### PART I REGULATION OF FOREIGN INVESTMENT

### CHAPTER 1 ESTABLISHING A JOINT VENTURE

#### I. JOINT VENTURES - OVERVIEW

- § 1:1 Introduction
- § 1:2 Business advantages of joint ventures
- § 1:3 Business disadvantages of joint ventures
- § 1:4 Antitrust advantages of joint ventures
- § 1:5 Antitrust risks of joint ventures

### II. JOINT VENTURE STRUCTURE - CORPORATE, PARTNERSHIP, CONTRACTUAL

- § 1:6 The corporate joint venture
- § 1:7 Partnership joint ventures
- § 1:8 The contractual joint venture

#### III. JOINT VENTURE FORMATION

- § 1:9 Overview
- § 1:10 Phase 1-Market analysis and the business plan
- § 1:11 Step 1 The business plan and technology appraisal
- § 1:12 Step 2 Choosing the host country
- § 1:13 Step 3 Searching for partners
- § 1:14 Step 4 Partner selection
- § 1:15 Step 5 The letter of intent
- § 1:16 Phase 2 Joint venture formation and operation
- § 1:17 Negotiating the joint venture agreements
- § 1:18 Asset evaluation checklist
- § 1:19 Joint venture funding checklist
- § 1:20 Management control
- § 1:21 Protecting minority shareholders
- § 1:22 Joint venture governance checklist
- § 1:23 Dispute resolution
- § 1:24 Share transfers by partners
- § 1:25 Phase 3 Termination of the joint venture

#### § 1:26 Winding-up the joint venture

### IV. JOINT VENTURES AND TECHNOLOGY TRANSFER

- § 1:27 Overview
- § 1:28 Separate agreements
- § 1:29 National intellectual property rights
- § 1:30 Consistent terms for all agreements
- § 1:31 Background rights
- § 1:32 Sublicensing
- § 1:33 Third party infringement
- § 1:34 Royalties and maintenance
- § 1:35 Technical assistance
- § 1:36 Proprietary information and confidentiality
- § 1:37 Technology transfer checklist

### V. LEGAL ISSUES FACING U.S. - BASED JOINT VENTURE PARTNERS

- § 1:38 Overview
- § 1:39 The Foreign Corrupt Practices Act
- § 1:40 Enforcement
- § 1:41 Covered natural and legal persons
- § 1:42 Corrupt intent
- § 1:43 Payment
- § 1:44 Recipient
- § 1:45 The business purpose test
- § 1:46 Permissible payments and affirmative defenses
- § 1:47 Civil and criminal penalties for bribery
- § 1:48 Other penalties
- § 1:49 Private causes of action
- § 1:50 Government guidance
- § 1:51 The OECD convention
- § 1:52 Anti-boycott regulations

#### CHAPTER 2 BASIC MANAGEMENT STRUCTURE AND THE JOINT VENTURE AGREEMENT

#### I. CHOOSING THE MANAGEMENT STRUCTURE

§ 2:1 Generally

#### II. JOINT VENTURE MANAGEMENT

- § 2:2 Generally
- § 2:3 Board of directors

- § 2:4 Internal management
- § 2:5 Managing partner
- § 2:6 System of management control

#### III. FORMING THE JOINT VENTURE

- § 2:7 Organizational options
- § 2:8 Drafting the JV agreements

#### IV. AN INTRODUCTION TO JOINT VENTURE, TRADE NAME, AND TECHNICAL ASSISTANCE AGREEMENTS

§ 2:9 Generally

#### V. DISCUSSION OF CLAUSES IN JOINT VENTURE, TRADE NAME, AND TECHNICAL ASSISTANCE AGREEMENTS

- § 2:10 Parties
- § 2:11 Preamble
- § 2:12 Definitions
- § 2:13 Scope of the joint venture
- § 2:14 —Objectives of the joint venture
- § 2:15 —Legal form
- § 2:16 —Implementation schedule
- § 2:17 —Duration
- § 2:18 Planning and co-ordination
- § 2:19 —General business principles to be observed
- § 2:20 —Internal business planning
- § 2:21 —Co-ordination with host country authorities
- § 2:22 —Co-ordination between the joint venture company and its partners
- § 2:23 Representation—Representation of the company
- § 2:24 —Affiliates, branches and representative offices of the joint venture
- § 2:25 —Representation of the foreign party by the company
- § 2:26 Foreign trade rights and foreign currency transfers—Foreign trade rights
- § 2:27 —Foreign currency rules
- § 2:28 Accounting and auditing
- § 2:29 Incorporation—Practical steps
- § 2:30 —Name
- § 2:31 —Registered office
- § 2:32 —Charter
- § 2:33 —Correspondence of the charter with contracted arrangements
- § 2:34 —Costs of incorporation

