



Practice Guides

Joint Ventures

Contributing Editor

Giorgio Vagnoni

LAWP Studio Legale e Tributario

2026

Chambers Practice Guides

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Published by

Chambers and Partners

165 Fleet Street

London

EC4A 2AE

Tel +44 20 7606 8844

Fax +44 20 7831 5662

Web www.chambers.com

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PARES Dynamic Legal Advisors was founded in 2011 and is a full-service Portuguese law firm based in Lisbon, providing multidisciplinary, fully personalised legal advice at every stage of a matter. The firm has 65 lawyers, including a 20-strong Commercial and Corporate Law team that works alongside its Banking and Financial, Tax, and Competition and European Law practices to advise domestic and international clients on joint ventures, M&A, corporate restructuring and cross-border transactions, including matters involving private equity, investment and venture capital funds, real estate and infrastructure. The

team regularly advises clients across these sectors on structuring and negotiating joint ventures with domestic and international partners, recently advising Sevenair Academy on its Airbus-backed pilot-training partnership. PARES negotiates in English, French and Spanish, supporting clients with cross-border operations, and combines experienced and younger practitioners in a close, hands-on approach to client relationships, continuing to invest in legal knowledge and technology to meet increasingly complex commercial demands.

Authors



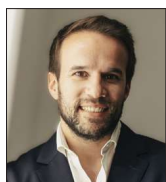
António Juzarte Rolo joined PARES in 2012 and has been a partner since 2017, jointly co-ordinating the firm's commercial and corporate law practice. He advises on mergers, acquisitions, demergers, corporate

restructuring, and the structuring and negotiation of joint ventures, as well as on management regulations for fund management, private equity and venture capital firms. He also supports clients in negotiating commercial contracts, working predominantly in Spanish and English. He holds an LLM in International Business Law and a Postgraduate Degree in Commercial Law, both from Universidade Católica Portuguesa, and is a member of the Portuguese Bar Association.



Marta Belchior is an associate at PARES, which she joined as a trainee in 2019 before qualifying as an associate in 2021. She focuses on commercial and corporate law, advising companies on their

formation, administration, reorganisation and restructuring, including acquisitions, mergers and transformations, as well as dissolution. She also advises on the structuring and negotiation of joint ventures and has assisted companies in preparing, negotiating and executing contracts essential to their commercial operations. She holds a postgraduate qualification in M&A and Corporate Litigation from the University of Lisbon and is a member of the Portuguese Bar Association.



André Rei is a senior associate at PARES, which he joined as a trainee in 2016 before qualifying as an associate in 2018. He works primarily in commercial and corporate law, advising on the formation, acquisition

and restructuring of companies and business groups. He also advises on the structuring and negotiation of joint ventures and has experience preparing, reviewing and negotiating commercial contracts, partnership and investment agreements, working in Portuguese, English and French. He holds a postgraduate qualification in M&A and Corporate Litigation from the University of Lisbon and is a member of the Portuguese Bar Association.

PARES Dynamic Legal Advisors

Rua Alexandre Herculano, 23 – 2nd floor
1250-008 LISBOA
Portugal

Tel: +351 210 936 404
Email: geral@paresadvogados.com
Web: www.paresadvogados.com/en/



1. Market Conditions

1.1 Geopolitical and Economic Factors

Over the past year in Portugal, joint venture (JV) activity has been influenced by the same global political and economic issues affecting the rest of the euro-zone. However, the interest in forming JVs has stayed strong. The ongoing uncertainty from conflicts in Ukraine and the Middle East, along with unpredictable US trade policies, has led Portuguese companies to seek partners and markets in more stable regions. They are also opting for structures that spread out risk instead of concentrating it.

Domestically, inflation went down for most of 2025 but started rising again in 2026 due to higher energy prices. The European Central Bank, after cutting rates for a while, stopped and then started increasing them again because of new political pressures. This has made getting bank loans less reliable, making JVs more attractive for pooling money and sharing financial risks between partners instead of relying on just one company's finances.

US tariffs on European goods, even after being limited, have directly impacted export-focused industries like wine and footwear. This will likely encourage some Portuguese businesses to form international JVs to diversify their markets and distribution channels, rather than just trying to cover the extra costs themselves. Private equity firms are still using JVs to combine smaller, scattered Portuguese businesses. Additionally, Portugal's Recovery and Resilience Plan is creating new pressures and opportunities, especially in areas like energy, digital upgrades and infrastructure projects that fit its goals. Given all this, JVs

are increasingly being used as a less risky way to enter the Portuguese market or test a potential partnership. This often serves as a step before a full takeover, once both sides have a better grasp of each other and the market conditions, particularly when private equity is involved.

Looking ahead to 2027, we anticipate that JVs will continue to be a favoured way to enter the Portuguese market, especially in sectors related to the country's energy and digital transformation goals. Companies will likely keep preferring structures that share risk over immediately buying out partners.

1.2 Industry Trends and Emerging Technologies

Lately, Portuguese JVs have mostly focused on renewable energy, aviation, healthcare and technology. Renewable energy has been especially busy. Portugal is getting ready for its first offshore wind licensing round and is also working on its green hydrogen goals. An example of this is the WindFloat Atlantic pilot project, developed by Ocean Winds, a JV between EDP Renewables and Engie. It shows how big energy companies are already using JVs to share the costs and risks of developing new technologies.

Partnerships have also been common in aviation and healthcare. Usually, a Portuguese company teams up with an international one. This helps them get access to technology, training or funding faster than they could on their own.

These partnerships are increasingly influenced by rules from the EU and Portugal. The EU AI Act (Regulation (EU) 2024/1689), for example, applies direct-

ly in Portugal. It has a system based on risk levels and includes new rules about liability, meaning more responsibility for damage caused by AI systems. JV agreements that involve AI now need to clearly state how liability will be shared between the partners, instead of figuring it out later.

Who owns the IP is another common problem, especially in JVs for technology and AI. The partners need to decide from the start how ownership of jointly developed technology and data will be divided, rather than waiting until the venture is already running.

