

Hewitt on Joint Ventures

Fifth Edition

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*Published in 2011 by Sweet & Maxwell, 100 Avenue Road,
London NW3 3PF part of Thomson Reuters (Professional)
UK Limited (Registered in England & Wales, Company No 1679046.*

Registered Office and address for service: Aldgate House, 33 Aldgate High Street,
London EC3N 1DL)

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Typeset by LBJ Typesetting Ltd of Kingsclere
Printed and bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

First edition 1997 (Pearson Professional Ltd)
Second edition 2001
Third edition 2005
Fourth edition 2008
Fifth edition 2011

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used and re-planted.

A CIP catalogue record of this book is available for the British Library.

ISBN: 978-0-41404-482-1

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Preface

“Instead of competition, the discussion in the executive offices is increasingly of collaboration”

A special report a few years ago in the *Financial Times*¹ reflected the growing importance of collaborative relationships in the business world. That importance has been further underlined in the difficult economic climate of recent years. Joint ventures and alliances are, in the words of another leading commentator,² “an integral part of the corporate finance and corporate development tool-kit”.

A “joint venture” is not a legal term of art. The focus here is on collaborative arrangements by which two or more companies jointly and directly participate in an integrated business venture but without going so far as full merger or acquisition. We address a range of collaborative relationships (whether they are described as joint ventures, partnerships, consortia, teaming arrangements, strategic alliances or some other term) whilst recognising that the corporate joint venture is still the most common, and perhaps most complex, form of business collaboration to cross the desk of the transactional lawyer.

Aims of this book

This book is intended for the practitioner. Whilst it addresses underlying legal principles, it aims primarily to assist the practising lawyer to acquire the basic tools, skills and information required for these transactions including: (i) a good feel for the commercial background, (ii) a knowledge of available legal structures, (iii) awareness of the key issues likely to arise and range of solutions available, (iv) an outline understanding (if not necessarily detailed knowledge) of a range of specialist legal disciplines such as tax, competition law, intellectual property and employment law and (v) access to a sound base of initial forms and precedents.

There are frequent checklists which assist this approach. There is rarely a simple “right” or “wrong” solution; the constructive lawyer engaged in joint venture transactions must be prepared to consider, with the client, a range of possible solutions to suit the particular venture.

¹ *Financial Times* Report, *Understanding the Culture of Collaboration* (June 2007).

² Boston Consulting Group, *The Role of Alliances in Corporate Strategy* (2005).

International context

Very many joint ventures and alliances have an international dimension. Insofar as this is a textbook, it is based on English law—but we try to present the text in a way that it can be read easily by an “international” reader. Most issues and solutions are relevant whatever the nationality of the parties and wherever the joint venture or alliance is based.

Joint ventures are receiving wider attention among international lawyers, aided by such initiatives as the International Bar Association’s distance-learning programme on International Joint Ventures and the International Trade Centre’s project to produce model joint venture contracts for small-and-medium sized enterprises in which I was pleased to have been involved. If this book in some small way assists lawyers engaged internationally on these interesting (and often challenging) transactions, I will be particularly pleased.

Changes in this edition

Laws and practice relating to joint ventures and alliances do not stay still. There are, cumulatively, many changes reflected in this 5th edition:

- the position of nominee directors has recently been reviewed by the English courts and practical application of the new statutory derivative action under the Companies Act 2006 has been experienced;
- the Model Articles of Association introduced by the Companies Act 2006 are now widely in use and being adapted for joint venture companies;
- the range of legal structures for joint ventures continues to develop: the limited liability partnership (LLP) has become an accepted legal form and the European Private Company (SPE) is now a prospect on the horizon;
- “strategic” contractual alliances have become increasingly popular in many sectors and more attention has been given in this edition to this type of alliance;
- public/private joint ventures are now an important medium for the delivery of public services and such ventures have their own special features;
- the UK Bribery Act 2010 has ensured that anti-bribery and corruption measures must be addressed when establishing a joint venture or alliance, particularly with a local partner in a foreign jurisdiction;
- governance of joint ventures and alliances is increasingly being recognised as a distinct area of management skill and study, reflected not least in the introduction in 2010 of the British Standards Institution’s new framework specification, BS 11000, for Collaborative Business Relationships;
- the importance of effective dispute resolution does not diminish and developments have ranged from increasing use of mediation in dispute settlement to a

marked rise in investor-state arbitration under international bilateral investment treaties;

