

Joint Ventures 2020

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Joint Ventures 2020

Contributing editors**Gavin Williams and James Farrell**

Herbert Smith Freehills

Lexology Getting The Deal Through is delighted to publish the third edition of *Joint Ventures*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on China, the Netherlands, Saudi Arabia and Thailand.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Gavin Williams and James Farrell of Herbert Smith Freehills, for their continued assistance with this volume.



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Nobles

FORM

Types of joint venture

- 1 | What are the key types of joint venture in your jurisdiction?
Is the 'joint venture' recognised as a distinct legal concept?

Ukrainian law recognises two forms of joint venture: a joint venture as a cooperative business activity, without the creation of a legal entity (ie, an unincorporated joint venture); and a joint venture as a separate legal entity (ie, an incorporated joint venture).

In an unincorporated joint venture, the parties enter into a joint venture agreement whereby they undertake to cooperate without the creation of a legal entity and set to achieve specific business objectives. Such joint venture agreements may envisage the consolidation of parties' assets (simple partnership) or a collective business without such consolidation of assets.

An incorporated joint venture is a joint-entity company, incorporated based on joint capital of two or more business entities. Joint ventures are usually organised either in the form of a joint-stock company or a limited liability company (LLC) in Ukraine.

Common sectors

- 2 | In what sectors are joint ventures most commonly used in your jurisdiction?

An unincorporated joint venture is widely used in public-private partnerships in Ukraine, where the investor aims to make a profit from state-owned resources or property rights under contractual arrangements, in particular for different industries. This is common in the oil and gas industry, and in road construction and transport infrastructure projects.

An incorporated joint venture structure is often used by non-Ukrainian investors in the sectors where local expertise, assets or know-how are essential for their collective business enterprise. In particular, the most common industries for such cooperation are agriculture, IT, consulting services and machinery.

PARTIES

Rules for foreign parties

- 3 | Are there rules that relate specifically to foreign joint venture parties?

Many foreign-ownership restrictions were abandoned during the years of Ukraine's transition into a market economy. There are some regulatory restrictions still applicable in some industries on foreign capital investments (eg, in banking and finance, insurance and media), but foreign joint venture parties now mostly enjoy national treatment.

Foreign investors should be aware that cross-border transfers (especially outbound payments) are usually subject to strict currency-control and financial-monitoring regulations. Foreign investors may perform a wide range of investment activities through special investment accounts opened with Ukrainian banks or directly from their foreign accounts.

Ultimate beneficial ownership

- 4 | What requirements are there to disclose the ultimate beneficial ownership of a joint venture entity?

Ukrainian law defines an ultimate beneficial owner as:

- a natural person who is able to influence, either directly or indirectly, the management or business activities of a legal entity, regardless of the formal ownership;
- a natural person that may give obligatory instructions or make the functions of management through:
 - the right of possession;
 - the right to use all assets (or their significant share);
 - the right to the decisive influence on the formation;
 - voting rights; or
 - legal actions that enable him or her to determine the conditions of the economic activity; or
- a natural person who is able to determine the influence by direct or indirect possession (through other individuals or entities) by one person on their own or together with related individuals or entities of the part with 25 per cent or more of the share capital, or the same part of voting rights in the entity.

However, the ultimate beneficial owner cannot be a person who has the formal rights of 25 per cent or more in the capital or voting rights in the entity, but who is the agent, the nominee (the nominal holder) or the only intermediary of such rights.

Ultimate beneficial owners must be disclosed at the incorporation of a company and opening of a bank account in Ukraine. Ultimate beneficial owners are also disclosed during joint venture competition clearances or at the acquisition of banks or financial institutions. The notaries, real estate agents and lawyers are required to conduct know-your-client procedures for significant transactions.

SETTING UP AND OPERATING A JOINT VENTURE

Structure

- 5 | Are there any particular drivers in your jurisdiction that will determine how a joint venture is structured?

Typical drivers for joint venture structures are industry practice, regulatory framework and taxation.

