

# Joint ventures in Liechtenstein: overview

by Dr Hannes Arnold, GASSER PARTNER Attorneys at Law

Country Q&A | Law stated as at 01-Sep-2017 | International, Liechtenstein

A Q&A guide to joint ventures law in Liechtenstein.

The Q&A gives a high level overview of joint ventures law, including regulation of joint ventures, types of joint ventures permitted in the jurisdiction, whether corporate joint ventures are subject to the corporate law, formalities for formation and registration of joint ventures, statutory limits on duration, anti-trust rules, termination, rules relating to joint ventures with foreign members, and incentives. To compare answers across multiple jurisdictions, visit the [Joint Ventures Country Q&A tool](#).

This Q&A is part of the [Joint Ventures Law Global Guide](#).

## Domestic company joint ventures (JVs)

### Regulation

1. Are JVs expressly regulated?

JVs are not specifically regulated or even expressly defined in Liechtenstein law. Practitioners use this term to cover different forms of co-operation between two or more parties to achieve a common purpose. Parties are generally free to form JVs in accordance with the principle of freedom of contract (*section 861 et seq, Civil Code*).

### Types

2. Which types of JV are allowed?

There are no special regulations or restrictions concerning the legal form of JVs. Parties are free to form a contractual JV under the Civil Code (*Art 859 et seq, Civil Code*) or a corporate JV or partnership JV under the Persons and Companies Act (*Personen- und Gesellschaftsrecht*).

### **Contractual JVs**

Contractual JVs are subject to Liechtenstein contract legislation (Article 859 et seq, Civil Code). However, as most provisions can be disappplied, parties are relatively free to stipulate their legal relationship. No formal requirements are needed to establish a contractual JV (they can even be established based on an oral or implied agreement). Contractual JVs are often chosen where no structure is needed and the purpose is a short-term project.

### **Partnership JVs**

JVs can be a partnership. Liechtenstein law permits a natural as well as a legal person to form a partnership. The possible forms of partnerships are:

- Unregistered partnership (*Einfache Gesellschaft*), under Article 649 et seq of the Persons and Companies Act.
- General partnership (*Kollektivgesellschaft*), under Article 689 et seq of the Persons and Companies Act.
- Limited partnership (*Kommanditgesellschaft*), under Article 733 et seq of the Persons and Companies Act.
- Ad hoc association (*Gelegenheitsgesellschaft*), under Article 756 et seq of the Persons and Companies Act.
- Silent partnership (*Stille Gesellschaft*), under Article 768 et seq of the Persons and Companies Act.

The distinction between contractual and partnership JVs is not clear, particularly those partnerships not subject to registration or other formal requirements. Contractual JVs can therefore sometimes be (re)qualified as partnerships (in particular unregistered partnerships, silent partnerships or ad hoc associations) (*see Question 16*).

### **Corporate JVs**

There are no general restrictions on establishing a JV as a company. Virtually any type of corporation under Liechtenstein law can be used to form a corporate JV. In particular, the following company forms are suitable as JVs:

- Joint-stock company (*Aktiengesellschaft, AG*), under Article 261 et seq of the Persons and Companies Act.
- Company with limited liability (*Gesellschaft mit beschränkter Haftung, GmbH*), under Article 389 et seq of the Persons and Companies Act.
- Establishment (*Anstalt*), under Article 534 et seq of the Persons and Companies Act.
- Association limited by shares (*Kommanditaktiengesellschaft*), under Article 368 et seq of the Persons and Companies Act.

### **Other types**

Traditionally, foundations (*Stiftungen*) play a key role in Liechtenstein. However, as they have no shareholders or members (only beneficiaries), and can only pursue business purposes in certain circumstances, their suitability as a JV is limited.

Limited partnerships and associations limited by shares have two different types of members/shareholders, with:

- Liability limited up to a fixed amount.
- Unlimited liability, who usually manage the partnership/corporation.

These types of JV can be useful where the partners have different roles (for example, one partner manages the JV and the other partner just provides funds or assets). However, as they are not commonly used, they are not considered further in this chapter.

