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JOINT VENTURES

Joint Ventures in Singapore: Overview

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USE OF JOINT VENTURES

1. How are joint ventures used in your jurisdiction?

Industries and Market Trends

In Singapore, joint ventures (JVs) can generally be entered into for any purpose. Singapore law does not distinguish between different sectors in relation to the use of legal structures. However, depending on the activities carried on by the JV entity or participants, sector-specific regulations may be relevant to the JVs business and operation.

JV activity has continued in the traditional areas of real estate and investments. There has also been significant JV activity in the FinTech sector. For example, Grab Holdings Inc. entered into a JV with Singtel to apply for a digital bank licence in Singapore.

Cross-Border Joint Ventures

It is common for foreign businesses to enter into JVs in Singapore with local Singapore businesses.

Singapore businesses operating in new or emerging markets are likely to continue to enter into JVs with local partners, particularly where there are foreign equity restrictions in that jurisdiction.

There are generally no restrictions on the level of foreign ownership of Singapore companies or businesses, except in a few business sectors where there may be equity restrictions (for example, in the financial services or telecoms sectors).

A Singapore JV company may also qualify for certain government incentives or schemes available to encourage commercial activity in a particular sector.

The incorporation process in Singapore is quick and straight-forward. In most cases, it takes one day to incorporate a new JV company.

There is no capital gains tax in Singapore and corporate tax is relatively low at the rate of 17%. Singapore also has an extensive network of double tax agreements with many countries.

There are no exchange control restrictions in Singapore.

Singapore provides a stable business environment with good infrastructure and a productive and well-trained workforce. It is also known for its adherence to the rule of law and strict laws against corruption.

There is a tight labour market in Singapore and workforce costs may be high. Talent is expensive and employees with the requisite skillsets may not be readily available in the labour market. Immigration regulations have also been tightened in recent years and in certain industries, employers may face challenges in bringing in employees from overseas with the right skillset.

Due to land scarcity in Singapore, land costs and rentals for production or office space may also be high.

Types of Joint Ventures

There are no restrictions on the types of JVs allowed in Singapore. They are usually a contractual JV or a corporate JV, depending on the requirements and commercial objectives of the parties involved.

Contractual JVs do not involve setting up a separate legal entity as the vehicle for the collaboration. Instead, parties usually undertake a specific, time-limited project, and agree their particular rights and responsibilities (*see Question 21*).

Corporate JVs involve setting up a separate legal entity as the JV vehicle. This is usually a private limited company, but can be a limited liability partnership, a limited partnership, or a general partnership (*see Question 3*).

Factors Affecting Choice of Structure or Vehicle

A corporate JV structure is preferred by parties who wish to adopt a formal management structure. The separate legal entity established as the JV company has formal board and management structures (*see Question 3*).

A contractual JV structure is preferred by parties who wish to operate the JV by way of informal management structures. There is no formal management structure in a contractual JV and the JV parties each retain direct control (*see Question 21*).

A corporate JV structure is subject to ongoing compliance and reporting obligations. A contractual JV is not subject to such compliance and reporting obligations as there is no separate legal entity for the JV.

A private company established as a JV company in a corporate JV structure enjoys perpetual succession and is generally used where parties contemplate a long-term JV relationship.

Contractual JVs typically have a fixed term and are more commonly used for specific, time-limited projects (for example, the construction and development of a real estate project).

The choice of JV structure can also depend on sector-specific regulations. For example, there may be requirements or restrictions as to equity ownership.

PRE-CONTRACTUAL ISSUES

2. What preliminary steps are typically carried out before entering into joint venture transactions?

Preliminary Agreements

Potential JV parties typically enter into a mutual binding non-disclosure agreement for confidential information shared between the parties in connection with the proposed JV.

JV parties also typically enter into a term sheet setting out the key terms of the JV. The term sheet may be binding or non-binding, depending on what the parties agree.

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Due Diligence

Legal, business, and financial due diligence is usually carried out by each JV party on its JV partner. The completion of such due diligence is typically a condition precedent to completion of the JV.

Conditions Precedent

Conditions precedent typically included in a JV term sheet are as follows:

- Entry into definitive transaction agreements (for example, a shareholders' agreement).
- Requisite approvals to be obtained by each JV party, including any applicable internal and regulatory approvals.
- Agreement on the initial business plan and budget.
- Agreement on any other relevant operating agreements.

Considerations for Listed Company Joint Ventures

Under the *SGX-ST* listing rules, depending on the value and terms of the JV, a listed company that is party to a JV or whose subsidiary is party to a JV may be required to:

- Make a public announcement on SGXNET, containing certain prescribed information about the JV.
- Obtain shareholders' approval for the JV at a general meeting of the company.

INCORPORATED JOINT VENTURES

3. What are the advantages and disadvantages of an incorporated joint venture in your jurisdiction?

Advantages

As a separate legal entity, a JV company can sue and be sued in its own name. Shareholders of the JV company are not liable for the debts of the JV company unless they agree to guarantee such debts to third parties.

A corporate JV structure is preferred by parties who wish to adopt a formal management structure. The separate legal entity established as the JV company has formal board and management structures (*see Question 3*).

A private company established as a JV company in a corporate JV structure enjoys perpetual succession and is generally used where parties contemplate a long-term JV relationship.

Disadvantages

A corporate JV structure is subject to ongoing compliance and reporting obligations.

Setting up a Joint Venture Company

4. How are joint venture companies usually set-up?

Registration Requirements

The following entities set up in Singapore must register with the *Accounting and Corporate Regulatory Authority (ACRA)*:

- Limited liability company.
- Limited liability partnership.
- Limited partnership.
- General partnership.

The incorporation process in Singapore is quick and straight-forward. In most cases, it takes one day to incorporate a new JV company. Guidance on the incorporation process is available on the *ACRA website*.

Applicable Legislation

JVs are not expressly regulated in Singapore under any specific legislation.

They are governed by a combination of contract law, tax law, competition law, the laws of the relevant corporate vehicle, and laws governing various related issues including employment, real estate, intellectual property (IP), and data protection.

Depending on the form of the corporate JV, the following key legislation is also relevant:

- Companies Act (Cap. 50).
- Limited Liability Partnership Act (Cap. 163A).
- Limited Partnership Act (Cap. 163B).
- Partnership Act (Cap. 391).

Language Requirements

All documents that must be filed with ACRA, such as the company's constitution, must be in English or be filed with a certified English translation.

For private contractual documents governed by Singapore law, there is no restriction on the use of a foreign language in the contractual agreement between the JV parties.

Share Capital Currency Requirements

The share capital of a limited liability company can be denominated in a foreign currency.

