

# Cross-Border Joint Venture and Strategic Alliance Guide (The Czech Republic)

A Practical Guidance® Practice Note by Vladimír Čížek and Rudolf Bicek, Schoenherr



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This Cross-Border Joint Venture and Strategic Alliance Guide (The Czech Republic) discusses relevant law and practice related to the formation and operation of cross-border joint ventures, including corporate and contractual joint ventures, in the Czech Republic. 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?

Joint ventures and strategic alliances are not expressly regulated in the Czech Republic. Therefore, there is no standard form of strategic alliance or joint venture. Specific rules for structuring joint ventures and strategic alliances are not provided for either in legislation or court practice.

Under Czech law, contractual and entity-based (corporate) joint ventures and strategic alliances are allowed.

#### *Contractual Relationships*

Contractual joint ventures and strategic alliances are created when two parties with an aim to cooperate in a limited and specific way enter into an agreement or partnership arrangement specifying the relationship and terms. There is no equity participation in this structure. Examples of this are consortiums, various associations or long-term business cooperation models. In this approach, the rights, obligations, and financial terms are specifically outlined in the agreement governing the relationship, and each of the parties retains its separate structure and interests—but for the collaborative relationship.

#### *Entity-Based (Corporate) Structures*

Most joint ventures and strategic alliances in the Czech Republic are structured based on an entity (corporate) approach. The establishment of an entity-based joint venture or strategic alliance consists of (1) either the formation of a new company or the acquisition of shares in an existing company, and (2) entering into an agreement that more specifically regulates the rights and obligations that are not governed by that company's articles of association.

For entity-based structures, certain mandatory corporate rules on the respective type of legal entity must be observed. Below are some of the more common forms of entity-based structures that are typically used for joint ventures and strategic alliances.

- **General partnership** (in Czech: *veřejná obchodní společnost*)
- **Limited partnership** (in Czech: *komanditní společnost*)
- **Limited liability company** (in Czech: *společnost s ručením omezeným*)
- **Joint-stock company** (in Czech: *akciová společnost*)

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

Below is a description of some of the forms joint ventures and strategic alliances take in the Czech Republic. However the most suitable legal forms for joint ventures and strategic alliances are typically limited liability companies and joint-stock companies:

- **General partnership.** A general partnership can be formed on the basis of a memorandum of association (in Czech: *společenská smlouva*), which does not have to be drawn up in the form of a notarial deed. The Act on Business Corporations stipulates requirements on the minimum content of the memorandum of association. At least two partners are required to establish a general partnership and all partners jointly and severally guarantee all the obligations of the partnership. The establishment process takes on average 20 days.
- **Limited partnership.** A limited commercial partnership can be formed on the basis of a memorandum of association (in Czech: *společenská smlouva*), which does not have to be drawn up in the form of a notarial deed. The Act on Business Corporations stipulates requirements on the minimum content of the memorandum of association. At least one limited partner and one general partner must fund the partnership. The minimum contribution for a limited partner is to be set in the memorandum of association. The establishment process takes on average 20 days.
- **Limited liability company.** A limited liability company can be formed on the basis of a constituent document, which is a memorandum of association (in Czech: *společenská smlouva*) if the company has more than one participant, or a foundation deed (in Czech: *zakladatelská listina*) if the company has only one participant. In both cases, the constituent document must be drawn up in the form of a notarial deed. A limited liability company has no board of directors; instead, the company is represented by one or more executive directors. There is no need to establish a supervisory board. The minimum capitalization of a limited liability company is CZK 1 (approx. €0.04), but

market standard is approximately CZK 200,000 (approx. €8,700). The establishment process takes on average 20 days.