3. What are the principal corporate/company laws governing corporate JVs?

The principal legal source for all Liechtenstein companies and partnerships, with and without legal personality, is the Persons and Companies Act.

The Persons and Companies Act rules are further specified in the Ordinance on the Persons and Companies Act (*Verordnung zum Personen- und Gesellschaftsrecht*).

The Ordinance on the Commercial Register (*Handelsregisterverordnung, HRV*) contains provisions regarding registration with the commercial register (*Handelsregister*).

### Formation and registration

4. What are the typical JV founding documents for a corporate JV?

The standard formation document for a corporate JV is a public deed. This determines the mutual consent of the contractual parties to set up the company. It is mandatory for the establishment and registration of the company.

The public deed must be signed by all founding members. It must contain:

- A copy of the statutes (the articles of association, signed by all founding members).
- A confirmation of the subscription for all shares.
- A bank confirmation of the payment of the minimum share capital.
- An expert report on contributions in kind.
- The nomination of the members of the board of directors.

The public deed is registered by a competent person at the commercial register. A company only acquires legal personality on registration in the commercial register.

5. Is the use of foreign language in a JV's founding documents (both corporate and contractual) restricted?

The use of foreign languages is not restricted for contractual JVs.

All entries in the commercial register are in German. Generally, the founding documents of corporate JVs can be drawn up in a language other than German. During registration, the Office of Justice (*Amt für Justiz*, the authority administering the commercial register) can, at its discretion, request a certified German translation of the documents (*Article 4, Ordinance on the Commercial Register*).

6. Are public officers (for example, public notaries) involved in a JV's formation procedure?

No public officers are involved in the formation of contractual JVs and partnership JVs which do not need to be registered (unregistered partnerships, silent partnerships, and ad hoc associations).

Where registration is mandatory to form a corporate or partnership JV (*see Question 7*), the Office of Justice (the authority administering the commercial register) is involved.

7. Are JVs registered with any local registries? Are public sector bodies' authorisations required for a JV's establishment?

### **Local registries**

Corporate JVs (joint-stock company, limited liability company or establishment) and certain types of partnership JVs (general partnerships and limited partnerships) must be registered with the commercial register. Corporate JVs only come into legal existence on registration.

### **Public sector bodies**

Authorisations from public sector bodies are not required to establish a JV. Liechtenstein does not have national anti-trust or merger control laws. Depending in particular on the turnover achieved by the JV partners, merger filings may be required under the merger control regimes of the EU or other jurisdictions.

In some sectors, specific approval from the regulatory authority is required to set up a JV (*see Question 9*).

8. What other formal requirements must be complied with to validly constitute a JV?

There are no other formal requirements which must be complied with under Liechtenstein law to validly constitute a JV.

### Permitted markets

9. Can the JV structure be used in every industry sector? Are there any restrictions to be considered and carefully assessed before investing in a JV?

The JV structure can generally be used in any industry sector.

In some sectors, specific approval from the regulatory authority is required to set-up a JV. For example, providing financial services (banks, insurance companies, asset management companies, trust companies and so on) requires specific approval from the Financial Market Authority (*Finanzmarktaufsicht Liechtenstein*) to set-up a JV, and for the acquisition of a significant share in such a company (as a general rule, 25% or more).

### Purpose

10. Can a JV be established with any purpose?

Both corporate and contractual JVs can be established for any purpose, as long as the purpose is not illegal or against good morals.

## Share capital and participation

11. What possible forms of participation are there in a JV's share capital? How can a JV member contribute and are there statutory limits on the possibility to make contributions in kind?

### Forms of participation

Generally, JV members can make contributions to the share capital of corporate JVs in cash or in kind. All companies must have a minimum capital, stipulated by law, which has to be fully paid in when the company is set up.

Even though most contributions are made in cash, there are no statutory limitations on contributions in kind. However, if members make contributions in kind, an expert report on the value of the non-cash contribution must be obtained and submitted to the commercial register.

After registration with the commercial register, the capital is fully available to the company.

