



Joint Venture Agreement

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Joint Venture and Consortium

Joint venture (JV)

- Joint works
- Joint revenues
- Joint liabilities

Consortium

- Separation of works
- Separation of revenues
- Separation of liabilities

 Unincorporated JV

 Incorporated JV

Reasons for JV

- Joint capital
- Joint resources
- Increase cooperation
- Create strategic partnership
- Joint invest hi-technology and innovation
- Co-develop products
- Market new products
- Easy access to local market
- Combine synergy
- Reduce risks
- Reduce fierce competition
- Save money

😊 MOU

😊 Letter of Intent

😊 Joint Venture Agreement

Contents of JV Agreement

Contents of JV Agreement

- Objectives of JV
- Business to be carried on
- Shareholding structure
- Directorship between parties
- Management
- Conditions precedent



- Articles of association and joint venture agreement
- Business plan
- Finance and accounting
- Books , accounts and records
- Equity and debt financings
- Investment in any new business
- Investment in any other country



Contents of JV Agreement

- New project and capital expenditures
- Profits and dividend policy
- Notice, quorum and resolution of the board of directors meeting
- Notice, quorum and resolution of a general meeting of shareholders
- Reserved matters at the level of the board of directors
- Reserved matters at the level of shareholders

Contents of JV Agreement

- Representations and warranties
- Undertakings
- Exclusivity
- Transfer of shares
- Right of first refusal
- Tag along provisions
- Drag along provisions

Contents of JV Agreement

- Non-compete provisions
- Non-solicitation
- IPO and listing, if any
- Insurance
- Indemnification
- Limitation of liability
- Costs and expenses

Contents of JV Agreement

Confidential information

IP protection

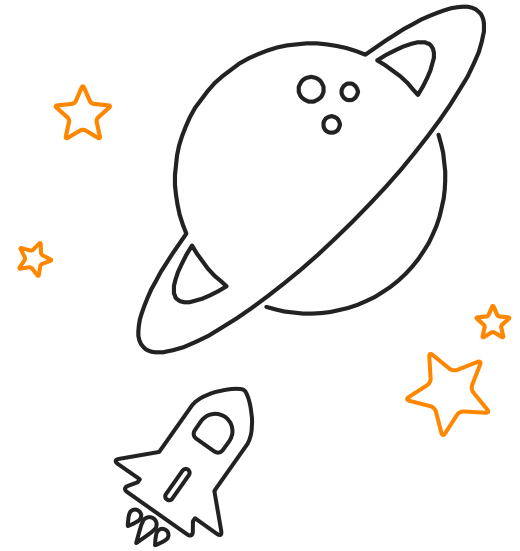
Events of default

Dispute resolution mechanism

Termination

Governing law

Litigation or arbitration



Agreements in connection with JV Agreement

- **Sale Agreement**
- **Service Agreement**
- **Distribution Agreement**
- **Technical Assistance Agreement**
- **Licensing Agreement**

Laws

- ◆ Civil and Commercial Code on company law
- ◆ Public limited Company Act

Laws

- ◆ Securities and Exchange Act
 - Disclosure of information
 - Connected transaction
 - Acquisition or disposition of assets
 - Reporting requirement
 - Tender offer requirement

Laws

- ◆ Foreign Business Act
- ◆ Foreign Employment Act
- ◆ Land Code
- ◆ Factory Act

Laws on restriction of foreign shareholding include:

- Air Navigation Act
- Casualty Insurance Act
- Condominium Act
- Financial Institution Business Act
- Hotel Act
- Land Code
- Life insurance Act
- Public Limited Company Act
- Telecommunication Business
Operation Act
- Thai Vessel Act



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Corporate shareholding structure can be prepared
to cope with foreign shareholding issue.



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Laws

- ◆ Bankruptcy Act – business rehabilitation and Bankruptcy
- ◆ Revenue Code
- ◆ Customs Act
- ◆ Excise Tax Act
- ◆ Labour laws

Laws

◆ Trade Competition Act

- Market dominance
- abuse of market dominance



Pointes to be considered

- Companies in Thailand can be divided into a company limited, a public limited company and a listed company and are subject to different laws of Thailand.