#### Eckstrom's Licensing

capitalization  § 2:36 —Parties' shares of the statutory capital  § 2:37 —Subscriptions  § 2:38 —Cash payments  § 2:39 —Non-cash contributions  § 2:40 Financing—Financing plan  § 2:41 —Sources of financing  § 2:42 Facilities—Local legislation  § 2:43 —Description of facilities  § 2:44 —Plant building  § 2:45 —Other services  § 2:46 —Terms and conditions  § 2:47 Products  § 2:48 —Description, know-how and patents, national standard, and technical norms  § 2:49 —Terms and conditions  § 2:50 —Research and development  § 2:51 —Product quality  § 2:52 —Product liability  § 2:52 —Product liability  § 2:53 —Organization and management—Organizational structure  § 2:54 —Statutory organs and their internal relations  § 2:55 —Composition and election  —Term of office  § 2:57 —Quorum and manner of acting  § 2:58 —Recruitment and dismissal  § 2:60 —Use of foreign employees  § 2:61 —Conditions of employment  —Use of foreign employees  § 2:62 —Cromations of employment  § 2:63 —Persons to be trained  § 2:64 —Persons to be training  § 2:65 —Persons to be trained  § 2:66 —Aims, training program  § 2:67 —Visas, work permits, accommodation  Training—Need for training  § 2:68 —Cost, insurance  § 2:69 —Purchases and marketing—Purchases  § 2:71 —Purchases from abroad  § 2:72 —Marketing  Transfer of shares  § 2:73 —Restrictions on ownership  —Approval by authorities  § 2:75 —Consent by other shareholders or by the company; Premptive rights  —Transfer of shares and the joint venture contract	8	2:35	Statutory capital and capital contributions—Minimum
\$ 2:36 —Parties' shares of the statutory capital \$ 2:37 —Subscriptions \$ 2:38 —Cash payments \$ 2:39 —Non-cash contributions \$ 2:40 Financing—Financing plan \$ 2:41 —Sources of financing \$ 2:42 Facilities—Local legislation \$ 2:43 —Description of facilities \$ 2:44 —Plant building \$ 2:45 —Other services \$ 2:46 —Terms and conditions \$ 2:47 —Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 2:53 —Organization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner et acting \$ 2:58 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Conditions of employment \$ 2:63 —Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:70 —Marketing \$ 2:71 —Marketing \$ 2:72 —Marketing \$ 2:73 —Restrictions on ownership \$ 2:74 —Restrictions on ownership \$ 2:75 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract	2	2.00	capitalization
\$ 2:38 —Cash payments \$ 2:39 —Non-cash contributions \$ 2:40 Financing—Financing plan \$ 2:41 —Sources of financing \$ 2:42 Facilities—Local legislation \$ 2:43 —Description of facilities \$ 2:44 —Plant building \$ 2:45 —Other services \$ 2:46 —Terms and conditions \$ 2:47 Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 0 rganization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner of acting \$ 2:58 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Use of foreign employees \$ 2:62 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 —Place, where training \$ 2:64 —Place, where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 —Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Marketing \$ 2:73 —Restrictions on ownership \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract	§	2:36	
\$ 2:40 Financing—Financing plan \$ 2:41 — Sources of financing \$ 2:42 Facilities—Local legislation \$ 2:43 — Description of facilities \$ 2:44 — Plant building \$ 2:45 — Other services \$ 2:46 — Terms and conditions \$ 2:47 — Products \$ 2:48 — Description, know-how and patents, national standard, and technical norms \$ 2:49 — Terms and conditions \$ 2:50 — Research and development \$ 2:51 — Product quality \$ 2:52 — Product liability \$ 2:53 — Organization and management—Organizational structure \$ 2:54 — Statutory organs and their internal relations \$ 2:55 — Composition and election \$ 2:56 — Term of office \$ 2:57 — Quorum and manner of acting \$ 2:60 — Use of foreign employees \$ 2:61 — Conditions of employment—Qualifications \$ 2:62 — Visas, work permits, accommodation \$ 2:63 — Places where training is to take place \$ 2:64 — Places where training is to take place \$ 2:65 — Persons to be trained \$ 2:66 — Aims, training program \$ 2:68 — Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 — Marketing \$ Transfer of shares \$ 2:71 — Purchases from abroad \$ — Restrictions on ownership \$ 2:72 — Marketing \$ Transfer of shares \$ 2:74 — Restrictions on ownership \$ 2:75 — Approval by authorities \$ 2:77 — Consent by other shareholders or by the company; Premptive rights \$ 2:77 — Transfer of shares and the joint venture contract			
\$ 2:40 Financing—Financing plan \$ 2:41 — Sources of financing \$ 2:42 Excilities—Local legislation \$ 2:43 — Description of facilities \$ 2:44 — Plant building \$ 2:45 — Other services \$ 2:46 — Terms and conditions \$ 2:47 Products \$ 2:48 — Description, know-how and patents, national standard, and technical norms \$ 2:49 — Terms and conditions \$ 2:50 — Research and development \$ 2:51 — Product quality \$ 2:52 — Product liability \$ 2:53 — Organization and management—Organizational structure \$ 2:54 — Statutory organs and their internal relations \$ 2:55 — Composition and election \$ 2:56 — Quorum and manner et acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:60 — Quorum and dismissal \$ 2:60 — Use of foreign employees \$ 2:61 — Conditions of employment \$ 2:62 — Visas, work permits, accommodation \$ 2:63 — Training—Need for training \$ 2:64 — Place where training is to take place \$ 2:65 — Persons to be trained \$ 2:66 — Aims, training program \$ 2:67 — Visas, work permits, accommodation \$ 2:68 — Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 — Marketing \$ 2:71 — Purchases from abroad \$ 2:72 — Marketing \$ 2:73 — Restrictions on ownership \$ 2:74 — Restrictions on ownership \$ 2:75 — Approval by authorities \$ 2:76 — Consent by other shareholders or by the company; Premptive rights \$ 2:77 — Transfer of shares and the joint venture contract			
\$ 2:41 —Sources of financing \$ 2:42 Facilities—Local legislation \$ 2:43 —Description of facilities \$ 2:44 —Plant building \$ 2:45 —Other services \$ 2:46 —Terms and conditions \$ 2:47 Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 0 rganization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner et acting \$ Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 —Persons to be trained \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ Transfer of shares \$ 2:73 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:42 Facilities—Local legislation \$ 2:43 —Description of facilities \$ 2:44 —Plant building \$ 2:45 —Other services \$ 2:46 —Terms and conditions \$ 2:47 Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 0rganization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner of acting \$ 2:58 —Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 —Places where training is to take place \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 —Rarsfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:43 —Description of facilities \$ 2:44 —Plant building \$ 2:45 —Other services \$ 2:46 —Terms and conditions \$ 2:47 Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 2:53 Organization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places, where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			•
