assembly is not a mandatory corporate body of the LLC, the shareholders do have the competence a shareholders’ assembly would generally have.

The directors who represent the LLC or JSC, carry out management duties in the interest of the LLC or JSC, while they must observe limitation in their authorisations as provided in the foundation act, shareholders’ agreements, company’s by-laws and corporate resolutions adopted/issued by corporate bodies. The company needs to have at least one director.

13. TERMINATION

13.1 What legal regime applies to the JV termination? Can a JV be terminated for just cause on the request of one party?

(a) Contractual JVs
There is no specific legal regime applicable to the termination of a contractual JV. Consequently, the general rules of the Montenegrin Obligations Act for the termination of contracts apply.

Several circumstances may lead to the termination of a joint venture, e.g. expiry of the term; achievement of the purpose of the joint venture; insolvency of the active party; cancellation due to failure of one party to perform its obligations, etc. The parties may also agree on other cases of termination, including unilateral termination (the termination without cause).

4 Zakon o obligacionim odnosima, Official Gazette of the Republic of Montenegro, No. 047/08, 004/11 and 022/17.
(b) Corporate JVs

Provisions of the Montenegrin Companies Act on liquidation of companies apply to the termination of the corporate JV. The liquidation can, as a voluntary way of termination of a company, be carried out via a regular or summary liquidation procedure. Both types of liquidation proceedings are initiated by the shareholders’ assembly.

13.2 Is the termination of a corporate JV subject to governmental or other approval?
No governmental approval is required.
Other approvals include:
(i) Montenegrin Central Registry of Commercial Entities resolution;
(ii) for JVs active in regulated fields, termination may be subject to approval by the relevant regulatory authorities.

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?

In a contractual JV, the parties can choose the applicable law and the competent forum, pursuant to the general rules of contract law.

In a corporate JV, the agreement between the shareholders (JV members) could be subject to foreign law and foreign forum but it would be superseded by mandatory norms of the Montenegrin law.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
There are no specific rules relating to validity and authorisation of JVs with foreign members compared with JVs with national members.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdictions?

The same rules and regimes apply to JVs with local members or members incorporated under or governed by the laws of foreign jurisdictions.

16. ECONOMIC OR FINANCIAL INCENTIVES

Are there economic or financial incentives for foreign direct investments in a JV?

Foreign investors enjoy a "national treatment" under the Foreign Investments Act\(^5\) ("Foreign Investment Act") meaning that they are guaranteed the same rights as the national investors. Also, a rule of vested right is applicable – the investors are granted full protection of rights obtained on the basis of the investment.

On the other side, the Foreign Investment Act does not prescribe any specific economic or financial incentives for foreign investors. It rather stipulates the establishment of government bodies (the Montenegrin Investment Promotion Agency and the Montenegrin Foreign Investment Council), responsible for performing activities related to promoting foreign investments.

17. MINIMUM INVESTMENTS/CONTRIBUTIONS

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?

There are no mandatory minimum equity investments or contributions in-kind thresholds triggered by the nationality of a JV member.

---

5 Zakon o stranim investicijama, Official Gazette of the Republic of Montenegro, No. 018/11 and 045/14.
1. REGULATION

Are JVs expressly regulated in your jurisdiction?

JVs can be established as a new legal entity or as a partnership of two or more existing legal entities, for long-term cooperation or created for a specific purpose (mostly as Special Purpose Vehicles ("SPVs"), for example, for the purpose of concluding a contract for establishing a public-private partnership or concession). In order to create JVs in any of the abovementioned forms, the provisions of the Law on Obligations (the "LO") and the Law on the Trade Companies (the "LTC") apply. The Law on Protection of the Competition (the "LPC"), which contains a provision where it regulates that JVs that operate as an autonomous economic entity on a long-term basis are considered a concentration, needs to be taken into consideration as well.

The practice of using JVs in North Macedonia is not overly developed. In most cases the JVs are created by a merger of two existing legal entities for a special purpose or for establishing a long-lasting partnership.

2. TYPES OF JVs

2.1 Which types of JVs are allowed?

Macedonian law enables the creation and existence of both contractual and corporate JVs.

(a) Contractual JV

The basis for the contractual JVs is found in the LO from Article 667 to Article 703. Contractual JVs can be established with an agreement for partnership, when two or more partners oblige to join their property and labour or part of the property and labour, for the purpose of joint realisation of property gains and division of the gains (in the form of profit). Contractual JVs are not considered as legal entities. The property of the contractual JVs comprises the contributions of the partners (principal capital) and the property acquired by its operation. The partners are co-owners of the property of the contractual JV.

Each of the partners is obliged to invest in the JV. The contribution may consist of objects, money, rights and labour. Unless otherwise agreed, the contribution of each of the partners is equal. Contributions stipulated by the agreement for JV can be further increased only with the consent of all partners. The profits and losses of the contractual JV are divided between the partners in a manner determined with the agreement. If the agreement does not stipulate how the profits and losses are distributed, it is assumed that the partners have an equal share in the division.

Partners in a contractual JV can be natural and legal entities. The legal entities can be incorporated in any form under the LTC: general partnership, limited partnership, limited liability company ("LLC"), joint-stock company ("JSC") and limited partnership with shares.

Contractual JVs are also established under the Law on Concessions and Public Private Partnership ("LCPPP")4. Public private partnership agreement ("PPP") is a form of a contractual JV concluded between the public and the private partner (see Section 8).

(b) Corporate JV

Under the LTC, the corporate JV can be created as a trade company, in one of the following forms: general partnership, limited partnership, LLC, JSC and limited partnership with shares.

---

2 Official Gazette No. 28/2004, effective 08 May 2004, as amended.
2.2 Are corporate JVs subject to your jurisdiction’s corporate law?

Yes, since corporate JVs are constituted as trade companies, they are subject to the rules of corporate law. Corporate law is in most part legislated in the LTC. Each of the five types of trade companies, as specified in Section 2.1, has some distinctive characteristics that differentiate it from the other types.

The main characteristics of trade companies are as follows:

(a) In the general partnership, the partners are liable to the creditors regarding the company’s obligations unlimitedly and jointly with their entire assets. In the LLC and the JSC, the shareholders are not liable for the company’s liabilities. In the limited partnership, there is a mixture of the two types of liabilities depending on the partner’s status in the company.

(b) For the incorporation of general partnership, there is no minimum principal capital requirement since the partners are liable with their entire assets. This also applies to limited partnership. On the other side, the LTC requires minimum principal capital for the establishment of LLCs and JSCs. The minimum value of the principal capital for the establishment of LLC is EUR 5,000 in MKD counter value. The minimum nominal amount of the principal capital for the establishment of JSC depends on the manner of incorporation of the JSC. If the JSC is incorporated simultaneously without a public call for subscription of shares, the minimum principal capital needs to be EUR 25,000 in MKD counter value, and when the JSC is incorporated successively with a public call for subscription of shares, the minimal nominal amount of the principal capital needs to be at least EUR 50,000 in MKD counter value.

(c) The transfer of shares in general partnerships, LLCs and limited partnerships is conducted in a different and more complex manner, unlike the simpler procedure of share transfer in JSCs. The transfer of shares in the former is made by a notarised agreement which needs to be registered in the Central Registry of North Macedonia (“Central Registry”) while in the JSC, the shares are unlimitedly transferable and free to be traded with at the secondary securities market. The shares of JSC are recorded in the shareholders book of the JSC which is maintained by the Central Securities Depository AD Skopje (“Central Securities Depository”) in electronic form and all the changes in the book are registered according to the transfer of the shares by trading on the stock exchange or through a non-commercial transfer (by way of an agreement for gift; execution of a securities pledge agreement; inheritance; execution of a court decision, etc.).

(d) JSCs have several options on disposal for cumulating funds, such as privileged shares, non-voting shares, corporate bonds, etc. These options are not accessible to general partnerships, LLCs and limited partnerships because the shares in these types of trade companies cannot be designated in as many types as those in JSCs.

(e) The contribution of partners in a general partnership, LLC, limited partnership and JSC can be monetary and non-monetary. However, only in the case of the general partnership and limited partnership, contributions in the form of labour and services are permitted.

(f) The establishment of pledge over the shares of a general partnership, LLC and limited partnership is done through a notarised agreement. The pledge should be noted in the book of shares of the company and to be registered with the Pledge Registry maintained by the Central Registry (“Pledge Registry”). In case of a limited partnership, a pledge may be established only with the consent of all members. The establishment of pledge over the shares in the JSC is made by concluding a pledge agreement, and entry of the pledge in the Pledge Registry or by concluding a pledge agreement and transferring the shares into possession of the pledgee. The pledge is also registered in the Shareholders’ Book of the JSC. In case of a pledge whose value is at least five per cent of the value of the capital of the JSC whose securities are listed on the official securities market, the JSC is obliged to immediately submit to the Commission the report on the establishment of the pledge, and within five working days at least in one daily newspaper in North Macedonia.

(g) The management in a JSC can be entrusted to a board of directors in the one-tier system of management or management board and a supervisory board in the two-tier system of management. In a limited partnership, limited partnership with shares and LLC, the management is carried out by a manager/s or by the body in which they are organised.
Of all types of trade companies, the most frequently established are the LLC and the JSC. The general partnership, limited partnership and limited partnership with shares are not commonly used in North Macedonia because of the unlimited liability of all or some of the partners in these types of companies.

When establishing a corporate JV, besides the conclusion of the articles of association, the partners can enter into some type of a JV Agreement in order to regulate the operating of the new legal entity. This agreement is a standard inter partes contractual agreement regulated under the LO (the provisions for contractual JVs can be applied here) and although it is not required under the law, in case it is concluded, it needs to be in accordance with the provisions of the LPC and the rules on concentrations (the LPC considers JVs a concentration arising from a change of control on a long-term basis, as a result of the acquisition of direct or indirect control of all or parts of one or more other undertakings by one or more persons already controlling at least one undertaking or; one or more undertakings, through the purchase of securities or property, by an agreement or otherwise prescribed by law).

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in the JV’s founding documents (both corporate and contractual)?

Neither the LTC nor the LO prescribe a restriction for the use of a foreign language in a JV’s founding documents. The Law on the use of the Macedonian language prescribe that Macedonian language should be used in trade companies. This can apply also to the JV’s founding documents. Therefore, it is recommended that when the JV is established by foreign entities, its founding documents to be composed both in Macedonian and in the foreign language. Additionally, considering some specifics in the establishment of corporate and contractual JVs, some rules should be noted.

(a) Contractual JV

Under Macedonian law, contractual JVs do not need to be registered. The LO only prescribes that the partnership agreement by which a contractual JV is established needs to be in a written form, without making any requirements for the use of Macedonian language or for the notarisation of the agreement.

(b) Corporate JV

Corporate JVs must be registered in the Trade Registry maintained by the Central Registry. The registration procedure requires that the founding documents, including the articles of association, to be submitted together with the application for registration. If the founding documents are in a foreign language, they must be presented in original along with a Macedonian translation made by a sworn translator.

In case of a dispute which arises out of the corporate JV Agreement, the agreement needs to be submitted to the court in North Macedonia in the original language, along with a translation in Macedonian language.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?

(a) Contractual JV

The JV Agreement may be signed in simple written form. There are no further requirements for notarisation of the agreement unless the parties to the agreement decide upon such notarisation before a Notary Public.

(b) Corporate JV

The articles of association of the JV in the form of general partnership must have notarised signatures. LLCs and JSCs are established by a written agreement with certified signatures of the shareholders with an electronic signature of a registration agent, or in electronic form signed with the electronic signature of the shareholders of the company through the e-registration system. All individuals who will be registered with the Trade Registry as representatives of the JV must present a notarised sample of their signatures.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are

the conditions for that?
While the establishment of corporate JVs needs to be registered in the Trade Registry, for the contractual JVs there is no such obligation under the Macedonian laws.

In some special cases when the JV is intended to perform some type of regulated activity, such as banking, insurance, health care, production of military equipment, etc., there is a requirement to obtain authorisation/licence by the regulatory authorities.

Additionally, some registration procedures may need to be respected in case of an in-kind contribution in the JVs that involves a real estate, an aircraft, an intellectual property right, etc. Real estates, intellectual property rights, aircrafts, etc. are registered in the relevant registries and in case of a transfer in their ownership, the transfer needs to be noted in those registries.

The LPC prescribes that the creation of a JV that carries out activities of an autonomous economic entity on a long-term basis shall be deemed concentration, as a result of acquisition of direct or indirect control over the whole or parts of one or more undertakings by one or more entities that already control at least one undertaking or one or more undertakings, by purchasing securities or assets, by an agreement or in any other manner prescribed by law.

Notification regarding the concentration needs to be submitted to the Commission for Protection of Competition ("CPC") if the joint aggregate turnover of all participating undertakings, generated by selling goods and/or services on the world market, exceeds the amount of EUR 10 million in MKD counter value, gained in the business year preceding the concentration, and where at least one participant has to be registered in the Republic of North Macedonia, and/or the joint aggregate turnover of all participating undertakings, generated by selling goods and/or services in the Republic of North Macedonia, exceeds the amount of EUR 2.5 million in MKD counter value, gained in the business year preceding the concentration, and/or the market share of one of the participants is more than 40 per cent or the aggregate market share of the participants in the concentration on the market is more than 60 per cent in the year preceding the concentration.

The participants in the concentration are obliged to submit a notification to the CPC prior to its implementation and following the conclusion of the JV Agreement.

3.4 Are there any other formal requirements for the establishment of a JV?
There are no other formal requirements for the establishment of contractual JVs. In the case of corporate JVs, the rules for establishment of the particular type of trade company apply.

4. PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
In general, there are no specific restrictions for the economic field where the JV will have its main activity. However, as mentioned in Section 3, there are certain economic sectors that are strongly regulated such as banking, insurance, financial services, pharmaceutical, energy, etc. and the law introduces specific legal requirements with respect to the corporate form and status (for instance, a minimum amount of share capital, qualification of the board members, etc.) of the companies operating in these economic sectors.

5. PURPOSE

Can the JV be established for any purpose?
Macedonian laws do not impose restrictions on the purpose for which a JV can be established. The partners to the JV can establish the JV for completing a special purpose or for the purpose of a long-term partnership.

In a lot of cases, JVs are created in order to be more competitive in a public procurement procedure, a concession or in a public-private partnership. In other cases, this is done if the legal entity or consortium selected as the most favourable bidder in such a procedure is a foreign company and needs to establish a legal entity based in North Macedonia.

Some JVs which are performing a registered activity must operate within the scope of that activity, as well, where applicable, within the scope of the authorisation/licence they have obtained from the regulatory authority. This is especially the case in some areas such as banking, insurance, etc.
6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
(a) Contractual JV

When signing an agreement for establishment of a contractual JV, each partner obliges to invest in the JV a contribution that may consist of objects, money, rights and labour. Unless otherwise stipulated, contributions made by the partners are equal. When the agreement for JV is concluded indefinitely, partners to the JV may leave the JV at any time, except when it is inconvenient. The partner is obliged to cancel its participation three months in advance before the end of the accounting year. The partner who is leaving the JV will be reimbursed in-kind for the objects which he has invested in the JV, and will be paid in cash for the objects and rights, which cannot be restored, and if their value is not specified in the agreement, with the value which the contribution had at the time when it was invested. The value of the contribution which is consisted of labour of the partner is not reimbursed. In addition, part of the value of the common property remaining after the deduction of the value of the contributions of all partners, and which is proportionate to the input of the partner in the increase in the value of the contribution, will be paid to the partner who is leaving the JV. A partner cannot dispose of any part of the property owned by the partners or with any separate contribution in that property. Through the duration of the JV, partners cannot require division of the common property of the JV.

(b) Corporate JV

The contributions in a corporate JV can be made in cash (monetary contributions) and in objects (movable and immovable) and rights having asset value, that can be appraised and expressed in cash (in-kind contributions) or only in cash, objects and rights. As an exception (in general partnership and limited partnership), the partners may also contribute labour and services. The contributions cannot be returned to the partners, except in the cases expressly determined by the LTC.

Monetary contributions can be denominated in domestic or foreign currency. Prior to filing the application for entry of the company in the Trade Registry, the shareholder does not have an obligation for payment of the monetary contribution, nor for entering the non-monetary contribution. In LLCs, if during the company’s establishment the full amount of the monetary contribution has not been paid, the remainder of the contribution has to be paid within one year from the day of the publication of the entry of the company’s incorporation. In JSCs, the shareholder needs to pay the shares upon the notice of the management body. The shareholder, who still does not make the payment, is not entitled to vote until he executes the due payment and the legally determined default interest.

When an in-kind contribution is invested in the JV, the business name, the name, i.e. the name of the shareholder contributing the in-kind contribution, detailed description of the in-kind contribution and the appraised value expressed in cash need to be entered in the articles of association, the statute or the decision regarding the increasing of the principal capital. The in-kind contribution in the LLC, the limited partnership and limited partnership with shares needs to be appraised by an authorised appraiser (one or more) appointed by the partners or the bodies of the JV, from the list of authorised appraisers.

