

JOINT VENTURES

A GLOBAL GUIDE FROM PRACTICAL LAW

Foreword

Elena A Berlucchi, Partner,
STUDIO BERLUCCHI, former Associate
General Counsel, *GE OIL & GAS*

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Enyal Shuke, *SHUKE LAW*

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Alberto Navarro and Eduardo Patricio
Bonis, *NAVARRO CASTEX ABOGADOS*

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Bryn Davis and Matthew Caddy,
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Roel Nieuwdorp, *AMBOS NBGO*

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Marcelo Viveiros de Moura
and André Santa Ritta,
PINHEIRO NETO ADVOGADOS

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Yordan Naydenov and
Dr Nikolay Kolev, *BOYANOV & CO*

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Neil Hazan,
BORDEN LADNER GERVAIS LLP

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NOERR

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Ferenc Gonter and Aurélien Veil,
AUGUST & DEBOUZY

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Andreas F Bauer,
GSK STOCKMANN + KOLLEGEN

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Christos Gramatidis,
BAHAS, GRAMATIDIS & PARTNERS

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Fred Kinmonth and Geraldine Johns-
Putra, *MINTER ELLISON*

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Márton Osztheimer and Emese
Simon, *NOERR*

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Eri Raffaera Budiarti, Muhammad
Iqsan Sirie and Arini Dyah Septiana,
ASSEGAF HAMZAH & PARTNERS

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Dr Tannaz Jourabchi-Eisenhut,
AMERELLER LEGAL CONSULTANTS

Iraq

Dr Daniel Heintel
and Dr Bawar Bammarny,
AMERELLER LEGAL CONSULTANTS

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MARCIANO COHEN LEVITSKI & CO

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and Francesco Vitali de Bonda,
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Armengol Silenzi,
SOLCARGO

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Jonge, *LOYENS & LOEFF N.V.*

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Hannes Lubitzsch, *NOERR*

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Pavol Rak and Tomáš Záborský,
NOERR

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Isil Baytok and Emir Ali Baser,
B+B LAW FIRM

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Caroline Newsholme
and Patrick Groves, *NABARRO LLP*

United States

Joseph J Dehner,
FROST BROWN TODD LLC

GREECE

Christos Gramatidis, BAHAS, GRAMATIDIS & PARTNERS



DOMESTIC COMPANY JOINT VENTURES (JVS)

REGULATION

1. ARE JVS EXPRESSLY REGULATED?

In Greece, a JV (*koinopraxia*) is an association of two or more natural persons or legal entities that have a common aim to achieve a certain project or transaction. JVs are generally not regulated. However, this is with the exception of special law provisions that regulate certain specific forms of specialised co-operation:

- Law 3669/2008: regulating JVs for the construction of public works.
- Law 2810/2000: regulating JVs between agricultural associations.

TYPES

2. WHICH TYPES OF JV ARE ALLOWED?

The following types of JV are allowed in Greece:

- Contractual JV. This can be a simple civil law partnership that has, or does not have, a juristic personality (de facto company).
- JVs that may or may not include elements of a corporate partnership (consortiums).
- Dormant JV. This is formed as a silent or dormant company, that is, an internal/unseen company that does not act toward third parties and does not have juristic personality.

3. ARE CORPORATE JVS SUBJECT TO THE CORPORATE LAW?

JVs can be subject to corporate law if the parties decide to form a corporate entity where they will be shareholders.

FORMATION AND REGISTRATION

4. IS THE USE OF FOREIGN LANGUAGE IN A JV'S FOUNDING DOCUMENTS (BOTH CORPORATE AND CONTRACTUAL) RESTRICTED?

A JV that is formed by way of a private/contractual agreement can be in Greek or in any other language. However, if the parties choose to form the JV as a corporate entity, the founding documents must be executed in Greek.

5. ARE PUBLIC OFFICERS (FOR EXAMPLE, PUBLIC NOTARIES) INVOLVED IN A JV'S FORMATION PROCEDURE?

There is no specific regulatory regime for JVs. However, if the parties choose to form the JV specifically as a limited liability company, the formation procedure must involve a public notary.

6. ARE JVS REGISTERED WITH ANY LOCAL REGISTRIES? ARE PUBLIC SECTOR BODIES' AUTHORISATIONS REQUIRED FOR A JV'S ESTABLISHMENT?

LOCAL REGISTRIES

There is no specific regulatory regime for JVs. However, if the parties choose to form the JV as a corporate entity, the formation procedure includes all applicable corporate formalities:

- Registration with the local court regarding civil law partnerships.
- Commercial registry registration for other corporate types.

