

Joint Ventures

Fourth Edition

Ian Hewitt

THOMSON



SWEET & MAXWELL

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Preface

*"If you think you can go it alone in today's global economy,
you are highly mistaken"*

Jack Welch

Jack Welch summed up the position succinctly in this way during an interview whilst CEO of General Electric of the US. Joint ventures and alliances have become vital to modern business.

A "joint venture" is not a legal term of art. Our 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. This book attempts to 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 a corporate joint venture is still probably the most common, and complex, form of business collaboration to cross the desk of the transactional lawyer.

Aims of this book

This book is intended for the practitioner (whether a businessman, lawyer or other adviser). Whilst it addresses underlying legal principles, it aims principally to assist the practising lawyer in developing basic tools and skills required for these transactions including (i) a good feel for the commercial background, (ii) a knowledge of the 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 aim to 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 for the particular venture.

International context

Very many joint ventures and alliances have an international dimension. Most issues and solutions are relevant whatever the nationality of the

parties and wherever the joint venture or alliance is based. Insofar as this is a textbook, it is based on English law—but I have tried to address the subject throughout in an international context. Most references to particular English law cases and legislation appear in the footnotes, or in distinct sections, so that the text can be read easily by an “international” reader free of undue specific English law references. Part D brings together a discussion of issues which commonly affect international joint ventures with “local” partners, particularly in developing market countries, and includes introductory summaries of laws affecting joint ventures in a number of important jurisdictions worldwide.

Joint ventures are receiving wider attention amongst international lawyers, aided by such initiatives as the International Bar Association’s distance-learning International Practice Diploma course on “International Joint Ventures” with which I have been pleased to assist. If this book in some small way assists lawyers who are engaged internationally on these interesting (and often challenging) transactions, I shall be particularly pleased.

Changes in this edition

Changes in this edition, if not so radical as in the last edition, have cumulatively been many:

- The UK Companies Act 2006, including the codification of the general duties of directors and a new statutory derivative action, has required an updating of many principles, details and references.
- Generally, increased attention has been given to the possible legal options available if a joint venture fails due to the “opportunistic” behaviour of a partner.
- There have been important developments affecting joint ventures in specialist, but vital, areas such as tax, employment, accounting and European competition law.
- Internationally, the discussion on joint ventures in “developing markets” has expanded. The summaries of laws and practice relating to joint ventures in China, India and Russia have been updated, as well as the other jurisdictions covered, and a contribution from South Africa has been added to the specific countries addressed.
- The collection of precedents has increased by the addition of a Shareholder Funding Agreement and a JVC Share Sale Agreement.
- The opportunity has been taken to improve the text in a number of places and generally to try and keep it “fresh”.

Aided as ever by a team of able co-contributors, I hope that the book will continue to assist the practitioner engaged on these important, and often challenging, transactions.

Ian Hewitt
May 1, 2008

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

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