A company with a share capital can by ordinary resolution convert its share capital or any class of shares from one currency to another currency.

The capital contributions of partners of such JVs can be denominated in any currency.

Notarisation Requirements

Notarisation is not generally required when forming a corporate or a contractual JV.

5. How are joint venture companies usually financed?

Shares/Equity Issued for Assets/Services

Shares (or other equity interests) in the JV company can be issued in return for a contribution of assets or services to the JV company. No stamp duty is charged on the issuance of shares or other equity interests, unlike in the case of a transfer of shares.

A company with a share capital can also issue shares for which no consideration is payable to the company.

Party Loans

There is generally no restriction on the provision of a shareholder's loan to the JV company and a shareholder can take security for its loan.

Typically, parties agree in the shareholders' agreement that a shareholders' loan will be made by each JV party in proportion to their respective shareholding percentages.

Party Cash/Asset Contributions

Contributions to the share capital of a limited liability company are not restricted to cash and can be contributions in kind (for example, a contribution of assets or intangibles such as IP rights).

Formalities for Non-Cash Consideration

If shares are allotted by a company as fully or partly paid up otherwise than in cash, and the allotment is made under a contract in writing, the contract evidencing the allottee's entitlement must be lodged with ACRA.

If the allotment is made under any of the following, the company must lodge certain other prescribed documents with ACRA:

- A contract not in writing.
- A provision in the constitution.
- To satisfy a dividend declared in favour of, but not payable in cash to, the shareholders, or in pursuance of the application of money held by the company in an account or reserve in paying up unissued shares to which the shareholders have become entitled.

Shareholders' Agreement and Constitutional Documents

6. What agreements typically govern an incorporated joint venture? What key joint venture-related provisions is it advisable to include in the governing agreements?

Shareholders' Agreement

A shareholders' agreement sets out the terms on which the parties intend to regulate the JV relationship. Singapore law does not generally restrict the provisions that can be agreed between the parties in a shareholders' agreement.

The key JV-related provisions typically contained in a shareholders' agreement include:

- Object and scope of the JV.
- Capitalisation and financing of the JV company. This typically sets out how additional financing required by the JV company will be satisfied (for example, subscription for additional shares in the company by the shareholders, shareholder loans, and external loans from banks or other third parties) and the order of preference of these financing methods.
- Composition of the board and management, including any special rights given to the JV partners to appoint and remove a certain number of directors or other officers, and rights of directors to vote in the interests of the shareholder that appointed them.
- Profits/dividends distribution policy.
- Restrictions on the issuance and allotment of new shares and transferability of shares (for example, provisions relating to pre-emption rights, tag along rights, and drag along rights).
- Minority protection (for example, veto rights, board or shareholder reserved matters, and quorum requirements for board and general meetings).
- Deadlock provisions (for example, put and call options).
- Exit mechanisms (for example, default buy-out options).
- Restrictive covenants on the company and JV parties.

Joint Venture Company's Constitutional Documents

The most common JV vehicle used in a corporate JV is a private company limited by shares. Previously, the memorandum and articles of association were the company's constitutional documents. Following an amendment to the Companies Act, the memorandum and articles of association have been merged into a single document known as the constitution.

The matters which must be set out in the constitution include:

- Name of the company.
- If the company is a company limited by shares, a statement that its members' liability is limited and the share capital with which the company is incorporated.
- The full name, addresses, and occupations of the subscribers.
- That the subscribers wish to form a company in pursuance of the constitution and (where the company is to have a share capital) agree to subscribe for the number of shares in the capital of the company set out next to their names.

The constitution also typically sets out the company's objects and contains provisions on the internal regulation of the company, such as those relating to:

- Classes of shares and the rights of each class of shares.
- Pre-emption rights and other restrictions on the allotment or transfer of shares.
- Passing board and member resolutions.
- Conduct of board meetings and general meetings.
- Appointment and removal of directors.
- Duties of the company's officers.

7. Who are typically parties to the shareholders' agreement? Are the shareholders' agreement and joint venture company's constitutional documents binding on the joint venture parties?

Parties to the Shareholders' Agreement

The shareholders are party to the shareholders' agreement. The JV company may or may not be a party to the shareholders' agreement.

Binding on Joint Venture Parties

A shareholders' agreement is only binding on the parties to it.

A company's constitution constitutes a contract between the company and all its members, and among the members *inter se*. The constitution of a company therefore binds a company and its members, and each member is bound to observe all the provisions of the constitution.

Amendment, Conflict Resolution, and Remedies for Breach

A shareholders' agreement is a private agreement that can be amended by mutual agreement of the parties.

The constitution of a company can be amended by a special resolution (passed by a majority of at least three-quarters of the votes of the members), unless otherwise provided in the Companies Act, and subject to any entrenching provision included in the constitution.

Terms in a shareholders' agreement under which a company agrees to restrict its statutory powers are not enforceable against the company (for example, the Companies Act will prevail over a company's constitution and shareholders' agreement, in the event of conflict). However, such terms may be enforceable between the members if the company's obligations are severable.

The shareholders' agreement also typically includes a provision stating that, in the event of conflict between the constitution and the shareholders' agreement, the terms of the shareholders' agreement will prevail. If there is no prevalence clause agreed in the shareholders' agreement, the constitutional documents are likely to prevail over the shareholders' agreement in the event of conflict, as a shareholders' agreement only creates personal obligations.

As a shareholders' agreement is a contract between the parties to it, remedies for breach of contract are typically contractual damages. Equitable remedies may be available at the court's discretion (for example, the court may direct that a party must act in accordance with the shareholders' agreement).

As the company's constitution is a contract between the company and its members and among the members *inter se*, every member has a personal right to have the terms of the constitution observed. Remedies can be contractual damages or equitable remedies.

8. Are there typically restrictions on share transfers in the joint venture company?

New Members Joining

Typically, the company's constitution provides that a transfer of shares is subject to the board's approval.

Change of Control of Joint Venture Parties

The shareholders' agreement typically includes change of control provisions relating to a change of control of the JV parties.

In addition, sector-specific requirements may restrict change of control without the prior consent of the relevant authority.

Other Restrictions on Share Transfers

The shareholders' agreement may also include other restrictions on the transfer of shares in the company (for example, pre-emption rights, tag along rights, and drag along rights).

Sector-specific requirements may also contain share transfer restrictions.

9. How are shareholders' meetings of a joint venture company usually conducted?

Procedure to Call and Adjourn a Meeting

An annual general meeting (AGM) is a general meeting at which certain prescribed matters are decided by the shareholders, including the following prescribed under the Companies Act:

- Directors presenting the company's financial statements.
- Auditors reporting the financial statements to the members.
- Appointing or re-appointing an auditor for the next upcoming year.