- substantive changes have taken place in specialist areas which impact significantly upon joint ventures—particularly changes in relation to EU competition law, international accounting standards (IFRS) and taxation;
- the international dimension continues to be integral to this book; Switzerland has been added to the countries where a basic introduction has been provided and the sections on the BRIC countries (Brazil, Russia, India and China) have been updated along with many others;
- additional precedents include the International Trade Centre (ITC) Model Contract for an International Corporate Joint Venture particularly aimed at small and medium-sized enterprises (SMEs) in both developed and developing countries;
- last, but not least, the opportunity has been taken to revise or re-fresh the text in a number of areas.

Joint ventures involve, in effect, the creation of a new business enterprise. This can be a source of satisfaction—not only for the parties themselves but also the lawyers who form part of the team. Working with many able co-contributors, I hope that this book will provide a useful basic tool-kit for lawyers and other professionals engaged in this important field.

Ian Hewitt
July 1, 2011

Acknowledgements

Personal thanks are, as with all previous editions, due to many people who have assisted with this book. I am very grateful to many colleagues at Freshfields Bruckhaus Deringer LLP for their contributions in specific areas despite busy client practices. In particular:

Competition/regulatory	Andrew Renshaw, Patrick Gorman and Alison Jones
Dispute resolution	Nigel Rawding and Chido Dunn
Employment	David Pollard, Jocelyn Mitchell, Kathleen Healy and Lara Zellick
Intellectual property/IT	Bryony Evans, Patrick Atkinson and Martin McElwee
Property	Emma Kendall
Tax	Jonathan Cooklin

and many colleagues in offices worldwide who have contributed to the country-sections in Part D:

China	Melissa Thomas and Shen Yuxin
France	Jean-Claude Cotoni and Thomas Rabain
Germany	Hildegard Bison
India	Pratap Amin
Italy	Mario Ortu, Luigi Verga and Luca Sponziello
Japan	Junzaburo Kiuchi and Miho Wakitani
The Netherlands	Dirk-Jan Smit and Machiel Lambooi
Russia	Michael Schwartz and Maria Listrovaia
Spain	Toni Valverde and Josep Tomas
United States	Charles Peet

Additionally, within the firm, I am indebted to Geraldine Watson (knowledge management lawyer) for her valued advice and contribution, and to Yetunde Adeyemi (librarian) and Toni Partridge (secretarial) for their patient and vital assistance.

There have again been a number of contributors from “outside” the firm who have added significantly to this book. I am particularly grateful to them:

Accounting	Imre Guba (<i>PricewaterhouseCoopers</i>)
Brazil	Syllas Tozzini and Renato Berger (<i>TozziniFreire Advogados</i>)
Czech Republic	Marketa Protivankova (<i>Vejmelka & Wuensch</i>)
Poland	Prof. Grzegorz Domanski and Dr. Marek Swiatkowski (<i>Domanski Zakrzewski Palinka sp.k</i>)
South Africa	Charles Douglas and Julie Oppenheim (<i>Bowman Gilfillan</i>)
Switzerland	Prof. Jean-Paul Vulliet, Frederik Gevers and Dominique Gottret (<i>Lalive & Partners</i>)

The experience of many clients with whom my colleagues and I have worked over the years has provided an important, if implicit, contribution. I also acknowledge the influence of the growing professional literature in this area and am grateful to those responsible for the specific excerpts which I have included.

I am thankful as ever to my wife, Jenifer, for her continued support of this project. I am pleased that this book has reached its fifth edition. As with the first edition, I record my gratitude to my parents for their past encouragement when I set off on a legal career.

Ian Hewitt
July 1, 2011

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