Legal 500
Country Comparative Guides 2026

Switzerland

Joint Ventures

Contributor

Wenger Plattner

Dr. Oliver Künzler

Partner | oliver.kuenzler@wenger-plattner.ch

Markus Mühlemann

Partner | markus.muehlemann@wenger-plattner.ch

Urs Reinwald

Partner | urs.reinwald@wenger-plattner.ch

Michael Schifferli

Partner | michael.schifferli@wenger-plattner.ch

Daniel Zimmerli

Partner | daniel.zimmerli@wenger-plattner.ch

Dr. Martina Braun

Partner | martina.braun@wenger-plattner.ch

For full list of contributors, see final page

This country-specific Q&A provides an overview of joint ventures laws and regulations applicable in Switzerland.

Switzerland: Joint Ventures

1. In what industries or sectors are joint ventures most commonly used in your jurisdiction?

In Switzerland, joint ventures are commonly used in the construction industry, industrial projects, as well as the research, and financing industry. The retail sector and the burgeoning fintech industry have also increasingly adopted joint ventures.

2. What are the main types of joint venture in your jurisdiction?

Joint ventures typically take the form of either equity or contractual arrangements, each offering distinct advantages depending on the parties' objectives and the scope of the collaboration. Equity joint ventures, which involve the creation of a separate legal entity such as a stock corporation (Aktiengesellschaft) or as a limited liability company (Gesellschaft mit beschränkter Haftung), provide a formal structure with shared ownership, limited liability, and governance mechanisms. These are ideal for larger, long-term ventures where the partners wish to pool resources and mitigate personal liability.

On the other hand, contractual joint ventures are based solely on agreements between the parties, allowing for greater flexibility and control, often suited to short-term projects or collaborations without the need for a new legal entity. In such arrangements, liability remains with the individual partners, though it can be tailored through the contract. Ultimately, the choice between these two models depends on the desired level of formality, the scale of the collaboration, and the degree of liability protection required.

3. What types of corporate vehicle are most frequently used for equity joint ventures?

Swiss law does not provide for a specific corporate vehicle for joint ventures. Equity joint ventures are most commonly structured in the form of a stock corporation or a limited liability company.

The stock corporation is generally preferred for larger, capital-intensive joint ventures, offering a formal governance structure, limited liability for shareholders, and the ability to raise substantial capital. This makes it particularly well-suited for long-term, complex projects requiring significant financial investment. In contrast, the limited liability company is favoured for smaller, more flexible joint ventures, providing limited liability with a simpler management structure that allows partners more direct control over daily operations.

4. What are the key factors which influence the structure of the joint venture and the choice of joint venture vehicle?

In Switzerland, joint ventures are used for numerous purposes and by companies of all sizes and in a wide range of sectors and the reasons for choosing a particular form are just as manifold. In practice, legal, financial and operational factors, governance and strategic considerations as well as the type and nature of the joint venture partners are the most important factors when setting up a joint venture. Equity joint ventures offer limited liability by way of a separate legal entity and formalized control and governance structures (e.g. based on ownership stakes). Contractual joint ventures are more flexible and allow joint venture partners to agree on governance rights and decision-making processes that are tailored to the needs of the specific joint venture, while exposing the partners to potentially greater liability. A corporate structure may be the preferred option if the joint venture's operations are complex, for instance because it operates in multiple jurisdictions or because of the size of its operations. Equity joint ventures offer more potential to raise additional capital as they may attract additional investors or access the credit or financial markets. The contractual form may, however, be preferred for projects that require no or limited additional capital or in case the partners wish to adopt a tailor-made profit distribution model that deviates from the typical corporate dividend model. Long-term strategic goals or the possibility of an exit by way of a trade sale or an IPO or public listing may also be criteria for an equity joint venture. A separate legal entity may also be required or preferrable to fulfil regulatory requirements associated with the joint venture's business.

5. What are the principal legal documents which set out the terms of a joint venture and how does

the constitution of the joint venture vehicle interact with the joint venture agreement?

Contractual joint ventures are formed and governed by the contractual agreement of the joint venture partners, i.e., the joint venture agreement. It governs the relationship among the joint venture partners and the terms and conditions of the joint venture (such as the JV purpose, contributions of the parties, distribution of profit/losses, governance and dispute resolutions mechanisms as well as the exit provisions).

If the joint venture is structured as an equity joint venture, the articles of incorporation and the organizational bylaws of the JV entity govern the internal structure and operations of the JV entity, while the joint venture agreement and the shareholder agreement (as a separate agreement or included into the joint venture agreement) contain the arrangements between the joint venture partners in their roles as shareholders of the JV entity. The constitutional documents of the JV entity and the contractual arrangements between the joint venture partners are complementary and together constitute the entire set of rules for the joint venture. It is therefore important that these documents are aligned and that contractual arrangements between the joint venture partners are also implemented in the corporate documents of the JV entity to the largest extent legally possible to ensure their validity and enforceability not only between the joint venture partners, but also from a Swiss corporate law perspective.