\$ 2:44 —Plant building \$ 2:45 —Other services \$ 2:46 —Terms and conditions \$ 2:47 Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 2:53 —Organization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner et acting \$ 2:58 —Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 —Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 —Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 —Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Premptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:45 —Other services \$ 2:46 —Terms and conditions \$ 2:47 Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 0:52 —Organization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner or acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:46 —Terms and conditions \$ 2:47 Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 2:53 Organization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Place where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			_
\$ 2:47 Products \$ 2:48 —Description, know-how and patents, national standard, and technical norms \$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 2:53 —Organization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner of acting \$ 2:58 —Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 —Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 —Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 —Transfer of shares \$ 2:74 —Restrictions on ownership —Approval by authorities \$ 2:75 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:48 — Description, know-how and patents, national standard, and technical norms \$ 2:49 — Terms and conditions \$ 2:50 — Research and development \$ 2:51 — Product quality \$ 2:52 — Product liability \$ 2:53 Organization and management—Organizational structure \$ 2:54 — Statutory organs and their internal relations \$ 2:55 — Composition and election \$ 2:56 — Term of office \$ 2:57 — Quorum and manner et acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 — Recruitment and dismissal \$ 2:60 — Use of foreign employees \$ 2:61 — Conditions of employment \$ 2:62 — Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 — Places where training is to take place \$ 2:65 — Persons to be trained \$ 2:66 — Aims, training program \$ 2:67 — Visas, work permits, accommodation \$ 2:68 — Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 — Domestic purchases \$ 2:71 — Purchases from abroad \$ 2:72 — Marketing \$ 2:73 Transfer of shares \$ 2:74 — Restrictions on ownership \$ 2:75 — Approval by authorities \$ 2:76 — Consent by other shareholders or by the company; Preemptive rights \$ 2:77 — Transfer of shares and the joint venture contract			
technical norms  \$ 2:49			
\$ 2:49 —Terms and conditions \$ 2:50 —Research and development \$ 2:51 —Product quality \$ 2:52 —Product liability \$ 2:53 Organization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner et acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract	8	2.40	technical norms
\$ 2:53 Organization and management—Organizational structure \$ 2:54 — Statutory organs and their internal relations \$ 2:55 — Composition and election \$ 2:56 — Term of office \$ 2:57 — Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 — Recruitment and dismissal \$ 2:60 — Use of foreign employees \$ 2:61 — Conditions of employment \$ 2:62 — Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 — Places where training is to take place \$ 2:65 — Persons to be trained \$ 2:66 — Aims, training program \$ 2:67 — Visas, work permits, accommodation \$ 2:68 — Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 — Domestic purchases \$ 2:71 — Purchases from abroad \$ 2:72 — Marketing \$ 2:73 Transfer of shares \$ 2:74 — Restrictions on ownership \$ 2:75 — Approval by authorities \$ 2:76 — Consent by other shareholders or by the company; Preemptive rights \$ 2:77 — Transfer of shares and the joint venture contract	8	2.49	—Terms and conditions
\$ 2:53 Organization and management—Organizational structure \$ 2:54 — Statutory organs and their internal relations \$ 2:55 — Composition and election \$ 2:56 — Term of office \$ 2:57 — Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 — Recruitment and dismissal \$ 2:60 — Use of foreign employees \$ 2:61 — Conditions of employment \$ 2:62 — Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 — Places where training is to take place \$ 2:65 — Persons to be trained \$ 2:66 — Aims, training program \$ 2:67 — Visas, work permits, accommodation \$ 2:68 — Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 — Domestic purchases \$ 2:71 — Purchases from abroad \$ 2:72 — Marketing \$ 2:73 Transfer of shares \$ 2:74 — Restrictions on ownership \$ 2:75 — Approval by authorities \$ 2:76 — Consent by other shareholders or by the company; Preemptive rights \$ 2:77 — Transfer of shares and the joint venture contract			—Research and development
\$ 2:53 Organization and management—Organizational structure \$ 2:54 — Statutory organs and their internal relations \$ 2:55 — Composition and election \$ 2:56 — Term of office \$ 2:57 — Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 — Recruitment and dismissal \$ 2:60 — Use of foreign employees \$ 2:61 — Conditions of employment \$ 2:62 — Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 — Places where training is to take place \$ 2:65 — Persons to be trained \$ 2:66 — Aims, training program \$ 2:67 — Visas, work permits, accommodation \$ 2:68 — Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 — Domestic purchases \$ 2:71 — Purchases from abroad \$ 2:72 — Marketing \$ 2:73 Transfer of shares \$ 2:74 — Restrictions on ownership \$ 2:75 — Approval by authorities \$ 2:76 — Consent by other shareholders or by the company; Preemptive rights \$ 2:77 — Transfer of shares and the joint venture contract			—Product quality
\$ 2:53 Organization and management—Organizational structure \$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			—Product liability
\$ 2:54 —Statutory organs and their internal relations \$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:55 —Composition and election \$ 2:56 —Term of office \$ 2:57 —Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:57 —Quorum and manner of acting \$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:58 Employees and conditions of employment—Qualifications \$ 2:59 —Recruitment and dismissal \$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract	§	2:56	—Term of office
