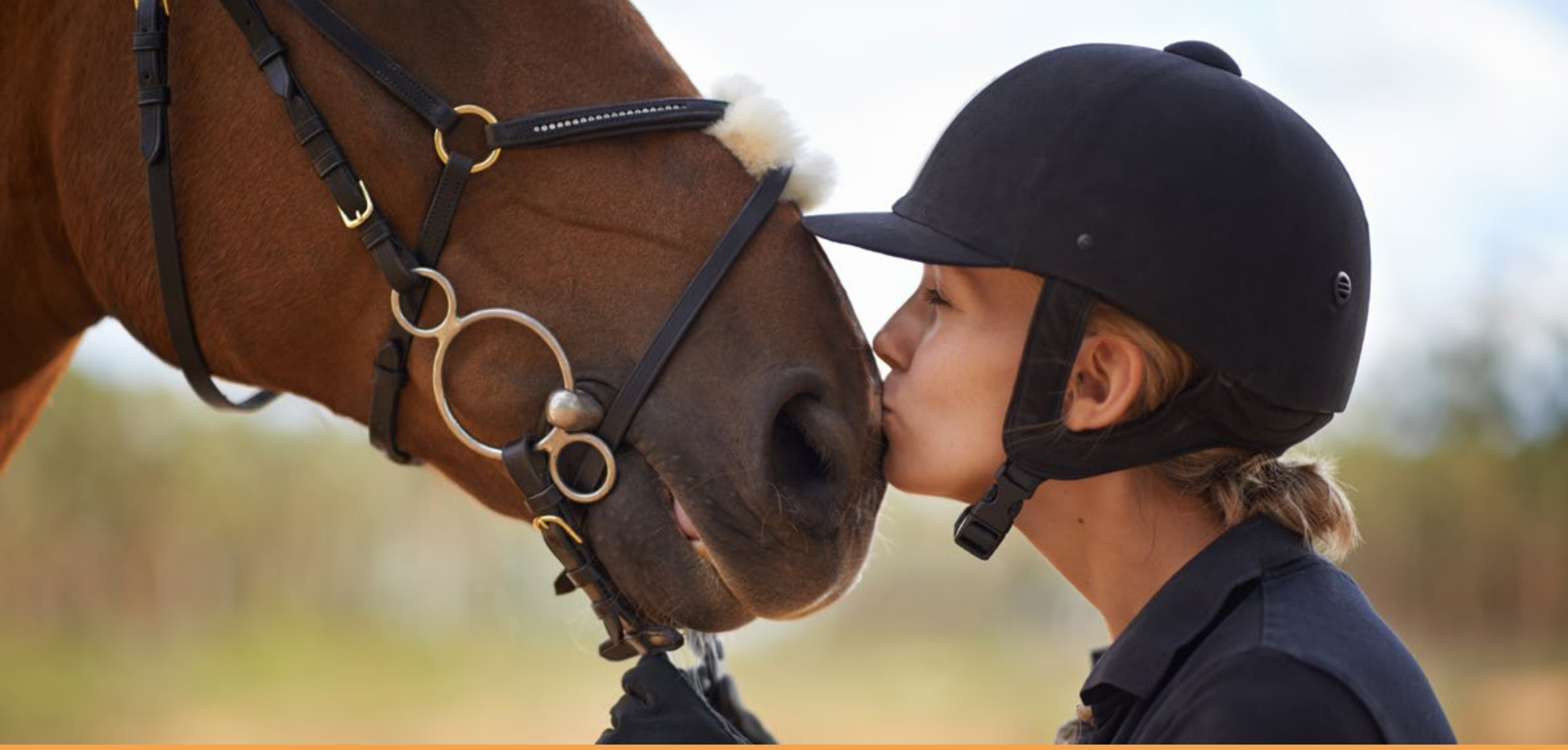


Joint ventures

Joint ventures (JVs) are becoming increasingly popular within the equestrian industry. Starting an equine business can be expensive. But the JV structure enables those wanting to start up a business to overcome this barrier, whilst providing those who are looking to diversify, such as farmers and landowners, with the opportunity to expand their business or minimise their responsibilities. Joint ventures also offer the flexibility to build a business tailored to the specific requirements of those involved.

What is a JV?