- **Joint-stock company.** A joint-stock company can be formed on the basis of a constituent document, being articles of association (in Czech: *stanovy*). The constituent document must be drawn up in the form of a notarial deed. The joint-stock company can have either monistic or dualistic structure of corporate management. A dualistic structure anticipates that the company's bodies will include (in addition to the general meeting) the board of directors (in Czech: *představenstvo*) and supervisory board (in Czech: *dozorčí rada*). The monistic structure means that, in addition to the general meeting, the company's bodies will include a board of trustees (in Czech: *správní rada*), the authority of which generally corresponds to the authority pertaining to the board of directors. The minimum capitalization of a joint-stock company is CZK 2,000,000 or €80,000. The establishment process takes on average 20 days.

A special tax regime applies to general partnerships and limited partnerships, which are partly or entirely "transparent" companies for Czech tax purposes. Income of general partners is taxed at the partner's level, whereas income of limited partners is taxed at the company's level, with a potential withholding tax on distributed dividends in certain cases.

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

Generally, a joint venture or strategic alliance may be formed for any purpose. Nevertheless, the Civil Code lays down some restrictions concerning the purpose for which a legal entity may be established. Under the Civil Code, it is forbidden to establish a legal entity whose purpose is against public order (e.g., violation of law, incitement of hatred and intolerance, or promotion of violence). It is also forbidden to establish an armed legal entity or an entity with a security force, unless the entity falls under one of the statutory exceptions (e.g., a legal entity whose members hold or use guns for sport or cultural purposes or for hunting, etc.).

### 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?

In general, the form of a joint venture or strategic alliance is not determined by the type of industry, but essentially by

the volume of business. In the Czech Republic, the majority of joint ventures and strategic alliances are structured as entity-based structures. The legal forms that are used most frequently are limited liability companies and joint-stock companies.

Generally, a joint-stock company is suitable for doing business in a larger scale, requiring larger amounts of capital, while a limited liability company is suitable especially for midsize enterprises. General partnerships and limited partnerships are usually used, with a few exceptions, as a legal form for smaller enterprises. There are of course exceptions.

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

Joint ventures and strategic alliances can generally be used in any industry. However, it is recommended to examine the conditions for doing business according to the respective line of business of the joint venture or strategic alliance. For example, special licences are required to conduct business in the energy industry, pharmaceutical industry or area of payment services. If a joint venture or strategic alliance undertakes business in a state regulated field, it must always comply with the special requirements stipulated for the respective field of business.

### **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 Relationships*

In the case of contractual joint ventures or strategic alliances, the agreement(s) governing the relationship will specify the obligations, allocation of risk, liability, and indemnification rights between the parties.

#### *Entity-Based Structures*

In order to minimize potential liability, parties to a joint venture can opt for the legal form of a limited liability company or a joint-stock company. These corporate structures secure that the shareholders of the company cannot be held personally liable for the company's debts or liabilities. In contrast, shareholders of a general partnership and unlimited partners of a limited partnership are held personally liable for the company's debts.

Above and beyond the protections afforded by a separate legal entity, the underlying documents and/or agreements governing the entity and the relationships among the shareholders, members or partners may contain various provisions allocating risk among the parties and address indemnification rights.

## **Statutory Framework**

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

#### *Contractual Relationships*

The agreements governing these relationships are subject to provisions of the Civil Code according to the chosen form of agreement; nevertheless, it is possible to stipulate differently from the majority of the statutory provisions.

#### *Entity-Based Structures*

Entity-based structures are governed by a number of laws (e.g., the Civil Code, the Act on Business Corporations, the Trade Licensing Act and the Act on Public Registers). Nevertheless, it is possible to stipulate differently from some of the statutory provisions.

### **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 (contractual as well as entity based).

### **Do joint ventures or strategic alliances have to be registered with any federal or local body other than the commercial registry where the charter or other organizational documents must be filed in order to effect the entity's formation?**

There are no bodies other than the Commercial Register where the charter or other organizational documents must be filed in order to effect the entity's formation.

