

Cross-Border Joint Venture and Strategic Alliance Guide (Singapore)

A Practical Guidance® Practice Note by
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This Cross-Border Joint Venture and Strategic Alliance Guide (Singapore) discusses relevant law and practice related to the formation and operation of cross-border joint ventures, including corporate and contractual joint ventures, in Singapore. For other jurisdictions see the [Cross-Border Joint Venture and Strategic Alliance Resource Kit](#).

Structures

What are the standard forms of joint ventures / strategic alliances and common features of each?

The most common forms of joint ventures and strategic alliances in Singapore are:

- Contractual alliances –and–
- Corporate joint ventures

Contractual Alliances

A contractual alliance is a contractual arrangement between the parties (venturers), setting out the terms of their cooperation in relation to a particular venture. No separate legal entity is created. The assets and obligations of the venture belong to the venturers personally.

Corporate Joint Ventures

A corporate joint venture is an arrangement involving the creation of a company by the venturers, who become members of the joint venture company. A private company limited by shares (private company(ies)) is the most common form of corporate entity that is used for a corporate joint venture. As a separate legal entity, the private company may sue and be sued in its own name. In general, the members of the company are not liable for the debts of the company. In addition, their liability is limited to the amount they contributed and/or the amount (if any) remaining unpaid on the members' shares.

What are some of the key corporate governance, tax, regulatory, and timing considerations that could impact the choice of structure?

Management Structure

Parties looking for more formal management structures are likely to adopt a corporate joint venture structure, while parties looking for more informal management structures are likely to adopt a contractual alliance structure.

Companies are entities in which senior management and employment structures can be clearly identified. There is no formal or distinct management structure in a contractual joint venture, as venturers retain direct control over their own resources.

Administrative and Reporting Requirements

Companies have ongoing compliance and reporting obligations that require both time and expense. A contractual joint venture allows venturers to establish a collaborative relationship without incurring the costs involved in connection with setting up and running a separate entity.

Tax

For private companies, corporate tax is payable by the company on its taxable income and in general, no tax is withheld from the members with respect to the dividends they receive.

Contractual joint ventures and partnerships are tax-transparent; the venturers and partners respectively pay individual taxes on their share of profits they receive.

Industry-Specific Regulatory Requirements

Some industries require a certain form of entity in order to conduct business or to hold a license that may be required in order to conduct operations. If a jointly owned venture requires a regulatory license, a distinct corporate entity may be required. For instance, a capital markets services license can only be granted by the Monetary Authority of Singapore to a corporation.

Duration

Private companies enjoy perpetual succession, and would generally be used where it is intended that the business will be long term. Contractual joint ventures are typically used for specific, time-limited projects, such as the construction of a property development or a gas and oil exploration project.

Formalities of Formation

In general, contractual alliances and partnerships offer more flexibility and simplicity of formation. A corporate entity will, on the other hand, require a formal and distinct management structure.

Can a joint venture or strategic alliance be formed for any purpose?

A joint venture or strategic alliance can generally be set up for any purpose, subject to certain considerations and/or limitations on the type of joint venture structure to be used in each situation.

Are there any forms of joint ventures or strategic alliances that are more typically used in certain industries (such as real estate, pharmaceutical, or technology)? Why are such forms favored?

A contractual alliance is suitable when parties are co-operating on a one-off project or where there is sharing of costs, information, resource, or output (rather than net profit). Contractual alliances are especially favoured when parties (1) undertake joint research and development or other forms of technology co-operation; (2) jointly bid to undertake a particular construction project; or (3) co-operate in marketing, sales, and business development.

Are there any industries that would not permit or would not be conducive to a joint venture or strategic alliance?

Generally, there is no legislation in Singapore that restricts joint ventures or strategic alliances in any industry. However, there may be certain industry-specific constraints that may affect the type of joint venture structure selected for investment in certain industries.

How is a joint venture or strategic alliance structured to minimize potential liability? Are there instances where parties to a venture or alliance may knowingly choose a vehicle without limited liability and, if so, why would such party make that choice?

Contractual Alliances

In the case of a contractual alliance, the obligations, liabilities, allocation of risks, and indemnification rights (if any) of the venturers are set out in the agreement governing the venturers' relationship.

Corporate Joint Ventures

A joint venture may be structured as a private company to minimize potential liability. In the case of a private company, the liability of the members is limited to the amount of their capital contributed to the venture, and in general, the members will not be personally liable for the debts and obligations incurred by the company.

