

Joint Ventures 2026

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Luxembourg: Law and Practice & Trends and Developments

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Law and Practice

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1. Market Conditions

1.1 Geopolitical and Economic Factors

While it would be inaccurate to claim that inflation, interest rate fluctuations, geopolitical conflicts such as the war in Ukraine and those ongoing in the Middle East, the resurgence of US political unpredictability or shifting market demands have not impacted joint ventures (JVs) based in the Grand Duchy of Luxembourg, the jurisdiction remains appealing for the structuring of JVs. This is largely due to its political and economic stability, as well as its reliable, business-friendly and flexible legal framework.

In recent years, family offices have increasingly invested alongside commercial partners or institutional investors, such as private equity firms, through JVs. These JVs are frequently used to acquire assets located outside Luxembourg, with the parties involved often situated internationally. Luxembourg serves as a compromise jurisdiction and a “safe haven” for incorporating the holding structure that will ultimately own assets across the EU or even globally.

The trend in these segments clearly leans towards controlling and sharing both financial and corporate risks while ensuring the distribution of profits to co-investors. In uncertain times, JVs have proven to be a strategic option for parties to pool resources and expertise, leveraging their combined strengths and funds, and sharing risks, in order to pursue specific projects or opportunities.

1.2 Industry Trends and Emerging Technologies

In Luxembourg, several sectors have seen heightened JV activity, notably financial services, renewable energy, real estate, healthcare and life sciences, logistics and supply chain management, as well as technology and fintech. Luxembourg is a leader in both the finance and tech sectors, making it a hub for innovation in financial technology. The country’s strategic support for the space technology sector has also attracted numerous private space companies and tech firms.

This increase in JV activity can be attributed to the factors described in **1.1 Geopolitical and Economic**

Factors, particularly Luxembourg’s stable but very flexible legal environment.

2. JV Structure and Strategy

2.1 Typical JV Structures

JVs are not legally defined under Luxembourg laws. A JV is an arrangement between at least two parties reflecting their willingness to share a venture, for either joint commercial or joint investment purposes, by gathering their resources and sharing the risks entailed by the project.

While JVs in Luxembourg are not required to take any prescribed legal form, they are generally structured in one of two ways. The first is the corporate JV, which in most cases involves the incorporation of a separate JV vehicle by the participants (should an operational company not already have been incorporated by one participant in the JV). The second is the contractual JV, which is based on a single contractual arrangement whereby the participants define the scope of their collaboration and their respective rights and obligations.

Contractual JVs are recommended for short-term collaborations that are focused on a specific project. Under this structure, the participants remain liable for the JV’s liabilities, but do not have to bear the costs associated with the incorporation and day-to-day management of a common JV vehicle. Although not all aspects of Luxembourg law applicable to agreements can be detailed here, it is worth mentioning that contractual JVs are not subject to any compulsory formality. The JV agreement is structured as a private contract executed by the parties thereto. There is no requirement to have it enacted by a notary or for it to adopt any specific form, and there are no stamp or registration duties. The agreement may be written in English without requiring translation into any of Luxembourg’s administrative languages.

As to the content of the agreement, the principle of freedom of contract largely applies, provided that the terms do not conflict with public policy provisions. For any agreement governed by Luxembourg law, an overriding duty of good faith always applies, not only

to the performance of the provisions of the agreement itself, but also to pre-contractual discussions and any enforcement of the agreement that may be required.

While a corporate JV involves some additional costs and complexity, for instance in regard to compliance and governance, it offers limited liability to participants, an established governance structure, and capital-raising capabilities to support future business growth.

A successful JV requires a high level of collaboration and co-operation, which may explain the dominance of corporate JVs in Luxembourg.

The forms of JV vehicle most commonly adopted for corporate JVs in Luxembourg are:

- private limited liability company (*société à responsabilité limitée* – S.à r.l.);
- public limited liability company (*société anonyme* – SA);
- simplified joint stock company (*société par actions simplifiée* – SAS);
- partnership limited by shares (*société en commandite par actions* – SCA); and
- limited or special limited partnership (*société en commandite simple* – SCS, or *société en commandite spéciale* – SCSp).

For the SCA, SCS and SCSp, the JV participants are limited partners with limited liability and a general partner with unlimited liability.

2.2 Strategic Drivers for JV Structuring

In Luxembourg, the choice of the most appropriate legal form for the JV vehicle depends on several factors – notably, the possibility of the structure to provide for tailored decision-making arrangements within the JV, management preferences, capital requirements, profit and loss sharing, transfers of shares, and accounting and tax considerations.

If the JV is not established to conduct a regulated activity or to issue securities to the public, then the S.à r.l. is typically the preferred legal form as it offers greater flexibility and is not subject to extensive statutory requirements. As per the Law of 10 August 1915

on commercial companies, as amended (LCC), the S.à r.l. must have a share capital of at least EUR12,000, must be managed by a single manager or a board of managers, and may not make public offers of shares or debt securities.

Until May 2026, when incorporating an S.à r.l. in Luxembourg by means of a cash contribution, the minimum corporate share capital of EUR12,000 had to be transferred to a bank account opened in the name of the company before its incorporation. In some jurisdictions, financial institutions are unable to open bank accounts for future companies, which could result in a lengthier process.

The Luxembourg Parliament provided a solution to this problem by approving the Law of 18 May 2026 amending the LCC, which introduced the possibility to incorporate an S.à r.l. deferring the payment of the minimum share capital by up to 12 months as of the incorporation. The Law provides several exceptions:

- any portion of the share capital exceeding the minimum amount of EUR12,000 must be entirely paid at incorporation;
- the mechanism of deferred payment cannot be applied in the event of a contribution in kind;
- any portion of the share premium (*prime d'émission*) must be fully paid at the time of incorporation; and
- any shares issued in connection with an increase of the share capital following the incorporation must be fully paid up at the time of the capital increase.

Once the S.à r.l. is incorporated, the transfer of its shares to non-shareholders requires in principle the approval of the existing shareholders holding at least 75% of the issued share capital by way of a formal shareholder resolution – though the articles of association can provide for a lower threshold, provided it is not less than 50%. Given the importance attributed to the individual identity of the shareholders, it is not permissible to adopt such resolutions of approval at the inception of the JV without knowing the identity of the proposed future transferees. The JV agreement could, however, include a provision whereby all shareholders at the time of execution of the JV agreement commit to vote in favour of such a resolution. Voting

arrangements are, subject to certain conditions, valid under Luxembourg laws. It should also be noted that the identities of the shareholders of an S.à r.l. must be disclosed in the Trade and Companies Register (*Registre de Commerce et des Sociétés* – RCS).

While often overlooked in practice, the SAS, introduced in Luxembourg in 2016, presents a compelling alternative to the S.à r.l. It provides a high level of confidentiality to shareholders, with their identities and shareholdings remaining undisclosed in the RCS. Moreover, except for mandatory or public order provisions, it permits extensive customisation, particularly with respect to management structures, voting features (such as shares with multiple voting rights), and profit and loss sharing through the issuance of preference or ratchet shares.

