

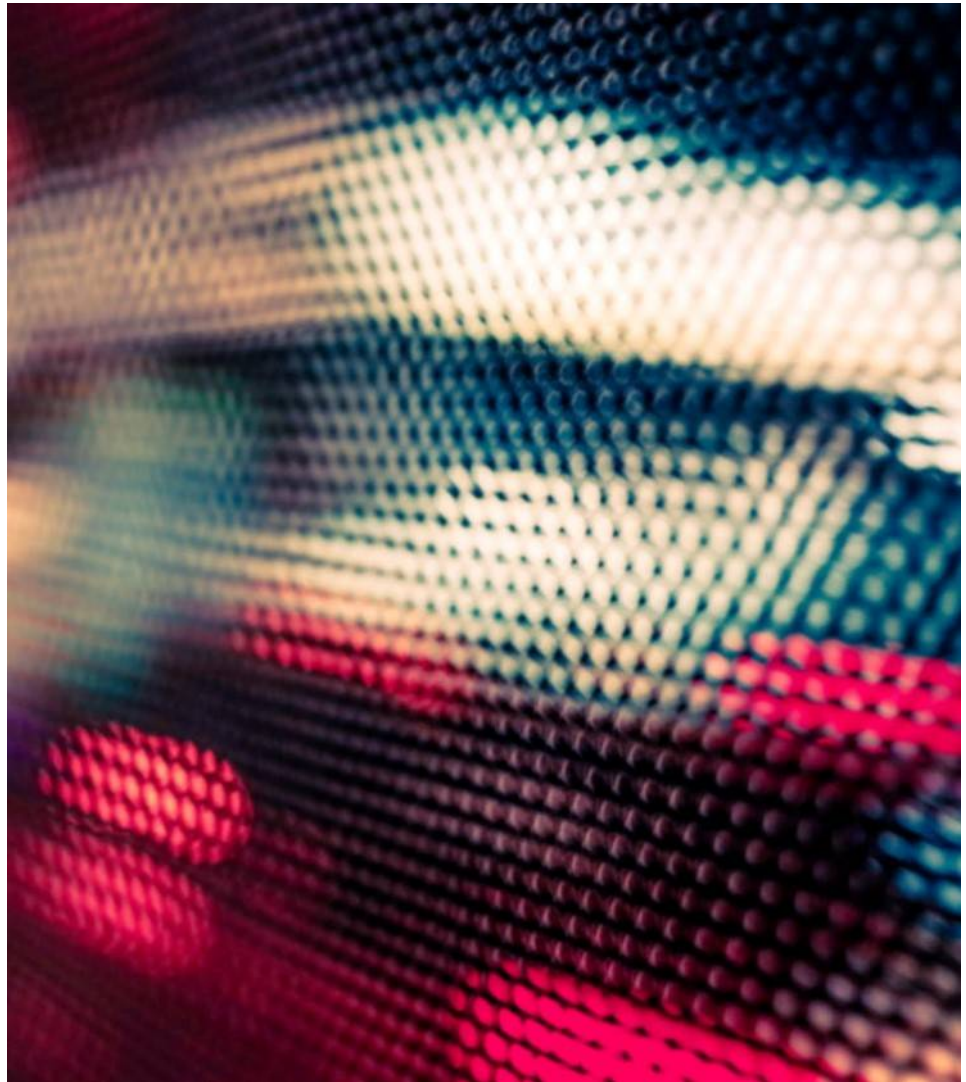


# **JV structuring considerations**

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# 1. Major structuring considerations

# Hot topics for joint venture structuring

## Deal logic

- structuring analysis reveals that JV is more advantageous than other forms of collaboration and M&A
- partnering creates strategic advantage and strong business case

## Corporate governance

- result of intensive discussions and analysis of governance options
- creates fast and efficient decision making processes
- levels management & control

## Financing and allocation of profits

- shareholding ratios correspond to contribution by partners
- financing resources correspond to capital requirements
- allocation of profits reflects total contributions of partners