Pointes to be considered

- A company in Thailand must generally have 51% Thai shareholding and 49% foreign shareholding but a company incorporated under law of Thailand may have up to 100% foreign shareholding if the Thai company applies and obtains an investment promotion certificate or a foreign business license.

Pointes to be considered

- A private company must have at least 3 shareholders.
- A JV company may apply for an investment promotion from the Office of the Board of Investment or the Office of the BOI.

Pointes to be considered

- A private company with a foreign private equity party may be converted into a public company which may apply for an initial public offering or IPO to the Office of the SEC and listing to the Stock Exchange of Thailand.

Pointes to be considered

- Licenses from many government authorities for a JV company may be required.
- Royalties to be payable from a local party to a foreign party of a JV company may be the fixed amount or be based upon a percentage of the total revenues

Pointes to be considered

- Debt to equity ratio of 3: 1 of a company may be required if a company applies for an investment promotion certificate or a foreign business license.

Pointes to be considered

- A JV company with more than 51% foreign shareholding cannot own land in Thailand unless land ownership by the JV company is allowed by land for the purpose of investment in Thailand.

Pointes to be considered

- A long-term lease of land may be for a period of 30 years and , in an exceptional case, 50 years.
- An foreigner working in Thailand must apply and obtain a work permit.
- JV parties may have different corporate systems and difference cultures.

Pointes to be considered

- A foreign party may apply a centralized system or a decentralized system.
- Management functions should be properly allotted among parties.
- Give and take approach should be adopted for a successful JV company.

Pointes to be considered

- Successfully cooperative JV parties benefits a JV company.
- Dividend payment and percentage of dividend payment are issues between parties.
- Any change of any JV party may lead to conflict and an unsettled dispute.

Pointes to be considered

- Any investment in any new business may require approval of the board of directors meeting.
- A casting vote of the chairman of the board of directors meeting of a JV company should be maintained.

Pointes to be considered

- Quorum and resolution of the board of directors meeting or a general meeting of shareholders might face problem in the case of lack of cooperation and lack of directors or shareholders of any party of the JV company.

Pointes to be considered

- JV may succeed or fail.
- A majority shareholder may bully or impose hard pressure on a minority shareholder.
- Protection of interest of a minority shareholder must be inserted into a JV agreement.

Pointes to be considered

- Measures should be inserted into a JV agreement to avoid exploitation and taking of unacceptable advantages by any JV party.
- Too excessive investment or too excessive business expansion of a JV company may lead to financial difficulty.

Pointes to be considered

- Different management styles of parties may collapse a JV company.
- Minor breach of provision of JV agreement should be cured.
- Material breach of provision of JV agreement leads to termination of a JV agreement.

Pointes to be considered

- Breach of one agreement results in deemed breach of other agreements.
- Price for purchase of shares by one party from another party in the case of unsettled dispute is to be set forth in a JV agreement.

Pointes to be considered

- Dispute between parties should be amicably settled, if practicable.
- In case of total failure in settlement of dispute, shares in a JV company should be bought by one party from another party.

Pointes to be considered

- After failed negotiations, legal enforcement must be applied as a last resort.
- Laws of a countries may also conflict with each other – Revenue Code and BOI Act; SEC Act and Competition Act.

Pointes to be considered

- A foreign law as government law and local laws may conflict with each other.
- A foreign judgment cannot be automatically enforced in Thailand.

Pointes to be considered

- Any document in a foreign language must be translated into Thai to be submitted to a competent court of Thailand.
- Liquidated or consequential damage may not be enforced under law of Thailand.

Is arbitration better than litigation in the case of a legal enforcement for a JV company in Thailand ?

Thailand has a lot of courts of justice including:

- Civil court:
- Criminal court;
- intellectual property and International trade court;
- Tax court; and
- Labour court.