For instance, the state has a long-standing practice of joint venture agreements for cooperation in oil and gas owing to certain tax considerations. Certain regulated business activities can only be conducted by legal entities registered in the designated form (eg, the banks can only operate as a public joint-stock company). Owing to possible double taxation, joint venture parties sometimes prefer to cooperate as an unincorporated business in the initial stages before proceeding to a joint corporate entity.

Tax considerations

6 | When establishing a joint venture, what tax considerations arise for the joint venture parties and the joint venture entity? How can tax charges be lawfully mitigated?

An incorporated joint venture is a taxpayer under the general rules (regarding corporate profit tax, value added tax (VAT), real estate and other taxes). Small undertakings whose annual income does not exceed certain thresholds (currently, 3 to 5 million hryvnias) and that comply with certain criteria, may enjoy preferential taxation regimes. Some temporary VAT and corporate profit tax exemptions exist in certain industries, such as in cinematography and the space and aircraft industries.

An unincorporated joint venture is subject to separate taxation, for which special tax-accounting regulations apply. The joint venture agreement shall define a (resident) participant responsible for the venture's tax accounting and payment; such participant and the agreement are registered by the tax office.

In-kind contributions (as opposed to cash contributions) of founders or participants into the (both incorporated and unincorporated) joint venture trigger Ukrainian VAT, subject to further tax credit and refund.

Asset contribution restriction

7 | Are there any restrictions on the contribution of assets to a joint venture entity?

The parties can agree on the contribution of any assets into an unincorporated joint venture. Importantly, the investments of the parties are deemed of equal value if the parties do not state otherwise in their joint venture agreement.

There are restrictions on the contribution of certain assets to the capital of a separate corporate entity. The following cannot be used for formation of the registered capital:

- budget and loaned funds;
- bills (promissory notes);
- state (municipal) property that cannot be privatised; and
- state property that is under operational management of the state-financed institution.

Interaction between constitution and agreement

8 | What is the interaction between the constitution of the joint venture entity and the agreement between the joint venture parties?

For incorporated joint venture entities, the constitution takes precedence over joint venture agreements. There is a limited scope that can be regulated in an agreement between participants or shareholders of a company in Ukraine. In most cases, therefore, incorporated joint ventures have only constitutions. Generally, such agreements can only supplement the constitution. Agreements between shareholders should only be regulated under Ukrainian law to be enforceable in Ukraine.

With the enactment of the new Law on Limited Liability Companies (the LLC Law) and the changes to the Law of Joint Stock Companies (the JSC Law) in 2018, it is expected that shareholder agreements will gain significance in the future. Shareholders will be able to govern a broader

scope of corporate issues at their discretion (with certain limitations), and determine, in particular, the method of execution of their corporate rights, such as voting at shareholders' meetings, as well as modalities of the sale and purchase of company shares.

Party interaction

9 | How may the joint venture parties interact with the joint venture entity? Are there any restrictions?

In an incorporated joint venture entity, from the corporate-law perspective, the shareholders can participate and vote at general shareholders' meetings and, therefore, interact with the joint venture by governing it on the most important issues. The shareholders only have access to a limited set of information regarding the entity.

From the competition perspective, information-sharing falls under the scrutiny of the competition authority (see question 13).

Exercising control

10 | How may the joint venture parties exercise control over the joint venture entity's decision-making?

In an unincorporated joint venture, the parties may agree that all affairs are to be carried out jointly by all shareholders. If all affairs are to be carried out jointly, the consent of all shareholders must be obtained in order to execute each transaction.

In incorporated joint ventures, the parties' shareholders may exercise their will through participating in general shareholders' meetings.

In joint-stock companies, all issues on the agenda of the general shareholders' meetings are resolved by a simple majority vote of all participating shareholders. However, in a private joint-stock company the shareholders can agree a bigger quorum (eg, unanimous consent of all present shareholders) for any issues except:

- the pre-term termination of the powers of the officials of the company's bodies;
- the commencement of a claim against the company's officials regarding the reimbursement of damages incurred by the company; and
- the commencement of a claim regarding the non-compliance with the law in the case of a significant transaction.

Therefore, the minority investor can have more power and control over a private joint-stock company.

