# Corporate joint ventures in Italy: Corporate governance, transfer of shares and exit strategies

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The term corporate joint venture is used here to refer to corporate vehicles participated by two or more ventures (shareholders) in order to carry on the business activities envisaged by the shareholders. In Italy, the most common forms of legal entities used as corporate joint venture include limited liability company (SRL) and joint stock corporation (SPA).

One of the key issues which arises when dealing with a corporate joint venture is how to regulate the relationships between the ventures with respect to corporate governance, transferability of interests and exit strategies. All rules governing a corporate joint venture are, generally, included in a shareholders agreement entered into by the shareholders at the time the joint venture is created. Very commonly, most of the provisions of the shareholders agreement are also included into the by-laws of the company so that those provisions could be opposable vis-à-vis third parties and could survive the termination/expiration of the shareholders agreement.

Article 2341 bis of the Italian Civil Code (ICC) provides that shareholders agreement relating to joint stock corporation (SPA) or companies (including SRL) controlling joint stock corporations cannot set out a duration exceeding five years, although shareholders agreement can be voluntarily renewed by the parties upon expiration. The third paragraph of article 2341 bis ICC provides, however, an exception to the above time limitation (in case of shareholders agreement linked to cooperation agreement for the production and supply of products/services relating to the corporate joint venture entirely held by the parties to the cooperation agreement).

The shareholders agreement and/or the by-laws should set out clearly the rules applicable to the corporate governance. Generally in joint venture with a majority shareholder and a minority shareholder, routine decisions would fall within the competence of the former (or the director(s) appointed by same), while the minority shareholder (or its directors) will have a veto right on the strategic decisions.

Very commonly, shareholders agreement and/or by-laws will also place limits on the parties' ability to convey their shares to third parties for a certain period of time. Lock-up provisions, although included in the by-laws, will be anyhow subject to certain (time) limitations. Indeed, article 2355 bis ICC provides that the by-laws of an SPA can include a prohibition to transfer the shares for a period not longer than five years; article 2469 ICC provides that if the by-laws of an SRL prohibits the transfer of participations, the quota holder will have the right to withdraw from the company and will be entitled to receive the liquidation value of its quota (however, the by-laws can provide for a maximum two-year term during which the withdrawal right cannot be exercised).

Ventures typically wish to have the possibility to exit at some point in time in the life of a joint venture. Depending upon the strategic intent of the ventures, exit strategy alternatives may include an IPO either upon the approval of both shareholders or pursuant to each joint venture's right, put and/or call, drag along and/or tag along, The drafting of such clauses is a delicate exercise and particular attention should be given to ensure compliance with the legal requirements. Recently, Italian courts have scrutinised some of those clauses and, in certain cases, declared the exit provisions unenforceable, as the relevant clauses were found not compliant with legal requirements. Therefore, the draftsman should carefully review those clauses in order to avoid or minimize the risk that their validity or enforceability could be challenged.

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