



**Mahidol University**  
International College

# **Joint Ventures in Thailand – A legal perspective**

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# Presenter



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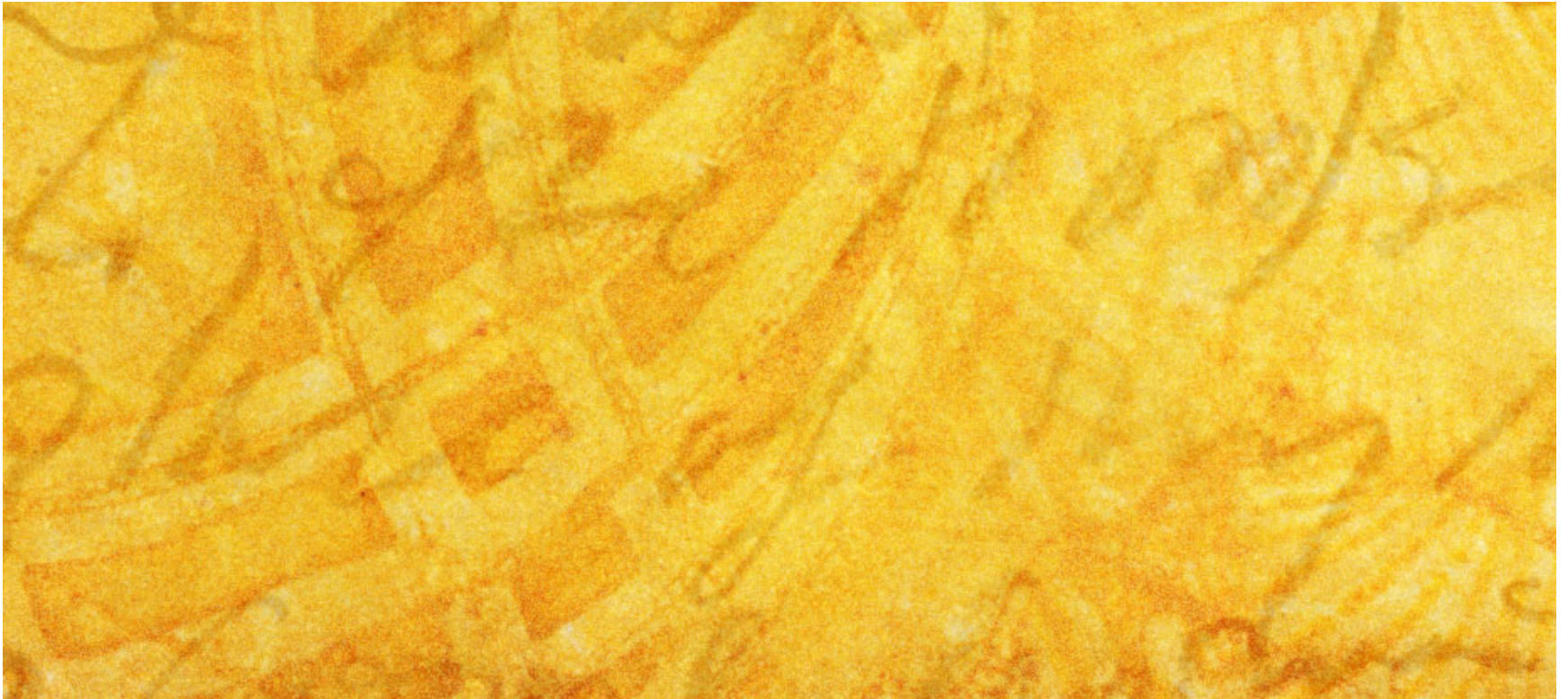
# Outline

- What is a joint venture?
- Building effective international joint ventures in Thailand
- Strategies for joint venture success



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# **1. What is a joint venture?**





# Definition

- Agreement of mutual benefit between two or more people or businesses who have complementary resources



# Essential elements

The necessary elements are:

- (1) An express or implied agreement;
- (2) A common purpose that the group intends to carry out;
- (3) Shared profits and losses; and,
- (4) Each member's voice in controlling the project.