In a joint-stock company, a qualified majority (more than 75 per cent of the present shareholders) is required to adopt the following decisions:

- amendment of the company's charter;
- cancellation of the bought-out shares;
- changing the type of company;
- regarding the placement of shares;
- changing the registered capital;
- issue of securities that may be converted into shares; and
- termination of the company.

With certain exceptions, the charter of a joint-stock company may provide for other issues requiring a qualified majority of votes.

In an LLC, as a general rule, all issues are decided by an absolute majority of votes. However, issues of changing the charter and registered capital, reorganisation or liquidation of the company require a qualified majority (at least 75 per cent of the total number of votes of participants of the company). Unless the company charter sets a lower number of votes (but no less than a majority), unanimous decisions of all participants are required for:

- the approval of the monetary assessment of a non-pecuniary contribution of a participant;

- the redistribution of the participants' shares;
- the establishment of other corporate bodies; and
- the purchase of a participant's share by the company.

The minority investors are also entitled to demand internal and external audits. For instance, minority shareholders holding over 10 per cent in a joint-stock company may request a special review by internal auditing committee or a proper inspection of financial accounts by an independent auditing firm.

Governance issues

11 | What are the most common governance issues that arise in connection with joint ventures? How are these dealt with?

As to an unincorporated joint venture, the parties are free to establish special procedures relating to adopting decisions and running the business in a practical manner, according to the terms and conditions of a joint venture agreement.

The two most common governance issues that arise for joint venture corporate entities are:

- presence of a quorum; and
- adopting decisions on specific issues.

The issues that arise during the joint venture's operation are handled through negotiation or mediation. In the case of corporate disputes, the parties may resolve them in the courts or arbitration tribunals. As noted above, shareholders will have more freedom and flexibility to handle governance issues through shareholder agreements.

Nominee directors

12 | With an incorporated joint venture, what controls exist in your jurisdiction in relation to nominee directors? How should a nominee director balance the potentially conflicting interests of the joint venture company and the appointing shareholder?

In Ukraine, a majority shareholder (participant) usually nominates a director, but the former must act in the best interests of the joint venture company, as required by law, not the appointing shareholder.

In LLCs, supervision over the board of directors can be exercised by a supervisory board (if foreseen by the charter) or appointed by the general shareholders' meeting, or both. The latter may delegate certain of its powers to the supervisory board, including the appointment and dismissal or suspension of the board of directors. Moreover, shareholders holding at least 10 per cent of the charter capital may initiate a financial audit of the company by an independent auditor. The board of directors is obliged to provide documents regarding the company at the request of the auditor.

As to a joint-stock company, the executive body is accountable to the general shareholders' meeting and supervisory board (including its standing auditing committee). The general shareholders' meeting can elect an auditing commission as a separate corporate body as well. In public joint-stock companies, the annual audit by an independent certified auditor is obligatory. The board of directors is obliged to provide documents regarding the company at the request of the audit commission or an auditor.

Competition law

13 | What competition law considerations are engaged by the formation and operation of the joint venture? Is approval needed?

Assuming the turnover thresholds are met, the creation and operation of the joint venture may trigger the need to obtain certain approvals.

Depending on whether a joint venture will be full-function or not, there may be a need for clearance of:

- merger: in the case of a joint venture's creation, if operating permanently, all the functions of an autonomous economic entity (full-function joint venture) and such creation will not lead to coordination of competitive behaviour between the parent companies of the joint venture themselves or between the joint venture and its parent companies; or
- concerted actions: if a joint venture is established with an objective of, or results in coordination of, competitive behaviour between the parent companies of the joint venture themselves or between the joint venture and its parent companies.

Provision of services

14 | What are the key considerations in your jurisdiction in structuring the provision of services to the joint venture entity by joint venture parties?

In an unincorporated joint venture, in the case of a simple partnership, approval of all parties is needed for the execution of every transaction, unless stated otherwise in the simple partnership agreement.

