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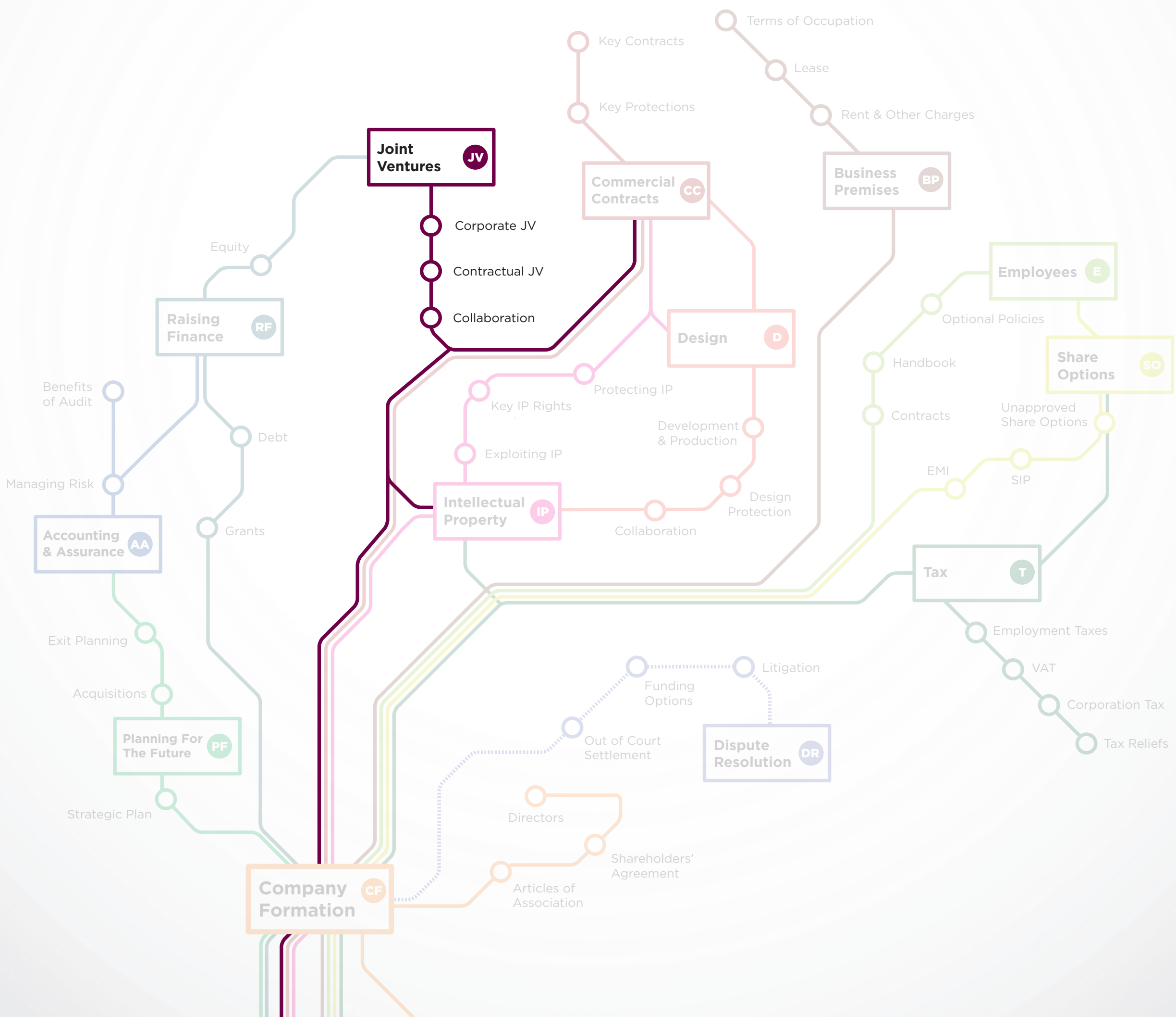
JOINT VENTURES



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JOINT VENTURES AND COLLABORATIONS

A joint venture or collaboration with another organisation can be a good way to spread the risks and share the rewards of a business activity.

You may consider entering into a joint venture if you have know-how, intellectual property rights, a product or some other asset which, when combined with a complementary contribution from a joint venture partner (or partners), would enable you to carry out a business activity which would otherwise not have been possible. For example, a joint venture could enable you to develop new products using shared technology or intellectual property rights or to exploit new markets. Another common reason for collaboration is so that the costs and risks of a major project (such as a programme of research and development) may be shared.

There are a number of different ways of structuring a joint venture and this note is intended to give a general overview only. The best structure for you will depend on the nature of the joint venture as well as on your particular circumstances and those of your proposed joint venture partner(s).

