

Chapter 11

Joint ventures

11.1. Basic features

A joint venture agreement (JVA) is a contract whereby two or more **enterprises** agree to pool their resources for the purpose of attaining a certain business objective. The parties to such agreements can be either companies or individuals, but also the latter will act in their capacity as entrepreneurs.

The substance of JVAs has changed in the course of time.

Originally they were **temporary agreements** with a very limited purpose. They were considered convenient means for providing a concentration of financial resources, knowledge and skills as needed for the realisation of large-scale business projects (*e.g.* participation in large public tenders): in fact, the first “joint ventures” were carried out in the US by big corporations operating in industries – such as mining or construction – requiring major investments. With such a structure, attainment of the business purpose usually entailed the cessation of the JVA, since the realisation of the specific project involved constituted the very core of the agreement.

In the last decades of the 20th century, with the development and enlargement of markets and increased competition, particularly in the international arena, the scope of contractual joint venture schemes became wider and more sophisticated, often involving the establishment of a new legal entity (usually a limited company) owned by the joint-venture partners and used as a vehicle for the attainment of the venture’s purpose.

After the post-socialist transition in China, Russia and other countries with transitional or developing economies, the term “joint venture” acquired a new meaning, becoming the name for **a special kind of local-foreign limited company** to be used by foreign investors as the only available mode by which to enter the markets of certain countries. In several countries – *e.g.* China and Vietnam – the JV designation still retains the meaning of a special kind of company, with a mix of local and foreign capital, which is often the only vehicle where by to effect direct foreign investment in certain restricted or protected industries or business sectors.

It should be remarked that, in general, the original concept of joint ventures as tools for the attainment of a single specific economic purpose has given way to a broader notion of JVs as tools for the co-operative exercise of certain business activities by two or more enterprises, generally effected through the establishment of entities of a corporate nature having legal personality and designed for long duration.

11.2. Types and basic principles

JVAs are flexible instruments, easily adaptable to the needs of the parties and to the economic field concerned. Indeed, parties to a JV may be companies operating in similar fields and needing to pool their resources so as to reach the same business objective (vertical cooperation). Alternatively, they may operate in different sectors and collaborate in a project requiring a convergence of their respective expertise (horizontal cooperation).

Therefore, many types of JVAs have been developed, the substance and form of which may vary for business or legal reasons.

The two most prevalent types of JVA structures are **Contractual JV** and **Corporate JV** (or **Incorporated JV**): the main difference between them is the fact that in a Contractual JV the parties do not set up a separate legal entity for the project, whilst in the Incorporated joint venture a separate legal entity is established to act as the vehicle for carrying out the project.

11.2.1. Contractual JV

Contractual JVs reflect the original purpose of this business instrument. A contractual JV is an agreement whereby two or more parties contribute resources for the pursuit of a particular business project and outline the terms under which they intend to work together. The main aspects on which the parties must agree are the outline of the project (including its duration and any causes for early termination), the allocation of tasks within the JV, the division of costs and profits and the overall management.

On the basis of the agreement's terms, the profits or losses of the venture are apportioned between the parties, which set up no new legal entity for their project and therefore remain entirely distinct, each one an independent subject with its own rights and obligations. Since the joint venture is not a legal entity it does not enter into contracts, hire employees or have its own tax liabilities.

The venturers work together as partners but remain fully independent, retain full control over their own assets, business and employees and can avoid the burden of establishing a new legal subject.

In terms of operations, decisions in a JV are made by the members collegially, but one of the parties is usually designated as that which will deal with all third parties – thus acting as **main contractor** –, and may be the only one liable for the JV's debts. In other cases, a steering committee or similar body, comprising of the representatives of the JV members, is established: the committee shall be in charge of the overall coordination of the project and the relations of the JV with third parties. It generally deliberates according to the principle of unanimity, unless otherwise agreed upon by the parties.

The absence of legal personality and corporate form makes this JV model very flexible and adaptable to different needs, but also riskier in terms of potential liabilities.

Generally, forms of Contractual JV are used for temporary projects, especially in the energy and construction sectors. The most typical example of a Contractual JVA is the agreement between several companies from different sectors for joint participation in a public tender or procurement bid (*e.g.* for an infrastructure construction).

11.2.2. Incorporated/corporate/Equity JV

With an incorporated (or corporate or Equity) JV, the business object is to be attained by establishing a distinctly legal entity, usually a limited company, or by transferring part of the shares of an existing entity to the venturers. When a project is to be realised by a newly established company, the operation is usually called “**green-field investment**”, whilst in case of acquisitions of mergers with existing vehicles, it is called “**brown-field investment**”.