6. How long does it typically take to form a joint venture in your jurisdiction?

The formal process of forming an equity joint venture in Switzerland typically takes around 10 business days, assuming the necessary documents are in order. This timeframe primarily covers the notarization act and the registration with the Swiss Commercial Register. However, the overall timeline can vary depending on the complexity of the joint venture and how quickly the partners agree on key terms, such as the joint venture agreement.

If the joint venture is structured as a contractual venture—without creating a separate legal entity— the process can be faster, focusing only on drafting and signing the agreement between the partners. However, reaching consensus on the venture's structure, governance, and financial arrangements may take several weeks or even months.

7. Is using a corporate joint venture structure effective in shielding the joint venture parties from liabilities for the operations of the joint venture entity under local law?

A corporate joint venture structure with a corporation or a limited liability company as JV entity shields the joint venture partners from exposure with regards to liabilities arising from the joint venture's operations. However, such protection is not absolute. According to legal doctrine and court precedents, the corporate veil may in particular be lifted if the notion that the JV entity constitutes a separate legal entity must be considered an abuse of rights. There is also a risk of liability if a joint venture partner de facto acts as corporate body of the JV entity or if a joint venture partner has created an expectation of responsibility of the parent for its subsidiary which is then disappointed.

8. Are there any legal considerations which apply to the financing of the joint venture or the contribution of assets to it?

Depending on the corporate form of the joint venture, the respective corporate law rules regarding a capital increase, for example, come into play. The minimum financial outlay required to establish a stock corporation, or a limited liability company must also be considered, as at least 20% of the share capital (in all cases minimum CHF 50,000) must be provided for a stock corporation and at least CHF 20,000 for a limited liability company. The parties can control certain aspects of the financial development of the joint venture, for example by way of an obligation to make additional contributions or anti-dilution clauses.

If contributions in kind are made into the company's equity, the corresponding provisions of the Swiss Code of Obligations (CO) on contributions in kind and acquisitions in kind apply, which are intended to prevent overvalued assets from being contributed to the company, thereby reducing the liability substrate. It should also be noted that according to prevailing doctrine only assets that can be capitalized in the balance sheet can be contributed. For example, services cannot be contributed to the company in exchange for capital. Public law can also restrict the parties, for example antitrust aspects can speak against a contribution in kind. In cases where a contribution in kind is not possible, the parties can provide the assets to the joint venture by means of a substitute transaction, e.g. a license agreement.

9. What protections under local law apply to minority shareholders and what additional or enhanced minority protection mechanisms are typically agreed between the joint venture parties?

In Switzerland, minority shareholders enjoy several legal protections under the CO. In particular, they have the right to request information from the company's management about its affairs, including financial statements and business operations. Shareholders with at least 10% of the share capital can request additional information or documents if they believe the company's actions are not being conducted properly. In the event of a merger, demerger or acquisition, minority shareholders are entitled to special protections, such as the right to vote on the proposed transaction. If the minority shareholders do not agree with the terms of the deal, they may have the right to exit the company at a fair price, subject to the conditions in the company's articles or the relevant agreements. Finally, minority shareholders are entitled to participate in the capital increase so that their influence is not diluted.

In addition to the statutory protection mechanisms, the following contractual agreements are typically concluded between the joint venture parties and recorded in a shareholders' agreement: The joint venture parties regularly agree on the conditions under which capital increases can be resolved and implemented. This includes the right of the founders to participate in the capital increase to protect their influence from dilution. Furthermore, agreements are often concluded regarding the distribution of profits and to prevent the loss of representation in the executive bodies and the loss of codetermination rights due to possible transfers of competencies (delegation of authority). Tag and drag along rights are also frequently part of shareholders' agreements. Finally, agreements are made regarding the operational basis to ensure the ability to influence key management decisions and to influence the conclusion, amendment or termination of key contracts with co-shareholders.