\$ 2:59 — Recruitment and dismissal \$ 2:60 — Use of foreign employees \$ 2:61 — Conditions of employment \$ 2:62 — Visas, work permits, accommodation \$ 2:63 Training — Need for training \$ 2:64 — Places where training is to take place \$ 2:65 — Persons to be trained \$ 2:66 — Aims, training program \$ 2:67 — Visas, work permits, accommodation \$ 2:68 — Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 — Domestic purchases \$ 2:71 — Purchases from abroad \$ 2:72 — Marketing \$ 2:73 Transfer of shares \$ 2:74 — Restrictions on ownership \$ 2:75 — Approval by authorities \$ 2:76 — Consent by other shareholders or by the company; Preemptive rights \$ 2:77 — Transfer of shares and the joint venture contract	§	2:57	—Quorum and manner of acting
\$ 2:60 —Use of foreign employees \$ 2:61 —Conditions of employment \$ 2:62 —Visas, work permits, accommodation \$ 2:63 Training—Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract	§	2:58	
<ul> <li>\$ 2:61 —Conditions of employment</li> <li>\$ 2:62 —Visas, work permits, accommodation</li> <li>\$ 2:63 Training —Need for training</li> <li>\$ 2:64 —Places where training is to take place</li> <li>\$ 2:65 —Persons to be trained</li> <li>\$ 2:66 —Aims, training program</li> <li>\$ 2:67 —Visas, work permits, accommodation</li> <li>\$ 2:68 —Cost, insurance</li> <li>\$ 2:69 Purchases and marketing—Purchases</li> <li>\$ 2:70 —Domestic purchases</li> <li>\$ 2:71 —Purchases from abroad</li> <li>\$ 2:72 —Marketing</li> <li>\$ 2:73 Transfer of shares</li> <li>\$ 2:74 —Restrictions on ownership</li> <li>\$ 2:75 —Approval by authorities</li> <li>\$ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>\$ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			
<ul> <li>\$ 2:62 —Visas, work permits, accommodation</li> <li>\$ 2:63 Training—Need for training</li> <li>\$ 2:64 —Places where training is to take place</li> <li>\$ 2:65 —Persons to be trained</li> <li>\$ 2:66 —Aims, training program</li> <li>\$ 2:67 —Visas, work permits, accommodation</li> <li>\$ 2:68 —Cost, insurance</li> <li>\$ 2:69 Purchases and marketing—Purchases</li> <li>\$ 2:70 —Domestic purchases</li> <li>\$ 2:71 —Purchases from abroad</li> <li>\$ 2:72 —Marketing</li> <li>\$ 2:73 Transfer of shares</li> <li>\$ 2:74 —Restrictions on ownership</li> <li>\$ 2:75 —Approval by authorities</li> <li>\$ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>\$ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			
\$ 2:63 Training —Need for training \$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
\$ 2:64 —Places where training is to take place \$ 2:65 —Persons to be trained \$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
<ul> <li>\$ 2:65 — Persons to be trained</li> <li>\$ 2:66 — Aims, training program</li> <li>\$ 2:67 — Visas, work permits, accommodation</li> <li>\$ 2:68 — Cost, insurance</li> <li>\$ 2:69 Purchases and marketing—Purchases</li> <li>\$ 2:70 — Domestic purchases</li> <li>\$ 2:71 — Purchases from abroad</li> <li>\$ 2:72 — Marketing</li> <li>\$ 2:73 Transfer of shares</li> <li>\$ 2:74 — Restrictions on ownership</li> <li>\$ 2:75 — Approval by authorities</li> <li>\$ 2:76 — Consent by other shareholders or by the company; Preemptive rights</li> <li>\$ 2:77 — Transfer of shares and the joint venture contract</li> </ul>			
\$ 2:66 —Aims, training program \$ 2:67 —Visas, work permits, accommodation \$ 2:68 —Cost, insurance \$ 2:69 Purchases and marketing—Purchases \$ 2:70 —Domestic purchases \$ 2:71 —Purchases from abroad \$ 2:72 —Marketing \$ 2:73 Transfer of shares \$ 2:74 —Restrictions on ownership \$ 2:75 —Approval by authorities \$ 2:76 —Consent by other shareholders or by the company; Preemptive rights \$ 2:77 —Transfer of shares and the joint venture contract			
<ul> <li>\$ 2:67 —Visas, work permits, accommodation</li> <li>\$ 2:68 —Cost, insurance</li> <li>\$ 2:69 Purchases and marketing—Purchases</li> <li>\$ 2:70 —Domestic purchases</li> <li>\$ 2:71 —Purchases from abroad</li> <li>\$ 2:72 —Marketing</li> <li>\$ 2:73 Transfer of shares</li> <li>\$ 2:74 —Restrictions on ownership</li> <li>\$ 2:75 —Approval by authorities</li> <li>\$ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>\$ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			
<ul> <li>§ 2:68 —Cost, insurance</li> <li>§ 2:69 Purchases and marketing—Purchases</li> <li>§ 2:70 —Domestic purchases</li> <li>§ 2:71 —Purchases from abroad</li> <li>§ 2:72 —Marketing</li> <li>§ 2:73 Transfer of shares</li> <li>§ 2:74 —Restrictions on ownership</li> <li>§ 2:75 —Approval by authorities</li> <li>§ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>§ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			
<ul> <li>§ 2:69 Purchases and marketing—Purchases</li> <li>§ 2:70 —Domestic purchases</li> <li>§ 2:71 —Purchases from abroad</li> <li>§ 2:72 —Marketing</li> <li>§ 2:73 Transfer of shares</li> <li>§ 2:74 —Restrictions on ownership</li> <li>§ 2:75 —Approval by authorities</li> <li>§ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>§ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			_
<ul> <li>\$ 2:70 —Domestic purchases</li> <li>\$ 2:71 —Purchases from abroad</li> <li>\$ 2:72 —Marketing</li> <li>\$ 2:73 Transfer of shares</li> <li>\$ 2:74 —Restrictions on ownership</li> <li>\$ 2:75 —Approval by authorities</li> <li>\$ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>\$ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			
<ul> <li>§ 2:71 —Purchases from abroad</li> <li>§ 2:72 —Marketing</li> <li>§ 2:73 Transfer of shares</li> <li>§ 2:74 —Restrictions on ownership</li> <li>§ 2:75 —Approval by authorities</li> <li>§ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>§ 2:77 —Transfer of shares and the joint venture contract</li> </ul>	_		
<ul> <li>\$ 2:72 —Marketing</li> <li>\$ 2:73 Transfer of shares</li> <li>\$ 2:74 —Restrictions on ownership</li> <li>\$ 2:75 —Approval by authorities</li> <li>\$ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>\$ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			—Purchases from abroad
<ul> <li>§ 2:73 Transfer of shares</li> <li>§ 2:74 —Restrictions on ownership</li> <li>§ 2:75 —Approval by authorities</li> <li>§ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>§ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			
<ul> <li>§ 2:74 —Restrictions on ownership</li> <li>§ 2:75 —Approval by authorities</li> <li>§ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>§ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			S S S S S S S S S S S S S S S S S S S
<ul> <li>\$ 2:75 — Approval by authorities</li> <li>\$ 2:76 — Consent by other shareholders or by the company; Preemptive rights</li> <li>\$ 2:77 — Transfer of shares and the joint venture contract</li> </ul>			
<ul> <li>\$ 2:76 —Consent by other shareholders or by the company; Preemptive rights</li> <li>\$ 2:77 —Transfer of shares and the joint venture contract</li> </ul>			
emptive rights § 2:77 —Transfer of shares and the joint venture contract			
§ 2:77 —Transfer of shares and the joint venture contract	3		
· · · · · · · · · · · · · · · · · · ·	Ş	2:77	
3 2.10 Termination and inquidation		2:78	Termination and liquidation