The SCA, SCS and SCSp legal structures are typically favoured for investment-focused JVs (involving silent investment partners) where some participants prefer not to be as deeply involved in the management decisions as they would be in a different legal structure and, as such, prefer a limited partner position.

From a regulatory perspective, when a JV is established for investment purposes, it must be confirmed that the JV vehicle does not qualify as an alternative investment fund (AIF) subject to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (the “Alternative Investment Fund Managers Directive”, or AIFMD). If the JV vehicle has characteristics that place it within the scope of AIFs as defined in the AIFMD, the regulatory requirements applicable to the investment vehicle and its manager will be significantly different from those applicable to an unregulated JV vehicle.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

In Luxembourg, the main set of rules applicable to the JV vehicle is derived from Luxembourg civil law and the LCC. However, depending on the nature of the JV and the sectors in which it operates – especially if the JV vehicle qualifies as an investment fund – public

authorities may need to be involved, such as the Luxembourg Financial Supervisory Authority (*Commission de Surveillance du Secteur Financier* – CSSF) or the Luxembourg Insurance Commission (*Commissariat aux Assurances*).

If a JV is structured as an AIF in Luxembourg, it falls into the regulatory framework established by the Law of 12 July 2013 on alternative investment fund managers and the AIFMD. This requires, among other things, seeking authorisation from and registration with the CSSF, and adhering to, among other things, investment restrictions and transparency requirements.

According to the Law of 2 September 2011 regulating the access to the professions of craftsman, merchant, manufacturer and certain liberal professions, any economic activity carried out on a regular basis, subject to a few exceptions, requires a prior business permit from the Ministry of Economy (*Ministère de l'Économie*). In order to gain a permit, among other things, the relevant company must meet the following requirements:

- having an establishment in Luxembourg – a physical presence in Luxembourg that includes infrastructure suitable for the nature and scale of the concerned activity; and
- effective and permanent management of the business by an individual appointed as manager (*dirigeant*), who must, among other things:
 - (a) meet the requirements of good standing and professional qualifications;
 - (b) effectively manage the day-to-day operations of the relevant company by means of physical presence in the establishment of the relevant company;
 - (c) have a genuine connection with the relevant company (eg, as an owner or legal representative of the business); and
 - (d) be compliant with tax and social security obligations – the individual must not have evaded tax and social obligations (including withholding tax) in their previous or current business activities, whether these activities were carried out in their own name or through a company run by said individual.

3.2 Anti-Money Laundering Compliance

The key anti-money laundering (AML) legislation applicable in Luxembourg is the Law of 12 November 2004 on the fight against money laundering and terrorist financing (the “AML Law”), as last amended on 16 July 2026.

The AML Law implements the Fourth AML Directive (2015/849/EU) as amended by the Fifth AML Directive (2018/843/EU), and establishes the obligation for the entities and individuals listed in Article 2 of the AML Law to:

- implement customer due diligence measures (Know Your Customer – KYC);
- ensure an adequate internal organisation with respect to AML and countering the financing of terrorism; and
- maintain transactional records as well as report any suspicious transactions or activities to the Luxembourg Financial Intelligence Unit (*Cellule de Renseignement Financier*).

A further EU AML package, partly applicable from early 2025, was adopted on 31 May 2024 by the European Parliament. This package includes, among other things:

- Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “Sixth AML Directive”), to be transposed by EU member states into their national law by 10 July 2027;
- Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the “2024 AML Regulation”), directly applicable as of 10 July 2027; and
- Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024, establishing a new European AML authority, the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA), a decentralised EU agency that will progressively co-ordinate national

authorities to ensure the correct and consistent application of EU AML rules, which is expected to start direct supervision on 1 January 2028.

3.3 Sanctions, National Security and Foreign Investment Controls

In Luxembourg, restrictions on co-operation with JV partners arise from both EU regulations and national legislation. At the EU level, as an EU member state, Luxembourg is subject to the EU sanctions regulations. At the national level, the Law of 14 July 2023 on foreign direct investment (the “FDI Law”), implementing Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019, establishes a national screening mechanism with respect to foreign direct investments that could impact national security or public order. With some exceptions, the FDI Law provides that if an investment in a company established in Luxembourg meets the relevant criteria, the investor is required to notify the transaction to the Ministry of Economy in Luxembourg. Under the FDI Law, an investment is subject to such mandatory notification if:

- it is made by a foreign investor (ie, a natural person who is not a national of, or an entity that is not incorporated/established under the laws of, an EU member state or a country which is part of the EEA);
- it is made in a company established under Luxembourg law which operates in certain critical sectors – eg, energy, transportation, health, communication; and
- it enables the investor to exercise control over the Luxembourg company, eg, to have more than 25% of the voting rights of such company, to have the majority of the voting rights (also by means of an agreement between shareholders) of such company, to have the right to appoint or remove the majority of the board of managers of such company (while also being a shareholder of such company), etc.

Beyond sanctions and national security considerations, there are additional regulatory and legal frameworks that may impose restrictions on JVs, including sector-specific regulations, competition law and other compliance requirements.

3.4 Competition Law and Antitrust

In accordance with applicable EU provisions and in particular with Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the “Merger Regulation”), if the JV qualifies as a “concentration” (as defined in Article 3 of the Merger Regulation) and meets certain requirements provided in the Merger Regulation (eg, having a “Community dimension”, as defined in Article 2 of the Merger Regulation), it needs to be notified to the European Commission.

At national level, JVs in Luxembourg are currently not subject to a national ex ante merger control regime. Should the JVs fall outside the scope of the Merger Regulation, no mandatory obligation to notify the Luxembourg Competition Authority (*Autorité de concurrence*) currently exists. As per applicable Luxembourg laws, the Competition Authority can only perform an ex post intervention with the aim of ensuring the proper functioning of the EU internal market.

In August 2023, a draft bill of law (Projet de loi n. 8296) was presented in the Luxembourg Parliament in order to reshape its competition framework. The purpose of such bill of law was to introduce a national ex ante merger control regime entailing a mandatory notification to the Competition Authority once certain thresholds are reached. However, due to the opposing opinion of the Council of State (*Conseil d'État*), a Luxembourg institution responsible for providing an opinion on all bills of law and draft regulation, the bill of law was withdrawn in February 2026, and it will be replaced by a new bill of law, whose introduction is currently scheduled after summer 2026.

3.5 Listed Companies and Market Disclosure Rules

The mere fact that a listed company (ie, one whose securities are admitted to trading on a European regulated market, multilateral trading facility or organised trading facility) participates in a JV in Luxembourg will not lead to the applicability of specific rules in Luxembourg beyond those set out in the EU capital market directives and regulations applicable to listed companies in general.

3.6 Transparency and Ownership Disclosure

In accordance with the Law of 13 January 2019 establishing the register of beneficial owners, as amended, all legal entities established in Luxembourg and registered with the RCS are required to disclose and submit information about their ultimate beneficial owner(s) (UBO(s)) to the Register of Beneficial Owners (*Registre des bénéficiaires effectifs* – RBE).