Here the JVA contains not only the obligation of the parties either to set up or to buy/sell shares in a company, but also many other provisions on such company's governance and management as well as on relations between shareholders (“shareholders' agreements”): in fact, in such cases the documents related to the establishment of the new company or to the transfer of its shares (deed of incorporation or share purchase agreement) are distinct and independent from the shareholders' agreements. In very general terms, it may be said that whilst a shareholders' agreement is of a merely contractual nature and therefore valid only between the parties (thus not opposable to third parties), the instruments officially establishing a corporate entity with limited company status, or transferring shares therein, are universally valid (*erga omnes*): this means, for instance, that should one of the parties sell its shares in breach of the shareholders' agreement, such sale will nevertheless be valid and enforceable and the other party or parties will be entitled only to damages for contractual breach.

Other provisions of the JVA may state details of the scope of the association, of commercial and financial arrangements between the shareholders and

the company, of the regulation of intellectual property matters etc. The agreement may also contain restrictive covenants limiting the extent to which shareholders are permitted to compete with the JV corporation: competition law implications of any restrictive covenants included in the JVA should be taken into consideration and care should be taken to ensure that such restrictions will be likely to be enforced, particularly in the European Union, where competition rules are extremely stringent.

11.3. Common principles

The two models of Joint Venture are inspired by certain common basic principles, which also take on different meanings depending on the form of JV to which they relate. In general terms, the two main principles that lie at the core of all JVAs are:

11.3.1. The principle of personality (*intuitus personae*)

The contractual relationship at the base of a JVA is, by its nature, grounded in mutual trust between the parties (*intuitus personae*). This implies that the personal characteristics of each party are essential to the life of the agreement. As with the fitting of a piece in a *jigsaw* puzzle, if the JV project calls on a certain company to carry out a certain task, it is exactly that company and no other that will be needed. Therefore, the agreement often contains clauses to preserve the personal nature of the JV and prevent its transfer to third entities.

In particular, most corporate JVAs contain a number of restrictions on the transfer of shares. These may include a permanent or temporary prohibition on transfers, a prohibition on transfers of shares to competitors, conditions to be fulfilled before effecting intra-group transfers, pre-emption rights (or rights of first refusal) which may be exercised before a participant is authorised to transfer its shares to a third party, and drag-along/tag-along rights (by virtue of which, if one participant proposes to sell its stake, the others are entitled to join in the sale under the same terms and conditions) or similar rights. In some cases, a JV member may be expelled from the venture (*e.g.* because it ceases to hold a certain certification or has to face bankruptcy or other insolvency proceedings): in this event, the remaining parties will decide whether the JV would be in a position to continue its operation or not.

(See also article 4.8 of the JV contract below).

11.3.2. The principle of consensus

With Contractual JVs a number of elements are usually listed in the contract as requiring unanimous agreement for adoption, and in practice the venturers often prefer to maintain consensual voting, even when it is not required. Here it is often a question of decisions regarding budgets and plans, capital spending, strategy, and the practice aims at ensuring that the JV is managed with the greatest possible degree of mutual agreement.

With respect to Incorporated JVs, the principle of consensus is an exception to the general rule of majority voting that prevails in company law throughout the world, and is also a way to protect minority shareholders' rights. It is generally expressed in agreements among shareholders to adopt an unanimity system, or a veto system, or a qualified majority approval mechanism for resolutions on matters of major importance. Often, due to the requisite of unanimous approval, there may arise **deadlocks**, *i.e.* situations where the participants are unable to reach an agreement and no decision can be taken. Specific contractual clauses are commonly drafted to resolve such deadlocks, providing solutions that may range from the granting of a deciding (or tie-breaking) vote in the board to one of the directors (usually the Chairman) to the deferral of the decision to a third party or the entitling of the dissenting party to withdraw from the JV.

(See also article 6.2.6 of the JV contract below).

11.4. Governing law

As for the JV Agreement's governing law, a distinction needs to be drawn, since JVAs of enterprises based in the same country (domestic JVAs) are governed by the local law of contracts (*e.g.* in Italy that contained in the Italian Civil Code) and by other laws regulating the relevant sectors (company law, tax law, competition law etc.). Conversely, international JVAs are governed either by the law of a country designated by the parties or by the supplementary law applicable in accordance with the rules governing conflict. In some jurisdictions the parties have no freedom to choose the law applicable to their agreement and it is domestic law that will apply in all circumstances.