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?

According to the LTC, the minimal principal capital of LLCs and JSCs is indicated in EUR in MKD counter value. Furthermore, the LTC prescribes that the principal capital can be denominated in domestic or foreign currency. Therefore, it is not contrary to the LTC if the principal capital is indicated through reference to a foreign currency.

7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?

There are no provisions which limit the duration of JVs (both contractual and corporate). A JV can be established for a fixed period or for an indefinite period of time.

7.2 Are there statutory limitations on the number of members of the JV?

For contractual and corporate JVs, the minimum number of partners in the JV is two. There are no limitations as to the maximum number of partners to the JV. However, if the contractual JV is established as a new legal entity in the form of an LLC, it should be noted that an LLC can have 50 members, at most.
8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?

JVs are established in accordance with the LCPPP. The LCPPP regulates the award of a concession for goods of general interest and an agreement for the establishment of a PPP. The agreement for PPP is a form of contractually regulated, long-term cooperation between the public partner and the private partner and can be considered as a form of a contractual JV.

The public partner, i.e. public sector body can be the Republic of North Macedonia, municipalities, public enterprises, public institutions, trade companies established by the Republic of North Macedonia and the municipalities and the companies where the state or the bodies of the municipalities have an ownership-based direct or indirect influence (when they own the major part of the capital of the company, have the majority votes of the shareholders and appoint more than half of the members of the management or supervisory board) and other legal entities that, in accordance with the law, exercise public powers.

The LCPPP also expressly allows a consortium, i.e. a contractual JV, to bid in the procedure for concession (consortium is defined as a group of economic operators that jointly submit an offer or an application for participation, without having a special legal capacity). Furthermore, this law regulates that an SPV may be established by the private partner or the concessionaire for the purpose of concluding an agreement for establishment of a public-private partnership or for concession for goods of general interest and/or for implementation of a public-private partnership or concession for goods of general interest. When the SPV is established by a consortium, it can be considered as a type of a corporate JV for achieving a specific purpose – concluding of an agreement for public-private partnership or a concession.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?

The LPC regulates the prohibited forms of prevention, restriction or distortion of competition, the measures and procedures in regard to restrictions of competition. The implementation of this law is supervised by the CPC.

The JV partners must take into consideration that under the LPC, the agreements, decisions and concerted practices that have the object or effect of distortion of the competition by, for instance, fixing the purchase or selling prices or other trading conditions, control of productions or establishing sales quotas, sharing of the market, limiting of import and export, etc., are prohibited. Such agreements and decisions, or their specific provisions that are prohibited under the LPC, shall be null and void.

However, this prohibition shall not apply to agreements, decisions of associations of companies and concerted practices that contribute to the improvement of the production or distribution of goods and services or to the promotion of technical or economic development, provided that they: do not impose unnecessary restrictions for the attainment of the objectives or do not afford the possibility of eliminating the competition in respect of a substantial part of the products or services concerned. This exemption of the prohibition under the LPC is referred to, inter alia, vertical agreements on exclusive distribution right, selective distribution right, exclusive purchase and franchise right; horizontal agreements on research and development, or specialisation; agreements on transfer of technology, on licence, or know-how.

Nevertheless, in order to be exempted from the prohibition under the LPC, there are market control requirements that have to be fulfilled, as well as certain restrictions and obligations which shall not be contained in the agreements which are exempted from the prohibition under the LPC (regulated by a Decree from the Government of the Republic of North Macedonia for each type of agreements, for example, the Decree on block exemption of certain types of vertical agreements or the Decree on the closer conditions for block exemption of certain types of agreements on transfer of technology, licence or know-how).

Furthermore, agreements of minor importance do not fall under the abovementioned prohibition. As an agreement of minor importance is an agreement wherein the joint market share of the parties in the agreement and the companies under their control on the market does not exceed the threshold of 10 per cent in the case of horizontal agreement or the threshold of 15 per cent in the
case of vertical agreement (where it is not possible to determine whether the agreement is horizontal or vertical, the threshold of 10 per cent applies).

10. **DE FACTO COMPANIES/PARTNERSHIPS**

Must the contractual JV satisfy any conditions to avoid falling within the definition of *de facto* company/partnership?

The Macedonian law does not recognise the concept of ‘*de facto* company/partnership’. The company can be treated as a legal entity only on the grounds of a special statutory provision and if duly registered in the Trade Registry. On the other hand, the contractual JV is not a legal entity, considering the provisions of the LO regulating the agreement for partnership. The parties to the agreement for partnership (the partners of the contractual JV) have the right to participate in the distribution of profit as well as to share the loss.

The CPC recognises the term ‘*de facto* merger’ which occurs when two or more previously independent companies or parts of companies agree to combine their economic activities and form one economic entity, without a legal merger. A precondition for establishing of ‘*de facto* merger’ is the existence of permanent, single economic management.

11. **LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV**

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

(a) **Contractual JV**

The contractual JV partners can agree on the manner of the profit and loss distribution. When they do not exercise that right, it is assumed that the partners shall have equal participation in the distribution of the profit and loss. The provision which restricts a partner to participate in the profit distribution and/or to share the loss is null and void.

For the contractual JV’s obligation toward third parties, the partners are jointly liable. If the partners agree to limit their liability to the amount of their contributions, that contractual provision will have an effect on the creditors, only if the creditors were notified for this restriction prior to the conclusion of the agreement.

(b) **Corporate JV**

There is a general rule provided in the LTC that the profit and loss in a general partnership shall be proportionately shared among the partners, in proportion to the share of each partner in the company, unless the partners agreed otherwise in the articles of association.

Each partner in the general partnership is liable towards any third parties for obligations of the general partnership, with his entire asset and jointly liable with the other partners. The provision in the articles of association which would exclude the full liability of the partners shall be null and void.

When the claim is justified, the third party can require fulfilment of an obligation from the partners, only after the non-fulfilment of the liability by the general partnership within the determined deadline.

The unlimited partners in the limited partnership have the same status as the partners in the general partnership being liable to third parties with their entire asset. On the other hand, the limited partners have the same status as the shareholders in the LLC and are not liable for the obligations of the company but only to the amount of their fully paid contribution.

When the JV is incorporated as LLC or JSC, the shareholders are liable for the company’s obligations up to the amount of their respective contributions. If the contributions are fully paid to the company, the shareholders are no longer liable for the company’s obligations. However, shareholders in LLC or JSC shall be unlimitedly and jointly liable for the company’s obligations if (i) they have abused the company as a legal entity in order to achieve personal goals; (ii) they have abused the company as a legal entity in order to cause damage to their creditors; (iii) they have disposed the company’s asset as if it was their own property; or (iv) they

---

have decreased the company's asset for their own benefit or to the benefit of a third party when they were aware or should have been aware that the company was not capable of settling its liabilities to third parties.

According to the LTC, all shareholders in the LLC have the right to participate in the profit distribution proportionally to their share in the company. However, the articles of association may provide that the right to participate in the profit distribution may be limited or excluded. The general rule is that the profit is distributed proportionally to the shareholders' shares, but the articles of association may provide another manner of profit distribution. The shareholder becomes the company's creditor up to the amount of the approved, but unpaid profit. In addition, the LTC provides that the shareholders are entitled to receive distributions of a portion of the remainder of the liquidation or bankruptcy estate.

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) Contractual JV
The partners in the contractual JV are entirely free to determine all aspects of the JV, as long as the JV Agreement does not contradict the mandatory legal provisions (for example, the exclusion of certain partners from participation in the profits and/or losses is prohibited) and the good morals.

(b) Corporate JV
The documents for incorporation of a corporate JV should not be in contradiction to mandatory legal provisions. Different mandatory rules have to be taken into consideration depending on the corporate form which is used for the JV. They are related to rules for raising capital, the increase and decrease of the principal capital; procedures for expulsion of shareholders if they violate their obligations; transformation and dissolution of the JV; procedures for passing resolutions, quorum requirements, powers of the management bodies, etc.

The decisions of the shareholders' meeting of LLC can be passed with a majority of the votes of the quorum unless the articles of association determine a larger majority (the quorum is consisted of shareholders who hold the majority of votes on the basis of the contributions unless the articles of association determine a larger majority). However, for the adoption of certain decisions, the LTC requires a higher majority. For instance, a majority of three-quarters of the total number of voting rights is required for approval of changes in the articles of association (the articles of association may provide a larger majority and additional conditions); an unanimous decision by the shareholders for change of the business activity of the company (unless otherwise provided in the articles of association). Decisions for increase or decrease of the principal capital are adopted in the same manner as approving changes in the company's articles of association.

The general rule which is applicable to JSCs is that the decisions of the assembly are adopted with a majority of the voting shares represented at the assembly unless the company's statute prescribes a greater majority or prescribes other conditions in relation to the majority for adopting decisions of the assembly. Such majority is needed, for example, for taking a decision to amend the company's statute, as well as, for the increase of the principal capital.

However, in some cases, a greater majority of the voting shares is needed. For instance, a majority of at least two-thirds of the voting shares is needed for the following decisions: regular decrease of the principal capital of the company; termination of the company; approval of a major business deal, involving assets in value of more than 50 per cent of the bookkeeping value of the company's assets; transformation of a company from one form into another.

In addition, the following decisions require a majority vote of at least three-quarters of the voting shares represented at the assembly: authorisation regarding the exclusion of the right for subscription of the new shares, exclusion and limitation of the priority right during the subscription of the newly issued shares.

In relation to the decision-making process in the JSC, it is a general rule that the decisions are adopted by a majority vote of the quorum (at least half of the members shall be present at the meetings of the board of directors/management board or the supervisory board) unless greater majority is required by the law or by the articles of association. According to the LTC, a unanimous vote of the board of directors or supervisory board is needed as prior consent to concluding a significant business agreement which value is appraised to be between 20 and 50 per cent of the bookkeeping value of the company's assets. The decision to
approve a business deal with an interested party shall be adopted by a majority vote of the members of the board of directors or the supervisory board that have interest in the business deal.

Generally, for all forms of JV, one way of financing of the JV’s activities is by granting loans (at market interest rates) or providing equity capital. An additional option available for the shareholders in an LLC is granting an Additional Money Contribution ("AMC") to the LLC, following a decision of the shareholders’ meeting that has to approve the granting of the AMC. The significance of the AMCs is that the company is not required to pay interest on those funds. In addition, the shareholders may adopt a decision to add the reserves and the profit of the company into its principal capital. The existing shareholders have priority rights to take over new contributions proportionally to the previously acquired contributions in the company’s principal capital unless otherwise determined in the articles of association.

In the JSCs, the increase of the principal capital can be carried out by contributions (by issuing new shares), a conditional increase of the principal capital, approved capital and increasing the principal capital with the company’s assets (transformation of the profit, reserves and non-distributed profits).

The JSCs have another type of financing source, only available to them – issuing 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).

13. TERMINATION

13.1 What legal regime applies to the JV termination?
Can a JV be terminated for just cause on the request of one party?
(a) Contractual JV
A contractual JV can terminate in the following cases: expiring of its term (if the contractual JV is established for a definite term); an agreement of the partners; request by any partner to the court for termination of the contractual JV when one of the partners does not fulfil its obligations towards the contractual JV, etc. The provision in the contract between the JV partners according to which the partners waive the right to request termination of the contract or exclusion of a partner shall be null and void.

(b) Corporate JV
The termination of each form of corporate JV is regulated in the LTC. The general partnership may be terminated by a decision of all partners; the limited partnership - by a decision of all limited and unlimited partners; the LLC - by a decision of the general meeting of shareholders adopted with a majority of at least three-quarters of the total number of votes (unless the articles of association provide for a higher majority; if the articles of association provide for a lower majority, that provision will be null and void); and the JSC and the limited partnership with shares - by a decision of the assembly of shareholders adopted with a majority of at least two-thirds of the capital (unless the company’s statute provides for a higher majority and additional conditions for adoption of the decision).

After termination of the corporate JV in any form, a liquidation procedure will be started. If the JV has an outstanding debt towards creditors that cannot be paid, a bankruptcy procedure will be initiated.

13.2 Is the termination of a JV subject to governmental or other approval?
The contractual JV formed under a PPP agreement can be terminated, inter alia, with a unilateral termination of the agreement by the public partner or the private partner and by a mutual agreement of the partners.

The termination of corporate JVs is generally not subject to approval, except for JVs operating in regulated industries (such as banks, insurance companies, etc.) which have to require special permission before going into voluntary termination and liquidation (for example, banks have to obtain a prior consent by the Governor of the National Bank of Republic of North Macedonia).

14. CHOICE OF LAW AND JURISDICTION

14.1 Are there constraints on the choice of law and choice of forum applicable to a JV?
The partners in a contractual JV are entitled to choose the law governing the agreements, including the right to choose foreign
law as the governing law. However, the governing law of agreements that are related to real estates is exclusively the law of the country where the real estate is located. In addition, the parties are entitled to choose the governing law of their non-contractual obligations. Nevertheless, if all relevant elements of the situation at the time of the event causing the damage occurred are located in another country, which is not the country whose right has been chosen as governing by the parties, the choice of the parties will not affect the application of the provisions of that other country’s law, whose application cannot be excluded by agreement.

In a corporate JV, the JV partners (the shareholders of the corporate JV) can conclude an agreement between them, with the right to choose the governing law of that agreement. Nevertheless, if the agreement is regulating rights and obligations of the agreement’s parties related to a real estate, the law of the country where the real estate is located is exclusively governing law.

The JV partners are generally entitled to choose a foreign jurisdiction, with some exceptions where certain cases fall within the exclusive jurisdiction of the courts/public officials of North Macedonia. Those cases are disputes related to rights over real estate located in North Macedonia or disputes over intellectual property rights registered in North Macedonia, disputes related to the establishing, termination and statutory changes of legal entities, disputes related to the validity of registration in the public registries maintained in the Republic of North Macedonia, the approval and conducting of enforcement.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
JVs with foreign partners are allowed in North Macedonia. There is no requirement for a minimum/maximum number of local parties in such a JV, i.e. two or more foreign partners can set up a JV to do business in North Macedonia without any local partners. The relevant rules of the Macedonian law for subsidiaries of foreign entities will be applied in this situation.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?
JVs with partners incorporated under, or governed by, the laws of a foreign jurisdiction and JVs with partners incorporated under the law of North Macedonia are with equal rights and obligations. However, the Law on Ownership and Other Real Rights provides that foreign natural persons and legal entities cannot acquire the right of ownership of agricultural land. Thus, a member of the contractual JV, which is incorporated under, or governed by, the laws of a foreign jurisdiction, cannot acquire the right of ownership of agricultural land.

There are not any other restrictions on the business activities of the entities (including JVs). However, according to the Law on Prevention of Money Laundering and Financing of Terrorism (the “AML Law”), the legal entities are obliged to disclose their beneficial owners in the Registry of Beneficial Owners, maintained by the Central Registry of the Republic of North Macedonia, which has to be established according to the AML Law. Such Registry has not been established yet, but that is expected to be done by October 2019.

16. ECONOMIC OR FINANCIAL INCENTIVES

Are there economic or financial incentives for foreign direct investments in a JV?
According to the Law on Financial Support of Investments, the Government of the Republic of North Macedonia provides state aid to legal entities registered in the Trade Registry. The total financial support cannot be more than 50 per cent of the amount of the incurred eligible costs, where the exact amount of the financial support depends on the total value of the investment project. There is financial support for investments (for new employments, establishing and promoting the cooperation with local suppliers, capital investments and revenues growth, etc.) and financial support for competitiveness (increasing the competitiveness on the market and conquering markets and sales growth).

---

8 Official Gazette No. 120/2018, entered into force 07 July 2018.
Furthermore, the Law on Technological Industrial Development Zones provides the following incentives for investing in the technological industrial development zones: tax exemptions and reliefs and procedures, customs exemptions and reliefs, aid for training and improvement and other incentives such as participation of the Government in the costs for construction of a facility within the zones.

17. MINIMUM INVESTMENTS/CONTRIBUTIONS

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?

According to Macedonian law, an individual contribution in an LLC cannot be less than EUR 100 in MKD counter value and the contribution has to be expressed in a round number and divisible by one hundred. The Macedonian law also provides that the nominal value of a share in a JSC cannot be less than EUR 1 in MKD counter value. Furthermore, for certain types of regulated activity there are minimum capital requirements set forth in the legislation (e.g. for non-bank financial institutions the minimum capital required under the law is MKD 6 million, or approximately EUR 97,579).

---

1. REGULATION

Are JVs expressly regulated in your jurisdiction?
Yes, contractual JVs (where the parties to association do not establish a separate legal entity) are expressly regulated under the Romanian jurisdiction, while for corporate JVs (involving establishment of a new legal entity) the general rules on commercial companies apply. Also, special rules apply to certain special associations/partnerships.