Following the landmark judgment of the Court of Justice of the European Union of 22 November 2022 in the joined cases C-37/20 and C-601/20, the RBE has been amended so that access to the RBE is granted only to “professionals” (as defined in Article 2 of the AML Law), for the purposes of fulfilling their AML/KYC obligations, and to entities registered with the RCS with respect to their own information.

Under Luxembourg laws, a UBO is any natural person (or, more rarely, a group of natural persons, as described below) who ultimately (directly or indirectly) owns or controls a legal entity (including by means of bearer shares) by a percentage of more than 25% of the shares, voting rights or an interest in the capital, or by other means. If, after all possible means, no UBO can be identified (and there are no grounds for suspicion), the natural person holding the position of principal executive officer of a legal entity is considered the UBO.

In less common cases, a group of natural persons may also be collectively deemed UBOs of an entity if they together control at least 25% of this entity, such control being considered as “by other means”. Control “by other means” exists when (i) members of the same family together holding more than 25% of the voting rights of an entity act in concert at general meetings or (ii) shareholders enter into a shareholders’ agreement whereby they shall act in concert at general meetings.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

As addressed elsewhere in this article, several recent decisions and statutory developments have shaped

the Luxembourg regulations in relation to JVs, including:

- the issuance of an order on 29 May 2026 by the *tribunal d'arrondissement de Luxembourg* referring several questions to the Court of Justice of the European Union for a preliminary ruling on, among other things, the interpretation of the Sixth AML Directive in connection with the access to the RBE (see **3.6 Transparency and Ownership Disclosure**);
- the envisaged introduction of a new bill of law with respect to the introduction of an ex ante merger control regime in Luxembourg, following the withdrawal in February 2026 of bill of law n. 8296 (see **3.4 Competition Law and Antitrust**);
- the approval of the Law of 18 May 2026, which introduced the possibility to incorporate an S.à r.l. deferring the payment of the minimum share capital of EUR12,000 (see **2.2 Strategic Drivers for JV Structuring**);
- the commencement of the applicability of the ESG Ratings Regulation, enhancing the transparency and reliability of ESG Ratings (see **8.3 ESG Considerations in JVs**, subsection “The Main ESG Regulations in Luxembourg”); and
- the approval of the Law of 19 December 2025, transposing in Luxembourg Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (see **8.3 ESG Considerations in JVs**, subsection “Gender Parity on the Boards of Listed Companies”).

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

Setting up a JV entails a multi-phase process for the participants. The negotiating phase of a JV typically involves:

- the completion of a due diligence questionnaire focusing not only on the JV itself, its rationale or commercial goals, but also on the JV participants;
- the execution of a mutual non-disclosure agreement (NDA);

- the execution of a head of terms document, which is crucial as it sets forth the main commercial and legal terms the participants have agreed upon during the negotiation; and
- in most cases, the execution of an exclusivity agreement prohibiting the parties from entering into negotiation with others for a restricted period of time.

At a pre-JV agreement stage, the following provisions are typically contemplated and settled in the terms sheet:

- the purpose and scope of the JV;
- the financial contributions of each participant and further funding opportunities;
- the decision-making structure;
- the management structure;
- the transferability of shares and any restriction rights in relation thereto;
- profit sharing arrangements;
- contemplated dispute resolution mechanisms;
- exit mechanisms; and
- termination of the JV.

5.2 Disclosure Obligations

Information about the JV will be disclosed between the participants to the JV when the heads of terms are signed. For regulatory requirements regarding disclosure of the JV, please see **3.3 Sanctions, National Security and Foreign Investment Controls** and **3.4 Competition Law and Antitrust**.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

Conditions precedent provided for in JV agreements are often linked to:

- regulatory approvals (eg, FDI approval);
- achievement of specific milestone or KPI by a party to the JV agreement; or
- securing funding and achievement of prior transactions (eg, carve-out of certain assets or activities).

Article 1181 of the Luxembourg Civil Code provides that an obligation under a condition precedent is an obligation that depends either on a future and uncertain event or on an event that has already occurred

but is unknown to the parties. Attention needs to be paid to the drafting of any condition precedent. If the fulfilment of a condition precedent depends solely on the will of one of the parties to the JV agreement, then the underlying obligation is deemed null and void by law (*condition potestative*).

Failure to fulfil the conditions precedent renders the agreement ineffective, while fulfilment of the conditions precedent triggers its effectiveness. Under Luxembourg civil law, this effectiveness is retroactive to the date on which the commitment was made, although this retroactive effect may be waived by the parties.

Depending on the type of JV (investment-focused or operational), material adverse change and force majeure events may also be included as conditions precedent to the entry into force of JV agreements, although they are less common in JV agreements.

Material adverse change clauses are not specifically regulated and may be freely defined by the parties to the JV agreement. With respect to force majeure, Article 1148 of the Luxembourg Civil Code provides that “No damages shall be due when, as the result of force majeure or accident, the debtor has been prevented from delivering or doing what he has bound himself to deliver or to do, or has done what was prohibited”.

The parties to a JV agreement remain free, however, to agree on alternative rules applying to force majeure events and to contractually determine how the force majeure clause shall apply (ie, the parties may narrow down the effect of force majeure effects to specific events or may even completely waive the application of force majeure events).

In the absence of a specific definition of a force majeure event, both legal doctrine and case law establish that three cumulative conditions must be satisfied for an event to be considered as force majeure:

- the event must be external to the debtor, meaning that it must have been beyond their control;
- it must have been unforeseeable at the time the agreement was executed; and

- it must be insurmountable (*irrésistible*), meaning that it must make the performance of the contractual obligation impossible, rather than merely more difficult or burdensome.

5.4 Legal Formation and Capital Requirements

Setting up a JV under Luxembourg law requires careful planning, and several steps must be complied with, as set out below:

- Drafting the JV agreement – This crucial document will comprehensively outline the rights and obligations of the parties to the JV.
- Drafting the articles of association (or limited partnership agreement) of the JV vehicle – Some parties prefer not to mirror all the provisions of the JV agreement in the articles of association. This is typically negotiated on a case-by-case basis.
- Incorporation of the JV vehicle in the chosen legal form – Generally, the incorporation of a company must be enacted before a Luxembourg notary, except for SCS and SCSp structures, which can also be incorporated under private seal.
- Registration of the newly incorporated JV vehicle – Articles of association are entirely publicly available, while limited partnership agreements are only partially published.
- Complying with any regulatory requirements – Depending on the nature of the JV’s activities, it may be necessary to comply with specific regulatory requirements. These could include merger control regulations, FDI rules, or obtaining relevant business permits, as applicable.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

Regardless of the form of the JV vehicle, the terms the parties agreed upon for the JV will be set out in detail in the JV agreement. In Luxembourg, JV participants can agree that the JV agreement will not be subject to Luxembourg law if the provisions of the chosen foreign law do not contravene public order provisions under Luxembourg law. As is often the case, parties to a JV may be based in different jurisdictions and will prefer to apply a law that is more familiar to them.