How data is shared, where it is stored, and compliance with GDPR are still key parts of due diligence. It is now standard practice to have binding agreements for data sharing, particularly when a JV involves partners from both the EU and countries outside the EU.

2. JV Structure and Strategy

2.1 Typical JV Structures

The standard JV route under Portuguese law and market practice is the incorporation of a special purpose vehicle under the form of a private limited liability company (*sociedade por quotas* – Lda.) or, in larger ventures, of a public limited liability company (*sociedade anónima* – S.A.). Its main advantages lie in the shareholders' limited liability, clear governance rules via shareholders' agreements (SHAs) (*acordos parasociais*), and the ease of raising third-party financing, given its familiarity to lenders and other stakeholders. Its principal disadvantages, when compared with other JV structures, are the potential double taxation exposure on distributed profits and the formalities involved in exit or liquidation.

Beyond corporate JVs, another commonly used structure is the silent partnership (*associação em participação*), under which a third party commits to invest in an existing company without acquiring shareholding rights, obligations or liabilities, in exchange for a share in the profits of a specific project (with the possibility of excluding that party from sharing in losses). This structure is useful for passive investment or real estate JVs seeking discretion, although it offers weaker governance rights and no asset separation.

Consortiums (*consórcios*) are a common JV structure in construction and public tenders, offering no incorporation costs or formalities, flexible profit-sharing and tax transparency. Their principal drawback is exposure to joint and several liability, which tends to make them less attractive to lenders financing the venture itself.

2.2 Strategic Drivers for JV Structuring

The choice of JV vehicle in Portugal is generally driven by liability exposure, tax treatment, and the parties' need for control over assets and decision-making, with tax considerations frequently determining the structure before governance issues are even addressed.

The need for control and decision-making is often the first filter applied, particularly where partners intend to take an active role in management or, even where they do not, wish to retain voting rights – whether as shareholders and/or within the management body – and to secure clear exit routes, such as drag-along, tag-along and shotgun provisions, allowing them to take over the project, or exit it, should matters depart from the projected business plan. The corporate JV route is generally better suited to accommodating these mechanisms than the alternatives available.

Tax treatment is a further significant factor. While non-corporate JVs such as silent partnerships and consortiums are fiscally transparent, avoiding double taxation – at vehicle level (corporate income tax – IRC) and upon distribution of profits – the Participation Exemption Regime, introduced in 2014 in the Portuguese Corporate Income Tax Code, arguably offers an even more favourable outcome for corporate JVs: under this regime, national corporate shareholders holding at least 10% of the share capital or voting rights of a company, for a minimum period of 12 months, are exempt from taxation not only on dividend distributions but also on capital gains arising from the sale of those shares – allowing shareholders to exit the project company entirely tax-free, an advantage not available to non-corporate structures.

Although the Participation Exemption Regime applies only to national corporate shareholders, the effect is not equivalent for non-Portuguese shareholders, as

dividends and capital gains taxation follows the rules of the shareholder's place of residence – although, depending on the applicable double tax treaty and domestic regime, this may nonetheless prove favourable where the place of residence does not tax such income, or taxes it at a lower rate than would otherwise apply in Portugal. Partly for this reason, foreign shareholders frequently interpose a Portuguese holding company as shareholder of the project JV company, so as to benefit from the Participation Exemption Regime and to reinvest profits within Portugal.

The silent partnership is typically used in JVs of a different nature, where the silent partner commits capital alone in exchange for a share of profits. This structure allows the investment to be collateralised against the company's assets – an option unavailable to corporate JVs – while the silent partner retains a quasi-shareholder position in terms of information rights and project tracking, without taking an active role in shareholder or management decisions.

For the reasons outlined above and given that corporate JVs remain the structure of choice in the vast majority of Portuguese transactions, this article will focus principally on corporate JVs. References to non-corporate structures, such as the silent partnership and the consortium, are made where relevant for comparison, but the analysis that follows should be read with the corporate JV as its primary frame of reference.

3. JV Regulation

3.1 Legal Framework and Regulatory Bodies

Corporate JVs are governed principally by the Portuguese Companies Code (*Código das Sociedades Comerciais*) (CSC), which regulates corporate vehicles and sets out the main limitations concerning decision-making, share transfers, profit distribution, liquidation, redemption and exclusion. Many of these provisions are mandatory and cannot be freely derogated from in the articles of association (*estatutos*), particularly those protecting minority shareholders from forced dilution, unfair exclusion and asset dissipation – for instance, pre-emption rights on capital increases, the right to a proportionate share of liquidation proceeds,

and the qualified majorities required for amendments to the articles of association or for capital reductions.

The regulator responsible for the registration of the relevant corporate acts is the Companies Registry Office (*Conservatória do Registo Comercial*), which verifies that incorporation documents, share transfers, capital changes and dissolution filings comply with these legal requirements before granting registration – registration being, for most corporate acts, a condition of their enforceability against third parties.

Sector-specific JVs may additionally be subject to specialised regulators, namely, among many others, the Bank of Portugal (BdP), the Securities Market Commission (CMVM), the Insurance and Pension Funds Supervisory Authority (ASF), the Energy Services Regulatory Authority (ERSE) and the Competition Authority (AdC).

Municipal licensing authorities – rather than the Institute of Public Markets, Real Estate and Construction (IMPIC) – frequently serve as the primary regulator for real estate and construction JVs.

3.2 Anti-Money Laundering Compliance

JV formation in Portugal is subject to the anti-money laundering (AML) framework established by Law 83/2017, transposing the EU's Fourth and Fifth Anti-Money Laundering Directives, the core legislative act establishing preventive and punitive measures for AML and countering the financing of terrorism, transposing EU rules and setting rigorous Know Your Customer (KYC) due diligence, and risk-management obligations for designated obligated entities. In particular, lawyers acting in JV incorporation qualify as obligated entities and must carry out customer due diligence, identifying and verifying the JV partners and, critically, their ultimate beneficial owners (UBOs) before engaging in any services.