## Partner fit

- joint strategic objectives
- joint expectations for realization of business case
- joint culture, value and behavioural standards

## Deal structure

- result of intensive discussion and analysis of various forms of collaboration
- reflects partners' competences and contributions

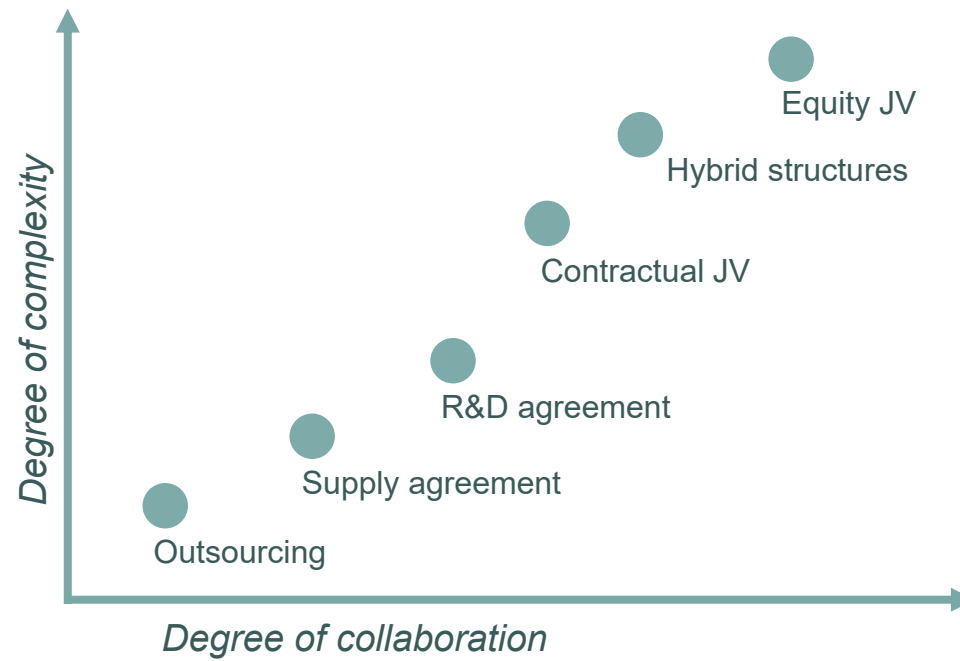
## Exit

- termination scenarios anticipated, discussed and addressed at early stage
- no "boilerplate" solutions
- protection against overhasty and uncontrolled termination