# Advantages

- Additional financial resources
- Sharing the economic risk
- Tapping newer methods, technology and approaches you do not have
- Building relationships with vital contacts



# Disadvantages

- Shared profits
- Diminished control over some important matters
- Undesired outcome of the quality of the product or project
- Uncontrolled increase in the operating costs



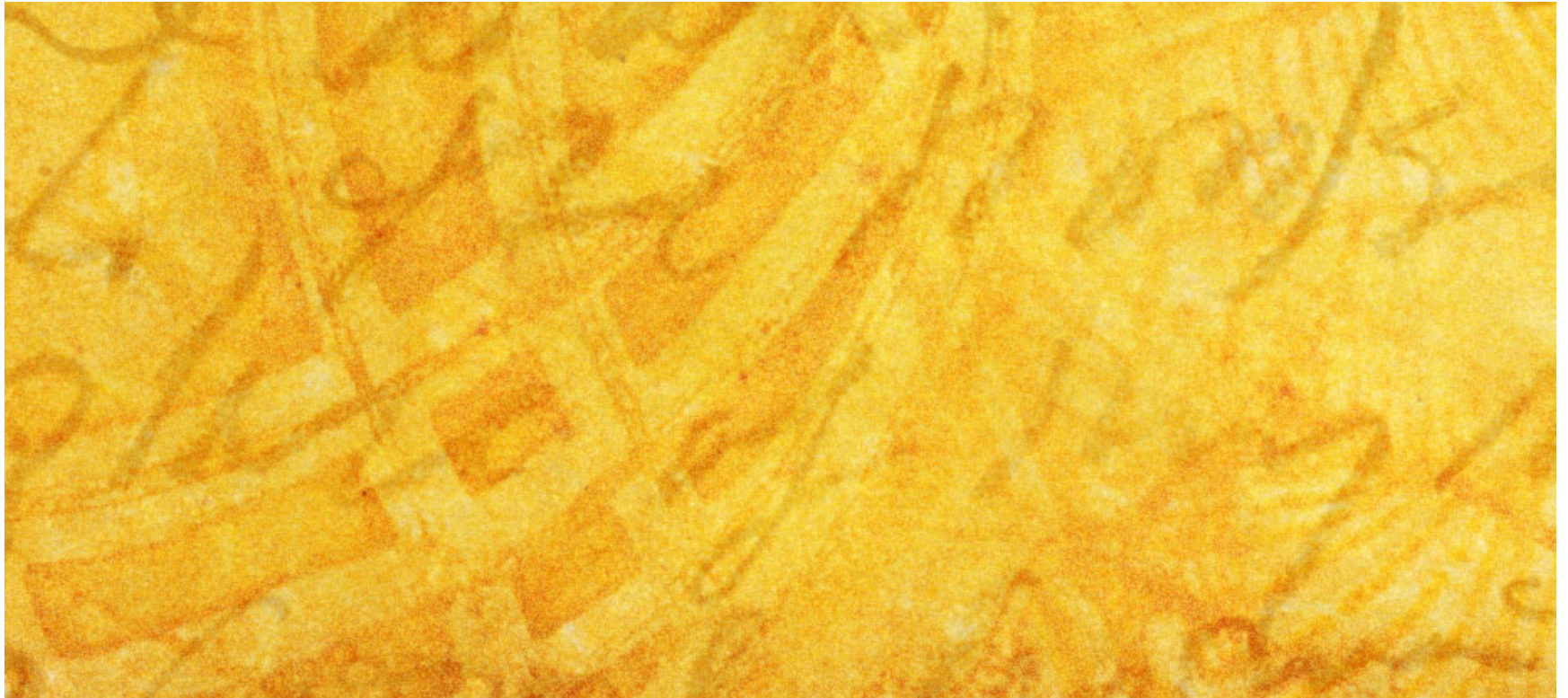


**Is there any difference between a national joint venture and an international joint venture?**





## **2. How to build effective joint ventures under Thai law?**





# Types of JV.

- **Contractual joint ventures**  
(unincorporated model)
  
- **Equity joint ventures**  
(incorporated model)



# **3. Contractual joint venture under Thai law**





# Contractual Joint Venture

- Agreement in which two parties come together for a particular business project and sign a contract outlining the terms under which they will work together.
- Parties retain all their own assets and agree as to their separate rights and obligations.