Under the Companies Act, subject to the requisite notice being given to members entitled to receive notice of the meeting, a general meeting can be held at any time, and the company can resolve that any meeting held or summoned to be held is the company's AGM. The AGM is usually convened by the board of directors. Unless the company is exempted from holding an AGM or has dispensed with the holding of an AGM, non-listed companies must hold their AGM within six months of their financial year end, while listed companies must hold their AGM within four months of their financial year end.

An extraordinary general meeting (EGM) is a general meeting at which other important business matters requiring shareholder approval are approved. The EGM can be convened by the board of directors or called by the members.

Any member(s) holding at least 10% of the total number of voting shares can call on the directors to convene an EGM. The directors must, despite anything in the constitution, immediately proceed to duly convene an EGM, to be held as soon as practicable but in any case no later than two months after receipt by the company of the requisition. If the directors do not within 21 days after the date of deposit of the requisition proceed to convene the EGM, the requisitionists or any of them representing more than 50% of their total voting rights can convene the EGM within three months from that date.

Two or more members holding at least 10% of the total number of the company's issued shares, or a lower number provided by the constitution, can also call an EGM.

A general meeting must be called by notice in writing of at least 14 days, or a longer period provided in the company's constitution (other than a meeting to pass a resolution, which requires special notice of 28 days). The shareholders can consent to shorter notice. Notices of meetings must be served in the manner provided for in the company's constitution.

A court also has power to order an EGM, if it is impracticable to call or conduct a meeting in the usual manner. These situations include the inability to meet quorum requirements or a deadlock situation.

Shareholder meetings can be held in or outside Singapore. Holding shareholder meetings in Singapore may suggest permanent establishment in Singapore for tax purposes.

The COVID-19 (Temporary Measures) (Alternative Arrangements for Meetings for Companies, Variable Capital Companies, Business Trusts, Unit Trusts and Debenture Holders) Order 2020 contains alternative arrangements for holding shareholder meetings during the ongoing COVID-19 pandemic. Shareholder meetings can be conducted by electronic means, in a physical location subject to safe distancing and prevailing COVID-19 regulations on the number of attendees, or in a hybrid format. These alternative arrangements can apply regardless of whether they are provided for in the company’s constitution. A company can, however, provide for such alternative arrangements in its constitution in any event.

Participation and Voting Procedures

Despite any provision in the company's constitution, all members are entitled to attend a general meeting of the company.

Subject to and without prejudice to any special rights or restrictions about voting attached to any class or shares, each member entitled to vote can vote in person, by proxy, by attorney, or other duly authorised representative.

The company's constitution typically sets out the voting rights of members.

Voting can take place on a show of hands or on a poll. The default position is usually for voting to take place on a show of hands unless a poll is demanded. For a show of hands, each member is entitled to one vote. On a poll, each share is entitled to one vote.

Resolutions can also be passed in writing in accordance with the Companies Act and the company's constitution, subject to meeting certain procedural requirements.

Recording Decisions

Under the Companies Act, every company must keep minutes of all general meetings and enter them into the statutory minute books within one month of the general meeting.

The minutes must be signed by the chair of the meeting or the chair of the next succeeding meeting. Any member is entitled to inspect the minutes without charge at the company's registered office or principal place of business in Singapore.

A copy of every special resolution and every resolution which effectively binds any class of shareholders must be lodged with the Registrar within 14 days of the passing of the resolution, unless otherwise provided under the Companies Act.

Differences for Meetings in Joint Ventures

The meetings for a JV company are governed by the terms of its constitution and shareholders' agreement. The constitution and shareholders' agreement of a JV company typically contain

bespoke, negotiated meeting provisions, such as those relating to quorum, voting thresholds, and a casting vote.

10. Are there any restrictions on how dividends are paid to shareholders?

Limits on Distribution, Capital Maintenance Rules, and Directors' Powers to Declare a Dividend

The Companies Act provides that no dividends can be paid to shareholders except out of profits.

The manner and timing of the declaration of dividends are usually governed by the company's constitution. Final dividends are paid yearly after the company's annual accounts have been drawn up. Interim dividends can be paid at any time throughout the year before the company's annual earnings are determined.

Shareholder Approvals

If a private company has adopted the model constitution contained in the Companies Act, the power to declare the final dividend lies with the company at a general meeting, subject to the dividend declared not exceeding the amount recommended by the directors. For JV companies, JV parties typically include provisions in the constitution and/or shareholders' agreement relating to the declaration of dividends and how such dividends will be shared between the JV parties.

For interim dividends, the model constitution provides that the directors can from time to time pay the shareholders such interim dividends as appear to the directors to be justified by the company's profits.

Class of Shareholders

A company's constitution can exclude or limit the right of certain classes of shares to dividends.

Management and Directors

11. How is the joint venture company management typically organised?

Board Structure

A single-tier board structure is typically used.

Directors' Powers

Under the Companies Act, the business of a company is managed by, or under the direction or supervision of, the directors.

The directors can exercise all the powers of a company except any power that the Companies Act or the company's constitution requires the company to exercise in a general meeting.

Directors' Duties and Liabilities

Directors have fiduciary duties under common law and statutory duties under the Companies Act. These duties include:

- To act honestly and in good faith in the best interests of the company.
- To exercise powers for a proper purpose.
- To avoid conflicts of interest.
- To exercise care, skill, and diligence.

The definition of a director under the Companies Act includes any person occupying the position of director of a corporation by whatever name called, and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act. As such, shadow or de facto directors are liable under Singapore law for a breach of director's duties, even if they have not been formally appointed as a director.

Reserved Matters

Directors can exercise all the powers of a company except any power that the Companies Act or the company's constitution requires the company to exercise in general meeting, for example resolutions relating to:

- Amendments to the company's constitution.
- An issue of new shares.

12. How are meetings of directors of a joint venture company usually conducted?

Procedure to Call and Adjourn a Meeting

The Companies Act does not prescribe how board meetings should be convened or conducted. Board meetings are typically regulated under the company's constitution.

The Companies Act does not prescribe a minimum notice period or the persons who can call a board meeting.

There are no statutory requirements on the country in which a board meeting should be held, although there may be tax implications relating to permanent establishment depending on the location and frequency of the board meetings.

The procedures to call or adjourn a board meeting are governed by the company's constitution. If a private company has adopted the model constitution in the Companies Act, the following provisions relating to convening and calling of board meetings apply:

- The directors can meet for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit.
- A director can at any time summon a meeting of the directors. The secretary must, on the requisition of a director, summon a meeting of the directors.