However, there are limited circumstances when a court may ignore the separate legal personality of a company and hold the members of the company personally liable for the obligations of the company, namely where (1) the company is in fact not a separate entity; or (2) the corporate form has been abused to further an improper purpose and not for a bona fide transaction.

In addition to incorporating an entity with a separate legal personality, members may also agree on the allocation of risks, liabilities, and obligations between themselves in the underlying documents or agreements governing the entity and their relationship.

Unlimited Liability

Parties may choose to incorporate a vehicle without limited liability (i.e., unlimited companies) in order to comply with legislation or the rules of a particular industry. For example, an unlimited company may be granted a license to provide architectural services or to supply survey services in Singapore, whereas a limited company may be licensed only if its paid-up capital exceeds a prescribed amount.

Statutory Framework

What is the applicable statutory framework for each structure discussed above?

The relationship between parties in a contractual alliance is governed by the general law of contract in Singapore.

Private companies are governed by the Companies Act (Chapter 50) of Singapore (Companies Act). The members of a private company may also enter into separate shareholders' agreement, which is governed by the general law of contract in Singapore.

Are there statutory or other limits on the duration of a joint venture or strategic alliance?

There are no statutory limits on the duration of a joint venture or strategic alliance. The agreements governing the relationship may, however, specifically limit the duration of the collaboration.

Do joint ventures or strategic alliances have to be registered with any federal or local body?

Contractual Alliance

Generally, contractual alliances need not be registered with any governmental authority.

Corporate Joint Ventures

In accordance with the Companies Act, private companies have to be registered with the Accounting and Corporate Regulatory Authority (ACRA) as part of the incorporation process.

Regulatory Environment

Are joint ventures or strategic relationships specifically regulated?

Although there are no regulations pertaining to joint ventures or strategic relationships generally in Singapore, certain industries are regulated by industry-specific regulation, such as the capital markets—Securities and Futures Act (Chapter 289) of Singapore—and insurance industries, Insurance Act (Chapter 142) of Singapore.

Are there any antitrust matters to be considered in forming a joint venture or strategic alliance?

Antitrust matters have to be considered in forming a joint venture or strategic alliance in Singapore. In particular, the Competition Act (Chapter 50B) of Singapore (Competition Act) prohibits mergers (including anticipated mergers) that result, or may be expected to result, in a substantial lessening of competition for goods and services within any market in Singapore.

Even if a joint venture does not constitute a merger, it is still prohibited from (1) entering into agreements, decisions, or concerted practices that have as their object or effect the prevention, restriction, or distortion of competition within Singapore (unless otherwise exempted in accordance with the Competition Act); or (2) carrying out any conduct that amounts to an abuse of a dominant position in any market in Singapore. The Competition and Consumer Commission of Singapore has the power to prohibit a merger and may issue directions to remedy, mitigate, or eliminate the adverse effects arising from the merger.

Formation

What are the procedures in forming a joint venture or strategic alliance?

Contractual Alliances

A joint venture in the form of a contractual alliance is formed by the parties entering into a contractual agreement to govern their relationship and the joint venture.

Corporate Joint Ventures

Private companies have to be registered and their constitution lodged with ACRA as part of the incorporation process in accordance with the Companies Act. Traditionally, the articles of association and memorandum of association were the main constitutional documents of a private company. Pursuant to amendments to the Companies Act which took effect in January 2016, the articles of

association and memorandum of association were merged into one document referred to as a private company's constitution. The constitution includes the name of the company, shares of capital, initial subscription of shares, and the manner in which the private company is internally governed (i.e., corporate governance, rights of shareholders, and the procedures of the general meeting).

What documentation/agreements are required to form a joint venture or strategic alliance?

Contractual Alliances

In a contractual alliance, parties usually enter into a contract specifying the relationship and terms of the joint venture. This will include the rights, obligations, and liabilities of, and the allocation of risks between the parties.

Corporate Joint Ventures

Joint venture partners usually enter into a joint venture agreement or shareholders' agreement to govern their relationship in respect of the joint venture and the private company. The shareholders' agreement is a private agreement that will have contractual effect as between the parties to the shareholders' agreement. It is common for the essential terms of the shareholders' agreement to be replicated in the private company's constitution.

What other steps are required to form a joint venture or strategic alliance?

Apart from the documentation set out above, it is vital for parties to identify the specific third-party consents and regulatory clearances (if any) that will be required to establish a joint venture or strategic alliance.

