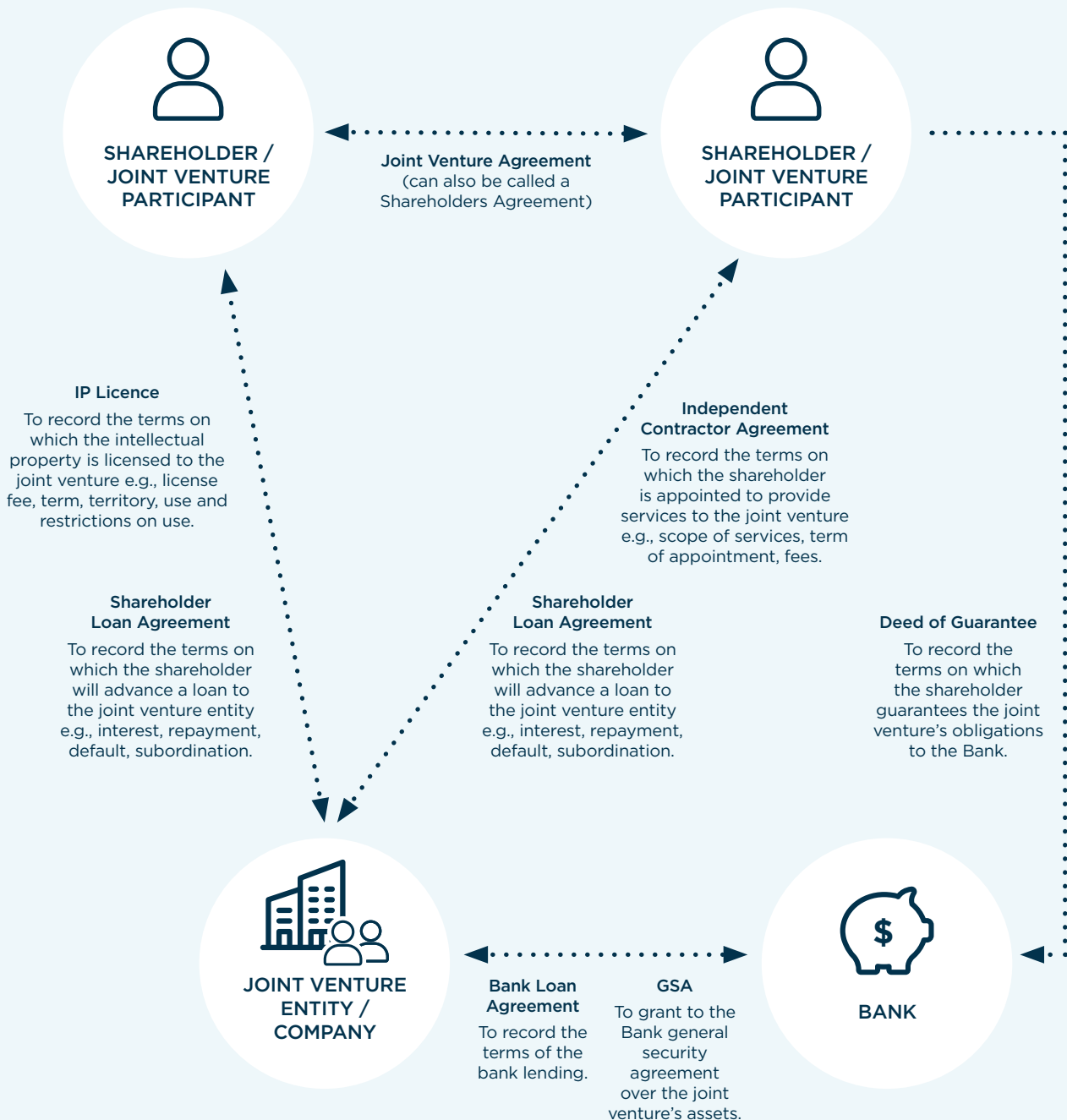


SIMPLE JOINT VENTURE CONTRACTUAL MATRIX

Each joint venture will have its own unique set of circumstances. The diagram below shows how an incorporated joint venture might be structured, and the key contracts that may be required. It assumes one joint venture participant will provide intellectual property to the joint venture, and the other will provide services to the joint venture. Both the joint venture participants will provide loans to the joint venture. The joint venture will obtain bank finance which is secured by a general security agreement (GSA) and a guarantee from a joint venture participant.



KEY CONSIDERATIONS FOR A JOINT VENTURE AGREEMENT

If you're thinking of establishing a joint venture, we recommend you turn your mind to certain key considerations at the outset. Set out below are the initial questions we ask clients who are embarking on a new joint venture. The answers help us advise on the best structure for the joint venture and the key contracts required. Some of the questions may not be relevant to your particular joint venture, and others may require explanation. But we hope they're a helpful starting point.