Participation and Voting Procedures

The participation and voting procedures are governed by the company's constitution. If a private company has adopted the model constitution in the Companies Act, the following provisions relating to participation and voting at board meetings apply:

- Subject to the constitution, questions arising at any meeting of directors must be decided by a majority of votes. A determination by a majority of directors is for all purposes treated as a determination of the directors. In case of an equality of votes, the chairman has a second or casting vote.
- A resolution in writing, signed by all the directors entitled to receive notice of a meeting of the directors, is as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

Quorum Requirements

Quorum requirements are governed by the company's constitution. If a private company has adopted the model constitution in the Companies Act, the quorum necessary to transact the business of the directors can be fixed by the directors, and unless so fixed is two.

Chairing the Meeting

The person who acts as the chair of a meeting is governed by the company's constitution. If a private company has adopted the model constitution in the Companies Act, the following provisions apply:

- The directors can elect a chair of their meetings and determine the period for which the chair is to hold office. If no chair is

elected, or if at any meeting the chair is not present within ten minutes after the time appointed for holding the meeting, the directors present can choose one of their number to chair the meeting.

- In case of an equality of votes, the chair has a second or casting vote.

Recording Decisions

Every company must cause minutes of its board meetings to be entered into the minute books within one month of the date on which the relevant meeting is held.

If the company only has one director, the director can pass a resolution by recording it and signing the record.

13. How are directors usually appointed and removed in a joint venture context?

Appointment of Directors

Under the Companies Act, a company must have at least one director who is ordinarily resident in Singapore. Persons who are ordinarily resident in Singapore include Singapore citizens, Singapore permanent residents, and the holders of a relevant employment pass.

Employment pass holders who want to take a secondary directorship position in a company separate from the company for which the pass is approved must apply for and be granted a letter of consent by the Ministry of Manpower before registering their directorship positions with ACRA.

The constitution of a company will typically set out the procedure for appointing a director. The directors of a company can be appointed by an ordinary resolution passed by the company's shareholders in a general meeting.

However, the constitution of a company can provide for alternative methods to appoint directors. For example, the board of directors can be empowered to appoint directors. In a JV company, specific shareholders may have the right to nominate and/or appoint directors which is tied to their shareholding in the JV company. Any such right of appointment would be enshrined in the constitution and/or shareholders' agreement.

Removal of Directors

Subject to any contrary provision in the company's constitution, a director can resign by giving notice in writing to the company. However, a single director who is ordinarily resident in Singapore cannot resign or vacate their office.

Subject to any contrary provision in the company's constitution, the Companies Act provides that a private company can by ordinary resolution remove a director before the expiration of their term of office, regardless of any agreement between the private company and the director.

A director can also be disqualified from acting as a director in certain circumstances prescribed under the Companies Act.

14. Do directors have fiduciary or other legal duties to the joint venture company? Are there rules on directors' conflicts of interest?

Duties to the Joint Venture Company

Directors have fiduciary duties under common law and statutory duties under the Companies Act (*see Question 11*). Directors owe their duties to the company.

Rules on Directors' Conflicts of Interest

Directors have a common law fiduciary duty to the company and must not place themselves in a position in which there is a conflict between their duties to the company and their personal interests or their interests to others.

Every director must observe section 156 of the Companies Act. This requires a director to disclose to the board of directors any interests they have in transactions or proposed transactions with the company, or any office held or property possessed by the director, which might create duties or interests in conflict with their duties or interests as a director.

The Companies Act provides that the following must be disclosed:

- The nature of the director's interest (whether direct or indirect, including a member of the director's family's interest) in any contract or proposed contract with the company.
- The nature, character, and extent of any conflict that may arise due to a director holding any office or owning any property.

There are no restrictions under the Companies Act on directors transacting with the company, provided the director fully discloses their interest in the manner required under the Companies Act and the board approves the transaction.

However, the constitution typically provides that a director must not vote on the approval or ratification of transactions or proposed transactions in which they are interested (and that if they do not abstain, they are deemed to have abstained).

15. Are there any other key limitations on directors?

Age, Nationality, Identity, Bankruptcy Status, and Mental Capacity

A director:

- Must be at least 18 years old.
- Must be of full legal capacity.
- Must not be a person who has been disqualified from acting as a director of a company.

The following persons are restricted from becoming a director:

- Undischarged bankrupts.
- Persons who have been convicted of certain types of offences.
- Persons who are declared unfit to be directors under a disqualification order.
- Persons in persistent default in relation to certain procedural requirements under the Companies Act.
- Persons who have been directors of three or more companies that were struck off within a five-year period.

Corporate Directors

Corporate directors are not permitted in Singapore and only natural persons can be directors.

Directors' Remuneration

Under the Companies Act, payment of director's fees must be approved by shareholders. However, payment of a director's salary for services rendered need only be approved by the board.

Company Indemnification of Directors

Under the Companies Act, any provision that attempts to exempt an officer from liability due to negligence, default, breach of duty, or breach of trust is void, subject to the following:

- A company can maintain insurance for an officer against such liability.
- A company can generally indemnify a director against liability incurred by directors in respect of third parties, other than in certain limited exceptions.

The court has power to relieve directors from the consequences of their negligence, default, breach of duty, or breach of trust if:

- The director shows that they acted honestly and reasonably.
- It is fair to excuse them having regard to all the circumstances of the case.

Other Key Limitations

Not applicable.

Control and Minority Protection

16. What protections does the law provide for minority shareholders in the joint venture? What additional protections are usually negotiated? What default protections can be waived?

Different Share Classes and Weighted Voting Rights

Private companies are generally able to create different classes of shares with different rights attached to them.

The authors' typically see the following types of shares created:

- Ordinary shares typically entitle the holder to one vote per share, the right to participate equally in dividends, and a share in any surplus capital if the company is wound up.
- Preference shares typically confer preferential rights over ordinary rights. For example, a holder of preference shares may be entitled to receive a certain rate of dividend before the ordinary shareholders receive dividends. Preference shareholders may also receive priority on a return of capital if the company is wound up. Preference shareholders are often non-voting in nature and redeemable or non-redeemable.
- Non-voting shares do not confer rights on the holder to attend general meetings of the company or to vote at such meetings. However, the Companies Act preserves rights in relation to a resolution to vary the rights attached to a share and resolutions for the voluntary winding-up of the company.

The Companies Act does not restrict weighted voting for private companies. The constitution can provide that a shareholder is deemed on a poll (when voting is determined by the number of shares held) to have a specified number of votes for each share held.