11.5. Chinese-foreign equity joint ventures (EJV)

In China, the JV is one of two possible forms of foreign-invested enterprise allowed by law (the other being the subsidiary controlled entirely by a foreign entity, known as "Wholly Foreign-Owned Enterprise" – WFOE). It is called **Equity JV (EJV)**, with "equity" signifying corporate capital.

The EJV was introduced in the Chinese legal system in 1979, at the very beginning of the post-Maoist reforms, by the “Law of the People’s Republic of China on Sino-Foreign Equity JV” which, together with the legislation developed in subsequent years, still governs it.

As remarked above, JVs were the first vehicle – and, for a long time, the only one available – for foreign companies to enter the Chinese market, and have for a much longer period been the preferred instrument for investing in China. Although the trend changed in favour of the WFOE’s model after the first ten years of foreign investment in China, the JV is still considered an essential tool for strategic investments; it is also still the mandatory instrument for direct foreign investment in several strategic sectors, like banking or the automotive industry. Indeed, JVs also represent an opportunity for Asian investors, who may thus gain access to new business sectors or technologies.

A Sino-foreign EJV is a limited liability company having the status of a Chinese legal person, and is established in the Chinese territory with the contributions of – at least – a Chinese participant and a foreign participant. The foreign capital participation should amount to at least one quarter ($\leq 25\%$) of the total investment, whilst the Chinese participant is not subject to any minimum requirement. Participants can contribute to the EJV capital either in cash or in kind, *i.e.* intangible goods or services with a determinate monetary value. Usually the Chinese participant will contribute land-use rights and buildings for manufacturing activities, whilst the foreign investor pays in with cash and technology.

The profit made by the JV is distributed to the participants in proportion to their respective shares in the registered capital. Their losses are limited to the amounts represented by their respective shares in the EJV’s capital.

The EJV is established on the basis of an agreement (JVA or memorandum of association) between the Chinese participant and the foreign participant; the former must generally be a legal person, whilst the latter maybe either a legal person or a natural person.

Along with the JVA, the EJV’s articles of association, containing the company’s management rules, are drawn up. Both of these documents, which are necessarily subject to Chinese law, require approval by the competent domestic authority. Disputes arising between the participants may be submitted to arbitration in China or abroad.

Under the Sino-Foreign Equity JV Law, still in force today, a Board of Directors must be established. It may constitute the EJV’s sole executive authority, since EJVs are not required to convene a shareholders’ meeting

The Board is composed of a number of directors appointed by the participants in proportion to their respective contributions. Its size and composition are negotiated by the participants and specified in the contract and articles of association. The Board of Directors elects the Chairman and the Vice-chairman. The position of Chairman of the Board may be held by a member of either participant.

The Board generally works on the basis of the majority principle, but Chinese law requires all major decisions (in particular capital increase or decrease, transfer of shares and dissolution) to be taken unanimously. The participants may decide to extend the unanimity principle – or to introduce qualified majority requisites – to other matters and deadlock provisions may be inserted in EJV agreements.

All major decisions affecting the EJV must also be approved by the competent State authority.

The primary responsibility for the day-to-day operation and management of the JV Company lies with the General Manager, who is subject to the guidance of the Board of Directors. The JV must also establish an internal body for the supervision of accounts.

**CONTRACT FOR THE ESTABLISHMENT
OF AN EQUITY JOINT VENTURE COMPANY**

This Contract is made and entered into as of _____, by and between:

[COMPANY's name], a company incorporated under the laws of Italy, with registered office in..., represented by...; (hereinafter referred to as "VENTURER IT");

[COMPANY's name], a company incorporated under the laws of the People's Republic of China, with registered office in ..., represented by ...; (hereinafter referred to as "VENTURER PRC");

The Parties represent each other that they are valid legal persons duly established under the laws of China or Italy respectively, and represent that they enter into this Contract on their own account and dispose of all necessary corporate powers and authority to enter into this contract and to carry out their obligations hereunder.

The Parties guarantee each other that the representatives mentioned above have the right to represent their company.

WHEREAS

VENTURER IT is a company limited by shares established under the laws of Italy specialized in the production and distribution of home accessories and decorative items.

VENTURER PRC is a limited company established under the laws of the People's Republic of China specialized in the production of stationery, gadgets, furnishings and gift ideas.