However, if the net turnover (revenues) of the companies involved exceeds the specific amount stipulated in Act No. 143/2001 Coll., on the Protection of Competition, as amended (the Antitrust Act), the acquisition of concentration approval by the Office for the Protection of Competition (the Antitrust Office) is necessary. The Antitrust Office can require the submission of formation documents, accounting documents, and other documents relevant for the proceedings before it.

In addition, if a joint venture or strategic alliance undertakes business in a state regulated field (e.g., energy, pharmacy, agriculture, etc.), it must always comply with the special requirements stipulated for the respective field of business. This means that registration at the respective government department, office or other institution may be required (e.g., Ministry of Agriculture, Ministry of Health, or Czech National Bank etc.).

## Regulatory Environment

### Are joint ventures or strategic relationships specifically regulated?

Joint ventures and strategic alliances are not regulated by virtue of the fact that they are collaborative arrangements or because of the structure they choose. However, as in the case of any other business, joint ventures and strategic alliances are subject to general regulations that may impose certain requirements, restrictions, or registration obligations. It is therefore necessary to examine the conditions for doing business according to the respective line of business. For example, special licences are required to conduct business in the energy industry or pharmaceutical industry. If a joint venture or strategic alliance undertakes business in any of these fields, it must comply with the special requirements stipulated for the respective field of business.

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

Generally, the two following types of antitrust rules apply to joint ventures and strategic alliances:

- The rules on concentration of companies –and–
- The rules on agreements distorting competition

### *The Rules on Concentration of Companies*

#### *Entity-Based Structures*

The rules on concentration of companies are applicable to entity-based structures. The companies involved must themselves assess whether or not they meet net turnover thresholds (below) in order to determine whether they must notify the concentration to the Office for the Protection of Competition (in Czech: *Úřad pro ochranu hospodářské soutěže*) (Antitrust Office) before the establishment of the joint venture or strategic alliance or acquisition of shares or ownership interests in such an entity-based structure. The approval of the Antitrust Office cannot be avoided. If the concentration raises doubts on whether it could negatively affect competition, the companies concerned can suggest, along with the motion for concentration approval,

commitments that would maintain effective competition. The Antitrust Office can approve the concentration subject to the fulfilment of such commitments.

According to the Antitrust Act, an entity-based structure is subject to a prior concentration approval by the Antitrust Office if any of the following conditions are met:

- The total net turnover achieved in the most recent accounting period in the Czech Republic by all companies concerned exceeded CZK 1.5 billion (approx. €60.4 million) –and–
- At least two of the companies concerned achieved in the most recent accounting period in the Czech Republic a net turnover exceeding CZK 250 million (approx. €10.07 million)

A joint venture or strategic alliance established by an acquisition of shares or ownership interests is subject to a prior concentration approval by the Antitrust Office if the:

- Turnover achieved by the acquired joint venture or strategic alliance in the last accounting period in the Czech Republic is higher than CZK 1.5 billion (approx. €60.4 million) –and–
- The worldwide turnover achieved in the most recent accounting period by any other company concerned exceeds CZK 1.5 billion (approx. €60.4 million)

A newly established joint venture or strategic alliance is subject to a prior concentration approval by the Antitrust Office if:

- The net turnover achieved by at least one of the companies establishing the joint venture or strategic alliance in the last accounting period in the Czech Republic is higher than CZK 1.5 billion (approx. €60.4 million) –and–
- The worldwide net turnover achieved in the most recent accounting period by any other company concerned exceeds CZK 1.5 billion (approx. €60.4 million)

#### *Contractual Relationships*

Unlike entity-based structures, contractual joint ventures or strategic alliances are not subject to any prior concentration approval by the Antitrust Office, because they are not connected with any merger or acquisition. A contractual joint venture or strategic alliance can only be subject to proceedings before the Antitrust Office as an agreement distorting competition (see below). If the Antitrust Office concludes that the contractual joint venture or strategic alliance distorts competition, then the Antitrust Office can prohibit the performance of the contractual joint venture or strategic alliance in the future and impose a fine.

