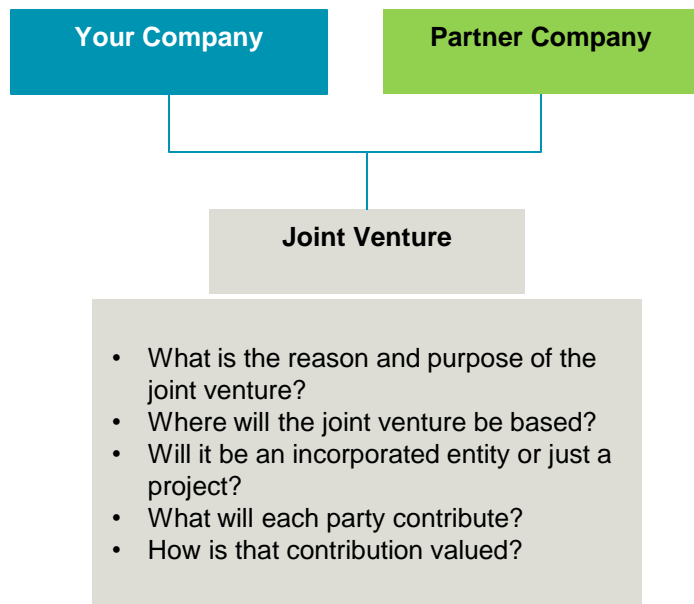


WOLF THEISS

*Supporting the international growth and development of
Entrepreneurial Businesses*

Joint Ventures

Joint Ventures



There are many ways in which two companies, or two investors may co-operate on a common project (a “joint venture”).

But, before jumping into legal structures, or considering how know-how or intellectual property will be managed and protected within a joint venture, it is important to answer the question, “what is the reason and purpose of the proposed relationship”?

1. Is the joint venture focused on Research & Development capacity, or access to technical skills? i.e. pooling research capabilities to make a technical breakthrough, sharing intellectual property, accessing engineering expertise from another country or industry?
2. Is it focused on access to a new, international market? i.e. partnering with an established market participant in Asia, or Western Europe who can distribute and sell your products, or bundle or integrate them with their own product to enter a new market segment?
3. Or is it about access to financing and working capital for investment? i.e. accessing equity capital that may only be available in the USA or Western Europe, bringing expert financial and management venture capital expertise on board to help the founders deliver and grow?

Depending on the purpose of the joint venture, and roles of the parties, the structure and balance of decision making within the joint venture will differ.

The three life-stages of a joint venture

Entry

- What will each party contribute?
- How will contributions be valued?
- Type of joint venture (partnership, corporate entity, project based on commercial agreements)
- Location, personnel and resources?
- Regulatory consents (merger control, data protection)?

