

Strategic Alliances- Implementation routes and key considerations

	Description	Preliminary steps, agreements and considerations	Assets / Intellectual Property ("IP")	Contracts with third parties	Employees	Liability	Tax	Financing	Changes in principals	Exit	Other considerations
Joint Venture involving a separate entity ("JV Co")	JVCo is established as a new limited company or LLP by participants, to form the vehicle through which they will hold and operate the joint venture business	Incorporation of JVCo (usually a limited company or LLP) LLP Agreement or Shareholders' Agreement and Articles of Association	Need for ownership of assets / IP to be transferred or licensed to JVCo	Contracts might need to be assigned/novated to JVCo which may cause disruption to customers and/or need third party consent	If existing business is transferred to JVCo, staff may transfer under TUPE Alternatively, new hires or secondees / consultants will be required	Participants are unlikely to be held liable for obligations of JVCo However, participants might be required to guarantee the obligations of JVCo, e.g. to bank	Taxable gain may be realised on transferring assets both in and out of JVCo Corporate vehicles may result in double tax charges (corporation tax in JVCo and further tax on distribution to participants) LLPs are generally tax transparent but will depend on jurisdiction of establishment	Participants may contribute cash, assets and/or know how Corporate vehicles generally facilitate outside investment (i.e. provide opportunity for debt and equity fundraisings)	Can be dealt with by a sale of shares/LLP interest	Sale, flotation or liquidation of JVCo are all options On a voluntary liquidation of JVCo, assets/IPRs held by it (including those it has created) can be returned to the participants	One participant may require "control" of JVCo to allow for accounting and tax consolidation in its group Consider whether the joint venture is permitted under competition laws, if with a direct/indirect competitor
Minority stake in company ("InvestCo")	Investor acquires a minority stake in InvestCo e.g. a supplier	Share subscription in InvestCo Shareholders' Agreement and Articles of Association	Assets/IP not usually transferred	Investment may trigger adverse rights under contracts with InvestCo		Investor unlikely to be liable for actions of InvestCo if it is a limited company	Possible double tax charges (corporation tax in InvestCo and further tax on distribution to participants)	Initial investment Possible further financing by loan or equity subscription Consider protections against dilution	Interest in InvestCo can be sold, subject to any transfer restrictions in Shareholders' Agreement and Articles of Association	Sale of shareholding to a third party or back to InvestCo (subject to legal restrictions)	If InvestCo is a supplier, it allows investor to have some control over that supplier and to share in profits generated from the business it gives supplier Minority protection rights required to protect value of investment
Co-operation Agreement/ Partnership	Contractual arrangement in respect of a collaboration/profit-sharing arrangement and/or to participate in a speculative venture such as a joint tender or procurement project	Contract between independent parties agreeing to collaborate	Licences to use each other's assets / IP (including new assets / IP created during the collaboration)	Need to decide which participant contracts with third parties and how profits will be shared	May involve seconding staff to other participant but beware of TUPE if part of one party's business is transferred	Risk of creating a general partnership and therefore possible unlimited liability in respect of own actions and those of other participants	Less likely to involve taxable disposals of assets Generally should be tax transparent, but a UK resident participant can be liable for the UK tax liabilities of a non-UK resident party	Participants finance their own costs, save where one party incurs costs on behalf of both/all the participants	Contract may need to be terminated and renegotiated with new party	Termination of contract and apportionment of shared assets and outstanding receivables and liabilities	Consider whether the arrangement is permitted under competition laws
Licensing/ Franchising	Owner granting a third party ("Licensee") the right to exploit intellectual property rights / trading format	Franchise agreement or licence Operation manual Consider granting exclusive territories Consider duration and renewal	IP licensed to Licensee Owner may also sell/ lease products, software, equipment etc to Licensee	Licensee will contract with third parties direct	Licensee generally employees its own staff but owner may supply staff for training	Licensee will normally be responsible for its own obligations but owner should consider seeking an indemnity.	Licensee liable for its own tax with the owner being liable for tax in respect of any fee/ royalty received Transfer pricing may apply if parties are connected	Licensee usually funds its own operation and pays the owner a fee (possibly based on turnover) Owner may want sight of Licensee's accounts	Licence may be transferred (subject to consent of other party) or may need to be terminated and renegotiated with new party	Termination of Licence Owner to have right to terminate quickly if Licensee is under-performing or is damaging owner's brand	Owner needs to ensure Licensee does not act in a way to dilute IP / brand and maintains uniform quality Conversely, this kind of arrangement enables the Owner to increase exposure for his brand whilst minimising the costs.
Distribution/ Agency	Appointment of a third party to help get the principal's goods / services to market A distributor buys the principal's goods and re-sells them to third parties An agent markets or sells goods/services on behalf of the principal (but does not purchase them itself)	Distribution or Agency Agreement Consider scope of appointment and territorial exclusivity	Principal may license Distributor/Agent to use IP such as trade marks	A distributor contracts with purchasers direct, whereas an agent procures sales, the contract for which is concluded between the principal and the purchaser	Agent/distributor will usually employ its own staff If agent is an individual, care needs to be taken to avoid an employment relationship being created with his principal	A principal can be held liable for acts of its agents and the agent will want to ensure principal is solely liable for goods/services supplied A distributor will normally be directly liable to the purchaser as the contracting party	Generally, each party is responsible for its own tax Possible VAT considerations for distributors depending on which country it trades in	Agents are usually paid a commission for procuring introductions/sales Distributors cover their costs by adding a margin when on-selling the products they have purchased	Agreement may be transferred (subject to consent of other party) or may need to be terminated and renegotiated with new party	Termination of agreement Commercial agents may be entitled to statutory compensation or an indemnity on termination under Commercial Agents Regulations	Competition law may restrict the terms which principals can impose on distributors (e.g. re. pricing of goods) The Commercial Agents Regulations confer minimum rights on commercial agents in addition to compensation or indemnity rights on termination.

This information has been prepared by Charles Russell LLP as a general guide only and does not constitute advice on any specific matter. We recommend that you seek professional advice before taking action. No liability can be accepted by us for any action taken or not taken as a result of this information. Charles Russell LLP is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.