On _____, the Parties have entered into a Memorandum of Understanding where they discussed the guidelines for the future establishment in China of an Equity Joint Venture (hereinafter referred to as the "**Joint Venture**").

Now, in accordance with the *Law of the People's Republic of China on Joint Venture using Chinese and Foreign Investment* and other relevant Chinese laws and regulations, the Parties, adhering to the principle of equality and mutual benefit and through friendly consultations, agree to jointly invest to set up a Joint Venture in Beijing, China.

THEREFORE

It is agreed as follows:

TITLE OF THE
CONTRACT

PREAMBLE:
IDENTIFICATION
OF THE PARTIES

REPRESENTATIONS

RECITALS

1. INTERPRETATION

1.1 Definitions

1.1.1 In this Contract, the following terms shall (unless the context requires otherwise) have the following respective meanings:

Ancillary Agreements means the Lease Contract and the Trade-mark and know-how License Agreement.

Approval Authorities means the delegate of the Ministry of Commerce (MOFCOM) in Beijing and the relevant local branch office of the State Administration for Industry and Commerce (SAIC) whose approvals are required for the establishment and incorporation of the Joint Venture as a legal person in the People's Republic of China.

Articles means the Articles of Association of the Joint Venture as they may subsequently be altered from time to time;

Board means the Board of Directors of the Joint Venture or any duly appointed committee thereof. The Board is the highest administrative organ of the Joint Venture;

Business means the business scope intended to be carried on by the Joint Venture, as described in Article 3 ("Business Scope of the Joint Venture") hereof;

[...]

2. INCORPORATION OF THE JOINT VENTURE

2.1 Characteristics of the Joint Venture upon incorporation

2.1.1 As soon as reasonably practicable after the date of execution of this Contract the Parties, and in particular VENTURER PRC, shall use all reasonable endeavors to procure the Joint Venture to be incorporated and established in the People's Republic of China with the following characteristics:

- the name of the Joint Venture shall be: ...;
- the Chinese name shall be: ...;
- the address of the registered office of the Joint Venture shall be at [address], People's Republic of China;
- the Joint Venture shall be incorporated in the People's Republic of China as a Limited Liability Company; Parties' liability shall be limited to the amount of registered capital subscribed; each of the Parties shall share the profits, take the risks and bear the losses according to their contribution in the registered capital of the Joint Venture; creditors of the Joint Venture shall have recourse only to the assets of the Joint Venture; if the Joint Venture's assets are insufficient to satisfy the Joint Venture's creditors' claims, none of the Parties shall be liable for any deficiency;
- the Joint Venture shall have a total amount of investment up to _____ Euro (say: ...); the registered capital of the Joint Venture shall be _____ (say:...);

DEFINITIONS

PROVISIONS
DESCRIBING THE
STRUCTURE AND
MAIN SCOPE OF THE
TRANSACTION
(CREATION OF A JV)

– the Joint Venture is expected to be licensed from VENTURER IT a certain know-how and other rights according to the provisions of the Trademark and Know-how License Agreement herewith attached.

2.1.2 The date of Completion is the date of issuance of the Business License by the relevant Approval Authority.

2.1.3 The Joint Venture may establish branch offices within or outside the Territory with the approval of the Board.

3. BUSINESS SCOPE OF THE JOINT VENTURE

3.1 Business

3.1.1 The Business of the Joint Venture shall be the design, manufacturing and sale, on both the domestic Chinese and international markets of home accessories, furnishings, party gadgets and gifts [...] and related activities

4. CAPITAL AND FURTHER FINANCE

4.1 Total amount of investment and Registered Capital

4.1.1 The Joint Venture shall have a total amount of investment of Euro _____ (say: _____), the registered capital of the Joint Venture shall be Euro _____ (say: _____).

4.1.2 The difference between the total investment of the Joint Venture and its registered capital could be funded from the following sources, as determined by the Board according to the actual business situation:

– loans to the Joint Venture by each of the Parties in an amount proportionate to each of the Parties' share in the Joint Venture at the time of lending; and/or

–loans, grants or interest free loans, if any, from banks or other financing institutions to the Joint Venture.

4.2 Contribution of the Parties

4.2.1 The investment by the Parties to the registered capital shall be contributed according to the following proportions:

VENTURER IT shall contribute Euro _____ (say: _____), accounting for 60 % of the registered capital;

VENTURER PRC shall contribute Euro _____ (say: _____), accounting for 40 % of the registered capital.