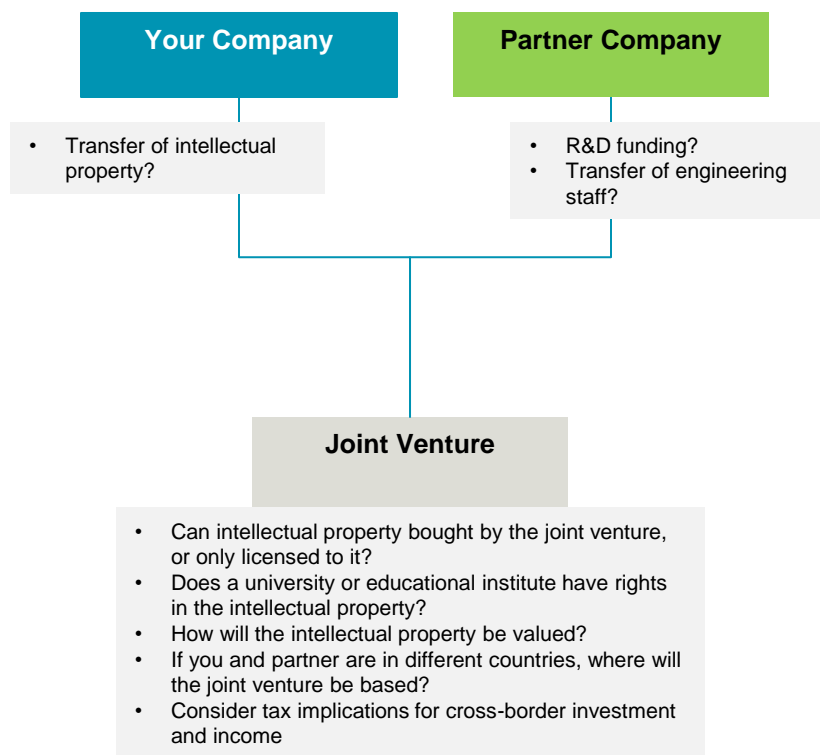
Management

- What will be the balance of power within the management?
- Will all decisions need to be made unanimously, or only the critical decisions? (which are those?)
- How will the joint venture be financed if more cash is needed? (can one partner force an equity capital injection?)
- Business plan and annual budgeting
- How will income be allocated and distributed?
- Tax planning

Exit

- When and how will the joint venture finish?
- What happens if one party cannot meet its obligations (or breaches the agreement)?
- Who decides on a sale or liquidation?
- How will the joint venture be valued on an exit if not sold to an independent third party?
- Return of know-how
- Continuing confidentiality and business obligations (to support products that will continue to be produced by)

1. Technical focus (R&D, access to engineering)



In any technically focused joint venture, the main issue to consider is what intellectual property or know-how is to be shared, and how will the technology be further developed and advanced?

Sale or licence: In some countries, such as the UK, both moral and commercial rights in copyright can be sold to the joint venture company, which will then be the owner of that intellectual property. In other countries, including Bulgaria commercial rights in copyright may only be licensed. In each case, the rights transfer must be at arms length in order to minimise tax risk. The Joint Venture agreement should set out clearly what use the joint venture will apply to the intellectual property and technology, what modifications may be made for the benefit of the joint venture. If intellectual property has been developed in cooperation with an educational institution or technology accelerator, consent may be required for the exploitation of these commercial and moral rights by the joint venture.

Employee resources: Where companies come together for R&D and technology development, human resources also need to be allocated. Will employees be permanently transferred to the joint venture or only seconded? Where there is a transfer of personnel across borders within or outside of the EU, residency, work-permit and social security issues will need to be addressed. Subject to the number of employees transferred, EU rules on the transfer of undertakings may apply to protect employees from negative changes to employment terms.

2. Access to an international market



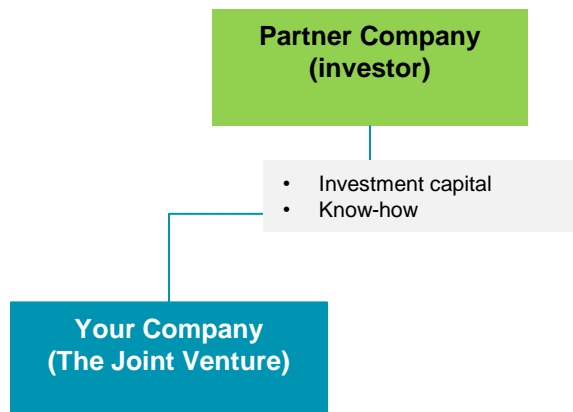
- Is there a need to have a separate entity or is a revenue/marketing sharing agreement sufficient?
- Competition law applies to commercial agreements between companies at different levels of the supply chain, and to competitors.
- Care needs to be taken not to inadvertently agree to terms that could be considered as creating a cartel or price fixing.
- If the joint venture will be based only on commercial agreements, both companies will want to be certain that the governing law of the agreement is understood by them and that contractual terms can be enforced.
- In particular, each party will want to be aware that certain breaches can be stopped quickly by way of an injunction (e.g. a breach of intellectual property or confidentiality)

Companies with a sales presence in one region have a number of options when contracting with partners in other regions to expand their sales coverage. These may include franchising arrangements, or appointing sales agents or distributors. Where there is a sufficient synergy or shared vision, companies may enter into a joint venture with revenue and cost sharing.

Form of relationship (antitrust issues) If the two companies decide not to establish a new entity, then care needs to be taken to comply with competition law rules, which apply to sales, marketing and revenue agreements between companies. Where companies are at different levels of the supply chain – e.g. a supplier and distributor – certain contractual terms may be permitted, or not permitted, depending on the respective market positions of the companies in that country or region. Where companies are deemed to be at the same level – e.g. potential competitors – then care should be taken not to include provisions that could be classed as a cartel or market sharing.