2. TYPES OF JVs

2.1 Which types of JVs are allowed?
Under Romanian law, the following joint ventures can be established:
(a) Contractual JVs (not resulting in the establishment of a separate legal entity) are established based on the execution of an agreement by the involved parties; or
(b) Corporate JVs (resulting in the incorporation of a new legal entity) are established with the observance of rules for the incorporation of the new legal entity and function based on shareholders agreements/articles of association of the respective legal entity, with the observance of the Companies Law No. 31/1990 ("Companies Law") and Civil Code rules and requirements.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
The establishment of a corporate JV, as well as the activity of companies, are being primarily regulated at national level by the Companies Law and Civil Code.

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in the JV’s founding documents (both corporate and contractual)?
In principle, the JV Agreement/founding documents may be executed in any foreign language chosen by the parties. However, the following should be considered: (i) articles of association should also be available in Romanian language (either as original signed document or official translation, as the case may be); (ii) in dealing with Romanian authorities (such as Trade Registry Office, tax authorities, courts etc.), a (formal, certified and notarised) Romanian translation of foreign language documents will be necessary for all documents to which the Romanian entity is a party.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?
In principle, there are no formalities for entering into a JV (except as provided below); however, the written form is required ad probationem, as a proof of execution of the partnership (i.e. enforceability and court admittance of various proofs).

Circumstances in which authentication of specific JV incorporation documents is required:
(a) the articles of association of a corporate JV must be executed in authenticated form (i) to the extent immovable assets are being contributed to the share capital, or (ii) if a joint-stock company is incorporated through a public offering, or (iii) in case of establishment of a general partnership (in Romanian – “societate in nume colectiv”) or a limited partnership (in Romanian – “societate in comandita simpla”);
(b) the agreement establishing a contractual JV must be executed in authenticated form to the extent immovable assets are being contributed to the association;
(c) various documentation required for the establishment of a company needs to be executed in authenticated form (director and/or shareholder affidavits, as well as signature specimens must also be submitted to the Trade Registry Office in the authenticated form).

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?

Registration requirements:
(a) trade registry registration: a corporate JV is incorporated based on registration with the Trade Registry Office following submission of a specific file; in case of performance of activities subject to special authorisation (e.g. environmental, health, etc.), specific authorisations are required to be obtained prior to initiating the performance of the specific activity;
(b) fiscal registration: (i) for corporate JVs, the fiscal registration is performed together with the registration with the Trade Registry (via trade registry intermediation); registration for VAT purposes is performed separately (further to the observance of specific conditions/process); (ii) for contractual JVs, the fiscal registration is performed within 30 days as of the execution of the agreement establishing the contractual JV.

Authorisations, licences or other governmental permits:
(i) Merger control clearance in Romania: please refer to the relevant details presented under Section 9 below;
(ii) Licences/authorisations triggered by the performance of a regulated activity: for JVs active in regulated fields, additional prior authorisation by the competent regulatory is required.

3.4 Are there any other formal requirements for the establishment of a JV?
(a) Approval for use of specific words in the name of the JV: words like “national”, “Romanian”, “institute”, derivative thereof or expressions relating to public authorities or institutions may be used in the name of a company only with the prior approval of certain governmental or local authorities, depending on their impact.
(b) For contractual JV – specific accounting rules have to be observed in relation to the books of the JV.

4. PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
In principle, a corporate JV structure may be used in every field, subject to observance of specific authorisations, licences and/or other permits.

For a contractual JV, while there are no express prohibitions, an analysis on a case by case basis needs to be performed in order to confirm the compatibility with the specific regulatory requirements.

Moreover, certain industries or assets are qualified as strategic and establishment of joint ventures involving such assets are subject to approval by the Supreme Council for Defence based on a specific notification made through the Competition Council.

5. PURPOSE

Can the JV be established for any purpose?
As long as the purpose is not illegal or contrary to public policy, the JV may be established for any purpose subject to comments under Section 4 above.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
(a) Corporate JV
Preliminary comment: Considering that most of the corporate JVs are established as joint-stock companies (in Romanian – “societate pe actiuni” – “SA”) or limited liability companies (in Romanian – “societate cu raspundere limitata” – “SRL”), the information presented below details primarily matters of interest with respect to these two types of companies.
Types of contributions
(i) The types of contributions are common with the ones allowed by law upon establishment of a commercial company, as follows:
• cash contributions are mandatory for the setting up of all types of companies; however, no minimum level of cash contributions is provided by law;
• in-kind contributions can be brought upon incorporation of any type of company, subject to performing a valuation in relation thereof; contributions in receivables are assimilated by law to in-kind contributions but are not permitted for the case of limited partnerships by shares and SRL;
• labour/services contributions - such contributions are generally not accepted to the share capital of a company, regardless if upon incorporation or further increase of the share capital; however, considering the advantages which may be generated by such contributions, this type of contribution is allowed in the case of general partnerships and limited partnerships, only in connection with the active partners.
(ii) Minimum level of share capital:
• SA – min. RON (Romanian lei) 90,000;
• SRL – min. RON 200.
Special requirements apply for VAT registration.
(iii) Statutory limits for payment of contributions:
In case of SA, at least 30 per cent of the subscribed capital has to be paid upon registration, and the remaining part within 12 months as of registration in case of cash contributions, respectively within two years as of registration, in case of in-kind contributions.
In the case of SRL, the share capital has to be paid entirely upon incorporation.

(b) Contractual JV
(i) same types of contributions (in-kind/in cash) as in the case of corporate JVs are applicable;
(ii) no minimum level of contributions/statutory limits are reasonably time-barred to three years (general statute of limitation); however, there are no limitations for the parties to contractually agree on the timing for performing the contribution;
(iii) cannot acquire ownership rights over the contributions of the parties (as opposed to the corporate JVs); the associates may agree that the contribution to the partnership is to be held as joint property of the parties; further, the ownership over the assets contributed may become property of one of the parties only to achieve the business scope of the partnership (provided that this aspect is stipulated in the partnership agreement and the relevant publicity formalities are observed, as the case may be). At the termination of the partnership, the contributing parties may request the return of the assets, in case not otherwise provided in the agreement.

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
Yes, as long as the equivalent in RON currency is also indicated.

7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limits on the duration of JVs.

7.2 Are there statutory limitations on the number of members of the JV?
Yes, in the case of corporate JVs, as follows:
(a) SA should have at least two shareholders, without an upper limit being provided by law;
(b) SRL may be established with a sole shareholder, provided that the latter is not a sole associate in another Romanian company and limited liability company with a single shareholder; an SRL cannot have more than 50 shareholders.

There are no statutory limits on the number of members for contractual JVs.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?

---
1 Law No. 98/2016 on Public Procurement and Law No. 99/2016 on Sectoral Procurement.
According to the Romanian Public Procurement Law, public sector bodies may enter into JV Agreements with other public sector bodies when awarding public procurement contracts as “contracting authorities”.

As regards Public Private Partnerships, there is indeed a recent Government Emergency Ordinance, that regulates how PPPs may be established, as well as a separate Law No. 100/2016 governing classical works and services concessions.

In addition, the Public Procurement Law provides that it does not apply to companies or unincorporated associations established by contracting authorities with natural or legal persons, thus envisaging cases when a public sector body may enter into a JV Agreement with a private company without having to observe public procurement rules. There is no clear legal framework for how or when such a JV Agreement may be concluded. However, please note that the Public Procurement Law provides in the very same article that if the legal substance of the act is that of a public procurement contract, then public procurement rules apply regardless of the name thereof (JV Agreement or another).

The existence of the Government Emergency Ordinance and Law No. 100/2016 mentioned above, further limit the possibility of public sector bodies to enter into JV Agreements with private companies without observing the rules thereof, especially organising a public tender for selecting the private company. Thus, JV Agreements may not be used by public sector bodies to circumvent obligations established by the laws mentioned above regarding the award of public procurement, concession or PPP contracts.

Moreover, according to Law 137/2002 regarding certain measures for accelerating the privatisation, the companies where the state or a local public authority is majority shareholder may contribute to the establishment of private/public companies together with private companies/individuals. The private/public companies established in this manner have a preferential right to the acquisition of the assets of the authority contributing as a shareholder.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?

General remarks

The Romanian Competition Council has issued Guidelines on restrictions directly related and necessary to concentrations (Guidelines on Ancillary Restraints).

(a) Ancillary restrictions are considered not to infringe antitrust provisions.

(b) Key elements for a restrictive agreement to be an ancillary restraint are that the restriction is directly related and necessary to the implementation of a transaction/concentration if the case.

(c) By contrast, for restrictions that cannot be regarded as directly related and necessary to the implementation of the concentration, antitrust rules remain potentially applicable.

Agreements necessary to the implementation of a concentration are typically aimed at protecting the transferred value, maintaining the continuity of supply after the break-up of a former economic entity, or enabling the start-up of a new entity. In determining whether a restriction is necessary, it is appropriate not only to take account of its nature but also to ensure that its duration, subject matter and geographical field of application does not exceed what the implementation of the concentration reasonably requires.

The Competition Council’s Guidelines on Ancillary Restraints provide that in all cases the obligations must be limited to duration, geographical area, and products which are necessary for the protection of the economic activity of the JV. These principles also apply to non-solicitation and confidentiality clauses.

Rules applicable to non-competition clauses

Clauses implying non-competition obligations are ancillary restraints if the obligations correspond to the products, services and territories covered by the JV Agreement or its articles of association.

i) Non-competition obligations between the (controlling) parent undertakings and a JV are regarded as directly related and necessary to implementation of the concentration for the lifetime of the JV.
A non-competition obligation between the parent undertakings and a joint venture may be considered directly related and necessary to the implementation of the concentration where such obligations correspond to the products, services and territories covered by the JV Agreement or its by-laws.

The geographical scope of a non-competition clause must be limited to the area in which the parents offered the relevant products or services before establishing the joint venture. Similarly, non-competition clauses must be limited to products and services constituting the economic activity of the joint venture.

ii) In contrast, non-competition obligations between non-controlling parents and a joint venture are not directly related and necessary to the implementation of the concentration.

Rules applicable to non-solicitation and confidentiality clauses

Non-solicitation and confidentiality clauses related to the use of confidential information have a comparable effect and are therefore evaluated in a similar way to non-competition clauses.

Specific analysis has to be made also in relation to IP licence agreements or purchase and supply agreements to be entered into with parent companies if the case.

Merger control

According to the Merger Guidelines, a JV may constitute an economic concentration in the case of an acquisition of control (meaning the possibility of exercising a decisive influence on an undertaking).

Regarding the object of control, it can be one or more, or also parts of, undertakings which constitute legal entities, or the assets of such entities, or only some of these assets/businesses. Also, the acquisition of control over assets can only be considered a concentration if those assets constitute the whole or a part of an undertaking, i.e., a business with a market presence, to which a market turnover can be clearly attributed.

The joint venture must fulfil the full-functionality criterion in order to constitute a concentration.

In order to do so, the joint venture, for instance, must have management dedicated to its day-to-day operations and access to sufficient resources including finance, staff, and assets (tangible and intangible) in order to conduct on a lasting basis its business activities within the area provided for in the JV Agreement. Also, a joint venture is not full-function if it only takes over one specific function within the parent companies’ business activities without its own access to or presence on the market.

In addition, the transaction is notifiable to the Romanian Competition Council if the following thresholds are met:

(a) all undertakings concerned had an aggregated total turnover (worldwide) in the year prior to the transaction (signing) exceeding the RON equivalent of EUR 10 million, and

(b) at least two of the undertakings concerned had a turnover in Romania in the year prior to the transaction (signing) exceeding the RON equivalent of EUR 4 million.

In case of transactions implying the acquisition of joint control, the concept of undertakings concerned can, for example, be each of the companies acquiring joint control or each of the companies acquiring joint control and the acquired pre-existing company or business, as the case may be.

The calculation of the turnover for establishing whether the transaction is notifiable would need to follow specific rules (e.g. geographical allocation of turnover, adjustment rules for previous acquisitions).

Anticompetitive aspects of JVs

When the full functionality condition of a joint venture is not fulfilled, the JV may constitute a cooperative JV.

Generally, a cooperative JV could lead to different forms of restriction or distortion of effective competition (which might lead to sanctions) such as by object of the agreements in the form of (a) joint fixing of prices, (b) limitation of output or sales or (c) allocation of markets or customers.

JV Agreements that do not imply a coordination of competitive behaviour are unlikely to generate competition restrictions, in case of cooperation (i) between non-competitors, (ii) between competing companies that cannot independently carry out the relevant project or activity the JV will provide, (iii) concerning activities not influencing the relevant parameters of competition.

However, agreements like these could restrict competition by their effects on the relevant market when the undertakings have significant market power and foreclosure or other anticompetitive effects are likely to occur. It is, therefore, necessary to assess the
JV in its economic and market context before conclusions can be drawn as to whether the JV contains restrictions on competition or not.

10. DE FACTO COMPANIES/PARTNERSHIPS

Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?

Reasonably, the following conditions (including without being limited) should be satisfied in order not to qualify as de facto company/partnership:

(a) corporate JV – the existence of affectio societatis (as the common will of several legal persons or legal entities to merge into one entity) and registration with the Trade Registry Office in view of valid incorporation of the JV;

(b) contractual JV – execution by the interested parties of a partnership agreement, based on which the parties agree to perform certain activities in association and share the gains and losses.

11. LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

A JV Agreement cannot provide that a JV member can participate without incurring any risk, loss or reward.

The following clauses are prohibited/do not produce effects:

(a) establishing a minimum amount of profit in favour of one or more shareholders or partners to be distributed irrespective of the results of the JV;

(b) allocation of profits cannot result in either (i) one party acquiring all the benefits/profits or (ii) one party participating only to benefits, and not also losses (i.e., being exonerated from participation to losses).

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) Contractual JV

Contractual JVs – there are no provisions relating to the decision-making process (for example, quorum, voting rights or partners decision-making). Consequently, the parties are free to mutually agree on such aspects based on the JV Agreement. Please see the comments under Section 11.

(b) Corporate JV

Corporate JV – there are particular rules pertaining to the governance of every type of company as listed below.

Joint-stock company

The general meeting of shareholders ("GMS") is responsible for the adoption of the most important decisions of the company. In the GMS, the number of votes pertaining to each shareholder is determined pro rata with the participation to the share capital, except for the case when the articles of association provide otherwise (e.g., the number of votes belonging to shareholders holding more than one share may be limited). The right to vote may not be assigned and any agreement binding the shareholder to exercise the right to vote as instructed or proposed by the company or the persons holding representation powers shall be null and void.

The Companies Law regulates two types of GMS:

(i) ordinary ("OGMS")

Such meeting must be convened at least once a year, within maximum of five months as of the end of the financial year and its attributions are expressly provided by the Companies Law. For the validity of its deliberations, the shareholders holding at least one-quarter of the aggregate number of the voting rights must attend the meeting. Resolutions can be adopted with the majority of the votes cast (higher quorum and vote majorities may be stipulated under the articles of association). In case the previous conditions are not met, there can be a second meeting of the OGMS, deciding with the majority of the expressed votes (regardless of the quorum).

Under the Companies Law, the OGMS is compelled:

• to discuss, approve or amend the annual financial statements based on the reports submitted by the board of directors (the "BoD"), respectively by the directorate and the supervisory board, by the censors or the auditor, as the case may be, and to determine the dividends;

• to appoint and revoke the members of the BoD, respectively of the supervisory board, and the censors;

• for the companies required to have their financial statements
audited, to appoint and determine the minimum period for the financial audit contract, as well as to revoke the auditor;
• to establish the remuneration payable to the members of the BoD, respectively of the supervisory board, as well as of the censors, for the current financial year, unless such are provided in the articles of association;
• to analyse the management activity carried out by the BoD, respectively of the directorate;
• to draw up the income and expenses budget and, as the case may be, the activity program for the following financial year;
• to decide with respect to pledging, leasing or dissolving one or several of the company’s units.

(ii) extraordinary (“EGMS”)
An EGMS is convened whenever a resolution is necessary in relation to other important aspects for a company’s activity (a non-exhaustive list of such aspects is provided by the Companies Law and refer to decisions regarding the legal form, headquarters, object of activity, decrease/increase of the share capital, merger/de-merger, set up of secondary offices, etc.). For the validity of its deliberations, the shareholders attending the meeting convened for the first time must represent at least one-quarter of the total voting rights, and for the following convening calls - shareholders representing at least one-fifth. Resolutions are passed with the majority of the votes cast by the attending or represented shareholders.