4.3 Forms of contribution

4.3.1 The Parties shall contribute to its share in the registered capital in cash.

4.3.2 The Parties shall contribute their share in the registered capital, according to the following schedule:

55,5 % of the total amount of the registered capital shall be con-

tributed by the Parties within 3 (three) months from the date of issuing of the Business License;

44,5 % of the total amount of the registered capital shall be contributed by the Parties within 24 (twenty-four) months from the date of issuing of the Business License;

4.4.3 The Board may resolve to amend the above schedule for capital contributions in accordance with the actual requirements of the Joint Venture, within the limits prescribed by the applicable laws and regulations.

4.4 Capital Verification

4.4.1 After the investment has been contributed by the Parties, a Chinese registered accountant agreed by the Parties and invited by the Joint Venture shall verify it and provide a certificate of verification.

(...)

4.7 Increase of the registered capital

4.7.1 Any increase of the registered capital of the Joint Venture shall be unanimously approved by the Board and shall be submitted to the relevant Approval Authority for approval. The registration procedures for the changes shall be dealt with at the original registration and administration office.

4.8 Assignment of equities

4.8.1 Neither Party shall sell, assign, pledge, mortgage or otherwise transfer all or part of its contribution to the registered capital of the Joint Venture unless the unanimous resolution of the Board has been obtained, and subject to the receipt of all necessary governmental approvals including the approvals of the relevant Approval Authority.

5. RESPONSIBILITIES OF THE PARTIES

5.1 Responsibilities of VENTURER IT

5.1.1 VENTURER IT shall:

- effects its capital contribution in accordance with Article 4 of this Contract;
- sign the attached Agreements ancillary to the Joint venture;
- assist the Joint Venture in research for and development of the Product and in its distribution on the Italian and international markets;
- assist the Joint Venture in purchasing or leasing equipment, materials, spare parts, means of transportation and communication facilities as well as all other material to be purchased or leased abroad needed for the business;

BODY
OF OBLIGATIONS

- assist the Joint Venture in recruiting foreign management and technical personnel and any other personnel in accordance with the needs of the Joint Venture;
- be responsible for the handling all other matters entrusted to it by this Contract and by the Articles.

5.2 Responsibilities of VENTURER PRC

5.2.1 VENTURER PRC shall:

- effect its capital contribution in accordance with Article 4 of this Contract;
- sign the attached Agreement ancillary to the Joint venture;
- assist the Joint Venture in negotiating and entering into the Lease Contract for the first premise located in Beijing, ..., and in subsequent lease negotiations, in order to help the Joint Venture to obtain a good price and full and efficient usufruct of the premises rented.
- assist the Joint Venture in processing applications for approval, registration, issuance of the business license and in other dealing with the relevant Authorities concerning the establishment of the Joint Venture;
- assist the Joint Venture in purchasing or leasing equipment, materials, means of transportation and communication facilities in China;
- assist the Joint Venture in contracting for and obtaining fundamental services such as those of communication water, electricity, transport etc.;
- assist, in cooperation with China XXX Logistics Co Ltd., the Joint Venture in contracting and settling the logistic services needed by the Joint Venture in order to conduct the Business;
- assist the Joint Venture in recruiting Chinese management and technical personnel, employees and other personnel in accordance with the needs of the Joint Venture;
- assist foreign employees and staff in applying for entry visas, work permits and in organizing their transfer;
- assist the Joint Venture, where necessary, in applying for loans and financing from banks and/or financial institutions;
- be responsible for handling all other matters entrusted to it by this Contract and by the Articles.

5.3 Profits

5.3.1 After paying taxes in accordance with the law and drawing various funds, the remaining profits may be distributed according to the proportion of each Parties equity in the registered capital.

5.3.2 The Joint Venture shall not distribute profits unless the losses of the previous fiscal year have been made up. Remaining profit from previous year can be distributed together with that of the current year.

5.3.3 Dividends to VENTURER IT shall be paid in convertible currency and may be repatriated.

(...)

6. ORGANIZATIONAL SETUP

6.1 Management Organs

6.1.1 The Joint Venture shall establish a management structure composed by the Board of Directors as its highest administrative organ and the General Manager and other managers as its Business management organs.

6.2 Board of Directors

6.2.1 The Board shall be composed of 5 (five) Directors, of which 3 (Three) shall be appointed by VENTURER IT and 2 (Two) by VENTURER PRC.