Enhanced due diligence applies where a partner is a politically exposed person or is based in a high-risk third country, or where the ownership structure is unusually complex or opaque – a recurring issue in multi-jurisdictional JVs. Obligated entities are also required to report suspicious transactions.

For JVs involving foreign capital contributions, banks implementing capital calls or shareholder loans will additionally apply their own AML controls under the Bank of Portugal's supervision, often requiring source-of-funds documentation beyond what company law itself demands. Material inaccuracies in the declared beneficial ownership chain can delay financial institutions' onboarding of the JV vehicle and, in serious cases, expose obligated entities and JV representatives to administrative sanctions.

Depending on the area of business, JVs may additionally be subject to sector-specific regulations (in particular those in the banking and finance, capital markets, real estate and construction sectors, and virtual asset service providers).

3.3 Sanctions, National Security and Foreign Investment Controls

Under Law 97/2017 and EU sanctions regulations, co-operating with a JV partner that is subject to EU/UN sanctions is prohibited, and Portuguese banks routinely screen JV parties against consolidated sanctions lists before onboarding. Having a sanctioned partner will, in practice, block the transaction regardless of the JV's commercial merit.

On national security, Decree-Law 138/2014 empowers the Council of Ministers to oppose, on public security grounds, acquisitions of control over strategic assets – ie, infrastructure tied to national defence, energy, transport and communications – by non-EU/EEA persons.

In practice, this power is rarely used. Despite being in force for over a decade, there are no publicly known instances of the Council of Ministers vetoing a transaction on these grounds, consistent with the pro-investment stance successive Portuguese governments have taken since the 2010–14 financial crisis.

There is no general restriction on foreign participation in Portuguese JVs: foreign shareholders may hold up to 100% of the capital of a JV vehicle, and no minimum Portuguese shareholding is required as a matter of company law. Restrictions instead arise on a sector-specific basis. Banking and financial services, insurance, energy, telecommunications, media

and defence-related activities each carry separate authorisation, regardless of the nationality of the JV's shareholders. These sectoral regimes frequently go beyond a simple licensing filing, sometimes requiring local management experience or fit-and-proper assessments extending to indirect beneficial owners.

3.4 Competition Law and Antitrust

JVs in Portugal are subject to Law 19/2012 (the Competition Act), enforced by the Competition Authority, and, where the JV meets EU thresholds, to Regulation (EC) 139/2004. A “full-function” JV – ie, one operating on a lasting basis and performing all the functions of an autonomous economic entity – is treated as a concentration and is subject to the same merger control regime as an acquisition.

Notification to the Competition Authority is mandatory where:

- the JV creates or reinforces a market share of 50% or more in the relevant national market;
- the JV creates or reinforces a market share between 30% and 50%, provided at least two of the parties individually achieved turnover exceeding EUR5 million in Portugal in the preceding financial year; or
- the parties' combined Portuguese turnover exceeded EUR100 million in the preceding financial year, again provided two parties individually exceeded EUR5 million.

Where thresholds are met, completion is prohibited until clearance is obtained, and gun-jumping is sanctionable with fines of up to 10% of the infringing party's turnover.

Non-full-function JVs, and co-operation between parent companies falling short of a concentration, remain subject to the general prohibition on restrictive agreements under Article 9 of the Competition Act, mirroring Article 101 of the Treaty on the Functioning of the European Union, requiring careful drafting of any information-sharing, non-compete or exclusivity provisions in the JV agreement.

3.5 Listed Companies and Market Disclosure Rules

When a JV partner is listed on Euronext Lisbon – the Portuguese stock exchange – its participation triggers strict transparency, approval and governance mandates under the Portuguese Securities Code and the Securities Market Commission regulations.

First, listed participants face immediate market disclosure obligations, by having to publicly disclose any strategic partnership agreements that influence voting rights or corporate control, or constitute inside information. Furthermore, if the JV alters share ownership, any crossing of major statutory thresholds starting at 5% must be reported to the regulator and the market.

Second, the listed party must assess whether the transaction qualifies as a related-party transaction, which is particularly critical when the JV involves entities connected to directors, controlling shareholders or group companies, thereby triggering mandatory independent board approvals, specialised auditing and public disclosure to mitigate conflicts of interest.

Finally, listed corporate participants must adhere to strict corporate governance codes. This framework ensures that all subsequent transactions within the JV undergo transparent auditing and rigorous supervisory board reviews to maintain market integrity.

3.6 Transparency and Ownership Disclosure

Corporate JVs incorporated in Portugal are strictly subject to UBO disclosure mandates managed by the Central Registry of Beneficial Owners (*Registo Central do Beneficiário Efetivo* – RCBE), originally established by Law 89/2017.

This mandatory filing requires the identification of any natural persons who ultimately own or control the corporate entity, either by holding a direct or indirect shareholding of more than 25% of the share capital or voting rights or, if ownership cannot be established through capital percentages, by effective control through contractual arrangements, veto rights or, as a last resort, the top managing directors being deemed as UBOs.

The initial registration must be completed within 30 days of the legal entity's incorporation or tax allocation. Furthermore, corporate vehicles must continuously maintain accuracy by reporting any mid-year ownership modifications within 30 days of the change. To remain in good standing, an annual validation of the data must be submitted by 31 December.

Failing to maintain a valid RCBE filing triggers significant structural restrictions and financial penalties ranging from EUR1,000 to EUR50,000, in addition to the prohibitions set out in Article 37 of Law 89/2017. Specifically, non-compliant entities are legally prohibited from distributing profits, disqualified from public procurement and state bidding participation, not allowed to launch public offerings, excluded from support from European structural, investment and public funds, and forbidden from carrying out real estate transactions, while additionally facing the operational blocking of their banking transactions, operations and financial accounts until full compliance is restored.