Specific Voting Majorities

Statutory voting requirements required under law cannot be excluded. The Companies Act prescribes voting thresholds for certain types of corporate actions. For example, some corporate actions must be approved by a special resolution of the company (a resolution passed by a three-quarters majority of members present and voting at a meeting), including an amendment of the constitution and voluntary winding-up of the company.

Other corporate actions must be approved by an ordinary resolution of the company, including the issuance of new shares in the company by directors and the disposal of the whole or substantially the whole of the company's undertaking or property.

If a company's share capital is divided into different share classes, the constitution typically contains a provision stating that any variation or abrogation of the rights attached to any class of shares is subject to the approval of a resolution passed at a separate meeting of the shareholders of that class.

The interests of minority shareholders can be protected by other mechanisms, such as class rights, weighted voting, and shareholder reserved matters.

Buy-Out of Minority Shareholders

A shareholders' agreement can include buy-out provisions, which provide that on certain termination events one JV party has the right to, or is required to, buy out the other JV party, at a pre-agreed price (or a price determined by a pre-agreed formula). Termination events can be, for example, a breach of certain terms of the shareholders' agreement, the occurrence of insolvency events, or an unresolved deadlock.

In a dispute between shareholders, the court can order the majority shareholder to buy out the minority shareholder (and vice versa), in particular if there is minority oppression.

A court can also order a buy-out by a majority shareholder, minority shareholder, or by the company itself as an alternative to a winding-up, if the JV is still viable despite the dispute between the shareholders.

Other Exits

Exit mechanisms are typically agreed in the shareholders' agreement, which may be triggered in certain situations such as:

- Deadlock at the board or shareholders' level.
- Certain agreed milestones not being met within the specified time frame.
- A breach of certain material terms of the shareholders' agreement.
- A pre-agreed exit milestone being reached.
- A JV party being insolvent.

Exit mechanisms typically included in a shareholders' agreement include:

- A buy-out by one JV party of the shares of the other JV party.
- Sale or realisation of the whole JV.
- An initial public offering of the company on a stock exchange.
- Liquidation in accordance with the Companies Act.

Deadlock and Termination

17. What provisions are usually included to resolve deadlock?

Dispute Resolution

It is typical for parties to include an agreed dispute resolution process in the shareholders' agreement and the constitution to avoid a deadlock situation. A number of mechanisms can be used to break a deadlock, such as:

- Allowing the chairman to have a second or casting vote in the case of a voting deadlock at a board or shareholders' meeting.
- Requiring a period and process for the parties to discuss and resolve the deadlock.
- Escalating the issue to senior officers of the JV parties for resolution.
- Providing exit mechanisms (including buy-out provisions) (*see Question 16*).

Remedies

If there are no specific provisions in the shareholders' agreement or constitution to resolve a deadlock, shareholders can vote to voluntarily wind up the company. This requires a special resolution.

A shareholder can also apply to the court to wind up the company if there is an unresolved dispute resulting in deadlock.

The court can order a winding-up of the company, or order a buy-out by the majority shareholder, minority shareholders, or by the company, as an alternative to the winding-up on the basis that it is "just and equitable".

Compulsory Transfers of Shares or Assets

It is common for shareholders' agreements to provide for a compulsory transfer of shares in a JV company in certain circumstances, such as:

- Insolvency or change of control of a shareholder.
- A breach by a shareholder of a material term of the shareholders' agreement or the company's constitution.

These compulsory transfer provisions are generally enforceable, subject to insolvency laws relating to undervalue transactions or unfair preferences, which may result in a compulsory transfer by an insolvent Singapore company being set aside.

18. What are the typical termination arrangements in the joint venture agreement?

The procedure for terminating a corporate JV is usually provided for in the shareholders' agreement, which will contain exit mechanisms and the events that trigger them.

In the event of termination, the shareholders' agreement would typically provide for one of the following:

- The JV company to be wound up and the proceeds distributed among the JV parties (if any).
- One JV party to buy out the other JV party at an agreed valuation.
- The shares in the JV company to be sold to a third party.

A JV in the form of a contractual agreement is generally terminated by the parties in accordance with the agreed termination provisions.

PARTNERSHIP JOINT VENTURES

19. What are the advantages and disadvantages of a partnership joint venture and when are they commonly used instead of a joint venture company?

When Are They Used?

Partnerships are commonly used where tax transparency, flexibility, and privacy are key concerns of the JV parties.

Advantages

The main advantages of a partnership JV are that:

- A partnership structure is tax transparent, and each partner is taxed on their share of the partnership's profits at the applicable tax rate.
- A partnership structure is more flexible and easier to operate.
- A partnership structure has lower compliance costs compared to a corporate JV.
- The financial details and management arrangements of a partnership structure can be kept private, as there is no requirement to file the partnership agreement or partnership's accounts with ACRA.

Disadvantages

The main disadvantages of a partnership JV are that:

- A partnership does not enjoy the limited liability protection of a corporate JV.
- A partnership does not have the ability to raise financing that a corporate JV has.

20. How are partnerships created in your jurisdiction? What type of partnerships are available?

Partnerships

A general partnership:

- Can be formed with between two and 20 partners, who can be individuals or bodies corporate.
- Is not a separate legal entity: the partners collectively own the assets and are each individually liable for the debts and liabilities of the partnership, without any limit.
- Can also be sued (both the firm and the partners) for any wrongful act committed by any partner in the course of the firm's business, or with the authority of co-partners.
- Is automatically dissolved if any partner dies or leaves the firm.

Partnerships can be created by conduct, oral agreement, or written agreement, and can be created without a formal arrangement. A partnership is established where two or more persons carry on business in common with the aim of making a profit.

Limited Liability Partnerships

In a limited liability partnership:

- The owners have the flexibility of operating as a partnership, while having a separate legal identity that is separate from its partners and similar to a private limited company.
- A partner is not personally liable for any business debts incurred by the partnership. A partner can be personally liable for claims for losses resulting from their own wrongful act or omission, though not for wrongful acts or omissions of any other partner of the partnership.
- There is perpetual succession, which means any change in the partnership will not affect its existence, rights, or liabilities.
- There are requirements to keep accounting records, profit and loss accounts, and balance sheets that sufficiently explain its transactions and financial position. An annual declaration of solvency must be submitted to ACRA, which is publicly inspectable.

A limited liability partnership must be registered with ACRA.

Other Partnerships

A limited partnership combines limited liability features and tax transparency:

- It requires a minimum of two partners, with at least one general partner and at least one limited partner.
- It is not a separate legal entity from the partners.
- A general partner is responsible for the partnership's actions and is liable for all its debts and obligations.

A limited partner is not liable for the partnership's debts and obligations beyond their agreed contribution if they do not take part in the partnership's management.