6.2.2 The Chairman of the Board shall be appointed by VENTURER IT.

6.2.3 The term of office for the Directors, Chairman and Vice-Chairman is four years and may be renewed. In any case the appointing party can in any moment, and upon its own judgment, dismiss its own Director. In case of appointment or dismissal of a director, the appointing party shall inform the other Party in written form and the appointment or dismissal shall be filed with the relevant department. Each Party agrees to co-operate with the other Parties to effect such removal.

6.2.4 The Board shall be the highest authority of the Joint Venture Company. Its functions and powers are, inter alia, the following:

- deciding on all major matters concerning the Joint Venture Company management and operations;
- deciding on the engagement, powers, expense limits and other management rules of the high rank officials such as the General Manager and other managers;
- approving the reports submitted by the General Manager;
- approving the annual financial reports and expenditures, the distribution plan and the annual profits;
- adopting the internal regulations of the Joint Venture;
- deciding the set up of branches;
- amending the Articles of the Joint Venture;
- deciding the increase, reduction and transfer of share of registered capital;
- discussing and deciding the termination of business;
- deciding the termination of the Joint Venture Company or merging with another economic organization;
- all other matters set out in this Contract or in the Articles of the Joint Venture.

6.2.5 The following matters shall require the unanimous approval of all Directors of the Board:

1. the amendment of the Articles of the Joint Venture;
2. the termination or liquidation of the Joint Venture;
3. the adjustment or assignment of the registered capital of the Joint Venture;
4. the merger of the Joint Venture with any other economic entity or organization or the spin-off of the Joint Venture;
5. the acquisition by the Joint Venture of other enterprises;
6. the approval of pluriannual plans;
7. the alienation of tangible and intangible fix assets, which are relevant for the activity of the Joint Venture.

6.2.6 All other matters shall be decided by simple majority of votes of the Directors present in person or by proxy at a meeting of the Board. In case of parity, the vote of the Chairman shall be the casting vote.

6.2.7 The Chairman of the Board is the legal representative of the Joint Venture Company. Should the Chairman be unable to exercise his or her duties for any reasons, he or she shall authorize the Vice-Chairman or any other director to represent the Joint Venture Company temporarily.

6.2.8 The Board shall convene at least one meeting every year. The meeting shall be called in writing with 30 days notice by the Chairman of the Board or by the Vice-Chairman of the Board.

6.2.9 If so required by at least two members of the Board, the Chairman has anytime the duty to call, as soon as reasonably possible, extraordinary Board meetings. Such meetings shall be called in writing, with not less than 15 days notice.

6.2.10 The Board meeting will be held, in principle, at the location of the Joint Venture. Other places and forms of meeting can be indicated by the Chairman of the Board. In particular, the Board meeting may be held totally or partially by video-conference.

(...)

[*OMISSIS*: 7. LABOUR MANAGEMENT; 8. FINANCIAL AFFAIRS AND ACCOUNTING; 9. TAXATION]

10. DURATION OF THE JOINT VENTURE

10.1 Duration

10.1.1 The duration of this Contract and of the Joint Venture shall be [10] [ten] Years starting from the date of issuance of the Business License.

10.1.2 An application for extension of the duration, proposed by one Party and unanimously approved by the Board, shall be submitted to the original Approval Authorities not later than six (6) months prior to the expiration date of the Joint Venture.

DURATION
OF THE CONTRACT

10.2 Early termination

10.2.1 Any of the Parties may terminate this Contract prior to the expiration of its term by sending, ninety (90) days prior to the day the termination shall be final, a written notice to the other Parties (the “**Termination Notice**”), when any of the following conditions occurs:

- after 2 (two) years from the Completion, the Joint Venture incurs in heavy and unpredictable losses (including those losses caused by Force Majeure events) exceeding 50% of the losses foreseen in the pre-contractual understandings and documentation and in particular in the Feasibility Study, and it is impossible or too difficult to remedy the situation or the Parties did not reach an agreement on the way to remedy the situation;
- any law, rule or regulation promulgated subsequent to the execution of this Contract has a material and adverse effect on either the Joint Venture or the Parties; if any existing law, rule or regulation is amended or interpreted so that it has a material and adverse effect on either the Joint Venture or the Parties;
- all or part of the Joint Venture assets are confiscated by any government authority;
- any of the Parties becomes bankrupt or is subject to liquidation proceedings for dissolution (in this event the Party subject to bankruptcy and/or other liquidation proceedings shall not have the right to serve the Termination Notice);

10.2.2 The Parties may, at any time, through a unanimous declaration of the Board, agree upon an early termination of this Contract.