## The Rules on Agreements Distorting Competition

Joint ventures and strategic alliances (both contractual and entity-based) can also be subject to proceedings before the Antitrust Office as an agreement distorting competition. Agreements between competitors, concerted practices of the competitors, and decisions by associations of companies aimed at, or resulting in, distortion of competition are prohibited and are null and void, unless the Antitrust Office grants an exemption. An exemption may be granted to agreements that have an insignificant impact on competition.

Expressly prohibited are agreements containing provisions on:

- Direct or indirect fixing of prices or other business terms and conditions
- Limitation or control of production, sales, research and development, or investments
- Market sharing, supply resources sharing, or customers sharing
- Making the conclusion of a contract subject to the acceptance of further performance, which by its nature or according to commercial usage and fair business practices has no connection with the object of such contracts
- Application of dissimilar conditions to identical or equivalent transactions with other undertakings that places them at a competitive disadvantage –or–
- Obligation of the parties to the agreement to refrain from trading or other economic cooperation with undertakings not party to the agreement, or to otherwise harm such undertakings (group boycott)

If the Antitrust Office concludes that the joint venture or strategic alliance distorts competition, it can prohibit the performance of the joint venture or strategic alliance in the future and impose a fine.

## Formation

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

#### *Contractual Relationships*

There are no other formal requirements for contractual joint ventures and strategic alliances, unless they are subject to proceedings before the Antitrust Office.

#### *Entity-Based Structures*

In the case of an entity-based joint venture or strategic alliance, a filing with the Commercial Register is typically required in order to form the entity.

The formal requirements that must be fulfilled to constitute a joint venture or strategic alliance include the:

- Requirements of the Civil Code and the Act on Business Corporations for the formation and incorporation of a new company
- Requirements of the Act on Business Corporations for a transfer of shares or ownership interests in an existing company. If the articles of association of the existing company require the fulfilment of special conditions for the transfer of shares or ownership interests (for example, the approval of the general meeting or the shareholders' meeting), then these requirements must be fulfilled as well
- Acquisition of licences necessary for carrying out the line of business
- Registration for relevant taxes and social security insurance –and–
- Acquisition of concentration approval by the Antitrust Office if the net turnover of the companies involved exceeds a specific amount stipulated in the Antitrust Act (In this case, the Antitrust Office can require the submission of formation documents, accounting documents and other documents relevant for the proceedings before the Antitrust Office.)

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

#### *Contractual Relationships*

The nature of the relationship and requirements on other documentation/agreements will govern what type of agreement is to be entered into between the parties.

#### *Entity-Based Structures*

A **limited partnership** and a **general partnership** can be formed on the basis of a memorandum of association (in Czech: *společenská smlouva*), which does not have to be drawn up in the form of a notarial deed. The Act on Business Corporations stipulates requirements on the minimum content of the memorandum of association, such as the trading name of the company, the registered office, etc.

- A **limited liability company** can be formed on the basis of a constituent document, which is a memorandum of association (in Czech: *společenská smlouva*) if the company has more than one participant, or a founding deed (in Czech: *zakladatelská listina*) if the company has only one participant. In both cases, the constituent document must be drawn up in the form of a notarial deed. The Act on Business Corporations stipulates requirements on the

minimum content of the constituent document, such as the trading name of the company, the registered office, contributions of participants, etc.

- A **joint-stock company** can be formed on the basis of a constituent document, being articles of association (in Czech: *stanovy*). The constituent document must be drawn up in the form of a notarial deed and must contain the minimum requirements prescribed by the Act on Business Corporations, such as the trading name of the company, the registered office, the amount of registered capital, etc.

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

#### *Contractual Relationships*

The nature of the relationship and requirements on other steps will govern what type of agreement is to be entered into between the parties.