# Elements that drive a joint venture's structure and complexity



# Complexity mainly driven by degree of collaboration



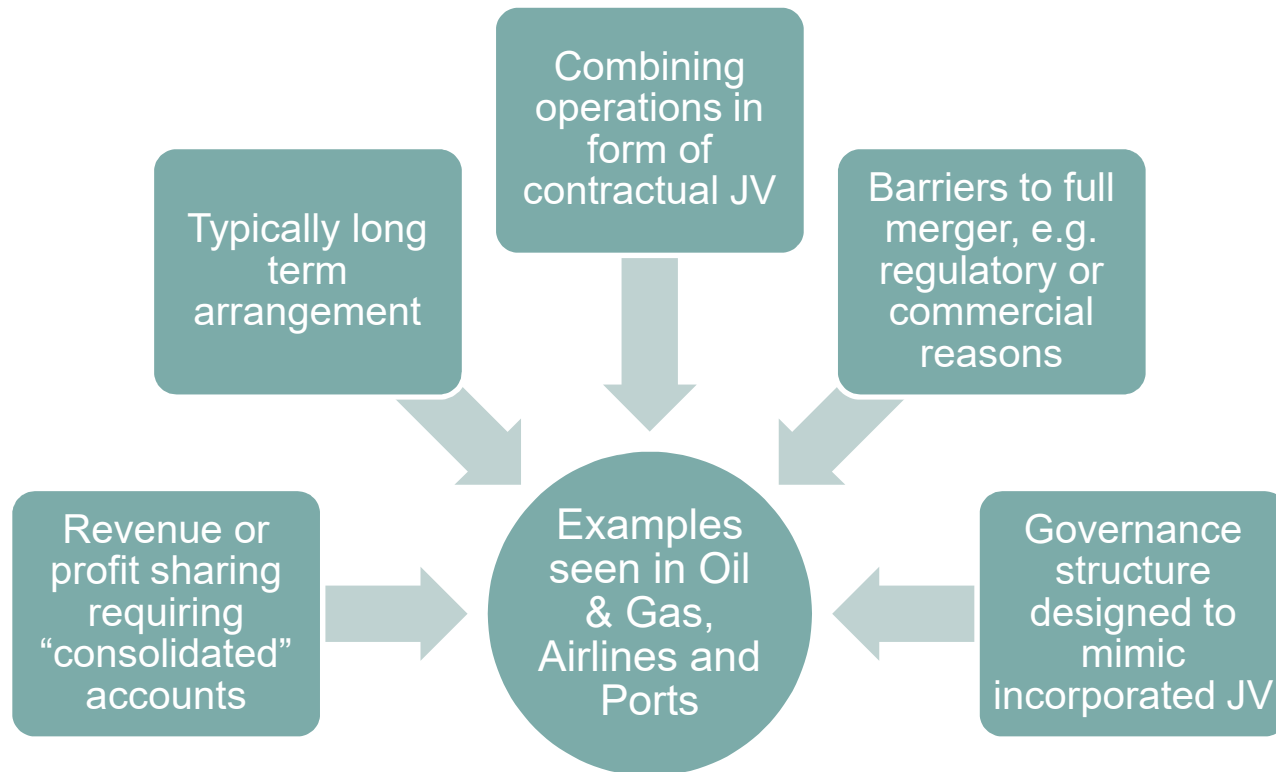
## Contractual vs. incorporated joint venture (1/2)

Topic	Contractual cooperation	Incorporated (equity) joint venture
<b>Parties involved</b>	contractual parties only	shareholders and joint venture company
<b>Degree of collaboration and integration</b>	low, contractual parties generally remain independent	medium to high depending on contributions and shareholding ratios
<b>Degree of organisation</b>	low, no independent organisation	high, cooperation incorporated in separate legal entity
<b>Life-cycle</b>	typically limited to duration of a certain project	duration focussed on more permanent cooperation
<b>Termination flexibility</b>	relatively high; termination notice sufficient	relatively low due to shareholding, financing, and incorporated organisational structure
<b>Corporate identity</b>	typically not	own corporate identity due to separate entity
<b>Management</b>	by contractual parties	by dedicated corporate bodies
<b>Liability in business transactions</b>	remains with each contractual party	sits with joint venture company
<b>Liability cap in business transactions</b>	generally unlimited	limited liability of joint venture company's shareholders