A joint venture is a commercial arrangement between two or more individuals or business entities, often for the purpose of starting a new business activity.

Joint ventures cover a variety of collaborative business arrangements which involve differing degrees of integration and commitment. The terms of a joint venture are set out in a bespoke agreement that reflects the circumstances of the contracting parties, clearly setting out their respective rights and responsibilities, in addition to any business goals and exit strategies.

Types of joint venture

The most common types of joint venture are:

- Newly incorporated limited company (newco)
- Contractual JV
- Limited liability partnership
- General partnerships

Newco

In some circumstances, the best structure for the new business will be a newco formed by the parties who will subscribe to become shareholders of the newco. The business will be a separate legal entity with limited liability, which means the newco can own its own assets and enter into contracts in its own right.

This structure typically involves the vesting of all the trading activities, and assets and liabilities relating to the joint venture operation, in a single vehicle (or its subsidiaries).

The main advantage of a newco is that the shareholders' liability is limited to the amount each party contributes by way of share capital. But the shareholders may be required to provide guarantees or security to support external financing and third party contracts. The corporate structure also provides considerable flexibility through the creation of different types of share and loan capital. The shareholders' rights will often depend on the contribution of the parties and this should all be set out in a joint venture shareholders' agreement.

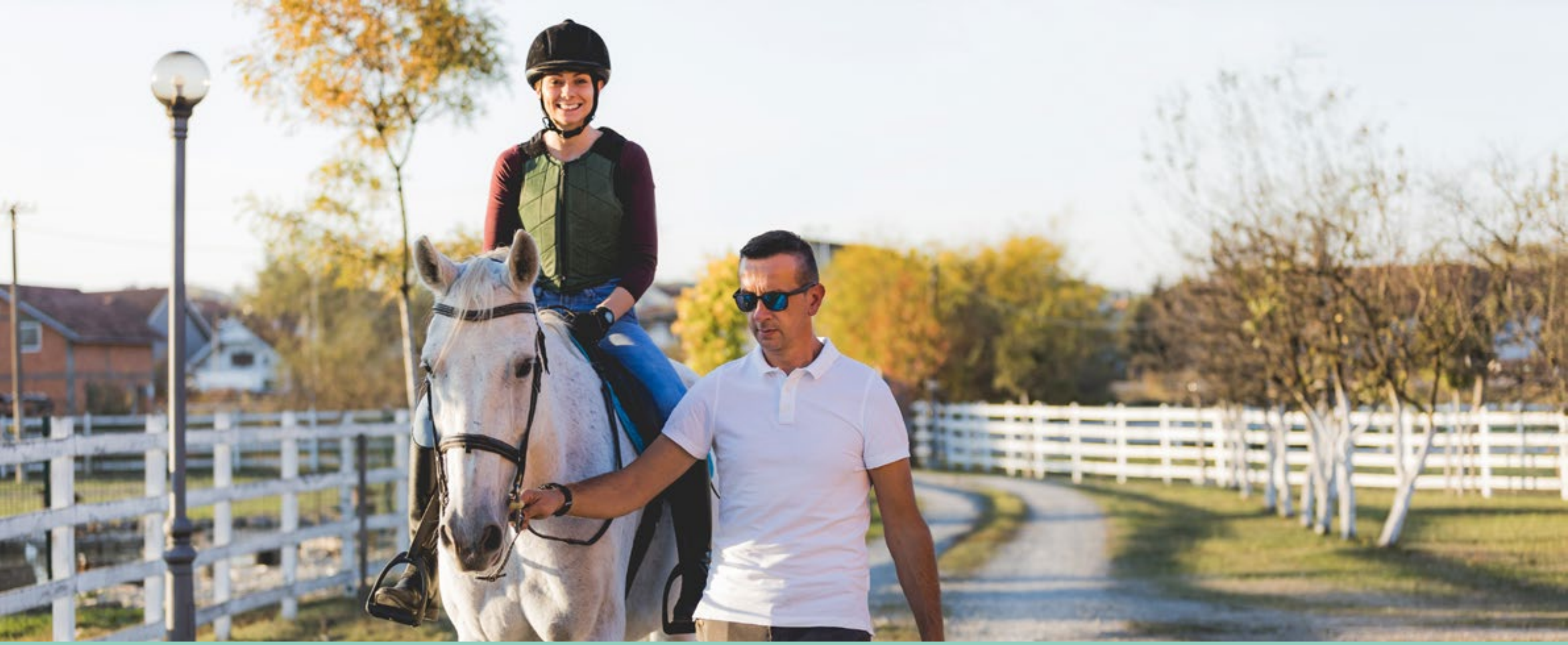
Contractual JV

As the name suggests, this is a contract, where a farmer or landowner and, in our case, the equine professional, set out their arrangement for a joint venture.