#### *Entity-Based Structures*

In the case of entity-based structures, in addition to registration with the Commercial Register, the new company must also be registered with certain other registers, such as:

- The Trade Licensing Office
- The Tax Office –and–
- Other state authorities, depending on the line of business (especially if the line of business is regulated by the state (e.g., energy, pharmaceutical, etc.))

### **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 the case of contractual joint ventures, it is important that the underlying documentation be clear so that the relationship would not be deemed to be a general partnership. The risk of being deemed a partnership is that each party is jointly and severally liable for the debts of the partnership and has the right to bind the partnership.

### **What filings with governmental authorities (if any) are required to form the joint venture or strategic alliance?**

Generally, no filings with governmental authorities are required to form the joint venture or strategic alliance. Some filing requirements may arise in connection with competition law issues (please see answer to question: *Are there any antitrust matters to be considered in forming a joint venture or strategic alliance?*) or in connection with the

character of the business activity that can be regulated by some governmental authorities (e.g., guns, pharmaceuticals, energy, agriculture, etc.).

## **Becoming a Member/Partner**

### **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 Relationships*

The levels of participation in the business relationship can be designed to satisfy the mutual preferences and needs of the respective parties.

#### *Entity-Based Structures*

- **General partnership.** The partners have the same business shares in the company if the memorandum of association does not stipulate otherwise. The business share represents the equity stake in the company.
- **Limited partnership.** The unlimited partners have the same business shares in the company, if the memorandum of association does not stipulate otherwise. Business shares of the limited partners of a limited partnership constitute the equity stake of the owners. The business share is the proportion between the contribution of the owner and the registered capital.
- **Limited liability company.** The business share in a limited liability company constitutes the equity stake of its owners. The memorandum of association of a limited liability company can designate one or more classes of ownership interest. The rights and preferences of the various classes of ownership interest are delineated in the corporation's memorandum of association.
- **Joint-stock company.** The business share in a joint-stock company is stock that constitutes the equity stake of its owners. The bylaws of a joint-stock company designate how many shares of stock are authorized for issuance and specifies one or more classes of stock that typically fall in the categories of common stock and preferred stock. The rights and preferences of the various classes of stock are delineated in the corporation's bylaws (such as voting, nonvoting, convertible, etc.). Ownership in stock is typically reflected by stock certificates.

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

The participations (contributions) into entity-based joint ventures and strategic alliances can be monetary or nonmonetary. Forms of participation are irrelevant with

respect to contractual joint ventures, as these do not issue share capital.

There are no limits applicable to monetary contributions to an entity-based joint venture or strategic alliance. Nonmonetary contributions can only consist of assets that have an ascertainable economic value. A nonmonetary contribution can consist of:

- Movable property
- Real estate
- Know-how
- Shares
- Interests in other companies
- Intellectual property rights

The value of a nonmonetary contribution must be determined by an expert appointed by the company in the memorandum of association. The value must be stipulated in the memorandum of association and the contributions must be provided before the share capital is entered in the Commercial Register. The Act on Business Corporations provides one exception to the form of a contribution that can be used, which is that contributions in the form of performance of any work or supply of any services are expressly prohibited.

The amount for one contribution into a limited liability company must be at least CZK 1 (approx. €0.04); however, the market standard is about CZK 200,000 (approx. €8,000). The minimum value of a share in a joint-stock company is not limited by law; nevertheless, the minimum value of share capital shall be at least CZK 2,000,000 or €80,000.

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

Typically, value and form of contributions to entity-based joint ventures or strategic alliances must be stipulated in the memorandum of association. A nonmonetary contribution must be provided before the incorporation of the company (i.e., before the company is entered in the Commercial Register). Monetary contributions shall be provided on the special bank account set up for this purpose by an administrator of contributions. Monetary contributions shall be paid up in accordance with the conditions set forth by the memorandum of association and the Act on Business Corporations.