An individual or a corporation can be a general partner or a limited partner. Appointing a local manager is not mandatory unless all the general partners reside outside Singapore.

It exists as long as the partners agree that it will and as long as all the general partners remain in the partnership.

A limited partnership must be registered with ACRA.

CONTRACTUAL JOINT VENTURES

21. What are the advantages and disadvantages of a contractual joint venture and when are they commonly used instead of a joint venture company or partnership?

When Are They Used?

A contractual JV structure is preferred by parties who wish to operate the JV by way of informal management structures. There is no formal management structure in a contractual JV and the JV parties each retain direct control (*see Question 1*).

Contractual JVs typically have a fixed term and are more commonly used for specific, time-limited projects (for example, the construction and development of a real estate project).

Advantages

Contractual JVs generally offer more flexibility in terms of management structure and are easier to establish than corporate JVs.

A contractual JV is not subject to ongoing compliance and reporting obligations, as there is no separate legal entity for the JV (*see Question 1*).

Disadvantages

See *Question 1*.

22. Is there a risk of a contractual joint venture being categorised as a partnership and the parties being liable as partners?

A contractual JV may constitute a partnership if it can be objectively inferred from the relevant facts and surrounding circumstances of the business relationship between the JV partners that the JV falls within the definition of a partnership (that is, two or more persons carrying on business in common with a view to profit).

In this case, each partner is jointly liable for the debts and liabilities of the partnership.

TAX

23. What are the main tax issues on setting up the joint venture, and transferring assets to and making payments into it?

Setting up a JV, and transferring assets to and making payments into it, can be subject to the following taxes.

Corporation Tax

The prevailing corporate tax rate for companies which are tax resident in Singapore is currently 17%. The corporate tax rate is subject to applicable tax exemptions or incentives.

VAT

Goods and services tax (GST) is generally levied on the import of goods into Singapore and the supply of goods and services in Singapore, unless the sale is zero-rated or exempted. The GST rate is currently 7%.

Stamp Duty/Transfer Tax

Stamp duty is payable on a transfer of interests in immovable property in Singapore (for example, property transfers and leases) or stocks or shares registered in Singapore.

Tax on Issuing/Transferring Shares

Stamp duty is payable on a transfer of stocks or shares registered in Singapore. The stamp duty payable is 0.2% of the consideration paid or the value of the transferred stock or shares, whichever is greater.

Stamp duty relief may be available for share or stock transfers made in the reconstruction or amalgamation of companies or between associated companies, subject to meeting certain conditions.

Withholding Tax

Payments for services, interest, royalties, rental of movable properties, and so on to a non-resident company or individual are subject to withholding tax.

The withholding tax rate varies depending on the nature of the payment.

For example, interest, commission, fees, or other payments in connection with a loan or indebtedness paid by a tax-resident company to a non-tax resident (who does not derive such interest from any trade or business in Singapore) is subject to a withholding tax rate of 15%.

Withholding tax rates may be subject to applicable double tax treaties.

24. How is the joint venture/interests of each participant taxed in your jurisdiction? Does this include worldwide profits?

A JV company that is tax resident in Singapore is taxed at the prevailing corporate tax rate of 17% on income sourced in Singapore and foreign-sourced income remitted or deemed to be remitted into Singapore.

For the taxation of dividends, see *Question 25*.

25. How are dividends taxed in your jurisdiction?

Payment of Dividends by a Resident Joint Venture Company

Dividends paid by a Singapore tax resident company to its shareholders are exempt from tax in Singapore under the one-tier corporate tax system, regardless of whether the shareholder is incorporated or resident in Singapore or outside Singapore.

There is no withholding tax on dividends.

Receiving Dividends

Dividends received by a Singapore tax resident company from a company that is tax resident in Singapore are exempt from tax.

Dividends received by a Singapore tax resident company from a company that is tax resident in another jurisdiction (foreign-sourced dividends) are exempt from tax, provided that the foreign-sourced dividends or the underlying profits out of which they were paid have been subject to applicable taxation in the source country and the highest rate of income tax in the source country is at least 15%.

Instead of the tax exemption, the Singapore tax resident company can elect to be taxed on the dividends and receive any applicable foreign tax credit on the dividends.

26. Are interest payments tax deductible? Is this restricted by thin capitalisation and transfer pricing rules?

Interest payments are tax deductible provided the interest is incurred on debt or borrowing employed in producing taxable income.

If the debt or borrowing is employed in producing capital gains or tax-exempt income, the interest incurred is not tax deductible.

EMPLOYEES

27. What employment law issues arise when transferring employees into a joint venture?

Statutory Protection on Transfer

In relation to employees covered under the Employment Act (Cap. 91), a transfer of an undertaking (or part of it) will not operate to terminate the contract of service of any employee employed by the transferor in the undertaking (or part of it) which is transferred, subject to certain conditions (*section 18A, Employment Act*).

The contract of service will then have effect after the transfer as if originally made between the employee and the transferee and the terms and conditions of employment remain the same (unless parties agree to change the terms and conditions).

Employees have the right to:

- Be notified of the transfer and of matters relating to the transfer.
- Be given the opportunity to consult their employer.
- Preserve the original terms and conditions of employment with the new employer.

The new employer must:

- Inform the previous employer of matters that will affect employees, so they can inform employees within a reasonable period.
- Take over the previous employer's rights, powers, duties, and liabilities which are part of any contract or agreement with the employees' union before the transfer.
- Keep unchanged any terms or conditions of employment for the transferred employees, unless the transferred employees agree to a change.

If the employee and new employer cannot agree to new terms, both parties have the right to terminate the employment with notice.

Section 18A of the Employment Act only applies to a sale of a business as a going concern. It does not apply to a transfer of assets only, transfer of shares, transfer of operations outside Singapore, or the outsourcing of supporting functions.

General Employment Protections

The Employment Act is the main labour law in Singapore. The Employment Act covers all employees working under a contract of service with an employer, and covers both local and foreign employees.

The Employment Act does not cover certain exempt employees (seafarers, domestic workers, and certain classes of public servants). Certain parts of the Employment Act do not apply to managers or executives. For example, Part IV of the Employment Act, which provides for minimum standards for rest days, work hours, and other conditions of service, generally does not apply to managers or executives.

Pension and Share Scheme Rights

Employers must make contributions for employees who are Singapore citizens or permanent residents to the central provident fund (CPF), which is a social security savings plan.

While there are no statutory restrictions on private pension schemes, private pension schemes are not common in Singapore due to the CPF scheme.

28. Are secondments of employees to joint venture companies used in certain circumstances instead of a transfer of employees?