In a joint-stock company, provision of services to the joint venture entity by joint venture parties (ie, its shareholders) may be recognised as an interested-party transaction if the transaction value exceeds 1 per cent of the company's asset value, unless the company charter sets a lower value. The party interested in the transaction may be a shareholder (or shareholders, their affiliated persons) who alone or jointly owns 25 per cent or more of the company's shares. Interested-party transactions with a value of up to 10 per cent of the company's asset value require the approval of the company's supervisory board, and transactions with a value of more than 10 per cent of the company's asset value require the approval of a general shareholders' meeting. During the voting process, the shareholders interested in the transaction do not have the right to vote and a decision on this matter is taken by a majority of votes of non-interested shareholders present at the meeting.

In an LLC, a transaction is considered an interested-party transaction if the other party is, inter alia, a shareholder (or shareholders, their affiliated persons) who alone or jointly owns 20 per cent or more of the company's shares. However, it is entirely up to the shareholders to provide in the company charter for regulations concerning the need of pre-approval for interested-party transactions. All shareholders shall approve the relevant charter provisions unanimously. If the charter does not contain such provisions, no restrictions as regards interested-party transactions apply, except that such transactions shall be at arm's length.

Employment rights

15 | What impact do statutory employment rights have in joint ventures?

There are no special employment regulations concerning incorporated joint ventures (the employment conditions in a joint venture are identical to employment in any other company). Under general labour laws, transfer to another job in the same company, as well as transfer to another company or other area (location) requires the consent of the employee.

As to an unincorporated joint venture, the employees are always employed by the joint venture parties.

Intellectual property rights

16 | How are intellectual property rights generally dealt with on the creation, operation and termination of a joint venture in your jurisdiction?

Intellectual property (IP) rights may be transferred for ownership or use (under a licence agreement) under the incorporated joint venture. During termination of the legal-entity ownership, IP rights are dealt with in the same manner as any other property rights; they are either sold to pay off the debts or distributed among the shareholders of the company.

As for an unincorporated joint venture, the parties can provide the right to use IP in a joint venture agreement. The title of the IP object remains with the joint venture party.

FUNDING THE JOINT VENTURE

Typical funding

17 | How are joint ventures generally funded in your jurisdiction? Are there any particular requirements relating to funding and security packages?

The standard procedures for financing incorporated joint ventures in Ukraine are either through capital contributions or corporate loans. Donations or non-refundable financial assistance also exist but can trigger unfavourable tax consequences.

The advantages of a capital contribution include the relative simplicity of its implementation (which requires a shareholders' resolution, amending the joint venture's charter and its state registration), as well as no repayment obligation (except for withdrawal from and liquidation of the joint venture) and no interest payments.

Funding through a loan would necessitate a formal loan agreement with a non-resident lender. The loan agreement must correspond to the requirements of and be registered with the National Bank of Ukraine (the registration requirement will be lifted in February 2019). Security packages are not required by law.

Non-incorporated joint ventures are funded through contributions of the parties. This issue is governed by the joint venture agreement.

Capital injection restrictions

18 | Are there any legal or regulatory restrictions on the injection of capital into, or the distribution of profits or the extraction of cash by other means from, the joint venture entity?

In early 2014, the National Bank of Ukraine imposed severe restrictions on cross-border currency transactions in order to mitigate the consequences of the country's political and financial crisis. They included a complete ban on dividends and investment repatriation abroad (eg, by a decrease of the charter capital, share sale or withdrawal from the entity) and on early loan repayment to non-resident lenders (with some exceptions).

The restrictions were partly lifted between 2016 and 2018 owing to the achieved overall macroeconomic stability in Ukraine; however, the monthly amount of repatriated investments is limited to US\$5 million, and dividends to US\$7 million, and the restriction of early loan repayments is also still in place. It is expected that certain restrictions will be lifted in February 2019, when the new Law on Currency and Currency Transactions becomes effective. However, the National Bank of Ukraine has reserved the right to temporarily (up to six months) reintroduce currency restrictions owing to certain material reasons related to the general situation of the national financial market.