Contractual JVs, such as consortiums and silent partnerships, lack independent legal personality and generally fall outside direct standalone RCBE registration requirements. However, this does not bypass transparency requirements, as each individual company participating in the JV is obliged to maintain its own updated RCBE profile, this obligation extending explicitly to foreign corporate entities acting in Portugal through a non-corporate structure, as long as they carry out economic activity or execute legal transactions that require a Portuguese taxpayer identification number or operate via a local permanent representation.

4. Legal Developments

4.1 Notable Recent Decisions or Statutory Developments

Portuguese JV practice has seen no significant court decisions in the past three years genuinely worth flagging. The legal environment and prevailing case law on SHAs, corporate governance and deadlock enforcement have remained stable, with courts continuing to apply well-settled principles rather than departing from them.

On the statutory side, the most notable development in the past three years has been the Start-up and Scale-up Law (Law 21/2023), which, while not JV-specific, introduced a formal legal basis for stock option and stock ownership plans within Portuguese non-listed companies, including a favourable tax regime for gains realised on qualifying options. It is now more common for JV SHAs to set up a dedicated option pool from the start, with vesting, leaver and dilution terms agreed between the partners at signing, rather than worked out later once the venture is already running. The regime has also made it easier to bring a JV's management incentive structure in line with market practice in venture-backed and scale-up deals, an area Portuguese company law had previously left with little statutory support.

5. Negotiating the Terms

5.1 Preliminary Negotiation Instruments and Practices

When an underlying business exists, JV negotiations typically begin with a mutual non-disclosure agreement, followed by a light due diligence questionnaire covering the most important matters (financial statements, debt, licences and litigation) to form the basis for an offer. The parties then commonly execute a heads of terms, memorandum of understanding or letter of intent to establish core commercial terms. While these documents are generally non-binding, they include binding clauses on confidentiality and governing law. An exclusivity provision is often included to protect parties investing significant resources in due diligence.

For new ventures, an investment term sheet frequently initiates the process to model the commercial, financial and tax architecture.

At this pre-agreement stage, parties outline the standard provisions that will govern the JV vehicle, namely its nature, governance structure, management appointment rights, reserved matters requiring qualified majorities, funding mechanics, deadlock resolution mechanisms, transfer restrictions, exit mechanisms (including drag-along, tag-along and put/call options), and non-compete and non-circumvention

undertakings. When investing in existing businesses, conditions precedent – particularly regulatory or competition clearance – and satisfactory due diligence results are also typically outlined at this pre-JV agreement stage.

Crucially, under Article 227 of the Portuguese Civil Code, all preliminary negotiations are bound by a statutory principle of good faith: even under non-binding terms, an unjustified or sudden rupture of negotiations can trigger pre-contractual liability, obliging the defaulting party to indemnify the counterparty for wasted due diligence costs and expenses.

5.2 Disclosure Obligations

Portuguese law does not impose a general public disclosure requirement on the formation of a JV as such, as disclosure obligations arise instead from the status of the parties or the nature of the transaction, rather than from the JV structure itself.

Under the EU Market Abuse Regulation, listed companies face an immediate disclosure trigger, as disclosure to the market is required as soon as a concrete decision to proceed is made and the project qualifies as inside information. In practice, this threshold is frequently crossed at the heads of terms stage (rather than at signing or closing) provided the core terms are sufficiently precise and price-sensitive.

If the JV must be notified to the Competition Authority, the regulatory filing is required after the conclusion of the agreement (signing) but must occur prior to implementation (closing). The transaction cannot close until formal clearance is granted, making merger clearance a standard condition precedent.

For non-listed, non-regulated JVs, and for those not subject to competition clearance, disclosure is essentially a matter of commercial registry filing following incorporation or capital changes, which becomes publicly searchable but does not require an affirmative announcement.

5.3 Conditions Precedent, Material Adverse Change and Force Majeure

In Portuguese JV agreements, closing is frequently conditional upon satisfying standard conditions pre-

edent, which primarily focus on regulatory, corporate and operational clearances. Parties typically agree that the transaction cannot close without obtaining merger control clearance from the Competition Authority if statutory thresholds are met, alongside any required sector-specific approvals from regulators in sectors such as energy, banking, telecommunications or insurance.

Structurally, these conditions precedent also include obtaining necessary corporate approvals from the JV members' internal boards, securing third-party waivers from existing lenders to prevent cross-defaults, ensuring the accuracy of fundamental warranties at closing, and completing any mandatory pre-closing corporate carve-outs or asset transfers.

Material adverse change (MAC) clauses are also standard, acting as a contractual mechanism that allows a party to withdraw from the transaction if an event severely degrades the target's financial condition. In Portuguese practice, MAC clauses are heavily negotiated to explicitly define materiality thresholds – often tied to EBITDA or turnover decline, or loss of a material licence or contract.

5.4 Legal Formation and Capital Requirements

Setting up a corporate JV vehicle in Portugal involves choosing between two primary structures under the CSC: a private limited liability company (*sociedade por quotas*) or a public limited liability company (*sociedade anónima*). For a non-listed and non-regulated JV, the vehicle of choice is the *sociedade por quotas*, which can be incorporated with a minimum share capital of just EUR1 per shareholder. Because it does not mandate the appointment of a statutory auditor until certain high thresholds are met for two consecutive financial years, this structure proves highly capital-light to establish.

Conversely, if the JV business lies in a regulated area – such as insurance companies, credit institutions, investment firms, financial intermediaries, fund managers or payment institutions, among others – the *sociedade anónima* form is generally required by sector-specific regulations. This structure requires a minimum of five shareholders or a single corpo-

rate shareholder, a mandatory statutory auditor and, depending on the sector, a board of directors with regulator-vetted members. Furthermore, a *sociedade anónima* requires a minimum share capital of EUR50,000, although sector-specific regulations often raise this minimum threshold significantly higher.

Portuguese legislation imposes no legal restrictions on foreign ownership or foreign equity participation in local corporate entities, and there are no statutory nationality requirements for members of a company's board of directors. Foreign corporate participants face the same structural rules and incorporation procedures as domestic investors, while having to complete specific administrative requirements, such as obtaining a Portuguese taxpayer identification number (NIF, for individuals) or foreign entity number (NIPC, for corporate shareholders) before execution.