Use of Secondments

There are no statutory restrictions in Singapore on the secondment of employees to another organisation. However, if the employee is a foreign person employed on an employment or work pass, they cannot be seconded without the prior approval of the Ministry of Manpower.

Key Issues

The employing company will generally receive fees for the secondment of its employee. The secondment may be regarded as a supply of services by the employing company in Singapore, which would attract GST.

However, there may be tax concessions if the employing company and the company to whom the employee is seconded are related companies, subject to meeting certain conditions.

Key Differences in Regulation

Not applicable.

COMPETITION LAW AND JOINT VENTURES

Merger Control

29. When is a joint venture subject to merger control in your jurisdiction?

Triggering Events/Thresholds

Under Section 54(2) of the Competition Act (Cap. 50B), a merger is deemed to occur in any one of the following situations:

- Two or more undertakings, previously independent of one another, merge.
- One or more persons or undertakings acquire direct or indirect control of the whole or part of one or more other undertakings.
- An acquisition by one undertaking (the first undertaking) of the assets (including goodwill), or a substantial part of the assets, of another undertaking (the second undertaking), places the first undertaking in a position to replace or substantially replace the second undertaking in the business or, as appropriate, the part concerned of the business in which the second undertaking was engaged immediately before the acquisition.

The creation of a JV to perform, on a lasting basis, all the functions of an autonomous economic entity, constitutes a merger under section 54 of the Competition Act.

The *Competition and Consumer Commission of Singapore (CCCS)* is likely to give further consideration to a merger if it meets either of the following quantitative thresholds:

- The merged entity will have a market share of 40% or more.

- The merged entity will have a market share of between 20% and 40%, and the post-merger combined market share of the three largest firms on the market is 70% or more.

The quantitative thresholds are indicative only. Crossing them is not conclusive of whether a merger has lessened competition substantially.

A substantial lessening of competition can be established below these thresholds if other relevant factors provide strong evidence of any substantial lessening of competition. CCCS has investigated mergers even where the quantitative thresholds were not exceeded.

Notification

Singapore has a voluntary notification system, where the merged entity or the merging entities are expected to conduct their own self-assessment to ascertain if a merger notification is necessary.

The self-assessment must be conducted based on the CCCS Guidelines on Merger Procedures, read with its adopted decisions, and documented in the form of an email, dated memorandum, or note that CCCS will accept as documentary evidence.

A transaction can be notified either pre- or post-completion. However, failure to conduct the requisite self-assessment or to voluntarily notify a merger to CCCS carries the risk that CCCS may not accept a post-completion filing because it intends to initiate an investigation into the merger.

For example, in the Grab-Uber investigation conducted by CCCS in 2018 and the subsequent decision by the Competition Appeal Board, CCCS rejected the post-completion merger notifications and went ahead with its investigations.

Substantive Test

Mergers that have resulted, or may be expected to result, in a substantial lessening of competition in any market in Singapore for goods or services are prohibited, other than certain excluded mergers.

Main Stages and Process

The main stages are:

- Self-assessment to ascertain if a merger notification is necessary and voluntary notification to CCCS if determined to be necessary.
- Phase 1 Review by CCCS. This is triggered when CCCS accepts the completed Form M1, provided the application meets all the requirements. The indicative administrative time frame for completing a Phase 1 review is 30 working days.
- Phase 2 Review by CCCS. This is triggered when CCCS cannot conclude during the Phase 1 review that the transaction does not give rise to competition concerns. The indicative time frame for completing a Phase 2 review is 120 working days. This time period only commences after CCCS has received a complete Form M2 and a response to the Phase 2 information request that CCCS deems satisfactory.

The above time frames are not binding on CCCS.

Penalties for Non-Compliance

Notification is voluntary and there are no penalties arising from the failure to notify. However, merging parties must self-assess the effects of a particular merger to determine whether substantive competition law questions arise.

If CCCS subsequently determines that a merger gives rise to an infringement of the section 54 prohibition under the Competition Act, it will consider if the infringement was entered into intentionally or negligently in determining if financial penalties should be imposed on the merger parties.

CCCS can impose financial penalties of up to 10% of the undertakings' turnover in Singapore for each year of infringement, up to a maximum of three years.

A self-assessment documented at the time of the transaction will be considered by CCCS in assessing whether the infringement was entered into intentionally or negligently.

CCCS can impose other directions on the parties, such as directing the merged entity to remedy the substantial lessening of competition, for example, by divesting all or part of the business.

Restrictive Agreements and Practices

30. When is a joint venture subject to competition law provisions relating to restrictive agreements and practices in your jurisdiction?

Restrictive Agreements and Practices Laws

Agreements among competitors to prevent, restrict, or distort competition are prohibited under section 34 of the Competition Act.

Accordingly, even if the terms of a JV do not constitute a merger under section 54 of the Competition Act, JV parties must still ensure that the terms of their JV do not breach the rule against anti-competitive agreements.

Assessment of Joint Ventures

A joint venture will be prohibited under section 54 of the Competition Act if it constitutes a merger which results or is expected to result in a substantial lessening of competition in any market for goods and services.

It will also be prohibited under section 45 of the Competition Act if it constitutes an agreement among competitors to prevent, restrict, or distort competition.

Exemptions

Certain mergers are excluded from the section 54 merger prohibition, such as:

- A merger approved by any minister or regulatory authority (other than CCCS) under any requirement for such approval imposed by any written law.
- A merger approved by the *Monetary Authority of Singapore* under any requirement for such approval imposed by any written law.
- A merger involving any undertaking relating to certain specified activities (as defined in paragraph 6(2) of the Third Schedule to the Competition Act), such as the supply of water and bus and rail services.
- A merger if the economic efficiencies arising or that may arise from the merger outweigh the adverse effects due to the substantial lessening of competition in the relevant market in Singapore.

The Minister for Trade and Industry can also exempt a merger or anticipated merger (for which CCCS has proposed that the section 54 prohibition will be or has been infringed) on the grounds of public interest considerations (*section 68(3), Competition Act*).

Public interest refers to national or public security, defence, and any other prescribed considerations that the Minister publishes, by order, in the *Singapore Government Gazette* (*section 2, Competition Act*).

IP AND JOINT VENTURES

31. What are the main IP issues for a joint venture and how are they usually dealt with in the joint venture agreement?

Provision of IP to the Joint Venture

The JV company may sometimes need to use IP from its shareholders to carry out the agreed business. If so, an IP licence is usually granted by the shareholders to the JV company, and parties need to agree the terms of the IP licence, including:

- Whether the IP licence is royalty free or whether royalties are payable.
- Duration of the licence.
- Termination events.
- Scope of the licence (the IP rights covered by the licence).
- Ownership of developments made to the licensed IP by the JV company.