The main terms that a JV agreement would be expected to address include:

- scope of the JV, roles and responsibilities of each party;
- share capital modification and related anti-dilution aspects;
- funding obligations of the participants;
- management structure;
- reserved matters;
- deadlocks and dispute resolution mechanism(s);
- restrictions on share transfers, restriction to ensure the maintenance of the share capital and the withdrawal of certain of its shareholders under certain circumstances (drag-along/tag-along clauses);
- term of the JV;
- termination possibilities;
- plans for future change;
- exit provisions;
- put and/or call options;
- allocation of profits;
- distribution of assets;
- intellectual property rights; and
- confidentiality and non-disclosure obligations.

6.2 Governance and Decision-Making

Structuring the decision-making process within a JV is undeniably one of the most critical aspects to be discussed and carefully considered during its establishment. While the LCC provides a default framework, certain contractual mechanisms can play a vital role in shaping and refining the decision-making process within the JV, ensuring it aligns with the specific needs and objectives of the parties involved.

The following clauses can be inserted in the JV agreement and transposed in the articles of association, where necessary or desirable:

- clauses relating to the allocation of the directors' mandates – such clauses will enable the JV partners to have a certain degree of representation at the management level by ensuring that the former have one or more of their representatives on the board of directors or managers of the JV vehicle;
- clauses allowing different categories of board members to be created – eg, classes A and B, with different powers to act on behalf of the JV vehicle;

- a clause allowing the adjustment of the quorum and majority rules in decision-making bodies, enabling stricter rules in this respect than the ones provided for by the LCC (except for public order provisions);
- observer appointment clauses – in some cases, the JV partners will prefer to have an observer appointed instead of a director with voting prerogatives (an observer may receive all the documentation related to a particular meeting of the board and will be able to attend any board meetings); and
- specific consent clauses – in a classic JV vehicle, decisions by the board on strategic matters can require the approval of all, a majority or a supermajority of the partners of the JV (so-called “reserved matters”).

6.3 Funding

The funding of JV vehicles generally involves a blend of equity and debt, depending on the financial resources of the JV participants. The JV participants will make contributions in cash or in kind directly to the JV share capital or grant shareholders loans to the JV vehicle.

The JV agreement can provide for a future funding obligation to support the JV vehicle, notably with respect to the capital requirements, working capital, ongoing operations or financing of a project. Adjustment clauses addressing default by one partner can help resolve situations where such funding obligations cannot be satisfied by a partner.

Equity funding can lead to a change in the ownership of the JV vehicle and could effectively trigger a dilutive effect on the shareholding of existing participants. Several mechanisms, such as preferential subscription rights, anti-dilution clauses and issuance of instruments such as warrants and options, do exist under Luxembourg law to ensure that a JV partner's shareholding is not diluted. Another equity funding option is a contribution to the capital Account 115 of the Luxembourg standard chart of accounts (*apport en capitaux propres non rémunérés par des titres*) (the so-called “Account 115”) of the JV vehicle without issuing new shares. This approach is widely used and allows for quicker (and generally more cost-efficient) capital injections.

6.4 Deadlocks

As mentioned in 6.1 **Drafting and Structure of the Agreement**, one of the most essential issues to be addressed in a JV agreement is the resolution of a deadlock situation.

Provisions relating to confiscation or compulsory purchase of shares are generally valid, as long as they do not deprive shareholders of their shares without payment or deprive them of the right to request the dissolution by court of the JV for cause.

Furthermore, several contractual mechanisms can be contemplated to prevent a deadlock, which can be set forth either in the JV agreement, in the articles of association or in both:

- escalation clauses to senior representatives of the involved parties;
- mediation and negotiation clauses;
- dispute resolution mechanisms (international arbitration or expert determination); and
- exit strategies – put and call options in favour of the dissenting partner, exclusions mechanics provided for in the articles of association of the JV vehicle.

6.5 Other Documentation

The set-up of a JV usually further requires the execution of additional documents, each having a specific role to play with respect to the success of the JV, notably:

- NDAs;
- IP licences covering the use of the IP rights held by one of the partners to the JV by the other;
- agreements to transfer assets to the JV vehicle;
- asset management and service agreements;
- business plan; and
- policies (eg, KYC, conflicts of interest).

6.6 Rights and Obligations of JV Partners

Depending on the corporate form of the JV vehicle, the general rule for profit sharing between the JV partners is that any profit distributed to the JV partners shall be allocated pro rata to their participation in the JV agreement. The same rules apply for loss sharing.

However, Luxembourg law allows tailored shareholding and thus tailored profit and loss sharing mechanics (eg, by multiple classes of shares with different economic rights granted to each class). In terms of distributions, this specific shareholding makes it possible to grant preferential rights. These preferential rights may be structured as a distribution waterfall or on a case-by-case basis, for example by reference to specific internal rates of return achieved.

Nevertheless, Article 1855 of the Luxembourg Civil Code sets a limit to the parties' freedom as it provides that "an agreement giving one of the partners all the profits is null and void" (*clause léonine*). This prohibition applies to any JV agreement as well as to the articles of association/partnership agreement of a JV vehicle (this legal provision only invalidates the allocation of all profits to a party but does not prevent a significantly disproportionate allocation). Identically to profit sharing, contractual provisions may also provide for specific allocation of losses, though again within the limits of the above legal provision.

The access to information by the JV partners depends on the form the JV takes, which may provide for the communication of broad information regarding the JV and its business to almost no communication. As a matter of fact, if the JV is implemented under the form of a sole JV agreement, then the terms and conditions of said JV agreement will usually specify the information rights of the JV parties. If the JV partners establish a JV entity in the form of a Luxembourg company, then the JV partners, as stakeholders of the entity, shall (for most Luxembourg corporate forms) have access by law at least once a year to a management report prepared by the management body of the entity used as JV vehicle and the annual financial statements of the JV entity.

Finally, when it comes to non-compete, without particular contractual commitment, there is no general rule for non-compete obligations under Luxembourg law between JV partners.

6.7 Minority Protection and Control Rights

There are many ways for minority JV partners to shape control rights to protect their interest, the most common being:

- to ensure access to information through the right to appoint a member to the corporate bodies of the JV vehicle;
- to transfer restriction clauses (such as lock-up clauses, right of approval in the case of a transfer, right of first offer in the case of transfers);
- anti-dilution rights; and
- veto rights on important matters requiring the prior approval of a minority party.

All these rights are usually provided for in the JV agreement and mirrored in the articles of association/partnership agreement of the JV vehicle (mainly to ensure enforceability towards third parties).

6.8 Applicable Law and Dispute Resolution in International JVs

When selecting the substantial and procedural law governing a JV agreement in an international context, several critical factors must be taken into account to ensure the agreement is robust, enforceable, and conducive to the objectives of the JV. These include, among others:

- jurisdictional compatibility – ensuring that the chosen law is recognised and enforceable in all relevant countries involved;
- neutrality – selecting a neutral, internationally respected jurisdiction to avoid bias; and
- contractual flexibility – choosing a law that allows tailored agreements and effective dispute resolution (arbitration/litigation).