The EGMS renders decisions related to the following matters:
  a. change of the legal form of the company;
  b. relocation of the headquarters of the company;
  c. change of the company’s scope of business;
  d. incorporation or dissolution of certain secondary offices: branches, agencies, representative offices or other similar units without legal personality, if the articles of association do not provide otherwise;
  e. extension of the company’s duration;
  f. increase of the share capital;
  g. decrease of the share capital or re-establishment by issuance of new shares;
  h. merger or de-merger with other companies;
  i. anticipated dissolution of the company;
  j. conversion of nominal shares into bearer shares or of bearer shares into nominal shares;
  k. conversion of shares from one category into another;
  l. conversion of one category of bonds into another category or into shares;
  m. issuance of bonds;
  n. any other amendment of the articles of association or any other resolution requiring the approval of the EGMS.

However, the Companies Law provides for several important decisions (i.e., mentioned above at items a., c., f.-i.) which shall be passed with the majority of at least two-thirds of the voting rights held by the attending or represented shareholders (the articles of association may include stricter quorum and majority requirements).

Certain attributions of the EGMS (i.e., presented above at items b., c. (without referring to the domain and main activity of the company) and f.) may be delegated to the BoD or the directorate, as the case may be, through the articles of association or through EGMS resolution.

Management bodies
In a SA, the shareholders may decide, upon incorporation or at a later stage, through an amendment of the articles of association, the administration system, i.e., the one-tier system or the two-tier system.

i) One-tier administration system
In this case, the management is undertaken by one director or by several directors, organised as a BoD (having an odd number of members) and, as the case may be, by one or several managers (the “Managers”), led by a General Manager (members of the management should conclude a professional liability insurance policy).

For the case of companies which have the legal obligation to have their financial statements audited, at least three directors must be appointed. Furthermore, in the case of such companies, the BoD must delegate the management to the Managers, however, certain powers cannot be subject to delegation, e.g., supervision of the company’s activity, summoning the GMS, preparation of the company’s annual report.

The members of the BoD may be natural or legal persons, Romanian or foreign and are appointed by the GMS, except for the first ones, appointed through the articles of association. A maximum of five mandates can be performed by a director in a Romanian company, having a term of maximum of two years for the initial directors and respectively, four years for the subsequent ones.
The BoD represents the company in relation to third parties, except as otherwise provided in the articles of association. However, if management powers have been delegated to Managers, the representation powers are held by the General Manager. The members of the BoD are jointly liable (even with past BoD members) for the BoD’s activity if, being aware of certain irregularities, have not communicated such to censors, internal auditors or financial auditors.

Furthermore, directors are held by rules governing conflict of interest – the Companies Law forbids a director to participate to deliberations of the BoD if the director (or the spouse or relatives thereof) has interest contrary to those of the company, being liable to remedy the damages caused to the company if without his vote the majority of votes would not have been met.

The Managers are appointed by the BoD and are in charge of the day-to-day management of the company, being subject to an information obligation towards the directors in relation to the performed activity. The Managers have to be natural persons and may be members of the BoD (however, the majority of the BoD have to be non-executive, i.e., not Managers).

The Managers perform all actions necessary for managing the company, except for those attributions under the exclusive competence of the BoD, as provided under the law or the articles of association. The Managers are liable for improper performance of their duties delegated by the BoD or in relation to the supervision of the personnel.

ii) Two-tier administration system
In this case, the management is undertaken by the Directorate and the Supervisory Board.

The Directorate is exclusively competent for managing the company, as stipulated under the law or under the articles of association, except for the matters incumbent upon the GMS or the Supervisory Board. Considering the attributions of this management body, one may conclude that in the two-tier system, the Directorate comprises the duties of both the BoD and of the Managers from the one-tier system presented above. The members of the Directorate are appointed by the Supervisory Board but may be appointed also by the GMS if stipulated in the articles of association. The Directorate may have one member (known as the single general manager) or several (only natural persons), having an uneven number of members.

The Directorate has representation powers in relation to third parties, its members being jointly liable for the improper performance of their duties. A member of the Directorate may represent the company in relation to specific operations, pursuant to a unanimous mandate granted by the members of the Directorate. However, this does not impede the responsibility of the Directorate for acts of management, although a power of attorney was given to employees of the company, executive officers, based on the general law rule that the principle is also liable for the acts of the agent, in case of unauthorised substitution.

The Supervisory Board exercises the supervising duties in the company, such as appointment of the members of the Directorate, permanent control rendered over the management performed by the Directorate, providing the GMS with a yearly report in relation to its supervision function. Its members are appointed by the GMS, except for its initial ones appointed through the articles of association. The Supervisory Board appoints one of its members as President.

This management body shall have between three and 11 members, natural or legal persons, which cannot be members of the Directorate or employees of the company.

Controlling bodies
Control of the management activity within SA can be ensured:

i) by a number of censors (a SA must appoint at least three censors and one replacing censor, and in any case, an uneven number of censors) appointed by the GMS for three years mandates (with re-appointment possibility); or

ii) by external financial auditors selected by the GMS

Companies can generally opt between appointing censors or appointing financial auditors. However, companies having the legal obligation to have their financial statements audited (such as companies implementing the two-tier system of administration or companies who meet certain criteria set by law) or companies choosing by shareholders resolutions to do so, have also the obligation to organise internal audit.

Limited liability company

GMS:
Each share grants the right to one vote. The Companies Law provides certain decisions and deliberation that are mandatory for
the GMS. In the case of SRL, the Companies Law does not regulate the two types of meetings as presented above for the case of SA, but the shareholders may decide to adopt such a system, via the articles of association or provide different quorum and majority conditions.

The GMS passes resolutions by the vote of the absolute majority of shareholders and shares, save where the articles of association provide otherwise. For resolutions concerning the amendment of the incorporation document, unanimity is required, except if otherwise provided by law or articles of association. However, in case the legally convened meeting cannot pass a valid resolution due to a failed majority, the meeting convened again may decide on its agenda, irrespective of the number of shareholders present and of the share capital represented thereof.

It is worth noted that the sale of shares towards third parties (not shareholders) must be passed with three quarters of the share capital.

Management bodies
An SRL is managed by one or more directors appointed through the articles of association or by the GMS. In this case, the comments made above with respect to the management systems are no longer applicable.

In the Romanian legislation, no mention is made in relation to the incorporation of a management body in case several directors are appointed and are also bound to work together. However, should the shareholders decide to form a governing body (e.g., a BoD), they should also decide on the manner in which such will be organised and take decisions/perform attributions.

The directors of the SRL may be Romanian or foreign, natural or legal persons and may be appointed for an undetermined period. Every director is entitled to represent the company towards third parties, except as otherwise stipulated in the articles of association. Should the directors be compelled to work together under the incorporation document, they shall take all decisions with unanimity of votes, and in case of disagreement, the shareholders representing the absolute majority of the share capital shall decide. Also, a director may decide on his own on urgent matters, for avoiding material damage, in case the other director cannot perform their managerial duties.

Although the Companies Law does not expressly provide for rules on conflict of interest for SRL directors (as it does for SA), a director of a SRL cannot act (without the authorisation of the shareholders) as director in another company competing or having the same object of activity as the relevant company and a director of a SRL cannot perform the same type of commercial activities (on its own account or on account of third parties), being subject to revocation and being responsible for damages caused by such actions.

Controlling bodies
In view of ensuring the control of the management:

i) one or more censors can be appointed;

ii) external financial auditors can be appointed (however, for the case of an SRL under the legal obligation to have their financial statements audited, the shareholders must appoint an external financial auditor); further, companies whose financial statements are subject to financial audit based on GMS decision, or on law, shall organise internal audit.

In case the shareholder’s number is higher than 15, the appointment of censors or financial auditors is mandatory, the rules for the control of SA being applicable in such case.

or

iii) the shareholders who are not also directors can directly perform the control of the management.

13. TERMINATION

13.1 What legal regime applies to the JV termination? Can a JV be terminated for just cause on the request of one party?

(a) Contractual JVs

There is no specific legal regime applicable for the termination of a contractual JV – consequently, the general rules provided by the Romanian Civil Code for the termination of contracts apply.

Several circumstances may lead to the termination of a joint venture, e.g., expiry of the term; achievement of the purpose of the joint venture; insolvency of the active party; cancellation, due to failure of one party to perform its obligations, etc. The parties may also agree on additional cases of termination, including unilateral termination (termination without cause). Upon termination, the associates may decide that the silent party is entitled to request the in-kind.
(b) Corporate JVs
Termination of a corporate JV is subject to the Companies Law provisions on dissolution and liquidation of companies. Under the Companies Law, dissolution may be performed according to the law based on the will of the shareholders or to the court of law. Following a dissolution decision, the winding-up (liquidation) process (post-dissolution) is initiated in view of the capitalisation of assets and settlement of liabilities.

As regards management during the liquidation process, the following rules shall be observed during the liquidation procedure:
(i) the directors, the Managers and the members of the directorate shall continue their mandates until the appointment of liquidators;
(ii) the liquidators shall take measures to file the appointment act providing for their powers, or the resolution that replaces it and any subsequent act bringing changes regarding their replacement or to their powers with the Trade Registry in order to be immediately registered and published with the Official Gazette.

For the case of limited liability companies, the liquidation may be implemented without the appointment of liquidators to the extent all shareholders agree and the company subject to liquidation has sufficient assets to cover all its liabilities.

13.2 Is the termination of a JV subject to governmental or other approval?
No governmental approval is required. Other approvals required include:
(a) Trade Registry Office approval;
(b) for JVs active in regulated fields, termination may be subject to approval by or notification to the relevant regulatory authorities;
(c) court approval – in case of judicial dissolution or when the parties do not reach an agreement in respect of termination and/or distribution of assets.

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?

Generally, the parties are free to choose the law applicable to the contract. However, the choice of a foreign governing law made by the parties to a contract can, at least partially, be shifted and the Romanian law remains applicable in case of various circumstances provided by Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (“Rome I”) apply, among which:
(a) when a foreign law was chosen and all other relevant elements of a contract (e.g. the nationality of the parties, object, place of conclusion or of execution of the contract, etc.) at the time of the parties’ choice are located in Romania, the parties’ choice will not prejudice the application of Romanian law overriding mandatory provisions (i.e. provisions which cannot be derogated from by agreement because they are considered crucial for safeguarding Romania’s public interest)³;
(b) when the law of a country outside of the European Union was chosen and all other relevant elements are located in one or more European Union’s Member States (including Romania), the parties’ choice shall not prejudice the application of overriding mandatory provisions of the European Union law, where appropriate, as implemented in the Member State of the forum.

Note: This case is similar to the previous one, but focuses on the protection provided by the European Union law to those legal relationships that are closely connected to any Member State of the European Community⁴.

(c) when the application of a provision of the foreign law chosen by the parties is manifestly incompatible with Romania’s public policy; hence, if a dispute in connection with the contract concluded between the parties is lodged in front of a relevant Romanian court which raises a choice of law issue, the court can refuse to apply the law chosen by the parties to the extent that it finds the application of that law contrary to the Romanian public policy;

Note: According to relevant case law and legal literature, legal provisions governing among others the legal form of the contract (if required by law for its valid existence), conditions provided by law for the cause of the contract, the principle of non-retroactivity

---
³ Article 3(3) of Rome I.
⁴ Article 3 para 4 of Rome I.
of the law, the principle of binding force of the contract\textsuperscript{6} are considered as being part of the Romanian public policy.

(d) when a foreign law was chosen in case of contracts concluded with consumers (such choice of law is permitted), but such election invalidates the application of the mandatory Romanian rules that would have applied to protect the consumer if an express choice of law had not been made\textsuperscript{7};

(e) in case of fraud of Romanian law, if the conditions imposed by the Romanian Civil Code are met.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
In principle, there are no specific rules relating to validity and authorisation of JVs with foreign members compared with JVs with local members.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?
In principle, the same rules and regime apply to JVs with local members or members incorporated under or governed by the laws of a foreign jurisdiction.

16. ECONOMIC OR FINANCIAL INCENTIVES

Are there economic or financial incentives for foreign direct investments in a JV?
Romania’s general legal framework in the field of investment stimulation was adopted by means of Government Emergency Ordinance No. 85/2008, as subsequently amended and completed, regulating principles of investment stimulation, investment fields, types of support available, general eligibility conditions, etc.
A private investor in Romania may benefit from business aid from both national and EU sources, within the limits allowed by the State Aid regulations.

According to provisions in Government Emergency Ordinance No. 85/2008, incentives supporting investment in Romania (i) may be obtained for activities including, but not limited to, the following: employment and training, investment in processing activities, services in high technology related fields, R&D, energy, health and agriculture, (ii) are available under the form of grants awarded for tangible and/or intangible assets acquisition; financial support from the state budget for newly created job positions; interest bonuses for credit contracting, and other incentives regulated by special laws in force\textsuperscript{8}. Also, several general tax incentives are available in relation to investment in Romania e.g. corporate tax relief on reinvested profit.

17. MINIMUM INVESTMENTS/CONTRIBUTIONS

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?
There are no mandatory minimum equity investments or contributions in-kind thresholds triggered by the nationality of a JV member. However, in certain regulated industries there are requirements regarding minimum share capital, availability of funds, various financial criteria to be met.

\textsuperscript{6} Article 21 of Rome I.
\textsuperscript{7} Article 6 of Rome I.
\textsuperscript{8} For example, Government Decision No. 807/2014 for the establishment of state aid schemes aiming to stimulate investments having a major impact on the economy; Government Decision No. 332/2014 for investments generating new working places.
1. REGULATION

Are JVs expressly regulated in your jurisdiction?
No, the general rules of corporate and commercial law apply to both contractual JVs (where the parties do not establish a separate legal entity) and corporate JVs (involving the establishment of a new legal entity).

2. TYPES OF JVs

2.1 Which types of JVs are allowed?
(a) the contractual JVs (not resulting in the establishment of a separate legal entity) which establishment is based on an agreement; or
(b) the corporate JVs (resulting in the incorporation of a legal entity) which are established in accordance with the rules on incorporation of a legal entity and function based on the founding acts of the respective legal entity.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
The establishment and corporate governance of corporate JVs are primarily regulated by the Companies Act1 ("Serbian Companies Act").

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in the JV’s founding documents (both corporate and contractual)?
The agreement on establishment of a corporate JV, as the founding act of a new legal entity, is subject to submission for registration before the Serbian Commercial Registry and must be executed in Serbian (or in a bilingual form).

In relation to the contractual JVs, there are no general restrictions regarding the language of the agreement, but the bilingual form is preferred in case the agreement has to be presented to the local authorities.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?
In relation to the corporate JVs, since the agreement on corporate JVs represents the founding act of the company, parties need to execute such agreement before a Notary Public (in Serbian: overa potpisa). For more detailed analysis, please see the response under Section 3.3 below.

In relation to the contractual JVs, there are no general rules which would require the participation of the Notary Public. In some specific cases, however, the agreements on contractual JVs must be executed before a Notary Public (in Serbian: overa potpisa, solemnizacija) e.g. if the parties intend to transfer ownership on real estate or stake/shares in the company under the JV Agreement.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?
(a) Registration requirements:
(i) registration before the Serbian Commercial Registry: the corporate JV is established as of the date of its registration before the Serbian Commercial Registry following the submission of a specific application and the founding documents; in case of performance of business activities that are subject to special authorisations (e.g. healthcare, banking, etc.), specific authorisations need to be obtained prior to the initiation of the performance of the specific activity;
(ii) tax registration: i) for corporate JVs, the tax registration is performed together with the registration with the Serbian

---

Commercial Registry; registration for VAT purposes can be performed together with the registration with the Serbian Commercial Registry or separately; ii) as contractual JVs do not have the separate legal personality, they are not considered as taxpayers in Serbia.

(b) Authorisations, licences or other governmental permits:
(i) Merger control clearance in Serbia: Corporate JVs (resulting in a creation of legal entity which operates on the market independently on a lasting basis) require prior concentration (merger) approval by the Serbian Competition Commission if either of the following two turnover thresholds is exceeded:
• the aggregate combined annual turnover of JV partners generated worldwide in the financial year preceding the concentration exceeds EUR 100 million, provided that the Serbian turnover either of the JV partners exceeds EUR 10 million in that same period; or
• the aggregate combined annual turnover of the JV partners generated in the Serbian market exceeds EUR 20 million in the financial year preceding the concentration, provided that the annual Serbian turnover of each of the JV partners exceeds EUR 1 million in the same period.
(ii) Licences/authorisations in relation to the regulated activity: • for JVs active in the regulated fields, the additional prior authorisations by the competent regulatory authority may be required.

3.4 Are there any other formal requirements for the establishment of a JV?
No.

4. PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
In general, the corporate JV structure may be used in every field of the economy, subject to obtaining specific authorisations, licences and/or other permits where required, except in fields that are reserved for certain forms of business organisation e.g. registered entrepreneur.

For contractual JV, while there are no express prohibitions, an analysis on a case by case basis needs to be performed in order to confirm the compatibility with the specific regulatory requirements.