### **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?**

There are no restrictions regarding the number or legal form of members, even though the following restrictions are imposed on an individual as a managing director (if the company is a limited liability company, a general partnership, or a limited partnership), on a member of the board of directors (if the company is a joint-stock company), or on a representative (if the member is a legal person):

- At least 18 years of age
- Full capacity to perform legal acts
- No criminal record
- Assets are not subject to pending bankruptcy proceedings
- No court has terminated bankruptcy proceedings or rejected an insolvency petition against the prospective member/partner on the grounds that the assets were entirely insufficient to satisfy the creditors or to pay for the costs of the insolvency proceedings in the previous three years –and–
- No court or administrative authority has imposed on the prospective member/partner a ban of the activity related to a trade in the same field as the line of business of the joint venture or in a related field

In addition, there are no restrictions regarding nationality. A managing director or a member of the board of directors can be a foreign citizen and does not need to have residency in the Czech Republic.

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

#### ***Contractual Relationships***

In contractual joint ventures and strategic alliances, the relationship between partners/members is typically governed by a joint venture agreement or agreement on strategic partnership and statutory provisions of the Civil Code.

#### ***Entity-Based Structures***

In entity-based structures, the relationship between partners/members is typically governed by the memorandum of association, shareholders agreement or bylaws and statutory provisions of the Civil Code and the Act on Business Corporations.

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

Generally, a public sector body can enter into a joint venture agreement or agreement on strategic partnership. Such joint ventures or strategic alliances of public and private entities are typically formed for the purpose of providing public services or the construction of a facility and they are particularly used in infrastructure construction. Joint ventures and strategic alliances of public sector bodies and private entities are often used at the municipal level. However, a Public Private Partnership (PPP) in the form of a joint venture or strategic alliance is not very common.

The main PPP law applicable to joint ventures and strategic alliances of public and private entities is Act No. 134/2016 Coll., the Public Procurement Act, as amended. However, the regulation of PPPs is covered in various other Acts as well, for example:

- Act No. 13/1997 Coll., on Roads, as amended
- Act No. 128/2000 Coll., on Municipalities, as amended

The relationship between a public sector body and a private entity in joint ventures and strategic alliances, as well as the revenues and costs of their cooperation, are governed by a “concession contract” according to the Public Procurement Act. The concession contract is concluded on the grounds of a tender, under which the appropriate private partner is selected. The conditions for each PPP are specified in the respective tender.

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

The limitations on transfer of interest are set forth by the Act on Business Corporations and differ according to the corporate form of the respective joint venture or strategic alliance:

- **General partnership.** The transfer of the member/partner interest is forbidden and the members/partners may be changed only by a change of the memorandum of association.
- **Limited partnership.** The transfer of the member/partner interest is forbidden only to the members who fully guarantee the debts of the company and the members/partners may be changed only by a change of the memorandum of association.
- **Limited liability partnership.** The transfer of interest is not restricted among other members/partners of the

company; nevertheless, the transfer of interest to parties outside the company might be conditional upon the prior approval of the general meeting.

- **Joint-stock company.** Generally, shares in a joint-stock company are freely transferable. Some restrictions may be set in bylaws (for registered shares).

## Restrictive Covenants

### What restrictive covenants can apply to members/partners relating to corporate opportunity, noncompetition, and nonsolicitation?

Pursuant to the Act on Business Corporations, the members/partners of a limited liability company and a joint-stock company are not restricted from holding an interest in other corporations, in contrast to the members/partners of a general partnership or a limited partnership, who are allowed to have an interest in other corporations only with the prior approval of other members/partners of the respective companies. The memorandum of association or bylaws can deviate from the statutory provisions.

