



Note: This checklist is given by way of example only. It is not exhaustive and may include references to matters that are not appropriate in specific circumstances. The order in which matters are listed is not an indication of importance or the sequence in which they need to be addressed.

The checklist is not intended as a substitute for taking appropriate legal, regulatory, taxation, financial and other relevant advice. No advice is given or intended to be given in, or to be inferred by, this checklist and reliance should not be placed on it.

THE LAW SOCIETY
RESPONDING TO CHANGE IN THE CRIMINAL LEGAL AID MARKET
 Helping members achieve success in a changed market

JOINT VENTURE CHECKLIST

“JV” – means joint venture

JV Vehicle	
1.	<p>What type of vehicle is the JV to be carried out through:</p> <ul style="list-style-type: none"> • Limited company; • Limited liability partnership; or • Partnership. <p>Taxation - It will be necessary to ascertain the most suitable tax structure for the JV at an early stage, therefore consider instructing tax advisors.</p> <p>Members'/partners' tax positions to be ascertained and VAT on any sale.</p> <p>The type of structure used will be driven by tax considerations.</p>
Identify the parties	
2.	Who are the parties? Will all existing members/partners/shareholders of existing practices be involved? If not consider the impact on 'share' of existing business?
3.	Undertake appropriate searches on each party including winding up/bankruptcy searches and if a party is a corporate entity, Companies House searches.
What is the business which the JV will carry on?	
4.	What will be the business of the JV? Duty Provider alone or transfer of any other business? Where will Own Client Work be undertaken?
5.	Is the purpose to carry out the specific Duty Provider project or a continuing business involving other legal provisions?
Preliminary matters	
6.	What will the name of the JV be?

7.	Are there any restrictions on the use of the name?
8.	How will any existing brands be valued / protected?
9.	How will any new IP be dealt with?
10.	Are there any restrictions in existing agreements, for example, partnership deeds, employment, joint venture, financing or loan documentation? Who will need to consent/provide their approval? Check the existing firm constitutions
11.	Place of business: <ul style="list-style-type: none"> • Where will the JV carry on business? Whose premises? New premises? • What majority will be required to take a decision to acquire new premises? • Who will own the premises? If the premises are held in the name of one or more parties, will the premises be held on trust for the other parties and if the owner leaves the JV, will ownership be transferred to the other parties or will new premises need to be located? • Will landlord consent be required?
12.	Consider taking a confidentiality undertaking required from either, both or all the parties or their affiliates? You need to make sure you adequately protect the confidential information of your clients.
13.	Do the parties want to have a period of exclusive negotiation?
14.	How long is it likely to take?
15.	Transitional facilities - will it be necessary for the JV to continue to use any facilities of the existing entities (for example payroll or IT functions)? If so ensure that adequate contractual arrangements are in place to record this. Consider legal and regulatory constraints eg data protection, client confidentiality, client privilege.
16.	Risk Sharing of risk - will indemnities/warranties be given? Should they be capped?
Competition Issues, Regularity consents and Licences	
17.	Will there be any breach of domestic and EU Competition Laws/merger control? Address any issues before setting up the JV.
18.	Identify whether any regulatory or other consents (e.g. Bank or Landlord for premises to be used by the JV) or licences are required. In particular consider the necessary SRA approvals including any needed for alternative business structures and consents for assignment of client contracts and CFAs, and how to deal with these.
19.	How will compliance obligations be met?
20.	Are any tax clearances, third-party consents or registration formalities required to establish the JV or to enable the parties to participate in it? Consider client engagement arrangements and the ability to transfer these. Consider also any major supply contracts e.g. facilities/IT related.
Due Diligence	

21.	You should carry out legal, commercial, tax and financial due diligence on the parties entering into the transaction. This will enable you to identify risk areas along with any necessary consents you will need to obtain. It should also give you an understanding of what further ancillary documents will be required as part of the JV.
Structure and setting up of the JV	
22.	The main documents you should consider are the Shareholders'/Partnership/Members' agreement and articles of association or byelaws or equivalent (if a company is to be used). (Other ancillary documents may well be required but these will vary according to the requirements of each JV).
23.	What will each party contribute to the JV?
24.	Will any business/assets be transferred to the JV by way sale or (if the entity is a company) will the shares in the company which has been running the business be sold to the JV? Tax advice will be necessary in this regard. Consider the consideration for this. Any transfers at an undervalue will give rise to potential issues.
Shareholding/Membership	
25.	What should the respective parties' interests in the JV be? Consider whether a 50/50 division (i.e. where two parties are 'deadlocked') is advisable.
26.	Are there to be different classes of members/shares? If so, what rights and restrictions are to be attached to them (e.g. to vote, dividends, profits, income, capital, appoint and remove directors/members etc)?
27.	Financial return – is the JV to build capital value or is the model to take out all income?
28.	If it is to be a corporate structure consider transfer provisions: What restrictions should be imposed on the transferability of shares/interests in the JV? If one JV partner has a greater interest than the other, are 'drag-along' or 'tag-along' provisions appropriate? – (A drag-along clause will enable a seller of JV shares/interest holding a majority interest to compel the other party to also sell its shares/interests to the buyer. Tag-along entitles the minority JV party to be included in any third party offer for shares/interests received by the majority holder(s)).
29.	Do you require restrictions on the parties e.g. non to compete with business of the JV, and to maintain confidentiality?
30.	Meetings – consider quorum, notice, location?
Financing of the JV	
31.	How much capital will be required initially?
32.	Will the initial investment be in cash or by contribution of assets?
33.	In what proportions (if at all) will the parties themselves provide initial finance/capital? Will profits and losses be apportioned in the same proportions? This may affect whether interest is paid on capital.
34.	Will interest be paid on capital/undrawn profits (if a partnership structure is used)?