10. What are the duties of directors of an equity joint venture, including in relation to conflicts of interest?

Directors of an equity joint venture have a fiduciary duty to act in the best interests of the joint venture, prioritizing the joint venture's success over personal or external interests. They must avoid conflicts of interest, disclose any potential conflicts and recuse themselves from decisions where their personal or professional interests might compromise their impartiality. Directors are required to exercise due care, make informed, well-considered decisions and actively monitor the joint venture's operations. They must maintain the confidentiality of sensitive information and prevent its misuse for personal gain. Additionally, directors must avoid self-dealing and refrain from engaging in activities that compete directly with the joint venture. Fairness and transparency are crucial. Directors must ensure that all partners are treated equitably, with no party unfairly benefiting from the venture's decisions. Legal and regulatory compliance is a fundamental responsibility, requiring directors to ensure the venture adheres to relevant laws, including corporate governance, tax, and industry-specific regulations. Directors are also responsible for addressing disputes fairly, based on the terms of the joint venture agreement and the interests of all parties involved. In transactions involving related parties, they must disclose any relationships and ensure that deals are conducted at arm's length and on fair terms.

Failure to meet these duties can result in legal liability, including financial penalties or personal accountability for damages to the joint venture.

11. What is the typical structure of a joint venture's management body/board?

In Switzerland, corporate joint ventures are predominantly established in the form of stock corporation and less frequently in the form of a limited liability company.

In a limited liability company, the leadership is generally more flexible, with managing officers being appointed by the general meeting of the quotaholders to handle day-to-day management. The general meeting retains the authority for major decisions, such as amendments to the articles of association or dissolution, while the managing directors monitor the joint venture's operations.

In contrast thereto, a stock corporation follows a more formalized two-tier governance system, where the general meeting of shareholders elects the board of directors, which is responsible for setting the strategic direction. The board of directors appoints a CEO or management team, who run the daily operations and execute the strategy. This structure creates a clear separation between oversight and management and thus allows for more accountability and checks and balances, especially in larger joint ventures.

In contractual joint ventures, there is no separate legal

entity, and the leadership is entirely governed by the terms of the agreement between the partners. The joint venture agreement often specifies joint decision-making or assigns specific management roles to the parties involved, which offers greater flexibility. The partners may also delegate certain responsibilities to individuals, depending on the scope of the joint venture. However, the leadership structure in a contractual joint venture is usually less formalized and requires a careful definition of roles and responsibilities to avoid conflicts.

Ultimately, the choice of governance structure depends on the venture's size, complexity, and the level of control and oversight the partners desire.

12. Does local law imply any fiduciary duties or duties of good faith between the parties to a joint venture?

In corporate joint ventures established in the form of a limited liability company, Swiss law imposes a duty of loyalty on the quotaholders and thus to the parties to the joint venture. In joint ventures established in the form of a stock corporation, however, given that Swiss law does not recognize the imposition of additional obligations on shareholders due to the prohibition of ancillary performance obligations according to art. 680 para. 1 CO, additional obligations of good faith and fiduciary responsibility can only be imposed on the parties involved by the joint venture agreement itself. The joint venture agreement may further define the scope of these duties, creating a framework for the parties' cooperation and decision-making.

Furthermore, specific fiduciary duties apply to individuals entrusted with the management of the joint venture such as board members or managing officers. They are entrusted with the responsibility to act in the best interests of the joint venture and its equity holders. Board members and managing officers are expected to demonstrate loyalty and diligence and should avoid conflicts of interest and refrain from using business opportunities for personal gain. A proven breach of these duties may result in their subsequent liability towards the company.

Finally, according to art. 2 of the Swiss Civil Code (CC), all legal relationships, including joint ventures, are governed by a general duty of good faith. This requires the parties to act honestly, transparently, and in a way that upholds mutual trust and cooperation, ensuring that no party undermines the interests of the other participants or engages in a behaviour that would harm the joint venture's goals or relationships.

13. Do any restrictions, such as foreign direct investment rules, apply to foreign joint venture parties?

Switzerland is known for its open economy and liberal investment climate and currently does not (yet) have a general regime for the control of foreign direct investments. This is not expected to change significantly despite the fact that the Swiss Parliament has approved a piece of legislation aimed at preventing the acquisition of Swiss undertakings by foreign “state-controlled” actors in December 2025, because the scope of application of the new Swiss Investment Screening Act (Investitionsprüfungsgesetz) is – when compared to similar international legislation – relatively narrow and only very few transactions are expected to become subject to the newly-introduced approval requirement.

The new Investment Screening Act which is expected to enter into effect in 2027 at the earliest subjects acquisitions of certain Swiss companies with particularly important and/or critical business activities (such as military/defense, electricity grids, power plants, water supply, pharma, health, telecommunications, transport and financial market infrastructures) to an approval proceeding with, and the approval by, the Federal State Secretariat for Economic Affairs (SECO). If a relevant transaction is completed without approval, the additional necessary measures (including the divesture of the acquired undertaking) may be ordered and fines of up 10% of the worldwide annual revenues of the domestic undertaking may be imposed on the combined entity.