PUBLIC SECTOR BODIES

If the JV that is being established between two or more entities triggers merger control criteria and thresholds, the Hellenic Competition Commission may be competent to intervene, subject to the information in *Question 18*.

7. WHAT OTHER FORMAL REQUIREMENTS MUST BE COMPLIED WITH TO VALIDLY CONSTITUTE A JV?

See *Question 5*.

PERMITTED MARKETS

8. CAN THE JV INSTRUMENT BE USED IN EVERY MARKET? ARE THERE ANY RESTRICTIONS TO BE CONSIDERED AND CAREFULLY ASSESSED BEFORE INVESTING?

There are no restrictions regarding the market or business in which a JV instrument can participate in.

PURPOSE

9. CAN A JV BE ESTABLISHED WITH ANY PURPOSE?

A JV must be established as a corporate entity in order for it to have a general commercial purpose.

If the JV aims to complete just a specific project or transaction, it can exist as an association without juristic personality.

SHARE CAPITAL AND PARTICIPATION

10. WHAT POSSIBLE FORMS OF PARTICIPATION ARE THERE IN A JV'S SHARE CAPITAL? HOW CAN A JV MEMBER CONTRIBUTE AND ARE THERE STATUTORY LIMITS ON THE POSSIBILITY TO MAKE CONTRIBUTIONS IN KIND?

FORMS OF PARTICIPATION

Under Greek law there is no requirement to have any share capital for the establishment of a JV.

CONTRIBUTIONS

JVs are not legal entities (except in the case of de facto companies) and do not have a share capital.

11. CAN A CORPORATE JV'S SHARE CAPITAL BE INDICATED BY MAKING REFERENCE TO A FOREIGN CURRENCY?

JVs are not legal entities (except in the case of de facto companies) and do not have a share capital.

DURATION AND LIMITS ON MEMBERSHIP

12. ARE THERE STATUTORY LIMITS ON A JV'S DURATION?

There are no statutory limits that apply to a JV's duration. However, in Greece JVs generally refer to the completion of a specific project or transaction (with the exception of a de facto company) and so the duration of the JV usually coincides with the completion of the project or transaction.

13. ARE THERE STATUTORY LIMITS ON THE NUMBER OF MEMBERS PARTICIPATING IN A JV?

There are no statutory limits that apply on the number of members participating in a JV.

PUBLIC SECTOR BODIES

14. CAN A PUBLIC SECTOR BODY ENTER INTO A JV AGREEMENT? SUBJECT TO WHAT CONDITIONS? IN PARTICULAR, DO PUBLIC PRIVATE PARTNERSHIPS (PPP) LAWS AND REGULATIONS APPLY?

In Greece, PPPs are contractual agreements between a public entity (the contracting authority) and a private party, with the objective of implementing a project and/or providing a service. In a PPP scheme, the private partner bears the implementation costs of the project as well as a substantial part of the risks related to its construction and operation. The public partner lays out a set of output specifications on the design, technical and operational characteristics of the project and determines the private partner's payment method, either through:

- Partial payments (for example, annual payments) linked with the availability of the project and the compliance with its output specifications.
- Direct payments via fees from the end-users (for example, tolls).

The Public-Private Partnerships Act, Law 3389/2005 (as amended and in force) establishes the legal framework for the implementation of PPPs. PPP schemes are complementary to traditional public works and also to other forms of partnerships between the public and the private sector (for example, the concession agreements of the Ministry of Productive Reconstruction, Environment & Energy or the collaborations of local authorities with private partners).

On no occasion will PPP projects substitute the public works implemented through the Public Investments Programme.

NON-COMPETITION AND ANTI-TRUST CLAUSES

15. ARE THERE STATUTORY CONSTRAINTS ON THE USE OF NON-COMPETITION OR ANTI-TRUST CLAUSES IN A JV AGREEMENT?

During period of effectiveness

Under Greek law, a non-competition clause is permissible as long as it does not excessively constrain either party's freedom (*Article 179, section (a), Civil Code*). The parties can freely agree on a prohibition of competition for the time the agreement is in force. The parties can limit the prohibition, add specifications or expand it as long as the constraint can be justified in relation to the objective of the agreement, its duration, the financial activities that the parties are permitted to exercise and the degree to which the interests of the party benefitting from the limitation must be legitimately protected. In addition, the obligation to refrain from competitive actions can be supported by the principle of good faith (*Article 288, Civil Code*) or by the rules contained in Articles 173 and 200 of the Civil Code (even if the obligations have not been explicitly agreed on). The breach of the principle of proportionality in Article 179 of the Civil Code will mean that a non-competition clause is unjustifiable and abusive and therefore void. However, the invalidity of such a clause will not affect the remaining clauses of the agreement, which stay intact.