	Will there be a dividend policy on shares (if a company is used)?
35.	How much will be provided from external sources?
36.	How will further finance for the JV business be raised? Should there be an obligation on the parties to contribute further funding to the new vehicle? Will each party be required, or entitled, to contribute, pro rata to their original investment or otherwise? How will additional working capital requirements be fulfilled?
37.	Will any debt finance be secured and, if so, on what terms?
38.	How will the capital contributions of incoming/outgoing parties be handled?
Management of the JV	
39.	How many directors/members/managers will the JV vehicle have? How easily is this number increased? Each party will wish to ensure they are adequately represented.
40.	How are directors/members to be appointed and removed? Will a deed of adherence be required?
41.	How should key business decisions be taken? Will they all be delegated to an executive committee/Board.
42.	Will specific responsibilities be devolved to specific parties or committees?
43.	On what basis will decisions be made, simple majority, special majority or unanimous decision for specific issues?
44.	How will appointment of agents be agreed/determined?
Employment Considerations	
45.	Will the parties second employees or transfer their employment to the JV? If so, on what terms? How will terms be aligned across employees from various employers? Who will bear the employment-related liabilities during the employees' employment (e.g. cost of salaries, benefits and pension obligations)? Who will bear the liabilities that arise on the termination of employment or the secondment arrangements?
46.	Are secondment letters or new service contracts required?
47.	Is there a Transfer of Undertakings (Protection of Employment) Regulations 2006 (" TUPE ") transfer either at the outset or on the termination of the JV? If so, the employees who work in the undertaking that is the subject of the transfer will have additional legal rights (e.g. in respect of consultation and access to certain information). Moreover, a dismissal for a reason connected to the transfer may lead to automatic liability for unfair dismissal.
48.	Will it be necessary to harmonise employment terms of employees transferred by the parties to the JV company? What are the implications of this?
Business, accounting and financial matters	
49.	What reporting information will the parties require from the JV?
50.	What should be the JV's accounting policies and who will be the auditor?
51.	Is it clear what constitutes profits and losses of the JV (as opposed to that of the parties and their affiliates)? What provisions should apply regarding the distribution of profits and gains

	of the JV? Who is to decide the level of distribution and by reference to what criteria?
52.	What provisions are needed relating to the maintenance of books and records, access to them by the parties and the supply of management accounts or other financial information on a regular basis to the parties? Whose responsibility is this?
53.	What provisions are needed for the preparation of annual audited accounts, accounting principles to be applied and the appointment of auditors?
54.	What, if any, services (such as payroll, computers, personnel) will be provided by the participants to the JV? If legal services are to be provided on a sub-contract basis, consider the impact on your tender and compliance with required criteria for the award of criminal legal aid contracts.
55.	Consider and take appropriate actions in relation to tax matters, VAT and JV registration with HM Revenue and Customs.
Banking	
56.	Who will be the JV's bankers?
57.	Who will have authority to operate bank accounts and at what levels?
58.	How many authorised signatories will there be? Consider the effect of absence due to holiday or extended leaves of absence.
59.	If the JV is likely to hold client monies it will need to be regulated and set up to do so.
60.	Do any consents or approvals need to be obtained from any Banks who have funding arrangements with the existing parties forming the JV? Will the transfer of assets jeopardise this?
Intellectual Property	
61.	What brand will the JV trade under? How will existing IP/brands be protected?
62.	Will any intellectual property be transferred or licensed to JV?
63.	To what extent will the parties have access to, or rights over, confidential information, knowhow and other intellectual property rights concerning or accruing or belonging to the JV itself? Is there a risk that such information can flow from the JV into competing or potentially competing parts of the parties' other businesses (if to be retained)? If so, how can this be prevented? Consider conflicts of interest.
IT Systems and Data Protection	
64.	Which systems will operate in the JV? Consider: <ul style="list-style-type: none"> • Which systems will transfer • Regulatory constraints on access • Support arrangements • Maintenance • Protection of data • Ownership of systems and data created

	<ul style="list-style-type: none"> • Major IT supply contracts – ability to use existing arrangements of the parties or will new contracts be needed? What will the consequences be? • Will there be any need for information to be in formats that can be “read” and integrated into existing party systems – consider data protection issues.
Insurance	
65.	<p>Check to see if the existing entities have adequate insurance cover? Consider insuring assets; professional indemnity insurance; key-man policies; health insurance; public liability insurance; employer's liability insurance; others.</p> <p>Ensure new cover for the JV will be in place from date of incorporation/commencement of trade.</p>
Dispute Resolution	
66.	<p>How should a dispute be resolved, particularly if deadlock can be created?</p> <p>Where the parties have equal voting rights, there is a risk that disagreements will interfere with the efficient running of the business. This may be acceptable to the parties, since there will be pressure to reach a compromise. However, the parties may wish to include a dispute resolution procedure or a buy-out mechanism. Consider impact on the legal aid contract.</p>
Duration and Exit	
67.	<p>How long is the JV meant to last for - i.e. just duration of the Duty Provider contract? What happens on termination? Will there be obligations to take part of the business back e.g. TUPE transfer back of employees? How will it be wound up?</p> <p>In addition to potential expiry of the JV how/when will a party be able to exit?</p>
68.	<p>Is it necessary to plan an exit from the JV?</p> <p>Will there be any circumstances in which termination will automatically occur (e.g. loss of ABS licence)?</p>