6. Core Terms of a JV Agreement

6.1 Drafting and Structure of the Agreement

The documentation of a JV in Portugal depends heavily on whether the parties select a corporate vehicle or a contractual framework.

For corporate JVs, the terms are set out across two separate instruments. The articles of association are a public document, filed with the Companies Registry Office and enforceable against third parties, and primarily govern the company's external corporate capacity, its basic capital structure and the standard functioning of its corporate bodies. The SHA, by contrast, is a private, confidential contract regulating the internal relationship between the shareholders. Under Portuguese corporate law, the articles of association bind the company itself, whereas the SHA binds only the signing shareholders, and its breach – while enforceable as between shareholders, including through penalty clauses or specific performance – does not, by itself, invalidate a corporate resolution passed in violation of it.

For contractual JVs lacking independent legal personality, such as consortiums and silent partnerships, the entire venture is governed by a single, comprehensive private contract detailing operational management,

cost-sharing allocations, liability distribution and profit-splitting mechanics, since there is no underlying corporate structure or statutory default framework to fall back on.

A corporate JV's documentation would typically divide as follows:

- the articles of association would cover the corporate name, registered office, corporate purpose, capital structure, corporate bodies and, where permitted, share transfer restrictions capable of being embedded at statutory level, such as company consent requirements and pre-emption rights; and
- the SHA would then cover special rights, reserved matters, voting restrictions, veto rights, deadlock resolution mechanisms, more detailed share transfer restrictions and mechanisms (including tag-along and drag-along rights), dividend distribution policy, funding obligations, non-compete and non-circumvention undertakings, and confidentiality provisions.

6.2 Governance and Decision-Making

Governance in a Portuguese corporate JV operates on two tiers, and achieving a balance between shareholders without compromising operational decision-making is often the most heavily negotiated part of an SHA, though varying considerably according to the power dynamics and shareholding percentages of each shareholder.

At the corporate level, the CSC establishes default decision-making rules by reference to the general meeting and the management body, with ordinary resolutions generally passed by simple majority and structural matters – eg, amendments to the articles of association, mergers, dissolution, capital increases involving pre-emption waivers – requiring qualified majorities of two-thirds or, in some cases, three-quarters of the votes present. These statutory majorities cannot be lowered below their legal floor, although the articles of association may raise them.

A customised governance framework is then built into the SHA on top of these statutory defaults, typically including a defined list of reserved matters requiring enhanced consent – eg, material capital expenditure,

related-party transactions, changes to business plan, additional indebtedness, appointment of key management, issuance of new shares – together with board composition rights proportionate to shareholding. In Portuguese practice, the SHA serves as the primary mechanism whereby the parties enforce specific rights that may not be set forth in the articles of association, including regarding decision-making. Consequently, while breach of the SHA might not constitute an infringement of the articles of association or the law, it establishes a direct breach of contract under the SHA, triggering liability of the defaulting shareholder.

6.3 Funding

Portuguese corporate JVs are typically funded through a mix of equity and shareholder debt, rather than pure equity, since shareholder loans offer significant flexibility that equity contributions do not: they generally do not require shareholders' approval, are reimbursable by the management without net situation limitations, and their remuneration terms are freely negotiable.

Initial capitalisation is usually set at a modest statutory minimum – EUR1,000 to EUR10,000 for private limited liability companies (*sociedades por quotas*) and EUR50,000 for public limited liability companies (*sociedades anónimas*) – leaving most of the funding requirement to be met through shareholder loans (*suprimentos*) or staged supplementary capital contributions (*prestações suplementares*) aligned with the JV's actual cash flow needs.

Where the JV entity intends to seek bank financing, shareholders tend to favour supplementary capital contributions (*prestações suplementares*) over both share capital increases and shareholder loans. Their advantage lies in being treated as equity for accounting purposes – since their reimbursement is conditional on the company retaining positive net equity – while remaining considerably more flexible than a share capital increase, which typically requires an enhanced general meeting majority and involves deeper formalities and tighter restrictions on any future reduction. Shareholder loans, by contrast, are booked as debt and therefore affect the company's financial profile and leverage ratios, which can weigh against the JV's borrowing capacity or covenant headroom precisely

when bank financing is being sought. The SHA will typically set out an initial funding plan under which contributions are made proportionally to each JV member's percentage of the share capital.

As for future funding, three approaches are typically seen:

- a contractual obligation to provide proportional additional funding via capital calls, coupled with default mechanisms – such as forced redemption of shares or dilution clauses – applying to JV members that fail to follow a call;
- funding through shareholder loans or supplementary capital contributions; or
- no obligation to provide future funding at all, leaving each shareholder free to decide whether to participate in subsequent funding rounds, in which case non-participation triggers proportional dilution rather than a breach of the agreement.

Where funding is provided through new equity, existing shareholders will generally benefit from statutory or contractual pre-emption rights allowing them to maintain their percentage of the share capital, regardless of which of the above funding routes is used.

6.4 Deadlocks

Portuguese company law provides no statutory deadlock resolution mechanism for JVs, leaving the matter to be addressed contractually in the SHA.

The choice of deadlock resolution mechanism is heavily influenced by the ownership split, whether 50:50 or majority:minority, and is essential where the JV is structured on a 50:50 basis and each shareholder holds equal decision-making power at both general meeting and management levels, ensuring the venture is not permanently paralysed by an irreconcilable disagreement between the shareholders or the directors they appoint.

Common mechanisms, escalating from least to most drastic, include:

- a casting vote for the chairperson where the board has an even number of members;

- referral to an independent expert or mediator for specific technical or valuation disputes;
- Russian roulette or shotgun clauses, under which one party offers to buy or sell at a stated price and the other must elect to buy or sell on those terms;
- put/call options at fair market value, typically determined by an independent valuer; and
- as a last resort where the deadlock touches fundamental strategic matters and no buyout mechanism has been agreed, voluntary winding-up of the JV.