No new separate company or other business entity is created, each party retains ownership of their own assets (importantly, the land and infrastructure remain the farmer's).

Because no separate legal entity is created, it can be quick to set up and easy to terminate the JV. Therefore, this structure can be a good option for short term ventures or new businesses, but it will generally be difficult to raise external finance with this structure as there is no separate legal entity owning its own assets to grant security to a lender.

For example, the farmer (or landowner) may agree to give a tenancy of some land and buildings, and include some financial investment for the provision of equestrian facilities, in return for the equine professional's management of the business and land under the tenancy.



The landowner may agree to meet business overheads, and provide the land and fixed equipment or infrastructure (on the basis of a tenancy agreement), enabling the equine professional to run a business from the premises without having to make the up-front investment and purchase land and buildings. This type of joint venture is a structure that is beneficial to both parties, as it allows the landowner to maintain a level of control whilst allowing the professional to avoid some of the risk and start-up costs of running an equine business. It can generate a stable income (no pun intended) for the farmer (or landowner) and the farmer (landowner) may still benefit from tax or other stipends relating to land ownership, without having to manage the land, as it will be managed by the equine professional as part of their business.

A JV can go further than a simple tenancy, to include arrangements that do not relate directly to the land involved, where each party provides additional services to benefit the other. For example, it is agreed that the equine business will have flexible access to certain additional pasture on an informal basis, or that the farmer will provide hay and straw as it becomes available.

It may be that, subject to the equine business growing, and in exchange for continued investment in the property (building additional stables or adding a manege), the landowner takes a share in the income. Investment made by the farmer (or landowner) in any infrastructure will of course remain in the farmer's ownership and may form the basis of subsequent similar tenancies or arrangements.

Limited liability partnership (LLP)

Like the newco structure, this typically involves the vesting of all the trading activities, and assets and liabilities relating to the joint venture operation, in a single partnership vehicle as an LLP. An LLP also has a legal personality separate from that of its members.

An LLP combines the organisational flexibility and tax status of a partnership with limited liability for its members which may make the LLP an attractive choice of vehicle for some joint ventures. It may also be that an LLP is part of the evolution of a successful commercial JV, should the parties wish.

General partnerships

A joint venture partnership is an alternative structure. It involves partners sharing the risks, costs and responsibilities of running a business, all of which should ideally be set out in a partnership agreement.

A partnership is not a separate legal entity, which is a considerable disadvantage to both individual parties and companies (unless they choose to use subsidiaries to shelter their liability) and so the 'partnership joint venture' is similar to a commercial joint venture, although the parties effectively accept some joint liability for the venture, which represents a risk to both parties.

Another disadvantage of having no separate legal entity is that the JV will not have its own management structure and cannot itself raise finance (including creating security) for the joint venture operations.

It is also not as easy to change the parties to the JV because of the rules on dissolution and the non-assignability of partnership shares, although a partner can assign his or her share of the profits and include some provisions for change in ownership.

On the face of it, there is no clear advantage to entering into a partnership for the purposes of a JV, over entering into a commercial JV described above. A partnership structure may be considered where, for tax and commercial reasons, the parties wish to have common direct interests in the underlying assets of the venture.