[OMISSIS: 11. LIQUIDATION; 12. INSURANCE]

13. LIABILITIES FOR BREACH OF CONTRACT

13.1 Breach of Contract

13.1.1 In the event that a breach of contract committed by any of the Parties to this Contract results in the nonperformance of or inability to fully perform this Contract, the Articles or any of the Ancillary Agreements, the direct liabilities and losses arising from the breach of contract shall be borne by the Party in breach.

[...]

14. AMENDMENTS TO THIS AGREEMENT

14.1 Revisions and amendments

14.1 This Contract may be amended and/or revised only by an instrument in writing signed by the duly authorized representatives of the Parties, according to the relevant provisions of the Articles. The revisions or amendments must be submitted to the original Approval Authority.

15. ENTIRE AGREEMENT

15.1 Entire Contract

15.1 This Contract sets out the entire agreement and understanding between the Parties with respect to the subject matter hereof. The only enforceable obligations and liabilities of the Parties in relation to the subject matter are those that arise out of the provisions contained in this Contract. All representations, communications and prior agreements (expressly: the Memorandum of Understanding) in relation to the subject matter are merged in and superseded by this Contract.

SELF-SUFFICIENT
CONTRACT

16. FORCE MAJEURE

16 Force Majeure

16.1 Force Majeure Event means any act occurrence or omission, as a direct result of which the Party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Contract, and which is beyond the reasonable control of the Party, including but not limited to occurrence of weather or other forces of nature (earthquake, typhoon, flood, storms), war, riot, insurrection, embargo or other unavoidable accidents. Whenever a Force Majeure Event occurs, the Party whose performance of the obligations is affected by that Force Majeure Event (the "Affected Party") must serve to the other Party, as soon as reasonably possible, a written notice certified by the local notary organization of the place where the Event occurred, containing full particulars of the Force Majeure Event, including its nature and likely duration, the obligation affected by it and the nature and extent of its effect on those obligations (the "Suspension Notice"). The obligations of the Affected Party are suspended, to the extent that they are affected by the Force Majeure Event, from the date the Affected Party gives a Suspension notice in respect of that Force Majeure Event until the cessation of the Force Majeure Event.

FORCE MAJEURE
CLAUSE

16.1.2 If a Force Majeure Event continues for a period of ninety (90) days after a Suspension Notice is given, the Parties shall jointly decide, according to the actual conditions, whether to terminate, to modify or to fulfill the obligations contained in this Contract.

17. SETTLEMENT OF DISPUTES

17.1 Dispute Resolution

17.1 In the event of any dispute between the Parties arising in connection with this Contract (or any Ancillary Agreement entered into pursuant to this Contract) and the Articles, any of the Parties shall use all reasonable endeavors to resolve the matter on an amicable basis.

DISPUTES
SETTLEMENT
CLAUSE

17.1.2 If any Party serves formal written notice on the other that a material dispute has arisen and that the Parties are unable to friendly resolve the dispute within a period of thirty (30) days from the service of such notice, then the dispute shall be settled under the Rules of Arbitration of the International Chamber of Commerce. The Arbitral Tribunal shall consist of three arbitrators appointed pursuant to those Rules. The arbitration shall be held in Singapore.

17.1.3 The arbitration shall be held in English language, and the arbitration award is final and binding upon the Parties.

17.1.4. The arbitration fees and the relevant lawyers' fees as well as related costs shall be borne by the failing party. During the arbitration, the Contract shall be executed continuously by the Parties except for matters in dispute.

18. CONFLICT WITH ARTICLES

18.1 Supremacy of this Contract

18.1.1 In the event of any conflict between the provisions of this Contract and the Articles or other constitutional document of the Joint Venture, the provisions of this Contract shall prevail as between the Parties.

PREVALENCE OF THE
CONTRACT OVER
OTHER DOCUMENTS

19. NO COMPETITION

19 Non-competition

19.1.1 No Party, without the prior written consent of the other Parties, can promote, participate in, finance, operate or engage in any sino-foreign joint venture, seated in the Territory, having as business scope or operation directly competitive with the Business.