5. PURPOSE

Can the JV be established for any purpose?
As long as the purpose is not illegal or contrary to public policy, the JV may be established for any purpose subject to comments under Section 4.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
Corporate JVs can be established in the form of a joint-stock company (in Serbian: akcionarsko društvo, a.d., “JSC”) or in the form of a limited liability company (in Serbian: društvo sa ograničenom odgovornošću, d.o.o., “LLC”).

Shareholders’ quotas are calculated in the proportion to their contribution in the share capital. The prescribed minimum share capital for a JSC is RSD 3,000,000 (approximately EUR 26,000) and the prescribed minimum share capital for an LLC is RSD 100 (approximately EUR 0,8).

The contributions can be in the form of:
(a) monetary contributions;
(b) non-monetary contributions (which can consist of the assets and rights).

Labour and services cannot represent shareholders’ contribution.

Subscribed capital must be entirely paid in within five years from the date of establishment, except in the case of public JSCs where subscribed capital must be entirely paid in within two years from the date of establishment. Before establishment, the shareholders of the JSC must pay in at least 25 per cent of the subscribed share capital whereas the amount of paid monetary contribution cannot be lower than RSD 3,000,000 (approximately EUR 26,000).

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
The share capital must be indicated in RSD currency.
7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limits for the duration of JVs save in case of concessions which are further elaborated under Section 8.

7.2 Are there statutory limitations on the number of members of the JV?
There are no statutory limits on the number of members for corporate or contractual JVs.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?

According to the Public Private Partnership and Concession Act\(^2\) ("Serbian PPPC Act"), a public private partnership ("PPP") is defined as long term cooperation between public and private partner for the purpose of securing financing, development, reconstruction, management or maintenance of infrastructural or other facilities of public significance and provision of services of public significance, which can be contractual or institutional, with or without elements of concession.

The public sector bodies are: (i) the state authorities, organisations and institutes, other direct or indirect budget users, as well as mandatory social security organisations; (ii) the public enterprises; (iii) the entity performing activity of public interest where some public entity holds more than 50 per cent of the shares or 50 per cent of the voting rights or participates in funding the entity with more than 50 per cent of funds, or has more than half of the members in the management of that entity or supervises that entity; (iv) the entity founded by the public body fulfilling the conditions from point (iii) above.

In case of contractual PPP (with or without elements of concession), mutual rights and obligations between the public and private partners are stipulated in the PPP agreement, which needs to contain elements prescribed by the Serbian PPPC Act.

An institutional PPP (with or without elements of concession) is based on relations of public and private partner as shareholders in a JV company which implements the PPP project, whereby this relation can be established either via capital investment into a new company or acquiring shares (or capital increase) in the existing company. A concession (being either a contractual or institutional PPP) is a public contract regulating commercial use of natural assets, publicly owned assets in general use, or assets owned by a public partner, or performing activities of general interest, which the public partner confers to the private partner for a defined period of time, under conditions set in the law, against payment of the concession fee by the public or private partner. In a concession arrangement, the private partner assumes the risk of commercial exploitation of the subject matter of the concession.

The procedure of the selection of the private partner is governed by the Public Procurement Act\(^3\) and/or the Serbian PPPC Act. PPP arrangements (including concessions) can last minimum of five years, and a maximum of 50 years (there could be some exceptions for concessions, prescribed under sectoral laws).

Pursuant to the Public Ownership Act\(^4\), public property owners are entitled to, amongst themselves or with other persons, invest into development of assets of general interests, assets in general use and other assets, and, on that basis, they may, in accordance with the Public Ownership Act and other applicable laws, acquire right of use or other rights (e.g. concession) and earn income on that basis. This practically means that the Serbian PPPC Act would apply to all such arrangements (as described above), and, in addition, the rules of the Public Ownership Act (and other applicable laws – e.g. public budget regulations) would need to be observed in case of investment of public ownership into development of assets of general interests, assets in general use and other assets.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?

---


\(^3\) Zakon o javnim nabavkama, Official Gazette of Republic of Serbia, Nos. 124/2012, 14/2015 and 68/2015.

The Competition Protection Act ("Competition Act") does not prescribe any direct restriction of non-compete/anti-trust clauses. Non-compete obligations generally constitute anti-competitive restrictive agreements which are prohibited under the Competition Act. However, non-compete obligations may sometimes be necessary in the context of mergers and acquisitions in order to prevent vendors to undermine transactions by competing with their old business. In the contexts of JVs, non-compete obligations serve the purpose to prevent the shareholders in the JV from competing with the newly created entity on the market. These types of restrictions, called ancillary restraints, may, therefore, be allowed in JVs and will not be scrutinised by the Serbian Competition Agency, provided that they are (i) directly related to the transaction in question; (ii) objectively necessary, and (iii) proportionate in the context of the transaction in terms of their subject-matter, duration and territorial scope.

The Serbian Competition Commission or any other state authority did not render any specific anti-trust rules, guidelines or policies which are applicable to the JV Agreements - only the general anti-trust rules apply.

10. **DE FACTO COMPANIES/PARTNERSHIPS**

Must the contractual JV satisfy any conditions to avoid falling within the definition of *de facto* company/partnership?

There are no such rules.

11. **LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV**

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

Parties to a contractual JV are free to regulate their relationship as they find fit, including the limitation of their liabilities. These limitations, however, would be enforceable only between the JV members and could not affect potential third party’s claims. Furthermore, the liability limitations cannot apply in the case of wilful misconduct and gross negligence.

In the case of a corporate JV, the members of the JV, i.e. the shareholders, there is a statutory limitation of liability for the JV’s (company’s) obligations, in that the shareholder’s risk/liability is limited to their contribution to the company’s share capital.

12. **GOVERNANCE OF THE JV**

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) **Contractual JVs**

There are no provisions relating to the decision-making process (for example, quorum, voting rights or partners decision-making). Consequently, the parties are free to mutually agree on such aspects based on the JV Agreement. Please see the comments under Section 11.

(b) **Corporate JVs**

There are particular rules pertaining to the governance of every type of company as listed below.

(i) **Joint-stock company**:

JSC can be organised as a 1) non-public JSC; and 2) public JSC. In the latter case, the shares of the public JSC can be publicly held and listed on the stock exchange.

JSC’s corporate governance can be organised as:

> one-tier system, in which case corporate bodies are:
  > • shareholders’ assembly;
  > • one or more directors; in case of three or more directors, they form the board of directors.

> two-tier system, in which case corporate bodies are:
  > • shareholders’ assembly;
  > • one or more executive directors; in case of three or more directors, they form the executive board;
  > • supervisory board.
Note that a public JSC has to appoint an executive board, constituted of at least three directors.

(ii) Limited liability company:
LLC’s corporate governance can be organised as either:
> one-tier system in which case corporate bodies are:
  • shareholders’ assembly;
  • one or more directors; in case of three or more directors,
    they form the board of directors.
> two-tier system in which case corporate bodies are:
  • shareholders’ assembly;
  • one or more directors;
  • supervisory board.

Director(s) of LLC or JSC
Directors represent the LLC or JSC, carry out management duties in the interest of the LLC or JSC, while they must observe limitation in their authorisation as provided in the foundation act, shareholders’ agreements, company’s by-laws and corporate resolutions adopted/issued by corporate bodies. The company needs to have at least one director who is a natural person.

13. TERMINATION

13.1 What legal regime applies to the JV termination?
Can a JV be terminated for just cause on the request of one party?
(a) Contractual JVs
There is no specific legal regime applicable on the termination of a contractual JV – consequently, the general rules of Serbian Obligations Act\(^6\) for the termination of contracts apply.

Several circumstances may lead to the termination of a joint venture, e.g. expiry of the term; achievement of the purpose of the joint venture; insolvency of the active party; cancellation due to failure of one party to perform its obligations, etc. The parties may also agree on other cases of termination, including unilateral termination (the termination without cause).

(b) Corporate JVs
Provisions of the Serbian Companies Act on liquidation of companies apply on the termination of the corporate JV. The liquidation can be voluntary or involuntary. The voluntary liquidation is initiated by the company’s shareholders, while involuntary liquidation is initiated by the Serbian Commercial Registry if the conditions for involuntary liquidation pursuant to the Companies Act are fulfilled.

13.2 Is the termination of a JV subject to governmental or other approval?
No governmental approval is required.

Other approvals:
(i) the Serbian Commercial Registry’s resolution;
(ii) for JVs active in regulated fields, termination may be subject to approval by relevant regulatory authorities (e.g. National Bank of Serbia).

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?
(a) Contractual JVs
The parties can choose the applicable law and the competent forum, pursuant to the general rules of contract law.

(b) Corporate JVs
The agreement between the shareholders (JV members) could be subject to foreign law and foreign forum but it would be superseded by mandatory norms of the Serbian law.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
The same rules and regimes apply to JVs with local members or members incorporated under or governed by the laws of a foreign jurisdiction.

15.2 Are any of the rules applicable to local companies — JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?
The same rules and regimes apply to JVs with local members or members incorporated under or governed by the laws of a foreign jurisdiction.

16. ECONOMIC OR FINANCIAL INCENTIVES

Are there economic or financial incentives for foreign direct investments in a JV?
Foreign direct investments are regulated by the Investments Act\(^1\) ("Serbian Investment Act") and the foreign investors are guaranteed the same rights as the national investors. Also, a rule of vested right is applicable — the investors are granted full protection of right obtained on the basis of the investment.

The investor can obtain the following forms of state aid, in accordance with the relevant law:
(a) allocation of incentives;
(b) tax incentives, tax reliefs and exemption from paying duties;
(c) tariff preferences;
(d) system of mandatory social insurance;
(e) lease and alienation of real estate and land in public ownership;
(f) other forms of state aid in the terms of the law governing the control and allocation of state aid.

The Government of the Republic of Serbia formed Development Agency of Serbia and Council for Economic Development, state bodies responsible for assessment of the fulfilment of conditions for granting incentives for investment projects pursuant to the Regulation on determining the criteria for granting the incentives related to the direct investments\(^2\). These incentives can be granted to the company registered with the Serbian Commercial Registry, which submitted the application for the incentives and business plan for the investment project and which is not subject of bankruptcy, liquidation or reorganisation — if other conditions stipulated in the Regulations are fulfilled.

17. MINIMUM INVESTMENTS/CONTRIBUTIONS

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?
There are no mandatory minimum equity investments or contributions in-kind thresholds triggered by the nationality of a JV member.

\(^1\) Zakon o ulaganjima, Official Gazette of Republic of Serbia, No. 89/2015 and 95/2018.
1. REGULATION

2.1 Are JVs expressly regulated in your jurisdiction?
JVs are not expressly regulated under Slovenian law, consequently the general principles of civil and corporate law apply. More precisely, provisions of the Obligations Code (the “OC”) regulating the partnership agreements apply to contractual JVs, and JVs established in the form of a company are mainly regulated with the Companies Act (the “CA”).

Generally, parties to the JV are free to decide on the type of JV they wish to establish. However, should the JV be established in order to autonomously perform an economic activity on a lasting basis, the parties have to establish a corporate JV in one of the permissible corporate forms set out in the CA. Therefore, provisions of the CA regulating corporate forms, establishment, operations and termination of various corporate forms are of high relevance for corporate JVs.

Should the parties choose to establish a contractual JV, they would not need to register a company in order to commence work towards their common objective, however, they would need to consider in their partnership agreement a few mandatory provisions of the OC, and certain additional provisions of the OC would apply if not otherwise agreed upon in the partnership agreement.

2. TYPES OF JVs

2.1 Which types of JVs are allowed?
Both types of JVs are allowed under Slovenian law, i.e. contractual and corporate JV. However, since 2012 it is no longer allowed to establish companies with a silent partner.

(a) Contractual JVs
A contractual JV is formed on the basis of a partnership agreement, which is regulated in Articles 990-1002 of the OC. Under a partnership agreement, two or more persons undertake to endeavour to achieve a common objective permitted by law using their contributions. Such partnership is not a legal entity. It may be established for a definite or indefinite period; however, it may in any event not perform economic activities on a lasting basis, as this may be done only by one of the legal entities set out in the CA. Each party to the partnership is obliged to contribute a monetary or in-kind contribution agreed with the partnership agreement. A relationship in which a certain party only receives benefits, without having an obligation to ensure a contribution, is not considered a partnership agreement under Slovenian law. If not agreed otherwise within the partnership agreement, the parties are entitled to profits and/or must bear losses proportionately to their contributions. Generally, partners may not transfer their respective shares in the partnership to third parties, however, some scholars believe that such transfer should be allowed if the common objective for establishment of such partnership is not significantly linked to the partner who wishes to transfer its share.

(b) Corporate JVs
A corporate JV is established in the form of a company. The parties may choose any corporate form as regulated in the CA, i.e. a general partnership, a limited partnership, a limited liability company (“LLC”), a joint-stock company (“JSC”) or a partnership limited by shares.

The higher level of freedom of the parties in regulating their relations, limited shareholder liability and lower costs of operating a company are some of the advantages of corporate JVs.
incorporation often make the LLC the preferred choice when establishing a corporate JV.

2.2 Are corporate JVs subject to your jurisdiction’s corporate law?
Yes, corporate JVs are subject to corporate law and can be established in any form of a company. Slovenian law regulates five types of companies, as outlined in Section 2.1 above.

In practice, corporate JVs are usually established either in the form of LLC or JSC, therefore, some of the main differences between them are outlined below. Corporate forms with unlimited liability of partners are very rarely established.

(a) JSC is managed either under a one-tier management system (a board of directors) or under two-tier management system (a management board and a supervisory board) and the CA contains several mandatory corporate governance rules, whereby the management system in an LLC may be more freely chosen;

(b) the transfer of shareholdings in an LLC is more complex than the transfer of shares in a JSC. for the transfer of shares in an LLC, a share transfer agreement namely has to be concluded in the form of a notarial deed, and the share transfer has to be registered with the Slovenian Court Register (“Court Register”). On the other hand, the transfer of shares in a JSC is achieved through registration of the holder’s transfer order with the centralised register of dematerialised securities, the Central Securities Clearing Corporation KDD;²

(c) management in a JSC is much more autonomous in relation to the shareholders compared to the management of an LLC;

(d) the costs of establishment of a company in the form of LLC are lower than the costs of establishment of a company in the form of JSC. The minimal registered capital required for LLC is EUR 7,500, whereas the minimal registered capital required for JSC is much higher, as it amounts to EUR 25,000;

(e) certain instruments are available only to JSCs, e.g. corporate bonds, preference shares, convertible shares, etc.; LLCs may not issue securities as evidence of shareholdings;

(f) the establishment of a pledge of the business shares in LLC is more complicated than the establishment of a pledge of the shares in JSC; also, several pledges may exist on the business shares in LLC whereas only one pledge may exist on the shares;

(g) the shareholders’ right to corporate information in a JSC is limited, compared to the general availability of corporate information to shareholders in an LLC.

In practice, parties of a corporate JV often conclude shareholders’ agreements in addition to founding documents of the JV, in which they usually regulate more specifically the rights and obligations between the shareholders (e.g., call and put options, drag along and tag along rights, deadlock provisions, exit provisions, etc.). The shareholders’ agreements are not binding upon the JV itself, but only among the shareholders; they are also not publicly available and do not have to be disclosed to the Court Register. However, in specific sectors, such as with respect to financial institutions, insurance companies and investment firms, the relevant regulators may need to be notified about, or even approve, the conclusion of a shareholders’ agreement.

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in the JV’s founding documents (both corporate and contractual)?
(a) Contractual JV

The contractual JV is formed when two or more persons conclude an agreement in which they undertake to endeavour to reach a legal common objective. There are no restrictions on the use of foreign language in a contractual JV’s founding documents. Additionally, the contractual JVs are not registered, so there is also no need to have the founding documents translated for registration purposes.

Should the Slovenian court be competent to solve a dispute between the parties to the JV Agreement, a translation of the JV Agreement into Slovenian would need to be presented, and the same is true if the contractual JV needs to be disclosed to any Slovenian authorities.

² According to Article 182 of the CA, all shares of a JSC have to be in a dematerialised form.
Corporate JV

Corporate JV is established when it is registered with the Court Register. According to CA, it is mandatory for the founding documents to be in Slovenian language. However, the use of a foreign language is not entirely prohibited, as it is also possible that the founding documents are concluded in two or more languages, whereby the prevailing language should be Slovenian language. A shareholders’ agreement may be entered into in a foreign language and would only have to be translated into Slovenian language in case of a need for regulatory approval or a dispute that falls under the jurisdiction of a Slovenian court.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?

(a) Contractual JV

There are no specific requirements regarding the form of the contractual JV Agreement. Therefore, it may be concluded in a simple written form or even orally insofar as it is possible to establish the parties’ consensual will. Also, no public officers need to be involved in the procedure of formation of a contractual JV.

