1. **Identify the Parties:**

* Who are the parties?
* Individuals?
* Partnerships?
* Companies?
* Other bodies, organizations or associations?
* Are any of the parties subsidiary or holding companies?

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* Will the JV Company also have obligations?

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1. **Identify the Business of the JV Company:**

* What is the business of the JV Company?
* Is the purpose of the joint venture to carry out a specific project or a continuing business?
* In what countries/jurisdictions will the JV Company operate?
* Where are its clients?
* What are the parties' objectives?

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* What is the likely turnover or market share?

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* What regulatory consents, approvals and licenses will be required for the JV Company and its business?

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* Where will the business be based?

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1. **Regulatory Approvals:**

* Is the JV Company business a regulated activity? (financial services? Telecom? Healthcare?)

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* Are there any regulatory approvals in overseas jurisdictions?

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* Is it possible that the JV Company will be regarded as a "collective investment scheme"?

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* Should provision be made for the parties to provide information or assistance in the event of any regulatory enquiry after the JV Company has been set up

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1. **Structure & Setting-up of the JV Company:**

* Is the JV Company business to be carried out through a separate company? or does it fit within one of the parties’ existing business?
* A collaboration agreement, for joint marketing, joint research or the development and manufacture of goods to a particular design?
* An agreement for supply of goods or services?
* A licensing or franchise agreement?
* A distribution or agency agreement?

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* What will the legal form of the JV Company be?

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* In what jurisdiction(s) will the JV Company be established?

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* What formalities are required for establishing the relevant structure, including relevant registration requirements and approvals? How long is it likely to take?

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* Applicable tax considerations?

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1. **Financing the JV Company:**

* Will each party provide funding?
* In what proportion?
* Will funding be proportional to shareholding? To profit sharing?
* Will the initial investment be in cash or in kind?

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* Are there advantages (in relation to tax or otherwise) in funding through debt rather than equity, or vice versa?

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* Is third party funding required? Banks? Security? Who will provide it?

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* Continuing funding requirements of the JV Company
* Working capital requirements
* Losses incurred by the joint venture
* Development and expansion costs
* Will each party be required (or entitled) to contribute to continuing calls for funding, pro rata to its original investment or otherwise?

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* What happens if one of the parties defaults?

1. **Contribution of Assets to the JV Company:**

* Will either JV party contribute an asset to the JV Company?
* On what terms?
* Outright transfer, or lease or licence for a fixed or indefinite term?
* Stamp taxes or other tax considerations affect the method of contribution of the assets? Who will bear the tax costs of contributions?
* How will payments to the JV party be taxed, for example dividends, interest, intellectual property royalties?
* How are contributed assets to be valued, and how will any adjustments be made for any shortfall or excess in relation to any contributor's proportionate funding obligation?

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* Do assets need to be valued (if, for example, they are transferred in consideration for the issue of shares in a joint venture company)?

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* When can assets be contributed? Regulatory approvals? Transferability restrictions? What due diligence investigations will be made into assets being contributed and what warranties and indemnities will be given in this regard and to whom?

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1. **Competition & Restrictions:**

* Will the parties be prohibited from competing with the JV Company?
* Territory limitations
* Existing business ventures
* For how long

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* Will the parties be prevented from soliciting customers and employees from the joint venture?

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* How will the business of the JV Company be defined for the purposes of such restrictions?

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* Will the parties have obligations to refer business to the joint venture?

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1. **Board of Directors:**

* Board of Directors composition and Chairperson
* What rights will each party have to appoint directors? And chairperson?
* Will the chairperson have a casting vote or other special powers or rights?
* Quorum and notice requirements

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* How will the General Manager/CEO be appointed?

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* Shareholder matters vs Board matters vs management matters

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* Conflict Situations

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1. **Shareholders:**

* Ownership of the JV Company
* Shareholding and voting rights of each party are equal?
* Will there be separate classes of shares?
* Will any special voting rights attach to any or all shares?

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* What quorum and notice requirements will apply for shareholder meetings?

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* Should there be any limitation on possible locations for shareholders' meetings?

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1. **Control & Minority Protection:**

* Minority protection against majority decision at shareholder and/or director :
* Requirements for unanimity?
* Requirements for special majorities?
* Rights of veto?