## Contractual vs. incorporated joint venture (2/2)

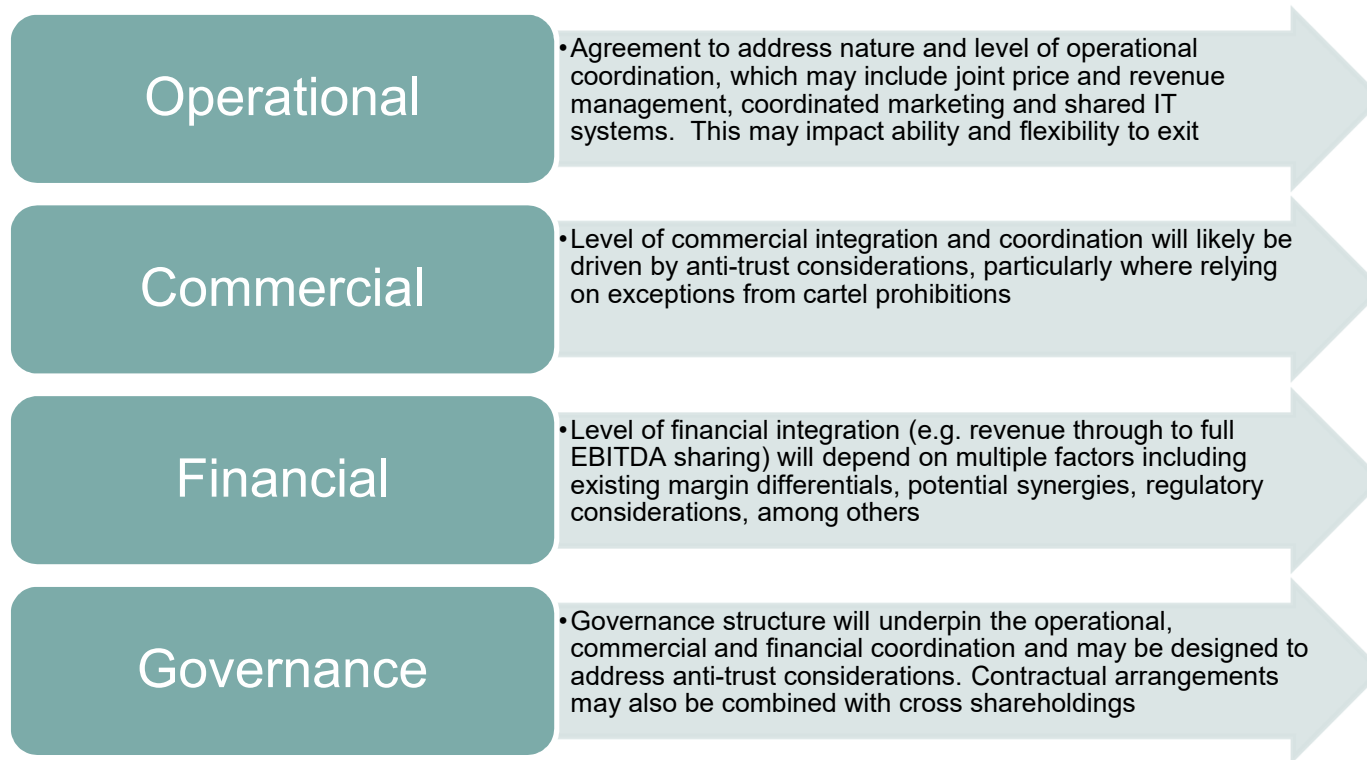
Topic	Contractual cooperation	Incorporated (equity) joint venture
<b>Financing of resources</b>	by respective contractual party	joint venture company has own access to financing sources
<b>Accounting</b>	no separate accounting obligation	separate accounting obligation
<b>Confidentiality of collaboration</b>	high	rather low
<b>Relevance of anti-trust matters</b>	typically, low to medium (unless exclusivity arrangements are concerned)	rather high
<b>Taxation</b>	license, franchise fees	full taxation as separate corporate entity
<b>Consequences in case of insolvency of a partner</b>	contractual cooperation will be terminated	joint venture (per se) independent from insolvency of one of its shareholder
<b>Administration effort</b>	low	medium to high
<b>Drafting effort</b>	low to medium	medium to high
<b>Negotiation effort</b>	medium	rather high
<b>Time to implement structure</b>	short to medium	medium to long