- § 2:79 —Statutory grounds for termination
- § 2:80 —Agreed grounds for termination
- § 2:81 —Liquidation
- § 2:82 Miscellaneous provisions
- § 2:83 —Relief from liability
- § 2:84 —Confidentiality of information
- § 2:85 —Right of inspection
- § 2:86 —Incorporation and survival of the joint venture contract
- § 2:87 —Amendment of the joint venture contract
- § 2:88 —Effectiveness of the joint venture contract
- § 2:89 —Languages
- § 2:90 Applicable law
- § 2:91 —Choice of law
- § 2:92 Settlement of disputes
- § 2:93 —Amicable settlement
- § 2:94 —Settlement in arbitration or through general courts of law
- § 2:95 —Choice of forum
- § 2:96 Force majeure
- § 2:97 Final agreement review by counsel

### VI. GENERAL ANALYSIS OF THE WODEL AGREEMENTS

§ 2:98 Generally

#### VII. MODEL MANUFACTURING JOINT VENTURE AGREEMENT AND RELATED TRADE NAME AND TECHNICAL ASSISTANCE AGREEMENTS

- § 2:99 Joint venture agreement
- § 2:100 Corporate and trade name license agreement
- § 2:101 Technical assistance agreement

#### CHAPTER 3 ARBITRATION

#### I. INTRODUCTION

§ 3:1 Overview of arbitration

#### II. ADVANTAGES OF ARBITRATION

§ 3:2 Generally

### III. IMPORTANT ISSUES RELATED TO ARBITRATION

§ 3:3 Generally

#### IV. THE PLACE OF ARBITRATION

§ 3:4 Generally

### V. COMPARING INSTITUTIONAL AND AD HOC ARBITRATION

- § 3:5 Institutional arbitration—Overview
- § 3:6 —Advantages
- § 3:7 —Disadvantages
- § 3:8 —Selection issues
- § 3:9 Ad hoc arbitration—Overview
- § 3:10 —The UNCITRAL rules

#### VI. DRAFTING THE ARBITRATION CLAUSE

§ 3:11 Generally

### VII. IMPORTANT ELEMENTS OF THE ARBITRATION AGREEMENT

§ 3:12 Generally

#### VIII. ENFORCEMENT OF ARBITRAL AWARDS

- § 3:13 Court enforcement of arbitral awards
- § 3:14 Conventions for enforcement of arbitral awards—Overview
- § 3:15 —The New York Convention
- § 3:16 —The Panama Convention
- § 3:17 Grounds for refusal to enforce arbitral awards

### IX. SURVEY OF INTERNATIONAL ARBITRATION RULES

§ 3:18 Generally

### X. INTERNATIONAL ARBITRATION INSTITUTIONS

§ 3:19 Generally

#### XI. REGIONAL ARBITRATION INSTITUTIONS

§ 3:20 Generally

#### XII. DISPUTES BETWEEN FOREIGN INVESTORS AND HOST GOVERNMENTS - THE ICSID CONVENTION

- § 3:21 Overview
- § 3:22 The ICSID Convention

### XIII. THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

§ 3:23 Generally

xxiv

#### XIV. THE NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

§ 3:24 Generally

#### XV. THE UNCITRAL ARBITRATION RULES

§ 3:25 Generally

### XVI. CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

§ 3:26 The Revised Arbitration Rules Adopted by the China Council for the Promotion of International Trade/China Chamber of International Commerce on September 5, 2000 (effective as of October 1, 2000)

# CHAPTER 4 LEGAL RESTRICTIONS ON COOPERATION BETWEEN JOINT VENTURE PARTNERS

# I. APPLICATION OF U.S. ANTITRUST LAWS TO MERGERS AND JOINT VENTURES IN A GLOBAL ECONOMY

- A. INTRODUCTION
- § 4:1 Generally
  - B. THE U.S. ANTITRUST SYSTEM
- § 4:2 The pertinent statutes
- § 4:3 The consequences of noncompliance with U.S. antitrust statutes—Hart-Scott-Rodino Antitrust Improvements Act (HSR)
- § 4:4 —Government enforcement
- § 4:5 —Private enforcement

### C. JURISDICTIONAL AND OTHER LIMITATIONS ON APPLICATION OF U.S. ANTITRUST LAW

- § 4:6 Overview
- § 4:7 The extraterritorial reach of U.S. antitrust laws
- § 4:8 The role of comity in invoking U.S. antitrust jurisdiction
- § 4:9 Foreign sovereign compulsion
- § 4:10 Foreign sovereign immunity

#### D. A PRIMER ON THE Hart-Scott-Rodino Antitrust Improvements Act (HSR)

§ 4:11 Overview

§	4:12	HSR's reporting requirements, exemptions, and treatment of foreign parties and transactions
§	4:13	—HSR's size-based tests
-	4:14	—The 2001 Amendments to the HSR Act
-	4:15	—Special HSR rules for transactions involving a foreign party or government
§	4:16	Practicalities of fulfilling the requirements of HSR—Making the HSR filing
§	4:17	—Processing of the filing
§	4:18	—Assistance from the FTC
§	4:19	—Strategic considerations
	E.	ANALYSIS OF CORPORATE MERGERS UNDER U.S. ANTITRUST LAWS
§	4:20	Overview
§	4:21	Defining the relevant market and measuring the merger's effect on concentration—Overall approach to market definition
Ş	4:22	—Defining the relevant product market
8	4:23	—Defining the geographic markets
8	4:24	—Identifying firms in the relevant market
§	4:25	—Determining concentration and increase in concentration in the relevant market
§	4:26	Analysis of non-quantitative factors that pertain to the adverse competitive effect of a merger
§	4:27	The traditional defences—Ease of entry, efficiencies, and failing firm or division
§	4:28	—Ease of entry
§	4:29	—Efficiencies
§	4:30	—Failing from and failing division
-	4:31	The treatment of nonhorizontal mergers having horizontal effects
8	4:32	—Potential competition

### F. ANALYSIS OF JOINT VENTURES UNDER U.S. ANTITRUST LAWS

#### § 4:34 Generally

#### G. APPLICATION OF U.S. ANTITRUST PRINCIPLES TO MERGERS AND JOINT VENTURES INVOLVING NON-U.S. FIRMS

- § 4:35 Introduction
- § 4:36 U.S. company and U.S. subsidiary or division of non-U.S. firm
- § 4:37 U.S. company and non-U.S. firm with sales in U.S

—Vertical mergers with horizontal effects

- $\S$  4:38 U.S. company and non-U.S. firm with no present sales in the U.S
- § 4:39 Merger of non-U.S. firms that sell in the U.S
- § 4:40 Joint venture between U.S. and non-U.S. concerns

#### H. CONCLUSION

- § 4:41 Generally
  - I. THE National Cooperative Research and Production Act
- § 4:42 Generally
  - J. ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS
- § 4:43 Generally

### II. JOINT VENTURES AND EUROPEAN UNION MERGERS, COMPETITION POLICY

- A. MAJOR CHANGES TO THE MERGER CONTROL REGIME DUE IN 2004
- § 4:44 Council Regulation (EC) No. 139/2004 of 20 January, 2004
- § 4:45 The Modernization Regulation Articles 81&82

### B. OVERVIEW OF MERGER CONTROL REGULATION NO. 4064/1989

- § 4:46 Council regulation 4064/89
- § 4:47 Community dimension
- § 4:48 Compatibility with the Common Market
- § 4:49 The definition of a concentration
- § 4:50 Joint ventures Sole vs. joint control
- § 4:51 Full function joint ventures defined
- § 4:52 Lasting structural change
- § 4:53 Ancillary restrictions

