

**ISSUES ARISING IN CONNECTION WITH  
ESTABLISHING PARTNERSHIPS OR LLCs BETWEEN  
U.S. AND FOREIGN INVESTORS**

July 2017

MARTIN LUTZ  
GRAVES DOUGHERTY HEARON & MOODY  
401 CONGRESS AVE., STE. 2200  
AUSTIN, TEXAS 78701

KRISTEN N. GEYER  
CULHANE MEADOWS  
100 CONGRESS AVE., STE. 2000  
AUSTIN, TEXAS 78701

**PRELIMINARY CLARIFICATIONS:**

We will be identifying issues to have on radar screen when accepting foreign investment into an LLC or partnership (without getting too much into the weeds on partnership taxation).

What do we mean by “foreign” investor? Generally, an investor not already subject to US jurisdiction as a citizen or resident—i.e., for tax purposes, a Non-Resident Alien.

Considerations will include:

*Proper Structuring and Considerations of Tax Efficiency*

*Compliance and Regulatory Matters*

*Relationship/Cultural Issues*

**1. STRUCTURING (LARGELY A TAX-DRIVEN EXERCISE)**

Investigating options and approaches to structuring, when US or foreign clients assume they want to form a partnership or LLC:

- Often clients assume they want to establish a formal, jointly-owned entity, when another approach might be more advisable.

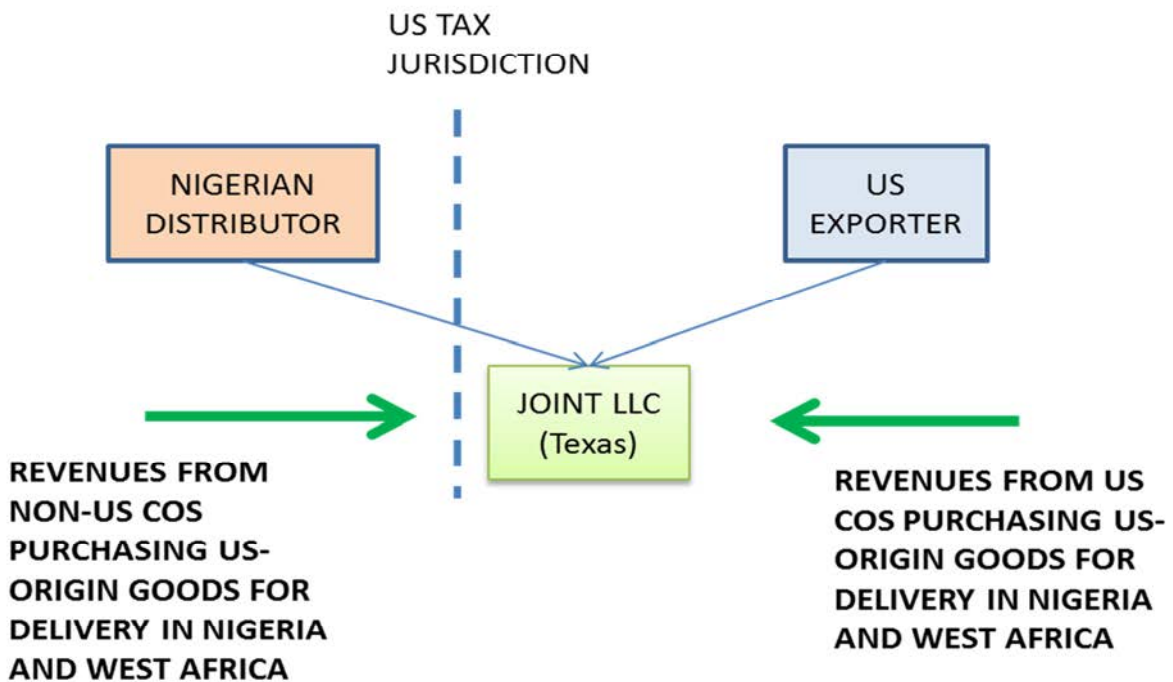
- The attractive flow-through treatment enjoyed by the US partners is not quite so attractive to the foreign partner—in fact, from the perspective of the foreign investor, it is almost always best to avoid it.
- Be sure to consider: Where will the profits be generated? What taxes will apply? Is it necessary or advisable to have the foreign partner subject to US tax jurisdiction?

**Client Example 1:**

US exporter and Nigerian distributor decide to form a joint venture to market US-manufactured oilfield equipment to multinational oil companies (both US and non-US) operating in Nigeria.

- The partners ask for help in forming a Texas-registered LLC to act as the purchaser/reseller.
- Sales from the joint US entity would be made to customers that are located in both Nigeria and the United States (with US customers purchasing the equipment for shipment to their overseas operations in Nigeria).
- So, revenue from sales will be generated in both Nigeria and the United States.

***Client Proposal: A 50/50 Texas LLC***



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Issues Arising in Connection with Establishing Partnerships or LLCs Between U.S. and Foreign Investors

Also available as part of the eCourse

[2017 LLCs, LPs, and Partnerships eConference](#)

First appeared as part of the conference materials for the  
26<sup>th</sup> Annual LLCs, LPs and Partnerships session  
"Foreign Investment Into US LLCs and Partnerships"