### Contributions

The minimum capital of a stock company is CHF50,000 (or EUR/US\$50,000 if the company's share capital is denominated in such other currency) and can be contributed in cash or in kind. At least 25% of the company's actual share capital, in any case at least the said minimum capital, must be fully paid in when the company is set up.

The minimum capital of a limited company is CHF10,000 (or EUR/US\$10,000 if the company's share capital is denominated in that currency). The entire actual capital has to be fully paid in when the company is set up.

The minimum capital of an establishment is CHF30,000 (or EUR/US\$30,000 if the company's share capital is denominated in that currency). If the capital of the company is divided into shares, the capital must be at least CHF50,000. The entire actual capital has to be fully paid in at the time of formation.

12. Can a corporate JV's share capital be denominated in a foreign currency?

The share capital of a corporate JV can be denominated in Swiss francs, or in euro or US dollars.

## Duration and limits on membership

13. Are there statutory limits on a JV's duration?

There are no statutory limits on the duration of a JV, whether contractual or corporate. A JV can be established for a pre-defined duration or for an unlimited period.

14. Are there statutory limits on the number of members participating in a JV?

There are no statutory limits on the number of members that can participate in a JV.

### **Public sector bodies**

15. Can a public sector body enter into a JV agreement? Subject to what conditions? In particular, do public private partnerships (PPP) laws and regulations apply?

Public sector bodies can enter into JV agreements and there are no specific requirements for such JV agreements. However the Act on Public Procurement (*Gesetz über das Öffentliche Auftragswesen, ÖAWG*), in which Liechtenstein implemented the EU procurement directives, will have to be considered.

### **Non-competition and anti-trust clauses**

16. Are there statutory constraints on the use of non-competition or anti-trust clauses in a JV agreement?

### **During period of effectiveness**

Liechtenstein does not have national anti-trust laws.

However, as Liechtenstein is a member of the European Economic Area (EEA), EU/EEA competition law (including its rules concerning ancillary restraints) may apply to JVs established in Liechtenstein, if it affects the trade between EEA-contracting parties (respective violations could be enforced by the EFTA Surveillance Authority).

### **Following termination**

See above, *During period of effectiveness*.

### **De facto company/partnership**

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

The simplest form of partnership is an unregistered partnership. An unregistered partnership is created when two or more parties combine to achieve a common goal with common force and means. Specific formalities are not required to create an unregistered partnership, which can be formed by an oral contract. It is not possible to register it.

Therefore, a contractual JV is very likely to be seen as a partnership. Some doctrine even defines a contractual JV as an unregistered partnership. Most contractual JVs qualify as a de facto partnership.

Most legal provisions applicable to a partnership can be excluded contractually. However the most important provision, personal and unlimited liability of the partners for all losses of the partnership, cannot be excluded as against third parties.

### **Limiting member liability**

18. Can a JV agreement provide that a JV member can participate without incurring any risk, loss or reward?

When participating in a company limited by shares, a limited liability company or an establishment the JV member has to contribute its share in cash or in kind to receive shares. The risk of loss of these assets cannot be excluded. However, the JV member has no further obligation or liability to third parties.

In a partnership, the JV members can agree in the formation deed to distribute rewards in any way. Parties can also agree that one or more members are excluded from losses or other risks. However, this is not enforceable against



third parties, as all members of the partnership are liable for the partnership's liabilities, based on the principle of joint and several liability.

Anti-trust

19. Do any anti-trust rules, guidelines or policies apply to a JV agreement?

Liechtenstein does not have national anti-trust laws. However, as Liechtenstein is a member of the EEA, EU/EEA competition law (including its rules concerning ancillary restraints) may apply to JVs established in Liechtenstein (see *Question 16*).

### **Governance and limits on directors**

20. Can the parties to a JV freely regulate the JV or are they subject to certain restrictions?

There are no JV-specific restrictions in this regard. For corporate or partnership JVs certain restrictions may derive from the applicable corporate law. Otherwise, JV partners are free to regulate their relationship, as long as these regulations do not violate mandatory provisions or are against good morals.