Unlike many common-law systems, where such mechanisms are typically enforced only through damages, several of these provisions are capable of specific performance (*execução específica*) under Portuguese law where a party fails to comply, giving them real teeth and the ability to deliver a definitive resolution to the deadlock.

6.5 Other Documentation

Beyond the SHA and articles of association, a corporate JV typically requires a further layer of documentation, falling into several distinct categories.

Contribution-related documentation varies according to what each JV member is bringing into the venture: asset transfer or contribution agreements where a partner assigns real estate, equipment or a going concern to the JV; and IP licence agreements where a partner contributes technology, trade marks or know-how without assigning title, as opposed to an IP assignment agreement where ownership itself transfers.

Financing documentation typically includes shareholder loan agreements and, where applicable, bank financing agreements or term sheets, together with any security package required by the lender over the JV's assets or the shareholders' shares.

Operational agreements between the JV and its parent companies commonly include management services agreements, technical assistance agreements and supply agreements governing the ongoing relationship once the venture is operational, alongside non-compete and non-circumvention agreements protect-

ing the JV's business from competition by the parents themselves.

HR-related documentation covers employment agreements for JV staff and, where personnel are seconded from a parent company, secondment agreements.

Finally, financing support documentation – eg, parent company guarantees or comfort letters – is often required by lenders or key counterparties to backstop the JV's obligations, particularly during its early stages before it has an independent financial track record.

6.6 Rights and Obligations of JV Partners

Key rights and obligations of shareholders/partners in corporate JV, typically include:

- proportional (or otherwise agreed) profit sharing, generally reflecting each partner's equity, unless the agreement provides for a different allocation;
- information rights, including access to accounts, board minutes and periodic reporting;
- non-compete undertakings, restricting partners from competing with the JV's business during the relationship (and sometimes for a limited period after exit); and
- board representation rights proportional to shareholding.

Under the CSC, profits and losses are distributed according to shareholding percentage as a default rule, unless the articles of association or an SHA provide otherwise. Such deviations are permitted, subject to certain mandatory limits – most notably the prohibition on entirely excluding a shareholder from profits, a prohibited arrangement known in Portugal as the "*pacto leonino*".

As to liability for JV debts, in a corporate JV, liability is limited to the company's own assets, and shareholders are only liable up to their capital contribution (save in cases of abuse of legal personality or specific statutory exceptions). This limited-liability shield is one of the principal reasons parties choose a corporate JV with an incorporated structure over a purely contractual JV, where liability rules are more complex and can expose members to joint liability towards third parties. However, notice that directors/managers in a

corporate JV are jointly and severally liable for debts to the Portuguese Tax Authority and Social Security.

6.7 Minority Protection and Control Rights

Minority partners in a Portuguese JV typically protect their position through a combination of contractual and, to a lesser extent, statutory mechanisms.

At contractual level, the SHA is the primary vehicle for protection and would typically include:

- reserved matters or veto rights over specified strategic decisions, regardless of shareholding percentage;
- board representation rights, guaranteeing at least one appointed director even where the shareholding is below what would ordinarily secure a board seat;
- enhanced information and audit rights, going beyond the statutory minimum;
- anti-dilution protections in future funding rounds;
- tag-along rights, allowing the minority shareholder to join a sale by the majority JV partner on the same terms; and
- exit mechanisms – put options exercisable against the majority partner or buy-sell/Russian roulette clauses – providing a route out should the relationship break down.

The CSC also affords certain statutory minority protections, independently of the SHA: minimum shareholding thresholds (typically 5% or 10%, depending on the right) that trigger the ability to convene a general meeting, request specific information from management or challenge shareholder resolutions taken in breach of the law or the articles of association, as well as the right to bring a liability action against directors on the company's behalf. In practice, however, these statutory rights are relatively limited tools in a JV context, and contractual protections in the SHA remain the primary and more effective safeguard, particularly for minority partners seeking meaningful, enforceable control rather than the residual protections the law provides to all minority shareholders generally.

6.8 Applicable Law and Dispute Resolution in International JVs

Portuguese private international law respects party autonomy, so parties can choose a foreign law for the SHA. However, matters of Portuguese company law, such as validity of the articles of association, share transfer formalities, governance, directors' duties and minority protection, remain mandatorily governed by Portuguese law, since the JV entity is incorporated in Portugal. Therefore, parties could and should expect a degree of legal bifurcation, with a foreign-law SHA sitting alongside Portuguese-law incorporation documents, and should ensure the two are drafted consistently to avoid conflicts.

When a JV involves a Portuguese and a foreign partner, the foreign partner may prefer a neutral third-country law to avoid a perceived "home advantage", particularly in JVs with partners from multiple jurisdictions. Therefore, parties do not necessarily choose Portuguese courts – these are natural for matters intrinsic to Portuguese company law, but for broader commercial disputes, international arbitration (often seated in Lisbon, London, Paris or Geneva) is common, for confidentiality, neutrality and enforceability.

If the SHA is silent on jurisdiction, the default rules of the Brussels I bis Regulation (for disputes involving EU-domiciled defendants) or, failing that, Portuguese domestic rules of jurisdiction will apply, generally directing disputes to the courts of the defendant's domicile or the place of performance of the obligation in question. This can result in fragmented litigation across multiple jurisdictions which is precisely why well-drafted SHAs should invariably include an express jurisdiction or arbitration clause.

Portuguese law does not impose mandatory arbitration or mediation for commercial JV disputes generally. However, it is common, and good practice, for SHAs to include a tiered dispute resolution clause, requiring good-faith negotiation between the parties, sometimes followed by expert determination for specific technical or valuation disputes before either party may commence arbitration or litigation.

Portugal is a signatory to the 1958 New York Convention and the Brussels I bis Regulation, and has

bilateral treaties with countries in the Community of Portuguese Language Countries (CPLP).