Though a small country, Luxembourg is extensively focusing on international JVs and is attractive to foreign investors because of its stable and predictable legal system. However, JV agreements may also be subject to foreign law and jurisdiction.

When parties to a JV fail to agree on the applicable procedural law, there may be confusion about which country's procedural rules will apply. This can lead to disputes over jurisdiction (forum shopping), the admissibility of evidence and the conduct of proceedings, causing significant delays in resolving conflicts.

In Luxembourg, there is no general statutory obligation for parties to attempt alternative dispute reso-

lution (ADR) such as mediation or arbitration before initiating court proceedings in civil or commercial matters. Parties are generally free to bring their disputes directly before the courts unless they have contractually agreed to an ADR process (such as a mediation or arbitration clause).

The recognition of a foreign judgment in Luxembourg may require an exequatur procedure in accordance with Article 678 of the Luxembourg New Civil Procedure Code. However, Luxembourg, being an EU member state, also applies the EU regulations in this domain, such as:

- Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations; and
- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Furthermore, Luxembourg is party to several international treaties concerning the choice of forum and the recognition of foreign judgments, such as:

- the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed in Lugano on 30 October 2007 (Lugano Convention);
- the Hague Convention of 30 June 2005 on Choice of Court Agreements; and
- the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

7. The JV Board

7.1 Board Structure

Please see **6.2 Governance and Decision-Making** for an overview of governance organisation and, notably, the possibility of the shareholders of the JV vehicle being represented at the board by proposing candidate(s) to be appointed as board member(s) of the JV vehicle.

With respect to weighted voting rights, even though the current Luxembourg legal landscape tends to recognise them as a means to ensure board control, they are not commonly used in Luxembourg. The Luxembourg doctrine strongly upholds the principle of “one person, one vote”.

7.2 Duties and Functions of JV Boards and Directors

The management body of a JV vehicle is often either the board of managers for an S.à r.l., the board of directors for a one-tier SA, the management board for a two-tier SA, or the president for an SAS (and any director, as the case may be). This management body has the broadest powers to take any actions necessary or useful to realise the corporate object of the JV vehicle, except those expressly reserved by the LCC or the articles of association for the shareholders of the JV vehicles.

The members of the management body of the JV vehicle, which can also be legal entities, must:

- act with loyalty and in good faith for the benefit and in the corporate interests of the JV vehicle, exercising their duties with as much diligence and care as a reasonable person acting in the same circumstances;
- represent the JV vehicle in dealings with third parties;
- avoid any conflicts of interest; and
- exercise their mandate in compliance with, among other things, the LCC and the articles of association of the JV vehicle.

It is possible to include an explicit non-compete obligation of any member of the management body. Should this member be a natural person employed by the JV vehicle, this obligation will need to be compensated financially and be limited in duration and geographic scope in order not to be considered void under applicable laws.

In terms of delegation of functions, the management body of the JV is authorised to delegate certain functions to committees or subcommittees, depending on the legal form chosen for the JV vehicle. When committees or subcommittees are created, it is rec-

ommended that each of them adopts a policy, rules of procedure or a common charter relating to their functioning and scope of intervention.

The management body can also delegate the day-to-day management of the JV vehicle and the power to represent it in dealings with third parties to one or more persons who are not necessarily members of the management body. These individuals are referred to as day-to-day managers (*délégué à la gestion journalière*). Nonetheless, the liability for these delegated functions remains with the management body of the JV vehicle, which shall supervise the actions of those in charge of such delegated functions.

7.3 Conflicts of Interest

Pursuant to the LCC, a member of the management body of the JV vehicle having, directly or indirectly, an interest of a financial nature conflicting with those of the JV vehicle, in relation to an operation within the competence of such management body, must disclose such conflict of interest to the other members of the management body and must not participate in the deliberation of or vote on the conflicted matter. Any conflict of interest must be recorded in the minutes or resolutions of the management body's meeting, and a special report in this respect will need to be made to the shareholders of the JV vehicle at the next general meeting of shareholders before any resolution is put to the vote.

As contemplated in 6.2 **Governance and Decision-Making**, it is common that a director/manager of a JV participant is appointed as a director/manager of the JV vehicle, as long as they perform their duties in the best interests of the JV vehicle and not in the best interests of the JV participant. According to case law, the mere fact that an individual holds an executive role at a JV participant does not, in itself, establish a conflicting financial interest with the JV vehicle.

8. IP and ESG

8.1 Ownership and Use of IP

From an intellectual property (IP) perspective, when setting up a JV corporate entity, three main IP issues need to be considered, as described below.

Corporate Entity

Firstly, the ownership of pre-existing IP that each party brings into the JV should be defined, as well as the terms on which the JV will be allowed to use this IP. Secondly, it is important to determine who will own the IP developed during the course of the JV and who will have the rights to use, license and commercialise the new IP both during the life of the JV and after its termination. Thirdly, clear terms for the protection of confidential information and trade secrets exchanged between the JV partners are to be established. Finally, the conditions under which the JV can license its IP to third parties, including revenue-sharing arrangements and control over licensing decisions, are to be defined, as well as IP valuation methods, especially in order to assess how IP valuation impacts equity shares in the JV.

Contractual Collaboration

When engaging in contractual collaborations, several key IP issues should be carefully considered to ensure that the rights, obligations and expectations of all parties are clear and protected. In particular, ownership of pre-existing and newly created IP during the collaboration is to be clearly defined, just as questions of revenue sharing and royalties are to be answered. Liability issues, if the collaboration results in the infringement of third-party IP rights, are to be addressed, along with what happens to the IP after the collaboration ends, including rights to continued use, licensing, and the return or destruction of confidential materials.

JV Agreement

IP issues are usually comprehensively addressed in JV agreements. They cover questions regarding the ownership of pre-existing IP and which usage rights are licensed to the JV and to the other party, the ownership of newly created IP and how to commercialise and exploit it, and what happens to the IP if the collaboration ends.

Moreover, in complex JVs, dispute resolution mechanisms should be included to handle any conflicts over IP ownership, usage or infringement. Strict NDAs ensure that all IP and proprietary information exchanged remains confidential, helping to build and foster trust within the JV.

8.2 Licensing v Assignment of IP Rights

When deciding whether to license or assign IP rights, it is important to conduct a thorough evaluation of the IP owner's long-term objectives, financial requirements and strategic interests.

Licensing IP rights is ideal when the IP owner wants to retain control over the IP and continue benefiting from the IP, and is interested in long-term revenue streams. Assigning IP rights should be considered when the IP owner seeks immediate capital or wants to transfer the responsibility of managing and exploiting the IP to another party. The assignor, however, loses all control and future revenue potential from the IP.

8.3 ESG Considerations in JVs

ESG Regulations and Developments Affecting JVs

Even if a JV is not classified as a fund, environmental, social and governance (ESG) factors still warrant careful attention. Depending on the business activity of the JV and its shareholders, the structure may be subject to varying levels of ESG obligations and commitments, and the JV contract will, at a minimum, stipulate certain obligations in this respect (mostly to comply with the internal policies of certain shareholders).