14. What competition law considerations apply to the set up and operation of a joint venture?

For competition law purposes, cooperative joint ventures must be distinguished from concentrative joint ventures (also referred to as corporate joint ventures (CJV)).

Cooperative joint ventures are agreements or concerted practices between the cooperating parties, potentially restricting competition (art. 4 para. 1, and art. 5 of the Swiss Cartel Act (CartA)). As synallagmatic contracts, cooperative joint ventures do not alter market structures.

In contrast, CJV result from the acquisition of control in, or the creation of an undertaking (formerly not controlled by two or more parties) that performs all economic functions of an autonomous economic entity on a lasting basis (art. 4 para 3 lit. b CartA, and art. 2 of the Swiss Merger Control Ordinance; Vollfunktions-Gemeinschaftsunternehmen). Altering market structures, CJV constitute concentrations. Whether a CJV is an

autonomous market entity or only performing auxiliary functions for its parent companies depends on a case-by-case assessment. Basically, a CJV needs to have its own management as well as the resources requisite for its own market presence, and it generates turnover by consuming or supplying goods or services in the market.

A CJV typically is under the joint control of two or more parents. The controlling parents take the most important business decisions concerning the CJV (such as budget and financing issues, appointment of the executive board, etc.). Each parent holding joint control can prevent such important decisions by exercising certain veto rights. Thus, follows that even minority shareholders may exercise joint control, depending on their specific veto power.

CJV may be subject to Swiss merger control before the Swiss Competition Commission (ComCo) and trigger a pre-closing notification obligation if the turnover generated by the undertakings concerned (consolidated group view) exceeds certain thresholds (art. 9 CartA). The basic turnover thresholds are as follows: (a) In the financial year preceding the concentration, the undertakings concerned (i.e., the parents exercising joint control, and the joint venture company) together reported a worldwide turnover of at least CHF 2 billion, or a turnover in Switzerland of at least CHF 500 million, and (cumulatively) (b) at least two of the undertakings concerned each reported a turnover in Switzerland of at least CHF 100 million. However, if any of the undertakings concerned have been held to be market dominant in Switzerland in a proceeding pursuant to the CartA, and the concentration concerns either that market or an adjacent market or a market upstream or downstream thereof, the concentration must be notified to ComCo notwithstanding any turnover considerations. Neglecting the notification obligation triggers high fines, and any agreements relating to the project remain temporarily void until ComCo has cleared the concentration.

Certain restrictions agreed on by the parents holding joint control of the CJV in favour of the latter are not agreements or concerted practices, provided they are directly related to and necessary for the concentration (see question 23). This applies regardless of whether the concentration is subject to clearance by ComCo.

Changes in the economic set-up of the joint venture: Any significant change in the economic set-up (e.g. acquiring or losing the ability to act as an autonomous economic entity) may alter the joint venture's cooperative, or corporate character. A cooperative may turn into a corporate joint venture, or vice versa, thus triggering a notification obligation, or turning the underlying agreements into agreements potentially restricting competition.

Changes in the control situation of the joint venture: Certain changes in the control situation of a CJV may constitute a new concentration project potentially to be notified to ComCo (e.g. change from joint control to sole control, or vice versa).

However, if joint control changes into “no control”, the company may remain a CJV, but any agreements between the parents and the CJV (such as non-compete covenants) will have to be re-assessed under the rules on agreements and concerted practices (see question 23).

15. Are there requirements to disclose the ultimate beneficial ownership of a joint venture entity?

The requirements to disclose the ultimate beneficial ownership of a joint venture entity vary depending on whether the joint venture entity is a non-listed company or a listed company.

In the case of non-listed companies, any person who alone or by agreement with third parties acquires shares in a Swiss company (stock corporation or a limited liability company) whose participation rights are not listed in a stock exchange, and thus reaches or exceeds the threshold of 25% of the share capital or right to vote must within one month give notice to the company of the first name, surname as well as the address of the natural person for whom it is ultimately acting (i.e. the ultimate beneficial owner). The company is obliged to keep a register of the ultimate beneficial owners on the basis of said notices.

It is to be noted that in September 2025, the Swiss parliament passed the Swiss Federal Act on the Transparency of Legal Entities and the Identification of Beneficial Owners, which inter alia introduces a not publicly accessible federal (transparency) register, in which companies and other legal entities in Switzerland have to disclose certain information concerning their ultimate beneficial owners. The act as well as the ordinance, which is currently under consultation, are to enter into force in October 2026.

In the case that the joint venture entity or a Swiss joint venture party is a listed company, its investors resp. shareholders must disclose their participation as soon as such reaches, exceeds or falls below 3%, 5%, 10%, 15%, 20%, 25%, 33 1/3 %, 50% or 66 2/3% of the voting rights in the company. This disclosure notification needs to

include, amongst other information, who the ultimate beneficial owner is.