## Joint operating agreements – a hybrid structure





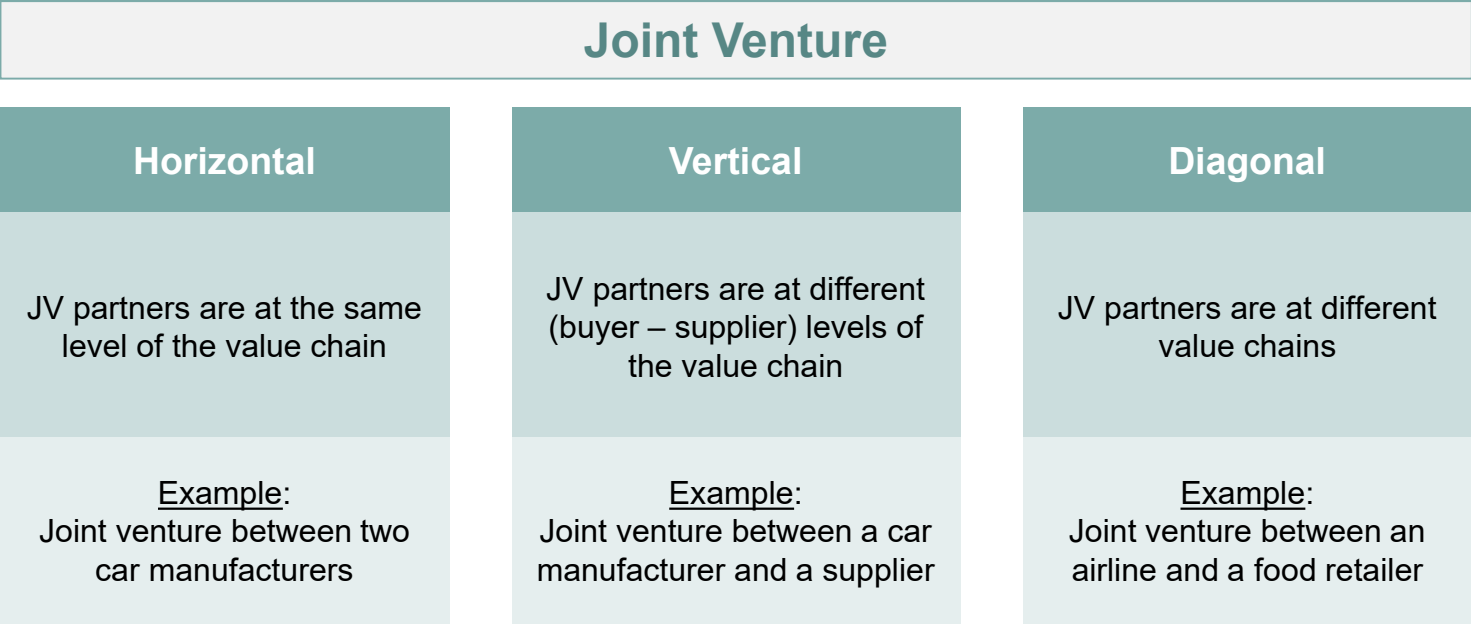
# Joint operating agreements – level of integration





## **2. Types of joint ventures and joint venture establishment**

# Common joint venture value chain structures



# Common ways to establish the joint venture company

	(A) Joint NewCo formation	(B) Staggered NewCo formation	(C) Joint acquisition of TargetCo	(D) Unilateral share acquisition
	by both partners upon closing	first, by one partner; participation in NewCo by another partner upon closing	by both partners with M&A transaction	by one partner in existing company of other partner
Complexity of transaction	●	●	●	●
Contractual complexity	●	●	●	●
Transaction certainty	● ●	●	● ●	● ●
Dispute potential	●	●	●	● ●
Time	●	●	●	●
Costs	●	●	●	●