## Management

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

The members of the statutory board are vested with decision-making power regarding the day-to-day management of the company. The type of statutory board and majority necessary for the decision-making differ according to the legal form of the company:

- **General partnership.** In a general partnership, the members of the statutory body are all shareholders, provided that they satisfy statutory conditions for becoming a member of the statutory body.
- **Limited partnership.** In the case of a limited partnership, the members of the statutory body are all unlimited partners, provided that they satisfy statutory conditions for becoming a member of the statutory body. All shareholders oversee day-to-day operations in the case of the above-mentioned legal forms, as well as strategic decision making.
- **Limited liability company.** In a limited liability company, the executive director(s) oversee(s) day-to-day operations and the general meeting is responsible for strategic decision making.



- **Joint-stock company.** In a joint-stock company, the members of the board of directors oversee day-to-day operations and the general meeting is responsible for strategic decision making. The monistic structure means that, in addition to the general meeting, the company's bodies will include a board of trustees, the authority of which generally corresponds to the authority pertaining to the board of directors.

The distinction between day-to-day decision making and strategic decision making is interpreted in the case law, the Act on Business Corporations and the memorandum of association.

### What mechanisms are there for resolving deadlocks on major decisions?

In the event of a deadlock in a 50/50 joint venture or strategic alliance, the applicable operative documents in the case of both contractual and entity-based structures should anticipate and have a clear mechanism for resolving conflicts. Without such a mechanism, dissolution is very often the only choice. The following are some ways that a deadlock can be addressed:

- The issue would be escalated to certain key executives of each partner in an effort to solve the deadlock.
- The chairman can have a tie-breaking vote.
- A designated independent director can be allocated a tie breaking vote.

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

The members of the statutory body are appointed and removed in accordance with the Act on Business Corporations.

- **General partnership.** The members of the statutory body are all shareholders, provided that they satisfy statutory conditions for becoming a member of the statutory body.
- **Limited partnership.** The members of the statutory body are all unlimited partners, provided that they satisfy statutory conditions for becoming a member of the statutory body.
- **Limited liability company.** The managers/executive directors are appointed and removed by the general meeting by a simple majority of votes. The memorandum of association may stipulate appropriate majorities differently from the statutory provisions.

- **Joint-stock company.** The managers/members of the board of directors are appointed and removed by the general meeting by a simple majority of votes. The articles of association may stipulate appropriate majorities differently from the statutory provisions.

## 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?

The Act on Business Corporations states the general rule providing that profits shall not be distributed should such a distribution cause the bankruptcy of the company.

In case of general partnership, the shareholders shall bear all losses and distribute all profits equally, although the memorandum of association can regulate the matter differently.

In a limited partnership, the losses and distributions shall be divided between the company and unlimited partners. The unlimited partners shall bear all losses and distribute all profits equally, while profits allocated to the company shall be distributed among limited partners, who are not bearing losses, although the memorandum of association can regulate the matter differently.

In case of a limited liability company or a joint-stock company, due to its legal form the shareholders shall not bear losses. The distribution of profits is subject to the prior approval of the general meeting and is carried out according to the size of the shareholder's interests/shares in the company, even though the memorandum of association can provide otherwise.

## Indemnification

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

Under the Civil Code and the Act on Business Corporations, the executive directors (unlimited partnership, limited partnership, limited liability company) and the members of the board of directors (joint-stock company) have a duty to act with due care, diligence and loyalty towards the company. If they violate the duty, they can be held liable for a harm caused to the company.

# Exit or Termination

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

Depending on the size and number of participants in a joint venture or strategic alliance, the operative documents may build in a mechanism allowing participants an exit vehicle short of the termination of the entity. The exit mechanism is important to protect the economic and managerial interests of the other parties and the value and success of the joint venture.

While joint venture agreements might have a bifurcated approach, precluding any transfers of interests for an initial period of time (two to five years), transfers after such period would be permitted to outside third parties subject to other members' consent and various other limitations. Various mechanisms included may be a right-of-first-offer, right-of-first-refusal, co-sale rights, put and call rights, or buy-sell right with a private auction.

In addition to a voluntary withdrawal, the operative documents will generally have provisions identifying certain causes for mandatory withdrawal. For instance, if a member commits a material breach or defaults on its obligations under the joint venture agreement, it may be forced to sell its interests back to the joint venture and/or its co-venturers.