(b) Corporate JV

For the establishment of a corporate JV in the form of JSC, partnership limited by shares or LLC, the founding documents need to be concluded in the form of a notarial deed. As an exception, articles of association of an LLC may be concluded by way of using a prescribed form, whereby only the signatures need to be notarised. The articles of association for the establishment of a corporate JV in the form of a general partnership or limited partnership only have to be concluded in simple written form, whereby the signatures need to be notarised.

Furthermore, when legal representatives are appointed, they have to issue a notarised statement by way of which they consent with their appointment and confirm that there are no circumstances which would prevent their appointment.

Registration of any corporate JV has to be performed through a Notary Public who is obliged to consult certain available registers with respect to AML, payment of taxes, absence of criminal convictions and similar.

Auditors may need to be involved in certain cases, for example:

(i) should the shareholders of an LLC make contributions in-kind in the amount exceeding EUR 100,000;
(ii) if a member of the management or supervisory body of a JSC acquires shares or shares are acquired on his behalf at the time of establishment;
(iii) if a member of the management or supervisory body of a JSC obtained any special benefit or payment for preparing the establishment, or
(iv) if the establishment of a JSC is carried out with in-kind contributions.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?

Generally, there are no registration requirements for contractual JVs, whereas, on the other hand, corporate JVs have to be registered with the Court Register.

In order to start performing certain regulated activities (such as banking, insurance, investment services, etc.), the JV has to obtain sector-specific authorisations and/or licences from the relevant regulators.

The establishment of a JV has to be considered also from the merger control perspective. Pursuant to the Restriction of Competition Act\(^4\) (“PRCA”), the Competition Protection Agency (“CPA”) has to be notified if the merger notification turnovers are met and the respective JV establishment is not notified to the European Commission. The merger control thresholds are met if:

(a) the aggregate annual turnover of the undertakings creating the JV, together with other undertakings in their respective groups, on the market of the Republic of Slovenia exceeded EUR 35 million in the preceding business year, and

(b) the annual turnover on the market of the Republic of Slovenia of at least two undertakings creating the JV, together with other undertakings in their respective groups, in the preceding business year exceeded EUR 1 million.

---

Should the parties fail to notify the CPA or exercise the rights and obligations arising from the creation of the JV prior to obtaining the CPA's approval, they can be exposed to high fines in accordance with the PRCA and risk of nullity of certain actions and transactions.

Even if the above merger notification thresholds are not met, the CPA needs to be notified if the undertakings creating the JV, together with other undertakings in their respective groups, hold more than a 60 per cent market share on any relevant Slovenian product or service market. In such case, the CPA is entitled to ask for a concentration notification no later than 15 days following the date on which the undertakings concerned informed the CPA of the implementation of the concentration (either on their own or following an inquiry by the CPA).

3.4 Are there any other formal requirements for the establishment of a JV?
Generally, there are no other requirements for the establishment of a JV, however, in certain sectors, such as banking and insurance, there are specific requirements that must be taken into consideration (e.g. different minimum capital requirements, etc.).

4. PERMITTED MARKETS
Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?
Generally, JVs can be used in every field of the economy, however, there are certain restrictions which apply to specific sectors, i.e. financial sector (banking, insurance, investment services), energy sector, media, defence, etc. such as that (i) these activities may be performed only by a company organised in a prescribed form, (ii) an approval from the relevant regulator needs to be obtained prior to commencing certain activities and/or prior to acquiring a qualified share in the companies operating in these specific sectors, or (iii) acquisition of a controlling share in the share capital is allowed only with the approval of the Slovenian government.

5. PURPOSE
Can the JV be established for any purpose?
Contractual JVs may be established for any legal purpose, other than in the field of operations where specific requirements are prescribed relating to the corporate form. An additional limitation is that contractual JVs may not perform economic activities on a lasting basis as this may be done only by one of the legal entities as regulated by the CA.

In practice, parties often form contractual JVs in public procurement tenders, where they combine their know-how, skills and competences and thus improve their chances of succeeding in tender proceedings.

Corporate JVs may generally be established for any legal purpose, whereby they may operate in a certain field only in so far as they also fulfil other sector specific requirements. Besides the corporate form, such JVs may perform only those activities which are permitted in the specific sector, and only within the scope as foreseen in their foundation documents.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?
(a) Contractual JV
The contributions have to be specified in the partnership agreement and they must be contributed as agreed in the partnership agreement. Parties to a contractual JV may provide monetary contributions or in-kind contributions (property, rights, receivables, services, allowance or omission, with economic value). Assets may also be provided only for use or enjoyment as a contribution to the partnership. There are no minimum requirements for contributions, however, they should be in such amount that allows achieving the determined common objective.

(b) Corporate JV
The minimal registered capital required for an LLC is EUR 7,500. Capital contributions in LLCs may be provided in cash or in kind (things and rights). An obligation to perform a certain service may not be provided as an in-kind contribution. The minimal amount of each capital contribution is EUR 50. Monetary contributions have to be deposited (in EUR) on the bank account - for registration purposes, the bank should confirm that the JV may freely dispose of the respective funds. In-kind contributions also
have to be provided prior to the application for registration of the JV in the Court Register and have to be audited if their value exceeds EUR 100,000.

The minimal registered capital required for JSC and partnership limited by shares amounts to EUR 25,000. Capital contributions in JSC may be provided in cash or in kind (things and rights). At least one-third of the share capital must be paid in cash. Monetary contributions have to be deposited (in EUR) on the bank account - for registration purposes, the bank should confirm that the JV may freely dispose of the respective funds. An obligation to perform a certain service may not be provided as an in-kind contribution. Generally, in case of providing in-kind contributions, the establishment of the JSC has to be reviewed by one or more auditors.

There is no minimal registered capital requirement for the establishment of a general partnership and limited partnership. Contributions may be provided in cash, things, rights or services. The value of each non-monetary contribution has to be mutually evaluated by all shareholders.

6.2 Can the corporate JV's share capital be indicated through reference to a foreign currency?
No, the corporate share capital cannot be indicated through reference to a foreign currency. The share capital has to be indicated in EUR.

7. DURATION AND LIMITS ON MEMBERSHIP

7.1 Are there statutory limits on the duration of a JV?
There are no statutory limitations on the duration of a JV. Both types of JVs may be established for a definite or for an indefinite period.

7.2 Are there statutory limitations on the number of members of the JV?
The minimum number of members in any JV is two, there is no statutory maximum in contractual JVs.

In corporate JVs, there is a limitation for the maximum number of participating members in LLCs, as the maximum number of shareholders in any LLC is 50 unless the Ministry of Economy allows more than 50 shareholders.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?
Public sector bodies may enter into JVs in accordance with the rather detailed special rules contained in the Public-Private Partnership Act5.

The Public-Private Partnership Act regulates the formation of contractual public-private partnerships and public-private equity partnerships.

(a) A contractual public-private partnership may be formed as:
(i) concession, where the private partner bears the majority of the commercial risk involved in operating a public-private partnership project, or
(ii) public procurement, where the public partner bears the majority of the commercial risk involved in operating a public-private partnership project.

(b) A public-private equity partnership may be formed:
(i) by establishing a legal entity;
(ii) through the sale of an interest in a public entity or other entity governed by public or private law;
(iii) by purchasing an interest in a public entity or private entity; or
(iv) in another, legally and effectively related and comparable way, by transferring the exercise of rights and obligations arising from a public-private partnership to that person.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?
According to CA, unless provided otherwise by the articles of association, there is a non-compete obligation for partners in

---

general partnerships, general partners in limited partnerships and shareholders in LLCs. These may not assume the following roles in another company whose activities are or could be in direct competition with those of the JV - partner in a general partnership; general partner in a limited partnership; shareholder in an LLC; member of the management board, the board of directors or the supervisory board of a JSC; procurator; and employee.

The articles of association may lay down that a non-compete obligation remains in force even after the termination of the membership in the company, however, the non-compete obligation may not apply for longer than two years. Limitations under competition law also need to be observed in this respect.

There are no explicit provisions regulating the duration of the non-compete clauses for contractual JVs.

The applicable restrictions under the competition law depend upon the market power of each of the JV partners and the JV itself: on one hand, *de minimis* exemptions may be applicable, and on the other - extreme limitations stemming from prohibition of dominance abuse have to be considered. In situations where the market power is in between, some horizontal block exemptions may be applicable, such as R&D block exemption⁶.

### 11. LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV

**Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?**

**(a) Contractual JV**

Unless provided otherwise within the partnership agreement, each party is entitled to a part of the benefits. In addition, each party to the partnership agreement is obliged to bear a part of the losses. If not agreed otherwise within the partnership agreement, the parties are entitled to profits and/or must bear losses proportionately to their contributions. A relationship in which a certain party only receives benefits, without having an obligation to ensure a contribution, is not considered a partnership agreement under Slovenian law, but would be assessed under different rules (e.g., rules applicable to gifts).

According to the OC, if assets within the partnership need to be preserved or if damage needs to be averted, each party is obliged, in addition to providing the contribution stipulated in the partnership agreement, to contribute a proportionate part of that, which is required for preserving the assets or preventing the damage.

A contractual JV is not a legal entity, hence, the parties to the partnership agreement are liable for the obligations of the JV.

**(b) Corporate JV**

If not agreed otherwise in the articles of association of an LLC, profits are distributed to the shareholders proportionally to the value of their business shares. Generally, shareholders of LLCs are not liable for the JV’s obligations in excess of the amount of their contributions.

Partners in a general partnership are subsidiary and severally liable towards the creditors of the general partnership. They shall agree in the partnership agreement on distribution of profits.

For liabilities of a limited partnership, general partners are liable with all their assets, whereas limited partners are liable only up to the amount of their respective capital shares and outstanding contributions. Partners shall agree in the partnership agreement on distribution of profits.

---

⁶ Official Gazette of Republic of Slovenia No. 74/16.
Shareholders of a JSC are not liable for the liabilities of the JV in excess of the amount of their contributions. One of the main rights deriving from being a holder of ordinary shares is the right to participate in the profits (dividend). The JSC may also issue preferred shares, which may ensure preference regarding (i) payment of predetermined sums (or percentages of the nominal value of shares) or profit and/or (ii) preference regarding payment in case of winding up of the JV, and/or (iii) other rights set out in the articles of association.

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

(a) Contractual JV
Pursuant to Article 992 of the OC, parties to the partnership agreement adopt decisions on the matters of the partnership unanimously unless it is agreed in the partnership agreement that these decisions are adopted by the majority of votes; in such case, the majority has to consist of at least two-thirds of all votes.

The parties adopt, in particular, decisions on the use of the profit and other benefits, the manner in which loss is covered, the entry of a new party or exclusion of a current party, claims against any party for settlement of damage made to the partnership, revocation of management, termination of the partnership agreement and other issues which surpass the management.

Expulsion of a party from the partnership may be requested by other partners if there are reasonable grounds for such expulsion. This is usually done in court proceedings, but the parties may also agree in the partnership agreement that the parties themselves may decide on the expulsion of a party from the partnership.

(b) Corporate JV
Each form of a company is regulated differently under the CA. Some are regulated more strictly than others.

(i) LLC
Unless the law or the articles of association stipulate otherwise, the shareholders in an LLC adopt decisions at the general meeting, with a majority of votes cast. A majority of all shareholders have to be present for the general meeting to adopt decisions.

A majority of three-quarters of all shareholders’ votes is required for certain matters, including amendment to the articles of association. Such decision has to be approved by the notary, except when the change of articles of association refers solely to the registered office, company name or business activity.

Generally, each shareholder has one vote for each EUR 50 of the subscribed contribution. However, the articles of association may stipulate that certain shareholders have more votes or that the voting right of certain shareholders is limited.

It may be agreed within the articles of association, when a shareholder may exit and/or be expelled from the company. In each case, a shareholder may exit the company for justifiable grounds, in particular, if other shareholders or management are causing damage to the shareholder, if the company or the shareholders obstruct or disable the execution of shareholder’s right to exit, if the shareholder is obstructed at executing his rights, arising from the law or articles of association, or if the general meeting or management give him unproportionate obligations.

A shareholder may be expelled from the company, provided there are reasonable grounds, in particular, if the shareholder causes damage to the company or another shareholder if the shareholder does not act in accordance with the general meeting’s decisions, if the shareholder does not cooperate at managing and thus obstructs ordinary operations of the company or execution of other shareholders’ rights and if the shareholder gravely violates the articles of association. A shareholder in an LCC may also be expelled from the company if such shareholder fails to provide the subscribed contribution.

Generally, the JV parties can finance the activities of the JV by granting loans or providing equity capital. Shareholders in an LLC have the additional option to grant AMCs to the LLC. The essence of AMCs is that they may be provided at a later stage (in contrast to contributions, which have to be provided at the time of establishment of the company), if necessary. The obligation to provide AMCs may be agreed in the articles of association, or the articles of association may only stipulate that AMCs are permissible and later all shareholders adopt a decision approving such an AMC. In addition, they may also be agreed with an amendment to the articles of association.
The shareholders in an LLC, holding at least one-tenth of the share capital may request the convocation of a general meeting and add items on the agenda of the general meeting. They may also convene the general meeting or include an item on the agenda by themselves if their request to convolve the general meeting has not been accepted, or if persons to whom the request was addressed have been absent.

(ii) JSC

Unless otherwise foreseen in the law or the articles of association, the shareholders in a JSC adopt decisions at the general meeting, with a majority of votes cast. In addition, there are no quorum requirements for valid adoption of shareholder’s decisions at the general meeting, unless stipulated otherwise in the articles of association. All adopted decisions have to be approved by the notary within notarial minutes.

In general, the general meeting adopts decisions with a simple majority of the votes cast, unless the articles of association provide otherwise. A higher majority is required for certain matters, e.g. the majority of three-quarters of the represented share capital is required for the amendments of the articles of association, the increase of the share capital with contributions, issuance of convertible bonds or the pre-emption right to buy shares and dividend bonds; in certain of these cases, the articles of association may also provide for a different (usually higher) majority, provided that certain additional conditions are met.

The voting rights of shareholders are exercised in accordance with the proportion of share capital that their shares represent. Each no-par value voting share generally carries one vote, whereby voting rights may be restricted in the articles of association.

A squeeze-out process is possible in a JSC: any shareholder holding at least 90 per cent of the share capital may adopt a decision at the general meeting on the transfer of the shares of the remaining shareholders against payment of appropriate compensation. The reverse process is also possible: if there is a shareholder holding at least 90 per cent of the share capital, each of the remaining shareholders may ask to be squeezed-out against payment of appropriate compensation. Squeeze-out rules are different within three months following a successful takeover offer: within this period, squeeze-out is allowed at the takeover price.

A shareholder in JSC may be expelled from the company if such a shareholder fails to provide the subscribed contribution.

The JV parties may choose to manage the JSC either under a one-tier management system (a board of directors) or under a two-tier management system (management board and supervisory board). Even though not many Slovenian companies are publicly traded, many Slovenian JSCs are subject to takeover rules. This is the case because the Takeovers Act applies to public companies as well as to any other JSC that has at least 250 shareholders or a total capital in excess of EUR 4 million. Therefore, even a JV with a small number of shareholders could be subject to the takeover rules for as long as it is organised in the form of a JSC and its total capital exceeds EUR 4 million.

13. TERMINATION

13.1 What legal regime applies to the JV termination? Can a JV be terminated for just cause on the request of one party?

(a) Contractual JV

According to Article 1000 of the OC, a contractual JV may be terminated:

(i) upon expiry of the definite period for which it was established;
(ii) when the purpose for which it was established is achieved or when achieving this purpose becomes impossible;
(iii) if the partners conclude to terminate the partnership;
(iv) if a party dies or loses the capacity to contract, or if bankruptcy, liquidation or compulsory settlement proceedings are initiated against a party as a sole proprietor;
(v) if a party as a legal entity ceases to exist, because of corporate changes, or if bankruptcy, liquidation or compulsory settlement proceedings are initiated against it;
(vi) if a party’s share is acquired by a third person as a consequence of enforcement proceedings;
(vii) if through an act issued by a national authority, a party is prevented from performing activities that are vital to achieving the common purpose of the partnership agreement; or
(viii) if a party terminates the partnership agreement.
In case a person ceases to be a party to the partnership agreement for reasons listed under (iv)-(viii) above, the partnership agreement may still remain in force for the remaining parties, provided that such continuation is agreed with the partnership agreement.

A party may terminate the partnership agreement as stipulated in the partnership agreement. If the partnership agreement contains no provisions in this respect, a party may terminate the partnership agreement applicable for an indefinite period without cause with a notice period of three months. A partnership agreement applicable for a definite period may be terminated only for just cause, without any notice period.

(b) Corporate JV
A company in the form of an LCC, a JSC or a partnership limited by shares may be wound up:
(i) upon the expiry of the definite period for which it was established;
(ii) by a decision of the general meeting, which has to be adopted with a three-quarter majority (unless the articles of association provide for a higher majority);
(iii) if the court establishes the nullity of a company with share capital;
(iv) in the case of bankruptcy;
(v) by a court decision;
(vi) if the company has no shareholders or if it only has own shares;
(vii) if the management has been inactive for more than six months;
(viii) by merger with another company; or
(ix) if the company’s share capital is reduced below the statutory minimum amount.