There are two basic structures available: a "corporate joint venture" which involves setting up a new, jointly owned, legal entity (such as a company or a limited liability partnership) which is entirely distinct from the joint venture partners; and a "contractual joint venture" where the collaboration is achieved through the use of a contract creating rights, obligations and liabilities between the joint venture partners. We look at some of the main advantages and disadvantages of each below.

CORPORATE JOINT VENTURES

ADVANTAGES OF A CORPORATE STRUCTURE

The risks and liabilities associated with the joint venture business can, to a large extent, be ring-fenced within the joint venture. If a company or limited liability partnership structure is used, the joint venture will benefit from limited liability. In practice, however, joint venture partners are often required to guarantee the obligations of the joint venture company in order to obtain bank funding or other finance, increasing their level of risk.

There is considerable flexibility to create a tailor made corporate structure which divides ownership, control, rights to dividends etc. according to your requirements. Your options even extend to establishing a share option scheme to incentivise the joint venture's employees and management team.

You have the option of using a company or a limited liability partnership for the joint venture, and each has different consequences, particularly in terms of how any profits are taxed and how accounts are drawn up.

Use of a corporate structure may make it easier to obtain funding for the joint venture, since the assets of the joint venture company can be used as security for borrowings.

Use of a corporate structure, and particularly a company, is likely to make it easier to sell the joint venture business in the future, to attract private equity investment or even to float the business on a stock market such as AIM or the London Stock Exchange.

DISADVANTAGES OF USING A CORPORATE JOINT VENTURE

The joint venture company will need access to all the assets necessary to run its business. Consequently, existing assets owned by the joint venture partners may need to be transferred into the ownership of the joint venture company or licensed to the joint venture company, depending on the circumstances. Where finance is being sought, the lender is likely to require that the relevant assets are owned by the joint venture company. It is likely that employees will need to be transferred into the joint venture company too.

If the business fails, or the joint venture partners fall out or wish to bring the joint venture to an end for some other reason, it can be complicated and costly to unravel a corporate joint venture.

CONTRACTUAL JOINT VENTURES

ADVANTAGES OF A CONTRACTUAL JOINT VENTURE

If the collaboration is to be limited in scope or relatively short lived, it may be cheaper and easier to enter into a contractual joint venture.

A contractual joint venture is often more flexible than a corporate joint venture as it is subject to fewer rules and regulations. Also, as there will be no requirement to register the joint venture or to publish accounts for it, it will be easier to keep the joint venture confidential.

There is no need to transfer ownership of rights or assets into the joint venture (meaning that you remain in control of your assets). However, the joint venture partners are still likely to need to license rights to each other.

It may be easier to bring the joint venture to an end when it has run its course. However, the process of negotiating what will happen on termination of the joint venture is often difficult and, depending on how complicated the joint venture is, unravelling things can still be problematic and time consuming.

DISADVANTAGES OF BASING YOUR COLLABORATION ON A CONTRACTUAL STRUCTURE

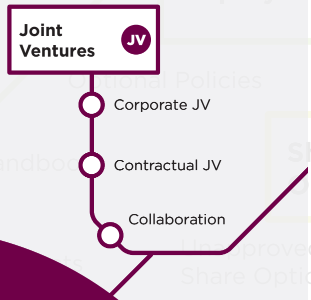
Agreeing who will own any new intellectual property rights or know-how generated by the joint venture can be difficult. Joint ownership is often seen as the fairest option but this can cause complications in terms of how the rights are managed, exploited and enforced.

Third parties may be reluctant to deal with a contractual joint venture because it is not clear to them who they are contracting with or who has authority to enter into arrangements relating to the joint venture.

There is a greater risk that one partner may become liable for the acts and omissions of the other joint venture partner and thereby vulnerable to claims from third parties. Contractual protections will therefore need to be included in the joint venture agreement to guard against this, typically reciprocal indemnities. However, even if indemnities are included, you will have less protection than if you used a corporate joint venture structure.

You will be more exposed to the risk of your joint venture partner becoming insolvent. Their insolvency could affect their ability to perform their obligations under the contract, and a liquidator could choose to disclaim the contract (i.e. end it) because it is onerous. The insolvency of a joint venture partner in a corporate joint venture does not directly affect the joint venture company which in theory can continue with its business intact. However, in practice there could still be negative consequences if the joint venture company is dependent on future funding or services from the insolvent joint venture partner.

We have given you no more than a flavour here of the different possibilities available. If you are considering entering into a collaboration or joint venture, please contact us at the earliest opportunity and we will be able to give you detailed legal and tax advice regarding the best method for structuring your joint venture.



CHECKLIST

Consider what benefits you will get and/or hope to get from the joint venture or collaboration.

Consider and discuss with your legal, tax and financial advisers what you wish to achieve and the best structure for achieving your goals.

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