16. What issues relating to the ownership and licensing of intellectual property rights generally apply to the set up and termination of a joint venture?

The regulation of intellectual property rights in a joint venture poses a number of challenges. Firstly, it is crucial to define the ownership of the background and foreground intellectual property rights used and/or created in relation with the joint venture. In general, intellectual property rights are rarely transferred to a contractual joint venture due to the complex formalities in connection with joint ownership of such rights. Instead, comprehensive licensing agreements take an important role in the process of establishing a joint venture. The parties may agree, for example, on a license arrangement between either or both of the partners and the contractual joint venture. Such license agreements should address exclusivity, territorial restrictions, duration, sublicensing provisions, royalty payments, and mechanisms for resolving disputes. Furthermore, antitrust and tax law aspects must be considered (e.g. valuation of the IP rights in the accounts).

Secondly, it is particularly important to consider as from the beginning how ownership and use of the respective intellectual property rights will be handled in case of termination of the joint venture and/or exit of a partner. The primary issue is deciding which party or parties should receive the rights and whether the respective other party and/or the joint venture (as applicable) may continue to use such rights.

Finally, the question of the legal form of the joint venture should be taken carefully into account. If the joint venture is to hold intellectual property rights, a contractual joint venture without independent legal identity is generally less beneficial than a stock corporation. In this regard it has to be noted that under Swiss law, invention and designs created by employees are owned by the employer.

17. What legal considerations apply when transferring employees into a joint venture?

In case of a transfer of business (Betriebsübergang) from a parent company to the joint venture (transfer of assets), according to art. 333 CO all employment relationships linked to the respective business are transferred through operation by law automatically with all rights and duties to the joint venture. The conditions of the employment relationship remain the same and the employee's seniority is also transferred to the new employer. The previous employer and the acquirer of the business (i.e. the joint venture) are jointly and severally liable for the employee's claims that became due before the transfer and that become due afterwards until the date on which the employment relationship could normally be terminated or is terminated if the employee rejects the transfer (art. 333 para. 3 CO).

In case of a transfer of business, the employer is obligated to inform the employees in due time before the transfer about the reason of the transfer and it's legal, social and economic consequences (can also be a joint obligation of the old and the new employer). In case that measures affecting the employment relationships are intended as a result of the transfer (for example, termination of contracts, change of conditions, change of workplace, etc.) the employer not only has to inform the employees (or the employee representative body) but consult them prior to the decision on these measures is taken. In such case, the employees must be given adequate time (at least 14 days) to make proposals with regard to the intended measures.

The employees have the right to reject the transfer of their employment relationship. In such case, the respective employment relationship will end after expiration of the statutory notice period after the rejection.

The new employer may – even in case of a transfer of business – offer the employees new employment contracts and agree with them on new terms and conditions. However, in case the employee does not agree, a change of conditions may only be reached by observing the notice periods and issuing notices of termination combined with offer of new employment conditions (so called Änderungskündigungen).

In case the joint venture will not take over an existing business but set up and operate a new business, an automatic transfer of employment relationships will not occur. If in such case, an employee from one of the parent companies goes to the joint venture, the parties will have to agree to conclude a new employment contract between the joint venture and the respective employee and, if applicable, terminate the contract between the employee and the parent company. In case there is no transfer of business, the seniority does not have to be adopted by law, however, it is common in such situations to recognize the seniority of the employee in the new employment contract.

18. Do any additional requirements apply to joint ventures when a joint venture party is a publicly listed company?

If one of the joint venture parties is a Swiss company listed in Switzerland, the ongoing requirements for maintaining the listing (such as ad hoc publicity) as well as the rules and regulations that only apply to listed Swiss companies may have an impact on the joint venture despite the fact that these requirements may not be applicable to the other joint venture partner or the JV entity. It is therefore recommendable to clarify whether additional requirements are relevant with regard to a contemplated joint venture early on in the process of establishing it.

19. What are the key tax considerations for both the joint venture parties and the joint venture vehicle itself?

The relevant tax considerations for both the joint venture (JV) parties and the Swiss JV vehicle depend on its legal form, financing structure and the nature of the contributions. The following sections address the key elements relevant for corporate JVs established through a Swiss company.

1. Corporate Income Tax

A Swiss-incorporated JV vehicle is subject to corporate income tax on its worldwide income (subject to treaty relief). Combined effective tax rates vary by canton and typically range between approximately 11 and 21%.

Tax base: Taxable income is determined based on statutory financial statements and includes operational income, investment income, and capital gains. Losses may be carried forward for seven years. Switzerland does not provide group relief or loss consolidation, which is relevant where JV partners operate other Swiss entities.