A number of Russian-controlled business are currently subject to tough sanctions imposed in response to the annexation of Crimea and the backing of separatist forces in eastern Ukraine. These sanctions

cover, inter alia, the freezing of assets and a ban on financial transactions, including the repatriation of capital and dividends.

Tax considerations

19 | What tax considerations should be taken into account in the operation of the joint venture?

In contrast to incorporated joint ventures, parties of unincorporated ventures are fully liable for tax debts of joint ventures.

Corporate profit tax

An incorporated joint venture is obliged to pay an advance corporate-profit tax at the rate of 18 per cent on dividends disbursed to its shareholders. This tax is charged on top of the dividend amount exceeding the taxable profit of the entity, and is not deducted therefrom. It is further set off against the regular tax liabilities of the joint venture.

A non-refundable financial relief granted by a shareholder to an incorporated joint venture adds to its financial result and increases its tax liabilities accordingly (unless balanced with the company's losses).

Thin capitalisation rule

Interest amounts paid by an incorporated joint venture to its related non-resident creditors exceeding 50 per cent of the venture's earnings before interest, tax, depreciation and amortisation are not deductible if the loan exceeds 3.5 times the venture's net capital.

Withholding tax

An incorporated joint venture is obliged to deduct 15 per cent Ukrainian withholding tax from the amount of dividends paid out to its shareholders, unless an effective double-tax treaty (DTT) provides otherwise. The DTTs set lower or preferential withholding tax rates (usually, 5 to 10 per cent), if some conditions are complied with.

Likewise, interest amounts paid out by an incorporated joint venture to its shareholders, which are non-resident lenders under corporate or intra-group loan agreements, are also levied with 15 per cent Ukrainian withholding tax, unless an applicable DTT provides for a lower rate.

Non-resident participants of non-incorporated joint ventures are ineligible for preferential withholding tax rates with regard to the distributed profit.

VAT

In-kind contributions of shareholders to the joint venture are taxable with 20 per cent VAT, subject to further VAT credit.

Accounting and reporting issues

20 | Are there any noteworthy accounting or reporting issues for the joint venture parties regarding their investment in the joint venture?

There are no accounting or reporting issues affecting non-resident shareholders or parties of a joint venture. As regards resident shareholders, they shall indicate their investments in regular financial and statistical reports under the general rules.

In an unincorporated joint venture, a (resident) party determined by the joint venture agreement is responsible for tax accounting, reporting and payment.

DEADLOCK, EXIT AND TERMINATION

Deadlock provisions

21 | What deadlock provisions are commonly included in joint venture agreements in your jurisdiction?

The parties of unincorporated joint ventures can include any applicable deadlock provisions in their joint venture agreements.

As for agreements between participants or shareholders of an incorporated joint venture, the law does not provide for a wide discretion. Provisions on the formation of corporate bodies, their competence, procedures for convening general meetings and adopting decisions at such meetings shall be drafted in accordance with Ukrainian law. In turn, the law does not provide deadlock provisions to be used by participants or shareholders, except appraisal rights of minority shareholders in joint-stock companies (see question 27).

With the enactment of the LLC Law and respective amendments to the JSC Law in 2018, it is expected that shareholders will be able to stipulate certain deadlock provisions in their shareholder agreements.

Exit provisions

22 | What exit provisions are commonly included? Does the law restrict any forms of mandatory transfer provision or any basis of calculation?

A party to an unincorporated joint venture may make a notice of its refusal to further participate in the joint venture agreement no later than three months before the withdrawal. This period cannot be altered by the agreement. Items (property) transferred to the joint venture shall be returned to the participant who provided them without remuneration, unless otherwise provided by the agreement.

As for incorporated joint ventures, its shareholders, in some instances, have pre-emptive rights (rights of first refusal) in the case of an exit of other shareholders. For example, a shareholder of a private joint-stock company must notify other shareholders about the intention to sell its shares. The company charter may set such a notification period. Other shareholders may have 20 calendar days to two months to exercise their pre-emptive rights to buy the shares. A similar rule is applicable for LLCs, where the participants are entitled to their pre-emptive rights in proportion to each participant's share (unless the charter provides otherwise).