WHO WILL YOU BE 'IN BED' WITH?

- Who will be involved in the joint venture?
- What are their individual investment objectives?
- Who will have an ownership stake (shareholders) and in what proportions?
- What entities will they use for their ownership stake e.g., individuals, companies, trusts?
- What involvement will they have in the venture e.g., day-to-day involvement vs passive investor or somewhere in between?

TELL US ABOUT THE VENTURE...

- Please describe the joint venture's business.
- Are any authorisations, consents or licences required for the business operations?
- Are there any contracts that need to be entered into to develop the business?
- Will the joint venture own or licence any intellectual property, and will it develop or commercialise any intellectual property?
- What is your preferred entity for the joint venture e.g., company, limited partnership, unincorporated joint venture?
- Have you taken tax advice on the best structure? We recommend you do.
- What is the name of the joint venture?
- What is the timeframe for the venture?
- Will the parties be locked in for an initial term?
- Are there any business assets to be transferred to the joint venture entity?
- Will the joint venture rely on supply from the participants, or supply to the participants? If so, consider the terms (price, delivery, quality), exclusivity, the period of commitment, and consequences of failure to supply.

LET'S TALK ABOUT GOVERNANCE

- Who will have a governance role (directors)? How many directors will there be in total? How many can each participant appoint? Can the board appoint additional directors?
- Consider director voting rights e.g., will board decisions be by simple or special majority, will the chairperson have a casting vote, how will deadlocks at a board level be resolved?
- Will a managing director be appointed?

- How often will board meetings be held and where?
- What is a quorum for board meetings?
- How often are shareholders to meet and where?
- What is a quorum for shareholder meetings?
- Consider shareholder voting rights e.g., threshold for special resolutions, 75% or higher?
- What (if any) matters will be reserved for shareholders (i.e., the board cannot undertake them without shareholder approval)?
- What are the authorisation levels and board/shareholder approval requirements for:
 - the issue of new shares
 - a transfer of shares within specified period of formation
 - admission of new shareholder
 - change to the constitutional documents
 - loans, borrowings, mortgages, guarantees (above specified limits)
 - capital expenditure commitments
 - new types of business or geographical expansion
 - pricing and trading terms
 - employment of senior staff
 - commencing/settling substantial litigation
 - contracts with shareholders and related entities of shareholders

HOW WILL THE VENTURE BE FINANCED NOW AND IN FUTURE?

- Will shareholders contribute funds to the joint venture? If so, as share capital or loans or a combination?
- If the shareholders will provide initial shareholder loans, what are the terms of those loans e.g., when are the loans to be advanced, will interest accrue on the loans and at what rate, when will they fall due for payment, are they to be documented separately in a loan agreement or simply in the joint venture agreement?
- If the shareholders will provide initial shareholder loans, do they require the loans to be secured e.g., by a GSA or specific security or mortgage over land owned by the joint venture entity? If the joint venture entity obtains third party finance, will the shareholders agree to subordinate their debt to the third-party lender?
- Are shareholders under any obligation to contribute further funds to the joint venture in future? Any limit to that obligation? If no obligation, how is the joint venture to raise future finance?
- Can shareholders be required to guarantee the joint venture's third-party lending?

DO YOU HAVE ANY EXPECTATIONS AROUND DIVIDENDS?

- What is the joint venture's dividend/distribution policy?
- Will the joint venture be required to distribute a proportion of profits?
- Any authorisations or consents required for payment of dividends?
- Any tax issues? Eg withholding.

WHAT ARE THE RIGHTS AND OBLIGATIONS OF OWNERS?

- Must new shares be offered to shareholders in proportion to existing shareholdings? If not, do shareholders appreciate their shareholding may be diluted?
- What are the restrictions on transfer of existing shares i.e., will the joint venture agreement contain pre-emption rights?
- Will shareholders undertake not to compete with the joint venture business? Should current business interests be allowed?
- Will shareholders be required to refer orders to the joint venture?

WHAT HAPPENS IF SOMEONE 'WANTS OUT'?

- What is the exit mechanism?
- Are there any circumstances in which termination will automatically occur?
- Will the joint venture agreement be able to be terminated for breach?
- Consider what will be liquidating events?
- What are the rights of participants to intellectual property/know-how after termination?
- Any buy-out procedure? Tag and drag along rights?

HOW WILL DEADLOCKS AND FUNDAMENTAL DISPUTES BE RESOLVED?

- Consider expert determination for financial or technical matters?
- Is mediation or alternative dispute resolution appropriate?
- Arbitration or usual court proceedings?

For more information [click here](#).