If there is no documentation forming the joint venture or strategic alliance, is there a standard form that exists by default? Are there any attendant risks of falling within that category?

In respect of a corporate joint venture entity, there is no standard form joint venture agreement or shareholders' agreement, but there is a standard form of constitution under the Companies Act.

Becoming a Member

What are the different levels of equity and voting participation in the various forms of joint ventures and strategic alliances? How flexible is each of the structures?

Contractual Alliances

The structure of a contractual alliance (including in relation to the levels of contribution, profit sharing, and decision rights) may be freely decided between the parties as a matter of contract.

Corporate Joint Ventures

The ownership interest in a private company is represented by shares in the capital of the company. Private companies may issue different classes of shares, such as preference or ordinary shares. The rights (including the voting rights) of the various classes of shares are typically set out in the company's constitution.

What forms of contributions (e.g., cash versus in-kind) may be made by members/partners?

For both a corporate joint venture and contract-based joint venture, the investors may purchase their interests or make contributions in the form of cash, non-cash assets, or services.

Should contributions to the joint venture or strategic alliance be documented? If so, what is the typical form of documentation?

Contributions to corporate joint ventures or strategic alliances will usually be documented in the form of a subscription agreement. For tax and accounting purposes, it is preferable to have all contributions documented. This can be by way of ancillary agreements in various forms, depending on the nature of the contribution.

In a corporate joint venture, where shares are allotted as fully or partly paid-up otherwise than in cash, and the allotment is made pursuant to a contract in writing, the company must lodge with ACRA a return of allotment with (1) the contract evidencing the entitlement of the allottee; or (2) a copy of any such contract certified as prescribed.

Are there any statutory or other requirements regarding the number (i.e., minimum or maximum) or type of members (as in age requirements or legal status; individual or juridical person) in the joint venture or strategic alliance?

Generally, an investor in a joint venture or strategic alliance may be an individual or corporation. If the investor is an individual, he/she must be of full legal capacity (i.e., more than 18 years old).

Contractual Alliances

The minimum number of investors in a contractual alliance is two. There is no maximum number of investors that may enter into a contractual alliance.

Corporate Joint Ventures

A private company limited by shares requires a minimum of one member and is subject to a maximum of 50 members.

What documentation would typically govern the relationship between partners/members?

Contractual Alliances

In a contractual alliance, the relationship between the venturers will be governed entirely by the terms of the joint venture agreement.

Corporate Joint Ventures

Members of the company usually enter into a joint venture agreement or shareholders' agreement, to govern their relationship in respect of the joint venture and the private company. It is common for the essential terms of the shareholders' agreement to be replicated in the private company's constitution.

Can a public sector body be a member/partner in the joint venture or strategic alliance?

Yes, a public sector body in Singapore can be a member or partner in a joint venture or strategic alliance. The policies and guidelines for a public-private partnership are as formulated by the Ministry of Finance (Singapore) from time to time.

What restrictions, other than contractual ones, are there on a member/partner transferring its interest in the joint venture or strategic alliance?

Other than contractual restrictions, the transfer of interest in the joint venture or strategic alliance may be restricted by industry-specific legislation.

Restrictive Covenants

What restrictive covenants can apply to members/partners relating to corporate opportunity, non-competition, and non-solicitation?

A joint venture or strategic alliance will typically require non-compete covenants prohibiting one or more of the joint venture partners from competing with the venture. Such restrictive covenants are usually set forth in the relevant joint venture agreements or shareholders' agreements.

However, restrictive covenants are prima facie void and unenforceable under Singapore law, and the party seeking to rely on the restrictive covenant has the onus of showing that the clause is reasonable in the interests of the parties, as well as in the interests of the public. There must also be a legitimate proprietary interest to be protected, and the restrictive covenant must be carefully drafted so that it is not broader than necessary to protect the legitimate proprietary interest.

Other types of typical restrictive covenants include (1) confidentiality obligations; (2) corporate opportunity provisions that limit a joint venture partner's right to take up business opportunities without first offering them to the joint venture; and (3) non-solicitation of key employees and customers.

Management

How is the joint venture or strategic alliance managed in the different structures? Are there statutorily mandated supermajority provisions?

Contractual Alliances

The management of the contractual alliance will be as contractually provided for in the agreement governing the relationship between the parties.