Deductions: Ordinary business expenses are deductible if commercially justified, including arm's length interest on shareholder and external loans. Swiss thin capitalization rules and safe harbour interest rates issued by the Federal Tax Administration apply when determining acceptable leverage and deductible interest. Excessive shareholder debt may be reclassified as equity, resulting in nondeductible interest and potential withholding tax consequences.

Participation deduction: Capital gains and dividend income from qualifying participations benefit from the participation deduction, provided that the statutory conditions are met. In practice, this requires a minimum shareholding of 10%; for capital gains relief, the participation of at least 10% must additionally have been held for at least one year at the time of the sale. The participation deduction is particularly relevant in entry and exit scenarios and where the JV functions as a holding entity.

Capital tax: Swiss cantons levy annual capital tax on equity and, where applicable, debt deemed equity for tax purposes. Rates vary but are generally modest.

Tax-neutral restructuring rules: Contributions of assets, businesses or shares to the JV may qualify for tax-neutral treatment if specific statutory requirements are met. Transactions that do not satisfy these conditions can trigger tax consequences at both shareholder and JV level.

2. Stamp Duties

Equity contributions to a Swiss corporation are generally subject to a 1% issuance stamp duty. The first CHF 1 million of contributed capital in connection with a capital increase is exempt. Restructuring and group relief rules may allow for a full exemption if the statutory conditions are met. Debt financing is generally not subject to stamp duty.

3. Withholding Tax

Dividends: Dividends are subject to a withholding tax of 35%. Relief at source or refund may be available under domestic rules for qualifying intragroup dividends as well as under applicable double taxation treaties. Depending on the relevant treaty provisions and the specific circumstances, qualifying distributions may be processed through a notification procedure or benefit from a reduction of the withholding tax at source.

Interest: Interest is generally not subject to withholding tax unless the financing qualifies as a bond or bond-like instrument under Swiss rules. If shareholder loans do not meet arm's length conditions, excessive debt may be recharacterised as equity for tax purposes.

Liquidations and share buybacks: Liquidation proceeds and share buybacks are treated as taxable distributions to the extent they exceed the share capital and the capital contribution reserves (Kapitaleinlagereserven). This is often relevant when terminating a JV.

4. Value Added Tax (VAT)

Contributions: Cash contributions into the JV are not subject to VAT. Contributions in kind (assets, business

transfers, IP) may be taxable unless treated as a transfer of a going concern (TOGC). TOGC treatment avoids VAT but requires the transferred business to meet specific criteria.

Registration and activities: If the JV provides taxable supplies in Switzerland, VAT registration is required once annual VAT-relevant revenue exceeds CHF 100,000. The standard VAT rate is 8.1%. Voluntary registration may be beneficial to enable the recovery of input VAT.

VAT grouping: Swiss VAT grouping is available to entities that are under unified direction of one legal entity. This can simplify compliance and reduce non-recoverable VAT on intra-group transactions.

Shareholder services: Management or support services provided by JV partners to the Swiss JV may be subject to VAT based on place-of-supply rules or reverse charge mechanisms. VAT treatment must be reviewed carefully, especially where partners are located abroad.

5. Transfer Pricing

Transactions between the JV vehicle and its shareholders, including financing, management services, cost-sharing and licensing arrangements, must comply with the arm's length principle. The Federal Tax Administration has published a circular defining thin capitalization parameters and issues annual circulars with safe harbour interest rates. While deviations from these safe harbours are permissible, they require appropriate substantiation (for example, through benchmarking). Advance tax rulings are commonly obtained for financing structures, cost-sharing arrangements and asset contributions.

The Swiss tax authorities apply the OECD Transfer Pricing Guidelines directly. The OECD guidance on shareholder activities, low value-adding intra-group services and transactions involving intangibles is therefore relevant when determining the allocation of costs between JV partners and the JV entity.

6. Taxation of JV Parties

Swiss-domiciled corporate shareholders are taxed on dividends and capital gains, typically benefiting from the participation deduction where the statutory requirements are met.

Individuals resident in Switzerland are taxed on dividend income, subject to partial taxation relief for qualifying participations. Private capital gains on shares are generally tax-exempt but may become taxable if the transaction meets criteria such as indirect partial liquidation or transposition. These rules are relevant if JV ownership changes or partners exit.

Contributions of shares or assets to the JV may trigger taxation of hidden reserves at the shareholder level unless statutory conditions for tax neutrality are met. Capital contribution reserves created upon incorporation or qualifying capital injections can be repaid tax-free to shareholders, which is often relevant for the structuring of JV financing and future distributions.