# Determining the appropriate legal form

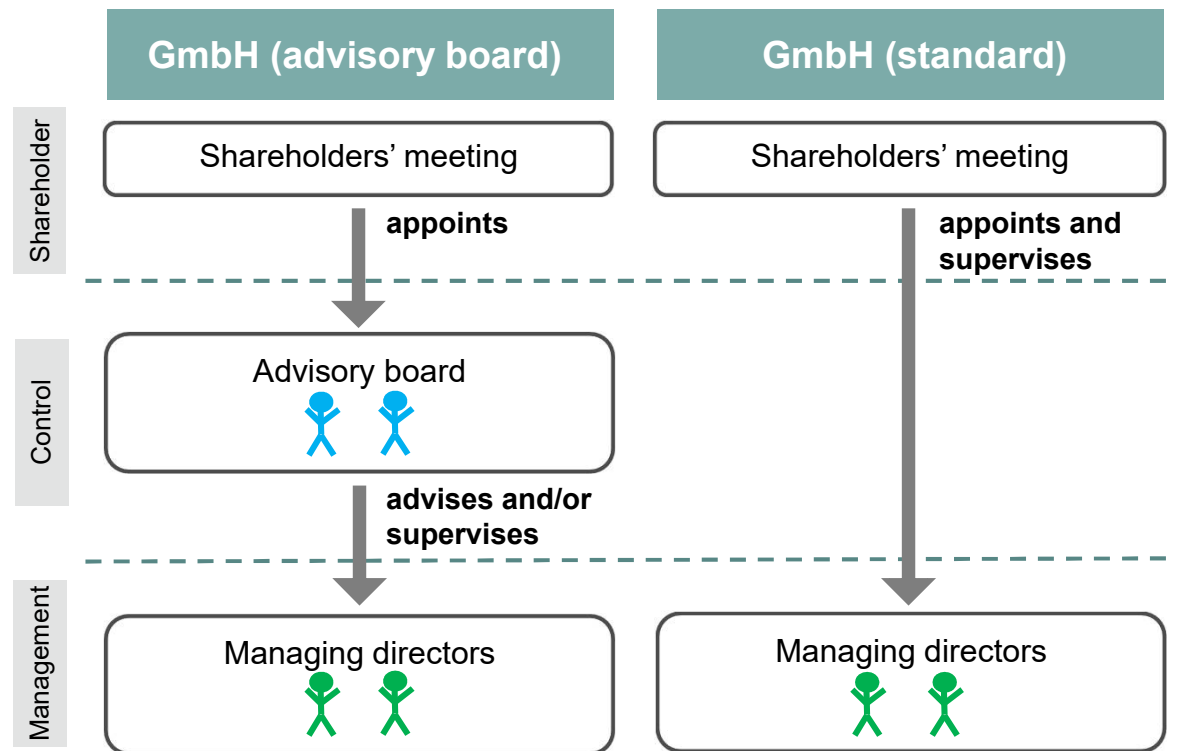
Checklist	✓	✗
(1) Limited liability of shareholders		
(2) Low formation effort		
(3) Beneficial tax regime		
(4) Flexible corporate governance		
(5) Local jurisdiction requirements		
(6) Nationality requirements		
(7) Flexible dividend regime		
(8) Transferability of shares		
(9) Standard accounting, reporting and publicity requirements		
(10) Low corporate housekeeping effort		



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### **3. Commonly used legal forms (Germany)**