Participants of LLCs have a general statutory right to exit the company upon a notice with the demand to pay the proportionate amount of assets. Such payment must be made within 12 months of the date of the exit (unless the charter sets another payment term). At the request of the participant and upon the consent of other participants, the contribution may be returned in kind. The participant also receives the proportionate amount of the profit received by the company in the given year. Participants that hold 50 per cent or more of the charter capital require the consent of the other shareholders for withdrawal. The withdrawal of a participant becomes effective with its state registration.

Tax considerations following termination

23 | What are the tax considerations on termination of the joint venture?

Termination of an incorporated joint venture triggers a mandatory tax audit conducted by the tax office, which is usually complicated by local conditions and red tape. The entity may not be liquidated as long as it has outstanding tax debts (unless declared bankrupt).

Other tax considerations in relation to the transfer of assets include VAT levied when in-kind (as opposed to monetary) assets are returned to participants of a joint venture owing to its termination.

Finally, an income derived by a non-resident shareholder of an incorporated joint venture from the disposal of its shareholding is subject to the Ukrainian withholding tax of 15 per cent (unless an applicable DTT provides otherwise). At the same time, transactions with shares and other corporate rights are not VAT taxable.

DISPUTES

Choice of law and resolution methods

24 | In your jurisdiction, are there constraints on the choice of law or the method of dispute resolution provided for in joint venture agreements?

As a matter of court practice, joint ventures incorporated in Ukraine, relations between shareholders regarding joint ventures and corporate governance are subordinated exclusively to Ukrainian law and Ukrainian courts. Shareholders of a Ukrainian company may face significant obstacles with enforcement in Ukrainian courts of joint venture agreements under foreign laws.

On the contrary, joint venture agreements between participants in an unincorporated joint venture and disputes between them may be subordinated (except for imperative provisions of Ukrainian law) to a foreign jurisdiction and arbitration.

Mandatorily applicable local law

25 | What mandatory provisions of local law will apply irrespective of the choice of governing law?

Legal provisions pertaining to areas of Ukrainian public law, such as accounting and taxation, monetary regulations and currency control, customs, competition, regulatory, administrative and criminal law remain mandatory and must be complied with.

Regardless of the chosen law, Ukrainian law also applies to all real estate matters if real estate is situated in Ukraine, as well as to other property subject to state registration in Ukraine (such as transport vehicles and securities). Overall, according to the general principle of private international law, Ukrainian law shall determine the property and other proprietary rights to things located in Ukraine.

In addition, some types of disputes are subject to the exclusive jurisdiction of Ukrainian courts, such as related to real estate located in Ukraine, IP rights registered in Ukraine and corporate disputes regarding Ukrainian legal entities and their bankruptcy.

Remedy restrictions

26 | Are there any restrictions on the remedies a tribunal can grant that would have a bearing on the arbitration of joint venture disputes? Are there any restrictions on the arbitration of shareholder claims?

As already noted above, corporate disputes or shareholder claims of incorporated joint ventures may not be subject to arbitration. State commercial courts are the competent courts of Ukraine. The only exception are disputes arising out of a shareholder agreement between shareholders of an incorporated joint venture. Such disputes may be subjected to international commercial arbitration based on an arbitration clause (agreement) endorsed and signed by the joint venture and all its shareholders.

In terms of interim measures or injunctive relief as a remedy prior to the final judgment, the claimant must sufficiently prove their necessity to the court; for example, if there is otherwise an imminent danger that its rights will be breached or their restoration or the enforcement of the final judgment may otherwise become impossible or impeded. Interim measures may include, inter alia:

- retrieval of evidence;
- search of premises;
- seizure of money and property; and
- prohibition to undertake certain actions.

The court may decide on injunctive relief at its discretion to the extent permitted under the law. The following interim measures, however, may not be used as injunctive relief in corporate disputes:

- prohibition to hold shareholders' meetings and take decisions (except for certain decisions determined by court directly related to the subject matter of a dispute and a prohibition to amend the company charter with respect to charter capital, if the subject of a dispute are shares of the joint venture);
- prohibition for issuers, registrars or custodians to provide the shareholders' registers or information on shareholders necessary for the holding of general meetings; or
- prohibition to participate (register for participation) in shareholders' meetings and determine their quorum.