Following termination

After the JV has ended, the contractual commitment to refrain from competitive actions is binding on the parties (if it does not unreasonably breach the principle of freedom to continue business). This depends on the circumstances of the case, including the:

- Duration of the non-compete obligations.
- Geographical scope of the clause.
- Type of activity prohibited.

in contrast, a contractual term is not valid, if:

- It does not protect the professional interests of the parties involved.
- It results in an excessive restriction on the business freedom of the parties.
- There is no reasonable benefit for the parties involved.

However, under Greek law there are no provisions regarding the geographical scope of non-compete contractual terms. It is up to the courts to decide whether a term that limits a party geographically or otherwise is contrary to the general principles described above.

DE FACTO COMPANY/PARTNERSHIP

16. MUST THE CONTRACTUAL JV SATISFY ANY CONDITIONS TO AVOID FALLING WITHIN THE DEFINITION OF DE FACTO COMPANY/PARTNERSHIP?

A JV can be considered a “commercial partnership” if its partners have as a common aim the joint exercise of a commercial activity under the name of a company. The concept of a “de facto commercial partnership” refers to companies that exercise commercial activity under the company name, but the parties have not completed the company publication / registration formalities. In addition, a JV can be considered as a “dormant” company, that is a company where only one of the members acts and transacts with third parties but there is an internal arrangement between the members (*see Question 2*).

LIMITING MEMBER LIABILITY

17. CAN A JV AGREEMENT PROVIDE THAT A JV MEMBER CAN PARTICIPATE WITHOUT INCURRING ANY RISK, LOSS OR REWARD?

In JVs all parties are liable according to their participation. They can also have internal back-to-back arrangements if they want to limit a party’s liability, but such arrangements are not binding on third parties. In the case of dormant companies (*see Question 2*), the “dormant partner” is not responsible in relation to third parties.

ANTI-TRUST

18. DO ANY ANTI-TRUST RULES, GUIDELINES OR POLICIES APPLY TO A JV AGREEMENT?

It will depend on whether the JV is established to meet all the functions of an autonomous economic entity on a permanent basis, or not. Firstly, if the JV is established for the purposes of a merger and acquisition (concentration) it will be subject to the respective merger control rules. Whereas, if the JV aims or results in a co-ordination of the competitive behaviour of the independent undertakings establishing it, it will be determined using the criteria for the consideration of restrictive agreements and practices under Greek (and EU) competition law.

GOVERNANCE AND LIMITS ON DIRECTORS

19. CAN THE PARTIES TO A JV FREELY REGULATE THE JV OR ARE THEY SUBJECT TO CERTAIN RESTRICTIONS?

No relevant provisions apply to JVs unless they operate as companies, and in such a case the applicable laws depend on the type of company under which the JV operates. Therefore, it can operate under the law that regulates:

- Civil law companies.
- General partnerships.
- Dormant partnerships.

20. ARE THERE LIMITS OR RESTRICTIONS ON THE ELIGIBILITY OF AN INDIVIDUAL AS A MEMBER OF THE BOARD OF DIRECTORS/STATUTORY AUDITOR?

See Question 18.

TERMINATION

21. WHAT LEGAL REGIME APPLIES TO A JV'S TERMINATION? CAN A JV BE TERMINATED FOR JUST CAUSE ON REQUEST OF ONE PARTY?

A JV will be dissolved on the realisation of its purpose or where its purpose has become unattainable. If the JV had been established for a definite period, it will be dissolved on expiration of such period. A JV can also be terminated by any party on serious grounds (for example, breach of contract or a material adverse change of circumstance that may render the continuation of the JV a burden).

22. IS THE TERMINATION OF A JV AGREEMENT SUBJECT TO ANY PUBLIC SECTOR BODY'S APPROVAL?

The termination of a JV agreement is not subject to any public sector body's approval.

CHOICE OF LAW AND JURISDICTION

23. ARE THERE CONSTRAINTS ON THE CHOICE OF THE LAW AND THE JURISDICTION APPLICABLE TO A JV?

The choice of law is reserved for the parties to decide freely. Parties are also allowed to confer territorial competence on a particular court to settle any disputes (*Article 42 and 43, Greek Civil Procedure Code*). This can happen through a prior written agreement or silently if the defendant makes an appearance without challenging the jurisdiction of the court. In cases that provide for derogation from the exclusive jurisdiction of the competent Greek Court, the agreement must be express. When it involves future disputes, the agreement conferring territorial competence must be in writing and define the exact legal relationships to which it refers. Conferral of territorial jurisdiction is not possible in the case of non-pecuniary claims and claims relating to immovables.