Commercial contracts: If a new entity is not set-up, then the relationship between the two companies will be based on one or more commercial contracts, instead of ownership documents (Articles of Association). Given the international purpose of a sales and marketing driven joint venture, it is likely that these documents may be written under a different law – e.g. English law rather than Bulgarian – and a different dispute mechanism – e.g. arbitration rather than courts. Each company will want to be certain that the contractual terms can be enforced against the other party and that critical breaches can be stopped quickly. There may be practical mechanisms to mitigate risks, such as escrow accounts and insurance.

3. Joint Ventures for investment & expansion



- Clear rules and framework for use of investment capital
- Investor control /input over business plan, annual budget and strategic decision making
- Separation of management and shareholding
- Commitments to compliance
- Exit terms, including the shortest or longest period before an exit process
- Mechanisms to force other shareholders to sell
- Options to acquire more shares (or reduce a shareholding)
- Guaranteed return to the partner company
- Penalties in the event of breach, including forced sale of shares at a lower value

Where the primary purpose of a joint venture is to access financial capital to support business growth and expansion, the investor partner may invest directly in the company, so that the company itself becomes the joint venture vehicle. The investor partner will want certain controls over the company to make sure that the business performs as promised.

Corporate governance: Investment capital in the context of a joint venture may be provided by a larger company in the same sector, or the investment arm of a blue-chip company, e.g. Google Ventures. In each case, the (larger) investor company will want the joint venture to maintain the highest corporate governance standards. These may include separation of roles between shareholders and management, clear board decision making, control over business planning and the setting of annual budgets, and a commitment to regulatory compliance.

Planning for exit: Whilst many parties focus on the entry into a joint venture, an investor partner will also focus on how and when to exit the joint venture. In the context of an investment, exit terms may include control over the decision to exit by the investor partner, mechanisms to force the other shareholders to sell at the same time, valuation guidelines and valuation resolution mechanisms, and terms for each partner to buy-out the other. Where there has been a breach of the shareholders agreement, there may also be mechanisms to reduce that shareholder's value as compensation/or incentive to perform.

Wolf Theiss: Strategic advice to clients across the region



- Real presence on the ground – our offices in 13 countries in the CEE/SEE region enable us to provide our clients with fully integrated and efficient service, irrespective of the jurisdictions involved
- One of the largest and most experienced teams in the CEE/SEE region – over 340 lawyers, focused on not only meeting but exceeding clients' expectations wherever possible
- Comprehensive full-scope legal advice to help make your opportunities happen
- OUR VISION: To be instrumental in building and safeguarding the future prosperity and success of our clients, our people and the markets in which we choose to operate



Austrian Law Firm of the Year: 2009, 2012 & 2013
Austrian Client Service : Law Firm of the Year 2011



Law Firm of the Year: Austria, 2014
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Our corporate, investment & joint venture practice

Companies, founders, investors and financing institutions choose Wolf Theiss because of our unique and successful work in corporate and M&A. As one of the largest corporate and M&A teams across Austria and CEE/SEE, we facilitate deal introductions and proactively work to find solutions and consensus to ensure that transactions are successful. Our M&A teams consist of highly specialized transaction, regulatory and industry lawyers across our 13 offices and we are proud to work alongside our clients on their most important and challenging transactions and issues.

- **Complete Service** - From the moment of appointment, we consider ourselves to be part of your team. From mergers and acquisitions and venture capital to private and public equity and debt offerings, we proactively support clients through all stages of their transactions to ensure that legal risk is effectively identified and managed, and that transactions successfully put into place the foundation for a target's future growth and development.
- **Finding and executing solutions** - CEE/SEE can bring up complex and unusual regulatory requirements. With specialist and strong local, specialist and industry teams across the region, we are able to find consensus with regulators and stakeholders and find solutions to execute corporate compliance and transactions.
- **Mergers and Acquisitions** - We have had a front and leading role in the development of the private and public M&A markets across the region. Our lawyers have extensive experience in successfully negotiating and closing all types of transactions ranging from share deals, asset deals, leveraged buyouts, management buy-outs, to management buy-ins including regulatory advice. We act for buyers, sellers or targets, and represent their boards and investors, often under time pressured and sensitive circumstances.

IFLR

"Very good work; innovative approach," is one client's feedback on the firm's corporate group.

(IFLR 2016)



"The quality of the work from this law firm is outstanding – truly comprehensive and complete. The communication is clear, and the lawyers were proactive in providing solutions to the issues."