20. Are there any legal restrictions on the distribution of profits by a joint venture entity?

Swiss law does not specifically govern joint ventures. Depending on whether the joint venture is structured as a corporation or is of a contractual nature, generally the rules applying to companies or contracts as set forth by the CO are applicable.

If the joint venture is structured as a corporation, then for example, before any distribution of the profits can be made to the shareholders, a portion thereof must be allocated to legal reserves.

If the joint venture is of a contractual nature, in principle the allocation of profits can be stipulated as wished in the joint venture agreement, however certain tax restrictions exist.

21. How are deadlocks in decision making usually dealt with in a joint venture agreement?

In an equity joint venture, parties can assign the chairperson a casting vote to break deadlocks on board-level or shareholders-level. However, in a 50:50 joint venture, this can disproportionately favour one party. To counteract this, parties might alternate the chairperson position regularly or appoint an independent chairperson.

Some joint venture agreements also allow for an independent party to resolve disputes or establish a joint committee to address issues, provided these do not involve non-transferable and inalienable board or shareholder responsibilities. While more creative solutions, such as “Russian roulette” or “blind bid” clauses, can be implemented, they carry a higher risk of failing in practice and causing further complications.

Another common strategy involves including mediation and arbitration clauses. These clauses establish a structured process for resolving disputes in the event of a deadlock, allowing the parties to avoid litigation and maintain focus on their business objectives. Additionally,

buy-sell provisions are often included; these allow one party to buy out the other if a deadlock occurs, providing a clear exit strategy and ensuring operational continuity.

Resolving a deadlock in a 50:50 structure is delicate and maintaining a balance with the principle of common control is challenging. Therefore, prioritizing straightforward solutions or alternative conflictavoidance methods is recommended.

22. What exit or termination provisions are typically included in a joint venture agreement?

of which is to safeguard the interests of all parties involved. One of the fundamental provisions is that of termination for cause, which allows the parties to terminate the agreement if one party breaches its obligations or fails to perform as agreed. Furthermore, a termination for convenience clause may be incorporated into the agreement, enabling any party to terminate the agreement without cause after providing a specified notice period.

Another crucial aspect frequently addressed is the buyout provision, which delineates the manner in which one party may acquire the other's interest in the joint venture, along with the valuation methodologies and payment terms. Provisions for drag-along and tag-along rights are also common.

23. What restrictions under local law apply when joint venture parties agree to restrictive covenants eg non-compete or non-solicitation obligations?

This question specifically concerns CJV performing all the functions of an autonomous economic entity on a lasting basis. As to cooperative joint ventures, the rules on agreements and concerted practices competition apply (art. 4 para. 1, and art. 5 CartA).

Restrictions directly related to and necessary for the implementation of the CJV are not considered agreements or concerted practices pursuant to art 4 para. 1 and art. 5 CartA, but so-called ancillary restraints. Ancillary restraints are lawful, provided certain conditions are met. Failing to meet these conditions, a restriction is not directly related to and necessary for the CJV, and thus not ancillary. However, this does not mean that it is illicit, but rather that it must be assessed under the rules on agreements and concerted practices on a case-by-case basis. ComCo basically adopts the rules on ancillary restraints set out by EU law. These rules apply irrespective of whether a CJV must be notified to ComCo – certain restraints may thus be ancillary even though a CJV has not been subject to a ComCo merger control proceeding.

As to the most frequent restraints potentially considered ancillary to a CJV transaction, the following rules apply:

A non-compete covenant between the controlling parents and the CJV in favour of the latter may ensure that the CJV may successfully fulfil its purpose both in the market, and for the controlling parents. Such covenant is directly related to and necessary for the implementation of the CJV (i.e. ancillary), provided it is proportionate: It must be restricted to the products, and the geographic market the CJV is active in. It is ancillary only (i) for the parents exercising joint control (and not for shareholders without any joint control rights), and (ii) only as long as joint control is in place. Any (horizontal) non-compete covenants among the CJV parents or restricting the CJV in favour of the controlling parents is not considered ancillary. The same is true for any non-compete covenants between the CJV and any parents not exercising joint control. These principles also apply to nonsolicitation and confidentiality.

License agreements: A license granted by one or more parents to the CJV may be considered ancillary if it enables the CJV to conduct its business. If certain intellectual property rights have been transferred from a parent to the CJV, a license back to the parent may also be considered ancillary if it is necessary for the parent to continue its business. Even cross-licenses between a parent and the CJV may be ancillary. The license may be restricted to a particular field of the CJV's activities. It is immaterial whether such license is exclusive or whether it is limited in time. In contrast, license agreements among the parents are not considered ancillary. As to geographical restrictions, the proportionality considerations mentioned supra for non-compete-covenants apply. Any restrictions protecting the licensor rather than the licensee are not considered ancillary.