### C. THE COMMISSION'S REVIEW UNDER THE MERGER REGULATION

- § 4:54 Article 4 Notification of concentrations
- § 4:55 The review process
- § 4:56 The simplified review procedure
- § 4:57 Article 81 Coordination of Competitive Behavior
- § 4:58 Article 8 Commission Powers
- § 4:59 Referral to the member states
- § 4:60 Article 10 Time Limits

- § 4:61 Article 11 Requests for Information
- § 4:62 Articles 12 and 13 Investigative powers
- § 4:63 Articles 14 and 15 Fines and penalty payments
- § 4:64 Articles 16 and 21 Exclusivity of competence
- § 4:65 Article 17 Professional Secrecy
- § 4:66 Article 19 Liaison with Member States

### D. REVIEW OF JOINT VENTURES UNDER ARTICLES 81 & 82

- § 4:67 Overview Articles 81 and 82 of the EC treaty
- § 4:68 Notification
- § 4:69 Structural joint ventures Expedited review
- § 4:70 Full investigation under Articles 81 & 82

# E. COMMISSION REVIEWS UNDER ARTICLES 81 & 82 — BLOCK EXEMPTIONS AND GUIDELINES

- § 4:71 Guidelines on the applicability of Article 81 of the EC Treaty to Horizontal Cooperation Agreements
- § 4:72 The R&D and specialization block exemptions Overview
- § 4:73 The R&D block exemption
- § 4:74 The specialization agreement block exemption
- § 4:75 The vertical agreements block exemption
- § 4:76 The commission guidelines on vertical restraints

### F. THE COMPETITION LAW OF SELECTED MEMBER STATES

- § 4:77 Overview
- § 4:78 Germany
- § 4:79 France
- § 4:80 Belgium
- § 4:81 Italy
- § 4:82 The Netherlands
- § 4:83 Spain
- § 4:84 The United Kingdom
- APPENDIX 4A 1995 Antitrust Enforcement Guidelines for International Operations (Department of Justice and Federal Trade Commission)
- APPENDIX 4B Horizontal Merger Guidelines (Department of Justice and Federal Trade Commission)
- APPENDIX 4C The National Cooperative Research and Production Act of 1993 (15 U.S.C. §§ 4301 et seq.)
- APPENDIX 4D Antitrust Guidelines for Collaborations Among Comepetitors

- APPENDIX 4E Consolidated Text of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (Published in OJ L 395, 30.12.1989; corrected version OJ L 257, 21.9.1990, p.13) with amendments introduced by Council Regulation (EC) No 1310/97 of 30 June 1997 (published in OJ L 180, 9.7.1997, p. 1, corrigendum OJ L40, 13.2.1998, p. 17)
- APPENDIX 4F Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (Text with EEA relevance)
- APPENDIX 4G Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03)
- APPENDIX 4H Form CO Relating to the Notification of a Concentration Pursuant to Regulation (EEC) No. 4064/89 (with Guidance Notes)
- APPENDIX 4I Commission Notice Guidelines on the Applicability of Article 81 of the EC Treaty to Herizontal Cooperation Agreements (2001/C 3/02)
- APPENDIX 4J Commission Regulation (EC) No 2659/2000 of 29 November 2000 on the Application of Article 81(3) of the Treaty to Categories of Research and Development Agreements (Text van EEA Relevance) Official Journal L 304, 05/12/2000 p. 0007 – 0012
- APPENDIX 4K Commission Regulation (EC) No. 2658/2000 of 29 November 2000 on the Application of Article 81(3) of the Treaty to Categories of Specialisation Agreements (Text with EEA Relevance)
- APPENDIX 4L Commission Regulation (EC) No. 2790/1999 of 22

  December 1999 on the Application of Article 81(3) of the Treaty to Categories of Verticle Agreements and Concerted Practices (Text with EEA Relevance)
- APPENDIX 4M EU Competition Rules
- APPENDIX 4N Commission Notice On Restrictions Directly Related And Necessary To Concentrations (2001/C 188/03) (Text with EEA relevance)
- APPENDIX 40 DG COMPETITION Best Practices on the conduct of EC merger control proceedings
- APPENDIX 4P Commission Notice on the appraisal of horizontal mergers under the Council Regulation on the control of concentrations between undertakings
- APPENDIX 4Q Council regulation (EC) No 1/2003 Of 16 December 2002 On the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

### CHAPTER 5 U.S. CONTROLS ON EXPORTS OF TECHNOLOGY

#### I. U.S. EXPORT CONTROL POLICY

§ 5:1 Introduction

### II. EVOLUTION OF U.S. EXPORT CONTROL POLICY

- § 5:2 Overview
- § 5:3 Dissolution of COCOM
- § 5:4 New focus on nonproliferation controls

#### III. EXPORT ADMINISTRATION REGULATIONS

- § 5:5 Overview
- § 5:6 Technology subject to control
- § 5:7 Examples of technology exports
- § 5:8 Export licensing requirements
- § 5:9 License exceptions
- § 5:10 Re-exports of U.S.-Origin technical data
- § 5:11 Domestic transfers to foreign nationals
- § 5:12 Nonproliferation and anti-terrorism controls
- § 5:13 Encryption export controls

### IV. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

- § 5:14 Overview
- § 5:15 Exports of technical data and defense services
- § 5:16 Re-exports

#### V. TRADE AND ECONOMIC SANCTIONS

- § 5:17 Generally
- APPENDIX 5A Scope of the Export Administration Regulations (15 C.F.R. Part 734)
- APPENDIX 5B License Exceptions (15 C.F.R. Part 740)
- APPENDIX 5C Encryption Commodities and Software (ENC) (15 C.F.R. § 740.17)
- APPENDIX 5D Supplements to 15 C.F.R. Part 740

#### CHAPTER 6 TAXATION OF INTERNATIONAL JOINT VENTURES

### I. STRUCTURE OF THE JOINT VENTURE: GENERAL CONSIDERATIONS

§ 6:1 Generally

#### II. PARTNERSHIPS

- § 6:2 Definitions
- § 6:3 Taxation of partners
- § 6:4 Foreign tax credit
- § 6:5 Sourcing rules
- § 6:6 Withholding tax on foreign partners

#### III. FOREIGN CORPORATIONS

- § 6:7 Transfer of property
- § 6:8 Deemed paid foreign tax credit
- § 6:9 Controlled foreign corporations
- § 6:10 Export incentives
- § 6:11 Passive foreign investment companies