ESG issues may also have a greater or lesser impact on customer/supplier relations, on internal governance procedures and risk management (including sustainability risks), depending on the JV's field of activity and where this business is operated. In fact, ESG-focused evaluation criteria are increasingly being used in management incentive packages, further emphasising their growing importance. In summary, JV partners are strongly advised to adopt a comprehensive risk-based approach when establishing and operating a new JV. This entails ensuring appropriate ESG compliance and implementing a robust compliance management system that encompasses the JV, its employees and its shareholders.

If the JV vehicle qualifies as a fund, ESG topics are a must. Indeed, since the entry into force of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR), the number of ESG and impact funds has been ris-

ing. Luxembourg currently stands as the number one green financial centre in the EU. As a result of pressure from both investors and legislators, it appears certain that sustainable finance products will become a major trend in the investment fund industry in general.

Revision of the EU Disclosure Regulation

In 2022, the European Commission announced an assessment of the SFDR. The assessment included various instruments, including two consultations (one public and one targeted), the review of several studies and an impact assessment. On the basis of the data collected, in November 2025 the European Commission issued a proposal for a regulation of the European Parliament and of the Council amending the SFDR Regulation, Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) and repealing Commission Delegated Regulation (EU) 2022/1288. European institutions are currently amending the proposal of the European Commission, and an agreement on the final text is expected to be reached by the end of 2026 or the first part of 2027. The purpose of the amendment proposal is to provide less burdensome disclosure obligations and to provide more clear categories of product.

It should be noted that Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) no 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EC, as regards corporate sustainability reporting (CSRD) is still to be implemented in Luxembourg, with the bill of law (Projet de loi n. 8370) still to be approved by the Luxembourg Parliament.

ESMA Guidelines on ESG Terms in Fund Names

On 14 May 2024, the European Securities and Markets Authority (ESMA) published its final report on the Guidelines for the use of ESG or sustainability-related terms in fund names. Accordingly, the use of ESG or sustainability-related terms in fund names is subject to certain conditions. Fund names incorporating ESG or sustainability-related terms are permissible only if at least 80% of the fund's investments consider ESG criteria or pursue sustainability objectives. In addition, it is assumed that the exclusion criteria of the Paris-aligned Benchmarks are taken into account and that a

significant proportion is invested in sustainable investments within the meaning of Article 2 (17) of the SFDR in order to reflect the expectations of investors based on the fund name. The ESMA Guidelines also address, for the first time, the use of transition-related terms and the combination of different terms.

Funds that are subject to supervision by the CSSF, regardless of whether they qualify as an Article 6, 8 or 9 product, must use fund denominations that are consistent with the respective investment objective and investment policy of the fund and with the ESMA Guidelines. The CSSF also expects that future developments on this topic will also be implemented at the European level.

EU Taxonomy Regulation

Since 1 January 2023, non-financial companies have had to provide evidence of the rate of conformity of their business activities with the environmental objectives of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (the "Taxonomy Regulation") as part of their reporting. However, this only applies to the environmental objectives of climate protection and adaptation to climate change. From 1 January 2024, the reporting obligation also applies to financial companies when it comes to these two environmental objectives. With regard to the other environmental objectives, however, non-financial companies fall under the reporting requirement as of 1 January 2025 and financial companies as of 1 January 2026. The implementation of the EU taxonomy for sustainable activities is to be facilitated by a communication on the legal interpretation and implementation of the technical screening criteria.

The Main ESG Regulations in Luxembourg

The ESG regulatory framework in Luxembourg is dominated by directly applicable as well as transposed European legislation. The main references in Luxembourg are the SFDR, the SFDR Regulatory Technical Standards (SFDR RTS) and the Taxonomy Regulation. This is in addition to specific guidelines provided by the CSSF.

The CSSF's current priorities with regard to ESG are essentially focused on supporting a transparent and coherent transition of the financial sector towards long-term sustainability objectives, including, among other things:

- supervision of reporting made by credit institutions and investment firms in accordance with SFDR;
- review of risk integration by credit institutions in relation to the management of risks connected to nature;
- monitoring of investment fund managers in relation to the integration of sustainability risks and compliance with the disclosure obligations provided under the SFDR and the Taxonomy Regulation; and
- support for issuers that intend to voluntarily publish their sustainability statements.

As of 2 July 2026, Regulation (EU) 2024/3005 of the European Parliament and of the Council of 27 November 2024 on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities, and amending Regulations (EU) 2019/2088 and (EU) 2023/2859 (the "ESG Ratings Regulation") became applicable. The purpose of this Regulation is to enhance the transparency and reliability of ESG ratings in the market. Pursuant to the Regulation, any provider of ESG ratings based in the EU shall:

- be authorised by ESMA;
- ensure the avoidance of conflicts of interest; and
- disclose the methodology used.

Gender Parity on the Boards of Listed Companies

The Law of 19 December 2025 transposed in Luxembourg Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.

The law aims at improving the balance of genders in the management boards of listed companies, with specific thresholds of balance provided on the basis of the number of board members.

The law is applicable only to companies that have their registered office in Luxembourg and have their shares listed on a regulated market in the EU. The law

expressly excludes from its scope small and medium-sized enterprises that meet certain employee and balance sheet thresholds.

In particular, it provides the obligation for companies to select board candidates in a fair and transparent manner. Companies will need to report annually to the CSSF the composition of the boards, unless those companies are able to explain the reasons why they are not compliant.

9. Exit Strategies and Termination

9.1 Termination of a JV

JV arrangements can come to an end in several ways, which should be outlined in the JV agreement. The most common include:

- a deadlock situation that has not been resolved;
- at the expiry of a determined period, unless agreed otherwise between the participants to the JV;
- upon termination of the object of the JV – some JVs are only set up for the completion of a specific purpose, and once completed, the JV may be terminated;
- by mutual decision of the participants to the JV;
- by any participant to the JV on contractual grounds thoroughly defined in the JV agreement – eg, breaches of certain provisions of the JV agreement, insolvency of a participant, change of control, violation of an IP licence agreement, failure to meet a funding obligation following an unsuccessful cure period; and
- poor performance of the JV.

A JV vehicle can also be dissolved by the Luxembourg courts in accordance with the LCC.

Contemplating the consequences of the termination of the JV is crucial. The main matters that should be dealt with in this respect concern:

- settlement of liabilities;
- allocation of assets;
- employment issues;
- IP issues;
- survival clauses from the JV agreements; and

- de-registration from the RCS if the JV is a registered entity.

The JV agreement can also stipulate that the termination of the JV does not trigger the termination of the JV vehicle. As a separate legal entity, transfer of shares or liquidation of the JV vehicle should also be contemplated.