# GmbH is the standard legal form for an equity JV



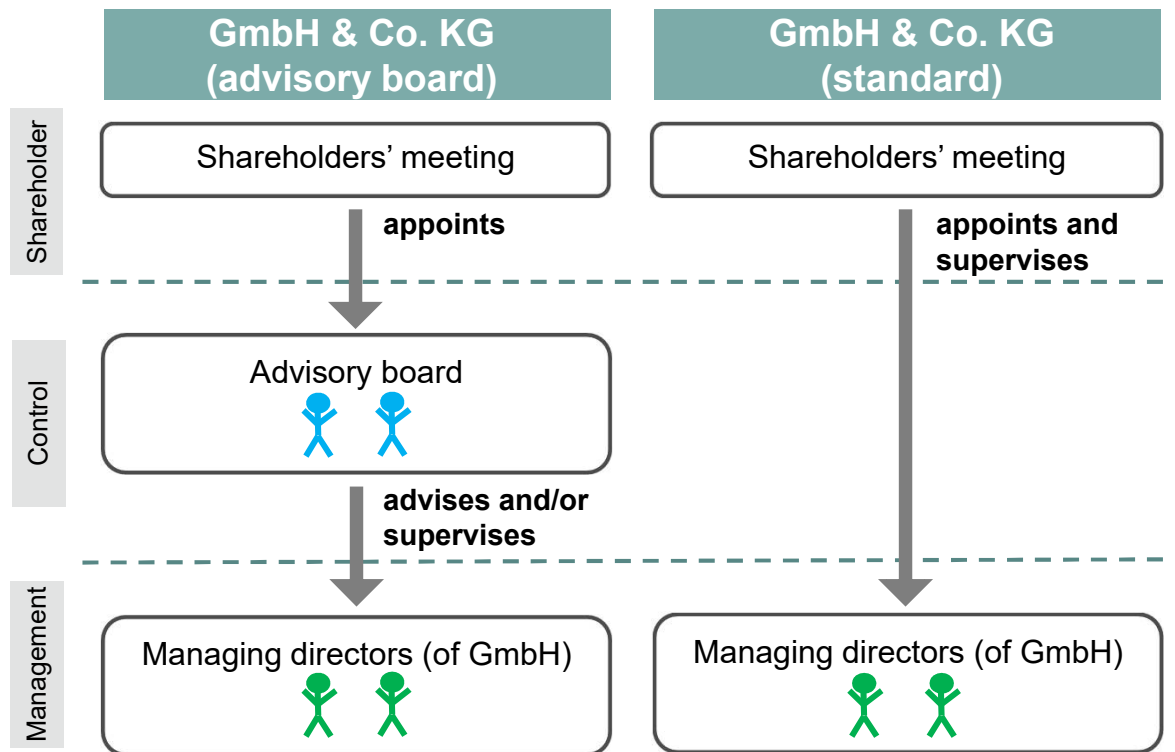
## Shareholders' meeting

- right of final decision
- right to give instructions to managing directors
- appointment and dismissal of managing directors
- limited liability

## Advisory board

- optional corporate body
- includes external or shareholder-affiliated experts
- advisory and /or supervisory corporate body
- liability depending on scope of competence
- shareholders' meeting may delegate competences to advisory board

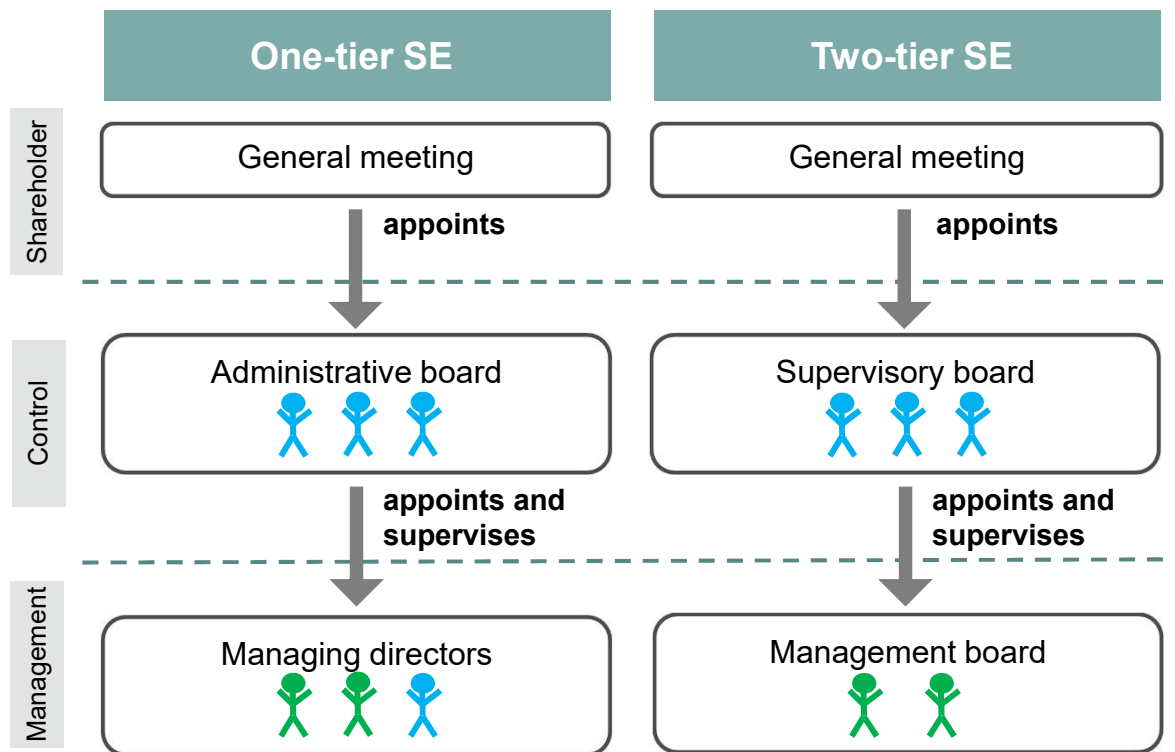
# More complex legal forms (GmbH & Co. KG)