Corporate Joint Ventures

The business of a company is managed by, or under the direction or supervision of, the directors, who may exercise all powers of a company, except any power under statute or the company's constitution that is required to be exercised by the company in general meeting.

Shareholders of a private company are free to stipulate in a shareholders' or joint venture agreement specific reserved matters that may not be undertaken by the company

without the approval of all or a specified proportion of its members. It is common for such restrictions to be replicated in the private company's constitution.

In addition, the Companies Act sets out certain corporate actions that must be approved by shareholders of the company who represent a majority of the total voting rights of all shareholders present and voting. These actions include (1) the disposal of the whole or substantially the whole of the company's undertaking or property; and (2) an issuance of shares by the company.

The Companies Act also sets out certain corporate actions that must be approved by shareholders of the company who represent at least 75% of the total voting rights of all the shareholders present and voting. These actions include (1) amendment of the company's constitution; and (2) reduction of the company's share capital.

What mechanisms are there for resolving deadlocks on major decisions?

Some common deadlock resolution mechanisms that parties may provide in the relevant joint venture agreements are:

- Giving a casting vote to an investor or, in the case of a corporate joint venture, to an investor's nominee director;
- Stipulating a period and process for parties to seek resolution in good faith; –and–
- Exit options setting out the pricing mechanism for the transfer of any ownership interests in the joint venture.

What procedures apply for electing and removing managers in joint ventures and strategic alliances?

The procedures for the election and removal of directors are generally set out in the relevant agreement between the parties (i.e., joint venture contract, and/or shareholders' agreement).

Where the joint venture vehicle is a private company, the procedure for the appointment of directors is typically set out in the constitution. However, where the constitution is silent as to the appointment of directors, the company may appoint a director by ordinary resolution passed at a general meeting.

Allocating Profits, Losses, and Distributions

How are profits, losses, and distributions allocated among partners/members? Are there legal or regulatory restrictions that may limit the ability of the partners/members to make such allocations on their own?

Contractual Alliances

The profits, losses, and distributions in a joint venture or strategic alliance will largely depend on the relevant agreement between the parties (i.e., joint venture and/or shareholders' agreement).

Corporate Joint Ventures

Where the joint venture entity is a private company, the company will typically distribute profits to its members by way of dividend. The shareholders may also agree on, and set out, a dividend policy in the shareholders' agreement. It should be noted that the company will not be able to pay any dividend to its shareholders, except out of profits of the company.

Indemnification

What Indemnification provisions would apply in a joint venture or strategic alliance?

Indemnification provisions (if any) will be contractually agreed between the parties as a form of risk allocation.

Exit or Termination

How does a partner/member exit a joint venture or strategic alliance?

The manner in which a venture partner exits a joint venture or strategic alliance will typically be contractually agreed to between the investors. For example, a joint venture agreement (particularly in the case of contractual alliances) may provide for (1) the automatic lapse of the joint venture after a specific period of time; (2) termination for convenience by any investor; or (3) termination for cause (i.e., the occurrence of specific events pursuant to which an investor may terminate the joint venture).

In the case of a corporate joint venture, an investor may exit the joint venture by way of a trade sale of its stake in the joint venture vehicle or through a public offering of the shares of the joint venture vehicle.

How is a joint venture or strategic alliance terminated?

Typically, a joint venture or strategic alliance may be terminated in the following manner:

- Lapse of fixed term;
- Termination for convenience;
- Termination for cause (i.e., due to a default or the occurrence of a specified event);
- Exit by an investor; –or–
- Winding-up the joint venture company.

Is the termination of a joint venture or strategic alliance subject to the approval of any governmental body?

The termination of a joint venture would generally not require the approval of any governmental body.

Foreign Members/Partners

What statutes or rules govern joint ventures or strategic alliances with foreign parties?

Singapore law imposes restrictions on foreign investment (including joint ventures or strategic alliances with foreign parties) in certain industries, such as broadcasting and domestic news media. The relevant statutes governing these sectors are the Broadcasting Act (Chapter 28) of Singapore (Broadcasting Act) and the Newspaper and Printing Presses Act (Chapter 206) of Singapore (Newspaper and Printing Presses Act).

What are the material provisions of such statutes or rules?

Material Provisions of the Broadcasting Act

Section 44(1)(a)

Unless the minister otherwise approves, a company shall not be granted or hold a broadcasting license if a foreign member (1) holds 49% or more of the shares in the company or its holding company; or (2) controls 49% or more of the voting power in the company or its holding company.