Injunctive relief measures must be proportionate to the claimant's demands and not affect other shareholders' rights.

Minority investor protection

27 | Are there any statutory protections for minority investors that would apply to joint ventures?

With regards to an incorporated joint venture, a minority investor can file an action to the court against the company's officials who have caused damage to the company. Shareholders holding 10 per cent or more of the company are entitled to file such action as well as initiate a general shareholders' meeting.

Additionally, shareholders in joint-stock companies shall have the right to claim from the company to buy out their shares at the market value if they have registered at the general shareholders' meeting and voted 'against' a decision on one of the following:

- a merger, accession, division, transformation, spin-off, change of the company type;
- granting consent to a substantial or interested-party transaction;
- refusal to exercise the pre-emptive right of a shareholder to purchase shares of an additional issue in the process of their placement; or
- a change (decrease or increase) of the share capital.

Moreover, in joint-stock companies, in the case of a purchase of the controlling shareholding (ie, more than 50 per cent of the shares), the new majority shareholder (acting alone or with its affiliates) is obliged to offer remaining minority shareholders the ability to buy out their shares at the market value.

The law provides no statutory appraisal rights to participants of LLCs. However, participants of LLCs holding less than 50 per cent of the shares have a general right to exit the company upon a notice with the demand to pay the proportional amount of assets, as envisaged by the law and charter. Participants holding 50 per cent or more of the shares require the consent of the other participants to withdraw from the company.

Liabilities

28 | How can joint venture parties have liabilities to each other beyond what is expressly agreed in the joint venture agreement?

With regards to an incorporated joint venture in the form of an LLC and joint-stock company, the law prescribes that the shareholders can be

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held liable within the amount of their shares only. Few other forms of legal entity can envisage the full responsibility of its shareholders for the joint venture's liabilities.

As to non-incorporated joint ventures, the participants bear sole responsibility under all joint-obligations, irrespective of the grounds for their emergence. If a joint venture agreement was not terminated upon the participant's application on its refusal from further participation in it, or in the case of the agreement breach upon one of the participant's demand, the participant whose participation in the agreement is terminated is liable to the third parties under joint obligations that emerged during the term of its participation in the agreement.

A shareholders' agreement can provide for liability (financial sanctions or reimbursement of damages) of its parties for failure to comply with their obligations. The mentioned liability measures are protectable by court.

Disclosure of evidence

29 | Are there any particular issues that can arise in joint venture disputes in your jurisdiction concerning disclosure of evidence?

According to the law, the shareholders and participants of an incorporated joint venture can only have access to a limited portion of a company's documentation. As a practical matter, usually, a majority shareholder has full access to company's documentation and, in the case of a dispute with their partners, can obstruct the disclosure of evidence.

MARKET OVERVIEW

Jurisdictional advantages

30 | What advantages does your jurisdiction offer for parties wishing to set up and operate joint ventures?

The main economic advantages are:

- a large and rapidly growing consumer market;
- a qualified and relatively cheap workforce;
- varied cargo transportation options (railway, Black Sea ports);
- preferential trade regimes for certain goods with EU and other countries; and
- natural resources: black soil, coal and amber.

The main legal advantages are:

- a civil-law legal system;
- continual approximation and adaptation to EU law and standards;
- good practice in accordance with international standards;
- ongoing work to improve the investment climate;
- a positive attitude to foreign investors;
- a fast and simple registration of joint ventures;
- transparency and easy access to public databases with relevant information on companies, their assets and beneficiaries; and
- open tendering procedures in public procurement.

Requirements and restrictions

31 | **Are there any particular requirements or restrictions relating to joint ventures in your jurisdiction that could deter international investors?**

The main legal restrictions (connected with currency regulations) are set forth in question 18. Additionally, certain spheres of business activities are bureaucratically regulated and require substantial paperwork and matching formalistic requirements.

The information in this chapter was accurate as at October 2018.

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