# Applicable laws

- Law of contract
- Civil and commercial Code
- Revenue Code



# Tax considerations

- The RC treats a joint venture as a juristic company for purposes of tax liability.
- Practice tip: Stay small is preferable



# **4. Equity joint venture under Thai law**





# Definition

- A type of joint venture in which two or more parties set up a separate legal company to act as the vehicle for carrying out the project.
- May be more appropriate when parties are in a long-term, complex business relationship



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# **What are the essential provisions of JV Agreements?**





# JV contracts

In addition to standard legal provisions in JV agreements, negotiating points, which usually require special attention, are:

- Ownership split
- Management control
- Profits and Losses
- Protection of IP rights
- Breach, termination and dispute resolution provisions





# Transfer of shares

- The shareholders of a close corporation frequently desire to keep "outsiders" from obtaining an interest in the corporation.
- Limits on the parties' ability to convey their shares to third parties :
  - Prohibition to transfer the shares
  - Right of First Offer
  - Right of First Refusal

# Example

- *Restriction Against Transfer. None of the parties shall transfer or otherwise dispose of [as defined in Section 16(c)] all or any Shares [other than to an affiliate {as defined in Section 16(d)}] during the first four (4) years of the term of this Agreement. Thereafter, none of the parties shall transfer or otherwise dispose of all or any Shares without the written consent of 75% of the outstanding Shares of the Corporation, except as otherwise expressly provided in Section 2.*

# Example

- *Right of First Offer. No shareholder may transfer all, or a part of his shares without having offered them to the other shareholders who shall enjoy a preference right to purchase them.*
- *The proposal shall be made to the Board of Directors in a registered letter with acknowledgement of receipt, advising of the number of shares to be transferred, the price, as well as the name, surname, profession and address of the eventual purchaser or purchasers, if any.*

# Example

- *Right of First Refusal. Before any shares held by the shareholder may be sold or otherwise transferred, the other shareholder shall have a right of first refusal with respect to all (and not less than all) of such shares.*



# Management

- What is your management vehicle to direct the JV?
- What is the extent of the authority given to the management vehicle compared the joint venturers (shareholders, members or partners).
- What is the protection for each joint venturer on fundamental decisions and changes (particularly where one of the co-venturers has a minority ownership interest)?



# Management

- Special resolution for modification of MoA, AoA; increase and reduction of registered capital, dissolution of company, amalgamation of company?
- Do you want a proportionate board representation? Consider whether representation should cease once ownership interest falls below certain level
- If a 50-50 board is established, you will have to deal with deadlock possibility.
- Any particular qualifications for members of board or any particular prohibitions on who can act? How to remove or replace them?

# High vote requirements

- High vote and high quorum clauses can be used to give minority shareholders control of, or an equal voice in the control of, the board of directors.

# Example

*“No resolutions may be adopted at any general meeting of shareholders unless a quorum of the holders of at least two-thirds of the outstanding capital stock is present or represented, and all resolutions shall be adopted by at least a majority of two-thirds of the votes cast”*

# Nondisclosure clauses.

- Do nondisclosure agreements need to be signed?

*“[b]oth parties agree that no right or license under any patent or trade secret . . . is granted to the other party by this agreement.”*



# Non competing clauses

- Joint venture partners cannot enter into activities competing with the joint venture.
- Noncompete provisions can be validly enforced even after a member leaves the joint venture so long as they are reasonable and not against public policy.

# Example

- *During the term of this agreement, neither party shall have any ownership interest in or have any interest as an employee, salesman, consultant, officer or director in, or otherwise aid or assist in any manner, any person or company or firm in a business which is similar to that undertaken by the parties in this agreement.*

# Conflicts

- What is the course of action in case the joint venture fails?
- Conciliation?
- Mediation?
- Arbitration? Who will choose the arbitrators?

# Example

- *Any controversy between the parties involving this Agreement shall, on the written request of one party served on the other, be submitted to arbitration, and such arbitration shall comply with and be governed by the commercial arbitration rules of the XXX in effect on the date of this Agreement.*



# TAX Considerations

- Foreign companies may route their investments into a Thai joint venture company through an offshore destination.
- Thailand has double taxation avoidance agreements (“DTAAs”) with many countries.
- Reduced withholding tax rates applicable to capital gains, technical service fees, etc.



# IP Considerations

- If trade secrets or know-how are contributed, how will these assets be treated upon dissolution of the JV?
- If contributed IP is subject to a granted patent, registered copyright, or registered trademark, what if legal protection is lost or challenged?
- What IP is not being contributed? Beware of “implied” licenses!
- Nature of Contribution – Assignment or License?



# Q&A

If you do not have the opportunity to have your question addressed during the seminar, you may contact the presenter directly:

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