

Checklist and Heads of Terms Property Development Joint Venture

Overview

Joint ventures are a very common way of successfully implementing property development projects.

This checklist is designed to help parties in the early stages of structuring a property development joint venture, by identifying and seeking agreement in principle on the key legal terms.

About LCN Legal

LCN Legal is a law firm which specializes in domestic and international corporate and property investment structures. It is regulated by the Solicitors Regulation Authority in England & Wales. In addition to its focus on property investment structures, LCN Legal also advises large corporates, private investors and property developers on all types of corporate and investment structures.

LCN Legal's senior lawyers have acted on property and corporate investment structures for clients such as private equity real estate fund managers, royal families, internationally acclaimed property developers and foreign and domestic investors in respect of large scale, high value, developments.

Our lawyers are recognised experts in corporate structuring of real estate projects, and we wrote Lexis Nexis's practice note for lawyers on buying property SPVs. We have also been recognised and quoted as experts by publications such as the Financial Times, the Scotsman newspaper, Financial Director Magazine, Accounting Web, Tax Journal, Transfer Pricing Week and Practical Law (a Thomson Reuters resource for legal professionals).



Testimonials for LCN Legal

"I have worked with Paul and his team in structuring significant Corporate Debt and have found his approach to be commercial, pragmatic and measured. I would have no hesitation working with Paul again, as we value his commercial and responsive approach."

– Joanne Luce, Director, Acqua Trust Company Limited, Jersey

"An excellent event. The most insightful two hours I've spent in a long time."

– Director, Property Development Group

"Through the course of my career in establishing funds, restructuring funds and raising capital, I have dealt with well over 30 law firms, from the smaller niche firms as well as the magic and silver circle firms, and can say that there're just a few firms I would recommend without hesitation. LCN is one of those few firms. Paul Sutton provides my firm a service, which goes way beyond the norm. His advice is invaluable, guiding my business through the challenging issues it faces as a result of the shifting regulatory landscape we operate in. His entrepreneurial attitude, his work ethic and his friendly fee structure has made it an exceptionally good experience, I cannot speak more highly of him."

– Robert Bourn, Partner, Agri Partners

"We at Goldfield have directly employed Paul's services both when he was at McGrigors and more recently now that he is a Partner at LCN. On all occasions he has shown us what a top solicitor can do! He is quite simply one of the best we have ever had the pleasure to engage – and we have engaged a fair few in our time! We cannot rate him any higher than we do. Always a pleasure to work with him."

– Leigh Goodman, Entrepreneur and Investor, Goldfield Partners Limited

Checklist and Heads of Terms

This document reflects the parties' good faith intentions but is **not** intended to be legally binding.

1. Project overview

<p>Developer</p> <ul style="list-style-type: none"> • Name of contracting party • Address • Key contact 	
<p>Investor(s)</p> <ul style="list-style-type: none"> • Name of contracting party • Address • Key contact 	
<p>Project overview</p> <ul style="list-style-type: none"> • Nature of property or properties • Strategy: trading (develop and sell) or investment (develop and long-term hold) • Proposed corporate structure (if known) – including which entity will own the land/property • Any assets to be transferred to the joint venture (e.g. development management business; pipeline of projects)? • Target IRR (for investor(s) and developer) • Exit strategy • Specific tax considerations (e.g. for overseas investors?) • Specific regulatory issues (e.g. requiring independent operator / depositary) • Particular risks and issues relating to the project (e.g. rights of light, local government specifications etc) 	

2. The property

<p>Has a specific site or sites been identified?</p> <ul style="list-style-type: none"> • Address(es)/location(s) • Description (freehold / leasehold title, type, condition) • Is the purchase secured? (option/ conditional contract/unconditional contract/exclusivity agreement etc.) 	
<p>Proposed development</p> <ul style="list-style-type: none"> • Proposed actions (demolition/new build/change of use) • Planning consent status • Community Infrastructure Levy/ Section 106 liabilities? 	
<p>Marketing strategy for sale/letting of property/units</p> <ul style="list-style-type: none"> • Target purchaser / tenant profile • Marketing channels (e.g. local property agents) 	
<p>Minimum disposal price for viability (e.g. unit price or £ / sq ft)</p>	

3. Financial overview

<p>Costs</p> <ul style="list-style-type: none"> • Approximate acquisition cost • Approximate development/build costs 	
<p>If a trading strategy will be followed:</p> <ul style="list-style-type: none"> • Envisaged period to complete development (from acquisition of site) • Target sale price 	

<p>If an investment strategy will be followed:</p> <ul style="list-style-type: none"> • Envisaged period to complete development (from acquisition of site) • Holding period from completion of development works • Target rent/yield 	
<p>Third party funding</p> <ul style="list-style-type: none"> • Name of funder • Facility agreed in principle? • Key terms 	
<p>Shareholder guarantees / personal guarantees</p> <ul style="list-style-type: none"> • Guarantees required to secure the obligations of the joint venture vehicle (JV) to third parties? • If guarantees are required, how are the underlying liabilities to be shared between the parties? 	