19.1.2 Such provision shall in no case be applicable to the single shareholders of VENTURER IT.

NO COMPETITION
CLAUSE

20. CONFIDENTIALITY

20.1 Application

20.1.1 The provisions of this Article apply where, in communications relating to this Contract and/or the Ancillary Agreements or during the performance of this Contract and/or the Ancillary Agreements, any Party (the "disclosing Party") gives to the other Party (the "receiving Party") any written or oral information of a technical, business or financial nature which it considers confidential and proprietary and makes the receiving party aware that it considers the information to be of that nature.

20.2 Obligations of confidentiality

20.2.1 A Party must not:

CONFIDENTIALITY
CLAUSE

- disclose, directly or indirectly, any confidential information to any person without the prior written approval of the disclosing party for the particular disclosure, other than to its employees, dealers, distributors, suppliers but only to the extent necessary, under the circumstances, for realizing the purposes of this Contract or the Ancillary Agreements upon these persons undertaking to the receiving Party to keep that information strictly confidential; or
- disclose, directly or indirectly, any confidential information to any person without the prior written approval of the disclosing party for the particular disclosure, other than to legal advisers, auditors and other consultants requiring the information for the purposes of this Contract or the Ancillary Agreements upon these persons undertaking to the receiving Party to keep that information strictly confidential; or
- use or make a copy of any confidential information otherwise than for the purpose of this Contract or the Ancillary Agreements.

20.2.2 The receiving Party shall be fully liable for the disclosure directly or indirectly of any aspect of the confidential information by its employees, suppliers, distributors or dealers to any person or entity not authorized under this Contract to receive it.

20.3 Return of Confidential Information

20.3.1 A receiving Party, at the written request of the disclosing Party, must immediately deliver to the disclosing Party all documents and other materials containing, recording or referring to confidential information which are in its possession, power or control.

20.4 Duration

20.4.1 The provisions contained in this Article 20 shall remain in effect even after the termination of this Contract, for any reason whatsoever, for a period of 5 (Five) Years, unless otherwise agreed in writing by the Parties.

21. MISCELLANEOUS

21.1 Severability

21.1.1 If any of the provisions of this Contract is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

SEVERABILITY
CLAUSE

21.2 Address of notices

21.2.1 Any notice or other communication between the Parties shall either be delivered by hand or sent by registered post or facsimile transmission (provided that, in the case of facsimile transmission, the notices confirmed by being delivered by hand or

NOTICES

sent by registered post within 48 hours thereafter), in the English language, as follows:

VENTURER IT

Address:

Fax No:

Addressed for the personal attention of:

VENTURER PRC

Address:

Fax No:

Addressed for the personal attention of:

21.3 Non-Assignment

21.3.1 None of the Parties, nor the Joint Venture, nor any Shareholder may assign any of its rights or obligations under this Contract in whole or in part, otherwise than pursuant to a transfer of equity to one of the Parties or to a third party, in accordance with the relevant terms and conditions of this Contract.

NON-ASSIGNMENT
CLAUSE

21.4 Governing law

21.4.1 This Contract shall be governed by and construed in accordance with the laws and regulations of the People's Republic of China.

CHOICE OF
APPLICABLE LAW

21.5 Original Contract

21.5.1 This Contract is written and executed in Chinese and English. Both language texts are of equal authenticity. In case of inconsistencies between the two linguistic versions, the English version shall prevail.

21.5.2 This Contract with all its annexes is executed in 4 (four) copies, 2 (two) in the Chinese language and 2 (two) in the English language; each of the Parties shall keep one copy of each version.

CHOICE
OF LANGUAGE

21.6 Approval

21.6.1 This Contract and all its annexes shall be examined and approved by the Approval Authorities of Beijing, People's Republic of China, the date of approval being the date of validity. The same applies in the event of amendments.

21.6.2 Should, for any reason whatsoever (i) after 6 months from signing, the approval of the Contract have been refused or have not been granted by the competent authority or (ii) between the signing of the Contract and the issuing of the business license have passed more than 6 months, the parties shall not be bound to their contractual obligations except for the confidentiality obligation.

EXECUTION CLAUSE

21.7 Costs

[...]

21.8 Attachment

21.8.1 The following attachments hereto are an integral part of this Contract:

Articles of Association;

Annex A:

Annex B:

Annex C:

(...)

The Parties have executed this Contract in [*place*], on the [*date*]

VENTURER IT

Legal Representative: Ms./Mr.:

VENTURER PRC

Legal Representative: Ms./Mr.:

PLACE AND DATE OF
EXECUTION

SIGNATURES