(Chambers 2016)



"Wolf Theiss has a very international outlook and many talented people. That is really important if you are a company with activities in other countries. It is able to handle all of our issues, from general corporate matters to serious disputes with governments. To be able to work with just one firm is a huge benefit for us."

(Chambers 2015)

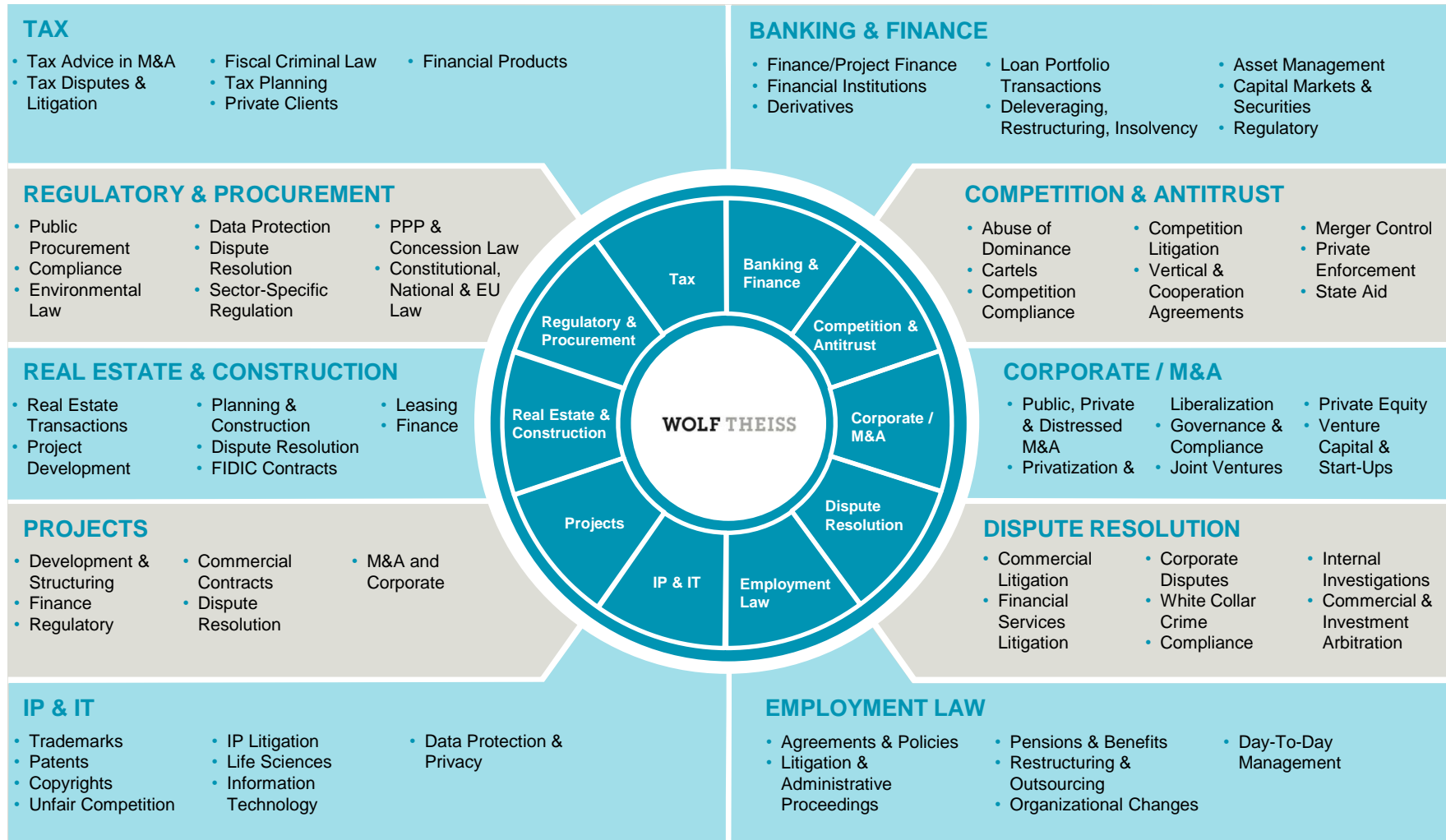


"The attorneys at Wolf Theiss are very dedicated and easy to work with. They understood our business, and really went the extra mile when needed."

"I have a positive impression of the firm. It has an organic approach, with good offices in many countries."

(Chambers 2014)

Supported by a comprehensive legal foundation



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