



CORPORATE LAW IN ITALY

JOINT VENTURE IN ITALY

by

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Joint Venture rules in Italy

Although the Joint Venture is a legal tool that was born under the "Common Law", in which such expression is used in order to indicate heterogeneous shapes of temporary collaboration between two or more enterprises, aimed to the realization of a common objective, the meaning of the term "Joint Venture" in Italy is intended such as an important instrument of collaboration between enterprises, fit to be used in the field of production, trade and research.

In origin the term Joint Venture was intended as an agreement with which some enterprises of the same Country decided to join for the realization of an objective of common interest aiming to develop complex shapes of collaboration between enterprises of various countries. The diffusion of such a legal instrument outside of the national borders has been encouraged by the process of progressive liberalization of the international trade exchanges and of integration of the world-wide markets.

Today the term Joint Venture is used in a wider meaning, it refers to whichever combined initiative by some enterprises. Between all the shapes of enterprise aggregation the Joint Venture is the most flexible, it is fit to be used in the international context in order to favour the access in the new markets, allowing the



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sharing of them jointly with the foreign partner, above all when the foreign partners are from far and culturally various countries.

Under the object of the Joint Venture the agreement could assume various shapes.

In Europe the new contractual figure of Joint Venture has been immediately adopted, setting up, sometimes, skilled legal tools, such as, for example, the "Association Momentanè" in Belgium, or the German "Arbeitsgemeinschaft".

In Italy doesn't exist a legal shape similar to the Joint Venture, for which, the realization of combined entrepreneurial initiatives is set up, normally, through various legal shapes, such as, the consortium, and also through more recent legal institutes as the Associazione Temporanea di Imprese (ATI) (Temporary Association of Enterprises), the Gruppo Europeo di Interesse Economico

(GEIE) (European Economic Interest grouping) and the Associazione in Partecipazione (Limited Partnership).

In fact in Italy there is not an expressed legislative definition of the legal institute of Joint Venture but the digest has compensated this lack: it has defined it as those shapes of association between enterprises not comprised in the traditional shapes of aggregation stated by the law. In this regard there are some jurisprudential decisions, concerning the legitimacy and the merit, issued in the middle of the '90ies.

Italian Jurisprudence

Mainly important is the Sentence Cass. n° 6757/2001 issued by the Corte di Cassazione, which, in order to distinguish such institute and the Associazione in Partecipazione, has established that the term Joint Venture means the <<shapes of temporary association of enterprises finalized to the execution of an economic activity in a field of common interest, in which the parties state the constitution of a company



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with independent legal personality (...), to which entrust the conduction of the combined initiative>>.

The aforementioned sentence of the Corte di Cassazione defines a particular kind of Joint Venture: the so-called "Corporate Joint Venture", which is characterized by the constitution of an independent legal subject to which the associate partners will charge the common action. In this case the Joint Venture can assume the legal form of a corporate company, such as, the Società a Responsabilità Limitata (limited) or the Società per Azioni (joint stock company) and must be recorded to company's register.

However, in practice, the parts often prefer to establish a relationship "not equity", on exclusively contractual basis, without any share or participation exchange, this case is called "Non Corporate Joint Venture", or "Contractual Joint Venture".

Contents of joint venture agreement

The formal structure of a Joint Venture agreement is normally characterized by a base agreement to which a set of other accessories agreements are connected, also called "contratti satellite" (ancillary agreements), such as, i.e., the agreements for the protection of the patent, for transfer of the know-how, for recruiting, which, all together constitute a system of contracts, where the base agreement will constitute the key of essential reference for their interpretation.

The base agreement of the Joint Venture must contain some essential information, such as:

- the object that the parties aim to obtain with the contract that is usually appointed in the premises;
- the description of the plan; the division of the tasks, with consequent determination of the responsibilities, of rights and obligation of the parties;



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- the division of costs and proceeds deriving from the activity carried out by the Joint Venture;
- the duration of the agreement.

Scope

Usually the aim of a Joint Venture is the realization of the object in a medium/long time, such as, particular attention will be given to the duration of it.

The clauses that eventually pose some limitations to the contractual freedom of each of the parties must be considered with particular interest, provided that, normally, in the Joint Venture agreement are inserted some "confidentiality clauses", "no competition clauses", of division of markets or agreements aimed to prevent the parties to interfere in the activity of Joint Venture, so that it can achieve the object with autonomy.

A Joint Venture can be employed in various contexts: for the production of assets or services, for the sale of every kind of products, for real estate activities, for the common management of specific projects.