Ownership of IP

Generally, the JV company will own any IP developed by it or developed by its employees or contractors (subject to the terms of agreement with the contractor).

However, parties to the JV may agree that shareholders will retain ownership of any IP developed by the JV company using or involving licensed IP.

Commercialisation of Joint Venture IP

See above, *Ownership of IP*.

Ownership of IP on Termination

Any IP owned by the JV company will be treated in the same way as the other assets of the JV company on the winding-up or dissolution of the JV.

If the termination of the JV is due to a solvent or voluntary winding-up of the JV company, parties may agree in the shareholders' agreement (or other agreement) that a shareholder has the option to acquire the IP rights owned by the JV or be granted a licence of the IP rights.

Alternatively, a licence of such IP rights can be granted to all shareholders in the event of a voluntary winding-up of the JV company.

ANTI-CORRUPTION/CRIMINAL CONDUCT

32. How are anti-corruption/racial discrimination/harassment/me too rules dealt with in a joint venture context?

Applicable Laws

The main anti-bribery and corruption laws in Singapore are:

- Prevention of Corruption Act (Cap. 241).
- Corruption, Drug Trafficking and other Serious Offences (Confiscation of Benefits) Act (Cap. 65A).
- Chapter IX of the Penal Code.

Most corruption-related prosecutions are made under the Prevention of Corruption Act, which has a broader scope. For example, the relevant provisions of the Penal Code are narrower and relate only to offences relating to the bribery of public servants.

Protections in the Agreement

JV parties will wish to mitigate and ringfence, to the extent possible, risks and exposure from the JV company being involved in any corruption or bribery activity.

Appropriate compliance procedures and governance frameworks should also be implemented during the term of the JV and any such compliance obligations should be contained in the shareholders' agreement.

JV parties should have monitoring and information request rights.

Parties may agree on exit or termination provisions in the event of any breach of anti-corruption or bribery regulations.

Due Diligence

Appropriate due diligence should be conducted on the JV company, the JV partners, and any assets or business that are transferred to the JV company.

Protection for Whistleblowers

There is currently no specific whistleblowing legislation in Singapore.

In relation to corruption, the Prevention of Corruption Act offers protection to informers and whistleblowers are accorded anonymity. However, the right to anonymity may be revoked by the Singapore courts where the courts believe that either:

- The informer fully made in their complaint a material statement which they knew or believed to be false or did not believe to be true.
- Justice cannot be done without revealing the informer's identity.

Anti-Corruption Warranties

Relevant warranties relating to compliance with anti-corruption or bribery regulations are typically given by each JV party in the shareholders' agreement.

33. What are the principal rules concerning anti money laundering and counter terrorism for financing that are relevant in the joint venture context?

The main legislation that governs money laundering-related offences is the:

- Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, which criminalises the laundering of benefits from serious criminal offences.
- Terrorism (Suppression of Financing) Act (Cap. 325), which criminalises the provision of property and services for terrorist purposes.

ADDITIONAL DOCUMENTS

34. What additional documents are typically required for a joint venture company or partnership?

Joint Venture Formation Documents/Documents Governing Relations Between JV Parties

The primary incorporation document for a limited liability company is its constitution, which must be filed with ACRA.

Parties typically also enter into a shareholders' agreement to set out their rights and responsibilities in relation to the JV company, separately and in addition to the terms of the company constitution.

For a limited liability partnership, a limited partnership and a general partnership, the mutual rights and duties of its partners are typically governed by the partnership agreement.

The main documents governing relations between JV parties would be the shareholders' agreement and the constitution of the JV company.

If the JV company is using IP owned by a shareholder, IP licences are typically entered into between the JV company and the shareholders. If assets or businesses are being transferred to the JV company, the relevant asset and business transfer agreements are entered into.

Documents Governing Relations Between the Joint Venture and Third Parties

Depending on the nature of the JV and its business, the following ancillary agreements may be entered into between the JV parties and third parties:

- Management agreements.
- Contracts for the supply of goods and services.
- Distribution and marketing agreements.
- Service and secondment agreements.
- Property consents or transfers.
- Financing and leasing documents.

FOREIGN INVESTMENT RESTRICTIONS

35. What restrictions are there on foreign entities doing business in the jurisdiction in a joint venture structure, and are there restrictions on local entities entering into joint ventures with foreign parties?

Restrictions on Foreign Investment

Generally, there are no restrictions on foreign investment and foreign investors do not generally require consent to participate in a JV.

However, there are certain industries where foreign investment is restricted (for example, real estate and telecoms).

Certain sectors are subject to a licensing regime (for example, banking and telecoms) under which both local and foreign investors must obtain approval from the relevant regulatory authority for their investment.

Restrictions on Foreign Ownership

Certain key sectors are subject to restrictions on foreign investment, such as real estate and telecoms.

Specific legislative restrictions on foreign ownership apply to certain types of residential property.

There are also legislative restrictions on foreign ownership of broadcasting and newspaper companies in Singapore. A broadcasting licence will not be granted if the company is controlled by foreign sources, or if foreign sources hold more than 49% of the shares or voting power of the company.

A newspaper company must have two classes of shares, with one class of shares only held by Singapore citizens or approved corporations.

Authorisations

See above, *Restrictions on Foreign Investment* and *Restrictions on Foreign Ownership*.

Residency Requirements

There are no residency requirements applicable to the shareholders of a JV.

Investment Levels

There are no mandatory minimum or maximum investment levels for a foreign JV party.

There are no mandatory thresholds for minimum equity investments or contribution in kind applicable to a foreign participant in a Singapore JV.

Foreign Exchange Controls

There are generally no foreign exchange controls relating to the remittance or repatriation of profits or capital in and out of Singapore, whether the JV party is resident or non-resident in Singapore.

36. Are there economic or financial incentives for foreign direct investments in a joint venture?

There are no economic or financial incentives specific to foreign direct investment in a JV. However, there may be certain governmental incentives or schemes to encourage commercial activity in a particular sector (for example, grants for research, training, and productivity, tax incentives for pioneer activities, industrial land-efficiency, or corporate treasury).

CHOICE OF LAW AND JURISDICTION

37. Are there restrictions on the choice of law and jurisdiction applicable to a joint venture?

The parties to a contractual JV are free to choose the governing law and relevant jurisdiction of the contract. There are also no restrictions on the governing law or jurisdiction applicable to a JV agreement of a corporate JV, whether a shareholders' agreement or limited liability partnership agreement.

However, the form or entity used to create the JV, such as a limited company or a limited liability partnership, is subject to the statutory provisions relating to such bodies.

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