

Chapter 5

Contracts: Choice of Law, Structuring and Dispute Resolution

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[5.1] Introduction

[5.1.1] International joint ventures: the contract setting

The joint venture is now a widely used vehicle for the conduct of transactions in the course of international trade and investment¹ International joint ventures have been entered into in almost every area of commercial or commercially related activity, including manufacturing and industrial production; petroleum and mineral development; agriculture; marketing and distribution arrangements; transportation; banking and finance; communications, publishing and broadcasting; research and development projects; and tourism and entertainment. The reasons for the popularity of joint ventures at the international level are various and have been examined elsewhere:² here it can be observed that the joint venture is an adaptable vehicle, suited to many international transactions, and able to meet the expectations of diverse venture participants.³

Despite this commercial utility, there is no internationally agreed definition, either in law or business practice, of 'joint venture';⁴ indeed many national legal systems do not recognise the joint venture as a discrete or

1 Schmitthoff maintained that 'the joint venture is the favoured form of cross-border co-operation'. See C Murray et al (eds) *Schmitthoff's Export Trade: The Law and Practice of International Trade* (11th ed, Stevens, 2006) at 338.

2 See, for example, J Walmsley, *Handbook of International Joint Ventures* (Graham and Trotman, 1982) Ch 1; E Herzfeld, *Joint Ventures* (3rd ed, Jordans, 1996) Ch 2.

3 For a short comparison of the possible vehicles for trade and investment activity, see MW Berwind, 'Strategies for Entering Foreign Markets' (1984) 7 *Hastings International and Comparative Law Review* 293.

4 Various definitions of joint venture are presented in Herzfeld (1996), op cit, Ch 1, and AG Greenwood, 'International Joint Venture Arrangements' in JDM Lew and C Stanbrook (eds), *International Trade: Law and Practice* (2nd ed, Euromoney Publications, 1990) Vol 1, at 153-161.

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