Should a shareholder of an LLC who holds at least one-tenth of the share capital believe that the company’s objective cannot sufficiently be achieved or that some other just cause exists for winding up of the company, such shareholder may file an action requesting the court to decide on the winding up of the company.

A shareholder of a JSC or a partnership limited by shares may also lodge with the court a proposal for the compulsory winding up of the company if statutory conditions for such winding up exist. The court shall issue a decision to wind up the company if the shareholders fail to provide share capital in the amount of the legal minimum requirement within the time limit set by the court, which may not be shorter than three months.

A company in the form of a general partnership or a limited partnership may be wound up:
(i) upon expiry of the definite period for which it was established;
(ii) by a decision of the shareholders;
(iii) through bankruptcy;
(iv) upon the death or winding up of a shareholder unless otherwise provided by the articles of association;
(v) by termination;
(vi) based on a court decision;
(vii) if the number of shareholders drops below two; or
(viii) in other cases, provided for by the law.

If a general partnership or a limited partnership is formed for an indefinite period, any shareholder may terminate the articles of association at the end of the financial year provided that notice is given in writing to the other shareholders at least six months prior to this date. If a just cause exists, a shareholder may file an action requesting the winding up of the company (i) prior to the expiry of the definite period for the duration of which the company was established or (ii) without a notice period if the company is established for an indefinite period. A just cause shall be deemed to exist if another shareholder intentionally or through gross negligence breaches any substantial obligations contained in the articles of association or if the fulfilment of such obligation becomes impossible.

After the termination of a corporate JV (other than as a result of bankruptcy proceedings), a liquidation procedure shall be started. The shareholders may generally choose either (i) a summary liquidation which is carried out faster and without a liquidation administrator, but leaves the shareholders liable for the remaining JV’s liabilities for a certain period of time, or (ii) regular liquidation in which a liquidation administrator is appointed in order to close down the operations, settle JV’s debts and distribute the remaining property to shareholders.

13.2 Is the termination of a JV subject to governmental or other approval?
Generally, the termination of JV (irrespective of its type) is not subject to governmental and/or other approval. However, certain
approvals may have to be obtained when a JV, which performs certain regulated activities (e.g. banking, insurance, etc.), is intended to be terminated. By way of example, when a bank intends to be wound up, it must prior to adopting such a decision, present its liquidation plan to the Bank of Slovenia.

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?

(a) Contractual JV

There are no constraints on the choice of law applicable to a contractual JV. However, the choice of foreign law cannot derogate from any mandatory provisions of Slovenian law if the elements of the JV Agreement relate to the territory of Republic of Slovenia.

According to the Private International Law and Procedure Act, the parties may agree on the jurisdiction of a foreign court if at least one of the parties is a foreign citizen or legal entity with its registered office in a foreign country and the dispute is under the applicable law not subject to the exclusive jurisdiction of the courts of Republic of Slovenia. In addition, when assessing the party’s agreement on jurisdiction, EU Member States must also consider the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) under which the parties may agree on a foreign jurisdiction regardless of their domicile.

(b) Corporate JV

For a corporate JV, Slovenian law is the mandatory law for the foundation documents and the parties may not derogate from it. The Slovenian courts have exclusive jurisdiction to decide cases regarding establishment, termination and changes in the status of a company and in all disputes related to the validity of decisions of a company having its registered office in Slovenia.

Regarding other matters, including disputes in connection to shareholders’ agreements, the parties may choose a different law and jurisdiction.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?

There are no restrictions on the nationality of the parties of either a contractual or corporate JV.

An additional formality applicable to any foreign natural or legal person wishing to become a shareholder and/or legal representative of a corporate JV is that he must obtain a Slovenian tax number.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?

All the rules which are applicable to local JVs are also applicable to JVs with members incorporated under or governed by the laws of a foreign jurisdiction.

16. ECONOMIC OR FINANCIAL INCENTIVES

Are there economic or financial incentives for foreign direct investments in a JV?

According to the Investment Incentive Act, there are certain incentives, e.g. subsidies, credits and guarantees, which may be granted either to local or foreign investors. For the incentives to be granted, various factors are considered, such as the value of the investment, activity being invested into, number of new employments, transfer of technology, knowledge and experience, environmental impact, etc.

17. MINIMUM INVESTMENTS/CONTRIBUTIONS

Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?

There are no minimum equity investments or contributions in-kind thresholds applicable specifically to foreign JV members.
Are JVs expressly regulated in your jurisdiction?
The joint ventures are commercial arrangements between two or more economically independent individuals and/or legal entities combining their services and assets to achieve a common purpose. Although certain pieces of Turkish legislation (such as the Competition Board’s Communique No. 2010/4) include specific provisions in relation to JVs, they are not expressly regulated under the Turkish Code of Obligations ("TCO") or the Turkish Commercial Code ("TCC"). That being said, depending on the type of the JV, provisions of both the TCO and the TCC may apply with respect to the establishment and governance of JVs.

If a JV is only formed in a contractual form, it will be deemed as an ordinary partnership and the relevant provisions of the TCO will apply. The contractual JVs are preferred if the arrangement between the parties is related to a specific purpose that can be fulfilled within a short period.

If the venturing parties aim to achieve a more continuous partnership, it will be more practical to establish the JV in a corporate form by incorporating a commercial legal entity in accordance with the relevant provisions of the TCC.

The venturing parties may freely choose to form either a contractual JV or a corporate JV depending on the type of the business that the parties aim to conduct through the JV. Certain pieces of Turkish legislation restrain this freedom of the parties to select. For instance, pursuant to the Capital Markets Law No. 6362¹, JVs, to which an intermediary firm will be a party, must be formed as a joint-stock corporation.

Which types of JVs are allowed?
Despite the lack of a clear definition of JVs under Turkish law, as per the legal doctrine and court precedents, the parties may form either a contractual JV or a corporate JV.

(a) Contractual JVs
The contractual JVs are formed by the parties through the execution of a JV Agreement to achieve a common goal. In this type of JVs, no corporate bodies are formed in order to achieve such common goal.

The contractual JVs are usually preferred when the parties aim to achieve a specific purpose or complete a specific project within a short period.

(b) Corporate JVs
The corporate JVs are established as corporate legal entities, types of which are exhaustively specified under the TCC. The parties may establish a corporate JV in the form of a limited liability partnership ("LLP"), joint-stock corporation ("JSC"), limited partnership, general partnership or cooperative companies.

Are corporate JVs subject to your jurisdiction’s corporate law?
Although the TCC does not explicitly refer to JVs, establishment and governance of corporate JVs are subject to Turkish corporate law. Corporate JVs must be incorporated into one of the legal entity types that are exhaustively listed under the TCC. Under the TCC, there are five types of companies: (i) limited liability partnerships; (ii) joint-stock corporations; (iii) limited liability companies; (iv) cooperative companies; (v) public joint-stock companies.

---

¹ Official Gazette of Republic of Turkey, Issue No. 27836, effective 1 January 2011.
² Official Gazette of Republic of Turkey, Issue No. 27846, effective 14 February 2011.
³ Official Gazette of Republic of Turkey, Issue No. 28513, effective 30 December 2012.
partnerships; (iv) general partnerships and (v) cooperative companies. Each of these legal entity types has its own advantages and disadvantages depending on the business to be carried out. In practice, the most preferred types of commercial companies are LLPs and JSCs. Accordingly, we will only refer to the LLPs and JSCs as well as their similarities and differences in this article.

3. FORMATION AND REGISTRATION

3.1 Is there any restriction on the use of foreign language in the JV's founding documents (both corporate and contractual)?

(a) Contractual JV

Law No. 805 on Compulsory Usage of Turkish for Commercial Entities ("Law No. 805") governs that the Turkish companies are obligated to use Turkish in their (i) transactions carried out in Turkey, (ii) agreements executed in Turkey, (iii) correspondence, (iv) accounts and (v) company books. Furthermore, the transactions and correspondence between the foreign individuals/legal entities and Turkish individuals/legal entities which take place in Turkey must be in Turkish.

In practice, if a party to the JV Agreement is from a foreign nationality while the other party is Turkish, the parties generally prefer to execute the JV Agreement in a foreign language. However, depending on the governing law and the jurisdiction specified under the JV Agreement, the parties may face certain challenges, especially before Turkish courts due to Law No. 805 in Turkey. Accordingly, in order to avoid any potential disputes in connection with the validity of the JV’s founding documents (including the JV Agreement), the parties should execute these documents in Turkish language or in dual column format, if one of the venturing parties is of foreign nationality and the agreement is governed by Turkish law. That said, the language requirement should be evaluated on a case-by-case basis depending on the choice of law and jurisdiction clause of the JV Agreement.

(b) Corporate JV

The main document required for incorporation of a corporate JV is the articles of association to be signed by the partners of the corporate JV. The articles of association must be registered with the competent trade registry (i.e., the trade registry where the company will be incorporated). The articles of association must be executed in Turkish regardless of the nationalities of the shareholders. The parties must also submit the board members’ and signatories’ IDs and signature declarations to the trade registry and if the originals of such documents are executed in a foreign language, the notarised translations must be submitted to the trade registry. Any transaction that needs to be registered before the competent trade registry (e.g., appointment of board members or signatories, capital increase, merger, incorporation, amendment of articles of association, etc.) must be carried out in Turkish.

If the parties prefer to participate into an existing company by way of a share transfer, rather than incorporating a new one, registration of the new shareholders with the company’s share ledger must be made in Turkish, as Turkish companies are obligated to keep their books and records in Turkish according to the Law No. 805.

In case of the JSCs, the share transfers are not subject to registration with the competent trade registry so the main document (i.e., the Share Purchase Agreement) structuring the share transfer can be executed in foreign language, if one of the venturing parties is of foreign nationality. That said, language requirement should be evaluated on a case-by-case basis depending on the choice of law and jurisdiction clause.

Unlike JSCs, share transfers in the LLPs must be registered with the competent trade registry. In order to do so, the parties must execute a Share Purchase Agreement in Turkish before a Turkish Notary Public before submitting the agreement to the trade registry for registration. In practice, if one of the venturing parties is of foreign nationality, the parties usually execute a short form Turkish Share Purchase Agreement, as well as a separate full-fledged Share Purchase Agreement in a foreign language or dual language.

3.2 Are public officers (e.g. Notary Public or similar) involved in the procedure of formation of a local JV?

Under the TCC, the companies must be registered with the competent trade registries in order to be officially incorporated

---

4 Official Gazette of Republic of Turkey, Issue No. 353, effective 22 April 1926.
5 Depending on the number of acquired shares certain trade registry notifications may be required.
and to have legal personality. The trade registries require notarised documents to be submitted for incorporation, accordingly, both Notary Publics and trade registries are involved in the incorporation of corporate JVs.

If the JV will operate in a regulated sector (such as insurance, energy, banking), the incorporation of such JV, as well as its operations, may require the competent public authorities’ approval and involvement.

3.3 Are there registration requirements for JVs? Are any authorisations, licences or other governmental permits required for establishment of a JV (e.g. national regulatory or antitrust authorities)? What are the conditions for that?

Corporate JVs must be registered with the competent trade registries in order to be officially incorporated and to have legal personality.

If the JV will operate in a regulated sector (such as insurance and energy), the incorporation of the JVs may require the competent public authorities’ approval. Furthermore, depending on the venturing parties’ turnover, the incorporation of a JV may be subject to the Competition Authority’s approval. You may find our detailed explanation regarding the Competition Authority’s approval under Section 9.

3.4 Are there any other formal requirements for the establishment of the JV?

There are no other requirements other than the ones mentioned in Section 3.3.

4. PERMITTED MARKETS

Can the JV be used in every field of the economy? Are there any restrictions to be considered and assessed before investing?

In Turkey, JVs are generally formed in certain sectors such as mining, chemistry, real estate, manufacturing, energy and transportation. There are no specific restrictions regarding formation of a JV, other than the sector specific restrictions regulated under different pieces of legislation (e.g., insurance and energy). In this regard, foreign investors should carefully examine the sectors that they would like to invest and operate in to avoid any violations of the domestic and sector-specific regulatory restrictions.

5. PURPOSE

Can the JV be established for any purpose?

Under Turkish law, parties can sign any type of contract for any purpose with any party pursuant to the principle of “freedom of contract” stipulated under Article 26 of the TCO. However, the subject matter of the relevant contract shall not be in breach of the rules set out in Article 27 of the TCO. The relevant article of the TCO states that any provision of a contract which is contrary to the mandatory provisions of the law, morality, public order, individual rights or whose subject matter is impossible to achieve is null and void. Accordingly, contractual JVs can be established for any purpose, as long as the provisions of the JV Agreement do not violate any mandatory provisions of the applicable laws and the subject matter of the JV is achievable.

6. SHARE CAPITAL AND PARTICIPATION

6.1 What are the possible forms of participation in the share capital of a JV? How can a member contribute and are there statutory limits for in-kind contributions?

(a) Contractual JV

In order to contribute to a contractual JV, two or more partners should undertake to combine their services or assets. Each partner must inject cash or contribute tangible or intangible assets, receivables or efforts in the JV. The TCO stipulates that the contribution shares must be equal unless otherwise determined in the JV Agreement.

(b) Corporate JV

Corporate JVs can be incorporated by the venturing parties by a contribution of cash or capital in kind (e.g. real or tangible property and intellectual property rights, the value of which should be determined by the court) to the share capital. The in-kind capital must be free of any encumbrances. It is worth emphasizing that undertakings of service, personal efforts, commercial reputation and undue receivables cannot be contributed to corporate JVs as share capital.
The parties may also prefer to subscribe to an existing company instead of incorporating a new one. In this event, the parties may subscribe to the company by way of a capital increase, by purchasing the existing shares or through a merger. The subscription structure should be agreed on between the parties in the JV Agreement and/or other transaction agreements.

6.2 Can the corporate JV’s share capital be indicated through reference to a foreign currency?
The mandatory provisions of the Turkish law do not allow the companies to have share capitals in foreign currency. Accordingly, the share capital of a JV must be indicated in TRY. On the other hand, it is possible for a foreign partner to contribute to the JV by injecting foreign currency into a corporate JV and the corporate JVs may keep and utilise the capital contributions in foreign currency in their bank accounts without effectively converting such contributions into TRY. However, such foreign currency must be converted into TRY only for the purposes of registration of such share capital increase with the relevant trade registry and recording such amount as the capital increase in the JV’s accounts by using the applicable FX rate.

8. PUBLIC SECTOR BODIES

Can a public sector body enter into a JV Agreement and subject to what conditions? Do special Public Private Partnership laws and regulations apply?
(a) Public Sector Bodies’ Ability to Enter into JV Agreements
Under Turkish law, if a legal entity is (i) incorporated directly through an explicit authority granted by the Constitution or the law and (ii) equipped with public power privileges, such entity is qualified as a public entity. The public entities are free to enter into JV Agreements which are of a fully commercial nature and do not directly serve for the public interest provided that they comply with the mandatory requirements under the Public Procurement Law.

As per the Public Procurement Law, public entities that are willing to enter into a private law agreement (such as the JV Agreement depending on the scope of work foreseen under the JV Agreement), must first initiate a tender and fulfil other conditions set out under the Public Procurement Law. Public entities can enter into private law agreements (such as the JV Agreement) only with the party winning the tender, provided that all other statutory conditions are satisfied.

(b) Public Private Partnership Laws and Regulations
Although many different Public Private Partnership models are to the nature and purpose of the establishment of JVs, the corporate JVs must be established by a minimum of two shareholders. In the case of the corporate JVs established as LLPs, the number of shareholders cannot exceed 50 as per the provisions of the TCC. If the number of shareholders exceeds 500 in JVs incorporated as JSCs, such companies will be deemed as publicly-held and be subject to Capital Markets Law regulations.
structured in Turkey, such as Build-Operate-Transfer model, Build-Lease-Transfer model and Build-Operate model, there is no specific provision under Turkish law on Public Private Partnerships which is directly applicable to JVs. Therefore, when a public body enters into a JV Agreement, the legal aspects regulating the JV’s activity will depend on sector-specific regulations.

For instance, with respect to the electricity generation sector, in order to establish and operate an electricity generation facility through the Build-Operate-Transfer business model, certain conditions must be fulfilled as per the Law on Regulation of Energy Sales and Establishment and Operation of Electrical Energy Through Built-Operate-Transfer Model, (e.g., obtaining the approval of TEIAS - State Electricity Generation and Transmission Corporation). In addition, with respect to the health sector, the Law on Building and Renewal of Facilities and Procurement of Services through Public Private Partnership Model provides a rather extensive legal framework for long partnership agreements.