9.2 Asset Redistribution and Transfers

When contemplating the transfer of the assets owned by the JV to the JV participants, whether they were originally contributed to the JV vehicle by the JV participants or generated directly by the JV, the following main issues should be addressed:

- Asset valuation – The valuation of the assets to be transferred is generally determined in accordance with the calculation method set out in the JV agreement.
- Contractual restrictions over the assets – Depending on the nature of the assets, it must be ensured that any asset to be transferred is free from any encumbrances or third-party rights that could prevent its transfer (eg, mortgages, pledges over shares, limitation to the transferability of IP rights).
- Nature of the assets – Fulfilment of legal registration requirements may be triggered by the transfer of certain assets (eg, IP rights, real estate).
- Corporate interest – The management body of the JV vehicle must ensure that the transfer of assets contemplated is in the best interests of the JV, either from a corporate perspective or from a business perspective, when assessing the impact of such transfer on the *modus operandi* of the JV. The decision to transfer assets of the JV to its participants may require the prior approval of an *ad hoc* committee or the shareholders of the JV vehicle.

The transfer of assets from the JV to its participants is a scenario that is worth contemplating in advance and including directly in the JV agreement.

9.3 Exit Strategy

There are no specific Luxembourg corporate law provisions regulating share transfers, except that the shares of an S.à r.l. may be transferred *inter vivos* to non-shareholders only with the favourable vote of shareholders representing at least 75% of the share capital (which can be decreased to 50%, see 2.2 **Strategic Drivers for JV Structuring**).

The exit strategy can be freely determined by the JV agreement and typically includes exit through a sale to a third party or a winding-up (or any similar corporate transaction, such as a merger).

A mechanism frequently applied is exit via the redemption of entire classes of shares at a value determined in the JV agreement (and mirrored in the articles of association).

Trends and Developments

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Introduction

The Grand Duchy of Luxembourg is widely considered to be an attractive jurisdiction to establish a joint venture (JV) for several reasons.

Firstly, from a political and economic perspective, Luxembourg is generally placed among the most stable countries in the world, as demonstrated by its long-standing AAA credit ratings.

Secondly, from a cultural perspective, Luxembourg is characterised by a strongly international environment, which offers numerous advantages to those seeking to do business in the Grand Duchy. For example, the administrative languages of Luxembourg are Luxembourgish, French and German, with English being widely used for transaction and corporate documents.

Thirdly, from a legal perspective, Luxembourg law provides flexibilities that have proved to be useful when parties seek to negotiate the allocation of rights and obligations in their JV.

Once the potential parties of a JV have decided to establish the JV in Luxembourg, it is recommended to involve Luxembourg counsel during the early stages of negotiation, at which point the parties outline the main aspects of the JV vehicle, including the purpose, the target(s) and a tax-efficient exit strategy. The involvement of a Luxembourg lawyer is recommended in order to tackle the main topics of discussion at an early stage, resulting in smoother implementation of the JV.

This article aims to provide a short roadmap highlighting the main points to consider during the negotiation of a JV:

- the shareholding of the JV vehicle;
- the management of the JV vehicle;
- the governing law of the JV agreement;
- the relationship between the JV agreement and the articles of association of the JV vehicle;
- the potential qualification of the JV vehicle as an alternative investment fund; and
- the foreign investment control mechanism applicable in Luxembourg.

It should be noted that any consideration of these aspects will differ depending on the type of company or partnership selected. This article focuses on private limited liability companies in Luxembourg (*sociétés à responsabilité limitée* – S.à r.l.), which is one of the most commonly used types of entity for JV vehicles, due to the flexibility of its rules.

However, there are several other suitable types of company forms that could be used for a JV vehicle, such as public limited liability companies (*sociétés anonymes*), simplified stock companies (*sociétés par actions simplifiées*) or common/special limited partnerships (*sociétés en commandite simple/spéciale*).

The Shareholding of the JV Vehicle

First and foremost, it is recommended that the parties agree on the characteristics of the investments they plan to make into the JV. This amounts to more than the simple sum of the investments and includes questions such as the proportion of debt and equity to be invested, the number of shares each shareholder will

hold, how these shares confer voting rights and influence within the JV, and what each party will contribute to the venture (eg, cash or contribution in kind). These negotiations are crucial, as they define the balance of power between the shareholders. Luxembourg law offers various possibilities for structuring shareholding arrangements effectively. The focus of this section will be on key potential scenarios concerning (i) the types of financial instruments used; (ii) the nature of the contributions made by the parties; and (iii) how these contributions may be allocated.

Types of instruments

The share capital of an S.à r.l. is generally divided into shares (*parts sociales*), which may or may not have a nominal value. Holding shares in a S.à r.l. entitles the shareholders to economic rights (such as preferred distributions, dividends and liquidation proceeds) as well as non-economic rights (such as voting rights as well as observer and board member appointment rights).

As a general rule, these rights are proportional to the number of shares held. However, the balance between shareholders is not always straightforward and more complex structures are often requested to achieve the desired result. A notable example is the additional protections that a minority shareholder may request in order to better safeguard its interests.

Luxembourg law offers several options to create tailored shareholding structures. One option is the use of shares with different share classes (eg, class A and class B shares), with different rights granted to each class. This structure offers flexibility in several aspects, such as distributions and voting rights.

In terms of distributions, this specific shareholding structure offers the possibility of preferential rights in the case of distributions, which may be structured as a waterfall or on a case-by-case basis, for example linked to specific internal rates of return achieved.

In terms of voting rights, this structure may be used together with a list of important matters for the management of the JV vehicle – so-called “reserved matters” – in order to submit the approval of such matters to specific majorities or the approval of one class

of shares, regardless of the total number of shares held. For example, the JV agreement may provide that the majority necessary for the approval of a merger requires the inclusion of the favourable vote of shareholders representing the majority, or even totality, of the class of shares held by the minority shareholder(s).

Beyond shares, Luxembourg law further offers the possibility of issuing beneficiary or profit units (*parts bénéficiaires*). Beneficiary units are instruments that can be issued by the company but do not form part of its share capital. The features of this instrument are therefore highly flexible and can be freely defined in the articles of association of the JV company.

The allocation: share capital, share premium, Account 115

Once the JV partners have decided the types of equity instruments to use, the parties will need to decide how to allocate their values. If the shares are subscribed at their nominal value, the contributed value will be fully recorded as the share capital of the JV vehicle.

If one or more shareholders subscribe to shares at a price above their nominal value, the share premium must be recorded in one of the JV vehicle’s accounts. If new shares are issued, such additional value will be booked to the company’s share premium account. In Luxembourg, however, shareholders have the flexibility to allocate such additional contributions to the capital reserve of the company, known as Account 115 of the Luxembourg standard chart of accounts (*apport en capitaux propres non rémunérés par des titres*). Contributions to Account 115 can be made quickly as they do not require the involvement of a notary.

The contributions

Once the structure of the share capital of the JV vehicle is determined, the parties need to consider the form of the contributions to the JV vehicle. Generally, contributions to an S.à r.l. are made in cash or in kind (eg, by contributing receivables or shares in other companies).

Since May 2026, under Luxembourg law it has been possible to incorporate an S.à r.l. by deferring the payment in cash of the minimum share capital up to

12 months as of the incorporation. The law provides several exceptions to this possibility:

- any portion of the share capital exceeding the minimum amount of EUR12,000 must be entirely paid at incorporation;
- the mechanism of deferred payment cannot be applied in the event of a contribution in kind;
- any portion of the share premium (*prime d'émission*) must be fully paid at the time of incorporation; and
- any shares issued in connection with an increase of the share capital following the incorporation must be fully paid up at the time of the capital increase.

