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Joint ventures

The term 'joint venture' does not have a specific meaning in English law. It is commonly used to describe a commercial arrangement between two or more entities, that falls within one of the following basic structures:

- a limited company
- a limited liability partnership
- a partnership; or
- a contractual co-operation agreement.

Which option is most suitable will depend upon various factors (including commercial, legal and tax considerations), and careful thought and planning is needed from the outset to avoid unforeseen (and potentially costly) consequences.

There is no one-size-fits-all approach to joint ventures, but we have outlined a few key issues for you to think about before embarking on one:

- **Mutual reliance**

The key to a successful joint venture is having two or more parties that want to exploit a business opportunity, with each party bringing something to the table that the other(s) cannot. If one party can succeed in exploiting the opportunity without the other, the joint venture is unlikely to be successful.

For example, company A might have developed a product but may have only limited resources to bring that product to market, and company B may have a significant customer base and/or significant resources that could be used to sell company A's product.

- **Contributions**

What is each party contributing to the joint venture? This can include assets (such as cash, equipment or intellectual property rights), expertise (such as management services or marketing resources) and products and/or services.

It is important for each party to understand what is being contributed and the basis on which is it being contributed. For example, is company A transferring ownership of the intellectual property rights that are to be used to develop its product to the joint venture vehicle, or will company A simply be licensing the use of those intellectual property rights for as long as the joint venture remains in place?

- **Business plan**

A well thought-through business plan, that is based upon reasonable assumptions and has been agreed between the parties, will form a strong foundation for any joint venture. Documenting an agreed approach to the joint venture in this manner will reduce the level of contingency planning that will otherwise need to be included in a joint venture agreement, because everyone knows the agreed way forward.

- **Heads of terms**

Invest some time (and money) into agreeing heads of terms at the outset. This will highlight areas of potential difference between the parties and encourage them to decide how they should be overcome before fully committing to the joint venture. This approach reduces the risk of disputes in the future, and should streamline the process involved in drafting and agreeing the joint venture agreement itself.

- **Advice**

Engaging appropriate professional advisors is crucial to the long-term success of any joint venture. Seeking that advice at the earliest opportunity (particularly before heads of terms are agreed) will help the parties to start their relationship on the correct footing from the outset.

Disclaimer: please note that this fact sheet is for guidance only and is not intended to replace legal advice.

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