Purchase and supply obligations: If a parent has transferred a business (or a part thereof) to the CJV, and if the parent remains active in a market downstream or upstream to that of the CJV, certain dependencies between the parent and the CJV – as a supplier, or a customer – may arise during a transitional period following the transaction. Purchase and supply agreements enabling the parties to continue their business are considered ancillary if they are proportionate: The obligation must not exceed the necessary quantities (as required before the transaction, or set out as a fixed amount, possibly with a variation

clause), and it must only be upheld until the dependencies at issue are mitigated (whereas a transitional period of up to five years may be justified). Obligations providing unlimited quantities, exclusivity obligations or most preferred customer / supplier clauses are not considered ancillary. These rules apply to service and distribution agreements between a parent and the CJV as well.

24. What dispute resolution mechanisms usually apply to joint ventures and are there any legal restrictions on the parties' choice of governing law or choice of dispute resolution mechanism?

Joint venture disputes are solved according to the applicable substantive and procedural provisions that apply to the chosen construct of the joint venture. Often this is a simple partnership (Einfache Gesellschaft) but sometimes also different setups are chosen. There is no restriction by law as to the setup or applicable dispute resolution mechanism.

As a general rule and where the parties to a joint venture have an international background and/or where one or more of the parties is domiciled in a jurisdiction outside of Switzerland, parties often choose arbitration as their standard mode of dispute mechanism. Switzerland is an arbitration friendly jurisdiction with only limited possibilities to set aside awards. Generally speaking, the Swiss Federal Supreme Court takes a pro arbitration stance and tends to uphold well-reasoned awards. Similarly, the big commercial law firms are well versed in arbitration proceedings, therefore ensuring a pool from which to select both, competent counsel and arbitrators alike.

In addition, arbitration usually is confidential, and awards may be enforced in most jurisdictions worldwide under the New York Convention. This makes arbitration the dispute resolution mechanism of choice for international joint ventures. Where all parties to a joint venture are domiciled in Switzerland, a choice of jurisdiction clause in favour of the local courts is equally an option. If available in the relevant canton, joint venture contracts between companies registered in the commercial registry will usually be handled by specialised commercial courts.

In specific industries (for example the construction industry), the parties sometimes opt to include multi-tier dispute resolution clauses. In such cases, arbitration or litigation is sometimes preceded by mediation or adjudication.

The parties are free to choose the law applicable to the contract. However, care should be taken if the parties choose foreign law as their substantive law. In such case, local courts are only obliged to accept jurisdiction if at least one of the parties is domiciled in Switzerland. No such jurisdictional risk exists if arbitration is chosen as dispute resolution mechanism (even when choosing foreign substantive law).

25. What are the key market trends affecting joint ventures in your jurisdiction and how do you see these changing over the next year?

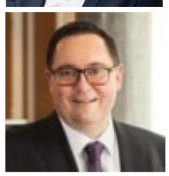
The market trend of globalization and thereby the need to access new technologies, talent and markets are key drivers for Swiss companies increasingly engaging in cross-border joint ventures. These drivers persist even in the ongoing challenging geopolitical climate. Furthermore, the ever-increasing government regulations are another driver for joint ventures, as it presents considerable opportunities to support companies in transforming their operations and keeping up with the fast-paced political changes.

These trends indicate a dynamic and evolving landscape for joint ventures in Switzerland. To navigate these changes successfully, companies will need to stay adaptable and forward-thinking.

Contributors

Dr. Oliver Künzler
Partner
oliver.kuenzler@wenger-plattner.ch

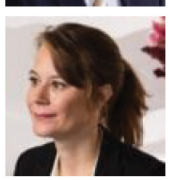
Markus Mühlemann
Partner
markus.muehlemann@wenger-plattner.ch



Urs Reinwald
Partner
urs.reinwald@wenger-plattner.ch

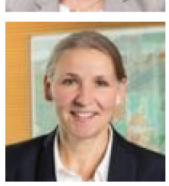
Michael Schifferli
Partner
michael.schifferli@wenger-plattner.ch

Daniel Zimmerli
Partner
daniel.zimmerli@wenger-plattner.ch

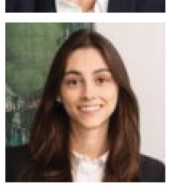


Dr. Martina Braun
Partner
martina.braun@wenger-plattner.ch

Suzanne Eckert
Counsel
suzanne.eckert@wenger-plattner.ch



Cristina Solo De Zaldivar
Counsel
cristina.solo@wenger-plattner.ch



Valérie Berger
Senior Associate
valerie.berger@wenger-plattner.ch