The Management of the JV Vehicle

Once the basis of the shareholding structure of the JV company has been established, the parties often negotiate and agree upon its management structure. Under Luxembourg law, the management of an S.à r.l. is generally entrusted to a board of managers, since a sole manager is unusual for JVs. The board of managers considers and approves the actions of the company in accordance with, among other things, its corporate object and its corporate interest.

The appointment of the managers

The members of the board of managers are appointed by the shareholders of the company, either in connection with the incorporation of the JV before a Luxembourg notary, at a subsequent general meeting of shareholders, or by means of written shareholder resolutions.

Under Luxembourg law, the individual shareholders only have a nomination right, not an appointment right. This means that JV parties cannot agree in the JV agreement that a single shareholder can directly appoint, without a shareholders' resolution, one or more manager(s). In practice, the JV parties grant the shareholders the right to nominate a specified number of future managers in the JV agreement. This is coupled with an undertaking in the JV agreement from all other shareholders to appoint the nominated managers by way of a shareholder resolution. For shareholders that do not have the right to nominate a manager, under Luxembourg law it is also possible and common to appoint an "observer" to the meetings of the

board of managers. An observer is not a manager and therefore does not have voting rights. However, an observer usually has the right to receive the relevant documentation presented in the board meetings and to attend these meetings.

The majorities

Once the principles governing the composition of the board of managers are agreed, the JV parties normally negotiate the board of managers' quorum and majorities for approvals. As a general rule, the board of managers can validly meet when at least half of the members are present or represented, while board resolutions can be approved with the favourable vote of at least half of the managers attending the meeting.

Luxembourg law offers some flexibility in this respect. A very common structure used in the context of a JV agreement is the organisation of the managers into different classes (eg, class A and class B managers), which is not automatically connected to the potential share-class structure of the shareholding.

Organising the management into classes allows a certain amount of flexibility, eg, in terms of quorum and majorities. For example, the JV agreement may provide that a meeting of the board of managers can only be validly constituted if at least one manager from a certain class is in attendance. Similarly, it is possible that a resolution can only be approved with the favourable vote of at least one manager from each class or that only one class A and one class B manager may jointly represent the company vis-à-vis third parties.

This structure can be particularly useful for minority shareholders, who usually have the right to nominate only one manager. A board of managers divided into different classes may allow the manager nominated by a minority shareholder to have a "veto" right on certain matters or prevent a manager from entering into agreements with third parties without the knowledge of the managers appointed by the other JV parties.

The Governing Law of the JV Agreement

A JV agreement regulating a Luxembourg S.à r.l. does not necessarily need to be governed by Luxembourg law. The parties may choose a different governing law based on their preferences – for example, if they are

more familiar with the provisions of their home jurisdiction or if the main assets of the JV are located in a different country.

Although the choice of governing law is generally free, submitting the JV agreement to a law other than Luxembourg law has several implications. First and foremost, such a choice does not change the fact that the JV vehicle is a Luxembourg-established entity and therefore subject to the applicable rules and regulations of the Grand Duchy of Luxembourg.

As a result, it is essential that the JV agreement, if submitted to another law, is carefully reviewed from a Luxembourg perspective as well, in order to ensure that its provisions fully comply with Luxembourg law.

By way of example, Luxembourg corporate law provides that the shares of an S.à r.l. may be transferred inter vivos to non-shareholders only with the favourable vote of shareholders representing at least 75% of the share capital. In practice, a JV agreement submitted to another law may provide for the shares in the JV company to be transferable in line with the permitted transfer provisions and usual tag-along, drag-along and right of first refusal provisions, potentially omitting this formal requirement.

The Relationship Between the JV Agreement and the Articles of Association

When assisting with Luxembourg JV transactions, a common point of discussion is to what extent the provisions of the JV agreement should be implemented into the articles of association of the JV vehicle.

The JV agreement is a contract and, in general, is confidential and binding only on the parties that have signed it. However, the notarial deed incorporating an S.à r.l. is published in the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés*) and is therefore publicly accessible. Unlike the JV agreement, the articles of association of the company are enforceable against all third parties (the so-called “erga omnes effect”).

The JV parties therefore need to find a balance between confidentiality and the erga omnes effect, by deciding to what extent the provisions of the JV

agreement should be transposed into the articles of association of the JV vehicle. Usually, the articles of association do not reproduce the provisions of the JV agreement in full but are limited to the most important provisions regarding restricted share transferability (eg, drag-along rights, tag-along rights), the management of the company and distribution rules.

The Potential Qualification of the JV Vehicle as an Alternative Investment Fund

A JV vehicle, if certain requirements are met, may be classified as an alternative investment fund. Consequently, such JV vehicles would need to comply with the provisions of Luxembourg law on alternative investment funds.

In order to clarify the status of the JV vehicle, the parties should carefully assess whether the JV vehicle is a pure corporate structure or whether it qualifies as an alternative investment fund, with the help of their advisers. This can be the case, for example, where a JV vehicle raises capital from a number of investors with the aim of investing that capital for their benefit in accordance with an investment policy.

The Foreign Investment Control Mechanism Applicable in Luxembourg

In September 2023, pursuant to the Law of 14 July 2023 on foreign direct investments (the “FDI Law”), a screening mechanism for foreign direct investments was introduced in the Grand Duchy of Luxembourg. If an investment in a company established in Luxembourg meets the relevant criteria, the investor will be required to notify the transaction to the Ministry of Economy (*Ministère de l'Économie*) in Luxembourg, which will evaluate it and grant or deny approval on a case-by-case basis. An investment is subject to this mandatory notification if it is made by a foreign investor – ie, a natural person who is not a national of, or an entity that is not incorporated/established under the laws of, an EU member state or a country which is part of the EEA, when it meets the following conditions:

- the investment is made in a company established under Luxembourg law which operates in certain critical sectors – eg, energy, transportation, health, communication; and

- the investment enables the investor to exercise control over the Luxembourg company, eg, to have more than 25% of the voting rights of such company, to have the majority of the voting rights (also by means of an agreement between shareholders) of such company, to have the right to appoint or remove the majority of the board of managers of such company (while also being a shareholder of such company), etc.

Therefore, the parties to a JV agreement should analyse the characteristics of their JV carefully, in order to clarify whether there is a need to proceed with the notification to the Ministry of Economy.

Conclusion

This article outlines some of the main aspects that are usually considered and negotiated by the parties when planning a JV involving a JV vehicle established in the Grand Duchy of Luxembourg. This list is not exhaustive, and JV parties need to take into account a number of economic, legal and tax aspects based on the specific project.

While negotiations may seem lengthy and challenging, well-structured and thoroughly negotiated JV agreements are crucial in ensuring the efficient operation of the JV. Luxembourg's legal framework is frequently selected as it provides a favourable environment that supports the smooth functioning of the JV.

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