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* Class rights attaching to shares?

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* Will any such protections extend to all matters for decision or just to some?

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* What remedies are available if minority rights are breached?

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1. **Transfer of Shares:**

* Are transfers of shares permitted?
* Freely?
* Existing shareholder pre-emption rights (rights of first refusal)
* Intra-group transfers free?
* Transfers to family members free?
* "Russian roulette" or "shotgun" provisions
* "Drag-along" or "tag along"

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* How will shares be valued for the purposes of the transfer provisions?

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* Will any new shareholder be required to become a party to the joint venture agreement?

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* Will the joint venture's name have to be changed if shares are transferred?

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* What will happen to any arrangements between a leaving shareholder and the JV Company?

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* What happens to monies owed to the JV Company by the outgoing shareholder?

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* Key Person arrangements?

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* Change in control of a shareholder? Insolvency of shareholder?

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* Breach of undertakings by a shareholder?

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* Death of a shareholder?

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1. **Deadlock:**

* When does deadlock occur?
* Issues specified in the JV agreement
* Issues designated as deadlock issues by any of the JV parties

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* How are deadlock issues resolved?
* the chair of the board's casting vote
* reference to independent non-executive directors
* reference to an external expert or arbitrator
* reference to chairpersons or chief executives of the parties to the joint venture?

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* Will any "cooling off" period apply?

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* If deadlock occurs, can one or more parties terminate the joint venture? buy the shares of the other JV party and if so at what price? Trigger the sale of the JV Company to a third party and if so at what valuation?

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1. **Continuous Business Involvement of the JV Parties:**

* Will any of the JV parties supply support to the JV Company?
* Offices? or other accommodation, support services or facilities, or training for staff?
* Who bears the cost? Or is it a capital contribution?
* What happens if the JV party stops being a JV party?

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* Continuing trading arrangements between JV parties and the JV Company (distributorship agreements, supply of goods or services)?
* Independently audited?
* Impact on the JV party’s entitlement to the profits or responsibility for losses?

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* Flow of information to and reporting from the JV Company to the parties? Procedures. Frequency. Format.

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1. **Employees:**

* Will the JV Company need employees?
* New employees
* Employees seconded from JV parties

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* Consider the management structure

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* Consider share option or incentive schemes

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* Pension arrangements?

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* Will any of the JV parties have to make redundancies as a result of the creation of the joint venture? If so, how will the cost be borne by the parties?

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1. **Intellectual Property:**

* What IP Rights are to be contributed to the joint venture?
* Should they be licensed or transferred?

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* Who will own the IP Rights developed by the JV Company? Or by any of the parties?

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* Who will have the right to exploit the IP Rights? Will there be any compensation for this?

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* Will the parties have independent rights over confidential information, know-how and other IP Rights belonging to the JV Company?

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* What will happen to the IP Rights on termination of the joint venture?
* Will any of the parties require a licence of any IP Rights following termination?
* Will there be different methods of dealing with IP Rights depending on the exit route used?

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1. **Administration:**

* Name of the joint venture

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* Joint venture's lending bankers
* Lawyers (company agreements, supplier agreements, IP, IT etc)

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* Auditors (financial year, accounting and auditing procedures)

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* What other professional advisers will be appointed, and by whom?

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* Where will the joint venture's registered office and headquarters be located?

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* What will be the dividend policy? How much will be distributed to the parties, when and who will make decisions on this?

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1. **Termination:**

* Is the joint venture for a fixed term or indefinite in duration?

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* Are there any circumstances in which the joint venture will automatically terminate
* The loss of any regulatory approval
* The loss or destruction of a particular asset
* The insolvency of any party
* The transfer of any party's shares

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* Are there any circumstances in which any party will be entitled to terminate the joint venture
* A change of control of any other party
* A material breach of the joint venture agreement by another party
* By notice of termination given after the expiry of a minimum fixed term

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* What arrangements will apply on termination for
* The distribution of the assets, including intellectual property and know-how of the joint venture
* The discharge of outstanding contracts of the joint venture
* The assumption or discharge of any other liabilities of the joint venture

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