4. Source of funds overview

	Equity	[Mezzanine debt]	[Senior debt]	Total
Developer				
Investor				
[Third party]				
Total				

5. Fees and profit sharing between the parties

<p>Fees payable to developer (e.g. cost plus on development costs incurred)</p>	
<p>Fees payable to investor?</p>	
<p>Profit sharing ratios (for residual profits)</p>	
<p>Profit distribution triggers (e.g. refinancing or sale of property/lease of units)</p>	

6. Responsibilities of the parties

	Developer	Investor	Third party (outsourced)
Review and development of strategy			
Site/property sourcing			
Financial appraisal of the proposed development			
Technical due diligence of the site/property			
Appointment of property lawyer			
Appointment of tax adviser			
Project management of works			
Obtaining and advancing planning consents			
Procuring insurance of the property			
Financial administration			
Reporting during project (income and expenditure)			
Sourcing of senior debt			
Marketing and sale of property/units			
Marketing and letting of property/units (if applicable)			

7. Investor protections*

<p>Conditions precedent for drawdown of investor funds</p> <ul style="list-style-type: none"> • Financial appraisal • Report on title • Surveyor's report • Completion of acquisition of property 	
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<p>Investor security</p> <ul style="list-style-type: none"> • First / second charge over property • Charge over shares of property-holding entity • Guarantee from developer • Personal guarantee 	
<p>Reporting/access to information</p> <ul style="list-style-type: none"> • Monthly/quarterly reports on income and expenditure? • Right to obtain valuation of project (at investor/ developer/project cost)? • Right to appoint independent monitor (at whose expense?) 	
<p>Key man provisions?</p> <ul style="list-style-type: none"> • Include specific “key man” provisions with step-in / termination rights? • Key man insurance / contingency plans? 	
<p>Guarantee of adequate resourcing by the developer</p> <ul style="list-style-type: none"> • Does the investor have the right to limit the number of projects managed by the developer? • Exclusivity/non-competition restrictions? 	
<p>Step-in rights to complete development</p> <ul style="list-style-type: none"> • LTV falls below [] % • Specified milestones not achieved • Others? 	

* See also following sections.

8. Governance of the JV

<p>Directors of the JV company/ group entities (specify number of representatives of developer and investor, and any independent directors)</p>	
<p>Quorum requirements for holding a valid board meeting</p>	

Frequency of board meetings	
Chairman of the board of directors (specify whether chairman is to have a casting vote)	
Auditors / accountants	

9. Veto rights / reserved matters requiring the consent of the parties

	Developer approval required	Investor approval required
Purchase of property		
Adopting/amending business plan		
Matters outside the scope of the business plan		
Non-budgeted expenditure over [amount]		
Transactions/arrangements with connected parties		
Appointing a contractor (other than as previously agreed)		
Material changes to terms of appointment of contractors		
Sale of property before expiry of [investment period]		
Sale of property after expiry of [investment period]		
Litigation, other than for routine collection of rent or enforcement of tenancy agreements		
Any borrowing by the JV		
Granting any charge over the property/the JV's assets		
Re-investment of any income or capital received by the JV		
Changes to constitutional documents of the JV		
Issue of further shares by the JV		
Transfer of shares in the JV		

	Developer approval required	Investor approval required
Winding up of the JV		
Other - specify		

10. Dispute resolution, termination and exit provisions

<p>Triggers for dispute resolution procedure to be invoked e.g.:</p> <ul style="list-style-type: none"> • Notice by one party to the other • Expiry of cooling off period following a dispute arising 	
<p>Consequences of dispute resolution procedure being triggered:</p> <ul style="list-style-type: none"> • Project sold and JV wound up • “Texas Shoot Out” - Each party makes a sealed cash bid for the shareholding of the other. The highest sealed bid wins and the winning bidder must buy the shareholding of the other party for the price specified in its bid. • “Russian Roulette” - One of the two parties serves a notice on the other party naming a cash price (per share) for that other party’s shareholding in the JV. The party receiving the notice has the option to either buy the other party out or to sell out to the other party at the offered share price. • One-sided put/call options (e.g. developer has call option / investor has put option) 	
<p>Other exit provisions e.g.</p> <ul style="list-style-type: none"> • Pre-emption rights on sale • Drag right (ability to force a sale of the whole project to a third party buyer) • Tag right (right of a minority party to be bought out if the majority sells to a third party buyer) 	

11. Next steps

	Responsibility (Developer or Investor)	Target deadline to complete
Circulate NDA for signature (if not already signed)		
Prepare circulate detailed budget/financial appraisal		
Obtain agreement in principle from senior lender		
Instruct surveyor to report on property		
Instruct property lawyer for title due diligence and planning advice		
Instruct tax adviser for tax due diligence on property (e.g. VAT, capital allowances) and JV structure		
Instruct LCN Legal to prepare joint venture documents and to establish of special purpose vehicle(s)		

These heads of terms are governed by English law and are subject to the exclusive jurisdiction of the English courts.

Signed:

Full name: _____

Full name: _____

Signature: _____

Signature: _____

Date: _____

Date: _____