#### IV. INBOUND INVESTMENTS

- § 6:12 Withholding tax on dividends
- § 6:13 Branch profits

#### V. LIMITED LIABILITY COMPANIES ("LLC'S")

§ 6:14 Generally

#### VI. CHECK THE BOX REGULATIONS

- § 6:15 General background
- § 6:16 Separate entity test
- § 6:17 Elective and required classifications
- § 6:18 Eligible entities (initial and existing classification)
- § 6:19 Making the election

### VII. USE OF HYBRIDS IN INTERNATIONAL JOINT VENTURES.

- § 6:20 Definitions
- § 6:21 Regular hybrid-U.S. joint venture partner in joint venture treated as a corporation for foreign tax purposes
- § 6:22 —CFC owning an interest in a foreign joint venture hybrid
- § 6:23 —Potential pitfall in converting a CFC to a hybrid

§ 6:24 Reverse hybrid

#### VIII. OTHER PROVISIONS AFFECTING INTERNATIONAL JOINT VENTURES

- § 6:25 Transfer pricing provisions
- § 6:26 Earnings stripping provisions

APPENDIX 6A The Internal Revenue Code ("IRC")

APPENDIX 6B Treasury Regulations

#### CHAPTER 7 FINANCING AND INSURANCE

### I. THE OVERSEAS PRIVATE INVESTMENT CORPORATION

- § 7:1 Generally
- § 7:2 Insurance
- § 7:3 —Inconvertibility
- § 7:4 —Expropriation
- § 7:5 —War, revolution, insurrection, and civil strife
- § 7:6 —Business income coverage
- § 7:7 Finance
- § 7:8 —Direct loans
- § 7:9 —Loan guaranties
- § 7:10 Special programs
- § 7:11 —Contractors and exporters program
- § 7:12 —Energy programs
- § 7:13 —Leasing
- § 7:14 Investment encouragement programs
- § 7:15 —Feasibility studies
- § 7:16 —Special project grants and loans
- § 7:17 Pre-investment assistance
- § 7:18 —Investment mission
- § 7:19 —Opportunity bank
- § 7:20 Overall eligibility
- § 7:21 —Insurance
- § 7:22 —Finance

### II. THE MULTILATERAL INVESTMENT GUARANTEE AGENCY

§ 7:23 Generally

### III. OPIC AND MIGA—A COMPARISON OF PROGRAMS

#### A. ELIGIBILITY CRITERIA

§ 7:24 Eligible investors

xxxii

- § 7:25 Eligible countries
- § 7:26 Types of investment covered
- § 7:27 Forms of investment covered
- § 7:28 Policy criteria
- § 7:29 Percentage exposure
- § 7:30 Maximum exposure per project
- § 7:31 Overall country limits
- § 7:32 Duration of coverage

### B. STANDARD INSURANCE COVERAGE FOR EQUITY INVESTMENTS

- § 7:33 Inconvertibility
- § 7:34 Types of action covered
- § 7:35 No input coverage
- § 7:36 No exchange rate coverage
- § 7:37 Coverage against deterioration
- § 7:38 Offshore accounts
- § 7:39 Expropriation
- § 7:40 Violation of international law
- § 7:41 Government as commercial party
- § 7:42 Dispute resolution coverage
- § 7:43 Coverage of project agreements
- § 7:44 Assignment in connection with claim
- § 7:45 Bad deals
- § 7:46 Political violence
- § 7:47 Business income coverage
- § 7:48 Exclusions

### C. INSTITUTIONAL LENDERS COVERAGE FOR INTERNATIONAL LOANS

- § 7:49 Comparison to equity coverage
- § 7:50 Payment default
- § 7:51 Payments as and when due
- § 7:52 Inconvertibility coverage for lenders
- § 7:53 Right to convert
- § 7:54 Expropriation coverage for lenders
- § 7:55 Compensation
- § 7:56 Option to prepay
- § 7:57 Political violence coverage for lenders

### D. OTHER SOURCES OF POLITICAL RISK COVERAGE FOR LENDERS

- § 7:58 Generally
- © 2006 Thomson/West, Rel. 10, 3/2006

### IV. THE EXPORT-IMPORT BANK OF THE UNITED STATES

- § 7:59 Overview
- § 7:60 Programs offered by ex-im bank

### V. THE INTERNATIONAL FINANCE CORPORATION

- § 7:61 Overview
- § 7:62 Project finance
- § 7:63 Advice and technical assistance
- § 7:64 Ownership and management
- § 7:65 Funding of IFC's activities
- § 7:66 Funding approval
- § 7:67 Products
- § 7:68 Preparing the investment proposal

#### VI. THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

- § 7:69 Introduction
- § 7:70 Financing with the EBRD—Terms and conditions
- § 7:71 —Rates
- § 7:72 —Terms
- § 7:73 —Fees
- § 7:74 —Expenses
- § 7:75 —Recourse
- § 7:76 —Insurance
- § 7:77 —Security
- § 7:78 —Covenants
- § 7:79 —Equity positions
- § 7:80 Approval criteria
- § 7:81 Financing instruments

### VII. THE PRIVATE EXPORT FUNDING CORPORATION

§ 7:82 Generally

#### CHAPTER 8 INTERNATIONAL IP CONVENTIONS AND EUROPEAN COMMUNITY IP LAW

#### I. INTRODUCTION

§ 8:1 Overview of the international intellectual property legal regime

xxxiv

# II. THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

§	8:2	Overview
§	8:3	Transitional arrangements and technical cooperation
§	8:4	Organizational structure
§	8:5	Implementation
§	8:6	Definition of intellectual property
§	8:7	Incorporation by reference of the Paris and Berne Conventions
§	8:8	The principle of national treatment
§	8:9	The Most-Favored-Nation Principle (MFN)
§	8:10	Reservations
	8:11	Security exceptions
§	8:12	Standards concerning the availability, scope and use of intellectual property rights (Part II)
§	8:13	Copyright and related rights (Section 1)
§	8:14	Trademarks (Section 2)
§	8:15	Geographical indications (Section 3)
§	8:16	Industrial designs (Section 4)
§	8:17	Patents (Section 5)
§	8:18	Layout-Designs (topographies) of integrated circuits (Section 6)
§	8:19	Protection of confidential information (Section 7)
§	8:20	Control of anti-competitive licensing practices (Section 8)
§	8:21	Enforcement of intellectual property rights (Part III) - General Obligations
§	8:22	Civil and administrative procedures and remedies
§	8:23	Special requirements related to border measures
§	8:24	Criminal procedures
§	8:25	Acquisition and maintenance of intellectual property rights
Ş	8:26	Dispute prevention and settlement
-	8:27	Dispute settlement