Section 44(1)(b)

Even if the foreign shareholding threshold is satisfied, a broadcasting company will not be granted a broadcasting license if a majority of the persons having direction, control,

or management over the broadcasting company or its holding company are appointed by, or under an obligation to act in accordance with the wishes of, any foreign investor.

Material Provisions of the Newspaper and Printing Presses Act

Section 10(1)(a)

All directors of every newspaper company must be Singapore citizens.

Section 10(1)(b) and (c)

Newspaper companies must issue two classes of shares, ordinary and management, with the latter being issued or transferred only to approved Singapore citizens or corporations.

Section 11(3)

No person may acquire more than 5% of the total votes attached to all voting shares in a newspaper company without first obtaining governmental approval.

What constitutes a "foreign" member or partner of a joint venture or strategic alliance? If there is an attribution rule that traces the ultimate ownership of a local member/partner to a foreign entity, what are the equity-holding and voting-rights thresholds for deeming "control" at each ownership chain?

There is no general definition of a foreign member or partner of a joint venture or strategic alliance in Singapore. What constitutes a foreign member is determined by the specific legislation governing such industry.

What permits, consents, or registrations are required by foreign members/partners of a joint venture or strategic alliance?

Foreign members/partners do not require general permits, consents, or registrations to participate in a joint venture or strategic alliance.

However, as discussed above, there may be restrictions imposed on foreign investment (including joint ventures or strategic alliances with foreign parties) in certain industries, and foreign investment in such protected industries may thereby require specific governmental approvals.

Are there any economic incentives for foreign direct investments in a joint venture or strategic alliance?

Eligible businesses planning to conduct what are perceived to be "high-value" activities in Singapore may qualify for various incentive programs, including:

- **Research incentive schemes.** These programs encourage the development of research and development capabilities and technologies by supporting projects in the areas of science and technology.
- **Training grants.** These grants for training programs are available for companies that foster the development of employees' skills and know-how in new technologies.
- **Productivity grants.** These grants facilitate projects that target improvements to energy, water, land, or labor efficiencies, with the focus on enhancing a company's operations through the adoption of new technologies.

- **Pioneer certificate incentives (PCI) and development and expansion incentives (DEI).** These incentives motivate companies to grow capabilities and conduct new or expanded economic activities in Singapore. An approved company under the PCI or DEI is eligible for a corporate tax exemption or a concessionary tax rate of 5% or 10%, respectively, on income derived from qualifying activities for a specific period of time.

Are there mandatory minimum or maximum equity investments or contributions for a foreign joint venture or strategic alliance member/partner?

There are no mandatory minimum or maximum equity investments or contributions for a foreign joint venture or strategic alliance member/partner.

Are there any restrictions regarding distributions to, or repatriation of profits by, foreign partners/members?

There are no restrictions regarding distributions to, or repatriation of profits by, foreign partners or members.

Jon Nair, Director, Drew Napier LLC

Jon Nair practice covers a broad spectrum of corporate transactions including mergers and acquisitions, private equity and venture capital investments, joint ventures, and restructuring.

Before joining Drew & Napier in 2015, Jon worked in leading Singapore and international law firms where he advised on a wide range of notable domestic and cross-border transactions in sectors such as technology, financial institutions, transport, energy, and infrastructure. Jon has also advised on commercial contracts and financing matters when on secondment at a major Singapore-listed real estate and hospitality company. Jon regularly assists clients on their general corporate matters such as compliance with the SGX listing rules and on employment matters.

As part of his practice, Jon works closely with investors, multinational corporations and family groups on their regional transactions in South-east Asia.

Teng Sen Tan, Director, Drew Napier LLC

Teng Sen Tan areas of practice encompass mergers and acquisitions, private equity, joint ventures, corporate governance, general corporate, crisis management and securities related matters. Teng Sen also regularly advises on compliance issues with Singapore stock exchange listing rules. He has advised companies, board of directors, financial institutions, private equities, venture funds as well as ultra-high net worth individuals. As part of his practice, Teng Sen has advised mergers and acquisitions spanning various industries including, consumer markets, health care, real estate, logistics, transport cybersecurity and technology. Prior to joining Drew & Napier, Teng Sen started his career with the Corporate M&A department in one of the largest law firms in Singapore. Teng Sen had also spent a stint with a large Japanese law firm in Tokyo, and had also worked as an in-house counsel in an international bank.

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