As regards enforcement, for arbitral awards, Portugal is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which provides a streamlined framework for the recognition and enforcement of foreign arbitral awards. For foreign court judgments, the applicable regime depends on the country of origin:

- EU member states – Judgments are generally recognised and enforced under the Brussels I bis Regulation.
- Non-EU states – The recognition and enforcement of judgments are governed by the Portuguese Code of Civil Procedure, unless an applicable bilateral or multilateral treaty provides otherwise and they must undergo a recognition procedure before the Portuguese courts prior to being enforceable.

7. The JV Board

7.1 Board Structure

Portuguese law does not prescribe a specific JV board model, leaving the parties to structure governance through whichever corporate form they choose: a public limited liability company (*sociedade anónima*) or a private limited liability company (*sociedade por quotas*). The former is more common for larger ventures, typically featuring a board of directors (*conselho de administração*) alongside a supervisory board or statutory auditor (*conselho fiscal* or *fiscal único*, respectively), while the latter is managed by one or more directors (*gerentes*) without a mandatory supervisory body.

JV boards usually allocate seats in proportion to shareholding, either through the articles of association – typically via a special right of appointment granted to one or more shareholders or share classes – or through the SHA, granting each party the right to appoint directors (and to replace and dismiss those it has appointed) in proportion to its stake. This proportional logic is a matter of contractual choice rather than statutory default: in the absence of such provision, directors are simply elected by ordinary major-

ity at general meeting, which would allow a majority shareholder to fill the entire board.

On appointment and removal, directors of a *sociedade anónima* are subject to a maximum term of four years unless otherwise provided, whereas no express statutory limit applies to directors of a *sociedade por quotas*. Directors are appointed by the general shareholders' meeting, or co-opted to fill vacancies subject to subsequent ratification, and may be removed at any time by simple majority, with or without cause, although removal without just cause can give rise to a compensation claim – a risk JV agreements typically address by requiring the removing shareholder to indemnify the JV or the other partner for any resulting liability.

There is no nationality or residency restriction on directors: foreign individuals may serve freely, subject only to obtaining a Portuguese taxpayer identification number and, where applicable, appointing a tax representative.

Weighted board votes are not available under Portuguese law, since each director or manager holds a single vote regardless of who appointed them or how much capital that shareholder holds. Board control is instead engineered contractually, through seat allocation, casting votes, veto rights, and reserved-matter or qualified-majority clauses, rather than through the voting weight of individual board members.

7.2 Duties and Functions of JV Boards and Directors

Directors are responsible for managing and representing the company or JV structure and owe duties of care and loyalty: they must act as a diligent, informed director, in the company's interest, having regard to shareholders' long-term interests and those of other important stakeholders, and must also avoid conflicts of interest and disclose any personal interest in matters coming before the management body.

Directors' duties are owed to the company itself, not to the shareholder who appointed them, and a director who favours the appointing shareholder's instructions over the company's interest risks personal liability. JV agreements can manage this tension contractually,

through consultation mechanisms and reserved matters, but such contractual arrangements cannot override the director's statutory duty to the JV company – a director cannot be validly instructed to act against the company's interest, no matter how explicitly that instruction is set out in the SHA.

In public limited liability companies (*sociedades anónimas*), the board of directors may delegate day-to-day management to one or more delegated directors, or appoint an executive committee, provided the articles of association allow for this. Structural matters – eg, approval of accounts, mergers, capital changes and similar resolutions – cannot be delegated in this way. Delegation to third parties is more limited still, restricted to powers of attorney for specific acts, which does not amount to proper board delegation and does not relieve the board of its underlying management responsibility.

On reporting, the law requires directors to prepare an annual management report and accounts for shareholder approval within three months of financial year-end, and shareholders separately hold a general statutory right to information regarding the company's affairs. JV agreements typically build on this statutory floor with more extensive contractual reporting obligations, such as monthly management accounts, budget variance reports, or standing information rights for a shareholder's appointed observer.

7.3 Conflicts of Interest

Portuguese law addresses conflicts of interest through disclosure and abstention rules rather than outright prohibition: when directors have a personal interest in a matter under board discussion, they must disclose it and are barred from voting on that resolution. If the conflicted director nevertheless votes despite this restriction, and their vote proves decisive to the formation of the majority, the resolution in question may be voided.

Related-party transactions between the company and a director, or an entity connected to them, require prior board or general meeting approval and, in some cases, a favourable report from the supervisory body. Separately, the CSC imposes an express non-compete restriction on directors: except if authorised by

the general meeting, a director may not, on their own or a third party's behalf, engage in an activity competing with the company, nor hold a position in a competing company. Breach of this restriction triggers liability and can justify removal for just cause – a rule of particular relevance where the appointing shareholder operates in the same or an adjacent market to the JV.

Portuguese law does not disqualify someone merely for holding a role within a JV member. However, a person's position can become problematic where it creates structural, recurring conflicts – for instance, where their day-to-day role gives them ongoing access to competitively sensitive JV information or places them on the board of a competing business – rather than an isolated, transaction-specific one addressable through disclosure and abstention alone. In such cases, parties typically address the issue contractually, through the appointment of independent directors for sensitive matters or, where the conflict is more fundamental, by requiring the appointing shareholder to nominate an alternative individual altogether.

8. IP and ESG

8.1 Ownership and Use of IP

One of the key issues regarding IP in a corporate JV is whether the IP should be assigned to the entity, merely licensed, or retained by the contributing partner/shareholder – which will be assessed in 8.2 Licensing v Assignment of IP Rights.

A central distinction is between background IP (pre-existing IP that each party brings in), which is usually retained and merely licensed, and foreground IP (IP developed by the JV going forward), whose ownership must be expressly allocated to avoid default joint-ownership rules producing unclear outcomes.

These distinctions also apply to contractual collaborations, with added focus on licence scope (exclusivity, territory, etc), what happens to licensed IP on termination, and cost-sharing for prosecution and enforcement in the absence of a single entity to hold rights.