### III. THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

§	8:28	Introduction
§	8:29	National treatment
§	8:30	The right of priority
§	8:31	Independence of patents
§	8:32	The right of the inventor to be mentioned
§	8:33	Importation, failure to work, and compulsory licenses
§	8:34	Maintenance fees
§	8:35	International traffic
§	8:36	International exhibitions

§	8:37	Paris convention provisions covering the use of trademarks
§	8:38	The independence of trademarks
§	8:39	Well-known trademarks
§	8:40	State emblems, official hallmarks and emblems of international organizations
§	8:41	Assignment of trademarks
§	8:42	Article 6quinquies - Protection of trademarks
§	8:43	Service marks
§	8:44	Article 7 - Nature of the goods
§	8:45	Collective marks
§	8:46	International exhibitions
§	8:47	Industrial designs
§	8:48	Trade names
§	8:49	Appellations of origin and indications of source
§	8:50	Unfair competition

# IV. THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

§	8:51	Overview
§	8:52	The three basic principles
§	8:53	Works protected
§	8:54	Owners of rights
§	8:55	Persons protected
§	8:56	Rights protected
§	8:57	Limitations
§	8:58	Compulsory licenses
§	8:59	Duration of copyright protection
§	8:60	The Paris Act of the convention

#### V. THE WIPO COPYRIGHT TREATY (WCT)

3	8:61	Introduction to the Internet Treaties
3	8:62	The relationship between the WCT and the Berne Convention
3	8:63	The scope of protection
3	8:64	Protection for computer programs
3	8:65	Protection for compilations of data (Databases)
3	8:66	The rights of distribution and rental
3	8:67	The right of communication to the public
3	8:68	The right of reproduction
3	8:69	Article 10 - Limitations on author's rights
3	8:70	Article 11 - Technological protective measures
3	8:71	Article 12 - Obligations concerning rights management information

# VI. THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS, OCTOBER 26, 1961 (THE "ROME CONVENTION")

Overview § 8:72 8:73 Article 2 - National treatment 8:74 Article 3 - Definitions 8:75 Article 4 - Requirements for national treatment 8:76 Article 5 - National treatment for producers of phonograms Article 6 - National treatment for broadcasting organizations 8:77 Article 7 - Protection for performers 8:78 § 8:79 Article 10 - Right of reproduction for phonogram producers § 8:80 Article 12 - Involuntary uses of phonograms 8:81 Article 13 - Minimum rights for broadcasting organizations 8:82 Article 14 - Minimum duration of protection § 8:83 Article 15 - Permitted exceptions § 8:84 Article 16 - Reservations § 8:85 The phonograms convention and the satellite convention

### VII. THE WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT)

§	8:86	Overview of the internet treaties
§	8:87	Article 1 - Relation to coner conventions
§	8:88	Article 2 - Definitions
§	8:89	Article 3 - Parties protected under the WPPT
§	8:90	Article 4 - National treatment
§	8:91	Article 5 - Moral rights of performers
§	8:92	Article 6 - Economic rights of performers in unfixed
		performances
§	8:93	Article 7 - Right of reproduction
§	8:94	Article 8 - Right of dstribution
§	8:95	Article 9 - Right of rental
§	8:96	Article 10 - Performers right of making available fixed
		performances
§	8:97	Article 11 - Producers right of reproduction
§	8:98	Article 12 - Producers right of distribution
§	8:99	Article 13 - Producers right of rental
§	8:100	Article 14 - Producers right of making available of
		phonograms
§	8:101	Article 17 - Terms of protection
§	8:102	Article 18 - Technological measures
§	8:103	Article 19 - Rights management information

#### VIII. THE PATENT COOPERATION TREATY (PCT)

§ 8:104 Overview

#### IX. THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS AND THE PROTOCOL

- § 8:105 Overview
- § 8:106 Filing an international registration
- § 8:107 The effects of international registration

# X. THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

- § 8:108 Overview
- § 8:109 The main provisions

#### XI. THE TRADEMARK LAW TREATY

§ 8:110 Overview

#### XII. THE PATENT LAW TREATY

§ 8:111 Overview

#### XIII. THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

§ 8:112 Overview

#### XIV. THE INTELLECTUAL PROPERTY LAW OF THE EUROPEAN UNION - OVERVIEW

- § 8:113 Basics of European community law
- § 8:114 The harmonization of member state law
- § 8:115 Trademarks
- § 8:116 Designs
- § 8:117 Patents
- § 8:118 Copyright
- § 8:119 Enforcement of intellectual property rights

#### XV. TRADEMARKS

- § 8:120 Trademark harmonization Council Directive 89/104/EEC
- $\ \, \$\,\, 8{:}121$  The community trademark - Council Regulation(EC) No 40/94

#### XVI. COPYRIGHTS

- § 8:122 Copyrights Council Directive 93/98/EEC of 29 October 1993
- § 8:123 Copyright and computer programs Council Directive 91/250/EEC

xxxviii

§ 8:124 Databases - Directive 96/9/EC
 § 8:125 Satellite broadcasting and cable retransmission - Directive 93/83/EEC
 § 8:126 Harmonization of copyright laws - Directive 2001/29/EC
 § 8:127 Rental right and lending right - Council Directive 92/100/EEC

#### XVII. PATENTS

- § 8:128 Commission proposal of 1 August 2000 for a community patent
- § 8:129 Biotechnological inventions Directive 98/44/EC

#### XVIII. DESIGNS

- § 8:131 The community design regulation Council Regulation (EC) No 6/2002

### XIX. THE PROPOSAL FOR AN ENPORCEMENT DIRECTIVE

§ 8:132 The proposal for a directive on measures and procedures to ensure the enforcement of intellectual property rights

#### XX. EUROPEAN COMMUNITY COMPETITION LAW

- § 8:133 Overview of interface between EC competition law and IP law
- § 8:134 The 2004 technology transfer block exemption and guidelines
- § 8:135 The modernization regulation Council Regulation (EC) No. 1/2003
- § 8:136 The 2004 TTBER Commission Regulation (EC) No. 772/2004
- § 8:137 Guidelines on the application of Article 81 Technology Transfer Agreements