- KG is a partnership and subject to taxation different than GmbH
- typically in the form of a person-identical KG (shareholders of KG and GmbH are identical) or a so-called "Einheits-KG" (KG holds all shares of GmbH)
- KG acts through limited liability company acting as general partner (*Komplementär-GmbH*) which, in turn, acts through managing directors
- more complex than GmbH due to interdependence of GmbH acting as general partner and KG agreement



# More complex legal forms (*Societas Europaea*)



- SE is a pan-European company form
- sole German legal form which allows a one-tier structure (similar to UK, US) and which is not an address of employee participation at board level
- use as joint venture originally envisaged by SE Regulation, but less contractual flexibility compared to GmbH due to requirements under stock corporation law (statutory strictness)
- attractive legal form for cross-border joint ventures of a certain size and prominence

# Illustrative allocation and delimitation of competences

	<b>A</b> GmbH (standard)	<b>B</b> GmbH & Co. KG	<b>C</b> AG / two-tier SE	<b>D</b> One-tier SE
Daily business	managing directors	managing directors (general partner)	management board	managing directors
Granting of consent to transactions requiring consent (reserved matters)	shareholders	shareholders	supervisory board	administrative board
Control of management	shareholders	shareholders	supervisory board	administrative board
Deadlock resolution	deadlock committee	deadlock committee	deadlock committee	deadlock committee
Use in Germany				
Market perception	owner-managed businesses	family-owned businesses	large listed companies	family-owned businesses
Management structure	simple	multi-tier	two-tier	one-tier
Influence of shareholders on daily business				
Decision-making autonomy of management				
Complexity of formation				
Administration effort				
Share capital	EUR 25k	EUR 25k (general partner)	EUR 50k / EUR 120k	EUR 120k



### **3. Commonly used legal forms (UK)**

# Joint venture vehicles available in the UK

## Company limited by shares

- Most common vehicle for a joint venture
- Simple mechanism for upfront contribution by participants and future injections of capital via share subscription
- Financial flexibility: different types of shares and loan capital
- Different levels of participation: different classes of share

## Company limited by guarantee

- Common vehicle for industry associations
- Straightforward mechanism for admitting new members or exiting members (no need to sell / transfer shares)
- Fewer financing options (equity investment is not available)
- No ability to transfer ownership between members
- May prevent/break tax grouping

## Partnership (including LLPs)

- Less common vehicle for joint ventures
- Usually the partners (rather than the partnership) are taxed in respect of (their share) of the partnership's income and capital gains, but each partner should take own advice and certain taxes - wage withholding (e.g. PAYE), social security and value added/sales taxes - are often the responsibility of the partnership
- No transferrable shareholding
- Less clear distinction between ownership and management





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