IP issues are usually dealt within the JV through IP licence agreements, foreground IP ownership/licence-

back provisions, confidentiality obligations, and exit mechanisms governing IP on termination or a partner's departure.

When IP is transferred to or from a foreign entity, additional factors come into play such as parallel registration formalities in the relevant foreign jurisdictions, withholding tax and transfer pricing implications on royalty payments between related parties, and potential export control.

8.2 Licensing v Assignment of IP Rights

The choice of whether IP rights should be licensed or assigned depends on how central the IP is to the contributing partner/shareholder's own business outside the JV.

Licensing is generally preferred when the IP is core to the shareholder's wider operations, such as when it is proprietary technology, a brand or a platform used beyond the JV. Licensing allows the shareholder to retain ownership and control, recover the IP cleanly on exit, and still monetise it through royalties. In Portugal, licences and their agreements should be recorded with the National Institute of Industrial Property (INPI).

Assignment is more suitable where the IP is specific to the JV's business with little standalone value to the shareholder, since this gives the JV freedom to exploit the licence onward or use the IP as security and is generally more attractive to third parties providing finance or to a future buyer, since a JV dependent on licensed IP is a weaker asset on exit. The trade-off is that the shareholder permanently loses ownership.

Also, the assignment of IP to a corporate JV entity as an in-kind contribution requires an independent valuation from a statutory auditor, and the tax treatment differs since there are capital gains on assignment and ongoing royalty income, potentially subject to withholding tax cross-border in licensing.

8.3 ESG Considerations in JVs

Environmental, social and governance (ESG) has become a genuine legal and commercial risk factor rather than a merely reputational add-on. ESG affects access to financing (banks and investors increasingly price ESG performance into lending terms), talent

retention, and exposure to litigation and regulatory enforcement. For JVs specifically, ESG failures by one partner can create reputational and legal consequences for the other partners and the JV entity itself.

JVs should build ESG proportionate to actual exposure and assess whether size/turnover thresholds bring the JV entity within the scope of ESG legislation. ESG reporting and due-diligence responsibilities should also be foreseen in the JV agreement's ESG representations/warranties and termination triggers for serious ESG breaches by a shareholder.

Portugal's ESG framework is almost entirely EU-driven, since there is no major standalone Portuguese ESG legislation. The key instruments are the following:

- CSRD (sustainability reporting) is the main framework governing corporate sustainability disclosures;
- CSDDD (supply-chain due diligence) is a directive which must still be transposed to national law;
- EU Taxonomy Regulation (classifying sustainable activities), being a regulation, has direct and mandatory application; and
- SFDR (for financial market participants), being a regulation, has direct and mandatory application.

Portugal does not yet have domestic case law on ESG/climate change matters in its courts. Its only points of contact with this type of litigation have been: (i) on the one hand, proceedings before the European Court of Human Rights, in which the application was declared inadmissible, without any substantive ruling on the case; and (ii) on the other hand, the European Commission's enforcement action concerning Portugal's failure to comply with EU directives.

9. Exit Strategies and Termination

9.1 Termination of a JV

Portuguese JVs typically end through the expiry of the agreed term or completion of the project purpose, mutual agreement to dissolve the JV entity, a triggering event under the JV agreement, the exercise of a put/call or drag/tag, or the sale of the JV entity/business to a third party.

Regarding general matters to address on termination, the JV agreement should pre-define the triggering events and the resulting exit mechanism (rather than leaving parties to negotiate under pressure) as well as the valuation methodology for buyouts, the allocation/distribution of assets (such as foreground IP) and of contingent liabilities, indemnities post-termination, non-compete and non-solicitation obligations surviving termination, confidentiality, IP licence termination or survival, and dispute resolution for any termination-related disagreement.

9.2 Asset Redistribution and Transfers

Key considerations when transferring assets between JV shareholders/partners include:

- proper valuation (arm's-length pricing, particularly important for related-party transfers to avoid transfer-pricing and tax challenges);
- formalities of transfer specific to the asset type (for example, real estate requires public deed and Land Registry Office registration, and IP assignments should be recorded with INPI);
- tax treatment of the transfer; and
- whether existing security interests or third-party consents restrict the transfer.

A critical distinction is between assets originally contributed by a shareholder and assets generated by the JV itself is that contributed assets often carry residual expectations of return to the contributing partner on exit or termination, particularly background IP, which is typically licensed rather than assigned precisely so it can revert cleanly. Regarding assets that are contributed as share capital, there is no automatic right to have the same asset returned, and the contributing partner instead holds equity value. Assets generated by the JV (typically foreground IP, goodwill, contracts won by the JV, business developed, etc) belong to the JV entity, and their disposal or distribution to a departing partner requires either a negotiated buyout, a distribution in kind approved as a capital reduction/dissolution matter, or a sale to the continuing partner.

9.3 Exit Strategy

Portuguese law addresses exit from a JV entity in the same way it addresses exits from any commercial company, primarily through default rules that parties

are free to shape contractually, rather than through rigid mandatory restrictions.

Portuguese statutory law provides some baseline protections affecting exit. For a public limited liability company (*sociedade anónima*), shares are, in principle, freely transferable, but the articles of association may impose pre-emption rights, consent requirements or lock-up periods. For a private limited liability company (*sociedade por quotas*), by contrast, the transfer of shares (quotas) to third parties requires the company's consent unless the articles of association provide otherwise, which means that *sociedades por quotas* carry a built-in restriction that *sociedades anónimas* lack.

Beyond these default rules, exit mechanics are largely a matter of contractual freedom. Parties can, and routinely do, customise pre-emption rights, tag-along/drag-along rights, put/call options and deadlock-triggered buy-sell mechanisms in the SHA, provided these do not contravene mandatory statutory provisions.

The most common exits in Portuguese JV practice are a negotiated buyout of one partner's stake by the other (often at a pre-agreed valuation formula) or the sale of the entire JV entity to a third party. Other than that, deadlock-triggered buy-sell mechanisms are also standard as a fallback exit route.