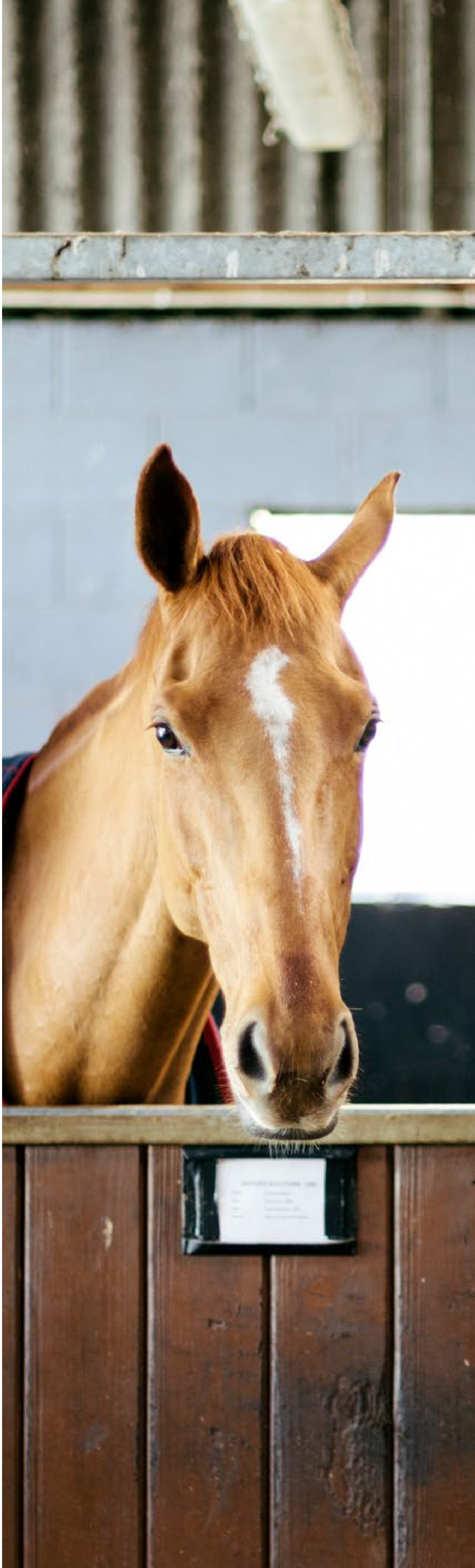
Property considerations

In most circumstances, famers/landowners will be keen to retain absolute ownership and control over their most valuable asset – their land! For this reason it will often be the case that, irrespective of which structure is chosen for the joint venture, the land will continue to be owned by the landowner, with the new joint venture having the right to occupy the land/property for the purpose of operating the new equine business.

It is likely that the right to occupy the land/property will be documented in a formal lease. The lease will set out the rights and responsibilities of both the landowner and the new JV and some of the important considerations will be:

- Who is going to repair and maintain what during the lease?
- Will the JV have to pay a rent to the landowner and if so will this be a market rent or turnover rent?
- Will there be any restrictions on use of the land/ property, including by whom and when?

The landowner is likely to be wearing two hats, one as a pure landowner and the second as a partner/member in the joint venture. The final terms of the lease are likely to be different for each business and will depend on how the JV itself is structured and how much involvement the landowner is looking to have in the new equine business.



Ultimately, there will be a balancing act between giving the new joint venture the flexibility to build and grow the new equine business, whilst ensuring that the landowner retains enough control over land that is often close to where they live. They may also have other family members' interests in that land to consider.

Choosing the right structure for you

There are many issues to consider when choosing the right structure for you, such as how profits are to be extracted, which parties are to share the risk, whether the JV will have its own employees, how it is to be controlled, what is the accounting and tax treatment, how the JV is to be funded and whether ownership will need to change at any point.

As well as legal advice, it is therefore also important to take tax and accountancy advice, as well as input from equine business consultants, to ensure that the right structure is put in place that meets the technical, operational, financial, accounting, regulatory, legal and tax requirements of the parties as well as the commercial objectives of the parties.

Joint ventures are a popular choice for equine business owners at any stage in their career, as they can offer flexibility and further opportunities. However, it is also important to consider the associated risks. The equestrian industry's vulnerability to the negative impacts of Covid-19 has highlighted the importance of planning. In order to avoid any complications that may arise, it is essential to have a carefully drafted agreement that sets out the rights and responsibilities of each party, covering any scenarios that may affect the business.

How HCR can help you?

Our specialist team has the skills and experience to advise on your joint venture whichever structure you choose. We offer a range of fixed fee charging structures depending on your needs. This means you're in control of your costs. And because we've helped so many clients with joint ventures before, we're quick and efficient, tailoring our tried and tested documentation to speed up the process for you.

For more information on joint ventures within the equestrian industry, contact

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