The parties can by agreement confer jurisdiction on a court of a member state to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, provided both (*Council Regulation (EC) No 1215/2012*):

- The agreement conferring jurisdiction is in writing, or evidenced in writing, or is in a form which accords with practices which the parties have established between themselves, or in a form which accords with a usage which is widely known in trade or commerce.
- It is not contrary to special provisions applying to insurance matters, consumer contracts and employment contracts or to the exclusive jurisdiction of the courts under the regulation, that is, in relation to proceedings which have as their objective:
 - rights in rem in immovable property;
 - tenancies of immovable property;
 - validity of the constitution;
 - nullity or the dissolution of companies;
 - validity of entries in public registers.

The regulation applies to specific matters of a pecuniary nature and excludes revenue, customs or administrative matters, bankruptcy, winding-up, judicial arrangements, compositions and analogous proceedings, the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession, social security and arbitration. Exclusive international jurisdiction clauses can be regarded as invalid by a Greek court if the recourse to a foreign jurisdiction is impossible and/or results in the denial of justice (for example, where the foreign courts refuse to hear the case because under their procedural rules they do not have jurisdiction or where the decision will not be recognised in Greece).

JVS WITH FOREIGN MEMBERS

VALIDITY AND AUTHORISATION

24. WHAT ARE THE RULES RELATING TO VALIDITY AND AUTHORISATION OF JVS WITH FOREIGN PARTIES?

Validity

The only requirement for a foreign party to be a member of a Greek JV is for the party to first obtain a Greek tax registration number (that is, to have a "tax establishment" in Greece).

Limits

Not applicable.

Authorisation

Not applicable.

EFFECT OF FOREIGN MEMBERSHIP

25. ARE ANY OF THE RULES RELATING TO DOMESTIC COMPANY JVS (SEE QUESTIONS 1 TO 23) DIFFERENT FOR JVS WITH MEMBERS INCORPORATED UNDER, OR GOVERNED BY, THE LAWS OF A FOREIGN COUNTRY?

There are no different rules relating JVs with members incorporated under, or governed by, the laws of a foreign country.

ECONOMIC OR FINANCIAL INCENTIVES

26. ARE THERE ECONOMIC OR FINANCIAL INCENTIVES FOR FOREIGN DIRECT INVESTMENTS IN A JV?

Law 4146/2013, Creation of a Development Friendly Environment for Strategic and Private Investments provides the institutional framework for private investments, subject to other investment laws.

Investment categories include:

- General entrepreneurship.
- Regional cohesion (Investors with projects that address local needs or capitalise on local competitive advantages).
- Technological development (enterprises that invest in innovation and want to upgrade their technology infrastructure).
- Youth entrepreneurship (Investors from 20 to 40 years old).

- Large investment plans (investments with a budget of at least EUR50 million).
- Integrated, multi-annual business plans (companies legally formed at least five years prior to application, that implement integrated two-five year business plans with a budget of at least EUR2 million).
- Partnerships and networking (partnerships and networking configurations or clusters of at least five enterprises operating in the form of a consortium).

Types of available aid include:

- Tax relief (exemption from the payment of income tax on pre-tax profits which result, according to tax law, from any and all of the enterprise's activities).
- Subsidy (payment by the state of a sum of money to cover part of the subsidised expenditure of the investment).
- Leasing subsidy (payment by the state of a portion of the installments paid under a leasing agreement executed to acquire new machinery and /or other equipment).
- Soft loans by the National Fund for Entrepreneurship and Development.

MINIMUM INVESTMENTS/CONTRIBUTIONS

27 ARE THERE MANDATORY MINIMUM EQUITY INVESTMENTS OR CONTRIBUTIONS IN KIND THRESHOLDS FOR A FOREIGN JV MEMBER?

There are no mandatory minimum equity investments or contributions in kind thresholds for a foreign JV member.

THE REGULATORY AUTHORITIES

HELLENIC COMPETITION COMMISSION

Main activities. Independent authority that protects the proper functioning of the market and ensures the enforcement of the rules on competition.

W www.epant.gr

GENERAL COMMERCIAL REGISTRY

Main activities. Responsible for the registration and monitoring procedures of commercial enterprises.

W www.businessportal.gr

ENTERPRISE GREECE

Main activities. The official agency of the Greek state, under the supervision of the Ministry of Economy, Infrastructure, Shipping & Tourism, to promote investment in Greece.

W www.investingreece.gov.gr