## How is a joint venture or strategic alliance terminated?

### *Contractual Relationships*

A contractual joint venture or strategic alliance can be terminated according to the provisions that the parties have agreed in the joint venture or partnership agreement and general provisions of contractual law:

- By notice of one party
- Upon expiration of a time period
- Upon achievement of the stipulated goal –or–
- By mutual agreement

### *Entity-Based Structures*

The termination of an entity-based joint venture or strategic alliance is regulated by the provisions of the Civil Code and the Act on Business Corporations governing the liquidation of companies in general. The decision to liquidate a joint

venture or strategic alliance is taken by their members and requires at least a two-thirds majority of all members. If the memorandum of association or bylaws stipulates that a company is established for a specific period of time, the company terminates upon the expiration of that stipulated time. A joint venture cannot be terminated at the request of only one joint venture member.

A member of a joint venture or strategic alliance can only propose to a court to decide on the winding-up of the company and its entry into liquidation. However, such a proposal is only possible in certain instances, for example:

- If the company is no longer authorized to carry out its business activities –or–
- If the company is unable to undertake activities due to insurmountable conflicts between its members

A member of the company cannot simply leave the partnership. The only possibility is to transfer its shares or ownership interests to another member or to a third person.

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

### *Contractual Relationships*

The termination of a contractual joint venture or strategic alliance is not subject to the approval of any public sector body.

### *Entity-Based Structures*

Termination of an entity-based joint venture or strategic alliance is not subject to the approval of any public sector body. However, the general requirements of the Civil Code and the Act on Business Corporations for winding-up and liquidation of a company must be fulfilled, which includes, among other things, the final approval of the tax authorities.

# Foreign Members/Partners

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

There are no specific statutes or rules applicable to joint ventures or strategic alliances with foreign parties. Such joint ventures and strategic alliances are treated in the same way as the “domestic” ones.

**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?**

Under Czech law, a foreign member may be any foreign national, foreign government, or foreign company (i.e., a company established under foreign law). In addition, there is no attribution rule that traces the ultimate ownership of a local to a foreign entity.

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

Generally, foreign members/partners of joint ventures and strategic alliances are treated in the same way as “domestic” ones.

For more information please see answers to questions: *Do joint ventures or strategic alliances have to be registered with any federal or local body other than the commercial registry where the charter or other organizational documents must be filed in order to effect the entity’s formation? What other steps are required to form a joint venture or strategic alliance? and What filings with governmental authorities (if any) are required to form the joint venture or strategic alliance?*

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

Czech law does not set out any specific economic or financial incentives for foreign direct investments exclusively aimed at joint ventures or strategic alliances. However, investment incentives are available to any entity that fulfils obligations set under Act No. 72/2000 Coll., on Investment Incentives, as amended, and include:

- Legal entity income tax allowance for a period of 10 years for newly established companies or exiting legal entities
- The transfer of a technically equipped area at a preferential price
- Financial support for the creation of new jobs (up to CZK 300,000 per employee (up to approx. €12,100))
- Financial support for the retraining and training of personnel (up to 70% of training costs)
- Financial support for acquiring long-term tangible and intangible assets –and–
- Real estate tax allowance for preferential industrial zones

Investment incentives are intended for investors in the areas of technology centres, business support services centres, the manufacturing industry, and manufacturers of special medical products.

The amount that the investor must invest varies between CZK 10 million (approx. €400,000) and CZK 2 billion (approx. €80.5 million), depending on the investment area.

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

Generally, foreign members/partners of joint ventures and strategic alliances are treated in the same way as “domestic” ones.

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

Generally, foreign members/partners of joint ventures and strategic alliances are treated in the same way as “domestic” ones. Therefore, there are no restrictions regarding distributions to, or repatriation of profits by, foreign partners/members.

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