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## Key Considerations in Entering Into an International Joint Venture: Why, When and How?

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- Why Choosing an IJV?
- Choosing the Right Structure
- Testing the Waters
- Securing the Participation of Your Partner
- Controlling the JV
- Protecting Your Interest in the JV
- Exiting the JV

## Why Choosing an IJV?

- Overcome restrictions
- Entry into difficult markets
- Expand into new business
- Share risks
- Learn and apply new know-how
- Pre-empt competition?

## Choosing the Right Structure

Non-incorporated JV	Incorporated JV
No separate legal entity: parties remain independent	Creation of new entity with separate legal personality
Parties remain fully liable	Limited liability
Flexibility	Established legal framework
Minimal formalities	Costs and formalities

***Are both recognized by Qatari law?***

## Choosing the Right Structure (Cont.)

- When and why using each?
  - Legal and regulatory limitations
  - Liability exposure – capacity to sue/be sued
  - Duration and scope
  - Flexibility – Costs of compliance
  - Corporate governance and management structure
  - Investment incentives (incl. tax exemptions, free trade zones)
  - Tax implications

## Testing the Waters

- The dilemma of using a pre-contractual document
  - When and why?
- Are these documents recognized by Qatari law?
  - Civil Code
  - QFC Contract Regulations
    - ↪ no liability for ceasing negotiations unless in bad faith

## Testing the Waters (Cont.)

- Major pitfalls while drafting a pre-contractual document
  - Legal effect
    - Be aware of the parties' intent and actions - "subject to contract" not bulletproof
  - Binding vs non-binding
    - Choosing the right wording - Use of contractual terms?
    - Duty to negotiate in good faith?

## Testing the Waters (Cont.)

- Non-binding document with binding provisions
  - Governing law, jurisdiction, costs, confidentiality
  - IP developed during negotiation phase
    - Ownership? Freedom to use IP after transaction?
  - Exclusivity
    - Duration? Extension?



## Testing the Waters (Cont.)

- Non-disclosure agreement
  - Defining CI
  - Limiting the use of CI only in connection with the JV
  - Limiting the disclosure of CI only on a “need to know basis”
  - Restricting access to sensitive information to a selected number of identified senior employees
  - Restricting physical access to sensitive information

# Securing the Participation of Your Partner

- The non-compete conundrum
  - Scope: initial and future business of the JV
  - Territory
  - Duration
  - Entities / persons bound by non-compete undertaking
  - Exceptions for any existing activities of the JV partners?

## Securing the Participation of Your Partner (Cont.)

- Intellectual Property
  - Pre-contract
  - Establishment of the JV
  - Operation of the JV
  - Termination of the JV

## Securing the Participation of Your Partner (Cont.)

- Intellectual Property
  - Un-incorporated JV
    - Existing IP to be licensed to other partners?
    - New IP will be jointly owned by JV partners or only by the IP creator?
    - Results to be exploited separately or jointly?
  - Incorporated JV
    - Ownership, licensing?
    - Developments by JV partners to be licensed to JV?
    - Grant-back rights to JV partner?

## Securing the Participation of Your Partner (Cont.)

- Lock-up
  - Sunset period?
  - Carve-outs for affiliates and minimum stake transfers?
- Permitted transfers
  - Affiliates / Intra-group transfers?
- Prohibited transfers
  - Competitors
  - More stringent measures on JV / JV partners

# Controlling the JV

- Why have control
  - Driver, co-pilot or passenger?
  - The case for control
  - What if you cannot get control?
  - 50/50 JVs

## Controlling the JV (Cont.)

- How to control
  - Shareholder level
  - Board level
  - Management level
  - Partial control

## Controlling the JV (Cont.)

- Reconciling the interests of majority and minority shareholders
  - Reserved matters
  - Special majority decisions
  - Outright vetoes
  - Independent directors



## Controlling the JV (Cont.)

- Avoiding / breaking deadlocks
  - The case for/against rules on deadlocks
  - Relaxed quorums and casting votes
  - Puts (sell options) and calls (buy options)
  - Shotguns (Russian roulette) and other permutations

# Protecting Your Interest in the JV

- Avoiding dilution
  - Is dilution a concern?
  - Pre-emptive rights
  - What if you cannot come up with the money?
  - Financing policies as a means of protection

## Protecting Your Interest in the JV (Cont.)

- Fending off third parties
  - Rights of first refusal
  - Rights of first offer
  - Get that clause right!
  - Key conditions

## Protecting Your Interest in the JV (Cont.)

- Calls (buy options)
  - Outright calls
  - Upon death, incapacity, bankruptcy of another shareholder
  - Upon breach by another shareholder (e.g. non-compete, change of control, etc.)
  - At what price

## Exiting the JV

- Puts (sell options)
  - Outright puts
  - Own death or incapacity
  - Failure to reach business objectives
  - Employment termination

## Exiting the JV (Cont.)

- Drags
  - To the benefit of majority shareholders
  - Trigger thresholds
  - Subject to right of first refusal/offer?
  - Other key conditions

## Exiting the JV (Cont.)

- Tags (piggybacks)
  - To the benefit of minority shareholders
  - Trigger thresholds
  - *Pro rata* or full tag?
  - Other key conditions

## Exiting the JV (Cont.)

- Winding up
  - Why
  - Percentage voting required
  - Lower asset realisation values?
  - Other considerations



## Q&A



# Contact



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