9. NON-COMPETE AND ANTI-TRUST CONSIDERATIONS

Are there statutory restrictions on the use of non-compete/anti-trust clauses in JV Agreements?

Under Turkish law, the venturing parties executing the JV Agreement are free to include a non-competition clause. However, such clauses are subject to the regulations set out under Law on the Protection of Competition (“Competition Law”), Block Exemption Communiqué on Vertical Agreements (“Block Exemption Communiqué”) and the TCO.

The Block Exemption Communiqué applies to vertical agreements executed for buying and selling goods and services by two or more entities that are operating on different levels of production and distribution chains. In this regard, the provisions of the Block Exemption Communiqué will be applicable to JVs where the venturing parties are operating on different levels of the market. In these types of JV formations, the venturing parties may include a non-competition clause in their agreement, provided that such clause does not apply for more than five years from the termination of the agreement. If the parties do not abide by this obligation, the Competition Authority may initiate an investigation on the venturing parties and impose administrative fines.

There are also several restrictions to non-compete clauses to be included in JV Agreements where the venturing parties horizontally operate on the same level of production. In this regard, the non-compete clause in the JV Agreement must be limited in duration, geographic scope and subject matter of the JV Agreement. As per the precedents of the Turkish Competition Board, non-compete and non-solicitation obligations up to two years are deemed permissible in horizontal JV Agreements.

10. DE FACTO COMPANIES/PARTNERSHIPS

Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?

The Turkish law does not recognise the concept of de facto company/partnership.

11. LIMITING THE LIABILITIES OF THE MEMBERS OF THE JV

Can the JV Agreement provide that a JV member can participate without incurring any risk, loss or reward?

(a) Contractual JV

Although the parties of the JV may agree otherwise in the JV Agreement, the TCO stipulates that the partners will equally share the profit and loss of the partnership without regard to their contribution into such partnership. Accordingly, the partners must share the profit and loss of the JV equally among themselves, unless otherwise agreed between the partners. A partner can be entitled to the profit of the JV without bearing any loss only if such a partner contributes to the partnership with its services.

---

9 Official Gazette of Republic of Turkey, Issue No. 6428, effective 21 January 2013.
11 The Turkish Competition Authority, Communiqué No. 2002/2.
12 Five-year is the maximum period allowed by the Competition Authority subject to certain conditions (e.g., significant know-how).
(b) Corporate JV

It is not possible for shareholders to participate in a corporate JV in the form of JSCs or LLPs without bearing any risk, loss or reward.

According to the TCC, each shareholder is entitled to JSC and LLP’s profit in proportion to its shareholding ratio. Furthermore, if a JSC or an LLP goes into liquidation, the shareholders will also be entitled to the liquidation profit (if any) _pro rata_ their shares held in such company.

Although the general rule is the distribution of the profit _pro rata_ to each shareholder’s shares, it is possible to specify or issue preferred share groups with privileges in respect of the profit distribution. Such a privileged group of shares must be determined under the company’s articles of association together with the preferred rights the holders of shares are entitled to.

As per the liabilities of the shareholders in corporate JVs, the liability of the shareholders of a JSC is limited to the amount of their share capital undertaking. The same principle is also applicable to the partners of the LLPs except for the public debts (i.e., taxes, social security obligations, etc.) for which the shareholders are liable _pro rata_ to their shareholding percentages. Having said that, if the shareholders of the JV are also the JV’s board members and/or authorised signatories, they will also have liabilities arising from their management duties.

12. GOVERNANCE OF THE JV

Can the parties to a JV Agreement freely regulate the JV or are there certain restrictions that have to be taken into account?

As explained under Section 1 above, regardless of the JV’s type of incorporation (i.e., contractual or corporate), the JVs will be considered as a (ordinary or commercial) partnership. The shareholders/parties of a JV are entitled to freely regulate the JV as an ordinary or commercial partnership through different means such as the board of directors’ resolutions, general assembly meetings, JV’s articles of association and transaction agreements (e.g., SPA, SHA, Service Agreements).

Having said that, the TCC sets forth certain mandatory rules on the governance of corporate JVs established as a JSC or an LLP. The shareholders of corporate JVs must comply with these mandatory rules and cannot amend them in the relevant transaction documents regarding the formation/governance of corporate JVs. Set out below are some examples of such mandatory rules stipulated under the TCC:

(i) The minimum nominal value of one share in JSCs and LLPs is TRY 0.01 and TRY 25, respectively. The shareholders are not allowed to specify the nominal value of a share that is lower than the foregoing values.

(ii) Corporate JVs established as LLPs can have a maximum of 50 shareholders.

(iii) A veto right cannot only be granted to a single shareholder or board member.

(iv) Members of the board of directors can only be appointed for a maximum of three years, though re-election is possible.

(v) The general assembly meetings can be held with the attendance of shareholders representing at least one-quarter of the entire share capital. The shareholders may specify a higher quorum under the corporate JV’s articles of association, whereas they are not allowed to specify a lower meeting quorum.

13. TERMINATION

13.1 What legal regime applies to the JV termination? Can a JV be terminated for just cause on the request of one party?

(a) Contractual JV

The reasons for termination of an ordinary partnership is listed under the TCO. Accordingly, an ordinary partnership can be terminated if (i) the purpose of the partnership is fully achieved or such purpose has become impossible to achieve; (ii) a partner dies and there are no provisions in the partnership agreement stating that the agreement will continue with participation of the legal descendants; (iii) capacity of a partner is restricted by law or a partner becomes bankrupt; (iv) partners unanimously agree to terminate the partnership; (v) the term determined for the partnership expires; (vi) a partner serves on the other partners a six-months prior _bona fide_ termination notice (which is applicable to partnerships established for an indefinite term) and (vii) a partner reserves the right of unilateral termination under the partnership agreement and exercises it.
The partnership can also be terminated at any time by a court decision upon a party’s termination request, provided that there is a just cause for termination of the partnership.

(b) Corporate JV
The grounds for termination of JSCs and LLPs are listed under the TCC. Accordingly, a JSC can be terminated if (i) the term determined under the articles of association has expired; (ii) if the purpose of the legal entity has been achieved or such purpose has become impossible to achieve, (iii) a termination event specified under the articles of association has occurred, (iv) the shareholders representing 75 per cent of the entire share capital resolve on termination of the entity in a general assembly meeting, (v) the legal entity becomes bankrupt; (vi) the relevant court decides on the entities’ termination due to lack of a corporate body following the shareholders’ request. Furthermore, according to Article 531 of the TCC, if a just cause exists, a shareholder holding the shares representing at least 10 per cent of a JSC’s share capital, may request the dissolution of the company by filing a lawsuit with the commercial court. The court, at its sole discretion, may decide on (1) the company’s dissolution, or (2) the exit of the shareholder in return of the payment of the shares’ market price or (3) any other appropriate remedy.

An LLP can be terminated if (i) a termination event specified under the articles of association has occurred; (ii) the shareholders resolve on termination of the entity in a general assembly meeting; (iii) the legal entity becomes bankrupt and (iv) the relevant court decides on the entities’ termination due to lack of a corporate body following the shareholders’ request. Furthermore, if a just cause exists, any shareholder of an LLP may request the dissolution of the company by filing a lawsuit with the commercial court. The court, at its sole discretion, may decide on (1) the company’s dissolution, or (2) the exit of the shareholder in return of the payment of the shares’ market price or (3) any other appropriate remedy.

13.2 Is the termination of a JV subject to governmental or other approval?
Although the termination of a JV does not require governmental approval, there is a termination procedure to be carried out before certain governmental authorities. Accordingly, if the JV operates in a regulated sector (e.g. banking, insurance, energy), certain governmental approvals may be required for the termination of such JV.

If the termination occurs for a reason other than bankruptcy or a court decision, the general assembly of the shareholders must resolve on the termination of the legal entity and such resolution (i) must be notarised by a notary public; (ii) registered with the relevant trade registry and (iii) announced on the Turkish Trade Registry Gazette.

14. CHOICE OF LAW AND JURISDICTION

Are there constraints on the choice of law and choice of forum applicable to a JV?
(a) Choice of Law
If both venturing parties are Turkish entities/individuals, Turkish law will be applicable to the JV Agreement. If one of the venturing parties is a foreign entity, it is accepted that such a contractual relationship between the parties contains a foreign element. Accordingly, the principles regarding the choice of law in the JV Agreement will be governed by the Turkish International Private and Procedure Law (the "IPPL"). As per Article 24 of the IPPL, the parties to a JV Agreement are free to choose the governing law.

The parties’ choice regarding the governing law must be clearly indicated in the JV Agreement. Having said that, even if there is no specific provision regarding the choice of law in the JV Agreement, the references to a specific law in ancillary documents (e.g., supplementary protocols, side letters) will be deemed a valid choice of law, provided that the parties’ choice regarding the governing law is clear under such documents.

That said, the overriding mandatory provisions (e.g., employment of foreign employees) of the Turkish law will be applicable to any situation falling within their scope, irrespective of the parties’ choice on foreign governing law in the JV Agreement. In addition, the provisions of the governing law chosen by the parties are not applicable to the JV Agreement if the provision of the applicable foreign law is expressly contrary

\[\text{If the legal entity is a publicly traded company, the shareholders representing at least 20 per cent of the total share capital must apply to the court for termination with just cause.}\]
to the Turkish public order. Under these circumstances, the relevant provisions of Turkish legislation will be applicable to the relevant provisions of the JV Agreement.

In order to avoid any risks regarding the invalidity of the choice of law provision due to Law No. 805 in cases where one of the parties is a Turkish legal entity or individual and there is a foreign element in the JV Agreement, the parties should assess on a case-by-case basis whether the choice of law provision needs to be executed in dual column format.

(b) Choice of Forum
Under Turkish law, any dispute between Turkish nationals, which does not contain a foreign element, must be subject to domestic jurisdiction rules under the Civil Procedure Law ("CPL"). Under the CPL, merchants or public entities may grant jurisdiction to one or more than one Turkish courts for the disputes arising from JV Agreements that includes an exclusive jurisdiction clause.

As per the IPPL and the jurisprudence of the Cassation Court, the venturing parties are entitled to include an exclusive foreign jurisdiction clause in the JV Agreement if:
(i) the dispute contains a foreign element;
(ii) the dispute does not fall within the exclusive jurisdiction of Turkish courts (e.g., disputes regarding ownership of real properties);
(iii) the dispute arises out of a relationship within the scope of obligations law;
(iv) it is not contrary to the Turkish public policy, i.e., violates the fundamental principles of Turkish law, Turkish general morality and customs, fundamental understanding of justice, fundamental rights and liberties set forth in the Constitution, principles of international law and principle of bona fide; and
(v) the foreign court chosen by the parties is precise and clear.

Even if the parties agree on a foreign court jurisdiction in a JV Agreement, it is possible for the venturing parties to initiate lawsuits before Turkish courts. In such case, the defendant must raise a jurisdiction objection based on the relevant exclusive foreign court jurisdiction clause, in order to ensure that the dispute is settled by the relevant foreign court. If the defendant does not raise a jurisdiction objection or the Turkish court deems that the jurisdiction clause is not valid (which may be the case if one of the venturing parties is a Turkish entity and the JV Agreement is not executed in Turkish or dual column format), the Turkish courts will resolve the dispute in accordance with the governing law determined under the JV Agreement.

(c) Arbitration
Arbitration is frequently preferred for large commercial disputes related to JVs in areas such as construction, energy and infrastructure to be resolved before arbitral tribunals. Under Turkish law, arbitration is governed by both Turkish laws and international treaties to which Turkey is a party. Turkey has a dual system for domestic and international arbitration. The primary legislation on arbitration is the CPL, which governs domestic arbitration in Turkey. The International Arbitration Law ("IAL"), on the other hand, governs arbitration proceedings involving a foreign element, with a venue in Turkey. In this regard, venturing parties in a JV are entitled to determine arbitration as the dispute resolution method in accordance with the provisions of the CPL and IAL, depending on the nationality of the venturing parties and the venue of the arbitration.

In order to settle a dispute by arbitration, the arbitration clause in the JV Agreements must be in writing and the parties’ intention to settle the dispute by arbitration and to be bound by the arbitral award must be explicit and clear. It is worth noting that the parties’ right to choose arbitration as the dispute resolution method in a JV Agreement is contingent upon certain conditions. For instance, the parties are not entitled to include an arbitration clause related to an agreement that can be deemed against the public order, such arbitration agreement will be deemed invalid.

The venturing parties should take into consideration that the mandatory provisions of Law No. 805 will also be applicable to arbitration clauses. Accordingly, in order to avoid any potential disputes in connection with the validity of the arbitration clauses in JV Agreements, the parties should assess whether the arbitration clause needs to be executed in dual column format on a case-by-case basis if one of the venturing parties is a Turkish entity.

15. VALIDITY AND AUTHORISATION

15.1 What are the rules relating to validity and authorisation of JVs with foreign members?
There are no regulatory limitations in relation to JVs with foreign
members; foreign investors can be parties to corporate and contractual JVs which are formed in Turkey. Having said that, if one of the parties of a corporate JV is of foreign nationality, the venturing parties are obligated to notify the General Directorate of Incentive Implementation and Foreign Investment of the JV’s capital, scope of activity and any transfers between the Turkish and/or foreign shareholders of the JV according to Foreign Direct Investment Law and Communique of the Foreign Direct Investment Law.

15.2 Are any of the rules applicable to local companies – JVs different for JVs with members incorporated under, or governed by, the laws of foreign jurisdiction?
If there is a foreign shareholder in the JV shareholding structure, the application of certain regulations may differ. For instance, as explained under Section 15.1, if one of the parties of the JV is of foreign nationality, the venturing parties are obligated to notify the General Directorate of Incentive Implementation and Foreign Investment of the JV’s capital, scope of activity and any transfers between the Turkish and/or foreign shareholders of the JV.

16. ECONOMIC OR FINANCIAL INCENTIVES
Are there economic or financial incentives for foreign direct investments in a JV?
JVs established by foreign direct investments may benefit from the rights granted to foreign investors specified under the Foreign Direct Investment Law (e.g., equal treatment with local investors, unless stated otherwise in international agreements and applicable legislation, establishment of liaison office).

Furthermore, depending on the sector in which the JV will operate in, the JVs may benefit from the incentive scheme set out under the Decision of Council of Ministers No. 2012/3305 regarding state aid on investments, such as VAT exemptions, customs exemptions, social security premium assistance, interest rate assistance, reduction in income tax.

17. MINIMUM INVESTMENTS/CONTRIBUTIONS
Are there mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member?
There are no mandatory minimum equity investments or contributions in-kind thresholds for a foreign JV member. Turkish entities/legal individuals and foreign JV partners are treated equally with regard to such investments or contributions.

14 Official Gazette of Republic of Turkey, Issue No. 25141, effective 17 March 2003
ABOUT SEE LEGAL

The South East Europe Legal Group ("SEE Legal") is a unique regional group of 10 leading independent law firms covering 12 jurisdictions in Southeast Europe.

WE OFFER YOU
• Competent and prompt services
• International standards
• Deep local knowledge, experience and contacts

OUR MAIN AIM IS
• To be your leading source for business support in the Southeastern European region

In all of the countries, the respective SEE Legal member firm is in the top tier for reputation, expertise, and client service. As a Group, SEE Legal is top-ranked in Band 1 as a Leading Regional Law Firm Network – Europe-wide by Chambers Europe and Chambers Global 2019 and 2020.

For more information on SEE Legal, please visit www.seelegal.org

Other recent SEE Legal Handbooks
The Southeast Europe Energy Handbook 2019
The Southeast Europe Employment and Immigration Handbook 2018

Forthcoming SEE Legal Handbooks in 2020
The Southeast Europe Taking and Enforcing Security Handbook 2020
## CONTACTS

### Albania
Enkelejd Seitllari  
e.seitllari@kalo-attorneys.com

### Bosnian and Herzegovina
Bojana Bosnjak - London  
bojana.bosnjak-london@mariclaw.com

### Bulgaria
Nikolay Zisov  
n.zisov@boyanov.com

Yordan Naydenov  
y.naydenov@boyanov.com

### Croatia
Damir Topic  
damir.topic@dtb.hr

### Greece
Claire Pavlou  
c.pavlou@kglawfirm.gr

### Montenegro
Luka Popovic  
luka.popovic@bdkadvokati.com

### Republic of North Macedonia
Tatjana Shishkovska  
tsiskovska@polenak.com

### Romania
Gabriela Cacerea  
gabriela.cacerea@mndkp.ro

Madalina Panca  
madalina.panca@mndkp.ro

### Serbia
Vladimir Dasic  
vladimir.dasic@bdkadvokati.com

### Slovenia
Natasa Pipan Nahtigal  
natasa.pipan@selih.si

### Turkey
Serhan Kocakli  
skocakli@kolcuoglu.av.tr