Chart on JV. Company

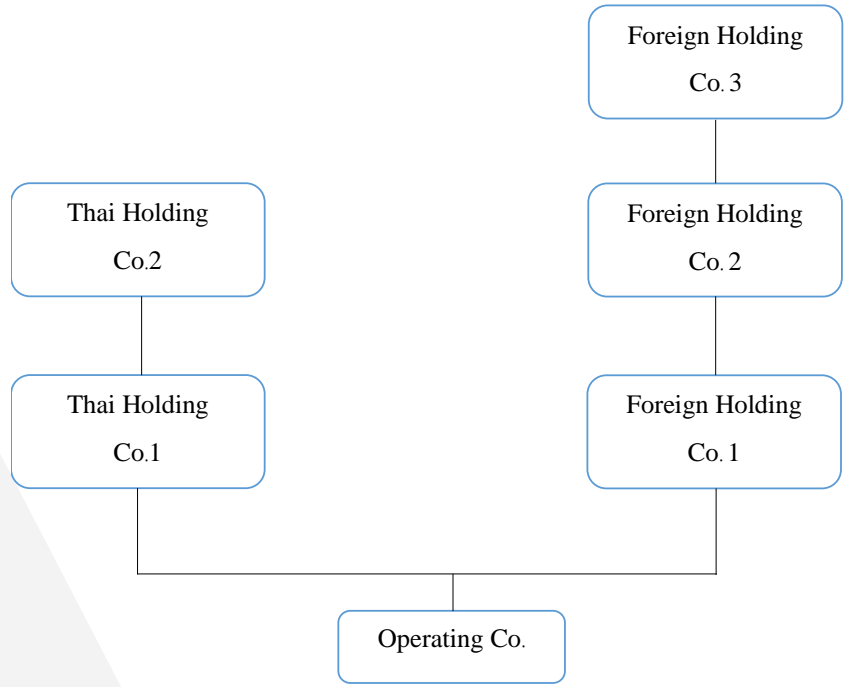
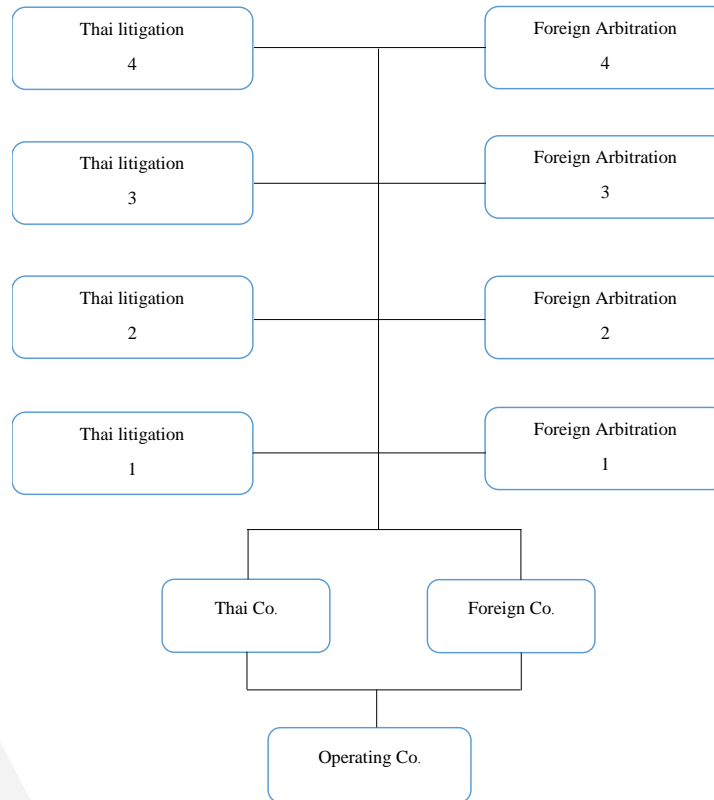


Chart on legal disputes



CASE STUDY

THANK YOU

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