21. Are there limits or restrictions on the eligibility of an individual as a member of the board of directors/statutory auditor?

There are no JV-specific restrictions. JV partners are generally free to appoint any natural persons or legal entities as directors or auditors, subject to the applicable corporate law provisions.

In a company, at least one member of the board of directors must be a citizen of an EEA state or a Swiss citizen and hold an authorisation under the Trustee Act. The authorisation is granted by the Financial Market Authority and requires a prior examination.

## Termination

22. What legal regime applies to a JV's termination? Can a JV be terminated for just cause on request of one party?

A contractual partnership terminates by resolution of all the parties or provisions in the contract.

A corporate JV can be terminated according to provisions in its statutes or by law. Under the Persons and Companies Act a company is terminated by any of the following:

- A resolution by the company's governing body.
- A court decision for good cause.
- Initiation of liquidation proceedings.
- A court decision when all founding partners are incapable and not of sound mind.

A partnership JV terminates when any of the following occurs:

- The purpose is achieved, or it becomes impossible to achieve the purpose.
- A partner with unlimited liability dies, and it has not been agreed to continue the partnership without him.
- By resolution of all the members.
- By passage of a specified time.
- By a court decision for good cause.

The partnership also terminates for just cause on request of one of the parties when this has been agreed in the foundation deed, or the partnership has been established for an indeterminate time or for the lifetime of one of the partners.

23. Is the termination of a JV agreement subject to any public sector body's approval?

The termination of a contractual JV or a corporate JV is not subject to any specific public approvals.

## Choice of law and jurisdiction

24. Are there constraints on the choice of the law and the jurisdiction applicable to a JV?

There are no constraints regarding the choice of law and jurisdiction for contractual JVs.

Under Article 114 of the Persons and Companies Act, the place of jurisdiction for any company or partnership is the company seat, which is Liechtenstein. Any corporation or partnership which requires registration with the commercial register must be governed by Liechtenstein law.

## JVs with foreign members

### Validity and authorisation

25. What are the rules relating to validity and authorisation of JVs with foreign parties?

#### Validity

Generally, there are no restrictions on JVs with foreign parties, provided that no international sanctions apply to the respective country and/or foreign party.

#### Limits

There is no minimum or maximum number of parties who must be local.

#### Authorisation

There are no specific authorisation requirements for JVs with foreign parties.

### Effect of foreign membership

26. Are any of the rules relating to domestic company JVs (*see Questions 1 to 24*) different for JVs with members incorporated under, or governed by, the laws of a foreign country?

The rules relating to domestic company JVs are not different for JVs with members incorporated under, or governed by, the laws of a foreign country.

### **Economic or financial incentives**

27. 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.

### **Minimum investments/contributions**

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

There are no mandatory equity investment or contributions-in-kind thresholds for a foreign JV member.

## **The regulatory authorities**

**Liechtenstein Office of Justice, commercial register department**

**Main activities.** Operation and administration of the commercial register.

**W** [www.llv.li/#/12078/handelsregister-hr?scrollto=true](http://www.llv.li/#/12078/handelsregister-hr?scrollto=true)

## Online resources

### Lichtenstein legislation

W <https://gesetze.li>

**Description.** Government website containing all Lichtenstein legislation, in German only.

## Contributor profile

**Dr Hannes Arnold, Senior Partner**

**GASSER PARTNER Attorneys at Law**

T +423 236 6080

F +423 236 3081

E [hannes.arnold@gasserpartner.com](mailto:hannes.arnold@gasserpartner.com)

W [www.gasserpartner.com](http://www.gasserpartner.com)

**Professional qualifications.** Attorney at Law, Liechtenstein and Austria

**Areas of practice.** Corporate law; business law; civil law and litigation; commercial law; banking and finance law; real estate law

**Languages.** German, English

### Professional memberships/associations:

- Liechtenstein bar association.
- AIJA Association International des Jeunes Avocats.
- ELS European Law Society.
- Liechtenstein Arbitration Association.

---

END OF DOCUMENT

